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DEPARTMENT OF JUSTICE OVERSIGHT

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BEFORE THE

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UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

ACTIVITIES OF THE DEPARTMENT OF JUSTICE

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CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Hatch, Hon. Orrin G., U.S. Senator from the State of Utah	1
Leahy, Hon. Patrick J., U.S. Senator from the State of Vermont	4
Kennedy, Hon. Edward M., U.S. Senator from the State of Massachusetts	23

WITNESS

Statement of Hon. Janet Reno, Attorney General, U.S. Department of Justice, Washington, DC	12

ALPHABETICAL LIST AND MATERIALS SUBMITTED

Reno, Hon. Janet:	
Testimony	12
Prepared statement	52

APPENDIX

QUESTIONS AND ANSWERS

Responses of Janet Reno to questions from Senators:	
Hatch	63
Thurmond	76
DeWine	86
Ashcroft	91
Leahy	94
Kennedy	112
Additional responses of Janet Reno to questions from Senators:	
Hatch	153
Dewine	155
Leahy	155

DEPARTMENT OF JUSTICE OVERSIGHT

WEDNESDAY, MAY 5, 1999

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 9:33 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senators Thurmond, Grassley, Specter, Kyl, Sessions, Leahy, Kennedy, Biden, Feinstein, Feingold, and Torricelli.

OPENING STATEMENT OF HON. ORRIN G. HATCH, U.S. SENATOR FROM THE STATE OF UTAH

The CHAIRMAN. It is a pleasure for me to welcome our distinguished Attorney General. We are glad to have you here at today's oversight hearing.

I hardly need to point out that the bulk of the Attorney General's duties are crucial law enforcement ones and that the credit owing to the Attorney General and the Justice Department often goes unexpressed. Let me assure you, Attorney General Reno, that while I will focus this morning on problems with the Department's actions, this committee acknowledges and appreciates the successes the Department has enjoyed during your tenure—whether enforcing antitrust and business competition laws, or investigating and enforcing our civil rights, drug, and terrorism laws.

Yet there are serious issues, some of which have come to light only recently. I am referring to questions of security breaches of our country's nuclear technology that have occurred at Los Alamos and questions about youth violence in our country.

To begin with Los Alamos, some have described the recent security breaches by Wen Ho Lee as the worst threat to U.S. security since the Rosenbergs. I will not accept that assessment unless confirmed by facts developed in the pending investigations of this matter. But while all the facts are not yet in, what we do know is staggering. Mr. Lee, who was belatedly fired only 2 months ago, was implicated in some three separate espionage inquiries:

First, with passing secrets to China about the United States neutron bomb technology in the early 1980's;

Second, with passing information to China in 1988 that enabled it to copy one of our most advanced nuclear warhead technologies and assist the Chinese Government in placing multiple warheads into a single intercontinental ballistic missile, commonly known as W–88 technology;

And, third, and most devastating, the downloading in 1994 by Mr. Lee of 50 years' worth of so-called "legacy codes," which contain our country's nuclear codes, onto a nonsecure computer system that may have been accessed by third parties.

Based on information already in the public domain, it appears to me that had the Department acted promptly and properly 2 years ago, when urged by the FBI to petition the court for wiretap authority over Wen Ho Lee's phone and computer, that much of this apparent damage to our national security may have been avoided.

Let me be specific, as I hope you will be with your answers. As reported in the New York Times, the FBI in 1996 suspected Mr. Lee of involvement in espionage and in 1997 requested permission from the Department to seek a court warrant to monitor Mr. Lee's phone and gain access to his computer. The Times reported that such permission was initially denied by the acting director of the Department's Office of Intelligence Policy Review and then denied on appeal by the Department's Deputy Attorney General, Eric Holder.

The explanation subsequently proffered for this denial was that the evidence did not meet the "probable cause" threshold necessary for a wiretap to be issued. But consider that at the time the Department turned down the FBI, the following evidence was apparently known about Wen Ho Lee:

As far back as 1982, Mr. Lee was investigated by the FBI as the result of a phone call he placed to another Taiwanese-born scientist—Peter Lee, no relation—who had just been dismissed from the Lawrence Livermore National Laboratory following an investigation of China's theft of neutron bomb secrets.

Then in 1994 or 1995, Wen Ho Lee was observed being hugged by a visiting Chinese scientist in a manner that was perceived to be "suspiciously congratulatory."

Later, because of Mr. Lee's travel to China in 1988 and the subsequent discovery of documents by the FBI from 1988 that contained W–88 secrets, Mr. Lee emerged in early 1996 as the FBI's prime suspect in the W–88 investigation.

And now I return to sometime in 1997, when the FBI urged the leadership of the Department to allow wiretap authority of Wen Ho Lee. One journalistic report has it that the Department makes some 700 such wiretap applications to courts each year under the Foreign Intelligence Surveillance Act and that the Department only refuses the FBI once or twice a year. That is a matter of great concern.

To move to another subject, in last year's oversight hearing you pledged to help Congress pass juvenile justice legislation. The recent tragedy in Littleton, CO, underscores the need to confront the culture of crime and violence infecting many of our Nation's youth. Yesterday I testified before the Commerce Committee hearing that examined the marketing of violence to children. At that hearing, I noted that there is a sense among many Americans that we are powerless to change our culture and that this feeling of powerlessness has restrained our ambition for solutions. I believe, however, that we can change our culture. The time has come for us as a Nation to demand more accountability from everyone, including the entertainment industry.

S. 254, the Hatch-Sessions Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act, is the product of more than 2 years of work in the Senate Judiciary Committee. This legislation contains a $450 million juvenile accountability incentive block grant; a "juvenile Brady" provision, which prohibits the possession of a firearm by persons who commit a felony as a juvenile; and $435 million for prevention programs. My home State of Utah is particularly interested in the authorization of the juvenile accountability incentive block grant. The Senate is set to consider S. 254 next week, and I would really call upon you and ask for your help in enacting that bill.

In the aftermath of the Littleton tragedy, the President called for additional gun control legislation. Given the magnitude of this and other school shootings, no potential solution should go unexamined. Having said this, I must note that the Federal gun laws are not worth much unless the Justice Department enforces them. After all, State and local law enforcement officials cannot prosecute Federal law.

To date, the Clinton administration's record on firearm prosecutions is disappointing. For example, the Judiciary Committee's Youth Violence and Criminal Justice Oversight Subcommittees examined Federal firearms protections in a joint hearing on March 22. The subcommittees' findings were very troubling. For example, as the first chart to my right shows, between 1992 and 1997, Triggerlock gun prosecutions dropped nearly 50 percent, from 7,048 to 3,765. And as you know, these are prosecutions of defendants who use a firearm in the commission of a felony.

It is also a Federal crime to possess a firearm on school grounds. The second chart that we will put up right now, illustrates that, despite the more than 6,000 students illegally bringing guns to school last year—6,000 kids illegally brought guns to school last year—the Justice Department only prosecuted eight cases under this law in 1998 and only five such cases in 1997.

It is a Federal crime to transfer a firearm to a juvenile. Yet, as the chart shows, the Clinton Justice Department prosecuted—I think we need the next chart. The next chart, the Clinton Justice Department prosecuted only six cases under this law in 1998 and only five in 1997.

Finally, while it is a Federal crime to transfer or possess a semiautomatic assault weapon, as the chart reflects, the Clinton Justice Department prosecuted only four cases under this law in 1998 and only four in 1997.

In short, one should weigh the sincerity of administration officials advocating these newest gun control proposals. There is arguably no better indicator of that sincerity than the administration's record on gun crimes. So I urge the Justice Department to prosecute our current gun laws to the fullest extent. When the Justice Department does not fully prosecute current laws, it undermines requests for additional gun control legislation.

I look forward to this oversight hearing, and I trust that your responses to our questions will be sufficiently specific to assist this committee in better understanding a record that at this time gives me a great deal of concern about our country's security and the safety of our own citizens.

We are happy to have you here, and personally, I always look forward to listening to your testimony and hearing from you.

With that, we will turn to our ranking member, and then we will turn to you.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Attorney General Reno, I am delighted to see you here. I have been listening with great interest to the chairman's comments. I am impressed at the amount of information——

The CHAIRMAN. I wonder if some of us should go vote, so we can come back and not interrupt. I will go vote, and I will read my distinguished colleague's statement later.

Senator LEAHY. I just want to say how impressed I was, Mr. Chairman, at the information you were able to obtain about the wiretap applications. I always assumed that was confidential and not obtainable.

The CHAIRMAN. We have our ways.

Senator LEAHY. It shows that you do, and especially for wiretaps that were never applied for or granted, so I would understand if the AG is a little bit reticent to talk about something like that which is so confidential.

The CHAIRMAN. It is in the public record. It is reported.

Senator LEAHY. I would assume that if we are going to go into the events at Los Alamos thing, insofar as these events apparently occurred during the Reagan and the Bush administrations, as well as this one, I would assume that we may want to go into a classified hearing so we can find out who did respond and who didn't respond during three different administrations. I know the chairman would not want to be partisan, and he would want to make sure that we checked into what happened in these other administrations, too.

Madam Attorney General, we are all, again, grieving for the victims of school violence. I commended the President for having convened the October 1998 White House Conference on School Safety, and we are working with you to provide additional community police and school resource officers across the country. I met earlier this morning with the Secretary of Education. I know that he and the Surgeon General are also working on additional initiatives.

A number of us have sponsored legislation in this area. Much of the legislation was never even considered by the Judiciary Committee, although we were able to incorporate portions in measures that have been enacted. We reintroduced, again, on the first day of this session S. 9, the Safe Schools, Safe Streets, and Secure Borders Act of 1999, building on the 1994 crime law. It is comprehensive. It is realistic. It is funded by extending the Violent Crime Reduction Trust Fund for 2 more years. We tried to avoid the easy rhetoric and focus on the reality of what we face.

It targets violent crime in our schools. It reforms the juvenile justice system. It combats gang violence, cracks down on the sale and use of illegal drugs. It enhances the rights of crime victims. It offers meaningful assistance to law enforcement officers in the battle against street crime, international crime, and terrorism. That bill,

which was cosponsored by Senators Kennedy, Biden, Torricelli, Schumer, and others, is an important step, I believe.

Unfortunately, however, this committee has spent more time these last several weeks—in fact, this past year—on symbolic issues like the proposed flag amendment to the Constitution. We spent a lot more time on that than school violence. In fact, the committee held four hearings on that proposed constitutional amendment in the last year, none on the tragic school violence incidents that occurred throughout the country, including those before the shootings in Colorado.

I have said before that I have a feeling that if we were to ask the parents of Colorado if they were wishing that we would spend more time on school violence or more time on the possibility that somebody somewhere might burn a flag, they probably would say it is time for us to turn our attention to school violence.

In fact, I was disappointed when the committee decided to postpone last week's long-scheduled hate crimes hearing. And I am disappointed that this week the Subcommittee on Youth Violence canceled its hearing on reducing juvenile violence through recognition of early-warning signs.

These are hearings that go into reality, not rhetoric. So I hope that the chairman's expressed interest this morning that we might go to juvenile violence means that we finally will, because we could talk about such things as the booklet developed out of the White House Conference on School Violent that is now being used by schools throughout the country.

Senator Lott, the Republican majority leader, indicated last week that he will finally allow the Senate to turn its attention to these matters next week with a full and open debate on proposals to combat school violence. I look forward to that debate, and I know we will need your help on that. We know that the Federal Government and Federal law alone cannot solve the problem of school violence. But there are things that we can do.

We have to recognize the traditional prerogative of the States to handle the bulk of juvenile crime. We have to redouble our efforts to find ways to help parents and State and local authorities on matters of school safety.

After 3 years in which we have missed opportunity after opportunity to cooperate in a bipartisan way on these matters, it is long past time to put partisanship aside and work together to make progress on prevention and enforcement crime matters that affect us all. Unlike many crime issues that have come before this committee in recent decades, maybe youth crime can be addressed on a bipartisan basis if we want to and if we stop squandering the opportunities.

Under your leadership, Madam Attorney General, and the programs established by the Violent Crime Control and Law Enforcement Act of 1994, the Nation's serious crime rate has declined for 6 straight years. I think it is probably an oversight that that chart wasn't put up here. But no administration during the 25 years I have been here, Democrat or Republican, has been able to say before that the Nation's serious crime rate has declined for 6 straight years. It has with this administration. We are seeing the lowest reported rate in many years. Murder rates have fallen to their lowest

levels in 3 decades. Juvenile crime rates have also been falling. Federal, State, and local law enforcement officers have been doing a good job in this, and the aid they have been given by the Federal Government has certainly helped.

A matter on which we worked closely to assist State and local law enforcement officers is the Bulletproof Vest Partnership Act, which began to be implemented by your Department. That help is being made available online with a minimum of bureaucratic hassles. And I commend you, Attorney General Reno, for your leadership in those areas.

I commend you for helping to stem the tide of domestic violence and for moving aggressively to help the victims of this abuse and to improve rights and services for crime victims in general. I hope that you and others in the Department will work with us on the crime victims initiatives we introduced last week in S. 934. I know that there are some problems in the restrictive interpretation of the final language, but we can work on that.

I appreciate the continuing cooperation of you and your staff and the staff of the Immigration and Naturalization Service and the Office of Special Investigations in evaluating the sufficiency of current resources.

Last, I would say that the Department deserves credit for the good work being done by Bill Lann Lee as acting head of the Civil Rights Division. He has done a fine job. He should not be relegated to second-class status any longer. The President has now had to renominate him for a third time. It is time for the Senate to have the guts to stand up and vote either for him or against him, but not hold him in limbo. Let's bring that nomination to the floor of the Senate. Let every U.S. Senator stand up and either vote yea or nay. I think fairness demands nothing less. Honesty demands nothing less. And I think it would be wrong for the Senate to hide this from a vote any longer. But that is my feeling. Of course, it is the feeling of, frankly, every right-minded person in this country.

Actually, we ought to vote on a lot of these people. There are four U.S. attorneys, two U.S. Marshal nominees pending. There are 36 pending judicial nominees. We ought to vote on those.

I regret that the Senate has lost sight of the fact that for each nomination statistic, there is a man or woman whose career has been placed on hold and whose reputation may suffer unwarranted and unintended detriment if we do not perform our duty and that the American people within the jurisdiction of the Federal courts with longstanding vacancies are also being punished.

We have held more than 20 hearings since February, but we haven't held a single confirmation hearing for any nominee. It is May and the Senate has confirmed only two judges and two U.S. attorneys all year long. It is time we ought to move on that.

It will be a revealing test of our diligence as legislators to see at the end of the day just how much we are able to move forward on these issues. The American people deserve safe streets. They deserve safe schools. They deserve continued protection of their civil rights. They deserve bipartisan cooperation toward effective Federal law enforcement.

I will put my full statement in the record and go and vote now, but, again, I would commend you, Madam Attorney General. Dur-

ing your tenure we have seen the violent crime rates come down in this country at a greater rate than we have at any time since I have been in public office, and I commend you for that.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF SENATOR PATRICK J. LEAHY

Attorney General Reno, I am delighted to see you and look forward to working with you in the days and months ahead to make progress on the justice issues we face as a nation.

We are all grieving, again, for victims of school violence. I have commended the President for having convened the October 1998 White House Conference on School Safety. We are working with you to provide additional community police and school resource officers across the country. I also know that you and the Secretary of Education and the Surgeon General are all working on additional initiatives.

For the last several years a number of us have sponsored legislation in this area. Much of that legislation was never considered by our committee, although we were able to incorporate portions in measures that have been enacted. We reintroduced, again, on the first day of this session as one of the Democratic priorities, S. 9, The Safe Schools, Safe Streets, and Secure Borders Act of 1999, which builds on the successful programs we implemented in the 1994 crime law. Our bill is comprehensive and realistic. The new program initiatives are funded by extending the Violent Crime Reduction Trust Fund for two more years. We have tried to avoid the easy rhetoric about crime that sometimes comes too easily in this crucial area. Instead we have crafted a bill that can help make a real difference.

The Safe Schools, Safe Streets, and Secure Borders Act targets violent crime in our schools, reforms the juvenile justice system, combats gang violence, cracks down on the sale and use of illegal drugs, enhances the rights of crime victims, and offers meaningful assistance to law enforcement officers in the battle against street crime, international crime and terrorism. Our bill, cosponsored by Senators Kennedy, Biden, Torricelli, Schumer and others, represents an important next step in the continuing effort to enact tough yet balanced reforms to our criminal justice system.

Unfortunately, this committee has spent more time these last several weeks and this last year on the symbolic issue of the proposed flag amendment to the Constitution than it has on school violence. The Committee has held four hearings on that proposed constitutional amendment in the last year and none on the tragic school violence incidents that have occurred throughout the country. I was disappointed when the Committee decided to postpone last week's long-scheduled hate crimes hearing. Senator Kennedy has developed a good legislative proposal that many of us have cosponsored and that many of us think can help make a difference in providing federal resources and backup authority on a serious and all-too-current crime problem. And I am disappointed that this week, the Subcommittee on Youth Violence canceled its hearing on "Reducing Juvenile Violence through Recognition of Early Warning Signs." That might have given us a useful opportunity to talk about the efforts like the booklet developed after the White House Conference on School Violence that is now available to schools throughout the country.

Senator Lott, the Republican Majority Leader, indicated last week that he will allow the Senate turn its attention to these matters next week with a full and open debate on proposals to combat school violence. I look forward to that debate and to Senate action on this problem. We will need your help to come to a balanced legislative proposal that recognizes the contributions that prevention and community policing can make. We all know that the Federal Government and federal law alone cannot solve the problem of school violence or local crime. Nevertheless, we should help or at least make help available. We must recognize the traditional prerogative of the States to handle the bulk of juvenile crime while we redouble our efforts to find ways to help parents and State and local authorities on matters of school safety. After three years in which we have missed opportunity after opportunity to cooperate in a bipartisan way on these matters, it is long past time to put partisanship aside and work together with the Administration to make progress on prevention and enforcement crime matters that affect us all. Unlike many crime issues that have come before the Committee in recent decades, youth crime can readily be addressed on a bipartisan basis—if we will just make the effort to get the job done—and we cannot afford to squander any more chances to work together to tackle these problems.

Under your leadership and the programs established by the Violent Crime Control and Law Enforcement Act of 1994, the nation's serious crime rate has declined for six straight years. We are seeing the lowest recorded rates in many years. Murder

rates have fallen to their lowest levels in three decades. Even juvenile crime rates have also been falling. Since 1994, violent crimes by juveniles and the juvenile arrest rates for serious crimes have also declined. Our federal, State and local law enforcement officers have been doing a good job in this regard, and you should be commended for greatly improving the effectiveness of our federal assistance efforts and for extending the reach of those efforts into rural areas. Just last month, a matter on which we worked closely to assist State and local law enforcement officers, the Bulletproof Vest Partnership Act, began to be implemented by the Department, and that help is being made available on-line with a minimum of bureaucratic hassles. I thank you for your leadership is these critical areas.

I also commend you for helping to stem the tide of domestic violence and for moving aggressively to help the victims of this abuse and to improve rights and services for crime victims in general. I hope that you and others in the Department will work with us on the crime victims initiatives that we reintroduced last week in S. 934, the Crime Victims Assistance Act. In particular, I know that the emergency reserve we established in 1995 and 1996 from the Crime Victims Fund is being put to good use in the aftermath of the violence in Littleton. While I intended my original amendment to provide authority to help the victims of international terrorism, like the families of those on Pan Am flight 103 over Lockerbie, Scotland, I understand that restrictive interpretation of the final language of that amendment has led to problems. I would hope that we could fix those problems for those victims' families and for those affected by the Khobar towers and embassy bombings last year, without delay.

I also will appreciate the continuing cooperation of you and your staff and of the staff of the Immigration and Naturalization Service and the Office of Special Investigations in evaluating the sufficiency of current resources, strategies and cooperation among the Department's agencies in investigating allegations of human rights violations by individuals who have immigrated to the United States.

The Department also deserves credit for the good work being done by Bill Lann Lee as acting head of the Civil Rights Division. He has done a fine job and should not be relegated to second-class status any longer. The President has now had to renominate Bill Lann Lee for a third time. It is time for the doors of the Senate to be opened to this nomination and for the Senate to vote. I believe that in fairness and out of a sense of dignity this committee should report his nomination to the floor for a Senate vote without further delay. Bill Lann Lee has earned our support, and all American's will be well served by his confirmation.

Mr. Lee's nomination is one of three nominations for Assistant Attorney General positions currently pending before the Committee. In addition, there are five U.S. Attorneys and a U.S. Marshal nominee pending. There are 36 pending judicial nominees for the many vacancies that plague the federal courts around the country. Chairman Hatch correctly noted a few weeks ago that consideration of judicial nominations is "a serious responsibility of this committee" and that what is important is "the actual performance of our responsibility to examine and take action on the qualified judicial nominees sent to us by the Administration." I regret that the Senate has lost sight "of the fact that for each nominations statistic, there is a man or woman whose career has been placed on hold and whose reputation may suffer unwarranted and unintended detriment if we do not perform our duty" and that the American people within the jurisdiction of the federal courts with longstanding vacancies are also being punished by the Senate's inaction. Although our committee has held more than 20 hearings since February, it has yet to hold a single confirmation hearing for any nominee. It is May and the Senate has confirmed only two judges and two U.S. Attorneys all year.

By contrast, the Department has much of which to be proud. I hope that we will have an opportunity today to hear from the Attorney General about these efforts and accomplishments and the plans to increase the effectiveness of our law enforcement efforts over the coming years. It will be a revealing test of our diligence as legislators to see at the end of today just how much we have been able to bury partisanship in the interest of shedding light on the long list of issues that fall within our jurisdiction and within the responsibilities of the Attorney General. The American people deserve safe streets. They deserve safe schools. They deserve continued protection of their civil rights. And they deserve bipartisan cooperation toward effective federal law enforcement.

Senator THURMOND [presiding]. Ms. Reno, you may give your opening statement.

Attorney General RENO. Mr. Chairman, why don't we just go ahead to your questions, if that would be OK?

Senator THURMOND. Proceed to questions?

Senator GRASSLEY. We did meet Senator Hatch, and if you were going to give an opening statement, he wanted us to start in the meantime while he came back. So did you not have an opening statement? Because if you don't, we will go to questions.

Attorney General RENO. I think you might as well go to questions.

Senator THURMOND. Thank you. Ms. Reno, I am extremely concerned about the possible damage to our national security that may have been caused by the compromise of nuclear weapons design codes at Los Alamos National Laboratory. I understand that in 1997 the Justice Department rejected the FBI's request to seek court approval to establish a wiretap on the telephone and computer of Wen Ho Lee, a scientist suspected of compromising these codes. News reports indicate that the FBI actually did eavesdrop on Mr. Lee as far back as 1982 concerning nuclear weapons-related espionage.

The question is: Why did the Justice Department reject the FBI's 1997 request to seek court approval for a wiretap?

Attorney General RENO. Senator, the matter is, all these materials are classified, and I would be happy to arrange for a briefing with the committee and staff that has proper security. It is also in the middle of a pending criminal matter, and we would not want to do anything that would interfere with that. But I would be happy to work with you in doing everything I can to appropriately brief you on the matter.

Senator THURMOND. Ms. Reno, were you personally made aware of the request for the 1997 wiretap regarding Mr. Lee? And if not, does the Department have records regarding who was responsible for rejecting the FBI's request?

Attorney General RENO. With respect to all of these matters, sir, I think it is important that it be done in an appropriate manner with appropriate classification.

Senator THURMOND. Serious questions have been raised in various congressional committees about problems with the Department of Energy's management of security at the National Laboratories such as Los Alamos. Do you believe the responsibility for security at these facilities should be transferred from Energy to the FBI?

Attorney General RENO. I think it is important that we proceed with this matter and then make appropriate determinations in conjunction with Secretary Richardson and after further discussion.

Senator THURMOND. On a different topic, after the Supreme Court issues its decision in *Miranda* v. *Arizona* in 1966, the Congress passed a statute, 18 U.S.C 3501, for the courts to use to evaluate whether a confession was voluntary. Recently, the Fourth Circuit Court of Appeals followed other courts and ruled in the *Dickerson* case that this statute is constitutional. The court also criticized the Justice Department for refusing to enforce the statute.

The question is: Has the *Dickerson* case in the Fourth Circuit caused you to reconsider your refusal to enforce the statute?

Attorney General RENO. As you know, it is the subject of ongoing litigation in the *Dickerson* case to which you refer. The defendant

in that case is expected to file a petition for certiorari, and we will be called upon to respond to that petition. Our response will, of course, depend in part on precisely what is said in the petition. It would be inappropriate for the Department to address the subject of current litigation in any forum other than the court. We would be happy to provide you with the briefs we have filed on the subject.

Senator THURMOND. If the Supreme Court accepts certiorari and hears the *Dickerson* case, it is important for the Senate to know whether the administration will defend the constitutionality of section 3501 because the Senate should defend the law if the administration will not. If the *Dickerson* case is considered by the Supreme Court, will the Justice Department argue that the statute is constitutional?

Attorney General RENO. Again, our response would depend in part on precisely what is said in the petition, but I can assure you that the Solicitor General takes quite seriously his responsibility for defending the constitutionality of the statutes of this country and for coordinating this effort with Senate counsel.

Senator THURMOND. Even if the Supreme Court does not accept certiorari and does not hear the *Dickerson* case, the fourth circuit has held section 3501 constitutional. Will the Justice Department encourage the courts to apply this law to the fourth circuit?

Attorney General RENO. In the fourth circuit, we have issued directions to the prosecutors to call to the attention of the district courts the court's ruling in the *Dickerson* case.

Senator THURMOND. In recent years, the Department of Justice has experienced problems with its financial statement audits. Although there have been some improvements, the Department has received a disclaimer of opinion for 3 years in a row concerning certain agencies, including the INS and Marshals Service. As you know, a disclaimer of opinion means that the information provided to the auditors was so insufficient that they were unable to give an opinion concerning the condition of the finances.

Are you concerned about these difficulties with balancing the Department's books? And when do you expect the problem to be fully addressed?

Attorney General RENO. We are always concerned with situations like that, and we are focused on that and hope that it will be resolved very shortly.

Senator THURMOND. There has been a great deal of discussion recently about gun laws. As you know, gun prosecutions were higher in the Bush administration than in the Clinton administration. President Bush's Attorney General issued the Thornburgh memorandum prohibiting U.S. attorneys from dropping gun charges. However, I understand that when you became Attorney General you modified the Thornburgh memo to give prosecutors more discretion regarding gun charges.

The question is: Do you believe that this change in policy may have contributed to the decline in firearms prosecutions?

Attorney General RENO. No, I don't think that that change in the Thornburgh memorandum contributed. What we tried to do, Senator, was recognize that numbers are not the issue. What is at issue are the organizations that perpetuate violence throughout the

community. What is at issue are major criminals, and what is at issue is forming a partnership with State and local authorities so that each one is involved in planning on how to do these cases and who can handle the cases in the best interest of the community.

For that reason, we focused on major criminal organizations, and yet we developed in March 1994 an antiviolence initiative in which Federal agencies came together to plan in each district and community and then reach out to State and local officials to plan with them what the major crime problems were, who should handle which cases, and, for example, in Boston, the U.S. attorney and the local DA meet regularly. The local DA takes most of the cases involving small gun cases, but where interests of federalism or principles of prosecution dictate that the Federal authority should take it, they take the case.

What we are interested in is the bottom line and the result, and the result in Boston has been a dramatic decrease in the number of youth homicides, for example, attributed in part to that.

What we want to do is work with everyone concerned in a thoughtful, bipartisan way to address these issues, not in terms of numbers but in terms of results.

Senator THURMOND. I just have one more question. I understand that in the 1996–1997 school year, over 6,000 students were expelled for bringing a firearm to school, but there were only eight Federal prosecutions last year for possessing a firearm on school grounds. I recognize that prosecutions may have been brought under State laws. However, do you think that Federal prosecutions are sufficient? And if so, are Federal laws like this useful?

Attorney General RENO. I think Federal laws like this can be very useful in certain jurisdictions where there may not be the capacity or the law that permits the prosecution of it. But in most instances, the State and local authorities are going to be on the front line on these issues. It is basically a local issue, and this is part of our partnership in trying to reach out to them and say when there is a reason why you can't bring the case, we want to be prepared to do it.

Senator THURMOND. That completes my questions, and I thank you very much.

Attorney General RENO. Thank you, Senator.

The CHAIRMAN. Thank you.

General would you care to make your opening statement?

Attorney General RENO. If you don't mind, because it is important.

The CHAIRMAN. I would like to hear it. I am personally pleased that you waited until we could get back.

Attorney General RENO. I appreciate that.

The CHAIRMAN. I apologize. There are other Senators who want to be here, but this vote right at this time has inconvenienced all of us.

Attorney General RENO. Please don't worry about it.

The CHAIRMAN. So let's take your testimony at this time, and then what I will do is I am going to defer my initial question round to Senator Specter, and he can have his when it comes in the normal course. He was the first to arrive, so we could go to him after the next Democrat. But we will go with you then, General Reno.

STATEMENT OF HON. JANET RENO, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Attorney General RENO. I have been in office a little over 6 years, Mr. Chairman. My first hearing before this committee began March 9, 1993, and it is very vivid in my mind. I think I have now had five oversight hearings plus some additional hearings before this committee, and as I look at these 6 years, we have done so much together. We have also disagreed upon occasions, but we have really worked together, I think in a very thoughtful, bipartisan way, and I have a great respect for the committee and for each and every one of its members. And before I do anything else, I would like to thank you all for your thoughtfulness and your kindness to me during these 6 years, even in the middle of some fierce disagreements.

Senator BIDEN. I wouldn't go overboard, General. We are not all that nice.

Attorney General RENO. Yes, Senator. I would have to disagree with you. They have all been—even Senator Specter, when he looks over his glasses at me. [Laughter.]

The CHAIRMAN. In some ways, we are a lot nicer than the other side, I want you to know.

Attorney General RENO. I think you were very gracious, Mr. Chairman, and that is one of the reasons I waited to make my opening statement with your thoughtful comments.

The CHAIRMAN. I appreciate that.

Attorney General RENO. But I would not take the credit. I think all America, this committee, this Congress, all America deserves credit for the fact that violent crime is down 21 percent since 1993 and at its lowest level since 1973.

The overall crime rate is at the lowest level in nearly a quarter of a century. Murders are down more than 20 percent in larger cities and suburban communities. And violent crime by juveniles is down for the third year in a row.

Mr. Chairman, when I came before this committee in 1993, I said that youth violence, wherever it was, was one of the most serious crime problems we faced in America. And our job is, as you point out, still far from done. Now more than ever, we have to resist the temptation of complacency. The tragedy at Littleton reminds us all that there is still too much violence.

I agree with you. I think we can work together and substantially eliminate the culture of violence and the attitude towards violence in this country. And I just thought your comments were right on target for eliminating the attitude that we have. I would like to describe just in a general way where I think we can go.

There was a certain partisan tinge, but there is also a thoughtful nonpartisan approach in your comments. If we can work together and understand that crime is not a Democratic or a Republican issue, as I think we have on so many occasions in this committee, if we can do everything we can not to politicize it, if we can react based on common sense and hard facts, analyzing the intelligence, develop the strategies, working with State and local officials.

Let me give you an example, Mr. Chairman. When I came into office, I had had some experience with weed-and-seed in Miami. There were only about 2 dozen weed-and-seed sites in the country.

Weed-and-seed is a Republican program. It has now been increased to over 200 sites because it is a good program and it is working, and that is an example of how I think we can come together to address these issues.

I think it is important and I know when you held your hearing on the appropriations process you raised this issue that we approach the problem with the idea that we must preserve principles of federalism. We are focused on how to reach a balanced budget. No one wants local and State law enforcement dependent on Federal law enforcement for the long run. It should stand on its own and not be permanently dependent on Federal dollars. But Federal dollars can have a marvelous effect in a community and in initiatives across the country by providing new initiatives and giving them a chance to see what works and what doesn't work, by providing communities such as existed in 1993 who were in crisis for violence with seed money to develop new programs. And so we have seen Federal dollars, thanks to this committee and Congress, use community policing, which needs to be enhanced now so that it becomes ingrained in the community.

What you, what Senator Biden—Senator Biden, thank you for that wonderful day in Delaware. It is just encouraging to see what can be done. But you, Mr. Chairman, with your leadership, the two of you together—and you take more of the credit, Mr. Chairman, but you have worked together on it. In terms of domestic violence and violence against women, Congress has begun to change the whole attitude towards domestic violence in this country, and I wish you had been there, Mr. Chairman, because you would have appreciated the comments by the citizens that things were different now because of what you all have done with the Violence Against Women Act.

Drug courts. When I came to Washington, I told you about the drug courts. A Republican Congress has continued to spread drug courts across the land in a thoughtful, bipartisan effort because it is working.

Technology. I wish Senator DeWine were here and Senator Leahy, but their initiatives with the DeWine-Leahy Act are again an example of how we must help State and locals adjust to the new technology, develop the new technology so that they will be prepared for the next century.

Community-building and youth violence, initiatives that can make a difference are so important. Federal responsibilities are important as well. I have addressed the issue of what the Federal Government can do as a partner. And terrorism, national security, and crime that crosses district and State lines, exchange of information, legislation, all of this can be so important.

With respect to guns, Mr. Chairman, we have a wonderful opportunity. In the period 1992 to 1996, Toronto, a city somewhat the same size as Chicago, had about 100 gun homicides for the whole period. Chicago had 3,063 during the same period. We don't have to accept violence as a way of life in this country, and I think we have reached the point where we can put aside the rhetoric and sit down and figure out that guns kill people, that we ought to—as a Nation, if we can send people to the moon and do some of the things that we have done, we ought to be able to sit down and fig-

ure out how we keep guns out of the hands of people who do not know how to safely and lawfully use them or have evidenced an unwillingness to do so.

The President has presented a package. Other people have ideas. Let's get together and come up with something that really addresses the problems that this Nation faces with guns, while at the same time recognizing those that have law-abiding purposes with the guns.

It is important that there be a balance, and I was so glad to hear you talk about prevention because prisons wouldn't have worked in Littleton. They knew what they wanted to do with their life when they went into that school, and prisons weren't part of it and were not a deterrent.

If we can develop programs through education, prevention, intervention, punishment that is fair, firm, fits the crime, and makes clear to every American that they are going to be held accountable when they do wrong, and that there are chances of success when they come back from detention facilities or from prison, that there are reentry programs that give them a chance to come into the community, we can do so much if we form and enhance our partnerships with law enforcement across this country. We can do so much if we work with communities that understand their needs and resources better than we do and help them begin to build.

I have seen a city that you care a lot about and I have come to care a lot about, Salt Lake City. I have seen programs in Delaware where they are making a difference. I have been to Philadelphia and seen so much of what is going on there in terms of community-building, and to Boston. Communities have a vitality and an excitement and a can-do attitude about reweaving the fabric of community around children, creating the building blocks of strong and healthy children, strong parents, free of domestic violence, educare, nutrition, proper medical care, afternoon and evening supervision, truancy prevention, school-to-work programs, school counselors, conflict resolution.

We know some of the things that can work. We don't know whether they will work with respect to every child. But we are trying to form a partnership with communities to address that, and in that connection, we have developed a grant between three Departments. HHS, Education, and Justice have come together to create a unified grant for communities across America that provides for funding in a comprehensive way to address healthy children, safe schools issues. Doing and building on programs like that, we can truly make a difference.

I really look forward——

The CHAIRMAN. Could I interrupt you just a second on that? You are hitting a lot of things I really believe in, and I think most of us up here do, and I am very appreciative of it. And I am a great believer in prevention and juvenile justice matters, as are my friends on both sides, especially Senator Biden, who has worked very closely, and Senator Feinstein. And I don't mean to interrupt you, but I just—pardon me for interrupting you, but——

Attorney General RENO. That is OK.

The CHAIRMAN. At this point it just seemed like a good point to just ask you, today and at last year's oversight hearing, you

pledged to help Congress enact juvenile justice legislation. However, we are not aware of the Department's position on the bill we filed, S. 254, the Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act. Could you tell us where you stand on that and whether you are going to help us? Because that comes up next week and I need your help on it.

Attorney General RENO. What I want to do is work with you to make sure that there are programs for prevention out there that can make a difference, that if there is a need for further accountability on the part of juveniles, we address that issue. I will be happy to sit down with you. One of the things that I am excited about is——

The CHAIRMAN. It is going to happen next week, so we need to sit down, we need to work this out.

Attorney General RENO. I will call you when I leave and make an appointment.

The CHAIRMAN. It was unfair of me to interrupt you, but I just wanted—you are making some very important points in my eyes, and rather than wait until you were through, I thought I would right at this point——

Attorney General RENO. OK, let me get——

Senator BIDEN. Mr. Chairman, just a 10-second intervention.

The CHAIRMAN. Sure.

Senator BIDEN. You and I have been working at length on this, and I just want you to know the Justice Department has been in every single piece of the negotiation, because there is nothing I have agreed with you about that I haven't checked with Justice, and there is nothing that Justice hasn't said. In other words, the only problem we have is whether there is enough prevention money in——

The CHAIRMAN. I can presume that Senator Biden speaks for you, then. That is——

Senator BIDEN. No, I don't speak for the General——

Attorney General RENO. No, no, no.

The CHAIRMAN. No, no. But I——

Senator BIDEN. No one speaks for the General.

The CHAIRMAN. I presume that Senator Biden and Senator Feinstein are working——

Attorney General RENO. This is the reason I raise it, just by the—I mean, you used to get after me last year about talking about prevention too much, and so I am glad that you are——

The CHAIRMAN. I don't think I got after you. Maybe others did.

Attorney General RENO. But with this approach, I will call you as soon as I leave. I will call your office and find out when I can come, or I will be happy to meet with you and Senator Biden, whatever we can——

The CHAIRMAN. Senator Sessions is a key player——

Attorney General RENO. And Senator Sessions who has been a real leader in this whole effort.

But we have got the chance to really make a difference, and I think we can do it, and I will make myself available——

The CHAIRMAN. I am sorry to interrupt you. I just——

Attorney General RENO [continuing]. And now I will hush up.

The CHAIRMAN. Well, are you through? I didn't mean to interrupt you like that. Continue if you care to talk about anything.

Attorney General RENO. I just think we have got to make sure that our kids are held accountable, but no one wants to see a kid commit a violent act if it can be prevented. And if we can fashion a balance between punishment and prevention and as well, Mr. Chairman, reentry into the community—we send too many kids home after having detained them without any followup or support. And when they come back to the apartment over the open-air drug market where they got into trouble in the first place, it just spells trouble again. We have a chance, working with communities, to really, really make a difference.

And one final point, Mr. Chairman. I think there is a significant—and the Deputy Attorney General has done a marvelous job in this regard of focusing on children who are witnesses or victims of violence. The studies now clearly indicate that the child who is abused too often becomes the abuser. And for too long now, we have let children drift through foster care, and when they are abused and neglected, we have not focused attention on them.

We have done some really good things with drug courts together. Let us work together to develop some model children's courts as well. We are on our way to doing that.

The CHAIRMAN. I also want you to look at the effect of the Internet, movies, video games, and so forth and see if there is something we can do in those areas, too, that is fair to the communities, to the business community, but also fair to our children. So give some thought to that.

Attorney General RENO. We are in the process of doing that. One of the things that we are doing, Mr. Chairman, is looking—the parent who is with the child during the day knows where the child goes. The parent who has to work, whether it be where the child goes or where the child goes on the Internet, needs help and we need to work on that.

The CHAIRMAN. Senator Thurmond has already asked his questions, and I will defer my question period to Senator Specter, who has requested that, but we will go to the ranking member first. Then I will defer to Senator Specter.

I suspect we will give you double the time because you will have my time and yours.

Senator SPECTER. Thank you, Mr. Chairman.

The CHAIRMAN. I will defer to you, and then I will go to the next Democrat and then back to you.

Senator LEAHY. Let me start off with a discussion, and then we will go to questions. As I said earlier in my opening statement, I am glad if there is an indication that we will finally move to these issues of violence and juvenile crime. Maybe some of the hearings that we have had canceled this year will be put back on the agenda, and we can go to it. I appreciate the chairman, as I said in my opening statement, saying now that we are going to look at it after all and Senator Lott saying the same.

I appreciate your response yesterday, Attorney General, to my letter of March 4, regarding independent counsel costs. I understand the Department continues to insist as a matter of policy it serves no more than a ministerial role of a dispersing officer and

does not have the responsibility to keep detailed accounting of independent counsel expenditures or to provide oversight on how they spend their unlimited budgets.

I do have a few questions about the information you were able to provide me. I spoke the other day about Mr. Schmaltz on the floor, and I will not go into things like self-aggrandizement that he expressed by passing out wristwatches referring to a prosecution of a former Cabinet member as though that Cabinet member was some kind of a big-game trophy or any of the other disgusting and, as I described on the Senate floor, stupid things he did, but let me just go to Mr. Starr.

I note that over the course of Mr. Starr's investigation, 78 FBI agents, 25 Federal prosecutors, 524 support employees from the Department had been detailed to him.

In looking at the number, to put this on contrast, and I realize I am just a lawyer from a small town in Vermont, it appeared to me this is more people than we have in most small towns in Vermont.

Is it an unusually high number, 600 Department employees?

Attorney General RENO. I understand that the 600 number is the total number deployed, detailed over——

Senator LEAHY. I broke it down. It is 78 FBI agents, 25 Federal prosecutors, 524 support employees.

Attorney General RENO. That is detailed over the entire course of the investigation and not at any one point in time, but I am not in a position to comment since I am unfamiliar with the work since I have tried to ensure his independence. I am unfamiliar with the work, and I cannot comment.

Senator LEAHY. I wish somebody with a checkbook would take a less, independent attitude, so we at least would know what is going on. Is it common practice to take Federal prosecutors away from their assigned duties to be detailed to staff independent counsel investigations?

Attorney General RENO. I understand that the Department has routinely detailed prosecutors to an independent counsel when requested through several administrations.

Senator LEAHY. Mr. Starr used almost 80 FBI agents, but he still spent a million dollars on private eyes or private investigators and $850,000 on unspecified experts. Is there really almost $2-million worth of investigative matters that would fall outside the expertise of FBI agents requiring these private detectives and experts?

Attorney General RENO. I do not know, Senator.

Senator LEAHY. All right. I see that Mr. Starr spent $196,000 on cash awards. Any idea what that might be?

Attorney General RENO. No, sir.

Senator LEAHY. The Department reimburses attorneys' fees to some Federal employees called as witnesses. The taxpayers paid out about $11,000 in such expenses for Mr. Starr. The Department has 24 more pending requests in connection with Mr. Starr's investigations. Do you know how much this is going to end up costing the taxpayers?

Attorney General RENO. I do not have the details on that, Senator. I will try to have someone go through it and total it, but we have not maintained it in that fashion.

Senator LEAHY. My point is that we seem to have a automatic ATM machine that the special prosecutor can keep just punching and the money comes out, but no details are made of where it is spent, how it is spent, who it is spent on or anything else, and I realize the necessity of keeping the independence of this person, but we do not allow anybody this kind of independence. We are all elected officials up here who supposedly just respond to the electorate of our States, but we have to account for everything we spend from a piece of stationery we buy to a trip we take.

I am a little bit concerned that you can have somebody spend millions and millions of dollars, detailed over whatever period of time, 600 Federal employees, hire private investigators, private detectives, experts and so on, with no specification of who they are, what they are for, or anything else, and spend $2 million extra there on top of a $40-million investigation and nobody knows how it gets spent. In my State, $40 million is a lot of money.

The Boston Globe this week published two articles reporting the individuals who may have committed human rights crimes abroad and at least several individuals have entered with ease under immigration laws. The INS efforts to investigate these allegations against them seem to be ineffectual.

One of the individuals that the Boston Globe mentioned currently resides in Burlington, VT, my home, and the allegations made against him are very serious.

The article also raises questions about whether the Department of Justice has a workable or operative strategy to handle such cases, and this seems to be a repeat of the problems that led to the creation of the Office of Special Investigations in 1979.

What does the Department of Justice and Immigration and Naturalization Service do when it becomes aware of allegations that a person who has been legally admitted to the United States may have committed human rights crimes abroad? Is there coordination like, for example, INS, OSI, and so on, and does OSI have the authority to pursue cases of war crimes?

Attorney General RENO. My understanding is that OSI works specifically with Nazi war criminals, but we take generally this whole category of cases involving people who may have committed human rights crimes abroad very seriously, and we pursue them.

Generally we receive leads with regard to potential war criminals or others from organizations such as Amnesty International or the Center for Justice and Accountability. They often give us source information which we can follow up on to verify the information, identify the perpetrator, and take sworn statements with regards to their actions. We have worked with organizations such as The Hague war tribunals, the Organization for Security and Cooperation in Europe to gain additional corroborating information.

This information can then be used in removal proceedings for possible prosecution if we can confirm conclusively that the individual misrepresented themselves when they applied for immigration status.

That being said, it is often hard to make these cases, as there is usually very little documentation available, and the legal standards for prosecution of having committed genocide or systematically

persecuted others or having them part of an effort to violate human rights, it is very difficult to prove.

Senator LEAHY. My time is up, but let me suggest this, Attorney General. I understand the procedure, and I understand what the departmental policy is. It might make it easier, though, to understand how it is applied to a specific case. So let me do this. I will get to you and your staff the accounts of this particular person as it is reflected in Vermont, as the Boston Globe outlined, and then if you could have somebody meet with me and my staff and explain what steps were followed in this particular case, how they reflect policy, because I suspect if there is this case, there will be other cases in other parts of the country, and if we could take this particular one and follow it down, what a procedure has done there, that would be very helpful to me.

Attorney General RENO. We will follow up and do everything that we can to share the information with you, and I think your suggestion is very, very important.

Senator LEAHY. Thank you, Attorney General.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Leahy.

As per Senator Specter's request, I will defer my time to him, and then we will come back to you.

Senator SPECTER. Thank you very much, Mr. Chairman, for scheduling me to question at this time.

I join my colleagues, Madam Attorney General, in welcoming you here, and I agree with what Senator Hatch has said about the generally very good job that you have been doing on so many areas, although there have understandably been disagreements.

Your work in the juvenile field is exemplary, and the pushing of the gun prosecutions, including my home State, Southeastern Pennsylvania, is exemplary.

I put at the top of my list for questioning the very important issues which have arisen involving national security with respect to China, the espionage issue, the satellite issue, and the prosecutions which are pending.

A very important question is posed today for congressional oversight as to what action was taken by the executive branch going directly to the President.

In his March 19 news conference, President Clinton first commented about security breaches and then said, "Now I think there are two questions here that are related, but ought to be kept separate. One is was there a breach of security in the mid-1980's, and if so, did it result in espionage." That has not been fully resolved, at least as of my latest briefing. So that, on March 19, President Clinton says the issue of espionage is an open question.

According to a variety of sources, Deputy Attorney General Eric Holder reviewed a request by the FBI for a search warrant, and without going into any of the details, which was turned down.

There has also been extensive public comment about a major memorandum which was prepared in November 1998 distributed to top Department of Justice officials. So that, on this date of the record, there are at least two major points of notification, at least from what we know, and we ask you for the specifics coming to the

Department of Justice, to your top Deputy and the memorandum to top officials.

My question to you is, did the Department of Justice, either the Deputy, you or others, advise the President that the issue of espionage had been clearly established, substantially before his March 19, 1999, news conference?

Attorney General RENO. It is very difficult for me to answer these questions because you posed some questions or make some points that I would have to go back through classified information, and what I suggested at the outset was I would be happy to arrange for an appropriate classified briefing of this matter so far as it did not impact on the pending criminal case.

Senator SPECTER. All right. I would appreciate that, and it may be that some of these matters will have to go into closed session.

Attorney General RENO. I would be happy to do that.

Let me first make a point. We have reviewed all of the information, and we will continue to review it. We are working with Senator Rudman to make sure that everything is appropriately reviewed, but I have no reason whatsoever to conclude that the Deputy Attorney General at this point reviewed the matter, that it was brought to him, and I think it is very important that we look at it all very carefully and give you as much information as we possibly can that does not affect the pending investigation.

Senator SPECTER. I agree with you about the care. Deputy Attorney General Holder was asked about this question on a Sunday talk show several days ago, and gave an ambiguous answer as to what had come to his attention. So let us defer that.

I think that the question as to whether the Justice Department notified the President about espionage does not call for the disclosure of classified material. Some of the details might, but let me go on to the next point.

The issue of pending criminal prosecutions and pending investigations is a complicated one, and in a moment, I will cite the authorities which I think—and, of course, I want your views—give the Senate and congressional oversight authority to move into those matters, but before getting to the statements of law, let me take up factually two matters.

One matter involves the satellite launches. Between 1989 and 1998, there were 13 Presidential waivers of post-Tiananmen Square sanctions for exports of satellites or parts to China. Seven of those 13 waivers came in the Presidential election year of 1996. Four of those seven waivers were for Loral or Hughes.

This matter has two parts to it. One part involves the allegation that Loral and Hughes gave to the Chinese, the technical information which would be relevant on missiles with warheads, when they were talking about the satellite launches.

The other aspect of it involves the campaign contribution of an extraordinary nature by the CEO of Loral, Mr. Bernard Schwartz, more than 1½ million dollars.

Let me put that issue aside for just a moment, Madam Attorney General, and go to the second matter, which is in the nature of pending investigations and pending prosecutions, although somewhat different.

Johnny Chung has entered a guilty plea, and there was a plea bargain. The media reports—and regrettably, that is most of what we have to go on—that Johnny Chung told Department of Justice investigators that a Chinese intelligence official, General Ji Shendai, had transferred $300,000 to Chung, contemporaneously at a time when a good bit of classified information was being passed on to China.

Then, when Chung was sentenced, Judge Manuel Real said this, that if Democratic Chairman Don Fowler and former Democratic Party Finance Director Richard Sullivan "did not know what was going on, they are the dumbest politicians I have ever seen." "It is very strange that the giver pleads guilty and the givee gets off free."

Now, I ask you these questions, Madam Attorney General, in the context understanding that they involve pending investigations and pending prosecutions, and we have discussed these matters at very substantial length. Your response has always been that you cannot discuss these matters. Maybe we will have to go into closed session, but when we have had closed sessions, you have declined to do so because they are pending.

The Supreme Court of the United States in the case of *Sinclair* v. *United States* said this:

> It may be conceded that Congress is without authority to compel disclosure for the purpose of aiding the prosecution of pending suits, but the authority of that body directly or through its committees to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.

So the Supreme Court came at the closure on the issue and said, as I have just quoted, that it is not sufficient to decline congressional oversight when a suit is pending.

Then, on the issues of investigations, the Supreme Court of the United States in *McGrain* v. *Dougherty* said the following:

> It is quite true that the resolution directing the investigation, the congressional investigation, does not in terms avow that it is intended to be in aid of legislation, but it does show that the subject to be investigated was the administration of the Department of Justice, whether its functions were being properly discharged or were being neglected or misdirected, and particularly whether the Attorney General and his assistants were performing or neglecting their duties in respect to the institution and prosecution of proceedings to punish crimes and enforce appropriate remedies against the wrongdoers, specific instances of an alleged neglect being recited. Plainly, the subject was one on which legislation could be had and would be materially aided by the information which the investigation was calculated to elicit. This becomes manifest when it is reflected that the functions of the Department of Justice, the powers, duties of the Attorney General, and the duties of his assistants are all subject to regulation by congressional legislation, and that the Department is maintained and its

activities are carried on under such appropriations as the judgment of Congress are needed from year to year.

There has been a Congressional Research Update as of April 1999 relating that Congress can in oversight in effect require information from pending investigations of prosecutions, citing authorities from the Palmer Raid, Teapot Dome, to Watergate, to Iran Contra which is 1980's, and to Rocky Flatts in 1992.

I appreciate that is a fairly, fairly long analog, and it may be that we are going to have to do this in closed session, or it may be that a better way to do it is on an informal basis, but I think that as a matter of oversight, when you have national security matters involved at an oversight prerogative of the highest nature and these matters have gotten to the appellate courts and the District of Columbia circuit has handled quite a few, they have referenced how complicated it is, how important it is, and a balancing to some extent.

Let me start with my first point.

The CHAIRMAN. Senator, your time is up. I will come back to you as soon as Senator Kennedy is through.

Attorney General RENO. Can I answer that?

The CHAIRMAN. Yes. I apologize to you. Of course, you can answer.

Attorney General RENO. Mr. Chairman, as I recall, you know full well the efforts I go to, to meet oversight responsibilities that I have to respond, and I think I feel very strongly that it is important for the Attorney General to be as responsive as she can to Congress to go to every possible length to provide information that would not affect the pending investigation, to do so in closed session as you and I have on occasion, Mr. Chairman, in another circumstance.

Frankly, Senator, I probably know more than most Attorneys General about the whole process and about the accommodations process, and I commit to you that I will do everything I can consistent with the responsibilities that I have to work with you to ensure that you can do your oversight. I suggest that we will explore with the chairman if you would like some appropriate closed session.

The CHAIRMAN. Senator Kennedy.

Senator KENNEDY. Thank you.

General we want to again extend a warm welcome to you. We are mindful of the very long and distinguished service that you have had as the Attorney General of the United States and your own public service before that, and I think all of us are very, very grateful for what you continue to do as the head of the Department. We thank you for being here today.

Under normal circumstances, General, I would like to question you about what we are doing about the INS and INS detection, and to talk a little bit about the antitrust laws.

We have had a recent case in Massachusetts, in terms of banks, to give assurance that local considerations would be there.

I want to talk to you also a little bit, as my friend and colleague did, Senator Leahy, about the Bill Lann Lee nomination, an outstanding individual, and about how important it is for the Senate to take action on this issue.

I want to talk to you a little bit about hate crimes. This is an important issue. We still have to address it. We have had strong support for you and the President of the United States about law enforcement officials nationwide.

I also want to talk with you a little bit about this racial profiling and the traffic-stop statistics legislation. These are all very, very important issues.

Given the limited amount of time that we have on this, and I will submit other questions on that, I ask that my full statement be entered in the record.

[The prepared statement of Senator Kennedy follows:]

PREPARED STATEMENT OF SENATOR EDWARD M. KENNEDY

Mr. Chairman, the Committee is holding this hearing while the nation stands at an important cross road. The epidemic of youth violence in our cities and suburbs has taken another victim—Littleton, Colorado—and, once again, we find ourselves in the wake of another senseless tragedy. Each of us deplores the senseless injury and loss of life, the families torn apart, and the communities living in fear.

Faced with this national challenge, we clearly need to take bolder steps to give children, parents, schools, and communities the help they deserve.

We must do more to keep guns out of the hands of children. A 1993 survey by Louis Harris found that 59 percent of school children in sixth through 12th grade said they "could get a handgun if they wanted one." A third said they could get one "within an hour." It's a national disgrace, but not a surprise, that we lose 14 children every day to gunshot wounds. We require aspirin bottles to be child-proof and we regulate toy guns. Why don't we do more to protect children from real guns?

We need to pass legislation that calls for safety locks on guns, that bans juvenile possession of assault weapons and high capacity ammunition clips, that imposes increased penalties on adults who transfer guns and ammunition to juveniles, and that takes other necessary steps to close the gaping loopholes in the current gun laws. I know the Administration and Attorney General Reno support these efforts, and I look forward to working with them as we prepare to debate these issues in the Senate next week.

But guns aren't the only problem, and new gun laws are only part of the solution. We need to support steps to help parents and teachers detect and address the alienation and the many other causes of youth violence. Last year, the Department of Justice, the Department of Education, and Department of Health and Human Services initiated its innovative Safe Schools, Healthy Students plan to support community-based efforts. Congress can and must do more to support communities through this program.

I am also concerned about the treatment of immigrants seeking asylum in the United States and the harsh laws guiding detention and deportation policies. The INS should consistently implement its policy of releasing asylum seekers who have established a credible fear of persecution and are not a danger to the community. I am working with Senator Leahy, Senator Robb and others on legislation to improve conditions of INS detention, and define the cases in which asylum seekers should be released from detention. All immigrants should be treated fairly. Whenever possible, immigrants subject to detention should be housed in facilities that are close to their families and communities, where they are more likely to find legal representation.

The current detention policy is particularly harsh. It eliminates the discretion previously granted to INS and immigration judges, and changes the rules in the middle of the game for many immigrants. The categories of crimes that could result in deportation have been significantly expanded to include minor, non-violent offenses, where no sentence was served. Even U.S. war veterans have been detained and deported. There is no justification for measures that divide families, deny immigrants their day in court, and turn immigrants into second class citizens.

I know the Attorney General is prepared to discuss these issues and many others—including civil rights enforcement and passage of the Hate Crimes Prevention Act—and I look forward to her testimony.

Senator KENNEDY. I would like to talk to you a little bit about what most families are concerned about in the country, and that is whether their children who are going to school today are going

to be safe and secure, and also what is on the mind of probably a lot of children, about whether they are safe and secure in the schools that they are attending today.

I think all of us certainly have thought about this. We have watched it and read about it, and seen the enormous emotion by the families who have suffered immeasurably in the most recent tragedy at Littleton, but also in the six previous tragedies as well. We are mindful that there are not any easy answers or easy solutions, but I do not think that should bar us from taking reasonable steps, particularly those steps that have demonstrated at least some opportunity for progress in some of the areas that really have been identified. We will have an opportunity in the Senate next week, by the assurances of the majority leader, to deal with some aspects in terms of the gun legislation, and hopefully, we might even have an opportunity to try and deal with some of the other aspects in the supplemental.

We will be addressing the enormous needs that we have in terms of Kosovo and the importance of making sure that our armed forces are going to have the kinds of support that they need in terms of carrying the responsibility forward and protecting their lives, but we also have another crisis, I think, that is out there in the schools and in communities that need attention. A number of us are hopeful that we might be able to give some help and assistance to schools, to families, to teachers, to local law enforcement people, to personnel in the communities that might have some ability to have some impact in terms of trying to make schools safer communities.

So, really, there are two areas that I want to inquire of you. I would just reference at the outset what has happened to Boston, and then I wanted to inquire of you about the important legislation that last year was developed with your leadership in the Justice Department, Secretary Riley and Donna Shalala in that Safe Schools Healthy Students Plan, which is a consolidation of a lot of the programs which are going to be available to communities. It is the basis of a lot of research, which I think offers some real kind of hope, and maybe we can get some focus and attention on that.

First, as you are familiar, we have some 13 children every day in the country that die of gunshot wounds, and we have seen the most obvious example in Littleton.

I was looking again back at my own City of Boston. Between 1995 and 1998, homicides dropped by 64 percent. In 1998, there were 35 homicides in Boston, compared to 152 in 1990.

This year, thus far, there have been four murders in Boston, which is down another 56 percent from this time last year, 64 percent in the previous years—56 percent from this time last year. During the period from July 1995 through December 1997, no juvenile in Boston was murdered by a gun.

Last year, there were 16 murders, just general murders; this year, to date, zero. These are just extraordinary results, and I think we ought to try and see what we can learn. Boston is different from other communities, but there certainly seems to be a program or an approach there which has been very, very successful in trying to deal with the problems certainly in terms of youth violence.

This is what they call the Boston Gun Project. I know now this program is trying to be replicated in a number of different communities across the country by the year 2003.

We are going to hear Commissioner Evans make a very effective presentation tomorrow in a different committee, in our Human Resource Committee, where he is going to talk about tough law enforcement and engagement. He is going to talk about working with the schools, and he is going to also talk about tracking of weapons.

I see that my time is almost up. I would appreciate it if you could comment about which gun control measures you feel are of the highest priorities, and also if you would comment on that program that was developed with your leadership in the Justice Department to help and assist schools. We would like to find out what we can learn from those that might be immediately applicable, trying to do something here and now.

We will have to do things over the longer term, but maybe there are some steps that could be done now that could be helpful to families.

Attorney General RENO. Let me talk about the long range and the short range within it. You have clearly put your finger on one of the important parts. If we are to focus on youth violence, we also have to focus on all violence so that people understand it is not acceptable, and that is the reason the Boston Project is important.

We focused on violence. We let people know that they were going to be held accountable, but we let others know that they would be held accountable, but that there were alternatives. As I recall, John Hancock came in and provided programs that taught young people how to get jobs, how to hold jobs. The faith community came in the schools, the courts, the citizens. It was a remarkable effort.

We have translated that effort into five communities in a strategic local planning project that focuses on the same thing, what are the organizations, who are the people that are committing these crimes, apprehend them, hold them accountable, let them know that there is a firm, fair sanction that fits the crime. Let the youngsters coming up know that they will be held accountable, but there are other routes for them to go.

At the same time, there are different situations with respect to youth violence that we have got to focus on, and I just think it is important to realize that we cannot do a quick fix in high school. We can do so much in terms of adding counselors, but it is very difficult to grow up in this country today. We need conflict resolution programs and problem-solving programs in the schools.

Senator my dream is that we teach every teacher how to teach their kids to resolve conflicts without knives and guns and fists. It is possible to do. That we have counselors in the schools who can identify kids who are on the verge of getting in trouble, that we have programs to say that we will not tolerate bullies and hassling and put-downs in schools. Everybody should be respected.

School counselors can be a very effective force, and the Conference of Mayors has called for youth counselors in the schools of this country and the Federal assistance for this effort.

Providing afternoon and evening programs that give young people a variety of things to do can make a significant difference, and

that is what we are trying to do through the grant that you speak of.

None of this is going to work if it is one piece here and not a look at the whole if it is just prevention or not punishment, if it is just a program for elementary school and not for high school, if you do everything right by the kid, but he cannot get a job or find something to do in the afternoon.

We have got to really restitch the fabric of community around our kids and give them something to be positive about.

I would finally like to take a few minutes to say I have had too many young people in the last year tell me why do people not like kids, and I say from my experience in these last couple of years that the young people of America are extraordinary. They are fine. They are wonderful. They are public-spirited. They want to contribute. They can be obstreperous, but they can be witty and funny and caring and dear, and we have got to do everything we can to support them.

Senator KENNEDY. Thank you very much.

I see you have Mr. Jennings from Boston who is sitting behind you. He is the coach for the Boston Celtics. You have chosen wisely. We have a lot of respect for him.

Attorney General RENO. He is my coach now.

Senator KENNEDY. Thank you.

The CHAIRMAN. We want to welcome you, Mr. Jennings. You have got a number of big basketball fans here on this dais. So we are happy to have you here with us.

Senator Leahy asked if we have a good team out in our State. Can you imagine? That is typical.

Senator Specter.

Senator LEAHY. I am just trying to keep you humble.

The CHAIRMAN. As you know, Senator Specter has my time deferred, but he is now in the order to be heard.

Senator SPECTER. Thank you very much, again, Mr. Chairman for yielding me your time and now my time. I asked my colleague, Senator Grassley, if this sequence gave him any heartburn because we have been here since 1980. I do not want to give anybody any heartburn, but especially Senator Grassley.

Senator GRASSLEY. I even feel good that you are concerned about it.

Senator SPECTER. I am concerned about it.

Senator SMITH. Do not ask down at this end.

Senator SPECTER. I am concerned about Senator Kyl, Senator Sessions, and everybody, but let me make better use of the time than that repartee.

Madam Attorney General, I have posed a number of questions, and I will defer to you suggestion on a closed session as to what is happening with the pending investigations and/or prosecutions as to Loral and Hughes and the other pending matters. I think there are some closed issues which are appropriate for public comment, which do not involve national security.

There has been a closed plea bargain as to Johnny Chung. So I think that is a proper matter for congressional oversight.

I did not have time to talk about Judge Real with respect to his comment of his "surprise" that Attorney General Janet Reno has

not appointed a special counsel to investigate the Clinton Campaign fundraising maneuvers, but I would ask you specifically what action, if any, the Justice Department is taking or if it is an open matter, as Judge Real who sentenced Johnny Chung said, "It is very strange that the giver pleads guilty and the givee gets off free," referring to Mr. Fowler and Mr. Sullivan.

Are there ongoing investigations as to Fowler and Sullivan?

Attorney General RENO. What I would suggest that we do, Senator, so that I make sure that I do not do anything that would inadvertently hurt the investigation, is respond to your questions in writing.

Senator SPECTER. The plea bargain of Peter H. Lee resulted in probation and a fine and some community service. Peter Lee was one of those at Los Alamos where there were overtones, perhaps more than overtones, as to the espionage issue, and there was finally a guilty plea as to security breaches which could have carried a sentence of 5 years in prison.

There was an issue as to reluctance to bring other charges because of confidential information from the Department of the Navy, but it seemed to me that given the circumstances of Los Alamos—and like you, Attorney General Reno, we were old-line district attorneys, you in Miami and me in Philadelphia—that sentence of probation and community service and a fine was not sufficient for what Peter H. Lee had done.

I would be interested in your comment as to the propriety of that kind of a sentence on a plea bargain for something as serious as that which was involved there.

Attorney General RENO. Let me respond in writing so I can make sure that my answer is complete.

Senator SPECTER. OK; one of the difficulties with responses in writing is that we do not have a chance to really discuss it.

Attorney General RENO. I will be happy to come over and discuss it with you to the extent that it is appropriate.

Senator SPECTER. All right. I understand that a good many of these matters are specific, and I asked you about ones that are very well known like Chung which is a big case and also Peter H. Lee which is a big case, but let me come back to a written response which I have had from you.

The Governmental Affairs Committee is considering what to do about independent counsel, and this will be the fourth hearing where I have asked you the question about the expansion of the jurisdiction of Independent Counsel Kenneth Starr to move into the Monica Lewinsky incident.

I asked you about it in an oversight hearing about a year ago. You told me that the application spoke for itself, and there is never enough time. Then I asked you about it at a Budget hearing here, a few weeks ago, and you said you would study it and get back to me. I asked you about it in general at Governmental Affairs more recently, and I did get an answer yesterday, not from you, which surprised me a little bit because we had had so much discussion about it. I understand the need to function through assistants, but this is a matter which I had looked for your personal views on.

Acting Assistant Attorney General Jennings wrote to me as follows. The issue as to Judge Starr's expanded jurisdiction involved

his having been at the investigation of President Clinton for about 4 years with Whitewater and the Filegate and Travelgate and so many, many other matters, and the concern which I expressed contemporaneously in January 1998 that the public would misunderstand and think that there was as vendetta when he was expanding his jurisdiction, and there were media calls for speeding up his investigation.

The application which you had filed said just this, the parts of two pages to the appointing court asking for expansion of jurisdiction. "It would be appropriate for Independent Counsel Starr to handle this matter because he is currently investigating similar allegations involving possible efforts to influence witnesses in his own investigation. Some potential subjects and witnesses in this matter overlap with those in his ongoing investigation."

As I said to you the last time we talked about it—you used the plural here, "witnesses," "subjects," and "witnesses" again, and to the best of my knowledge, the only one we had was Webster Hubbell who was offered a job arranged by the same lawyer for the same company out of the city.

To say that that application speaks for itself, I think it is simply not accurate, but this is the letter I got yesterday from Mr. Jennings, your Acting Assistant Attorney General for Legislative Affairs, "Upon reflection, the Attorney General has determined that given the particular circumstances of this matter, any further matter by her at this time beyond the explanation provided in her public application to the Special Division for expansion of the jurisdiction of an independent counsel would be inappropriate. In addition to Mr. Staff's pending litigation, these circumstances include the fact that the events leading to the Attorney General's decision to recommend that Mr. Starr's jurisdiction be expanded to include the Lewinsky matter are under review by the Department of Justice."

We have had with frequency your deferring answers to a closed session or to writing, but I have to tell you candidly, Madam Attorney General, that I consider that response not only totally insufficient, but really bordering on insulting, to come back in the context of how many times we have raised this question and the importance to pending litigation we are trying to decide now, the Senate Governmental Affairs Committee, whether we ought to continue independent counsel. A big issue has been Judge Starr's excesses—that is the allegation, I am not saying that they were—and his investigation of Lewinsky, and we want to know why the Attorney General took the initiative to expand his jurisdiction. This is an important pending matter for consideration by Congress.

You have not said, "Well, I will come in and talk to you privately or a closed session." You just say it is inappropriate.

I think it is important for us to know, so we can decide what to do with the Independent Counsel Statute. This is not to assess blame for the past, but to try to figure out where we go from here. Why did you ask the court to expand its jurisdiction, given all of the problems here, Madam Attorney General?

Attorney General RENO. First of all, Senator, I would not do anything that would even insinuate disrespect for you, and I apologize to you if you feel like it was insulting because it certainly was not, but you have put your finger on one of the most difficult issues that

I face, and that is how I exercise my responsibility under the Independent Counsel Act without interfering with the independence of the independent counsel.

There is a matter in trial now. There is a matter under review now. I am happy to talk with you and the chairman about how we might properly address this because it does go to the independence of it. I have not dragged this along. I have tried to see where we stood and whether it would be appropriate at some point for me to comment, and I will be happy to explore that with you, but I have got to make sure.

And I will tell you, since you have never been, I do not think, on the other end, it is easy to be a prosecutor in Philadelphia and it is easy to be a prosecutor in Miami.

Senator SPECTER. I do not remember that.

Attorney General RENO. It is much more difficult to be a prosecutor in Washington and acknowledge and honor Congress' oversight responsibilities, while at the same time trying to do what you are supposed to be doing under the law, and I will try my level best to do both to your satisfaction.

Senator SPECTER. My final statement, Madam Attorney General, is I know you have got a very difficult job, and I think you have done a good job over a very long period of time. Our relationship goes back more than a decade, 1985, when I came to Miami trying to move on career criminal prosecutors, the statute that we had passed just the year before. So I have watched you as a district attorney, and I will not prolong the discussion. I think it is as tough to be district attorney of Miami as it is to be anything, almost as tough to be district attorney of Philadelphia.

One of the problems about doing all of this——

Attorney General RENO. But you did not do oversight, I mean, when you came to Miami.

Senator SPECTER. Did not need to. Your job was so good. Nobody needed to do any oversight.

The final point is that when we do it in closed session, we do it by letter. The public does not really know what we are doing. It is a prodigious, prodigious job to pursue this issue, Madam Attorney General, through four hearings, and then we are going to have a meeting, but I have an instinct that you and I will meet again publicly and we may talk about it again publicly.

Attorney General RENO. What I have said from the very beginning is that to the extent that I can under Federal law, with Privacy Act considerations and everything else—and forgive me, Mr. Chairman, but I want to take my time on this one—in Florida, we had a public records law, a sunshine law. Everything became open when the matter was concluded. I had closeout memoranda that were made available. So people knew where I stood, and I always said I cannot comment during the pendency of the investigation, but I can comment afterwards as long as there is no other intelligence that will lead to further subjects.

I am prepared to do that again, to the extent that I can under Federal law, consistent with 6(e) and every other Federal limitation, and I would anticipate and would appreciate the opportunity to have another public discussion with you at the appropriate time.

Senator SPECTER. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Feinstein, we will turn to you.

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

It is great to see you again, Madam Attorney General, and I want to welcome you to the committee. I would like to talk about essentially three things. The first is the assault weapons. The second is children learning to make bombs from the Internet, and the third is the Immigration and Naturalization Service and some growing concerns that I have, specifically the public charge issue.

You were very helpful in 1993 when I wrote the assault weapons legislation, and the Department of Justice and you in particular were very supportive. I am very, very grateful for that.

As you know, it is very controversial legislation, and there are loopholes. If I had my druthers, I would ban possession of assault weapons. I see no reason for them to be anywhere on the streets, and particularly in our schools in America, but very shortly, I hope to introduce legislation with a number of cosponsors to close a significant loophole which is the importation of big clips coming from other countries.

If you will recall, we tried to get the President to do this by executive order. Your Department held that he could not; that it would take legislation to close this loophole.

As you will also recall, it is now illegal to manufacture, sell, or possess a clip drum or strip of more than 10 bullets, subsequent to the passage of the legislation in 1994.

The loophole is allowing the foreign importation. We would like to close that loophole and strengthen the law with respect to prohibiting possession of assault weapons by juveniles.

I would like to ask if you would take a look at this legislation in the next few days, and hopefully, you will be able to support it.

Attorney General RENO. I think we will, and we will certainly look at it because I believe it is part of the President's package.

Senator FEINSTEIN. That is correct. It is actually combining two things into one——

Attorney General RENO. Two points.

Senator FEINSTEIN [continuing]. And trying to strengthen it. So I would appreciate that very much.

For some years now, I have been concerned about the availability of bombmaking information on the Internet. Let me be very clear. For the information that I am concerned about, there is no legal use. There is only an illegal use, and we have had this bombmaking prohibition in bills for 3 or 4 years now. They are always removed surreptitiously in conference.

Since Littleton, in just a few weeks, there have been seven incidents of youth using bomb instructions from the Internet to build bombs, and at Salt Lake City; Cobb County, GA; Wimberly, TX; Brooklyn, NY, six of the seven incidents, these youngsters brought these bombs to schools.

Senator Biden and now Senator Hatch have been in support of this legislation, and you conducted a thorough study pursuant to the Antiterrorism and Effective Death Penalty Act in 1996, and in that study, you recommended the adoption of my legislation. However, you also recommended that the state of mind required to be

proven be heightened from "knowing" to either "intends" or knows that the person receiving the information intends to use it to commit a crime.

I am concerned now that this is too difficult a standard to ever really prove a case, and in light of what is now becoming a widespread use of this information to actually build bombs, and the recent decision by the fourth circuit. I want to just quickly read to you part of that fourth circuit decision, "In the case of *Rice* v. *Pallidin Enterprises,* which ruled that a publisher of one of these so-called mayhem manuals could be held civilly liable to relatives of a victim who was murdered by a criminal following the instructions contained therein." The court extensively cited and relied on the Justice Department study on my amendment, noting, that the exhaustive legal analysis set forth in that report and stating that the decision we reach today follows from the principal conclusion reached by the Attorney General and the Department in that report, the court concludes, we are confident that the first amendment poses no bar to the imposition of civil or criminal liability for speech acts which the plaintiff or the prosecution can establish were undertaken with specific, if not criminal, intent.

The court then quotes from the Justice Department report,

> The Government may punish publication of dangerous and structural information where that publication is motivated by a desire to facilitate the unlawful conduct as to which the instructions inform or, at the very least, publication with such improper intent should not be constitutionally protected where it is foreseeable that the publication will be used for criminal purposes.

What I am essentially asking that you look at or respond to, do you think we can safely restore the standard to "knowing" and still survive scrutiny under the first amendment?

Attorney General RENO. Let us take a look at it, Senator, and we will do so immediately and get back to you very quickly because it is the subject of everybody's concern.

Senator FEINSTEIN. Right, and particularly that fourth circuit opinion.

Attorney General RENO. I have made the notes.

Senator FEINSTEIN. I believe now that all of this material only has a criminal implication. There is no legal purpose for a light bulb bomb, a book bomb, a pipe bomb, a letter bomb, any of these things, and when these manuals tell you how to break into labs, how to assemble the materials, how with specificity to craft any illegal instrument which can only be used illegally, what I am hopeful is that now that there is broad, wide knowledge, that knowledge alone can be the test.

Attorney General RENO. Let us check and get back to you.

Senator FEINSTEIN. I would appreciate that very much.

I will go to INS for a moment. You might be aware that the ambiguity of the public charge definition issue has caused much confusion within immigrant communities. People are essentially foregoing essential healthcare because they wrongly believe that their participation in Government-run health programs will jeopardize

their immigration status or the status of family members in the United States.

Recently, we have had a death in Orange County of an infant who died after receiving an injection in the back room of a local gift shop, and all throughout my State, these illegal nonmedical treatment facilities are setting up to deal with the problem.

In California alone, 1.7 million children go without health insurance, despite the existence of a Federal program that offers low-cost medical care, and in some areas of Los Angeles, only 30 percent of preschool youngsters have been immunized.

I was just in Orange County at a center. 37,000 youngsters have no immunization at all because they are afraid to register, that their immigration status will be jeopardized.

I have been writing for 3½ months now to INS, and I do not get a satisfactory response. What I am asking for is a clear regulation, if possible. If not, I am prepared to introduce legislation, but a clear regulation that would exempt immunizations, public healthcare, public health-related healthcare, and critical healthcare from any public charge aspect.

Are we going to be able to get it as a specific regulation, or do we need to introduce legislation? That is my question.

Attorney General RENO. The INS is currently engaged in discussions on an interagency basis to develop an administrationwide approach to the public charge issues.

We will embody it in field guidance and possibly the regulation, but we at this point are in conversation with the Department of Health and Human Services and Agriculture because they have issues that directly relate to this. We are trying to move it as fast as we can. At the conclusion of the interagency process, we will be issuing the guidance. I think it should address the issues, such as vaccination. We want to consult with Members of Congress and make sure that we do this right and that we do it with all deliberate speed because I know how important it is.

Senator FEINSTEIN. As I told the White House yesterday, who called urging me to be patient, I have run out of patience. I have really tried to be nice. I have tried to write letters. Then entire California delegation has signed letters, and I really think it is important, Madam Attorney General. People are dying, and we are going to have a major public health contagion problem in California unless we get this cleared up.

Attorney General RENO. Let me make a suggestion. Just keep on being nice and as determined as you usually are and adamant and——

Senator FEINSTEIN. You know, that will get me a box of Mars bars.

Attorney General RENO. No, no, no.

Senator FEINSTEIN. Two tickets to next week's elections.

Attorney General RENO. One of the things that I have discovered about you, you are probably the most tenacious person when you get a subject. So just keep at it——

Senator FEINSTEIN. All right.

Attorney General RENO [continuing]. And I will let you know exactly where we stand because you are absolutely right.

The CHAIRMAN. She gets almost everything she wants on this committee.

Senator FEINSTEIN. That will be the day.

The CHAIRMAN. Well, you do pretty well, really.

Senator Grassley.

Senator GRASSLEY. General Reno, I have some issues that I want to bring up that are things that have been ongoing between me and your Department, and it is more or less to get some updates from you.

Not long ago, you were gracious enough to meet with me and a number of other Senators from agricultural States regarding our concern with agribusiness concentration. You indicated that you would consider our concerns carefully, and I have no doubt that you will, and that you would let us know if you saw any problems.

Have there been any developments since that meeting?

Attorney General RENO. Yes; I follow this very carefully now. I have an 8:30 morning meeting at which I go over my checklist of things that are really critical, and "pork" and "beef" are the shorthands for the issues. And you all made clear, the Senators made clear, what an impact this has had. I can assure you that we take the concerns very seriously.

As I told you in the meeting, the Assistant Attorney General for the Antitrust Division, Joel Klein, had determined that he would go to—he went to Minnesota, met with farmers in a public forum. It was attended by hundreds of farmers. He heard their concerns personally.

The Antitrust Division has met and is continuing to meet with various producer groups to discuss their concerns. On each such occasion, we have invited farmers to provide us with specific facts and circumstances pertaining to situations that might be antitrust violations. We have a number of attorneys and economists looking into the concerns the farmers have expressed.

In certain areas, such as increasing concentration resulting from mergers and price-fixing of goods that farmers purchase, the Antitrust Division has brought enforcement actions.

Senator GRASSLEY. You say they have brought some——

Attorney General RENO. Enforcement actions.

Senator GRASSLEY [continuing]. They are thinking about doing it?

Attorney General RENO. No; this is in certain areas, such as increasing concentration resulting from mergers and price-fixing of goods that farmers purchase. The Division has brought enforcement actions, those, for example, requiring divestiture in the Monsanto/DeKalb biotechnology seeds merger, and the criminal case of ADM; others for price-fixing of lysine and livestock feed. It has a number of pending investigations.

In other areas, we are gathering information and working directly with the U.S. Department of Agriculture in order to ascertain whether enforcement action by either Antitrust or USDA is warranted. We are pursuing this. It is something that I am personally following carefully, and we will do everything that we can under the law.

Senator GRASSLEY. OK; at that same meeting—and this would be a followup of just what you said—at that meeting, we asked you

to consider whether or not, if the Department of Justice did not have authority to take action—and you are showing where you do have authority to take action, but that if there were some other areas where there were problems that we needed to deal with, if you didn't have the authority to do that that you would let us know.

You also indicated that that could mean providing us with—in fact, we asked for legislative suggestions, if that was necessary, if you determined that these legislative changes were necessary to help you do your job more effectively. A review of existing antitrust law, then, a status of that review that you promised us, if there might be any changes in law needed?

Attorney General RENO. I have not been advised that there are any changes needed yet, but I want to assure you that we will continue to review it as we develop facts and understand better what we can and can't do based on the factual situation that we are able to develop.

Senator GRASSLEY. I wonder if you would ask your antitrust people, if there is anything to supplement what you have said, if they would give my staff a phone call, because if there is legislative language needed, or even a thought now that there might be some, we need to be alerted to that so that we don't lose a whole year.

Attorney General RENO. And, again, since it is a pending matter, I can't assure that I can take specific action, but I can assure you that I am following it very closely. And both with respect to what we can do and with respect to the legislation, we will follow through.

Senator GRASSLEY. My last comment wasn't in regard to action you can take under existing law. It would only be in regard to a briefing for me if you think there might be some legislative changes made even if you haven't made your final determination.

Attorney General RENO. I will talk with Joel Klein as soon as I return to the office.

Senator GRASSLEY. And then I wrote a letter to Assistant Attorney General Klein about visiting my State of Iowa, like he did a very successful visit to Minnesota, and I got a response back that it is still on their radar screen and they haven't made a decision to do it or not to do it. I guess I would ask that you put in a word of support of that letter if you would, please.

Attorney General RENO. Yes, sir, I shall.

Senator GRASSLEY. If I can move on to airline pricing, please, I would like to know what progress the Antitrust Division has accomplished in looking into predatory pricing allegations and other possible antitrust violations by airlines. In response to my written questions at the last DOJ oversight hearing, you indicated that the Antitrust Division was close to bringing certain aspects of its investigation to a conclusion.

Could you give me an update, and do you see the Department of Justice needing to take further action?

Attorney General RENO. My understanding is that our preliminary review did not suggest predatory behavior, but we are aware of the situation and will follow it closely. And what I will do, Senator, is call Mr. Klein when I get back and find out exactly what that means.

Senator GRASSLEY. Also, you are probably aware of it, and I should have included in my question, but some predatory pricing situations are in the domain of the Department of Transportation as well. And so I need to follow through with them, and there may be some contact between your office and them.

My last question, now that the yellow light has come on, would deal with Federal law enforcement resources in our State, specifically the FBI. The Omaha field office of the FBI, which covers both Iowa and Nebraska, is slated to lose five full-time agent positions through attrition. The Omaha field office has already lost three of five positions.

I asked you about the issue earlier at our previous hearings. Late last night, I received a response indicating that the Omaha field office is being downsized, but that the special agent-in-charge there has requested more personnel and that the request is being considered.

Now, what is so puzzling about the personnel reduction is that bank robberies in the Iowa-Nebraska area have increased very dramatically in the last few years. Doubling the amount of bank robberies in the area of the Omaha field office, they would have gone from 61 in 1997 to 120 in 1998. The lead Federal agency which investigates bank robberies, of course, is the FBI. So we are reducing the FBI presence in Iowa, while at the same time we are seeing a doubling of bank robberies. This doesn't strike me as a wise way to allocate law enforcement resources.

So, first, I would like to ask what is the status of the request from the Omaha office of additional personnel. On the one hand, we are told it is being reduced. On the other hand, the special agent-in-charge has requested more personnel and is being told that the request is being considered.

Second, I would want to appeal to you to grant this request of the agent-in-charge because with so many bank robberies, I think we need more, not less, in the way of law enforcement resources in the Midwest.

Attorney General RENO. First of all, as I understand it, during the operating year, FBI headquarters does make adjustments to field staffing levels based upon emerging crime problems and significant investigations that develop subsequent to the setting of staff levels. The special agent-in-charge for the Omaha field office has submitted a request for additional staffing and that request, along with requests from a number of other FBI field offices, is now being considered.

Let me give you a larger picture, and at some point, Mr. Chairman, it might be well for us to share with you just our methodology so that you understand what we are trying to do.

I am trying to develop some long-range staffing planning so that when I add FBI agents in one jurisdiction, I make sure that there are prosecutors that can handle the cases that the agents make, and that there are marshals that can handle the offenders that are taken into custody, and that we have a seamless system that is appropriately balanced. We are engaged in that effort.

There are some historical inequities that have to be adjusted as we look at this, but it is something that is very important to me because I want to make sure that we have staffing levels that can

respond to emerging crime problems, respond to population increases, respond to particular skills that are needed in particular areas. And I will check with Director Freeh and ask him to advise you as soon as any appropriate decision is made.

Senator GRASSLEY. Thank you. Thank you very much.

The CHAIRMAN. General, I have been sitting here worrying about when we can hold this closed hearing. I think what I would like to do is have a closed staff briefing this week, if we could, before Friday, or Friday if you want. And then we will consult with the ranking member and with you and see when we can hold this closed hearing, which I think we are going to have to hold.

So could you have the staff prepared to brief our staff?

Attorney General RENO. OK, and you will make sure your staff has the appropriate clearances?

The CHAIRMAN. No question about it, we will have to do that, OK?

Attorney General RENO. That would be fine.

The CHAIRMAN. So if we could do that before Friday, I would appreciate it, and then we will try and work out when we can have the closed hearing. I think it is important that we answer some of these questions.

Senator Feingold, we will turn to you.

Senator FEINGOLD. Thank you, Mr. Chairman, and welcome, General Reno. One of the benefits of waiting a while to speak is you get the benefit of the wisdom of the more senior members, and in this case I do want to just reinforce two different issues that were brought up earlier.

The first one is the questions that Senator Grassley just asked that are critical with regard to agricultural concentration. I also attended with quite a number of Senators from both parties the very good meeting we had with you. I want to thank you for what was done in Minnesota, and hope serious consideration will be given to Senator Grassley's request for a hearing in Iowa. And, frankly, because of my concerns about concentration in the dairy industry, at some point it would be very helpful to have some opportunity to convey those concerns and have the people convey those concerns in Wisconsin.

But I also want to reiterate what Senator Grassley was asking. I think it was very clear, but I just want to second it. We stand ready here, some of us on this committee, on a bipartisan basis and in the Senate to propose legislation with regard to antitrust or other laws if there are gaps. And we need to know soon, as Senator Grassley clearly said, so that if something needs to be done, it can be actually accomplished in this Congress. And so let me just put that as high on your radar screen as we can, given the crisis that we have in rural America.

The second point I want to mention before I get to my main question is to reiterate Senator Kennedy's reference to the work that Bill Lann Lee is doing and the importance of his confirmation. I had a wonderful meeting with him yesterday where he outlined for me four or five areas that he has emphasized, and I am very impressed and pleased with the initiatives that he has taken in the civil rights area and am hoping that we can move that nomination along as well.

General Reno, I want to shift gears now and just speak a bit about a problem that is getting a lot more attention in the country and in this committee and in the Congress, and you actually referred to it in your remarks and so did Senator Kennedy. That is the practice of racial profiling by certain law enforcement agencies in traffic stops.

As you know, there have been a number of studies and numerous anecdotal reports that the police in some places stop African Americans and members of other minority groups for alleged minor traffic violations more frequently than they stop white drivers. This has led a new term to come into our national vocabulary, particularly in our minority communities, to describe the offense for which many African Americans are stopped and it is called "driving while black." I have had Hispanic constituents of mine refer to the concept of "driving while Hispanic."

Now, I think the fact that this term has even come into existence is a disgrace. It is a shame that law enforcement officers are even suspected by some Americans of enforcing our laws in a discriminatory way. Whether it is actually a significant problem or not, the suspicion is there and we have a responsibility to address it.

So I have introduced a bill in the Senate, Senate bill 821, The Traffic Stop Statistics Study Act, along with Senator Lautenberg of New Jersey—and I believe Senator Torricelli is also a cosponsor, and Senator Kennedy—to require the Department of Justice to do a nationwide study of traffic stops to give us the factual basis for addressing this racial profiling issue.

Racial profiling has no place in our law enforcement practices. All Americans must be free to travel our Nation's highways without fear of harassment by the Government. The stereotyping of African-Americans and other minorities as more likely to be involved in drug trafficking or other criminal activity is an insult to law-abiding citizens all over this country of every race. People should be judged, as Martin Luther King said, by the content of their character, not by the color of their skin.

And so I would like to know what steps the Department is taking to address this problem, which I think you would agree is getting a lot of attention, and what is your position on the legislation that I and Senator Torricelli and others have cosponsored in the Senate. As you well know, there is a House bill on this that I believe actually got through the House last year, led by Representatives Conyers and Menendez, that I believe is identical to the one that we have introduced in the Senate. I would be curious about what is being done and what your Department's position is on the legislation.

Attorney General RENO. We take the matter very seriously because we share your concern and your feelings about it. Racial profiling, a focus on conduct based on race or ethnic background, is just plain wrong. And for that reason, the Department has been involved in several investigations concerning traffic stops and searches by law enforcement officers, including in New Jersey, and these investigations are ongoing.

At the same time, the Department sponsored a 2-day problem-solving meeting on law enforcement stops and searches. This was last December. It was attended by police chiefs, State police direc-

tors, civil rights leaders, national police organization representatives, and Federal law enforcement officers. And we are using the results of that meeting to try and develop best practices that can assist local law enforcement and State police in addressing this issue.

Our findings have been people don't want it to happen. Police administrators don't want it to happen, and we have got to take steps to make sure that there are standards in place so that people know what to expect, what they should do and not do, and we are pursuing that as vigorously as we can.

Senator FEINGOLD. General Reno, I also asked about the legislation. We would very much like your——

Attorney General RENO. I have not had a chance to review your legislation. Let us take a look at it and get back to you quickly on it.

Senator FEINGOLD. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Feingold.

We will now turn to Senator Sessions. Then we will go to Senator Torricelli, Senator Kyl, and then Senator Smith.

Senator SESSIONS. Thank you, Mr. Chairman.

General Reno, with regard to the juvenile crime rate, there have been some good numbers that we can be thankful for, but overall the trend is not a healthy trend. I know some have said that crimes rates are down. From 1993 through 1997, there was an overall increase, according to the FBI statistics, of 14 percent in crime by those under 18.

I noticed you said that juvenile violent crime rates were down, and I think this is true, considering murder and rape and aggravated assault. But simple assault is up, as the numbers I have show, by 17 percent. So I guess the answer is, as you well know and we both know, we have got a very serious juvenile crime problem and we ought not to be too optimistic about some good trends in the last year or two. Would you agree with that?

Attorney General RENO. That is exactly what I have said in my opening statement.

Senator SESSIONS. Very good. I missed that statement.

Attorney General RENO. But I would point out to you that we don't have to be controlled by the demographics because the number of young people is increasing dramatically over these last 5 years and in the next 5 years to come. It is important that we take steps.

It used to be people never paid any attention to assaults, simple assaults. They told the kid to go home. I think people realize that it is important that when we see violence even in small terms that we take effective, thoughtful steps to intervene to say we won't tolerate it.

Senator SESSIONS. I agree with that, and I do believe that one thing that is failing us—and I think the core of Senator Hatch and I—the bill that we hope you will be able to support enthusiastically is to strengthen our juvenile court systems so they can intervene effectively at those first assaults that later turn out to be a stabbing or a shooting when the fights continue or the child gets away with it. So I hope that you will work with us on that and that we

can make some significant progress toward improving our juvenile justice system.

To me, we are confusing what we talk about prevention and law enforcement. In many ways, they are the same. If a judge has the opportunity to drug-monitor a youngster who is using drugs, who has alternative punishments in schools and boot camps or other discipline he can apply, that strengthens his ability to intervene and change a child's life.

Do you agree that the court system itself, properly managed by effective judges who have a myriad of options for sentencing and discipline, in effect, can prevent further crime?

Attorney General RENO. Certainly, they can. And do you know the first place to start? Since there is such a direct correlation between kids who are abused as infants and small children and subsequent abuse by them in subsequent violation of the law, let's start with model children's courts that make sure we have enough programs in place for those abused and neglected children to interrupt the cycle of violence and make sure they get off to the right start.

Senator SESSIONS. I agree, and I think the foster parents program can be improved. It has some good things, but can be improved. But I am not sure that the afterschool programs and those kinds of programs are part of a criminal justice judiciary bill. That would be more part of a health bill or an education bill, and that is the only thing I would say to you, that we can't put everything in this bill when we try to improve juvenile justice.

Attorney General RENO. If we can't put everything in this bill, let us do something, then, that the Departments of Health and Human Services, Education, and Justice have done, which is come together with the other committees, come up with something that provides a comprehensive approach so that no piece is left out because of the difference in jurisdictions. I think we can do so much in this regard.

Senator SESSIONS. Well, I think we could, but this bill is a good step, and I hope that you will support it. It may not deal with preschool, afterschool programs, and other things that some would like to see, but they ought to be as a result of hearings in committees. Don't you agree?

Attorney General RENO. Well, I think there have been more than enough hearings on it, and I will use my bargaining chip with you to make sure that we get either in this committee or some other committee an appropriate balance between prevention and the courts. I really think we can do it.

Senator SESSIONS. A good court system prevents crime, and if we disagree, we disagree on that.

Attorney General RENO. It is a lot less expensive to keep them out of trouble in the first place.

Senator SESSIONS. Well, it is, but considering all of the shootings that we have had, even those where juveniles had some criminal record, perhaps had the juvenile system not been so overloaded and so overburdened, there would have been more probation officers, or the judge could have given more time to it and perhaps the family could have been involved and those kids may not have gone on.

Attorney General RENO. I couldn't agree more.

Senator SESSIONS. Well, we want to help that, and this bill will really strengthen that option.

With regard to guns, there has been a 40-percent decline in the prosecution of gun cases by this Department of Justice. I have raised it with you really, I guess, for 2 years, and Mr. Holder also. The reason it concerned me is because I was aware of the program President Bush pushed to enhance prosecutions of criminals with guns.

And then I was most pleased to see that a U.S. attorney in Richmond was carrying on that same project, called Project Triggerlock, and even enhanced it and called it Project Exile. And it was not being favorably considered throughout the Department of Justice. We set a hearing on it, and the Saturday before our Monday hearing, the President himself praised that Project Exile, and in his statement to the American people directed that you study how to replicate that because they had obtained a 40-percent reduction in violent crime as a result of this project. I believe it will work.

Have you followed the President's directive?

Attorney General RENO. We have done that, and let me explain where we are at. I don't know whether you heard Senator Kennedy discussing what we have done in Boston. In Boston, the laws apparently were somewhat different because the laws in Virginia up until recently did not provide for as an effective effort against illegal possession of certain guns.

What we are doing is forming a partnership with State and local authorities. When the State and local authorities want to do it, when they can do it, they should be doing it. That is, I think, consistent with principles of federalism. Where, because their laws are inadequate or for other reasons, they can't, then we should be working with them to do it. But we should do it recognizing that each community and each district in America is different. There is no cookie-cutter approach, but there should be one common understanding. People who illegally use guns should know that they face the consequences.

Senator SESSIONS. Well, we do know—and my time is up—that prosecutions are down substantially. I believe this project will work. And I understand—correct me if I am wrong—that your commission to study the President's directive is not going to report back until 2001, or start the program until 2001.

Attorney General RENO. Start what program?

Senator SESSIONS. Well, let me read you what the President said. Did you get that directive? He said he was directing that you do a report and a study.

Attorney General RENO. What we have done is institute Project Exile in Richmond. We have also done a study, which at this point is inconclusive as to what portion of the initiatives in Richmond have been responsible for what reduction. And we are trying to make sure that we come up with solid facts that can properly inform Congress, the President, and everybody else.

Senator SESSIONS. Well, the President said this. He is directing that Treasury Secretary Robert Rubin and Attorney General Reno to use every available tool to increase the prosecution of gun criminals—and I say amen—and to "report back to me with a plan to reduce gun violence by applying proven local strategies to fight gun

crime nationwide, and to hire more Federal prosecutors and ATF agents so we can crackdown on even more gun criminals."

Are you doing that?

Attorney General RENO. As I indicated to you earlier, what we are doing is working with State and local authorities to make sure that every gun case is properly prosecuted. We had been doing that in Boston well before the situation with Richmond arose, and we are trying to fashion it so that we work as a partner with State and local authorities.

If the local authorities have the capacity and the law to do it, then they will do it. But we want to make sure that we use our resources in the wisest way possible. And, yes, I think we are doing it.

Senator SESSIONS. Well, the President said for you to report back, and I hope that you will.

Attorney General RENO. I have been talking to him.

Senator SESSIONS. The indication from your answer is that you are not committed to proposing a replication of the Richmond Exile Project to other U.S. attorneys offices. You are hesitant to do that——

Attorney General RENO. No, I am not hesitant——

Senator SESSIONS [continuing]. Even though it had a dramatic reduction in violent crime in Richmond.

Attorney General RENO. Well, let's look at it. We have evaluated it, and what we have seen—I don't know whether you heard Senator Kennedy, but he gave a really good description of what has happened in Boston.

Senator SESSIONS. I like the Boston project.

Attorney General RENO. Now, I wouldn't want to change Boston and say you have to do it this way. I want communities working with the Federal Government in partnership rather than the Federal Government coming down and saying, you do this and you do that and you do the other. If Boston can do it, then we should work with them to see that they do it.

I have been talking with the President. I recommend Exile when it is appropriate, I recommend other programs when they are appropriate. But one of the things, Senator—the communities of America have a lot of sense of innovation and creativity, and the Federal Government shouldn't be telling them what to do when we can together do it better than this one-way street that has too often existed.

And the prosecution by the Federal Government of small gun cases that can better be handled by the State court, without the Federal Government pursuing the organizations that we have pursued, doesn't make such good sense. So we are trying to work together, and if you have any community where you think we should be doing something more, call me.

Senator SESSIONS. Mr. Chairman, the local communities respond positively, as the chief of police in Richmond did, to an aggressive Federal presence. It should be a partnership; obviously, it should be. But this Department is not committed to it, and I can tell from the Attorney General she is not going to move those numbers. And I think it is really a failure. I think this Department is not effectively enforcing the gun laws.

The President continues to ask for more gun laws. We had a school-ground gun law passed and there have been less than 10 prosecutions out of that. There are less than 10 under the assault weapons ban, less than 10 under selling a weapon to a minor. And we want more laws, but what we need is more prosecutions.

Attorney General RENO. Well, let me suggest to you something again because we should be very clear about what we are talking about. State prosecutions of weapons offenders have increased sharply. In other words, combined Federal and State prosecutions for gun crimes have increased since 1992. In addition, Federal prosecutions for major violent organizations have increased. I think we are on the same track, Senator. I don't think we are disagreeing, but if you have a case where you think there is a problem, you let me know and let me pursue it.

Senator SESSIONS. Mr. Chairman, thank you. I have gone past my time. I feel strongly about this, and obviously we don't agree. Thank you.

Attorney General RENO. Well, what I would like to know is if there are State prosecutions, do you want us to double them?

Senator SESSIONS. I would like to see the project in Richmond worked in general with local people throughout the Nation. I think you would get much enhanced prosecutions. You would reduce violent crime, you would save lives. Criminals go away longer under the Federal law. The cases are quicker under the Federal law. As you well know, in most States it would give relief to the overburdened big-city courts, and it is extremely popular with local people. All of those are facts, and you and I both know that.

Attorney General RENO. No, sir, I don't, but I will be happy to pursue it in every way that I can because I am dedicated to making sure that anybody who illegally uses a gun is prosecuted and appropriately held accountable.

The CHAIRMAN. Well, let me interrupt in this way. You both are making good points. The Boston program has worked very well. Project Exile has worked very well. I think what the Senator is suggesting is let's expand that around the country.

Attorney General RENO. We are trying to.

The CHAIRMAN. Well, I think that is——

Attorney General RENO. But not just Exile. We are saying here is Boston as an example that might work.

The CHAIRMAN. I am saying they both have similarities, they both are working. You have indicated where one might work better than another, you are willing to recommend that. But his point is a good point, and that is we have the laws on the books to prosecute these gun violations in schools, but they are not being prosecuted.

We had 6,000 kids walk into schools this last year with guns and we have had less than 10 prosecutions. Now, that is the point. It is a good point, and you have indicated a good-faith approach toward it that you are willing to do what you can to step up and get these things spread around the country.

Attorney General RENO. We are doing it, Senator, and if we are missing something, tell me about it so I can pursue it.

The CHAIRMAN. Well, I don't think you have had enough prosecutions for the number of guns that have been walked into schools.

Attorney General RENO. We don't do things based on numbers. We do things based on who can handle it best.

The CHAIRMAN. But the point I am making is that I think sometimes maybe numbers are important, too, when we have 6,000 known violations of Federal law. I am not saying you have to prosecute all 6,000 of them. But, my gosh, less than 10 indicates you are not staying on top of it or your U.S. attorneys are not staying on top of it.

Attorney General RENO. I don't think you can conclude that. I think you, first of all, look at what State and locals are doing and try and figure our the best way to do it and which system has the best juvenile justice system to respond.

The CHAIRMAN. Well, I am not trying to put you on the spot, General Reno, but what I am saying is this.

Attorney General RENO. The whole purpose of oversight is for me to be on the spot and to be accountable, and I am here.

The CHAIRMAN. The thing that irritates us, to be honest with you, is that we have this continual demand for more laws when it is apparent to us, or at least seemingly apparent, that the current laws on the books—there were 19 such laws violated in the Columbine issue, maybe more, but I can name at least 19. The fact of the matter is that the question is are we enforcing the laws as they exist.

On the State and local levels, they claim they are. Are we doing it on the Federal level? And I think you have tried to answer that, but I would look at the criticisms and see if we can improve.

Attorney General RENO. I am looking at it in every way I can, and that is the reason I suggested to the Senator if there is a specific case where we are not doing right, let me know.

Senator SESSIONS. A specific violation or a specific——

Attorney General RENO. No; a community where there is not a good partnership between State and local authorities so that we are doing——

Senator SESSIONS. I just would say this, Mr. Chairman. We had a hearing on it a few weeks ago 2 days after the President made his directive to the Attorney General.

Was it in writing? Did you get a written directive from the President?

Attorney General RENO. I am sure there is a written directive.

Senator SESSIONS. Or just what he said in his address to the people?

Attorney General RENO. No. I get written directives.

Senator SESSIONS. Well, at any rate, I thought we had a commitment after that hearing. We heard from the U.S. attorney in Richmond and she was very much of a believer in this project, and I thought we had a commitment that the President was going to act and you were going to act. And now I hear that nothing is going to be done; it is going to be business as usual.

Attorney General RENO. No, sir, it is not business as usual.

The CHAIRMAN. Well, you have indicated that you are in the process of doing that, you want to do it, and we are going to judge you next year on how well you have done it. And I think Senator Sessions makes some good points. You have indicated a good-faith effort and we will count on that.

Attorney General RENO. I am here, I am accountable, and you don't have to wait until next year.

The CHAIRMAN. Well, I would like to see improvement. Let's put it that way, OK?

Attorney General RENO. I can't promise you improvement in numbers. I can promise you improvement in making sure that these cases are handled as well as they possibly can, consistent with Federal, State and local resources.

The CHAIRMAN. It seems to me the numbers will grow rather than have the low numbers that we have.

We have infringed on Senator Torricelli's time, so I am going to turn to him right now.

Senator TORRICELLI. Actually, you have taken so much time, you have gone beyond my time. You have now infringed on Senator Kyl's time, Senator Smith's time, and the next hearing. [Laughter.]

The CHAIRMAN. Shall we go to Senator Kyl, then?

Senator TORRICELLI. Actually, it was worth it to hear the Senator from Alabama suggest that authorities in Richmond would like more Federal presence in enforcement of the law. It shows just how far in the last 135 years America has really come if the people of Richmond want this change.

Madam Attorney General, I found the conversation interesting, and although this is not the thrust of my questioning, but I only wanted to offer the observation that I am sensitive to the frustration. I suspect in my State, if you were to ask the people in New Jersey their two principal priorities for Federal law enforcement, it would be enforcement of narcotics laws because of narcotics trafficking, and the trafficking of illegal guns into our State that contradict our considerable efforts at reasonable gun control. Yet, I find neither to be a priority of either local or Federal law enforcement.

It is my impression that U.S. attorneys' offices throughout the country are not operating with direction or a sense of priorities. There is a continuing effort by individual U.S. attorneys to set their own priorities often involving high-profile cases at the expense of the day-in and day-out work that makes our citizens safer, recaptures our cities, and reflects your and the President's real priorities.

I do not claim to be an expert on the day-in and day-out work of the U.S. Attorney's Office in Newark, but it is not my sense that there are overwhelming resources to deal with narcotics trafficking or this problem of the continued incredible flow of illegal firearms into our State.

I know these issues don't get people promotions. I know they don't win headlines, but I know they save lives, and I share a little bit—while we are on dramatically different sides of the gun control issue—I share a little bit of that frustration because I suspect if we were to look at the numbers today of how many gunrunners are being interrupted and the number of high-level drug cases being prosecuted in my State, my guess is it would not be an impressive picture.

However, now going to what I was going to ask you about, what is impressive are Mr. Holder's efforts for which I would like to thank you. My State has gone through some painful revelations in

dealing with the issue of racial profiling. The State has had to admit some things about itself and its practices in recent years that are uncomfortable and generally unforgivable.

It appears that despite years of denial, there has been a policy by law enforcement in New Jersey of using racial profiling to question people along our major highways in ways that are unforgivable. Our State is coming to terms with this issue, but it has been facilitated enormously by the Department of Justice, and I am particularly grateful to Mr. Holder for his efforts.

In correspondence from you to Governor Whitman last week, you noted that you would enter into negotiations with the State of New Jersey with an objective of a consent decree. I would like to ask you specifically whether indeed, to date, in preparing for these negotiations with an objective of a consent decree, the State of New Jersey is being cooperative, whether there are additional levels of cooperation that you would still like to obtain, and how you see this procedure unfolding toward a consent decree.

Attorney General Reno, I was with Bill Lee Saturday night and I have not heard anything in the ensuing days that would indicate to me anything other than cooperation. The way I see it unfolding, and what I would like to see, again, on a nationwide basis, is the development of standards so that police officers know what they should do and should not do, and that it is very clear. And in the development of this consent decree, I think the best practices and other standards can be spelled out that can be helpful and informative not just in New Jersey, but throughout the country.

Senator TORRICELLI. But, in fact, then, in these negotiations and this consent decree, we actually could be beginning provide a national standard for other communities to follow so people recognize when this is going too far and when citizens are victimized, as opposed to what is sound law enforcement practice?

Attorney General RENO. National standards, with the recognition that there are going to be different circumstances in different places.

Senator TORRICELLI. Is Mr. Lee going to be the lead in the negotiations with the State of New Jersey?

Attorney General RENO. Yes, he is.

Senator TORRICELLI. Generally, what is your sense——

Attorney General RENO. When I say the lead, he is going to be the person responsible as the Acting Assistant Attorney General. In terms of day-to-day efforts, he probably would not be the negotiator on day-to-day matters.

Senator TORRICELLI. I understand that. Mr. Holder has also been very knowledgeable on this matter and has, for many of us involved in the process, earned a great deal of confidence at the moment, for whatever value that may be to you.

Attorney General RENO. It is of tremendous value to me because I rely on him a very great deal on that and many other matters for the same reason.

Senator TORRICELLI. I can say that the confidence among people in New Jersey, now that this process is coming to a close, now that the Federal Government is providing some oversight, and now that there will be a consent decree that people will find free and fair,

is in some measure due to Mr. Holder's personal presence and the confidence on different sides that he has engendered.

What is your sense, Madam Attorney General, of the timing, if you could speculate at this point?

Attorney General RENO. One of the things that sometimes frustrates me about the Justice Department is that it is slower than I would like. I made that comment to you at the last hearing. I think this is a matter of vital importance to this Nation. I would like to see it done with all deliberate speed, but I don't want to see it done precipitously. I would like to see a lasting result.

Senator TORRICELLI. That is obviously important for us as well in the State. We want this done properly, but this is a conversation that should not be taking place among people in New Jersey 1 year from now or 6 months from now. We need to get this behind us. It goes to the credibility of our State government and the confidence of people living in sometimes difficult circumstances. So I hope this will receive that kind of attention.

Let me also ask you, there have now been revelations that hotel clerks and employees have been used as informants on narcotics trafficking by the State police. I believe it is in the great traditions of our country that citizens provide information at their own risk to help law enforcement solve the most dangerous crimes in our society. And I certainly believe it is appropriate for the State police and the FBI to ask citizens to be informants.

The problem is that there are allegations that law enforcement was asking hotel clerks to look for people who were speaking Spanish. In my judgment such use of language is not a fair indicator of whether people are involved in criminal conduct. The other indicators—the use of cash, the movement of rooms, the frequency of phone calls, other patterns of behavior—might be appropriate.

I want to congratulate New Jersey's citizens for offering their assistance, but we need more sensitivity from law enforcement. Finally, I am greatly concerned, Madam Attorney General, that now that this practice has unfortunately been made public, some of the most dangerous criminals in America who are trafficking in narcotics across our highways are aware that both in the past and even in recent weeks, ordinary citizens were providing surveillance and acting as informants.

You know far better than any member of this Committee the level of violence of which some of these narcotics traffickers are capable. I hope in your conversations with the FBI Field Office in Newark and with local law enforcement officials, you will do your best to ensure that they are doing everything possible to ensure the safety of the citizens who offered information, and to put the criminal element on notice that we care about these informants. We are aware. We are watching. And we are going to take measures to protect them.

Attorney General RENO. May I have a break?

The CHAIRMAN. Sure.

Attorney General RENO. Thank you. I will be right back.

The CHAIRMAN. Let's have a 5-minute break. We are going to have a vote here any minute and I would like to finish with our last two questioners. So we will recess for 5 minutes.

[The committee stood in recess from 12:03 p.m. to 12:05 p.m.]

The CHAIRMAN. I apologize for not asking you if you needed a break before then, so please forgive me.

We will turn now to Senator Kyl. There is a vote on, so I would like to finish the last two, and so we will go with you, Senator Kyl, and then last but not least Senator Smith.

Senator KYL. Thank you, Madam Attorney General, for your perseverance here this morning. I want to begin by spending about 30 seconds on comments that the ranking Democrat on the committee made regarding the costs of the independent counsel, specifically Ken Starr's investigation, to make two points.

The first is that when I was in the House of Representatives and we last reauthorized the statute, there was a substantial Republican effort, in response to Lawrence Walsh's investigation at the time, to control the cost of independent counsel, and that was thwarted by Democrats. Senator Leahy had his opportunity and did not take advantage of it at that time.

The second point is this. Like spending money on national defense, we may all prefer to spend our money on matters other than law enforcement, but public corruption is very serious business. It is a top priority of law enforcement, as I am sure the Attorney General would agree, and it must be dealt with. When targets don't cooperate but deliberately seek to obstruct justice, as President Clinton did, now confirmed by a Federal district judge, it will cost more. And, Mr. Chairman, I think it is important to make those points in response to what Senator Leahy said.

Now, Madam Attorney General, when you and I first met before I was selected to the Senate in September 1994, in Phoenix, it was on the occasion of my attempting to urge that you make a top priority controlling Arizona's and the other States' borders with Mexico. We had a horrible situation there, and in your testimony you allude to the fact that you have made substantial progress since that time. I commend you for the progress to date, but express significant concerns about the fact that that progress is now stopping.

Unfortunately, the strategy was first to control San Diego and then to control Texas, funnel the illegal immigrants through Arizona. And that is a good strategy if you follow it through. The problem is when they get to my State, the strategy is no longer in effect, and therefore my State is being overrun by illegal immigrants and by contraband coming into the United States illegally. It is a catastrophe. People are going to get hurt, and this is what I want to focus on today.

The testimony of officials under your jurisdiction that it was time to take a breather is fundamentally wrong. No one at the border is taking a breather, and the Justice Department cannot afford to take a breather either. You know that under the 1996 immigration bill, we are supposed to hire 1,000 new agents each year. That is supposed to be net. With attrition rates approaching 10 percent per year—that is about 800 agents per year—if we don't fund 1,000 new agents, there will be far fewer agents than are currently deployed to do an ever-increasing job.

In 1998, 1.5 million individuals nationwide were apprehended while attempting to cross the border. Now, the rule of thumb is that there are about three that are not apprehended for every one

that is. That is 4.5 million illegal immigrants into the United States per year.

And just to bring it back to my own State of Arizona, in March alone, in the Tucson sector alone, over 60,000 illegal immigrants were apprehended in just 1 month. That equates to about 725,000 apprehensions annually in just the Tucson sector. Twenty-eight thousand pounds of marijuana were seized, an all-time record. You have a situation where 600 immigrants are trying to cross en masse, in broad daylight, near the small town of Douglas, AZ. Ranchers nearby are taking laws into their own hands. We are going to have more people die this summer as they try to cross the border illegally out in the middle of the desert.

This is a top Federal responsibility, but it is instructive to me that in your opening statement of about 41 pages, controlling illegal immigration—and I think this is a metaphor—we get to that on page 35. There are programs that are not Federal responsibilities, for example, supporting State and local law enforcement, that have a priority—you start talking about that on page 11. But here you have the Federal Government which has the sole responsibility of controlling the border. And as I say, I think it is a metaphor that we get to that on page 35.

What you note in your testimony is that you launched Operation Gatekeeper in San Diego and Operation Hold the Line in El Paso, and that that has had some significant effect in those communities. But as you know, the strategy, as I said before, is to funnel those people through Arizona. You also note that this year there were no funds requested to hire additional Border Patrol agents, notwithstanding the 1996 law.

Now, it is unacceptable, and I am sure you can imagine my plight of representing a State where people are saying, wait a minute, I thought we were going to control the border and the Attorney General asked for zero funds to hire any new agents. In this past year, we were supposed to get 1,000 agents. Arizona would have gotten about 350 to 450 of those agents, I am told, but now we are only going to end up hiring about 200 to 400, according to the testimony of the head of the Border Patrol, and Arizona is likely to get about 100 to 150 of those. That is unacceptable.

Twenty of the twenty-one border chiefs have said that they desperately need new agents. Chief Sanders has said we need 20,000. General McCaffrey said we need 20,000. A University of Texas study says we need 16,000 just on the southwest border. So it is clear that we have got to hire more border agents.

My first question to you is did you support Doris Meissner's request for 1,000 new border agents in this year's budget?

Attorney General RENO. We suggested that there be additional Border Patrol agents, but we also feel very, very strongly that with 48 percent of the Border Patrol agents having 3 years of experience or less, it is very important that we provide a balance.

Senator KYL. I understand that. My question was Doris Meissner acknowledged that she had requested 1,000 agents. Did you support her in that request?

Attorney General RENO. I think I will provide you with the exact amount that we—I don't remember——

Senator KYL. Well, she said she requested 1,000. The administration came up with zero.

Attorney General RENO. I do not remember whether——

Senator KYL. Whether you supported the full 1,000 or not?

Attorney General RENO. The answer is yes.

Senator KYL. You did support the full 1,000?

Attorney General RENO. That is what we went——

Senator KYL. I thank you for that.

Attorney General RENO [continuing]. To OMB with.

Senator KYL. Right, and OMB said no, it is zero, and the same thing for Customs. And I appreciate that. We need to continue to fight for it, though.

The rationalization now that you just gave doesn't apply to the Tucson sector. Eighty percent of the people there have 2 or more years of experience, so you could put a lot more new agents in the Tucson sector. And, ironically, that is right where they are needed. It shouldn't be a surprise. We have put them in California, we have put them in Texas. There are more new agents there. There aren't more new agents in Arizona because we haven't put them there yet, so we could put more new agents in the Tucson sector.

Attorney General RENO. And I understand that you are going to be meeting with Deputy Attorney General Holder on this.

Senator KYL. Yes, and I understand he has your full authority to act in this regard to try to assist us.

Attorney General RENO. That is correct. Now, what we also have got to make sure of is that there is a balance of adequate resources because as you increase the Border Patrol, you have got to have the capacity in terms of prosecution and otherwise.

Senator KYL. Absolutely, and I could not agree more with you on that and I support everyone, from the marshals to the magistrates to the jails, and so on. Absolutely correct. We need far more money than we are getting, and we need your support in pushing OMB and the President to get what the law requires.

Since my time is short and we have this vote on, let me just ask you to please answer for the record this question. Of the $93 million that was appropriated to hire the 1,000 border agents for this fiscal year, will you tell us how much of that to date INS has spent and whether you would support a program to use some of that money for a hiring bonus this year so that we can hire more than 200 to 400, as is the currently projected number?

Attorney General RENO. I will get the exact amount of dollars. I want to explore the hiring bonus because I don't know what that does in terms of morale with troops who are already on the line. So we have got to analyze that carefully.

Senator KYL. Thank you.

The CHAIRMAN. Senator Smith, you will be our final questioner.

Senator SMITH. Thank you, Mr. Chairman. I know we are about out of time on the vote, but let me just ask the Attorney General a couple of questions.

I know you indicated you don't want to talk about the content of Los Alamos unless we go into executive session, Madam Attorney General, but let me just ask you this. As I understand it, agents of the FBI went to Justice, to the Office of Intelligence Policy Review, to request an application to the special court created

by the Foreign Service Intelligence Surveillance Act for a wiretap on Mr. Lee.

Now, Acting Director Gerald Schroeder denied that request, I am told, and then the FBI appealed to Eric Holder, who also denied the request. Did Director Freeh or any of his subordinates appeal Mr. Holder's decision to you?

Attorney General RENO. No, and I will just again stress what I did before. I think it is very important for you to hear the whole picture and not just what you read in the newspapers. I have no understanding that there was an appeal to Mr. Holder. I think it is very important that we look at the process. We are in the process of doing that.

At this point, I don't think that there has been any incorrect decision, but we are going to look at it very carefully. But don't, please, sir, jump to conclusions.

Senator SMITH. I understand. I am just trying to get two or three questions that I think just in——

Attorney General RENO. Well, I would urge you that these questions can be far better and more completely answered and more accurately answered in a closed session.

Senator SMITH. I can appreciate that, but let me ask you this. Did the White House contact you or any other Department of Justice official regarding the FBI's request for a wiretap? Did they ask you not to do it?

Attorney General RENO. No.

Senator SMITH. Did they discuss it with you at all?

Attorney General RENO. No.

Senator SMITH. Just one more question because we are out of time. And I understand that we can get into this further in executive session, but 99 percent of the requests for this kind of information are granted. And here is a situation here where a national security incident is out there, and yet this is denied.

I would like to explore that with you at some point wherever is the appropriate place, but let me just ask you this. Why did your Department believe that a search warrant was necessary for Mr. Lee when it is a Government computer, it is a Government office, and it is a matter of the highest national security of the U.S. Government?

Attorney General RENO. As I indicated, nobody should be discussing these matters that are classified, and we will be happy to try to brief you in an appropriate fashion with appropriate security.

Senator SMITH. Well, Mr. Chairman, these are very important questions. Would you just at some point clarify for us when we are going to have the opportunity to ask these questions? Beyond that, I will yield back.

The CHAIRMAN. General Reno has said that she will have a classified discussion with appropriately cleared staff before the end of this week, and then we will try to jointly come up with, with the ranking member, a date for a closed session.

Senator SMITH. With members?

The CHAIRMAN. With members, right.

Senator SMITH. Thank you. Thank you, Madam Attorney General.

Attorney General RENO. Thank you.

The CHAIRMAN. Thank you. Would you tell them to hold the vote for me? I will be right over. I just have one question, and you have to appreciate me because I haven't hardly asked a question.

Attorney General RENO. I always appreciate you even when you ask me lots of questions and put up big posters and everything else. [Laughter.]

The CHAIRMAN. I spared you today, except for the beginning.

Many in Congress have been searching for ways to limit the exposure of violent or sexually explicit material or content, whether in movies, songs or graphic video games, to children. As chairman of the Judiciary Committee, I am mindful of the first amendment concerns implicated by government attempts to regulate content on the Internet or over other media, but I do believe we have to do what we can to promote responsibility on the part of the entertainment industry.

Now, I am interested in hearing your views on a proposal that I have been considering to provide the industry with a limited exemption from the antitrust laws in order to give them the freedom to develop and enforce voluntary standards and enforcement mechanisms without the fear of antitrust liability or regulation. This would allow the appropriate industries to enter into joint discussions, joint consideration, and possibly joint agreement among themselves in developing—and here is the key—and enforcing voluntary guidelines to address the negative impact of violence and sexually explicit material in video games, music, movies, and the Internet.

Now, you can take time to answer this in writing, if you would care to, and I think it will take some time to reflect. But I am anxious to get your views on this possible proposal, and I want you to work with me and my colleagues on the committee in developing a reasonable proposal along these lines, if you will. I would appreciate it. But if you will submit your——

Attorney General RENO. I will be happy to submit it, and I will be happy to work with you on this issue. I would be happy to work with the committee, with Senator Sessions on the gun package. I just have the feeling that in this next 1½ years we can do so much if we work together.

The CHAIRMAN. If we work together, we can do a lot of good for our young people.

Attorney General RENO. I am committed to doing everything that I can.

The CHAIRMAN. Well, thank you so much. I know it is always a pain to come up here, and especially on an oversight hearing. We will have to have that private session, but as usual you have cooperated very well and I appreciate it. I just hope we can get to the bottom of some of these other questions.

Attorney General RENO. Can I just say one other thing?

The CHAIRMAN. Sure.

Attorney General RENO. There are times that you support a person just because of reputation. There are times when you support a person because you have watched them in action and you understand the depth of their feeling, their fairness, their intellect and their abilities.

Bill Lann Lee has been just a splendid person to work with, and I just urge you to confirm him. He has such a wonderful way of working with States and others to work out the issues without sacrificing principle. He is doing a wonderful job now and he will serve you and this Nation very well.

The CHAIRMAN. Well, I appreciate those comments. Let me just say this. I intended to support Bill Lann Lee before his testimony, and I told him he would have to be very careful in his testimony. And, in my opinion, he did not evidence a complete agreement to abide by the law.

Second, having been appointed as acting for over 15 months now, in what I consider to be a violation of the Vacancies Act, that alone causes some on our side to feel that it is flying in the face of justice to resubmit him.

Third, my feeling about it is this. As you know, the Department has been cooperating with us in investigating or looking into and analyzing and evaluating Mr. Lee's efforts down there. The purpose of that is for me to be fair to Mr. Lee because I personally like him. I think he is an excellent attorney. I think he is the type of person I would want to serve in almost any other position in government, but I have got to be assured that whoever serves in these very difficult positions is going to abide by the law.

And we are going to look at that very carefully and, as you know, I will be as fair as I can possibly be. I will be fair; it is just that simple. And it may involve some angst on the part of some people around here, but the fact of the matter is we are looking at it. We appreciate the Department's cooperation with us and Mr. Lee's cooperation with us. He has been very cooperative, and that means a lot to me and it goes a long way.

But we still have a little way to go to finish that evaluation, and I think it is safe to say that the vast bulk of what he does is not in question. But there are some matters that are in question. As you know, I will try to be fair, but I also have to abide by the law.

Attorney General RENO. You are always fair and I appreciate that very much.

The CHAIRMAN. Thank you, Madam Attorney General. We appreciate you, and with that we will recess until further notice.

[The prepared statement of Attorney General Reno follows:]

PREPARED STATEMENT OF ATTORNEY GENERAL JANET RENO

Good morning, Mr. Chairman, Senator Leahy, and Members of the Judiciary Committee. Just a month and a half ago, I came before this Committee to discuss the Department's proposed budget for fiscal year 2000. I am pleased to appear before you again today to testify about the record of the Department of Justice and the work that we are doing to enforce our Nation's laws, make America's communities safer and more secure, and strengthen our law enforcement systems so that we will be prepared to address the new challenges of the coming century.

The oversight function of this Committee is very important, and I welcome it. You also have been active and full partners in so much of the work we have done over these past six years. We could not have made such tremendous progress in recent years without your strong support and attention.

We need today to harness all the energy, expertise and resources that we have in our Department, in this Congress, and in our communities to break the cycle of violence in this country.

I hope that we can work together to face this challenge, just as we have worked together on so many important issues, for this is one of my highest priorities as I look to the future.

I first appeared before the Senate Judiciary Committee in 1993. The challenges that we faced at that time were great. Americans were concerned about the problem of crime. Our own resources—at Main Justice, among our law enforcement components, and in our U.S. Attorneys' offices—were lacking. We had work to do to assure that our personnel were trained and ready on an up-to-the-minute basis, with current and integrated information technology. We did not yet have a strategic plan to address the new and growing problem of cybercrime. Criminal enterprises were becoming increasingly global, and yet we were just establishing our own ability to fight crime abroad. The Immigration and Naturalization Service (INS) lacked the manpower or resources to effectively enforce our nation's immigration laws. And communities across America had little faith that the federal government could effectively address their concerns about crime, the environment, or civil rights.

In 1993, I committed to working with you to address the nation's domestic and international crime problems, improve enforcement of our civil rights and environmental laws, secure our borders, assure a competitive and fair marketplace as we transition to an information-based economy, and ensure that every part of the Department of Justice works effectively to advance our mission.

I am pleased to report today that, working closely with you and the Congress, we have made great headway in each of these areas, and we have laid a solid foundation to tackle the challenges that we face.

I. The Administration's Comprehensive Crime Control Strategy

Over the decades and across the country, Americans had grown very concerned about the problem of crime. With the support of President Clinton and Vice President Gore, the bipartisan efforts of this Congress, the dedicated work of federal, state, local, and tribal law enforcement, and with the strong support of our communities, we are turning this situation around.

Over the past six years, the Department has implemented a comprehensive crime control strategy with seven key objectives:

- Vigorously enforcing federal criminal laws in cooperation with other federal agencies to have the greatest impact on crime problems—including terrorism and other crimes against national security;
- Building partnerships with, and providing resources to, state, local and tribal law enforcement in order to ensure that law enforcement agencies can conduct criminal investigations and prosecutions effectively, without regard to turf or credit;
- Developing a comprehensive initiative against drug trafficking and abuse, which includes fair and firm punishment, and education, prevention, drug courts, post-incarceration monitoring, and reentry programs for drug-dependent offenders.
- Developing a comprehensive program to end the culture of violence through targeted efforts directed at gun violence, juvenile crime, and domestic violence;
- Working with law enforcement at all levels to develop the capacity to investigate and prosecute cybercrimes;
- Establishing a strong international presence to ensure that there is no safe place for criminals to hide; and
- Promoting integrity in law enforcement at all levels.

We started in 1994, by working with Congress to achieve passage of the Violent Crime Control and Law Enforcement Act. This legislation has formed the basis for the Department's comprehensive crime control strategy. Over the past five and half years, we have worked to enforce this law, build strong partnerships with communities, and help strengthen state and local law enforcement agencies. We believe that the strategy now in place is working.

Today, the violent crime rate is down 21 percent since 1993, and is at its lowest level since 1973. The overall crime rate is at the lowest level in nearly a quarter of a century. Murders have fallen by more than 20 percent in larger cities and suburban communities. And, although it may be hard to believe after last month's tragedy in Littleton, Colorado, violent crime by juveniles is down for the third consecutive year. We must build on the progress we have made and continue to work toward a safer America.

A. VIGOROUSLY ENFORCING FEDERAL CRIMINAL LAWS

The Department of Justice vigorously investigates and, prosecutes criminal violations of the laws of the United States. Overall, in 1998, federal prosecutors success-

fully convicted 89 percent of those defendants whose cases were closed during the year, and 77 percent of all convicted defendants were sentenced to prison.

1. Targeting violent offenders, organized crime and white collar crime

In 1998, the Department prosecuted many violent criminal offenders using the enhanced criminal provisions of the Violent Crime Control Act of 1994. Last year, federal prosecutors filed 6,889 cases against 8,703 violent offenders, increasing the total number of cases by 10 percent over the previous year.

The Department also prosecuted 26,906 defendants for narcotics violations in 1998, increasing the number of defendants charged by 14 percent over the previous year. We have had particular success targeting and dismantling major criminal and drug trafficking organizations. In 1998, the Department filed 199 cases against 390 organized crime defendants. These included the 6 successful prosecution of 22 members of La Cosa Nostra (LCN) on racketeering-related charges.

Additionally, the Department has continued to aggressively prosecute "white-collar" crime, filing 6,669 white-collar crime cases against 8,518 defendants last year.

2. Targeting domestic terrorism

The Department of Justice has taken steps to prevent and prepare for the threat of terrorism in the United States, and to prosecute those who commit such heinous acts.

Under its role as the designated lead agency for domestic terrorism, the FBI and the Department are taking steps to ensure that state and local communities are prepared in the event of a terrorist attack involving weapons of mass destruction (WMD). We convened a meeting last August to get input and expertise from our federal agency partners in this effort, the Departments of Energy, Defense, Health and Human Services, the Environmental Protection Agency and FEMA, as well as from state and local first responders.

We have proposed the establishment of the National Domestic Preparedness Office (NDPO) to coordinate federal domestic preparedness activities and to serve as a clearinghouse for information to state and local first responders. Working in conjunction with other federal agencies, the NDPO will act as a single point of contact for first responders to access information about and receive assistance from the multitude of federal domestic preparedness programs.

We have also looked to the state and local responder community to provide us valuable input throughout our planning efforts. In the proposed NDPO effort, an advisory committee of state and local authorities will be the bridge between the federal planning team and the states and local emergency response and health care community. We also established a Center for Domestic Preparedness in Fort McClellan, Alabama, to train state and local emergency personnel. To date, we have helped train 500 emergency personnel at this new facility, and we have provided $12 million to metropolitan areas for emergency equipment needed to respond to terrorist incidents.

Additionally, at the direction of the Congress, we have prepared a Five-Year Counter Terrorism and Technology Crime Plan (Five-Year Plan) which was submitted on December 30, 1998. The Five-Year Plan serves as a baseline strategy to combat terrorism in the United States and against Americans abroad. I am committed to working with Congress and with other federal agencies to continue to develop this plan.

In addition to our work to prevent and prepare a response to terrorism, the Department has successfully prosecuted several terrorists. Last year, Timothy McVeigh was sentenced to death, and Terry Nichols was sentenced to life in prison in connection with the bombing of the Alfred P. Murrah federal building in Oklahoma City that killed 168 Americans. Ramzi Ahmed Yousef, convicted in the World Trade Center bombing that killed six and injured hundreds, was sentenced to 240 years in prison. And, also last year, the UNABOMBER, Theodore J. Kaczynski, pleaded guilty and was sentenced to life in prison without the possibility of parole.

3. Protecting national security

The Department of Justice plays a key role safeguarding America's national security. During the last several weeks there has been a considerable amount of publicity about possible espionage at the Los Alamos National Laboratory. We are zealously investigating these claims and I can assure you that we will aggressively prosecute any person whom we determine illegally transferred classified information. Our National Laboratories handle some of our country's most sensitive and classified scientific research and we must make certain that their secrets are not disclosed improperly.

I have discussed these issues with FBI Director Freeh and the Secretary of Energy, Bill Richardson, and I know that they share my concerns. Our goals at this

point are twofold. First, we must take every step necessary to ensure the security of the national laboratories. Second, we must be certain that we identify, investigate, and, if there is sufficient evidence, prosecute every person responsible for divulging classified information.

C. BUILDING PARTNERSHIPS WITH STATE, LOCAL AND TRIBAL LAW ENFORCEMENT

Beginning early in the Administration, we recognized that it was essential to join forces with our state, local and tribal counterparts and with local communities to fight-crime.

1. Supporting State and local law enforcement

The cornerstone of our community crime control strategy is community policing. Since 1994, the Department has provided more than $5.4 billion in funding for this program and we are close to reaching our goal of funding 100,000 community police officers.

The Department of Justice is now planning to build on the foundation we have laid for community policing with a new 21st Century Policing Initiative. This initiative will strengthen community police forces in high crime areas, and provide police with new technologies, communication systems and equipment.

Senator DeWine and Senator Leahy have shown such tremendous leadership in this area in their work last year on the Crime Identification Technology Act (CITA). We hope that you will support our 21st Century Policing Initiative that includes $350 million specifically for state and local crime-fighting technology.

The Administration is also building on community policing with a community prosecution initiative to fund up to 1,000 prosecutors, each year for five years, to advance community-based prosecution strategies across the country.

Community policing and community prosecution programs are part of our larger Department of Justice effort to support state and local law enforcement. Since 1993, we have increased federal support for state and local law enforcement by 294 percent—an increase of more than $2.9 billion.

Within the Department of Justice, the Office of Justice Programs (OJP) principally works with federal, state, local, and tribal agencies and organizations to develop, fund, and evaluate a wide-range of programs to prevent and control crime. At the present time, we are developing a new organizational structure for OJP to make the work of this office more efficient and accessible for the state, local and tribal communities.

2. Building Federal community-based crime strategies

At the federal level, the Department of Justice has developed a community-based strategy for federal law enforcement to use in fighting violent crime. We have dramatically expanded the Department's Weed and Seed Program from about two dozen sites in 1993 to nearly 200 sites today. In addition, we launched a major new violence reduction effort in 1994: the National Anti-Violent Crime Initiative (AVCI). Throughout the country, U.S. Attorneys have developed coordinated, comprehensive strategies to address violent crime problems in their districts.

3. Improving tribal justice

The Department of Justice is committed to encouraging and supporting continued-adherence to the principle of government-to-government relations between federally recognized Indian tribes and the federal government. Last year, we proposed a multi-year Indian Country Law Enforcement Initiative to help raise the level of law enforcement in Indian country to national standards. With additional funding in fiscal year 2000, we plan to increase the number of law enforcement officers on tribal lands, provide more equipment and training, construct badly needed detention facilities, enhance juvenile crime prevention and intervention, improve the effectiveness of tribal courts and criminal statistics collection systems, and hire 26 additional Assistant United States Attorneys to prosecute major crimes in Indian country.

C. DEVELOPING A COMPREHENSIVE INITIATIVE AGAINST DRUG ABUSE

The Department of Justice has a comprehensive program to control the trafficking and use of illegal drugs. This program, prepared in coordination with the Administration's National Drug Control Strategy, aims to reduce the availability of illegal drugs in the United States. It includes aggressive efforts designed to disrupt and dismantle multi-jurisdictional drug trafficking organizations. It also includes drug education, prevention and treatment programs to break the cycle of crime and drugs.

The Department of Justice is now implementing a comprehensive Drug Control Strategic Plan, announced in March of 1998, to attack drug trafficking. First, the

Department's Organized Crime Drug Enforcement Task Force (OCDETF) brings the expertise, experience and capabilities from the law enforcement components into one group. OCDETF targets the highest level traffickers and organizations. It also works with the Department of Defense, and with state and local agencies to combat illegal drug activities.

Second, our United States Attorneys are developing local drug strategies to address the particular threats and needs in their districts. We are developing these strategies in conjunction with state and local law enforcement and with community leaders.

Third, we are coordinating drug enforcement efforts with violent crime control and anti-gang measures undertaken as part of the Anti-Violent Crime Initiative. The Drug Enforcement Administration (DEA) Mobile Enforcement Team Program and the Federal Bureau of Investigation (FBI) Safe Streets Task Force are particularly involved in this effort.

Fourth, we are working cooperatively with foreign governments to develop productive counter-drug relations. We are negotiating extradition treaties so that we can prosecute international drug traffickers here in the United States; and we have established FBI and DEA centers oversees to investigate drug trafficking and to coordinate enforcement efforts with foreign countries.

At the same time, we are focusing more and more on the strong link between crime and drugs. A recent report by the National Center on Addiction and Substance Abuse, drawing upon data from the Department's Bureau of Justice Statistics, found that 80 percent of people serving time in state or federal prisons were either high when they committed their crimes, stole to buy drugs, violated drug or alcohol laws, or have a long history of substance abuse.

This tells us that it is not enough simply to punish drug using offenders and then send them back out on the streets—still drug and crime dependent. Over the last six years, the Administration has developed a comprehensive program for drug offenders. It includes expanded drug testing programs for arrestees, drug courts to compel treatment and reduce recidivism by non-violent drug offenders, and effective treatment for offenders while they are incarcerated. It also includes testing, follow-up treatment, and sanctions to assure that offenders stay clean after they are released. Such efforts are demonstrably effective in reducing offender drug use and drug-related crime.

I hope that we can build on this program with increased funding in fiscal year 2000 for drug courts, and for drug testing and treatment programs for offenders at the federal, tribal, state and local levels.

D. BREAKING THE CYCLE OF CRIME AND VIOLENCE

We have put an effective strategy in place to reduce crime. Now, we must resist the complacency that often accompanies such substantial progress. As the tragic events in Littleton, Colorado and the continuing violence in so many of our inner cities remind us, there is still too much crime and lawlessness in America.

Working together to reduce the unlawful possession of firearms, to address the problems facing our youth, to end domestic violence, and to assist crime victims and strengthen the ties in our communities, we can help break the cycle of crime and violence for tomorrow.

1. Keeping guns away from criminals and children

The Department of Justice is taking a number of measures to reduce gun violence.

First, the Department is implementing the Brady Law. Through November 1998, during the first five years of the operation of the Brady Law, over 250,000 felons and other prohibited persons were denied firearm purchases. Since November 1998, the Department has implemented the Brady Law's National Instant Check System (NICS). NICS has already processed more than 3.4 million background checks, and the FBI alone has denied gun transfers to more than 36,000 people who should not have them. We estimate that our state partners have denied at least as many as well.

The Department is seeking to restore the user fee for the National Instant Criminal Background Check System. A user fee for NICS is the best way to cover the cost of operating the system. Without a user fee, taxpayers must pay for firearms background checks, and states will stop conducting NICS background checks. We look forward to working with you to resolve this funding issue.

Second, we have asked U.S. Attorneys to develop an anti-violence strategy with state and local law enforcement to target illegal guns. We recognize that each district will have a different strategy, tailored to the particular needs in that community. In Boston, Massachusetts, for example, the U.S. Attorney, working with local enforcement and community coalitions, used a problem-solving approach to combat

gun and gang violence. The strategy helped cut youth homicide rates by 71 percent in two years. In Richmond, Virginia, the U.S. Attorney dramatically increased the number of federal prosecutions of gun crimes. Richmond's Project Exile contributed to a 41 percent drop in the number of firearms homicides in 1998.

Third, under the President's Directive of March 20, 1999, the Department is taking our local efforts to reduce gun crime one step further, building upon the Anti-Violent Crime Initiative's focus on coordinated partnerships among federal, state, and local law enforcement. I will be directing each U.S. Attorney to work closely with the Bureau of Alcohol, Tobacco and Firearms (ATF) Special Agent-in-Charge, as well as with state, local, and tribal law enforcement and community leaders, to develop an Integrated Firearms Violence Reduction Strategy tailored to the needs of each district. Secretary Rubin has directed ATF Special Agents-in-Charge to do the same.

Fourth, the Department has published a handbook of proven gun crime and violence reduction strategies in place in communities around the country. This handbook, *Promising Strategies to Reduce Gun Violence,* has been distributed to Members of Congress, all U.S. Attorneys, and others, and it is available to the public through the Department's clearinghouse.

Finally, last week, the President announced that he is proposing a comprehensive bill to strengthen America's firearms and explosives laws. This Act would reduce illegal gun purchases and gun trafficking by limiting the purchase of handguns to no more than one per month. It would raise the age of the youth handgun ban from 18 to 21 years of age, and halt the importation of large capacity ammunition magazines. It would ban possession of semi-automatic assault rifles by anyone under 21, and require Brady background checks for the purchase of explosives. The proposed legislation would also help law enforcement trace more guns used in crimes to their sources, and close the loophole in our Brady law that allows criminals to purchase guns at gun shows.

1. Juvenile crime

The Department has developed a strategy to address juvenile crime and improve juvenile justice. It provides for a continuum of programs—from prevention to early intervention to graduated sanctions for juvenile offenders. We are supporting state and local efforts to build juvenile justice systems that can deliver the right services and sanctions in a cost-effective manner. We are also providing states and communities with funding to implement comprehensive delinquency prevention programs. To date, the Department has awarded Title V Community Prevention grants to 619 communities.

At the federal level, the Clinton Administration has proposed legislation to enhance the effectiveness of the federal juvenile justice system.

Finally, the Department is focusing on the specific problem of violence in our schools. At the President's direction last year, the Department convened meetings with a broad range of experts to discuss the issues raised by last year's school shootings and the larger issue of youth violence. The Department of Justice also worked hand in hand with the Department of Education to publish and distribute *Early Warning, Timely Response: A Guide to Safe Schools,* to help parents, teachers, and principals recognize and respond to youth who have displayed the warning signs of violent behavior.

The juvenile arrest rate for violent crime has dropped for three straight years, falling 23 percent from 1994 to 1997, after rising steadily from 1989 to 1994. We have also seen significant declines in every type of juvenile violent crime, including a 43 percent drop in the juvenile murder arrest rate from 1993 to 1997. Yet, the tragic explosion of violence at Columbia High School in Littleton, Colorado reminds us all that there is still too much violence in our schools and our communities and many challenges still lie ahead.

3. Ending violence against women

Over the past six years, the Clinton Administration, largely through the Department of Justice, has greatly expanded efforts to address violence against women.

In 1994, Congress passed,the Violence Against Women Act (VAWA). This law launched the first major federal effort to address violence against women. Since the enactment of this law in September 1994, the Department of Justice has made combating domestic violence, stalking and sexual assault a major priority.

Over the past six years, the Department has filed 141 indictments and obtained 100 convictions under the federal domestic violence laws. To coordinate VAWA cases effectively, the Department has also assigned a point of contact in every United States Attorney's Office who works with the FBI, ATF, and local police and prosecutors to raise awareness of VAWA, exchange information about domestic violence and

sexual assault cases, coordinate resources on those cases, and ensure referral of appropriate cases for federal prosecution.

The Department is now responding to the increasingly serious problem of international trafficking, particularly in women and children. Through trickery, or physical, economic or other duress, victims are smuggled into the United States and other countries for the sex trade, unlawful labor, and other illegal purposes.

The Department has also, since 1994, awarded over $700 million to police, prosecutors, victim service providers, and courts at the state, tribal, and local levels through VAWA grant programs.

4. Assisting victims of crime

In the past decade, the federal government has taken unprecedented steps to assist crime victims. New federal and state laws define and protect the rights of victims—to information, to participate in judicial proceedings, and to receive compensation. Currently, the Department, through the Office for Victims of Crime, provides direct financial assistance to victims nationwide, and today, every United States Attorney's Office has a victim/witness coordinator.

E. FIGHTING CYBERCRIME

In this Information Age, people use computers, the Internet, and other new information technologies (IT) to conduct business, perform research, and to communicate with others. Criminals use these technologies as a new means to commit old crimes like defrauding unsuspecting senior citizens, distributing child pornography, stealing credit card numbers, and robbing banks. Our Nation has become so reliant on new technology that the national and economic security of the United States now depends largely on the rapid, consistent, secure, and reliable movement and storage of data. As a result, without proper safeguards, we are potentially vulnerable to hackers, cyberterrorists, and other criminals who would use their computers for illegal intrusion into, and exploitation of, America's major information and communications networks. Over the past several years, the Department has begun to put these important safeguards into place.

First, last year the Administration established a National Infrastructure Protection Center (NIPC) located in the Federal Bureau of Investigation. The NIPC's job is to detect, deter, analyze and respond to cyber threats, intrusions, and exploited vulnerabilities of our Nation's critical electronic infrastructures. This mission requires coordination with other agencies at every level of government. The Department has also developed the National Cybercrime Training Partnership (NCTP) to work in partnership with local, state, federal, and international law enforcement agencies in response to cybercrime. Cybercrimes, by their very nature; respect no national boundaries and may be perpetrated from virtually any spot on our planet. Strong liaison relationships with foreign police and security agencies are essential to identifying and apprehending cyber criminals.

F. ESTABLISHING A STRONG INTERNATIONAL PRESENCE

One of the greatest challenges I have faced as Attorney General has been confronting the striking increase in international crime—and its impact here in the United States and on Americans and American interests at home and abroad.

The impact of international crime is felt daily in our communities. International drug trade produces the horrible consequences of drug abuse—drug trade and trafficking related violence. International financial crime robs Americans of their savings, and exploits our banks and businesses. The growing problem of international trafficking in persons results in the most basic violations of human rights. Cybercrime threatens the American financial sectors and our critical infrastructures as well.

Confronting transnational crime requires two significant and sustained efforts on our part. First, we need sufficient legal authority and resources to match the increase in scale and complexity of international criminality. Second, we need to build an effective infrastructure of cooperation with other countries; we need that infrastructure to collect evidence of trans-border crime and to bring international criminals to justice.

Over the course of the past six years, we have worked to achieve these goals, and we have made a great deal of progress.

We have strengthened our "front line" against international crime: our FBI, DEA and INS agents abroad. For example, in the last five years, the FBI has opened eight new offices—in Argentina, Israel, Russia, the Ukraine, Estonia, Poland, Saudi Arabia and South Africa; the Bureau now operates more than 38 overseas offices and is in the midst of opening four more. Last year, these offices handled 20,000

investigative leads from our FBI offices at home. DEA, too, is augmenting its network overseas, with further expansion into the Newly Independent States of the former Soviet Union, Latin America, and Asia. We now have prosecutors stationed in Rome, Mexico and Colombia, and in Brussels to cover our increasing anti-crime work with the Europeans.

Our network of law enforcement treaties has been vastly expanded and modernized. Just last year, the Senate Foreign Relations Committee approved a record 38 new extradition and mutual legal assistance treaties. As a result, we have doubled the extradition and foreign evidence cases handled by our office of International Affairs.

We are making real inroads into what had been the greatest problem in bringing international fugitives to justice: other countries' refusal to extradite their own citizens. In every possible international forum, I put this issue on the top of my agenda. And we are seeing results: the first extraditions of Mexicans from Mexico; new treaties in Latin America—with Bolivia, Paraguay and Argentina—that remove centuries-old bars to extradition of nationals; and promising changes in the laws of countries such as the Dominican Republic and Colombia.

G. PROMOTING INTEGRITY IN LAW ENFORCEMENT

Across the country, there are nearly 700,000 Law enforcement officers, and the overwhelming majority are hard-working public servants who do a dangerous job justly, fairly, with excellence and with honor. They put their lives on the line every day in the pursuit of justice and public safety.

I support and salute these dedicated officers. We owe them a great debt of gratitude. But we as a society cannot tolerate officers who cross the line and abuse their position by mistreating law-abiding citizens or who bring their own racial bias to the job of policing.

Even isolated cases of excessive force or bias can cause citizens to lose faith in their law enforcement officers, and undermine the trust that is so essential to effective policing. For too many people, especially in minority communities, the trust that is so essential to effective policing does not exist because residents believe that police have used excessive force, that law enforcement is biased, disrespectful, and unfair.

To restore this trust between communities and law enforcement, police chiefs and rank and file officers agree that we must take decisive action against the few officers who violate their oaths and use excessive force or harass individuals. Most cases of excessive use of force by police officers are prosecuted by state and local authorities. However, the Department has important jurisdiction in this area and during the past five years we have prosecuted over 300 officers for excessive force and other misconduct, and obtained the convictions of more than 200. Recently, we completed our investigation of the New Jersey State Police and determined that state police officers are engaged in a pattern or practice of discriminatory traffic enforcement. We look forward to working with the State of New Jersey on a settlement that will ensure that New Jersey becomes a model for guarding against discriminatory law enforcement.

II. Enforcing Federal Laws and Representing the Federal Government in Judicial Proceedings

Central to the mission of the Department of Justice is our work to protect civil rights, the environment, competitive fair market practices, the integrity of America's immigration laws, the fair enforcement of our tax laws, and our efforts to effectively represent the interests of the federal government in litigation.

A. ENFORCEMENT OF CIVIL RIGHTS LAWS

The Department of Justice is making significant progress in the enforcement of civil rights. I would like to focus today on three areas of particular activity by the Civil Rights Division.

First, is the work that the Civil Rights Division is doing to enforce the promise of equal opportunity for Americans with disabilities, under the Americans with Disabilities Act. The Department has successfully resolved a number of cases involving discrimination in public accommodations and access to services for persons with disabilities. For example, Wendy's has agreed to modify queue lines in nearly 1,700 restaurants, and Bass Hotels, the owner of Holiday Inn, has agreed to modify their hotel facilities to make them more accessible to people with disabilities. Connecticut's private hospitals have agreed to provide sign-language interpreters to patients who are deaf.

Second, the Civil Rights Division has sought to ensure that every American who has the means to own a home can do so without being discriminated against in the lending process. The Division has brought a record 13 lending discrimination suits, which have resulted in changes to make sure that lending practices are fair to all Americans.

Third, the Department is developing new strategies to fight hate crime, a problem we believe is widespread and under-reported. In particular, we have established a hate crimes task force in each of the U.S. Attorneys' offices around the country which bring together state and local law enforcement and community leaders to coordinate our response to hate crimes.

From 1993 through 1998, the Department of Justice brought 32 federal hate crimes prosecutions under 18 U.S.C. § 245. This law allows the federal government to prosecute a hate crime case where a victim was engaging in a federally protected activity. For example, in South Carolina, a team of federal, state, and local law enforcement agencies prosecuted five members of the local Ku Klux Klan for a series of hate crimes including two church arsons and the assault, with intent to kill, of an African American man with a mental disability. These five Klansmen were convicted of both state and federal offenses and have been- sentenced to serve lengthy terms in prison.

The Department is committed to taking a firm stand against hate crimes, and supports legislation to strengthen federal hate crimes laws.

Acting Assistant Attorney General Bill Lann Lee is leading the federal civil rights enforcement effort with expertise and dedication. I urge you to move quickly to approve Mr. Lee's nomination.

B. PROTECTING OUR ENVIRONMENT

The Department's Environment and Natural Resources Division (ENRD) has a strong record of enforcement of our environmental laws. Overall, between 1993 and 1998, ENRD brought more than 350 civil Clean Air Act cases and 240 civil Clean Water Act cases, imposing more than $286 million in penalties. Among its recent successes are two settlements with a major mining company, in cases brought for violations of the clean water and hazardous waste laws. The settlements include an $11.8 million penalty, and will result in cleaning up of the contaminated areas as well as a major upgrade of the company's environmental management systems.

The Division has also brought successful criminal prosecutions involving the illegal importation of chlorofluorocarbons, pollution of oceans and inland waterways, discharges of massive quantities of hazardous substances into the environment, and pesticide contamination; and has launched an enforcement program targeting the $5 billion illegal wildlife smuggling industry.

The Division's litigation has also resulted in the protection of public lands and Indian rights and claims. In all of its work, the Division has integrated alternative dispute resolution and carefully selects cases to use the Department's resources cost effectively and appropriately.

C. PROTECTING AMERICAN CONSUMERS FROM UNFAIR MARKET PRACTICES

The Antitrust Division works to ensure that American consumers benefit from a competitive and fair marketplace. Strong competition benefits American consumers, who are assured of high quality goods at reasonable prices, and helps American industry in the worldwide economy by promoting healthy rivalry and encouraging efficiency and innovation.

Because of the globalization of our economy and the growth of technology, the Antitrust Division faces increasingly large and complex cases each year.

Through its enhanced enforcement efforts, the Division has recovered a record $470 million in criminal fines in the past two years alone. On the civil side, the Division has challenged Microsoft's hold on the computer software industry and the control that Visa and MasterCard have on the credit card industry. The Department has also conducted a number of antitrust investigations of the agriculture industry in recent years, leading to a number of enforcement actions, including the criminal prosecution of Archer Daniels Midland and others for price fixing, and the required divestiture, as part of the Monsanto/DeKalb Genetics merger, of cutting-edge genetic transformation technology.

Second, the Antitrust Division has increased its work in the review of mergers. Mergers have been occurring at a record pace—with merger filings increasing 10 percent in fiscal year 1996, 20 percent more in fiscal year 1997, and another 30 percent in fiscal year 1998. The Antitrust Division recently successfully challenged the largest merger in American history: the proposed merger of Lockheed-Martin with Northrop Grumman.

D. REPRESENTING THE UNITED STATES IN CIVIL PROCEEDINGS

From 1993 through the beginning of 1999, the Civil Division secured a record $5.5 billion in judgments and settlements. The majority of these awards are the result of the crackdown on fraud committed against taxpayers—specifically, the vigorous pursuit of health care fraud—and successes in suits involving bankruptcy fraud, loan defaults, and other commercial transactions.

In addition, in December of 1998, I concluded that there were viable bases for the Department to pursue recovery of the federal government's tobacco-related health care costs through litigation. The Department has now formed a tobacco litigation team, housed in the Civil Division, to pursue recovery of these costs. I hope that you will support the Department's request for $20 million in fiscal year 2000 to fund the tobacco litigation.

E. CONTROLLING ILLEGAL IMMIGRATION AND REVITALIZING THE IMMIGRATION AND NATURALIZATION SERVICE

Six years ago, the Immigration and Naturalization Service (INS) lacked the resources, the personnel or the equipment to control illegal immigration or administer our nation's immigration laws. The agency's filing systems were inadequate. There were holes in our fences along our border. Roads along the border were impassible for the Border Patrol. Computers were antiquated. And there was no effective strategy for controlling illegal immigration.

In the past six years, through the efforts of the Immigration and Naturalization Service (INS) and the backing of this Committee, the Department has put in place a comprehensive strategy to control illegal immigration and improve the operation of the Immigration and Naturalization Service.

The first priority was to reverse years of neglect along the Southwest border. With your support, the Department has nearly doubled the size of the Border Patrol to almost 9,000 agents today. Similarly, we have added over 1,900 new Immigration Inspectors and deployed new state of the art technologies to speed up the process of legal entry and control illegal immigration at our Ports of Entry. We launched Operation Gatekeeper in San Diego, Operation Hold the Line in El Paso Texas, and Operation Rio Grande in South Texas. We will continue to send reinforcements to Arizona and other sectors that are experiencing great pressure as we close the traditional corridors for illegal immigration. I would like to note that with the greatly expanded workforce, the proposed budget for fiscal year 2000 does not request funds to hire additional Border Patrol agents next year. We do, however, request significant funding for facilities and for force-multiplying technologies to support the Border Patrol.

Second, we are deporting illegal immigrants faster and in greater numbers than ever before. From fiscal year 1993 to fiscal year 1998, INS increased the number of annual removals from 42,471 to over 171,000. The number of criminal aliens removed from the country reached 56,100 last year, and is continuing at the rate of more than 1,000 per week, double the number removed in 1993. We have significantly increased detention space to support this effort. INS now detains about 14,500 criminal aliens, quadruple the capacity of 1994. Last year, we were able to detain more than 150,000 aliens, 74 percent more than in 1995.

Third, INS has placed agents and officers overseas to target major smuggling operations.

Fourth, INS has reformed the system for asylum processing to reduce fraud and better respond to those who are fleeing persecution.

Fifth, the Department is continuing to reengineer the naturalization process to accommodate the millions of new applicants for citizenship. Overall, from fiscal year 1993 to fiscal year 1998, INS has received over 5.6 million new applications for citizenship and has completed nearly 4 million cases.

Finally, we will shortly present to you a draft proposal to fundamentally restructure the INS by dividing its primary functions of enforcement and services into distinct chains of command. This effort will increase accountability, improve performance and strengthen our immigration system.

F. PROMOTING THE FAIR ENFORCEMENT OF THE FEDERAL TAX LAWS

The Tax Division works to ensure fairness in the tax system. Since fiscal year 1993, the Division has successfully blocked more than $2.4 billion in improper tax refund claims, including more than $275 million in such claims in 1998. The Division also secured convictions in the largest motor fuel excise tax case to date, involving an attempt by organized crime figures to evade $140 million in taxes. The Tax Division has also vigorously prosecuted large-scale electronic-filing fraud schemes

and helped to identify systemic weaknesses that led the IRS to institute better fraud detection and prevention controls.

III. Managing a Growing Department and Preparing for the Future

The Department has experienced tremendous growth during the past six years, moving from an annual budget of $11 billion and over 83,000 employees in fiscal year 1993 to more than $20 billion and 122,000 employees in fiscal year 1999. Through this important investment in human and information resources, the Department has become better equipped to fulfill its criminal and civil law enforcement responsibilities.

A. MANAGING OUR HUMAN RESOURCES

The Department has hired more than 35,000 additional employees over the past six years. This includes an 18 percent increase in the size of the FBI, a 33 percent increase in DEA, and a 67 percent increase in the INS workforce. The Department has faced a tremendous management challenge recruiting, screening, hiring, training and integrating these 35,000 new employees into our operations.

During this past decade, the federal prison population has also grown dramatically up 142 percent. To manage this unprecedented growth, the number of personnel in the Federal Bureau of Prisons has increased by one-third over the past six years. The Department continues to implement an aggressive long-term prison expansion program, requesting $738 million in new initiatives for detention and incarceration programs. We know that we are going to face tremendous challenges in the future as we develop strategies to respond to the needs of our increasing and aging federal prison population.

B. MANAGING INFORMATION RESOURCES

Over the past six years, with your support, the Department has been able to invest in new technology to improve efficiency, aid law enforcement and keep pace with rapid changes in crime. We plan to continue this effort, as well as our efforts to improve the security of our computer and technology systems against external threats and internal weaknesses.

At the same time, we are working to assure that critical systems within the Department of Justice operate correctly on January 1, 2000. In 1999, Congress provided the Department with more than $84 million in one-time funding to ensure year Y2K compliance. We estimate that the total cost of Y2K compliance and implementation will be $109 million. More than 90 percent of the Department's critical information systems are now compliant, and we project that we will achieve 100 percent compliance of these systems by October 1999.

IV. Conclusion

I appreciate the oversight function performed by this Committee as well as the Committee's understanding of the Department's policy with regard to providing information about pending cases. I know that this policy often results in the Department not being able to provide the Committee as much information as it would like. But, as you know, this policy ultimately serves to protect the independence of the Department many dedicated career attorneys.

These have been a challenging six years for all of us. I am pleased that we have made such great progress on crime and in so many areas. But we have more work to do and more challenges to face. I look forward to working with every Member of this Committee as we seek solutions and work to craft policies and programs that are tailored to the needs of our communities and our country.

Thank you.

[Whereupon, at 12:24 p.m., the committee was adjourned.]

APPENDIX

QUESTIONS AND ANSWERS

Questions from Senator Hatch

1. **As I noted in my opening statement, between 1992 and 1997, Triggerlock gun prosecutions dropped nearly 50 percent, from 7,048 to 3,765. These are prosecutions of defendants who use a firearm in the commission of a felony.**

   a) How can you explain such a sharp decline in these important prosecutions during your tenure?

This Administration has pursued a strategy of collaborative partnerships between federal, state and local law enforcement agencies in order to bring all resources to bear on violent crime, including gun crime. These partnerships are effective and make sense.

Since 1992, the number of violent crimes committed with firearms – including homicides, robberies and aggravated assaults – has dropped 27%, and the nation's violent crime rate has dropped by nearly 20% since 1992.

Collaboration among the different levels of law enforcement allows each community to identify its crime problems and to implement the techniques that are most likely to have a positive impact on these problems. It also allows federal enforcement tools to be used strategically where they will have the greatest impact.

In examining these issues it is important to keep in mind that both federal and state authorities prosecute gun cases, and that federal authorities generally focus on the worst type of offenders.

Although the number of federal prosecutions for lower-level offenders (persons serving sentences of 3 years or less) is down, the number of higher-level offenders (those sentenced to 5 or more years) is up by nearly 30 percent (from 1049 to 1345).

At the same time, the total number of federal and state prosecutions is up sharply – about 25 percent more criminals are sent to prison for state and federal weapons offenses than in 1992 (from 20,681 to 25,186).

In short, the increased collaboration among federal, state, and local law enforcement has resulted in: (1) a more efficient distribution of prosecutorial responsibilities, (2) a steady increase in firearms prosecutions on a cumulative basis and, most importantly, (3) a sharp decline in the number of violent crimes committed with guns.

2. **Last year, more than 6,000 students illegally brought guns to school, yet the Justice Department prosecuted only eight cases under this law in 1998 and only five such cases in 1997.**

   a) Given the rash of school shootings in recent years, do you think that the Department should prosecute more students who illegally bring guns to school?

b) Do you believe that these cases should be prosecuted in state court instead of federal court?

Most violent crime cases are investigated and prosecuted at the state or local level, and our use of federal statutes should not compete with or supplant the traditional local response. Rather, the appropriate federal role in prosecuting violent crime is to assist state and local authorities by providing for complementary federal prosecutions of the most dangerous violent offenders in each community.

Federal law pertaining to juvenile offenders, in fact, presumes that juveniles are best handled by the state, and contains strict requirements that must be met before federal jurisdiction may be asserted over a juvenile. And, although federal law does allow a juvenile to be prosecuted as an adult for unlawfully possessing a handgun, a juvenile cannot be prosecuted as an adult for carrying or discharging a firearm in a school zone. In many cases, therefore, state laws may provide a more appropriate sanction than federal law.

In addition, state and local systems are better equipped to handle juveniles. Those systems have detention facilities, probation offices, counseling services, and other programs for juveniles that simply do not exist in the federal system. Handling all of these cases federally would impose a huge burden on federal prosecutors' offices and the federal judiciary, which is not set up to handle a mass influx of cases, let alone juvenile cases. Because the United States Attorneys' Offices have limited resources, pursuing more juvenile cases would require reducing the number of criminal prosecutions in other areas.

3. It is a Federal crime to transfer a firearm to a juvenile, yet the Clinton Justice Department prosecuted only six cases under this law in 1998 and only five in 1997. a) Does the Department intend to prosecute the 22-year-old man that allegedly provided the 9mm handgun used in the Littleton killings?

Two individuals have now been charged in connection with the shootings at Littleton. The U.S. Attorney's Office in Colorado and ATF worked closely with local investigators and prosecutors throughout the investigation. The decision was jointly made to file charges in state court, rather than in federal court. Felony charges were available in the state system while under current federal law, unlawfully transferring a handgun to a juvenile is merely a misdemeanor.

4. I understand that the Department is considering a lawsuit against the tobacco companies. I understand that the Department is asking Congress to appropriate about $20 million to fund a tobacco litigation team or task force, in the hope of recovering hundreds of millions of dollars in medical fees paid by the federal government for smokers. I have a few questions on this matter.

a) Would you please tell us a little about the possible theory of recovery. You see, we have a "chicken and egg" problem here: you want us to give the Department the money, but tell us little about your plans. Since this is the Committee that has

oversight jurisdiction over the Department of Justice, without such information it is difficult to ascertain the viability of your request. Will you please share with me your specific legal theories for recovery in this potential lawsuit?

In December of 1998, the Attorney General concluded that there were grounds to pursue recovery against the tobacco industry. Subsequent to that decision, the Department formed a tobacco litigation team, which is developing a specific litigation plan. Department attorneys are reviewing past litigation against the tobacco companies by private litigants and by the state attorneys general. They are considering a large body of factual material concerning the conduct of the tobacco companies. Based on that review, they are assessing the potential bases for tobacco industry liability to the United States, and the nature and scope of damages that may be recovered.

At this time, although the tobacco litigation team has made considerable progress, the Department has made no final decisions as to what specific theories we will rely upon in this litigation. The Department will file suit only on the basis of grounds that have a sound basis in fact and in law. We can state that the case the Department expects to bring will turn on intentional misconduct. As the tobacco companies' own documents demonstrate, they have engaged in a course of conduct over the past five decades designed to hide the addictive nature of tobacco and to suppress information about the health risks of tobacco use, while simultaneously misleading the American public about the safety of their product. That conduct has cost the American taxpayers billions of dollars and caused disease and suffering for millions of Americans. We believe this history requires careful assessment of all legal bases for recovery by the government and pursuit of any sound legal bases for recovery. Consistent with longstanding Department of Justice policy, we cannot be more specific about the precise legal theories under consideration before we file suit.

b) Apart from the truth that litigation should not be a substitute for legislation, it would seem that existing law may not enable the Department to successfully pursue legal action against the tobacco companies, but that additional legislation may be needed to enable such a direct recovery suit. Would you not agree? Is this an area that Congress must — or even has the power to — address?

We believe that we possess sufficient legal authority under existing law. We are not asking Congress to pass new substantive law.

c) Do you know when and where you plan to file suit?

We have made no final decisions about when or where to file suit.

5. **As you know, we have been battling methamphetamine use in Salt Lake City. It seems at times that the problem is worsening, and I want to give local law enforcement encouraging information, but frankly, I am at a loss. I want Utah's local law enforcement to be as encouraged as you are. Thus, can you tell me in very specific terms what you currently are dong, and what you plan to do in the next six months, to significantly decrease the use of methamphetamine?**

The solution to the methamphetamine problem will not be found overnight, but will require steady pressure on both the "supply" (interdiction and enforcement) and "demand" (prevention, education and treatment) sides.

From a law enforcement perspective, there have been some recent developments of note in Utah targeting the root of the methamphetamine problem: precursor chemicals. After a four-month investigation, on May 13, 1999, DEA and state officials served search warrants on nine convenience stores in Salt Lake City and seized 53.2 kilograms of pseudoephedrine and 2.2 kilograms of ephedrine from the stores and two distributors. These chemicals could have produced about 33.2 kilograms (73.1 pounds) of meth in a clandestine lab, with a street value of approximately $3.3 million. Twelve people – each of whom was told by undercover officers posing as purchasers that the chemicals would be used to make methamphetamine – were arrested on state charges.

Further up the distribution chain, there were two main Utah distributors, Wholesale USA, Inc. and Galaxy Distributing. Wholesale USA voluntarily surrendered its DEA registration to sell List I chemicals. Galaxy entered into a memorandum of understanding that it will no longer sell the types of pseudoephedrine tablets favored by clandestine methamphetamine manufacturers. The Federal Government has sued one of the tablet manufacturers, Advance Pharmaceutical, for civil penalties under the Controlled Substances Act.

In March of this year, federal agents made undercover purchases and arrests at what DEA believes was the state's largest illicit supplier of iodine crystals, CNR Enterprises. The ensuing search yielded the seizure of 66½ pounds of iodine crystals, which could produce anywhere from 67 to 269 pounds of methamphetamine. (There is no uniform conversion ratio for this chemical because of the varying practices of clandestine manufacturers).

The DEA in Salt Lake City has observed that they are now pursuing a higher percentage of clandestine meth lab investigations "proactively" instead of reactively. They attribute this positive, subtle turnabout to a changed investigative focus on the precursor chemicals, increased staffing and resources, greater community awareness, and a commitment to prosecutions at state as well as federal levels.

The Utah state legislature recently acted quickly and decisively to curb the illicit sales of precursors in the state through the "Utah Controlled Substance Precursor Act." It is now a Class A misdemeanor for a person to possess more than 12 grams of ephedrine or pseudoephedrine, unless he is licensed to engage in regulated transactions or has a lawful business or professional

reason to possess the chemicals. It may be time to reexamine the 24-gram federal retail threshold – subject to the "safe harbor" exemption for "blister packed" tablets – provided for in the Comprehensive Methamphetamine Control Act of 1996 (Pub.L. 104-237).

Although the meth problem persists, federal regulatory and enforcement efforts have apparently had some impact. Black market prices for precursor chemicals are higher than they were a few years ago: diverted cases of pseudoephedrine that sold for around $200-$300 in 1996 now sell for $2,000 or more. Purity levels have also fallen for methamphetamine, which was traditionally a high-purity drug. The typical purity level of meth seizures is now in the 20+% range; the product is typically "cut" at large lab sites to boost profits and make up for scarce precursor supplies. (Small labs, however, continue to produce a much purer form of methamphetamine.) The most recent data from sites in the Drug Abuse Warning Network (DAWN), maintained by the Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services (HHS-SAMHSA), shows a significant decrease overall in methamphetamine emergency room episodes between 1997 and the first half of 1998, although there are troubling indications of increased use among Hispanics, women and youth. The lower DAWN figures are of course no reason for complacency: a similar dip was observed in 1996, and meth use remains too high and continues to spread into new areas.

The methamphetamine problem, and our understanding of how best to confront it, continue to evolve. We will keep doing all that we can to confront the abuse and trafficking of methamphetamine, and we look forward to working with your Committee on this and other matters in the future.

6. **In the last couple of weeks, we have learned a lot about what kinds of unseemly and corrupting materials can be accessed on the Internet. I must say that I was shocked to discover that there are numerous web sites operated by American companies that sell drug paraphernalia, including bongs, water pipes, glass vials and precision weighing scales, along with descriptions of how these devices can assist in getting a better "high" from smoking marijuana. There are even web sites that advertise marijuana and poppy seeds for sale complete with growing and nurturing instructions. These sales seem to violate current drug laws, including 21 U.S.C., section 863, the anti-drug paraphernalia statute, which was enacted to prohibit the sales of drug paraphernalia.**

   What is DOJ doing to enforce the prohibition against selling drug paraphernalia over the Internet? How many prosecutions have there been under this statute targeting the Internet sale of drug paraphernalia?

   **** RESPONSE WILL BE PROVIDED AS SOON AS POSSIBLE ****

7. Now that the defendant in Dickerson will reportedly ask the Supreme Court to reverse the Fourth Circuit's ruling, will the Department urge the Court to uphold Section 3501?

Although Mr. Dickerson has indicated that he intends to file a petition for certiorari, he has not done so yet. The Department therefore has not yet decided what position it would take if the Supreme Court were to grant certiorari.

8. Don't these circuit court decisions [Dickerson and United States v. Crocker, 510 F.2d 1129 (10th Cir. 1975)] prove that, to paraphrase Mr. Waxman, there are "reasonable arguments" to defend Section 3501?

After careful analysis of all of the Supreme Court's decisions in this area, the Department took the position in Leong and Dickerson that the Court's decisions, read as a whole, indicate that the Court views Miranda as based on the requirements of the Constitution. The Department reached that conclusion because the Supreme Court has continued to apply Miranda's requirements to cases arising in state courts, which the Court would have no authority to do if Miranda were not of constitutional dimension.

Neither Crocker nor Dickerson addressed the question of how the Supreme Court could apply Miranda in state cases unless Miranda has constitutional underpinnings. The majority in Dickerson dismissed that crucial issue as merely an "interesting academic question." The panel in Crocker did not acknowledge the issue at all.

In any event, we do not believe that Crocker actually addressed the constitutionality of Section 3501(a). The court held in that case that there had been "full compliance with the Miranda mandates," and the question on appeal was whether the district court erred in using Section 3501(b), rather than Miranda, to determine the voluntariness of the defendant's statement. The court of appeals held that the district court had properly applied the totality of the circumstances test set forth in Section 3501(b). The court did not, however, consider whether a voluntary confession taken in violation of Miranda is admissible under Section 3501(a). And indeed, since Crocker was decided, the Tenth Circuit has never relied on Section 3501(a) to uphold the admission of a statement taken in violation of Miranda.

9. In your April 15th letter, you stated that the Department had instructed federal prosecutors in the Fourth Circuit to bring Section 3501 and the Dickerson decision to the district court's attention in any case in which a defendant sought the suppression of a confession. Will you pledge not to discourage federal prosecutors in the Fourth Circuit from using section 3501?

Following the Dickerson decision, the Department did instruct federal prosecutors in the Fourth Circuit to bring that decision and Section 3501 to the attention of district courts whenever a Miranda violation is alleged. The Department further advised prosecutors to acknowledge that Dickerson is controlling authority insofar as it holds that "§ 3501, rather than Miranda, governs

the admissibility of confessions in federal court." As a precaution, however, the Department also instructed that, as long as Dickerson remains subject to possible further review in the courts, prosecutors should urge district courts to rule on the defendant's suppression motion under traditional Miranda analysis as well.

10. **As you know, America will be hosting the world at the 2002 Winter Olympics in Salt Lake City. The public safety officials in Utah, in cooperation with federal law enforcement, are well ahead in planning for the security and public safety needs of this extraordinary event. I want to publicly compliment them on the work done so far, and thank you for the Department's cooperation in this effort. One thing that concerns me, however, is that in order for certain assistance to be properly coordinated, the Attorney General must first certify the Games as a national security event. To my knowledge, this certification has not yet been made. Can you please tell me when you will do so?**

On behalf of the representatives of the law enforcement agencies who have been working for over two years with Utah officials, thank you for your kind words of thanks.

To answer your question, there is a distinction between the certification of Department of Defense (DoD) assistance to civilian sporting events, a responsibility entrusted to the Attorney General by Congress, and the designation of the Games as a National Special Security Event under Presidential Decision Directive / NSC-62. The latter designation does not affect the availability of federal support to events such as this, and the former is a much more limited certification than your question suggests.

The Attorney General's role with regard DoD assistance to civilian sporting events is specified in 10 U.S.C. § 2554, which provides that DoD may provide assistance for safety and security at the Olympics and other civilian sporting events "but only if the Attorney General certifies that such assistance is necessary to meet essential security and safety needs." In other words, the Attorney General does not certify *events*, rather she certifies *specific types or categories of assistance* that responsible law enforcement or other officials request DoD to provide.

We have implemented this statute through a memorandum of understanding between the Attorney General and the Secretary of the Army (DoD's executive agent), which establishes a Joint Advisory Committee (JAC) comprising representatives of DoD, the FBI, and the Department of Justice. The JAC assesses requests for DoD support and advises the Attorney General whether to certify it according to the statutory standard. To date, the Attorney General has certified various types of assistance for the Nike World Master Games and the Goodwill Games.

We have received a request from the Director of the Utah State Olympic Public Safety Command, established by the State of Utah to coordinate all security planning for the Games, that the Attorney General certify nine categories of assistance. The JAC is reviewing the request and

has contacted the Public Safety Command to seek clarification of some of the items requested. Upon the completion of that process, the JAC will forward the request, along with its recommendations, for her decision.

The certification process is designed as a continuing process. That is, it is available as the planners determine their needs and it is not a one-time, all-or-nothing opportunity. If the threat or other factors change and dictate a modification of a security and safety plan such that additional types of assistance might be necessary, the Public Safety Command will be able to forward additional requests for assistance for certification.

11. **Recently, the Office of the Inspector General issued a report on the performance to date of the (COPS) grant program, initiated in the 1994 crime bill. The audit revealed some rather troubling information. For instance, 51 per cent of COPS grantees included unallowable costs in their claims for reimbursement. 78 per cent of recipients of COPS MORE grants, intended to redeploy officers into community policing, could not demonstrate that officers were actually redeployed. 58 per cent of grantees did not have a good-faith plan to retain after the grant period the officers hired with federal funds. And, 23 per cent of grantees did not have adequate community policing plans, or could not distinguish COPS activities from their pre-grant method of operations.**

Since FY 1995, Congress has appropriated over $6 billion to this program, so I find it disturbing that the performance results are so mixed. While I am critical of the Department's proposed cuts to many state and local law enforcement assistance programs, I am concerned that such large amounts under the COPS program may not have been used to the best effect.

Since so many jurisdictions have found it impossible to comply with the COPS program's requirements, and, in about one quarter of the cases had trouble even defining "community policing," would you agree that this program should be reevaluated and reformed to provide greater flexibility, as I have recently proposed?

**** RESPONSE WILL BE PROVIDED AS SOON AS POSSIBLE ****

12. **Recently, section 530B of title 28 took effect. This, of course, is the so-called McDade provision, which affected the ethical rules governing federal prosecutors in the performance of their official duties. Before the law took effect, your Department warned Congress that the provision would have a significant negative effect on the Department's ability to enforce the law and prosecute violations of federal law. I happen to agree with that assessment, and still believe that section 530B in its current form is an ill-advised law. Would you please provide the Committee with an update on what effect this law has had so far, and what policies the Department has had to change to comport with its requirements.**

Impact of Section 530B: The Department's assessment of the full impact of Section 530B is ongoing, and there are many issues about the scope and interpretation of Section 530B that are

currently in litigation or are likely to be litigated in the near future. To date, however, the impact of Section 530B has been for the most part exactly what the Department predicted:

1) The Amendment has caused tremendous uncertainty because most state bar rules have not been interpreted as applying to government attorneys and are vague, so attorneys simply do not know if their conduct is permissible or not; not surprisingly that creates a tremendous chilling effect and interferes with our ability to enforce the law.

   The uncertainty is increased because we must frequently compare conflicting bar rules. Department attorneys, who are often licensed in multiple states, working in other states, and supervising investigations that span many states, must engage in a complex analysis to determine what rules should apply to particular conduct. The Department's regulation implementing the McDade Amendment provides guidance to attorneys, but the area of choice-of-law with respect to state ethics rules remains complex. Department attorneys often must seek guidance in determining what rules apply or must divert their scarce time to research on what rules may apply to particular conduct. The clear impact of this is to delay the investigation.

   Moreover, the guidance that the Department provides is in a sense of less value to its attorneys than the guidance it can provide in other areas. In attempting to interpret § 530B, we can advise Department attorneys as to our best reading of the statute, but cannot protect them from the personal consequences if a court or disciplinary committee takes a different view. Under § 530B, unlike any other statute to which the Department might object on policy grounds, it is the individual government attorney, rather than the government, who pays the price for misinterpreting the law. Accordingly, especially with respect to close questions arising under the statute, attorneys are chilled even from engaging in conduct that is in the best interests of a case and consistent with what we believe to be a correct interpretation of the law.

2) The Amendment creates a rift between agents and prosecutors, because the Amendment, in practice, restricts prosecutors from supervising agents. This is not a helpful development in law enforcement because it is critically important that investigators and prosecutors work together, particularly on complex cases. We are already seeing evidence of this rift as investigators develop cases on their own, relying on well-established and perfectly legitimate federal law, without the input of prosecutors in order to avoid the restrictions prosecutors may be subject to under state ethics laws.

   Moreover, because Section 530B limits the ability of prosecutors to speak with those who may have evidence of wrongdoing, particularly corporate employees, prosecutors have no choice but to use the grand jury subpoena to obtain the evidence, although a simple conversation might provide all that was needed. The Department believes that Section 530B is causing an increase in the use of grand jury subpoenas, but it does not yet have empirical evidence to support this claim.

3) The Amendment has prevented attorneys and agents from taking legitimate, traditionally accepted investigative steps, to the detriment of pending cases. The most obvious effect on law enforcement has been in decisions by attorneys and investigators not to take particular investigative steps out of concern that such steps, such as obtaining evidence by consensual monitoring or speaking with corporate employees about potential corporate misconduct, may violate some state's bar rules.

There have been several examples of the impact already. In some states, Department attorneys are refraining from authorizing tape recordings by informants or law enforcement agents operating undercover. Federal law clearly permits this routine law enforcement activity, referred to as consensual monitoring. However, one state bar has issued a brief ethics opinion and has verbally advised Department attorneys that, if they participate in or authorize a consensual monitoring, they will violate the state bar rule prohibiting the use of fraud or deceit; this state's interpretation appears to be similar to the highly restrictive (and, we believe incorrect) view of the Oregon bar, which has interpreted its bar rules to prohibit attorney participation in sting operations (Oregon has recently issued a new opinion which addresses the issue of an attorney tape recording a conversation but does not resolve the issue of sting operations). In another state, Department attorneys have been reluctant to authorize consensual monitoring because of state criminal law or state ethics rules that could be interpreted to prohibit the conduct. Before proceeding with the action they contacted the local District Attorney's office and others to be sure they wouldn't be prosecuted for their actions.

As noted above, state rules regarding contacts with represented persons continue to be a problem for Department attorneys. In many cases, the state rules are unclear or appear to prohibit traditionally accepted, constitutionally permissible investigative activities. In several cases, Department attorneys have refrained from, or been advised not to, be involved in questioning targets and witnesses represented by counsel or defendants, even though law enforcement agents are permitted to engage in the same conduct. The most difficult situation arises in investigations of corporate misconduct because the law concerning which employees a government attorney may speak with is unclear.

The Amendment has also limited the Department's ability to investigate continuing criminal activities and such offenses as witness tampering and obstruction of justice. For instance, in one case, Department attorneys received information that an indicted defendant was seeking to intimidate or bribe a witness. The attorneys did not feel that they could, under the relevant interpretations of the state's ethics laws, use an informant to find out more about the defendant's plans.

Although state rules on communications with represented persons remain the most significant problem, defendants are also using other bar rules offensively to claim that legitimate cases or evidence should be thrown out of court. In one case, defense counsel unsuccessfully sought dismissal of a drug indictment and other

sanctions by claiming that, under the McDade Amendment, Department attorneys violated state ethics rules related to trial publicity because an arresting officer – a state trooper – talked to a reporter.

In another instance, on the eve of trial a defendant filed a motion to dismiss the indictment in a case for failure to present "material evidence" to the grand jury in violation of Rule 3.3(d) and 3.8(d). The defendant argued that the McDade amendment, by requiring compliance with state bar rules, altered existing Supreme Court law on what evidence must be presented to the grand jury. We argued that we had complied with existing Supreme Court law and the court denied the motion.

4) Defendants are raising Section 530B in cases to interfere with legitimate federal prosecutions. The Department believes that Section 530B should be interpreted not to conflict with other federal laws and not to elevate state substantive, procedural, and evidentiary rules over established federal law. The Department's regulations make clear that Section 530B mandates compliance with state bar ethical rules, not the host of other rules that govern each state's judicial system. Nonetheless, as the Department has predicted, it is being forced to litigate these claims by defendants.

A number of defendants have argued that state bar rules prohibit the use of cooperating witness testimony. The Department has not lost on this issue to date.

As we have noted in the past, the Department continues to litigate against the application of state bar rules that provide additional protections to attorneys (and not others) who are subpoenaed by federal prosecutors. These rules give procedural or other advantages to attorneys and are not part of established federal law.

The Department expects litigation concerning the McDade Amendment to be wide-ranging because defense counsel have every incentive to seek broad interpretations of the Amendment. In one case currently being litigated, a defendant is arguing that Section 530B requires compliance with state procedural rules that prohibit or limit the removal of cases from state court into federal court.

Department Efforts to Comply with Section 530B: As part of the Department's implementation of Section 530B, the Department has taken a number of steps to ensure compliance with the new law.

First, on April 19th, 1999, the Department established the Professional Responsibility Advisory Office (PRAO) to provide guidance and assistance to Department attorneys on matters of professional responsibility, particularly those issues arising under Section 530B. Every Department component and each United States Attorney's Office has a Professional Responsibility Officer (PRO) who assists Department attorneys on ethical issues. The primary function of the new PRAO will be to provide an additional resource to the PROs and to ensure consistent policies and practices Department-wide. In addition, the PRAO will: 1) serve as a

repository of information concerning professional responsibility issues; 2) develop training materials for Department attorneys; 3) distribute a newsletter to Department attorneys concerning developments in the law; and 4) coordinate the Department's relationships with state bars associations, state disciplinary authorities, and standards setting organizations.

To date the PRAO has received over 130 inquiries concerning professional responsibility issues. These statistics do not reflect the many issues resolved by individual attorneys, supervisors, or PROs in Department components or the United States Attorneys Offices. Most of the inquiries to the PRAO have involved the scope of Section 530B itself and its application to state bar rules concerning communications with represented persons.

Second, the Department issued an Interim Final Rule containing regulations to implement Section 530B. Those regulations define the scope of Section 530B and seek to provide guidance to Department attorneys about what rules apply to their conduct.

Third, the Department is conducting training of Department attorneys concerning the requirements imposed by Section 530B.

13. **CALEA implementation is now four years behind schedule. You recently testified before a House Appropriations Hearing that DOJ is near an agreement with a major manufacturer that would provide DOJ a "right-to-use" license for CALEA compliant solutions on this manufacturer's platforms, and that DOJ would in turn provide that software to carriers at no charge. This information is very encouraging. I remain concerned, however, that any agreement should include adequate provisions to address the concerns of small, rural carriers who rarely, if ever, receive wiretap requests.**

a) Can you assure me that the concerns of small, rural carriers are being considered and evaluated in these negotiations?

A cornerstone of the Department's implementation plan is the recognition that the small, rural carrier segment of the telecommunications industry may have difficulty in meeting CALEA's June 30, 2000 compliance deadline. Because the vast majority of small, rural carrier switches were installed prior to January 1, 1995, these switches are "grandfathered" until the Government agrees to reimburse the carrier for the cost of implementing CALEA. The Department's flexible deployment concept focuses on high intercept areas and many small, rural carriers will likely be able to defer deployment to coincide with their normal business cycles. It is believed that this deferment will lower the overall costs on implementing CALEA for both the Government and the industry. Additionally, the Department is planning to work with the Federal Communications Commission to structure a conditional extension of CALEA's compliance date for individual small, rural carriers based on factors such as lawfully-authorized electronic surveillance intercept activity, cost, size, and market share. We are currently working with industry members and associations representing small, rural carriers to gain consensus over the overall implementation concept and precise language that will provide this extension to small, rural carriers.

b) If an agreement is reached in current negotiations, would further action by the FCC or Congress be needed to ensure immediate implementation of CALEA?

Yes. The Department believes that when an agreement is reached through this negotiation, other manufacturers will seek similar reimbursement agreements with the Government. In fact, the Government and five other manufacturers have begun discussions regarding "nationwide buyouts" and "right-to-use" license agreements. The Department does not believe that further FCC action, beyond what is already being considered by the FCC, will be necessitated by an agreement being reached.

In addition, the Department will continue to work with the Congress to ensure that adequate funding is available in the Telecommunications Carrier Compliance Fund (TCCF) to support these reimbursement agreements .

Questions from Senator Thurmond

1. **According to data from the October 1998 report, the DOJ's Office of Inspector General received 7,493 complaints in fiscal year 1998. This is a fifty percent increase in the number of complaints they received since 1994 and almost three times the number received in 1991. Are you concerned whether the Inspector General has the resources to handle the influx? Please explain.**

Yes, the Attorney General is concerned whether the Office of the Inspector General (OIG) has adequate resources to investigate an increasing number of misconduct allegations. This is why the Department supported an OIG request to add 31 Special Agents to its Investigations Division in FY 2000 and another six attorneys and investigators for its Special Investigations and Review Unit. The OIG has not kept pace with the Department's substantial growth during the last six years, and, in fact, has no more Special Agents today than it did in 1992.

Unfortunately, the Senate Appropriations Committee's recent "mark" of FY 2000 appropriations legislation not only failed to meet the President's request with respect to increased OIG resources, it recommended a ten percent reduction from the OIG's FY 1999 levels. Such a cut would severely impair the OIG's ability to investigate a rising number of allegations of serious criminal and administrative conduct.

2. **Although the Department of Justice has shown an improvement for its consolidated financial statement this year as compared to FY 1997, for the third year in a row the Department has received a "disclaimer of opinion" in four of its nine components. These components are the U.S. Marshals Service; the Assets Forfeiture Fund/Seized Assets Deposit Fund; Immigration and Naturalization Service; and the Offices, Boards, and Divisions. How are you addressing these serious problems, and do you expect them to be resolved before next fiscal year?**

Although the Department of Justice (DOJ) received a disclaimer on its consolidated financial statements for FY 1998, considerable progress was made across the components. The Federal Bureau of Investigation and the Working Capital Fund received unqualified or "clean" opinions. The Federal Prison (FPS) received a qualified opinion. The Drug Enforcement Administration and the Office of Justice Programs received clean balance sheet opinions, and are well positioned, along with FPS, to move to across the board clean opinions in FY 1999. Overall, material weaknesses were cut in half, from 26 to 13. However, despite this progress, the Department recognizes there is more to be done.

The Attorney General's goal is to achieve a clean opinion on the FY 1999 statements. This is an sizeable task, but DOJ components are making every effort to meet the goal. The Attorney General has met personally with component heads to ensure that each component has aggressive corrective action plans underway. Even components with clean or qualified opinions continue to implement additional controls and conduct internal program reviews to ensure compliance with new accounting standards.

Major corrective action programs are underway at the components which received disclaimers. The Offices, Boards, and Divisions (OBD) corrective action plans are focused on obtaining more accurate accrual data for the Community Oriented Policing Service (COPS) grants, and accurate OBD obligation accruals. The U.S. Marshals Service (USMS) is also focusing on accurate accruals, and improving controls over its newly installed accounting system. The Assets Forfeiture Fund (AFF) program has taken major steps to validate the accuracy of its seized and forfeited property balances, and ensuring the accuracy of the obligation data it receives from partnering agencies, including the USMS. Within the Immigration and Naturalization Service (INS), resources are being devoted to reconciling the fund balance with Treasury, obtaining accurate accruals, validating property balances, and calculating deferred revenue from the INS fee programs. Finally, where applicable, components are taking steps to improve overall controls on computer security, improving internal controls which safeguard our funds and other assets, acquiring and retaining accounting resources and expertise to assist with the complexities of statement preparation, and improve the overall timeliness of preparing the statements for audit. Corrective action progress is closely monitored throughout the audit, with status reports regularly discussed with senior management.

The significant progress made last year indicates the Department is making headway in addressing the "pure accounting" issues raised in the audits.

3. **Effective action against fundamental threats as the illegal drug trafficking or other criminal enterprises can only occur when federal agencies cooperate and focus their limited resources in a concerted effort with each other as well as with state and local law enforcement agencies. We can never fully address the fight against crime without a coordinated multi-agency approach and the total absence of "turf battles". What is the Department of Justice doing to emphasis the importance of inter-agency coordinated enforcement efforts and the sharing of resources and intelligence?**

We in federal law enforcement have long recognized that unless we focused and took maximum advantage of our limited federal law enforcement resources, we would be unable to achieve any lasting success against the large, well financed, and sophisticated transnational criminal organizations such as those which are responsible for bringing most illegal drugs into the United States and distributing them once they get here. Consistent with this view, in 1995, the Drug Enforcement Administration (DEA), in conjunction with the Department's Criminal Division, established the Special Operations Division (SOD). Today, the SOD is a joint national coordinating and support entity comprised of agents, analysts, and prosecutors from DEA, the Federal Bureau of Investigation (FBI), the United States Customs Service (USCS), and the Narcotic and Dangerous Drug Section of the Criminal Division. The mission of the SOD is to coordinate and support regional and national-level criminal investigations and prosecutions against the major criminal drug trafficking organizations threatening the United States. This mission is routinely performed seamlessly across both investigative agency and district jurisdictional boundaries. Within the SOD, no distinction is made among the participating investigative agencies--it is entirely likely that a USCS Special Agent will be assigned to coordinate the DEA portion of a national-level investigation originally initiated by the FBI. Where appropriate State and local investigative and prosecutive authorities are fully integrated

into SOD-coordinated drug enforcement operations. The drug investigative databases of all of the participating agencies are fully available within the SOD. In addition, a compartmented element of the SOD develops "sanitized," tactically actionable, investigative "tips and leads" which are derived from sensitive sources both from within the law enforcement community and from other Federal agencies. These actionable investigative leads are then disseminated by the SOD to "field" investigative elements in support of investigations being supported and coordinated by and through the SOD.

In addition, the Special Operations Division supports and is supported by the Organized Crime Drug Enforcement Task Force (OCDETF) Program. The workload and work product of the OCDETF Program have grown dramatically in recent years because all the participating federal law enforcement agencies and the 93 United States Attorneys recognize that the most effective weapon against sophisticated drug trafficking organizations is the OCDETF approach — multi-agency, often multi-jurisdictional, comprehensive investigations. The OCDETF Program, once thought to be diminishing in importance, has been infused with the agencies' determination to work together in a coordinated, focused fashion, and the program has seen what Director Freeh calls an "aggressive expansion," indicative of the agencies' belief that federal, state, and local partnerships are the most effective means of combating drug-related crime.

The OCDETF model works in every district in the country, integrating investigators from a variety of agencies with their singular expertise, including state and local departments, and involving an Assistant United States Attorney from the inception of the OCDETF case. OCDETF cases target organizations responsible for the importation and distribution of all classes and categories of drugs and target the major drug trafficking networks in virtually every region of the globe. OCDETF investigations initiated in FY 1998 range from those coordinated by the Special Operations Division which target the national priority organizations identified by the DEA, the FBI and the USCS, such as the Cali Cartel and Mexican Drug Federation, to street corner gangs, which bring homicides, shootings, and fear to our cities' neighborhoods.

The Special Operations Division and the Organized Crime Drug Enforcement Task Force Program are among the ways we focus the resources allocated to us in order to maximize their effective application.

4. A recent 'weekly population report' shows 112,479 inmates are being housed in federal prisons which have a rated capacity for 87,691. With the U.S. Marshals Service and INS adding to the population with subjects waiting to be sentenced or deported, increases the number of subjects being housed in our federal facilities.

a) What is the Detention Planning Committee doing to plan for the current overcrowding issues?

The Detention Planning Committee (DPC), which is comprised of representatives of the BOP, United States Marshals Service (USMS), Immigration and Naturalization Service (INS), Executive Office of U.S. Attorneys (EOUSA), and Office of the Deputy Attorney General, meet regularly to identify and develop strategies to manage current and future federal detention needs.

When the USMS experiences difficulties in securing adequate bed space in major cities, it may make a request through the DPC that the BOP provide additional bed space. When practical, the BOP provides additional detention beds through the expansion or establishment of detention units at existing federal prisons, and as necessary, will request construction funds to build new detention centers.

Based on the recommendation in an earlier congressionally directed study in which the DPC agencies participated, the INS long-term detainees will be transferred to the BOP which will provide beds that the INS can then use to house short- term detainees. The long-term detainees come from countries that refuse to allow their return, and they cannot be released for reasons of public safety. Following the study recommendation, the President's FY 2000 request includes preliminary site and planning funds for three facilities to provide additional BOP capacity to absorb the INS long-term detainees, and contract funding for up to 1000 beds.

b) Please provide a ten-year projection for the population of the Federal Prison system.

The following figures reflect population projections that have been revised over the past few months:

FY 2000	147,674
FY 2001	159,859
FY 2002	170,453
FY 2003	177,001
FY 2004	182,835
FY 2005	192,119
FY 2006	197,011
FY 2007	201,408
FY 2008	205,407
FY 2009	209,081

c) Please give specific timetables for ongoing projects involving the construction of additional Federal Prison space.

See Table attached.

d) Please explain how current and proposed construction plans will meet the prison space needs for the next ten years.

As a result of the rapidly increasing federal inmate population, over the past few years the BOP has been adding beds through a vigorous construction program as illustrated in the attachment. The President's FY 2000 request for the BOP includes construction funds for the last two facilities (for a total of seven) to absorb the D.C. sentenced felon population, and for a penitentiary in the western portion of the United States. Also included are site and planning funds for three medium security institutions for BOP's sentenced inmates, and preliminary resources for three facilities to absorb the INS long-term detainee population. The FY 2000 budget request

indicates that by FY 2006, crowding would be reduced to 31 percent as a result of the planned construction. However, there are indications that the inmate population may increase even more rapidly than projected, resulting in higher rates of overcrowding.

In the years ahead, the BOP will need to request construction funds necessary to complete projects for which preliminary/partial funding has already been provided. Beyond this, BOP will continue to analyze projected overcrowding rates and request funding to provide adequate bed space. BOP's construction requirements in the next ten years, are dependent on the levels of investigation, arrest and prosecutions in the federal criminal justice system. In the past, for example, new federal criminal statutes, along with increased law enforcement and judicial resources, mandatory minimum sentences, and elimination of parole contributed greatly to BOP's increased inmate population. In the absence of any significant changes, we anticipate that the increase in the federal inmate population will continue, giving rise to requests by the BOP for additional resources to ensure safe and secure housing for federal inmates.

5. The growing cost for the Federal Bureau of Prisons to provide health care to its inmates is another area of concern.

a) Do you believe that the Bureau of Prisons and the Marshals Service should be able to pay for private health care costs for inmates at Medicare rates?

The Department of Justice supports legislation requiring Medicare program participants to provide federal prisoners medical care at Medicare rates.

b) What efforts are being made to use contractor services for health care within Federal facilities?

All Bureau of Prison institutions rely on physicians and other medical providers in the community to supplement, on a contractual basis, medical care provided to inmates by Bureau staff (which includes Public Health Service staff on detail to the Bureau of Prisons). Usually these services are provided by taking the inmate to the local hospital for care, and in many cases the institutions have contracts with local hospitals for in-patient services. In some cases, the institutions enter into contracts that require the provision of medical services at the prison. Finally, the Bureau of Prisons is in the midst of the congressionally mandated demonstration project at Beaumont, Texas, where a private company provides all medical care to the inmates at the Federal Correctional Complex in Beaumont, Texas.

c) What efforts are being made to use "Telemedicine," which does not require that inmates be transported out of the facility?

The Bureau of Prisons is in the process of implementing a system-wide Telemedicine network that will reduce the costs of providing necessary medical care to the inmate population while enhancing the security of the Bureau's institutions by reducing the frequency of outside medical trips and transfers to medical centers.

6. **The DOJ Inspector General has received 4,000 allegations of criminal acts by BOP employees and of those, only 4% have been investigated, at least partly because of the lack of resources at the DOJ OIG. The size of the BOP Internal Affairs Division has only 21 investigators nationwide for an employee base of over 30,000, which are spread across the country. Is the Internal Affairs office large enough to address the large number of allegations?**

The Bureau of Prisons believes that it has sufficient staff in the Office of Internal Affairs (OIA) to ensure that all allegations of misconduct among BOP staff are properly investigated. In FY 98, of the 3601 cases of BOP staff misconduct that were closed, 78.2% were investigated by Bureau of Prisons institution-based investigative staff. OIA conducted 13% of the investigations and the remaining cases were investigated by other entities such as OIG (4.1%), Civil Rights (.6%), FBI (1%) and others including local law enforcement and EEO staff (3.1%). OIA conducts only those investigations that are beyond the scope and capabilities of local Bureau investigators. OIA provides oversight for cases investigated locally and serves as the resource office for investigators in the field. OIA often seeks advice and direction from OIG.

7. **It was discussed that drug testing is an important method of controlling drug abuse in prisons. Is the Bureau of Prisons planning to use hair testing as a manner of testing for drug abuse?**

The Bureau of Prisons has been aggressively researching new technologies regarding the identification of inmate drug users. The Bureau is presently reviewing "rapid detection cups" and a "sweat patch" for potential application in the prison setting. The Bureau has been monitoring the evolution of hair testing as a mechanism for drug detection as well, but has been concerned about controversy surrounding this technology due to claims of invasiveness (the donor must provide at least 50 strands of hair) and bias (darker hair retains drug particles for longer period of time.)

Current Bureau of Prisons regulations preclude any type of drug testing of inmates except for urinalysis testing. The Bureau is in the process of revising these regulations to permit other types of drug testing. Once the regulations have been changed, the Bureau of Prisons may design a hair testing pilot for Bureau inmates, depending upon the results of a pilot currently being conducted by the Pennsylvania Department of Corrections.

8. **A recent audit conducted by the GAO identified three weaknesses in DEA's internal controls which may have contributed to several recent cases of embezzlement. The weaknesses include (1) ineffective segregation of duties which are designed to reduce the opportunities of employees for errors and fraud, (2) failure to require appropriate approvals and documentation to support disbursement transactions, and (3) inadequate accounting and control over property and equipment. What action is being taken to address these problems and to avert similar cases in the future?**

Since the initial audit by GAO, DEA has implemented a new financial system and financial policy and procedural changes which have strengthened the agency's internal control

environment, minimizing the possibility of future instances of embezzlement and other forms of theft. Among these changes are the following:

- Implementation of a new financial management system on October 1, 1997. This system provides for improved controls in an automated environment. Control enhancements include a formal approval process for access to the system, use of user ID's and passwords, improved controls over establishing vendors, mandatory data fields for critical payment information, an automated payment certification process requiring the approval of three individuals and increased controls over incoming and outgoing interagency agreements.

- Performance of a detailed review of the agency's internal control environment. The review included validating that existing accounting and administrative controls are effective. This review was performed in conjunction with the financial system implementation. The resulting improvements to internal controls includes the mandatory segregation of duties requirements which eliminate the possibility of any individual performing conflicting functions (i.e., preparing budget requests, obligating funds, and approving invoices for payment). Funds control procedures have also been strengthened, requiring more active management participation. Standard operating procedures for invoice processing have been distributed worldwide. These procedures require signature cards for authorized approving officials, and documentation to support that the payment is legal, proper and correct (obligating documents and receiving reports with appropriate approvals).

- Allocation of additional personnel resources to meet financial management requirements.

- Formalization of a training plan which identifies mandatory continuing education requirements for personnel in the Financial Management Division. DEA is currently developing a training plan for program managers and management personnel.

- Enhancement of the agency's internal inspection process placing a greater emphasis on reviewing internal controls relating to financial transactions with a specific focus on proper segregation of duties.

- Contracting with the independent accounting firm, Price Waterhouse Coopers (PWC) to review DEA's centralized payment process. The scope of the review included assessing the current operating environment, payment process and procedures, and staff skills and knowledge. In the conclusion of their report, PWC acknowledged DEA's internal control improvements, specifically in the areas procedures, training and the new financial management system. Recommendations were made in each of the areas reviewed. DEA is currently reviewing the recommendations and developing an action plan.

In addition, DEA has made additional changes in policy to strengthen the guidelines for property management. DEA has begun plans to implement a new property management subsystem that is totally integrated with its new financial management system. The scheduled dates to convert DEA's eight major property subsystems to the new system range from April 15, 1999 to March 31, 2001. DEA buildings, land, vessels and boats components were converted on

April 15, 1999. The new property management subsystem replaces outdated manual and automated subsystems and brings DEA in compliance with federal and Department of Justice Property Management Regulations linking existing subsystems together to function as one, while integrating financial data with property and equipment (P&E) records in the automated environment.

The new property subsystem will give DEA the ability to track and control P&E through the financial obligation process and identify amounts expended that are not supported by P&E records. A monthly reconciliation of these amounts against P&E received will be performed by the property management oversight function to ensure integrity of all P&E purchases, and to establish complete P&E records. Situations involving amounts that cannot be reconciled through routine oversight procedures will be investigated under DEA's Liability Assessment process. Decisions regarding personal liability will emanate from DEA's Board of Professional Conduct upon reviewing reports of investigation.

The new property management system streamlines physical inventory and reconciliation processes. Barcode technology will be used during physical inventories and the system reports inventory exceptions (i.e., items recorded that were not found during physical inventory). These exceptions will also be investigated under DEA's Liability Assessment process, and DEA's Board of Professional Conduct will make decisions regarding personal liability.

In February 1999, renewed policy and procedures for P&E disposals were circulated to all DEA offices worldwide with a mandate for DEA Headquarters offices to identify excess P&E for immediate disposal. These directives were issued with the intent to "clean house" and remove excess P&E vulnerable to unauthorized removal or theft. In sum, over the past two years, DEA has made significant progress in improving both its financial management operations and its procedures for property management. In the recently completed FY 1998 Financial Statement Audit conducted by the independent public accounting firm of KPMG, DEA received an unqualified opinion on its balance sheet. In addition, all material weaknesses cited in the area of property and equipment management in DEA's 1997 financial audit have been rectified.

9. **In the same report, the GAO referred to two Independent Public Accountant audit reports (IPA), FY 1996 and FY 1997, which say that DEA does not have a system in place to accurately and completely report seized assets and drugs. What efforts are being made to address these concerns?**

Based on the Independent Public Accountant audit report which is referred to in this question (the annual Office of the Inspector General Financial Audit which is conducted by KPMG Peat Marwick, LLP) DEA has taken several steps to improve its asset and drug seizure reporting systems. To address any outstanding issues identified in the audit report, DEA has set up an internal Financial Audit Committee which has been in operation for the past 16 months. The following lists the specific audit findings which you have referenced, as well as the actions taken to address them:

Finding: No system in place to accurately and completely report seized drugs as of 9/30/97.

Actions taken: On July 29, 1998, DEA's Operational Support Division (SC) sent a directive to the agency's Office of Forensic Sciences (SF) advising it to run a System to Retrieve Information from Drug Evidence (STRIDE) report on September 30th of each year, beginning on September 30, 1998, and transmit these reports to the Office of Finance (FN) by October 5th each year. Beginning in FY 1998, the Office of Finance began making the appropriate footnote entry on the agency's end-of-year financial statement. Additionally, field divisions were asked to submit quarterly information on bulk marijuana to Office of Operations Management (OM), which in turn, forwards these reports to the Office of Finance for inclusion in DEA's Financial Statement footnote. These actions effectively provide for a system which accurately and completely reports seized drugs. Bulk marijuana seizures will be automated within DEA's E-NEDS systems in the near future.

Finding: An agency-wide system to track seized property held in evidence-only and recovered funds does not exist.

Actions taken: On July 1, 1998, DEA's Operations Division (OC) issued a directive requiring program managers to use computerized spreadsheets to track this information until the agency finished revising its E-NEDS system, which is used to track property held as evidence-only and recovered funds. On May 30, 1999, DEA finished the implementation its new agency-wide tracking system, which is now fully functional and meets all requirements for the tracking of seized property held in evidence-only as well as recovered funds.

10. **Since 1990, the asset forfeiture programs at the Department of Justice and the Department of the Treasury have been designated as a high-risk area by the Comptroller General because they have been characterized by mismanagement and internal control weaknesses. Although GAO has recently reported on program management improvements in four Marshal Service districts, several major challenges remain relating to the management and disposition of seized and forfeited property. The Departments of Justice and the Treasury continue to operate similar but separate seized asset management and disposal programs without plans for consolidation, even though the Anti-Drug Abuse Act of 1988 required that they develop and maintain a joint plan to consolidate postseizure administration of certain properties. In June 1991, GAO estimated that program administration cost could be reduced significantly if consolidation would occur. Please explain the status of your efforts to consolidate these programs, if any.**

The Departments of Justice and Treasury disagree with GAO's position that consolidation of property management and disposal functions makes good management sense. The savings estimates used by GAO to support its recommendation in 1991 are based on limited and very outdated data.

In addition, extraordinary changes have reshaped the federal asset forfeiture program since GAO did field work in 1990 in support of its position, including (1) a redrafting, by Treasury, of its seized property contract to provide for a number of cost efficiencies; (2) establishing

procedures for more sophistication in case development, by both Departments, in order to avoid problems that increase property management and disposal costs; and (3) significant progress in monitoring and tracking assets via Justice's Consolidated Asset Tracking System, which is also utilized by Treasury's Secret Service and Bureau of Alcohol, Tobacco and Firearms. Further, Treasury and Justice continue to cooperate on a broad range of asset forfeiture policies, procedures and other issues, including property management and disposal. Thus, the asset forfeiture program environment that existed in 1990 does not exist today.

11. New reports have recently indicated that the USMS has reported a serious shortfall in their budget for this year and may be faced with no funds to support some of their daily functions. Are these reports accurate and, if so, how is issue being addressed.

While the U.S. Marshals Service (USMS) identified a budget shortfall to the Department of Justice (DOJ) earlier this fiscal year, the USMS will have enough funds to support its daily functions. Department officials have worked closely with the USMS to identify potential sources of additional funding and to ensure that essential services are provided to support all USMS mission related activities. The USMS has reduced discretionary spending during this fiscal year and has maintained a hiring freeze to avoid exceeding current budget allocations.

Questions from Senator DeWine

1. **Attorney General Reno, the President and Prime Minister Obuchi of Japan announced their intention to sign an antitrust agreement. I led a letter with 25 other Senators that questioned the wisdom of signing such an agreement. Further, I chaired a hearing that addressed this agreement and Japan's anti-competitive behavior, yesterday. I have grave reservations about the Japanese and their intent to honor the agreements which they have signed with us. Therefore, I would like your commitment to carefully monitor the implementation of this agreement to ensure that the Japanese meet both THE SPIRIT and the letter of this agreement. This is not a reflection on Joel Klein, or any lack of faith in him. I just want your involvement to ensure that the Japanese understand that DOJ will aggressively enforce the law.**

The agreement we expect to conclude with Japan will enable our respective antitrust authorities to assist each other with investigations and enforcement matters when such assistance has a clear advantage over unilateral action. In no way will the agreement limit our ability to enforce our antitrust laws against anti-competitive conduct anywhere in the world that has a direct effect on U.S. commerce, including U.S. export commerce. Our enforcement record speaks for itself. Japan is fully aware that we are committed to enforcing our antitrust laws vigorously, and our commitment in that regard will not waver.

2. **As you know, I have long believed that criminal prosecution of gun-related offenses is crucial to the quality of life in our communities. In May of 1995, I proposed Project Triggerlock legislation to require the Department of Justice to utilize this proven anti-crime tool. Since then, you and I have discussed numerous times my belief that the Department must aggressively pursue those who commit crimes involving a weapon.**

Frankly, since 1995 there has been an insignificant increase in gun prosecutions, despite Congress' urging. I am convinced that we have to do more to encourage the Department to prosecute these cases. So, I have reintroduced my Triggerlock legislation, S. 412, which directs the Department to require each United States Attorney to: (1) establish an armed violent criminal apprehension task force; and, (2) report at least monthly to the Attorney General on the number of defendants charged with, or convicted of, violating specified Federal firearms' prohibitions in the district for which the U.S. Attorney is appointed. This bill would also amend the Federal criminal code to define "crime of violence" to include possession of explosives or firearms by convicted felons (thus making such persons subject to pretrial detention). After four years of Congress requesting the Department to aggressively go after violent criminals who use guns, I believe that this would provide accountability and incentive for the Department to do so.

I would appreciate your comments today or in writing on this legislation.

S. 412 would require every U.S. Attorney to establish an "armed violent criminal apprehension task force . . . responsible for developing strategies for removing armed violent criminals from the streets." We are, of course, in favor of the concept behind this legislation, which is apparently to remove armed criminals from our streets through collaborative efforts with state and local law enforcement. Indeed, using task forces to address violent crime is one approach we have taken throughout the country since announcing the Anti-Violent Crime Initiative in 1994. For a number of reasons, however, we would not support the bill as it is currently drafted.

Today we have several hundred task forces comprised of federal, state, and local agents and officers, located in virtually every U.S. Attorney's District. While all of these task forces target violent crime, the focus of each task force is on the particular crime problem identified by the law enforcement leaders in that community. Thus, for example, a task force in one city may target gang violence while another city (or another task force in the same city) may target armed repeat offenders.

For instance, an analysis of the firearm violence problem in Boston revealed a prevalence of youthful offenders. As a result of this analysis, programs and prosecution initiatives were put in place at the federal, state and local levels to deal with the problem facing Boston. We firmly believe in this flexible approach--that the law enforcement leaders in a district or municipality, rather than officials in Washington, are in the best position to identify the most serious crime problem and implement appropriate strategies. We are concerned that S. 412 would require the Department to create a new task force which might compete with or duplicate the efforts of an existing task force. This could result in taking resources away from a task force which is having a significant impact on violent crime.

We are currently working to build on existing efforts to reduce violent crime, including firearms crimes, across the country. The President directed that, together with the Department of the Treasury, we develop an integrated firearms violence reduction strategy which draws on proven measures and innovative approaches being demonstrated by communities throughout the country. One of the important elements in this strategy will be effective, aggressive, coordinated enforcement of the firearms laws. For example, creative and effective efforts to reduce firearm related violence were the centerpiece of this year's recently held United States Attorneys Conference. Our experience indicates that a collaborative effort between federal law enforcement and our state and local partners yields the most productive results. We therefore expect that the goals of S. 412 will be met without the need for this legislation.

We also note that S. 412 contains certain reporting requirements regarding the number of defendants charged with, or convicted of, firearms violations. It would require reporting on at least a monthly basis by the districts, and reporting to the Congress every 6 months. Although reporting certainly is appropriate for oversight purposes, it is not clear to us that the benefits of a reporting requirement of such frequency outweigh the burdens imposed thereby. We want to point out that the bill's reporting requirements may contain a drafting error involving the interplay between sections 922(g) and 924 of Title 18. We would be happy to discuss this issue with staff.

3. **When we spoke at the last Oversight Hearing, you repeated your strong support for the Crime Identification Technology Act -- which, as you know, is a widely supported bipartisan Act that provides $250 million a year to states for anti-crime technology. As you know, we are going through the appropriations process and I would appreciate you lending your support to fully fund the Crime Identification Technology Act.**

Will you seriously consider supporting full funding of the Crime Identification Technology Act?

**** RESPONSE WILL BE PROVIDED AS SOON AS POSSIBLE ****

4. **Attorney General Reno, when you testified in October 1998 before the Foreign Relations Committee on the issue of International Parental Kidnaping, you talked about an interagency committee created to specifically focus on the issue of international parental kidnaping. During your testimony, you stated that this interagency committee would be reporting to you on their activities and recommendations to improve services and responses for parents ant that you expected this report at the beginning of 1999.**

Have you received that report from the interagency committee, and when do you expect it to be publicly available for review?

The Attorney General received the report and it was transmitted to the Foreign Relations Committee on June 29, 1999. We would be pleased to provide your office with a copy of the report.

5. **I understand the Office of Justice Programs has been working through the Commerce, State, Justice appropriators to adopt legislative language to reorganize this office to bring 5 agencies under its direct control and consolidate all grant making authority for these divisions in the Office of Justice Programs itself. In fact, this reorganization completely eliminates the Bureau of Justice Assistance which administers the Byrne Memorial Grant program and the Local Law Enforcement Block Grant Program, and many other worthwhile programs that deal with crimes against the elderly and drug testing, to name a few. This is just one example in this extensive plan. Not surprisingly, I have noted strenuous objections from some of these agencies that question both the extensive breadth of the change and , what they believe to be, the closed- process that produced it.**

a) Attorney General, do you believe that this Committee, who has jurisdiction of your Department, should have been directly engaged in the department's legislative plans to implement such a massive reorganization? Why has such a massive department reorganization been handled through the Appropriations process, where it is almost assured that few will have an opportunity to look at it?

The process of examining the OJP structure was begun in Fiscal Year 1998 in response to specific Congressional direction. That year, the Appropriations Act Conference Report asked the Assistant Attorney General of OJP to report on the extent of coordination and overlap within OJP. The FY 1999 Appropriations Act directed the Department of Justice to submit by March 1999 plans for a reorganization of the Office of Justice Programs (OJP) "...with streamlined, consolidated authorities." That request was prompted by concerns about overlap and duplication among the work of OJP's bureaus and offices, and about effective stewardship by OJP of substantial criminal and juvenile justice grant-in-aid initiatives. Both the initial report prepared to respond to the FY 1998 concern and the FY 1999 proposed restructure plan were provided to the authorizing committees of both the Senate and House in a Report to Congress (hereinafter, "Report").

The restructuring plan for the Office of Justice Programs does not seek to eliminate any of the approximately 55 funding streams, created by various statutes over time, which OJP administers. No elimination is being sought for the Byrne Grant program or any others. Indeed, we echo your sentiments about the value associated with our funding many worthwhile programs to improve the criminal justice system. The restructuring plan seeks to change how the Office of Justice Programs and its component organizations administer the existing grant programs and related functions, such as technical assistance and training. Our vision is for more effective and efficient grant administration of the existing programs and better use of limited staff to support practitioner needs. The "alphabet soup" of OJP agencies can frustrate those OJP serves, instead of being able to go to one place to get an answer. Many other practitioners' experiences are described in the Report to Congress that contained the restructuring plan.

More importantly, the restructure proposal sets forth a vision for ensuring better responsiveness to the field, focusing resources more effectively, and eliminating confusion, duplication, and overlap in OJP's programmatic work. It proposes to organize the agency by function (e.g., discretionary grant programs by subject; all research and evaluation in the National Institute of Justice; all statistical work in the Bureau of Justice Statistics); create an "information central" point for "triaging" inquiries to the agency from state and local jurisdictions; and organize grant management by "state desks" -- another means of providing customer service to the field.

The Report was developed after consultation with over 50 constituent organizations and practitioners, as well as extensive consultations within the Justice Department, OJP, and its bureaus. It was transmitted to the Congress on March 10, 1999 after approval by the White House and OMB. Further, once it was provided to the Congress, the OJP Assistant Attorney General conducted a series of outreach meetings with various constituent organizations, and has continued to discuss the proposal with them.

While we have heard from certain groups about their concerns about the proposed changes, we have also heard from many organizations that, in fact, are quite supportive of the proposal. Organizations such as the National Criminal Justice Association (whose members administer the Byrne program), that National Association of Attorneys General, the American Correctional Association, the Association of State Correctional Administrators, and others have voiced support.

Finally, the Department, of course, values the oversight role of the Judiciary Committee. On March 25, 1999, Assistant Attorney General Laurie Robinson testified before Chairman Jeff Sessions of the Subcommittee on Youth Violence, which has oversight responsibility for OJP. The proposed restructure plan was discussed at that hearing, and Ms. Robinson continued that dialogue at a hearing held by the House Subcommittee on Crime on July 22, 1999.

b) I appreciate the attempt to coordinate the large number of grant programs that the Department of Justice administers, the Office of Justice Programs was established to coordinate these programs, not take them over from the divisions to which Congress has given the authority (in most instances) to administer particular programs based on the division's expertise. Don't you believe that there ought to be more open dialogue with the Congress about this proposal before this course of action is settled on, which frankly, will have an impact long after this Administration?

The mission of the Office of Justice Programs changed with the passage of the 1994 Crime Act. It was at that point that the Attorney General delegated to the Assistant Attorney General specific responsibility to administer the new grants programs (except COPS) that were created by the Crime Act. Additionally, beginning in Fiscal Year 1999, the Congress provided final grant authority to the Assistant Attorney General. As the Report of the restructuring proposal details, there is considerable duplication and overlap so that there is no longer a clear demarcation of any one agency having expertise in a specific area. For example (as cited on page 11 of the Report): four OJP bureaus and one office work on corrections; all five bureaus address hate crimes; four bureaus and one office address domestic violence; five bureaus and one office work on youth violence and so on. The Report itself recommends that Congress give careful consideration to this plan and its timing, and we look forward to working with the Congress as the consideration of the restructure proposal progresses.

c) I have noted that this Office of Justice Program's reorganization plan appears to reinstate the LEAA model, which Congress abandoned as unworkable. What is the rationale for reinstating this model?

While there may be some resemblance to LEAA in the proposed structure for OJP in that it proposes a more streamlined and simple structure, there is much that is different. This restructuring plan is most certainly not a look backward, but rather a vision for the future. The proposal grew out of considerable thoughtful input from practitioners in the field regarding options to improve the delivery of grants, training and technical assistance, provide information, conduct research and evaluation, and assure appropriate oversight of the considerable investment Congress has made in the improvement of the criminal justice and juvenile justice systems. The goal is to have a centrally administered agency comprised of coherent components, with distinct functions and capabilities, *which share a common mission*. The current structure of the agency greatly inhibits our ability to achieve that goal and move forward a comprehensive, integrated program to help achieve public safety in America's communities.

Questions from Senator Ashcroft

1. **a) Have Justice Department officials met, or otherwise communicated, with any persons who are not employees of the federal government about the possibility of pursuing litigation against the tobacco manufacturers?**

Yes, the Department routinely meets with members of the public and with counsel who request the opportunity to discuss potential litigation in matters of common interest. In an effort to make the most informed decisions relating to this potential litigation, we have received the views and heard the ideas of private citizens. In addition, the Department has had discussions with legal experts who have agreed to serve as paid consultants of the Department in connection with these matters.

b) You have indicated that the Department has formed a task force for this litigation [Press Availability, Jan. 21, 1999.] Please explain whether this "task force" is an "advisory committee" under the Federal Advisory Committee Act ("FACA")?

c) What steps has the Justice Department taken to comply with sections 9-12 of the FACA?

d) Have task force meetings been, or will they be, held in public as required by section 10 of FACA?

The FACA applies only to committees that are established or utilized "in the interest of obtaining advice or recommendations." 5 U.S.C. App. § 3(2). Teams assembled to conduct government litigation do not fall within this definition.

2. **a) You have recently announced that the Department has retained Minnesota plaintiffs' lawyer Michael Ciresi to assist the tobacco task force. But the Department has many highly skilled career lawyers in the Civil Division with experience in litigating toxic tort cases. Why did the Department hire Ciresi? How was Ciresi chosen? What are the terms of his employment? Is he a full time Justice Department employee?**

On April 5, 1999, the Justice Department entered into an agreement with the Minneapolis law firm of Robins, Kaplan, Miller & Ciresi L.L.P. (Robins, Kaplan), to retain the firm's services as tobacco litigation consultants. Robins, Kaplan represented the state of Minnesota and Blue Cross-Blue Shield of Minnesota in their lawsuit, State of Minnesota and Blue Cross and Blue Shield v. Philip Morris, Inc. Unlike the other states that settled their litigation against the tobacco companies, Minnesota took its case into trial before obtaining a substantial damages settlement.

Under the contract, the Robins, Kaplan firm provided assistance to the Justice Department's tobacco litigation team though June 30, 1999. The contract provided that it could be renewed at the agreement of both parties. The parties chose not to renew the contract when it ended in June, but have not ruled out the possibility of renewing the contract at a later date.

Under the terms of the contract, the Department of Justice is obligated to pay the firm $75 per hour for work performed by its attorneys on this matter prior to June 30, 1999, and will reimburse the firm for travel costs and expenses. This represents a substantial reduction in the firm's customary billing rate. Payment under the contract is capped at a maximum of $81,670. The Robins, Kaplan attorneys who worked on the tobacco litigation were not Justice Department employees. The firm will be compensated only for those hours its personnel actually worked. We have not yet reached a final accounting of the work done by the Robins, Kaplan firm, but in no case will payment be greater than the $81,670 cap imposed by the original contract.

The Department has great confidence in the experienced career litigators who comprise our tobacco litigation team. The Robins, Kaplan firm brought an intimate familiarity with the hundreds of thousands of documents that have been produced by the tobacco companies in their litigation against the states. This background has allowed the Robins, Kaplan attorneys to provide enormous assistance very economically to the Department's litigation team in the early stages of this case.

b) Does the Department plan to hire other outside attorneys? Will they be selected through a competitive bidding process?

While we have no current plans to do so, we would not rule out the possibility of hiring additional legal consultants, or of hiring experienced attorneys to work on the Department's litigation team. Any hiring of outside counsel or legal consultants would be subject to federal procurement law. The Federal Acquisition and Streamlining Act of 1994, P.L. 103-355, codified at 41 U.S.C. § 251 *et seq.*, would be applicable to such a procurement. 41 U.S.C. § 253 exempts such procurements from competitive procedures.

c) Will you rule out the possibility of hiring outside counsel on a contingency fee basis?

Yes. As we have previously announced, we will not hire outside counsel on a contingency fee basis.

d) Will Ciresi be subject to all rules that govern Justice Department attorneys?

As discussed above, attorneys for the Robins, Kaplan firm were not Justice Department attorneys. Government contractors, including legal consultants, generally are not subject to the rules that govern the conduct of Justice Department attorneys. The Justice Department may not, however, pay consultants for the performance of tasks that are prohibited for federal employees.

3. a) Does the Department have plans to bring suits to recover increased medical or other expenditures against any other industries?

The Department has no plans to bring similar litigation against any other industries. Because we are in active preparation for the tobacco litigation, we are constrained in our ability to outline in detail the theories and strategies that we will use in this litigation. We can state, however, that the case the Department expects to bring will turn on intentional misconduct. As

the tobacco companies' own documents demonstrate, they have engaged in a course of conduct over the past five decades designed to hide the addictive nature of tobacco and to suppress information about the health risks of tobacco use while simultaneously misleading the American public about the safety of their product. That has cost the American taxpayers billions of dollars and caused disease and suffering for millions of Americans. We are aware of no other industry with a similar history.

b) If the Department were to bring suit against the tobacco industry, is there anything that would prohibit it from suing these or other industries for increased medical or other government expenditures in the future?

The Department's ability to sue any person or entity in the future, as today, will depend on the specific facts and legal issues presented in the individual cases. This will not change because the Department brings suit against the tobacco companies.

c) As a legal matter, does the Department believe that the legal principle of proximate cause should limit legal liability?

"Proximate cause" is a term that generally means the primary or moving cause that produces an injury. The applicability of this principle depends on the law and facts of a particular case. As a general matter, the Department recognizes the principle of proximate cause as it has been developed by the courts.

d) Is the Department willing to forego defending the United States Government on the basis that the government was not the proximate cause of a plaintiff's injury?

No.

Questions from Senator Leahy

1. **Over the course of Mr. Starr's investigation, 78 FBI agents, 25 Federal prosecutors, and 524 support employees from the Department -- for a total of over 600 Department employees -- have been detailed to Independent Counsel Starr's staff.**

a) Is that an unusually high number?

The Independent Counsel statute provided that "At the request of an independent counsel, prosecutors, administrative personnel, and other employees of the Department of Justice may be detailed to the staff of the independent counsel." [28 U.S.C. 594(d)(1)] The Department has generally responded positively to requests for such details.

With respect to the number of detailees to Independent Counsel Starr, we would note that (1) this was a large investigation conducted over a long period of time, which could tend to increase the number of detailees and (2) many of the support employees, particularly, worked for the Independent Counsel only intermittently or for short periods of time. [See, Department of Justice letter of May 4, 1999, copy enclosed.]

b) Is it a common practice to take federal prosecutors away from their assigned duties to be detailed to staff independent counsel investigations?

At the request of Independent Counsels, the Department has detailed Department attorneys, particularly Assistant U.S. Attorneys, to a number of their investigations. As indicated above, the statute contemplates details to Independent Counsel offices.

c) Despite Mr. Starr's use of almost 80 FBI agents, he also spent over $1 million on private investigators and over $850,000 on experts. Do you know what investigative matters might fall outside the expertise of FBI agents that would require private investigators and private experts?

The Independent Counsel statute provides that "For the purposes of carrying out the duties of an office of independent counsel, such independent counsel may appoint, fix the compensation, and assign the duties of such employees as such independent counsel considers necessary (including investigators, attorneys, and part-time consultants.)" [28 U.S.C. 594(c)]

The Department does not have a basis on which to assess Independent Counsel's Starr's decisions to hire particular employees or classes of employees.

d) I see that Mr. Starr spent $196,000 on "cash awards." Is this another word for bonuses? Do you know why he would have paid bonuses?

Chapter 45 of title 5, United States Code, gives Executive Branch agencies (including the offices of independent counsel) the authority to pay a cash award of up to $10,000 to an employee who "by his suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or

achieves a significant reduction in paperwork; or (2) performs a special act or service in the public interest in connection with or related to his official employment." [5 U.S.C. 4503]

The same Chapter also provides that "An employee whose most recent performance rating was at the fully successful level or higher (or the equivalent thereof) may be paid a cash award under this section." [5 U.S.C. 4505a]

The Department does not know the specific basis of any award paid by Independent Counsel Starr.

e) The Department reimburses attorneys' fees to some federal employees called as witnesses in independent counsel investigations. Taxpayers have already paid out about $11,000 in such expenses, and the Department has 24 more pending requests in connection with Mr. Starr's various investigations. Do you know how much those 24 pending requests would add up to if the Department ends up paying them all?

The normal process is for an employee to request reimbursement approval in principle and only after approval and the rendering of services to submit bills for review. Therefore, until the bills are submitted and we determine the reimbursability of particular charges, we are not able to estimate what the total cost will be. As of June 24, 1999, there were 37 requests for reimbursement pending and 8 payments have been made totaling $15,997.26.

2. **As a result of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, many legal permanent residents, including those who have served in the U.S. armed forces are being subjected to mandatory detention and mandatory deportation for past convictions. I have spoken to you before about such cases involving veterans who suffered permanent physical and psychological injury during active combat in Vietnam and the Gulf War. Some of these veterans have been living in this country for decades, and have U.S. citizen children and grandchildren. They now face detention and deportation for as few as one conviction, incurred years ago, for which they spent little or no time in prison.**

I asked Commissioner Meissner about this practice at an INS oversight hearing in March. I gave her a number of examples of people, including one veteran with a silver star and others who were being deported with no chance to really be heard. She said that the INS was "troubled" by these kinds of cases; she agreed that there was "room for some work" on the 1996 Act.

I am pleased that the INS subsequently dropped one of the cases that I had brought to Commissioner Meissner's attention. The case involved a decorated Army Sergeant named Rafael Ramirez, who lawfully immigrated to this country 29 years ago, at the age of 6. Mr. Ramirez found himself in deportation proceedings nearly 10 years after pleading guilty to possession of marijuana.

Following the INS oversight hearing, I introduced a bill, S.871, that would afford veterans like Mr. Ramirez some relief. The "Fairness to Immigrant Veterans Act of 1999" would restore to veterans the right to go before an immigration judge to present the equities of their case and the right to have a Federal court review any deportation decision. It would provide veterans with an opportunity to be released from detention while their case is pending.

a) Do you agree with Commissioner Meissner that there is "room for work" on some of the harsher provisions of the 1996 Act?

Yes, examples of the severe effects that some of the stricter detention and removal provisions of the 1996 immigration legislation have had, particularly on longtime lawful permanent residents of the United States, suggest that there is room for improvement. The Department of Justice believes that this goal can be accomplished without undercutting the important enforcement tools the 1996 law provided for the removal of dangerous criminal aliens, and looks forward to working with the Congress on more specific proposals.

b) If so, do you believe that S. 871 is a reasonable step in the right direction?

The Department of Justice believes S. 871 is a useful tool for starting the debate on cancellation of removal for aggravated felons who are also long time permanent residents of the United States, and we hope to work closely with you on this issue. The Department does have some concerns about specific provisions of S. 871, which we would be happy to discuss with you or your staff.

3 **Associate Attorney General Raymond Fisher previously noted the Department's support for a similar legislative package that Senator Kennedy and I introduced in the last Congress.**

a) Could you please comment more specifically on any strengths or weaknesses that you see in the bill?

The Department is in the process of reviewing this bill, and we will be forwarding our views under separate cover. We look forward to working with you to develop legislation that can help crime victims.

b) Do you think that while Congress is debating the merits of a constitutional amendment on victims rights that it should, at the same time, be considering legislative measures to benefit victims?

We firmly believe that some things can be done legislatively to help crime victims, and we would be pleased to work with you on this front. However, I want to emphasize that statutory reforms would not obviate the need for a victims' rights constitutional amendment, which is necessary to provide permanent, comprehensive protection for crime victims.

4. **One of the new programs that the Crime Victims Assistance Act would authorize is a Victim Ombudsman Program to allow independent officers to represent the victims' interests by educating prosecutors and judges as to their victim-related responsibility and by providing guidance and support to crime victims themselves. Do you believe that this type of program would benefit Crime Victims?**

We believe that victims' ombudsman programs are well worth exploring.

Last year, OVC funded an analysis of three states that have undertaken victims' rights compliance programs, *Victims' Rights Compliance Efforts: Experiences in Three States*, Office for Victims of Crime, May 1998. This report showed that programs may differ in scope and design. Those differences have to do with investigative and sanctioning authority, the range of services provided, the degree to which a program remains an impartial liaison or serves as a victim advocate, and the efforts made by a program to train and reach out to the public and the criminal justice community. To illustrate one of these differences, the Wisconsin Victim Resource Center approaches its mission as one of advocacy, offering direct services to victims as it acts as liaison with the criminal justice system. The Minnesota Office of the Ombudsman, on the other hand, stresses the importance of objectivity and neutrality, limiting the scope of its services to overseeing the treatment of victims in the criminal justice system.

We would be pleased to work with the Congress regarding victims' ombudsman programs and other measures to strengthen and promote victims' rights.

5. **A subcommittee of this Committee held a hearing on March 24th on the new McDade law. Deputy Attorney General Eric Holder and two United States Attorneys testified that the McDade law would cause "significant problems" for federal civil and criminal law enforcement. The McDade law went into effect on April 19th. Although I appreciate that it may be too soon to tell, are you aware of any "significant problems: that have resulted in the last three weeks as a result of the new law?**

Impact of Section 530B: The Department's assessment of the full impact of Section 530B is ongoing, and there are many issues about the scope and interpretation of Section 530B that are currently in litigation or are likely to be litigated in the near future. To date, however, the impact of Section 530B has been for the most part exactly what the Department predicted:

1) The Amendment has caused tremendous uncertainty because most state bar rules have not been interpreted as applying to government attorneys and are vague, so attorneys simply do not know if their conduct is permissible or not; not surprisingly that creates a tremendous chilling effect and interferes with our ability to enforce the law.

The uncertainty is increased because we must frequently compare conflicting bar rules. Department attorneys, who are often licensed in multiple states, working in other states, and supervising investigations that span many states, must engage in a complex analysis to determine what rules should apply to particular conduct. The Department's regulation implementing the McDade Amendment provides guidance to attorneys, but the area of choice-of-law with respect to state ethics rules remains complex. Department attorneys often

must seek guidance in determining what rules apply or must divert their scarce time to research on what rules may apply to particular conduct. The clear impact of this is to delay the investigation.

Moreover, the guidance that the Department provides is in a sense of less value to its attorneys than the guidance it can provide in other areas. In attempting to interpret § 530B, we can advise Department attorneys as to our best reading of the statute, but cannot protect them from the personal consequences if a court or disciplinary committee takes a different view. Under § 530B, unlike any other statute to which the Department might object on policy grounds, it is the individual government attorney, rather than the government, who pays the price for misinterpreting the law. Accordingly, especially with respect to close questions arising under the statute, attorneys are chilled even from engaging in conduct that is in the best interests of a case and consistent with what we believe to be a correct interpretation of the law.

2) The Amendment creates a rift between agents and prosecutors, because the Amendment, in practice, restricts prosecutors from supervising agents. This is not a helpful development in law enforcement because it is critically important that investigators and prosecutors work together, particularly on complex cases. We are already seeing evidence of this rift as investigators develop cases on their own, relying on well-established and perfectly legitimate federal law, without the input of prosecutors in order to avoid the restrictions prosecutors may be subject to under state ethics laws.

Moreover, because Section 530B limits the ability of prosecutors to speak with those who may have evidence of wrongdoing, particularly corporate employees, prosecutors have no choice but to use the grand jury subpoena to obtain the evidence, although a simple conversation might provide all that was needed. The Department believes that Section 530B is causing an increase in the use of grand jury subpoenas, but it does not yet have empirical evidence to support this claim.

3) The Amendment has prevented attorneys and agents from taking legitimate, traditionally accepted investigative steps, to the detriment of pending cases. The most obvious effect on law enforcement has been in decisions by attorneys and investigators not to take particular investigative steps out of concern that such steps, such as obtaining evidence by consensual monitoring or speaking with corporate employees about potential corporate misconduct, may violate some state's bar rules.

There have been several examples of the impact already. In some states, Department attorneys are refraining from authorizing tape recordings by informants or law enforcement agents operating undercover. Federal law clearly permits this routine law enforcement activity, referred to as consensual monitoring. However, one state bar has issued a brief ethics opinion and has verbally advised Department attorneys that, if they participate in or authorize a consensual monitoring, they will violate the state bar rule prohibiting the use of fraud or deceit; this state's interpretation appears to be similar to the highly restrictive (and, we believe incorrect) view of the Oregon bar, which has interpreted its bar rules to prohibit attorney participation in sting operations (Oregon has recently issued a new opinion which

addresses the issue of an attorney tape recording a conversation but does not resolve the issue of sting operations). In another state, Department attorneys have been reluctant to authorize consensual monitoring because of state criminal law or state ethics rules that could be interpreted to prohibit the conduct. Before proceeding with the action they contacted the local District Attorneys office and others to be sure they wouldn't be prosecuted for their actions.

As noted above, state rules regarding contacts with represented persons continue to be a problem for Department attorneys. In many cases, the state rules are unclear or appear to prohibit traditionally accepted, constitutionally permissible investigative activities. In several cases, Department attorneys have refrained from, or been advised not to, be involved in questioning targets and witnesses represented by counsel or defendants, even though law enforcement agents are permitted to engage in the same conduct. The most difficult situation arises in investigations of corporate misconduct because the law concerning which employees a government attorney may speak with is unclear.

The Amendment has also limited the Department's ability to investigate continuing criminal activities and such offenses as witness tampering and obstruction of justice. For instance, in one case, Department attorneys received information that an indicted defendant was seeking to intimidate or bribe a witness. The attorneys did not feel that they could, under the relevant interpretations of the state's ethics laws, use an informant to find out more about the defendant's plans.

Although state rules on communications with represented persons remain the most significant problem, defendants are also using other bar rules offensively to claim that legitimate cases or evidence should be thrown out of court. In one case, defense counsel unsuccessfully sought dismissal of a drug indictment and other sanctions by claiming that, under the McDade Amendment, Department attorneys violated state ethics rules related to trial publicity because an arresting officer – a state trooper – talked to a reporter.

In another instance, on the eve of trial a defendant filed a motion to dismiss the indictment in a case for failure to present "material evidence" to the grand jury in violation of Rule 3.3(d) and 3.8(d). The defendant argued that the McDade amendment, by requiring compliance with state bar rules, altered existing Supreme Court law on what evidence must be presented to the grand jury. We argued that we had complied with existing Supreme Court law and the court denied the motion.

4) Defendants are raising Section 530B in cases to interfere with legitimate federal prosecutions. The Department believes that Section 530B should be interpreted not to conflict with other federal laws and not to elevate state substantive, procedural, and evidentiary rules over established federal law. The Department's regulations make clear that Section 530B mandates compliance with state bar ethical rules, not the host of other rules that govern each state's judicial system. Nonetheless, as the Department has predicted, it is being forced to litigate these claims by defendants. A number of defendants have argued that state bar rules prohibit the use of cooperating witness testimony. The Department has not lost on this issue to date.

As we have noted in the past, the Department continues to litigate against the application of state bar rules that provide additional protections to attorneys (and not others) who are subpoenaed by federal prosecutors. These rules give procedural or other advantages to attorneys and are not part of established federal law.

The Department expects litigation concerning the McDade Amendment to be wide-ranging because defense counsel have every incentive to seek broad interpretations of the Amendment. In one case currently being litigated, a defendant is arguing that Section 530B requires compliance with state procedural rules that prohibit or limit the removal of cases from state court into federal court.

6. **I recently introduced a bill that addresses the Department's most pressing concerns respecting the McDade law. S. 855, The Professional Standards for Government Attorneys Act of 1999, would do two things. First, it would clarify the professional standards that apply to Government attorneys. Second, it would ask the Supreme Court to prescribe a uniform national rule for Government attorneys with respect to contacts with represented persons. I know that the Department has been reviewing S. 855 for several weeks now. Do you support the basic approach of this legislation?**

S. 855 is a good approach that addresses the two most significant problems caused by the McDade Amendment – confusion about what rule applies and the issue of contacts with represented parties. The Department looks forward to working with the Committee to solve these problems.

7. **Under current practice and ABA model rules, the ethics rules of the court in which a lawyer is appearing govern the lawyer's conduct, not necessarily the rules of the licensing State. This suggests that the ethics rules of the federal court in which a federal prosecutor is practicing ought to govern the conduct of federal prosecutors.**

(a) Do you agree?

Yes.

(b) More generally, do you agree that the choice-of-law provisions in S. 855 simply codify existing practice with respect to rules governing attorneys conduct?

The Department strongly supports clear choice-of-law rules, so that all attorneys know what rules govern their conduct. The ABA Model Rules address most situations by making clear that the rule of the court before which an attorney is litigating should govern an attorney's conduct. Unfortunately, only a small minority of states have adopted that rule. Moreover, the ABA Model Rules do not directly address what is perhaps the most difficult choice-of-law issue – what rules apply to an investigation that is a collaboration of several attorneys who may be licensed in different states. The choice-of-law provisions of S. 855 do adopt the ABA's model rule approach.

c) Please let me know the respects in which the McDade law departs from existing law and practice with respect to rules governing attorney conduct?

How far the McDade Amendment will stray from current law remains to be seen because the provision is so vague. Here are some of our concerns:

First, under pre-McDade law, it was relatively clear that Department attorneys need comply with the rules of the court before which they are litigating or the state where they are licensed; language of the McDade Amendment leaves that in doubt.

Second, pre-McDade, where a state bar rule went beyond the regulation of ethics and sought to alter substantive, evidentiary, or procedural rules in federal court, the Department has been able to challenge the rule in court, which it has done with varying success. Our ability to do this in the future remains to be seen.

Third, prior to the McDade Amendment, where a state bar rule purported to regulate ethics by unduly interfering with the enforcement of federal law, the Department has argued that the federal courts should 1) interpret the rule in the light of federal practice; 2) create an exception for law enforcement; and/or, 3) construe the rule narrowly in order to avoid running afoul of the Supremacy Clause. These arguments are more difficult to make now, even when a federal judge believes a state ethics rule will interfere with the legitimate enforcement of federal law.

Fourth, with respect to the area of contacts with represented persons, the McDade Amendment supersedes the Department's ethics rule on communications with represented persons. The Department has proposed an interim final rule that would replace the Department's regulation on communications with represented persons. The new rule is intended to provide guidance to Department attorneys about what rule applies. It does not address communications with represented persons.

8. **In a letter that you and the Deputy Attorney General sent last year to Chairman Henry Hyde on the proposed McDade law, you discussed the ongoing consideration by the Judicial Conference of rules governing attorney conduct in federal court, and noted that "the Rules Enabling Act process is the one established by Congress to consider these kinds of issues. It would be premature at best to prejudge the outcome of that deliberative process."**

a) Does the Department support the approach taken in S. 855, which is consistent with the Rules Enabling Act, or does it maintain that the authority to make and enforce ethical rules for federal prosecutors should rest with the Department?

b) As between the U.S. Judicial Conference and the Department of Justice, would you agree with me that the Judicial Conference is more disinterested with respect to the appropriate standards of conduct for federal prosecutors?

The Department has worked with the Conference of Chief Justices, the ABA, and others to come up with a rule on contacts with represented persons that is fair and effective. The Department

believes that the Judicial Conference, under the Rules Enabling Act, is an appropriate forum to discuss and resolve the longstanding issues related to Rule 4.2 and we look forward to participating, as we have, in that process.

9. **Does the McDade law affect in any way the authority of the U.S. Judicial Conference to prescribe uniform national rules for attorney conduct in Federal Courts under the Rules Enabling Act? Does the McDade law affect in any way the authority of Federal district courts to prescribe local rules for attorney conduct?**

The Department does not believe that the McDade Amendment in any way affects the authority of the Judicial Conference or of local federal courts to develop rules of practice in federal courts.

10. **As you know, the Administrative Office of the Courts has spent many years reviewing the case law and studying the rules governing attorney conduct in the federal courts. It has found that most conflicts between state and local federal court rules fall into just a few core areas, including contacts with represented persons. In connection with which of these areas of conflict has the Department issued regulations and with which has it refrained from issuing regulations?**

Of the 10 rules identified by the Judicial Conference, the Department has issued an ethics regulation in only one of these areas – the area of contacts with represented persons, where we have had serious problems.

11. **What new instructions or guidance, if any has the Department given to Assistant United States Attorneys with respect to their professional conduct under the McDade Amendment?**

The Department has published regulations to implement the Amendment and to provide guidance to Department attorneys about what rule applies to particular conduct. We have also trained our Professional Responsibility Officers and are in the process of training our attorneys on compliance with the Amendment. In addition, we have created a new, centralized Professional Responsibility Advisory Office (PRAO) to provide consistent guidance and assistance to Department attorneys on issues of professional ethics.

12. **Senator Hatch has introduced a bill, S. 250, which would grant the Department broad authority to issue its own ethics rules where a state's rules were "inconsistent with Federal law" or "interfere[d] with the effectuation of Federal law or policy." Please identify those state ethics rules which the Department would "supersede" should this bill become law, and describe the regulations which the Department would likely issue.**

S. 250 sets a standard -- "inconsisten[cy] with federal law" or "interferen[ce] with the effectuation of federal law or policy" -- that the Department would have to meet in order to seek relief from state bar rules, whether via regulation or court order. If enacted, the Department would have to review that standard to determine what circumstances meet that test. As noted above,

contacts with represented persons is the only area in which the Department has issued its own regulation, and the one area where the Department has had serious, longstanding problems.

13. S. 250 provides nine categories of "prohibited conduct" by Justice Department employees, including prohibiting Department employees from altering evidence or attempting corruptly to influence a witness's testimony "in violation of [18 U.S.C. 1503 or 1512]" – the obstruction of justice and witness tampering statutes. These statutes use the same "whoever ..." formulation as the federal bribery statute, 18 U.S.C. 201(c), which Tenth Circuit recently decided in United States v. Singleton does not apply to a federal prosecutor functioning within the official scope of his office. The court based its decision on the proposition that the work "whoever" in Section 201(c) does not include the government. Does S. 250 pose any risk by providing that government attorneys are subject to Sections 1503 and 1512, of casting doubt on the Tenth Circuit's reasoning, leading other courts to conclude that the federal bribery statute may, indeed, apply to federal prosecutors?

The Department does not interpret the language of S. 250 to resurrect the now-rejected reasoning of the Singleton case.

14. In the ongoing dispute over implementation of the Communications Assistance for Law Enforcement Act (CALEA), the FCC has tentatively concluded that the FBI is right and that telecommunications carriers must be capable of giving law enforcement a cellular phone location on a real-time basis. Privacy advocates are very concerned about this capability and how law enforcement will use cell phones as tracking devices, and consequently have been vigorously fighting against this capability being required by the FCC.

a) Do you agree with me that the FBI should be allowed to use cell phones to track a user's movements only with stringent privacy safeguards in place?

b) In my new privacy bill, E-RIGHTS (S. 854), I propose that the FBI be able to use cell phones as a tracking device only with a probable cause court order – the same order required under current law to put a tracking device on a car. Would this be a proposal that the Department could support?

**** RESPONSE WILL BE PROVIDED AS SOON AS POSSIBLE ****

15. **I recently introduced, with Senators Kennedy and Torricelli, and others, the Seniors Safety Act, S. 751, a bill to address the problem of crime against seniors. I want to thank you and the Department for the assistance you provided in putting that bill together. One of the provisions would authorize Federal authorities to investigate and prosecute nursing home operators who engage in patterns of health and safety violations in the care of nursing home residents, while also providing whistle-blower protection for reporting such violations. I think this is an important new provision to avoid piecemeal local prosecutions that cannot and do not address the problem of bad nursing home operators who own nursing homes in multiple jurisdictions. Could you describe how this provision will help nursing home residents?**

The nursing home provision would be of assistance in a number of ways. At this time, there is no general federal patient abuse and neglect statute. While the Department has used the civil False Claims Act to address fraudulent and abusive conduct in nursing homes that has resulted in patient harm, the FCA is focused on financial fraud, and it does not reach widespread abuse and neglect of nursing home patients absent the submission of a "false claim." Moreover, while state agencies, particularly the state Medicaid Fraud Control Units (MFCUs) handle many patient abuse and neglect cases, their cases generally focus on individual instances of abuse committed by nursing home employees. Moreover, MFCUs are limited to investigations involving misconduct in their jurisdictions. As a result, separate MFCUs may pursue isolated cases involving facilities located in different states without the realization that the problems are the result of a corporate policy or practice.

The new provision would authorize the Department of Justice to pursue charges against individuals and nursing homes and other residential care facilities that engage in a pattern of violations of nursing home statutes, rules, or regulations. Criminal sanctions would attach if the violations were committed knowingly and willfully. These provisions would fill the gap in current law by allowing the Department to pursue civil and criminal penalties for widespread abuse and neglect in nursing homes and other residential care facilities. At the same time, the high threshold for such cases – i.e., cases involving a pattern of violations – would not displace the primary enforcement role of state authorities in handling individual instances of abuse and neglect.

The provision also would allow the Attorney General to obtain injunctive relief against a facility that is engaging in, or about to engage in, a violation of the statute. This provision is important in that it will allow the federal government to address situations posing a threat to the health or safety of patients without waiting until the conclusion of a trial. Finally, the provision also contains an important provision to protect whistleblowers against retaliation. Nursing home employees and other insiders should not face the loss of their job or other retaliatory action for doing the right thing by notifying authorities of conditions that might jeopardize the health or safety of nursing home patients.

16. **I alluded in my opening statement to a number of pending nominations and, in particular, to the nomination of Bill Lann Lee to be the Assistant Attorney General for the Civil Rights Division. He has been serving as the Acting Assistant Attorney General now for about a year and a half and has been re-nominated for the third time. How do you think he is doing?**

As the Attorney General stated at the oversight hearing, she believes that Bill Lann Lee is doing a wonderful job. Over the last eighteen months, he has worked to strengthen our hate crimes laws, make society accessible to Americans with disabilities, fight housing discrimination, and combat modern day slavery. Following are a few examples of how he has led the Civil Rights Division's law enforcement efforts in a fair and effective manner.

Bill Lee co-chairs, with the Solicitor of the Labor Department, the Worker Exploitation Task Force that was created to combat the serious problem of modern day slavery and worker exploitation in the U.S. Indeed, the Civil Rights Division indicted sixteen individuals who had orchestrated a scheme to recruit young women from Mexico and force them into prostitution. Last November, three individuals were indicted in the Northern Mariana Islands for luring women from China with promises of waitressing jobs and then forcing them to work as "bar girls" and have sex with customers. In New York, the Civil Rights Division helped convict the ringleaders responsible for enslaving deaf Mexicans and forcing them to sell subway trinkets.

Bill Lee has made the prevention and prosecution of hate crimes a top priority of the Division under his leadership. With the Treasury Undersecretary, Bill Lee co-chairs the National Church Arson Task Force, a task force that has a 35% arrest rate in more than 670 cases since 1995. This is more than double the arrest rate for arsons generally. This spring, the task force co-chairs joined the U.S. Attorneys in Indiana and Georgia to announce the indictment of a defendant for setting 12 fires in those two states, the largest number of fires attributed to a single defendant during the life of the Task Force. One of the Georgia fires resulted in the death of a volunteer firefighter and injuries to three others. In addition, the Civil Rights Division secured guilty pleas from three defendants who, as member of skinhead gangs, were involved in the beating and stabbing of two African-Americans in southern California. The Division also obtained guilty pleas from six defendants for physically assaulting Hispanic residents in Nampa, Idaho.

Bill Lann Lee is committed to vigorous enforcement of the ADA's promise of equal opportunity to all Americans with disabilities. For example, under his leadership, the Civil Rights Division, along with nine state attorneys general, reached an out-of-court settlement with Wendy's that will require the chain to modify queue lines in nearly 1,700 restaurants so they are more accessible to customers with disabilities. Last December, Bass Hotels, the owner of Holiday Inn, agreed to make it easier for guests with disabilities to get a room and agreed to set up a system to mediate future access-related complaints. The Civil Rights Division has also certified that the Florida Accessibility Code is equivalent to the ADA, thus giving builders, architects and other businesses greater assurance that by complying with the State building code, they will also be in compliance with the ADA. Bill Lann Lee then sent a letter to other governors, encouraging them to submit their codes for similar voluntary certification.

Bill Lann Lee has made fair housing enforcement another of his key priorities. For example, under his leadership, the Civil Rights Division settled with the owners and managers of a Richmond, Virginia, apartment complex who were accused of refusing to rent to African Americans. The $480,000 settlement is the largest rental discrimination case in Virginia to date. The Division also settled with the owner of an Idaho apartment complex, who refused to rent to families with children in violation of federal law – the apartments were publicized in advertisements with the words "no children." And, in response to the Division's investigation in the Chicago metropolitan area under the accessibility provisions of the federal Fair Housing Act, the nation's largest homebuilder agreed to correct design problems in six housing developments that were inaccessible to persons with disabilities.

Finally, Bill Lann Lee is a conciliator. He brings people together. He has initiated an Alternative Dispute Resolution (ADR) program within the Division that will ensure that its lawyers are fully trained in and encouraged to use ADR as a helpful and important tool for resolving many civil rights disputes. Indeed, since Bill Lann Lee arrived at the Department, the Division's Disability Rights Section has referred over 400 complaints involving public accommodations and local governments to mediation.

Similarly, Bill Lann Lee worked with Georgia state officials to reach an agreement to improve the state's juvenile detention facilities. He also worked with the NCAA to find a settlement that enabled the NCAA to maintain its academic standards while modifying the methods it uses to assess whether students with learning disabilities meet those standards. And he helped to find common ground in resolving the issue of reparations for the World War II internment of Japanese Peruvians that had been left unresolved after many years of debate.

In short, Bill Lee has ensured that our civil rights laws are enforced fairly, effectively, and vigorously. He is serving our nation very well indeed.

17. **Law enforcement access to medical records is a hot topic. I appreciate the need for law enforcement access to medical records to uncover widespread fraud and abuse, and the medical privacy bill (S. 573) I introduced along with Senator Kennedy and others provides ample access to those records so long as the patients' identities are protected by law enforcement. We should leave intact mandatory reporting laws such as notifying authorities of a gunshot wound or suspected child abuse.**

My question is in the instance when law enforcement seeks access to medical records of a specific person who is a target of an investigation. I believe patients should feel secure that an FBI agent cannot walk into any hospital or doctor's office and gain unfettered access to patient files.

Under current law, we have standards in place for law enforcement access to video rental records, for telephone records, and for wiretaps. Now, I am not suggesting that we put in place the same requirements for access to medical records as for wiretaps, but standards and procedures need to be in place.

Do you agree?

The Department fully agrees that standards and procedures should be in place for law enforcement access to, and use of medical information. In fact, while not broadly recognized, many such standards and procedures are already in place and applicable to federal, state and local law enforcement activities involving medical records. For example, law enforcement officers are subject to constitutional and statutory limitations which prohibit the misuse of their official position to obtain medical information, or any other evidence, for personal use. However, these requirements are scattered throughout federal, state and local statutes and ordinances and court decisions, and not available as a single, uniform legislative imperative. The comprehensive medical record privacy legislation under consideration therefore provides a unique opportunity.

We also agree that the standards currently in place for wiretaps, phone records and video records may not be appropriate for medical information. For one, our privacy expectations in our homes, our private phone conversations, and what we read and view have traditionally been afforded maximum Constitutional and statutory protections barring unreasonable search and seizure and promoting our right to free speech. However access to general medical information, while increasingly considered extremely personal and private, has not traditionally been so narrowly restricted. One stark, but narrowly focused exception to this was the enactment of the substance abuse patient medical records statute which addressed a compelling societal need to provide substance abuse counseling and treatment to patients without subsequent fear of prosecution for drug offenses which were at the core of the treatment regimen.

Even as we act to provide more protection to medical information, particularly the misuse of medical information, we must keep in mind that even under such legislation, many more individuals will continue to have access to our medical information than would ever enter our homes or listen in on our phone conversations. Also, medical information traditionally provided evidence critical to the investigation and prosecution of criminal and fraudulent activity, and must continue to do so. For example, most states have recognized this need by enacting mandatory reporting laws which require medical providers to report to law enforcement treatment for wounds which appear to have occurred during criminal activity including gunshot and knife wounds, rapes and child abuse. I also recognize that what may appear to be a reasonable limitation to a federal law enforcement agency, may have substantial adverse impacts on state or local law enforcement agencies responsible for investigating and prosecuting the vast majority of crimes in our nation.

Irrespective of these distinguishing facts, there are additional important common sense limitations which would serve to further regulate law enforcement access to, and use of, sensitive medical information, without impairing essential official law enforcement responsibilities to protect public health and safety and to enforce uniformly the laws enacted by Congress and state and local legislative bodies. To that end, we have been working closely with Congress on medical record privacy legislation and will continue to do so.

18. The Department of Justice testified last week before the Health, Education, Labor and Pensions (HELP) Committee and left the impression that this Department does not believe there is any Fourth Amendment protection for a person's medical record. Is that correct, or will the Department work with me to ensure that we accord private medical records at least the same protection that we already give our video tape rental records?

The similarities and differences between video records and medical records are not simply drawn but must be carefully considered. The traditional use of medical information as a key source of evidence whether for investigations of health care, insurance and disability payment, fraud and abuse, or for investigations of crimes which have caused injuries, principally conducted by state and local law enforcement agencies, sets medical records apart from video rental records. Video rental records are needed as evidence in a rare number of cases.

There is another factor which distinguishes the treatment of video rental records. The specter of government agencies seizing video rental records implicates First Amendment as well as privacy concerns regarding free speech guarantees protecting the right to read and view written or cinematic material without government interference. However, even with such First Amendment protections, video rental records must be disclosed to law enforcement, pursuant to Title 18, United States Code, Section 2720 (b)(2)(C), the statute protecting video rental records.

Under Section 2720, law enforcement can obtain video records, but only by use of grand jury subpoenas, warrants or court orders, an inappropriate limitation in the context of medical records which are needed in a far wider range of investigations, than are video records. For example, medical information provides indispensable forensic proof of many types of crimes. Also, medical records are frequently needed in time sensitive, urgent or exigent circumstance not relevant to the use of video records. Such circumstances routinely arise during the investigation of certain crimes, including those where: there is an injury to a victim or a suspect; a suspect, fugitive or material witness is fleeing; or where a suspect is threatening harm to victims such as a kidnaping or terrorist attack.

Furthermore, under current law, federal, state and local law enforcement can obtain and use health information through different types of compulsory process, the use of which provides sufficient protection against the improper disclosure of health information to law enforcement. If law enforcement access to medical information was limited to the narrow list of authorized compulsory disclosure tools applicable to video records, substantial problems would arise, particularly in the civil context. For example, when the Department is considering intervention in a private civil *qui tam* fraud matter, pursuant to the False Claims Act, it is crucial that the government retain its current authority to subpoena health records for review when this information is needed to evaluate the merits of the claim, and the government's interest in the outcome. Any provisions which would regulate law enforcement access to medical records therefore, must authorize the continued use of the different types compulsory process currently used by federal, state and local law enforcement.

19. **The Boston Globe this week published two articles reporting that, in at least several cases, individuals who may have committed human rights crimes abroad have entered with ease under our immigration laws, and that INS efforts to investigate these allegations against them seem to be ineffectual. One of these individuals currently resides in Burlington, Vermont, and the allegations made against him are serious.**

The article also raises questions about whether the Department of Justice has a workable or at least operative strategy to handle such cases. This seems to be a repeat of the problems that led to creation of the Office of Special Investigations in 1979.

What does the Department of Justice do when it becomes aware of allegations that a person who has been legally admitted to the United States may have committed human rights crimes abroad? Is there adequate coordination among the Department's agencies – specifically, INS and OSI, in such cases today? Can you generally describe the direction they receive from the Department in handling these cases? Does OSI have the authority to pursue cases of War Crimes committed in all regions of the world?

When the Department of Justice learns that persons legally admitted to this country may have committed human rights abuses, thorough investigations are conducted and appropriate action is taken, including criminal prosecution, extradition, or removal from the United States. The INS does not knowingly allow anyone who violates human rights to come to the United States. The National Security Unit of the Office of Field Operations at the Immigration and Naturalization Service (INS) is responsible for coordinating investigations of special interest cases, including those involving alleged human rights abusers who may have participated in persecution, genocide, or torture. If a person enters through fraud or misrepresentation, INS conducts a thorough investigation and considers all evidence to determine whether to pursue revocation of the person's immigration status and removal from the United States. Certain human rights abusers may also be amenable to criminal prosecutions for their actions and INS works closely with the Criminal Division of the Department of Justice as well as with the United States Attorney's Offices.

On December 10, 1998, the President signed an Executive order on the Implementation of Human Rights Treaties. Part of this Executive Order establishes an Interagency Working Group, chaired by the National Security Council, in which the Departments of Justice, State, Labor and Defense participate. In addition, the Department of Justice has formed its own working group on human rights headed by the Office of the Deputy Attorney General. The Human Rights Abusers Task Force, is a subgroup of the DOJ working group, devoted to identifying and taking appropriate action against human rights abusers. The Task Force has been charged with improving the acquisition and exchange of information or evidence regarding the conduct of human rights abusers and coordinating interaction with appropriate non-governmental organizations to gather information which they may possess.

By statute and DOJ policy, OSI's jurisdiction is limited to Nazi persecution, war crimes and genocide cases. For this reason, they have not been coordinating with INS on modern war crimes matters; they are a part of the DOJ Task Force and will provide their expertise on gathering information on and prosecuting cases.

b) Is it possible that we need a fresh look at strategy and coordination of investigations into these cases?

The DOJ Human Rights Abusers Task Force is devoted to developing a comprehensive strategy to deal with such cases.

c) Will you direct INS and OSI to advise you of recommendations to improve the handling of such cases, and will you share these recommendations with the Committee?

The DOJ Human Rights Abusers Task Force has already begun to form comprehensive recommendations to improve the handling of such cases. The Department will be pleased to brief you on the recommendations.

d) In particular, will you look into the handling of these cases outlined in these news accounts and let me know what you find?

Since the cases outlined in the three part series by the Boston Globe involve on-going investigations, we are not able to comment on them.

20. A recent decision by the United States Court of Appeals for the 9th Circuit found in favor of mathematician Dan Bernstein and ruled that the government's restrictions on the export of encryption software are an unconstitutional restraint of free speech.

(a) Does the Department of Justice intend to appeal?

The government has decided to ask the Ninth Circuit to rehear the appeal in the Bernstein case. The government filed its rehearing petition on June 21, 1999.

(b) Does this ruling allow export of encryption products, or only of source code?

The district court issued a declaratory judgment that the Export Administration Regulations' (EAR) controls on encryption "software and related devices and technology" are invalid on prior restraint grounds. The district court also issued an injunction that limits in certain respects the enforcement of the EAR's encryption export controls against Professor Bernstein and certain other persons. The Ninth Circuit's decision affirmed the district court's declaratory judgment with respect to all encryption items on the Commerce Control List, in part on the ground that the provisions of the EAR regarding the export of encryption software in source code form cannot be "severed" from the provisions regarding the export of other encryption products. The Ninth Circuit's decision did not address the scope of the district court's injunction, which is currently stayed and which will go into effect only if and when the Ninth Circuit's mandate is issued.

(c) If the source code for encryption products is freely available, would it then follow that restricting the actual products is a futile effort, as well as a needless restriction on trade?

Mere foreign availability, while a factor to be taken into account in determining the appropriate scope of export controls, is not by itself dispositive. For example, even though some encryption products are already available abroad, they are not commonly used, and, therefore, export controls continue to support public safety and national security, as they continue to make the acquisition and effective use of encryption by criminal and terrorist elements more difficult. The danger to public safety and national security arises less from the use of encryption by isolated criminals and terrorists than from the ubiquitous use of non-recoverable encryption — which may even have been embedded in the infrastructure — by any and all criminals and terrorists. Moreover, at present the Ninth Circuit decision has not gone into effect, and, therefore, Professor Bernstein's source code software is not freely available

21. The Department of Justice's basis in this case was that source code is not a language, but instead is a tool for controlling computers. Does this mean that the Government should be able to restrict any computer language, from sophisticated programming languages to Hypertext Markup Language (HTML)?

The constitutionality of the export controls on encryption source code software does not rest on the proposition that "source code is not a language." Instead, the critical point is that, whether or not encryption source code software can be used as a form of expression in particular instances, it also can be used to control the operation of computers, just like other encryption items. The EAR's export controls are based solely on the capacity of encryption software in source code form to electronically cause computers to encrypt communications and data, not on the capacity of source code to convey information and ideas about cryptography; the First Amendment does not preclude the government from regulating the export of encryption source code software on the basis of its capacity to encrypt data. What the EAR controls is not the use of any particular computer programming language, but rather the export of encryption items.

22. Has the Department of Justice done any studies to date comparing how much crime is helped by encryption compared to how much is prevented by encryption?

Any such study would necessarily be speculative. We can study the extent to which law enforcement is encountering encryption in criminal cases, both in the United States and abroad. For example, at least fifty percent of the FBI offices have reported some type of encounter with encryption in criminal or foreign counterintelligence cases. And indications are that the use of encryption in criminal cases is increasing. But it would be very difficult to determine how much crime is "prevented" by encryption. That said, the Department of Justice recognizes the importance of encryption in preventing certain types of crime, and is a strong proponent of the legitimate use of encryption to protect the security of information and the privacy of individuals. Finally, the question appears to lump all types of encryption products together; it is important to recognize that there are encryption products that use methodologies, such as recoverable encryption, that do not normally impair the investigation of crime (because recoverable encryption allows for lawful access to the plaintext of encrypted information), but do assist in preventing crime (because robust recoverable encryption denies criminals access to the plaintext of private data and communications).

Questions from Senator Kennedy

1. **As you know, Fleet Bank and Bank Boston recently announced plans to merge. The newly combined bank -- FleetBoston -- will become the eighth largest bank in the nation and a formidable presence in New England.**

Both banks anticipate that certain assets, including accounts, loans, branches, and ATMs, will need to be divested in order for the merger to receive approval from the Justice Department. Senator Kerry and I wrote a letter to Joel Klein recently expressing our belief that Massachusetts-based banks should have a fair opportunity to compete for the assets being sold. We strongly believe that any process that automatically favors selling the assets to a single financial institution outside of our state -- with no historical ties or commitment to local communities -- would be unfair and unwise.

a) What I would like to know from you, Madam Attorney General, is what steps can and will the Justice Department take to ensure that the Fleet/Bank Boston divestiture process is open, and affords Massachusetts-based banks a fair opportunity to compete for the assets being sold?

b) Also, when do you anticipate that the merger review process will be completed?

When the Department of Justice requires divestiture of assets in order to satisfy our competitive concerns about a merger, we need to ensure, pursuant to our mandate under the antitrust laws, that those assets are sold to a person or persons who are able and willing to maintain their independent competitive significance in the relevant market in a way that addresses our competitive concerns. Thus, for example, if our competitive concern is for a particular segment of banking (such as, in this instance, so-called "middle market" lending), we need to ensure that the assets are sold to a person or persons who will be a competitive factor in that segment. As long as we determine that sufficient assets are sold to a buyer or buyers that address the competitive concern, the Department does not under the antitrust laws further dictate to whom the assets must be sold or under what process. In the case of a bank merger, as you know, the federal bank regulators also play a role in reviewing the merger, and may have their own criteria, in addition to our recommendation, for assessing whether a particular divestiture will satisfy any concerns they may have.

The Department of Justice is still reviewing this merger and awaiting specific proposals as to disposition of assets. While we expect this process to conclude in the near future, the timing may be effected by the fact that the Federal Reserve Board intends to hold a public hearing on the merger.

2. **Under current law, the INS has the authority to release from detention asylum seekers who establish a credible fear. I understand that this authority is arbitrarily exercised. In some jurisdictions, they are detained up to a year while their asylum claims are considered; in other jurisdictions, asylum seekers are routinely released.**

   Why doesn't INS implement a consistent release policy for all asylum seekers who establish a credible fear of persecution? Wouldn't such a policy free up detention beds, which are needed for others who should be detained?

The discretion to authorize the parole from custody for all asylum seekers who establish a credible fear of persecution rests with the District Director who has jurisdiction over that particular case. This consideration is given on a case-by-case basis for urgent humanitarian reasons or significant public benefit, provided the alien presents neither a security risk nor a risk of absconding. While a finding that an alien has a credible fear of persecution is one factor in the parole decision, INS must consider other factors as well. These considerations include whether the INS has been able to establish the alien's identity and whether the alien has close ties to the community. Custody determinations also consider the impact on any organized smuggling, exploitation, or other criminal conspiracies that may be identified or suspected in an individual case. The INS has not found any of its District Directors to be abusive of their discretion for parole, but we are making efforts to determine whether that discretion is being exercised on a consistent basis and whether the appropriate factors are being considered in making parole determinations. A team from INS Headquarters recently visited the Wackenhut facility in New York for this purpose, and plans are underway for similar trips to other districts. INS intends to take steps to insure that parole decisions are made on a consistent and considered basis.

3. **I am very concerned about the Hub Site Detention and Removal Plan which calls for the detention of immigrants in particular geographic areas according to their nationality. I share the concerns raised by many that this plan is unfair and will divide families. I believe a better plan is to detain immigrants in facilities that are close to their family and community ties where they are more likely to find legal representation.**

   In light of the concerns raised, has the INS reconsidered the implementation of Hub Site Plan?

The Hub Site Plan was an INS regional concept to facilitate the removal of illegal aliens within the Central Region. The INS has stated, in responses to community-based organizations, that its presentations and explanations of the Hub Site concept to stakeholders should have been more fully developed and explained. The intent of the Hub Site concept was to optimize the resources and tools available to the regional offices. The concept of improving and enhancing INS removal process remains with our Headquarters staff and embraces three basic operational tenets: 1) to improve the access of legal representation and knowledge of rights for all detained aliens; 2) to improve the access to consular official representation; and 3) to minimize detention time per case.

4. **The 1996 immigration laws require the detention of nearly all immigrants who have committed a crime. The list of crimes which mandate detention includes nonviolent crimes and crimes for which no sentence was served. The laws are also applied retroactively, so persons with crimes which occurred in the distant past could be subject to mandatory detention.**

   Under the existing mandatory detention requirements, does INS have discretion not to detain immigrants who committed minor crimes in the distant past?

Not all criminal convictions fall under the mandatory detention requirements. For example, a single conviction for a crime involving moral turpitude with a sentence of less than one year does not mandate detention. However, for those crimes included in the mandatory detention provisions, the INS has no discretion not to detain an alien during the alien's removal proceeding, regardless of the severity or time of the offense.

5. **Another important immigration issue affecting long-time permanent residents is the availability of relief from deportation. I understand that three federal circuit courts have ruled that the Soriano decision was incorrect and the law eliminating waivers of deportation cannot be applied, retroactively.**

   a) In light of the federal court rulings, have you considered revisiting this decision and holding that the law should not be applied retroactively?

   b) Short of legislation repealing these onerous provisions, are there any other measures that the INS could implement to restore waivers to long-time residents?

On April 24, 1996, the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") was enacted. Section 440(d) of AEDPA amended the Immigration and Nationality Act ("INA") by making section 212(c) relief unavailable to aliens who are deportable due to convictions of specific criminal offenses. Matter of Soriano, Opinion of the Attorney General (February 22, 1997). Although the U.S. Supreme Court on March 8 declined to review lower court decisions on this subject, the Department has not changed its position on the issue of the availability of criminal waivers under Section 212(c) of the INA. As you are aware, this issue is being litigated around the country and with the continued development of case law on the subject, the Department will be considering any appropriate options.

6. **Recently, the Justice Department won a major affirmative action case in the federal district court for western Texas. In Rothe Development v. Dept. Of Defense, the court found the new "benchmarking" system for federal procurement to be narrowly tailored to meet the government's compelling interest to remedy discrimination. It is the only decision to date on the government's new post-Adarand program.**

Bill Lann Lee has said many times that he believes that there are still circumstances where affirmative action is constitutional and that he supports it only where it is necessary to remedy discrimination. Does the decision in Rothe vindicate Bill Lee and the Administration's position on affirmative action?

The program at issue in Rothe is an example of the Clinton Administration's commitment to review and, where necessary, reform federal affirmative action programs to ensure that they comply with Supreme Court decisions. Although a Fifth Circuit judge has issued a stay of the district court's decision pending appeal, we believe that the district court's opinion is an important expression of support for the Administration's position on affirmative action.

In Adarand, the Supreme Court clarified that federal affirmative action programs remain fully lawful when narrowly tailored to serve a compelling government interest. The Department of Justice has carefully reviewed the contracting program at issue in Rothe and concluded that it passes constitutional muster under this analysis. The federal district court judge in the case agreed.

In Rothe, a white-owned business challenged the constitutionality of the Air Force's award of a computer and telephone services contract to ICT, a company owned by a Korean-American. ICT was deemed to be the lowest qualified bidder, based in part on a ten percent price evaluation credit awarded to small disadvantaged businesses. Under this program, ten percent is added to a non-minority contractor's bid when it is compared to the bids of qualified socially- and economically-disadvantaged businesses.

The district court held that the program is justified by a compelling interest in remedying discrimination against minority-owned businesses, and that the revised and reformed program is narrowly tailored to that interest. First, because small socially- and economically-owned businesses are underutilized in the industry covered by this contract, affirmative action programs of this type are especially appropriate. Moreover, the presumption of social disadvantage for individual members of specified racial groups is rebuttable, and non-minority individuals are eligible to apply for admission to the program. Finally, all participants — regardless of minority status -- must certify their economic disadvantage before becoming eligible for the program.

7. **What is the Justice Department doing to investigate racial profiling by law enforcement and stop the discriminatory effects of the Pipeline program? Will the Traffic Stop Statistics Study Act of 1999 give the Justice Department the tools you need to determine the extent of this problem and how to fix it? Will the Act help you work effectively with states like Massachusetts that are considering similar laws to study the problem?**

Several statutes give the Department of Justice the authority to conduct an investigation when allegations arise that a law enforcement agency may be engaging in discriminatory policing. The Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, authorizes the Department to file suit for injunctive and declaratory relief when law enforcement officers engage in a "pattern or practice" of conduct that violates the Constitution or federal law. Two earlier statues — Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the Omnibus Crime

Control and Safe Streets Act of 1968, as amended, 42 U.S.C. § 3789d(c) — prohibit discrimination by law enforcement agencies that receive federal financial assistance, and allow the Department to obtain remedies both through an administrative procedure and through litigation.

On April 26, 1999, the Civil Rights Division advised the State of New Jersey that a lawsuit has been authorized against the New Jersey State Police, pursuant to 42 U.S.C. §§ 14141 and 3789d(c), alleging that state troopers are engaging in a pattern or practice of conducting discriminatory traffic stops. The Division offered to enter into pre-suit settlement negotiations, to which the State agreed, and these negotiations now are proceeding. The Civil Rights Division (working in some instances in conjunction with U.S. Attorneys' Offices) also has a number of other investigations ongoing concerning allegations of discriminatory traffic stops and discriminatory pedestrian stops.

The Drug Enforcement Administration's Operation Pipeline program teaches state and local law enforcement officers awareness and conversational skills to use in conjunction with routine traffic stops to help locate individuals who are transporting illegal drugs or other contraband.. These skills are to be used only after a proper traffic stop has been made, and are used to decide whether to request consent to search the motorist's vehicle or deploy a drug-sniffing canine. The program does not teach law enforcement officers to profile drivers to decide which drivers should be stopped for a traffic violation. Indeed, the program teaches that motorists should not be stopped or searched on the basis of race or ethnic origin, and that any such profiling is not an effective means for locating drug couriers because couriers may be of any race or ethnic origin.

The Clinton Administration supports the enactment of the Traffic Stop Statistics Study Act of 1999, with an appropriate limitation on the use of the data collected. This legislation would help the Justice Department, and the Nation as a whole, to move beyond anecdotes and obtain important data about the nature and scope of the problem of discriminatory traffic stops, and then develop appropriate solutions. The legislation would allow the Department to complement local efforts that are ongoing across the country to gather traffic stops data by accumulating and analyzing the data collected. In addition, the legislation authorizes grants to law enforcement agencies to collect and submit traffic stop data that will be helpful to the Attorney General's analysis.

In recognition of the value in collecting data on law enforcement stops and searches, President Clinton issued an Executive Memorandum on June 9, 1999 requiring three federal agencies — DOJ, Interior, and the Department of the Treasury — to design and implement systems for collecting and reporting statistics with regard to the race, ethnicity, and gender of persons who are stopped or subjected to certain warrantless searches by federal law enforcement agents.

8. **As you know, the Juvenile Justice and Delinquency Prevention Act of 1974 provides a number of core protections for children which are designed to assure that children are free from assault and abuse from adult inmates. As a condition of receiving federal funds, jails must remove children from adult jails, except in limited circumstances, and in those circumstances, to ensure sight and sound separation from adults. Congress passed this important legislation in response to studies in the early 1970's that found that children in adult jails often were subject to rape, sodomy, and assault by both inmates and prison staff. Children were committing suicide, physically and sexually assaulted, and murdered. For the past 25 years, Congress has been protecting America's children from the dangers of adult jails. Most states accept these funds and are in compliance with the law. I understand that some members of Congress would like to weaken these core protections, which would mean a return to the days when children's lives were routinely threatened.**

I'd like to know where the Administration stands on the maintenance of these core protections, in particular on the "jail removal" and "sight and sound" separation provisions.

The response to this question is combined with that of Question 9 on Sight and Sound Contact.

9. **I understand that Kentucky is one of several states which is not in compliance with the JJDPA and is therefore not eligible to receive funds. And I'm aware that more recently Kentucky is attempting to come into compliance with the federal law. However, the reason that Kentucky is not in compliance is that children are routinely housed in adult jails and are subject to serious assault and abuse, from adult inmates as well as prison guards. For example, I understand that a number of years ago 15-year-old Robbie Horn was ordered into the Oldham County jail after having an argument with his mother. He was walked down the hallway past the cell block of adult inmates -- a routine "scare" tactic in that jail – and within half an hour he was dead. Robbie took off his shirt, wrapped one sleeve around his neck and the other around the bar in the shower and hung himself. There are other examples, in fact I have a chart which illustrates cases of assault, rape, and death of children in adult jails in Kentucky. Current legislation pending in the Senate, S. 254, would allow "brief, incidental or accidental" physical contact between children and adult inmates in adult jails and would expand the circumstances and length of time under which children would be held in adult jails. Children, such as Robbie Horn, could be walked down a hallway past open adult cells where adult inmates were yelling taunts and obscenities. This may seem to be a sort of "scare" tactic for some youth, but it wasn't for Robbie Horn. It resulted in a situation where he was literally scared to death, and he committed suicide as a result. This seems to me that under this legislation we would be replicating a Kentucky type "model" all over this country. Under this legislation, more children would be at risk of assault and abuse, and more tragedies such as the ones in Kentucy, which I believe are preventable tragedies, could occur.**

What is the Administration's position on these preventable tragedies and what would be your legislative recommendations for ensuring these types of situations are replicated all across America?

The Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP Act) was the first Federal law to address juvenile delinquency in a comprehensive manner, combining Federal leadership, state planning, and community-based services to promote system improvement. The Act has enjoyed over two decades of bipartisan support.

Two of the current four core protections were part of the Act from the beginning: the deinstitutionalization of status and nonoffenders in secure confinement (DSO) in Section 223(a)(12)(A) and the separation by sight and sound of juveniles from adult offenders in detention and correctional facilities in Section 223(a)(13). The deinstitutionalization of status offenders reflected an emphasis on the importance of diverting noncriminal juveniles into community-based programs and services. The rationale for separation arose from documentation that youth placed in adult facilities, without adequate separation in place, were at a much greater risk for physical, sexual, and psychological abuse than youth placed in juvenile facilities.

In 1980, Congress amended the JJDP Act to include a new core requirement in Section 223(a)(14), the removal of juveniles from adult jails and lockups. The need for the jail removal requirement was clear. The jail census revealed that more than 12,000 juveniles were in adult jails on any given day. Juveniles were being placed in drunk tanks and isolation cells in order to meet the separation requirement, and studies showed that juvenile suicides in jails and lockups occurred at eight times the suicide rate in juvenile detention facilities. Additionally, juveniles in adult jails and lockups were not receiving appropriate services, such as counseling, healthcare, and educational support.

The JJDP Act as amended in 1992 (Pub. L. 102 -586) and OJJDP's Formula Grants Program Consolidated Regulation (28 CFR Part 31: 1996) establish and implement these core requirements, including exceptions that provide enhanced and appropriate flexibility, while ensuring the continued safety of children in the justice system. (The fourth core requirement, disproportionate minority confinement, was also added to the JJDP Act in 1992.)

Through their efforts to comply with the core requirements of the JJDP Act, states have made dramatic improvements to the treatment of delinquent juveniles in the juvenile justice system. For example, 1996 compliance monitoring data (Fiscal Year 1997 data is currently being reviewed and evaluated) shows that 53 states and territories were in compliance with the separation requirement: 37 states reported having no violations; 16 states reported that their violations were within acceptable de minimis levels. A comparison of the total number of annual violations reported nationally at the time that the requirement was enacted (77,310) to the total number of violations reported nationally in 1996 (612) indicates a 99.2 percent reduction in separation violations.

Similar success has been achieved with the jail and lockup removal requirement. According to information provided in 1996 compliance monitoring reports, 48 states and territories were in compliance with the jail removal requirement: 13 states reported having no

violations; 35 states met de minimis noncompliance or other full compliance criteria. A comparison of the total number of violations reported nationally at the time that the requirement was enacted (148,442) to the total number of violations reported nationally in 1996 (4,347) indicates a 97 percent reduction in jail removal violations.

Kentucky has made excellent progress in achieving compliance with the core requirements, with the State's 1998 compliance monitoring report showing the State to be in compliance with both the DSO requirement and the separation of juveniles from adult offenders requirement. Kentucky reported no separation violations in its 1998 report. While Kentucky continues to be out of compliance with the jail and lockup requirement, the State's current violation rate of 35.31 per 100,000 juvenile population is a significant reduction from the 1994 rate of 565.48 per 100,000 juvenile population. Consequently, Kentucky is now a participating state, receiving 75 percent of its FY 1998 Formula Grants program allocation.

The dramatic improvements in the protection of juveniles in the juvenile justice system documented by state compliance with the separation and jail and lockup removal requirements since the enactment of each of these core requirements is a system reform that must be maintained. It can only be maintained by continued state compliance efforts. Congressional support for these efforts, by maintaining the core requirements in a manner that does not allow any planned or intentional contact between juveniles and adults and which crafts carefully considered, short-term exceptions to the jail and lockup removal requirement, will maintain the safety of delinquent juveniles while continuing to give states the support needed to improve their juvenile justice systems. For these reasons and to prevent tragedies like that described in the question posed, the Administration strongly supports the maintenance of the core requirements.

10. **It is my understanding that concerns have been expressed by the advocacy community about the reorganization of the Office of Justice Programs. Under this proposal, functions currently supported by the Office of Juvenile Justice and Delinquency Prevention would be transferred to the National Institute of Justice, an agency primarily responsible for research on adult crime. As you are aware, juvenile justice research, training of juvenile justice personnel, public officials and their staffs, and technical assistance to communities have provided invaluable to public officials, policy makers, and concerned citizens. There is a significant danger that these important activities will inevitably have a lower priority at NIJ, resulting in far fewer resources for communities to use in their juvenile crime control and prevention efforts.**

What is the current status of the proposal and are you open to considering alternatives to this approach so that the focus and attention on youth is not lost in a reorganization shuffle?

The OJP Restructure Report was provided to the Congress in March 1999. The Senate Judiciary Subcommittee on Youth Violence has started its examination of the recommendations. Similar reviews are underway in the House of Representatives. Aside from general briefings and discussion with the field and with interested Members of Congress, no specific legislative action has been taken as of this time.

In recognition of the fact that the juvenile justice system is separate from the adult criminal justice system, the Restructure Report recommends retaining a separate Juvenile Justice Office. This plan can be an important step in helping to promote support -- and leadership -- for juvenile justice in the coming years. The Juvenile Justice Office would continue to have responsibility for *all* programmatic work relating to that issue (including discretionary grants, technical assistance, training, publication content, and the conceptualization of the formula grant programs). In addition, the vision in the Report calls for *all* juvenile justice program work across OJP to be overseen by the Juvenile Justice Office, whether or not it is supported under the funding streams currently administered by OJJDP. This can provide the field with more coordinated, focused, and effective attention to these issues. In summary, the report envisions the Juvenile Justice Office continuing to serve as a central "leadership point" within the Justice Department for addressing juvenile delinquency and prevention.

With the proposals in the Restructure Report for consolidation of research and statistics, the Department is attempting to replicate across all of OJP the "R&D" (research and development) cycle that OJJDP has implemented well in recent years. In other words, the opportunity for developing and implementing programs based on knowledge developed through research and evaluation would continue. The Justice Department carefully weighed the pros and cons of integrating the research and statistics functions, respectively, in NIJ and BJS, and concluded -- with the advice of many people from the field -- that, while OJJDP has made enormous strides in building its research and statistics area, it is imperative that knowledge building regarding delinquency, crime, and related human behavior not be artificially segmented between those under and over age 18. Because of the intense focus in the country in recent years on youth violence, NIJ and BJS have, in fact, devoted significant attention to those issues. As a result, there is real duplication and overlap between their work and that ongoing in OJJDP. And despite strong efforts, real coordination and collaboration has not occurred; opportunities have been lost and an integrated approach to knowledge development has not been fully achieved. However, in order to ensure continuing focused attention to the issues of juvenile justice into the future, the Restructure Report recommends creation of an Institute on Juvenile Justice Research within NIJ.

11. **Particularly in light of concerns express about the recent police brutality cases and racial profiling, I have serious concerns about pending legislation in the Senate which would undermine states' efforts to address the issue of disproportionate minority confinement in the juvenile justice system. I understand that as a result of the current federal requirement, 40 states are implementing or developing intervention plans to address DMC, such as increasing cultural diversity of program staff; providing support training for juvenile justice system personnel; developing, supporting, and expanding delinquency prevention program; increasing the availability and improving the quality of diversion programs; developing community-based alternatives to secure detention and incarceration; and reviewing and revising existing juvenile justice system policies and procedures. I would be concerned about any proposals to step back from these important efforts.**

    What is the Administration's position on this issue and how can the states be further supported in their effort?

In the 1992 amendments to the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 (Pub. L. 93-415, 42 U.S.C. 5601 *et seq.*), addressing disproportionate minority confinement (DMC) became a core requirement of the JJDP Act. Under the JJDP Act Formula Grants Program (Title II, part B), each participating state must address efforts to reduce the proportion of youth detained or confined in secure correctional facilities, jails, and lockups who are members of minority groups if that proportion exceeds the proportion of such groups in the general population. OJJDP regulations provide for states to address this requirement in three phases: (1) identifying the extent to which DMC exists (data gathering); (2) assessing the reasons for DMC if it exists; and (3) developing an intervention plan to address the identified reasons. Each state reports its compliance with DMC in its comprehensive three-year plan and subsequent yearly plan updates. For the purposes of this requirement, OJJDP regulations define minority populations as African-Americans, American Indians, Asians, Pacific Islanders, and Hispanics.

States have made significant progress in meeting the DMC requirement. As of April 1999, 41 states have completed the identification and assessment phases and are in the process of implementing the intervention phase. While the work of these states is particularly noteworthy, every state participating in the Formula Grants program is in compliance with the DMC requirement.

To assist states and local communities in efforts to reduce DMC in the juvenile justice system, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has published and widely disseminated useful information and provided training and technical assistance, including instructions in interpreting the requirement, national scope training workshops, on-site technical assistance regarding implementation issues, and information concerning innovative program approaches. We have also funded programs designed to test various approaches to DMC. Most recently, OJJDP joined a number of other organizations to support the *Building Blocks for Youth* initiative to conduct a sustained and integrated national campaign to reduce DMC through the use of multiple strategies. In addition to providing national technical assistance, OJJDP is also offering intensive technical assistance over an extended period of time to selected States to facilitate their ongoing DMC efforts. We have many significant examples of promising approaches used in different areas of the country and would be pleased to provide them.

Based on the pervasive and concerted efforts taking place across the nation to address DMC, the promising approaches adopted to date by states and communities, and the still disturbing level of over representation of minorities in secure detention and confinement, the Administration supports the existing DMC requirement with the addition of language clarifying that OJJDP will not establish numerical standards or quotas in implementing the requirement. OJJDP plans to further support and facilitate states' DMC efforts by refining and expanding intensive DMC technical assistance, promoting ongoing data collection, developing a compendium of promising DMC programs and approaches, and conducting a national evaluation to build state capacity to evaluate and measure the effectiveness of DMC efforts.

12. **Please explain the Justice Department's position on the need for expanding current federal hate crimes legislation to include sexual orientation, gender, and disability.**

Violent hate crimes committed because of the victim's sexual orientation, disability or gender pose a serious problem for our Nation. It is imperative that we have the law enforcement tools necessary to ensure that the perpetrators of hate crimes are identified and swiftly brought to justice. In cases involving violent hate crimes based on the victim's sexual orientation, gender, or disability, the Hate Crimes Prevention Act of 1999 would prohibit the intentional infliction of bodily injury whenever the incident involved or affected interstate commerce. S. 622 is a measured, thoughtful response to a critical national problem.

From statistics gathered by the federal government and private organizations, we know that a significant number of hate crimes based on the sexual orientation of the victim are committed every year in this country. Despite the prevalence of violent hate crimes committed on the basis of sexual orientation, such crimes are not covered by 18 U.S.C. §245 unless there is an independent basis for federal jurisdiction. We also know that a significant number of women are exposed to brutality and even death because of their gender. Indeed, Congress, through the enactment of the Violence Against Women Act in 1994, has recognized that some violent assaults committed against women are bias crimes rather than mere "random" attacks. Finally, Congress has shown a sustained commitment over the past decade to the protection of persons with disabilities from discrimination based on their disabilities. Because of a concern about the problem of disability-based hate crimes, Congress also amended the Hate Crimes Statistics Act in 1994 to require the FBI to collect information about such hate-based incidents from state and local law enforcement agencies.

State and local officials are on the front lines and do a tremendous job in investigating and prosecuting hate crimes that occur in their communities. In fact, most hate crimes are investigated and prosecuted at the state level. But we want to make sure that federal jurisdiction to prosecute hate crimes covers everything that it should so that the federal government can share its law enforcement resources, forensic expertise, and civil rights experience with state and local officials. It is by working together cooperatively that state and federal law enforcement officials stand the best chance of bringing the perpetrators of hate crimes swiftly to justice.

APPENDIX

Attachment to Thurmond #4(c): Federal Prison Systems Buildings and Facilities Ongoing Construction Projects

Attachment to DeWine #5: March 1999, "A Report to the U.S. Congress Concerning a New Organizational Structure for the U.S. Department of Justice, Office of Justice Programs"

Federal Prison System
Buildings and Facilities
Ongoing Construction Projects

	Security Level	Number of Beds	Estimated Activation Date
New Facilities:			
Houston, TX FDC	Detention	570	3/2000
Butner, NC	Cadre	250	5/2000
	Medical	613	5/2000
Brooklyn, NY MDC	Detention	1,229	5/2000
Philadelphia, PA FDC	Detention	757	5/2000
Pollock, LA USP	Minimum	128	1/2001
	High	960	1/2001
Honolulu FDC	Detention	570	5/2001
Lee County, VA USP	Minimum	128	2002
	High	960	2002
Big Sandy, KY USP	Minimum	128	2003
	High	960	2003
FCI Yazoo City, MS	Minimum	128	2004
	Medium	1,152	2004
D.C. Funding:			
USP Coleman, FL	High	960	9/2001
FCI Petersburg, VA	Medium	1,152	2002
FCI Glenville, WV	Minimum	128	2002
	Medium	1,152	2002
USP Canaan Township, PA	Minimum	128	2002
	High	960	2002
USP McCreary County, KY	Minimum	128	2003
	High	960	2003
South Carolina FCI	Minimum	128	2003
	Medium	1,152	
Northern Mid-Atlantic, WV Facility	Minimum	128	2003
	High	960	2003
Acquired Facilities:			
Devens, MA	Minimum	125	01/00
George AFB/Victorville with Female Camp	Minimum	256	12/99
	Medium	1,152	6/2000
Castle AFB/Atwater, CA USP	Minimum	128	7/2001
	High	960	7/2001
Expansion of Existing Facilities:			
Loretto, PA Expansion	Low	200	1/2000

U.S. Department of Justice

Washington, D.C. 20530

The Honorable Harold Rogers
Chairman
Subcommittee on the Departments of
Commerce, Justice, and State, the
Judiciary and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

MAR 1 0 1999

Dear Mr. Chairman:

On October 21, 1998, the 1999 Department of Justice Appropriations Act was signed into law. In the Joint Explanatory Statement of the Committee of Conference that accompanied that bill, the conferees directed the Assistant Attorney General (AAG), Office of Justice Programs (OJP) and the Justice Department to develop a plan for "a new organizational structure" for OJP. The enclosed report has been prepared in response to that congressional directive and presents a reorganization plan for OJP that would achieve Congress' objective of developing "...a management" of agency programs and activities. In calling for a new organizational plan for OJP, Congress specifically directed the AAG OJP to explore the consolidation and streamlining of agency activities in order to enhance OJP's stewardship of criminal and juvenile justice grant-in-aid initiatives. A major goal of the restructuring project was to craft an organizational plan that would be responsive to principles of good government and sound management.

This report was cleared by the Office of Management and Budget (OMB) on March 10, 1999.

Please feel free to contact me if you require any additional information.

Sincerely,

Stephen R. Colgate
Assistant Attorney General
for Administration

Enclosure

TABLE OF CONTENTS

EXECUTIVE SUMMARY i

Enhancing the Stewardship of Federal Criminal and Juvenile Justice Grant Programs 1
Introduction 1
The OJP Reorganization Project 2
Underlying Assumptions 5
Elements of a Vision of the Federal Criminal Justice Assistance Program 6
Methodology for Development of this Reorganization Plan 7

The History of the Organizational Structure of Federal Justice Grant Programs 7
An Historical Context 7
Decentralizing the Policymaking Function 8
The Existing OJP Organization Structure 8
Effects of a Decentralized Organizational Structure 9

A Plan for a New Organizational Structure for the OJP 13
Components of the New Organizational Structure 13
Principal Tasks in Creating a New OJP Organizational Structure 13
Centralizing Administrative Authority 14
Consolidating and Streamlining Agency Functions 16
Creating Coherent Organizational Components 22
Reducing the Number of Presidential Appointees 33

Implementing a New Organizational Structure for the OJP 37
Timing Plan Implementation 37
Conclusion 38

B. The Existing OJP Organization Structure

The OJP consists of five bureaus; six program offices; and six administrative offices. Each of the OJP bureaus is headed by a director or an administrator who reports to the Attorney General through the Assistant Attorney General, and who is appointed by the President, with the advice and consent of the Senate.

Unlike other components of the Justice Department, the substantive functions of the OJP bureaus are vested by law in their directors, rather than the Attorney General or the OJP Assistant Attorney General. These statutes have provided that the directors have final authority over all grants, cooperative agreements, and contracts awarded by their respective agencies.

C. Principal Tasks in Creating a New OJP Organizational Structure

A key feature of the plan for a new OJP organizational structure is the unification, and thereby the clarification, of lines of authority within the agency. In addition, the new OJP organizational structure would eliminate duplication and overlap in the performance of OJP responsibilities by streamlining and consolidating agency program and administrative functions. Finally, the new OJP organizational structure would preserve the integrity of the more than 50 congressionally mandated funding streams currently managed by that agency, while enhancing the efficiency, effectiveness, and accountability of that agency's program and administrative functions.

The creation of a centralized OJP organizational structure would involve four principal tasks: *centralizing administrative authority; consolidating and streamlining agency functions*; *creating coherent organizational components*; and *reducing the number of presidential appointees*.

D. Components of the New Organizational Structure

This plan proposes that the new OJP organizational structure be comprised of a research institute, a statistical office, four programmatic offices and six administrative offices. The streamlining of the existing OJP infrastructure reflected in the plan for a new organizational structure would be accomplished by eliminating three bureaus and several program offices, and consolidating the functions performed by those bureaus and offices into the components of the new OJP organizational structure.

The six substantive offices of the new structure would be: the *National Institute of Justice*; the *Bureau of Justice Statistics*; the *Office of Criminal Justice Program Development*; the *Office of Juvenile Justice and Delinquency Prevention Programs*; the *Office of State and Local Information Transfer*; and the *Office of Formula Grants/State Desks*.

A REPORT TO THE U. S. CONGRESS CONCERNING A NEW ORGANIZATIONAL STRUCTURE FOR THE U. S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS

I. Enhancing the Stewardship of Federal Criminal and Juvenile Justice Grant Programs

A. *Introduction*

On Oct. 21, 1998, the fiscal year 1999 appropriations measure covering spending for the U. S. Department of Justice, including programs and activities of the Justice Department's Office of Justice Programs (OJP), was signed into law.[1] In the Joint Explanatory Statement of the Committee of Conference that accompanied that bill, the conferees directed the OJP Assistant Attorney General and the Justice Department to develop a plan for "a new organizational structure" for the OJP, to be submitted to the Congress by March 1, 1999.[2]

This report has been prepared in response to that congressional directive and presents a reorganization plan for the OJP that would achieve the Congress' objective of developing "... a new OJP structure with streamlined, consolidated authorities, which will ensure centralized management" of agency programs and activities. In calling for a new organizational plan for the OJP, the Congress specifically directed the OJP Assistant Attorney General to explore the consolidation and streamlining of agency activities in order to enhance the OJP's stewardship of criminal and juvenile justice grant-in-aid initiatives. A major goal of the restructuring project was to craft an organizational plan that would be responsive to principles of good government and sound management.

The first step in developing a new organizational structure for the OJP was to step back and articulate, from a very broad strategic standpoint, what the mission and goals of the federal criminal justice assistance program should be, and to set forth a vision of what the federal criminal justice assistance program should look like, and how it should operate. Second, a set of operating assumptions needed to be set out to establish the parameters for the development of a new OJP organizational structure.

The third step in the reorganization initiative was to determine what organizational elements would have to be incorporated in a new structure for the OJP to achieve the vision of a federal criminal justice assistance program for the future.

The plan set forth in this report for a new OJP organizational structure, in response to direction from congressional conferees and feedback from the field, reflects a shift from a decentralized to a centralized structure for that agency, under which the overall authority for the management and administration of OJP programs and activities would be vested with the OJP

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[1] *Department of Transportation and Related Agencies Appropriation Act for 1999*, Pub. L. 105-277 (Oct. 21, 1998).

[2] *Report of the U. S. House of Representatives, Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, Fiscal Year 1999*. Report 105-636 (July 20, 1998), as incorporated by reference in U. S. Congress, *Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999: Conference Report to Accompany H. R. 4328, Department of Transportation and Related Agencies Appropriation Act for 1999*, Report 105-825 (Oct. 19, 1998). [hereinafter *House Report*]

performance of the OJP and, in particular, to improve coordination and collaboration among agency bureaus and offices.

Since the advent of the current administration, it has been a priority for the Justice Department leadership to unite the separate components of the OJP in pursuing one "corporate vision" of goals and objectives. In pursuit of that corporate vision, the OJP Assistant Attorney General, with the strong support of the Attorney General, has engaged the OJP bureau and office directors in a number of cooperative endeavors, including formulating agency-wide performance goals and objectives; pooling grant funds and technical assistance resources to address specific criminal justice problems and constituency needs; jointly publishing an agency-wide discretionary grant program plan; conducting intra-agency working groups on emerging and topical criminal and juvenile justice issues; and collaborating on constituency-outreach initiatives, such as meetings with agency "stakeholders" to secure feedback on OJP plans and programs.

However, in their efforts to improve the performance of the OJP, the Attorney General and the OJP Assistant Attorney General found that in many cases they were attempting to apply administrative solutions to problems that in large part are the products of the statutes that created the OJP and the federal criminal and juvenile justice assistance programs that it administers. Some of these administrative issues consequently could not be resolved without the concurrence and assistance of the Congress.

In 1998, the Congress took the first of two legislative steps to formally initiate an examination of the OJP infrastructure, and by extension, the statutory framework that has shaped that infrastructure for the past 14 years. In the conference report accompanying the Justice Department's fiscal year 1998 appropriations bill, the conferees observed that, since 1995, funding appropriated for OJP programs had grown by 213 percent, from $1.1 billion to over $3.4 billion.[6] The conferees directed the OJP Assistant Attorney General to submit a report that "outlines the steps OJP has taken and which recommends additional actions that will ensure coordination and reduce the possibility of duplication and overlap among the various OJP divisions."[7] The House report from which the conference committee recommendations were adopted stated further, "The Committee is concerned that the current structure of administration of grants within the [the OJP] produces a fragmented and possibly duplicative approach to disseminating information to State and local agencies on law enforcement programs and developing coordinated law enforcement strategies to address drugs, crime and juvenile justice."[8] Responding to that directive from the Congress, the OJP Assistant Attorney General in December 1997 submitted a report which addressed congressional concerns, and which presented options for improving coordination in OJP grant administration.[9]

The Congress' second step toward responding to its concerns regarding coordination within the OJP was taken in October 1998. In the conference report that accompanied the fiscal year 1999 Justice Department appropriations bill, the conferees directed the OJP Assistant

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[6] *House Report, supra* note 2.
[7] *Id.*
[8] *Id.*
[9] *Report to the House & Senate Appropriations Subcommittees Concerning OJP Coordination, Duplication & Overlap Issues.* U. S. Department of Justice: Washington, D. C. (December 1997).

- the development of technology;
- the delivery, in select cases, of direct services;[12]
- the conceptualization, development, and publishing of reports; papers; and policy, program, statistical, and research briefs and synopses;
- the identification, and development of appropriate responses to, the information needs of criminal justice agencies and the public;
- the dissemination of information concerning topical and emerging issues; trends; promising strategies, programs, and practices; program performance evaluations; and the availability of federal grant funds, and technical assistance and training resources.

The functions of the OJP are virtually unique within the Justice Department and among other federal agencies charged with justice-related functions. It is the responsibility of the OJP to ensure that its activities provide for the effective and efficient administration of criminal and juvenile justice grant-in-aid programs; maintain appropriate accountability measures; and are responsive to the justice-related needs of state and local governments and practitioners. Moreover, in performing these functions, the OJP must ensure that it serves the federal role in criminal and juvenile justice, while fulfilling its obligations to its state and local constituency.

D. *Underlying Assumptions*

The new organizational structure for the OJP proposed in this report reflects several underlying operating assumptions that collectively established the parameters for developing a plan to reorganize the administrative infrastructure of that agency. These assumptions were as follows:

- the OJP will remain in the Justice Department;
- the U. S. Congress will continue periodically to alter the focus of and sometimes eliminate existing criminal and juvenile justice funding authorities;
- the U. S. Congress from time to time will create new funding authorities to address topical criminal and juvenile justice issues;
- criminal and juvenile justice grant-in-aid funding authorized by the Congress will support a mix of investments in block grants, technical assistance and training, research, evaluation, statistics, and discretionary grants to foster innovation.

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[12] This function is uniquely a responsibility of the OJP's Office for Victims of Crime (OVC). Under the Victims of Crime Act of 1984 (Chapter of the Comprehensive Crime Control Act of 1984, Pub. L. 98-473 (Oct. 12, 1984)) the OVC was charged with administering a program to compensate victims of crimes committed on Tribal and Federal lands. No other component of the OJP is charged with or engaged in delivering direct services.

effective manner. It should facilitate coordination, collaboration, and comprehensive planning across the various criminal and juvenile justice funding authorities that it encompasses.

The OJP structure should consolidate functions, streamline operations, and eliminate duplication and overlap of agency activities.

☐ *Flexibility*

The OJP structure should remain sufficiently flexible to accommodate congressionally initiated shifts in funding authorities, funding levels, and funding priorities and to respond in a timely manner to emerging crime problems.

☐ *Outreach*

The OJP structure should incorporate appropriate strategies for keeping apprized of, and responding as appropriate to, the justice-related activities, needs, and problems of state and local governments and other agency constituencies. It should facilitate program constituencies' and the public's access to information concerning crime problems; program activities; and funds availability.

F. *Methodology for Development of this Reorganization Plan*

The plan for a new organizational structure for the OJP reflects a concerted effort to seek out and consider the ideas and observations of as large and as representative a group of officials, both within and outside the Justice Department, as time and resources would permit. The constituency outreach carried out in conjunction with the development of the new organizational plan for the OJP has involved interviews, conducted by telephone, and in face-to-face meetings, with some 50 Justice Department officials, both within Main Justice and the OJP, and dozens of public and special interest group representatives and criminal and juvenile justice practitioners.

Some of the officials interviewed subsequently took the time to submit written materials to the Assistant Attorney General to supplement comments made during interviews.

In addition, both the NIJ director and the OJJDP administrator convened special constituent focus groups to discuss the OJP reorganization. The OJP Assistant Attorney General benefitted greatly from the thoughtful comments and recommendations of the knowledgeable and experienced researchers and juvenile justice practitioners who participated in these gatherings.[13]

II. The History of the Organizational Structure of Federal Justice Grant Programs

A. *An Historical Context*

The proposals presented in this report should be viewed in historical context. In 1968, with enactment of the Safe Streets Act, the Congress created the nation's first comprehensive criminal justice grant-in-aid program. The thrust of the Safe Streets Act was to bring the

[13] See Appendix A for lists of participants in the focus group meetings hosted by the NIJ director and the OJJDP administrator, respectively

Unlike other components of the Justice Department, the substantive functions of the OJP bureaus are vested by law in their directors, rather than the Attorney General or the OJP Assistant Attorney General. These statutes have provided that the directors have final authority over all grants, cooperative agreements, and contracts awarded by their respective agencies. [17]

D. *Effects of a Decentralized Organizational Structure*

The Congress could not have anticipated the magnitude of the effects that decentralization of the policymaking and administrative responsibilities of the Safe Streets Act program one day would have on the central management of that program. The Congress' decision in 1968 to place a presidentially appointed administrator – in the first five years of the program, a trio of presidentially appointed administrators – at the head of the new Safe Streets Act grant-in-aid program was intended to reinforce the operational independence of that program within the Justice Department. The decision to utilize presidentially appointed positions for this purpose established an important organizational precedent for that program. A principal consequence of that decision was the creation of statutorily separate offices within the Safe Streets Act administrative structure and the placement of presidential appointees at the head of these major program components.

The chief result of the placement of presidential appointees at the head of major Safe Streets Act program components was a decentralization of the policymaking and administrative responsibilities of that program. Today, these responsibilities effectively are spread among the Congress, the White House, the Justice Department and, within the Safe Streets Act program complex itself, among six presidentially appointed officials within the OJP.

This decentralized organizational structure of the OJP has been reinforced by the Congress' use of separate funding streams to ensure that their various crime priorities receive priority attention among the OJP's program activities. This action of the Congress, along with the authorizing statutes themselves, has created bureaus with enormous overlap in mission and responsibilities and has spawned obstacles to coordinating and integrating the program activities of these components of the OJP organizational structure.[18]

Decentralization of the OJP organizational structure has created management hurdles that are manifest principally in three areas:

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[17] In a recent departure from this approach, the Violent Crime Control and Law Enforcement Act of 1994 (the "Crime Act") placed the funding authority for all grant programs that it created with the Attorney General; this authority then was delegated in every instance but one (the Community Oriented Policing Services (COPS) program) to the OJP, thereby providing grant-making authority to the Assistant Attorney General for those programs. The OJP Assistant Attorney General in turn created three program offices, the Corrections Program Office, the Drug Courts Program Office, and the Violence Against Women Grants Office, to administer new Crime Act grant-in-aid initiatives. Subsequently, the Executive Office for Weed and Seed was transferred from Main Justice to the OJP and placed within the office of the OJP Assistant Attorney General. In 1998, the OJP Assistant Attorney General established the Office of Police Corps and Law Enforcement Education and the Office of State and Local Domestic Preparedness Support to oversee the administration of new responsibilities placed within the OJP.

[18] See Appendix C for a list of programs.

detriment of the program's state and local constituency and criminal and juvenile justice practitioners. The considerable effort expended in attempting to surmount obstacles to coordination that are inherent in the OJP's decentralize leadership structure has significant cost implications, both in terms of human resources and time, and diverts much energy from the agency's central mission. The potential for overlapping or inconsistent program initiatives only has increased as the Congress has pressed each bureau and the crime bill offices to devote some funds to such crime control initiatives as domestic violence reduction.

The Safe Streets Act authorizes each presidentially appointed OJP bureau or office director to establish policy to govern the operations of his or her respective program. The OJP Assistant Attorney General may set policy for the administrative support functions and any programs placed by the Congress or the Attorney General under his or her direct administration. However, absent a congressional or legally supportable delegation from the Attorney General, the OJP Assistant Attorney General has no direct authority to require the presidentially appointed heads of the OJP bureaus to adopt or comply with specific policies established by his office.

This decentralized authority structure creates the potential for conflicts and inconsistencies among the policies and program activities of the various OJP bureaus and offices. These conflicts and inconsistencies in turn may have detrimental effects on the relationships of OJP bureaus and offices with the various constituencies that they serve. Under such a system, the OJP Assistant Attorney General is dependent upon the good will and voluntary cooperation of the other presidential appointees in any effort to establish program or administrative strategies for the overall program. He must depend upon the willingness of the bureau and office directors to share information and work together to fulfill the OJP Assistant Attorney General's mandate to coordinate the overall activities of the OJP. The quality of the interpersonal skills of and relationships between the presidentially appointed OJP Assistant Attorney General and the presidentially appointed OJP bureau and office directors become inordinately critical factors in achieving cohesion in the overall OJP program internal management scheme.

The statutes that created the five OJP bureaus – as well as those that created the 1994 Crime Act programs – themselves contain substantial duplication of issue and program coverage. Program staff in many bureaus and offices, therefore, handle grant programs addressing the same topics. To illustrate, on key topics of interest to the Congress, the general public, and criminal justice practitioners:

- four OJP bureaus and one office work on corrections;
- five OJP bureaus address hate crimes;
- four OJP bureaus and one office address domestic violence;
- four OJP bureaus and one office work on youth violence;
- five OJP bureaus and one office address child abuse;
- four OJP bureaus address gang issues; and
- three OJP bureaus and one office address juvenile drug use.

III. A Plan for a New Organizational Structure for the OJP

A. *Components of the New Organizational Structure*

This plan proposes that the new OJP organizational structure be comprised of a research institute, a statistical office, four programmatic offices and six administrative offices.[19] The streamlining of the existing OJP infrastructure reflected in the plan for a new organizational structure for the OJP would be accomplished by eliminating three bureaus and several program offices, and consolidating the functions performed by those bureaus and offices into the components of the new OJP organizational structure.

The six substantive offices of the new structure would be:

- the National Institute of Justice;
- the Bureau of Justice Statistics;
- the Office of Criminal Justice Program Development;
- the Office of Juvenile Justice and Delinquency Prevention Programs;
- the Office of State and Local Information Transfer; and
- the Office of Formula Grants/State Desks.

The six administrative offices of the new OJP structure would be:

- the Office of Congressional and Public Affairs;
- the Office of Administration;
- the Office of General Counsel
- the Office of Civil Rights
- the Office of Strategic Planning, Budget, and Management Services; and
- the Office of the Comptroller.

B. *Principal Tasks in Creating a New OJP Organizational Structure*

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[19] See Appendix D for an organizational chart for the new OJP organizational structure.

The Congress' call for a centralized OJP administration contrasts sharply with the thinking of the drafters of the original Safe Streets Act legislation, who, seeking to isolate the distribution of grant-in-aid funds from politically motivated influences, principally at the hands of the Attorney General, decentralized the policymaking and administrative functions of the Safe Streets Act's administrative structure.[21] However, over the 30-year history of the Safe Streets Act, no Attorney General has shown an inclination to become directly involved in Safe Streets Act operational activities and grant-related decision making.

Instead, the major consequence of the Congress' earliest decision to decentralize administration of the Safe Streets Act programs has been the creation of an administratively unmanageable complex of virtually independent initiatives in which no one person is vested with the authority to articulate overall performance objectives for the agency and ensure that the program development and funding activities of agency components reflect an integrated strategy to achieve these objectives. Similarly, no one person can be held accountable for the agency's performance. This decentralized administrative structure – according to Justice Department officials, interest group representatives, and criminal and juvenile justice practitioners interviewed in conjunction with the OJP restructuring initiative – has produced duplication and overlap among program initiatives, created confusion concerning lines of authority within the agency, and produced arbitrary boundaries among program initiatives that have inhibited the development of system-wide initiatives to address criminal and juvenile justice issues that cut across the functional components of the criminal and juvenile justice systems.

Moreover, practitioners and state and officials interviewed were in substantial agreement that the OJP's decentralized administrative structure has been a key contributing factor to a lack of coordination among agency components in developing and implementing program initiatives. One interest group representative interviewed asserted that it is important that the OJP Assistant Attorney General have the authority to make certain that agency bureaus and program offices interact with one another and "are working toward common objectives." Another interest group representative observed that obstacles to providing continuity in addressing criminal and juvenile justice issues are inherent in the existing decentralized OJP organizational structure. The OJP should be restructured to facilitate the development of interagency, cross-disciplinary strategies, to address crime issues comprehensively, he said. Still another interest group representative observed that centralization of administrative authority within the OJP would help to overcome the fragmentation in agency activities that is caused by the Congress' practice of authorizing separate funding streams to address specific criminal and juvenile justice issues. While this official said that he does not believe that the organization that he represents would support any effort to encourage the Congress to integrate the several funding streams administered by the OJP, he observed that this practice produces "an artificial structure that moves away from handling programs in a comprehensive manner" which is exacerbated by the agency's existing decentralized administrative structure.

Few officials interviewed raised any concerns about or offered any objections to centralizing administrative authority within the OJP with the OJP Assistant Attorney General. In general, those few individuals who did raise concerns about centralizing the OJP administrative authority noted that placing the administrative authority in the hands of one individual does create the risk of problems if the person in whom that authority is vested does not have the necessary knowledge and skills to perform that function or the best interests of the agency and

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[21] See section **II. The History of the Organizational Structure of Federal Grant Programs**, above.

of the OJP into six substantive offices and six administrative offices. This structure would replace the existing OJP organizational structure, which is comprised of five bureaus, six program offices, and six administrative offices.

By far the majority of Justice Department officials, interest group representatives, and criminal and juvenile justice practitioners interviewed in conjunction with the OJP restructuring project urged consolidation of OJP functions most directly related to management and administration of grant-in-aid programs. At the same time, strong sentiment existed among these officials for maintaining separate research, statistics, and juvenile justice components within the OJP organizational structure.

Concerns about the ability of OJP bureaus and offices to respond to constituency needs, to plan comprehensively, and to coordinate program development and implementation activities within the agency were at the center of calls for consolidation and streamlining grant-related functions, especially program development, grants management and administration, and technical assistance and training functions. Although the vast majority of officials interviewed stated that coordination within the OJP currently is better than at any point in the Safe Streets Act program's history, these officials asserted that, nevertheless, the spread of agency programs and activities among five substantially independent bureaus on many occasions has undermined efforts to integrate related initiatives.

One Justice Department official said that there are "wonderful 'pockets of excellence'" within OJP, but there is much duplication and lack of coordination. She asserted that it is difficult to achieve effective reductions in duplication within the framework of the current [OJP] structure. The "individualized" OJP bureaus and program offices create separate bureaucracies which inhibit the development of new ideas and foster a focus on long-term program support instead of innovation, she concluded.

2. Research and Statistics

The NIJ and the BJS that are in place today are the products of a lengthy evolution during which their respective organizational structures and functions have been reshaped on numerous occasions to enhance the prominence and prestige of their activities. No single action, rather a series of legislative and administrative actions that have occurred over the 30-year history of the Safe Streets Act program, have brought the NIJ and the BJS from their earliest status as functional components of larger program offices within the overall Safe Streets Act administrative structure to their current status as largely operationally independent components of the OJP.

Over the course of that evolution of the justice-related research and statistics functions, many proposals have been put forward to further enhance the independence of the justice-related research and statistics functions: removing the BJS from the Justice Department and creating an independent justice statistics agency; removing the NIJ and the BJS from the Safe Streets Act administrative structuring and placing these agencies under the direct authority of the Attorney General; creating advisory boards to oversee the activities of the NIJ and the BJS; appointing the NIJ and the BJS directors to specific terms that would overlap changes in presidential administrations; and consolidating the research and statistics functions under the authority of one presidentially appointed director and the oversight of an advisory board. Each of these proposals resurfaced during discussions with Justice Department officials, interest group representatives,

program activities. Maintaining an independent statistical function within the OJP would help to reinforce that point and encourage broader use of BJS's work product, he concluded.

3. Juvenile Justice

Likewise, most officials interviewed in conjunction with the OJP restructuring project said that the substantive area of juvenile justice should remain a distinct organizational component within the OJP administrative structure. Several officials who were interviewed observed that the juvenile justice system is separate from the broader criminal justice system, and that the OJP organizational structure therefore must include a distinct juvenile justice component to ensure that the unique problems of the juvenile justice system receive appropriate attention. Participants in a special constituent focus group, the Juvenile Justice Research and Statistics Working Group, convened by the OJJDP administrator, asserted that:

> despite recent blurring of its borders, the juvenile justice system remains a separate apparatus from the criminal justice system. The juvenile justice system has a distinct history, mandate, and jurisprudence. It deals with youngsters not only as offenders but also as victims of abuse and neglect and as dependents. Also, unlike the criminal justice system, it has linkages to a unique set of other systems, including mental health, child protection, welfare, social services, and education because delinquency is in large part the result of faulty social development.[23]

The Working Group argued that all juvenile justice functions of the OJP, including juvenile justice-related research, should continue to be integrated in one office.

> An integrated office means that juvenile justice practitioners at the state, local, and federal levels have a single source of information for all juvenile justice matters. That is a great advantage to the broad juvenile justice field. Reorganization by function, while perhaps more efficient for the research and statistics communities, would ironically be less efficient for the primary consumers of OJJDP's work. The practitioners' needs in this regard should be served first and they are best served in an integrated organization.[24]

The concerns of the Working Group were shared by several officials interviewed, who asserted that the preservation of a separate juvenile justice component within the OJP is paramount to making certain that juvenile justice issues are not subjugated to the broader interests and concerns of the criminal justice system. One interest group representative said that any "down-grading" of the status of the OJJDP within the OJP organizational structure might affect the visibility and viability of juvenile justice programs; he postulated that it would be difficult for the juvenile justice constituency "to try to penetrate" the Justice Department if the current status of the OJJDP were diminished. Another interest group representative asserted that "if there were no OJJDP, the interests of kids would be subsumed in a big department." The value of a separate juvenile justice agency," he continued, "is its focus on the issue." The juvenile justice system historically has been unable to compete successfully for attention and

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[23] *Recommendations to the Assistant Attorney General Regarding Juvenile Justice Research, Statistics and Evaluation.* Report of the Juvenile Justice Research and Statistics Working Group (January 1999), at 2. [hereinafter *Juvenile Justice Recommendations*]

[24] *Id.*

strong researcher/program interactions are "important so that significant research findings can be moved into practice and used to help shape more effective programs."[27]

The primary objective of placing the NIJ and the BJS within a centralized OJP administrative structure is to overcome a specific, identified weakness in the existing linkage between the knowledge-development functions of the OJP and the program development activities of that agency. The work of the NIJ and the BJS collectively provide the basis for this nation's understanding of its crime problems and have guided the development of plans, programs, and strategies to address these problems. These functions of the NIJ and the BJS would not be impeded by any provisions of the proposed plan for a new OJP organizational structure, and would remain primary responsibilities of these agencies. No element of that proposed plan would diminish or undermine the broader, long-term research, evaluation, and statistics missions of the NIJ and the BJS or subordinate these missions to the specific, sometimes short-term program-oriented needs of OJP program offices. Instead, under the proposed plan for a new OJP organizational structure, the work of the NIJ and the BJS would become as important a factor in guiding the design and implementation of programs by OJP programmatic offices as it has in influencing the actions of these agencies' broader constituency of public policymakers and criminal and juvenile justice practitioners, researchers, and statistics professionals. Indeed, it is anticipated that the strengthening of the tie between the knowledge-development functions of the NIJ and the BJS and the program development activities of OJP programmatic offices would create new opportunities for collaboration on important national scope research and statistical initiatives, such as are exemplified by the several long term longitudinal studies of crime and juvenile delinquency now underway.

The proposed plan incorporates the necessity of independence in the research and statistics functions and the priority of strengthening ties between these investments and program development for the criminal justice field. It vests authority for agency research and statistics programs in the NIJ and BJS Directors while it vests authority in the Assistant Attorney General to require formal annual review and consultation processes between these two bureaus and the other OJP offices. NIJ and BJS directors would retain authority for all agenda-setting, grant-making and dissemination functions. The Assistant Attorney General would have the authority to direct NIJ to undertake studies relating to emerging issues of national concern. The Assistant Attorney General would also establish an annual program development cycle. All offices would be convened to review progress in previous program development activities and to plan the coming year's programs. The research and statistics offices would present relevant results and findings from their programs in reports that would help shape the development offices' program decisions; the development offices would present their developmental priorities in formats that would help shape the research and statistics agendas for the coming year. These meetings would not be isolated events, but rather points in a continual process of dialogue between the research and statistics staffs and the program development staffs, the goals being increased incorporation of data and research findings into program models, operational principles, and the expenditures of formula grant funds; and, equally, closer coordination of research and statistics agendas with program development needs.

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[27] *Report of the Committee to Design the Structure of a Justice Research and Statistics Program in the Department of Justice* (January 1999), at 6. [hereinafter *Committee Report*]

Improvement and centralization of the publications functions of the OJP bureaus and offices was a major interest of the majority of officials interviewed. One Justice Department official said that coordination problems within the OJP are most evident in overlap and inconsistency among OJP publications. This official asserted that the "multiplicity" of publications on single topics by different OJP bureaus and program offices often appear to reach conclusions and make recommendations that are "in tension," if not inconsistent.

1. Research and Statistics

A number of officials interviewed urged the consolidation of all OJP research and evaluation activities within the NIJ and all statistical collection and analysis activities within the BJS. The most vocal of the advocates of this position were the members of the Committee to Design the Structure of a Justice Research and Statistics Program in the Department of Justice. The Committee, in its report to the OJP Assistant Attorney General, pointed out that there is a "natural tension" between arguments for and against consolidating OJP research and statistics functions.[28]

> The argument for dispersion [of research functions among OJP bureaus and program offices] is that it moves the research closer to the people who know the problems, it enhances the likelihood of implementing findings from the research, and it builds constituent support for the research program. The argument for [consolidation] is one of assuring greater coordination in the overall research program, enhancing the quality of the research by using the combined expertise of the total research staff, being able to recruit a stronger research staff because of the research commitment of the organization, and generally capitalizing on the economies of scale of a single strong research organization.[29]

The Committee asserted that "arguments for consolidation dominate those for dispersion." A consolidated OJP research function "will achieve better coordination, avoid redundancy, and enhance the quality of the research and statistics product," the Committee stated.[30] The Committee also recommended that the consolidation of research and statistical functions within the OJP be accompanied by the transfer of juvenile justice funding for research and the collection and analysis of statistics to the research and statistics components of the OJP, respectively.

In making its recommendations concerning consolidation of research and statistics functions within the OJP organizational structure, the Committee acknowledged "the special concerns expressed by the OJJDP in such an arrangement, a concern that the distinctive issues associated with the juvenile justice system and with delinquency as a developmental process require particular attention."[31] However, the Committee concluded that "[while there may be a strong argument for courts to deal with juveniles differently from adults, there is much less of an argument for such a partition in research. Bringing them together will enhance the ability of researchers to address the important continuity of offending between the teen and adult years."[32]

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[28] *Committee Report, supra* note 28, at 4.
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*

that agency should be organized by funding stream; by subject or issue area; or by function, e. g., program development, grants management, and technical assistance and training. Because the creation of specific bureaus and program offices to administer specific funding streams under the existing OJP organizational structure has been a principal contributor to problems concerning coordination, duplication, and overlap, this approach was rejected. Likewise, because the organization of the OJP infrastructure by subject or issue area would produce duplication and overlap of program management, administration, and service delivery functions, this approach also was rejected. Instead, the proposed plan for a new OJP organizational structure reflects the decision to create an OJP infrastructure that would be organized largely by function and to organize within the program offices around broad subject areas, in order to focus the knowledge, skills, and competencies needed in addressing the broad spectrum of diverse and complex criminal and juvenile justice issues.[34]

The only major departure from organizing responsibilities under the plan largely by functions would be the new Office of Juvenile Justice and Delinquency Prevention Programs. For reasons discussed in section III. D., *Consolidating and Streamlining Agency Functions*, above, that Office would be charged with developing all plans, programs, and strategies within the OJP to address juvenile justice and delinquency prevention-related subjects and issues.

Clearly, one of the most difficult questions that arose in the course of developing the proposed plan for a new OJP organizational structure concerned whether to retain a separate crime victims bureau within that structure, or, alternatively, to integrate the existing functions of the OVC into the six programmatic offices that would be created under that plan. The leadership of the Department is strongly committed to ensuring that the needs of crime victims are aggressively addressed across all OJP Programs. While the importance of sustaining a highly visible focus on those issues within the OJP argued favorably for a separate crime victims bureau, concerns about the perceived and sometimes real isolation of the crime victims issue in one segregated office within the overall OJP structure suggested a critical need to take some significant steps to bring to bear the broader resources of the OJP on that substantive area. One interest group official, who represents a victims services organization, in fact suggested that consolidation of program development, grant management and administration, and technical assistance and training functions of the OJP, including those currently administered by the OVC, might expand the access of special interest constituency groups to grant funds and other resources of the OJP.

Consistent with the functional approach to organizing OJP responsibilities proposed by this plan, all research and evaluation functions of the OJP would be carried out by the NIJ and all statistical collection and analysis functions of that agency would be carried out by the BJS. The new Office of Criminal Justice Program Development would assume responsibility for all substantive program development activities within the OJP except those relating to juvenile justice, which would be developed by the new Juvenile Justice Office; those relating to the development of research plans and programs, which would be developed by the NIJ; and statistical collection and analysis plans, which would be developed by the BJS. The Office of Criminal Justice Program Development also would be charged with the administration of all discretionary grant programs and of technical assistance and training grants awarded in conjunction with those programs.

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[34] See section III. 2. d. *The Office of Criminal Justice Program Development.*

While the integration of publications-related functions agency-wide is a principal objective of the new organizational structure for the OJP, the reorganization plan proposes that the NIJ director retain authority over all decisions concerning the conceptualization, development, release, and dissemination of research-related publications and other materials produced by that office. This recommendation is made to reinforce separation of the research and evaluation functions from the program development activities of the OJP and is taken to ensure the objectivity and credibility of reports, papers, and other written materials produced by that agency. Once publication decisions are taken, however, the new Office of State and Local Information Transfer could facilitate the mechanics of the printing and dissemination of publications in line with the NIJ's plans.[36]

Finally, in its report, the Committee to Design the Structure of a Justice Research and Statistics Program in the Department of Justice recommended that five to 10 percent of funding for the research and statistics components of the OJP organizational structure, respectively, be set aside for projects of shared interest to these components. In addition, the Committee recommended that the Congress be encouraged to designate a research set-aside of five to ten percent of any funding appropriated for specific grant programs and projects. This plan commends these recommendations to the Congress for its consideration.

b. *The Bureau of Justice Statistics*

The responsibility for all statistical collection and analysis-related plans, programs, and strategies development within the OJP would be vested with the BJS. The development of these plans, programs, and strategies would be carried out in consultation with the various program offices of the new OJP organizational structure. Likewise, the various program offices of the OJP would consult with the BJS in the course of developing grant-funded initiatives and the development of technical assistance and training programs to support these initiatives to ensure that knowledge out of the statistical work informs the programmatic work of the agency.

For reasons spelled out below relating to the need to pull together all of the OJP's work on technology and information systems, responsibility for the design, implementation, and management of information systems-related grant initiatives would be transferred to the new Office of Criminal Justice Program Development's technology and information systems section. The technology and information systems section would be required by statute to draw upon the knowledge and expertise of BJS personnel in carrying out these responsibilities, in particular, the design and implementation of information systems-related grant initiatives.

The BJS director, like the NIJ director, would retain authority over all decisions concerning the conceptualization, development, release, and dissemination of statistical information from that office. Here, as with respect to the NIJ, this recommendation is made to reinforce separation of the statistical collection and analysis functions from the program development activities of the OJP, and is taken to ensure the objectivity and credibility of reports, papers, and other written materials produced by the BJS.

c. *The Office of Juvenile Justice and Delinquency Prevention Programs*

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[36] See section III. 4. f. *The Office of State and Local Information Transfer.*

- adjudication;
- technology and information systems;
- corrections;
- domestic preparedness (counterterrorism); and
- substance abuse.

This office would assume responsibility for the primary policy, planning, and program development activities associated with the OJP discretionary programs, with the exception of juvenile justice programs, that directly receive congressional appropriations. This agency-wide integration of the policy, planning, and program development function would be achieved by consolidating the separate policy, planning, and program development capacities of the BJA, the OVC, and the six program offices of the existing OJP organizational structure: the Corrections Program Office, the Drug Courts Program Office, the Executive Office for Weed and Seed, the Office of State and Local Domestic Preparedness Support, the Office of Police Corps and Law Enforcement Education, and the Violence Against Women Office. The creation of an integrated policy, planning, and program development office would achieve the multiple objectives of preserving the integrity of the various funding streams authorized by the Congress, while streamlining the management of pivotal functions of the OJP, building a capacity to develop subject matter expertise, and driving integrated *thinking* and *action* around core OJP issue areas. Staff would be expected to consult regularly with the NIJ and the BJS to understand the "state of knowledge" as programs plans are developed.

In addition, the Office of Criminal Justice Program Development would assume grant management, administration, and program and project monitoring responsibilities associated with national-scope discretionary grant initiatives, which under the existing OJP organizational structure are carried out by the several OJP bureaus and six program offices. Integration of these grant-related functions would streamline substantially agency-wide management of its discretionary grant programs. This Office also would develop, implement, and manage technical assistance- and training-related initiatives offered in support of grant programs and projects administered by this Office. In carrying out its technical assistance- and training-related functions, this Office would work closely with the Office of State and Local Information Transfer, which would serve as the central coordinating point for information on all OJP technical assistance and training.

Topical issues and special areas of interest under each section would be reflected in the assignment of personnel, area specialists, with the requisite knowledge, experience, and expertise in the field. Additional sections and area specialists could be added within the Office over time to respond to emerging issues, changes in program priorities, and the creation of new topical funding streams by the Congress. The built-in flexibility of the Office's structure would permit that component of the overall OJP organizational structure to accommodate adjustments in the scope and focus of its activities over time without disrupting the division's overall organizational framework.

Special note should be made concerning three of the proposed sections within. First, the proposed creation of a technology and information systems section within the new Office of

delinquency prevention, no separate system exists to address the needs and problems of crime victims. Instead, each component of the criminal justice system bears some level of responsibility for ensuring that the interests of crime victims are protected and the needs of these individuals are met. Accordingly, the development of programs, plans, and strategies to address these needs and problems must be an *agency-wide* priority within the OJP. To that end, the plan proposes the creation of a Crime Victims Section within the Office of Criminal Justice Program Development, to continue to spearhead attention to this issue across all of OJP's offices, but it does not recommend a separate bureau to carry forward this function. This proposed action would not diminish the importance of crime victims within the context of criminal and juvenile justice issues, but, rather, would ensure that these issues become a distinct and broader focus by all of the programmatic offices of the OJP.

e. *The Office of Formula Grants/State Desks*

The new Office of Formula Grants/State Desks under this plan would integrate and consolidate all grants management, administration, and program and project monitoring functions associated with congressionally authorized formula and block grant programs currently administered by OJP bureaus and offices. Programs that would be integrated into this new division would include the BJA-administered Byrne Formula Grant Program, and Local Law Enforcement Block Grant Program; the OJJDP-administered Juvenile Justice and Delinquency Prevention Formula Grant Program and Juvenile Accountability Incentive Block Grant Program; the OVC-administered Victim Assistance and Compensation grant programs; and the VAWGO-administered violence against women formula grant program. The new Juvenile Justice Office would retain responsibility for monitoring state juvenile justice formula grant recipients' compliance with congressional mandates under the Juvenile Justice and Delinquency Prevention Act.

Under the plan, geographically-based staff expertise would be centralized in the OJP administrative structure within the Office of Formula Grants/State Desks. At present, the majority of OJP bureaus and program office maintain state-focused desks which are manned by bureau and program office personnel who are charged with developing knowledge and expertise concerning the problems of the jurisdictions for which they are responsible and establishing and maintaining close ties with officials in these jurisdictions. The centralization of "state desks" within this Office would strengthen this geographically-oriented approach within the OJP and would eliminate duplication and overlap in assignment of OJP personnel to this function within the agency. State desk personnel within the new Office of State and Local Formula Grant Programs would be responsible for managing, administering, and monitoring all block and formula grant awards made to jurisdictions for which these office officials are responsible.

Under this geographically based organizational scheme, the United States would be divided up into five regions: Northeast, Southeast, North Central, South Central, and West. The office would be comprised of five sections, each of which would cover one geographical region. Each state would be assigned to a specific geographically based regional section of the office, and, in turn, to an area representative within that section. Each geographic area representative would be responsible for overseeing management, administration, and monitoring of all formula and block grants within his or her assigned states. Staff also would be charged with ensuring close coordination with relevant subject matter experts in the OJP program offices, particularly with those in the Office of Juvenile Justice and Delinquency Prevention Programs on juvenile justice formula grants; with the family violence section on the violence against women grants; and with the victims section on the victims assistance and compensation formula grants. In

office would serve as the central clearinghouse for constituency-oriented information on the program, technical assistance, and training initiatives of the OJP itself. The office would assume responsibility for managing the National Criminal Justice Reference Service and the juvenile justice clearinghouse.

g. *The Administrative Offices*

Under the existing OJP organizational structure, six administrative offices report directly to the OJP Assistant Attorney General. These offices are: the Office of Congressional and Public Affairs, the Office of Administration, the Office of General Counsel, the Office of Civil Rights, the Office of Budget and Management Services, and the Office of the Comptroller. No changes are proposed in the functions and responsibilities of these administrative offices under the proposed new organizational structure for the OJP, except to broaden the role of the Office of Budget and Management to encompass, as well, strategic planning.

F. *Reducing the Number of Presidential Appointees*

A fourth major step toward creating a centralized OJP administrative structure proposed under this plan would involve eliminating the presidentially appointed directorships of the five bureaus under the existing OJP organizational structure: the BJA, the NIJ, the BJS, the OJJDP, and the OVC. The directors of the NIJ, the BJS, the Office of Criminal Justice Program Development and the Office of Juvenile Justice and Delinquency Prevention Programs under the new OJP organizational structure would be appointed by the Attorney General; the director of the Office of Formula Grants/State Desks and Office of State and Local Information Transfer would be appointed by the OJP Assistant Attorney General, as would the directors of the six administrative offices. The elimination of these existing presidentially appointed bureau and office directors, like the centralization of the overall administrative authority within the agency with the OJP Assistant Attorney General, is a major departure from the administrative structure shaped by the Congress over the years.

Reducing the number of presidentially appointed OJP bureau and program office director positions clearly is one of the most potentially controversial actions proposed under the plan to create a new organizational structure for the OJP. This option had vocal proponents and opponents among the numerous Justice Department officials, interest group representatives, and criminal and juvenile justice practitioners interviewed. The most vehement arguments against elimination of the presidentially appointed OJP bureau and office directors concerned the need to preserve the independence and objectivity of research and statistical functions and to ensure that juvenile justice receives adequate attention and prominence among agency priorities. Proponents of eliminating the presidentially appointed bureau and office director positions believe that these positions have contributed to problems encountered within the OJP in formulating and pursuing implementation of a central, agency-wide mission.

Although a few officials interviewed in conjunction with the OJP restructuring initiative voiced opposition to making any changes in the existing organizational structure of the OJP, there was little objection expressed in any of the interviews to eliminating the presidentially appointed directorships of the BJA and the OVC. One interest group official that represents a victims service organization in fact took the position that the presidentially appointed OVC directorship reinforces the concentration of victims interests in one component of the OJP

have asserted that because of the interrelationship of research, statistics, and program development, these agencies must remain components of the OJP, under the direct authority of the OJP Assistant Attorney General, and, as such, their activities should inform the overall mission of the OJP. While agreeing with the research and statistics communities that the integrity, objectivity, and credibility of the work of the NIJ and the BJS are critical, these officials have argued that these objectives can be achieved by ensuring that the mission of the NIJ and the BJS are clear and properly framed within authorizing legislation. Moreover, they have suggested that ensuring that the directors of these agencies are well-qualified for the positions that they hold and that, in general, agency personnel are knowledgeable and experienced professionals are the most important considerations in ensuring that these agencies and their work deserve respect from the field. Asked whether the elimination of the presidentially appointed directorships from the NIJ and the BJS would affect the prestige and standing of these agencies in the research and statistics community respectively, one interest group representative said that the NIJ and the BJS "don't need more prestige; their work should stand for itself."

2. The OJJDP

The OJJDP, like the NIJ and the BJS, began its history within the Safe Streets Act program's administrative structure as a functional component of a larger program office. In reaction to frustrations among the broad-based constituency of juvenile justice advocates who believed that the juvenile justice issues were receiving less attention than more prominent criminal justice concerns, the Congress in 1980 established the OJJDP as an independent entity within the Safe Streets Act administrative structure, to be headed by a presidentially appointed administrator.[42]

The vast majority of Justice Department officials, interest group representatives, and criminal and juvenile justice practitioners interviewed in conjunction with the OJP reorganization initiative, regardless of the level of their direct involvement with juvenile justice issues, were outspoken in their belief that any new organizational structure for the OJP must continue to ensure that juvenile crime-related issues receive priority attention among the activities of agency bureaus and program offices. However, these officials were divided in their opinions on whether the preservation of the presidentially appointed OJJDP directorship is central to achieving that objective. In general, those officials who represent juvenile justice advocacy groups and youth-serving organizations supported preservation of the presidentially appointed OJJDP directorship. One juvenile justice interest group representative said that his organization has "a fear of lumping OJJDP in with all of the other assorted agencies under the [direct authority of] an assistant attorney general." He said that his organization believes that preservation of a presidentially appointed OJJDP administrator with direct access to the attorney general is essential to ensuring that "attention to the needs of troubled youth and families [is] not diluted among other concerns that the Justice Department has." The remaining juvenile justice officials interviewed articulated substantially less concern about keeping the presidentially appointed OJJDP directorship than about continuing, and in fact enhancing, an OJP focus on juvenile justice issues.

For two not-for-profit juvenile justice organization representatives, their interests in enhanced coordination and collaboration among OJP bureaus and offices seemed to match or

[42] Juvenile Justice Amendments of 1980, Pub. L. 96-509, sec. 6 (Dec. 8, 1980).

experience, and skills needed to carry out their responsibilities within the OJP organizational structure.

This plan for a new organizational structure for the OJP accepts the recommendations of the Committee that a revised OJP statutory authority require that "[the [NIJ] Director . . . have strong experience in research and in research management and . . . be seen as extremely competent by the various constituencies involved, including officials in the Justice Department, practitioners in the field, and most especially by members of the research community" and that, "similarly, the [BJS] Director . . . have strong technical experience with statistical series and with information systems, and . . . be seen as professionally competent by the various constituents of the [BJS], and particularly by statistics professionals."[44]

In addition, the director of the new Office of Juvenile Justice and Delinquency Prevention Programs under the new organizational structure for the OJP likewise should have strong experience in the fields of juvenile justice and juvenile justice management and should be viewed as extremely competent by the various constituencies involved, including practitioners in the field, especially by those in the juvenile justice community. This plan encourages the Congress to consider incorporating this, or similar language, concerning the desired qualifications of the NIJ, the BJS, and the Juvenile Justice Office directors in any legislation put forward to recast the OJP organizational structure.

Presidentially appointed positions are by their very nature political. The proposal to eliminate the presidentially appointed directorships of the various bureaus and program offices of the OJP reflects the belief that this action may in fact de-politicize these positions and diminish, rather than enhance, the potential for political interference in the activities of the directors of these OJP components.

A few of the officials who provided suggestions for consideration in restructuring the OJP, including the members of the Committee to Design the Structure of a Justice Research and Statistics Program in the Department of Justice, proposed that the NIJ and BJS directors be appointed to serve specific terms as a means of ensuring stability in those key components of the OJP. This proposal is commended to the Congress for its consideration.

IV. Implementing a New Organizational Structure for the OJP

A. *Timing Plan Implementation*

The organizing principle that has guided development of the plan presented in this report is to move the OJP from a decentralized organizational structure to a centralized organizational structure. Implementation of that plan would require four principal tasks: centralizing administrative authority, consolidating and streamlining agency functions, creating coherent organizational components, and reducing the number of presidential appointees.

Each of the four tasks that would be required to move the OJP from a decentralized organizational structure to a centralized organizational structure would effect major operational changes in the manner in which that agency carries out its responsibilities. For that reason, it is recommended that the Congress give careful consideration to the timing for implementation of a

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[44] *Committee Report, supra* note 41.

appointed bureau and office directorships. These concerns and many others were heard clearly in the extensive constituency outreach conducted in conjunction with the reorganization project. Moreover, these views were carefully considered in deciding upon the elements of a plan to create a new organizational structure for the OJP.

However, virtually every official interviewed in conjunction with the OJP restructuring project emphasized the need to improve coordination and collaboration and eliminate duplication and overlap among OJP bureaus and offices, and to dissolve what one interest group representative called "silly distinctions" in the alignment of program-related responsibilities that reflect conflicts and confusion concerning lines of authority and produce obstacles to providing continuity in addressing criminal and juvenile justice issues. In many cases, these concerns outweighed vested interests in retaining certain aspects of the existing OJP organizational structure, such as the presidentially appointed directorships of OJP bureaus and offices.

The issues of improving cooperation and collaboration and eliminating duplication and overlap in mission and function is a reflection of the difficulty of achieving program integration when the OJP's statutes create separate, semi-independent organizations with greatly overlapping missions. This is the problem that most fundamentally keeps the federal criminal and juvenile justice assistance programs from being integrated, focused, and realizing their full potential. *The overriding need to break down organizational barriers to unifying all components of the OJP in pursuit of a shared mission became the deciding factor in arbitrating conflicting views on how the OJP should be structured.*

The OJP's existing structure creates many obstacles to insuring an integrated approach to the problems of crime facing this nation. Steps to insure greater effectiveness and efficiency in the Justice Department's state and local crime control program could provide more continuity and coordination and potentially conserve financial and staff resources. The implementation of the proposed plan to create a new organizational structure for the OJP also could provide a management infrastructure to ensure greater accountability for the impact of the substantial dollars that the Congress has invested in the OJP program.

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Juvenile Justice Research, Evaluation and Statistics Meeting
January 14, 1999

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Report of the Committee to Design the Structure of a Justice Research and Statistics Program in the Department of Justice

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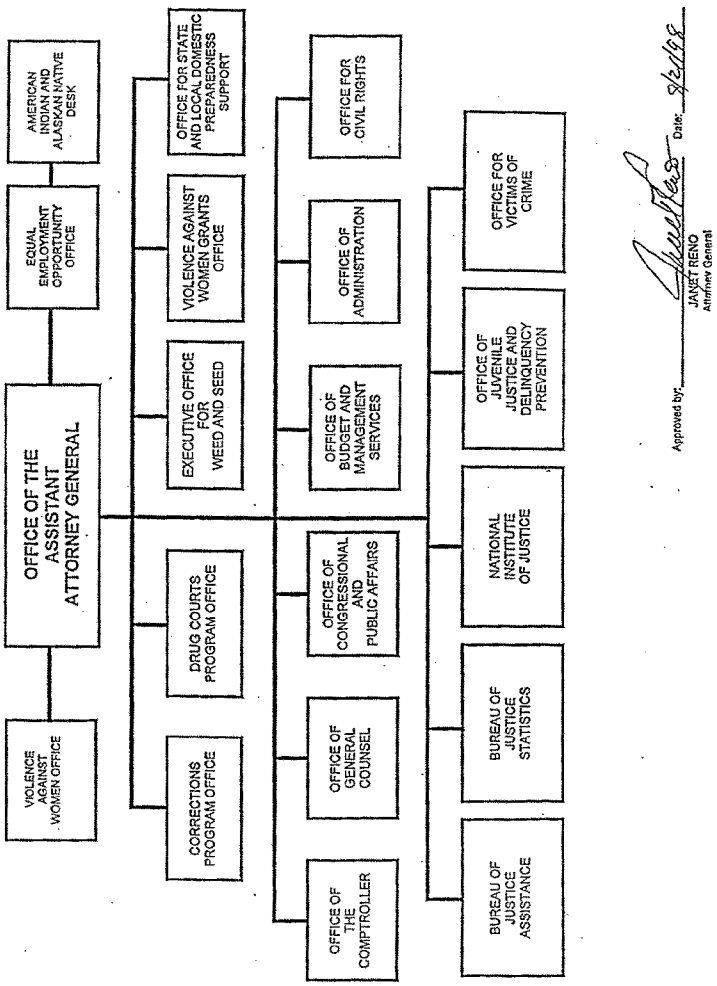
January 20, 1999

OFFICE OF JUSTICE PROGRAMS



Approved by: _____ Date: 9/27/98
JANET RENO
Attorney General

1999 OJP Programs

OJP's FY 1999 budget includes a total of 66 Programs, which are funded under 7 appropriation accounts.

Justice Assistance (17)
- Research, Evaluation and Demonstration Programs
- Criminal Justice Statistical Programs
- Missing Children Program
- Regional Information Sharing System
- National White Collar Crime Center
- Counterterrorism Programs (reimbursement) - (11 activities)
- Management and Administration

State and Local Law Enforcement Assistance (2)
- Byrne Formula Grant Program
- Byrne Discretionary Grant Program

Juvenile Justice Programs (12)
- Title II: Juvenile Justice and Delinquency Prevention:
  - Part A - Concentration of Federal Efforts
  - Part B - Formula Grant Program
  - Part C - Discretionary Grant Program
  - Part D - Gang-Free Schools and Communities
  - Part E - State Challenge Activities
  - Part G - Mentoring
- Title V - Local Delinquency Prevention
  - Underage Drinking Program
  - Tribal Youth
  - Safe Schools
- Drug Prevention Demonstration
- Victims of Child Abuse Act:
  - Improving Investigation and Prosecution of Child Abuse Cases

Violent Crime Reduction Programs: State and Local Law Enforcement Assistance (25)
- Criminal Records Upgrade Program
- Correctional Facilities Grants
- Drug Courts Grants
- Violence Against Women Act Programs:
  - Law Enforcement and Prosecution Grants
    - Civil Legal Assistance
    - Safe Start
  - Grants to Encourage Arrest Policies Program
  - Rural Domestic Violence and Child Abuse Enforcement Assistance
  - Training Programs

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

March 6, 2000

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is to supplement the record for the May 5, 1999, oversight hearing of the Department of Justice. On August 3, 1999, we provided all but four responses to follow-up questions from the Committee. Herein are the responses to those four questions.

If you have any questions regarding this or any other matter, please do not hesitate to contact me.

Sincerely,

Robert Raben
Assistant Attorney General

Enclosures

cc: The Honorable Patrick Leahy
Ranking Minority Member

The Honorable Mike DeWine
United States Senator

Response to Questions from Sen. Hatch

6. **In the last couple of weeks, we have learned a lot about what kinds of unseemly and corrupting materials can be accessed on the Internet. I must say that I was shocked to discover that there are numerous web sites operated by American companies that sell drug paraphernalia, including bongs, water pipes, glass vials and precision weighing scales, along with descriptions of how these devices can assist in getting a better "high" from smoking marijuana. There are even web sites that advertise marijuana and poppy seeds for sale complete with growing and nurturing instructions. These sales seem to violate current drug laws, including 21 U.S.C., section 863, the anti-drug paraphernalia statute, which was enacted to prohibit the sales of drug paraphernalia.**

A) What is DOJ doing to enforce the prohibition against selling drug paraphernalia over the Internet? How many prosecutions have there been under this statute targeting the Internet sale of drug paraphernalia?

The Department shares your concern about the sale of drug paraphernalia over the Internet. In August 1998, the Department prepared and disseminated to all United States Attorneys' Offices a memorandum offering guidance on the investigation and prosecution of persons selling drug paraphernalia over the Internet. The Drug Enforcement Administration (DEA) has also been concerned about the abuse of the Internet to violate certain laws enforced by DEA. A working group within DEA has been addressing those concerns. In addition, after considering the recent inquiry by this Committee concerning the illicit sale of drug paraphernalia over the Internet, the DEA has decided to expand the focus of that working group to include that issue.

In response to the second part of your question, during fiscal year 1999, nine (9) defendants were indicted under title 21 U.S.C. section 863, the drug paraphernalia statue. Unfortunately, since no part of title 21 U.S.C. section 863 speaks directly to the Internet, we do not know how many, if any, of these defendants were charged as a result of their specific involvement with Internet transfers of drug paraphernalia.

11. **Recently, the Office of Inspector General issued a report on the performance to date of the (COPS) grant program, initiated in the 1994 crime bill. The audit revealed some rather troubling information. For instance, 51 percent of COPS grantees included unallowable costs in their claims for reimbursement. 78 percent of recipients of COPS MORE grants, intended to redeploy officers into community policing, could not demonstrate that officers were actually redeployed. 58 percent of grantees did not have a good-faith plan to retain after the grant period the officers hired with federal funds. And, 23 percent of grantees did not have adequate**

community policing plans, or could not distinguish COPS activities from their pre-grant method of operations.

Since FY 1995, Congress has appropriated over $6 billion to this program, so I find it disturbing that the performance results are so mixed. While I am critical of the Department's proposed cuts to many state and local law enforcement assistance programs, I am concerned that such large amounts under the COPS program may not have been used to the best effect.

Since so many jurisdictions have found it impossible to comply with the COPS program's requirements, and, in about one quarter of the cases had trouble even defining "community policing," would you agree that this program should be reevaluated and reformed to provide greater flexibility, as I have recently proposed?

The COPS program has been successful in that COPS-funded community based police officers serve more than 87% of America's communities. As every major law enforcement group in the country will tell you, community policing and more officers have contributed significantly to the reduction of crime we have witnessed in the past several years.

The COPS Office designed its grants with flexibility in mind and their widespread use by law enforcement agencies is evidence of their success. COPS grants could be made more flexible, however, if Congress raised the funding cap per officer from $75,000 to $125,000. This would enable many agencies to take advantage of additional COPS funding to put even more officers on the beat because, at present, limiting grants to $75,000 over three years offers little financial incentive to the many agencies whose costs for salaries and benefits far exceed that level of support. Under the new cap, COPS grantees would still be required to provide local matching funds and retain the officer(s) at the end of the grant. The grant-making strategy employed by the COPS Office has proven itself as one of the most effective federal crime fighting strategies to date.

With regard to the Inspector General's Audit Summary, there are several important points. First, the vast majority of COPS grantees are in full compliance with the terms of their grants. Second, the basis for much of the IG's report is a pool of audits for 149 agencies, 1.2 percent of all COPS grantees, of which the majority were referred to the IG precisely because of COPS' concerns that these grantees may not have adhered to their grant conditions. Third, the COPS Office already has begun to address issues identified by the Inspector General with the affected law enforcement agencies. For these reasons, it is not appropriate to draw general conclusions about the COPS program from the Audit Summary.

Lastly, the Department looks forward to working with the Congress to build on the success of the COPS program. Specifically, the Administration's proposed 21st Century Policing Initiative provides law enforcement with the best opportunity to meet emerging challenges faced

by our criminal justice system by enhancing law enforcement's ability to hire needed additional officers and community prosecutors and by providing law enforcement greater access to technology, through COPS MORE, CONECT and COMPASS, and the latest crime fighting strategies.

Response to Question from Senator Dewine

3. **When we spoke at the last oversight hearing, you repeated your strong support for the Crime Identification Technology Act – which, as you know, is a widely supported bipartisan Act that provides $250 million a year to states for anti-crime technology. As you know, we are going through an appropriations process and I would appreciate lending your support to fully fund the Crime Identification Technology Act.**

Will you seriously consider supporting full funding of the Crime Identification Technology Act?

As you know, our FY 2000 appropriation provided $130 million for the Crime Identification Technology Act (CITA). This appropriation is considerably less than the $250 million that was authorized under CITA for FY 2000. Of the $130 million provided, Congress earmarked $95 million for specific criminal justice information and technology initiatives, leaving $35 million to implement the CITA program. We are planning to allocate these funds to forensic science; communications technology interoperability under the National Institute of Justice's AGILE initiative; information integration strategy building and standards development, consistent with the Global Criminal Justice Integration Initiative that the Office of Justice Programs proposed in its FY 2000 budget request; and state activity to support the National Sex Offender Registry, the National Protective Order File, National Crime Prevention and Privacy Compact, and the FBI's National Incident Based Reporting System (NIBRS).

Building law enforcement infrastructure at the federal, state, and local level has been and continues to be one of my top priorities. I believe it is important for public safety and criminal justice agencies at all levels of government to be able to communicate with one another and have access to state-of-the-art technology to help them do their jobs. The Department will continue to work with Congress to ensure that there is funding to address the technology needs of the law enforcement community.

Response to Question from Senator Leahy

14. **In the ongoing dispute over implementation of the Communications Assistance for Law Enforcement Act (CALEA), the FCC has tentatively concluded that the FBI is right and that telecommunications carriers must be capable of giving law**

enforcement a cellular phone location on a real-time basis. Privacy advocates are very concerned about this capability and how law enforcement will use cell phones as tracking devices, and consequently have been vigorously fighting against this capability being require by the FCC.

A) Do you agree with me that the FBI should be allowed to use cell phones to track a users movement's only with stringent privacy safeguards in place?

B) In my new privacy bill, E-Rights (S. 854), I propose that the FBI be able to use cell phones as a tracking device only with a probable cause court order - the same order required under current law to put a tracking device on a car. Would this be a proposal that the Department could support?

The Department agrees that the availability of real-time mobile telephone location information implicates sensitive privacy considerations and believes that the Government should seek such information from a user's mobile communications provider only pursuant to judicial process unless, perhaps, an emergency exists (e.g., an unconscious accident victim might be located because his telephone remains on). We do not take a position at this time on precisely what standard should apply, but explain considerations that are relevant to that determination.

At the outset, it is important to note that tracking an individual through the use of his or her mobile telephone would probably not raise constitutional concerns. *See Smith v. Maryland,* 442 U.S. 735, 744 (1979) (user whose dialed-number information is necessarily exposed to telephone company equipment has no Fourth Amendment expectation of privacy therein).

In determining the proper statutory provision for this issue, we begin with the principle that the law should generally be technology neutral. As you know from the Department's positions on computer crime, Internet gambling, and other technology issues, we strongly believe that statutes defining substantive offenses or authorizing investigative procedures should generally not vary depending on the technology used, absent a well-articulated reason.

In the case of identifying the location of a mobile telephone, an important analogy is identifying the location of a landline telephone. When criminals use the traditional landline telephone network, we identify the source device by using a trap-and-trace order, relying upon the standard that the information likely to be obtained is relevant to an ongoing criminal investigation. *See* 18 U.S.C. § 3121 *et seq.* After ascertaining this source information (e.g., the telephone number associated with the device being used by the target), we typically use a grand jury subpoena to obtain subscriber information associated with that telephone number. That subscriber information may include the target's name and the location of the device (e.g., the target's home).

This analogy to the landline telephone suggests a reason why the law applicable to a trap-and-trace order, rather than the stricter probable cause standard, may best uphold the principle of

technological neutrality. For example, suppose two hackers in the same apartment are attacking Defense Department computers. One uses the apartment telephone line, while the other uses a cellular telephone modem. If probable cause were required to obtain mobile telephone location information in real-time, one hacker could be identified through a trap-and-trace order combined with a grand jury subpoena, but the other could be located only with a warrant based upon probable cause.

On the other hand, there is an argument that obtaining mobile telephone location information in real-time is more intrusive on privacy than obtaining information about a landline telephone. The mobile and landline telephones are similar because the law enforcement official identifies the source of a telephone call. However, the mobile telephone is arguably different because law enforcement officials also may gain the ability to track the location of the telephone (and thus often the user) as the telephone moves from place to place.

This analysis of landline telephones and tracking devices illustrates the necessity of proceeding with care in setting the standard for real-time mobile telephone location information. The standard should reflect the important privacy and civil liberty values at stake in this area. In addition, any policy here should reflect that imposing inconsistent or unnecessarily high standards will threaten public safety as more and more criminals turn to wireless communications.

At a more technical level, we invite the Committee to consider carefully how to provide for emergency situations. We are also concerned that the current language in S. 854 for obtaining real-time wireless location information – "probable cause to believe that the equipment has been used, is being used, or is about to be used to commit a felony" -- may have negative and unintended consequences. For example, in one case, a carjacker murdered a car owner and, in the days following, drove the stolen car along the East Coast. Tracking his telephone - - which had not been used to commit the offense - - led to the apprehension of the murderer.