

overall strategy.

The last two require further explanation. Because the reactions of the armed individuals depend upon their beliefs and personalities and are likely to vary in ways that are important to negotiators and rescuers, it is important to have and be able to use a behavioral science component that can advise the tactical and negotiation groups about what to anticipate. The behavioral science, negotiation, and tactical capacities must be integrated in a way that allows the components to work together, and they must be directed by individuals skilled in handling these situations in the field under policy guidance from the political levels of government. My recommendations follow the suggestions of our experts about ways to improve this core structure.

To support the critical elements, there must be a tactical team to maintain an "outer perimeter" to keep others away from the scene; the ability to call upon the military for any necessary support with tactical and transportation equipment; the capacity to gather intelligence from inside and outside the barricades; liaison with other law enforcement agencies and prosecutors; and the ability to handle demands for information for the public.

2. The Responsibility of the FBI

These capacities are expensive to create and maintain; the necessary skills are scarce. The United States government should

have one such structure available to serve wherever a major threat of the sort I have described calls for federal law enforcement. With its Hostage Rescue Team, Critical Incident Negotiation Team, Behavioral Science Unit, other relevant components and large number of personnel, the FBI, according to the experts, is the obvious choice.

Although this review has not focused on the capacity of other federal agencies to conduct high-risk dynamic entries, it is clear that only a very highly trained and extraordinarily well-equipped unit could conduct a dynamic entry operation against a target that contains the volume of firepower and number of persons present at the Mt. Carmel compound. We cannot ask part-time special operations personnel to conduct such dangerous law enforcement operations.

Just as we turn to the military for equipment that it is uniquely able to provide, so should we be able to turn to the FBI to perform the tactical operations that it is uniquely situated to conduct. The substantial investment that we make in it already, and the increased investment that I propose, will enable the FBI to deal with potential terrorist incidents and to conduct other high-risk operations.

While I have no perfect set of numbers or characteristics to define a complex hostage/barricade situation as described on page 2, I do think that we should promptly arrive at a definition and require any federal agency confronting such a situation to refer

the matter to the FBI. The FBI would then assume responsibility.²

3. The Size and Location of the Hostage Rescue Team

Our experts agree that the FBI Hostage Rescue Team is as good as any in the world, a remarkable compliment. But they also agree that it is, at fifty persons, too small to deal with the variety of situations that may arise. I will propose to the Director of the FBI and the Attorney General that the size of the team be doubled, a figure within the range of acceptability according to most of our experts.

Although some of our experts recommended splitting the team into two parts -- basing one on the west coast to complement the present headquarters at Quantico, Virginia -- on balance I believe that it is better to maintain a central location so that the entire team can train together on a daily basis. We intend

² The FBI has no authority to respond to complex hostage/barricade situations stemming from investigations which are purely local in nature. In the absence of a violation of federal law, the FBI is without legal authority to intervene in an operational capacity. This seems clear from the applicable statutes and has been the conclusion of the Department of Justice since at least 1978.

Many local incidents will, however, involve violations of federal law as well as state law. In these situations the FBI team could be invited to assist local authorities. Moreover, pursuant to 28 U.S.C. § 540, the FBI is specifically authorized, at the invitation of local authorities, to investigate any killing of a state or local official, including a law enforcement officer, where the killing took place in the course of the officer's official duties. This would permit the use of federal resources in any case in which local officers were killed while attempting to execute an arrest or search warrant and the event led to a major hostage/barricade situation.

that most FBI SWAT teams include one former HRT member who can bring to bear that unit's specialized experience and training. The FBI and SWAT teams from the various federal law enforcement agencies should be able to maintain the situation until the arrival of the rescue/negotiation force which can at any time be in the air within a very reasonable period.

Finally, while we increase the number of tactical personnel, we should also promote research to develop non-lethal technology to expand the number of options available to subdue suspects.

4. Negotiations Capacity

The field commander is going to need not only a remarkably able tactical rescue team but also very talented negotiators. Negotiation in this situation is a specialty. If the FBI is given the responsibility for dealing with these events, it must supplement its present, largely dispersed negotiating capacity with an increased central component at Quantico.

Because negotiations and rescue assaults are alternative courses in many of the situations we are discussing, the negotiators should be familiar with the capacities of the HRT operations, and the HRT should be familiar with the strategies of the negotiating team. What is necessary in many circumstances is a highly coordinated effort using both sets of capacities, sometimes simultaneously and sometimes in sequence. The special demands on each group to understand the other require joint training operations at Quantico.

5. Behavioral Science Capacity

There is a third set of capacities necessary for these operations. The prospects of negotiations and the prospects of an assault both depend upon how the individuals or groups resisting law enforcement perceive their situation and, particularly, how they perceive their relationship to the government and its law enforcement forces. The type of situation we are describing often involves a group with a view of the government and of the group's obligations to the law that are very different from those of the ordinary citizen and even the ordinary criminal. Several of our experts suggested that David Koresh and his Branch Davidian followers believed that the unfolding events were part of a script that had been foretold in the Bible as interpreted by David Koresh. These experts suggested that relating the combined negotiation/assault tactics to that script would have been helpful. The question is how to develop the institutional capacity to take advantage of the wealth of information that might be brought to bear.

Federal law enforcement cannot and should not collect and study the writings of groups characterized only by views very different from the mainstream in the United States. This would be an undertaking far more dangerous to civil liberties and far more unstructured in its reach than collecting information, under traditional carefully written Attorney General guidelines, about violent organizations. What the experts suggest is that our training of law enforcement agents include material designed to

alert agents to the potential importance of differences in views among Americans on such subjects as religion and political ideology. Those who provide this training should themselves become expert in the range and diversity of beliefs held by Americans -- including the more unconventional beliefs -- and should be available for advice when events like this occur.

As to particular groups, like the Branch Davidians, we should consult with academic scholars for detailed information that may be useful to negotiators or others. But this requires us to be able to identify, in advance of the event, reputable experts who are willing to help, so that we may quickly turn to them for advice. For this, federal law enforcement must, our experts urge, begin to make contact with a wide range of experts in the social sciences -- from religion to sociology to psychiatry -- so that we can very promptly enlist their assistance when needed.

6. Crisis Management

We must have a fourth capacity in place to deal with complex hostage/barricade situations. We need field managers with the training, experience, and leadership qualities to orchestrate rescue and negotiation efforts in light of social science knowledge. That means that the FBI, if it is to be in charge of this national responsibility, will have to depart from its strong tradition of placing responsibility in the hands of the Special Agent in Charge ("SAC") of the local division.

The FBI has plans underway to select fifteen of its most senior field commanders to receive special training with the Hostage Rescue Team and with negotiators and to learn to call upon the social science capacity that we will be building. On any major occasion three or four of these specially chosen SACs will be called into action so that fatigue is not a factor in their operations any more than it will be in the operations of the newly expanded Hostage Rescue Team.

The local SAC will continue to play a highly central role as deputy to the field commander, responsible for coordinating relations with the variety of local authorities, state and federal, who continue to have significant responsibilities. The SAC should also assume responsibility for whatever criminal investigation is behind the confrontation. As in the case at Waco, dealing with the human risks will necessarily take precedence over gathering and protecting evidence for trial. However, the latter responsibility should be integrated as a consideration.

To the extent that time allows, the major policy decisions recommended by the field commander should be reviewed by the Director of the FBI and the Attorney General or their immediate deputies. The structure for this phase of the operation is generally well in place. An Assistant Director of the FBI should have the full-time responsibility in Washington -- regardless of whether the event involves international terrorists or a domestic group. The Assistant Director should and does have a

representative of the Hostage Rescue Team and of the negotiating team in Washington to advise him. The Assistant Director should also have available a representative of the social science unit, one who has some experience and some academic knowledge about groups that are out of the political and religious mainstream.

The Attorney General and Deputy Attorney General will be well advised to have available to them a senior ~~career~~ official whose responsibilities, over an extended period of time, include assisting in these events and maintaining a familiarity with the resources available to the FBI. Officials of the Department of Justice should be included in crisis planning exercises so that the entire chain of command will be prepared for emergencies.

7. The Responsibility of Other Federal Law Enforcement Agencies

Finally, while it is important to define a category of tactical situations in which the FBI should take control, other agencies will and should continue to conduct operations that may on occasion develop into hostage/barricade situations. Some of these will be below the threshold for assignment to the FBI. Others may start below that level even though they later escalate into complex hostage/barricade crises. Other agencies may also have to deal with a complex hostage/barricade crisis ~~until the~~ FBI team arrives. For these reasons, other law enforcement agencies must also be prepared to deal with hostage/barricade situations.

The Department of the Treasury's Federal Law Enforcement

Training Center has a "First Response Training Program" that teaches law enforcement officers the basics of handling a hostage/barricade situation, including setting up a command post, establishing an inner and outer perimeter, engaging in preliminary negotiations, and dealing with the media. Basic training of this sort should be provided to all federal agencies. We will also continue to need the more specialized capacities of the SWAT teams of several federal agencies for handling more familiar but still dangerous confrontations.

An orderly transition from ATF responsibility to FBI responsibility took place at Waco. This important transition stage could be facilitated by efforts to have SWAT teams from other agencies participate in training exercises with the HRT and the FBI negotiators. Such joint exercises may also make it possible to use agents from outside the FBI in handling a complex hostage/barricade crisis without losing the advantage of carefully coordinated responses.³

* * * * *

I am confident that when this structure is fully implemented, we will have substantially improved our ability to deal successfully with complex hostage/barricade situations with a reduced risk of losing innocent lives.

³ The Departments of Justice and the Treasury should also consider whether agents of law enforcement agencies outside of the FBI might be included in the HRT complement, on detail from their original agencies. This would be consistent with the HRT's function as a national special response unit, and when these agents left the HRT, they would transfer their new skills back to their home agencies.

APPENDIX

I. JURISDICTION

- A. Make the FBI the lead federal agency in complex hostage/barricade situations and domestic terrorist operations, and offer the assistance of the Department of Justice in reviewing plans for high-risk and sensitive raids

II. OPERATIONS

- A. Select and train FBI "Crisis Managers" to serve as on-scene commanders during hostage/barricade situations
- B. Double the size of the FBI's Hostage Rescue Team
- C. Increase the number of negotiators based at the FBI Headquarters in Quantico, Virginia
- D. Integrate behavioral science experts as part of the training process and dispatch them as part of the Crisis Management Team
- E. Conduct training exercises that include Department of Justice decisionmakers
- F. Standardize training and equipment of SWAT teams
- G. Do not invite the media to participate in law enforcement operations or give advance notice of such operations

III. RESEARCH

- A. Establish a pool of behavioral science experts who will be available to consult with federal law enforcement officials
- B. Establish a database of information about hostage/barricade situations worldwide
- C. Continue to promote research into non-lethal and less-than-lethal technologies

Heyman

HEYMAN (CONFIRM. HEARING)

1 We will be impatient with turf battles because we are
2 all, Federal and State agencies, pursuing the same ends with
3 resources inevitably too few for the task.

4 Finally, I hope you will find us frank about our
5 successes and failures, our hopes and our prospects, even
6 though frankness may subject us to criticism.

7 In fighting crime, Mr. Chairman and members of the
8 committee, we are all in it together. Thank you very much.
9 I look forward to answering your questions.

10 The Chairman. Thank you. We will proceed with the 10-
11 minute rule, if that is appropriate, if that is all right
12 with my colleagues. Or do you want to go longer?

13 Senator Hatch. I think we ought to have 15.

14 The Chairman. We will make it a 15-minute rule to
15 accommodate those who have more questions.

16 Let me begin by asking you about something very topical,
17 and that is the Waco investigation. Two days ago, the New
18 York Times reported comments by you about the scope of the
19 Justice Department's investigation of the events in Waco,
20 Texas, relating to David Koresh and the Branch Davidians.
21 Specifically, you were reported to have said the investigation
22 would not include a review of the decision to mount an
23 assault on the compound with tear gas and with tanks or
24 interview the Attorney General or other key decision-makers.

Subsequent reports have suggested that you may have been

1 misunderstood and that a full investigation will occur.

2 As you know, Mr. Heymann, I have stated that this
3 committee would await the results of the investigation called
4 for by the President before undertaking its own independent
5 review of the operation. But, quite frankly, my decision was
6 premised on my understanding that the Department of Justice,
7 as well as the Department of Treasury, would undertake an
8 exhaustive review of all relevant activities. Learning from
9 that event, a goal all of us seek, requires an evaluation of
10 the entire operation, in my view. Quite frankly, what, how,
11 why, and who made key decisions is central to that process.

12 I know that you cannot nor should not discuss the
13 specifics of an ongoing investigation, but I ask in general
14 whether the press accounts accurately characterize your
15 intentions. What are your general plans for an investigation
16 of the Waco incident?

17 Mr. Heymann. Senator, my plans are, and have been for
18 over a month--whenever it started, April 29th--April 19th,
19 excuse me--to conduct the most thorough, detailed Justice
20 Department investigation that one can imagine. Ever since
21 that time, we have scheduled about 900 interviews I think
22 we are going to be able to tell you what happened on--if you
23 pick a date, April 13th at 10:15 or 10:17, I think we are
24 going to be able to tell you what happened at 10:17.

25 The investigation is without bounds. We alerted the

1 Senator DeConcini. I am very interested in it as well,
2 and I know without saying so that Chairman Brooks and others
3 are very interested in it. This case is very disturbing from
4 at least the House investigation. Now, they are not a
5 criminal investigative agency per se, but having read and
6 paid attention to it somewhat, it disturbs me greatly that,
7 first of all, Attorney General Barr did not justify an
8 independent counsel and, secondly, that it doesn't appear
9 that anything is going to happen from some very dramatic
10 evidence that was forthcoming in that investigation in the
11 House.

12 I want to thank you for your clarification, Mr. Heymann,
13 on the so-called Waco investigation. I share the same
14 concerns that the chairman did, and I am not going to repeat
15 those. But I am very pleased that the paper apparently had
16 misquoted you, to some extent, on exactly how extensive that
17 investigation would be, including interviewing the Attorney
18 General, I take it. As you know, Secretary Bentsen has
19 appointed a three-panel outside investigative consultants
20 which they are going to interview everybody--Mr. Higgins and
21 anybody, Mr. Simpson, everybody who was involved in it. And
22 I presume that is exactly what you anticipate here, that no
23 stone is going to go unturned. And if something went wrong,
24 it is all going to come out. And if it didn't, it is all
going to be on the record so nobody is going to be able to

1 say, oh, my gosh, you didn't want to interview Director
2 Sessions because actually he was in New York at the time and
3 didn't actually receive the telephone call, or vice-versa, as
4 it relates to Ms. Reno.

5 Mr. Heymann. We will interview 900 people and right up
6 to the top, Senator DeConcini. Everybody.

7 Senator DeConcini. Thank you. I think that is really
8 the best thing, and I join the chairman in his wanting to get
9 it all out. I think the sooner the better. And if problems
10 are there, problems are there.

11 You talked about community policing and the administra-
12 tion's 100,000 police officers. Have you discussed this
13 proposal with the Attorney General or with OMB or with
14 anybody on how it is going to be financed?

15 Mr. Heymann. No, Senator.

16 Senator DeConcini. That is somebody else's problem?

17 Mr. Heymann. Well, I have been in place 2 weeks and a
18 day, Senator, and I have been trying to learn an awful lot
19 awfully fast.

20 Senator DeConcini. It greatly concerns me that if you
21 look at law enforcement budgets that the President submitted
22 here, there is a substantial decrease in the FBI, the DEA,
23 the Border Patrol, Customs, the ATF, INS. IRS I think is the
24 only one that gets an increase. And then there is this
25 effort that I support of 100,000 new officers on the streets.

File
Green CONGR. HEARINGS

1 headquarters level. I think once the message goes out
2 clearly and those types of cases are promoted and successfully
3 done, most of that problem will dissipate. I hope that will
4 be the case.

5 Senator DeConcini. Well, there are some excellent
6 examples where they have worked together, international
7 narcotics rings, and you have been involved in those. I just
8 hope every day the first thing your agents and supervisors
9 think when you walk in the office or come to work is, hey,
10 this guy wants us to work with other law enforcement. And I
11 leave that to you.

12 But, you know, sometimes, Judge, it borders on criminal
13 wrongdoing. Let me give you an example. On June 10th of
14 this year, the House Treasury Appropriations Subcommittee
15 conducted hearings on the Alcohol, Tobacco and Firearms and
16 their tragedy in Waco, Texas. It was a critical hearing of
17 ATF for some of their activities.

18 During the hearing, the 911 tape between the Branch
19 Davidian and the local enforcement authorities was aired.
20 Needless to say, these tapes cast ATF in a less than positive
21 light.

22 Now, unfortunately, these tapes had been edited in what
23 appears to be an attempt to discredit the Alcohol, Tobacco
24 and Firearms agency. Moreover, the tapes had been subpoenaed
25 by the U.S. attorney for use as evidence before the grand

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ASSET FORFEITURE LEGISLATION

1. ISSUE STATEMENT

Although the federal government has had the authority to take property through forfeiture for more than two hundred years, this authority was infrequently used in criminal law enforcement until the mid-1980s, when Congress passed a series of forfeiture laws aimed at drug traffickers and money launderers and established funds to finance the management and disposition of seized assets. Since then, the number and value of seizures has grown dramatically. With this expansive use has come increased scrutiny of the forfeiture laws.

Last October, prompted by growing criticism of the perceived unfairness of the civil forfeiture laws and by a spate of recent Supreme Court decisions consistently ruling against the government in asset forfeiture cases, the Department undertook a review of the federal asset forfeiture program. The review was initiated with the intent of formulating proposals to revise federal forfeiture law and policy.

In addition to the Department's efforts, Representatives Henry Hyde, John Conyers, and Craig Washington, also seeking asset forfeiture reform, introduced three separate bills in Congress last fall. If enacted, each would severely curtail the effectiveness of asset forfeiture as a law enforcement tool. To forestall action on the bills, the Attorney General, by letter dated October 18, 1993, asked House Judiciary Committee Chairman Jack Brooks to postpone consideration of any forfeiture legislation until the Department had completed its review and submitted its own proposals.

2. STATUS

While there was thought at one time that asset forfeiture reform would be rolled into the crime bill, that possibility is off the table. After substantial internal negotiation within the Department and within the Administration (with the Department of Treasury), a proposal was submitted to OMB for sign-off in late April. OMB has yet to indicate its clearance of the proposal for submission to Congress.

3. DEPARTMENT POSITION

In formulating its proposals, the Department has sought to convey a sense of balance. The theme is that forfeiture is an essential law enforcement tool that can be made even more effective by enhancing and clarifying the powers of the government while improving procedures to ensure that the rights of property owners are fully protected. The Department's package differs from the Hyde, Conyers and Washington bills in that it

recognizes the important role that both civil and criminal forfeiture have come to play in federal law enforcement and takes into account the procedural and substantive needs of the law enforcement community. Yet it acknowledges the need for procedural reform and adopts in a more sensible form many of the changes suggested by the Congressmen and the organized bar.

Overall, the DOJ bill would:

- Insure that innocent property owners are provided due process of law by shifting the burden of proof in civil forfeiture from the property owner to the government, by allowing a waiver of the cost bond in certain circumstances, by imposing deadlines on the government for sending notices of forfeiture to property owners and for initiating judicial proceedings upon seizure of the property, and by giving property owners more time in which to file papers contesting the forfeiture;
- Expand the availability of forfeiture funds (including funds that are shared with state and local law enforcement assisting in the seizure or forfeiture) to assist crime victims and to aid crime prevention and drug prevention and treatment programs; and
- Expand substantive forfeiture to cover the proceeds of white collar crimes and increase the tools available to law enforcement in civil forfeiture cases.

The most contentious revision in the Department's proposed bill concerns the shifting of the burden of proof to the government in civil forfeiture cases. Currently, the government must show only probable cause that a seizure was lawful in order to seize assets, while the burden rests with the claimant to show by a preponderance of the evidence either that the property was not involved in a criminal offense or that the claimant was not negligent in permitting the property to be used in a criminal manner. Critics contend that this procedure overturns the overturns the traditional presumption of innocence fundamental to American jurisprudence. The Department's bill shifts the burden of proof from the property owner to the government to prove forfeitability by a preponderance of the evidence. Although FBI, DEA, and the Treasury Department initially opposed this change, they have since withdrawn their objections. The criminal defense bar welcomes the shift in the burden but favors the congressional bills which not only shift the burden but also increase the standard of proof from a preponderance of the evidence to clear and convincing evidence. The Department rejected this standard in favor of the preponderance standard which normally applies in civil proceedings.

Another contentious issue concerns the current requirement by which property owners who wish to contest a civil forfeiture in court must post a cost bond of the lesser of \$5,000 or 10% of the value of the property. The various congressional bills would eliminate the cost bond requirement. The Department gave serious consideration to eliminating the cost bond but the proposal met with strong resistance from law enforcement agencies who believe that elimination of the cost bond, when combined with the revised burden of proof, will produce a flood of frivolous claims. The Department's bill strikes a middle ground by retaining the requirement but providing for waivers for indigent claimants as well as for non-indigent claimants for whom imposition of the bond would result in substantial hardship, and by allowing for additional categories of waivers as determined by the Attorney General and the Secretary of the Treasury. Our intention is to permit additional waivers for a time to see what impact they have on the number of frivolous claims. If there is little or no increase, the categories of waivers can be expanded.

It should also be noted that despite the fact that this initiative was undertaken as a reform, the criminal defense bar views the DOJ proposal as unacceptable, and in some ways worse than the status quo given the provisions in the bill which extend forfeiture to cover additional crimes and which increase the investigative tools available to the government in civil forfeiture cases.

Finally, it should be noted, as an aside, that the DAG is currently considering an internal reorganization of asset forfeiture responsibilities within the DOJ.

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Divider Title: _____

GUN CONTROL/BRADY IMPLEMENTATION

1. ISSUE STATEMENT

The Brady bill was signed into law on November 30, 1993. On February 28, 1994, the "interim provisions" of the Brady law obligated law enforcement officials in over 30 states, **for the first time ever**, to conduct background checks before someone can receive a handgun from a gun dealer. (Dealers in states with an existing background check which falls within parameters described in the Brady law have no new obligations stemming from Brady.) The Treasury Department's Bureau of Alcohol, Tobacco and Firearms had primary jurisdiction over the implementation of the interim provisions.

These interim provisions provide effected law enforcement officials five (5) business days to conduct background checks. They will remain in effect until a national instant background check system is declared operational by the Attorney General, which must take place on or before November 30, 1998. The development of the "national systems" is within the primary jurisdiction of the Department of Justice.

2. STATUS

DOJ has conducted the statutorily mandated survey of state criminal records. The survey has served as the basis for the establishment of timetables for the states to participate in the "national system". These timetables are to be announced by the AG by June 1. Also by June 1, the AG is to announce the design of the national system which will go into effect in 1998. In general, the law is operating well with early reports showing that thousands of convicted felons have been denied handguns because of the background checks.

Since February 28, 7 lawsuits have been brought challenging various aspects of the Brady Law. Six of them are virtually identical, primarily arguing that the federal government's requirement that state and local law enforcement officials make a "reasonable effort" to check backgrounds of handgun purchasers is violative of the 10th Amendment. One of the cases, in California, focuses on the application of the law to pawnbrokers, who are extremely unhappy with the application of the law to them, but who have also proven to be the place where the highest percentage of felon denials have been taking place.

The 10th Amendment cases are pending in the Civil Division. In the Montana case, the court struck down the requirement that law enforcement officials make a reasonable effort to check backgrounds, but severed and left in tact the five-day waiting period and the mandates upon dealers to provide information about proposed purchases to law enforcement officials. While

jurisprudentially problematic, this decision has had little practical impact since most law enforcement officials want to conduct the background check prior to sale and the portions of the statute left in tact by the Montana judge leave law enforcement officials with all the tools they need to do so.

Hearings and rulings are upcoming in the relatively near future in Arizona, Louisiana, Mississippi, and Texas.

3. DEPARTMENT POSITION

We're anxious to make it easy for the law to work and have worked closely with the states in designing the "national system". In addition, we'll defend that law's constitutionality and believe that, in the very worst case, the waiting period with voluntary - rather than mandatory - background checks will be upheld.

GUN CONTROL/ASSAULT WEAPONS

1. ISSUE STATEMENT

Assault weapons -- certain, but not all, semi-automatic weapons -- are heavily used in criminal activity and have not sporting purpose. Definitions of which weapons fall within this category and which do not are critical to proponents and opponents. All proposals in this area ban the manufacture and sale of assault weapons, but grandfather in continuing ownership rights for those who already have them.

In addition, there is substantial concern about the carnage which can be and has been caused, even by legal weapons, when large magazines are attached permitting the rapid firing of large amounts of ammunition.

2. STATUS

The Senate passed an assault weapon ban, sponsored by Senator Feinstein, and it is included in the Omnibus Senate bill. The Feinstein proposal also banned magazines of over 10 rounds.

A virtually identical version of the ban was passed in the House on a hard-fought, close vote (one vote switch to lose). House Judiciary Committee Chairman Brooks reluctantly understands that the assault weapon ban will be included in the conference report. One minor change effecting paperwork which must be filed regarding certain assault weapon transactions will be eliminated in the conference report.

3. DEPARTMENT POSITION

The Department and Administration support the Feinstein amendment. (The charge was lead on the House side by Representative Schumer).

Their proposal deals with the definitional issues by: (1) setting out a list of specific weapons which are banned, (2) setting out features which if part of a weapon would make it illegal, and (3) setting out a list of specific weapons which are not banned. Examples of the types of features which, if correctly combined, might lead a weapon to be banned are a folding or telescoping stock, a pistol grip protruding beneath, a bayonet mount, a flash suppressor, and a grenade launcher.

GUN CONTROL/DEALER LICENSING REFORM

1. ISSUE STATEMENT

° A "federal firearms licensee" (FFL) can, by virtue of that status, avoid many restrictions placed upon retail gun purchasers (for example, the Brady waiting period). In addition, gun dealers frequently are able to purchase weapons at discounted prices from the manufacturer.

° The licensing standards for gun dealers have been traditionally quite weak. As a result, there are an extraordinary number of licensed gun dealers, making dealer regulation extremely difficult for the Bureau of Alcohol, Tobacco and Firearms (BATF).

2. STATUS

There are more gun dealers in America than there are gas stations. It is estimated that of the over 284,000 FFL's, over 70% of them are not "engaged in the business" as required by law. The FFL license fee was just raised, in the Brady bill, to \$200 for three years.

3. DEPARTMENT POSITION

We support the Treasury Department's effort to substantially tighten up federal firearms licensing. The Senate bill contains requirements that: licensee applicants submit photo and fingerprints, FFL's comply with state and local laws, FFL's provide immediate notification of the theft or loss of merchandise, BATF have additional time to respond to license applications, and BATF have greater access to FFL's records.

Additional reforms which were developed by Treasury and which we support, could be included in the Crime Bill conference report, including: an increase in the FFL fee to \$600 per year, an increase in the penalty for falsification of FFL records, and authority for BATF to revoke licenses upon the felony conviction of an FFL.

GUN REGISTRATION & LICENSING

1. ISSUE STATEMENT

For years, gun control advocates have sought gun licensing and gun registration laws. These laws would operate like, and have the advantages which flow from, the registration and licensing associated with cars.

Those wanting to own a gun would first have to get a license, issued only to those meeting criteria ranging from a clean criminal record all the way up to a demonstrated capability to handle the weapon. Again, such a requirement would be analogous to the requirement that a motor vehicle driver demonstrate a capability to operate a motor vehicle safely before obtaining a driver's license.

Again, like with motor vehicles, while a license is associated with a specific person, registration is recordkeeping regarding a specific device, be it a car or a gun. Gun registration would be a system of recordkeeping regarding the ownership of every gun, useful to track back the ownership chain of guns used in crimes.

To the gun lobby, registration, and to a lesser extent licensing, are an absolute anathema. Gun advocates, more than anything else, oppose a government held list of all those who own guns, for they perceive their guns as the defense against a government gone tyrannical. It is a gun lobby mantra that if the government has a list of gun owners, and if things go bad, the first thing the government will do is go around and collect the guns from the people on the list. (It is for this reason that even recently adopted gun control laws require the destruction of all records which might permit the compilation of such lists.)

2. STATUS

Neither licensing nor registration are contained in the Senate or House bills, so this subject will not be addressed in the crime bill conference report. Still, licensing proposals are constantly looming on the horizon.

Cong. Schumer has recently introduced "Brady II", the omnibus gun control bill developed by Handgun Control, Inc., the leading anti-gun lobby organization. It contains a licensing requirement with mandatory safety training.

In addition, late last year, President Clinton indicated that he thought licensing might be a good idea. The Attorney General echoed that general view. A sudden storm of protest (including some voices from the police community which had so strongly supported Brady), prompted the White House to slow

things down by having the President ask the Attorney General to study the matter and make a recommendation to him. That request is still outstanding.

3. DEPARTMENT POSITION

No Department or Administration position has been developed. There does seem to be internal agreement that a licensing system which replaced Brady would be a step backwards since under Brady there's a background check with every purchase, whereas, under a licensing system, background checks are generally not required as long as a valid license is exhibited.

There has been some discussion with the Attorney General about proposing safety training rather than licensing. Even with that there were concerns about a large, unfunded mandate and the possibility of grant money for pilot safety training programs was being considered. There has been no discussion of, and no one seems interested in pursuing, registration. There is not anything approaching closure on the licensing issue.

YOUTH HANDGUN SAFETY ACT

1. ISSUE STATEMENT

Increasing violence among minors has triggered the search for new means for attacking that violence. The Youth Handgun Safety Act seeks to make it harder for young criminals to get handguns and handgun ammunition.

First, it makes it a federal crime for anyone to transfer a handgun (or related ammunition) to a minor, except in limited circumstances when it will be used with parental permission for hunting, etc. This extends the existing prohibition from dealers to the universe of all gun possessors.

The Act would also make it a federal crime for a minor to possess a handgun (or related ammunition) except in the same limited set of circumstances. This provision has caused the Judicial Conference substantial anxiety since it creates an entire class of juveniles who are federal offenders by definition.

2. STATUS

The Senate passed the Act, along with other similar language which has actually created some confusion about which provisions control. Clean-up is taking place in conference.

As noted above, there is concern on some fronts about the influx of juveniles this statute will bring into a federal system ill-equipped to handle juveniles.

3. DEPARTMENT POSITION

We support the Act and hope to be able to effectuate technical amendments in the House or in Conference to fix arguably conflicting, and certainly confusing, provisions in the Senate bill relating to penalties and the scope of transactions to which the prohibition applies.

In addition to the "juvenile" issue flagged above, reconciling support for this provision with Administration opposition to the D'Amato "federalize gun crime" proposals is tricky. Since the federal government already has substantial participation in the regulation of the sale and transfer of guns, it is probably best to characterize this provisions as an extension of that regulatory activity which does not invade the traditional state and local prosecution of street crimes committed with guns.

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Divider Title: _____

MANDATORY MINIMUM SENTENCES

1. ISSUE STATEMENT

Mandatory minimum sentences are being attacked from the left as too harsh, from the right as too few, and from the sentencing commission as unnecessary. Proposals for "safety valves" or "carve-outs" to deal with non-violent offenders with little or no record are in abundance, with widely varying definitions of who qualifies.

There are also fairness concerns about the substantial mandatory minimum sentencing disparities between crack and cocaine transactions.

2. STATUS

The House and Senate Crime bills contain a number of new crimes to which mandatory minimum sentences will apply. They also both contain a "safety valve" provision, which would permit sentencing under the sentencing guidelines, as opposed to in accordance with the mandatory minimum, if the offender is a low level, first time, non-violent, non-drug offender.

The House bill contains a provision which would require the Sentencing Commission to study the crack/cocaine sentencing disparity and make a recommendation regarding any appropriate changes in current law in this regard.

3. DEPARTMENT POSITION

The Administration and the Department support mandatory minimum sentences as an important tool. We support the imposition of the mandatory minimums included in the Senate bill. We also support the use of a "safety valve" for low level, first time, non-violent offenders.

With respect to the crack/cocaine disparity, we support the provision submitting this question to the Sentencing Commission for a recommendation. Some may attempt to substitute for this provision, provisions which deal with the disparity more directly. Any such proposals will be evaluated by the Administration on a case by case basis.

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Divider Title: _____

CHILD PORNOGRAPHY/KNOX & CRIME BILL

1. ISSUE STATEMENT

◦ Knox is a child pornography case which featured a video of a clothed female child. The camera zooms to the pubic area of the child for close-up views. Knox was convicted in the trial court on the basis that the portrayal of the child's unclothed upper thigh was pornographic. The 3rd Circuit rejected the trial court's reading of the statute, but maintained that the fact that the child's pubic area was "exhibited" was a sufficient basis for upholding the conviction. In the Supreme Court, the Solicitor General sought a remand on the grounds that the 3rd Circuit's standard was wrong. The SG argued that the prosecution should proceed with adoption of a standard requiring the genitals to be discernible or visible, even if clothed, and requiring that a finding that the material appeal to the "lascivious interest."

◦ The Department's position in Knox, as misinterpreted and misreported by a vast array of commentators, has drawn substantial criticism, including a unanimous Senate resolution and a directive from the President that DOJ recommend statutory changes to prevent further such incidents.

2. STATUS

The Supreme Court has remanded the case to the 3rd Circuit. The Government has sought a remand from the 3rd Circuit to the trial court to permit the trial court to make the necessary factual finding. Oral argument was held in April. The 3rd Circuit could remand, affirm its earlier decision, or adopt the SG's standard and affirm or overturn the conviction.

Legislation from the Department is pending final Administration approval.

3. DEPARTMENT POSITION

The SG's position in the Supreme Court was aimed at saving the statute from being struck down altogether so that it would be available for other prosecutions. Otherwise, we have no further comment on this pending case.

The Department will propose legislation improving the child pornography statutes which encompass all depictions of children designed or intended to appeal to a lascivious interest. The legislation will include depictions created by doctoring pictures with computers or with other procedures.

4. JUDICIARY COMMITTEE MEMBERS INTERESTS/POSITIONS

Contact: Elizabeth Fine

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Divider Title: _____

DIGITAL TELEPHONY/ENCRYPTION

1. ISSUE STATEMENT

Technology advances in telephones -- particularly the transmission of encrypted and digitalized signals -- are creating impediments to authorized law enforcement monitoring of phone calls.

2. STATUS

Encryption problems can be solved through a voluntary solution. The NSA has developed a microchip which encrypts messages which can only be "de-encrypted" by those with the "keys". These chips will be made available to relevant industries which will be encouraged to voluntarily use them. Only designated federal key escrow agents will be able to de-encrypt messages.

Digitalized communications are more problematic. Unless legislation is passed requiring the government to be able to monitor phone calls -- with all existing "wiretap" requirements and safeguards -- it will be possible to hold telephone conversations which can not be tapped.

Some civil libertarians oppose requiring the telephone manufactures to leave the capability for government monitoring. In addition, some industry experts indicate that such requirements will force them to make less than the best product than can because the requirement would force manufacturing choices that lead to slower processing than would otherwise be possible.

3. DEPARTMENT POSITION

The Department has drafted language which would require the manufacture of phone products to not eliminate the possibility of government monitoring of phone conversations. The legislation would in no way expand the reach of the government, but would merely prevent against slippage in the area of monitored phone conversations. Original thoughts of including this subject in the crime bill have been abandoned.

The Administration is proceeding with the preparation for distribution of the encrypted chips with federal key escrow agents. "Tapping" capability of both encrypted and digitalized messages is critical to effective law enforcement and the Department and Administration will continue to work towards accessibility despite the controversy surrounding these matters.

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Divider Title: _____

CRIME LEGISLATION: STATUS AND OVERVIEW

1. ISSUE STATEMENT

o As the economy has started to improve, crime has emerged as the number one issue on the minds of Americans. The Senate and House each considered and passed an Omnibus Crime Bill which cover hundreds of subjects.

o The Administration strongly supports prompt passage of H.R. 3355, which embodies the central elements of the President's anti-crime legislative agenda. This critical legislation sets forth a balanced and intelligent approach that will enable the Federal Government to play a significantly enhanced role in the nation's fight against the crime and violence that plague too many of our communities.

o Passage of H.R. 3355 will assist the states and localities in their efforts against violent crime -- particularly in the critical areas of police, prisons and prevention. In addition, H.R. 3355 will provide necessary tools to federal law enforcement officials, improving their effectiveness in combating violent crime.

o Both the Senate and House versions of H.R. 3355 contain provisions addressing the key elements of police, prisons, and prevention, which, while they differ at times in their specific approaches, are in many respects quite similar. In order to take advantage of the historic opportunity to enhance public safety presented by this legislation, the Conference Committee must act promptly and wisely to craft the final legislation.

o There are wide-ranging views about the spectrum of legislative proposals on the table. The Congressional Black Caucus supports a crime-fighting approach which focuses heavily on the prevention and programmatic end of the spectrum and eliminates or reduces certain of the more punitive elements on the table. Those on the political right are critical of proposals which don't emphasize punishment enough and question resource allocation for many prevention programs.

2. STATUS

The House and Senate have each appointed conferees. The Conference will not formally begin until after the Memorial Day recess. The key issues to resolve are the funding levels and funding mechanism; the size of the prison, police and prevention programs; the Racial Justice Act; and Assault Weapons.

3. DEPARTMENT POSITION

Our support for or opposition to specific crime legislation proposals is discussed in other briefing papers. In general, the following are themes of the Administration in this area:

(1) Tough & Smart, (2) Punishment and Prevention, (3) Drug Treatment as critical to dealing with the drug problem, (4) Federalization of crime should be limited to circumstances where there is a Federal interest and/or the Federal Government can handle the matter better than the states, and (5) Administration proposals are paid with the reinventing government program's reduction in Federal employees.

Central areas of administration activity are: (1) Sentencing, (2) Prisons, (3) Guns, (4) Police, (5) Procedural reform (e.g. - habeas, exclusionary rule), (6) Children, (7) Drugs, and (8) Violence against women.

4. JUDICIARY COMMITTEE MEMBERS INTEREST/POSITIONS

Contact: Elizabeth Fine

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Divider Title: _____

FUNDING OF CRIME BILL

1. ISSUE STATEMENT

The House and Senate proposals involve substantial new programmatic funding in this time of extremely limited discretionary spending. It is critical that there be a simple but credible explanation of where the money is coming to pay for the new cops, the drug treatment programs, the grants, and the prisons.

2. STATUS

The Senate Bill contains a "Violent Crime Trust Fund" which would, over the course of the next five years, administer over \$22 billion dollars for crime-fighting. First year outlays would be about \$2.4 billion according to the President's budget as submitted to Congress. The money for the "Trust Fund" would come from statutorily mandated personnel reductions in the Federal Government. A conforming reduction in discretionary spending is also mandated by the statute.

3. DEPARTMENT POSITION

We support the funding of the programs through a Violent Crime Trust Fund.

4. JUDICIARY COMMITTEE MEMBERS INTEREST/POSITIONS

Contact: Elizabeth Fine

FEDERALIZATION OF CRIMES

1. ISSUE STATEMENT

The Senate Bill, and to a lesser extent the House Bill, contain a range of crimes traditionally within the realm of state and local authorities which would become Federal crimes under the various legislative proposals.

2. STATUS

The Senate Bill contained the "D'Amato Violent Crime Control Act" which federalized all violent and drug crimes committed with a firearm which had at some point in time moved in interstate commerce.

There are also another half dozen scattered provisions federalizing crimes from participation in a criminal street gang traveling to commit spousal abuse, to various kinds of insurance fraud.

3. DEPARTMENT POSITION

Although many in the Department would like to eliminate all or almost all of the newly federalized crimes, that does not appear to be feasible. Accordingly, focus has been placed on the provision seeming the most misguided and most burdensome if taken by the Federal Government -- the federalization of almost all crimes committed with guns.

The Department and the Administration oppose the D'Amato position. With respect to other federalized crimes, it is important to note that the "Youth Handgun Safety Act" is an Administration favorite, which criminalizes handgun transfers to or possession by a minor, except in very limited circumstances.

When we want something federalized, it's an important tool which we can choose to use depending on the circumstances. When we don't want something federalized, we insist that the crimes are better handled by the state and local authorities and their substantial experience in the area.

4. JUDICIARY COMMITTEE MEMBERS INTEREST/POSITIONS

Contact: Elizabeth Fine

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Divider Title: _____

COMMUNITY POLICING/100,000 COPS

1. ISSUE STATEMENT

This is central to the Administration's crime initiative. It combines funding for 100,000 new police officers over the coming years with an expectation that the officers will be used for "community policing" efforts and that funds will only be provided to communities with a plan for maintaining the officers newly funded by this influx of Federal money.

Overall objectives are to: (1) expand and enhance community policing, (2) maximize the number of police on the street, (3) be responsive to pressing needs, especially with respect to violent crime, and (4) provide flexibility in the grant award and oversight process.

2. STATUS

Slightly different police hiring proposals are contained in the House and Senate Bills. Differences will be worked out at Conference.

3. DEPARTMENT POSITION

To accomplish the critical goal of putting 100,000 officers on our streets and to help implement community policing nationwide, the Administration strongly recommends that the Conference Committee authorize full and adequate funding for this program. Specifically, we support the Senate authorization level of \$8.9 billion, which will support hiring 100,000 officers, if the conferees also adopt the House Bill's funding-per-officer cap (which we support with waiver authority for the Attorney General in appropriate cases).

4. JUDICIARY COMMITTEE MEMBERS INTERESTS/POSITIONS

Contact: Elizabeth Fine

POLICE CORPS

1. ISSUE STATEMENT

For a number of the years the "New Democrats" have supported the notion of a "Police Corps." This has been a central DLC program for years.

The idea is to promote well-educated police officers by providing college scholarship funds for individuals committed to joining police departments after graduation. Frequently analogized to the ROTC, program participants are required to participate in police training activity during summers of their college education.

Police groups oppose the program. They feel that it wastes money on individuals who may become cops instead of providing scholarship funds for those who already are cops. They also are uncomfortable with an elitist group of "police corps" graduates in the midst of the departments.

2. STATUS

The House and Senate Bills contain police corps programs with funding of \$150 million authorized in the House Bill and \$350 million in the Senate Bill.

3. DEPARTMENT POSITION

The Department supports pilot efforts in this regard.

4. JUDICIARY COMMITTEE MEMBERS INTEREST/POSITIONS

Contact: Elizabeth Fine

POLICE OFFICERS' BILL OF RIGHTS

1. ISSUE STATEMENT

Police groups have sought, for a number of years, to create a federally mandated set of standards for the interrogation and prosecution of police officers. In addition to questions regarding the appropriateness of federalizing this set of issues, law enforcement managers are deeply concerned about the implications some of the "safeguards" would have upon the administration of police departments.

The police organizations are adamant about getting this. They have indicated a willingness to try to hold up an entire Crime Bill if there is no "Police Officers' Bill of Rights."

2. STATUS

Neither the Senate nor the House Bill contain provisions in this regard.

3. DEPARTMENT POSITION

The Department and the Administration oppose the inclusion of the Police Officers' Bill of Rights in the crime legislation currently being considered. It is unclear what position would be taken on the merits.

4. JUDICIARY COMMITTEE MEMBERS INTEREST/POSITIONS

Contact: Elizabeth Fine

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Divider Title: _____

THREE STRIKES AND YOU'RE OUT

1. ISSUE STATEMENT

o President Clinton has proposed the enactment of "three strikes and you're out" mandatory life imprisonment provisions, which target the most dangerous and incorrigible violent offenders for permanent incapacitation. This statute, intended to supplement existing sentencing and recidivist statutes is aimed at a relatively small class of violent offenders who commit and are convicted of violent offenses on three distinct occasions.

o There are critics of this proposal at both ends of the ideological spectrum. Some argue that the Administration proposal excludes too many offenders from its reach through the definitions of which crimes will apply and the "sequencing" requirement, the requirement that the statute is triggered only when there are convictions on three separate occasions.

Other critics argue that the net sweeps too broadly, requiring the incarceration of persons long after they are a danger to society, thus subjecting the society to unnecessary incarceration costs. In addition, these same critics express concern about the disproportionate effect such a proposal has on Native Americans, since the area in which a federal, as opposed to state, "3 strikes" proposal will have the most impact is within federal enclaves like Indian reservations.

2. STATUS

The Administration's proposal was incorporated into the House bill with certain amendments that we do not favor. The Senate bill incorporates "three strikes" proposals that were developed independently.

3. DEPARTMENT POSITION

The Department supports a "three strikes" formulation that reflects the essence of the President's original proposal, i.e., that is targeted to insure that truly violent repeat offenders are locked up for life.

4. JUDICIARY COMMITTEE MEMBERS INTEREST/POSITIONS

Contact: Elizabeth Fine

DEATH PENALTY

1. ISSUE STATEMENT

Because certain constitutionally-mandated safeguards are not in place, the death penalty is not, in fact, available for many Federal crimes which include the death penalty as one of the sentencing options. In addition, there are other heinous crimes for which the death penalty is not currently a sentencing option, which the President has indicated he believes should be death eligible offenses.

There remains substantial concern about the racially disparate application of the death penalty. In addition, the application of the death penalty to various offenses must be examined from a proportionality standpoint if the statute is going to withstand constitutional scrutiny.

2. STATUS

The Senate Bill creates the procedural mechanisms which would permit the death penalty to be used in all present and future death eligible offenses. It also creates a number of new death-eligible offenses, one of which is the non-homicidal use of violence in a certain drug offenses. The House Bill has a similar set of death penalty crimes and procedures.

The House Bill also includes the "Racial Justice Act," which survived on the House floor by the narrowest of margins. This provision would permit the use of a statistically based disparate impact analysis as a prima facie showing of imposition of the death penalty in a racially discriminatory manner.

3. DEPARTMENT POSITION

The Administration supports the activation of the "on the books" death penalty crimes and the proposed extensions of the death penalty as long as they are constitutional. The Department has expressed serious constitutional concerns about the non-homicidal death penalty, but has not flatly stated that it believes the proposed statute to be unconstitutional. In addition, we have some views about how to improve the procedural piece, whether it comes out of the Senate Bill or the Brooks Bill.

The Administration is determining whether there is a need for legislation to protect against racial discrimination in the imposition of the death penalty. Prosecutors are concerned that they not have to prove a negative -- that is to prove, in

the face of a prima facie determination of discrimination, that the death penalty is not being applied to the defendant for discriminatory reasons.

4. JUDICIARY COMMITTEE MEMBERS INTEREST/POSITIONS

Contact: Elizabeth Fine

REGIONAL PRISONS/TRUTH IN SENTENCING

1. ISSUE STATEMENT

Section 1341 of the Crime Bill directs the Attorney General to construct and operate at least 10 regional prisons with space at each prison for 2,500 inmates, at least 75 percent of whom must be violent state inmates or state criminal aliens convicted of a violent crime or a serious drug offense. The remaining 25 percent of the inmates would be Federal offenders.

In order to qualify for funding under this section, states would have to adopt "truth in sentencing" laws for crimes of violence that would ensure that prisoners would serve at least 85 percent of their sentences. Additionally, states would need to have sentences for firearms offenders (where death or serious bodily injury results), murderers, sex offenders, and child abuse offenders that would be at least as long as those imposed under Federal law. States would also have to adopt pretrial detention similar to that provided in the Federal system, as well as suitable recognition of the rights of victims.

Section 1341 authorizes \$600 million per fiscal years 1994-1998 to be appropriated to implement this mission.

The House Bill does not include a regional prisons plan.

2. STATUS

Much of the enthusiasm for regional prisons has died down. There is, instead, an interest in developing a grant program for states that is used to encourage states to adopt "Truth in Sentencing" policies and to make other changes in their criminal justice systems.

3. DEPARTMENT POSITION

- In order to provide additional prison capacity in the most cost effective and sensible manner, primary responsibility for managing correctional facilities for state offenders must remain with the states. Therefore, in lieu of Federally-financed, constructed and operated regional prisons, the Administration supports the creation of a Federal grant program to help states operate and/or construct state correctional facilities. Such funds could be used for state constructed and operated regional prisons, if states so chose.

- In addition, we support use of some portion of the grant funds to encourage states to adopt "truth in sentencing" policies.

4. JUDICIARY COMMITTEE MEMBERS INTERESTS/POSITIONS

Contact: Elizabeth Fine

BOOT CAMPS

1. ISSUE STATEMENT

Increased use of boot camps for young criminal offenders, at both the state and Federal level, is one of the key elements of the Administration's anti-crime plan. The Administration supports the use of a range of "alternative sanctions" and "correctional options" for youthful offenders including not only boot camps, but also electronic monitoring, weekend incarceration, home incarceration, restitution programs, vocational programs, community service, intensive supervised probation and other innovative and non-traditional alternatives. It is boot camps, however, that capture the imagination and get the most attention.

We support utilization of these as alternatives to probation as well as, in certain circumstances, incarceration. These alternatives are designed to ensure the "certainty of punishment" at the initial stages of a criminal career in the hopes of nipping it in the bud. It is, in that sense, a prevention as well as punishment oriented goal.

There is a Federal boot camp in Pennsylvania that has been running for about two years now and holds about 150 inmates for a six month program.

There has been some recent criticism of boot camps in the media claiming that they are not particularly effective. The data suggests that boot camps are slightly better than prison in terms of recidivism (but not significantly so) and are less expensive. There is less information about boot camps as alternatives to probation because they have not been widely used in that capacity. Most experts agree that whatever benefits boot camps can offer are lost if not followed up with post-release monitoring and services.

2. STATUS

The Senate and House Bills contains the following "boot camp" provisions:

a. The Senate Bill contains a Biden-sponsored \$3 billion boot camp and prisons program -- providing grants to states for boot camps and prisons for both non-violent and violent drug abusing offenders.

b. Both the House and Senate Bills include a "Certainty of Punishment" program. It was originally written by Congressman Schumer. This is a \$200 million grant program to assist states develop and run these programs for young offenders.

3. DEPARTMENT POSITION

Support use of boot camps enthusiastically as alternative to probation and prison (for non-violent). Support both Certainty of Punishment program and an additional prison grant program.

See also sheet on prisons which discusses regional prison proposal and Administration alternative proposal.

4. JUDICIARY COMMITTEE

Most, if not all, of the Committee is supportive of boot camps.

Contact: Elizabeth Fine

DRUG COURTS

1. ISSUE STATEMENT

Drug courts have proven promising and successful in a number of jurisdictions. They are currently used in at least 20 cities, including Miami, Oakland and Washington, D.C. The basic program includes an intensive supervision of the participants by the court and probation department, drug testing and treatment, and a series of graduated sanctions for failure to comply with the conditions of the program. It can be on a pre-trial diversion basis or post-plea condition of probation. The Attorney General is very supportive of the idea.

2. STATUS

DOJ has developed a grant program to assist state and local governments establish and run such drug court programs. This program is now contained in the House Crime Bill. The Bill would authorize \$200 million for each of three years.

The Senate Crime Bill has a drug courts title, but this is misleading - it is not a true drug courts authorization. It is a loosely tied collection of programs that have been in the Crime Bills in various forms for years such as the certainty of punishment boot camp program and drug treatment in state prisons program.

3. DEPARTMENT POSITION

Support our Bill and support drug courts strongly.

4. JUDICIARY COMMITTEE MEMBERS

Senator Biden may be sensitive to criticism of his "drug courts" collection but he realizes it is not the real thing and it was a cosmetic effort to include some kind of drug court program.

Contact: Elizabeth Fine

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Divider Title: _____

CRIME PREVENTION

1. ISSUE STATEMENT

Prevention programs make sense, and are a critical part of any balanced attack on the crime, violence, and drug abuse that plague our cities, towns, neighborhoods, and rural communities. However, in order to insure that these programs both have meaningful impact and are cost-effective, we must insist that they be coordinated and integrated and that we have the flexibility and tools necessary to avoid duplication and wasted effort.

2. STATUS

Among the prevention programs included in the House and/or Senate Bills which the Administration urges be included in the final legislation are:

- A. The President's Y.E.S. program (Youth Employment and Skills) which gives employment opportunities to kids in hard hit, high-crime areas, and which we believe should be funded at a level of \$1 billion;
- B. The Ounce of Prevention Council and related programs to keep schools open after hours, expand activities such as Boys' and Girls' Clubs that keep kids off the streets, and better coordinate the efforts of the Federal Government to assist communities prevent crime;
- C. Comprehensive prevention programs such as the House's Model Intensive Grant Programs and Local Partnership Act; and
- D. Innovative alternatives like Midnight Sports and Police Partnerships for Youth.

3. DEPARTMENT POSITION

The Administration's program and approach emphasizes both punishment and prevention - tough and smart. They are not mutually exclusive. We do not have to, and indeed we cannot afford to, choose between one or the other. Anyone who would refuse to prevent a crime while preferring to wait for it to happen so that they can punish the criminal can explain that choice to the victim.

To achieve this objective, the Administration strongly supports the full authorization level contained in the House Bill for prevention programs.

4. JUDICIARY COMMITTEE MEMBERS INTERESTS/POSITIONS

5. REFERENCE MATERIALS

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Divider Title: _____

JUVENILE CRIME/TREATING CHILDREN AS ADULTS

1. ISSUE STATEMENT

Under current law, for a juvenile to be tried in Federal court, the Attorney General must certify either that the state lacks facilities, authority or a willingness to try the juvenile, or in the case of certain Federal drug or violence crimes, that there is a substantial Federal interest in the case. That certification will permit a delinquency proceeding in Federal court.

If certification has taken place and the juvenile is at least 15 years old, and the offense involved is a crime of violence or one of various applicable drug offenses, the United States may seek to have the juvenile tried as an adult on the ground that such an action would be in the interest of justice.

A number of provisions in the Senate and House Bills would bring many more juveniles into the adult, Federal system in an effort to deal with increasing violence among those under 18. These provisions change the minimum age at which minors should be tried as adults and the circumstances under which that should happen. The Senate Bill also requires the automatic trial of certain juveniles as adults because of the offense committed.

The Judicial Conference has informally expressed substantial concern about the ability of the Federal court system and the Federal prisons to deal with juveniles and a view that these provisions are deeply problematic.

2. STATUS

Sen. Carol Mosely-Braun won insertion in the Crime Bill of a provision requiring that all those down to age 13 who commit certain serious Federal crimes with a gun, be tried as adults. The House Bill would lower the minimum age for transfer for adult prosecution to 13, in relation to juveniles charged with certain offenses. The House provision is not mandatory.

The Crime Bill also contains the "Youth Handgun Safety Act" which prohibits the sale of handguns to minors and the possession of handguns by minors except in certain approved circumstances.

3. DEPARTMENT POSITION

The Department and Administration support the reduction of the age at which one can be certified to be tried as an adult from 15 to 13, but oppose, at either age, a requirement that all minors committing certain Federal crimes must be tried as adults.

The Department and Administration support the Youth Handgun Safety Act, despite the concerns of the Judicial Conference.

4. JUDICIARY COMMITTEE MEMBERS INTEREST/POSITIONS

Contact: Elizabeth Fine

CRIMINAL STREET GANGS

1. ISSUE STATEMENT

As in so many other areas, some are looking for a Federal solution, or at least a Federal helping hand, in dealing with gang violence. With each proposal for Federal help comes the countervailing concern about the federalization of crime. There has also been some media concern expressed about the reach of "gang" statutes, suggesting that literal interpretation could lead to the inclusion of organizations like neighborhood or community clubs and organizations, well beyond anything traditionally thought of as a street gang.

2. STATUS

Gang oriented grant money, the "Youth Handgun Safety Act" (which prohibits juvenile handgun ownership except in very limited circumstances), enhanced penalties for certain offenses, and increased authority for the prosecution of juveniles as adults are all Crime Bill provisions aimed at dealing with gangs. Perhaps the most expansive of the gang related provisions is the creation of Federal street gang offenses.

In a RICO like structure, this provisions of the Senate Bill defines a series of "predicate gang crimes" and imposes severe penalties on those who "participate in a criminal street gang" or commit "predicate gang crimes." Debate regarding this proposal extends both into the realm of federalization of crime as well as into the mandatory minimum sentencing area since the penalties for a number of the gang offenses carry mandatory minimums.

3. DEPARTMENT POSITION

The Department and Administration believe that strong action must be taken to combat gang crimes and youth violence in our country. We support provisions in the Senate and House Bills that strengthen Federal prosecution of youth gangs and juvenile offenders; authorization for funding for more prosecutors for gang prosecutions; the creation of a new juvenile drug trafficking and gang prevention grant program; the authority to transfer juveniles to adult prosecution down to age 13; and the Youth Handgun Safety Act.

4. JUDICIARY COMMITTEE MEMBERS INTEREST/POSITIONS

Contact: Elizabeth Fine

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126

Divider Title: _____

VIOLENCE AGAINST WOMEN

1. ISSUE STATEMENT

The Senate and House Crime Bills contain a wide range of provisions to strengthen the response under Federal law to crimes of sexual violence and domestic violence, and greatly increases Federal assistance for state and local efforts to control and prevent crimes that particularly affect women, including sexual assaults, stalking, and domestic violence.

2. STATUS

Differences and duplication between the Violence Against Women Act provision in the House and Senate Bills will be worked out at Conference.

3. DEPARTMENT POSITION

The Administration strongly supports enactment of the Violence Against Women Act. We prefer certain key elements of the Senate version of that legislation, including among others, a civil rights remedy for victims of gender-motivated crimes of violence. We also support some aspects of the House Bill including some grant program formulations.

In conference, we believe that conforming changes can eliminate duplication and improve coordination and integration of the many new funding programs proposed in this area. Above all, we believe it is important that the Bill take a comprehensive, cost-beneficial and well-coordinated approach to this escalating crime problem.

4. JUDICIARY COMMITTEE MEMBERS INTERESTS/POSITIONS

Contact: Elizabeth Fine

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127

Divider Title: _____

BYRNE GRANT FUNDING

1. ISSUE STATEMENT

The Edward Byrne Memorial Grant Program (named after a slain New York City police officer) is run by the Bureau of Justice Assistance and provides Federal funding support of state and local law enforcement. It has two components: formula and discretionary. Under the formula grant component every state receives a percentage of the appropriated funds as compared to the discretionary fund which dispenses grants on a competitive basis. The formula program is authorized at \$1 billion but has been historically appropriated at between \$350 and \$400. The discretionary is authorized at \$50 million.

In the Administration's budget submission for FY 95, the formula funds are zeroed out from FY 94's \$358 million. The rationale was mostly a budgetary one but the argument was made that Crime Bill funding, including \$1.4 billion increase for crime overall in the FY 95 budget, would make it up. Also, some \$78 million of \$150 million in FY 94 supplemental has started to flow for new community policing cops. However, a unified local law enforcement voice of opposition has arisen as has considerable Congressional criticism. The criticisms include: first, the Crime Bill money is speculative while this is real money going to legitimate and successful law enforcement purposes; second, the Crime Bill money will not fund the same things as this program; and third, cutting this makes planning for next year impossible.

After receiving comments from governors, mayors, and law enforcement officials from around the country, the Administration reassessed its position regarding the Byrne Memorial Formula Grant Program. Instead of eliminating the Byrne Formula Grant from the President's FY 95 budget, the Administration now supports restoring \$125 million in formula grant allocations to states.

The Byrne Formula Grant currently funds approximately 1,000 multijurisdictional drug task forces throughout the nation. The amount of restored funding will be sufficient to cover the Federal share of all of these task forces. However, states will still have the flexibility to spend the restored funding on priority matters of their own choosing.

The Administration will pay for the restoration of Byrne Formula Grant funding by making three reallocations: \$50 million will come from a reduction in the proposed increase in discretionary Byrne Grant funding; an additional \$25 million will come from a reduction in the proposed \$69 million increase in funding for the Office of Juvenile Justice and Delinquency

Prevention; and \$50 will be provided by funds from the Crime Bill.

2. STATUS

Subject to appropriations process. Likelihood is that all or part of the funding will be restored.

3. DEPARTMENT POSITION

DOJ supports partial restoration of funding.

4. JUDICIARY COMMITTEE MEMBERS

Senator Biden has said publicly that the Byrne funding will be restored.

Contact: Elizabeth Fine

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128

Divider Title: _____

HABEAS CORPUS

1. ISSUE STATEMENT

This has been an extremely contentious issue between the left and the right (and basically Reps and Dems) for years. It was one of the reasons for the death of the conference report of the Crime Bill last Congress. It deals primarily with Federal habeas review of state capital convictions but there are aspects of it that apply to all habeas petitions including collateral review of Federal convictions. The real world problem is how to balance interests of swift justice and finality with fairness and accuracy. In capital litigation, it is not uncommon for cases to drag on for 10 or 15 years. At the same time, the reversal rate of state capital convictions by Federal habeas courts is more than 40%. Although the Supreme Court has done much to restrict habeas review in recent years there is still a view (pushed strongly by state AGs and local DAs) to restrict it legislatively. Similarly, others feel very strongly that several recent Court opinions should be overturned to assure credibility of habeas process.

One major issue is retroactivity - what law shall apply on habeas review to a case that became "final" years ago. In Teague v. Lane the Supreme Court held that "new rules" of law would not be applied retroactively on habeas review. It went on to define a "new rule" broadly, leaving little to be considered an "old rule" of developing case law that could be applied retroactively. Efforts to roll back this case in last Congress' Conference Report became the lightening rod for habeas opponents.

Qualifications of trial counsel: Much of the reason for the high reversal rate is the poor representation at trial. Democrat Bills have required rigorous trial counsel performance and qualifications standards for lawyers taking these cases at both the trial and appellate levels. Republicans generally take the view that the constitutional standard of ineffective assistance should suffice. Some versions of these standards are arguably extremely restrictive and hard to satisfy.

Three recent cases: Since the Conference Report last year the Court has decided three additional cases that some people want to overturn. These include: Herrera regarding limits on bringing habeas claims based solely on assertions of actual factual innocence rather than constitutional error; Brecht that set a lower of two possible standards of habeas review for harmless error; and Tamaya-Reyes establishing tough procedural default standards for defendants on habeas review.

Timing: All the proposals have time limits for filing petitions - vary from 90 days to a year.

Successive petitions: Under what conditions may a second or successive petition be brought. Must the claim involve reliability of verdict alone or can appropriateness of death sentence also be a ground.

Full and fair adjudication: This has been conservative notion for years and most recently identified with Congressman Hyde. Basically, it says that no habeas petition can even be heard if the claim was subject to a "full and fair" consideration at the state level - whether the result was correct or not. Many consider this an utter vitiation of habeas review.

The Powell Commission version is one many conservatives like and was the result of former Supreme Court Justice Powell's work several years ago. It has several elements, and lacks others, that makes it unacceptable to moderate Dems.

2. STATUS

Neither the House nor the Senate Bill include habeas reform measures. An amendment to strike habeas provisions in the House Crime Bill won by a sizeable margin when the Bill was on the floor.

3. DEPARTMENT POSITION

Administration supports habeas reform to ensure finality and fairness -- one bite at apple. We worked with Biden and DAs and AGs to get support for Biden version and we support that.

4. JUDICIARY COMMITTEE

Strong feelings on both sides of this issue: Hatch and Thurmond and Specter are very conservative on it and Metzenbaum and Kennedy the opposite.

Contact: Elizabeth Fine

National Performance Review
(NPR)

NATIONAL PERFORMANCE REVIEW

1. ISSUE STATEMENT

The National Performance Review (NPR) is a major management reform initiative intended to identify ways to make the government work better and cost less. The NPR report, issued by the Vice President last September, contained 384 major recommendations covering 27 Federal agencies and 14 government systems, such as procurement and budgeting. Sixteen of these recommendations directly related to the Department of Justice. For example, the NPR report recommended consolidating several Federal investigative agencies (or certain of their functions), improving border management, changing the organization and management of the Immigration and Naturalization Service, and revising the Department's debt collection procedures.

The President has issued a series of executive orders and memoranda to implement the NPR report. For example, Executive Order 12861 requires each executive department and agency to eliminate by 1996 not less than 50 percent of its civilian internal management regulations that are not required by law. Other executive orders and memoranda deal with performance standards, improving customer service, and establishing a partnership between senior Government management and Federal unions. The Department is subject to all of these requirements and has established a NPR working group to coordinate the Department's response.

The most important of these executive orders, at least for the Department's immediate purposes, is Executive Order 12839, which calls on the Government to effectuate the NPR's recommendation to reduce the executive branch civil workforce by not less than 12 percent by the close of FY 1999. Following the President's lead, the Congress, in passing the Federal Workplace Restructuring Act, recently enacted provisions requiring a 272,900 FTE government-wide reduction in the Executive branch civil workforce. On average, achieving this reduction means a further government-wide reduction of 8 percent from the personnel levels in the President's FY 1995 Budget. However, neither the President's Executive Order nor this legislation requires these reductions to be applied uniformly to each agency. Indeed, it is anticipated that between now and FY 1999, the Department will grow overall in response to the need for more prisons and the new law enforcement responsibilities established by the Crime Bill. Under the NPR, however, the Department will be expected to minimize its requests for new resources by improving its usage of existing resources.

2. STATUS

The Office of Management and Budget has asked all agencies to submit a streamlining plan designed to achieve the goals of Executive Order 12839 and the buyout legislation, by June 30,

1994. Subject to a final determination by the Attorney General, the Department will likely be submitting only an interim report on that day because of the need to assess further the impact of the Crime Bill and other Presidential priorities on the Department's resource needs.

3. DEPARTMENT POSITION

By June 10, 1994, each Department component is required to submit a streamlining plan that will describe how the component would respond were it required to absorb reductions in personnel corresponding to 4 and 8 percent of its FY 1995 personnel totals. In preparing these plans, the components are required to attempt to absorb such reductions first in support personnel, and to suggest reductions in operational personnel (e.g., attorneys, agents, officers) only where absolutely necessary. A working group appointed by the Deputy Attorney General is responsible for reviewing the component plans and developing a draft of the interim streamlining report that is to be filed on June 30, 1994.

A lengthier review of the component's streamlining plans will be performed in July and August during consideration of the component's FY 1996 budget request. Some of the issues raised by the component's streamlining plans will also be considered in long-term studies, such as the study Director Freeh is conducting on Department agency field operations.

4. JUDICIARY COMMITTEE MEMBERS INTEREST/POSITIONS

Because the NPR implicates all Department activities, it is possible that a member will be concerned as to how streamlining or other NPR requirements will affect particular components in the Department. However, as the Department has not yet solidified its streamlining plans, there is no good way to address these concerns except to say that the Department views the NPR as being compatible with its efforts to maximize the quality and efficiency of its law enforcement operations.

5. REFERENCE MATERIALS

Attached are copies of recent memoranda issued by the Attorney General and the Deputy Attorney General regarding streamlining. Also attached is a report reflecting the status, as of April 8, 1994, of the Department's implementation of those NPR recommendations that relate to its operations.



Office of the Attorney General
Washington, D. C. 20530

May 18, 1994

MEMORANDUM

To: Heads of Department Components

From: The Attorney General

Subject: Development of a Department-Wide Streamlining Plan

Executive Order 12839 calls on the Federal Government to effectuate the National Performance Review's recommendation to reduce the executive branch civil workforce by not less than 12 percent by the close of FY 1999. The order instructs Federal agencies to trim administrative personnel, simplify internal organizations and administrative processes, and eliminate unnecessary layers of management and bureaucracy. Following the President's lead, the Congress, in passing the Federal Workplace Restructuring Act (the buyout legislation), recently enacted provisions requiring a 272,900 FTE government-wide reduction in the executive branch civil work force. On average, achieving this reduction by FY 1999 means a further government-wide reduction of 8 percent from the personnel levels in the FY 1995 Budget. The Office of Management and Budget has asked all agencies to submit a streamlining plan designed to achieve the goals of EO 12839 and the buyout legislation, by June 30, 1994.

Neither the President's Executive Order nor this legislation requires these reductions to be applied uniformly to each agency. Instead, the President has asked us to take the sensible but challenging course of streamlining our operations and reducing our workforce while enhancing, rather than diminishing, our capability to perform our missions. I firmly believe that with careful and creative planning this goal is fully attainable. Moreover, with more difficult budgets expected in future years, we simply must review our missions, structure, processes, and operations with the goal of incorporating every possible efficiency and improvement without hurting, and ideally improving, our core functions.

I believe we should streamline according to an operating plan, not just a number. I am committed to helping you streamline according to your needs. If we are to accomplish this critical task, you, as the head of your component, must take the lead in reshaping the organization, personnel, processes, operations, and missions of your component.

It is critical for the Department's streamlining plan to be developed from the bottom up, reflecting the combined wisdom of all of our components and their employees. Towards this end, I am asking each component to submit to the Office of Policy Development, which will be managing this process under the oversight of the Deputy Attorney General, by no later than June 10, 1994 a component streamlining plan. As the accompanying instructions explain in greater detail, this plan should address the ways in which your component will improve its efficiency and productivity by reducing administrative personnel, eliminating unnecessary management structures, and streamlining operations. In arriving at your plan, I would ask you to keep in mind the following issues and questions:

- *Alternative Reduction Targets.* Please note that we are asking each component to include in its plan its proposed responses to each of two alternative personnel reduction targets. We are asking this because we do not now know what percentage reduction the Department will be asked to absorb.
- *Mission Redefinition.* Does your plan identify non-core missions or functions that could be eliminated to increase the resources available to support the Administration's and your component's priorities?
- *Administrative Processes.* Does your plan streamline your management and administrative practices to eliminate unnecessary work and layers of review, and to save work and money that could be better dedicated to your core missions?
- *Administrative Services.* Does your plan identify excess management and administrative personnel who are not being fully utilized or are performing functions that do not substantially further your core missions? Are agents or other operational personnel performing administrative functions? Are there administrative services that could be effectively provided by outside contractors or are there services currently being provided by contractors that should be internalized?
- *Headquarters and Field Structures.* Does your plan establish an appropriate level of headquarters staff and does it eliminate unnecessary field offices and regional management structures?
- *Long-term Goals.* Does your plan respond to the President's priorities? Does it respond to the President's direction to reduce the number of management and administrative positions and to increase the supervisory ratio between managers and employees?

- ° *Integration with 1996 Budget.* Remember to relate your streamlining plan with your 1996 Budget development.

As you and your managers design a streamlining plan for your operations, I would also ask you to keep firmly in mind the President's and my commitment to accomplish this task with careful attention and sensitivity to the human issues involved. In short, we must obtain the benefits of streamlining without undercutting the employee morale which is so essential to the accomplishment of our work. To assist you in maintaining this focus, I have asked the Justice Management Division to provide you with a summary of the various personnel issues that are implicated by the streamlining process.

I ask your full participation and cooperation in this important effort. Within the next week, you will be contacted to schedule a meeting with the senior staff that have been designated to facilitate this process. At that meeting please be prepared to discuss creative ways to streamline your operations and to propose policies and procedures that the Department should be examining from a broader perspective.

I urge you personally to review and approve your component's streamlining plan to ensure that it fully meets the President's expectations, and ask you to take whatever steps are necessary to ensure that your plan is completed by the June 10 deadline. My office, the Deputy's office, and the working group established for this purpose will do whatever we can to support you in these efforts.



Office of the Deputy Attorney General

Washington, D.C. 20530

May 13, 1994

MEMORANDUM

To: Heads of Department Components

From: The Deputy Attorney General 

Subject: Instructions for Developing a Component Streamlining Plan

I. The Plan

As is set forth in the accompanying memorandum from the Attorney General, by June 10, 1994, your component should submit a proposed streamlining plan to the Office of Policy Development. The plan should describe how your component would respond were it required to absorb the two alternative personnel reduction targets that are contained in Attachment A. These figures have been calculated by multiplying a range of percentages (4% and 8%) against your FY 1995 FTE totals.

Attaining Personnel Reduction Targets. In your draft streamlining plan, you should describe, with narrative detail and supporting tables, how your component would absorb the potential loss of positions under each of the two proposed scenarios through FY 1999. Your component's plan should include specific steps that would be taken to create leaner structures, reduce layers of bureaucracy, flatten management structures, and stimulate high performance practices. Attachment B contains a list of possible streamlining actions that have been proposed by the President's Management Council and the Office of Management and Budget.

In describing how your component would absorb various levels of personnel reductions, it is important that you adhere the following hierarchy:

- ° **NPR Targeted Personnel.** Personnel reductions should be absorbed first in those personnel classifications targeted by the National Performance Review: headquarters staff, supervisors, personnel specialists, budget specialists, acquisition specialists and accountants and auditors. Definitions of these personnel categories are contained in Attachment C. Your plan

should take into account other personnel (e.g. agents) who are performing the functions of these targeted categories.

- ° **Other Support Staff.** If it is impossible for you to absorb the personnel reduction target under a scenario in the areas targeted by NPR, you should then document how you would reduce staffing in other support personnel.
- ° **Operational Personnel.** You should propose reductions in positions directly involved in operations -- line attorneys and prosecutors, agents, officers, etc. -- only where sufficient cuts cannot be obtained in the job classifications targeted by NPR and in other support personnel categories. If such operational cuts are proposed, your component should identify its lowest priority functions and explain how the proposed reductions in operational staff would be absorbed in those functions.

Your component's streamlining plan should document, in specific terms, how you would reduce staffing in the designated areas or why you cannot reduce such staffing. Further, it should explain how you would reorganize your structures, operations and procedures to minimize, if not eliminate, any negative impact that these reductions might otherwise have on your operations. The plan should also include the specific steps that would be taken to effectuate these personnel reductions (e.g., attrition, buyouts, hiring freezes, RIFs, position reclassifications). The assumptions incorporated into your component's plan should be reasonable and the goals set forth therein should be attainable in light of those assumptions.

Although to comply with the President's streamlining directive you should focus on the targeted personnel categories, we urge that you do this in the context of an evaluation of your component's mission, core functions, processes, systems, and operations. You should consider how your component should be structured and operate to fulfill its core missions in the 1990's and beyond. You should, for example, evaluate field operations to determine what, if any, efficiencies and economies might be achieved by eliminating or augmenting them. Similarly, you might contract out certain services and flatten professional supervision and administrative management layers.¹

¹ This streamlining effort will be augmented by a somewhat longer range examination of the Department's law enforcement field structure. That effort will be undertaken by the Director of Investigative Agency Policies and will be coordinated with the larger streamlining process. If your component falls under the jurisdiction of the DIAP and, thus, is involved with that effort, you are, nonetheless, asked to participate fully in this process as well. Any field office reductions you propose in this effort to meet the two alternative reduction targets will be relevant to both of these efforts.

Summary. Please prepare an executive summary of your plan. That summary should refer to and be followed by two sets of charts that should be patterned on the two sample charts contained in Attachment D. Each set of charts should correspond to one of the two personnel reduction scenarios, that is, 4% and 8% of FY 1995 FTEs.

II. The Working Structure for This Project

Department Working Group. The project of developing component streamlining plans will be managed by the Office of Policy Development, under my oversight. Fran Allegra, Counsel to the Associate Attorney General, who began working on this project with the former ASG and with Sam Dubbin, Deputy Assistant Attorney General, will manage the streamlining effort on an operational basis and lead a working group with interest, experience, and/or expertise in the President's streamlining directive and management issues generally. Fran and others in this group will be available at all times to work with you on overarching or specific matters relating to the streamlining effort. A list of the group will be circulated shortly.

Component Leadership. You may, of course, designate whomever you like to be responsible for the direction and progress of this project within your component, although we very much expect you to remain integrally involved and to approve personally. We ask that you designate someone sufficiently senior so that this project is taken seriously and the job is done thoughtfully and completely.

Component Meetings. We will schedule a meeting with you and representatives from your component to discuss all aspects of this project, including any questions you have, the specific streamlining proposals suggested in Attachment B and a list of suggestions targeted to your practices drawn from information developed by JMD during prior budget reviews. A list of the latter proposals will be provided to you prior to the meeting. You should be prepared to address these proposals in your streamlining plan. At this meeting, we will also discuss any proposals that you believe that the Department should adopt to assist your component in streamlining its operations.

The Appendix. By June 1, please provide OPD with a separately bound appendix, to include:

- (i) organizational charts reflecting the entire management structure for each component and each sub-component thereof (e.g., the Office of Management Programs in the Civil Division);
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- (ii) statistics on the numbers and ratios of lawyers, agents or officers to support staff and on the numbers and ratio of supervisors to employees (for each organization identified in (i));
- (iii) a complete listing, including addresses and staffing patterns (see (ii) above) on duty at all field locations in your organization;
- (iv) information on major contracts that have been let to obtain services in the areas targeted by NPR;
- (v) budget information on the amount of expenses incurred for these categories: travel, automated litigation support, automated legal research, and internal and outside training;
- (vi) historical attrition rates for operational and support staff;
- (vii) statistics on persons eligible for buyouts.

The Justice Management Division will provide the head of your administrative component with additional instructions on the contents of the Appendix.

Additional Materials. We will also be assembling and reviewing, with an eye towards identifying other practical suggestions, several sources of information to assist in this effort. Some may require your comments, and, we will supply them as soon as possible. They will include all management studies on Department components that have recently been conducted by JMD, the Inspector General, the General Accounting Office, or other respected private or governmental entities. We would appreciate your providing us, as soon as possible, with any such studies of your component that you might have.

Evaluation and Synthesis. Your streamlining plan will be evaluated in light of the appendix material, the information we develop through our own reviews and surveys, and any additional information that we request from your component. If necessary, we will schedule an additional meeting to discuss your streamlining plan.

* * * * *

Please do not hesitate to contact Eldie Acheson, Sam Dubbin, or Fran Allegra if you have questions about this process or comments on how to improve the Department's productivity. We thank you in advance for all your help on this project and look forward to working closely with you to ensure that your component's plan represents a thoughtful and comprehensive response to the President's call for streamlining.

DEPARTMENT OF JUSTICE
NATIONAL PERFORMANCE REVIEW IMPLEMENTATION
STATUS REPORT: APRIL 8, 1994

DOJ	SUBJECT	STATUS NARRATIVE	STATUS CODE
DOJ01	Improve the Coordination and Structure of Federal Law Enforcement Agencies. 1. The President should issue an executive order establishing the position of Director of Law Enforcement (DLE), modeled after the Director of Central Intelligence (DCI) 2. The President should issue an executive order to establish an Executive Law Enforcement Council (ELEC) chaired by the DLE. 3. The Administration should initiate a realignment of federal law enforcement as follows: Because of the enormous complexities involved, the Attorney General should decide after hearing from all affected parties and former officials who participated in prior efforts, whether an actual merger of the DEA into the FBI is appropriate. Whatever the decision on a merger per se, the NPR recommends major structural changes to integrate drug law enforcement efforts of DEA and FBI. After successful accomplishment, the Attorney General and the Secretary of the Treasury will move forward to combining the enforcement functions of the BATF into the FBI.	1. On hold pending report. 2. On hold pending report. 3. DOJ has established the Office of Investigative Agency Policies (OIAP), headed by a Director of Investigative Agency Policies (DIAP) (FBI Director Louis J. Freeh). OIAP has begun to make major structural changes to integrate drug enforcement efforts of DEA and FBI. With respect to other issues, there have not been any Executive Orders.	4-On hold 4-On hold 10-In progress, but no schedule established

DOJ02	Improve Border Management The President should direct the Attorney General and the Secretary of Treasury to improve significantly, by January 1, 1996, border operations of the Immigration and Naturalization Service (INS) and the U.S. Customs Service (Customs).	INS and Customs are developing a joint strategic and operational plan to effect border improvements in 5 major areas under auspices of OMB, DOJ, and Treasury.	6-Making expected progress
DOJ03	Redirect and Better Coordinate Resources Dedicated to the Interdiction of Drugs 1. The President should issue an executive order to make the Director of Law Enforcement (DLE) responsible for drug interdiction operations' appropriations. The newly created position of DLE should be responsible for drug interdiction operations appropriations. (See TRE01 or DOJ01) 2. The newly created Executive Law Enforcement Council (ELEC) should review existing interdiction programs to determine their overall benefit to the national drug enforcement strategy (See TRE01 or DOJ01) The ELEC should provide recommendations to the DLE about any changes in deployment of resources which are necessary to better implement the national drug enforcement strategy. 3. The ELEC should recommend eliminating the P-3 program as part of its review of interdiction programs.	1. On hold pending report. 2. On hold pending report. 3. On hold pending report.	4-On hold 4-On hold 4-On hold

DOJ04	Improve the Department of Justice Debt Collection Efforts 1. The Federal Debt Recovery Act should authorize DOJ to use private debt collection counsel in all districts in which using private counsel would have a beneficial effect on debt collection litigation and collection efforts. 2. DOJ should be authorized to retain up to 1 percent or \$5,000 (whichever is less) per debt collection case for the DOJ Debt Collection Activity Fund, to pay case related costs such as asset and debtor investigations. 3. DOJ should be authorized to credit to the DOJ Working Capital Fund for fiscal year 1994 and thereafter, up to three percent of all amounts collected pursuant to DOJ civil debt collection litigation activities to be used only for paying the costs of processing and tracking such litigation.	1. Recent legislation extended the ability to use private debt collection counsel in 5 additional Federal districts. (From 10 to 15) 2. P.L. 103-121 authorized DOJ to retain three percent of recoveries in civil debt collection cases, to pay for litigation costs such as asset investigations, as well as to enhance case processing and case tracking. The legislation provides for the funds to be distributed through the DOJ Working Capital Fund. 3. See answer to DOJ04.02	6-Making expected progress 9-Completed 9-Completed
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Improve the Bureau of Prison
Education, Job Training and Financial
Responsibilities Programs

1. DOJ should facilitate attainment of a GED degree among inmates working in BOP labor programs.

2. BOP should develop additional markets and products for UNICOR (Federal Prison Industries).

3. BOP should expand use of minimum security prison labor.

4. BOP should charge a nominal user fee for prison health care.

1. BOP does not allow inmates to progress to higher paying jobs without first obtaining their GED. BOP is planning to increase the number of 1/2 day work & education programs offered at prisons.

2. BOP continues to explore additional markets and products for UNICOR. For example, it is establishing an NPR laboratory to test recycling as a possible new industry for federal inmates.

3. The number of inmates in public works programs supporting federal agencies grew from 1992 to 1993 by nearly 40% (to 581 inmates). Legislative authority is required to expand community service initiatives beyond federal projects.

DOJ prepared language for H.R. 3400 required to permit BOP to expand community service initiatives beyond federal projects, but it was dropped out of legislation.

4. Statutory language was prepared by DOJ, but was dropped from H.R. 3400

6-Making expected progress

6-Making expected progress

6-Making expected progress

4-On hold

**Improve Management of Federal Assets
Targeted for Disposition**

1. The Department of the Treasury and the Department of Justice (DOJ) should oversee the implementation of memoranda of understanding associated with Treasury's new Asset Forfeiture Fund.

2. DOJ should change its policies to allow all Asset Forfeiture Fund's administrative costs to be paid from asset sales receipts. This would exclude salaries for Federal personnel.

3. DOJ and the Treasury should follow-up on the results of the Office of Management and Budget's (OMB's) recently initiated study on the magnitude of the government-wide asset disposition problems.

1. DOJ and Treasury are meeting and developing memoranda of understanding. The transition to a two fund system has been smooth.

2. The President's FY 1995 budget requests that up to \$8 million from DOJ's Assets Forfeiture Fund be used to fund administrative costs of the U.S. Marshals Service's Seized Asset Program. The Marshals Service's base allocation would be reduced by this amount.

3. DOJ and Treasury are discussing ways to improve asset disposition. GAO has also met with DOJ and Treasury to discuss this issue.

6-Making
expected
progress

10-In
progress, but
no schedule
established.

6-Making
expected
progress

Reduce Duplication of Drug Intelligence Systems and Improve Computer Security

1. The Director of Law Enforcement (DLE) should manage a national law enforcement counter-narcotics program.

2. The DLE should evaluate and reduce the number of drug intelligence centers and systems to minimize unnecessary duplication.

3. Legislation should be enacted to eliminate the National Drug Intelligence Center (NDIC) and enhance the El Paso Intelligence Center's capacity to meet current strategic mission needs.

4. The DLE should coordinate the sharing of drug intelligence information among federal, state and local law enforcement agencies.

5. The DLE should evaluate and improve the security and privacy of drug intelligence systems and information management systems.

6. The DLE should develop incentives to promote intelligence data sharing among agencies.

1. On hold pending report.

2. On hold pending report.

In DOJ, OIAP has taken steps to coordinate drug intelligence and eliminate unnecessary duplication.

3. DOJ understands that this recommendation will not go forward.

4. On hold pending report.

OIAP has ordered FBI and DEA to create a common drug database, has taken steps to ensure coordination between EPIC and NDIC, and has begun discussions with Treasury on this issue.

5. On hold pending report.

6. See status of DOJ07.04 above.

4-On hold

4-On hold

4-On hold

4-On hold

4-On hold

Reinvent INS Organization and Management

1. The Commissioner of the Immigration and Naturalization Service (INS) should develop a comprehensive vision statement for the INS for the next five years. It should specifically include coordination with the U.S. Customs Service to improve border management. (See DOJ and TRE 02)

2. The INS Commissioner through the Attorney General should submit to the President a five-year plan for achieving the overall INS mission and an interagency agreement for resolving immigration issues.

3. The INS Commissioner should restructure the organization to better meet its responsibilities.

4. The INS Commissioner should issue strategic planning guidance which includes appropriate performance standards and output measures.

1. A new comprehensive mission statement is being developed as part of development of the INS strategic plan. The INS is developing goals, objectives, and strategies for issues raised by external stakeholders. Executive decisions on final recommendations are expected in May.

2. There is a five year plan for the Administration's recent immigration initiatives, keyed to budget increases ("1994 Immigration Initiative"). It will be refined as the mission statement and strategic plan are developed further, as will an interagency mechanism for resolving immigration issues.

3. DOJ submitted reorganization to Congress through OMB on February 1, 1994. House approval has been received; Senate approval is expected soon.

4. INS Strategic planning process was approved in 1993. The plan and performance standards and measures are being developed. See DOJ 8.01.

6-Making expected progress

6-Making expected progress

6-Making expected progress

6-Making expected progress

**Make The Department of Justice Operate
More Effectively as the U.S.
Government Law Firm**

1. DOJ should develop a department-wide case management system capable of tracking the status of matters referred to the department and the total number of staff in the litigating organizations working on them.

2. DOJ should review duplication of administrative and support services and eliminate duplication of services and overlapping authorities.

3. DOJ should establish temporary 12-month details between headquarters and U.S. Attorneys' offices.

4. DOJ should include representatives from both headquarters legal divisions and U.S. Attorneys' offices in department litigation working groups.

5. DOJ should ascertain client satisfaction. DOJ should develop a process to measure its agency clients' satisfaction with DOJ legal representation and inform the Attorney General of problems that may exist in the relationship.

1. A "one-identifier" case numbering system is now in place and will track DOJ caseloads. Individual components have separate case management systems. DOJ is in the process of developing a departmental case management system.

2. The Department's Streamlining Plan calls for such a review.

3. Several field personnel are now on detail to headquarters and other components, such as Criminal Division and representatives of HQ Components (Tax and Criminal) are serving extended details in USA offices.

4. Civil Division attorneys have been made part of the Affirmative Civil Enforcement Working group. Initiative related to Violent Crime and Health Care Fraud include USA/DOJ representation, as do working groups related to Civil Justice Reform.

5. Action on this recommendation is being addressed as part of the department's overall customer service initiative. Client satisfaction measurement due to be completed by late August.

10-In progress but no schedule established

10-In progress but no schedule established

10-In progress but no schedule established

10-In progress but no schedule established

6-Making expected progress

DOJ09 con't	6. DOJ should encourage its federal agency clients to avail themselves of Special Assistant United States Attorney status.	6. The program is widely used, and is part of USA orientation. SBA, HUD, HHS, Agriculture and Transportation are among 17 client agencies using special attorney status. At a recent meeting at OMB, agencies including ones who had previously expressed concern and expressed satisfaction with the SAUSA program.	6 - Making expected progress
DOJ10	Improve White Collar Fraud Civil Enforcement 1. The Attorney General should emphasize civil fraud recovery as a national priority. 2. DOJ should lead an interagency health care fraud prevention team. 3. Legislation should be enacted to authorize DOJ to retain a percentage of U.S. Attorneys' offices civil fraud recoveries to pay for the cost of creating civil fraud recovery teams within those offices. 4. DOJ should include attorneys from DOJ's Civil Division in the White collar fraud civil enforcement working group.	1. Attorney General has established this as a priority. 2. DOJ has established an executive level health care fraud group. 3. Legislation passed in FY'94 Appropriation Bill. 4. Completed.	9-Completed 9-Completed 9-Completed 9-Completed

DOJ11	Reduce the Duplication of Law Enforcement Training Facilities 1. The Director of Law Enforcement (DLE) should establish a senior interagency training advisory committee. 2. The ELEC should establish statutory guidelines for the development of new or expanded training facilities. 3. The DLE should develop FLETC and the FBI Academy training facilities to further accommodate multi-agency training needs.	1. On hold pending report. OIAP is reviewing training within DOJ. 2. On hold pending report. 3. On hold pending report.	4-On hold 4-on hold 4-On hold
DOJ12	Streamline Background Investigations for Federal Employees 1. OPM should decentralize authority to conduct background investigations to federal departments and agencies. 2. OPM should incorporate client requirements in the background investigation process. 3. OPM should cut costs government-wide by relaxing reinvestigation requirements.	1. No action pending report. (Not a DOJ responsibility) 2. No action pending report. (Not a DOJ responsibility) 3. No action pending report. (Not a DOJ responsibility)	1-No action yet 1-No action yet 1-No action yet

DOJ12 Cont	4. DOJ should reduce costs by revising reinvestigation requirements. 5. OPM should encourage the government-wide sharing of background investigation information.	4. On hold, pending review of security policy. 5. No action yet. (Not a DOJ responsibility)	4 - On hold 1-No action yet
DOJ13	Adjust Civil Monetary Penalties to the Inflation Index 1. OMB should institute a one-time "catch-up" inflation adjustment for all CMPs. 2. OMB should revise all CMPs every four years to reflect the effect of inflation.	1. In H.R. 3400, passed the House 11/22/93. 2. In H.R. 3400, passed the House 11/22/93.	6-Making expected progress 6-Making expected progress
DOJ14	Improve Federal Courthouse Security 1. GSA, Justice and the Judiciary should strengthen their coordination to ensure adequate judicial security and to avoid the unnecessary cost to U.S. Marshals service.	USMS and AOUSC are working to develop legislative language to create a no year account for security.	6-Making expected progress
DOJ15	Improve the Professionalism of the U.S. Marshals Service Legislation should be enacted to eliminate the requirement for Presidential appointment of U.S. Marshals (28 USC 561)	USMS has drafted legislative language. The language has been circulated within DOJ for comment and approval.	6-Making expected progress

DOJ16	Develop Lower Cost Solutions to Solving Federal Prison Space Problems 1. BOP should expand boot camp programs. 2. Congress should review the impact of mandatory minimum sentences. 3. Legislation should be enacted to improve the community corrections process. 4. BOP should expand the use of alternative sanctions such as halfway houses, home detention with electronic monitoring, and supervised home release for appropriate offenders.	1. BOP currently has two intensive confinement centers (boot camps) and is requesting approval for a third. Additional boot camps are under consideration. Included in FY'95 budget. 2. DOJ has completed a study of low level drug offenders with minimal criminal history, many of whom received mandatory sentences. 3. DOJ is analyzing proposals to improve the community corrections process. 4. In FY-94 BOP plans to expand the use of community based comprehensive sanction centers by adding 350 inmate beds and has increased the use of home confinement from 665 offenders in Nov 1993 to over 900 offenders currently.	6-Making expected progress 6-Making expected progress 10-In progress, but no schedule established 6-Making expected progress
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