

MF-1

DEPARTMENT OF JUSTICE AUTHORIZATION—
FISCAL YEAR 1981

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

SECOND SESSION
ON
DEPARTMENT OF JUSTICE AUTHORIZATION—FISCAL YEAR 1981

MARCH 6, 1980

Serial No. 93



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 1981

81556

COMMITTEE ON THE JUDICIARY

- | | |
|--|---|
| PETER W. RODINO, Jr., New Jersey, <i>Chairman</i> | ROBERT McCLORY, Illinois |
| JACK BROOKS, Texas | TOM RAILSBACK, Illinois |
| ROBERT W. KASTENMEIER, Wisconsin | HAMILTON FISH, Jr., New York |
| DON EDWARDS, California | M. CALDWELL BUTLER, Virginia |
| JOHN CONYERS, Jr., Michigan | CARLOS J. MOORHEAD, California |
| JOHN F. SEIBERLING, Ohio | JOHN M. ASHBROOK, Ohio |
| GEORGE E. DANIELSON, California | HENRY J. HYDE, Illinois |
| ROBERT F. DRINAN, Massachusetts | THOMAS N. KINDNESS, Ohio |
| ELIZABETH HOLTZMAN, New York | HAROLD S. SAWYER, Michigan |
| ROMANO L. MAZZOLI, Kentucky | DAN LUNGREN, California |
| WILLIAM J. HUGHES, New Jersey | F. JAMES SENSENBRENNER, Jr., Wisconsin |
| SAM B. HALL, Jr., Texas | |
| LAMAR GUDGER, North Carolina | |
| HAROLD L. VOLKMER, Missouri | |
| HERBERT E. HARRIS II, Virginia | |
| MIKE SYNAR, Oklahoma | |
| MICHAEL D. BARNES, Maryland | |
| DAN GLICKMAN, Kansas | |
| BOB CARR, Michigan | |
| BILLY LEE EVANS, Georgia | |

- JOSEPH L. NELLIS,** *General Counsel*
GABNER J. CLINE, *Staff Director*
FRANKLIN G. POLK, *Associate Counsel*

(II)

U.S. Department of Justice
 National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Public Domain
U.S. House of Representatives
 to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

CONTENTS

WITNESS

| | |
|---|--------|
| Civiletti, Hon. Benjamin R., Attorney General of the United States..... | Page 3 |
| Prepared statement..... | 4 |

APPENDIX

| | |
|---|----|
| Parker, Alan A., Assistant Attorney General, letter to Chairman Peter W. Rodino, Jr., dated July 28, 1980..... | 41 |
| Rodino, Hon. Peter W., Jr., Chairman, House Committee on the Judiciary, letter to Hon. Benjamin R. Civiletti, dated March 24, 1980..... | 44 |

(III)

NCJRS

OCT 5 1981

ACQUISITION

DEPARTMENT OF JUSTICE AUTHORIZATION—FISCAL
YEAR 1981

THURSDAY, MARCH 6, 1980

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met at 9:46 a.m. in room 2141 of the Rayburn House Office Building; Hon. Peter W. Rodino, Jr. (chairman) presiding.

Present: Representatives Rodino, Brooks, Kastenmeier, Edwards, Conyers, Seiberling, Danielson, Drinan, Holtzman, Mazzoli, Hughes, Hall, Gudger, Volkmer, Synar, Glickman, Carr, McClory, Fish, Butler, Moorhead, Hyde, Sawyer, and Lungren.

Staff present: Joseph L. Nellis, general counsel; Garner J. Cline and Daniel Freeman, counsel; and Franklin G. Polk, associate counsel.

Chairman RODINO. The committee will come to order.

Mr. EDWARDS. Mr. Chairman, I ask unanimous consent that the committee permit this meeting this morning to be covered in whole or in part by television broadcast, radio broadcast and/or still photography, pursuant to rule 5 of the committee rules.

Chairman RODINO. Without objection, it will be so ordered.

This morning we are pleased to welcome Attorney General Benjamin Civiletti to give testimony on a most important aspect of this committee's work, the Justice Department authorization for the next fiscal year. The committee, through its subcommittees, has already begun and, in most cases, has completed the authorizing process which is essential in its oversight hearings to determine whether or not the policies, programs, priorities, procedures and resources of the Department are being utilized according to congressional intent and reasonable rules of efficient management.

The committee is deeply involved in the consideration of the important questions surrounding the constitutional responsibility of the Justice Department to investigate and prosecute all wrongdoing under the Federal statutes, no matter who may be involved, coupled with the necessity for protecting the constitutional rights of individual citizens from unwarranted intrusion by the Government.

As you know, this is only the third year of the process in which Congress specifically authorizes appropriations for the Department of Justice and, therefore, it is particularly fitting that the Attorney General is here to inform us about the operations of his Department so that this committee may discharge its legislative responsibility through this authorizing process.

Mr. Attorney General, I am pleased to welcome you here this morning. You are here with us so that the committee may be informed. I look forward to a cooperative effort on the part of both the committee

and the Department in the significant work which is being done by you in your Department in this fiscal year and the future.

Finally, I should point out that together with the authorization process, the committee intends to exercise its oversight responsibilities with regard to the Department. We intend to continue hearings for the purpose of obtaining a legislative record of precisely what the Department is doing in its various efforts, whether it is operating in its most efficient manner, and in accordance with the legislative intent and legislative mandates.

As you know, on Tuesday the Subcommittee on Civil and Constitutional Rights, chaired by the distinguished gentleman from California, Mr. Edwards, had the opportunity to hear from the Assistant Attorney General, in charge of the Criminal Division, and the FBI. We do not intend to ask, and I hope that we will not repeat the many questions members asked, about the extent and nature of undercover operations with any specificity at all. We should, at all costs, avoid this repetition.

However, we will be interested, Mr. Attorney General, in your views and your comments on policy matters regarding some of the programs that you have developed, so that we may be able to obtain a more complete record of those operations in an important area of your activities. I would like to point out, especially in view of the recent disclosures of special operations, that the Department of Justice is seeking a budgetary increase of \$1.8 million, from \$3 to \$4.8 million in fiscal year 1981.

Before moving on, I would like to ask Mr. McClory to give his opening remarks.

Mr. McClory. I thank you, Mr. Chairman, for yielding. I just want to join you in welcoming the distinguished Attorney General this morning. This, in a sense, is a new role which the House Committee on the Judiciary is undertaking—the general review of the Department of Justice and the authorization of funds and activities that will occur during the ensuing year or two. I believe that it is an important role that we must assume and fulfill.

It is, in a sense, a kind of oversight of the Department of Justice activities in which we are engaging. Instead of merely responding to the wishes, needs or recommendations of the Department, the Committee on the Judiciary will review and examine objectively any recommendations that may be made. At the same time, we will have an opportunity to make recommendations concerning the directions in which the major activities of the Department might go.

I am cognizant of the broad scope of the activities of the Department of Justice, both civil and criminal. I would like also to commend the Attorney General on his performance of his duties, and to express my appreciation for his cooperation with the minority members of the Judiciary Committee. This is something that we greatly appreciate. Finally, I want to express our support for and our agreement with the manner in which you have handled some of the sensitive and difficult issues. Sometimes, there are partisan aspects to these issues, but nevertheless, you have dealt with those problems in a nonpartisan and objective way.

As a result, we have confidence in you. We support you, and we hope that our relationship can continue to be as agreeable as it has been in the past. We hope that you will communicate with the minor-

ity, as well as with the majority, with regard to your positions and recommendations.

Again, I join in welcoming you here this morning.

Thank you, Mr. Chairman.

Chairman RODINO. Mr. Attorney General, before asking you to present your testimony, I am going to state that, of course, you may read it in its entirety. Otherwise, we will include it in the record in its entirety. If you want to summarize, you can do so.

I would like to state that you certainly have demonstrated ever since assuming this very responsible post a real spirit of cooperation with this committee in an effort to do that which responsibly each of us must do.

I think with that note we welcome you here and hope to continue that cooperation.

Please proceed.

TESTIMONY OF HON. BENJAMIN R. CIVILETTI, ATTORNEY GENERAL OF THE UNITED STATES

Mr. CIVILETTI. Thank you, Mr. Chairman, Mr. McClory, and members of the committee.

I am pleased again to appear before the committee with regard to funding authorization of the activities of the Department for fiscal year 1981.

Last year, while testifying before the committee, I stated that the authorization process, which was then in its second year, guarantees that there is a partnership between the Congress and the executive branch of government in the formulation of policy and program direction regarding this Nation's criminal and civil justice system.

I reiterate that position, and, again, welcome the opportunity to share with you the Department's program and overview and fiscal plans for fiscal year 1981.

Supporting data and material, including the Department's proposed fiscal year 1981 authorization bill are already before the committee.

I believe these contain information sufficient to assist the committee in its deliberations. I would simply like to examine with you at this time for a few moments the more pertinent factors which influenced our fiscal 1981 request.

It reflects three themes. First, of course, is inflation and economic conditions, and the request is consistent with the President's policy of minimizing spending to the extent consistent with the duties of the Federal Government, to assist in the fight against inflation.

Second, it represents our continuing efforts to concentrate funding and resources in our law enforcement bureaus on areas of national priority which cannot effectively be handled at the State or local level, either because of the circumstances there, the nature of the operation, or the jurisdiction over the particular offense.

Finally, the authorization request reflects our policy of establishing realistic priorities. Priority setting or ranking, as you know, often requires tradeoffs and difficult decisions among various programs which independently have merit.

This request represents such hard decisions which, from time to time, have been made by the Department.

You will note that while our resource request represents a net decrease in positions, we have increased resources for our highest priority programs.

These priorities are consistent with the major initiatives the Department has undertaken in recent years. In the law enforcement and criminal prosecution areas, we propose to apply additional resources to fight organized crime, white-collar crime in all its facets, to prosecute criminal civil rights violations, to conduct foreign counterintelligence operations, to address fraud against the Government, and to combat high-level narcotics trafficking.

In addition, we are encouraging State and local governments to assume responsibility for crimes which are local in nature and for which there is concurrent jurisdiction.

The Department will also continue to diligently investigate and prosecute the denaturalization and deportation cases of alleged Nazi war criminals. I would like to point out here that, to assist you in reviewing our commitment to this effort, we have included a clearly distinguishable provision for this effort in our proposed fiscal year 1981 authorization bill.

In the corrections area, antiquated penitentiaries will continue to be phased out, and we are recommending statutory authority to permit the use of funds from the support for U.S. prisoners activity to provide limited financial assistance to improve local detention facilities which house Federal prisoners, whether sporadically or regularly, on a contractual basis.

In the area of litigation, the Department plans to develop further our litigation support and management systems.

Finally, a significant initiative of this committee during last year's authorization process—the appointment of a Special Investigator for the Immigration and Naturalization Service—has also been included in the Department's proposed fiscal year 1981 authorization proposal. I have reviewed applicants or candidates for that position, and within about 3 weeks, I hope that the position will be filled and the individual on duty.

In the coming weeks, Department officials are appearing before your subcommittees at your request to answer questions on specific programs under their direction.

With your permission, I will submit the remainder of my testimony for the record in order to provide an opportunity to the committee members to ask questions which they may have with regard to the overall policies of the Department generally, or with regard to specific programs about which they may be interested.

Thank you, Mr. Chairman.

[The complete statement follows:]

STATEMENT OF BENJAMIN R. CIVILETTI, ATTORNEY GENERAL

Mr. Chairman and Members of the Committee: I am pleased to have the opportunity to appear before this Committee to seek funding authorization for the activities of the Department of Justice for fiscal year 1981.

Last year, while testifying before the Committee, I stated that the authorization process guarantees that there is a partnership between the Congress and the Executive branch of government in the formulation of policy and program direction regarding this nation's criminal and civil justice system. I reiterate that

position, and, again, welcome the opportunity to share with you the Department's program and fiscal plans for fiscal year 1981.

Supporting data and material, including the Department's proposed fiscal year 1981 Authorization bill, have already been submitted to you. I believe these contain sufficient information to assist this Committee in its deliberations. I would like to examine with you at this time the more pertinent factors which influenced our fiscal year 1981 request, and highlight those activities for which we intend to increase our efforts.

Our request reflects three themes. First, our request is consistent with the President's policy of minimizing Federal Government spending to assist in the fight against inflation. Second, it represents our continuing efforts to concentrate funding in our law enforcement bureaus on areas of a national priority which cannot effectively be handled at the state and local level. Finally, the Authorization request reflects our policy of establishing realistic priorities. Priority setting, as you know, often requires difficult trade-off decisions among various programs. This request represents such hard decisions in certain instances.

You will note that while our resource request represents a net decrease in positions, we have increased resources for our highest priority programs. These priorities are consistent with the major initiatives the Department has undertaken in recent years. In the law enforcement and criminal prosecution areas, we propose to apply additional resources to fight organized and white-collar crime, to prosecute criminal civil rights violations, to conduct foreign counterintelligence operations, to address fraud against the Government, and to combat high level narcotics trafficking. In addition, we are encouraging state and local governments to assume more responsibility for crimes which are local in nature and for which there is concurrent jurisdiction. The Department will also diligently investigate and prosecute the denaturalization and deportation cases of alleged Nazi war criminals. I would like to point out here that, to assist you in reviewing our commitment to this effort, we have included a clearly distinguishable provision for this effort in our proposed fiscal year 1981 authorization bill.

In the corrections area, antiquated penitentiaries will continue to be phased out and we are recommending statutory authority to permit the use of funds from the Support for U.S. Prisoners activity to provide limited financial assistance to improve local detention facilities which house federal prisoners on a contractual basis. In the area of litigation, the Department plans to develop further our litigation support and management systems. Finally, a significant initiative of this Committee during last year's authorization process—the appointment of a Special Investigator for the Immigration and Naturalization Service—has also been included in the Department's proposed fiscal year 1981 Authorization proposal.

In the coming weeks, Department officials are appearing before your subcommittees at your request to answer questions on specific programs under their direction. Today, I would like to outline briefly our request in support of our program plans for 1981.

LITIGATION

Our request for the Department's General Legal Activities is modest and represents an increase of 2.6 million dollars and 38 positions over the current level. Requested staff increases are concentrated on expanding the efforts of our Economic Crime Units, increasing our investigation and prosecution of criminal civil rights violations, and improving our coordination and review of Title VI programs.

To improve our management of existing litigation resources, a top management priority of mine and an area which has been of considerable interest to this Committee, we are requesting resources to develop or improve current automated litigation management and support systems. I feel strongly that we can use current resources more efficiently by utilizing these management techniques, and a member of my immediate staff is coordinating the Department's efforts in this area.

Our request also reflects a 4 million dollar decrease due to the discontinuance of the State Antitrust Grant program, which was begun in 1977. By the end of 1980, 25 million dollars will have provided to State governments to develop anti-trust activities. We believe that this initiative has served its purpose in providing seed money and that it is now appropriate for the Federal Government to end its financial assistance.

For the U.S. Attorneys, we are requesting an increase of 33 positions. This includes a transfer of 11 positions from the Associate Attorney General's Office for the Legal Education Institute, 4 positions for the Attorney General's Advocacy Institute, which is actively conducting a program to improve attorney training, and 18 positions related to automated information systems. The request also includes 4.5 million dollars to bring the total of on-board U.S. Attorney employment closer to the current authorized position level. I have also made it one of my goals to ensure the highest degree of professional competence for our practicing lawyers. For this reason, I intend to merge the Legal Education Institute and the Attorney General's Advocacy Institute within the Executive Office of U.S. Attorneys. The new unit will be called the Office of Legal Education. The Office will offer courses in administrative and non-litigation matters and will emphasize the effects of new regulations and laws. In addition, techniques of vigorous, and ethical advocacy will be taught through intensive practical training sessions.

LAW ENFORCEMENT

An effective criminal justice system begins with proper law enforcement activities. The Department of Justice will continue to pursue vigorously the detection and investigation of criminal law violators. For FY 1981, the highest national law enforcement priorities will continue to be foreign counterintelligence activities, organized crime, white collar crime, public corruption, and narcotics trafficking.

To demonstrate our commitment to these priorities, we are requesting an increase in positions for the FBI's organized crime and white collar crime programs. We are confident that these increases will do much to facilitate the prosecution and conviction of major offenders in these areas. The proposed increases are offset by decreases in lower priority programs and more efficient field programs, such as fugitive apprehension and state and local assistance programs, primarily fingerprint identification. None of these reductions include special agents, and the reductions in the fingerprint identification program are the result of successful automation of the fingerprint program and the conversion of a number of full time positions to part time positions.

The Department's authorization request for the Drug Enforcement Administration includes a personnel increase for domestic enforcement. This will further enable Federal agents to concentrate on the disruption of organized drug trafficking of the most dangerous drugs. Staffing levels will be slightly reduced for state and local assistance programs in areas where state and local governments can assume additional responsibility. A funding level increase of \$1,000,000 is requested to begin development of a voice privacy communication system. The lives of DEA agents and the success of DEA enforcement activities are presently being jeopardized by the interception of operational radio communications.

The authorization request for the U.S. Marshals Service includes modest staff increases for the execution of federal fugitive warrants. In addition, an increase for the Witness Security Program will improve and augment assistance and social services for protected witnesses. These new resources will also enable the Marshals Service to increase extraordinary protection to critical government witnesses whose lives may be in jeopardy because of their testimony.

Staff decreases for the Marshals Service will occur in two areas. There will be a 370 position decrease for the court security program. This decrease will not result in any actual reduction in security services, but represents the decision to have the Department continue to reimburse the General Services Administration for judicial security guard services in lieu of the Marshals Service establishing its own separate program. Second, we are proposing a decrease of 234 positions as a result of proposed legislation to discontinue the service of civil process for private litigants. Section 8 of our proposed fiscal year 1981 Authorization bill addresses this issue. We believe the service of private process can and should be performed by private enterprise. In the past, the Government's failure to recover the costs involved has had the effect of granting a subsidy to a small segment of society which uses this service. You will note that our proposed legislation makes allowances for this service, however, in the case of indigents or when the court orders it in extraordinary circumstances.

Increases are included for the Immigration and Naturalization Service to help reduce waiting time for adjudications benefits, address the additional workload resulting from increased number of Indo-Chinese refugees, and to complete the rehabilitation of the Port Isabel, Texas Service Processing Center. While actual on-board Board Patrol staff will remain at or exceed current levels, the budget requests a modest reduction in authorized positions. We believe that increases of any significant border enforcement personnel should be postponed until the Select Commission on Immigration and Refugee Policy issues its report. This report should assist in developing agreement on statutory changes to remove the incentives for illegal immigration, an action that, we believe, may obviate the need for large resource increases for border enforcement personnel.

I also want to assure you that management practices within INS are receiving my personal attention. As I have stated, the Special Investigator provision, developed by Congress and made part of the fiscal year 1980 Authorization Act, is part of the Department's proposed fiscal year 1981 Authorization bill and we are moving forward on a major management review of INS by the President's Management Improvement Council. I am confident that the results of these two initiatives will greatly assist in improving the management and efficiency of the Immigration and Naturalization Service.

CORRECTIONS

Recent prisoner declassification efforts and the increased use of halfway houses have contributed to a reduced federal prisoner population. As a result, the authorization request reflects the closing or phase-down of three antiquated penitentiaries—McNeil Island, Leavenworth, and Atlanta. I am well aware that the closing or restructuring of these antiquated facilities has been a long standing objective of this Committee. We believe our proposed actions address the concerns of this Committee.

New resources are requested for the activation and expansion of previously approved institutions. To assure humane care and custody of offenders, modest staff increases are also requested for inmate services such as medical care, vocational training, and drug aftercare programs. Improved medical care was another major initiative of the Committee last year. Medical services at the Springfield, Missouri Medical Center will be improved and additional resources will be made available to expand and upgrade the quality of medical services at a number of other existing facilities.

OTHER REQUIREMENTS

In conclusion, the Authorization request also proposes small personnel increases in key staff offices within the Department. Included in these items are modest staff increases to support essential activities in my immediate office, the Office of Professional Responsibility, and the Office of Information Law and Policy, as well as for the critical library support services and Equal Employment Opportunity efforts conducted by the Justice Management Division. A decrease of five million dollars is proposed from the current 1980 level for the special State and Local Drug Grant Program for which funds were included in the General Administration Activity account.

This concludes my statement, Mr. Chairman. I shall be pleased to answer any questions that you or any members of the Committee may wish to ask.

Chairman RODINO. Thank you very much, Mr. Attorney General. I will advise the members of the committee that we will proceed under the 5-minute rule. I am going to ask one question, then I am going to yield to the ranking minority member, and continue in that manner.

Mr. Attorney General, we have heard much in the last few days about proposed cuts in the President's budgetary request; statements have been circulated and it has come to this committee's attention that some of those cuts may affect programs in which this committee is

vitaly interested—programs that have been ongoing in your Department.

Some of those programs are, in fact, the operation of LEAA, OJARS, and other agencies which were created by Congress.

Can you tell me whether or not any consideration has been given to some of these intended cuts in these programs?

Mr. CIVILETTI. Certainly. The President, and the Office of Management and Budget are, as you know, reviewing cuts throughout the Government on a fair analysis basis in order to determine whether or not it is both wise and feasible to reduce the fiscal 1981 budget to either a balanced state, or below the anticipated deficit of between \$16 and \$20 billion, at least as reported in the newspapers.

The Department of Justice naturally falls within that review and analysis.

To my knowledge, no decisions have been made yet with regard to how cuts would affect the Department, or the degree of reduction in the fiscal 1981 budget as presented to the Department and which is before the Congress.

As you know, we supported, and the President supported and submitted to the Congress, an increase in the LEAA budget from fiscal year 1980—a significant increase.

We have accomplished the reorganization that this committee designed and passed with respect to OJARS and LEAA, the National Institute of Justice, and the Bureau of Justice Statistics.

We are looking forward to the implementation of that bill and a new foundation for LEAA in those separate institutions.

But I cannot predict exactly how the President, Mr. MacIntyre, and others will implement the hard decisions that have to be made with regard to budget reductions in order for the Government to play its role in this terrible economic circumstance of galloping inflation.

But I am sure that we will present, and have presented, all the arguments that we can muster as to the preservation of those programs which we believe, on a departmental basis, are essential to the criminal justice system and the civil justice system.

Chairman ROBINO. Mr. Attorney General, I am going to pass over to Mr. McClory for his time for questioning.

But I would like to suggest that while a great deal of thought and consideration is going to be given to the Department and the budget cuts, I would hope, without intruding on your responsibilities as part of the executive department, that the same spirit of cooperation continues to exist so that you might advise us before final actions are taken; this will enable the committee to be in a position to know where, why, and how some of the budgetary decisions are going to be made. This, I think, would be very helpful to the committee.

Mr. McClory?

Mr. McCLORY. Thank you, Mr. Chairman.

I want to concur with you on that point, Mr. Chairman, especially with regard to the LEAA program which we cosponsored and in which the Department and the administration ultimately acquiesced.

I would hope that we can have good cooperation and support in the restructure and revitalization of this all important activity. I believe that it is the only Federal program supporting local law enforcement in the criminal justice system.

I want to ask whether you feel that an amendment to the authorization bill which would extend the authorization from 1 to 2 years, would be helpful. Would it fulfill your needs, and still, at the same time, maintain our responsibility?

Mr. CIVILETTI. Yes; I think that is a change which would fit within our mutual efforts to provide an opportunity for concentrated study and, at the same time, not present an excessive burden either on the Department or the committee to review the entire process every year.

Both of us could program better, I think, with detailed analyses over a 2-year cycle.

Mr. McCLORY. With respect to the LEAA, there has been some question raised as to whether or not the law enforcement education program, LEEP, should remain in the LEAA program within the Department of Justice, or whether it should be transferred to the new Department of Education.

Certain members of this committee argued forcefully on the floor of the House that this program should be retained in LEAA.

What is your attitude? What are you planning to do to hold on to this program and prevent its transfer to the Department of Education?

Mr. CIVILETTI. My understanding and impression is, I can check on it and verify it, that if you argued in that direction, you lost the argument. I believe the intention is that the LEEP program will move to the Department of Education and be administered there, and that that decision and direction was well in line and in hand before I became Attorney General.

But I don't have any disagreement with it. I don't have a strong view one way or the other as to whether it is administered in the Department of Justice or the Department of Education. It is an educational program. It does deal with part-time education as well as providing an opportunity to law enforcement officials to better their knowledge and position.

And so long as it meets and still is meeting the purposes, and is consistent with economic policies, I don't have a strong view about it.

Mr. McCLORY. Perhaps we could work together to try to keep it in your Department and prevent its transfer to the Department of Education.

I have one other question, which has two parts. One relates to the leaks, including one rather egregious leak, apparently, from the Department. What position has the Department had with regard to limiting access to information, particularly classified information or sensitive information? Is there any effort to compartmentalize the information so there would be a limited access to such sensitive information based upon a need to know?

The second part of my question concerns the clearance procedures in the Department. It was reported to me privately that there was a clearance bypass, or that a security clearance was granted to a friend without requiring him to comply with the Department's clearance procedures.

Would you discuss both parts of that question for me?

Mr. CIVILETTI. Certainly. The observation with regard to security and departmental policy for sensitive information is one that I have examined in some detail.

The best security historically within the Department has been related to those matters dealing with intelligence, and classified information, where the rules with regard to need to know, compartmentalization, special vaults, noncarrying of information, no copying, and limited distribution have been followed precisely and developed out of classification systems, as well as out of the intelligence community.

The criminal side, criminal investigation side of the Department of Justice, of course, deals with nonclassified information—facts and reports and papers. And primarily as a result of that difference, but for other material reasons as well, it has developed historically without, has the same degree of adherence to rules of security that have developed on the intelligence side.

There are legitimate reasons in the development of criminal investigations why all the rules would not apply, other than the simple fact that it is not classified information. We have attempted in the past, and do attempt regularly, to have investigators and prosecutors in criminal investigations operate on a secure basis, that is, on a need to know basis, without wide dissemination within a unit or division of information relating to a particular investigator's case. There is not, however, the same degree of attention to departmentalization or the same degree of attention to duplication and dissemination.

I have asked for, and have been conducting over the last month or so, an examination as to the ways in which we can, consistent with the purposes of investigations and the needs of investigations, better secure criminal investigation information materials by using some of the intelligence systems which are in place, or at least principles from those systems, and transferring them in part to criminal investigations in a more substantive way.

I have also examined with regard to security not only systems and process, but whether or not the Department's regulations need to be modified or clarified so as to make it even more abundantly clear that the terrible harm, danger and unfairness can arise as a result of loose treatment of information.

This is aside from deliberate leaks, which are clearly covered; I am speaking now of just the loose treatment of information which provides for potential disclosure to unauthorized persons or to third parties.

We have also looked at whether or not there can be a legitimate and careful amendment suggested to this committee for a prohibition under the Privacy Act which would specifically apply to the revelation of information material to a criminal investigation which violates the spirit and intent of the Privacy Act protections, but which now is not specifically made a misdemeanor offense, in order to increase the disincentive and deterrent value that act provides for in its general purposes.

With regard to clearances, I am not aware of any shortcuts or any exemptions from clearances for Department employees, for new people coming to the Department, for contractors engaged by the Department or surveyists, or people who examine the Department. None sticks in my mind.

The practice for security clearance is the standard practice followed by the background investigations, the submission to resource examination from the files of other agencies or inquiry to other agencies, and

then review and clearance obtained from respective source agencies or departments which grant the clearances, whether it is the State Department or the CIA or access to CIA material, or the Federal Bureau of Investigation.

Mr. McCLORY. I may bring one example to your attention, then I would appreciate your reporting to me on that example.

Mr. CIVILETTI. Certainly.

Chairman RODINO. The time of the gentleman from Illinois has expired.

The gentleman from California, Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

Chairman RODINO. Would the gentleman yield at this point. I will not take it out of his time.

Mr. McClory asked a very vital question. I think it's appropriate at this time, especially since, Mr. Attorney General, I read in today's Washington Post again about your great concern regarding these leaks and your warning about them. The Post does not quote you, but it's stated that you had addressed more than 800 employees, emphasizing that leaks jeopardize the investigations the Department is conducting, run the risk of harm to informants, witnesses and Department employees, jeopardize the right to a fair trial, and sometimes injure innocent people.

What especially concerns me is the injury to innocent people caused by leaks. We do not want to impede ongoing investigations. We have stated that. This committee has taken that position, and we wholeheartedly understand the need to go forward without this impediment.

But we are a civilized people. And when we injure other people, I think it's a common courtesy to either apologize or recognize that one has been injured.

If you, Mr. Attorney General, have in mind that there may be injury or there has been injury to innocent people, is there a thought then to be given to whether or not those people who have been injured innocently are in some way damaged irreparably. Despite the fact that you may fire the employees who were responsible for the leaks, the innocent person who has been injured or whose reputation has been damaged is not helped.

Is any thought being given to the Department's taking a position that it would recognize if it has committed a mistake of that sort, as a result of these leaks, and the leaks could not have taken place unless there was action and activity on the part of the Department, is there going to be any consideration seriously given to try and in some way redress that by making the record state the innocence of these people whose reputations have been damaged?

Mr. CIVILETTI. Possibly. That is a delicate business. It is, of course, natural in the course of human events where one party or institution has injured or caused or may have caused the injury of another party, for the one perpetrating the injury to at least apologize for the harm caused the innocent party.

But in this instance when we are talking about institutions, and we are talking about the wide number of investigations that the Department of Justice conducts, and the frequent circumstances where witnesses, third parties, documentary materials, State investigators,

State police, sometimes the subjects themselves, sometimes lawyers representing one or more other interests are main sources of leaks; and though it appears as though the Department may have either confirmed or contributed to the leaks, that is not the case. That presents a problem.

Second, as investigators go forward and arrests are made, or searches are made in the public domain, all persons, even when they are charged, even when there is a complaint outstanding, or there is an indictment, are presumed to be innocent and are entitled to that cloak of innocence throughout their prosecution.

The failure to give an apology, or to give a letter of clearance, for example, in the course of an investigation, would have the effect or may have the effect, or impression or perception, that by not giving such letters or apologies or whatever, that persons not receiving them who may have been named in the newspaper from any number of sources, are guilty.

The impression would be that the failure to receive a white card or clearance letter from the department would indicate true guilt, or even greater guilt than simply the exposure by the newspapers.

So although my natural human inclination would be to say, I think as does anyone else, if we have been wrong, we ought to correct the wrong and apologize for creating the wrong, and I agree with you in principle, the application of that to any specific set of facts or as a matter of policy throughout the Department is a very difficult problem.

Chairman RODINO. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

Mr. Attorney General, the Justice Department enforces many civil rights laws, but also Justice is called upon to defend Federal agencies when they are accused of discrimination. While we recognize that the Government, that the Department at its highest levels is committed to upholding our civil rights laws, I have received numerous complaints over the last year or so from civil rights organizations and private attorneys indicating that this commitment has not always filtered down to the individual attorneys litigating these cases.

I am told that U.S. departments, departmental lawyers and agency counsel often raise frivolous and overly technical defenses, in an attempt to tie settlement to the merits to the question of attorney fees and otherwise impede fair resolution of the case.

My question is, do you recognize that the Department's attorneys have a higher obligation in these cases—these cases where it is obvious that Government agencies are misbehaving—than simply to act as a lawyer, like a private lawyer, put up the best possible defense, and continue these defenses indefinitely?

And, if so, how can the Department remedy these problems?

Mr. CIVILETTI. The answer to the first question is yes. And the answer to the second question, which is a broader question, is in any number of ways, some of which we are attempting to implement and practice.

I recently met, for example, with representatives of civil rights groups myself, and continue to meet with all sides and spectrums of our constituency in the country, law enforcement groups, and civil rights groups, as well as persons and business groups who have concerns in the antitrust area.

I have reviewed an issue statement to the Court of Appeals of the District of Columbia with regard to legal fees, particularly in civil rights cases, and in other public interest cases. And just the other day a slight clarification was issued, essentially saying that the Government should pay a reasonable fee, where the Congress has indicated payment of such fees are appropriate, in order to encourage the bringing of these cases, and by the bringing of the cases, to do away with the practice which is prohibited by Federal law.

In determining the reasonable fee, public interest firms, those representing civil rights advocates or other public interest advocates, environmentalists or whatever, in the course of that litigation, are entitled to the same reasonable fee, though not a penny more as any firm for profit is entitled to in undertaking that representation.

Even though in determining costs one appropriate fact to consider is that public interest firms may be able to encourage lawyers and advocates to work for salaries which are less those achieved in a commercial firm, those institutions should not be penalized for that idealism.

I have also reviewed now the entire program of the civil rights division—its allocation of employees, its priorities, and its methods of doing business—with Drew Days and the management people in the civil rights division. We acknowledge the sometimes difficult task of distinguishing between representation by the Department of Justice of an agency or department, with the lawyer-client relationship, and the special duty which you so correctly point out we have to emphasize in these areas—particularly in that we have an independent judgment to make—and that frivolous and technical defenses have no place or role to play in these litigations, as well as other litigations.

Some of the problems arise though, frankly, because what is one man or woman's technical defense is another man or woman's substantive defense. You have to use sound judgment—rights that the Government is entitled to enforce and has a duty to enforce.

Mr. EDWARDS. Thank you for your answer. When a Government agency misbehaves, another Government agency ought to recognize that and not necessarily present every technical and specific situation.

Mr. CIVILETTI. That is correct.

Mr. EDWARDS. I thank the Attorney General for his very candid answer.

Chairman RODINO. Thank you very much.

Mr. Fish?

Fr. FISH. Thank you, Mr. Chairman.

Mr. Attorney General, on page 2 of your testimony, you refer to the highest priority programs for the Department: Law enforcement, additional resources to fight organized white collar crime, protection of criminal and civil rights, high-level narcotics traffic, and so forth.

I notice among your priority programs the absence of any mention of the law-enforcement service functions of the Immigration and Naturalization Service. In the overall priority ranking of the Department, where would you place the Immigration and Naturalization Service?

Mr. CIVILETTI. The reason that that is not listed there is that I think generally our view is that in terms of priorities, criminal law

enforcement with regard to the INS is not and can not be one of the highest priorities. That would be misleading, I think, and rather foolish under the present state of the law.

The INS generally is a high priority. It is an agency that has been in trouble periodically from time to time. Some of the achievements which it has made have been overshadowed. Some of the improvements that have been made have been overshadowed by some terrible deficiencies.

I think it is time now in INS, past time, perhaps, but time for an opportunity to restructure it, for immigration law and policy to be changed, for a combination of reasons. The Select Commission is one reason. It presents a marvelous opportunity to all of us who serve on it and with those who have appeared before it, to make dramatic and basic changes in refugee and immigration policy.

We have very shortly an opportunity to put at the top of INS a new management team in INS. A commissioner, a deputy commissioner, as well as filling the office which this committee has provided, special investigator. I think that presents a part of that opportunity.

Thirdly, in recognition of the difficulties, in part in New York, in part on the broader, the management study which is now underway and which was authorized by this committee and by the Congress in the authorization bill of 1980, is examining in detail the systems and management of the Immigration and Naturalization Service and thus presents a third incidence of the opportunity to correct and improve the INS.

So it is a high priority in the Department, although I think it would be misplaced to say it is a high priority within criminal enforcement.

Mr. FISH. I understand that, Mr. Attorney General. If you will bear with me, I will not ask any more questions, but I do want to state my convictions in this area.

The Immigration Service sustains almost 21 percent of the cuts imposed on the entire Department this year. This occurs at the same time as our hearings on the 1981 budget during which we received the Commissioner's testimony. He testified that a dramatic increase in work load occurred without a commensurate increase in staff inspections.

International air traffic in the United States has increased by over 40 percent in the last 4 years. Naturalization is another area in which we are hard-pressed to satisfy the growing demands for service. Since the end of the last fiscal year, pending naturalization applications have grown to more than 100,000, and we can predict more than a quarter of a million applications this year.

With respect to adjudications, the Commissioner testified that, in the adjudications division, requests for petitions and applications have hit a record high level, and that we are now approaching 2 million a year.

The increase over fiscal year 1977 is nearly 40 percent. I point this out, Mr. Attorney General, because the personnel for investigations, adjudications, and naturalization, as well as for the border patrol, for the fiscal year 1981 is roughly comparable to that of the personnel for fiscal year 1979. A fair statistic: as many of these categories have modestly gone up as have modestly gone down.

As you well know, apprehensions of illegal entrants have decreased steadily during the last fiscal year over the year before. A related issue involves the morale of the personnel.

Chairman RODINO. I would like to advise the gentleman that his time has expired.

Mr. FISH. Could I have another minute, Mr. Chairman?

Chairman RODINO. Without objection, so ordered.

Mr. FISH. Thank you. The morale is low among immigration personnel. I would suggest to you that this is in part a result of difficult accessibility of the personnel to management in the Justice Department. In short, there are communications problems. More basically, there is an uncertainty on the part of the employees with respect to the national resolve for them to carry out their mission, as well as an uncertainty with respect to departmental support for their mission.

I do not see anything in the personnel cuts proposed that would tend to reassure me or the personnel of the Service. I do not see anything in the Department's rationale with respect to why more border patrol were not provided for. I quote:

Judicial constraints on INS operations, public opinion about undocumented aliens, and the nature of the southern border make the current immigration statutes very difficult to enforce.

The Select Committee on Immigration and Refugee Policy report would assist in developing agreement on statutory changes. I find the position that large budget increases for enforcement would be unproductive, totally untenable and indefensible.

Thank you, Mr. Chairman.

Chairman RODINO. Mr. Attorney General, do you want to comment?

Mr. CIVILETTI. I agree with Congressman Fish that morale may be low. I disagree with him that the cause of it is that you don't have 200 more people or 500 more people or 300 more people in fiscal year 1981. They don't bear any relationship one to the other whatsoever. Morale is low because of disclosures of incompetence or difficulties with the underlying enforcement of the immigration law, which is a law passed by Congress, and because of the fact that we have a revolving door on the southwest border, and people get discouraged after arresting people nine times, the same people on some occasions.

They feel as if they are simply engaging in a useless exercise. That doesn't have to do with whether or not you have 100 more people or 500 more people, a few greater or more. It has to do with the kinds of problems which the Congressman was addressing substantively and working very hard at, and other members of this committee are working on with the Select Commission, and which we are working on in the Department of Justice so as to change some of those policies.

It is also important to properly train, support and develop practices within the Immigration Service in which they can take pride. There are an enormous number of people in the INS, contrary to some popular beliefs, who are dedicated to perform their work extremely well under most difficult circumstances, and yet never receive one iota of credit in the course of their employment.

Chairman RODINO. The gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. Mr. Chairman, I would like to reserve my time.

Chairman RODINO. The gentleman from Michigan, Mr. Conyers.
Mr. CONYERS. Thank you, Mr. Chairman. I join in welcoming the Attorney General here, and I am pleased to notice the priorities continue to be emphasized in the area of economic crime, organized crime, narcotics trafficking, and public corruption.

Our Subcommittee on Crime has worked to point up the disparity between the amount of resources committed by the Department of Justice to these activities which cost the American people far more than other kinds of crime. The questions that are raised, however, are: does the Justice Department now have the capability and resources to prosecute these kinds of activities in view of the budget request and how it is being treated at OMB? It seems to me that only a small number of personnel are being allowed to go into staff increases in connection with the economic crime units.

Mr. CIVILETTI. Well, that is a proper observation because we do make tradeoffs with resources in order to cover an enormous area of responsibility. We make tradeoffs with regard to decision priorities because of the wide breadth of concurrent jurisdiction in the criminal field.

The budget increases over the last 2 or 3 years, for example, in white-collar crime and public corruption, have been very substantial by comparison. They are not perhaps ideal. They are not what, given an unlimited amount of funding, you or I might choose. But, for example, I think the Fraud Section of the Criminal Division, in terms of personnel, is now up to about 70 prosecutors.

When I came into the Criminal Division in 1977, it had somewhere around 32. The economic crime units have been developed as an instrument to improve effectiveness and coordination with regard to white-collar crime in the communities, and to facilitate reporting among the U.S. Attorney's Offices, the field offices of public agencies—mostly Federal agencies—their headquarter offices here in Washington, and the Criminal Division. Those units are filling up. I think that we will meet our goal of roughly 150 people in each economic crime unit; I believe there are 29 or so units which are targeted for completion.

My last report with regard to implementation of those units was, I think, that we were at about 15 or 18 out of the 29. And the budget, at least the projections and instructions and directions for fiscal 1980 and 1981, provide for completion and full staffing of those economic crime units.

Mr. CONYERS. As you are aware, the Government attack on corporate crime in July 1979 was really very small. The reports indicate that there were only several corporate cases. Antitrust was very low. We will continue to work with you, hoping that the will is there, and that we now have to make certain that we get the resources without which we won't be able to do anything.

Our subcommittee and the Energy Subcommittee found a lack of coordination, for example, in the oil ripoffs, the daisy chain; new and old labeling showed very little coordination between the legal counsel in DOE and the Criminal Division in Justice.

The other concern that I would like to raise with you is one that, to me, is the most sensitive in criminal justice. That is the scandal of our prisons and our incarceration system, for which the Federal institu-

tions, I think, set a pattern followed by the rest of the States. It seems to me that this is one area where we can begin to set examples, without the investment of billions of dollars, that will be very, very important in terms of the whole incarceration system.

We have had testimony from Norm Carlson and others in the Department of Justice that many substantive changes could be made. Many people were warehoused who are, in effect, nonviolent. And they are made recidivists by virtue of the sentence of incarceration imposed upon them by justice. Are you doing anything to facilitate the way that we can handle this very sensitive area of criminal justice?

Mr. CIVILETTI. Yes, a great many things. Principally, we are, as the statement alluded to, accelerating programs to close down the horror houses, the old antiquated institutions that were built in either the late 1800's or the early 1900's, some of which have already been shut down, and some of which are on the agenda now—Leavenworth, McNeil Island, Atlanta, and so forth.

The new institutions take the form of work camps, of model correction centers, youth correction centers. We have an experimental program which is underway in North Carolina, for example, with the Federal institution. We have developed, after months of public comment and discussion, national standards with regard to correctional facilities. They are in their final review stage, and when ready will be a beacon for all institutions. They apply to all jails, medium security institutions as well as maximum security institutions, with regard to all phases of prison operation—medical treatment, food handling, space, disciplinary procedures, training, library, education, all kinds of criteria and characteristics.

Norm Carlson, as you know, has permitted and encouraged the effort to promote a readjustment of the inmate to the community, with the hope that that will increase an opportunity for useful citizenship and help prevent recidivism and return to crime by a prerelease to halfway houses of inmates between 90 and 120 days from the time they would otherwise be scheduled for parole. Without this halfway treatment, they would be thrust into the community without any relocation and without any attempt under minimum control or some control to reestablish roots, connections, and job opportunities within the community.

The prison population in the Federal institutions, as you know, is now somewhere around 23,500, down from a level of, in April or May of 1978, almost 31,000. Of course, the design capacity of Federal institutions is about 23,000 or so. So, we are finally at a stage of design capacity. That does not include, of course, the people who are on probation, people who are in halfway houses, or the people who are under parole.

But there are people whom we prosecute, white-collar criminals and others, for violent offenses, who have to be in institutions, who have to be—the purpose is punitive, for punishment, as well as for deterring of others. And there are circumstances in order to maintain discipline where what might otherwise seem to be harsh action is taken against inmates or prisoners.

I think we try to do it fairly, after a period for the opportunity for review. But it has to be done.

Mr. CONYERS. Mr. Chairman.

Mr. KASTENMEIER. The time of the gentleman from Michigan has expired.

Mr. CONYERS. I know it has expired. I just wanted to say that the Attorney General's concern in these two areas really wins my absolute support and approval. I think the priorities that have now been articulated and worked for by the Department of Justice are commendable.

I think the concern about this entire subject of incarceration is one that can change the whole approach of incarceration which has been such an embarrassment, frankly, in the criminal justice system.

I appreciate those comments.

Mr. KASTENMEIER. The gentleman from Virginia, Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman. I join in welcoming the witness today.

Mr. Attorney General, yesterday we passed the Fair Housing Amendments Act, which granted increased litigation authority to the Civil Rights Division of the Department for actions brought under title VIII.

Do your funding requests for the Civil Rights Division reflect the additional attorneys' fees needed to fulfill this legislative mandate?

Mr. CIVILETTI. I am not certain, Mr. Butler. I would have to review the specific proposal of the Civil Rights Division. If you would like an immediate answer now, I can do that.

Mr. BUTLER. No. However, I would appreciate it if you would send me an answer for inclusion in the record.

Mr. CIVILETTI. Certainly. (See the appendix at p. 37.)

Mr. BUTLER. Turning to the U.S. Marshals Service, it appears that we have a rather familiar request in the fiscal year 1981 authorization, for taking them out of the business of serving civil process. I believe that we went through this last year, and, if I remember correctly, we eventually appropriated the money needed to continue that Service. One of the problems that this request creates is who will serve civil process in place of the U.S. Marshals.

What is being done to develop alternative means for serving civil process in the event you are successful in obtaining this reduction—although I do not anticipate that you will be.

Mr. CIVILETTI. I can't give you a totally definitive answer. But I do know that in many jurisdictions, now federally, and some State jurisdictions, processes are served by private process servers, registered mail and special delivery and every other means. It is part of the cost borne by the litigants who undertake the suit.

Our basic view is that, in terms of cost, it no longer makes sense to have a U.S. Marshal who has duties with regard to the security to the courts, security of the prisoners, and fugitive hunting to be going around individually and personally serving private process. That is all.

Mr. BUTLER. Thank you. I am sympathetic with that view, but I do think it creates the problem of exactly how we can accomplish that goal.

Here again, I know you cannot give me a definitive answer at this time. However, if you could submit an answer for the record and explain exactly how the Department expects private civil process will be served if the Marshals are removed from this business, I would appreciate it.

Mr. CIVILETTI. All right. (See the appendix at p. 37.)

Mr. BUTLER. I was a little disappointed in what I would characterize as a more or less defensive response to the statement by the gentleman from New York, Mr. Fish, with regard to the need for additional personnel to improve the Border Patrol activities.

My attention was again called this morning to Operation Shortstop. Do you recall that experiment in June 1977? According to last year's report of the Appropriations Committee, the result of that operation was that the apprehensions of illegal aliens per worker increased significantly. The report further concluded that the Border Patrol must have support personnel to allow them to engage full time in their patrol function, rather than spending time in administrative support duty.

Mr. CIVILETTI. I think that's right.

Mr. BUTLER. You do not challenge the idea, then, that more personnel would improve the Border Patrol activity?

Mr. CIVILETTI. I don't challenge the proposition that if you have people placed on the border instead of fixing cars or repairing equipment, or their living facility, that you are going to apprehend more persons crossing the border. And if you have people stationed there 24 hours a day, you are going to apprehend more people crossing the border.

And that if you turn those people back who are crossing the border, who are apprehended, then they will continue to attempt to penetrate the border at different locations and different places, and that you will have continuation of the problem with the illusion of having more control, or more effectiveness, without the substance of that effectiveness.

Mr. BUTLER. If I interpret your answer correctly, I do not think that you have really accepted the view that we need substantial increases in the Border Patrol.

Mr. CIVILETTI. Right now?

Mr. BUTLER. Yes.

Mr. CIVILETTI. As a solution to the Southwest immigration problem? No, I don't think that is a solution by itself.

Mr. KASTENMEIER. The time of the gentleman has expired. The gentleman from Ohio, Mr. Seiberling.

Mr. SEIBERLING. Thank you, Mr. Chairman.

Mr. Attorney General, I certainly think that you have stated some very important priorities on page 4 of your prepared statement where you say for fiscal year 1981, the highest national law enforcement priorities will continue to be foreign counterintelligence activities, white-collar crime, narcotics traffic and corruption.

The only thing I don't see are a couple of areas I will ask you about. Since my time is short, I will make my questions brief and I hope your answers will be as brief as possible.

What about antitrust enforcement?

Mr. CIVILETTI. Not one of the highest criminal law enforcement priorities. It is the highest, of course, within the Antitrust Division. And there is a substantial amount of effort and allocation within that one division for antitrust enforcement.

But the Criminal Division, FBI, the normal and standard criminal law enforcement units do not place antitrust as a high priority because they do not conduct the cases.

Mr. SEIBERLING. I don't see anywhere in your statement antitrust mentioned. Maybe I missed it.

How do your 1981 requests compare with 1980, that is, the Congress to the Congress?

Mr. CIVILETTI. For antitrust?

Mr. SEIBERLING. Yes.

Mr. CIVILETTI. I don't think we have any additional personnel requests for the Antitrust Division for fiscal 1981, as compared to 1980. I think we have some management requests of about \$1,400,000 for some improvements in equipment and materials.

Antitrust Division has been increased, I think, for every year—I haven't checked this exactly—for the last 10 years in personnel. They have more than enough personnel to be effective.

Mr. SEIBERLING. Did you get all that you requested from OMB included in the budget?

Mr. CIVILETTI. I don't know the answer to that.

My impression is that we did and that we did not make a substantial increase request with regard to personnel.

Mr. SEIBERLING. How about Civil Rights?

Mr. CIVILETTI. I think we requested an increase in Civil Rights personnel and received it. It, I think, is the second smallest or the smallest division in the Department.

Mr. SEIBERLING. How do you budget requests for—how does your budget request for that division for 1981 compare to 1980?

Mr. CIVILETTI. Increase.

Mr. SEIBERLING. I assume we have the figures somewhere in the actual budget breakdown.

Mr. CIVILETTI. 18 more positions for 1981 than for 1980.

Mr. SEIBERLING. Thank you.

I would like to now get into another area of criminal law enforcement. Of course, we are all very much concerned with some of the ramifications of the ABSCAM operation, which, of course, was part of your white collar crime and organized crime activity.

We are concerned about the public officials, both Members of Congress and other public officials, who have been, because of leaks, revealed as having been under some sort of investigation or having been approached by some of the middlemen, but were found not to have been culpable according to the news accounts.

I would like to ask you whether the Department is going to put in writing unequivocally to those public officials a statement that they were found—not found to be culpable in any way and acted quite properly as far as the Justice Department is concerned?

Mr. CIVILETTI. We may.

Mr. SEIBERLING. Well, why shouldn't you?

Mr. CIVILETTI. That may not be the case in some instances.

Mr. SEIBERLING. Well, but if it is the case, shouldn't that be done, because—

Mr. CIVILETTI. What does that indicate to persons who do not receive such a letter, or to the public?

Mr. SEIBERLING. Well, you have said that everyone is presumed to be innocent. If you do not feel that you have any basis for proceeding against a person, but nevertheless, his name has been bandied about, as the Assistant Attorney General said in his testimony yesterday, don't you owe it to that person to state for the record that he has not, as far as you are concerned, committed any culpable offense?

Mr. CIVILETTI. We have done that, I think, to the person. That has been the practice of the Department not only for public officials but for everyone.

What we don't do, and I don't think we can do it, unless we are to do it across the board for all citizens who may be mentioned as a subject of investigation, is give letters saying that they have not committed any wrong if they are not indicted.

Mr. SEIBERLING. Well, you know, a public official is in a particularly sensitive position. First of all, if he's elected, he cannot sue for libel. A lot of people, including the news media, presume that he's guilty instead of presuming his innocence. His reputation is at stake.

It seems to me if you put a cloud over a person and there is no basis for that, that you have an obligation to state on the record in writing that that person has not committed any offense as far as you are concerned. I don't see anything wrong with that.

Mr. KASTENMEIER. The time of the gentleman from Ohio has expired.

Mr. SEIBERLING. I wonder if the Attorney General could have time to respond further?

Mr. CIVILETTI. We may disagree on that single proposition. I addressed some earlier remarks to the suggestion and, in certain occasions, it may be appropriate on a case-by-case basis.

On other occasions, it may be entirely inappropriate. It has never been done in the history of the country before by the Department of Justice. And I am not confident that it is the right course to take now.

Mr. Seiberling. Well, I think that is a deplorable situation.

Thank you.

Mr. KASTENMEIER. The gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. I wish to commend you for the innovative ideas the Department has implemented in conducting these operations. From what I have observed, I think that they have been very effective.

I would be interested in hearing some figures reflecting the reduction of crime in areas where you have been able to carry out the so-called "Sting" operations over a long period of time. I am certain that it would discourage people from taking stolen property to brokers if they learned that they might be dealing with the Government and, as a result, be imprisoned.

Mr. CIVILETTI. We do have instances in particular areas of commerce and particular geographic locations where Sting operations, whether they were conducted with regard to the fixing of construction contracts or with trucking hijackings, or with a particular spate of burglaries or fencing of property within an area, have been a substantial deterrent and, in some instances, Boston, particularly, for the time being, and I hope for some future time, they have even eliminated what had been very vicious criminal activity.

Mr. MOORHEAD. The area about which I am most concerned, however, is the one that has been mentioned several times this morning. When two out of three people who attempt to cross the border into the United States are successful, there is no real commitment to screening the border effectively. If they make two or three tries, they eventually get across.

Considering the size of the Border Patrol at the present time, I am not convinced that it is better than having no Patrol at all, because people are crossing whenever they wish.

I would like your comments on this situation.

Mr. CIVILETTI. No. 1, I don't know where you have the figure for two out of three people who attempt to cross the border illegally—

Mr. MOORHEAD. That figure comes from people down in the Tijuana area. They report that aliens are crossing almost at will.

Mr. CIVILETTI. I don't think that is true. We have apprehended, I think, somewhere around 1 million people in the last fiscal year. Those are the latest figures I have.

I don't believe that even if some of those persons are repetitive apprehensions, if 500,000 is a single instance estimate, that this means that 1 million people are successful. The best estimates of all of the studies done on cumulative residents in the United States is that the number of illegal aliens is only somewhere between 2 and 5 million.

If people were successfully coming in at the rate of even half a million a year, that figure would be five times or eight times that much.

Mr. MOORHEAD. Many of our public officials in California feel that figure is much higher than that, however.

Mr. CIVILETTI. I think that there is no question, Congressman, and I don't dispute it and don't mean to dispute it, that if we have three times as many border patrolmen, 15,000, we would have a substantially increased number of apprehensions and arrests and returns.

I don't know if we would, by that process, substantially reduce the number of persons who would be seeking entry into the United States, although we might reduce to a certain extent the number who successfully achieve entry.

My point is that I believe in an effective and strong border patrol. I don't think it depends entirely on the number of men. I also think we have a duty to allow for and recognize some of the economic conditions which cause the illegal attempt—

Mr. MOORHEAD. This is creating a problem for the minorities in southern California who are losing their jobs in many instances, being shoved out of their housing, and, generally, suffering more from the influx than any other group. In the end, the minority groups pay the price.

Mr. CIVILETTI. I am in sympathy with that. I think the problems and issues relating to the border should be addressed, and I think they in part are being addressed and addressed effectively and comprehensively.

Mr. MOORHEAD. I have been told by the police departments in Los Angeles and other southern California areas that many illegal

aliens have been picked up with voting cards. They have actually registered to vote and are exercising their franchise. They are getting very bold.

In addition, the police say that in instances where illegal aliens have served their term and are about to be released, the INS will not pick them up if there are only one or two because they say they have insufficient personnel. It seems to me that those who have been in trouble with the law would be those who would be less welcome here and who should be sent home.

Mr. CIVILETTI. I agree with that. I have not been aware nor has it come to my attention, among the many issues relating to INS that have come to my attention, of the two you have mentioned. I don't know whether that is a prevalent problem or if it is anecdotal. But I will look into it and advise you.

Mr. KASTENMEIER. The gentleman from California, Mr. Danielson, is recognized.

Mr. DANIELSON. Thank you, Mr. Chairman. I read over your statement, Mr. Attorney General. Very much of it is good, so I won't touch upon every point. I wish to bring to your attention, in case it has not reached your personal attention, that the Department of Justice and our Government will soon be confronted with a crisis situation in the Southern District of California due to the lack of adequate detention facilities for Federal prisoners.

We have been housing them by contract with the Los Angeles County Sheriff for, I guess, time immemorial. The Los Angeles County Sheriff's Office has advised the Government on a number of occasions that it has outgrown its detention facilities. I do know from personal onsite inspection, that they have had to close several of the facilities, most recently the department's principal jail in the Hall of Justice, pursuant to an order of the court in southern California. It was found to be inhumane. The cost of updating it would far exceed the cost of building a new facility, so they have had to just simply close it. They are now using it as a warehouse.

I have been in constant touch with the U.S. District Court, Southern District of California, with the Los Angeles County Sheriff and nearly all persons interested in law enforcement in that area for 3 or 4 years on this problem. The situation is not only urgent, it is reaching crisis stage because there will be no place to put the prisoners.

Last Saturday night I had dinner with the sheriff and he repeated his concern. He said this situation is becoming a disaster. I just don't know what to do. I do know that the records of the Department support what I have said. I know you have a lot of things to do, and the reports may not have reached your own desk. But I urge, with all the sincerity I have, that you cause an immediate analysis of this question to be brought to your attention.

It won't be enough to provide some funds to help local officials update their facilities because they simply don't have room. We talk about beds, but inmates are sleeping on the floor, at cetera. The facilities don't have room. We have had the heavy economy measure well known as proposition 13 in the last couple of years. There are just no funds available to build a new jail.

I strongly urge that you give consideration to the Federal detention center in that area. We already own land within two blocks of the

courthouse, adequate enough land, Department property. It could be a combined building, also housing such things as a garage, a courthouse for the Criminal Division, room for the probation officer, et cetera. GSA has already worked out the plans.

I am helpless to do anything further except to urge that you look into it personally because I just don't think you can be getting all the information. That is my caveat.

I see I still have more than a minute, so along the same line, I am going to expand.

Despite the fact that I have worked on this personally for a number of years, the Appropriations Committee required that Justice conduct a study, largely due to my efforts, which I now have in my hand. Last summer I tried to get a copy, after one of the judges called saying he just gotten that report from Justice about the jail. He asked, what do you think of such and such a section?

I said, golly, you can't have gotten that report, I don't have one. He said, I have got it right here in my hand. That, incidentally, was on or about August 31. I contacted one of your people, on September 20, by telephone. I was told that the report was not ready for distribution. It was still in the decisionmaking process and it was not known when it would be ready.

On October 26, 1979, I received a copy of a letter from Richard Lawrence deputy sheriff, directed to one of the judges, thanking him for a copy of the report and giving him some copies. On November 14, 1979, I sent a letter to Dr. Gregory Faulk, policy analysis, Justice Management Division, and asked for a copy of the report. On November 26 I received a copy of a letter from James Hooper, senior management counsel, addressed to one of the judges, thanking him for his comments on the study.

On December 3, 1979, I received a letter from Gregory Faulk, policy analysis, stating that the final report had been sent to the Attorney General on November 23; I will be getting a copy as soon as it's been reviewed and approved for general dissemination. That is 3 months after the judge received a copy.

On December 7, I took part in a breakfast meeting attended by judges from the Southern District of California, representatives of the county supervisor's office and sheriff's department, someone from the U.S. Attorney's Office and Marshal's Office and others. When I walked in, they asked if I had received a copy of the report yet and what my opinion was. I said, what report? I don't have it. I have just been told it is not ready yet for distribution.

They laughed and said, well, we will lend you a copy. So I got their copy.

Finally, on December 21, I got in touch with my good friend Alan Parker and said, Alan for heaven's sake, I am embarrassed. I am supposed to be the man in Washington pushing this thing. Justice won't give me a copy of that report. They laugh at me. Alan said, I will get you one—and he did. In fact, he got it to me in 44 minutes. I do not believe Alan Parker, nor you, had any personal part to play in this record, but I recommend the blowtorch be placed on the seat of the pants of some of those people down there.

Mr. CIVILETTI. I am going to ask Alan to get me a copy of the report. [Laughter.]

Mr. DANIELSON. I will give you xeroxed copies of all the letters to which, I have referred, if you wish.

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

Mr. CIVILETTI. Thank you, Congressman Danielson.

Mr. KASTENMEIER. The Chair would like having reserved its time, to ask a question or two based on the preceding questions referring to the Los Angeles Detention Facility. I note that in the corrections area, you indicated the Department plans to assist State and local correctional programs through support of the U.S. Prisoner's Fund, which traditionally provided only a contract fee for the provision of housing Federal prisoners in local jails.

How would this new effort work and how expensive do you intend it to be? How much, in terms of physical resources, is to be devoted to it? The reason this is important, in part, is because I think we will see H.R. 10 on the President's desk in the near future. And this will necessitate that local jails and State prisons be improved in some cases to meet certain conditions. Certainly, you will have responsibility for it. Obviously this is a much more limited program.

But I am curious as to what you intend by such support for local jails.

Mr. CIVILETTI. It is limited and modest, and not intended to be a precursor of a major Government program for Federal moneys to be spent on what we conceive and believe to be the proper obligation of States to the maintenance and development of sound and humane prison systems. We feel we have a responsibility here because we do have contractual obligations and do have specific responsibility for the care and treatment of inmates that are within our custody, our control, and through these contracts they are simply being housed or maintained in local institutions or facilities.

In some instances, Federal courts, pursuant to reviews and analyses and evidence, have directed that one or more portions of these facilities cannot be utilized or occupied because they are deficient in one manner or another. This is an attempt as a part of the contract negotiation discussion, not to limit payments to facilities simply of dollar cost averaged over operating expenses, but an attempt to factor in, in part, those remedial costs, not only for upkeep, but for improvement within the facility, so that we can make a modest contribution to improvements which will directly benefit the individuals who are in our charge and our custody, being held by these institutions.

I have been leery of this program because it does raise the specter, one, of a Federal intrusion, as well as a Federal obligation in a broader sense, to pay for local and State facilities. I do not think that that is an obligation of the Federal Government, nor should it be.

Mr. KASTENMEIER. What do you contemplate in terms of actual dollars in fiscal year 1981 for this modest assistance?

Mr. CIVILETTI. We haven't made a final determination, but the estimate nationwide, particularly directed toward those facilities under which there are existing court orders, is approximately \$3 million.

Mr. KASTENMEIER. I thank you. I will not burden the record further at this point, but there are others who are similarly interested.

The gentleman from Missouri, Mr. Volkmer, and others have expressed interest in this; perhaps they will want to pursue it later. At

this time, the Chair would like to recognize the gentleman from Michigan. Mr. Sawyer.

Mr. SAWYER. Thank you. I would like to join the others in welcoming the Attorney General.

Mr. CIVILETTI. Thank you.

Mr. SAWYER. As you may know, I have become somewhat of a fan of you and Phil Heymann. I think you are doing a fantastic job and I like your allocation of resources. Certainly, the national resources, State, local, and Federal combined, are meager. The State and local prosecutors and police are woefully unskilled in the area of white-collar crime and corruption. That just is not their orientation.

They are totally preoccupied with and are very good at dealing with street crime, and certainly are at least as good as the Federal agencies are in that area. If you left that area to them, including such things as bank robbery, you might be able to concentrate on the areas which are not within their expertise.

I would also like to comment on the confidence which you have inspired by operating with a total party blindness. Having at one time been a prosecutor, I can appreciate the political pressures that obviously are there. Yet, that is one place where I think we all agree that justice ought not be influenced by politics.

There is one matter on which I would like to solicit your help. Yesterday in the Criminal Justice Subcommittee, we stripped the Department of Justice of its jurisdiction under the Hobbs Act on extortion by a vote of five to four. Four of us felt this was inappropriate. Hopefully, before we report the bill to the full committee, we can get some assistance from the Department, if you share my feeling that this is serious.

Incidentally, I discovered one interesting thing while reviewing the Criminal Code. Virtually the entire administration are technically lawbreakers. There is one provision in the code that prohibits officers or employees of the Federal Government from contacting an individual Congressman and attempting in any way to influence or persuade his vote, in the absence of his express request. We have recognized that this is obviously antiquated and archaic and have changed it. Nevertheless, it is still the law.

Again, I would like to solicit your help. Thank you very much. That is all I have, Mr. Chairman.

Mr. KASTENMEIER. The Chair will state that there is a live quorum on. And the Chair would inquire of the Attorney General whether he would be willing to wait pending a 10- or 15-minute recess.

Mr. CIVILETTI. Certainly.

Mr. KASTENMEIER. In which case, I trust the gentleman from Massachusetts will return. We will start with the gentleman from Massachusetts, following the quorum call.

The committee stands in recess for 10 minutes.

[Recess.]

Mr. EDWARDS. The committee will come to order.

The gentlewoman from New York is recognized.

Ms. HOLTZMAN. Thank you, Mr. Chairman.

Mr. Attorney General, I too want to extend my welcome to the committee. First, you mentioned in your statement about the Border

Patrol that men are patrolling the border. That reminds me that there are virtually no women in the Naturalization Service—none.

I would like to know what sort of plan you intend to develop to bring women into the managerial service. I should add the same question applies to the FBI.

Could you do that?

Mr. CIVILETTI. Certainly.

Ms. HOLTZMAN. Second, with regard to the issue of the Nazi war criminal in the United States, I am pleased that you stated in your testimony you resolve to follow through on the investigation and prosecution of these cases.

Nonetheless, it seems to me quite extraordinary that the Department calls for a cut in the budget for the Nazi war crimes unit. Last year the committee authorized \$3 million for the investigations; this year the Department of Justice proposes \$2.3 million.

Is that the result of OMB, or is that the result of the Department of Justice's request?

Mr. CIVILETTI. I don't know the answer to the question. My impression or my recollection is that the reduction was an internal reduction due to having organized, implemented and putting the unit in operation within the Department of Justice, and the reduction relates to those startup costs, so to speak.

My impression is that we are now up to 19 prosecutors. We have three more under consideration for hiring, which would make it 22. A year ago, when we were considering authorization and you were so active—and I think correctly so—in proposing that this be rejuvenated and a real commitment be made, there were, I think, only eight positions in the unit. That was when it was in the INS.

We have the full complement of trained investigators. They, as you well know, have been active throughout the world, and particularly in Israel and Russia. So I don't think the budget reduction, or difference, not a reduction, has anything to do with fewer people, or less energy, or slower resolution.

As you know, that effort is on a fast track under commitments made by me publicly, and directions to Phil Heymann for expeditious resolution of the differentials in the 200 to 250 files between those which are prosecutable cases, and those which should be closed as not makable.

As far as I know, that effort is on track.

Ms. HOLTZMAN. I would still like to see a concrete explanation as to why a reduction of close to \$2 million is being suggested by the Department in the budget. Perhaps you could submit that for the record.

The next question I would like to ask you, Mr. Attorney General, has to do with the failure, so far, to appoint a special prosecutor in the case involving Secretary G. William Miller. Having myself played a role in the writing of the special prosecutor legislation, it seems to me that since there is a charge being made by the Securities and Exchange Commission, and serious questions have been raised about possibility of perjury, I would hope that the decision would be made by the Department of Justice and yourself to appoint a special prosecutor.

I cannot think of any case that falls more clearly within the congressional intent in writing the special prosecutor legislation. I would like to point out also that the Department of Justice appointed a special prosecutor to investigate Hamilton Jordan, the President's chief political adviser, on the basis of charges made by convicted criminals, whereas in this case a Federal agency itself, the Security and Exchange Commission raised the issues.

Second, the charges concerning Jordan involve possession of cocaine. The charges with regard to Secretary Miller might involve a question of possible perjury before a committee of the U.S. Congress.

I would think the seriousness of the charges, the nature of the allegations and the nature of the agency making the allegations would virtually mandate the appointment of a special prosecutor.

I would like to know whether you intend to do that.

Mr. CIVILETTI. Let me clarify the answer to the previous question first, Congresswoman. There has been no change and no difference as I understand it. We got \$2.3 million in fact. The fiscal year 1980 authorization bill mentioned the \$2.3 million mark, out of the \$3 million ceiling. I am advised that that is the same circumstance this year.

Ms. HOLTZMAN. Mr. Attorney General, I think your staff is still confused about the difference between the appropriations process and the authorization process. They were very confused about that when we first started the authorization hearings. I see they still have not learned the difference.

Mr. CIVILETTI. Perhaps they can straighten that out with you.

Ms. HOLTZMAN. Thank you.

Mr. CIVILETTI. I have your letters and views with regard to Miller and I intend to reply to them in writing.

Ms. HOLTZMAN. Can't you reply now?

Mr. CIVILETTI. No.

Mr. EDWARDS. The time of the gentlewoman has expired.

Ms. HOLTZMAN. Mr. Chairman, may I ask unanimous consent to provide for 2 additional minutes?

Mr. EDWARDS. Without objection.

Ms. HOLTZMAN. I know my colleague from Kentucky is going to followup but I would like to raise a question with regard to the Immigration Service.

Last year the Immigration Subcommittee, with the support of the entire Judiciary Committee and Congress, mandated the creation of an Office of Special Investigator, mandated the computerization of the Service, mandated keeping track of people coming into this country, and mandated an independent management study because there was a strong feeling that the agency was out of control.

Here we are dealing with the fiscal year 1981 budget. There is no special investigator in place. The computerization has not gotten underway. The management study is being done by a council on which OMB sits and we know OMB has been responsible in the past for serious efforts to cut the budget.

We are in a situation where the Immigration Service has not been able to control the problems of illegal immigration into the country. We know that 131 Iranian diplomats disappeared into the population of the United States.

Things aren't getting better. This request proposes cuts on top of the fact that the mandates by Congress have not yet been complied with. The fact of the matter is that this budget calls for a 25-percent cut in immigration officials at airports, on holidays and weekends, which is going to create a serious problem for tourism in the United States, and we already have a serious problem with regard to balance of payments.

I can't fathom for 1 minute why this kind of cut is being made. We have the same number of investigators in this budget as were requested and on board 20 years ago. I think that what deeply concerns me is that mandates of Congress are not being vigorously and energetically complied with.

Beyond that we see no serious effort on the part of the Justice Department to try to bring the Immigration Service to the point that it can effectively and efficiently and fairly enforce the law. We have detention facilities in which people don't have even the right to go outside once a day. People are kept in these detention facilities for months at a time.

There are court cases involving the conditions in these facilities. We also have problems, concerning allegations of serious brutality by the Border Patrol. Yet the common kinds of training programs for law enforcement officers in effect in almost every major city in the country have not even been instituted with regard to the Border Patrol.

We don't have a professional agency; we don't have an agency which is getting the kind of support it needs. I am very concerned that this budget that has been presented for the Immigration Service is just more of the same old thing.

Mr. CIVILETTI. Do you want me to reply to that?

Mr. EDWARDS. Yes.

Mr. CIVILETTI. I disagree with almost everything the Congresswoman has said, except that I agree with her that we need better management, better resolution, better changes in the law and the policy and direction of the Immigration Service.

The authorization bill for 1980 was passed in November 1979. I have, as the Congresswoman knows from my personal conversations with her, interviewed and have ready for appointment the special investigator pursuant to that authorization bill, an outstanding person. I intend—as soon as the background investigations are finished—to put in a team of management, including the special investigator, as well as the Deputy Commissioner and the Commissioner.

The computerization which is initiated has been held up in part by an examination of its efficacy here in a committee in Congress. The management study is underway. Mr. Kratzke, who heads it, is a sound man.

The President's council for management improvement and efficiency has responsibility in part, and an expertise which we think is supportive for the management study.

If we can have a sound study reported and recommended to the Department of Justice for improvements, I think we are better off with its credibility having been established in part by the fact that the very people who have conducted it at least have had some connection or relationship with and credibility with OMB.

The study itself will be independent. We have no strings on it or no directions with regard to control over it. Neither does OMB. It is

charged with the duty to make all recommendations which it finds from the examination. It will have resources to conduct it. And I share the concern.

I think immigration is a problem and a serious one. I think the Service is important. I know that the Congresswoman is committed to making improvements in it. And so am I. And I think we both would be relentless with regard to it.

Mr. EDWARDS. Does the gentleman from California desire to be heard?

The gentleman is recognized.

Mr. LUNGREN. Thank you. I would like to echo the comments of the gentleman from Michigan about the confidence many of us have in you and a number of your associates in terms of overall direction of the Department.

However, I was extremely disappointed in many of your comments with respect to the Immigration Service. Its absence from the list of major priorities is an oversight. I hope it is merely an oversight.

Second, in discussing the three themes that you outline on page 1, you talk about concentrating funds and law enforcement bureaus in areas of national priority and the difficulties in setting realistic priorities.

As I interpret the Constitution, local and State governments are incapable of controlling the border and doing very much about those who come in here illegally. I have received a request from the Board of Supervisors of Los Angeles County that the Federal Government improve its performance drastically in terms of border control.

The answer to this request that I have heard from various administration spokesmen is that we have created a Select Commission on Immigration that will report in March 1981 (perhaps coincidentally after the next election), but in the meantime nothing can be done. That is not an answer at all.

When former Commissioner Castile appeared before our subcommittee, he admitted that increased border patrol would have to be part of any ultimate solution and, in fact, would be beneficial at the present time.

President Carter said about 2 years ago that he believed that the situation necessitates the addition of 2,000 INS personnel for border patrol investigation. Nevertheless, since that remark was made, we have consistently had cuts.

This committee and the Congress specifically mandated an increase of 495 positions in border patrol last year. Evidently, we are being ignored, because Acting Commissioner Crossland told us that those positions have not been, and will not be, totally filled.

This budget does not provide for an increase in those positions. I recognize that this is not the whole answer. Nevertheless, could you tell me if the administration has taken an about-face with respect to the President's original approach that we needed as many as 2,000 more people in the INS? This seems to be the case in light of the fact that for 3 consecutive years we have had cuts in the positions approved by Congress through authorization and funds appropriated.

Mr. CIVILETTI. No. I don't think the administration has taken an about-face at all. I do think that there is a difference which you point out between onboard and authorized positions, and that there have

been differences between the numbers of border patrolmen which have been budgeted and the number of border patrolmen who have been hired. It's my impression, and I think this is correct, that compared to the existing border patrol strength onboard in 1976 we have increased the number of border patrolmen substantially every year since 1976, in 1977, 1978 and 1979. And that this budget for 1981, although it calls for a reduction in total employment within the border patrol, will not cause the reduction of a single border patrol person, nor will it decrease any prior allocations within INS to the border patrol.

Mr. LUNGREN. Mr. Attorney General, according to Mr. Crossland's testimony, this budget would provide for 301 positions compared with the 495 authorized by Congress 2 years ago. As a result, although it may be a net increase over what you actually had, it is not even equal to what we provided for 2 years ago.

Since I just have a minute left, I would just like to ask this one question. I have just learned that a letter was sent to the President by four members of the Senate requesting that the positions of Commissioner and Deputy Commissioner be filled on a permanent basis, although not suggesting who it ought to be. I understand that the letter further suggests that this would be an indication that the INS is at least being seriously considered by the administration, and is one of its priorities.

Can you tell us what the schedule would be for such an appointment?

Mr. CIVILETTI. Yes; I hope the nomination will be made the week of March 17.

Chairman RODINO. The gentleman from Kentucky, Mr. Mazzoli.

Mr. MAZZOLI. Thank you, Mr. Chairman. I will keep my comments brief. First I would like to welcome the Attorney General. I would like to pursue for just a moment, Mr. Attorney General, what my colleague from New York, Ms. Holtzman, raised regarding the appointment of a special prosecutor. If I understand correctly, four members, which is a majority of the minority of the Senate Judiciary Committee, have petitioned you on this matter. They wrote a letter, I believe, on February 11 which would require some answer by next week.

Is it correct to say at this point that you have not made up your mind on how to respond to that request?

Mr. CIVILETTI. No; I intend to reply to the request, and to lay out the reasons and all the considerations which are present from a close examination of the facts in response to the issue which they appropriately address. The initiation of the inquiry with regard to Secretary Miller and my response, came at the Senate Appropriation hearing in the question and answer period by, I think, Senator Weicker. And the thrust of the question was, don't you think a special prosecutor ought to be appointed for Secretary Miller? And I said, no, I don't think so.

We have a system within the Department of Justice for notice with regard to special investigator matters, where they fall within the act for the establishment of a preliminary inquiry; the report is to be referred to me in sufficient time, ordinarily 15 days before the expiration of the date of the 90 days for the preliminary inquiry, an analysis is to be done and then a decision is made by me within the terms and

conditions of the act as to whether to ask the court for a special prosecutor. None of that has occurred with regard to the Miller case. None of that had occurred.

So my response to the Senator was that, no, I don't think so. I am not aware that the special prosecutor provisions apply. I do not think they do apply, just from my knowledge generally of the history of the matter. And that I have not been aware or been made aware, nor do I understand that a preliminary inquiry is being made, nor have I received any analysis or report with regard to a special prosecutor. And that, therefore, although I have not considered it at length with all of the facts and a review and a report, I don't think a special prosecutor is called for. Simple, straight answer.

Mr. MAZZOLI. If I understand it, sir, that statement of yours to the question by Senator Weicker doesn't conclude the matter, and would not preclude the possibility of a special prosecutor?

Mr. CIVILETTI. Of course not. For instance, if the terms and conditions of the act were met, next week, or next month or a year from now, or yesterday, had they been met, I would give serious consideration to a special prosecutor for any Secretary; for any person covered by the act.

And, as a result of the inquiry of Congresswoman Holtzman, as a result of the inquiry from the minority members of the Senate Judiciary Committee, I have had a careful review done of all the situations concerning Bell Helicopter and Textron, and of all the references from the Department of Justice from prior confirmation proceedings and hearings; Senator Proxmire's specific letter has also been carefully considered.

And I will, prior to the date of March 11, reply to those inquiries in detail.

Mr. MAZZOLI. Mr. Attorney General, I want to yield to my colleague for a moment, but let me make one statement. I think it's imperative that a special prosecutor be appointed. I recognize you will make the judgment based on the facts in front of you. But I personally feel that the facts very definitely lend themselves in that behalf.

Ms. HOLTZMAN. I thank my colleague for yielding. The terms of the statute—and as I said I participated in the writing and drafting of that statute, and was on the subcommittee that worked diligently for a number of years in trying to formulate it—the standard under which the special prosecutor cannot be appointed is a standard where allegations are so unsubstantiated that no further investigation or prosecution is warranted. It seems to me that when you have an allegation from the Securities and Exchange Commission that bribes were made, which is not denied by the company involved, and you have a statement under oath by, Secretary Miller that no bribes were made, it seems to me that you have on the face of it the requirement that an investigation go forward.

If you say it's unsubstantiated, in essence you are saying that the SEC doesn't know what it's talking about. I don't know that the Justice Department is in that position.

Mr. MAZZOLI. I thank the gentlelady. I have one other statement, if I could, Mr. Attorney General. That is that I think you were correct earlier today in having serious reservations about sending apologies to anybody, including Members of the Congress, having had their names

involved in ABSCAM. While I understand the reason that might be considered in a case of public persons, a matter that might be taken under consideration, I would think that if you apologize to them, you will have to do so to the least of the least, anyone whose name also may have come up. I think it would start a process that could never be logically finished. I thank the Attorney General. I thank you, Mr. Chairman.

Chairman RODINO. Mr. Attorney General, I believe you still have a few minutes. Can you stay with us? A number of the Members who haven't had the opportunity of questioning you are on their way back. I hope that you can accommodate them. If you can, I would appreciate it. I think it's important.

In the meantime let me ask you a question, in light of what Mr. Mazzoli has just stated concerning the question of apology, which I don't think is the kind of thing that even ought to be considered. I don't know that an apology is the issue. I think what is more important, what is central here, is whether or not the responsibilities placed on the Department as a result of the very sensitive nature of some of these investigations are carried out with great care and caution. Responsibilities that are handled with such care and with such caution that damage is not done except in the rarest of instances. This is the reason why I am so concerned, having expressed time and again my confidence in the Department and in the Federal Bureau of Investigation for the kind of operations that they were conducting. At the time of my introduction of the charter proposal, I expressed concern and had grave reservations because the specifics that were going to be considered and which would be placed in the charter were not delineated. The guidelines were so general. I thought that the work rules that you and I talked about had been discussed, that the guidelines would be discussed, and that they would be ever so carefully drawn.

This is where I think the attention should be. This is where I believe we really should have focused. I would like to be assured by you, Mr. Attorney General, that you are aware that this is what we are doing now. This is going to be your responsibility as the Attorney General, one in whom I have implicit confidence, to make certain that those guidelines are carefully drawn, that those work rules are supervised in such a way and come to your attention so as to protect and guarantee these basic rights and these civil liberties with which we are so concerned.

Mr. CIVILETTI. Mr. Chairman, you are exactly right in your setting forth the twin responsibilities of the Department of Justice as it applies generally to law enforcement, and specifically to intrusions which are developed as a result of special methods of investigation, whether they be undercover operation investigations, whether they be electronic surveillance operations or whether they be investigations which are third party investigations of financial records.

We have the responsibility to be relentless, aggressive and fearless with regard to the enforcement of the law. At the same time we have the absolute responsibility to be sensitive and careful, that in our pursuit of that objective we do not ignore or abandon or jeopardize the civil rights and liberties, the rights of privacy, the rights to be free of unwarranted searches or seizures, the right to the integrity of one's

reputation and the sanctity of one's home, office and facilities, and the personnel transactions in third party institutions and in hospitals and other Government records, be they IRS records or social security records or census records.

Third, we have the absolute responsibility from which there is no excuse to keep our investigations secure and confidential, so that we do not contribute inadvertently, or through wrongful conduct by an individual or more, to the direct injury of innocent people wherever they may be located; those in public office although they are entitled to equal treatment, are susceptible to graver injury because their reputations are their lives. And we are concerned.

I am concerned and have been since I have been in the Department of Justice again in the 1970's, with the balance, with the safeguards, with the development of standards, with the increase in both effectiveness, forcefulness and blindness to person or position, but particularly with regard to the exercise of this enormous power that prosecutors and investigators have, and Justice Department officials as well as State officials have with regard to criminal investigation.

The greatest danger to the safety and security of the American people and its public officials is not the refusal or failure to appoint or go after anyone in a special prosecutor situation, or bring in an indictment or charge or whatever. The greatest danger is the overexercise of these enormous powers that can develop, if not a concept, at least a kind of spirit of the ends justifying the means. So that we think that we have tried diligently each step of the way, even where they are removed from the Department of Justice or operations are occurring on a daily basis in which we cannot have in all occasions a monitoring effect by everyone, and that we have that sensitivity in Director Webster and the criminal division.

I cannot be certain to 1,000 percent, and we may need from time to time to helpfully reexamine the procedures, the processes, to see whether they can be improved, whether there can be better safeguards and there can be greater care taken in all three principal areas—aggressive and vigorous enforcement, protection of civil rights and liberties and concerns about the injury of the innocent and intrusion in their affairs, and third, and most importantly, the integrity and honesty and security of the investigations and their information.

There are an enormous number of investigations that are conducted by the Department of Justice which thank God never see the light of day because they prove not to be violations of law. They prove out that people did not commit chargeable conduct. They are closed, and properly closed, and are never exposed to the light of day because that is not our job.

It would be a horrendous circumstance if innocent people, proved to be innocent by the investigations, were paraded before the public as if they were guilty. But I am not satisfied that we know the answers to every intricate question with regard to those three commandments, and we will continue to review and analyze these recent investigations and others, and even anticipate where we have improvements to make in each principle.

I know and appreciate this committee's interest and concern. I know that you are committed on this committee to vigorous and effective law enforcement. But I also know how sensitive the commit-

tee is, and properly so, to the enormous power which can be abused and to the preservation of the basic freedoms and independence and safety of the American people to which they are entitled, public officials or private citizens.

We are entitled to be free from persecution or discrimination or abuse by the Government on any of its arms or agencies. So that I have no hesitancy or reluctance to discuss these matters, and to suggest to you that I share your concerns and sensitivity that in going about our duty, we keep ever mindful of the need for the improvement of safeguards so that we don't trample on those precious rights and reputations which cannot be regrown or redeveloped.

Chairman RODINO. I want you to know I appreciate that, Mr. Attorney General. I have had every confidence that this is the kind of policy that you have instituted, that this will be ongoing, and that there will be this reexamination as you proceed. I look forward to seeing what the work rules and what the guidelines are going to be in the charter for the FBI; guidelines which, I am sure, will be able to give it the kind of direction that I believe is necessary.

Mr. Attorney General, I know that you have set a deadline of 12:15. I don't want to impose on you. There are three members who haven't had a chance to ask questions, and that would take 15 minutes. Can you—

Mr. CIVILETTI. Certainly.

Chairman RODINO. Father Drinan.

Mr. DRINAN. I won't take the full time. I want to commend you, Mr. Civiletti, and I echo the sentiments of other members of this committee that you and Mr. Phil Heymann are doing a very splendid job. My questions will be reserved for the appearance of Mr. Peter Benzinger who will be here in a week or two. My Subcommittee on Criminal Justice now has oversight powers on that particular agency and at that time we will go through the request for \$4.5 million in additional money along with an additional 114 positions. I just want to say, Mr. Attorney General, I have found over the last 3 years that these hearings are very productive.

A year ago members of the committee asked for a study which we have here now. It is on written guidelines for alleged violations of written criminal laws. If I may, I have some questions I would like to send to you.

Mr. CIVILETTI. Fine, sir.

Mr. DRINAN. I am on the Aging Committee of the House. We had a hearing recently with respect to the policy of the Department of Justice on alleged discrimination against those over 60 who desire to be a Federal judge. If I may I would like to write to you and ask about the policy of the Department of Justice in that regard.

Mr. CIVILETTI. Yes, sir.

Mr. DRINAN. One last thing on behalf of Mr. Edwards and myself, we are concerned about the diminution of funds for the CRS, especially in connection with the very important work the CRS has done in mediating ethnic conflicts with Vietnamese refugees. Once again I will be writing to you. I appreciate your staying after overstaying. I yield the balance of my time.

Mr. SEIBERLING. Would the gentleman yield?

Mr. DRINAN. Yes.

Mr. SEIBERLING. Mr. Chairman, I don't know whether the Attorney General has been informed of this, but we may submit additional questions which he will answer so we can make them part of the record. I presume that is in order.

Mr. CIVILETTI. I welcome those questions.

Mr. SEIBERLING. Thank you.

Chairman RODINO. Thank you. The gentleman from New Jersey.

Mr. HUGHES. Thank you, Mr. Chairman. I too want to welcome the Attorney General today. I appreciate him staying. I know he had other commitments at 12:15. We appreciate it—those of us who have been here since early this morning waiting for our opportunity to ask you things that concern us. First let me just say I agree with your priorities. I think your priorities are right on target.

I am concerned that there is no mention of antiterrorism. I presume when we talk about counterintelligence activities, foreign counterintelligence activities, we are talking about antiterrorism, but there is no mention of domestic antiterrorism efforts. That concerns me because we live in such a troubled world and there seems to be an infectious pattern that develops. I wonder where that fits into the overall relative priority scheme, if you could tell me briefly.

Mr. CIVILETTI. Yes. It's largely a preparatory and anticipatory concern, rather than an existing, ongoing daily damage concern. That is why in the concentration of major priorities, major directions, in those four areas which we have described, you see that they concentrated where daily damage is being done by commission of the offenses which we are battling to alleviate so as to reduce that damage. Terrorism ranks high in terms of our concentrated effort, our planning, our development, our preparedness, our intelligence gathering, counterintelligence and the rest. And it fits within categories of crimes such as skyjacking, kidnapping, extortion, in terms of prompt response, Federal investigations, Federal prosecutions with vigor.

It is of course of major concern. In fact, the antiterrorism effort is directly within the office of the Deputy Attorney General instead of simply the Criminal Division. We have been relatively successful.

Mr. HUGHES. Thank you.

Let me just say I think you have answered my question. I wanted to indicate my concern. I only have 5 minutes and want to see if we can't get over the questions and answers as rapidly as possible. I am concerned that you are eliminating seed money for States and antitrust enforcement matters.

I wonder if I can submit to the committee the experience with that seed money, the success ratio, and ask why it's felt at the present time that it's necessary to stop that kind of seed money.

I think most of us on this committee feel the States are often in a better position to expeditiously move matters dealing with anticompetitive behavior than at the national level. I would like some data on that if you could furnish it to this committee.

I am also concerned over the commitment to institutions and areas of correction. Moneys are committed to improve medical care, for instance. It's been my experience over the years that we do little but pay lip service to rehabilitation, particularly in the area of psychiatric and psychological care. I am interested in knowing how much of these funds are committed to trying to upgrade the inmate-psychologist

ratio, which has been extremely low over the years and, in fact, undermines efforts to rehabilitate.

Can you furnish that information to the committee also?

Mr. CIVILETTI. Yes.

Mr. HUGHES. Finally, I am interested, in the short time I have left, to tell you that with regard to covert operations, undercover work, I am fully supportive of the efforts of Justice and the Federal Bureau of Investigation. I have spent enough time in law enforcement myself to know that undercover operations are essential in certain areas, particularly when dealing with organized crime and public corruption, and I support these investigations. However, I have some major concerns. I think this committee would be well advised to wait until matters presently pending are disposed of so that at that point we can look at the process that is used.

I want to assure you, Mr. Attorney General, that I am going to support Justice in what I conceive to be reasonable efforts to ferret out wrongdoing, whether it be public or otherwise, and the use of undercover work is important.

That brings me to the next point which gives me great concern. The leaks. In my entire public career I have never known of a criminal investigation that identified through the media dates, times, places, demonstrative evidence and admissions against interest. You go through the whole gambit of a criminal trial, paraded before the press, which just damages this criminal investigation beyond comprehension.

I think you well know that you will have major challenges, and that disturbs me because it reflects so poorly upon law enforcement. I am interested in knowing specifically what is being done at this point to try to ferret out the leaks. What structural changes are taking place that will, first of all, assure us that we won't see a repeat performance?

Chairman RODINO. Time of the gentleman has expired.

Mr. HUGHES. Could I just finish my question? I ask unanimous consent for 1 additional minute to finish my question.

I would like to know just exactly what is taking place because this committee will, I hope, take a look at the process when we can do so without compromising any further criminal investigations. To that end I am hopeful we are developing memoranda to determine the nature and extent of any undercover operation, the manner in which it's created, the use of intermediaries, the type of control that is exercised, all the things that I am sure must give you great concern, which can indeed become counterproductive if in fact it begins to impinge upon constitutional rights and compromise law enforcement activities in this country.

Mr. CIVILETTI. Right. I can answer as to those things that are being done. There are two specific things that are being done. One, an all-out intensive investigation to determine the source of the leaks within the Department, headed by Dick Blumenthal, U.S. attorney for the District of Connecticut, by John Otto, Assistant Director of the FBI and former special agent in charge of the Chicago office, and supported by Assistant U.S. attorneys and FBI agents drawn from around the country. And that investigation has the charge of using every lawful means without restriction to find the perpetrators, those who have improperly and intentionally leaked material information relating to these criminal investigations.

Second, I addressed the Department of Justice yesterday about my concerns with the very harms that you have mentioned and other harms caused by breaches of duty by Department officials wherever located, no matter rank or position, and that message will go out to all the Department employees throughout the country by videotape as well as in writing.

Third, I have under study and consideration by a number of different people in the Department the kinds of things that the chairman talked about earlier, revisions in practices and policies with regard to security, need to know basis, departmentalization, whether we need to make regulations more specific in certain areas, whether we need a new statutory provision with regard to criminal penalty for violations of the Privacy Act, specifically related to criminal investigations and disclosure of information with regard to it. Within the substantive area of the conduct of such undercover operations, there are now a range of considerations or reviews or analyses in part already underway, for new guidelines prepared by me and by people under my direction for informant operations, undercover operations, the use of information and the seven or eight guidelines provisions which are called for by the proposed charter which is before this committee.

In accordance with general policy, in the due course of reviewing those proposed guidelines, it will be appropriate to review them with members of this committee and the different subcommittees under whose jurisdiction they fall. They will also be an integral part of the review process for the charter.

Chairman RODINO. The gentleman from Missouri.

Mr. VOLKMER. Thank you, Mr. Chairman.

I would like for Alan or who ever wants to get ready because I am going to ask questions but I am not going to ask you for any answers since I don't think I would get through all the questions. You can submit them for the record and I ask you also to submit them to me. I would also like to have a copy of the answers that you will send to the gentleman from New Jersey who has just spoken with regard to the State antitrust fund.

The things I am concerned with that I would like for you to answer are, one, on the civil process, elimination of the marshals in the use of serving of civil process, whether that is by contract or how it's going to be done. I would like to know the details on that.

Two, in your statement, you mentioned local detention and use of improved local detention facilities which house Federal prisoners on a contractual basis. I would like to know more details on that. In other words, again whether the contracts will be with governmental agencies, not-for-profit agencies, or both. If so, who is being housed, where are they housed now, and how is it operating? I am very interested in that. I think that this is a good concept.

I agree with you on that but I would like to look at it.

On the fingerprint ID, part-time employees instead of full time, I would like to have more detail on that. For instance, whether you plan to use college students, or how you have been doing it—if you have been—and how well it's worked.

The last thing I would like to have answers to, which I am going to submit for the record, is three pages long. Those questions are

on the undercover operations. If some of these cannot be answered because of the Abscam investigation, just say so. Indicate the questions are not answerable at this time, or something like that. However, some of these questions can be answered.

I would like to know about the Undercover Activity Review Committee; in other words, who belongs to it, how often it meets on these type of things and reviews—that type of thing.

With that, I think I am finished. I will put a copy of this with the reporter and give you a copy.

Mr. VOLKMER. The other answers you can send to me by mail. Thank you very much.

Chairman RODINO. Thank you very much. I would like to advise the gentleman from Missouri, the Attorney General will, as a procedure, respond to the questions by responding to the committee and committee chairman, and we will make answers available to all the members. (See appendix at p. 37.)

Mr. SEIBERLING. Mr. Chairman, could I be recognized for 30 seconds?

Chairman RODINO. We don't want to take the time of the Attorney General who has already volunteered, but go ahead.

Mr. SEIBERLING. I would just like to say I do think you are doing an outstanding job. I am particularly delighted with your answer to the gentleman, Mr. Hughes, about the steps you are taking to review controls over operations of the kind we have been discussing because I feel that some of the things we have learned as a result of the revelations and leaks on Abscam have raised a kind of a specter of the kind of world envisioned in George Orwell's "1984," when everybody is under surveillance, on constant trial before "Big Brothers." Whenever we find that kind of looseness in our democracy, I think, on the part of government, we need to take a good, hard look at it, because the time to stop that kind of trend is at the outset, not after it's gotten out of hand.

I want to commend you for taking steps to see that controls are adequate.

Mr. CIVILETTI. Thank you.

Chairman RODINO. Thank you very much, Mr. Attorney General. Thank you for staying as long as you have. That concludes today's hearing.

[Whereupon, the hearing was adjourned at 12:35 p.m.]

APPENDIX

U.S. DEPARTMENT OF JUSTICE,
ASSISTANT ATTORNEY GENERAL, LEGISLATIVE AFFAIRS,
Washington, D.C., July 28, 1980.

Hon. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: During the hearings on the Department of Justice FY 1981 authorization request, a number of Members of the Committee requested that the Attorney General respond to certain questions for the record. In addition, your letter of March 24, 1980, requested that the Department answer some additional questions pertaining to its current activities.

The Attorney General has requested that I respond to all of these inquiries. Enclosed please find the Department's replies.

Should you have any additional questions, I shall be glad to respond.

Sincerely,

ALAN A. PARKER,
Assistant Attorney General.

Enclosures.

RESPONSES TO HEARING QUESTIONS

PART I.—RESPONSES TO MEMBERS QUESTIONS POSED DURING FISCAL YEAR 1981
DEPARTMENT OF JUSTICE AUTHORIZATION HEARING WITH THE ATTORNEY GENERAL

Criminal Division: Office of Special Investigations (Nazi-War Criminals)
(Ms. Holtzman)

Question. The Congresswoman remarked: "I would still like to see a concrete explanation as to why a reduction of close to \$2 million is being suggested by the Department in the budget for the Office of Special Investigation."

Answer. The Department of Justice is not requesting a \$2,000,000 reduction in fiscal year 1981 for the Office of Special Investigations. The Department is requesting a funding level of \$2,387,000 for fiscal year 1981. This request is in consonance with the President's fiscal year 1981 budget request for this program and represents an increase of \$87,000 over the fiscal year 1980 appropriation.

Section 2(3)(g) of Public Law 96-132, the fiscal year 1980 Authorization Act for the Department provided "not to exceed \$3,000,000 of which \$2,300,000 shall be made available" for the Office of Special Investigations. We are aware that the \$3,000,000 level reflected a ceiling up to which the Congress can appropriate and the \$2,300,000 level reflects a floor indicating how much funding is to be made available for this activity.

We are also aware that the increased funding ceiling provides certain flexibility should additional supplemental funding be necessary at some point during the budget year. However, it has been budget policy that the Department not request a ceiling that is in excess of the President's budget request based on some anticipatory need that is not clearly defined. Generally, if an additional need for more resources arise, the Department requests supplemental funding level authorization and budget authority for that program. Such a supplemental request is made after extensive justification is presented.

The Assistant Attorney General for the Criminal Division, who has responsibility for this program, has testified that our fiscal year 1981 request of \$2,387,000 for the Office of Special Investigations is sufficient to do the job. Should an urgent need arise for supplemental funding, the Department shall consider the request and provide the Committee with an additional funding authorization request.

Pharmacy Robbery Statute

Question. "Do you think a significant increase in expenditures would be required if the Congress were to enact a pharmacy robbery statute . . ."

Answer. If Congress were to enact legislation to make pharmacy theft a Federal crime, major cost increases would be necessary to carry out the legislation's intent. The return would be questionable.

A 1977 DEA study indicated a cost of \$29,102,799 for hiring, training, and equipping 380 special agents and support personnel to investigate 6,000 pharmacy thefts per year. The figure of 380 agents was based on the average time of successful investigation of pharmacy thefts in four major cities, and upon the assumption that agents would be assigned to specific geographical locations based upon the 1976 theft pattern. If thefts did not continue in the same geographical pattern, which is probable, response time and thus successful apprehension would greatly suffer. In fiscal year 1979, there were 7,684 pharmacy thefts in which drugs were taken. Consequently, DEA has every reason to believe that more agent support would be required now and furthermore, because of inflation, costs will have accelerated considerably since 1977.

The judicial or prosecutorial impact as a result of Federal jurisdiction of pharmacy thefts would be negligible. History has demonstrated that the "small" narcotic case is generally declined by Federal prosecutors in favor of prosecution at the local level. With the emphasis now on developing and prosecuting major conspiracies, Federal prosecutors will be even more reluctant to accept smaller cases. Moreover, the Speedy Trial Act now requires cases to be tried within 60 days from indictment. The time constraints require an Assistant U.S. Attorney to be selective in the cases which he accepts for prosecution.

Passage of a Federal pharmacy theft legislation would mean that DEA would become, in effect, a local police agency whose cases would all be prosecuted locally. Therefore, it would be a serious drain on DEA's resources which more properly should be directed at major case development.

Fair Housing Amendments (Mr. Butler)

Question. "Yesterday, we passed the Fair Housing Amendments Act, granted increased litigation authority to the Civil Rights Division, to the Department, for actions brought under Title VIII."

"Do your funding authorization requests for the Civil Rights Division reflect additional attorneys fees to fulfill this legislative mandate?"

Answer. No resources were included in the fiscal year 1981 request to handle increased litigation authority under the Fair Housing Amendments Act. It is not our general policy to request resources for legislation that has not been enacted. Whenever legislation is enacted, we review the resource requirements associated with it and the appropriate action is taken. This action may require additional funding; it may require the reprogramming of funds or in some instances the Department may absorb the increased requirements granted by the additional responsibility.

U.S. Marshals Service (Mr. Kastenmeier)

Question. "Can you answer for the record exactly how the Department expects private civil process will be served if they are put out of this business? If you can do that for the record, I would appreciate it."

Answer. Briefly, the chief alternative will be private process servers. For example, this could be done under Rule 4(c) or Rule 4(d)(7) of the Federal Rules of Civil Procedure and could allow service by any person allowed to serve process in state court, including private process servers. This would be a purely private enterprise, arranged by the litigant through an individual or private agency.

In addition, alternatives now existing to a Deputy Marshal's service will continue. They include, for example, mail service under Rules 4(d)(7) and 4(c) of the Federal Rules of Civil Procedure in states which allow such service in their state courts. In addition other forms of service are authorized under specific statutes, e.g., publication, long-arm service, substitute service, and the like.

Question. "The things I am concerned with that I would like for you to deal with, one, on the civil process, elimination of the Marshals in the use of serving of civil process, whether that is by contract or how it's going to be done. I would like to know the details on that."

Answer. Under the revised Federal Rules of Civil Procedure, the Marshal could still be ordered to serve the private civil process in cases or districts where the judge believes alternate service is insufficient. We do, however, hope that this will not be more than a limited exception in justifiable circumstances.

Question. "On the—you mentioned at page 2 on local detention and use of improved local detention facilities which house federal prisoners on a contractual basis. I would like to know more details on that. In other words, again whether that is governmental agencies, not-for-profit agencies or both. If so, who, where you have them now, how it's operating? I am very interested in that. I think that is a good way to go."

Answer. The U.S. Marshals Service currently contracts with approximately 750 local detention facilities. The contracts provide, in most cases, coverage for Bureau of Prison's short term sentenced prisoners, federal unsentenced prisoners in the custody of the USMS and Immigration and Naturalization Service undocumented aliens.

Of the estimated 750 U.S. Marshals Service contracts, 745 are written with local governments and 5 are with non-profit organizations. These non-profit organizations include the Salvation Army and Catholic Community Services Agency in San Diego who provide housing for alien women and children.

Our prototype contracts in San Diego have been very well received and are reportedly operating without any complications. The other 3 non-profit contractors, located in Arizona, also provide housing for aliens and juveniles on a limited basis.

The Service is currently negotiating with the Salvation Army's southeastern region for a multi-facility contract to house alien women and children and low security juvenile detainees.

Question. On the fingerprint ID, part-time employees instead of fulltime, I would like to know more detail on that as to whether you plan to use college students or whether—how you have been doing it, if you have been, how well it's worked.

Answer. The Identification Division has not as yet had any experience in the use of part-time employees; therefore, it does not know how well it will work. It is hoped, however, that, since the part-time positions will allow the Division to draw from another pool of available labor, their addition to the Division's personnel staff will to some extent offset the loss of full-time employees due to attrition.

It is hoped that a large number of the part-time positions will be filled by former employees of the Identification Division who left because they were unable to work full time. Since such persons were previously cleared to work for the FBI and were trained in the Identification Division's work procedures, they can be quickly assimilated into the Division. Accordingly, efforts are presently under way to identify and contact such persons. Other sources of part-time employees will be college students, housewives, and other persons seeking limited employment. Recruitment efforts will include contacting local colleges and universities, and the use of local advertising.

II. BANK ROBBERIES (PERSONAL CRIMES PROGRAM)

Question. Please explain how the FBI now responds to bank robberies in its various field offices, given that the amount of manpower devoted to this area has decreased over the last few years?

Answer. The FBI's response to bank robberies varies from district to district in reflection of Department of Justice policy favoring increased deferral of bank robbery investigations and prosecutions to state and local law enforcement authorities. The key feature of this policy is its flexibility, for it recognizes that a variety of purely local conditions dictates where deferral is possible and appropriate. Thus, we have not promulgated specific national guidelines for deferrals in particular types of bank robbery cases. Rather, the Department has encouraged each United States Attorney and the Special Agents in Charge of the FBI field offices to engage in candid and open discussion with their state and local counterparts to assess the capabilities—present and anticipated—of state and local law enforcement agencies to investigate and prosecute bank robbery cases effectively. Many of these discussions are held within the framework of Federal-State Law Enforcement Committees which are already serving in many districts as a forum for discussion of the responsibilities of the respective investigators and prosecutors in areas of concurrent jurisdiction. As a result of these discussions, agreements are reached in each district setting forth the types of cases and circumstances which will be investigated and prosecuted locally or federally. There are, of course, many cases which because of their particular facts require a federal involvement. The FBI will retain primary investigative responsibility in such cases. Further, the FBI will maintain liaison with local authorities who are handling bank robbery

matters and lend technical assistance such as laboratory analysis where needed. It should also be noted that the FBI, through the FBI National Academy in Quantico, Virginia, is providing investigative training to local officials in an effort to enhance their investigative capabilities.

Question. Are the State and local police satisfied with these arrangements?

Answer. It is, of course, difficult for any law enforcement agency—federal, state, or local—to take on an increased share of investigative and prosecutive responsibility. However, as previously mentioned, the policy of increased deferral of bank robbery matters is particularly sensitive to the capabilities of state and local authorities. Deferrals under the policy are the product of consultation, discussion and agreement between federal authorities and their local counterparts. Moreover, the policy recognizes the need for continuing dialogue and liaison to ensure that all bank robberies are being vigorously investigated. Thus, where particular cases prove to be beyond the capabilities of local authorities the FBI may provide cooperative assistance in pursuing out of state leads or laboratory services or, if necessary, primary investigative responsibility.

Question. Are the banks satisfied with these arrangements?

Answer. When the Department began encouraging deferral of bank robbery matters some members of the banking industry expressed concern that a lessened FBI presence would have an adverse effect on the rate of incidence of bank robberies. To some extent these concerns were based on a misapprehension of the deferral policy. We have taken special efforts to meet with bankers throughout the country to explain that our policy does not represent a unilateral withdrawal of federal authorities from the bank robbery area. Instead, local authorities are, consistent with their ability to do so, taking on a larger share of the responsibility for investigation and prosecution of bank robbery matters. Further, our experience has shown that the existence of an immediate FBI response does not seem to affect the rate of bank robberies. Los Angeles has the highest rate of bank robberies in the United States despite the fact that the FBI continues to investigate all such incidents. In contrast, Detroit has one of the lowest rates even though local authorities investigate most bank robberies. We believe that other factors such as the location of banks, number of suburban satellites, architecture of bank buildings, and security measures have the greatest influence on the bank robbery rate. We have encouraged the banking industry to increase security measures in an effort to prevent robberies. FBI agents knowledgeable in bank robbery matters are available to review the security measures taken by individual banks in an effort to reduce the banks' vulnerability. Banks which have been victimized on a recurring basis are being contacted by these agents to review the presence or absence of factors which contribute to this problem.

PART II.—RESPONSES TO CHAIRMAN RODINO'S QUESTIONS CONTAINED IN THE MARCH 24, 1980, LETTER TO THE ATTORNEY GENERAL

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., March 24, 1980.

HON. BENJAMIN R. CIVILETTI,
Attorney General of the United States, Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: During the hearings we had on the Department of Justice authorization, members of the Committee expressed interest in forwarding to you questions concerning the Department and its activities for your response.

I am enclosing a series of such questions and I would appreciate your providing answers to these questions at your earliest convenience.

Sincerely yours,

PETER W. RODINO, Jr., Chairman.

Enclosures.

General

Question. On January 29, 1980, the Deputy Secretary of Energy circulated a memorandum that DOE not hold any major events in 14 States that have not ratified the ERA. Since the Department of Justice acts as legal counsel to other departments, were you consulted in formulating this policy? Don't you believe that the discriminatory use of federal funds to influence the voting in State legislatures is unauthorized and thus illegal?

Answer. There has been recent litigation concerning the alleged Department of Energy policy not to schedule agency events in States which have not ratified the

ERA. *Senator Orrin Hatch, et al. v. James Earl Carter, et al.* (D.D.C., 1980). However, we understand that both the President and the Department of Energy have disavowed any such policy of "boycotting" States which have not ratified the ERA. Accordingly, a joint stipulation of dismissal was filed by the parties in the above litigation on April 25, 1980.

Antitrust

Question. As a matter of policy, would not it be preferable for all antitrust enforcement capabilities to be lodged within one agency, the Department of Justice? Is there anything special about antitrust that requires two enforcement agencies while other laws are enforced by single agencies?

Answer. The present organization of antitrust enforcement responsibilities between the Antitrust Division and the Federal Trade Commission has worked well over the years and the consolidation of their functions into a single agency would not necessarily be advantageous. First, the Division and the FTC work in different litigation environments, one being an administrative agency, the other being an enforcement agency that conducts its enforcement efforts in the federal courts. Second, the two agencies perform their functions under different statutes with some distinctions in enforcement responsibility and areas of expertise. Third there has developed over the years a rational division of labor between the two agencies. This is monitored through the liaison arrangements that exist between the agencies and the periodic meetings between the top officials of the two entities. In addition, there is a great deal of communication and joint efforts by the agencies to exchange ideas and provide a general policy of how to manage their scarce resources.

It should be noted that any change in the functions of the agencies or consolidation into a single antitrust enforcement entity would require a substantial diversion of resources to incorporate the changes of emphasis in programs and structure now kept separate in each agency. Given the effective joint relationships that the agencies enjoy at present, there is no administrative or policy reason for disrupting the present relationship.

Question. Is there any truth to the stories that you personally are supervising negotiations in the IBM case? If yes, is it your usual practice to supervise negotiations? If it is not your usual practice, what did you find special in this case? Unfortunately, it may appear to some that since Clark Clifford has been hired by IBM, there may be a "political" settlement in the works, particularly if the matter has been taken up from the Antitrust Division to your office.

Answer. There is a grain of truth in the question. I have expanded the Department's general policy with regard to settlements and negotiations leading to settlements in significant cases. Consequently, I personally gave impetus to the Antitrust Division's exploring negotiations in the IBM case because of its size, length of time pending and importance. It is my usual practice to make sure that every division in the Department has carefully and forcefully exhausted reasonable, good-faith efforts to negotiate in important litigation. If I am not persuaded that this has occurred, I personally stimulate efforts to make sure that such negotiations are attempted.

My personal participation in the IBM discussions pertained to general terms and policies and not to specific details which are and will be conducted by the Antitrust Division. Throughout the initial discussions with regard to the IBM negotiations, lawyers and managers in the Antitrust Division participated at each step. My office is responsible for the entire Department of Justice, all of its offices, boards, bureaus and divisions. There is no reason to believe that if the Office of the Attorney General participates in any matter in the Department, it is on any basis less than the merits of a particular case—the relevant law and the facts pertinent to that law.

Immigration

Question. What have you done as Attorney General to improve the overall management of the Immigration Service to assist them to carry out more efficiently the tasks assigned them?

Answer. To begin with, I have made the improved management of the Immigration and Naturalization Service one of my highest priorities as Attorney General. Towards this end, the INS management study, provided for in the Department of Justice FY 80 Authorization Act, is well underway in implementing its project agenda and is working closely with the senior management of the Immigration and Naturalization Service. This study, one of the most significant steps being taken to improve INS management, is being accomplished under the auspices of the President's Management Improvement Council and

is drawing on resources and expertise from other parts of the Federal Government as well as the private sector. Changes are being made as issues and problems arise and implementation of the results of the study are therefore ongoing rather than separate from the operation of INS. Upon completion of the study team's analysis, the Department will promptly submit a report.

The management study is focusing, initially, on the issue of INS' automation, information and records systems. Sound planning and program implementation in these areas is fundamental to the reform of INS and will serve as the basis for identifying other critical management needs of the agency. As these secondary issues are identified, they too will be addressed by INS management and by officials in the Department.

The Department of Justice is making renewed efforts to support INS in analyzing and meeting its management needs as much as possible. While retaining responsibility for oversight and review, I am committed to a cooperative and supportive response by the Department. The Immigration Service is not a stepchild of the Department, as has incorrectly been suggested, but an agency that has been outdistanced in its capacity to deal with its responsibilities by events, inadequate laws, and contradictory policies. I am convinced that whereas resources in certain areas may be needed in the long term, resources are not an adequate answer and a priority on management issues and improved planning by INS is a necessary element of reform.

To accomplish all of these goals, the new leadership of the agency will soon be in place. In addition to the Commissioner and Deputy, there will be an appointment to the position of Special Investigator. The activities of the Special Investigator will make a considerable contribution to the improved management and professional expertise of the agency.

I will continue to devote my own time and the resources of the Department to help INS improve its management capabilities.

Question. In the fiscal year 1981 budget, there are total cuts proposed of 1,238 positions in the Justice Department. The Immigration Service was only surpassed by the Federal Bureau of Investigation (cut of 432 positions) and the U.S. Attorneys and Marshals cut of 562 positions. Could you describe why the Immigration Service received a cut of almost 21 percent of the cuts imposed on the entire Department?

Answer. The Administration's budget request for fiscal year 1981 represents the President's attempt to balance the budget and to hold full-time permanent employment throughout the executive branch to the January 1977 level. In the course of the budget process, the President must consider his priorities and carefully weigh the costs and benefits of various competing programs throughout the government. After considering the various funding options available to him, the President makes his decision. As a result, certain agency programs within the Department of Justice were reduced. The Immigration and Naturalization Service (I&NS) was one of the agencies affected by the reductions. The Administration believes that compelling reasons exist to decrease the number of authorized positions in I&NS. The bulk of the decrease in I&NS relates to the Border Patrol, i.e., 199 positions authorized in fiscal year 1980 have been eliminated. It is important to note that these are unfilled positions and that the actual onboard strength of the Border Patrol will increase in fiscal year 1981 over fiscal year 1980. Moreover, during this Administration, the actual number of personnel in the Border Patrol was steadily increased from under 2,000 in 1976 to 2,348 this year. Furthermore, given the present situation on the border, the Administration does not believe that the staff added by the Congress in fiscal year 1980 would, by itself make a significant contribution to border enforcement. Until the Select Commission on Immigration and Refugee Policy issues its report, which should assist in developing agreement on statutory changes to remove the incentive for illegal immigrants, large budget increases for enforcement would be unadvisable.

Finally, although the relative size of the Department's agencies was not used as a major factor in deciding the resource levels for each agency, I would like to point out that I&NS is in fact the second largest agency in the Department with approximately 19 percent of the Department's authorized positions.

Question. Does the Department or the Administration anticipate taking any position on the illegal alien issue before the report of the Select Commission on Immigration and Refugee Policy is filed next March?

Answer. The existence of the Select Commission on Immigration and Refugee Policy is not viewed by the Administration as a reason for suspending action or response to the critical issues before us. For instance, in the case of refugee matters, we have fully supported enactment of the Refugee Act of 1980. Likewise, the situation of Cuban arrivals in Florida has suddenly become grave and emergency matters have been required. With regard to illegal immigration that results from

the overstays of nonimmigrant visitors and students, we are proceeding with the development of a more comprehensive policy in that regard.

At the same time, the Administration does not foresee presenting legislation or other measures to the Congress on general immigration reform until the report of the Select Commission is made. We view the Commission as a welcome resource in an area with a serious need for coherent analysis and proposals. The Administration is giving full support to the work of the Commission and looks forward to its product as a major contribution to a rational immigration law and policy for the future.

Question. Does the passage of the Refugee Act of 1980 change your budget forecast as far as positions needed by the Immigration Service to handle (1) adjustment of status of refugees presently in the country (2) asylum procedures mandated under the bill?

Answer. Section 203(a)(7) of the Immigration and Nationality Act limits the eligibility for adjustment of status to aliens who had fled from communist dominated countries or from specified countries within the Middle East. The "Refugee Act of 1980" does not contain these geographic restrictions. In addition, the Refugee Act limits the number of adjustments to 2,500 during the second half of fiscal year 1980 and 5,000 per year thereafter compared with 8,700 per year previously eligible for adjustment under the Immigration and Nationality Act. Although I&NS received only 2,400 applications for adjustment in fiscal year 1979 under the provisions of the Immigration and Nationality Act, we anticipate that the number of applications will increase to the maximum allowable under the new act, i.e., 2,500 in fiscal year 1980 and 5,000 in fiscal year 1981, because the removal of geographic limitations will make many more aliens eligible for adjustment of status.

The Refugee Act of 1980 mandates that applications for asylum may now also be accepted at land border ports of entry. Under previous procedures such applicants were referred to American Consuls in Mexico and Canada. Due to the unstable political conditions in many South and Central American countries, we believe that the number of applications for asylum from these countries will increase at the borders. For example, during March we received 779 requests for asylum from nationals of Nicaragua who had entered the United States either as non-immigrants or by illegal entry from Mexico. The total pending Nicaraguan asylum requests now stand at over 3,000.

During Fiscal Year 1978, we received 3,702 asylum requests from all nationalities. In Fiscal Year 1979, 5,801. In the first five months of 1980, we have received 4,517 such requests. If this trend continues we estimate that we will receive 12,000 asylum requests in Fiscal Year 1980 and 20,000 asylum requests in Fiscal Year 1981.

The anticipated increase in status adjustments and applications for asylum will of course require some additional work effort. Our estimates, based on anticipated workload increases, include a need for approximately seven workyears in Fiscal Year 1980 and an additional six workyears in Fiscal Year 1981. We believe that our current budget request is sufficient to cover these additional demands. However, if we find that additional resources will be required, we will consider proposing a supplemental budget request.

The Cuban Program is of course a separate issue. Because of the emergency nature and the large numbers involved, the Administration has decided to coordinate its response to this issue among the various government agencies responsible for the processing and relocation of these individuals. Estimates of the costs of the Cuban emergency are being developed and refined. The estimate will be submitted to the Congress in the form of a supplemental appropriation request.

Community Relations Service

Question. During the hearings before the Subcommittee on Civil and Constitutional Rights last month the Community Relations Service requested 111 full-time positions, a decrease from last year's authorization of 136 positions. I take it, then, that you believe that CRS can adequately fulfill its mandate with that figure, and that there is no reason to increase it?

Answer. Currently, the Administration is analyzing how federal agencies including the Community Relations Service, can help relieve tensions in American cities. CRS is actively engaged in a variety of programs to negotiate community problems, sponsor police/community relations seminars and establish sensitivity training in police departments.

While the Administration's review may result in a decision that more resources are needed for CRS, right now I believe that the positions allocated will enable that agency to fully meet its caseload and program requirements in fiscal year 1981.

Federal Bureau of Investigation

Question. It has been brought to our attention that the overwhelming majority of telephone lines originating from the Department of Justice are not secure. That is to say, an efficient, organized criminal group could tap them and uncover important information regarding ongoing criminal investigations. Is that correct, and if so, is anything being done to remedy the situation?

Answer. The Department of Justice transmits a considerable amount of critical and sensitive information between various Departmental organizations and other government agencies (local, state, and Federal). National Security Information (Executive Order 12065) or "Classified Information" is protected utilizing encryption equipment in accordance with the established regulations of the defense and intelligence agencies.

However, a large part of the Department's critical and sensitive information is not covered by these protective regulations and requirements, since it is not National Security Information (NSI). There are no well-defined categories of critical and sensitive non-National Security requirements. The Department recognizes that sensitive electronic communications are subject to possible interception, limited only by the value of the information to intruders and their willingness to expend resources to exploit the vulnerabilities.

The overwhelming majority of telephone lines to the Department of Justice are not secure and are susceptible to possible interception. A limited number of secure telephones approved for discussion of NSI as well as sensitive information are available in the Department. Additionally, several secure telephones have been purchased by the Department for delivery in late 1981. There are also a small number of voice privacy telephones available which provide a limited protection capability suitable for some sensitive discussions.

Several Department organizations are interested in a limited protection capability for radio communications. The Immigration and Naturalization Service is evaluating a voice scrambler for potential use in radio communications. The Drug Enforcement Administration is in the process of awarding a contract to acquire equipment to reduce the threat of interception of radio communications. The Federal Bureau of Investigation (FBI) has initiated a contract to develop voice protection equipment suitable to the needs of the FBI. The Bureau of Prisons has a contract in procurement for digital voice protection for two of their radio systems. The United States Marshals Service is evaluating digital voice protection devices to provide the required level of security.

Question. Recently, more attention has been given to the Bureau's undercover operations with principal emphasis on its "sting" operations. What portion of the Department's request is earmarked for these purposes, and do you think it is adequate?

Answer. The fiscal year 1981 request for the Federal Bureau of Investigation (FBI) includes \$4,791,000 for undercover operations. This is an increase of \$1,791,000, or 60 percent, over the \$3,000,000 provided for these purposes in fiscal year 1980. Given the fact that the FBI has been held to an undercover operations funding level of \$3,000,000 for each fiscal from fiscal year 1978 through fiscal year 1980, it is the judgment of the Department and the President that this amount is needed and adequate.

Law Enforcement Assistance Administration (LEAA)

Question. The fiscal year 1981 budget does not reflect any increase over the 1980 level in funding for programs associated with the Juvenile Justice Act. Since it has been suggested by Henry Dogin that these programs have experienced "chronic understaffing" and need additional staff, could you please comment on the proposed funding level?

Answer. The proposed funding level of \$100 million for the Juvenile Justice Act is the same amount as was actually appropriated for the program for fiscal years 1978, 1979, and 1980. The Department did recommend an increase in the 1981 level to adjust the budget for inflation, but this recommendation was not accepted by the Office of Management and Budget because of its broad-based effort to reduce Federal spending.

The 1981 budget proposal for LEAA and OJJDP was developed early in calendar year 1979. The Justice System Improvement Act was approved December 27, 1979, less than one month before the President's Budget for fiscal year 1981 was submitted to Congress. The recommendation of Mr. Dogin was not made in the context of the budget process, but as part of a reorganization proposal for the Office of Justice Assistance, Research and Statistics. No final decisions have been made regarding the organizational structures of OJARS, LEAA, NIJ, and BJS. Mr. Dogin's recommendations will be kept in mind when future

personnel decisions are made. The President's revised budget request, which would eliminate funding for parts of the LEAA program will also be a factor in determining the proper OJJDP manpower level.

Question. Since the Justice System Improvement Act was enacted last December, there has been some confusion about whether OJARS is an umbrella agency with policy direction and control over the National Institute of Justice, the Bureau of Justice Statistics and LEAA, or whether it is a coordinating agency. Could you explain the Department's view on the role of OJARS?

Answer. It is our view that the role of the Office of Justice Assistance, Research, and Statistics (OJARS) is to coordinate the programs and activities of and provide staff support to the NIJ, BJS and LEAA. A basic principle of the Justice System Improvement Act is the independence and integrity of the research, statistics and financial assistance functions. Policy direction and control by OJARS is not consistent with this basic principle. The JSIA, and its attendant legislative history, clearly limits OJARS to coordination and staff support, and the Department fully recognizes and endorses this decision.

OJARS provides staff support to NIJ, BJS and LEAA for those services which, if replicated in each unit, would result in inefficiency and duplication. OJARS also coordinates the activities of the three units to insure that they work together effectively in those areas where their functions intersect. In this role, it serves as a vehicle for sharing information and bringing the collective efforts of the three units to bear on important national problems. It resolves any conflicts or inconsistencies that may occur. And, together with LEAA, it designates priorities for discretionary and national priority grant support. In this way, OJARS coordinates without infringing upon the policy authority vested in the three units. This view is based on the specific language of the Act and the explanations presented during House floor debate on December 13, 1979.

Recent actions by the President and Congress to enact a balanced Federal budget for fiscal year 1981 will result in reductions in appropriated funds for 1981. Until the impact of these budgetary actions on OJARS, LEAA, NIJ and BJS is determined, there will be a delay in finalizing the organizational structure of these activities. Discussions are currently under way with the Office of Management and Budget on this very matter.

Question. In a February 19 report to Congress, the Comptroller General concluded that recipients of LEAA grants are not being regularly audited to see if they are complying with Federal grant terms and that this situation is costing the Government millions of dollars. The report indicates that LEAA top management is aware of this, but has taken "little decisive action" to correct the problem. Could you please comment on this report and indicate what steps have been taken to correct the problem?

Answer. LEAA is taking several actions to address deficiencies in its audit practices. A special Management Advisory Task Force has offered 24 recommendations for improvement of audit effectiveness, many of which have already been implemented. Specifically, the number of audits open after more than one year has been substantially reduced. A revised audit policy is being drafted which is based upon existing legislation and applicable Office of Management and Budget Circulars. A special condition is being attached to all 1980 formula grant awards requiring state planning agencies which have not been audited within a reasonable time to have an audit performed during the term of the grant. Criteria have also been drafted for use by program managers specifying proper audit resolution procedures.

The Department responded in detail to other GAO recommendations. This response has been incorporated into the final report which GAO issued on February 19, 1980.

Impact of Criminal Code revision on Department operations

Question. The revision of the Criminal Code currently being processed by this Committee has been a project which the Justice Department has been closely associated with for a number of years. If enacted, it certainly would bring about some changes in our criminal justice system. Could you venture a prediction as to the financial impact of a codification on the criminal justice system?

Answer. Assuming that before enactment of any new federal criminal code all of the minor details and technical difficulties will have been carefully worked out by the Congress, in coordination with the Department of Justice in order to minimize the potential for unnecessary litigation, the costs of implementation would be relatively modest.

Answer. The financial costs would be of two general kinds—training costs and changeover costs.

The training costs for the federal system will include the costs of preparation of training materials, holding of training seminars, and assignment of personnel to be available to respond to questions from the field. These costs will be spread over three fiscal years. Training and personnel requirements can probably be achieved through internal reassignment of existing personnel, but additional outlays will be required for printing of training materials and for travel by training instructors and trainees. Assuming that all 1500 litigating attorneys will have to travel to a regional training center (an assumption since some will be located at the training center), and that basic training will require two days, the cost for trainee travel and per diem will be approximately \$200 per person, or a total of \$300,000. Travel for the instructors, printing of materials, and rental of training facilities could require an additional \$100,000. Thus the training costs could run as high as \$400,000.

Changeover costs will involve acquiring copies of the new code from commercial sources, preparing new forms of indictments, modifying the U.S. Attorneys Manual and assigning personnel to assist in initial cases. Commercially produced copies of the current federal criminal code cost \$11 a piece in purchases of 100 or more copies. Assuming instead a cost of \$15 and a need for 2,500 copies, then the cost would be \$37,500. If a similar cost were encountered for the printing of indictment forms and a revised U.S. Attorneys Manual, the total printing costs would be \$112,500. There would be no new costs for the expert advice, though there might be some additional travel costs for trial assistance or assistance in appellate arguments. If an additional \$37,500 were assigned for these costs, the changeover figure would be \$150,000 and the total costs would be \$550,000. Quite obviously these estimates are very rough.

In addition to the costs which will affect the litigating divisions, the Criminal Code will require these same kinds of expenditures from the investigative agencies as well. The Drug Enforcement Administration, for example, projects its costs at \$25,000 for training-related activities. The Marshals Service would spend approximately the same amount on training and revising its various manuals. The Federal Bureau of Investigation would have the largest expense among these agencies. It currently estimates a cost impact of up to \$625,000 made up of four factors: \$25,000 to bring into its Academy some 100 legal and field instructors for training; \$200,000-\$400,000 to bring resident agents into their main field offices for training; \$100,000 for preparation and distribution of revised agent guidelines and for preparation and distribution of revised agent guidelines and operations manuals and \$100,000 for evaluation studies of the potential impacts of the Criminal Code on the FBI's existing programs and case classifications.

The financial impact of a new Code of course would entail benefits as well as costs. By simplifying the law and making it more understandable, a new Code should eventually result in making the criminal justice process more efficient while still maintaining its fairness. Since a single Code section may replace dozens of statutes in the current law, interpretation will be more uniform and applicable case decisions far more easy to identify and apply. The result should be that far less time of judges, defense counsel, and prosecutors will have to be spent in attempting to understand and apply the controlling statutory law and decisional law. Consequently, the times required for preparation, trial, and appeal should be lessened, and the whole system should be able to process the same number of cases with reduced personnel, or a somewhat increased number of cases with the same level of personnel.

The extent of this benefit may be hard to measure and even harder to predict, but it may fairly be expected.

Question. Which of the versions, House or Senate, do you feel would facilitate most effectively the law enforcement functions of the Department of Justice and why?

Answer. Although both bills are reasonably designed to obtain the general benefits to the federal system of justice that a rational codification may offer, the Department of Justice believes that the current Senate version would facilitate its law enforcement functions more effectively. Department attorneys have participated over a period of years in working out numerous minor and technical details of the bill, in order to assure that unforeseen litigative problems would be minimized. In addition, the current Senate version resolves a variety of problems in prosecuting cases involving white collar crime and political corruption, while the current version of the House bill does not attempt to introduce significant changes from the current law governing these areas. A third reason is that, although both bills make important advances in the sentencing area, the Senate

version takes significant additional steps toward reaching fairness and certainty in sentencing by abolishing early release on parole in the context of a guidelines sentencing system and by providing a means of review of unusually low sentences as well as unusually high ones.

Question. Can you describe the efforts taken by the Department to apprise the law enforcement agencies under its control of the various criminal code revision proposals and the method and the depth of responses by these agencies?

Answer. The Department of Justice has circulated virtually every version of the House and Senate Codes both to law enforcement agencies within the Department and, under the auspices of the Office of Management and Budget, to every other federal agency. Most agencies have prepared several sets of written comments.

The depth of the comments has varied directly with the level of responsibility for criminal law matters. Some agencies have given the Department several sets of comments with each set being as long as 20 to 50 pages, while other agencies have simply given us an oral or written "no objection" report.

In addition to receiving written comments, we have, when appropriate, held extensive conferences by telephone or in person with a number of agencies—particularly those with significant law enforcement responsibilities. In instances involving specialized areas of criminal law, the Department has commonly worked directly with the pertinent agency in preparing the Department's commentary or suggestions.

Question. A criticism of previous Code revisions proposals has been that they result in an unwarranted expansion of federal jurisdiction. Do you feel that this criticism has been or continues to be justified, referring either to the House or Senate bill, and, whether you agree or not, how expansive do you think federal jurisdiction ought to be?

Do you think a significant increase in expenditures would be required if the Congress were to enact a parental kidnapping statute, a pharmacy robbery statute, or other similar proposals directed towards what might be called "special interest issues" within the Criminal Code?

Answer. The original Brown Commission proposal did contain a significant expansion of federal jurisdiction, although much of the criticism at the time painted the expansion as more extensive than it was. The current code reform bills—both the House and Senate versions—generally retain the existing reach of federal jurisdiction with some extensions or contractions that have been found to be warranted from past experiences. This is as it should be. Federal jurisdiction today is necessarily broad in order to provide a means of reaching, first, criminality that impinges upon federal operations directly, and, second, criminality that has its primary effect at the state and local level but that, for one reason or another, has occasionally presented the states and localities with serious enforcement problems. In this latter sense, the federal jurisdiction is a form of "back-up" jurisdiction—jurisdiction that may be held in reserve for situations in which it occasionally may be needed. The provisions of the two bills that, for the first time, will by statute require careful consideration of appropriate factors before undertaking to exercise concurrent federal jurisdiction in individual cases, and that will require regular reporting by the Department of Justice with regard to the instances in which the federal government has exercised its concurrent jurisdiction, should provide the Congress for the first time with effective means of monitoring the Department's exercise of the jurisdiction that has been enacted.

A comment might be made with regard to the most vociferous charges of jurisdictional expansion that have been made in recent years—those directed at the Senate bill in the last Congress. The principal charge (underlying 80 percent of the alleged expansion) was that the bill would expand Hobbs Act robbery and extortion coverage to cases that did not involve racketeering. The Hobbs Act, however, has never been limited to racketeering, as the Supreme Court unanimously pointed out shortly after the publication of the criticism. *United States v. Culbert*, 435 U.S. 371 (1978). The secondary charge (underlying most of the remaining 20 percent of the alleged expansion) stemmed from reading into the phrase "facility of interstate commerce" more than the Senate had intended; any concern has been obviated by replacing that phrase with the phrase "facility in interstate commerce."

It should be noted that some Code issues have inappropriately been cast in jurisdictional terms. The coverage of attempted crimes, and the use of the ancillary jurisdiction approach as opposed to a compound grading approach, are two examples. Issues such as these should be evaluated on their individual merits, and not confused with the issue of general jurisdictional reach.

With regard to any potential increase in expenditures required if Congress were to enact a parental kidnapping statute or a pharmacy robbery statute, any such expenditure would, of course, be related to the number of instances in which such jurisdictional authority is exercised. In any event, the Department of Justice believes that the passage of a federal criminal statute would not necessarily be the best means of meeting the problems occasioned by domestic disputes, no matter how serious, concerning child custody, and that state and local law enforcement authorities are best able to meet the problems occasioned by drug robberies of pharmacies.

Question. In both the House and the Senate versions of the proposed Criminal Code revision, a similar view is taken on the issue of possessing small amounts of marijuana. Namely, that possession of under 30 grams ought to be a non-jailable infraction. What is your opinion as to the effect of such a change from current law on the allocation of law enforcement resources and the significance of whatever symbolic importance is attached to such a change?

Answer. The Department of Justice believes that it is appropriate to focus its investigative and prosecutive resources on major traffickers in narcotics and other controlled substances, as opposed to persons simply in possession of small amounts for personal use. No matter how undesirable personal use of controlled substances may be, this is a matter that is more appropriately the province of state and local authorities. Consequently, any legislative modification of the penalty structure in a manner similar to that in the pending bills would not affect the allocation of federal law enforcement resources. The primary symbolic importance of any such change would be that the law appropriately is being recast to more accurately reflect the relative gravity of the various kinds of drug offenses; any misinterpretation may be avoided by a clear legislative history.

Question. The Department has requested, in the context of the Criminal Code revision, that federal jurisdiction be provided in cases where a murder or arson has been committed "for hire" notwithstanding the purely State characteristics of the crime. Can you please tell us the rationale for such requested expansion of federal jurisdiction in view of your "second theme" and how important you feel that expansion is to the Department's law enforcement role?

Answer. The arson-for-profit and murder-for-hire concepts would be expansions of existing law, although some arson schemes are reachable today under the mail fraud and wire fraud statutes, and some arson-for-profit and murder-for-hire cases can be reached under the Hobbs Act or the Travel Act (18 U.S.C. 1951, 1952). What the proposals would do is reach crimes directly in appropriate circumstances. There are a number of reasons supporting the Department's request for these provisions. First, in many cases such crimes do not have purely state characteristics. Very often they are committed by professionals who use interstate facilities or engage in interstate commerce. When this occurs, such crimes do become a matter of federal concern. Second, crimes for profit are often committed by sophisticated criminals or criminal enterprises. Providing a basis for federal jurisdiction will allow the Federal government to apply its more sophisticated investigative techniques to unravel these schemes. Finally, arson and murder for hire sometimes are in furtherance or pursuit of continuing criminal enterprises, fraudulent activities and organized crime activities. It would be incongruous to attack these broader evils without also providing a basis to attack the most vicious expression of these activities.

In our view, having complete coverage of the major organized crime offenses is very important for federal law enforcement. Many states and localities are unequipped to deal with complex interstate crimes. In a number of instances, organized crime has managed to avoid local prosecution through corruption. In the more than twenty states with no statewide enforcement authority, this means the only alternative is federal prosecution.

Drug enforcement

Question. What recommendations would you make that would improve the effectiveness of the Department's control of drug trafficking?

Would whatever suggestions you make require a significant increase in expenditures or reallocation of resources, or are there simpler means to accomplish this result?

For example, increasing or decreasing penalties or providing a mandatory sentence for various drug-related offenses?

Answer. The Department is striving to improve the effectiveness of control of drug trafficking consistent with the Federal Strategy for Drug Abuse and Drug

Traffic Prevention, 1979, prepared by the Strategy Council on Drug Abuse of which I am a member. Under the direct leadership of the Deputy Attorney General, the elements of the Department most directly involved in efforts against drug trafficking—the Drug Enforcement Administration, the Criminal Division and the United States Attorneys—are moving toward better use of a wide range of criminal and civil actions against drug traffickers.

The Department is concentrating internally on maximizing our effectiveness with current resources and within budgetary constraints.

We are increasing the number of highly-trained financial investigators in DEA. In order to get to the heart of narcotics trafficking, increased numbers of these investigators are essential. Another important related step will be increased cooperation with the IRS. Progress is being made. We are exploring within the Administration possible legislative proposals affecting drug trafficking. We have already expressed Departmental support for H.R. 2538, which would extend federal jurisdiction over any person on board a United States vessel or subject to United States jurisdiction who possesses a controlled substance with intent to import or distribute. The House has passed this bill; it is currently before the Senate. We also support H.R. 5961, which would amend the Currency and Foreign Transaction Reporting Act to make it a crime to attempt the already defined crime of transporting more than \$10,000 into or out of the United States without filing the required report. This would materially assist federal efforts to monitor and attach financial resources of drug traffickers. The bill has been reported out by the House Banking Committee. This new legislation and the additional interagency cooperation that is being pursued may result in a need to increase the Coast Guard's resources.

On the question of sentencing, the Department supports the approach taken in the proposed new Federal Criminal Code. Former Attorney General Bell, Assistant Attorney General Heymann of the Criminal Division, and myself, have all endorsed sentencing guidelines. Such a system would go far to remedy some of the wide disparities in sentencing of drug offenders. The Department does not endorse mandatory sentences. Possible proposals for amendments to sentence maximums for various offenses are currently under consideration.

END