

**THE RELATIONSHIP BETWEEN THE DEPARTMENT
OF JUSTICE AND THE STATE/LOCAL CRIMINAL
JUSTICE COMMUNITIES**

HEARING
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
NINETY-SEVENTH CONGRESS
SECOND SESSION
DECEMBER 9, 1982

the use of the Committee on Government Operations



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**U.S. Department of Justice
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THE RELATIONSHIP BETWEEN THE DEPARTMENT OF JUSTICE AND THE STATE/LOCAL CRIMINAL JUSTICE COMMUNITIES

THURSDAY, DECEMBER 9, 1982

HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2247, Rayburn House Office Building, Hon. Glenn English (chairman of the subcommittee) presiding.

Present: Representatives Glenn English, Ted Weiss, and Thomas N. Kindness.

Also present: Representative Michael G. Oxley.

Staff present: William G. Lawrence, counsel; Euphon Metzger, clerk; and John J. Parisi, minority professional staff, Committee on Government Operations.

Mr. ENGLISH. The hearing will be in order.

This morning we are starting a series of hearings into the relationships which exist between the Federal criminal justice community and its State and local counterparts.

The President has repeatedly called for increased cooperation between Federal and local authorities, citing the need to make better progress against organized crime, violent crime, and drug traffickers. This theme is a familiar one. Congressional reports and hearings for the past 10 years have made similar calls. We all recognize that criminality is a major blight on our society. Criminals are becoming more sophisticated, and their crimes are affecting us in ways we cannot afford any longer.

The cost to our society as a result of drug abuse is staggering. The University of Delaware published a study which showed that 356 active heroin users in Miami were responsible for an incredible 118,134 crimes in 1 year, and that only 1 of every 413 such crimes resulted in an arrest. A study by Temple University showed that 243 Baltimore heroin addicts committed almost 500,000 crimes in 11 years.

Each level of law enforcement, from the town sheriff to the chief of a major city police department to the Federal law enforcement agency, has its assigned jurisdiction and responsibility. These responsibilities often overlap. When a bank is robbed, both the FBI and the local police department have jurisdiction to investigate.

Both the local district attorney and the U.S. attorney have authority to prosecute.

Obviously, in the area of such concurrent jurisdiction there is great good sense in coordinating as closely as possible. This is not always the case, however, and we are interested in finding and examining the areas of difficulty.

Sometimes case responsibility falls almost exclusively on the Federal or local agency. For example, there is very little a State police agency can do about the importation of narcotics. That is the assigned responsibility of the U.S. Customs Service.

Similarly, the FBI and DEA cannot investigate most of the local drug offenders. They lack the resources and the mandate to operate on that level, and the local police should handle local crime.

In these circumstances the Federal jurisdiction and the local jurisdiction are supposed to complement each other. The decision as to who will prosecute a captured drug dealer must be made between the Federal and local prosecutors. But both GAO and an independent consulting group called INSLAW, under contract to the Justice Department, have established that often there is no agreement—no communication—and the criminal is prosecuted by neither. He goes scot-free.

The cooperative relationship we seek can take many forms. Local police departments often have information developed from local sources which is needed by Federal authorities. The Federal investigators often have information developed in other parts of the country which would be of value to the local police or prosecutor. This information must be shared, but often it is not.

Training, administrative assistance, equipment, financial grants, joint task forces, cooperative prosecutions—these are some of the areas where there is an opportunity to fine tune our criminal justice cooperation.

We will hear this morning from six witnesses who are all veterans of the system. Their views, both from the Federal side and from the State or local angle, will help us to develop an appreciation for the nature of the problems we face. We consider it especially important to solicit the views of people from all parts of the country. A questionnaire which we distributed to several thousand chiefs of police and local prosecutors indicates that most of them don't feel that their positions are taken into account when the Federal authorities talk about these problems.

Also, only about 7 percent of the prosecutors indicated that there was a reliable system which insures that cases declined by the U.S. attorney in their district were referred to them for their consideration.

Results of the two questionnaires are available at this time and will be distributed by the subcommittee staff. And, without objection, copies of those questionnaires with compiled results will be inserted into the record at this point.

[The material follows:]

NOTE: . Compilation of results is based on approximately 1250 responses to more than 1880 questionnaires.

STATE AND LOCAL PROSECUTORS' QUESTIONNAIRE

1. Compared to this time last year, is your felony caseload:

1	MUCH HIGHER (MORE THAN 10% HIGHER)	23.1%
2	SLIGHTLY HIGHER	35.0%
3	ABOUT THE SAME	29.0%
4	SLIGHTLY LOWER	8.4%
5	MUCH LOWER (MORE THAN 10% LOWER)	2.1%

2. Compared to this time last year, is your felony backlog:

1	MUCH GREATER (MORE THAN 10% GREATER)	10.8%
2	SOMEWHAT GREATER	23.9%
3	ABOUT THE SAME	44.0%
4	SOMEWHAT LESS	15.5%
5	MUCH LESS (MORE THAN 10% LESS)	3.3%

3. How concerned are you about the dismissal of criminal cases because of failure to provide a speedy trial?

1	THIS IS A REAL PROBLEM AT THIS TIME	60.9%
2	THIS IS AN OCCASIONAL PROBLEM	32.2%
3	THIS IS NOT A PROBLEM AT THIS TIME	5.9%

4. Have you noticed a trend toward increased numbers of misdemeanor jury trials?

YES	46.7%	NO	42.6%	NOT SURE	8.0%
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5. Would you say that you and your staff are in the position of having to plea bargain serious felonies because of the pressures of a backlog?

YES	26.0%	NO	67.9%	NOT SURE	3.2%
-----	-------	----	-------	----------	------

6. The average felony caseload of each assistant prosecutor in your office is approximately:

1	FEWER THAN 10 ACTIVE CASES	16.5%
2	11-25 ACTIVE CASES	23.6%
3	26-50 ACTIVE CASES	22.7%
4	51-75 ACTIVE CASES	12.4%
5	OVER 75 ACTIVE CASES	15.5%

7. Based on your experience, what is the maximum number of active cases that a reasonably competent prosecuting attorney can effectively manage?

1	FEWER THAN 10 ACTIVE CASES	4.1%
2	11-25 ACTIVE CASES	34.2%
3	26-50 ACTIVE CASES	36.2%
4	51-75 ACTIVE CASES	14.1%
5	OVER 75 ACTIVE CASES	5.6%

8. Is the U.S. Attorney in your jurisdiction declining to prosecute, and referring to you, certain Federal crimes which he was handling two years ago?

YES	13.5%
-----	-------

NO	64.1%
NOT SURE	18.2%

SKIP TO Q.9

8a. [IF "YES" TO QUESTION 8, ABOVE] Which of the following crimes that the U.S. Attorney General had previously been handling have been referred to your office? (Please circle the letter next to ALL that apply)

- a NARCOTICS (MINIMUM ACCEPTED FOR PROSECUTION RAISED)..... 5.3%
- b ARSON..... 1.4%
- c CIGARETTE BOOTLEGGING..... 0.4%
- d INTERSTATE TRANSPORTATION OF STOLEN MOTOR VEHICLES..... 5.3%
- e INTERSTATE TRANSPORTATION OF STOLEN PROPERTY..... 3.3%
- f FELON IN POSSESSION OF A FIREARM..... 5.0%
- g GAMBLING..... 2.4%
- h MAIL FRAUD/MAIL THEFT..... 4.1%
- i FORGERY..... 4.1%
- j STOCK OR BOND THEFT..... 0.6%
- k BANK ROBBERY..... 7.4%
- l ENVIRONMENTAL VIOLATIONS..... 0.7%
- m OTHER (please specify)..... 2.6%

8b. [IF "YES" TO QUESTION 8, ABOVE] Are the cases that the U.S. Attorney declines adding to your concern about case backlog in your office, or not?

YES 4.7% NO 10.8% NOT SURE 1.7%

9. Is there a reliable system which insures that you receive all cases declined by the U.S. Attorney for your evaluation?

YES 6.6% NO 48.5% NOT SURE 39.5%

10. Which TWO of the following types of Federally provided training for your personnel would be of greatest benefit at this time? (Please circle the letter next to the TWO most beneficial forms of training ONLY)

- a TRIAL TECHNIQUES - GENERAL CRIMINAL..... 75.6%
- b TRIAL TECHNIQUES - CIVIL..... 4.9%
- c TRIAL TECHNIQUES - CONSPIRACY..... 9.1%
- d TRIAL TECHNIQUES - APPELLATE..... 4.5%
- e CONTINUING LEGAL EDUCATION - CRIMINAL..... 68.5%
- f CONTINUING LEGAL EDUCATION - ANTI-TRUST..... 1.7%
- g CONTINUING LEGAL EDUCATION - ENVIRONMENTAL..... 1.0%
- h CONTINUING LEGAL EDUCATION - CIVIL RIGHTS..... 5.7%
- i JUSTICE SYSTEM MANAGEMENT - BUDGET, PERSONNEL, SUPERVISION..... 6.8%
- j COURT SYSTEM MANAGEMENT - DOCKET, SECURITY, RECORDS..... 6.7%
- k OTHER (please specify)..... 5.5%

11. In your view, which THREE of the following criminal offenses are LEAST appropriate to Federal investigation and prosecution. (Please circle the letters next to NO MORE THAN THREE offenses that are LEAST appropriate)

- a HOMICIDE..... 85.1%
- b NARCOTICS TRAFFICKING..... 3.6%
- c ENVIRONMENTAL CRIMES..... 8.5%
- d STATE/LOCAL POLITICAL CORRUPTION..... 18.2%
- e ARSON FOR PROFIT..... 29.5%
- f ARMED ROBBERY..... 31.7%
- g PHARMACEUTICAL BURGLARY..... 43.5%
- h ANTITRUST..... 1.8%
- i CIVIL RIGHTS..... 4.9%

12. Have you participated in Law Enforcement Coordination Committee (LECC) meetings with your local U.S. Attorney in the past three months?

YES 23.5% NO 73.1% NOT SURE 0.6% SKIP TO Q13.

12a. [IF "YES" TO QUESTION 12, ABOVE] How would you rate the quality of the meeting?

- EXTREMELY PRODUCTIVE 6.2%
- SOMEWHAT PRODUCTIVE 15.4%
- SOMEWHAT UNPRODUCTIVE 2.2%
- EXTREMELY UNPRODUCTIVE 0.6%

13. In conducting investigations or prosecutions, have you ever worked with a Federal investigative agency?

YES 82.6% NO 13.8% NOT SURE 0.6% SKIP TO Q14.

13a. [IF "YES" TO QUESTION 13, ABOVE] Using the four point scale listed below, how would you rate the cooperation of the agency or agencies with which you have experience?

- 1 - VERY COOPERATIVE, OF GREAT HELP
- 2 - SOMEWHAT COOPERATIVE, OF SOME HELP
- 3 - NOT VERY COOPERATIVE, USUALLY NOT TOO HELPFUL
- 4 - UNCOOPERATIVE, OF ALMOST NO HELP

9 - NO EXPERIENCE WITH THIS AGENCY -- CAN'T SAY

RATING OF AGENCIES ON COOPERATION

Bureau of Alcohol, Tobacco and Firearms (ATF)	128.6%	2	29.7%	3	4.9%	4	4.8%	9	14.0%
Customs Service	18.3%	2	7.2%	3	2.8%	4	1.8%	9	38.7%
Drug Enforcement Administration (DEA)	119.1%	2	20.6%	3	8.0%	4	4.9%	9	16.6%
Federal Bureau of Investigation (FBI)	132.0%	2	24.5%	3	11.1%	4	6.8%	9	3.1%
Secret Service	112.4%	2	7.8%	3	1.9%	4	2.1%	9	36.4%
Postal Inspectors	119.5%	2	15.3%	3	7.9%	4	5.1%	9	19.1%
Internal Revenue Service	15.8%	2	10.3%	3	7.1%	4	9.6%	9	29.0%
U.S. Marshal's Office	116.0%	2	13.7%	3	5.0%	4	4.4%	9	25.6%

13b. [IF "YES" TO QUESTION 13, ABOVE] When working with a Federal investigative agency on a matter that could be prosecuted in either Federal or State court:

- A. Do you feel that Federal investigative agencies share information with you openly and completely? YES 26.7% NO 38.6% NOT SURE 16.4%
- B. Do you feel that Federal agencies tend to give you only information which they know you already have? YES 23.6% NO 28.6% NOT SURE 28.7%
- C. Do you routinely turn over to the Federal agencies information which you obtain and they don't have? YES 58.5% NO 14.7% NOT SURE 7.7%

14. In those instances when you have cooperated with Federal authorities, who set the parameters of cooperation?

- SET BY MY OFFICE OR BY STATE POLICY 4.0%
- MUTUALLY AGREED UPON BETWEEN US 47.3%
- SET BY THE FEDERAL AUTHORITY INVOLVED 27.3%
- NOT SURE/NEVER INVOLVED IN COOPERATIVE ACTIVITY 13.5%

15. What is your attitude toward cooperative Federal/State organized crime prosecutions? (Please circle the number of the answer that comes closest to your attitude)
- 1 MY OFFICE HAS NEVER DONE COOPERATIVE PROSECUTIONS 62.3%
 - 2 WE HAVE DONE IT - FOUND IT VERY EFFECTIVE AND REWARDING 15.6%
 - 3 WE HAVE DONE IT - FOUND IT SOMEWHAT EFFECTIVE 16.0%
 - 4 WE HAVE DONE IT - FOUND IT GENERALLY INEFFECTIVE 3.4%

The following seven questions relate to areas which have been identified from time to time as creating friction between Federal and State/local prosecutors. For each question, please circle the answer that reflects your experience or feelings.

16. Jeopardy - Cases in which a competitive Federal investigation creates double jeopardy problems.
- | | | |
|------------|--------------------|-----------------|
| 70.2% | 22.7% | 2.3% |
| NO PROBLEM | OCCASIONAL PROBLEM | SERIOUS PROBLEM |
17. Stretching jurisdiction - Cases in which Federal jurisdiction is created in an interesting or newsworthy case using an artificial or strained interpretation of a statute.
- | | | |
|------------|--------------------|-----------------|
| 77.3% | 14.7% | 2.2% |
| NO PROBLEM | OCCASIONAL PROBLEM | SERIOUS PROBLEM |
18. Case poaching - Cases in which Federal investigators deliberately conduct an investigation parallel to a State case in order to be first to indict.
- | | | |
|------------|--------------------|-----------------|
| 78.0% | 14.7% | 2.0% |
| NO PROBLEM | OCCASIONAL PROBLEM | SERIOUS PROBLEM |
19. Sentence recommendations - Cases in which Federal agencies unexpectedly come in to a State court to make favorable sentence recommendations for informants or others.
- | | | |
|------------|--------------------|-----------------|
| 78.6% | 15.0% | 1.1% |
| NO PROBLEM | OCCASIONAL PROBLEM | SERIOUS PROBLEM |
31. Writing-out prisoners - Cases in which State prisoners unexpectedly are taken from State or local jails on a Federal writ.
- | | | |
|------------|--------------------|-----------------|
| 72.2% | 19.2% | 2.8% |
| NO PROBLEM | OCCASIONAL PROBLEM | SERIOUS PROBLEM |
32. Press leaks - Facts of Federal cases often finding their way into the media, thus discouraging State and local agencies from working jointly with Federal agencies.
- | | | |
|------------|--------------------|-----------------|
| 76.1% | 14.5% | 3.8% |
| NO PROBLEM | OCCASIONAL PROBLEM | SERIOUS PROBLEM |
33. Information sharing - Cases in which State or local agencies query a Federal agency's data bank, finding soon thereafter that the same Federal agency has an "open investigation" on the subject of your inquiry.
- | | | |
|------------|--------------------|-----------------|
| 62.4% | 24.7% | 6.3% |
| NO PROBLEM | OCCASIONAL PROBLEM | SERIOUS PROBLEM |

NOTE: Compilation of results is based on approximately 1300 responses to more than 1600 questionnaires.

POLICE AND SHERIFF'S QUESTIONNAIRE

- Q1. Have individual officers of your Department received Federal assistance to acquire college credit for professional development within the past 5 years?
- | | | |
|---------|--------|-------------|
| YES 56% | NO 38% | NOT SURE 6% |
|---------|--------|-------------|
- Q2. Have Federal funds or other Federal assistance been used by your Department to conduct a public crime awareness program within the past 5 years?
- | | | |
|---------|--------|-------------|
| YES 32% | NO 66% | NOT SURE 2% |
|---------|--------|-------------|
- Q3. Has your Department received Federal funds for the purchase of equipment within the past 5 years?
- | | | |
|---------|--------|-------------|
| YES 63% | NO 33% | NOT SURE 4% |
|---------|--------|-------------|
- Q4. Has your Department received Federal funds for support of local task forces or other special law enforcement operations (like S.W.A.T. teams) within the past 5 years?
- | | | |
|---------|--------|-------------|
| YES 25% | NO 74% | NOT SURE 1% |
|---------|--------|-------------|
- Q5. Has your Department received Federal funds for the acquisition of real property or repair/renovating of existing buildings in the past five years?
- | | | |
|---------|--------|-------------|
| YES 14% | NO 83% | NOT SURE 3% |
|---------|--------|-------------|
- Q6. Has your Department received Federal funds or assistance for administrative operations such as automatic data processing, information management, privacy of records, or communications operations within the past five years?
- | | | |
|---------|--------|-------------|
| YES 32% | NO 65% | NOT SURE 2% |
|---------|--------|-------------|
- Q7. Do you now or have you recently had a LEAA-funded ICAP Program (Integrated Criminal Apprehension Program)?
- | | | |
|--------|--------|-------------|
| YES 8% | NO 90% | NOT SURE 2% |
|--------|--------|-------------|
- Q8. Has your Department employed any persons through the CETA employment/training program in the past 5 years?
- | | | |
|---------|--------|-------------|
| YES 66% | NO 33% | NOT SURE 1% |
|---------|--------|-------------|
- Q8a. [IF "YES" TO QUESTION 8] How many are (were) the CETA employees?
- | |
|--------------------------------------------|
| 1 EXTREMELY USEFUL, MAJOR CONTRIBUTION 43% |
| 2 SOMEWHAT USEFUL, OF MODERATE UTILITY 46% |
| 3 NOT VERY USEFUL, DON'T KNOW MUCH 11% |
- Q9. Does your Department presently (or within the past five years) participate in a formal joint task force or strike force with any Federal law enforcement agency?
- | | | |
|---------|--------|-------------|
| YES 24% | NO 76% | NOT SURE 1% |
|---------|--------|-------------|
- Q9a. [IF "YES" TO QUESTION 9] What type of task force(s) were these? (Please circle the letter next to ALL that apply)
- a NARCOTICS.....
 - b ARSON.....
 - c ORGANIZED CRIME.....
 - d OTHER (please specify).....
- Q9b. Are (Were) the results of your Department's participation:
- | |
|--------------------------|
| 1 VERY EFFECTIVE 63% |
| 2 SOMEWHAT EFFECTIVE 30% |
| 3 NOT VERY EFFECTIVE 5% |

15. What is your attitude toward cooperative Federal/State organized crime prosecutions? (Please circle the number of the answer that comes closest to your attitude)
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- | | | |
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33. Information sharing - Cases in which State or local agencies query a Federal agency's data bank, finding soon thereafter that the same Federal agency has an "open investigation" on the subject of your inquiry.
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|------------|--------------------|-----------------|
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NOTE: Compilation of results is based on approximately 1300 responses to more than 1600 questionnaires.

POLICE AND SHERIFF'S QUESTIONNAIRE

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- | | | |
|---------|--------|-------------|
| YES 56% | NO 38% | NOT SURE 6% |
|---------|--------|-------------|
- Q2. Have Federal funds or other Federal assistance been used by your Department to conduct a public crime awareness program within the past 5 years?
- | | | |
|---------|--------|-------------|
| YES 32% | NO 66% | NOT SURE 2% |
|---------|--------|-------------|
- Q3. Has your Department received Federal funds for the purchase of equipment within the past 5 years?
- | | | |
|---------|--------|-------------|
| YES 63% | NO 33% | NOT SURE 4% |
|---------|--------|-------------|
- Q4. Has your Department received Federal funds for support of local task forces or other special law enforcement operations (like S.W.A.T. teams) within the past 5 years?
- | | | |
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| YES 25% | NO 74% | NOT SURE 1% |
|---------|--------|-------------|
- Q5. Has your Department received Federal funds for the acquisition of real property or repair/remodeling of existing buildings in the past five years?
- | | | |
|---------|--------|-------------|
| YES 14% | NO 83% | NOT SURE 3% |
|---------|--------|-------------|
- Q6. Has your Department received Federal funds or assistance for administrative operations such as automatic data processing, information management, privacy of records, or communications operations within the past five years?
- | | | |
|---------|--------|-------------|
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|---------|--------|-------------|
- Q7. Do you now or have you recently had a LEAA-funded ICAP Program (Integrated Criminal Apprehension Program)?
- | | | |
|--------|--------|-------------|
| YES 8% | NO 90% | NOT SURE 2% |
|--------|--------|-------------|
- Q8. Has your Department employed any persons through the CETA employment/training program in the past 5 years?
- | | | |
|---------|--------|-------------|
| YES 66% | NO 33% | NOT SURE 1% |
|---------|--------|-------------|
- Q8a. [IF "YES" TO QUESTION 8] How useful are (were) the CETA employees?
- 1 EXTREMELY USEFUL, MAKE A MAJOR CONTRIBUTION 43%
 - 2 SOMEWHAT USEFUL, OF SOME UTILITY 46%
 - 3 NOT VERY USEFUL, DON'T HELP MUCH 11%
- Q9. Does your Department presently (or within the past five years) participate in a formal joint task force or strike force with any Federal law enforcement agency?
- | | | |
|---------|--------|----------|
| YES 24% | NO 76% | NOT SURE |
|---------|--------|----------|
- Q9a. [IF "YES" TO QUESTION 9] What type of task force(s) were these? (Please circle the letter next to ALL that apply)
- a NARCOTICS.....
 - b ARSON.....
 - c ORGANIZED CRIME.....
 - d OTHER (please specify).....
- Q9b. Are (Were) the results of your Department's participation:
- 1 VERY EFFECTIVE 63%
 - 2 SOMEWHAT EFFECTIVE 30%
 - 3 NOT VERY EFFECTIVE 5%

Q10. Using the four point scale listed below, please rank the following Federal law enforcement agencies by the degree of cooperation and assistance each has given your Department.

- 1 - VERY COOPERATIVE, OF GREAT HELP
2 - SOMEWHAT COOPERATIVE, OF SOME HELP
3 - NOT VERY COOPERATIVE, USUALLY NOT TOO HELPFUL
4 - UNCOOPERATIVE, OF ALMOST NO HELP
9 - NO EXPERIENCE WITH THIS AGENCY -- CAN'T SAY

RATING OF AGENCIES ON COOPERATION
Table with columns for Agency Name, Rating 1 and 2, Rating 3 and 4, and Rating 9.

Q11. [IF YOU DID NOT CIRCLE "9" IN Q10. FOR D.E.A.] With regard to the sharing of narcotics intelligence, how useful is your exchange of information with the D.E.A.?

- 1 EXTREMELY USEFUL, IT OFTEN HELPS US SOLVE OUR CASES 63%
2 SOMEWHAT USEFUL, IT OCCASIONALLY HELPS US SOLVE OUR CASES
3 NOT VERY USEFUL, IT RARELY HELPS US SOLVE OUR CASES 37%
4 THEY USUALLY WANT OURS, THEY RARELY OFFER THEIRS
5 WE DON'T EXCHANGE INTELLIGENCE WITH D.E.A.

Q12. [IF YOU DID NOT CIRCLE "9" IN Q10. FOR D.E.A.] With regard to joint narcotics law enforcement operations, how productive is your cooperation with D.E.A.?

- 1 EXTREMELY PRODUCTIVE, WE OFTEN MAKE ARRESTS IN JOINT OPERATIONS 24%
2 SOMEWHAT PRODUCTIVE, WE MAKE OCCASIONAL ARRESTS IN JOINT OPERATIONS 34%
3 NOT VERY PRODUCTIVE, WE RARELY CONDUCT JOINT OPERATIONS 24%
4 WE NEVER WORK WITH D.E.A. ON JOINT OPERATIONS 18%

Q13. [IF YOU DID NOT CIRCLE "9" IN Q10. FOR F.B.I.] With regard to the sharing of general criminal intelligence, how useful is your exchange of information with the F.B.I.?

- 1 EXTREMELY USEFUL, IT OFTEN HELPS US SOLVE OUR CASES 66%
2 SOMEWHAT USEFUL, IT OCCASIONALLY HELPS SOLVE OUR CASES
3 NOT VERY USEFUL, IT RARELY HELPS US SOLVE OUR CASES 34%
4 THEY USUALLY WANT OURS, THEY RARELY OFFER THEIRS
5 WE DON'T EXCHANGE INTELLIGENCE WITH THE F.B.I.

Q14. [IF YOU DID NOT CIRCLE "9" IN Q10. FOR F.B.I.] With regard to joint crime enforcement, how productive is your cooperation with the F.B.I.?

- 1 EXTREMELY PRODUCTIVE, WE OFTEN MAKE ARRESTS IN JOINT OPERATIONS 25%
2 SOMEWHAT PRODUCTIVE, WE MAKE OCCASIONAL ARRESTS IN JOINT OPERATIONS 40%
3 NOT VERY PRODUCTIVE, WE RARELY CONDUCT JOINT OPERATIONS 27%
4 WE NEVER WORK WITH THE F.B.I. ON JOINT OPERATIONS 9%

Q15. Please indicate which of the following Federal law enforcement agencies, if any, have provided technical training to your personnel within the past five years (other than at the F.B.I. Academy) (Please circle the letter next to ALL that apply)

- a BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
b CUSTOMS SERVICE
c DRUG ENFORCEMENT ADMINISTRATION
d FEDERAL BUREAU OF INVESTIGATION
e IMMIGRATION AND NATURALIZATION SERVICE
f SECRET SERVICE
g POSTAL SERVICE
h INTERNAL REVENUE SERVICE
i U.S. MARSHAL'S OFFICE
j RECEIVED TRAINING FROM NONE

Q16. Have any of your personnel attended the F.B.I. National Academy at Quantico, Virginia, in the past five years?

YES 48% NO 52% NOT SURE [] SKIP TO Q17.

Q16a. [IF "YES" TO QUESTION 16.] How would you rate the F.B.I. Academy? (Please circle the number next to your answer)

- 1 EXCELLENT, WORTH EVERY MOMENT 70%
2 GOOD, CLEAR BENEFIT FROM TIME SPENT 24%
3 FAIR, QUESTIONABLE BENEFITS 5%
4 POOR, NOT WORTH TIME
5 NOT SURE

Q17. Based on your experience or on what you have heard or read, do you feel that STING operations are:

- 1 VERY USEFUL IN COMBATTING PROPERTY CRIME 57%
2 SOMEWHAT USEFUL IN COMBATTING PROPERTY CRIME 26%
3 NOT USEFUL IN COMBATTING PROPERTY CRIME 2%
4 COUNTERPRODUCTIVE, CREATES PROPERTY CRIME 2%
5 NOT SURE 13%

Q18. Has your Department ever been involved in a STING operation?

YES 25% NO 73% NOT SURE 2%

Q19. Does your Department belong to (or make use of) a Multistate Regional Intelligence Project? [Western States Information Network (WSIN); Rocky Mountain Information Network (RMIN); Mid-States Organized Crime Information Center (MOCIC); Regional Organized Crime Information Center (ROCIC); New England State Police Administrative Council (NESPAC); Middle Atlantic-Great Lakes Organized Crime Law Enforcement Network (MAGLOCLEN); Leviticus].

YES 25% NO 75% NOT SURE [] SKIP TO Q20.

Q19a. [IF "YES" TO QUESTION 19.] How do you rate the Intelligence Project?

- 1 VERY USEFUL IN PROVIDING INFORMATION 50%
2 SOMEWHAT USEFUL IN PROVIDING INFORMATION 38%
3 NOT VERY USEFUL IN PROVIDING INFORMATION 5%
4 NOT SURE 7%

Q20. Does your Department belong to (or make use of) E.P.I.C. (El Paso Intelligence Center)?

YES 13% NO 87% NOT SURE [] SKIP TO Q21.

Q20a. [IF "YES" TO QUESTION 20.] How do you rate EPIC?

- 1 VERY USEFUL IN PROVIDING INFORMATION 48%
2 SOMEWHAT USEFUL IN PROVIDING INFORMATION 37%
3 NOT VERY USEFUL IN PROVIDING INFORMATION 2%
4 NOT SURE 13%

Q21. Do you feel that sufficient attention is given to your Department's opinions concerning your needs when the Federal law enforcement assistance programs are being designed or not?

YES 17% NO 59% NOT SURE 24%

Q22. Some people in law enforcement have argued that Federal law enforcement agencies should become more involved in the investigation of certain kinds of crime. How do you feel about this? For each of the criminal areas listed below, please indicate whether you feel Federal law enforcement agencies should become MORE involved in the investigation of such crimes, LESS involved, or be involved about the SAME as they are now?

FEDERAL INVOLVEMENT IN CRIME INVESTIGATIONS
Table with columns for Crime Type, MORE, LESS, SAME, NOT SURE.

Q23. As you may know, the Reagan Administration is proposing cutbacks in many Federal programs, including Federal assistance to State and local law enforcement agencies. If you had to choose from the list below the TWO or THREE specific types of Federal assistance you would LEAST LIKE TO SEE ELIMINATED OR CUT BACK, which would they be?

(Listed in order of responses as Assistance LEAST Like to See Cut Back)

Direct grants for equipment purchase
Criminal Investigation training
Individual officer education grants (college courses)
Direct grants for local task force/special operations
Joint task forces (arson, narcotics, etc.)
STING operations
Administration training
Bomb/Arson training
Indirect grants for public education/crime awareness programs
Laboratory/Forensic training
Direct grants for real property acquisition/maintenance
Automated data processing administrative assistance
Indirect grants to hire CETA employees
Multistate Regional Intelligence Projects
El Paso Intelligence Center (EPIC)
Communications administrative assistance
Information Management/Security/Privacy administrative assistance
Fleet operations administrative assistance

And, from the same list, which TWO or THREE types of assistance would you MOST LIKE TO SEE ELIMINATED OR CUT BACK? (Please circle NO MORE than THREE choices in EACH of the columns).

(Listed in order of responses as Assistance MOST Like to See Cut Back)

Fleet operations administrative assistance
Indirect grants to hire CETA employees
Information Management/Security/Privacy administrative assistance
Direct grants for real property acquisition/maintenance
El Paso Intelligence Center (EPIC)
Individual officer education grants (college courses)
Automated data processing administrative assistance
Administration training
Communications administrative assistance
Indirect grants for public education/crime awareness programs
Multistate Regional Intelligence Projects
Direct grants for equipment purchase
STING operations
Direct grants for local task force/special operations
Bomb/Arson training
Joint task forces (arson, narcotics, etc.)
Laboratory/Forensic training
Criminal Investigation training

Q24. If the Federal government decreases its assistance to State and local law enforcement agencies, what resources can your Department draw upon to replace this assistance? (Please circle the letter next to ALL that apply)?

(According to responses, listed in order of most-least named resources to draw upon to replace Federal assistance.)

Will be forced to eliminate programs
Local financing sources
Not sure
State government assistance
Neighborhood associations/civic volunteers
Department savings
other
Guardian Angel-like organizations

Mr. ENGLISH. Much of the burden for correcting problems in the criminal justice system, of course, falls on the shoulders of the Judiciary Committee. We are fortunate on this subcommittee to have two distinguished members of that body—Congressman John Conyers, who chairs the Subcommittee on Criminal Justice, and our ranking minority member, Tom Kindness.

At this time I would like to recognize Mr. Kindness for any comments he might wish to make.

Mr. KINDNESS. Mr. Chairman, I appreciate the opportunity to be here this morning. I want to apologize, at the same time, that I will have to split my time this morning between here and the Crime Subcommittee of the Committee on the Judiciary which is having a hearing on a closely related subject—the implementation of the 12 new task forces around the country, announced in early October by President Reagan.

As I understand it, this is the first in a series of hearings in which the subcommittee will examine the nature and quality of the relationships between Federal law enforcement agencies and State and local law enforcement agencies.

With time running out on this Congress, I guess we can assume that, if those further hearings are to take place, you, Mr. Chairman, plan to return as chairman of this subcommittee, which would be very good indeed.

In preparing for this hearing, I couldn't help but recall the many days that I spent in the last Congress working on legislation to revise Federal criminal laws. We spent many an hour on that. When you work on that project, you get a clear picture of the hazardous way in which the Congress has, over the past, defined Federal interests and made certain conduct a Federal criminal offense.

We can chuckle over the fact that the executive branch is still responsible for enforcing section 45, title 18, United States Code which provides for a \$100 fine or 6 months imprisonment, or both, for trapping, capturing, shooting, killing, possessing, or detaining a carrier pigeon owned by the United States. But, in recent years, as Congress has enacted one regulatory act after another, the Commerce, Public Works, and Agriculture Committees could not resist the temptation to include provisions making violation of those acts a Federal criminal offense.

Inclusion of such provisions is rarely accompanied by any consideration of the resources needed and available in the executive branch to enforce them. Like barnacles on the rotting hull of an old ship, these provisions have accumulated.

Many Federal criminal laws are directed at behavior which is also considered criminal in the individual States of the Union. And, certain actions may result in multiple offenses, some of which are punishable under both State and Federal laws and others of which are only punishable under State laws. Conflict between Federal and State agencies in achievement of the interests served by those laws is inevitable, as history has proven.

As I reviewed the results of the questionnaires sent out by you, Mr. Chairman, I am encouraged to see that those inevitable conflicts are being managed satisfactorily for the most part. Certainly there are areas for improvement, but if these questionnaires are representative—and the sampling did appear to be very encourag-

ing, somewhere in the range of 50 percent which is just excellent for such a survey—then the problem is not as widespread or as deep as I thought it was and it does appear to be manageable.

As for Federal assistance to State and local law enforcement agencies, I am pleased to see from the questionnaires that training by Federal agencies is accorded high marks by State and local officials. But I do not lament the demise of LEAA [Law Enforcement Assistance Administration]. Like general revenue sharing, this form of special revenue sharing only created a dependency, like an addict in need of his fix of heroin. At the same time, I am dismayed by States and communities whose people complain about crime but are unwilling to foot the bill for adequate law enforcement resources or to locate a jail or correctional facility in their locality.

Cooperative efforts between Federal and local officials are necessary in order for the respective interests served by Federal and State laws to be fulfilled. I am encouraged by what I see in the results of these questionnaires, and I hope that this subcommittee will play a constructive role in the process of fostering further coordination and cooperation between Federal law enforcement agencies and State and local law enforcement agencies.

I look forward to the continuation of these hearings on this subject matter, as well as today's presentations.

Mr. ENGLISH. Thank you very much, Mr. Kindness. I think that was a good point to bring out with regard to the response to the questionnaire. In fact, that questionnaire dealing with the police departments ended up in the neighborhood of a 75-percent return, which is phenomenal for a questionnaire that was mailed out. So, we have a very impressive sample, I think, in looking at those results.

Our first witness today is Mr. Lowell Jensen. He is the Assistant Attorney General for the Criminal Division of the Department of Justice.

Mr. Jensen, please come forward and proceed in any manner you choose.

STATEMENT OF LOWELL JENSEN, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. JENSEN. Mr. Chairman, let me add just a brief personal note. Before I came to the Department of Justice, I spent a number of years of my life—I don't want to tell all of them—as a line prosecutor and as a district attorney in California. So, I am a professional public prosecutor from the local scene. This particular topic is one that is dear to my heart. As a matter of fact, inasmuch as I am able to say to you that not only is my personal commitment for a positive relationship with State and local a real commitment but so is that of the Department of Justice. It gives me great pleasure to be here today on behalf of the Department and in a personal sense to testify on this particular matter.

I think you have already made the point that we have a Federal, State, and local responsibility in the area of criminal justice, and we have to accept the need to work together and to work together

effectively. That is precisely what we must do. All of our citizens across the country deserve that.

So, with that in mind, I am happy to say that the Department of Justice is committed to the concept that the Federal Government has a basic responsibility to provide support to State and local law enforcement functions. To implement this commitment the Department is taking unprecedented steps to improve coordination and cooperation with State and local law enforcement agencies and to provide assistance to these organizations. I shall discuss the Department's efforts in these areas by outlining: (1) Major programs aimed at coordination among Federal, State, and local law enforcement systems; (2) programs for providing direct assistance to State and local law enforcement entities; and (3) the Department's support of proposed legislation which, if enacted, would enable the Federal Government to achieve even greater support of State and local law enforcement endeavors.

I may say it is also a pleasure to be here with Federal colleagues but also with a distinguished local prosecutor, Bob Macy, whom I have had a chance to work with through the National District Attorneys Association.

A significant new program aimed at fostering coordination among Federal, State, and local law enforcement systems is the establishment of Law Enforcement Coordinating Committees [LECC's] in all Federal judicial districts. The program is based upon a recommendation of the Attorney General's Task Force on Violent Crime. By order of the Attorney General, each U.S. attorney was directed to establish such a committee, and 85 LECC's are now in operation. Each LECC is composed of a U.S. attorney, the local heads of Federal law enforcement agencies, such as the FBI, DEA, ATF, and Customs, and the heads of State and local law enforcement agencies in the district. The purpose of the LECC is to achieve better coordination and cooperation among Federal, State, and local law enforcement officials and to insure that the impact of Federal law enforcement efforts on the actual crime problems in each community complements and assists State and local efforts to control crime. The Attorney General has given his strong personal support to the establishment of the LECC's and to these goals.

To address specific law enforcement problems, the LECC's are forming subcommittees which will address several important areas: (1) Referral of cases from one system to the other; (2) provision of mutual investigative or prosecutorial assistance; (3) conduct of joint investigations or prosecutions; and (4) division of responsibilities regarding offenses for which concurrent jurisdiction exists. In addition, the LECC's have established subcommittees concerning the cross-designation of prosecutors between the U.S. attorney's office and State and/or local prosecutors' offices within each district. Finally, specific LECC subcommittees have been established to improve cooperation in drug law enforcement activities through, for example, the exchange of information by enforcement agencies concerning illegal drug use. Thus, these LECC subcommittees are to identify and solve ongoing operational problems which can arise out of the involvement of multiple Federal, State, and local government law enforcement agencies. The LECC's are already producing notable successes. As a result of the LECC in Connecticut, a task

force on bank robbery has been formed which has fostered inter-agency cooperation, developed sharing of intelligence information, and established training sessions for bank employees specifically teaching them how to react during a bank robbery to maximize safety and the collection of valuable descriptive information. The bank robbery task force program in several Connecticut cities has been so well regarded that State officials have taken the initiative of requesting its expansion to another location as well. Cross-designated Federal prosecutors have obtained murder convictions in the State courts of Florida and Arizona, and, conversely, cross-designated State prosecutors have successfully prosecuted terrorist assault cases in California. Shared investigative and prosecutive efforts have been notably successful in food stamp cases in Nevada, and in large-scale marihuana cultivation and trafficking in eastern Washington and southwestern Missouri. We believe that the efforts of these LECC's, as well as others, are achieving the goals the Attorney General announced.

In addition to establishing LECC's, the U.S. attorneys have been directed to formulate district Federal law enforcement plans to summarize the type and extent of serious crime in the district and to establish the district's law enforcement priorities so that they will complement the activities of the State and local authorities. Certain elements of interagency cooperation must be addressed in the plans. For example, the plans are to contain procedures for the referral of all Federal cases which are declined for prosecution but which have prosecutive merit to State or local prosecutors or investigative agencies. In addition, the plans are to address operational procedures for interagency assistance so as to insure as much Federal assistance to State and local law enforcement authorities as possible on serious crime matters. The type of assistance to be outlined in the plan includes technical assistance, such as laboratory services, and the sharing of law enforcement intelligence information. The district plans are also to contain discussions of other matters considered by the LECC's, including the cross designation of prosecutors and appropriate strategies for drug law enforcement.

The district plans must be submitted to the Associate Attorney General for approval. So far, the Department has received over 40 such plans. The formulation of district plans, in conjunction with the operation of the LECC's, will help bring about a systematic approach to cooperation on an operational level among Federal, State, and local law enforcement agencies.

There is also an organization at the national level created by the Department to foster cooperation among Federal, State, and local prosecutors which is the Executive Working Group for Federal/State/Local Prosecutorial Relations. This organization, which meets four times a year, consists of Department officials from the Criminal Division, representative U.S. attorneys, representatives designated by the National Association of Attorneys General, and representatives designated by the National District Attorneys Association. The group provides a mechanism for open communication, considers the full range of issues that arise concerning prosecutorial relations and interagency coordination, and has recently focused on problems of concurrent jurisdiction and the exchange of information. The Executive Working Group provides a national over-

view of intergovernmental issues which the individual LECC's, each dealing with operational problems within a specific area, cannot provide.

Finally, I would like to present some information regarding Federal, State, and local cooperative efforts in an extremely important area of law enforcement today; namely, drug trafficking, particularly organized drug trafficking and organized crime. In each of the LECC's already established, State and local authorities have identified the most significant crime problem that exists in that particular community, and in 84 of the 85 LECC's that problem is drug trafficking. That overwhelming statement about the face of crime in this country has served to confirm the already existing resolve of the President and the Attorney General, as exemplified by the decision to extend narcotics enforcement responsibility to the FBI and the change of the posse comitatus law, that Federal enforcement efforts directed at drug traffickers should be significantly strengthened, and has served to provide support and impetus to the program of the President intended to mount a nationwide broad-based assault on this form of crime. As you know, the President has announced the formation of 12 regional task forces in key areas in the United States in addition to the continuation of the highly successful south Florida task force. Their goal will be to disrupt the intricate distribution and sales network set up by traffickers throughout the country. Their focus will be on those who direct, supervise, and finance the illicit drug trade, rather than on street dealers and addicts. These task forces, which will strengthen and add to the existing resources of the Federal Government, will continue to work closely with State and local law enforcement officials through the DEA, State, and local task forces which already exist in many areas of the country and in developing such efforts through the LECC's in other areas where they do not exist now.

The 13 drug task forces are only one part of the program announced by the President to combat organized drug trafficking. Other aspects of the program will also have a link to State and local law enforcement functions. Included in the program is a Presidential Commission on Organized Crime, which will be composed of four Members of Congress, four Federal enforcement officials, and distinguished State and local officials and leaders in the private sector. The Commission will undertake both a national and regional analysis of organized crime. It will develop indepth information on participants in organized crime, and it will evaluate existing enforcement efforts. The President's new program to combat drug trafficking will also include a major project to enlist all 50 of the Nation's Governors in an effort to bring about needed criminal justice reforms. The purposes of the Governors project are to help fully coordinate Federal efforts with State and local enforcement programs, to provide a forum for the States to tell the Federal Government about enforcement problems, and to supplement the work of the LECC's, about which I spoke earlier. Finally, the President's program will emphasize training for State and local law enforcement personnel through a pilot program at the Federal Law Enforcement Training Center in Glynco, Ga.

The Department's efforts to bring about real cooperation and coordination among Federal, State, and local law enforcement agen-

cies have been many and are already proving successful. However, the Department recognizes that coordination of effort is not enough and that direct assistance to State and local agencies is essential if they are to carry out their important missions.

One form of direct assistance the Department furnishes to State and local law enforcement agencies is through a variety of training programs for their officers and other personnel. I am pleased to see that the response seems to say that is being carried out in the way it was intended; that is, to be of great importance and assistance to State and local law enforcement personnel.

When the President announced the pilot training program at the Federal Law Enforcement Training Center in Glynco, Ga., he stated that this new program will complement the excellent training programs already run by the FBI and DEA.

In fact, in fiscal 1982 DEA ran 20 training programs at Glynco and another 125 regional training programs. This represented over 44,000 trainee-days for State and local personnel in programs covering such topics as undercover investigative and surveillance techniques.

In addition, DEA operated forensic science seminars, which trained 60 State and local forensic chemists in 1982. The State and local law enforcement agencies whose employees attend these DEA training programs pay no tuition or other fees for DEA's time and resources.

The FBI also runs a vast training program which includes the renowned "National Academy" program at the FBI Academy in Quantico, Va., and numerous training sessions conducted in the field. In fiscal 1982, close to 168,000 persons attended FBI field training programs in over 66,000 hours of classroom instruction. In addition, 1,000 officers attended the intensive "National Academy" program in Quantico.

The FBI offered instruction in many areas, including forensic science, management science, bombing investigations, computer-related crime, search and seizure law, hostage negotiation, and organized crime. As with the DEA programs, the FBI training sessions require no tuition payments by State and local law enforcement personnel. The FBI and DEA programs make it possible for State and local law enforcement officers to bring the latest and most sophisticated crime-fighting techniques back to their own communities.

The Department's support of State and local law enforcement agencies also takes the form of direct technical assistance. For example, DEA analyzes exhibits at the request of State and local law enforcement agencies and makes its chemists available to testify in State and local prosecutions. Similarly, the FBI performs various laboratory examinations free of charge at the request of any duly authorized law enforcement agency and furnishes examiners as expert witnesses at no charge.

A whole range of laboratory services is performed by the FBI for State and local law enforcement agencies, including blood examinations, hair and fiber tests, firearms and ballistics examinations, shoe print and tire impression analyses, and document examinations.

The FBI's National Crime Information Center records information identifying fugitives and stolen property and provides a readily accessible source of information to all law enforcement agencies which is of inestimable value. NCIC provides a nationwide network of law enforcement information to which State and local agencies can communicate directly through computer terminals for either input or retrieval purposes. By virtue of the easy access NCIC provides to law enforcement agencies, it accommodated 130 million inquiries in fiscal 1982. Currently, 190,000 wanted persons who are the subjects of State or local warrants are listed in NCIC.

Federal enforcement resources have long been used to apprehend State fugitives who flee interstate. A recent special enforcement program against fugitives originated through LECC efforts known as FIST [Fugitive Investigative Strike Team]. The FIST program has focused on both Federal fugitives and State or local fugitives designated as career criminals.

So far, the program has operated in four cities—Miami, Los Angeles, New York, and most recently, Washington, D.C. The New York and Washington FIST operations represented a joint effort by local police and the U.S. marshals. In all, the FIST operations have resulted in nearly 1,100 arrests, with the very successful Washington operation accounting for 614 of these arrests.

The fugitives arrested in Washington had an average of nearly four prior arrests, and half of those taken into custody were wanted for violent crimes or narcotics violations. Through the aid of the marshals service and the FIST program, local police have been able to rid the streets of many wanted persons with serious criminal records who previously had evaded the law.

Another area in which the Department assists State and local law enforcement concerns matters with international dimensions. Specifically, the Department's Criminal Division aids State and local prosecutors in the area of mutual assistance by intervening at their request to obtain evidence from foreign countries. Successfully prosecuting a State case has depended at times on presenting foreign witnesses, documents, or physical evidence that the Department has used its skill in obtaining. This office also handles international extraditions and acts as a conduit and adviser for extradition matters at the request of State and local prosecutors. In 1981 the Department handled 76 State extradition requests, over half of which were for crimes of violence. The processing of State extradition requests represents a significant portion of the Department's extradition work generally.

Finally, the Department of Justice supports State and local law enforcement agencies by continuing its criminal justice research and statistical programs. The Bureau of Justice Statistics collects data which can be used by State and local criminal justice officials in analyzing their law enforcement needs. For example, the Bureau of Justice Statistics compiles an annual statistical breakdown of jailed and imprisoned inmates, as well as a victimization survey. Research regarding a variety of State and local criminal justice concerns is conducted by the National Institute of Justice.

The last area in which the Department seeks to provide assistance to components of the State and local criminal justice systems is by supporting proposed legislation that has Federal assistance to

State and local law enforcement as its goal. For example, H.R. 7140 as passed by the Senate would permit for the first time the direct transfer of forfeited property to State and local law enforcement agencies which assist in investigations. Often, property such as vehicles and airplanes seized in joint investigations and forfeited to the United States would be extremely useful to State and local law enforcement agencies for future investigations. However, current Federal law fails to recognize the contribution of State and local law enforcement agencies in this regard. H.R. 7140 as passed by the Senate would also authorize payment, from the forfeiture funds created by the bill, to reimburse State and local authorities for the expenses of maintaining and protecting seized property. Finally, the bill as passed by the Senate would provide for the discontinuance of Federal forfeiture proceedings in favor of an action by State or local authorities where appropriate.

The Department also supports proposed legislation now before the House Committee on Government Operations which would authorize the donation of surplus property, including real property, to State and local governments for the construction and modernization of correctional facilities. There is clearly a need for additional correctional facilities at the State and local levels, and a law authorizing the donation of Federal surplus property for this purpose would greatly benefit State and local governments attempting to alleviate the problem of overcrowding at many facilities.

I believe that the many programs I have discussed in the areas of intergovernmental cooperation, direct assistance, and legislation demonstrate that the Department has acted upon its commitment to support the State and local criminal justice systems and has forged a true partnership to the end that citizens throughout this country can be provided a fair and effective system of criminal justice. I would be pleased to answer any questions you may have.

Mr. ENGLISH. Thank you very much, Mr. Jensen.

Mr. Kindness has some questions he would like to ask you.

Mr. Kindness?

Mr. KINDNESS. Mr. Jensen, I first noted that 84 out of 85 of the LECC's have identified the problem of drug trafficking as the principal or foremost problem.

Would you happen to have the information as to what the other LECC has identified and which one that is?

Mr. JENSEN. The LECC had a drug problem, but it was not their prime problem. It was the LECC in the State of Utah. The problem identified there was the problems of various forms of fraud—franchise fraud and various other kinds of fraud. It did not say that there was not a drug problem but that it was not identified as the prime problem in that particular area.

In every other area the response by the local people has been that the specific problem that we have to face is drugs, and they have also said that that is the area where the Federal participation and assistance can be of most value.

Mr. KINDNESS. The LECC's are on track, as you say, in the other nine districts. In the proposal to formulate 12 additional task forces to get at organized crime and drug trafficking, what is the view of the Department at present as to how the LECCs and the task forces would coordinate or overlap or interact?

Mr. JENSEN. The LECC is essentially information and a sharing kind of operation where you make sure that there is a liaison and a linkage so that you have a continuous kind of open communication chain. It is not intended to be operational.

The task forces will be operational. They will—as I mentioned before, there are already DEA State and local task forces. There are various task forces participated in by the FBI. Those task forces will be operational and investigative.

If there are problems of management or information sharing or coverage or in terms of, let's say, the idea as to what kinds of targets or areas we should be specifically concerned about, then that is the kind of thing that the LECC would look at.

They already have subcommittees that deal with drug enforcement. They would deal with the problems of coordination and, in effect, of the policy level as to where we should be going. They are not intended to be nor can they serve as an operational kind of investigative entity.

The other kinds of in-place task forces will be used for that purpose.

Mr. KINDNESS. Do you envision the flow of information being primarily from—once something has been considered by an LECC as an administrative problem to be dealt with—the LECC or its subcommittee back through local and State law enforcement and the Federal agencies involved and then to the task force? I am a little curious as to whether or not we might find difficulty with the crossing of lines by direct interaction between task forces and LECC's and State and local entities which might feel a little bit in left field.

Mr. JENSEN. Yes, I understand.

The LECC was never designed to be, nor could you put yourself legally in a way where you could see this as, a direct operational entity that had control either over Federal or local prosecutors or investigations. It is, in effect, a forum where people can discuss the problems. You may find in the area of operational activity some kind of failure to flow information back and forth. The LECC can serve as a forum to solve problems, and the LECC can serve as a planning mechanism for the use of Federal resources to complement State and local activities. So, it will continue to serve that role, and the drug task forces will carry, in effect, the role that is seen in terms of the needs in a given community for law enforcement activity between Federal, State, and local.

So, the LECC plays an administrative role of oversight and open communication kind of role. The drug task forces will play the direct investigative operational role.

Mr. KINDNESS. I understand the difference in their functions, but both would be reacting or interacting with regard to information and communication having to do with law enforcement and prosecutions and matters of emphasis and matters of determining better ways to work together and so on.

However, I just wondered whether some thought had been given to whether there are inherent conflicts that might arise in terms of determining what is important to try to fix.

I suspect that experience will cause these difficult places to come to the surface, if they exist, but I just wondered if there has been

any particular thought given to how the task forces might somehow interact in a specific way, perhaps by representation on the LECC's directly or—

Mr. JENSEN. Actually, what you are going to find is that the same players are going to be involved in this business all the way through. You will find that the local head of the SAC or the FBI will be involved in the drug enforcement effort, and he will also be playing a role in the LECC. The local sheriff will be doing the same thing. The U.S. attorney will be there. The district attorney from that area will be there.

As I say, one is an operational hat, and the other is a cooperative, partnership hat.

There are problems. There are always problems in terms of decisions and making sure that everybody is working on the same track. We are all on the same side, but every once in a while you run into some difficulties of formulating that. That is really what the LECC is all about which is, in effect, to have a forum for problem solving.

We don't think that anybody has come up with some perfect kind of organizational structure out there. It is very hard to put it out there. It differs from place to place.

One of the reasons for the LECC is to recognize that this world isn't the same in the criminal justice context. It varies from State to State.

Some States have some very good statutory structures and good investigative structures, some don't. Some have very real burdens and obstructions in terms of carrying out investigations.

So, what you are doing is putting in place the most effective mechanism for that community. That is what the LECC serves. You can't put this in a cookie cutter from Washington and solve it. You are doing to have to do it with LECC's and with task forces that are out there that work within their local contacts.

We are really putting in place what we think is a problem solving mechanism.

Mr. KINDNESS. I have one more question.

You made reference in your testimony to food stamp cases. Has there been experience with the involvement of the Department of Agriculture agents since their arrest powers have been expanded, that is, interacting with the Department of Justice or the FBI or others? If so, does that give any indication as to whether that was a good move to expand the arrest powers of the Department of Agriculture?

Mr. JENSEN. I think the sense is that it was. The Department of Agriculture has recently made a report, I think, on their activities, very successful activities in terms of their food stamp investigations and prosecutions. That has been carried out with the Department of Justice. This has been with various components of the department—U.S. attorneys, FBI, and also the Secret Service.

What I was making reference to was—particularly in Las Vegas—a joint operation where all these entities were involved, as well as local, with cross designation in grand juries. They came up with a series of indictments, both federally and locally, that was a shared investigative, prosecutive experience.

But as far as the enhanced activities with the Department of Agriculture, I think it has proven to be very positive.

Mr. KINDNESS. That hasn't presented any problems as between the Department of Justice and the Department of Agriculture?

Mr. JENSEN. I don't believe so. I don't know of any problems. I don't think there is a problem in that regard.

Mr. KINDNESS. I thank you, Mr. Jensen, and I thank you, Mr. Chairman.

Mr. ENGLISH. Thank you, Mr. Kindness.

Mr. Jensen, I know that you made mention in your testimony with regard to the "highly successful south Florida task force." We have been keeping an eye on that task force, as well. I think that some progress has been made down there. It is very encouraging.

Do you think that the south Florida task force—and recognizing the fact that this has been for the last year or so a grand experiment that has been underway with new and innovative things—is at a point where you would say that the task force has demonstrated that it is possible to pretty much stop the drug influx into this country where we cooperate and work together and use some innovative thoughts and ideas?

Mr. JENSEN. I think one could say yes to that with a degree of humility in terms of the depth and the dimensions of the problem. It is a staggeringly large problem. I don't think you can say that you can absolutely close off the drug traffic, either internationally or within our domestic kinds of areas. We have to address it from a demand problem point of view as well as a supply problem point of view. There is no question about that.

But the point that has been made in south Florida, I think, is that with a direct and intensive effort, getting at the point you made before, we see something that is peculiarly within the national responsibility. Local sheriffs really can't do much by way of interdiction or international kinds of negotiations. It is a responsibility of the Federal Government.

The task force down there has done a remarkable thing in terms of shutting off the flow in that specific area. Most of the drug traffic was coming through south Florida, that is, most of the marijuana and cocaine traffic. Heroin traffic was coming in in other areas, but the impact upon cocaine and marijuana that was there was dramatic.

This is true not only in what was happening there, but the obvious effect was on the traffickers. You have to go around. You now have this inevitable result. As you put your forces together and put an intensive effort in one place, then you have to be aware that they are going to go around. There is that kind of demand.

Part of what the President's program is about is to respond to the reality of that. That reality response is that we believe we can significantly affect that kind of importation flow.

Mr. ENGLISH. I mentioned in my opening statement the two studies that have been conducted, one with regard to Miami heroin addicts and the other with regard to Baltimore heroin addicts who committed a tremendous number of crimes.

What percentage of crime would you say—of serious crime—would be drug related?

Mr. JENSEN. There are various estimates. One way you look at it is by looking, in effect, back at the people who are the offenders who are incarcerated. There was a study in California that showed that 57 percent of those in the State prisons had a drug history.

But the phenomenon of repeated criminality is not only drugs. There is a phenomenon of the so-called carrier criminal who repeatedly commits offenses. This is both in drug areas and simply crime-choice areas.

Mr. ENGLISH. I realize that, but, again, when you are talking about figures of 356 people committing 118,000 crimes, then that is a pretty healthy chunk of crime.

Mr. JENSEN. There is no question about that.

Mr. ENGLISH. I was just wondering if you had any kind of feel, having been both a local prosecutor and now dealing with the problem on a Federal level, as to what percentage of the serious crime in this country is drug related.

Mr. JENSEN. At least 50 percent and probably more. Some of that can be demonstrated by going back into statistics, either in terms of those kinds of studies or in terms of actual people committed. Some of this has to be intuitive, but I think the best way you can say it is just exactly what the LECC said: "This is the biggest crime problem we face in this country."

Mr. ENGLISH. What about violent crime? Would there even be more as far as violent crime is concerned?

Mr. JENSEN. Violent crime has its own dimension.

It is one of these things where I don't think you can say that by identifying significant problems you exclude others. There is just no question—

Mr. ENGLISH. I guess what I am coming around to is this. It seems to me—and I would agree with you—that the south Florida task force has offered some real hope, some real possibilities. I have heard this from other law enforcement officials—and you have said it—that roughly 50 percent of the serious crime in this country is drug related.

So, what we have with the south Florida task force, then, is a promise of some real dramatic improvement in the crime situation in this country. Would you agree with that?

Mr. JENSEN. Yes, I think that is exactly so. That is the assessment. Again, I would go back and refer that both to the LECC and the perspective on the activities there in south Florida. The perspective is by the infusion of resources specifically for that purpose. We can have an impact on the drug world and, concomitantly, on the rest of the criminality that goes on, including violent crime.

Mr. ENGLISH. Can we have a significant reduction in crime without dealing with the drug problem?

Mr. JENSEN. I don't think it is possible to deal with the face of crime in this country without coming to grips with the drug problem.

Mr. ENGLISH. The U.S. attorney's office statistical report indicates that the number of defendants whose cases have been disposed of by Federal prosecutors has been declining in recent years. According to the information I have here, 59,300 in 1976 but only 36,558 in 1981. That is a reduction of about 40 percent. Of course, I

believe the crime rate has been going up. It has not been coming down.

I was wondering if you could explain to me why that has taken place. Are we catching fewer criminals, or are we just not disposing of as many; or what is going on?

Mr. JENSEN. Some of that was from the Federal commitment of resources, a shift in perception that you would move away from the quantities of criminal kinds of enforcement efforts to high-level quality types of prosecution. The numbers may go down, but they may be more significant kinds of cases.

This is a hard thing to measure. It is part of what we mention in the task forces. What we intend to do is to take out the highest level in the drug traffickers. If you take off the 10 people who do the money laundering and the importation, then you may accomplish more than if you took off 100 people who are the final distributors on the street.

So, there is a focus in terms of the level of criminality that is involved. But I think it also had to do with a shifting of resources. I think you will see that the 1982 figures will show more Federal prosecutions. I think there is more of an effort to return in some areas to Federal prosecution that had been forgone.

There was a time when the bank robbery prosecutions were by policy not being prosecuted. I don't think that is so now. We are looking at that through the LECC, and we are working it out on a case-by-case basis in the community. So, I think there was a resource implication in that.

First, it is a good thing to focus on the quality case. It takes a long time to make those cases. They are very complex. They are very difficult. But the people you eventually get, as offenders, are the ones you need to arrive at.

In the other sense, I think we will have a more participative-kind of prosecution effort.

Mr. ENGLISH. If I am to follow that line of thinking, you are talking about getting the big guy.

Mr. JENSEN. That is right.

Mr. ENGLISH. If we get the big guy, then that ought to have an impact down the line; shouldn't it?

Mr. JENSEN. Absolutely.

Mr. ENGLISH. But I thought we had already agreed that the rate of crime has been going up and not coming down. If that is the case, why have we not seen a reduction in the crime rate? Also, who is dealing with these criminals who used to be prosecuted by Federal prosecutors?

Mr. JENSEN. As far as crime rate is concerned, it is always a very difficult thing to correlate any specific activity with crime rates. You get into the problems of overlap in terms of timing. You may have anachronistic kinds of figures that talk about crime rates. If you look at the latest figures on crime rate, they have leveled off and slightly gone down.

I wouldn't want to claim that the focus on high-level offenders was a direct result of that. One could make statements that would say that all the activity in the criminal justice world will have an impact, but you wouldn't want to say that you are claiming that this is the specific impact that carried that off.

On the other hand, there is a level where the local prosecutors were trying many more cases that are now passed through. In some instances that was done as a cooperative venture, and in some instances it was just because of Federal decisions.

Mr. ENGLISH. Maybe I am looking at it too simply. But it appears to me that if you have had a 40-percent reduction in a 5-year period in the number of cases that have been prosecuted and that you were doing that on the theory that the guys you are prosecuting are the bigtime offenders who control all these other people, then we ought to see a reduction in the rate, if we have been successful.

But we are not seeing a reduction. The Justice Department is the one who comes up with these figures. So, it is your figuring. It is not anybody else's.

Mr. JENSEN. That is correct.

Mr. ENGLISH. So, you do the figuring.

Mr. JENSEN. In the last reports there are relatively minor reductions in crime rates that you see across the country.

What I am saying is that that has got to be a complex of any number of factors. I would not be saying to you that the Federal effort that we have just been discussing could be a sign for credit. There are a lot of factors.

As you do that, you can say to yourself that at least you are seeing a reduction and a leveling off and that the enforcement efforts must have some relationship.

Mr. ENGLISH. Then is it the local prosecutors that have taken on all these other people that made up the 1976 numbers?

Mr. JENSEN. In large measure, yes.

Mr. ENGLISH. Did they have that much slack in their caseload back in 1976 so that they can now take on that kind of load?

Mr. JENSEN. I don't think so. I did not see an awful lot of slack in my workload as a local prosecutor. I think if you ask Mr. Macy who will testify later that he will tell you that he has no slack either.

Mr. ENGLISH. Yes, I am going to ask him.

The questionnaires that were returned to us showed increases in the caseload for the local prosecutors.

I guess what it comes down to is this. The local law enforcement officials I have talked to think that their caseloads were pretty well loaded back in 1976. They have an additional load when you cut your load by 40 percent during that 6-year period. It seems to me that you are overworking your local prosecutors. You are expecting an awful lot out of them, I guess.

I know that these are outstanding folks and that they do wonderful work, but at the same time I am wondering if we are not expecting an awful lot of them. In other words, the Federal Government is dumping this workload onto the local prosecutors; isn't it?

Mr. JENSEN. The perception that you are now stating is an important perception. It is one that was part of the reason that the violent crime task force said what it did and was the reason why the Attorney General said what he said about the LECC.

If you go back—and Mr. Macy can speak for himself—to bank robbery, we had always had some Federal bank robbery given to us because of the peculiar problem in the federal system not knowing

how to handle not-guilty-by-reason-of-insanity problems. We would have bank robbers that had insanity problems. The federal system doesn't know how to handle that.

They would be sent over to the local system, and we would prosecute bank robbers who had that particular problem.

Then there was a resource thing where they sent some more bank robbers over to us. From a local prosecutor's standpoint, frankly, it didn't make that much difference, in terms of our workload, to have some quality bank robbers. The real problem was with the police who had to work these out.

If you look at the total system impact, the resource problem is for the local police more than the local prosecutor.

The prosecutor by and large is an efficient operation, but the impact upon the police resources was probably as dramatic as anything.

That is the kind of thing that has to be worked out in terms of an LECC where you sit down and you talk about how Federal resources are used so that they are complementary and not counterproductive. That is really what the LECC is for.

So, I think what you are saying is absolutely correct and is part of the perception of why there should be an LECC in every local community.

Mr. ENGLISH. I believe the Department of Justice commissioned a report known as the INSLAW report.

Mr. JENSEN. Yes.

Mr. ENGLISH. They looked into the business of concurrent jurisdiction in cases. It states: "It is readily apparent that ambiguity with respect to whether the offender should be prosecuted Federally or otherwise often causes the concurrent jurisdiction cases not to be prosecuted at all."

So, according to this report commissioned by the Department of Justice, it seems that what you have had happen is that the Department of Justice has cut back on the number of cases that they are prosecuting, and so the local prosecutors can't pick them up because they have their own problems which makes a situation where a lot of folks are falling through the cracks.

In fact, it says that we are talking about large numbers of criminals who are caught and never punished.

Are you not concerned about that?

Mr. JENSEN. Oh, absolutely.

Mr. ENGLISH. Do you believe that is correct? Do you agree with that report?

Mr. JENSEN. Not the way INSLAW says it. This is a study commissioned, as you say, by the Department of Justice.

Mr. ENGLISH. I assume you have a lot of faith in them. Otherwise, you wouldn't be commissioning them.

Mr. JENSEN. That is right.

Their report makes a point. However, there are some problems in the statistics. If you go back into the report, you will find out what is one of these kind of endemic, recurrent kind of thing in the criminal justice system. You don't have the kinds of data you need to do this all the way through.

That report unfortunately cannot go back and look at the cases based upon whether there was no prosecution based upon insuffi-

cient evidence to go at all or on some kind of lapse problem. That is the difficulty. That is a data problem that INSLAW couldn't solve.

They also had a problem of timing. They couldn't track every case through, and so they made an assumption that if the case had not been completed that it would lapse. That also was a problem.

Nevertheless, their point is correct.

Mr. ENGLISH. Isn't one of the problems that on the Federal level the Federal people were sitting around trying to decide what they wanted to prosecute and what they didn't? Due to the usually longer statute of limitations provisions in the Federal law, the time limitation for local prosecution was such that cases were never prosecuted because of the delay of the Federal people trying to decide. Isn't that the situation?

Mr. JENSEN. That could be. I don't think INSLAW identified that as a significant problem.

Mr. ENGLISH. Staff tells me differently.

Mr. JENSEN. A lapse in the statute of limitations?

Mr. ENGLISH. Counsel informs me it was a provision of the report.

I can appreciate the fact that you have to go after more serious criminals. But when you have a cut of 40 percent in the number of cases that you are prosecuting, it seems to me as though you are not doing as much work as you did back in 1976. That means that you have a lot of folks who are not getting prosecuted and a lot of people who are hitting the streets—people who have committed some Federal crimes.

I question whether that is desirable. Of course, if we are going to be able to move in with these task forces and if we are going to be able to substantially reduce the availability of drugs in this country and if we are going to be able to reduce the number of drug-related crimes, then we are going to have a serious impact. I assume that that is what the President has committed to the country that he is going to do; is that correct?

Mr. JENSEN. There is no question about that.

But I would like to make one other point. The figures that you are talking about and the kinds of partnership relationships that existed when that was part of the INSLAW study no longer exist. The problems that are there in terms of enforcement lapse are a specific reason for the LECC structure. Some of this is just that you don't understand the other system. We found a situation in California where there were cases that had been worked up of low-level bank embezzlement that were then sent for local prosecutions but not sent to the local prosecutor. They were sent someplace and put on a desk, and nobody knew they were there.

All you did, by understanding the systems, was to solve that. That is what the LECC is really for—for people to sit down and understand one another's systems and, from a Federal standpoint, to look at its systematic response and its use of resources in such a fashion that these enforcement lapses don't occur. That is what the concurrent jurisdiction subcommittee for an LECC is for. Those are the kinds of areas that the executive working group is looking at. They looked at that INSLAW report rather intensively. Those are the kinds of concerns they have.

So, I think what we are saying is that one recognizes those concerns, and the way you address them is by putting something in place like a systematic, institutional response through an LECC kind of mechanism.

Mr. ENGLISH. According to our study, only about 7 percent of the local prosecutors feel that you have that kind of arrangement now, that is, that type of cooperation now.

Mr. JENSEN. This is the task. This is what we are trying to do.

Mr. ENGLISH. I guess what you come right down to then is this: The only way that the administration is really going to be able to have any impact on crime, serious and violent crime, is through its efforts on drugs.

Mr. JENSEN. There are other areas. LECC's can identify other areas where cooperative efforts can be productive. I mentioned the fact that in south Florida they have a drug relationship in that the unfortunate homicide rate there had a relationship back to the drug traffickers, but there was a complete backlog of murder trials in the State system.

The way that was solved was by having Federal prosecutors cross-designated and by having them go into the State courts and try those cases and get rid of a backlog of murder cases that couldn't be handled by the local prosecutor.

Mr. ENGLISH. Does the Justice Department intend to do that nationwide?

Mr. JENSEN. In those areas where it is necessary. Generally, it is not necessary. Most local prosecutors are in kinds of situations where they can handle their homicide load.

Mr. ENGLISH. Counsel has requested that you supply for the record the number of murder cases in which you have had this kind of situation exist.

Mr. JENSEN. Surely. I will be glad to do that.

Mr. ENGLISH. Without objection, then, the record will be held open to receive that information.

[The material follows:]

U.S. Department of Justice

Criminal Division



Assistant Attorney General

Washington, D.C. 20530

JANUARY 7 1983

Honorable Glenn English
Chairman, Subcommittee on Government
Information and Individual Rights
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reference to your request during my testimony before the Subcommittee on Government Information and Individual Rights for information regarding the cross-designation of attorneys from the United States Attorneys' Offices to serve as State or local prosecutors for the purpose of prosecuting State homicide cases.

A significant program involving such cross-designations occurred in Florida. The United States Attorneys for the Middle and Southern Districts of Florida agreed with the State Attorney's Office that an Assistant United States Attorney from each office should be cross-designated as an Assistant State Attorney to serve in the State Attorney's Office for the Eleventh Judicial Circuit of Florida, which encompasses Dade County. The cross-designations, covering the period June 1, through December 1, 1982, were for the purpose of prosecuting homicide cases involving defendants who were nonresident or illegal aliens. This agreement arose out of contentions by the State Attorney's Office that the burdens of illegal immigration on Dade County should be shared by the federal government. In addition, the agreement provided for the incarceration of the defendants in federal prisons.

The Assistant United States Attorney from the Middle District of Florida cross-designated as an Assistant State Attorney is Lawrence Gentile, and the Assistant United States Attorney from the Southern District so cross-designated is Samuel Smargon. These two Assistant United States Attorneys worked in a task force with two Assistant State Attorneys and together prosecuted 33 defendants, of whom 31 were convicted and two acquitted. All were nonresident or illegal aliens, and all the

cases involved homicide charges. There are still several remaining cases to be tried, and in all 39 defendants will be prosecuted in 34 separate cases. The four attorneys working in the task force provided one another assistance on the various cases and worked together closely. The Assistant United States Attorneys were very well received by the State Attorney's Office in Dade County.

Several examples of the homicide cases prosecuted by the Assistant United States Attorneys in Dade County may be of interest to the Subcommittee. In State of Florida v. Martinez the defendant, a Cuban, was charged with and entered a plea of guilty to second degree murder for killing her husband, who allegedly had assaulted and raped her prior to the homicide. She is to serve ten years in federal prison. In another case handled by the Assistant United States Attorneys, State of Florida v. Viera, the defendant, a nonresident alien from Cuba, was charged with first degree murder for the killing of a taxi driver. The defendant had shot the taxi driver in the back after robbing him. The defendant had committed a similar crime two days before but had failed, despite his attempt, to kill the taxi driver in that case; the first victim later identified the defendant. As a result of the offenses committed in both cases, the defendant received three life sentences with a mandatory minimum term of 20 years, which he will serve in federal custody. Finally, the Assistant United States Attorneys prosecuted an illegal alien from Jamaica in the case State of Florida v. Roach. The defendant was convicted under the felony-murder rule for a first degree murder committed during an illegal drug transaction; the defendant and his accomplices had robbed and killed a drug peddler. The State was not able to apprehend any of the accomplices. The defendant received a sentence of 25 years to life, which he will serve in federal custody.

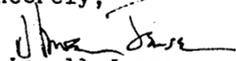
Another situation in which federal prosecutors were cross-designated as local prosecutors for purposes of a homicide case occurred in Arizona in State of Arizona v. Patrick and Michael Poland. In that case the United States Attorney for the District of Arizona, A. Melvin McDonald, and the Senior Litigation Counsel, Ronald Jennings, were cross-designated as Special County Attorneys for Yavapai County to prosecute the defendants in State court for first degree murder resulting from the killing, apparently by drowning, of two Purolator guards. Previously, the State had prosecuted and convicted the defendants, but the convictions were overturned by the Arizona Supreme Court. The County Attorney for Yavapai County had determined not to retry the defendants; however, the trial court would not permit dismissal of the charges. Since the United States Attorney's Office had successfully prosecuted the defendants for federal offenses arising from the same events, that office offered its assistance in a new investigation and a retrial. The offer was

accepted, and a joint investigation by the FBI and State investigators ensued. The defendants were convicted recently of first degree murder.

The cross-designation of a federal prosecutor as a local prosecutor for purposes of a homicide case has also involved an Assistant United States Attorney from the Central District of California. Specifically, Assistant United States Attorney Marcy Norton has been cross-designated as a Deputy District Attorney for Los Angeles County to prosecute the case People v. Catanio. This case, which involves both arson and murder charges, is being prosecuted in State court because relevant case law by the United States Court of Appeals for the Ninth Circuit precludes an arson conviction under the Federal explosives law applicable at the time of the offense. While the defendant was convicted of mail fraud charges in federal court, the ten-year sentence he received was considered insufficient in light of the death of a fire fighter. The State case is still pending in the Los Angeles County Superior Court.

I would be pleased to provide you with any further information on the cross-designation of federal prosecutors as State or local prosecutors or related information that you may wish.

Sincerely,


D. Lowell Jensen
Assistant Attorney General
Criminal Division

Mr. ENGLISH. Mr. Weiss?

Mr. WEISS. Thank you, Mr. Chairman.

First, Mr. Jensen, let me apologize for not being here to hear your testimony. I have gone through your written statement. As usual, we have three things scheduled at the same time.

I should also like to say, because I don't know how long I can stay at this hearing, that I have noted that there are two witnesses scheduled to testify from New York City. I have known Mr. Conboy for some time. Mr. Kindler is chief of the frauds bureau in the office of the district attorney where I got my start in public service some 25 years ago. I want to welcome both of you. I know that your contribution is going to be important and significant.

I only have a couple of questions of you. I notice that in your prepared statement that you are still referring to the task forces, the drug enforcement task forces that the President spoke about before the November 2 election. I recall reading a recent story indicating that those task forces have not been given the resources that the President had hoped for.

Originally he thought he could find \$130 million by shifting around funds from other programs in Justice, and apparently has concluded that there is just not that kind of money available. The Office of Management and Budget has now said that they don't have any new sources of money.

First, let me ask you this. Have you gotten any information—

Mr. JENSEN. If I may, I think what you are referring to was an editorial commentary in the New York Times. With all due respect to the editorial, they are wrong. They are just flat wrong.

The statement that there was any difference in terms of what the President had announced and the program that is going forward and the budget kinds of appropriation requests and to the extent that they are saying that that has not been carried through is not correct. They made a mistake.

If you look at the budget submissions, they are for additional and new money. There are hearings going on today for precisely that purpose.

Mr. WEISS. And where is the money coming from?

Mr. JENSEN. I am not into the identification of money, but it is identified as new money which would be additional money which would fund new resources for Justice and Treasury. Unfortunately, that commentary is just mistaken.

Mr. WEISS. But you are telling us that, even though there is not the capacity to shift moneys from existing programs, in fact the commitment of the administration is to find \$130 million of new moneys which they are asking the Congress to provide; is that correct?

Mr. JENSEN. That is correct.

Mr. WEISS. Without cutting it from anyplace else?

Mr. JENSEN. As I say, I don't know sources of money or appropriations. The issue that I would be talking to is an additional appropriation which would provide new resources and not just a shifting around within the Justice budget. The answer to that is yes. These are new resources, and that is the appropriation being sought.

Mr. WEISS. I am pleased to hear that. We will have a chance to test it as we go through the process.

The only other area that I want to touch on is this. I think I heard you say that, in your judgment, some 50 percent of the crime in this country is attributable to the drug trafficking; is that right?

Mr. JENSEN. If you go back and you say that it is attributable or related or whatever it may be, there is some crime that is directly related in that the burglar steals in order to get the money to support his habit. That sort of thing occurs, obviously.

There are other levels of criminality that go on in running the distributions. Some of these are financial. Some of them are related to other kinds of efforts.

There is a good deal of violence that goes on in just the struggle for control over networks that do the narcotics.

So, if you look at that whole perspective and you say to yourself, "What is related to the maintenance and the flow of drugs?", then you can come up with an intuitive kind of response that says that it must be more than 50 percent. My experience as a prosecutor would say that. Some of the studies that were referred to by the chairman showed extraordinary levels of crime by addicts. Other studies will look at offenders who are in prisons and find that a very high percentage of them had drug kinds of addiction problems before their incarceration.

Mr. WEISS. How far back does your experience as a prosecutor go?

Mr. JENSEN. I became a local prosecutor in Oakland, Calif., in 1955, and then I was a district attorney from 1969 to 1981.

Mr. WEISS. And, how far back would you say that this correlation between drug trafficking and crime goes?

Mr. JENSEN. It started with the explosion of crime in the 1960's. It grew through the 1970's and leveled off in the 1970's and the beginning of the 1980's. The enormous explosion in crime was in the 1960's.

Mr. WEISS. But the correlation between overall crime and drug-related crime—

Mr. JENSEN. It was pretty well on complementary tracks, parallel tracks. You found that as the enormous increases in burglaries and robberies and those kinds of offenses took place that there was an increase in drug trafficking. You saw an increase in the prosecutions for drug trafficking and for drug-related kinds of activities.

Mr. WEISS. And, from your observations as well as your experience, there has been an increased amount of moneys and staff and resources generally devoted to dealing with the drug traffic; is that right?

Mr. JENSEN. There is no question about that.

As the kinds of workload that you would have as a local prosecutor, you would be faced with the work of the local police who had made arrests over and over. You were simply doing a reactive kind of response in order to move those cases in the system. You needed new policemen. You needed new prosecutors. You needed new courts. You needed new correctional facilities.

Mr. WEISS. What is your sense as to alternately what it will take to start significantly reducing the drug traffic and getting a handle on it?

Mr. JENSEN. These are the kinds of things we are about right now. Our perspective is that the kind of commitment that is involved in the drug task force effort will have a significant impact.

Mr. WEISS. We have all been watching it, and I have been watching it, not just as a prosecutor but as a citizen. For the last 50 years, I guess, we have increasingly taken the position that if only we devote more resources and if we make the penalties harsher, that we will in fact be able to cut back on narcotics trafficking and the attendant crime that goes with it.

Instead, what we have seen has been an acceleration of both more trafficking and more resources and still more trafficking and more resources. Nothing seems to have helped.

I am just wondering whether, in fact, this is not an endless chase of our own tail in this situation where we, perhaps, ought not to be looking at the problem through some new approaches, rather than just the effort to interdict and apprehend and punish which has not seemed to have worked positively.

Mr. JENSEN. I think there ought to be a multiplicity of approaches. As you say, there can be different perspectives on this. My own perspective is that we really do need to make those increases in resources at strictly enforcement levels. I think, obviously, there have to be efforts on the demand side, too. I don't think we have done enough in the country to show the horrible kinds of impact on lives of drugs. I don't think we have done enough of that. I think we have to address the problem of the demand for drugs as well as its supply. I agree with you.

Mr. WEISS. The concern that I have is that I know that my constituents are up in arms because they don't feel personally safe and secure—and with justification.

Yet, we spend so much of our resources on trying to contain the drug traffic so that the person, old or young, who is concerned about his or her public safety feels that they are more or less abandoned by us. I just don't know how long that kind of situation can go on without there being a popular uprising against all of us in government.

Mr. JENSEN. I think that it is our responsibility in government. I think that part of that sense of being abandoned is that, unfortunately, there is this sense of having the problem within your home or your streets. In many instances this is a drug addict who is breaking into your home or mugging people on the streets. We can survive both by an enforcement effort that sees to it that that drug addict either doesn't get into that or is stopped from doing it. We get a sense of safety that comes out of a program that does precisely that.

Mr. WEISS. Lots of luck.

Mr. JENSEN. Thank you.

Mr. ENGLISH. Thank you, Mr. Weiss.

Mr. Oxley?

Mr. OXLEY. Thank you, Mr. Chairman. I appreciate your kind invitation to participate this morning.

Mr. Jensen, a couple of weeks ago I had an opportunity to go down to Key West to witness the commissioning of two new boats that will be used to interdict drugs in the south Florida area. During that time, I had an opportunity to be made aware of the situations that occurred down there. Rear Admiral John Lucas was kind enough to show me around.

One of the things that I noticed right away was a large trailer that had been set up right by the dock. I asked the admiral what that was for, and he said that it was where all of the drugs that had been seized were put. They would take it up to Miami when it was filled and the drugs would be turned over to Customs and incinerated. This occurred about once a week, as I understand it. They were seizing mostly marihuana, according to the admiral.

I asked him about the people who were arrested and if they were Americans. He said no, that they were primarily foreign nationals—mostly from Colombia. I asked what he did with those people once they were arrested off the boats. He pointed to a small camper trailer a small camper and said that that was his jail. He said when they arrest these people they put them in this holding camper jail until such time as they are moved.

I asked him what he did before they got the jail, and he said they chained them to the trees. So, apparently, there has been some progress made as far as imprisonment is concerned.

He then told me a rather shocking thing, Mr. Chairman, and that was that the captain of a boat which was allegedly a fishing boat and, in fact, was smuggling drugs, would make \$150,000 should he make a successful run, and that each crewmember on that boat would make \$50,000. I assume that these are uneducated Colombians to whom \$50,000 looks like a million dollars, as it would to us.

I asked what happened to those people and he said that once they were processed they were placed on an airplane and sent back to Colombia. In fact, many of the people with the Coast Guard were on a first-name basis with some of these people because they simply continue to make the trip.

The point is that there is simply no deterrence at all, it appeared to me. I asked him what they did with the boats, and he said that the boats were ultimately seized under Federal law and then were auctioned off. In many cases, the same people who originally had the boats would come back and purchase the boat again at the auction and simply start the process all over again.

You made some reference to H.R. 7140. I wonder what effect it would have on those particular situations. Also, what can we do to provide some meaningful penalty for those foreign nationals instead of simply giving them an airplane ticket that is paid for by Uncle Sam and sending them back to Colombia to start the process all over again?

Mr. JENSEN. As to the forfeiture kinds of problems that I mentioned before, what happens is this. I am sure that Bob Powis from the Treasury Department can give you some stories about this in terms of their storage facilities and what kinds of problems they face in a general sense.

The problem is that there are difficulties in moving those cases sufficiently quickly through the system so that you arrive at an expeditious and a reasonable disposition. The process now is such that you have to go in to the Federal courts in every instance where the value of the conveyance is over \$10,000, which means every time you are in the Federal courts, which means it takes you 18 months to get to a point where you can auction off, and you have already lost the economic kind of reality of that situation.

So, by addressing that problem—and as I say, I think Mr. Powis can give you some very specific figures and the impact of that—you would be able to make a process that would be a rational, reasonable process for dealing with that asset and getting it through.

As far as the prosecution of individuals is concerned, there are, undoubtedly, difficulties. I would not be able to do the specifics in terms of what that particular arrest was, obviously, but those can be addressed. Some of those are resource problems, and some of them are commitment problems that have to do with issues of the availability of prosecution and of courts and of correctional facilities and of the difficulty in terms of moving into a deportation process.

So, I think you have to address it totally. I think you can help out by legislation, such as H.R. 7140. The rest of it you can address by the resources that are implicit in something like the task force effort.

Mr. OXLEY. It just struck me as quite counterproductive. It was a shock to me, having worked in the federal system in the past in the law enforcement area. It seemed to me that something could be done, either by legislation or, as you indicated, partly by legislation and partly by resources.

On the face of it, it looks ludicrous. It concerns me because I think we have made some progress down in Florida. If we were

able to correct some of those problems, then we could continue to make even better progress in the future.

Mr. JENSEN. I believe so. The points you make are certainly well taken. There are any number of areas where sometimes the offenders on the street are back there as fast as they are arrested. This gives one pause. But, you look at those, and you solve the problems in terms of legislation and resources.

Mr. OXLEY. If I may, just one more question, Mr. Chairman.

This is somewhat in response to Mr. Weiss' comments. We are really looking at a somewhat unique crime problem in that probably never before in the history of this country has there been so much money to be made in the drug area or in crime in general. It seems to me that the amount of money that can be made through illegal drug efforts is literally staggering. I think the matter that I talked about with the Colombian nationals is an example of that.

That clearly makes your job much more difficult because it is extremely tempting to anyone, even someone who has never had a criminal record to deal in drugs. I remember hearing testimony in the Select Committee on Narcotics from an individual who had been offered half a million dollars to bring drugs in from Mexico. This individual had never had a criminal record before. He figured that if he could just do it one time he would certainly be in extremely good financial shape. The temptations are almost unbearable for many, many people.

Mr. JENSEN. I think there is no question about that.

Unfortunately, the criminal acts that are committed on the strictly cost-benefit analysis are there. I think what we are trying to do is make it cost, that is, make the cost the primary result of that analysis and not the benefit.

Mr. WEISS. If the gentleman will yield, that is why I was asking the question I was. I agree with you. The profit motive in this situation is so overwhelming, and the profits themselves are so overwhelming that the experience has been that even if those Colombians were incarcerated and the keys were thrown away, you would find 10 others in their place to do the work because it is so profitable for them.

So, my question is whether we are not asking the impossible of the law enforcement people who are trying to deal with this kind of thing. We are asking them to clean out the stables with a table fork, rather than a pitchfork.

Mr. JENSEN. I think that all of this discussion is pointing to the difficulties. However, we do have to say to ourselves that there is an area out there of cost-benefit analysis. If we can approach this where the result of that chance that is going to be taken of succumbing to temptation is that you are going to go to prison and lose all those proceeds, then that will change your analysis.

Mr. WEISS. Have you any kind of analysis as to what the total cost to our society is of the drug trafficking?

Mr. JENSEN. Staggering.

Mr. WEISS. The cost to law enforcement at all levels, as well as the property losses that are suffered?

Mr. JENSEN. I don't know that there is any specific analysis done which is as comprehensive as that. There are any number of analyses on localized bases. In the Florida situation, you look at the cash

imbalance. There was an enormous cash imbalance in the Florida banking situation which came about by drug trafficking. Those kinds of things have been isolated and identified, but I don't know of a comprehensive look.

The only thing we can say—really, when you get right down to it, the local police are telling us precisely that. They are in touch with their communities, and when you go out and ask them across this country what is their problem, then that is the problem which they are facing—the drug traffic.

Mr. OXLEY. Thank you, Mr. Chairman.

Mr. ENGLISH. Thank you, Mr. Oxley.

I think it is worth pointing out, though, that according to the indications we have had, at least in one area in south Florida, that the amount of drugs coming in illegally has been substantially reduced. There has been an impact there because of the efforts brought to bear on those specialized circumstances.

I think it also should be pointed out that in Florida there was an increased degree of coordination and cooperation, which has not always existed in all parts of the country. That, of course, has an impact.

Again, you feel that, given what we have seen in south Florida, that crime in this country can be substantially reduced through the President's task forces?

Mr. JENSEN. Yes, that is my perspective. I think it is shared by a lot of people.

Mr. ENGLISH. I certainly do thank you, Mr. Jensen, for your testimony. We appreciate it.

Mr. JENSEN. I thank you.

Mr. ENGLISH. Our next witness is Mr. Robert Powis who is the Deputy Assistant Secretary for Enforcement at the Department of the Treasury.

We want to welcome you here today. Please proceed.

STATEMENT OF ROBERT E. POWIS, DEPUTY ASSISTANT SECRETARY FOR ENFORCEMENT, DEPARTMENT OF THE TREASURY

Mr. Powis. It is my pleasure to appear before you today to testify on behalf of the Treasury Department concerning the activities of its enforcement bureaus regarding training, information coordination and resources which are provided to States and localities and also to discuss the cooperative relationship which exists between these bureaus and their counterparts in State and local law enforcement.

Initially, I would like to advise you of the structure of Treasury law enforcement. The Office of Enforcement and Operations exercises line authority over the enforcement bureaus. This office oversees the operations of the U.S. Secret Service, U.S. Customs Service, the Bureau of Alcohol, Tobacco, and Firearms, and the Federal Law Enforcement Training Center at Glynco, Ga. In addition, the office provides guidance on a wide range of law enforcement and administrative issues.

The major premise upon which our office operates is that successful law enforcement activity demands cooperation and coordination at all levels. We believe that it is absolutely essential for

Federal enforcement bureaus to maintain working relationships with and to cooperate with State and local enforcement officials on a daily basis. Part of this cooperation involves training and we firmly believe that our enforcement bureaus should make training available to State and local enforcement personnel to the extent possible within the limits of their expertise and funding resources.

As for the Justice/Treasury, State, and local training program, there are two recommendations of the Attorney General's Task Force on Violent Crime which indicate that the Attorney General should establish and, where necessary, seek additional resources for specialized training programs to allow State and local enforcement personnel to enhance their ability to combat serious crime. Pursuant to these recommendations the Justice and Treasury Departments agreed to jointly sponsor a program to carry them out. It was agreed that the facilities of the Federal Law Enforcement Training Center—FLETC—at Glynco, Ga., would be used to develop a training program to be made available to State and local enforcement officers aimed at the reduction of violent and serious crime. Experts available in the Federal Government and the various States have been identified and made available to teach in various courses offered under the auspices of this program.

Courses being presented currently include such programs as: Advanced arson training, officer safety and survival, court security and advanced explosives investigation techniques.

Courses projected for 1983 will include: Undercover investigative techniques, protective operations training, and marine law enforcement, to name a few.

The overall program to date has had excellent results. There has been an enthusiastic response to several of the courses presented.

The Secret Service recognizes fully the importance of cooperation and assistance with members of the State and local law enforcement community. Such cooperation is vital to the Service's protective mission. Detailed and coordinated planning is carried out by the Secret Service with State and local law enforcement agencies in connection with each visit by a protectee to a local jurisdiction.

The Secret Service also relies heavily upon information provided by local and Federal law enforcement agencies in the conduct of its protective responsibilities. The Service cannot make intelligent and informed decisions concerning potential sources of danger to its protectees in a vacuum. It must have information which local agencies and other Federal agencies can obtain and provide. Conscious efforts by the Secret Service in this area date back to the Warren Commission and its findings and recommendations.

Every effort is expended by the Secret Service to maximize relations with enforcement agencies with a view toward keeping lines of communication open so as to receive information about persons or groups who may intend to harm Secret Service protectees.

This is not a one-way street. Secret Service field offices as well as its intelligence division review incoming information from all sources. If information is received dealing with threats to non-Federal public officials, for example, Governors, mayors, or even private citizens, the Service insures that immediate notification is made to the appropriate law enforcement agency.

Secret Service agents, in addition to their protective efforts, made over 8,000 arrests in fiscal year 1982 in cases involving the counterfeiting of our currency and obligations and the theft and forgery of Government checks, bonds, and food stamps.

In the area of counterfeiting, the Secret Service routinely cooperates with State and local authorities. These authorities are frequently the first to respond to counterfeit notes passed.

In certain instances it is advantageous to prosecute criminal offenses under the jurisdiction of the Service at the State and local level. When that happens, the Secret Service provides the necessary expertise to facilitate the prosecution. Expert testimony, courtroom exhibits, and the laboratory services are examples of the type of support rendered.

In the area of counterfeit investigations much of the cooperation between the Secret Service and its counterparts at the State and local level is generally the "unstructured agent-to-police officer type contact."

The following example of a cooperative enforcement venture between the U.S. Secret Service and local law enforcement authorities is hereby set forth.

The St. Louis field office recently concluded a successful undercover "Sting" operation with members of the St. Louis City Police Department. The two agencies jointly planned, staffed, financed, and ran the operation. The Secret Service leased the building and installed sophisticated audio and visual equipment used to document each transaction between a violator and the undercover law enforcement personnel.

A Secret Service undercover agent worked alongside a police undercover officer to purchase stolen Government obligations and other stolen property. The operation lasted 6 months and successfully recovered \$558,000 in stolen contraband while expending \$40,000 in "buy" money. Eighty-five violators were arrested. Through cooperation between the U.S. attorney and the St. Louis city attorney, they were prosecuted in both Federal and State courts.

The U.S. Customs Service, due largely to its unique position as the first line of defense at our Nation's border, it has long enjoyed a reputation for assistance and cooperation with other law enforcement agencies. Violations of the numerous laws enforced by Customs often involve parallel or tangential violations of those statutes enforced by other Federal, State, and local law enforcement agencies as well as foreign governments.

As the committee is fully aware, the U.S. Customs Service has assumed a significant role in narcotics and financial investigative task forces. The ongoing south Florida task force—Operation Florida—has resulted in many instances of cooperation and coordination between the Federal Government and local/State agencies. The presence of such a Federal force is a valuable asset to local law enforcement agencies in that it is a source of equipment and expertise which might otherwise be unavailable at the local level.

A specific example would be the undercover operation involving the vessel sailing to Colombia for the purpose of obtaining a load of marihuana. This case was initiated by the Ft. Lauderdale Police Department and consisted of undercover officers being approached

by a narcotics organization to transport a load of marihuana from Colombia to the United States.

After several undercover meetings with the coconspirators, it was the intention of the Department to indict on a cold conspiracy. The situation was then brought to the attention of the task force and arrangements were made to provide a boat, tracking equipment, and undercover Federal agents, all of which made the actual trip to Colombia possible. The assistance provided by the task force produced more indictments and resulted in a stronger case than would have existed had the police department not requested the Federal participation.

In another area of substantial expertise, financial investigations involving provisions of the Bank Secrecy Act, Customs is utilizing the multi-agency task force approach in targetting the cash flow of major narcotics trafficking and organized crime organizations. In keeping with the intent of Congress in enacting the Bank Secrecy Act, Customs has designated the investigation of felony currency violations as a national priority.

In support of this effort, Customs established the Treasury Financial Law Enforcement Center [TFLEC] to facilitate both drug and nondrug case development for violations having the greatest potential for prosecution. TFLEC is an important financial crimes intelligence center serving the entire law enforcement community. It utilizes the specialized talents of criminal investigators, intelligence research specialists, and automated data processing specialists, combined with sophisticated electronic equipment, to collect, collate, and analyze financial data generated by the Bank Secrecy Act report to target suspected criminal organizations involved in large-scale currency transactions. TFLEC personnel also provide flow charting, link analysis, and onsite consultancy capabilities. This program is dependent upon interaction, cooperation, and participation of other agencies. Success requires, to a large extent, the interaction and participation by law enforcement at all levels of government.

On a nationwide basis, customs personnel are in daily contact with local and State law enforcement agencies obtaining, as well as providing, investigative and intelligence support to investigations of mutual interest. It is only through this cooperation that we can hope to be successful in our efforts to neutralize the operations of international and domestic criminal organizations.

U.S. Customs has also headed and participated in many task forces with State and local police investigating violations in the areas of cargo theft, auto theft, and stolen art. For example, pursuant to our goals in Operation Exodus, the U.S. Customs Service is participating with the Santa Clara County Sheriff's office in investigating thefts of critical technology hardware and data from firms operating in the Silicon Valley area of California. This coordinated effort is aimed at the stemming of the flow of illegal exports to Communist bloc nations.

The Bureau of Alcohol, Tobacco and Firearms has enjoyed the reputation as a close ally and working partner with State and local law enforcement officers since the inception of the agency. This relationship is founded on mutual respect for each other's expertise,

and the fact that ATF agents enter into law enforcement initiatives with their State and local counterparts as full partners.

The joint efforts of ATF and their associates in State and local agencies has resulted in the formation of many innovative projects that have directly supported these agencies in their fight against violent crime. These projects include the sharing of information and the joining of resources at the street level, through "state-of-the-art" training programs which produce an enforcement officer who is far superior to his predecessors.

ATF is the principal Federal agency with statutory jurisdiction over arson crimes, but unfortunately there are a lot more arsons committed than ATF has the resources to investigate.

A viable team concept developed by ATF involves the national response team. These highly trained cadres of experienced arson investigators are located in four key areas of the country. These teams are able to mobilize immediately and move to any location in the country within 24 hours to assist in major arson incidents. Because of their phenomenal clearance rate—over 60 percent—these teams have been commended by State and local law enforcement bodies, by major insurance companies, and by the Attorney General's office for the vigor and selflessness with which they pursue arsonists. This national response team is the only concept of its kind by a Federal law enforcement agency.

Perhaps the most widely utilized and successful of ATF's services to State and local law enforcement is its National Firearms Tracing Center. Since its inception, the tracing center has accurately and quickly traced tens of thousands of firearms for other law enforcement agencies, with a very significant percentage of those traces providing information vital to the apprehension of crime suspects. Within the last 3 months alone, ATF traces have led directly to the arrest of two suspected murderers.

Mr. Chairman, although we've discussed the south Florida task force before, I would be remiss if I didn't touch upon it briefly here. The unsung heroes of the drive against narcotics traffickers of southern Florida may well prove to be the agents and inspectors of the Bureau of Alcohol, Tobacco and Firearms. Working with little publicity, the 45 agents assigned to the task force have made over 200 felony cases in just 17 weeks of operation.

Concentrating their efforts on the suppliers of the small caliber handguns and easily concealable machineguns which are the weapons of preference among these dealers in death and corruption, ATF agents risk their lives every time they hit the streets.

Even as I was preparing this testimony, on December 2, 1982, I learned that one ATF undercover agent had been killed and another wounded during the course of an investigation in south Florida.

The agent who was killed was Agent Ariel Rios. I am happy to report to you this morning that the condition of the other agent who was hit four times is improving rapidly, and we expect him out of the hospital in the very near future.

Another excellent example of ATF's cooperative efforts occurred just yesterday and last evening in the support that ATF gave to local police agencies in connection with the incident at the Mall in Washington, D.C.

Historically, ATF has been involved in the development of training programs for State and local officers. Some of the subjects covered by these programs were firearms, organized crime, cigarette smuggling, arson, explosive investigations, and hazardous devices.

ATF has developed three training courses which have become a vital part of the new Justice/Treasury, State and local training program. These courses are: Advanced Explosives Investigative Techniques, Advanced Arson for Profit, and Undercover Techniques. These courses are recognized throughout the law enforcement community as "state-of-the-art" and are consistent with ATF's mission of assisting States and municipalities in the most effective manner possible.

In addition to the foregoing, it should be noted that all of our Treasury enforcement bureaus have representation on the U.S. attorney's law enforcement coordinating committees. This program was initiated by the Attorney General to formally coordinate Federal, State, and local enforcement priorities and activities. You heard about those from Lowell Jensen earlier.

Likewise, all of our enforcement bureaus are represented on the Department of Justice's organized crime and racketeering task forces around the country. These task forces have both State and local enforcement representatives. We also anticipate that the Customs Service and ATF will participate in the Presidential drug task forces which will be established in the near future. One of the goals of these task forces is to cooperate fully with State and local enforcement agencies.

Mr. Chairman, I believe that the information which I have provided sets forth a good record of cooperative efforts with State and local law enforcement on the part of Treasury's law enforcement bureaus. We want our bureaus to work to improve their already excellent cooperative efforts. Both we and the enforcement bureaus know that they cannot do their job effectively without cooperation from other Federal bureaus and from State and local law enforcement agencies.

Thank you very much. I am now ready to answer any questions you may have.

Mr. ENGLISH. Thank you, Mr. Powis.

And, without objection, your written expanded remarks will be inserted into the record at this point.

[Mr. Powis' prepared statement follows:]

FOR RELEASE UPON DELIVERY
December 9, 1982

STATEMENT BY
ROBERT E. POWIS
DEPUTY ASSISTANT SECRETARY FOR ENFORCEMENT
DEPARTMENT OF THE TREASURY
BEFORE THE
SUBCOMMITTEE ON GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

Mr. Chairman and Members of the Subcommittee,

It is my pleasure to appear before you today to testify on behalf of the Treasury Department concerning the activities of its enforcement bureaus regarding training, information coordination and resources which are provided to states and localities and also to discuss the cooperative relationship which exists between these bureaus and their counterparts in state and local law enforcement. I intend to discuss overall philosophy in this regard and give specific examples of cooperative efforts and information about training which is afforded to state and local law enforcement.

Initially, I would like to advise you of the structure of Treasury law enforcement. The Office of Enforcement and Operations within the Treasury Department was set up some

years ago to exercise line authority over the enforcement bureaus. This office oversees the operations of the U.S. Secret Service, U.S. Customs Service, the Bureau of Alcohol, Tobacco and Firearms and the Federal Law Enforcement Training Center at Glynco, Georgia. In addition the office, currently headed by Assistant Secretary John M. Walker, Jr., provides policy guidance on a wide range of law enforcement and administrative issues.

The major premise upon which our office operates is that successful law enforcement activity demands cooperation and coordination at all levels. We firmly believe in the need for Federal enforcement bureaus to cooperate with each other and to coordinate their activities in joint endeavors. We also believe that it is absolutely essential for Federal enforcement bureaus to maintain working relationships with and to cooperate with state and local enforcement officials on a daily basis. Law enforcement efforts are at their best in those areas where cooperation and coordination by Federal, state and local enforcement agencies is at its highest. Part of this cooperation involves training and we firmly believe that our enforcement bureaus should make training available to state and local enforcement personnel to the extent possible within the limits of their expertise and funding resources.

Justice/Treasury, State and Local Training Program

Recommendations 11 and 44 of the Attorney General's Task Force on Violent Crime stated that the Attorney General should expand where possible the training and support programs provided by the Federal Government to state and local law enforcement personnel and that the Attorney General should establish and, where necessary, seek additional resources for specialized training programs to allow state and local law enforcement personnel to enhance their ability to combat serious crime. Pursuant to these recommendations the Justice and Treasury Departments agreed to jointly sponsor a program to carry them out. It was agreed that the facilities of the Federal Law Enforcement Training Center (FLECTC) at Glynco, Georgia, would be used to develop a training program to be made available to state and local enforcement officers aimed at the reduction of violent and serious crime. It was also agreed that consideration would be given to the creation of a National Center for state and local law enforcement training to be located at Glynco. Jeffrey Harris, Deputy Associate Attorney General in the Justice Department and myself were named as co-chairmen of this project. An Interagency Working Group directed by George Bohlinger, former Acting Administrator of the LEAA, was set up to design and conduct pilot training courses and to determine the feasibility of the projected National Center. A final report is to be submitted by the

Working Group in January 1983. An Interagency Multi-Jurisdictional Advisory Committee was appointed to assist the co-chairmen of the working group to achieve their objectives. The focus of the program is the development of advanced specialized and technical training courses for operational personnel serving law enforcement at the state and local level and those individuals involved in training such personnel. Experts available in the Federal Government and the various states have been identified and made available to teach in various courses offered under the auspices of this program. Courses being presented and under consideration for development are not designed to duplicate existing training but rather to develop new programs and to engage in joint sponsorship with state and local officials when appropriate. A number of pilot programs have been developed and presented and several others are scheduled to be offered in 1983. It was decided that the training offered will be on a reimbursable basis and that scheduling will be developed on the basis of demand. A quality product designed to meet the needs of the state and local law enforcement community is the objective of each course. The following pilot courses have already been developed and presented.

1. Court Security. Offered by the U.S. Marshalls Service and jointly sponsored by the National Sheriff's Association. Two courses have already been presented.

2. Questioned Documents. Offered by the U.S. Customs Service. One course has already been presented.
3. Advanced Arson for Profit. Offered by the Bureau of Alcohol, Tobacco and Firearms. The first course is being presented at this time.
4. Advanced Explosives Investigative Techniques. Offered by the Bureau of Alcohol, Tobacco and Firearms. Six courses have already been presented.
5. Officer Safety and Survival for Trainers. One course has been presented.

The following courses have been developed and will be presented on a pilot basis during the first three months of 1983.

1. Undercover Investigative Techniques. Offered by the Bureau of Alcohol, Tobacco and Firearms.
2. Protective Operations Briefing. Offered by the United States Secret Service.
3. Driver Instructor Training. Offered by the Federal Law Enforcement Training Center (FLETC).
4. Advanced Law Enforcement Photography. Offered by the Federal Law Enforcement Training Center (FLETC).
5. Marine Law Enforcement. Offered by the Federal Law Enforcement Training Center.

6. Fraud and Financial Investigations. Offered by the Federal Law Enforcement Training Center.

In addition the Customs Service is working on the development of a course on Cargo Theft.

The overall program to date has had excellent results. There has been an enthusiastic response to several of the courses presented. One-hundred and eighty (180) state and local law enforcement officers have already gone through the Advanced Explosives Techniques. There is a backlog of over 400 local enforcement officials who wish to attend this course. The Bureau of Alcohol, Tobacco and Firearms has used an innovative approach in developing some of their courses by utilizing recognized experts on the state and local level in the actual preparation of course content. This concept is being used in the development of several additional courses. A decision has been made for the FLETC to take over operational control of the Justice/Treasury, State and Local Training Program on February 1, 1983, based on the success of some of the first courses presented and the potential for other courses which will be presented.

U.S. Secret Service

The Secret Service recognizes fully the importance of cooperation and assistance with members of the state and local law enforcement community. Such cooperation is vital to the Service's protective mission which includes the

protection of the President, members of his immediate family, the Vice President, former Presidents, visiting heads of states/governments and the major candidates for the Presidency and Vice Presidency during campaign years. The Service cannot carry out its protective mission without the cooperation and assistance it receives from state and local law enforcement. Coordinated planning is carried out by the Secret Service with state and local law enforcement agencies in connection with each visit by a protectee to a local jurisdiction.

The Secret Service also relies heavily upon information provided by local and Federal law enforcement agencies in the conduct of its protective responsibilities. The Service cannot make intelligent and informed decisions concerning potential sources of danger to its protectees in a vacuum. It must have information which local agencies and other Federal agencies can obtain and provide. Conscious efforts by the Secret Service in this area date back to the Warren Commission and its findings and recommendations. One of the primary concerns centered on the acquisition of possible threatening information through liaison affected by the Service. This concern has been reiterated at critical moments since that time. Every effort is expended by the Secret Service to maximize relations with enforcement agencies with a view toward keeping lines of communication open so as to receive information about persons or groups who may intend to harm Secret Service protectees.

Secret Service field offices and resident agents are responsible for the establishment and maintenance of active liaison with all intelligence and law enforcement agencies and their respective districts to ensure that all information on groups or individuals who might constitute a potential threat is furnished on a timely basis. They in turn report this immediately to the Headquarters Intelligence Division. The Service has a set of guidelines which include broad categories of information of interest to assist in evaluating not only individuals but situations which could pose a danger to its protectees and their movements. This is not a one-way street. Secret Service field offices as well as its Intelligence Division review incoming information from all sources. If information is received dealing with threats to non-Federal public officials, e.g., Governors, Mayors or even private citizens, the Service ensures that immediate notification is made to the appropriate law enforcement agency.

Cooperative intelligence security efforts are especially evident during major events which draw upon both Federal and local resources. Examples are the Olympics, National Political Conventions, World Fairs, etc. During such activity the Service participates willingly in the analysis and information sharing required to assess and prevent potential violence.

Secret Service agents, in addition to their protective efforts, made over 8000 arrests in FY 1982 in cases involving the counterfeiting of our currency and obligations and the theft and forgery of government checks, bonds and food stamps. In the area of counterfeiting, the Secret Service routinely cooperates with state and local authorities. These authorities are frequently the first to respond to counterfeit notes passed. In certain instances it is advantageous to prosecute criminal offenses under the jurisdiction of the Service at the state and local level. When that happens, the Secret Service provides the necessary expertise to facilitate the prosecution. Expert testimony, courtroom exhibits and laboratory services are examples of the type of support rendered. In the area of counterfeit investigations much of the cooperation between the Secret Service and its counterparts at the state and local level is generally the "unstructured agent-to-police officer type contact."

The following are examples of cooperative enforcement ventures between the U.S. Secret Service and local law enforcement authorities.

1. The St. Louis Field Office recently concluded a successful undercover "sting" operation with members of the St. Louis City Police Department. The two agencies jointly planned, staffed, financed and ran the operation. The

Secret Service leased the building and installed sophisticated audio and visual equipment used to document each transaction between a violator and the undercover law enforcement personnel. A Secret Service undercover agent worked alongside a police undercover officer to purchase stolen government obligations and other stolen property. The operation lasted six months and successfully recovered \$558,000 in stolen contraband while expending \$40,000 in "buy" money. Eighty-five violators were arrested. Through cooperation between the U.S. Attorney and the St. Louis City Attorney, they were prosecuted in both Federal and State courts.

2. The Secret Service is a member in the U.S. Department of Justice's Task Force against food stamp fraud. As such its Atlanta, Georgia, field office initiated a joint investigation with local Georgia Bureau of Investigation Agents into a \$400,000 fraud scheme masterminded by a suspect and fugitive from a similar scheme in Florida. The investigation disclosed the fugitive had fled to Houston, Texas. Based on information jointly developed by Federal and state investigators, the fugitive was swiftly arrested on Florida state warrants by Secret Service Agents in Houston, Texas.

3. Electronic Fund Transfer (EFT) cases frequently involve local banks as recipients and lend themselves to effective Federal and state law enforcement cooperation.

The Service's Washington Field office and the Arlington, Virginia, Police Department recently initiated an investigation involving a suspect who had fraudulently obtained \$13,000 in Federal funds through the EFT system. Because of a lack of state computer fraud laws, the local police would have been able to charge the defendant with only state misdemeanor violations. Because of the cooperation with the Secret Service, the defendant was charged with felony violations in Federal court.

U.S. Customs Service

The U.S. Customs Service, due largely to its unique position as the first line of defense at our nation's borders, has long enjoyed a reputation for assistance and cooperation with other law enforcement agencies. Violations of the numerous laws enforced by Customs often involve parallel or tangential violations of those statutes enforced by other Federal, state and local law enforcement agencies as well as foreign governments.

The U.S. Customs Service has assumed a significant role in narcotics and financial investigative task forces. The ongoing South Florida Task Force (Operation Florida) has resulted in many instances of cooperation and coordination between the Federal Government and local/state agencies. The presence of such a Federal force is a valuable asset

to local law enforcement agencies in that it is a source of equipment and expertise which might otherwise be unavailable at the local level.

A specific example would be the undercover operation involving the vessel sailing to Colombia for the purpose of obtaining a load of marijuana. This case was initiated by the Ft. Lauderdale Police Department and consisted of undercover officers being approached by a narcotics organization to transport a load of marijuana from Colombia to the United States. After several undercover meetings with the co-conspirators, it was the intention of the department to indict on a cold conspiracy. The situation was then brought to the attention of the task force and arrangements were made to provide a boat, tracking equipment, and undercover federal agents, all of which made the actual trip to Colombia possible. The assistance provided by the task force produced more indictments and resulted in a stronger case than would have existed had the police department not requested the Federal participation.

In another area of substantial expertise, financial investigations involving provisions of the Bank Secrecy Act, Customs is utilizing the multi-agency task force approach in targetting the cash flow of major narcotics trafficking and organized crime organizations. In keeping with the

intent of Congress in enacting the Bank Secrecy Act, Customs has designated the investigation of felony currency violations as a national priority. Our enforcement strategy includes imprisoning the principle violator, seizure and forfeiture of their assets, and prevention of their use of legitimate channels to launder the proceeds of illicit activities.

Financial investigations influence a large segment of the United States and overseas financial, criminal and law enforcement communities. To successfully enhance law enforcement's ability to neutralize organized criminal activity, interagency cooperation at all levels of government is essential. Code named El Dorado, these task forces draw upon the expertise, resources, and intelligence-gathering capabilities of various Federal, state and local law enforcement agencies. In support of this effort, Customs established the Treasury Financial Law Enforcement Center (TFLEC) to facilitate both drug and non-drug case development for violations having the greatest potential for prosecution. TFLEC is an important financial crimes intelligence center serving the entire law enforcement community. It utilizes the specialized talents of criminal investigators, intelligence research specialists, and automated data processing specialists, combined with sophisticated

electronic equipment, to collect, collate and analyze financial data generated by the Bank Secrecy Act reports to target suspected criminal organizations involved in large-scale currency transactions. TFLEC personnel also provide flow charting, link analysis, and on-site consultancy capabilities. Neither TFLEC nor El Dorado are merely Customs programs. Both are dependent upon interaction, cooperation, and participation of other agencies. The success of both entities requires, to a large extent, the interaction and participation by law enforcement at all levels of government.

Utilization of TFLEC information, combined with the diverse talents of investigators from different law enforcement agencies, is proving to be one of the most innovative and successful concepts in law enforcement in recent years. As a result, Customs is fully committed to encouraging increased cooperation between all facets of the law enforcement community. In support of this objective, Customs has actively pursued a program of briefings and training on all financial investigations, Bank Secrecy Act requirements, and TFLEC capabilities. This program, conducted at both Headquarters and field element levels, has been presented to numerous Federal, state and local law enforcement agencies. Such a program was recently presented to representatives of the New York Police Department. Based on.

requests for information from numerous local and state law enforcement agencies nationwide, TFLEC support has been provided to assist those agencies in ongoing criminal investigations. Local and state police officers are also active participants in the El Dorado task force operations in New York, Los Angeles and Miami.

U.S. Customs has also headed and participated in many task forces with state and local police investigating violations in the areas of cargo theft, auto theft, and stolen art. For example, pursuant to our goals in Operation Exodus, the U.S. Customs Service is participating with the Santa Clara County Sheriff's office in investigating thefts of critical technology hardware and data from firms operating in the Silicon Valley area of California. This coordinated effort is aimed at stemming the flow of illegal exports to Communist Bloc nations.

Recently, U.S. Customs was requested by the Executive Director, of the Justice/Treasury, State and Local Law Enforcement Training Program, to develop and present a course for state and local police in cargo theft. The school is projected to run 1 - 2 weeks, approximately 3 - 4 times a year at Glynco, Georgia. In addition to this formalized training, U.S. Customs agents routinely lecture at classes for local police departments. For example, the Office of the Special Agent in Charge, Philadelphia, trains state and

local police at Harrisburg, Pennsylvania, and Sea Girt, New Jersey, in Customs matters such as, the usefulness of Treasury Enforcement Communications System (TECS) to their investigations, narcotics identification and currency laws.

On a nationwide basis, Customs personnel are in daily contact with local and state law enforcement agencies obtaining, as well as providing investigative and intelligence support to investigations of mutual interest. It is only through this cooperation that we can hope to be successful in our efforts to neutralize the operations of international and domestic criminal organizations.

Bureau of Alcohol, Tobacco and Firearms

The Bureau of Alcohol, Tobacco and Firearms has enjoyed the reputation as a close ally and working partner with state and local law enforcement officers since the inception of the agency. This relationship is founded on mutual respect for each other's expertise, and the fact that ATF agents enter into law enforcement initiatives with their state and local counterparts as full partners.

The joint efforts of ATF and their associates in state and local agencies has resulted in the formation of many innovative projects that have directly supported these agencies in their fight against violent crime. These projects include the sharing of information and the joining

of resources at the street level, through "state-of-the-art" training programs which produce an enforcement officer that is far superior to his predecessors. I would like to now discuss several of these projects to further demonstrate this cooperative effort.

ATF is the principal Federal agency with statutory jurisdiction over arson crimes - but unfortunately there are a lot more arsons committed than ATF has the resources to investigate.

ATF's arson program provides for investigative assistance to state and local authorities experiencing a significant arson problem, particularly where the nature or magnitude of the problem exceeds their jurisdiction or resources. ATF has promoted and applied the task force approach to attack complex arson crimes occurring in major metropolitan areas.

Another viable team concept developed by ATF involves the National Response Team. These highly trained cadres of experienced arson investigators are located in four key areas of the country. These teams are able to mobilize immediately and move to any location in the country within 24 hours to assist in major arson incidents. Because of their phenomenal clearance rate (over 60%) these teams have been commended by state and local law enforcement bodies, by major insurance companies, and by the Attorney General's

office for the vigor and selflessness with which they pursue arsonists. This National Response team is the only concept of its kind by a Federal law enforcement agency.

Perhaps the most widely utilized and successful of ATF's services to state and local law enforcement is its National Firearms Tracing Center. Since its inception, the tracing center has accurately and quickly traced tens of thousands of firearms for other law enforcement agencies, with a very significant percentage of those traces providing information vital to the apprehension of crime suspects. Within the last three months alone, ATF traces have led directly to the arrest of two suspected murderers.

ATF traces in recent years have resulted in a better than 60 percent ratio of success in providing assistance in the solution of crimes and successful prosecutions. In the Presidential assassination attempt of 1981, an ATF trace taking only 16 minutes provided critical information to the United States Secret Service as they worked at crisis pace to determine the scope of the attack, and the potential for "follow-up" assaults.

Mr. Chairman, although we've discussed the South Florida Task Force before, I would be remiss if I didn't touch upon it briefly here. The unsung heroes of the drive against narcotics traffickers of Southern Florida may well prove to

be the agents and inspectors of the Bureau of Alcohol, Tobacco and Firearms. Working with little publicity and restricted resources, the 45 agents assigned to the task force have made over 200 felony cases in just 17 weeks of operation. Concentrating their efforts on the suppliers of the small caliber handguns and easily concealable machine guns which are the weapons of preference among these dealers in death and corruption, ATF agents risk their lives every time they hit the streets.

Even as I was preparing this testimony, on December 2, 1982, I learned that one ATF undercover agent had been killed and another wounded during the course of an investigation in South Florida.

The joint efforts of these agents with state and local officers, as well as with DEA, Customs and the FBI have drawn very high praise from local police administrators, including the Miami Chief of Police, and Dade County police officials. The President, reacting to the shooting of the ATF agents, has praised the dedication and heroism of all ATF members of the Task Force.

Historically, ATF has been involved in the development of training programs for state and local officers. Some of the subjects covered by these programs were firearms, organized crime, cigarette smuggling, arson, explosive

investigations and hazardous devices. Experts in the field concluded that there was a need for a comprehensive advanced course for the post explosives incident investigator, conducted in an environment that would permit a blend of classroom and actual hands-on training experience. It was envisioned that this training would complement the efforts of the Redstone Arsenal Hazardous Device School and other programs.

State and local police officers are usually the first to arrive at the scene of a bombing, and it is essential for successful investigation and prosecution that they have the proper training for these highly complicated investigations. Nationwide the arrest and conviction rate in explosives/incendiary crimes has been unacceptable and we feel will be improved through these efforts.

At the conclusion of 1981, discussions of the foregoing issues by staff members of the Department of the Treasury and the Department of Justice resulted in a decision by BATF to develop and implement such a course.

The development was done at a workshop/seminar conducted at the FLETC, Glynco, Georgia, involving experts selected by the International Association of Bomb Technicians and Investigators and the Bureau of Alcohol, Tobacco and Firearms.

The goal in the course development was to produce a product which would enhance the skills of state and local investigators having the legal responsibility for explosive/incendiary incident investigations.

This development process came on line at the same time as the formation of the pilot courses under the Justice-Treasury, State and Local Training Program at FLETC. It was decided to incorporate this ATF course into this new program. Indeed the development of this course was so successful that it is being used as a model for the development of other highly specialized courses for the Justice-Treasury, Program.

ATF has since added two other courses under the Justice-Treasury, State and Local Training Program. The first is Undercover Investigative Techniques, which was developed cooperatively with DEA, Secret Service, FBI and the New York Police Department and other state and local offices. The second, Advanced Arson for Profit, was a joint effort on the part of ATF and the International Association of Arson Investigators, the International Association of Chiefs of Police, and the Federal Emergency Management Agency with assistance from the insurance industry and state officers.

All three of the foregoing programs, Advanced Explosives, Advanced Arson for Profit, and Undercover Techniques,

are recognized throughout the law enforcement community as "state-of-the-art" and are consistent with ATF's mission of assisting and supporting states and municipalities to combat violent crime in the most effective manner possible.

In addition to the foregoing, it should be noted that all of our Treasury enforcement bureaus have representation on the U.S. Attorney's Law Enforcement Coordinating Committee. This program was initiated by the Attorney General to formally coordinate Federal, state and local enforcement priorities and activities. Likewise, all of our enforcement bureaus are represented on the Department of Justice's Organized Crime and Racketeering Task Forces around the country. These task forces have both state and local enforcement representatives. We also anticipate that the Customs Service and ATF will participate in the Presidential Task Forces which will be established in the near future. One of the goals of these task forces is to cooperate fully with state and local enforcement agencies.

Mr. Chairman, I believe that the information which I have provided sets forth a good record of cooperative efforts with state and local law enforcement on the part of Treasury's law enforcement bureaus. We want our bureaus to work to improve their already excellent cooperative efforts. Both we and the enforcement bureaus know that they cannot do their job effectively without cooperation from other Federal bureaus and from state and local law enforcement agencies. Thank you very much. I am now ready to answer any questions which you may have.

Mr. ENGLISH. Could you expand a little bit on Treasury's role in the incident that took place yesterday?

Mr. POWIS. As I understand it, ATF responded with a bomb-response vehicle. They had explosive technicians on the scene. They established a presence in the command post, and they provided some technical equipment which was used.

In addition, the first two officers to respond to the overturned van were a police officer and an ATF special agent who observed a transmitter, and the ATF special agent was able to get into the cab, get the free arm of the man in the cab, and handcuff the free arm to the steering wheel so that he would not be able to reach the transmitter. That, I understand, was their participative role.

Mr. ENGLISH. Good. Thank you very much.

I know that you included in your testimony an awful lot of incidents and situations where the Treasury Department agencies have cooperated with local law enforcement. I want to look in another direction now.

Could you describe to me some of the barriers that exist in exchange of information between Federal and local law enforcement agencies?

Mr. POWIS. Some of the barriers deal with, for instance, the Freedom of Information Act. I think that has proven to be somewhat of a barrier because in some cases local police agencies have realized that when they give information to a Federal enforcement agency and provide it and provide an informant source that there is a possibility that somewhere down the road that that information may be discovered by an FOIA request. That has had somewhat of a chilling effect on certain intelligence information over a period of time.

Mr. ENGLISH. May I stop you right there?

Do those local law enforcement officials recognize that that is excluded from the FOI Act under the provisions of the act?

Mr. POWIS. I don't think it is always excluded. I think that sometimes you can get a report, and you can determine through the deleted portions of the report what is going on and perhaps who an informant is, even though the informant is not identified.

Mr. ENGLISH. I tell you that I have heard that. We have had a number of agencies that have told us that. I have challenged each and every one of them to put that theory to the test. I have not had one take me up on it yet. I guess I am going to ask Treasury right now if you would like to test that out.

If you can prove that that is the case and if you can show evidence that that will take place, then I will be happy, as chairman of the subcommittee having jurisdiction over the FOI Act, to take a hard look to see if we can't adjust it.

In fact, I told the Director of the FBI and the Director of the CIA that I would be happy to pit the two of them against each other, and we can then find out if they can figure that kind of a theory out by using the Freedom of Information Act.

As I have said, nobody has accepted my challenge yet. Nobody has given me any specific examples where that has taken place. They say that the FOI Act is having a vague chilling effect or some other vague type of impact.

What I think is taking place and the thing that disturbs me a great deal is that I think we have a bunch of bureaucrats who don't want to fool with the Freedom of Information Act and don't want to mess with it. By running out these types of horror stories about something supposedly happening and coming back with stories about a chilling effect, I think they are chilling their own information.

I think the CIA has chilled its own information by putting these stories out to foreign governments. I think the FBI has chilled its own sources by putting out that type of story. I think you are doing the same thing. I think you are doing it again this morning.

The challenge is open. If you want to take us up then we will see if we can't arrange the test; and we will find out if you can piece together information from deleted documents and identify informants. We will go from there.

I think you are doing a disservice to yourselves, and I think you are doing a disservice to the American people in putting forth that kind of a statement unless you have the evidence to back it up.

Mr. POWIS. Mr. Chairman, we have a disagreement. It is very difficult to come up with concrete evidence to prove something that didn't happen. It is a very difficult thing to do.

Mr. ENGLISH. But, we are talking about something that has happened, though, or that is going to happen.

If it hadn't happened, then obviously it is not a problem, is it?

Mr. POWIS. But it is very difficult to prove a situation where an outfit doesn't get information that it might not know was coming to it. I personally think that in the intelligence area that there are many police agencies, particularly dealing with intelligence—and I go back to a period of service with the Secret Service—where they are reluctant to come forward with information that would have been readily available some years ago.

It is difficult to prove that.

Mr. ENGLISH. Let me tell you about another little study that was done. I understand it was done back in 1979 by the Director of the FBI, Mr. Webster.

He put out an inquiry, a questionnaire to his offices about the impact that the Freedom of Information Act was having on their sources of information.

Do you know what the result was?

Mr. POWIS. No, sir, I don't.

Mr. ENGLISH. Hardly any.

Mr. POWIS. I would be happy—

Mr. ENGLISH. Maybe you ought to get together with Mr. Webster, and maybe he will pull that thing out of the safe and let you take a look at it.

Mr. POWIS. All right. I would be happy—

Mr. ENGLISH. As I said, I have heard this ever since I became chairman of this subcommittee. Quite frankly, when I first came on this subcommittee, I was extremely disturbed when I heard about that because I don't want that sort of thing happening.

But the more I have looked into it, the more people we have talked to, and the more we have put out that challenge without takers, the more skeptical I have become. Quite frankly, I will chal-

One of the big problems is those persons outside of law enforcement. They have no concept of the kind of a problem we have, either the extent of it or the seriousness of it. As an example, I would point out a program that was on public television in Oklahoma 2 or 3 weeks ago. It was about a 2½-hour program called Epidemic. It talked about the drug problem in the United States.

That program pointed out that 1 out of every 10 high school seniors in the United States is smoking pot on a regular basis. Something like one out of every—well, without going into more statistics let me say this. The second thing this program pointed out was the fact that alcohol is the biggest killer of young people in the United States. I, as a seasoned prosecutor, was unaware of that.

I knew it was a problem. I did not know how great it was.

There was a great public shock and reaction to that program. No one really perceives the problem, the threat, that this country is facing right now, primarily from drugs.

One of the big problems is that not only do the people in general not know, but the Governors and mayors really don't have any idea what the problem is. Yet, they control the law enforcement resources in their communities.

I see the need for some type of a Federal program to educate Governors and mayors and ruling bodies on the kind of a problem we have so that they can set up priorities and properly allocate the resources that are under their control.

I was very interested this morning. As much as any prosecutor in the country, I try to keep aware of what is going on in the Federal Government. But I was amazed to find out that many of the programs make available so much training. It doesn't do a bit of good to have all of these programs unless they make the local and State officials aware of the fact that this training is available. I dare say that when the chief from Arkansas comes up here, he will tell you the same thing—he had no idea that a lot of these programs even existed. They are there, but we don't know about them. They are of no value to us unless we do know.

Congressman Kindness spoke of the past of LEAA. I know a lot about LEAA. I worked for it for a long time. I will grant you that it had its problems. However, the greatest service that LEAA provided—and one that is desperately needed now—is that it provided a mechanism to share information about good programs all over the United States and called national conferences to search for solutions to major problems.

As an example of that, I would talk first about drugs in schools. As I mentioned before, 1 out of every 10 seniors are smoking pot. Oklahoma is no different from any other State. We have narcotics in our elementary schools and in our mid-highs and in our high schools. It has become a very serious problem. It permeates all of society.

I flew in here a couple of days ago with a gentleman who made the remark that he was one of the lucky ones because drugs had not personally affected his family. I replied, "Yes, sir, you are because you are a rare person." There are very few people in the United States, if you speak especially of the extended family, who have not had problems from narcotics.

We have no solutions in Oklahoma. We have problems of ignorance. We have school administrators who don't want to talk about the drug problems in their schools because it reflects upon their abilities as administrators. I think we need to do something to overcome that kind of ignorance because that kind of ignorance is just proliferating the problem and making it worse.

I would like to see the Federal Government call a conference, a national conference—first of all, I would like to see someone do a little research to see if there is a place in the United States where someone has a program that is making some kind of significant strides in reducing drug usage in the schools.

After that study is made, I would like to see a national conference called of educators, prosecutors, and law enforcement types where we could look at those programs and hopefully take them back to our localities and implement those programs.

It is a critical problem. It is getting worse, and I just feel that somewhere in this country we can find a solution to this problem.

I mentioned the training of Governors and mayors. One of the biggest problems we have with organized crime right now is the infiltration of legitimate business. I would doubt that there are very many prosecutors in the United States and even fewer mayors or Governors who would even know what we are talking about when we talk about infiltration of legitimate business by organized crime. Yet, it is a growing problem, and they are the ones who control the resources and who set the priorities as to the investigation.

I think this calls for leadership on the national level to make this kind of information and education available to those of us out in the hinterlands.

One of the things I would like to commend you on, Mr. Chairman, is your efforts to try to get the use of the military resources in combating drugs. Oklahoma is an inland State, and, as you know, we are having drugs flown in on a regular basis, brought in from Mexico and from further south.

We don't have the resources to do it. I thought your suggestion of using AWACS aircraft is tremendous. I don't see any reason why the military cannot, instead of just having practice exercises, be involved in the detection and interception of incoming drugs into this country.

I am aware that by law they should not be involved in the apprehension process, but they could certainly be involved in the monitoring of the incoming aircraft and boats.

I am also aware of the fact that the military has a very sophisticated electronic capability which has never been made available to law enforcement agencies. It could have a dramatic impact on our ability to stop the flow of drugs.

There was mention of prisons. We need help in prison construction. Oklahoma, like every other State in the Union, is having overcrowding of prisons. The result is that you put somebody in prison on a 25-year sentence, and he is out in 3 years. What has happened is that our sentences have become meaningless. The criminals no longer fear prison. If they get caught, the worst thing that could happen to them is no less time than what I had to spend in the military in my youth. So, they don't fear it. We need help from the Federal Government in the area of prison construction.

lenge anybody who comes before this subcommittee, unless they can give me some evidence.

Mr. POWIS. I would like very much to get together with your staff and talk further about this.

Mr. ENGLISH. We would be delighted.

What I was pointing to, besides what you would perceive to be the chill of the Freedom of Information Act, was whether or not you see any other barriers in the way?

Mr. POWIS. I think that we have situations where material that is classified by Federal agencies creates a problem in terms of getting that information down to local enforcement people because they don't have clearance and so forth. I think that sometimes becomes a barrier.

I think there is a barrier coming out of IRS cases, not necessarily exclusive to State and local enforcement, but also somewhat problematical on the Federal level. Certainly there is a barrier because of 6103 and its limiting provisions with respect to the disclosure of information.

I think that, as in any walk of life, sometimes you have personal-ity conflicts which develop and can be a barrier between State and local entities. I don't want to overemphasize that because I think the vast majority of situations have good cooperation. But these are the kinds of things that sometimes can cause a barrier.

Mr. ENGLISH. Mr. Oxley?

Mr. OXLEY. Thank you, Mr. Chairman.

I am curious as far as the Bureau of Alcohol, Tobacco and Firearms is concerned, particularly in regard to the most recent budget hassle that we had. What effect has that had on the availability and the effectiveness of ATF and what do you see in the future as the role of ATF?

Mr. POWIS. There were times during the previous fiscal year 1982 where, because of severe budget restrictions, the ATF almost ground to a halt.

Since that time and late in the fiscal year, there was a substantial supplemental appropriation which helped put them back on their feet. We are operating in the current fiscal year with the current continuing resolution at a House figure of \$145 million. That is enabling them to operate in a pretty effective manner.

I see an organization that has gotten back off the floor and is doing a very effective job in the law enforcement area right now. I think their accomplishments in Florida are fantastic. Of course, that involves a beefed-up task force operation, but it is not just Florida. They are picking up in almost every area of the country. They are producing very well in the area of firearms, in arsons, in explosives cases. I see them doing well, and I think the prospect is that they will continue to do well.

What we are in the process of right now with the current budget is building back the clerical and administrative support which was lost during the last year. We see that as the first thing to be done so that we don't have agents typing their own reports.

We see them coming back very strongly.

Mr. OXLEY. You think the worst is over, as far as the efforts of some groups and some individuals here in the Congress to restrict, if not eliminate, ATF; is that right?

Mr. POWIS. Well, I think so. The administration had a proposal in terms of merging ATF. We have restrictive language from both of our subcommittees in the House and the Senate. Nothing will be done in terms of the mandate that is in that language. So we see a period where we are going to be building ATF back up. We also see them producing quite well. It appears, in terms of the kind of budget that we are operating with this year, that they will be able to do that job. They are not facing RIF's and they are not facing furloughs in the current year.

Mr. OXLEY. I thank you.

Mr. ENGLISH. Thank you, Mr. Oxley.

I sure don't want to end on a negative note because I do want to commend the Treasury Department. In the questionnaires that we have received, I think the Department of the Treasury probably scored higher than any other department in town. You are to be commended on that. Evidently, local prosecutors, as well as State and local law enforcement, do feel that you have a higher degree of cooperation. So, you are certainly to be commended on that.

Mr. POWIS. I thank you, Mr. Chairman.

Mr. ENGLISH. Thank you for coming before us.

Our next witness today is one who will give us the viewpoint of the local prosecutor. He is Mr. Robert Macy who is the district attorney of Oklahoma County in Oklahoma City, Okla. He comes from a fine State.

**STATEMENT OF ROBERT MACY, DISTRICT ATTORNEY,
OKLAHOMA COUNTY, OKLAHOMA CITY, OKLA.**

Mr. MACY. Thank you, Mr. Chairman.

I did not bring a prepared text. I am no longer with the Federal Government and don't have that kind of staff support. [Laughter]

However, I would like to make a few remarks and would be happy to respond to questions. I sincerely appreciate the opportunity to be here this morning because I see an effort being made and an opportunity is there to make great strides in combating crime in the United States.

We have had commissions forever, starting many, many years ago with the Wickersham Commission and then the Katzenbach Commission and then the Standards and Goals and President Reagan's latest commission. Having had some involvement with that, we have talked the war on crime for many, many years. We have never, in my opinion, implemented one. I have come here this morning seeking your assistance in trying to actually implement a war on crime.

I have listened to the two previous witnesses. I would commend President Reagan on his appointment of Lowell Jensen who is a seasoned prosecutor and who I think is doing an excellent job with the Department of Justice.

They have detailed great things that they are trying to accomplish in these departments. I think I would point out to you, sir, the fact that the biggest problem is probably ignorance or lack of communication between the Federal Government and the State and local agencies.

One of the big problems is those persons outside of law enforcement. They have no concept of the kind of a problem we have, either the extent of it or the seriousness of it. As an example, I would point out a program that was on public television in Oklahoma 2 or 3 weeks ago. It was about a 2½-hour program called Epidemic. It talked about the drug problem in the United States.

That program pointed out that 1 out of every 10 high school seniors in the United States is smoking pot on a regular basis. Something like one out of every—well, without going into more statistics let me say this. The second thing this program pointed out was the fact that alcohol is the biggest killer of young people in the United States. I, as a seasoned prosecutor, was unaware of that.

I knew it was a problem. I did not know how great it was.

There was a great public shock and reaction to that program. No one really perceives the problem, the threat, that this country is facing right now, primarily from drugs.

One of the big problems is that not only do the people in general not know, but the Governors and mayors really don't have any idea what the problem is. Yet, they control the law enforcement resources in their communities.

I see the need for some type of a Federal program to educate Governors and mayors and ruling bodies on the kind of a problem we have so that they can set up priorities and properly allocate the resources that are under their control.

I was very interested this morning. As much as any prosecutor in the country, I try to keep aware of what is going on in the Federal Government. But I was amazed to find out that many of the programs make available so much training. It doesn't do a bit of good to have all of these programs unless they make the local and State officials aware of the fact that this training is available. I dare say that when the chief from Arkansas comes up here, he will tell you the same thing—he had no idea that a lot of these programs even existed. They are there, but we don't know about them. They are of no value to us unless we do know.

Congressman Kindness spoke of the past of LEAA. I know a lot about LEAA. I worked for it for a long time. I will grant you that it had its problems. However, the greatest service that LEAA provided—and one that is desperately needed now—is that it provided a mechanism to share information about good programs all over the United States and called national conferences to search for solutions to major problems.

As an example of that, I would talk first about drugs in schools. As I mentioned before, 1 out of every 10 seniors are smoking pot. Oklahoma is no different from any other State. We have narcotics in our elementary schools and in our mid-highs and in our high schools. It has become a very serious problem. It permeates all of society.

I flew in here a couple of days ago with a gentleman who made the remark that he was one of the lucky ones because drugs had not personally affected his family. I replied, "Yes, sir, you are because you are a rare person." There are very few people in the United States, if you speak especially of the extended family, who have not had problems from narcotics.

We have no solutions in Oklahoma. We have problems of ignorance. We have school administrators who don't want to talk about the drug problems in their schools because it reflects upon their abilities as administrators. I think we need to do something to overcome that kind of ignorance because that kind of ignorance is just proliferating the problem and making it worse.

I would like to see the Federal Government call a conference, a national conference—first of all, I would like to see someone do a little research to see if there is a place in the United States where someone has a program that is making some kind of significant strides in reducing drug usage in the schools.

After that study is made, I would like to see a national conference called of educators, prosecutors, and law enforcement types where we could look at those programs and hopefully take them back to our localities and implement those programs.

It is a critical problem. It is getting worse, and I just feel that somewhere in this country we can find a solution to this problem.

I mentioned the training of Governors and mayors. One of the biggest problems we have with organized crime right now is the infiltration of legitimate business. I would doubt that there are very many prosecutors in the United States and even fewer mayors or Governors who would even know what we are talking about when we talk about infiltration of legitimate business by organized crime. Yet, it is a growing problem, and they are the ones who control the resources and who set the priorities as to the investigation.

I think this calls for leadership on the national level to make this kind of information and education available to those of us out in the hinterlands.

One of the things I would like to commend you on, Mr. Chairman, is your efforts to try to get the use of the military resources in combating drugs. Oklahoma is an inland State, and, as you know, we are having drugs flown in on a regular basis, brought in from Mexico and from further south.

We don't have the resources to do it. I thought your suggestion of using AWACS aircraft is tremendous. I don't see any reason why the military cannot, instead of just having practice exercises, be involved in the detection and interception of incoming drugs into this country.

I am aware that by law they should not be involved in the apprehension process, but they could certainly be involved in the monitoring of the incoming aircraft and boats.

I am also aware of the fact that the military has a very sophisticated electronic capability which has never been made available to law enforcement agencies. It could have a dramatic impact on our ability to stop the flow of drugs.

There was mention of prisons. We need help in prison construction. Oklahoma, like every other State in the Union, is having overcrowding of prisons. The result is that you put somebody in prison on a 2 year sentence, and he is out in 3 years. What has happened is that our sentences have become meaningless. The criminals no longer fear prison. If they get caught, the worst thing that could happen to them is no less time than what I had to spend in the military in my youth. So, they don't fear it. We need help from the Federal Government in the area of prison construction.

Here again is an area where this idea of information sharing comes in. I am trying to develop some alternatives to incarceration, but on the other hand I don't want to turn somebody loose to continue his criminal activity. I am sure that around the country there are some viable alternatives, some things that I will not think of but that someone else has tried and is available. If I had the knowledge of it, I would try to implement it in my town.

I furnish 40 percent of the criminals in the Oklahoma correctional system. If I could come up with a better system in my county, I could dramatically impact upon the overcrowding in the prison system.

I have 40 assistant prosecutors. I have a very busy workload. I don't have time to personally go out and seek out these programs, but I would certainly like to know about them.

I was at the FBI yesterday when we had our little occurrence down on the Monument grounds. There were two things about it. No. 1, I was there close to the command center and had an opportunity to observe personally the type of knowledge and resources they had available to them, to the point of finding out where the man had attempted to get his explosives in the past and finding out what his background was and what training he had had in explosives, and so on.

I doubt that very few law enforcement agencies or leaders across the country have any idea that they have that capability.

The reason I was there was because we are having an organized crime problem in Oklahoma. I see an effort by two different mobs to move into my State. I was there to try to get educated in the area of organized crime.

While there, I was introduced to the Organized Crime Information System. It is magnificent. I presented them three names of people who I know are involved in my State. Within a matter of seconds they had given me a complete printout on these people, all their aliases, their addresses, what kind of cars they drove, what the tag numbers were, whom they associated with, what places they frequented.

I had no idea this resource was available, and yet it is available. They have a terminal in virtually every major field office in the United States. This is a tremendous resource. They would share it. The only problem is that we didn't know it was there. So, again, these resources mean nothing to us unless somebody tells about it.

A few years ago when Clarence Kelley was in charge of the FBI, they set up a thing they called crime resistance programs which were the same as our crime prevention programs on the local level. We ran them in competition instead of in coordination. Again, that is something else we need to forget about—competing on the various levels and instead run a totally coordinated effort.

We have these LECC's. I have attended two meetings, and I have to attend another one tomorrow morning when I get back. I see tremendous potential, but if these things are not structured right and are not supervised, then they may end up just being a meaningless exercise.

I want to comment about what Lowell Jensen said this morning. I had not seen or heard that in my local LECC.

Again, how you do something is more important than what you do. What we have here is this. I sit in my office and I get a letter from the U.S. attorney saying that they have decided that they are going to set up these councils. It is "we, we, we." It is the same old thing. We don't, at the local level, really like the Federal Government to come down and tell us how to do things. We resist it. There is a built-in resistance over the years.

I would suggest that maybe one of the first things that you might do is to have the FBI come in and put on some local training for prosecutors and law enforcement officers in drug traffic. They are now having to move into that area. That would be one way for them to give us something. The complaint you will hear from local prosecutors and local police officers is that it is all "give, give, give." They say that all the FBI and the Federal Government does is take and don't give anything back.

I would suggest that one way to start these things out might be for them to give a little bit. Call a meeting and have them share with us some of their information and some of their training and some of their knowledge so that we don't come away with this perception of Big Brother telling us how to run our business.

I am lucky in Oklahoma County in that we do right now have an excellent working relationship with most of the Federal agencies, but the only reason it happened is because we had a prosecution that was initiated in my office about a year ago. It included the State bureau of narcotics and then was expanded to include the FBI and the U.S. attorney's office. For over a year we have been working very closely on this case and have learned to trust and share and cooperate with each other. So, in my county, at least, we have an excellent working relationship.

Congressman Weiss mentioned that nothing has worked. I might just comment on that. There have not been the resources made available that it might appear. We have had a lot of talk but not a whole lot more than talk.

During all of this time, we have had a lot of things that have happened. I am hopeful that we have finally mounted another attack on the exclusionary rule. It is so critical in narcotics investigations. I have one attorney assigned to constantly monitor court decisions because what is a legal search today is not a legal search tomorrow.

The requirements for search warrants change on a case-by-case basis. I think there was a commentary on television on "20/20" or "60 Minutes" where a veteran narcotics agent said that when they go into court the issue is not whether the defendant is guilty but whether the police officer conducted himself properly. I think that it is ridiculous to turn guilty people loose because the police inadvertently failed to cross a "t" or to dot an "i".

I had a critical search warrant thrown out because an extra digit was added to the address. Instead of 319 it ended up being 1319. There was an affidavit that had a picture of the building to be searched attached to it. That was suppressed for the technical error. The findings were thrown out, and several guilty people walked.

I think that the exclusionary rule has to be modified with a good-faith exception. If the police officer deliberately goes out and vio-

lates somebody's rights, then something should be done about it. But, on the other hand, if it is merely a technical error, then I think the evidence should be admitted. If you want to require further training or discipline for the officer, then that is something else.

Right now, we are in worse shape than we have ever been in the prison system. I can give an armed robber 25 years and he will be back on the streets of Oklahoma County in 3 years because the prisons are so crowded. It is like a dog chasing his tail—the shorter the sentences get, the more people commit crimes, and the more I put in the penitentiary, and the shorter the sentences get. Pretty soon, they are not going to keep them at all.

In response to Congressman Weiss' point, the ignoring of the problems of drugs in schools and in businesses has to be addressed.

Another area that is probably not the concern of this committee is this. Mr. English, we are having the National Finals Rodeo in Oklahoma City. You need to come home to see that. I was down there the other night. One of the things that dismayed me was this. I walked in and, working extra duty as a security officer was one of the finest homicide detectives in Oklahoma City. We don't pay our police officers well enough that they can feed, clothe, and educate their families on their income. They have to work extra jobs. You can't expect them to perform—as I say, that is outside your province but that is one of the reasons why we are not being effective in combating crime. You cannot pay those men meager wages and expect them to go out and do the job they have to do. They can't work 8 hours on another job and still do their own job.

That pretty well covers my remarks. Again I want to commend you for the work you have done and the interest you have shown. I am not interested in any more reports and investigations or commissions. I think it is time we quit talking and started doing something about crime.

Thank you.

Mr. ENGLISH. Thank you very much, Bob. I appreciate your testimony.

Your testimony gives us a little different viewpoint from what we heard earlier. In reading between the lines of what you are saying, it sounds like we still don't have the coordination and cooperation between Federal law enforcement agencies and the local and State law enforcement officials, both prosecutors and police, that Mr. Jensen and Mr. Powis like to think that we have. I am sure that that has been the direction coming out of their offices and what we are supposed to have. Somewhere down the line, evidently, some people are not getting the word, and you are not getting that linkage that is going to be necessary to be successful.

Is that an accurate assessment?

Mr. MACY. I think it is.

For instance, you are talking about cases going through the cracks. I have never had a case referred to me by the U.S. attorney's office. I am hopeful that with this new LECC—and ours only started 3 months ago—that we will address that problem. Prior to that time, the only cases that I handled that were investigated by the FBI were cases that the U.S. attorney had declined, and the

victim came to me saying he had been ripped off and wanted me to help him. But they were not brought to me by a Federal agency.

The statistics speak for themselves. When you have a 40-percent reduction in the number of cases handled by the U.S. attorneys, then they are turning down a bunch of cases, and they are going somewhere, and they did not come to my office.

Mr. ENGLISH. Have you ever had joint prosecutions with U.S. attorneys?

Mr. MACY. We are working on one now. I am supposed to be cross-designated as an assistant U.S. attorney to help prosecute the investigation we are working on at this time.

Mr. ENGLISH. Is this the first one?

Mr. MACY. This will be the first one in the history of the county.

Mr. ENGLISH. I think Mr. Jensen was talking about a bunch of their U.S. attorneys who could go into State court and prosecute and assist. Have we ever had that situation in Oklahoma that you know of?

Mr. MACY. We have not had it. I am hoping maybe we can do it. One of the interesting things is this. As an offhand remark, one of the problems I have with the U.S. attorney is that he can pay much better salaries than I can. Half of his staff are my former prosecutors. Hopefully, I can get some of them back to help me prosecute some of our joint cases.

Mr. ENGLISH. Do you have a free flow of information, exchange of information between, let's say, the U.S. attorney's office and your office?

Mr. MACY. I don't really know how to answer that. We don't have as open a sharing because of the fact that we don't get together. We started setting up the LECC, but before that time we would talk on an individual basis. But I think there needs to be a mechanism, maybe apart from LECC. It might be a good idea for the Federal and State prosecutors to meet just as prosecutors on a regular basis to discuss the cases, problems, and priorities. I am going to try to implement that.

Mr. ENGLISH. You heard Mr. Jensen agree with me that the south Florida task force has demonstrated the fact, at least in a given area, that we can come very close to shutting down the drug traffickers and the drugs moving in. The effort now is to try to apply the lessons learned there on a nationwide basis.

If the Federal Government does move with an effort as vigorous and as successful as the President and the Justice Department say it has been in south Florida, do you think that the crime problem itself becomes much more manageable as far as Oklahoma and Oklahoma City is concerned?

Mr. MACY. I think so. Mr. Jensen's figures may have been applicable nationally, although I don't really know. He talked about 59 percent. I have used the figure 70 percent in talking about the amount of crimes in Oklahoma that is drug-related. I think my figures are fairly accurate, if you take into account the violent crime that result from the competition or distribution, and then take into account also all of the burglaries, robberies, and shoplifting that are occasioned by people who have the habit and have to pay for it.

So, if there would be some way we could reduce the amount of drugs, it would have to have a dramatic impact.

I think we are covered by the task force out of St. Louis. Although we are getting some of our stuff from Kansas City, an awful lot of ours is coming from the South and the Southwest. I hope there is going to be some kind of effort on the Mexican border. As you know, in Oklahoma we have many, many hundreds of small airports where they can land a plane at any time. They are very hard to monitor. Again, I think this is where the AWACS and some of these things really play a vital role in stopping the flow of drugs into Oklahoma.

Mr. ENGLISH. Has there been any discussion among Oklahoma prosecutors or, to your knowledge, among Oklahoma law enforcement officials with regard to the role that the military might play to assist them in this overall effort through posse comitatus?

Mr. MACY. There has not been a very broad-based discussion. There has been a discussion between two or three of us.

Mr. ENGLISH. No information has been supplied by the Federal Government to you as to what assistance you might expect?

Mr. MACY. No. We have not received any of that type information.

Mr. ENGLISH. Do you think that unless an effort such as that in south Florida is applied, let's say, in Oklahoma that we are simply asking too much of our local police?

Mr. MACY. I think so. There is no way the local police can handle this kind of a problem. We don't have the facilities. We don't have the authority or jurisdiction. It has to be done on the national level.

Again, if drugs are 50 percent or 60 percent or 70 percent of the problem, if you intercept the flow of those drugs into your area, then that is going to have a dramatic impact on crime.

As Lowell Jensen said, the corresponding side is the treatment and demand. But if we can cut the supply, then we can have a dramatic impact on crime. In my opinion, only the Federal Government can do that.

Mr. ENGLISH. Mr. Oxley?

Mr. OXLEY. Thank you, Mr. Chairman.

Mr. MACY, you talked about the LECC. I understand you have had a couple of meetings already. I gathered you were not completely happy with the way it was set up.

From your perspective who should take the lead in providing the leadership and the direction for those types of programs?

Mr. MACY. It is almost going to have to be the U.S. attorney. I have some reservations about it. I don't want to step on any toes, but in a lot of instances the U.S. attorney tends to be the person with the least amount of experience in fighting crime. All of your law enforcement people have been at it forever, and many of the local prosecutors have been career prosecutors, whereas the U.S. attorneys change every time the administration does.

However, just by the nature of the setup, I think it is going to have to be the U.S. attorney. He is the one who reports to the Department of Justice.

The impact the problem could be lessened in the way it is handled.

Mr. OXLEY. On the one hand, I appreciate your concern about Big Brother telling you what to do. On the other hand, it seems to me that there has to be some direction in the LECC from the Feds.

Mr. MACY. I agree.

Mr. OXLEY. I gather from your testimony that you believe some Federal guidance is necessary, but that you have to be careful to provide enough input and direction from the local prosecutors and police authorities also. Is that a fair statement?

Mr. MACY. You need to recognize the way things are. The way things are in most police departments is that they feel the FBI is not really willing to share. They have very little contact with the U.S. attorney's office. The FBI, the DEA, the ATF make the cases for the U.S. attorney's office. The only prosecutor's office that State officials deal with is mine. Therefore, over the years there has been some distrust and suspicion and animosity. I think you need to recognize that that is there.

What I tried to say is that it is not so much what we are doing as how we do it. I think it is critical that we get these units together and get them cooperating. To do that, maybe we are going to have to bend over backwards to try to get them in. I think that once we get in there and get to talking and working together, then I think we will be fine.

I have noticed that several of the people who have been invited have not attended. They didn't really feel like it was really necessary for them to attend another meeting. Most of us have very heavy workloads. We don't have time to go to lunch for social purposes.

So, I just think that the U.S. attorneys are going to have to be pretty careful in the way they do it and are going to have to structure it in such a way that the local law enforcement agencies will feel like it is something worthwhile to them, something they need to attend and that they personally are going to benefit from.

Mr. OXLEY. You commented about the inherent distrust and the mixed feelings about the FBI by the local police. One of the things that I have found is that the law requiring the FBI to investigate any suspicions or allegations of police brutality in and of itself provides a certain difficulty in dealing with FBI personnel on a day-to-day basis.

Do you find that to be an inherent problem?

Mr. MACY. It is not a problem in my jurisdiction. The reason it is not is because the main police department there is the Oklahoma Police Department, and they have their own internal affairs department, and they are—I don't know the exact word I want to use—very efficient. Since I have been district attorney, I have prosecuted three police officers.

The point I am making is that the FBI has assisted, but the department itself has taken the lead in misconduct by its own people. The district attorney has been willing to step forward to prosecute them when they are wrong, and, therefore, in my jurisdiction the FBI has not had to play that much of a role.

I did serve with the Indiana State Police for 2 years. At that point, we did have that problem. We had suspicions simply because the FBI did have to and did a good job investigating misconduct.

I don't know how you can alleviate that problem.

Mr. OXLEY. I thank you very much. I thank you very much, Mr. Chairman.

Mr. ENGLISH. Thank you.

Bob, we really do appreciate your appearing before us. Your testimony has been extremely helpful.

I think our time is getting short. What we would like to do at this point is to take the two representatives from New York City as a panel. We have Mr. James Kindler, chief, frauds bureau, office of the district attorney, New York County, N.Y. We also have Mr. Kenneth Conboy, deputy commissioner for legal matters, New York City Police Department. Gentlemen, we welcome you both, and you may proceed.

**STATEMENT OF JAMES KINDLER, CHIEF, FRAUDS BUREAU,
OFFICE OF THE DISTRICT ATTORNEY, NEW YORK COUNTY, N.Y.**

Mr. KINDLER. Mr. Chairman, I thank the subcommittee for this opportunity to address the issue of Federal cooperation with State and local law enforcement.

It seems appropriate to begin by briefly describing the workload and priorities of the New York County district attorney's office. In 1981 our office handled some 35,600 felony cases, 35,200 misdemeanors, and 4,300 violations. These cases represent approximately 40 percent of the arrests made in the city of New York. The great bulk of these cases involve what are commonly known as street crimes—homicides, robberies, assaults, burglaries, and larcenies, crimes which have the most immediate and visible impact on the people who live and work in and visit Manhattan.

Not surprisingly, the prosecution of street crime commands a major portion of our office's resources and the energies of most of its 325 assistant district attorneys.

Since 1975 the district attorney's office has instituted a number of administrative reforms and programs directed at the most serious violent crimes and particularly dangerous classes of offenders. Many of these innovations—the assignment of senior ADA's to screen felony cases, the sex crime prosecution unit, and the career criminal program, just to name a few—were made possible by Federal funding.

These efforts have been effective against serious felony offenders. In 1981 over 7,600 indictments were filed in Manhattan. Two-thirds of the nonnarcotics indictments filed charged defendants with violent felony offenses. Last year more than 2,500 defendants were sentenced in Manhattan to State prison. That is approximately 2½ times the total for the year 1970. More than 1,000 of those sentenced to State prison were predicate felons; 160 defendants were sentenced to life terms.

Obviously, one of the most effective ways for the Federal Government to cooperate with and assist local law enforcement is to support and provide funds for aggressive and innovative programs directed at hardcore criminals.

In addition to street crimes and narcotics crimes, our office investigates and prosecutes a wide variety of white-collar crime, organized criminal activity, and official corruption. There are, at any

one time, approximately 200 cases being actively investigated by the assistants in our investigative bureaus.

The cases made by our frauds and rackets bureaus over the last few years have included, for example, substantial thefts from local antipoverty programs, fraudulent sale of commodities contracts, forged credit card and check schemes which cost metropolitan area banks millions of dollars, corruption among inspectors in the city's housing preservation department, and a wide-ranging theft and fencing ring which operated in Manhattan's garment center.

Our consumer protection and complaint bureau screened over 9,500 citizen complaints in 1981, many of which resulted in criminal prosecution.

Federal support for and cooperation with State and local law enforcement is as essential in cases of white-collar and organized crime as it is with respect to violent crime. This is true in part because sophisticated criminal schemes encountered in this area are seldom confined within local, State, or even international boundaries.

In 1980 our office prosecuted two international arms dealers who sold guns and explosives to terrorists. In order to make the case, which originated in Manhattan, a New York City undercover detective, posing as a Latin American guerrilla, had to fly to London to meet the defendants who were to sell him a quantity of machineguns in New York. The New York City office was able to operate in London only because of the assistance of the London police and the FBI.

Earlier this year, our office charged six persons with the fraudulent sale of coal mining tax shelter investments in a scheme by which New York investors were defrauded of over \$40 million.

The tax shelter programs involved were promoted in New York, the property to be mined was in Kentucky, and much of the money supposedly loaned to investors came from the Bahamas.

This case, which was made with the cooperation of several law enforcement agencies including the Justice Department and the Securities and Exchange Commission, was a part of the Leviticus project, which is a coordinated, multistate investigation by 14 law enforcement agencies into crimes affecting the coal industry.

The Leviticus project is federally funded. It is, I believe, the only current federally funded project in the New York County district attorney's office.

The investigation and prosecution of sophisticated white-collar crimes present not only opportunities for successful cooperation but occasions for conflict between Federal and local prosecutors. Not infrequently, Federal and local agencies find themselves investigating related criminal schemes or even the same criminal scheme. In such instances, lack of reasonable cooperation and coordination can lead not only to needless duplication of effort but also to the complete frustration of an investigation or prosecution.

When case conflicts do arise, local law enforcement agencies often find themselves at a competitive disadvantage. For example, Federal grand jury procedure is more flexible than the New York procedure, which does not permit indictments to be based on hearsay testimony and requires the production of original documentary

evidence. Thus, a case may often be presented more expeditiously to a Federal jury.

Another example concerns the law against double jeopardy. Under New York law a defendant may not be prosecuted for an act or a transaction for which he has been prosecuted in another jurisdiction. A State prosecution is barred even where the crime in question is charged only as an overt act in a broad Federal conspiracy.

Recently our office had an investigation into the fraudulent procurement of marriage certificates from a city agency by illegal aliens. Federal law enforcement agents were interested in the same scheme because the certificates were being used to perpetrate a fraud in the Immigration and Naturalization Service. We did, in fact, work out a satisfactory cooperation arrangement with local Federal prosecutors.

Nevertheless, in this case our investigation was effectively terminated when prosecutors from another Federal office in the metropolitan area arranged for the principal target of our investigation, who was responsible for more than 100 of these fraudulent marriages, to plead guilty to a Federal conspiracy charge which included the procuring of the marriage certificates. This not only aborted our prosecution but nullified some rather extensive investigative efforts by us and prevented us from securing the target's cooperation in prosecuting others.

I don't offer this example in any way to characterize Federal local law enforcement cooperation but really to make the point that where disputes do arise in this area they should not be resolved by the exercise of a procedural advantage or arbitrary action of any kind.

They should be resolved on the basis of reasoned and evenhanded discussions between the Federal and State agencies involved. Due consideration should be given to, among other factors, the Federal and State interests at stake, the initiative, time, and resources already devoted to the case by the agencies involved, and the possession by one or the other agency of critical witnesses, informants, or physical evidence.

Consideration might also be given to whether the potential targets of the investigation can be divided in some way and even, in appropriate cases, the possibility of parallel prosecutions.

I don't wish to list all of the appropriate considerations but rather, simply to point out that there is often a reasonable way to work out potential disagreements.

My experience has been that discussions between our office and Federal law enforcement agencies, at least when they take place at a sufficiently high level regarding important cases, have generally been satisfactory in resolving conflicts. When those conflicts in cases arise at lower levels of authority and involve more routine cases, they are somewhat less satisfactorily resolved.

That concludes my prepared remarks.

Mr. ENGLISH. Thank you very much, Mr. Kindler.

Mr. Conboy?

STATEMENT OF KENNETH CONBOY, DEPUTY COMMISSIONER OF LEGAL MATTERS, NEW YORK CITY POLICE DEPARTMENT, NEW YORK, N.Y.

Mr. CONBOY. Mr. Chairman, I appreciate the opportunity to appear before you to testify on the relationship which exists between Federal enforcement agencies and the New York City Police Department in the period of excessively high levels of crime in New York City and acute resource shortages.

Let me say parenthetically that it is a pleasure to appear at the same table with Jim Kindler who was a colleague of mine for a number of years in the offices of both District Attorney Frank Hogan and of Robert Morgenthau.

It is critical to emphasize the indispensable necessity of effective coordination and cooperation between urban police departments and national crime control agencies. This is especially imperative in the area of terrorism, narcotics and handgun traffic, and violent felony crime control.

In this connection, the New York police have established model joint task force units with the Federal Bureau of Investigation and coordinated, joint programs with the U.S. Secret Service and the U.S. marshals.

Furthermore, the department enjoys excellent data sharing with these agencies and also with the U.S. Customs Service and the Federal postal inspectors.

Finally, we value highly our broad access to the FBI's training facilities and its excellent crime laboratory resources.

I would like to set out in brief detail these relationships and arrangements that currently exist with these Federal law enforcement agencies.

The joint bank robbery task force was formed on September 20, 1979, consisting of 16 members of our department and 14 FBI agents. They work closely in agent detective teams with supervision provided by both agencies. They share equipment, communications, intelligence, and other resources. Office space and clerical and administrative support are supplied by the FBI.

One reason for their extraordinary success is the elimination of the traditional rivalry which exists whenever two separate agencies investigate the same type of crime.

On May 15, 1980, the terrorist task force was formed to investigate terrorist acts in or related to New York City. It consists of 10 New York City police investigators, including 2 supervisors, and 11 FBI agents. As with the bank robbery task force, the FBI provides office space in their building and administrative support.

To permit access to FBI and other Government records, our personnel were designated as special deputy U.S. marshals and subjected to top-secret security clearance and investigations.

The first, formal Federal-local narcotics task force in the country was the New York joint task force, now known as the drug enforcement task force, a triune group composed of the Bureau of Narcotics and Dangerous Drugs, now DEA agents, New York State police, and New York City police investigators.

It was formed on February 2, 1970, to interdict middle- and upper-level narcotics traffickers. The personnel complement con-

sists of 34 DEA agents, 21 State police, and 71 New York City police. It became the model of other narcotic task forces across the Nation.

In addition to these formalized task forces, there have been, and are, several ad hoc task forces for specific purposes and investigations. A joint effort by the U.S. marshals service and the New York police, called FIST [Fugitive Investigations Strike Team], resulted in the arrest of 281 persons, including 97 career criminals wanted by the Federal Government or the city police between April 4, 1982 and June 23, 1982.

An investigation into cargo thefts at John F. Kennedy International Airport, known as Operation Convoy, conducted by this department and U.S. Customs and later the Alcohol, Tobacco and Firearms Agency, resulted in 33 indictments earlier this year on a variety of grand theft and other charges.

Our organized crime homicide task force works closely and almost continuously with Federal strike forces involved in case building under the Rico Statutes. Every Presidential visit, and many visits by foreign dignitaries, are in fact joint operations involving the Secret Service and State Department people and almost every subdivision of our department, including the Patrol Bureau, the Intelligence Division, the Detective Bureau, the Communications Division, support services—highway, and emergency service units.

Other ad hoc investigations or mutual assistance between us and all Federal agencies are too numerous to mention.

In the area of training, the Bureau of Alcohol, Tobacco, and Firearms and the FBI conduct courses on bomb investigations which are attended by personnel on a regular basis from our arson and explosion division. The DEA conducts training courses in narcotics investigation which are routinely attended by our narcotics division personnel. The Secret Service conducts training in personal security for those members of the intelligence division assigned to the protection of Government officials and visiting dignitaries.

The FBI is the undisputed leader among Federal agencies in the training of New York City police officers. In addition to the 11-week FBI National Academy course to which we send 16 people every year, they have countless other programs, both at the academy and at their local facilities in New York City, including advanced latent fingerprint identification for our latent unit, sex crimes investigations, forensic science courses for our laboratory chemists and technicians, computer crimes, white-collar crimes, criminal psychology, including psychological profiling based on crime scenes, the National Executive Institute attended by the first Deputy Commissioner in the latter part of last year, 22 investigators, including 18 from our crime scene unit, who attended a 1-week course in crime scene examination and evidence collection recently at the FBI Academy in Quantico, Va.

Financing is obviously a critical aspect of our relationship, given the character of the crime statistics and the chronic resource shortages that the mayor and the police commissioner are dealing with. These, of course, are notorious, certainly to Members of Congress who have been so sensitive to the needs of New York City in connection with its financial difficulties.

In all of the out-of-city training programs provided to our personnel by the various Federal agencies, room and board are routinely provided, and the scholarship costs of these programs are absorbed by the U.S. Government.

The DEA pays the overtime of our investigators assigned to the drug enforcement task force, and this approached \$100,000 in the current fiscal year.

The FIST operation which I described—the operation that involved pursuit of dangerous and violent fugitives at large in the metropolitan area—resulted in about \$80,000 in overtime for New York City detectives over a period of only 2 months. It is an expensive program.

Approximately \$60,000 of that was reimbursed by the U.S. Marshals Service.

The narcotics division routinely borrows large sums of cash from the DEA for use as flash rolls, a term which basically relates to the need to induce credibility on the part of targets of such investigations. As recently as 2 weeks ago, they provided in excess of \$150,000 for such an operation.

The informant and "buy money" used by the various task forces is supplied by the U.S. Government agency involved, which is a very substantial assistance to the New York City police, in these more complex investigations of narcotics, gun traffic, and terrorism.

With respect to information sharing, classified information on terrorist activities from all FBI field offices is available to our personnel assigned to the terrorist task force by virtue of their top-secret security clearances. Information on security matters, particularly in the area of Presidential or other visiting dignitary matters, is routinely exchanged between our Intelligence Division and the Secret Service and the Department of State.

Narcotics intelligence is routinely exchanged via the unified intelligence division which is affiliated with the drug enforcement task force.

A full-time liaison officer is assigned from our department to the U.S. attorney's office in the eastern district of New York. The FBI keeps a full-time employee as liaison in our identification section. He has direct access to our criminal records for FBI investigations and serves as a conduit by which we can obtain criminal records from their headquarters files for our investigations.

While our own laboratory is one of the best in the Nation, we ask the FBI to perform certain examinations which they can do better. For example, they have a laser device that we do not now have which can obtain latent fingerprints off a number of difficult surfaces, including documents, styrofoam cups, and other substances. Their auto-paint file is superior to our own. By agreement they examine all bonding evidence from cases investigated by the terrorist task force.

The FBI's National Crime Information Center provides an important service in the computerized recording of fugitives, stolen property, and missing persons.

The Bureau of Alcohol, Tobacco and Firearms traces guns recovered by us in important crimes, from the manufacturer down to the last retail outlet.

The FBI Disaster Unit is available to us to assist in on-site identification of large numbers of unknown dead. Fortunately, it has not been needed since June 1975 when an airplane crash at John F. Kennedy Airport resulted in over 100 deaths.

The fingerprints of all unidentified dead which cannot be found in our own or the State files are routinely forwarded to the FBI for search in military and out-of-State criminal records.

Finally on the issue of reciprocity, cooperation between the New York City police and Federal law enforcement agencies is reciprocal. We supply to the joint task force experienced personnel who are familiar with both the topography and diverse demography of New York City. Many Federal agencies draw upon the expertise of the New York City police special fraud squad regarding the identification and appraisal of art objects, antiques, jewelry, and precious metals.

Additionally, the expertise of the fraud squad personnel is used to identify particular con games and supply intelligence information regarding known con operators.

The department conducts criminal investigation courses, homicide investigation courses, and hostage negotiation courses, all of which have been attended by Federal law enforcement personnel. I might just add parenthetically that the New York police hostage and negotiating team is generally recognized as the most effective in the United States and in fact has afforded us the opportunity to reciprocate with the FBI and other Federal agencies, particularly as it relates to possible hostage situations in the diplomatic community. We have really first-rate coordination and cooperation with Federal officials, both from the State Department and the Justice Department in connection with our responsibilities to the largest diplomatic community in the world.

The department conducts criminal investigation courses—well, I have already indicated that.

Security for diplomatic missions is provided exclusively by the New York City Police Department.

Services of the police crime laboratory have been utilized for the prompt analysis of evidence in cases requiring speed by Federal investigators. Similarly, the crime scene unit has provided personnel for crime scene examinations when the Federal agencies were unable to do so.

Mr. Chairman, that concludes my formal statement. If there is some additional time, I would like to just comment on the effect, that is, the negative effect—and what I have just said is a positive statement about our relationships with the U.S. law enforcement agencies—of the termination of Federal funding in a number of areas that have been most essential in the recent past with respect to the improvement of police service in New York City.

The Federal Government, through the LEAA program, was particularly responsive to New York's needs in past years. One of the critical requirements in a period of burgeoning crime is to render more efficient criminal justice operations. The Federal Government was most critical in providing resources over the years for computer technology to attempt to reduce what continues to be a somewhat Balkanized system to a state of coherence. The U.S. Government provided money for what we now refer to as our online book-

ing, or automated booking system. It is a multimillion-dollar program that was provided in significant portion by the LEAA program.

As an example, this has allowed us to process arrests in the city of New York in a most expeditious fashion and allowed us to significantly reduce the cost of overtime associated with tens of thousands of hours of lost police manpower waiting for papers and paperwork in cases to be processed on a manual basis. Prior to the online booking system, a policeman in New York City had to write out the name of the defendant 55 times in preparing the paperwork for the multiplicity of agencies which would, subsequent to the arraignment, address the question of the immediate case.

The online booking system has provided funds for prosecutor's management information systems in New York City. My colleague, Jim Kindler, is certainly familiar with this. This was a program initiated here in Washington, D.C. in the prosecutor's office and was first brought to New York by District Attorney Morgenthau in 1975. We are now on the verge of having a citywide, integrated prosecutor's management information system.

It may surprise you, Mr. Chairman, that we have five separate prosecutors in New York City. Each is an independently elected constitutional officer in the borough of his residence. So the integration of these systems is critical from a strategic point of view to improving crime control and rendering more efficient and more responsive the criminal justice operation in New York.

We also received money through LEAA several years ago for—this was during the administration of Mayor Koch—a violent felony warrant program. There is a very large number of outstanding bench warrants that are issued routinely in New York City, as in every major urban court system in the United States. We have anywhere from 150 to 200,000 such bench warrants outstanding at any one time.

Clearly a responsible police administration must allocate its limited resources to those felons who are manifestly more violent and dangerous and of the career criminal variety. This was very significantly enhanced by LEAA resources in 1978 and 1979 to fund the special unit to do this.

I do want to also mention the broader subject of career criminal prosecution because it is, of course, the centerpiece of most criminal justice discussion today in the United States. There has recently been a nationwide conference held in Baltimore and even more recently than that, the Conference of the New York City Bar Association last month on the subject. Harvard Professor Mark Moore and research specialists of the Rand Corp. have fashioned, after careful studies in California, Michigan, and Texas, a theory that if you could identify X-number of career criminals who were predictably going to commit Y-number of particular types of crimes and incarcerate them for Z-periods of time, then you would strategically, over time, reduce the level of violent crime. At the same time you would ameliorate the admittedly chaotic conditions in our prisons across the country.

The Senate is considering a series of bills. Senator Specter is the author of the one that comes to mind. It would involve the U.S. Government and the Justice Department in career criminal pro-

ecution. It is a very complex piece of legislation. I understand that today's hearing is not to address that bill, but to the extent that the U.S. Government involves itself by establishing Federal jurisdiction in certain career criminal areas this would obviously augment what must ultimately be a local effort. The common law crimes are primarily the responsibility of local prosecutors and police officials. But the suggestion, implicit in the career criminal legislation represented by Senator Specter's bill, and I believe another bill by Senator Biden, is that these are areas that can be very fruitful in terms of a Federal role in the larger questions of rampant crime in American cities.

Finally, I did want to say something about the particular responsibility we have to protect the largest diplomatic community in the world. The New York police freely undertake the routine and extraordinary protection of not only major foreign dignitaries, like Fidel Castro and the Pope and the Prime Minister of Israel, but we also undertake routine protective obligations with respect to the residences of ambassadors of the member states of the United Nations.

We currently have pending—and when I say “we,” I mean the city of New York—a bill for 21 million dollars for reimbursement with respect to past costs. The current appropriation is \$3.5 million. The House, on a bill submitted by Congresswoman Ferrara, passed in the last session an appropriations bill to raise the available resources to meet this manifestly Federal obligation.

The Senate has not acted. This is, in itself, a critical Federal participation. But I might add that U.N. treaties and international law impose upon the U.S. Government the obligation to provide this protection.

We think, with the FBI, the State Department, and the Secret Service, that it is more intelligent to have the burden borne by the New York police who know the territory. This is in fact the public policy of the Federal Government.

So, we are hopeful that in that connection the Senate is going to follow the lead of the House and adopt this legislation which is at this moment still in the Senate Appropriations Committee.

Mr. Chairman, that concludes my observations about the subject, and I will be pleased to answer any questions.

Mr. ENGLISH. Thank you very much.

You heard the testimony of Mr. Macy. Did his experience strike you as having any similarity to your experience in New York or is there anything vastly different?

Mr. KINDLER. I am giving a perspective as to what I do. This is not necessarily the total office perspective from white-collar crime. It is hard for me to compare what we do. I am sure that what I do is different from what Mr. Macy does.

My viewpoint from that of an online prosecutor is that cooperation varies a great deal from case to case, depending on the case. I have not personally had any experiences with the LECC's, although we have attended.

One program Mr. Macy mentioned was the cross designation program. I think he said it had not been implemented. In New York that has been implemented, and it is being implemented now to the benefit of our office in a number of current investigations

whereby assistants have been cross designated as U.S. attorneys. In the nature of the case it was better handled as a Federal prosecution. So, that is a program that has been successful and promises to be very helpful for us and hopefully the U.S. attorney's office. That would be an example of one difference.

Mr. ENGLISH. Are you aware of any U.S. attorneys who have been cross designated as State attorneys?

Mr. KINDLER. I am not, not personally.

Mr. ENGLISH. I notice that you were saying that you had something like 35,000 cases that you prosecuted last year; is that right?

Mr. KINDLER. 35,000 felonies. Those are just felonies representing the felony arrests made in Manhattan by the New York City Police Department. There are as many misdemeanors.

Mr. ENGLISH. In the information I had, I believe that is about the same amount as all the U.S. attorneys in the entire country prosecuted last year.

Mr. KINDLER. It very well may be. It continues to increase. That was for the year 1981. In 1980 it was about 32,000. Everything is increasing.

I have a figure here of 7,600 indictments. I don't think that includes narcotics indictments. The overall statistics for 1982 reached 7,000 indictments somewhere in September. So, one would expect that it will have gone up quite a bit.

Mr. ENGLISH. According to what Mr. Jensen was telling us, the U.S. attorneys have been going after the big fish, so to speak, with the philosophy that this is going to reduce crime overall. Have you noticed any reduction in the New York City area as a result of all the big fish that the Federal folks have been catching lately?

Mr. KINDLER. Without commenting in any way about the Federal programs, certainly crime is not being reduced.

Mr. ENGLISH. At least, it hasn't been going down any.

Mr. KINDLER. It has not been going down.

Mr. ENGLISH. Has it been going up in your area?

Mr. KINDLER. It certainly has been going up.

When you talk about the big fish, one of the best programs we have had is the career criminal program. Statistically it is borne out that a small percentage of the criminals commit most of the serious crime. If you can go after those criminals effectively, then you do have some effect. So, I think there has been an effect, but I don't think anyone has solved the problem.

Mr. ENGLISH. Are you aware of a significant number of cases that have fallen between the cracks, cases that at one time were being prosecuted on the Federal level but because of the emphasis on the big fish they have fallen through the cracks?

Mr. KINDLER. Perhaps the answer is that I do not know. I don't think that there are great categories of cases that are now being referred to us that were not previously being referred to us. In frauds, I do not see too many referrals.

Mr. ENGLISH. I see. I appreciate your testimony.

Mr. Conboy, we heard earlier from Mr. Jensen and Mr. Powis that they didn't think that we were going to make a big dent in reduction of crime in this country until we are able to deal with the flow of drugs that is coming into the country. Do you agree with that?

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Mr. CONBOY. Well, I certainly think that there is a decisive connection, at least in New York City, between narcotic addiction and street crime. The interesting information from the Rand Corporation in the study I alluded to earlier is that while narcotics addiction tends to be a factor in the careers of those criminals who are the most violent and the most active, it is not as decisive an element of the profile as they had originally thought in the California study, known as Rand One.

Rand Two, which is a combination of the Texas and Michigan studies, suggests that while narcotic addiction is a feature and a relevant factor to consider in designating somebody on a career-criminal list—by the way our career list is 20,000 for New York City alone and is limited to the area of robbery histories—and the fact is that we find narcotics, as a general condition in New York City, to be a most pernicious feature of not only the crime statistics on the street but also in the destructive impact upon larger numbers of neighborhoods.

So, I would agree with Mr. Jensen that the narcotic problem is an absolutely central piece of rescuing the major cities of the country from the crimewave, but it is not, obviously, the total answer. There are many, many other elements in our crime picture. For example, in our crime picture the role of juveniles is central when one looks at juvenile justice records of young people in New York. I am sure that this is true in other cities.

Children 13, 14, and 15 years old have appalling records of violent behavior. These are not only large numbers of crimes but particularly vicious and senseless crimes, particularly against the most vulnerable like the old people and the very young.

That is the arresting feature of my experience at police headquarters. Before that I was a prosecutor dealing largely in homicides and rackets cases. But this is a very serious question to deal with—the violent juvenile offender who at 12, 13, or 14 has committed unspeakable acts of cruelty over and over again.

But I would like to make one final point about the narcotics problem. The Federal Government over the years has, of course, had a variety of strategies to deal with narcotics and the narcotics traffic. The U.S. attorneys in the Ford and Carter administrations essentially mounted a very effective program against major dealers. We remember the case of Leroy Nicky Barnes. We remember the case of Carmine Tramonte. These men were convicted and were nationally regarded as the very top narcotics traffickers. They were convicted by U.S. prosecutors. There were also a host of other major figures who were convicted in New York in those years.

What happened, though, was that on the removal of the major figure, a lieutenant or indeed a major figure from prison simply continued to operate the business. The reason for that, of course, is because of the enormous economic incentive to deal in narcotics.

In the Nixon administration the approach was very innovative. For a period of time it was quite effective. That had to do with attempting to diplomatically interdict the flow of drugs by closing down the sources, Turkey especially. Of course, that has changed. When one source is closed, another opens. Our problem is that now the drugs seem to be coming mostly from Southeast Asia, that is,

the heroine from there and the cocaine and marihuana coming from Latin America.

Mr. ENGLISH. Assume something with me. Given your experience, what would be the impact in New York City if we were successful in shutting off 80 percent of the drugs going into New York City? What would be the impact on crime?

Mr. CONBOY. Well, I think it would be substantial.

There is, as I have indicated, a very strong nexus between drug addiction and street crime robbery. We estimate, by the way, that we are only effective—and when I say “we” I mean everyone, the New York police, the DEA, the Federal Government—in this way. Our narcotics commander testified before another House committee several months ago that we are only reaching approximately between 5 and 10 percent of the illegal narcotics traffic.

Mr. ENGLISH. I realize that. I am familiar with those numbers.

I am just curious about what you thought would happen. Would the crime situation in New York become manageable? Would you feel like you had a chance?

Mr. CONBOY. Well, I think so.

Mr. ENGLISH. If you had that kind of success, would that really put you in a position where you would feel like you had a fighting chance?

Mr. CONBOY. To go from 5 or 10 percent effectiveness to 80 percent would be of enormous benefit to the city.

I do want to tell you frankly that I think that narcotics as a problem is so complex with respect to its genesis, with respect to its manifestations in the lives of very, very significant numbers of young people that a law enforcement effort alone is not going to aggressively and effectively eliminate the problem. But obviously, 80 percent would have very beneficial effects.

Mr. ENGLISH. I would agree with you on that.

It is hard to fathom what such a thing would be. Anyone who has worked with the problem might think that to be an unattainable number, but we are talking about—from what Mr. Jensen was saying and from the reports from the south Florida task force and from what the President has said—a very successful effort in Florida. The President is committed to applying that kind of effort nationwide. If you can do it in south Florida, then you can do it elsewhere.

Regardless of what part of the country you live in, that at least gives law enforcement officials a fighting chance.

Would you agree with Mr. Macy's assessment that unless the task forces are successful that we are in real trouble as far as crime is concerned?

Mr. CONBOY. There is no question about it.

Mr. ENGLISH. I want to thank you both for appearing before us. Your testimony has been very helpful.

Our last witness this morning is Mr. Jimmy Cowart. I want to say that we are saving one of the best for the last. He is director of field operations, Police Department, Texarkana, Ark.

Jimmy, we welcome you.

I understand it is “Major Cowart” now.

I congratulate you on that promotion.

STATEMENT OF JIMMY COWART, DIRECTOR OF FIELD OPERATIONS, POLICE DEPARTMENT, TEXARKANA, ARK.

Mr. COWART. Thank you, Mr. Chairman.

I appreciate the opportunity to be here.

I have heard all the testimony today, and I would like to comment on a few of the things mentioned.

I am from a small jurisdiction. We have about 52,000 people. Our city is divided by a State line with Texas on one side and Arkansas on the other. We are about 20 miles from Oklahoma and about 13 miles from Louisiana. We have two police departments, two county agencies, two separate sets of FBI agents, ATF offices. So, we have quite a problem with coordination between all of us.

Our biggest problem in dealing with these agencies is information coordination. There have been many occasions where we would be working on the same people and not even know it because the information didn't get to us.

We have a good working relationship with the FBI agents and the other Federal agencies, but there seems to be a policy or an attitude on sharing the information. We can't get information that we need readily from these agencies.

NCIC is nice as far as tracing stolen property and wanted felons, but when you need other information on people whom you know are perpetrating thefts and frauds and things, then you simply can't get the background information that you need.

We have filled that gap somewhat with the Regional Organized Crime Information Center [ROCIC] in Memphis, which as you know is a federally funded multistate project. It has filled the gap. We can get the information we need simply by picking up the phone. They put us in contact with other police agencies and in direct contact with officers who have worked on these things and who are knowledgeable. They know the background and everything about the situations.

ROCIC also provides funds for the purchasing of narcotics, stolen property. They have equipment which we cannot afford but which they will loan to us and show us how to operate it. They are not directly involved in the investigation or the enforcement, but they do supply the backup that we must have to follow up on these cases.

We have a lot of problems with what we call "traveling criminals," groups of people who simply travel all over the country perpetrating crimes and who move from one location to the other. It is very difficult to keep track of these people, particularly when you can't get the information through the Federal agencies.

As far as violent crime is concerned, I believe we can handle violent crime on a local level, particularly in our jurisdiction. We don't have much problem with it.

Our problems come with these frauds and narcotics and things of that nature.

I will be the first to admit that the FBI does an excellent job on training. I can call the Little Rock office anytime and set up a training program for whatever I need. The FBI Academy in Quantico is an excellent facility. I have attended it twice.

But many of the training programs that were outlined I had not heard of before and had no knowledge that they existed, especially the training offered at Glynco, Ga. I did not know that existed.

As for the comments on the Freedom of Information Act, I have never had any hesitation in providing information to a Federal agency because of the Freedom of Information Act. It has been no burden to me.

I think the problem is on the other end. The other end fears sending it up to us, for whatever reasons. As far as the classification of information is concerned, I didn't know that information, other than national security information, had classifications put on it. I was not aware of that.

I have passed information to many Federal agencies on crimes that I believed had been committed. I would get no feedback and never knew what happened to this information. There was an arrest recently in Oklahoma of some people who were dealing in stolen firearms. I passed that information on to Arkansas State Police 2 months prior to that arrest. Meanwhile, the FBI developed that information separately in Oklahoma and finally made the arrest. But that information could have been forwarded to the FBI 2 months ahead of time, and possibly we could have prevented some of the burglaries that occurred to obtain these firearms.

In summation, our biggest problem is getting information across to the right people and having them act on it and also providing us with information that we need. We simply cannot get it.

Mr. ENGLISH. Major Cowart, do you think it would be helpful if we sent out to local law enforcement agencies exactly what the Freedom of Information Act does and what information is restricted and how it is restricted?

Mr. COWART. I believe it would, but also these Federal agencies don't tell us what their interpretation of the act is.

Mr. ENGLISH. They make their own interpretation. That is where the problem comes in.

Mr. COWART. My interpretation of it was—to begin with, I do not necessarily have to name the informant, as long as I can go to them with the idea that he is reliable. I don't have to name him, if they are worried about that.

But if that information, when it is related to law enforcement, is restricted, then it is not going to be given out anyway. I have never had any hesitation in giving it out.

It gets to the point where some of them almost believe that they have got to have a criminal case on a person before they can give you information. That is not true.

Mr. ENGLISH. You were mentioning that you have provided—you gave the example of people stealing guns—information to Federal agencies. Do they reciprocate? Do they provide you with information with regard to people they think might be in your neighborhood? Voluntarily?

Mr. COWART. Never. I have never received any voluntary information, unless there was also a Federal violation involved and they wanted manpower support from us. Then they will give us the information. But I have never received information related only to a local problem or possibly someone coming into our jurisdiction to perpetrate crime.

Mr. ENGLISH. It seems to me that that would kind of discourage people from cooperating.

Mr. COWART. Well, you get to the point where you receive information that would be of interest to some of the agencies, and you say, "Well, if I give it to them, what are they going to do with it?"

The Gun Control Act which provides for people who buy firearms by falsifying the forms and crossing State lines has occasioned so many cases of that sort, and the Federal prosecutor will not prosecute. They will not prosecute unless you can show that the person has been involved in numerous criminal acts.

It seems like such a waste of time and effort to go through all of that and then not get the prosecution.

Mr. ENGLISH. I assume you heard Mr. Jensen and Mr. Powis tell us all about how this cooperation has taken place and coordination has taken place between Federal and local. Does that sound very familiar to you?

Mr. COWART. Well, the talk sounds familiar. But I have seen very little of the action.

I have been to two meetings of the Narcotics Subcommittee of the LECC. We have accomplished nothing. Usually the representative will send someone to stand in for him.

Mr. ENGLISH. Oh, really?

Mr. COWART. Yes.

Mr. ENGLISH. He doesn't bother to attend.

Mr. COWART. We do a lot of talking, but what we need is some type of action. For instance, the drug traffic—and I am sure the Florida task force has done a great job—has the side effect. The traffic has shifted to other areas. We are getting more airplanes into our area, and we have a rural area with a lot of airstrips for crop dusters. We are getting more and more planes flying in because they are going away from Florida and the coastal areas and are flying straight into these rural areas.

I know of an arrest approximately 3 weeks ago in Hope, Ark. There was an airplane with \$2.3 million worth of narcotics on it. It had come in over the Louisiana coast. I think the DEA and the local sheriff's department handled that.

Mr. ENGLISH. Have you received any kind of contact or correspondence or guidelines or anything from anyone on the Federal level giving you any information about assistance that you might expect from the changes in the posse comitatus law, namely, assistance from the military?

Mr. COWART. It was discussed at the Narcotics Subcommittee of the LECC. A National Guard helicopter would be available to us for trying to spot marihuana from the air. We have quite a number of marihuana fields in Arkansas. This was to be done on a training basis.

The only catch to that is that you have to have training in order to spot marihuana fields from the air. It takes a lot of training. We don't have that training available to us yet. I could get into a chopper and go up, but I am not sure what I would be looking for.

With only 63 men in the police department, we are hard put. We work approximately 1,200 felony cases a year as far as investigations go.

Mr. ENGLISH. You are aware of the law being changed to allow the military to assist and support law enforcement officials. That applies not only to Federal but also to State and local officials.

Mr. COWART. Yes, sir, I am aware of it.

Mr. ENGLISH. Have you given it any thought as to how you might be able to use some of the resources of the U.S. military to help you in your efforts?

Mr. COWART. Yes, sir, I have. This is with regard to airplanes. But again, we are going to have to have the training before we can put that stuff to use. If we can get the training program set up, then we will be able to use it.

When we obtain equipment from ROCIC, they send someone down who is trained to operate that stuff. They will teach us how to operate it and stay with us while we are operating. I am speaking of surveillance equipment and other things we need.

To be real honest with you, I really just kind of gave up on using anything except ROCIC. I am patting them on the back because they have been such a great help to us. So, anytime I need anything I simply get in touch with them.

Mr. ENGLISH. We have been impressed by them also.

Major Cowart, I want to thank you very much for coming to Washington and giving us your testimony. It has been very helpful to us and has given us a good insight.

You can look at the big cities. You can look at some of the smaller towns. We get a pretty good picture about this cooperation.

I will have to say, quite frankly, that the picture that you and the other local officials are presenting is somewhat different than what we have heard from the Departments of Treasury and Justice. Perhaps the word is not filtering down as to how they are supposed to be cooperating and coordinating with you.

But, we will see if we can't encourage that in every way that we can.

Thank you very much for being here.

Mr. COWART. Thank you.

Mr. ENGLISH. That concludes our hearing today. We will recess subject to the call of the Chair.

[Whereupon, at 1 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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