SPECIFIC ONDCP LANGUAGE PERTAINING TO NEW AUTHORITIES AND REPORTING REQUIREMENTS AS DISCUSSED IN THE MEMORANDUM

I. NEW BUDGET RESOURCE AUTHORITIES

Formulation Tools

Drug Budget Initiatives: "The Director shall request the head of a department or agency to include in the department's or agency's budget submission to the Office of Management and Budget funding requests for specific initiatives that are consistent with the Presidents priorities for the National Drug Control Strategy and certifications made pursuant to paragraph (3), and the head of the department or agency shall comply with such a request."

ONDCP Budget Guidance: "Provide, by July 1 of each year, budget recommendations to the heads of departments and agencies with responsibilities under the National Drug Control Program, which recommendations shall apply to the second following fiscal year and address funding priorities developed in the annual National Drug Control Strategy."

Achieving Certification: "with respect to a request that is not certified as adequate to implement the objectives of the National Drug Control Strategy, include in the certification an initiative or funding level that would make the request adequate."

Implementation Tools

Reassignment of Staff: "Control of Drug-Related Resources -- request the head of a department or agency or program to place department, agency, or program personnel who are engaged in drug control activities on temporary detail to another department or agency in order to implement the National Drug Control Strategy, and the head of the department or agency shall comply with such a request."

2 percent resource transfer: "except to the extent that the Directors authority under this paragraph is limited in an annual appropriations Act, transfer funds appropriated to a National Drug Control Program agency account to a different National Drug Control Program agency account in an amount that does not exceed 2 percent of the amount appropriated to either account, upon advance approval of the Committees on Appropriations of each House of Congress."

Funds Control Notices: "(1) A funds control notice may direct that all or part of an amount appropriated to the National Drug Control Program agency account be obligated by

(A) months, fiscal year quarters, or other time periods; and

(B) activities, functions, projects, or object classes.

(2) An officer or employee of a National Drug Control Program agency shall not make or authorize an expenditure or obligation contrary to a funds control notice issued by the Director.

"(3) In the case of a violation of paragraph (2) by an officer or employee of a National Drug Control Program agency, the head of the agency, upon the request of and in consultation with the Director, may subject the officer or employee to appropriate administrative discipline, including, when circumstances warrant, suspension from duty without pay or removal from office."

II. NEW STRATEGY OUTCOME MEASURES AND REPORTING REQUIREMENTS

Drug Situation Assessment: "The Director shall include with each National Drug Control Strategy an evaluation of the effectiveness of Federal drug control during the preceding year. The evaluation shall include an assessment of Federal drug control efforts, including

(A) assessment of the reduction of drug use, including estimates of drug prevalence and frequency of use as measured by national, State, and local surveys of illicit drug use and by other special studies of

(i) high-risk populations, including school dropouts, the homeless and transient, arrestee, parolees, and probationers, and juvenile delinquents; and

(ii) drug use in the workplace and the productivity lost by such use;

(B) assessment of the reduction of drug availability, as measured by

(i) the quantities of cocaine, heroin, and marijuana available for consumption in the United States;

(ii) the amount of cocaine and heroin entering the United States;

(iii) the number of hectares of poppy and coca cultivated and destroyed;

(iv) the number of metric tons of heroin and cocaine seized;

(v) the number of cocaine processing labs destroyed;

(vi) changes in the price and purity of heroin and cocaine;

(vii) the amount and type of controlled substances diverted from legitimate retail and wholesale sources; and

(viii) the effectiveness of Federal technology programs at improving drug detection capabilities at United States ports of entry;

(C) assessment of the reduction of the consequences of drug use and availability, which shall include estimation of

(i) burdens drug users placed on hospital emergency rooms in the United States, such as the quantity of drug-related services provided;

(ii) the annual national health care costs of drug use, including costs associated with people becoming infected with the human immunodeficiency virus and other communicable diseases as a result of drug use;

(iii) the extent of drug-related crime and criminal activity; and

(iv) the contribution of drugs to the underground economy, as measured by the retail value of drugs sold in the United States; and

(D) determination of the status of drug treatment in the United States, by assessing

i) public and private treatment capacity within each State, including information on the number of treatment slots available in relation to the number actually used, including data on intravenous drug users and pregnant women;

(ii the extent, within each State, to which treatment is available, on demand, to intravenous drug users and pregnant women;

(iii) the number of drug users the Director estimates could benefit from treatment; and

(iv) the success of drug treatment programs, including an assessment of the effectiveness of the mechanisms in place federally, and within each State, to determine the relative quality of substance abuse treatment programs, the qualifications of treatment personnel, and the mechanism by which patients are admitted to the most appropriate and cost effective treatment setting."

Data System Adequacy: "The Director shall include with the National Drug Control Strategy required to be submitted not later than February 1, 1995, and with every second such strategy submitted thereafter

(A) an assessment of the quality of current drug use measurement instruments and techniques to measure supply reduction and demand reduction activities;

(B) an assessment of the adequacy of the coverage of existing national drug use measurement instruments and techniques to measure the casual drug user population and groups at-risk for drug use;

(C) an assessment of the actions the Director shall take to correct any deficiencies and limitations identified pursuant to subparagraphs (A) and (B)"

Treatment System Adequacy: "[The Director is required to include in each Strategy] identification of the specific factors that restrict the availability of treatment services to those seeking it and proposed administrative or legislative remedies to make treatment available to those individuals."

Strategy Functional Program Evaluation: "With each National Drug Control Strategy, the Director shall report to the President and the Congress on the Directors assessment of drug use and availability in the United States, including an estimate of the effectiveness of interdiction, treatment, prevention, law enforcement, and international programs under the National Drug Control Strategy in effect in the preceding year in reducing drug use and availability."

OFFICE OF NATIONAL DRUG CONTROL POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
Washington, D.C. 20500

November 2, 1993

MEMORANDUM TO THE PRESIDENT

FROM: DR. LEE P. BROWN, DIRECTOR
OFFICE OF NATIONAL DRUG CONTROL POLICY

SUBJECT: ONDCP REAUTHORIZATION

As you may be aware, the present statutory authorization for the Office of National Drug Control Policy (ONDCP) sunsets on November 18, 1993. I must underscore that the authorization for the ONDCP would not simply lapse, but the statutory authority for ONDCP would be repealed. If this occurs, it would cause serious political embarrassment to the Administration and its counter-narcotics program.

I have been before both of our authorizing committees in the Congress, Senate Judiciary and House Government Operations for hearings on ONDCP's reauthorization. In both hearings, Chairmen Joseph Biden and John Conyers, respectively, voiced skepticism about reauthorizing ONDCP unless they received a stronger signal that the Administration - not just ONDCP - is committed to an aggressive strategy to combat drug abuse and drug trafficking.

Mr. President, I am personally aware of your commitment to this issue, and keenly aware of the many important issues that you are facing. The interim drug strategy issued by ONDCP on your behalf sets forth a refreshing and innovative approach to addressing America's drug abuse problem. As we move forward on the FY '95 budget, it is my intention to give flesh and bones to the strategy document by working with OMB Director Panetta to insure drug programs receive budgetary priority.

However, if the statutory authority for ONDCP is repealed, it will send the wrong message to the American people that the Administration no longer views drug abuse as a national priority. Further, it would severely hamper my ability to insure adequate attention to the drug issue during the budget process in the coming months and to produce the February 1 strategy document as required by law, with any credibility.

I respectfully ask if you could do the following:

1. Call Senator Biden and Representative Conyers asking them not to let the statutory authority lapse for ONDCP, and to work with ONDCP to extend the authority of the office for another five years.

2. Sign the final PDD on coordination of international counternarcotics efforts that has been approved by all relevant agencies and is awaiting your approval. This PDD deliniates the new directions our international narcotics control programs will take in your Administration, as well as the interagency structure for developing, coordinating, and implementing counter-drug strategies and policies. The PDD enhances my role as coordinator of these activities. Both Senator Biden and Representative Conyers are looking for such a signal that you are committed to giving ONDCP the tools to do its job.

3. My office has prepared draft legislation to restructure the office and modestly enhance ONDCP's existing statutory authority. Pending final approval by OMB, it will be transmitted to the Congress. However, Biden and Conyers have both expressed skepticism about moving forward on a bill that expands ONDCP's authorities pending further demonstration of the Administration's commitment to the drug issue. As a back step, my staff has prepared a draft Executive Order for your signature that would accomplish many of the same objectives proposed in the bill. This draft Executive Order has been shared with the White House Counsel and the Office of the Chief of Staff. If this order could be approved and signed, it would also send a strong signal to the Hill of the your personal commitment to an effective drug control program and help get through the reauthorization process.

I look forward to discussing these matters with you.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

Old Executive Office Building
Room 246
Washington, D.C. 20503

Phone: 202/395-3120
Fax: 202/395-4639

Date:

To: Jose Cerda

67028

Number of pages (including cover sheet):

From: Christopher Edley, Jr.
Associate Director for General Government and Finance

Comments:

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 28, 1994

MEMORANDUM FOR JAMIE GORELICK, MERRICK GARLAND
LLOYD CUTLER, JOEL KLEIN, CLIFF SLOAN
CAROL RASCO, JOSE CERDA
CHRISTINE VARNEY, JENNIFER O'CONNOR
JOHN ANGELL

FROM: Christopher Edley, Jr. CKE
Associate Director for General Government & Finance

SUBJECT: ONDCP Budget and Personnel Powers

Attached is a draft memorandum for the President to the heads of National Drug Control Agencies. After several discussions and a great many drafts, Alice Rivlin and Lee Brown have agreed upon this text. This *precise* text.

Alice would like to know, as soon as possible, if you have any serious objections. I'd appreciate a sign-off from each organization, please, following which we will ensure that the other interested agencies are comfortable before Alice and Director Brown forward this draft, through West Wing channels, to the President.

Thanks.

cc: Alice Rivlin
Bob Wasserman

THE WHITE HOUSE
WASHINGTON

DRAFT

MEMORANDUM TO HEADS OF NATIONAL DRUG CONTROL AGENCIES

As you are aware, I recently signed the Violent Crime Control and Law Enforcement Act of 1994. Included within the act is the Reauthorization of the Office of National Drug Control Policy. This Reauthorization contains provisions which provide the Office of National Drug Control Policy with important new authorities to aid in achieving the goal of reducing drug use in America. These new tools will strengthen the role of the Director and achieve the goal of reducing illicit drug use in America which is the purpose of the National Drug Control Strategy.

I am confident that the National Drug Control Agencies can work together with the Director of National Drug Control Policy, in conjunction with the White House and OMB, to implement these new authorities in a prudent and collegial manner. The Director's objective, which I share, is that all concerned members of the Cabinet be involved fully in developing the National Drug Control Strategy, and in formulating the drug control budget to reflect my priorities as set forth in that strategy. No member of the Cabinet will act unilaterally on matters of shared concern. If agency heads cannot otherwise reconcile drug policy differences, I will resolve them through the budget process and other procedures normally used for addressing interagency disagreements.

I look forward to working with each of you as we begin preparing our 1996 budget and 1995 National Drug Control Strategy.

William Jefferson Clinton

Jose —
FYI —
the plot thickens
Carol

H.R. 4603 CJS Appropriations Bill, FY95

H.R. 4603

P.L. 103-317
Signed 8/26/94

One Hundred Third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the twenty-fifth day of January, one thousand nine hundred and ninety-four

An Act

Making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies programs for the fiscal year ending September 30, 1995, and making supplemental appropriations for these departments and agencies for the fiscal year ending September 30, 1994, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1995, and for other purposes, namely:

TITLE I—DEPARTMENT OF JUSTICE AND RELATED AGENCIES

DEPARTMENT OF JUSTICE

OFFICE OF JUSTICE PROGRAMS

JUSTICE ASSISTANCE

For grants, contracts, cooperative agreements, and other assistance authorized by title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the Missing Children's Assistance Act, as amended, including salaries and expenses in connection therewith, and with the Victims of Crime Act of 1984, as amended, $98,100,000, to remain available until expended, as authorized by section 1001 of title I of the Omnibus Crime Control and Safe Streets Act, as amended by Public Law 102–534 (106 Stat. 3524), of which $750,000 of the funds provided under the Missing Children's Program shall be made available as a grant to a national voluntary organization representing Alzheimer patients and families to plan, design, and operate the "Safe Return" Program.

STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE

For grants, contracts, cooperative agreements, and other assistance authorized by part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, for State and Local Narcotics Control and Justice Assistance Improvements, notwithstanding the provisions of section 511 of said Act, $62,000,000, to remain available until expended, as authorized by section 1001 of title I of said Act, as amended by Public Law 102–534 (106 Stat. 3524), of which: (a) $50,000,000 shall be available to carry out the provisions of chapter A of subpart 2 of part E of title I of said Act, for discretionary grants under the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs;

SEC. 111. Public Law 103–121 (107 Stat. 1161) is amended by inserting the words "and California" after the phrase "for projects on the northern border of the United States".

SEC. 112. Section 1404(a)(5)(B) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(a)(5)(B)) is amended by striking "1994" and inserting "1995".

SEC. 113. Notwithstanding any other provision of law—

(a) No transfers may be made from Department of Justice accounts other than those authorized in this Act, or in previous or subsequent appropriations Acts for the Department of Justice, or in part II of title 28 of the United States Code, or in section 10601 of title 42 of the United States Code.

(b) No appropriation account within the Department of Justice shall have its allocation of funds controlled by other than an apportionment issued by the Office of Management and Budget or an allotment advice issued by the Department of Justice.

SEC. 114. SENSE OF CONGRESS.—It is the sense of Congress that the President of the United States and the President-elect of Mexico should meet as soon as possible following the August elections in Mexico to discuss bilateral issues of mutual concern with the objective of deepening and strengthening the ties between the two neighbors, with emphasis on cooperation to establish equitable and effective regulation of the flow of citizens across the border between Mexico and the United States.

SEC. 115. (a) IN GENERAL.—Except as provided in subsection (c), an individual described in subsection (b) may be appointed noncompetitively, under a career or career-conditional appointment, to a position in the competitive service if—

(1) the individual meets the qualification requirements prescribed by the Office of Personnel Management for the position to which appointed;

(2) the last previous Federal employment of the individual was as an employee of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(3) the individual is appointed to such position within two years after separating from the Criminal Justice Information Services Division.

(b) INDIVIDUAL DESCRIBED.—An individual described in this subsection is an individual who—

(1) on the date of the enactment of this Act—

(A) is an employee of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(B) is serving in an appointed position (i) to be relocated from Washington, District of Columbia, to Clarksburg, West Virginia, and (ii) that is excepted by law or regulation from the competitive service; and

(2) has not relocated with his or her position in the Criminal Justice Information Services Division to Clarksburg, West Virginia.

(c) APPLICATION.—This section does not apply to an individual serving on the date of the enactment of this Act in an appointed position on a temporary or term basis.

(d) This section may be cited as the "Criminal Justice Information Services Placement Assistance Act".

To: Margaret Shaw 5-4639

Fr: José

I am confident that the National Drug Control Agencies can work together with the Director of National Drug Control, in conjunction with the White House and OMB, to implement these new authorities in a prudent and collegial manner. The Director's Office will not act unilaterally. It will not excercise authority over another agency without the concurrence of the agency head. [Though, as President, I always retain authority to address interagency disputes through the budget process and other procedures, I have every faith that a unified effort by all related agencies and my staff will overcome any differences that may arise in the course of implementation.]

Just a suggestion, if it's helpful. Let me know if you + Chris think it need to be more involved in the "negotians". Otherwise, I leave it up to you folks to work this out.

Thanks,
José

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

15-Sep-1994 02:56pm

TO: (See Below)

FROM: Christopher F. Edley, Jr
Office of Mgmt and Budget, EG

SUBJECT: <u>ONDCP Letter</u>

Just to keep you more or less up to date.

1. Yesterday, DOJ (Garland & Gorelick) redrafted the OMB-drafted letter (Brown-to-agency-heads) to make it a memo from POTUS to agency heads, with approximately the same content. DOJ did this because Reno and Gorelick, when they saw our language, appreciated that something soft rather than legalistic would be appropriate; but they believe something needs to come from POTUS.

2. Later in the day, Brown was meeting with Reno anyway, and she shared with him the revised letter. They had a good conversation, but he reserved decision.

3. Upon reflection, Wasserman & co. say no deal. The draft takes away current powers, like decertification, making them subject to collegiality. (how awful)

4. Stay tuned. Negotiations continue. I've had three conversations with Gorelick today already.

Distribution:

TO: Kenneth L. Schwartz
TO: James E. Duke
TO: Martha M. Gagne

CC: Margaret R. Shaw
CC: Clifford M. Sloan
CC: Jennifer M. O'Connor
CC: Jose Cerda, III

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

16-Sep-1994 12:19pm

TO: (See Below)

FROM: Christopher F. Edley, Jr
Office of Mgmt and Budget, EG

SUBJECT: Rivlin on ONDCP

Our understanding, based on Rivlin conversations with Director Brown and with the AG, is that the AG and Director will discuss the DOJ draft text and try to reach agreement on whether it is to be signed by the President or the ONDCP Director. Based on her conversations, Rivlin understands there to be no disagreement on the critical substantive point: collegiality among officers, all of whom work for the President.

On the content of the text, Alice would like to make one change to clarify that the President need not get involved on the occasion of every interagency disagreement. Assuming the document is for the President's signature, she would change the end of the second paragraph's final sentence, so that the sentence would read [referring to the exercise of power by ONDCP]:

"It will not exercise authority over another agency without the concurrence of the agency head; where differences remain, I will resolve them through the budget process and other procedures normally used regarding interagency disagreements."

Our understanding is that the ball is in the Director's court to get in touch with the AG. Good luck.

Distribution:

TO: Robert Wasserman
TO: FAX (95149368,Merrick Garland)
TO: Clifford M. Sloan

CC: Jose Cerda, III
CC: Jennifer M. O'Connor
CC: Kenneth L. Schwartz
CC: James E. Duke
CC: Margaret R. Shaw
CC: Lori L. Victor
CC: Robert G. Damus

C'EKDA

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MEMORANDUM TO HEADS OF NATIONAL DRUG CONTROL AGENCIES

FROM: The President

As you are aware, I recently signed the Violent Crime Control and Law Enforcement Act of 1994. Included within the Act is the reauthorization of the Office of National Drug Control Policy. This reauthorization contains provisions which provide the Office of National Drug Policy with new authorities to aid in achieving the goal of reducing drug use in America.

I am confident that the National Drug Control Agencies can work together with the Director of National Drug Control, in conjunction with the White House and OMB, to implement these new authorities in a prudent and collegial manner. The Director's Office will not act unilaterally. It will not exercise authority over another agency without the concurrence of the agency head; where differences ~~exist, I will resolve them~~ remain, I will resolve them through the budget process and other procedures normally used for regarding interagency disagreements.

I solicit your views on how best to proceed and look forward to working with you as we begin preparing our 1996 budget and national strategy.

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

07-Sep-1994 03:57pm

TO: (See Below)

FROM: Kenneth L. Schwartz
Office of Mgmt and Budget, TCJS

SUBJECT: ONDCP and Crime Bill

In preparation for your 5:00 meeting, Chris, please be aware of the following two snippets of language:

-- CJS. "Notwithstanding any other provision of law - (a) No transfer may be made from DOJ accouonts other than those authorized in this Act, or in previous or subsequent appropriations acts for the DOJ, or in part II of title 28 of the US Code, or in section 10601 of title 42 of the US Code, [and] (b) No appropriation account with the DOJ shall have its allocation of funds controlled by other than an apportionment issued by the OMB or an allotment advice issued by the DOJ." As you know, this is now law.

-- Defense Authorization. "Funds appropriated for the DOD may not be transferred to a National Drug Control Program agency account except to the extent provided in a law that specifically states -- (1) the amount authorized to be transferred, (2) the account from which such amount is authorized to be transferred, and (3) the account to which such amount is authorized to be transferred." If I understand it correctly, this is in the conference version of the pending bill.

There may be other provisions out there -- I really don't know. I know that other agencies are aware of the CJS provision (e.g., HHS), and I would not be surprised if they were not working their appropriation subcommittees.

Distribution:

TO: Lori L. Victor
TO: Margaret R. Shaw

CC: Christopher F. Edley, Jr
CC: Charles E. Kieffer
CC: Robert G. Damus
CC: James E. Duke

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF NATIONAL DRUG CONTROL POLICY
Washington, D.C. 20500

September 7, 1994

MEMORANDUM TO ROBERT WASSERMAN

FROM: EDWARD H. JURITH

RE: ONDCP REAUTHORIZATION

In preparation for today's meeting with White House Counsel on the additional authorities in the Crime Bill Conference Report, you may want to raise the following points:

A. **IT WOULD BE POLITICALLY FOOLISH TO RAISE THE PROFILE OF THIS ISSUE BY WAY OF AN EXECUTIVE ORDER OR A PRESIDENTIAL MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES.**

o The language at issued was inserted into the conference report by Senators Biden and DeConcini, both of whom strongly felt that the Administration proposed legislation to reauthorize ONDCP did not sufficiently enhance ONDCP's budgetary role in setting priorities under the National Drug Control Strategy.

o To formally attempt to overturn their work would put the President in the position of sticking it to the Chairman of the Senate Judiciary Committee - who delivered the Administration's crime bill. A bill the President needed.

o Moreover, a public renunciation of these provisions would give fuel to the President's political opponents that he is weak on the drug issue. Going into the congressional elections, they would add this action to a list of item they argue demonstrates that the President has ignored the drug issue, including:

- Downsizing of ONDCP
- Statements by the Surgeon General on drug legalization
- Inadequate attention to the drug issue by the President in statements and addresses.
- Cuts in drug interdiction funding
- The "shootdown" fiasco

By making a cause celebre about this, only the President gets hurt.

B. WHAT IS NEEDED IS TO DEVELOP A PROCEDURE TO MAKE THESE AUTHORITIES WORK IN A SENSIBLE WAY.

o Congresses' intent is that the Director of ONDCP be more fully involved in the budget process to ensure that the priorities of the National Drug Control Strategy is reflected in the Administration's budget recommendations. The Conference Report envisions closed consultation with the Committees on Appropriations on the new budgetary tools.

o As a Cabinet-level EOP agency, it only makes sense that the White House, OMB, and ONDCP work together to ensure that these new authorities are used in a sensible manner.

o The powers developed by the Congress are not substantially different from other circumstances where the Congress has determined that there is a strong need for budgetary coordination in a specific policy area that crosses a number a other cabinet-level agencies. See 50 U.S.C. 403-4(b) giving the Director of the CIA (who in this administration is not a Cabinet member) the authority to approve intelligence budgets; and 50 U.S.C. 403-4(d) governing transfer of funds or personnel within the National Foreign Intelligence Program.

o OMB and ONDCP should work out a process under which the Director exercises these powers.

C. THE ARGUMENTS OF THE DEPARTMENT OF JUSTICE ARE NOT ON POINT:

o Congress may increase the power and duties of an existing office without thereby rendering it necessary that the incumbent should again be nominated and confirmed. The powers passed by the Congress go to ONDCP, an office being reauthorized by the same act. They are additions to the previously enacted budget authorities of the agency by members of the authorizing committee; not the designation of a person to a new post.

o Any other restrictive interpretation would call into question the authority of any member of the Cabinet when Congress passes legislative initiatives to carry out the President's program and changes the mandate of that Cabinet member. Does Secretary Riley need to reconfirmed in light of the passage of the Goals 2000 legislation? Does Secretary Shalala need to be reconfirmed after health care reform passes, or in light of the removal of the Social Security Administration from HHS? In the aftermath of both Congressional actions the roles of these two cabinet members have or will change dramatically.

o Therefore, if Dr. Brown does not need to be reconfirmed, his actions would not be subject to any litigation risk in an action brought by an aggrieved third party.

U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

August 25, 1994

To: Janet Reno
Attorney General

Jamie S. Gorelick
Deputy Attorney General

Lloyd N. Cutler
Counsel to the President

From: Walter Dellinger
Assistant Attorney General

Re: Proposed Presidential Directive regarding the National Narcotics Leadership Act Amendments

I believe that the Department of Justice should recommend that the President issue a directive to provide guidelines governing the Director of National Drug Control Policy's exercise of the authority vested in him by the National Narcotics Leadership Act Amendments. The directive could be made in the form of an executive order accompanied by an explanatory memorandum from the President to affected agency heads. A draft executive order and presidential memorandum is attached for your consideration. As an alternative, the President may wish to consider simply issuing the directive in a presidential memorandum. This course would be less public, as presidential memoranda, unlike executive orders, are not automatically published in the Federal Register. A draft of such a memorandum is also attached.

Although it is an option, I do not recommend that the President comment on this matter in his signing statement. To do so would be contrary to the tone and theme of the signing ceremony and would detract, unnecessarily in my view, from that event. I believe that the executive order and memorandum are the more appropriate response. If, however, the President wishes to include a comment in his signing statement, I would recommend the attached language.

Language for a Presidential Signing Statement

In the subtitle "National Narcotics Leadership Act Amendments," the bill gives the Director of National Drug Control Policy new authority with respect to other agencies and departments that administer drug control programs, particularly in the areas of budgets, expenditures and program administration and policy. I applaud the goal of these amendments, which is to promote the forceful and coherent administration of our anti-drug efforts. This is an important priority for me as President. The amendments could, however, be construed to raise constitutional questions concerning my authority under Article II of the Constitution to direct the Executive Branch. Furthermore, it is my judgment that the goal of better coordination is in any event best served by achieving consensus among the agencies involved. To avoid these constitutional and administrative issues, I will instruct the Director to exercise his new authority only after obtaining the concurrence of the affected department or agency.

OPTION ONE: EXECUTIVE ORDER

DRAFT PRESIDENTIAL MEMORANDUM

From: William J. Clinton
President of the United States of America

To: Janet Reno
Attorney General

Lee Brown
Director of National Drug Control Policy

[All Other National Drug Control Program Agency Heads]

Re: The National Narcotics Leadership Act Amendments

I am advised that the National Narcotics Leadership Act Amendments raise substantial constitutional doubts. The Amendments give the Director of National Drug Control Policy ("Director") new oversight and enforcement powers over National Drug Control Programs as well as the policy and operations of federal agencies, including cabinet departments, insofar as they relate to these programs. It is extraordinary in our nation's history to grant executive oversight powers over cabinet departments to an officer other than the President; current law does not grant such broad authority to the Director. I am informed that, consequently, a serious legal argument could be made that the Amendments enact a constitutionally significant change in the office of Director, requiring the Director to be renominated and reconfirmed. See Shoemaker v. United States, 147 U.S. 282 (1893). I am informed that, furthermore, any attempt by the Director to exercise the authority conferred by the Amendments would be subject to significant litigation risk in an action brought by an aggrieved party. See Olympic Federal Savings and Loan Association v. Director, Office of Thrift Supervision, 732 F. Supp. 1183, 1192 (D.D.C. 1990). This risk, however, can be avoided if the Director exercises his authority under the amendments only pursuant to the guidelines set forth in this memorandum.

Among the most significant powers that the Constitution vests in the President is the authority to supervise his subordinates in the executive branch. I am advised that there is nothing in the text or structure of the Amendments that limits the supervisory authority of the President over the Director. In addition, were the Amendments construed to supplant the President's supervisory authority, they would be unconstitutional. See Myers v. United States, 272 U.S. 52 (1926). It is my judgment that the unsupervised exercise of the authority vested in the Director would detract from the effective administration of federal drug control efforts. Therefore, I am instructing the Director and the heads of all National Drug Control Program agencies to adhere to the guidance contained in the attached executive order.

EXECUTIVE ORDER

GUIDELINES FOR CONDUCT UNDER THE

NATIONAL NARCOTICS LEADERSHIP ACT AMENDMENTS

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to provide supervision and guidance for conduct under the National Narcotics Leadership Act Amendments, Pub. L. No. ___, it is hereby ordered as follows:

Section 1. The Director of National Drug Control Policy ("Director") shall not take any action that requires an agency head to include programs in the agency's budget proposal to the Office of Management and Budget without the concurrence of the affected agency head. With the prior authorization of the President, the Director may proceed without obtaining the concurrence of the affected agency head.

Sec. 2. The Director shall not take any action that requires the personnel of any agency to be detailed to any other agency or within any agency without the concurrence of the affected agency head(s). With the prior authorization of the President, the Director may proceed without obtaining the concurrence of the affected agency head(s).

Sec. 3. The Director shall not order that funds be transfered to or from any drug control program account without the concurrence of the affected agency head(s). With the prior authorization of the President, the Director may proceed without obtaining the concurrence of the affected agency head(s).

Sec. 4. The Director shall not issue a Funds Control Notice without the concurrence of the head of the recipient agency as to the form and substance of the notice. With the prior authorization of the President, the Director may proceed without obtaining the concurrence of the head of the recipient agency.

Sec. 5. The Director shall not disapprove any agency request for reprogramming of funds, unless authorized in advance by the President.

Sec. 6. The Director shall not disapprove any proposed agency change in policy relating to a National Drug Control Program, unless authorized in advance by the President.

Sec. 7. This order is intended for internal management purposes and does not create any private right of action.

Sec. 8. This order shall take effect immediately.

OPTION TWO: MEMORANDUM ONLY

DRAFT PRESIDENTIAL MEMORANDUM

From: William J. Clinton
President of the United States of America

To: Janet Reno
Attorney General

Lee Brown
Director of National Drug Control Policy

[All Other National Drug Control Program Agency Heads]

Re: The National Narcotics Leadership Act Amendments

I am advised that the National Narcotics Leadership Act Amendments raise substantial constitutional doubts. The Amendments give the Director of National Drug Control Policy ("Director") new oversight and enforcement powers over National Drug Control Programs as well as the policy and operations of federal agencies, including cabinet departments, insofar as they relate to these programs. It is extraordinary in our nation's history to grant executive oversight powers over cabinet departments to an officer other than the President; current law does not grant such broad authority to the Director. I am informed that, consequently, a serious legal argument could be made that the Amendments enact a constitutionally significant change in the office of Director, requiring the Director to be renominated and reconfirmed. See Shoemaker v. United States, 147 U.S. 282 (1893). I am informed that, furthermore, any attempt by the Director to exercise the authority conferred by the Amendments would be subject to significant litigation risk in an action brought by an aggrieved party. See Olympic Federal Savings and Loan Association v. Director, Office of Thrift Supervision, 732 F. Supp. 1183, 1192 (D.D.C. 1990). This risk, however, can be avoided if the Director exercises his authority under the amendments only pursuant to the guidelines set forth in this memorandum.

Among the most significant powers that the Constitution vests in the President is the authority to supervise his subordinates in the executive branch. I am advised that there is nothing in the text or structure of the Amendments that limits the supervisory authority of the President over the Director. In addition, were the Amendments construed to supplant the President's supervisory authority, they would be unconstitutional. See Myers v. United States, 272 U.S. 52 (1926). It is my judgment that the unsupervised exercise of the authority vested in the Director would detract from the effective administration of federal drug control efforts. Therefore, I am instructing the Director and the heads of all National Drug Control Program agencies to adhere to the guidelines that follow.

1. The Director shall not take any action that requires an agency head to include programs in the agency's budget proposal to the Office of Management and Budget without the concurrence of the affected agency head.

2. The Director shall not take any action that requires the personnel of any agency to be detailed to any other agency or within any agency without the concurrence of the affected agency head(s).

3. The Director shall not order that funds be transfered to or from any drug control program account without the concurrence of the affected agency head(s).

4. The Director shall not issue a Funds Control Notice without the concurrence of the head of the recipient agency as to the form and substance of the notice.

5. The Director shall not disapprove any agency request for reprogramming of funds.

6. The Director shall not disapprove any proposed agency change in policy relating to a National Drug Control Program.

As indicated, I am issuing these guidelines as part of my constitutional duty to supervise the execution of the law by subordinate executive branch officials. Consistent with that duty, I retain the authority to authorize the Director to proceed without the concurrence of any agency head or to disapprove requests for reprogramming of funds and National Drug Control Program policy changes.

Memorandum

To : The Attorney General Date August 4, 1994

From : The Director
Federal Bureau of Investigation

Subject : THE NATIONAL NARCOTICS LEADERSHIP ACT
AMENDMENTS TO THE CRIME BILL

ACTION MEMORANDUM

I, in the strongest of terms, find highly objectionable the eleventh-hour amendments adopted by the Conferees for the crime bill, H.R. 3355, which would confer unacceptable authorities to the Office of National Drug Control Policy (ONDCP). I am not alone in my opposition: Administrator Tom Constantine, Drug Enforcement Administration (DEA), has the same strong objections.

These amendments at this time are very troubling. You created the Office of Investigative Agency Policies (OIAP) to address the problem of the need for coordinated activities in law enforcement. Significant steps have been taken by OIAP to make Federal law enforcement more effective, particularly in the area of criminal drug law enforcement. As recently as Monday of this week, I publicly announced the exchange of DEA and FBI management personnel. Previously, directives have been issued by OIAP to more effectively coordinate overseas drug investigations and the collection and sharing of drug intelligence information.

I would also note that these amendments represent a significant derogation of the authority of the Attorney General as the Nation's Chief Law Enforcement Officer. These amendments would allow the unilateral judgement of the Director of ONDCP to supersede decisions made by the Attorney General as to the best use of Department of Justice resources. In essence, these provisions are a wholesale transfer of Department of Justice authorities to ONDCP.

The authority for ONDCP to transfer resources would significantly impact on the ability of the FBI, DEA and other Federal law enforcement agencies to commit the necessary resources to long-term, resource intensive investigations - the very investigations that have the most impact. Further, transfers of resources which would be permitted by these amendments could impede other investigative activities or responsibilities of agencies. Further, decisions by the ONDCP could substantially impede an agency from accomplishing its mission; e.g., DEA's overseas mandate.

Also troubling is this sweeping change in the role of ONDCP. It would transform an office that is primarily only responsible for policy matters into an office that makes investigative and operational decisions. This would result in substantial enhancements of staff by ONDCP and duplication of agency oversight. These are the very mid-level manager positions that have been targeted for reduction by the Administration.

I recognize that these amendments cannot now be extricated from the crime bill. Nonetheless, I urge you to take whatever steps possible, including language in our own appropriations bill, to nullify the effect of these amendments. We in Federal law enforcement have come too far this past year in forging an effective coalition to combat crime, including the scourge of drugs. The diminution of the authorities of your Office and the insertion of more bureaucracy will not serve the American public. I am prepared to assist you in the revocation of these ill-conceived amendments.

1 - Honorable Jamie Gorelick
Deputy Attorney General
Department of Justice
Washington, D.C.

1 - Honorable Jo Ann Harris
Assistant Attorney General
Criminal Division
Department of Justice
Washington, D.C.

1 - Honorable Sheila Anthony
Assistant Attorney General
Office of Legislative Affairs
Department of Justice
Washington, D.C.

1 - Honorable Thomas A. Constantine
Administrator
Drug Enforcement Administration
Washington, D.C.

U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

August 3, 1994

MEMORANDUM FOR JAMIE S. GORELICK
DEPUTY ATTORNEY GENERAL

FROM: WALTER DELLINGER
ASSISTANT ATTORNEY GENERAL

RE: LANGUAGE FOR CRIME BILL SIGNING STATEMENT

We suggest the following language for inclusion in a Presidential signing statement on the crime bill:

In the subtitle "National Narcotics Leadership Act Amendments," the bill gives the Director of National Drug Control Policy new authority with respect to other agencies and departments that administer drug control programs, particularly in the areas of budgets, expenditures and program administration and policy.

I applaud the goal of these amendments, which is to promote the forceful and coherent administration of our anti-drug efforts. This is an important priority for me as President. The amendments could, however, be construed to raise constitutional questions concerning my authority under Article II of the Constitution to direct the Executive Branch. Furthermore, it is my judgment that the goal of better coordination is in any event best served by achieving consensus among the agencies involved. To avoid these constitutional and administrative issues, I have instructed the Director to exercise his new authority only after obtaining the agreement of the affected department or agency.

THE WHITE HOUSE

WASHINGTON

September 5, 1994

MEMORANDUM TO CAROL RASCO

From: **Jose Cerda**
Elizabeth Hyman

Subject: **Reauthorization of ONDCP**

As you know, the Crime Bill includes language to reauthorize the ONDCP that would give expanded powers as it relates to its budget authority and to its ability to transfer related resources from one agency to another. This language would give ONDCP powers not currently held by any other federal department or agency. It is our understanding that the Attorney General's Office of Legal Counsel has just completed a memo determining the legal significance and viability of the reauthorization language -- and that the Attorney General is approaching her colleagues in the Cabinet to join her in protesting ONDCP's new powers to the White House. We expect that you, Leon Panetta and Lloyd Cutler will hear from the Cabinet this week.

You should also know that the Department of Defense -- and its Congressional patrons on the Hill -- have already moved to exempt DOD from ONDCP's new powers. The conference report on the Defense Authorization, which the President is scheduled to sign this week, includes language that effectively exempts DOD from ONDCP's new powers.

This memorandum is a first look at some of those legal issues, a response to the question of appointment of the Director, as well as a brief examination of some of the options available to you if it is necessary to mediate this development.

I. The Reauthorization Language

The following is a comparison of the principle powers of ONDCP prior to the Bill, with the current reauthorization language:

A. Budget Authority

In the past, the Director of ONDCP engaged in a certification process to determine if budgets proposed by the various related agencies were "adequate" to meet the needs of the Drug Control Strategy. Generally, the threat of "decertifying" an agency's budget was sufficient to give ONDCP some negotiating power with agencies before they submitted their budgets to OMB.

However, no sanction applied if an agency chose to disregard ONDCP's decision to decertify and the budget process went forward.

The reauthorization language in the Crime Bill conference report allows ONDCP to amend agency drug report submissions to the OMB, giving the Director the opportunity to raise drug control strategy issues early on in the budget process and greatly enhancing the Director's ability to make agency budgets consistent with the National Drug Control Strategy.

B. Drug Related Resources

The Director has always had the power to "request" that needed personnel be detailed from the various federal agencies and departments but the new reauthorization language would now require the agency or department to "comply" with the request.

Furthermore, with the advance approval of the House and Senate Appropriations Committees, the Director is now authorized to transfer funds appropriated to one National Drug Control Program agency to another, so long as it does not exceed two percent of the amount appropriated to either account. This is an unprecedented power accorded to the Director.

II. Legal Ramifications of the Reauthorization Language

The reauthorization language raises a separation of powers question. Simply put, does Congress have the power to direct an executive agency on how to carry out its functions, particularly when the execution of those functions will impinge upon the powers and obligations of other agencies.

The President is required by the Constitution to "take care" that the laws of the country are faithfully executed. The Supreme Court has sought to better define that power as it relates to agencies. In sum, the Court has found that the "take care" clause permits the President to oversee the management of an Executive agency. He is deemed to have exceeded his power, however, when he seeks to exercise control over an independent agency (i.e. by trying to remove an officer of an independent agency), or goes beyond the scope of management. The purpose of Presidential control over management is to ensure that laws are executed in a unitary and uniform fashion, avoiding regulatory conflict and duplication.

Those who support the theory of Congressional restraint on the power of the Executive would argue that it is within the power of Congress to direct an agency as it sees fit. After all, it is Congress that generally creates an agency through delegation of its powers; it is Congress that retains a great degree of power over agencies by virtue of its right of confirmation in the appointment process; and it is Congress, not the President, who has the power to appropriate money to the agencies. Furthermore, the theory that the President has sole dominion over the management of executive agencies has been reached by virtue of the modern Supreme Court defining what the President cannot do (i.e. unilaterally remove an officer from an independent agency), as opposed to an affirmative conclusion as to what he can do.

A recent Federal case, in which the Reagan Administration instructed the Attorney General to inform all executive branch agencies that they should disregard the Competition in Contracting Act, illustrates this constitutional debate. The court determined that the Executive did not have the authority to unilaterally declare that a statute was unconstitutional without the benefit of litigation. See Lear Siegler, Inc. v. Ball, 863 F.2d 693 (9th Cir. 1988)(en banc). The implication is that the President does not have unfettered power over the procedure of an agency (contracting awards). Lear differs from the ONDCP paradigm, though, because it was not an attempt by Congress to give more power to one agency in regard to executive management.

Another precedent to keep in mind involves Executive Order 12,291, which required Executive agencies to submit cost-benefit analysis of their various proposals and functions to OMB. This was a massive undertaking to coordinate administrative rulemaking by Executive agencies. Debate over this action raised many of the same issues discussed above, but the Order nonetheless went into effect.

We have learned that the Office of Legal Counsel has determined that Congress has exceeded its authority by drafting this reauthorization language. It is our understanding that OLC recommends limiting ONDCP's power. They have already drafted signing language for the Bill and an Executive Order overturning the language altogether.

The Attorney General is deeply troubled by the reauthorization language for two reasons. The first is that failure to address the issue head on will lead to exposure to litigation. Once an agency feels it has been infringed upon by ONDCP, or an outside group believes it has not been awarded monies as a result of ONDCP reassigning funds, they could file suit based on the separation of powers argument outlined above or a violation of the appointments clause which is discussed below. A second area of concern to the Attorney General is dominion over her budget. Clearly, the Attorney General feels that an Executive Order would shield the Administration from litigation and would protect DOJ appropriations.

III. Appointment of ONDCP Director

As you are well aware, authorization for the ONDCP lapsed in November, 1993, five years after its enactment. Reauthorization brings into question the legitimacy of the appointment of the Director, and whether his continued tenure would create a violation of the Appointments Clause. The narrow question is will reauthorization be sufficient to overcome the termination clause in the original legislation? It appears that it will -- based on the following reasoning:

- Statutory interpretation, according to Sutherland on Statutory Construction, says that "reenactment of a statute which has been repealed by specific provision, ... invalidates the previous repeal and restores the statute to effective operation."

- It is our understanding that termination provisions were put into legislation to avoid the "rubberstamping" of appropriations and require government to evaluate the worth of a particular program. The fact that Congress continued to appropriate money for ONDCP after it expired should be evidence that the legislative intent was that ONDCP was of value and should be continued.

- The President's Executive Order 12,880 of November 16, 1993, which alluded to the extension of ONDCP, buttresses the above point.

- There may be similar instances -- ie. the National Commission on Acquired Immune Deficiency Syndrome, which was due to terminate in 1993, but we believe, still is in existence because of Congressional appropriations [Will check on this]. Again, this would be evidence that Congress will ignore sunset provisions if they believe a particular agency or commission is of value.

Based on statutory interpretation, legislative history and action, the Director should not have to be reappointed, because ONDCP should be deemed never to have expired. We have learned, however, that OLC has looked at this issue and charted two conclusions -- the one above, and another. The second conclusion is that because the reauthorization language grants the director such expansive powers, Congress has in fact created a "new" Office and the Director must be appointed.

IV. Conclusions and Recommendations

The Administration must beware of several factors. If it seeks to undo ONDCP's new-found powers through the Bill signing language or an Executive Order, (though it may be within its constitutional right to do so), it could unleash the institutional ire of Congress. Furthermore, such a tactic would give ammunition to those who say the President is not doing enough to fight drugs in this country. But simply accepting the reauthorization language could create significant friction between other agencies and the ONDCP. And, agreeing to the language could set a dangerous precedent in allowing Congress more latitude in the functions and management of executive agencies.

Moreover, the Administration must also consider now that Dr. Brown has been accorded new powers, various interests will demand that he use them. For instance, Republicans could ask him to put the Crime Bill's prevention monies into expanded drug enforcement efforts. And treatment supporters, unhappy with our block grant budget or with the final substance abuse benefit in health care, will ask us to dip into the President's policing program to fund treatment. To date, we have rejected such shifts as arbitrary and as promoting the false choice between supply and demand drug control programs.

An opportunity does exist, however, for the President to use ONDCP's drug powers to make that extra effort required to fund his anti-drug priorities -- and to boost his public profile on the drug issue. For instance, if Congress underfunds the President's drug treatment request, he could take up to 2% of a non-priority account to fund a hard-core user initiative. Congressional appropriators may ultimately reject such transfers, but at least the Administration would be able to challenge their overall drug funding decisions.

If the Attorney General remains intent upon issuing an Executive Order, we recommend that it be directed at the process of implementation and not at the underlying language of the Bill. A flat rejection of the reauthorization language brings into play all of the hazards discussed above. A molding of the implementation process responds to the legal concerns of the Attorney General and allows the Administration to address the many political concerns, as well.

The Executive Order could require that Dr. Brown, in implementing his new powers, seek approval for drug related budget requests up front from you, Leon Panetta, and Alice Rivlin. This up-front consultation and approval process would retain the spirit of the reauthorization language, but through implementation, would shift authority to the President. Such a move would give the appearance of allowing Dr. Brown to use the powers delegated to him, silence the naysayers who claim the President isn't doing enough on drugs, provide the President with latitude to fund his drug related initiatives, and avoid the precedent of undo Congressional power, by virtue of the fact that the Executive has adopted the management of those delegated powers.

ing Technology Development program which remain available for obligation on the date of the enactment of this Act in accordance with the competition and cost-sharing requirements of subsection (d) of section 2525 of title 10, United States Code, as amended by section 258 of this Act, notwithstanding any other provision of law that specifies (or has the effect of requiring) that a contract be entered into with, or a grant be made to, a particular institution or entity.

(e) DEFINITIONS.—For the purposes of this section:

(1) FISCAL YEAR 1994 DEFENSE APPROPRIATIONS.—The term "fiscal year 1994 defense appropriations" means amounts appropriated or otherwise made available to the Department of Defense for fiscal year 1994 in the Department of Defense Appropriations Act, 1994 (Public Law 103–139).

(2) FISCAL YEAR 1994 DEFENSE AUTHORIZATIONS.—The term "fiscal year 1994 defense authorizations" means amounts authorized to be appropriated for the Department of Defense for fiscal year 1994 in the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160).

Subtitle B—Counter-Drug Activities

SEC. 1011. DEPARTMENT OF DEFENSE SUPPORT FOR COUNTER-DRUG ACTIVITIES.

(a) EXTENSION OF CURRENT AUTHORITY.—Section 1004(a) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 374 note) is amended by striking out "through 1995" and inserting in lieu thereof "through 1999".

(b) CONDITION ON TRANSFER OF FUNDS.—Funds appropriated for the Department of Defense may not be transferred to a National Drug Control Program agency account except to the extent provided in a law that specifically states—

(1) the amount authorized to be transferred;

(2) the account from which such amount is authorized to be transferred; and

(3) the account to which such amount is authorized to be transferred.

(c) CONDITION ON DETAILING PERSONNEL.—Personnel of the Department of Defense may not be detailed to another department or agency in order to implement the National Drug Control Strategy unless the Secretary of Defense certifies to Congress that the detail of such personnel is in the national security interest of the United States.

(d) RELATIONSHIP TO OTHER LAW.—A provision of law may not be construed as modifying or superseding the provisions of subsection (b) or (c) unless that provision of law—

(1) specifically refers to this section; and

(2) specifically states that such provision of law modifies or supersedes the provisions of subsection (b) or (c), as the case may be.

SEC. 1012. OFFICIAL IMMUNITY FOR AUTHORIZED EMPLOYEES AND AGENTS OF THE UNITED STATES AND FOREIGN COUNTRIES ENGAGED IN INTERDICTION OF AIRCRAFT USED IN ILLICIT DRUG TRAFFICKING.

(a) EMPLOYEES AND AGENTS OF FOREIGN COUNTRIES.—Notwithstanding any other provision of law, it shall not be unlawful for authorized employees or agents of a foreign country (including members of the armed forces of that country) to interdict or attempt to interdict an aircraft in that country's territory or airspace if—

(1) that aircraft is reasonably suspected to be primarily engaged in illicit drug trafficking; and

(2) the President of the United States, before the interdiction occurs, has determined with respect to that country that—

(A) interdiction is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and

(B) the country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force directed against the aircraft.

(b) EMPLOYEES AND AGENTS OF THE UNITED STATES.—Notwithstanding any other provision of law, it shall not be unlawful for authorized employees or agents of the United States (including members of the Armed Forces of the United States) to provide assistance for the interdiction actions of foreign countries authorized under subsection (a). The provision of such assistance shall not give rise to any civil action seeking money damages or any other form of relief against the United States or its employees or agents (including members of the Armed Forces of the United States).

(c) DEFINITIONS.—For purposes of this section:

(1) The terms "interdict" and "interdiction", with respect to an aircraft, mean to damage, render inoperative, or destroy the aircraft.

(2) The term "illicit drug trafficking" means illicit trafficking in narcotic drugs, psychotropic substances, and other controlled substances, as such activities are described by any international narcotics control agreement to which the United States is a signatory, or by the domestic law of the country in whose territory or airspace the interdiction is occurring.

(3) The term "assistance" includes operational, training, intelligence, logistical, technical, and administrative assistance.

SEC. 1013. REPORT ON STATUS OF DEFENSE RANDOM DRUG TESTING PROGRAM.

Not later than six months after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report describing the policy and procedures under which the Armed Forces conduct random drug testing of members of the Armed Forces, the frequency of such testing, and the number of members annually required to submit to such testing. The report shall describe any changes that were made to such policy or procedures, or to the frequency of such testing, during the one-year period ending on the date of the enactment of this Act.

Subtitle C—Naval Vessels and Related Matters

SEC. 1021. TRANSFER OF USNS MAURY.

(a) IN GENERAL.—The Secretary of the Navy shall transfer the USNS Maury (TAGS-39) to the Department of Transportation for assignment as a training ship to the California Maritime Academy at Vallejo, California. The transfer shall be made on the date of the decommissioning of that vessel.

(b) TERMS AND CONDITIONS.—(1) In carrying out subsection (a), the Secretary shall deliver the vessel—

(A) at the place where the vessel is located on the date of the conveyance;

(B) in its condition on that date; and

(C) at no cost to the United States.

(2) The Secretary may require such additional terms and conditions in connection with the transfer authorized by this section as the Secretary considers appropriate.

SEC. 1022. TRANSFER OF OBSOLETE VESSEL USS GUADALCANAL.

(a) AUTHORITY.—Notwithstanding subsections (c) and (d) of section 7306 of title 10, United States Code, but subject to subsections (b) and (c) of that section, upon the decommissioning of the USS Guadalcanal (LPH-7), the Secretary of the Navy may transfer the USS Guadalcanal to the not-for-profit organization Intrepid Museum Foundation, New York, New York.

(b) LIMITATION.—The transfer authorized by section (a) may be made only if the Secretary determines that the vessel USS Guadalcanal is of no further use to the United States for national security purposes.

(c) TERMS AND CONDITIONS.—The Secretary may require such terms and conditions in connection with the transfer authorized by this section as the Secretary considers appropriate.

SEC. 1023. MARITIME PREPOSITIONING SHIP PROGRAM ENHANCEMENT.

Section 2218(f) of title 10, United States Code, shall not apply in the case of the purchase of three ships for the purpose of enhancing Marine Corps prepositioning ship squadrons.

Subtitle D—POW/MIA Matters

SEC. 1031. ASSISTANCE TO FAMILY MEMBERS OF KOREAN CONFLICT AND COLD WAR POW/MIAS WHO REMAIN UNACCOUNTED FOR.

(a) SINGLE POINT OF CONTACT.—The Secretary of Defense shall designate an official of the Department of Defense to serve as a single point of contact within the department—

(1) for the immediate family members (or their designees) of any unaccounted-for Korean conflict POW/MIA; and

(2) for the immediate family members (or their designees) of any unaccounted-for Cold War POW/MIA.

(b) FUNCTIONS.—The official designated under subsection (a) shall serve as a liaison between the family members of unaccounted-for Korean conflict POW/MIAs and unaccounted-for Cold War POW/MIAs and the Department of Defense and other Federal departments and agencies that may hold information that may relate to such POW/MIAs. The functions of that official shall include assisting family members—

(1) with the procedures the family members may follow in their search for information about the unaccounted-for Korean conflict POW/MIA or unaccounted-for Cold War POW/MIA, as the case may be;

(2) in learning where they may locate information about the unaccounted-for POW/MIA; and

(3) in learning how and where to identify classified records that contain pertinent information and that will be declassified.

(c) ASSISTANCE IN OBTAINING DECLASSIFICATION.—The official designated under subsection (a) shall seek to obtain the rapid declassification of any relevant classified records that are identified.

(d) REPOSITORY.—The official designated under subsection (a) shall provide all documents relating to unaccounted-for Korean conflict POW/MIAs and unaccounted-for Cold War POW/MIAs that are located as a result of the official's efforts to the National Archives and Records Administration, which shall locate them in a centralized repository.

(e) DEFINITIONS.—For purposes of this section:

(1) The term "unaccounted-for Korean conflict POW/MIA" means a member of the Armed Forces or civilian employee of the United States who, as a result of service during the Korean conflict, was at any time classified as a prisoner of war or missing-in-action and whose person or remains have not been returned to United States control and who remains unaccounted for.

(2) The term "unaccounted-for Cold War POW/MIA" means a member of the Armed Forces or civilian employee of the United States who, as a result of service during the period from September 2, 1945, to August 21, 1991, was at any time classified as a prisoner of war or missing-in-action and whose person or remains have not been returned to United States control and who remains unaccounted for.

(3) The term "Korean conflict" has the meaning given such term in section 101(9) of title 38, United States Code.

SEC. 1032. REQUIREMENT FOR SECRETARY OF DEFENSE TO SUBMIT RECOMMENDATIONS ON CERTAIN PROVISIONS OF LAW CONCERNING MISSING PERSONS.

(a) REVIEW.—The Secretary of Defense shall conduct a review of the provisions of chapter 10 of title 37, United States Code, relating to missing persons.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report containing the Secretary's recommendations as to whether those provisions of law should be amended.

(c) CONSULTATION.—The review under subsection (a) shall be carried out in consultation with the Secretaries of the military departments.

To - Jose C.

From: C Brown

SEC. 111. Public Law 103-121 (107 Stat. 1161) is amended by inserting the words "and California" after the phrase "for projects on the northern border of the United States".

SEC. 112. Section 1404(a)(5)(B) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(a)(5)(B)) is amended by striking "1994" and inserting "1995".

SEC. 113. Notwithstanding any other provision of law—

(a) No transfers may be made from Department of Justice accounts other than those authorized in this Act, or in previous or subsequent appropriations Acts for the Department of Justice, or in part II of title 28 of the United States Code, or in section 10601 of title 42 of the United States Code.

(b) No appropriation account within the Department of Justice shall have its allocation of funds controlled by other than an apportionment issued by the Office of Management and Budget or an allotment advice issued by the Department of Justice.

SEC. 114. SENSE OF CONGRESS.—It is the sense of Congress that the President of the United States and the President-elect of Mexico should meet as soon as possible following the August elections in Mexico to discuss bilateral issues of mutual concern with the objective of deepening and strengthening the ties between the two neighbors, with emphasis on cooperation to establish equitable and effective regulation of the flow of citizens across the border between Mexico and the United States.

SEC. 115. (a) IN GENERAL.—Except as provided in subsection (c), an individual described in subsection (b) may be appointed noncompetitively, under a career or career-conditional appointment, to a position in the competitive service if—

(1) the individual meets the qualification requirements prescribed by the Office of Personnel Management for the position to which appointed;

(2) the last previous Federal employment of the individual was as an employee of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(3) the individual is appointed to such position within two years after separating from the Criminal Justice Information Services Division.

(b) INDIVIDUAL DESCRIBED.—An individual described in this subsection is an individual who—

(1) on the date of the enactment of this Act—

(A) is an employee of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(B) is serving in an appointed position (i) to be relocated from Washington, District of Columbia, to Clarksburg, West Virginia, and (ii) that is excepted by law or regulation from the competitive service; and

(2) has not relocated with his or her position in the Criminal Justice Information Services Division to Clarksburg, West Virginia.

(c) APPLICATION.—This section does not apply to an individual serving on the date of the enactment of this Act in an appointed position on a temporary or term basis.

(d) This section may be cited as the "Criminal Justice Information Services Placement Assistance Act".

LITIGATION REIMBURSEMENT

Amendment No. 40: Adds language (Sec. 109) proposed by the Senate and not in the House bill authorizing the Department of Justice to be reimbursed by other agencies for expenses associated with litigation of extraordinary size and complexity on behalf of that agency.

ASSETS FORFEITURE FUND

Amendment No. 41: Adds language (Sec. 110), proposed by the Senate and not in the House bill, which provides the Attorney General with authority to allocate surplus amounts in the Assets Forfeiture Fund in fiscal year 1995. The conference agreement makes technical amendments to the Senate language to conform to existing law.

IMMIGRATION PILOT PROJECT

Amendment No. 42: Adds language (Sec. 111) proposed by the Senate and not in the House bill to allow for the creation of a land border inspections pilot project on the California border. Current law allows for such projects on the Northern border only. The conference agreement will enable the INS and Customs Service to test the feasibility of a commuter-type lane at a border crossing in the San Diego area.

SENSE OF THE SENATE

Amendment Nos. 43 and 44: Deletes Sense of the Senate provisions not in the House bill concerning immigration policies and enforcement of child support laws.

VICTIMS OF CRIME

Amendment No. 45: Adds language (Sec. 112) proposed by the Senate and not in the House bill, which extends from fiscal year 1994 to 1995 the formula for distribution of base amounts for crime victim assistance grants.

The conference agreement also adds new language (Sec. 113), not in either the House or Senate bills, which prohibits the transfer of Justice Department funds unless such transfers are authorized in this Act, in part II of 28 U.S.C., or in 42 U.S.C. 10601. This provision also limits authority to allocate Justice Department funds to the Department and the Office of Management and Budget.

MEETING WITH PRESIDENT OF MEXICO

Amendment No. 46: Adds a Sense of the Congress (Sec. 114) proposed by the Senate, and not in the House bill, that the President of the United States and the President-elect of Mexico should meet to discuss immigration issues.

The conference agreement also adds language, not in either the House or Senate bills, which would make employees of the FBI's Criminal Justice Information Services Division who choose not to relocate out of the Washington, D.C., area eligible for competitive service appointments in other agencies. This authority will assist the FBI in finding jobs for these emplo[y]... thus avoiding cos[t] and demoralizing reductions-in-force (RIFs). T... language is su[p]ported by the Office of Personnel Management, and the Congr[es]sional Budget Office has scored the legislation at no cost to t[he] Federal government. The conferees believe this authority provid[es] the FBI Director with a prudent management tool, and will in fa[ct] save money since the Bureau will be able to avoid costly RIF pr[o]ceedings for some employees.

Amendment No. 47: Deletes language proposed by the Sena[te] to transfer $350,000,000 from Contributions to International Org[a]nizations and Contributions for International Peacekeeping Acti[vi]ties to reimburse states for the cost of incarcerating illegal alie[ns]. No such provision was included in the House bill.

Amendment Nos. 48 and 49: Deletes a Sense of the Senate r[e]garding the Case of United States v. Knox, and a Sense of the Se[n]ate regarding the escort of aliens being deported.

RELATED AGENCIES

COMMISSION ON CIVIL RIGHTS

SALARIES AND EXPENSES

Amendment No. 50: Appropriates $9,000,000 instead [of] $9,500,000 as proposed by the House and $8,413,000 as propos[ed] by the Senate.

Amendment No. 51: Deletes a provision proposed by the Hou[se] and stricken by the Senate which would have limited the com[]pensation of the Special Assistant to each of the Civil Rights Com[]missioners to 150 billable days per year.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SALARIES AND EXPENSES

Amendment No. 52: Appropriates $233,000,000 instead [of] $238,000,000 as proposed by the House and $240,000,000 as pro[]posed by the Senate.

The conferees are concerned about the lack of clarity with re[]spect to the Commission's budget justification materials and expe[ct] the Commission to review this matter and consult with the Appro[]priations Committees and the Office of Management and Budget t[o] insure that budget justifications developed to support the fisca[l] year 1996 budget request of the Commission strictly comply wit[h] OMB Circulars on this matter.

FEDERAL COMMUNICATIONS COMMISSION

SALARIES AND EXPENSES

Amendment No. 53: Appropriates $185,232,000, instead o[f] $166,832,000 as proposed by the House and $198,232,000 as pro[]posed by the Senate. Provides for $116,400,000 in offsetting fee col[]lections as proposed by both the House and Senate. Provides for a final (net) appropriation of $68,832,000, instead of $50,432,000 a[s] proposed by the House and $81,832,000 as proposed by the Senate. Restores language proposed by the House and stricken by the Sen[ate]

Jose Cerda

M E M O R A N D U M

TO: BOB WASSERMAN

FROM: CAROL BERGMAN Carol

RE: STRATEGY RE NEW BUDGET AUTHORITIES

DATE: SEPTEMBER 1, 1994

WHAT WE KNOW:

- DOD language to circumvent changed budget authorities contained in Conference Report on the National Defense Authorization Act.
- FBI Director Judge Freeh's memo to the Attorney General excoriating increased ONDCP authorities.
- OMB memo indicates that ONDCP should be included in the budget process per the passage of the Crime Bill.
- Rumors and anecdotes re agency concerns, e.g. Attorney General's conversation with Lloyd Cutler.

WHAT WE CAN ASSUME:

- The General Counsel of each federal agency is preparing to circumvent and/or mitigate ONDCP's changed authorities in the most appropriate way for that agency.
- DOD's language relies on the notion of potential conflict with what is in "the national security interest of the United States," an argument not so readily available to the other agencies.

WHAT WE NEED TO DO IN GENERAL:

- Move immediately to reassure various federal agencies.
    - Set up meeting/phone call ASAP with OMB/Alice Rivlin.
        - Talking points for Dr. Brown re ONDCP's anticipated budget process
    - Set up similar meetings/phone calls with Justice, HHS, State, Treasury, Education.

- Prepare to respond to potential legal issues, e.g. which legislative language has priority; litigation re use of resources.

    - Set up a staff meeting with the general counsel (or appropriate staff) of the House and Senate Committees of jurisdiction re ONDCP (House Government Operations and Senate Judiciary) to discuss strategy and develop legal analysis.

- Find Allies

    - Determine if we have any allies in the Executive Office and/or federal agencies.

    - Determine who our best allies are on the Hill.

<u>WHAT WE NEED TO DO RE DOD:</u>

I recommend an initial contact with the Secretary of Defense to discuss the impact of the legislation notwithstanding the language contained in the National Defense Authorization Act and make clear during the meeting the process by which ONDCP intends to handle its new authorities. (This might best be handled as a staff contact first: Chief of Staff to Chief of Staff.)

Suggest follow up staff meeting (ONDCP and DOD) to discuss the legal and contractual issues involved in the legislative language in the Defense Authorization Act, and make point to the Secretary that we had hoped to not have to handle matters in this way.

In other words, do not act as though DOD Authorization language has become law (it still must pass the Senate), and do not assume that it will be upheld as superseding ONDCP reauthorization language.

cc: Ricia McMahon
Charlotte Hayes
John Carnevale
Jose Cerda
Rose Ochi
Fred Garcia
Ed Jurith

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

26-Aug-1994 06:07pm

TO: (See Below)

FROM: BARBARA PAIGE
Office of Mgmt and Budget

SUBJECT: Director's Friday Staff Meeting August 26, 1994

The meeting was led by the Deputy Director for Management.

1. Crime bill
Everyone is pleased with the passage of the bill. With its passage, OMB staff should insure that the Lee Brown or his staff at the Office of National Drug Control Policy are a part of the budget process.

2. Health Care
The White House is concerned about public comments being made by unnamed White House sources.

3. Cuba
The decrease in the number of refugees to 1,400 is not necessarily due to the severe weather conditions since yesterday's arrivals would have to had left Cuba several days ago. Florida wants a supplemental budget appropriation to offset to cost of absorbing Cuban refugees. An analysis of the number of recent Cuban refugees in Florida, as well as the programs/assistance presently available for immigrant assistance and the amounts available under the FY 94 and FY 95 appropriations will be prepared.

4. Chemical Hazard Safety Board
The DDM will call Congressman Stokes concerning funding.

5. Legislative calendar for September and October
Includes appropriations, GATT, Superfund, campaign reform and lobbying reform.

6. Alternative Pay Plan
The plan was worked out with Leon Panetta last night. Staff is now working getting the memo to Podesta.

7. DOD
DOD may request a $100 million supplemental, although approval is

ONDCP REAUTHORIZATION

TALKING POINTS FOR CONVERSATIONS WITH CABINET SECRETARIES

RE CHANGED BUDGET/RESOURCE AUTHORITIES

- I would like to take this opportunity to begin a dialogue with you regarding the implementation of the changed authorities and budget process contained in the reauthorization of ONDCP in the Crime Bill that just passed Congress.

- As you know, the President has been severely criticized for not making drug control a high enough priority. There was significant backlash from both the media and Congress in response to the President making such severe staff cuts in ONDCP last year, i.e. from 122 to 40.

    The fact that the legislation authorizes up to 75 additional staff will go a long way towards ameliorating this; although obviously it is dependant upon appropriations.

- I want to stress to you the importance of the improved process to develop the drug budget and to implement the President's National Drug Control Strategy contained in the legislation reauthorizing ONDCP.

    The process whereby we can create an appropriate drug budget together with your department will permit a coordinated effort for the first time.

- I want to reassure you that I consider the additional authorities contained in the legislation regarding the power to transfer funds and personnel to be super-authorities which would only be employed in an emergency situation, and upon full consultation with the Secretary.

    The fact that the legislation strengthens the formulation of the budget through a coordinated effort mitigates the need for such super-authorities.

- At the same time, I want to give you a sense of how such authorities have the potential to be used to benefit this Administration should priorities shift to necessitate a significant change in direction or emphasis of our counter-narcotics efforts.

These super-authorities could be used to consolidate resources to implement an emergency response to an emerging situation. For example:

- In Haiti, we may jointly determine the need for a special effort to counter an emergency drug use and trafficking situation. My authorities could be used to collect resources in one place to best confront such a problem.

- In order to further improve local coordination of drug and crime efforts such as the PACT program, or the High Intensity Drug Trafficking Area (HIDTA), we might want to jointly expand by utilizing such expanded authorities.

- A public confrontation among the Cabinet Members over super-authorities that only have application in extraordinary circumstances is not helpful to the President. Such inter-office bickering suggests to the public that this Administration does not really mean business when it comes to the drug issue. On behalf of the President, we cannot allow such a perception to take root.

DRAFT

September 1, 1994

MEMORANDUM FOR DR. BROWN

FROM: JOHN CARNEVALE

SUBJECT: New ONDCP Authorities and Staffing Requirements to Carry Out New Authorities

The purpose of this memorandum is to discuss matters related to new authorities and responsibilities provided by the Crime Bill amendments to the 1988 Anti-Drug Abuse Act. This memorandum also presents estimates of additional ONDCP staff required to implement these new authorities and to improve our ongoing efforts.

On hold for a separate discussion are other matters pertaining to amendments in the Crime Bill affecting ONDCP's personnel and administration. Specifically excluded from this discussion, but planned for a subsequent Director's brief, are the following:

- Restriction on ONDCP personnel in Federal election campaign activities;
- CTAC's new authority to engage in demand reduction research;
- Requirements pertaining to how deposits are made to the Special Forfeiture Fund; and
- The Impact of the Crime Bill authorizations on the Strategy and Budget.

We are currently reviewing the entire Crime Bill to identify all the drug-related provisions, the amount authorized, and expected impact on the Strategy and budget for FY 1995 and beyond. Each of these areas will be discussed in subsequent memoranda to you.

I. NEW BUDGET/RESOURCE AUTHORITIES

The Crime Bill provided extensive and far-reaching authorities to the Director of ONDCP to formulate and implement the National Drug Control Strategy. By formulation, I refer to the powers of the Director of ONDCP to influence the budgets that agencies submit to the President in the preparation of the Administration's February budget to Congress. ONDCP currently has the authority to certify budgets, but cannot direct agencies to incorporate specific initiatives in their budgets.

Implementation encompasses efforts to ensure that agencies carry out the goals, priorities, and objectives of the Strategy through the programs they perform for drug control purposes. ONDCP has had no authority to ensure optimal implementation of the Strategy, once the agency budgets have been enacted. The new authorities in this area offer significant tools for the Director ONDCP to strengthen the implementation of the Strategy. However, as is discussed below, there is considerable agency concern over these particular authorities.

The new authorities affecting budget formulation and implementation are summarized below.

Formulation Tools

These tools would enable the Director to better formulate the National Drug Control Strategy budget that is sent to the Congress each February as part of the President's budget. Your ability to get agencies to incorporate specific budget proposals in the drug program budget is greatly enhanced by the Crime Bill. In particular, the certification process is strengthened to enable you to require that certain initiatives be incorporated into an agency's budget. Agencies will no longer be able to ignore your specific budget direction.

- **Drug Budget Initiatives**: The Director can require a department or agency to include a funding request for a specific initiative in its Tier III submission (which comes to ONDCP and goes to OMB). Previously, the Director could certify as to the adequacy of an agency's submission and could identify what changes are required to make a submission adequate. This provision would require the agency to make the Tier III submission "adequate" to support the Strategy.

- **ONDCP Budget guidance**: The Director ONDCP is required to provide by July 1 of each year budget recommendations to the departments and agencies. This authority (already in Executive order number 12880, issued November 16, 1993) is intended to inform agencies of Strategy priorities early in the budget formulation process.

- **Achieving Certification**: For those budgets not certified as adequate, the Director ONDCP is required to identify the specific changes to the agency's budget that are required to achieve certification. This affects the Tier I and Tier II budgets (Tier III is covered above). This requirement already exists in Executive Order number 12880.

Implementation Tools

These tools would enable the Director to adjust drug control programs once they are funded to ensure optimal implementation of the Strategy. Once an agency receives an appropriation, you could move staff, budget resources, and monitor the rate of agency spending to ensure 1) compliance with the Strategy, and 2) drug control program resources are allocated to meet the changing drug threat.

- **Reassignment of Staff**: The Director can request the head of a department or agency to temporarily reassign staff engaged in drug control activities to another agency to implement the Strategy. Previously, the Director could only do this in consultation with the head of the department or agency.

- **2 percent resource transfer**: The Director can transfer up to 2 percent of the resources of a drug program agency account into another drug program agency account (the transfer ceiling is fixed by the smaller of the two accounts), with the advanced approval of Congress.

- **Funds Control Notice**: The Director can direct that all or part of funds appropriated to a drug control agency be obligated by some time period (months, quarters, fiscal years). This authority enables the Director to monitor an agency's spending of drug program resources. While the Director (like the President) may not impound (withhold from spending) resources, the Director may use this to monitor an agency's drug program spending to ensure such spending comply with the goals of the Strategy. This new authority may be applied on a discretionary basis.

The authorities pertaining to the transfer of manpower and budget resources are of great concern to the agencies. Many agencies have expressed concern to OMB over these particular authorities and fear you may abuse these new powers. Some agencies are reportedly exploring the legal basis of these authorities. OMB has told agencies and the White House Chief of Staff that it will work with us to ensure that these new authorities are used in a "sensible" manner. Talking points addressing these concerns and proposing a line of defense are coming to you under separate cover.

In terms of ONDCP's workload, Planning and budget would have direct responsibility for these new authorities. However, as budget and program are highly interrelated, each ONDCP component would be required to posses a solid understanding of agency drug programs to ensure these new tools are used as effectively as possible.

II. NEW STRATEGY OUTCOME MEASURES AND REPORTING REQUIREMENTS

The amendments to the Crime Bill greatly enhance ONDCP's workload in other areas beyond those related to the formulation and implementation of the budget. Most pertain to reporting requirements for the annual Drug Control Strategy. Others pertain to other drug control activities, such as on the Ounce of Prevention Council (Title III) or the National Commission on Crime Prevention and Control (Title XXVII).

The annual Strategy evaluation requirement is enhanced as follows (for purposes of discussion, the following section titles are my own creation).

- **Drug Situation Assessment**: The Director is required to include in each Strategy an evaluation of the effectiveness of the Strategy during the preceding year that includes an assessment of 1) the prevalence of drug use, 2) the reduction in drug availability, 3) the reduction in the consequences of drug use, and 4) an assessment of drug treatment. In each case, specific outcome measures are listed for inclusion in the Strategy.

- **Data System Adequacy**: The Director is required to assess the adequacy of drug-related data systems to measure the casual drug user population and groups at-risk for drug use. The Director is also required to report on planned actions to correct deficiencies identified in existing drug-related indicators.

- **Treatment System Adequacy**: The Director is required to report on specific factors that restrict the availability of treatment and to propose administrative and legislative remedies to make treatment more available.

- **Strategy Functional Program Evaluation**: The Director is required to provide an overall assessment of the effectiveness of interdiction, treatment, prevention, law enforcement, and international programs.

- **Member Ounce of Prevention**: The Director is to be a member of the Ounce of Prevention Council, which may make grants for summer and after-school education and recreation programs; mentoring, tutoring, and other programs involving participation by adult role models; programs promoting employability and job placement; and prevention and treatment programs to reduce substance abuse, child abuse, and adolescent pregnancy.

- **Possible Other Issue**: The Director could be required to assist the National Commission in Crime Prevention and

Control on drug-related matters. While the law does not mandate any ONDCP involvement, the Commission is authorized to hold hearings and obtain information to assist it in its operations. It is likely that ONDCP will have to provide some support to this Commission.

Every ONDCP office is affected by these new requirements. Many of the data activities fall under the purview of the Data/Evaluation Subcommittee of the Research, Data, and Evaluation Committee. Planning and Budget would conduct and coordinate efforts (including research efforts) pertaining to the evaluation of the Strategy's effectiveness, including the evaluation of the functional activities. The Ounce of Prevention Council would likely be staffed by the Office of Demand Reduction.

III. STAFFING REQUIREMENTS TO IMPLEMENT NEW AUTHORITIES

The Crime Bill authorized 75 full-time equivalent positions (FTE) for ONDCP, and increase of 35 FTE. Without additional staff, our ability to use the new authorities provided by the Crime Bill is limited. By authorizing additional FTE, Congress clearly intends to give you the means to carry out your responsibilities. Of course, any proposed increase in staff may need to be considered against the limit on the size of the total White House staff.

In lieu of proposing additional ONDCP staff, agency representatives can help alleviate the workload. However, given the nature of some of the new authorities (budget and staff transfer authority), it may be best to hire additional ONDCP staff to ensure an unbiased, objective effort on your behalf.

As for hiring staff in FY 1995, the FY 1995 budget process is about over and it is uncertain whether there is Congressional interest in adding FTE above the President's request of 40 FTE for FY 1995. If there is no such interest, we will have to wait a full year (FY 1996 budget--October 1, 1995) for additional staff. This creates a staffing problem that could be serious, especially since Congress is likely to hold you accountable for implementing the new authorities in the Crime Bill.

The following summarizes the additional staff requested by each office within ONDCP.

- Supply Reduction (+7 FTE, total staff 10 FTE): Additional staff would support international programs, domestic enforcement, and intelligence (foreign, domestic, and internal intelligence research analysis.

- Demand Reduction (+5.5 FTE, total staff 11.5 FTE): Additional staff would perform liaison function with treatment and prevention agencies, would work special projects (religious summit, PACT, etc.), and would monitor agencies' implementation of the Strategy.

- State and Local Affairs (+ 7 FTE, total staff 11 FTE): Additional staff are request to perform liaison with states and localities, for program coordination, policy analysis, HIDTA administrative and financial management specialists,and for special projects (such as the African American Male Initiative).

- Congressional/Public Affairs (+3 FTE, total staff __ FTE): Two legislative analysts and one Public Affairs Specialists are requested. The two legislative analysts will assist with Hill contacts required by reauthorization, testimony, hearings, etc., and with reviewing bills, reading the Congressional Record, and other matters. The Public Affairs assistant would facilitate and expedite press inquiries.

- General Counsel (+0 FTE, total staff 1 FTE): This represents the presumed request that I developed. We will need to consult with the General Counsel upon his return from vacation.

- Administration (+2 FTE, total staff 4 FTE): This would provide additional staff to assist Richard Dew in executing the ONDCP budget (1 FTE), and Tilman Dean for general administrative support (1 FTE).

- Planning and Budget (+5 FTE, total staff 9 FTE): These staff would be used to support the enhanced budget responsibilities (+3 FTE) and to expand the analytic capability of the office to perform the additional Strategy evaluation (1 FTE) and data system evaluation requirements (+1 FTE).

In total, 29.5 FTE (total ONDCP staff 69.5 FTE, or 70 positions) are requested to implement the new authorities provided by the Crime Bill.

IV. RECOMMENDATIONS

The following recommendations/actions are for your consideration:

1) **STOP THE PANIC:** Allay Federal agency and department concerns over the new budget authorities provided by the Crime Bill by immediately beginning a dialogue with Cabinet Officials. It is no secret that the budget and manpower transfer authority is viewed askance by agencies and there is considerable concern over how you intend to use these particular authorities. One solution is to propose a

consultation process to ensure that agency heads are involved in any decision to transfer resources.

2) **NEED STAFFING DECISION**: The ONDCP budget is due to the Office of Administration (and then to OMB) on September 9th. While we can be late with this submission (arguing that the new authorities provided by the Crime Bill require a review of our situation), we nevertheless need to decide how many additional FTE are required in FY 1996. I recommend that you convene a meeting with Senior Staff to discuss their requests and to formulate a final recommendation. In that meeting, you should discuss White House receptivity to the proposed staffing increase. We should also explore staffing options should we fail to obtain additional staff for FY 1995.

   Parenthetically, the ONDCP budget now proposes an additional FTE for FY 1996. This level reflects the increment provided in FY 1994 and was incorporated into the budget as a placeholder without the benefit of ONDCP office component input. We will revise the budget request accordingly, once a final decision occurs.

3) **FY 1995 STAFFING DECISION**: Congressional Affairs needs guidance about what action it should take to affect the FY 1995 budget now before Congress. The Treasury/Postal Conference is scheduled for early September. A decision is needed about whether to approach the Congress about more staff for FY 1995.

4) **STRATEGY EVALUATION/DATA NEEDS**: Planning and Budget is most affected by the new authorities provided by the Crime Bill. However, each ONDCP component must contribute to the extensive evaluation requirement, especially with regard to implementation.

attachments

SPECIFIC ONDCP LANGUAGE PERTAINING TO NEW AUTHORITIES AND REPORTING REQUIREMENTS AS DISCUSSED IN THE MEMORANDUM

I. NEW BUDGET RESOURCE AUTHORITIES

Formulation Tools

Drug Budget Initiatives: "The Director shall request the head of a department or agency to include in the department's or agency's budget submission to the Office of Management and Budget funding requests for specific initiatives that are consistent with the Presidents priorities for the National Drug Control Strategy and certifications made pursuant to paragraph (3), and the head of the department or agency shall comply with such a request."

ONDCP Budget Guidance: "Provide, by July 1 of each year, budget recommendations to the heads of departments and agencies with responsibilities under the National Drug Control Program, which recommendations shall apply to the second following fiscal year and address funding priorities developed in the annual National Drug Control Strategy."

Achieving Certification: "with respect to a request that is not certified as adequate to implement the objectives of the National Drug Control Strategy, include in the certification an initiative or funding level that would make the request adequate."

Implementation Tools

Reassignment of Staff: "Control of Drug-Related Resources -- request the head of a department or agency or program to place department, agency, or program personnel who are engaged in drug control activities on temporary detail to another department or agency in order to implement the National Drug Control Strategy, and the head of the department or agency shall comply with such a request."

2 percent resource transfer: "except to the extent that the Directors authority under this paragraph is limited in an annual appropriations Act, transfer funds appropriated to a National Drug Control Program agency account to a different National Drug Control Program agency account in an amount that does not exceed 2 percent of the amount appropriated to either account, upon advance approval of the Committees on Appropriations of each House of Congress."

Funds Control Notices: "(1) A funds control notice may direct that all or part of an amount appropriated to the National Drug Control Program agency account be obligated by

(A) months, fiscal year quarters, or other time periods; and

(B) activities, functions, projects, or object classes.

(2) An officer or employee of a National Drug Control Program agency shall not make or authorize an expenditure or obligation contrary to a funds control notice issued by the Director.

"(3) In the case of a violation of paragraph (2) by an officer or employee of a National Drug Control Program agency, the head of the agency, upon the request of and in consultation with the Director, may subject the officer or employee to appropriate administrative discipline, including, when circumstances warrant, suspension from duty without pay or removal from office."

II. NEW STRATEGY OUTCOME MEASURES AND REPORTING REQUIREMENTS

Drug Situation Assessment: "The Director shall include with each National Drug Control Strategy an evaluation of the effectiveness of Federal drug control during the preceding year. The evaluation shall include an assessment of Federal drug control efforts, including

(A) assessment of the reduction of drug use, including estimates of drug prevalence and frequency of use as measured by national, State, and local surveys of illicit drug use and by other special studies of

(i) high-risk populations, including school dropouts, the homeless and transient, arrestee, parolees, and probationers, and juvenile delinquents; and

(ii) drug use in the workplace and the productivity lost by such use;

(B) assessment of the reduction of drug availability, as measured by

(i) the quantities of cocaine, heroin, and marijuana available for consumption in the United States;

(ii) the amount of cocaine and heroin entering the United States;
(iii) the number of hectares of poppy and coca cultivated and destroyed;

(iv) the number of metric tons of heroin and cocaine seized;

(v) the number of cocaine processing labs destroyed;

(vi) changes in the price and purity of heroin and cocaine;

(vii) the amount and type of controlled substances diverted from legitimate retail and wholesale sources; and

(viii) the effectiveness of Federal technology programs at improving drug detection capabilities at United States ports of entry;

(C) assessment of the reduction of the consequences of drug use and availability, which shall include estimation of

(i) burdens drug users placed on hospital emergency rooms in the United States, such as the quantity of drug-related services provided;

(ii) the annual national health care costs of drug use, including costs associated with people becoming infected with the human immunodeficiency virus and other communicable diseases as a result of drug use;

(iii) the extent of drug-related crime and criminal activity; and

(iv) the contribution of drugs to the underground economy, as measured by the retail value of drugs sold in the United States; and

(D) determination of the status of drug treatment in the United States, by assessing

i) public and private treatment capacity within each State, including information on the number of treatment slots available in relation to the number actually used, including data on intravenous drug users and pregnant women;

(ii) the extent, within each State, to which treatment is available, on demand, to intravenous drug users and pregnant women;

(iii) the number of drug users the Director estimates could benefit from treatment; and

(iv) the success of drug treatment programs, including an assessment of the effectiveness of the mechanisms in place federally, and within each State, to determine the relative quality of substance abuse treatment programs, the qualifications of treatment personnel, and the mechanism by which patients are admitted to the most appropriate and cost effective treatment setting."

Data System Adequacy: "The Director shall include with the National Drug Control Strategy required to be submitted not later than February 1, 1995, and with every second such strategy submitted thereafter

(A) an assessment of the quality of current drug use measurement instruments and techniques to measure supply reduction and demand reduction activities;

(B) an assessment of the adequacy of the coverage of existing national drug use measurement instruments and techniques to measure the casual drug user population and groups at-risk for drug use;

(C) an assessment of the actions the Director shall take to correct any deficiencies and limitations identified pursuant to subparagraphs (A) and (B)"

Treatment System Adequacy: "[The Director is required to include in each Strategy] identification of the specific factors that restrict the availability of treatment services to those seeking it and proposed administrative or legislative remedies to make treatment available to those individuals."

Strategy Functional Program Evaluation: "With each National Drug Control Strategy, the Director shall report to the President and the Congress on the Directors assessment of drug use and availability in the United States, including an estimate of the effectiveness of interdiction, treatment, prevention, law enforcement, and international programs under the National Drug Control Strategy in effect in the preceding year in reducing drug use and availability."

ONDCP OFFICE INPUT

ON STAFFING NEEDS

(Note: The Planning and Budget and Administration requests for additional staff are incorporated in the memorandum.)

INTRA-OFFICE MEMORANDUM

September 1, 1994

TO: Dr. Lee P. Brown VIA: Carnevale & Wasserman

FROM: George Kosnik, Acting Associate Director, BSLA

SUBJECT: Staffing Requirements for Bureau State and Local Affairs

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In order to be able to carry out our responsibilities pursuant to congressional mandates, new authorities in the reauthorization bill, expanded HIDTA areas and the Director's special projects, provided is the staffing requirements for BSLA and HIDTA.

CURRENT LEVEL:

Associate Director	1.0 FTE
Deputy State and Local Affairs	1.0 FTE
Director HIDTA Program	1.0 FTE
Secretary	1.0 FTE
	4.0 FTE

STAFFING REQUIREMENTS/REQUESTED LEVELS:

State and Local Affairs:

Liaison (former regional coordinators)	1.0 FTE
Program Coordinator and Monitor	1.0 FTE
Policy Analyst	1.0 FTE
	3.0 FTE

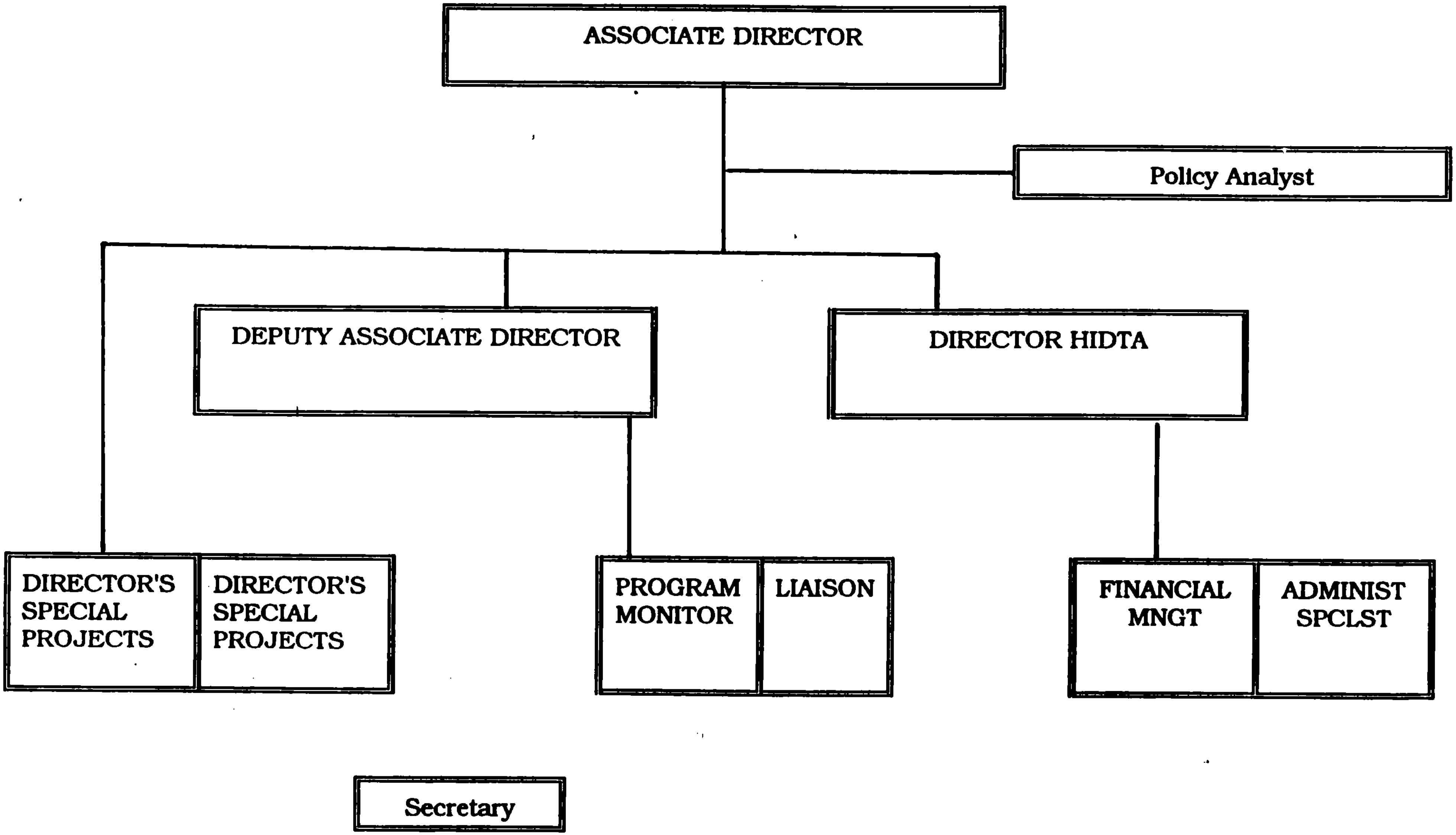
HIDTA:

Administrative Specialist	1.0 FTE
Financial Management Specialist	1.0 FTE
	2.0 FTE

DIRECTOR'S SPECIAL PROJECTS:

African American Initiative and Drug Control System Evaluation and Planning	2.0 FTE
TOTAL	7.0 FTE

PROPOSED STRUCTURE FOR BSLA



STATE AND LOCAL LIAISON

Requirement: GS 13/14 (Policy Analyst) responsible for handling the calls and correspondence from state and local governments, community organizations and individuals and conducting follow-up of their inquiries with federal drug control agencies program offices.

Pursuant to Sec.(C) (b) Responsibilities, (5) Consult with and assist State and local governments with respect to their relations with the National Drug Control Program agencies. To further, this Administration's inter-agency principle is "collaboration".

Justification: A full time coordinator is required to respond to the communications we received directly from constituents and from congressional and other public officials as well. Due to the radical reduction in the Regional Coordination Section from twelve position to a staff of one, it has not been possible to adequately perform this responsibility. Matters are primarily handled by referral to other agencies alone without followup.

Following the Regional Conferences, we anticipate an even greater number of contacts calling for our help with various federal program offices in securing grant applications information, influencing program guidelines, clarifying fiscal/grant procedures, and learning about local, state and private initiatives that work.

The ONDCP, both on the hill and with constituents, has a bad reputation, under the previous Administrations, because of lack of responsiveness to their concerns and requests for help. BSLA would like to turn that around through assigning a full time professional to service inquiries and requests.

The Coordinator will serve as an advocate with federal drug control agencies to ensure that constituents receive timely and accurate information and responses.

Working with the Deputy Director will assist in mounting Regional Conferences by maintaining regular outreach of state and local key contacts, and staffing the Rural Task Force.

Responsibilities also include identifying projects, both enforcement and prevention that are working, planning site visitations for the Director and Deputies, and organizing special events.

Qualifications include experience in drug and criminal justice field and working knowledge of drug policy and programs. Preferred understanding of intergovernmental considerations.

PROGRAM MONITOR

Requirement: GS 14/15 (Program Analyst) responsible for handling federal drug control agencies liaison functions for State and Local Affairs.

Pursuant to Drug Control Leadership Act Sec.(C) (b) Responsibilities, (3) Coordinate and oversee the implementation by National Drug Control Program agencies of the policies, objectives and priorities established.......and the fulfillment of the responsibilities of such agencies under the National Drug Control Strategy.

As per the Crime Bill requirement, to determine effectiveness of interdiction, treatment, prevention and law enforcement programs.

Justification: A coordinator is required to actively work with federal agencies drug/strategy related programs. Responsibilities include promoting coordination and cooperation among Federal, State and local anti-drug programs. The Program Monitor will review state and local drug control activities to ensure well-coordinated and effective drug control at all levels of government.

Serve on the several program tasks forces such as Weed and Seed. There are a number of established program working groups that have involved ONDCP participation in the past. We need to reestablish a role in those having to do with drug strategy related programs for state and local governments.

In particular, DOJ, Office of Justice Programs/Bureau of Justice Assistance has specifically requested forming a working relation with BSLA re: domestic law enforcement and community-based programs: Weed and Seed, More Cops, etc. BJA administers the Byrne Anti-Drug Act grant program--the principal drug enforcement federal assistance program for state and locals. And they will have primary responsibility police, courts and boot camps and other alternative disposition programs under the Crime Bill.

Affirmatively establishing connections with various units of National Drug Control Strategy agencies to input state and local affairs recommendations from our consultations regarding policy, regulations, and programs.

Working on joint agency undertakings such as national conferences, to represent ONDCP in securing a role for Director and Deputies as speakers and panelists.

Qualification: include experience in drug and criminal justice field and working knowledge of drug policy and programs. Preferred experience working in public sector.

POLICY ANALYST

Requirement: GS 12 (Policy Analyst) responsible for staffing the Associate Director in all matters.

Justification: A full time assistant to the Associate Director, who is responsible for providing coordination, oversight, and leadership in State and local government liaison for the numerous State and local governments and their drug-related agencies in the areas of supply and demand.

Staff support is necessary to coordinate staffing to carrying out responsibilities relative to representing the Administration's drug policies before the public, Congressional committees, and etc.,

Duties include arranging meetings for consultation on policy and program development and advising the Director, affirmatively outreaching drug/related governmental affairs: all levels of government state, regional, city and county agencies providing prevention, treatment, enforcement, prosecution, courts and schools.

Developing and continuously working along with Criminal Justice Special Interests Groups on joint project relating to drug policies and programs.

The Associate Director serves as the principal spokesperson for the National Drug Control Strategy to State and local governments. The Policy Analyst will assist in actively encouraging state and locals and private sector initiatives for drug prevention, treatment and control.

In lieu of an additional administrative/clerical position, a lower level policy professional is needed to follow through on the correspondence, requests for assistance and participation to the Associate Director, Director's requests and ONDCP staff document and assignments.

Also handle Associate Director's schedule, developing itinerary and coordinating with Administration and other internal units regarding speeches, press, congressional contacts and interface with OSR, ODR and P&B on policy and program issues and inter-unit coordination.

Qualifications: include experience in policy and support role. Need competency with computers and writing ability. Personal qualities include outstanding interpersonal skills, reliability and diligence to duty.

ADMINISTRATIVE SPECIALIST

Requirement: GS-13/14 equivalent to collect and package data from over 150 HIDTA initiatives and publicize the numerous successes.

Justification: A specialist is required to actively monitor, collect, and package a variety of quantitative and qualitative data, and prepare material to publicize successful accomplishments. Since agencies within the HIDTAs are not focused on publicity (other than large seizures), the specialist cannot merely solicit and receive reports. Rather, the specialist must keep in constant communication with several hundred agencies participating in the HIDTA Program and develop material based on own initiative.

The HIDTA program has matured sufficiently to enable ONDCP to identify major process and product successes and attempt to replicate them in other HIDTA and non-HIDTA locations. An effective means to this end is a HIDTA newsletter which will improve the level of innovation and increase communication between HIDTAs. There have been several unsuccessful start up attempts from individual HIDTAs. The primary problem was the lack of a central coordinating editor. The specialist will be responsible for creating, editing, publishing, and distributing other communications media including a HIDTA Pamphlet, effective briefing slides and material, and fact sheets.

Working with the ONDCP Congressional Office, the specialist will create tailored packages to keep Members of Congress informed of the successes, grant support, and HIDTA activity related to their constituency. Currently this is done on an irregular, reactive basis.

The specialist will also proactively advise/assist the seven HIDTAs in preparing communication material and respond to the numerous inquiries on the HIDTA program.

Qualifications include exceptional creative and technical writing skills and competency with desk top publishing software.

FINANCIAL MANAGEMENT SPECIALIST

Requirement: GS 13 - 15 responsible for managing the $107 million HIDTA budget.

Justification: Previously, the HIDTA staff included a CPA from the IRS who provided oversight for the budgetary portion of the HIDTA program. Today, the budgetary portion of the program is significantly more complex and larger. In FY 1995, more innovative financial management procedures will be used to improve responsiveness and accountability--particularly as the program gains increased visibility.

The HIDTA program has been refined to the degree that random and abbreviated audits of receiving offices are now possible. The Director is responsible for the public funds entrusted to him. We must ensure that there are proper accountability procedures in place for these funds.

The specialist will manage all funds for all participating Federal, State and local law enforcement, treatment, and prevention agencies. We asked DOJ to assume the management of the HIDTA State and local budgetary portion of the law enforcement program because of the staff reduction. With the increase of staff authorizations, it is expected that ONDCP will resume management of this budget. The DOJ grants section has no additional resources to manage this budget and is now under severe strain preparing for the Crime Bill grants. There are 116 active HIDTA grants--not including the pending FY 95 grants--being managed by DOJ. This represents about $60 million.

Qualifications include expert knowledge of Federal financial management requirements, State and local grants procedures, reimbursable agreements, and auditing techniques.

PREVIOUS HIDTA STAFFING

INS Program Analyst (GS 15).

Customs Program Analyst from Customs (GS 15)

IRS Program Analyst (GS 15).

Secretary.

Program analysts analyzed HIDTA submissions, conducted evaluations, provided budgetary oversight over $86 million, prepared issue papers, kept Departments and agencies informed, represented ONDCP at HIDTA-related meetings/conferences, reviewed law enforcement agency budget submissions for certification, prepared money laundering papers, resolved inter-agency conflicts, maintained close communication with State and local agencies, informally paved the way for acceptance of new policies and procedures, kept intelligence and information flow from task forces/agencies, and provided technical evaluation of HIDTA initiatives/innovations.

SPECIAL PROJECTS

AFRICAN AMERICAN INITIATIVE

Requirement: Schedule A responsible for designing and carrying out the Director's African American Initiative, with his guidance.

Pursuant to Crime Bill provision to study high risk populations and restricted availability of treatment and propose administrative and legislative recommendations.

Justification: Arising out of the Director's concern, the African American Initiative is a new special project that will be developed, with the President's expressed endorsement. Abuse of illicit drugs and the attendant violence it breeds have created devastating consequences for African American families and inner city communities.

Past drug policies have had a particularly, negative impact on African American drug abusers. Policies and criminal justice system practices such as the disparate impact of minimum mandatory sentencing, crack vs. cocaine sentencing, and comparative drug use rates and arrests rates must be reviewed. Essentially, the punishment approach, without treatment alternatives for chronic hard core users, have resulted in a astronomical growth of prison populations, with a disproportionate number of African Americans and ethnic minority inmates.

As for eg. a D.C. study has shown that drug users caught up in the drug sweeps of the 80's, who now fill our prisons, at the time of their arrests 80% were employed. Under our new strategy, some of these individuals, nonviolent illicit drug abusers, may be eligible for drug court diversion, boot camp and other alternatives.

Additionally, the dearth of the availability of drug treatment services for African American drug abusers in the justice system and in the community have compounded the problem. The fundamental shift in the strategy is to focus on treatment for the chronic drug abusers. Need to study the availability of drug treatment resources to this special population for planning and budgets.

Moreover, drug treatment alone would not be the answer in these communities faced with high unemployment and little ancillary human services to help create opportunities out of addiction and in to a productive life. Need to study the special needs and problems in conjunction with Kellogg Foundation African American project.

Qualification: requires particular expertise in criminal justice administration and crime policy and African American issues and concerns. Advanced degree in criminal justice or related area. Experience in an executive role in the criminal justice system. Preferred experience in formulating policy and programs in concert with African American policymakers, academics and the community.

DRUG CONTROL SYSTEMS EVALUATOR

Requirement: Schedule A responsible for designing and executing the evaluation of federal, state and local law enforcement drug control systems.
Pursuant to AntiDrug Act, Sec. 1003 (A) identify the technological needs of state and local government and HIDTA-related authorities.

Justification: A full time law enforcement information and intelligence systems expert is required to plan and manage the evaluation of Federal, State and local drug control systems financed by federal resources.

It is commonly believed that the drug control intelligence and information systems are not working effectively. Many of the systems are financed out of federal dollars. There has been a lack of planning and coordination among systems, which has resulted in duplication, costly redundancy, incomplete integration among state and local systems, and vis a vis state to state and regional systems, and inadequate interface with the several federal drug control systems. (This is further exacerbated by the lack of total interface between federal drug intelligence networks.)

A systems evaluator and planner will evaluate federal, state and local drug control systems. As for eg., evaluates federally resourced state and local drug intelligence programs. The objective is to streamline systems and make them more cost effective and efficient in ultimately targeting major drug trafficking organizations.

The Evaluator/Planner will ensure HIDTA, DOD AND BJA supported drug intelligence systems are compatible; prioritized to support the National Drug Control Strategy; and provide usable, actionable and timely support to State and local agencies.

Evaluation of regional intelligence centers includes the development of an usable "big picture" to assist federal, state and local agencies in prioritizing their efforts against the most significant drug trafficking organizations.

Responsibilities will also include evaluating the degree to which these intelligence centers provide effective predictive analyses. Typically, the ability for projecting, from a systems perspective, is lacking in law enforcement intelligence systems management. They are largely utilized for case support. As compared to the DOD capability, the drug control systems are in the stone age. Working with the HIDTA Director federal, state and local drug control systems will be provided technical assistance to move from a reactive mode to a proactive forecasting approach.

Qualifications include experience in law enforcement and systems. Must be highly skilled in intelligence procedures and systems, and highly knowledgeable in drug investigations and systems analysis.

STAFFING NEEDS FOR OFFICE OF DEMAND REDUCTION

A. DEPUTY DIRECTOR FOR DEMAND REDUCTION — 1.0 FTE

PROVIDE LEADERSHIP FOR OFFICE IN ALL AREAS OF DEMAND REDUCTION.

B. CHIEF OF ODR STAFF FUNCTION — 1.0 FTE

MANAGE STAFF, OPERATE ODR OFFICE ON DAY TO DAY BASIS, MANAGE PAPER FLOW OF OFFICE;

C. LIAISON WITH TREATMENT AGENCIES — 3.0 FTE

MONITOR AGENCIES' IMPLEMENTATION OF NATIONAL STRATEGY, STAY ON TOP OF TREATMENT RESEARCH AND ADVISE DDDR ON NATIONAL TREATMENT NEEDS INCLUDING STATE OF THE ART, TRAINING, MEDICATIONS DEVELOPMENT, ETC.

D. LIAISON WITH PREVENTION AGENCIES — 2.5 FTE

MONITOR AGENCIES' IMPLEMENTATION OF NATIONAL STRATEGY, STAY ON TOP OF PREVENTION RESEARCH AND MONITOR NATIONAL MOOD REGARDING PREVENTION MOVEMENT; TAKE THE LEAD IN CONCEPTUALIZING AND IMPLEMENTING NATIONAL PREVENTION SYSTEM.

E. SPECIAL PROJECTS STAFF — 2.0 FTE

THIS INCLUDES THE RELIGIOUS SUMMIT, WORKSITE PROGRAMS, HEALTH CARE REFORM, PACT, PRODUCT DEVELOPMENT.

F. INTERNATIONAL PROGRAMS — .5 FTE

PROVIDE LIAISON AND LEAD WORK WITH COMMITMENTS TO SHARE TECHNOLOGY WITH FOREIGN COUNTRIES.

G. OFFICE SUPPORT — 1.5 FTE

GENERAL SECRETARIAL, SCHEDUALING, CORRESPONDANCE CONTROL, TRIP COORDINATION.

TOTAL NEED	11.5 FTE
CURRENT STAFFING	6.0 FTE
REQUESTED INCREASE IN FTE	5.5 FTE

9/1/94

Public and Legislative Affairs
Reauthorization Staffing Needs

Anticipated additional staffing needs

Legislative Affairs

TWO Legislative Analysts:

Junior Staff Assistant -- with Hill experience and some political acumen to be able to go up to the Hill and help with Hill contacts required by reauthorization, e.g., performance measure requirements, and to help with testimony, hearings, Hill contacts, write memoranda on crisis issues to enable decisions by senior staff,

Research Assistant -- to research Lexis/Nexis, find bills, read Cong. Rec and daily leg. material to keep us up to date

Public Affairs

ONE Public Affairs Assistant and Researcher:

-- to get information to press and other inquiries distributed in a timely manner.

9/1

NOTE TO JOHN CARNEVALE

FROM: Hank Marsden HJ

SUBJECT: National Narcotics Leadership Act Ammendments

The Ammendment significantly expands both the bugetary authority of ONDCP and its programmatic responsibilities. To a large extent budget and program issues/requirements are closely interrelated. For example, the Director can reallocate funds from one agency/department to another - This presupposes that we have a good understanding of where programs are under funded and where we have programmatic excesses. Similarly, we have the authority to ask one agency to temporarily assign personnel to another agency - we need to know and understand the programs if we are to make valid demands for reassignment.

Listed below is my best estimate of what additional personnel ONDCP needs inorder to carry out those responsibilities which have traditionally fallen into the Supply Reduction area. I recognize that we are in the process of developing an overall ONDCP strategy and that the current allocation of responsibilities could change. My recommendations as to numbers would apply even if the function/activity was located in another ONDCP component.

✓ Deputy for Supply Reduction (1)

✓ Deputy's Secretary (1)

+2 International Programs (including interdiction) (3)

Three professional staff officers would be the minimum number necessary to do an effective job. This presupposes that we continue to rely heavily on the IWG for overseeing/coordinating international cocaine and heroin programs, and on the USIC to do the same for interdiction. We currently have one ONDCP staff officer (Rich Porter) and three fulltime "agency Reps" working on this area. They are fully committed against the requirements that are being levied on them. Even with the addition of two ONDCP positions, we would need to keep the three fulltime agency representatives.

+2 Domestic Enforcement (2)

Two professional staff officers would be the minimum number necessary to do an effective job. We presently have part of one ONDCP officer (Hank Marsden) working on domestic LE issues. This has proven to be insufficient to effectively monitor and oversee domestic programs.

+1 Intelligence (Foreign and domestic law enforcement) (1)

One professional staff officer would be the minimum number necessary to do an effective job. We presently have part of one ONDCP officer (Hank Marsden) working on foreign and domestic intelligence issues. In addition, this position has traditionally overseen the various working groups and committees related to interagency communications and ADP issues.

+2 Internal Intelligence Support (2)

Two professional staff officers would be the minimum to carry out an effective internal intelligence support function. We currently have one agency representative providing minimal support.

SUMMARY

Duputy Director -	1
Secretary -	1
International -	3
Domestic LE -	2
Intelligence -	1
Internal Intel Spt -	2
Total	10

+ 7 currently unfunded FTE

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DRUG TEAM

725 17th St. N.W.
Room 9202 N.E.O.B.
Washington, D.C. 20503

FAX # - 202-395-7238
Alternate Fax # - 202-395-4797

Number of Pages: [ ] (including this page)

To: Jose Cerda 67028

From: Jim Duke
202-395-3451

Martha M. Gagné
202-395-3452

Time Sensitive

[redacted]

Comments: HHS Language per your request

proposed by the Senate that caps the amount of funds ap for performance awards, to include a reduction in appr iations rel to the The fe delete without prejudice language proposed by the Senate related to funding for executive direction activities and to unallowable costs in connection with Federal grants and contracts.

The conferees have included section 513 that places a cap on the amount that agencies may spend on cash performance awards. The amount spent may not exceed one percent of the amount budgeted for personnel compensation and benefits. In addition, the conference agreement includes a reduction of $30,500,000 for salaries and expenses for all agencies funded in this bill; this is directly related to the one-percent cap. The reduction of $30,500,000 shall be allocated among the agencies funded in the bill by the Office of Management and Budget. The reduction shall be allocated in proportion to the extent to which agencies have exceeded the one-percent figure in the past.

The conference agreement deletes the language on unallowable contractor and grantee costs proposed by the Senate. The conferees remain concerned about the problems the Departments of Labor, Health and Human Services, and Education have experienced with contractors and grantees who make claims for reimbursement for costs that are unallowable. Accordingly, in order to help eliminate claims for unallowable costs, the conferees support a process whereby contractors and grantees certify that they will not claim costs that have been previously determined to be unallowable. It is the understanding of the conferees that the conference agreement of Federal procurement reform legislation addresses this matter to strengthen controls over the procurement process and to help eliminate contractor and grantee claims for unallowable costs.

It is the intent of the conferees that funds available for executive direction, excluding the Centers for Disease Control and Prevention, the National Institutes of Health and the Social Security Administration, shall not exceed the lower of the amounts set forth in the budget estimates submitted to Congress for fiscal year 1995 or the amounts provided in this conference agreement.

Amendment No. 154: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert:

SEC. 515. Notwithstanding any other provision of law, (1) no amount may be transferred from an appropriation account for the Departments of Labor, Health and Human Services, and Education except as authorized in this or any subsequent appropriation act, or in the Act establishing the program or activity for which funds are contained in this Act;

(2) no department, agency, or other entity, other than the one responsible for administering the program or activity for which an appropriation is made in this Act, may exercise authority for the timing of the obligation and expenditure of such appropriation, or for the purposes for which it is obligated and expended, except to the extent and in the manner otherwise provided in section 1512 and 1513 of title 31, United States Code; and

(3) no funds provided under this or any subsequent appropria- shall be available for the salary (or any part there) of an employee who is reassigned on a temporary detail to another position in the employing agency or department or in any other agency or department, unless the detail is independently approved by the head of the employing department or agency.

and

on page 55 of the House engrossed bill, H.R. 4606, after line 3, insert:

SEC. 305. None of the funds appropriated under this Act may be used to publish, release, report or finalize the designation of institutions to be reviewed under subpart 1 of part H of title IV of the High Education Act of 1965, as amended, until the State postsecondary review entity responsible for evaluating those institutions has received the Secretary's approval for its institutional review standards.

and

on page 56, line 19 of the House engrossed bill, H.R. 4606, strike "$8,119,000" and insert in lieu thereof *$8,519,000*

and

on page 43 of the House engrossed bill, H.R. 4606, after line 14, insert:

SEC. 210. Of the funds made available under this title, under the heading Low Income Home Energy Assistance, for fiscal year 1996, the Secretary shall receive assurances from States that funds will assist low-income households with their home energy needs, particularly those with the lowest incomes that pay a high proportion of household income for home energy.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement deletes language proposed by the Senate that expressed the sense of the Senate regarding Federal payments in lieu of taxes. The agreement also inserts language prohibiting certain transfers of funds, certain employee details, and fund apportionments done by any agency other than the Office of Management and Budget; inserts language related to postsecondary review entities under the Higher Education Act; appropriates $8,519,000 for the National Mediation Board; and inserts language related to the Low Income Home Energy Assistance Program.

TITLE VI—EMERGENCY SUPPLEMENTAL APPROPRIATIONS

Amendment No. 155: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment, as follows:

In lieu of the matter inserted by said amendment, insert:

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

27-Sep-1994 02:36pm

TO: (See Below)

FROM: Christopher F. Edley, Jr
Office of Mgmt and Budget, EG

SUBJECT: ONDCP powers

Attached is the Edley/Rivlin attempt to memorialize the result of a difficult Rivlin-Brown summit meeting 30 minutes ago on the vital issue of ONDCP powers. (The exercise is even more symbolic now than it was before; ONDCP's exercise of its new authorities is essentially gutted by riders attached to the CJS appropriations act, the Labor-HHS appropriations act, and the DOD authorization bill.)

I am faxing it to ONDCP. If they concur, I will contact DOJ/Gorelick/Garland.

Stay tuned.

Distribution:

TO: James E. Duke
TO: Kenneth L. Schwartz
TO: Martha M. Gagne

CC: Jennifer M. O'Connor
CC: Jose Cerda, III
CC: Clifford M. Sloan
CC: Margaret R. Shaw

draft September 27, 1994

MEMORANDUM TO HEADS OF NATIONAL DRUG CONTROL AGENCIES

FROM: The President

As you are aware, I recently signed the Violent Crime Control and Law Enforcement Act of 1994. Included within the Act is the reauthorization of the Office of National Drug Control Policy. This reauthorization contains provisions which provide the Office of National Drug Policy with important new authorities to aid in achieving the goal of reducing drug use in America. These new tools will strengthen the role of the Director of National Drug Control in leading the implementation of the National Drug Control Strategy.

I am confident that the National Drug Control Agencies can work together with the Director, in conjunction with the White House and OMB, to implement these new authorities in a prudent and collegial manner. No Cabinet officer will act unilaterally on a matter of shared concern. If agency heads cannot otherwise resolve policy differences, I will resolve them through the budget process and other procedures normally used for addressing interagency disagreements. The Director's goal, which I share, is that all concerned members of the Cabinet be involved fully in developing and implementing the drug strategy, including formulation of the drug control budget.

I solicit your views on how best to proceed and look forward to working with you as we begin preparing our 1996 budget and national strategy.

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 17, 1994

TALK TO RON KLAIN

Honorable Leon E. Panetta
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Panetta:

We have reviewed H.R. 1926, the "National Narcotics Leadership Act Amendments of 1993," as passed by the House of Representatives. In addition to our general concerns about legislation reauthorizing the Office of National Drug Control Policy (ONDCP), which have been communicated to you previously, we have an additional concern.

In particular, we are concerned about section 3(b) of the bill. Section 3(b) of the bill provides that 21 U.S.C. § 1502 is amended by adding the following new subsection:

> (f) Prohibition on Political Campaigning. -- A Federal officer of the Office of National Drug Control Policy who is appointed by the President, by and with the advice and consent of the Senate, may not participate in Federal election campaign activities, except that such an official is not prohibited by this subsection from making contributions to individual candidates.

This subsection raises distinct constitutional concerns under the first amendment and Article II.

If the Act is reauthorized, there would be four presidentially-appointed and Senate-confirmed officers in the ONDCP. Our principal concern is whether subsection 3(b) would violate these officers' first amendment rights to participate in federal election campaign activities. A prohibition on the officers' core political speech and associational rights would be upheld only if the government could show a compelling state interest, unrelated to the suppression of ideas, that could not be achieved through less restrictive means. _See_, _e.g._, _Roberts v. United States Jaycees_, 468 U.S. 609, 623 (1984); _Buckley v. Valeo_, 424 U.S. 1, 25 (1976).

To begin with, we note that Congress has not articulated a compelling state interest in singling out these political officers for special treatment and we doubt that we could do so in defense of the Act. The several purposes underlying the current and former versions of the Hatch Act simply do not apply to close presidential aides and high level political appointees. The Hatch Act is intended to prevent political use and abuse of the non-partisan civil service. See United States Civil Service Commission v. National Ass'n of Letter Carriers, 413 U.S. 548, 565-66 (1973) (Congress was justified in concluding that substantial barriers could be raised against the party out of power by "using the thousands or hundreds of thousands of federal employees, paid for at public expense, to man its political structure and political campaigns"); United Public Workers of America v. Mitchell, 330 U.S. 75, 98 (1947) ("Congress recognizes danger to the [civil] service in that political rather than official effort may earn advancement and to the public in that governmental favor may be channeled through political connections"). The four presidential appointees in the Office of National Drug Control Policy would already be political officers who were supposed to carry out the Administration's political objectives.

Moreover, subsection 3(b) could be challenged as being both underinclusive and overbroad. It is underinclusive in its failure to cover other political appointees, many of whom also deal with drug control policy. It is arguably overbroad in the scope of campaign activity that is prohibited. Under subsection 3(b), presidential appointees in the ONDCP could not serve as political advisers, consultants, or even engage in such mundane activities as stuffing envelopes out of public view. The overbreadth problem alone might be enough for the courts to strike down the provision.

We are also concerned with the possible restriction on the President's exercise of his Article II responsibility to "take Care that the Laws be faithfully executed." Art. II, § 3. Although the bill does not purport to prohibit all political activities by these appointees but only "campaign activities," the bill does not define "campaign activities." That term is subject to a potentially broad interpretation. It is unclear, for example, whether a presidential appointee in the ONDCP could initiate or announce a major drug control initiative during a federal election campaign period without running afoul of subsection 3(b). The Supreme Court has long recognized that the President cannot exercise his duties without the aid of his political appointees. See, e.g., Myers v. United States, 272 U.S. 52, 135 (1926); Marbury v. Madison, 5 U.S. (1 Cranch) 137, 165-66 (1803). We believe that Article II necessarily restricts Congress from interfering with the President's ability to take action or explain decisions which are entrusted to him by the Constitution or laws, even if these actions or explanations involve an activity commonly understood as "political." Accordingly, we believe that Congress may not restrict the

President's ability to take political action or communicate with the people whom he represents through those he has chosen to assist him in this regard. Depending on how it was interpreted, subsection 3(b) could violate this principle.

The longstanding distinction between career civil servants and political appointees is well understood by the public and serves to preserve government neutrality while accommodating the constitutional rights of the President and his top political appointees. Because we believe that subsection 3(b) raises serious constitutional concerns under the first amendment and Article II, we recommend that it be deleted from the bill.

Thank you for the opportunity to comment on this legislation. Please do not hesitate to call upon us if we may be of assistance in this or any other matter.

Sincerely,

Sheila Anthony

Sheila F. Anthony
Assistant Attorney General

THE WHITE HOUSE

WASHINGTON

August 24, 1993

MEMORANDUM FOR CAROL RASCO

FROM: JOSE CERDA III

SUBJECT: ONDCP REAUTHORIZATION AND STRATEGY

Carol, here's a belated memorandum on the status of ONDCP's reauthorization legislation and a copy of the interim drug strategy -- both of which will need to be addressed very soon. ONDCP's authorizing legislation is set to expire on November 18, 1993, and the Hill is eager to hold hearings when Congress reconvenes. And, while Dr. Brown previously committed to releasing an abridged strategy by August 23, 1993, his new target date for release is September 8th. Neither of these proposals have been submitted to OMB yet, and Dr. Brown would like DPC's assistance in submitting them to OMB for a top-down clearance process.

I. Interim Strategy

Attached is a copy of ONDCP's proposed interim drug strategy. It is a generic policy document that -- technically speaking -- does not comply with the office's mandate to produce a research-based document with measurable short-term and long-term goals, etc. Still, there is no expectation at this point that ONDCP will publish such a strategy until next February, and there is considerable pressure from the Hill to release some type of drug strategy. Thus, the interim strategy will simply lay out the broad parameters of the Clinton Administration's drug policy.

My edits to the interim strategy are also attached. I have proposed striking sections three through seven altogether for a variety of reasons. First, the interim strategy is too long. If we are not trying to comply with the specifics of the law's mandate for a comprehensive, research-based strategy, we shouldn't submit a 60-page document to the Hill. Second, sections three through seven on supply and demand are inconsistent in style and substance with section one, straying from the Administration's main themes and sounding much more like generic, reformulated language from past strategies. If we want separate sections on the specifics of our Supply and Demand programs, we should redraft much shorter versions -- and in our own language. Third, the level of detail discussed in sections two and three only serves to cloud the central themes outlined in section one. To be effective, the interim strategy must provide a clear -- if not detailed -- vision of the direction this Administration will take on drugs.

II. Reauthorizing ONDCP

ONDCP staff has drafted reauthorizing legislation that retains the office's current structure and dramatically enhances its budget-related powers. Once submitted to OMB and passed on to the Agencies for comments, this proposal is sure to meet significant hostility. Thus, Dr.Brown is submitting ONDCP's proposed reauthorization to you, Mack and David Watkins for White House consideration -- and hopefully support -- before engaging in the OMB legislative clearance process.

Dr. Brown intends to sit down with Mack sometime soon to discuss ONDCP's reauthorization, and -- depending on what direction Mack gives Dr. Brown -- you may find yourself at the center of this debate once the other Cabinet Secretaries get wind of Dr. Brown's proposal. Here are the issues you will need to consider.

A. Retaining ONDCP's Current Structure

When the President's 25% staff cut was first announced, there was an expectation that ONDCP -- given its smaller size -- would become more of a "policy shop", such as DPC, and that at least some of ONDCP's agency-like responsibilities would be transferred to the agencies. Such transfers could include: (1) allowing OMB to takeover ONDCP's budget certification function, which ensures that agencies are spending their drug-related monies in accordance with the National Drug Control Strategy; (2) giving Justice the lead role in monitoring the High-Intensity Drug-Trafficking Areas (HIDTA) program, which coordinates federal, state and local law enforcement and regulatory efforts in designated areas; (3) and handing over to the Advanced Research Projects Agency (ARPA, formerly DARPA) the Counter-Drug Technology Assessment Center (C-TAC), which is ONDCP's research unit.

Dr. Brown -- despite being presented with the above-mentioned options -- has chosen to keep all of ONDCP's current functions. Moreover, he has visited with Roy Neel to discuss the possibility of not having to abide by the 25% cut. He argued that ONDCP needed more staff (80, he proposed), and that the Hill was likely to appropriate money for more staff at ONDCP. My understanding is that Roy Neel responded to Dr. Brown by saying that the Administration was sticking to its 25% cut, but that this did not preclude Dr. Brown from accepting more staff if funded by Congress.

Dr. Brown has also visited with the relevant Appropriations Committee Chairmen, Senator DeConcini and Representative Hoyer, to discuss ONDCP staffing. Hoyer insisted that the Administration stick to its 25% cut and further stated that he will not increase ONDCP's staff appropriation without the White House providing any offsetting personnel cuts. DeConcini, on the other hand, has appropriated funds for 60 staff members at ONDCP and, I believe, given Dr. Brown assurances that he will fund a staff of more than 25 persons.

If we do not intend to stick to the 25% cut -- or if Dr. Brown will indeed be allowed to hire additional staff members, if funded by Congress -- then ONDCP's not being converted into a "policy shop" is not really an issue. With as fewer as 5 to 10 more staff members, the offices operational duties could more easily be met and its three Senate-confirmed appointees properly supported.

But if the 25% cut is firm -- so firm that Dr. Brown will not be allowed to hire additional staff that Congress may fund -- then we need to think twice before allowing Dr. Brown to go forward with his proposed reauthorization. Is there any possibility of giving Dr. Brown more staff and staying within the 25% cut? If there answer is no there is a legitimate question as to whether or not ONDCP will be able to carry out all of its duties with a staff of only 25. It can be done, but ONDCP will have to focus certification and other duties on several key areas (i.e., treatment, community policing, etc.), abandoning its government-wide budget analysis, and Dr. Brown and the office's three Senate-confirmed appointees will have to realize that they may not get the same day-to-day support as some of their counterparts in the agencies.

B. New Budget Powers

For years, ONDCP proponents on the Hill have argued that the office's budget powers need to be enhanced. Senators Biden and DeConcini, in particular, have made this very clear to Dr. Brown throughout the confirmation process, and he has accepted their advice and proposed a series of budget enhancements in the re-authorizing legislation to help ONDCP do its job.

Make no mistake, however, while these additional powers will be welcomed by anti-drug advocates on the Hill, they will be vehemently opposed by OMB and the agencies. OMB and the agencies have had a trouble-filled relationship with ONDCP and are sure to interpret Dr. Brown's proposed enhancements as infringing on their autonomy. Still, we can not avoid this issue because the Hill is sure to raise it, perhaps in an even less desirable form.

These are the new authorities sought by Dr. Brown.

(1) Power to direct agencies to include drug-related programs -- ONDCP currently reviews agency budgets <u>before</u> they are submitted to OMB. This assures ONDCP some impact at the start of the budget process, but it does not give them any <u>direct</u> authority over the agencies. ONDCP would like to be able to <u>require</u> agencies to include drug-related spending as part of their budget request or to seek drug-related reprogramming in order, if necessary to comply with the National Drug Control Strategy.

This is the most controversial of Dr. Browns proposed changes, and -- next to the office's basic structure -- what we need to consider most before sending the reauthorization through the clearance process. Agencies will chafe at the thought of losing control over any part of their budgets. ONDCP proponents, on the other hand, will applaud this proposed enhancement and say that it is the type of authority the office should have had originally.

(2) Review of all drug-related reprogramming -- Under the current authorization, agencies must submit any reprogramming of drug-related funds over $5 million to ONDCP for approval before submitting such a request to Congress. Dr. Brown's proposal requires that all reprogramming of drug-related funds be reviewed by ONDCP.

This change makes sense. Agencies have tried to circumvent ONDCP by seeking reprogramming requests of just under $5 million and going directly to Congress. Also, ONDCP is ultimately accountable for explaining all drug reprogramming to the Hill, and this change -- by allowing them to see all reprogramming requests upfront -- may actually reduce ONDCP's workload.

(3) Enhanced budget certification -- ONDCP is responsible for annually certifying in writing whether or not agencies are disbursing their drug-related monies according the National Drug Control Strategy. Dr. Brown proposes making two changes to the certification process: first, allowing ONDCP to certify budgets on a quarterly basis (not annually); and second, allowing ONDCP to certify budgets at the program level (not only the entire agency's budget).

With a staff of 25, ONDCP will only be able to certify on a quarterly basis if it targets its efforts to a handful of drug-related programs. The office simply will not have the resources to continue to certify all drug budgets on a line-by-line basis. However, certification is the duty most-identified with ONDCP, and requiring quarterly certification will help the office more closely monitor key drug accounts.

Permitting ONDCP to certify or decertify components of an agency's drug-budget will make the certification process more effective by helping ONDCP to target its efforts. ONDCP has often wanted to amend an agency budget at the program level, but -- if an agency resisted -- ONDCP's only option was to not certify the entire agency budget. Naturally, ONDCP has been reluctant to decertify entire agency budgets, except for the most egregious departures from the drug strategy.

(4) Requiring Payments to the Special Forfeiture Fund (SFF) -- ONDCP oversees a "Special Forfeiture Fund" that consists of surplus monies deposited from the Justice and Treasury Asset Forfeiture Funds. ONDCP is allowed to use the SFF to supplement, not supplant, priorities as articulated in the Drug Strategy. Dr. Brown's proposed reauthorization clarifies that Justice and Treasury shall transfer surplus funds to the SFF (as opposed to "may") and provides that such transfers be made on a quarterly basis.

In the final days of the previous administration, Attorney General Barr and Drug Director Martinez disagreed as to whether or not Justice was required to transfer surplus forfeiture funds to ONDCP's SFF. Barr ultimately refused to transfer the funds. Thus, requiring surplus monies to be transferred on a quarterly payments to the SFF is not unreasonable and likely to be approved by the Hill anyway.

C. Other Proposed Changes

ONDCP's draft authorization also includes some new, non-budget authorities that are worth mentioning. They are, however, as controversial as those which are tied to agency budgets.

(1) Elevating the Associate Director -- Dr. Brown has proposed elevating the Associate Director for State and Local Affairs to the deputy-level. I see no advantage in do this, particularly if the office is being down-sized.

(2) Modification of Drug-Related Data -- This change would allow ONDCP -- with concurrence of a particular Secretary -- to require that drug-related data be modified in accordance with standards established by the Director.

In the past, ONDCP has been allowed to suggest edits to the various drug data sets compiled by the federal government. However, new agency personnel have resisted sharing their drug-related with ONDCP, an agency they now perceive to be powerless.

More importantly, the method in which we conduct drug surveys needs to be modified to reflect the changes in how the Clinton Administration perceives the drug problem. This change would give the Director an unambiguous role with respect to how drug data is collected or released.

(3) Prohibits Appointees from Engaging in Political Activity -- The political activity of past Drug Directors has fueled much controversy on the Hill, and, during the confirmation process, Judiciary Committee members pushed Dr. Brown on this issue, asking whether or not he would refrain from such activity. White House Counsel may have some concerns with this language.

(4) Clarifies the Director's Authority to Require Drug-Related Information -- Agencies have not always cooperated with ONDCP in supplying the office with drug control information. This provision makes the Director's authority to access such information clear.

(5) Prohibits Changes to Drug Control Policy -- Under current law, agencies are allowed to make changes in drug control policy without necessarily consulting the Drug Director. Dr. Brown proposed requiring agencies to consult the Director <u>before</u> making changes and in <u>all</u> circumstance.

(6) Elevates Director to Cabinet-Level -- This provision formally elevates the Drug Director to the Cabinet-level.

Office of Policy Development
United States Department of Justice

10th Street and Constitution Avenue, N.W.
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Date: 10-18-93

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Total Pages (excluding this cover): 8

Additional Message:

Per Conversation. For Your Eyes only.

930NDCP.LET

Dear : UNCLEARED DRAFT

This letter provides the comments of the Department of Justice on the draft legislation to reauthorize the Office of National Drug Control Policy (ONDCP).

We have comments concerning (1) an unconstitutional provision of the bill, (2) the proposed authority of the Director of ONDCP to amend agency drug budget submissions, (3) changes relating to the Special Forfeiture Fund, and (4) the proposed division of responsibility for domestic and international programs through the creation of new deputy positions.

I. Unconstitutional Provision

Section 6(a)(3) of the bill contains an amendment which requires "advance written approval of the Committee on Appropriations of each House of Congress" as a condition on certain transfers from the Special Forfeiture Fund by the Director of ONDCP. This is an unconstitutional "legislative veto" provision, see INS v. Chadha, 462 U.S. 919 (1983), and should be deleted.

II. Authority to Amend Budget Submissions

Section 2 of the bill requires agencies to amend their drug budget submissions to OMB to incorporate ONDCP funding recommendations. This proposal would undermine the authority of agency and department heads to determine funding priorities by giving ONDCP unilateral authority to require an agency to amend its request.

The analysis statement accompanying the draft bill states, in part, that this change would "give the Director of ONDCP the means to ensure that critical drug policy issues would be considered by the President early [in] the Federal budget process." However, under the current statutes, agency drug budget submissions must be provided to ONDCP prior to submission to OMB and concurrently with submission to the agency's superiors. The Director of ONDCP may then certify the adequacy of the agency's budget request, or issue an opinion of the inadequacy of an agency's request to implement the objectives of the Drug Control Strategy.

This existing mechanism ensures that ONDCP can bring concerns about agency budget requests to the attention of agency superiors, OMB, and the President early in the federal budget process. In comparison, the proposed authority for unilateral amendment of agency budget requests by ONDCP prior to submission to OMB would tend to suppress, rather than inform about, areas of disagreement, and reduce the amount of information provided to OMB and the President in making final decisions concerning anti-drug funding priorities.

We also have practical concerns about the operation of the proposed amendment authority. No consultation with agency heads or their superiors would be required prior to ordering such amendments, and we are concerned that ONDCP may have difficulty in making fully informed decisions concerning agency budget requests with its current budget review staff of one. Even the previous staff of ten budget analysts was only able to perform limited review of agency budgets. We think that the appropriate focus should be the aggressive discharge by ONDCP of its existing oversight and certification functions, rather than foreclosing discussion and debate at the threshold of the Administration budget process by unilateral fiat.

Finally, the mandatory nature of this provision raises constitutional concerns. It would potentially infringe on the President's exercise of his exclusive power to recommend legislation. It also raises concerns about congressional intrusion into the management of the Executive Branch. Regardless of whether this provision ultimately would survive constitutional scrutiny, we think that the administration should not in the first instance propose provisions like this one that raise constitutional questions.

III. Special Forfeiture Fund

BEING REVISED & EXPANDED INTO OPTIONS SEE P. 5 FOR

Section 6 of the bill contains provisions that would double the total amount of funding to be transferred to the Special Forfeiture Fund and imperil the financial viability of the Department of Justice Assets Forfeiture Fund. The bill proposes:

Amount of Transfers to the Special Fund: Under current law, no more than $150 million will be transferred in any year to the Special Fund and both the Justice Fund and the Treasury Fund contribute to that amount. This amount is reduced by the amount of funds carried forward from the prior year in the Special Fund. Under the draft bill, both the Justice Fund and the Treasury Fund are required to transfer up to $150 million to the Special Fund for a total of $300 million. In contrast to current law, the transfers are not reduced by the amount of funding carried forward in the Special Fund.

Mandatory Transfers: The proposed bill eliminates the Attorney General's discretion in making transfers to the Special Fund. In addition, the bill requires quarterly transfers to be made to the Special Fund, based upon an October 1 estimate of what surplus will be generated during the ensuing fiscal year, regardless of the actual performance of the Justice Fund. Adjustments are permitted after the end of the fiscal year with the fourth quarter transfer.

<u>Special Fund Surpluses</u>: The proposed bill permits surplus end of year balances in the Special Fund to grow without limit. The bill also gives the Director of ONDCP authority to use up to $20 million of any surplus, subject to appropriation action and the unconstitutional legislative veto provision discussed above.

Before turning to the specifics of this proposal, we think that it is important to understand certain realities about the Special Forfeiture Fund and its relationship to ONDCP operations.

Revising the Special Forfeiture Fund is not an essential aspect of ONDCP reauthorization. All of ONDCP's functions can continue to be performed <u>in the absence of the Special Forfeiture Fund</u>, and the lesson of real world Special Forfeiture Fund congressional appropriations is that ONDCP has no meaningful influence over the distribution of Special Forfeiture Fund monies. Rather, those decisions are made in the appropriations committees in Congress.

Indeed, the Fund has proven to be of so little use to ONDCP that ONDCP has attempted in the past to secure its elimination. The reasons were that ONDCP had no real control over the money, but was nevertheless subject to frequent criticism based on the false assumption that it had a large pot of discretionary money at its disposal which it was not using effectively.

Rather than being an essential aspect of ONDCP operations, the Fund is likely to be an albatross to ONDCP in its current incarnation, as it has been in the past. Moreover, as discussed below, there are better alternatives which could give ONDCP real authority over drug program funds.

Our specific comments on the proposed changes are as follows:

The proposal to double the amount of funding that can be transferred to the Special Fund each year is not based upon a determination that greater amounts would be appropriated, if available. In fact, since the appropriations subcommittee with jurisdiction over the Special Fund (Senator DeConcini's subcommittee) is scored against its domestic discretionary allocation for these appropriations, it is highly unlikely that significantly higher levels will be appropriated. This is the reason that Congress enacted amendments in 1992 to reduce the amount that could be transferred to $150 million less the level of funds already in the Special Fund at the beginning of the year. Thus, this change will result in potentially embarrassing surpluses being generated for the Special Fund.

It is noteworthy that Congress already tried this approach when the Special Fund was first created, and it did not work. That is the reason Congress amended the statutory scheme to reduce the senseless stockpiling of scarce funds that could be used more productively elsewhere.

In addition, this change will reduce the level of funds available to the Attorney General to address other critical law enforcement needs without directly repealing the authority of the Attorney General to use any "super surplus." Reducing the Attorney General's discretion will not meet critical drug program needs that are going unmet, but will merely produce excess funds to remain on deposit in the Special Fund.

This proposal will also threaten the financial integrity of the Justice and Treasury Funds. It is extremely difficult to estimate the level of surplus funds that will be generated in any given year. This is a complex area, affected by the timing of complex litigation, economic conditions in areas where property is sold, the existence and validity of multiple claims against property, the degree of participation of State and local law enforcement agencies, and other factors.

While an adjustment in the fourth quarter transfer is contemplated in the bill to offset differences between actual performance and the estimate on which the transfers in the first three quarters were based, there is no provision to return funds if too much was transferred and no provision to cease or reduce transfers if the October 1 estimate proves too optimistic. This could result in a cash deficit in the Justice Fund (and in the Treasury Fund). This risk is created simply to produce surpluses to remain on deposit in the Special Fund. It should be noted that the bill requires the concurrence of the Director, both in making the annual estimate and in making fourth quarter adjustments in the transfer, but does not hold the Director accountable under the Anti-Deficiency Act if the decisions create a problem. Since the Attorney General is solely accountable under the law, the decisions should be solely the Attorney General's to make.

The proposed authority for the Director of ONDCP to use "super surplus" funds in the Special Fund is tightly constrained. The monies must be appropriated and will be subject to appropriations score-keeping (like all other monies used from the Special Fund), and are also subject to a "veto" by either appropriations committee on their use. Aside from the legal defect of this veto provision, discussed above, it is very clear that it is not the Director of ONDCP who will be controlling these funds. As with all uses of the Special Fund to date, they are controlled by the appropriations subcommittees.

The bill also proposes to shift Congressional oversight over transfers out of the Justice Fund from the appropriations subcommittees having jurisdiction over the Justice Fund to the appropriations subcommittees with jurisdiction over the Special Fund. This is done by defining the rules for the transfer in the Special Fund statute and, by cross-reference, requiring the Justice Fund to follow whatever is defined in the Special Fund statute. This is directly inverse to current law, severs a good working relationship between the Justice Department and its appropriations subcommittees, and permits changes in the statutory scheme to be implemented without the involvement of the Justice appropriations subcommittees. Past experience with the Special Fund financing mechanisms has clearly demonstrated the folly of this approach.

Finally, the proposal creates confusion regarding handling of surplus funds generated during fiscal year 1993. Fiscal year 1993 is over. Any distribution of 1993 surplus funds will be governed by the law that applied at the time. However, this proposal requires the Attorney General to provide an estimate of the 1993 surplus within 15 days of enactment of the reauthorization. It is unclear if this bill is intended to apply to those funds.

In sum, a rational solution to the funding issues for the drug control programs will not be found as long as we persist in forcing the solution into the existing Special Forfeiture Fund that is managed by Senator DeConcini. The proposal in the draft bill will do nothing to alleviate the demonstrated problems and deficiencies of the Special Forfeiture Fund, but will greatly compound them.

In lieu of this unsound approach, we recommend that the Special Forfeiture Fund be abolished, and that its objectives be achieved instead by:

BEING REVISED & EXPANDED

(1) repealing the Special Forfeiture Fund;

(2) creating a Drug Demand Reduction Fund that is available to the Secretary of HHS without fiscal year limitation to fund, with the approval of the Director of ONDCP, any drug demand reduction initiatives contained in the National Strategy;

(3) limiting the end of year surplus in both the Justice Fund and the Treasury Fund to up to one tenth of the prior year's obligations, as needed to avoid a deficit in the ensuing year;

(4) requiring one third of any remaining surplus in both the Justice Fund and the Treasury Fund to be transferred to the Drug Demand Reduction Fund;

(5) requiring the second third of any remaining surplus to

be used, with the approval of the Director of ONDCP, for any drug supply reduction initiatives contained in the National Strategy; and

(6) permitting the final third of any remaining surplus to be used by the Attorney General and Secretary of Treasury for other critical law enforcement, prosecutorial, and correctional purposes under their existing authorities.

This proposal would keep executive functions within the Executive Branch and permit the Director of ONDCP to exercise real authority over the allocation of drug program funds.

If our recommendation to abolish the Special Forfeiture Fund is not accepted, and it is continued in some form in the proposed bill, we recommend the following changes:

(1) all mention of fiscal year 1993 should be deleted from the bill;

(2) the maximum amount to be transferred each year from the Justice Fund should be $75,000,000 less one half of the amount carried forward in the Special Forfeiture Fund at the beginning of the fiscal year;

(3) the requirement for concurrence by the Director in establishing an annual estimate and making transfers should be deleted (or replaced with notice only);

(4) the requirement for quarterly transfers should be amended to permit adjustments on a quarterly basis if current conditions indicate that the full pro rata share should not be transferred;

(5) the statutory authority for transfers from the Justice Fund to the Special Fund should remain within 28 U.S.C. 524(c) with a cross-reference in the Special Fund statute;

(6) the legislative veto provision should be deleted; and

(7) a limitation on Special Fund appropriations should be included to ensure that a significant portion (e.g., one third) of Special Fund appropriations go for demand reduction activities.

IV. Division of Responsibility for Domestic and International Programs

The draft bill would replace the Deputy Directors of ONDCP for Supply Reduction and Demand Reduction with a Deputy Director for Domestic Programs and a Deputy Director for International Programs. It would also convert the Associate Director of the

Bureau of State and Local Affairs into a Deputy Director for Community Programs.

We support efforts to integrate criminal justice and treatment activities in the drug area, and the upgrading of community programs. However, we are concerned that the new bifurcation of domestic and international activities proposed in the bill ~~will~~ might have adverse operational effects.

to be Revised & softened

~~The specific restructuring under the bill would~~ fragmenting policy responsibility by splitting domestic intelligence from foreign intelligence, and by generally splitting domestic law enforcement from international programs and border interdiction matters. On the operational level, this would mean, for example, that the Deputy Director for International Programs would be able to engage the Drug Enforcement Administration on only the overseas component of the Kingpin Strategy, and that the person with whom the Drug Enforcement Administration deals on High Intensity Drug Trafficking Areas and domestic Task Force matters would not have responsibility for the border area. We recommend that any changes in the management structure of ONDCP be devised to avoid this type of fragmentation of responsibility for oversight of enforcement operations.

Sincerely,

Office of Policy Development
United States Department of Justice

10th Street and Constitution Avenue, N.W.
Washington, D.C. 20530

Date: 10-28-93

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Total Pages (excluding this cover): 13

Additional Message:

Reauthorization

Honorable Leon E. Panetta
Director
Office of Management and Budget
Washington, D. C. 20530

Dear Mr. Panetta:

This letter provides the comments of the Department of Justice on the draft legislation to reauthorize the Office of National Drug Control Policy (ONDCP).

We have several suggestions for alternative ways to enhance the role of ONDCP as well as specific comments on the draft language concerning (1) an unconstitutional provision of the bill, (2) the proposed authority of the Director of ONDCP to amend agency drug budget submissions, (3) changes relating to the Special Forfeiture Fund, and (4) the operational implications of the proposed division of responsibility for domestic and international programs through the creation of new deputy positions.

I. Unconstitutional Provision

Section 6(a)(3) of the bill contains an amendment which requires "advance written approval of the Committee on Appropriations of each House of Congress" as a condition on certain transfers from the Special Forfeiture Fund by the Director of ONDCP. This is an unconstitutional "legislative veto" provision, see INS v. Chadha, 462 U.S. 919 (1983), and should be deleted.

II. Authority to Amend Budget Submissions

Section 2 of the bill requires agencies to amend their drug budget submissions to OMB to incorporate ONDCP funding recommendations. This proposal would undermine the authority of agency and department heads to determine funding priorities by giving ONDCP unilateral authority to require an agency to amend its request.

The analysis statement accompanying the draft bill states, in part, that this change would "give the Director of ONDCP the means to ensure that critical drug policy issues would be considered by the President early [in] the Federal budget process." However, under the current statutes, agency drug budget submissions must be provided to ONDCP prior to submission to OMB and concurrently with submission to the agency's superiors. The Director of ONDCP may then certify the adequacy of the agency's budget request, or issue an opinion of the inadequacy of an agency's request to implement the objectives of the Drug Control Strategy.

This existing mechanism ensures that ONDCP can bring concerns about agency budget requests to the attention of agency superiors, OMB, and the President early in the federal budget process. In comparison, the proposed authority for unilateral amendment of agency budget requests by ONDCP prior to submission to OMB would tend to suppress, rather than inform about, areas of disagreement, and reduce the amount of information provided to OMB and the President in making final decisions concerning anti-drug funding priorities.

We also have practical concerns about the operation of the proposed amendment authority. No consultation with agency heads or their superiors would be required prior to ordering such amendments, and we are concerned that ONDCP may have difficulty in making fully informed decisions concerning agency budget requests with its current budget review staff of one. Even the previous staff of ten budget analysts was only able to perform limited review of agency budgets. We think that the appropriate focus should be the aggressive discharge by ONDCP of its existing oversight and certification functions, rather than unilaterally foreclosing discussion and debate at the threshold of the Administration budget process.

Finally, the mandatory nature of this provision raises constitutional concerns. It would potentially infringe on the President's exercise of his exclusive power to recommend legislation. It also raises concerns about congressional intrusion into the management of the Executive Branch. Regardless of whether this provision ultimately would survive constitutional scrutiny, we think that the administration should not in the first instance propose provisions like this one that raise constitutional questions.

III. <u>Special Forfeiture Fund</u>

Section 6 of the bill contains provisions that would double the total amount of funding to be transferred to the Special Forfeiture Fund (SFF) and imperil the financial viability of the Department of Justice Assets Forfeiture Fund. The bill proposes:

<u>Amount of Transfers to the Special Fund</u>: Under current law, no more than $150 million will be transferred in any year to the Special Fund and both the Justice Fund and the Treasury Fund contribute to that amount. This amount is reduced by the amount of funds carried forward from the prior year in the Special Fund. Under the draft bill, both the Justice Fund and the Treasury Fund are required to transfer up to

$150 million to the Special Fund for a total of $300 million. In contrast to current law, the transfers are not reduced by the amount of funding carried forward in the Special Fund.

Mandatory Transfers: The proposed bill eliminates the Attorney General's discretion in making transfers to the Special Fund. In addition, the bill requires quarterly transfers to be made to the Special Fund, based upon an October 1 estimate of what surplus will be generated during the ensuing fiscal year, regardless of the actual performance of the Justice and Treasury Funds. Adjustments are permitted after the end of the fiscal year by reducing the fourth quarter transfer.

Special Fund Surpluses: The proposed bill permits surplus end of year balances in the Special Fund to grow without limit. The bill also gives the Director of ONDCP authority to use up to $20 million of any surplus, subject to appropriation action and the unconstitutional legislative veto provision discussed above.

Before turning to the specifics of this proposal, we think that it is important to understand certain realities about the Special Forfeiture Fund and its relationship to ONDCP operations.

Revising the Special Forfeiture Fund is not an essential aspect of ONDCP reauthorization. All of ONDCP's functions can continue to be performed in the absence of the Special Forfeiture Fund, and the lesson of real world Special Forfeiture Fund congressional appropriations is that ONDCP has no meaningful influence over the distribution of Special Forfeiture Fund monies. Rather, those decisions are made in the appropriations committees in Congress.

Indeed, the Fund has proven to be of so little use to ONDCP that ONDCP has attempted in the past to secure its elimination. The reasons were that ONDCP had no real control over the money, but was nevertheless subject to frequent criticism based on the false assumption that it had a large pot of discretionary money at its disposal that it was not using effectively.

Rather than being an essential aspect of ONDCP operations, the Fund is likely to be an albatross to ONDCP in its current incarnation, as it has been in the past. Moreover, as discussed below, there are better alternatives that could give ONDCP real authority over drug program funds.

Although we understand from ONDCP staff that this section included unintentional drafting errors, our specific comments on the proposed changes as drafted are as follows:

The proposal to double the amount of funding that can be transferred to the Special Fund each year is not based upon a determination that greater amounts would be appropriated, if available. In fact, since the appropriations subcommittee with jurisdiction over the Special Fund (Senator DeConcini's subcommittee) is scored against its domestic discretionary allocation for these appropriations, it is highly unlikely that significantly higher levels will be appropriated. This is the reason that Congress enacted amendments in 1992 to reduce the amount that could be transferred to $150 million less the level of funds already in the Special Fund at the beginning of the year. Thus, this change will result in potentially embarrassing surpluses being generated for the Special Fund.

It is noteworthy that Congress already tried this approach when the Special Fund was first created, and it did not work. That is the reason Congress amended the statutory scheme to reduce the senseless stockpiling of scarce funds that could be used more productively elsewhere.

In addition, this change will reduce the level of funds available to the Attorney General to address other critical law enforcement needs without directly repealing the authority of the Attorney General to use any "super surplus." Reducing the Attorney General's discretion will not meet critical drug program needs that are going unmet, but will merely produce excess funds to remain on deposit in the Special Fund.

This proposal will also threaten the financial integrity of the Justice and Treasury Funds. It is extremely difficult to estimate the level of surplus funds that will be generated in any given year. This is a complex area, affected by the timing of complex litigation, economic conditions in areas where property is sold, the existence and validity of multiple claims against property, the degree of participation of State and local law enforcement agencies, and other factors.

While an adjustment in the fourth quarter transfer is contemplated in the bill to offset differences between actual performance and the estimate on which the transfers in the first three quarters were based, there is no provision to return funds if too much was transferred and no provision to cease or reduce transfers if the October 1 estimate proves too optimistic. This could result in a cash deficit in the Justice Fund (and in the Treasury Fund). This risk is created simply to produce surpluses to remain on deposit in the Special Fund. It should be noted that the bill requires the concurrence of the Director, both in making the annual estimate and in making fourth quarter adjustments in the transfer, but does not hold the Director accountable under the Anti-Deficiency Act if the decisions create a problem. Since the Attorney General is solely accountable under the law, the decisions should be solely the Attorney

General's to make.

The proposed authority for the Director of ONDCP to use "super surplus" funds in the Special Fund is tightly constrained. The monies must be appropriated and will be subject to appropriations score-keeping (like all other monies used from the Special Fund), and are also subject to a "veto" by either appropriations committee on their use. Aside from the legal defect of this veto provision, discussed above, it is very clear that it is not the Director of ONDCP who will be controlling these funds. As with all uses of the Special Fund to date, they are controlled by the appropriations subcommittees.

The bill also proposes to shift Congressional oversight over transfers out of the Justice Fund from the appropriations subcommittees having jurisdiction over the Justice Fund to the appropriations subcommittees with jurisdiction over the Special Fund. This is done by defining the rules for the transfer in the Special Fund statute and, by cross-reference, requiring the Justice Fund to follow whatever is defined in the Special Fund statute. This is directly inverse to current law, severs a good working relationship between the Justice Department and its appropriations subcommittees, and permits changes in the statutory scheme to be implemented without the involvement of the Justice appropriations subcommittees. Past experience with the Special Fund financing mechanisms has clearly demonstrated the folly of this approach.

Finally, the proposal creates confusion regarding handling of surplus funds generated during fiscal year 1993. Fiscal year 1993 is over. Any distribution of 1993 surplus funds will be governed by the law that applied at the time. However, this proposal requires the Attorney General to provide an estimate of the 1993 surplus within 15 days of enactment of the reauthorization. It is unclear if this bill is intended to apply to those funds.

In sum, a rational solution to the funding issues for the drug control programs will not be found as long as we persist in forcing the solution into the existing Special Forfeiture Fund that is managed by Senator DeConcini. The proposal in the draft bill will do nothing to alleviate the demonstrated problems and deficiencies of the Special Forfeiture Fund, but will greatly compound them.

Alternative Approaches

Option A:

In lieu of the unsound approach included in the draft bill, we recommend that the Special Forfeiture Fund be abolished, and that its objectives be achieved instead by replacing SFF with a new discretionary grant program.

Under this proposal, the SFF would be replaced with a new discretionary grant program under the authority of the ONDCP Director. Grants would be available for federal, state and local anti-drug activities. This new grant program would be authorized to fund both supply and demand reduction programs, at the discretion of the ONDCP Director. Thus, the Director would be able to support any part of the National Drug Strategy that needed additional funding, be it treatment or law enforcement, Federal, state or local.

This proposal would give the Director of ONDCP greater control over the monies under his purview than he has under current law. Past ONDCP requests for SFF appropriations have been significantly altered by the Treasury/Postal Appropriations Subcommittee, in part because traditionally all SFF spending was articulated in detail, both in the President's request and in the Congressional appropriation. Under a discretionary grant program, the Director would not be forced to articulate specific funding targets during the appropriations process, thus making it more likely that the allocation of the grant monies would be left to his discretion.

In addition, the Director could wait until the year of actual operations to determine where the funds should be allocated. Under current law, he is forced to articulate the SFF priorities more than a year in advance. If a need or gap in other available funding should arise after his budget has been sent to the Hill, he has no choice but to wait for the next appropriations cycle and hope for support from the Congress. Under this proposal, the Director would be able to step in with funding assistance in the year of actual operations and address needs that may have only recently come to light.

Funding for the grant program would be appropriated from general receipts, rather than from the Assets Forfeiture Fund. Thus, the Director would be in a better position to anticipate the funding level that would be available to him, and to plan accordingly. Under the current funding scenario, which is dependent upon unknown levels of forfeiture activity, he can never be certain whether or not surplus funds will be available.

Any surplus balances in the Justice or Treasury Forfeiture Funds would remain available to the Attorney General and the Secretary of the Treasury. Thus, these Departments would continue to have access to much-needed resources to further their anti-drug efforts, as well as retain an incentive to aggressively pursue asset forfeiture.

Lastly, this proposal would distinguish the Clinton ONDCP from the Bush ONDCP. Not only will the ONDCP Director be a full member of the Cabinet, but he would come to the table able to meet funding needs and support promising new initiatives. By providing ONDCP with a source of funding to address current-year needs, the ONDCP Director would, for the first time, become a real general in the drug effort. [See Attachment A for draft suggested language.]

Option B:

A somewhat less attractive, but also viable alternative to the draft bill would entail:

(1) repealing the Special Forfeiture Fund;

(2) creating a Drug Demand Reduction Fund that is available to the Secretary of HHS without fiscal year limitation to fund, with the approval of the Director of ONDCP, any drug demand reduction initiatives contained in the National Strategy;

(3) limiting the end of year surplus in both the Justice Fund and the Treasury Fund to up to one tenth of the prior year's obligations, as needed to avoid a deficit in the ensuing year;

(4) requiring one-third of any remaining surplus in both the Justice Fund and the Treasury Fund to be transferred to the Drug Demand Reduction Fund;

(5) requiring the second third of any remaining surplus to be used, with the approval of the Director of ONDCP, for any drug supply reduction initiatives contained in the National Strategy; and

(6) permitting the final third of any remaining surplus to be used by the Attorney General and Secretary of Treasury for other critical law enforcement, prosecutorial, and correctional purposes under their existing authorities.

Both Option A and Option B would keep executive functions within the Executive Branch and permit the Director of ONDCP to exercise real authority over the allocation of drug program funds.

Option C:

If our strong recommendation to abolish the Special Forfeiture Fund is not accepted, and it is continued in some form in the proposed bill, at minimum, we recommend the following changes:

(1) all mention of fiscal year 1993 should be deleted from

the bill;

(2) the maximum amount to be transferred each year from the Justice Fund should be $75,000,000 less one half of the amount carried forward in the Special Forfeiture Fund at the beginning of the fiscal year;

(3) the requirement for concurrence by the Director in establishing an annual estimate and making transfers should be deleted (or replaced with notice only);

(4) the requirement for quarterly transfers should be amended to permit adjustments on a quarterly basis if current conditions indicate that the full pro rata share should not be transferred;

(5) the statutory authority for transfers from the Justice Fund to the Special Fund should remain within 28 U.S.C. 524(c) with a cross-reference in the Special Fund statute;

(6) the legislative veto provision should be deleted; and

(7) a limitation on Special Fund appropriations should be included to ensure that a significant portion (e.g., one third) of Special Fund appropriations go for demand reduction activities.

IV. Division of Responsibility for Domestic and International Programs

The draft bill would replace the Deputy Directors of ONDCP for Supply Reduction and Demand Reduction with a Deputy Director for Domestic Programs and a Deputy Director for International Programs. It would also convert the Associate Director of the Bureau of State and Local Affairs into a Deputy Director for Community Programs.

We strongly support efforts to integrate criminal justice and treatment activities in the drug area, and the upgrading of community programs. However, we are concerned that the new bifurcation of domestic and international activities proposed in the bill might have unintended adverse consequences.

The specific restructuring under the bill appears to fragment policy responsibility by splitting domestic intelligence from foreign intelligence, and by generally splitting domestic law enforcment from international programs and border interdiction matters. This unnatural bifurcation could have serious implications for efficient management. As one example, a DEA program manager with oversight of the Kingpin Strategy would deal with one component of ONDCP regarding the international and intelligence aspects, while dealing with another ONDCP Deputy reagarding the domestic component. There are similar implications for the FBI, INS, OCDETF/HIDTA program, and so on. This borders out/ borders in approach reflects the organizational direction that the previous Administration had contemplated moving toward but had not fully implemented.

Obviously, there are problems associated with any administrative structure and most can be addressed in the by coordination efforts and effective management. We recommend that changes in the management structure of ONDCP be devised to the extent possible to avoid this type of fragmentation of responsibility for oversight of enforcement operations. For example, with a smaller staff, it might be possible for there to be fewer Presidentially appointed deputies, perhaps allowing one to coordinate Community Programs and another to oversee the integration of the other programs regardless of how responsibilities were structured at the subordinate level.

V. Other Mechanisms to Consider for Enhancing the Role of ONDCP: The Lead Agency Concept

During recent discussions on drug grant consolidation, we noted the lead agency authority vested in the Administrator of the Office of Juvenile Justice and Delinquency Prevention as an example of lead agency authority. This provision minimizes the application and oversight burdens imposed by the federal government on grantees. If a "program or activity" receives resources from more than one federal agency, the grantee need only comply with the regulatory requirements of the lead agency. The joint funding provision is set forth in 42 U.S.C. § 5615.

> Not withstanding any other provision of law, where funds are made available by more than one federal agency to be used by any agency, organization, institution, or individual to carry out a Federal juvenile delinquency program or activity, any one of the Federal agencies providing funds may be requested by the Administrator to act for all in administering the funds advanced whenever the Administrator finds the program or activity to be exceptionally effective or for which the Administrator finds exceptional need. In such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each Federal agency, and the Administrator may order any such agency to waive any technical grant or contract requirement (as defined in such regulations) which is inconsistent with the similar requirement of the administering agency or which the administering agency does not impose.

Other statutes extend similar authority. ONDCP may find the following provisions to be useful supplements to the OJJDP model. [See Attachment B.]

This proposal for possible inclusion in the reauthorization legislation of course only begins to address some of the issues related to grants coordination and consolidation. We believe this is an area where ONDCP can play an extremely important and significant role, and look forward to continuing to work with OMB, ONDCP and other agencies to help further related efforts.

In closing, it should be noted that we think that a better way to advance as important an Administration initiative as the ONDCP reauthorization legislation, might have been to have agency representatives meet several times and thoroughly discuss their concerns and recommendations on the various issues prior to putting a document in the formal clearance process. We are somewhat concerned that we have not been as helpful as we might have been in the development of this bill due to the time and other constraints governing written comments which are not present in free flowing brainstorming-style collaborations. For example, we have been developing a number of related ideas that were not appropriate for inclusion in our formal comments and would welcome an appropriate opportunity to discuss them further in the context of this bill.

Sincerely,

Attachment A

"SEC. 7. NATIONAL DRUG STRATEGY GRANTS

"(a) STATEMENT OF PURPOSE. -- The purpose of this section is to establish a program of discretionary grants and other funding in furtherance of the goals of the National Drug Control Strategy. It is contemplated that a significant proportion of the funding provided under this section will be utilized to support, improve, or expand drug abuse treatment, prevention, and education activities.

"(b) FUNDING AUTHORITY. -- The Director of the Office of National Drug Control Policy (hereafter, "the Director") is authorized to make grants to, and to enter into cooperative agreements and contracts with, Federal agencies, States, units of local government, other public and private agencies, organizations, and individuals, and combinations of the foregoing, in furtherance of the goals of the National Drug Control Strategy. Grants and other funding under this section may be for up to 100% of the cost of a project, program, or activity.

"(c) ADMINISTRATIVE MATTERS. -- The Director may issue regulations and guidelines to carry out this section, including specifications concerning application requirements and procedures, selection criteria, duration and renewal of funding, suspension and revocation of funding, evaluation requirements, matching funds, limitation of administrative expenses, submission of reports and recordkeeping by recipients of funds, and access to books, records, and documents maintained by recipients of funds for purposes of audit or examination.

"(d) REPORTS. -- The Director shall submit a report to Congress in each fiscal year detailing the award of grants and other funding under this section, the nature of the funded projects, programs, and activities, and the efficacy of the program established by this section in furthering the goals of the National Drug Control Strategy.

"(e) AUTHORIZATION OF APPROPRIATIONS. -- There are authorized to be appropriated in each of the fiscal years 1995, 1996, 1997, and 1998, $100 million to carry out this section, to remain available until expended.".

Attachment B

TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 6A. THE PUBLIC HEALTH SERVICE

§ 235. Administration of grants in certain multigrant projects

For the purpose of facilitating the administration of, and expediting the carrying out of the purposes of, the programs established by subchapters V [Health Professions Education], VI [Nurse Education], and VII [Agency for Health Care Policy and Research] of this chapter and sections 242b [General authority respecting research, evaluations, and demonstrations in health statistics, health services, and health care technology], and 246 [Grants and services to States] of this title in situations in which grants are sought or made under two or more of such programs with respect to a single project, the Secretary is authorized to promulgate regulations

(2) designed to reduce the number of applications, reports and other materials required under such programs to be submitted with respect to such project, and otherwise to simplify, consolidate, and make uniform (to the extent feasible), the data and information to be required to be contained in such applications, reports, and other materials; and

(3) under which inconsistent or duplicative requirements imposed by such programs will be revised and made uniform with respect to such project;

except that nothing in this section shall be construed to authorize the Secretary to waive or suspend, with respect to any such project, any requirement with respect to any of such programs if such requirement is imposed by law or by any regulation required by law.

CHAPTER 35. PROGRAMS FOR OLDER AMERICANS

ADMINISTRATION ON AGING

§ 3019. Joint funding of projects[1]

Pursuant to regulations prescribed by the President, and to the extent consistent with the other provisions of this Act, where funds are provided for a single project by more than one Federal agency to any agency or organization assisted under this Act, the Federal agency principally involved may be designated to

[1] 42 U.S.C. § 5048, a provision under Chapter 66 [Domestic Volunteer Services], is very similar to 42 U.S.C. § 3019.

act for all in administering the funds provided. In such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each Federal agency, and any such agency may waive any technical grant or contract requirement (as defined by such regulations) which is inconsistent with the similar requirements of the administering agency or which the administering agency does not impose.

OFFICE OF NATIONAL DRUG CONTROL POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
Washington, D.C. 20500

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FROM: John Carnevale

FAX NUMBER: ________

OFFICE NUMBER: ________

November 2, 1993

NOTE TO JIM JUKES

Attached is the revised legislation. We've also included draft Speaker letters.

The following changes were made:

o Section 1: added provision to give the new Deputy Director for Community Programs a salary comparable to the other Director's salaries (per OMB).

o Section 2: added "consultation" with an agency head on whether to include an initiative in an agency's budget (Justice suggestion) and deleted the language stating that the head of the agency "shall" comply with the Director's request to include such an initiative.

o Section 6: we accepted most of Justice's recommended changes to the SFF. These include:

-- deleting all mention of FY 1993;

-- changing the maximum amount to be transferred from each forfeiture fund to $75 million;

-- changing the requirement that the AG and Secretary get the "concurrence" of the Director in establishing annual estimates to "consult";

-- deleting the legislative veto provision; and

-- deleting the SFF permanent indefinite authority (per OMB).

Let me know if you need anything else.

John Carnevale
Director, Planning
and Budget

DRAFT

OFFICE OF NATIONAL DRUG CONTROL POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
Washington, D.C. 20500

The Honorable Albert Gore, Jr.
The President of the Senate
United States Senate
Washington, D.C. 20510

Dear Mr. President:

Enclosed herewith is a draft bill, the "Office of National Drug Control Policy (ONDCP) Reauthorization Bill." The Anti Drug Abuse Act of 1988 established ONDCP and defined its structure, responsibilities, and authorities. This draft bill would reauthorize ONDCP for a period of five years, until September 30, 1998, specifying November 18, 1988, as the new date of termination for ONDCP.

In addition, this bill would accomplish certain specific modifications to the original language that created ONDCP and would provide for some limited additional authorities. These modifications are necessitated by changes and evolution in both the National and international drug control situation since 1988. Some of the more important areas where changes are proposed are outlined below.

The draft bill would restructure of the Office somewhat, to more closely align the duties and responsibilities of the two Deputy Directors and the Associate Director with the Administration's drug policy focus. This would provide for Deputy Directors in each of three areas: Domestic Programs, International Programs, and Community Programs.

This bill would also authorize the Director of ONDCP, in consultation with the Secretary of a Department or an agency head, to include in that Department's or agency's budget submission to the Office of Management and Budget certain specific initiatives, designated by the Director, that are consistent with the National Drug Control Strategy. Under current law, the Director may only certify as to the adequacy of an agency's budget request, but the agency is not required to act on the Director's certification. This change would ensure that critical drug policy issues of interest to the President are properly addressed early in the Federal budget process.

Further, this bill would establish a requirement that the National Drug Control Strategy include both short-term objectives and long-term goals in the specific area of the consequences of illicit drug use. The current law requires only long-range goals for the somewhat narrow area of "reducing drug abuse."

This bill also amends current law to give the Director of ONDCP status as a member of the National Security Council and to make certain changes in the Special Forfeiture Fund, the Department of Justice and Department of Treasury Forfeiture Funds to allow for specific uses of the monies in these funds in line with the priorities of the National Drug Control Strategy.

It would be appreciated if you would lay this draft bill before the Senate. An identical proposal has been transmitted to the Speaker of the House of Representatives.

Sincerely,

Lee P. Brown
Director

DRAFT

OFFICE OF NATIONAL DRUG CONTROL POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
Washington, D.C. 20500

The Honorable Thomas S. Foley
Speaker of the House
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Enclosed herewith is a draft bill, the "Office of National Drug Control Policy (ONDCP) Reauthorization Bill." The Anti-Drug Abuse Act of 1988 established ONDCP and defined its structure, responsibilities, and authorities. This draft bill would reauthorize ONDCP for a period of five years, until September 30, 1998, specifying November 18, 1988, as the new date of termination for ONDCP.

In addition, this bill would accomplish certain specific modifications to the original language that created ONDCP and would provide for some limited additional authorities. These modifications are necessitated by changes and evolution in both the National and international drug control situation since 1988. Some of the more important areas where changes are proposed are outlined below.

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This bill also amends current law to give the Director of ONDCP status as a member of the National Security Council and to make certain changes in the Special Forfeiture Fund, the Department of Justice and Department of Treasury Forfeiture Funds to allow for specific uses of the monies in these funds in line with the priorities of the National Drug Control Strategy.

It would be appreciated if you would lay this draft bill before the House. An identical proposal has been transmitted to the President of the Senate.

Sincerely,

Lee P. Brown
Director

November 1, 1993

DRAFT

A BILL

To restructure and enhance the authority of the Office of National Drug Control Policy to better enable it to carry out its missions and responsibilities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. STRUCTURE OF THE OFFICE.

(a) Section 1002(b) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1501) is amended --

(1) by amending paragraph (2) to read as follows:

"(2) There shall be in the Office of National Drug Control Policy a Deputy Director for Domestic Programs, a Deputy Director for International Programs, and a Deputy Director for Community Programs.";

(2) by amending paragraph (3) to read as follows:

"(3) The Deputy Director for Domestic Programs, the Deputy Director for International Programs, and the Deputy Director for Community Programs shall assist the Director in carrying out the responsibilities of the Director under this Act.";

(3) by striking subsection (c); and

(4) by redesignating subsection (d) as subsection (c).

(b) Section 1003 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502) is amended --

(1) by amending the section heading to read as follows:

"Appointment and duties of Director and Deputy Directors";

(2) by amending subsection (a)(1) to read as follows:

"(2) The Director and the Deputy Directors shall each be appointed by the President, by and with the advice and consent of the Senate."; and

(3) by amending subsection (a)(2) to read as follows:

"(2) The Director and the Deputy Directors shall each serve at the pleasure of the President. No person shall serve as Director or Deputy Director while serving in any other position in the Federal Government.".

(c) Section 1010 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1507) is amended

(1) by redesignating subparagraphs (5), (6), (7), and (8), as paragraphs (8), (9), (10), and (11),

respectively, and by inserting the following new paragraphs after paragraph (4):

"(5) the term "Domestic Programs" means the programs, policies, and activities undertaken by a National Drug Control Program agency, for purposes of reducing drug use and availability within the United States, including --

(A) drug abuse education;

(B) prevention;

(C) treatment;

(D) domestic drug enforcement intelligence;

(E) domestic drug law enforcement, including law enforcement directed at drug users;

(F) research; and

(G) rehabilitation;

"(6) the term "International Programs" means the programs, policies, and activities undertaken by a National Drug Control Program agency, for purposes of reducing the supply of drugs abroad or en route to the United States, including --

(A) international drug control;

(B) foreign intelligence; and

(C) interdiction, including interdiction at and along the borders of the United States;

"(7) the term "Community Programs" means programs, policies, and activities undertaken at the State and local level, including programs related to community empowerment and other efforts to coordinate drug programs, pursuant to the policies, objectives, and priorities of the National Drug Control Strategy;". and

(d) Section 5314 of title 5, United States Code, is amended by --

(1) striking "Deputy Director for Demand Reduction, Office of National Drug Control Policy" and replacing it with "Deputy Director for Domestic Programs, Office of National Drug Control Policy";

(2) striking "Deputy Director for Supply Reduction, Office of National Drug Control Policy" and replacing it with "Deputy Director for International Programs, Office of National Drug Control Policy"; and

(3) inserting "Deputy Director for Community Programs, Office of National Drug Control Policy" after the new "Deputy Director for International Programs, Office of National Drug Control Policy".

SEC. 2. NATIONAL DRUG CONTROL PROGRAM BUDGET.

Section 1003(c) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502) is amended --

(1) by redesignating paragraphs (5), (6), and (7), as paragraphs (6), (7), and (8), respectively; and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) The Director, in consultation with the Secretary of a department or head of an agency, may require the inclusion in the department or agency's budget submission to the Office of Management and Budget funding requests for specific initiatives that are consistent with the President's priorities for the National Drug Control Strategy and certifications made pursuant to paragraph (3);".

SEC. 3. REPORT ON REPROGRAMMINGS

Section 1003(c) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502) is amended by adding new paragraph (7) to read as follows:

"(7) The Director shall report to the Congress on a quarterly basis regarding the need for any reprogramming or transfer of appropriated funds pursuant to subsection (c)(6)(A) for National Drug Control Program activities.".

SEC. 4. NATIONAL DRUG CONTROL STRATEGY OUTCOME MEASURES.

Section 1005(a) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1504 (a)) is amended --

(1) by inserting in paragraph (2)(A) "and the consequences of drug abuse" after "drug abuse".

SEC. 5. DIRECTOR AS A MEMBER OF THE NATIONAL SECURITY COUNCIL.

Section 402(a)(7) of title 50, United States Code, is amended by --

(1) striking "and" in paragraph (6);

(2) redesignating paragraph (7) as paragraph (8); and

(3) inserting the following new paragraph:

"(7) the Director of the Office of National Drug Control Policy; and".

SEC. 6. SPECIAL FORFEITURE FUND AMENDMENTS.

(a) ESTABLISHMENT OF FUND. Section 6073 of the Asset Forfeiture Amendments Act of 1988 (21 U.S.C. 1509) is amended--

(1) by amending subsection (b) to read as follows:

"(b) TRANSFERS FROM OTHER FUNDS.--

"(1) DEPARTMENT OF JUSTICE DEPOSITS.--(A) On October 1 of each of fiscal years 1994, 1995, 1996, 1997, and 1998, the Attorney General shall estimate, in consultation with the Director, the excess unobligated balance anticipated as of September 30 in the Department of Justice Assets Forfeiture Fund established under section 524(c) of title 28, United States Code.

"(B) In each of fiscal years of 1994, 1995, 1996, 1997, and 1998, the Attorney General shall transfer to the

Fund the excess unobligated balance estimated under subparagraph (A). Such transfers shall be made at the end of each quarter of a fiscal year on a pro rata basis. In order to account for unanticipated fluctuations in the Department of Justice Assets Forfeiture Fund balance during a fiscal year, the transfer at the end of the fourth quarter of each fiscal year shall be adjusted by the Attorney General, with the concurrence of the Director, so that the transfer is equal to the actual remaining excess unobligated balance in the Department of Justice Assets Forfeiture Fund on September 30. Transfers under this subparagraph shall be made only to the extent that the aggregate amount of such transfers during a fiscal year does not exceed $75,000,000.

"(2) DEPARTMENT OF THE TREASURY DEPOSITS.--(A) On October 1 of each of fiscal years 1994, 1995, 1996, 1997, and 1998, the Secretary of the Treasury shall estimate, in consultation with the Director, the excess unobligated balance anticipated as of September 30 in the Department of the Treasury Forfeiture Fund established under section 9703 of title 31, United States Code.

"(B) In each of fiscal years 1994, 1995, 1996, 1997, and 1998, the Secretary of the Treasury shall transfer to the Fund the excess unobligated balance estimated under subparagraph (A). Such transfers shall be made at the end of each quarter of a fiscal year on a pro rata basis. In order to account for unanticipated fluctuations in the

Department of the Treasury Forfeiture Fund balance during a fiscal year, the transfer at the end of the fourth quarter of each fiscal year shall be adjusted by the Secretary of the Treasury, with the concurrence of the Director, so that the transfer is equal to the actual remaining excess unobligated balance in the Department of the Treasury Forfeiture Fund on September 30. Transfers under this subparagraph shall be made only to the extent that the aggregate amount of such transfers during a fiscal year does not exceed $75,000,000.";

(2) by redesignating subsections (c), (d), (e), and (f), as subsections (d), (e), (f), and (g), respectively;

and

(3) by inserting after subsection (b) the following new subsection:

"(c) SUPER SURPLUS. (1) Any unobligated balance up to $20,000,000 remaining in the Fund on September 30 of a fiscal year shall be available to the Director, subject to appropriation and subject to paragraph (2), to transfer to, and for obligation and expenditure in connection with drug control activities of, any Federal agency or State or local entity with responsibilities under the National Drug Control Strategy.

(b) CONFORMING AMENDMENTS.--

(1) DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.--Section 524(c)(9) of title 28, United States Code, is amended--

(A) by striking subparagraph (B) and inserting the following new paragraph:

"(B) The Attorney General shall make transfers from the Fund to the Office of National Drug Control Policy's Special Forfeiture Fund in the manner provided in section 6073(b)(1) of the Asset Forfeiture Amendments Act of 1988 (21 U.S.C. 1509(b)(1)).";

(B) by striking subparagraph (C); and

(C) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively.

(2) DEPARTMENT OF THE TREASURY FORFEITURE FUND.--Section 9703(g) of title 31, United States Code, is amended by striking paragraphs (3)(A), (3)(B), and paragraph (4), redesignating subparagraph (3)(C) as paragraph (3), and inserting the following new paragraph:

"(4) After reserving the amount authorized by paragraph (3), the Secretary of the Treasury shall make transfers from the Fund to the Office of National Drug Control Policy's Special Forfeiture Fund in the manner provided in section 6073(b)(2) of the Asset Forfeiture Amendments Act of 1988 (21 U.S.C. 1509(b)(2)."

SEC. 7. COUNTER-DRUG TECHNOLOGY ASSESSMENT CENTER

(a) DRUG ABUSE ADDICTION AND REHABILITATION RESEARCH. Section 1502a of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502(a)) is amended --

(a) by redesignating paragraphs (B), (C), and (D) in section (c) as paragraphs (C), (D), and (E), respectively, and inserting after paragraph (A) the -- following new paragraph:

"(B) examine addiction and rehabilitation research and stress the interdisciplinary approach in examining clinical, pharmacological, and behavioral approaches to the counternarcotics problem;";

(b) ASSISTANCE FROM THE ADVANCED RESEARCH PROJECT AGENCY. Section 1502a of the National Narcotics Leadership Act of 1988 is amended by inserting after section (e) the following new section:

"(f) The Director of the Advanced Research Project Agency shall, to the fullest extent possible, render assistance and support to the Office of National Drug Control Policy and its Director.";

and

(c) REDESIGNATION OF LANGUAGE. Section 1008 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1505) is replaced with section 1502a.

SEC. 8. PAYING CERTAIN NECESSARY EXPENSES FOR STRATEGY CONSULTATION.

Section 1005(a) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1504(a)) is amended --

(1) by inserting the following new paragraph (C) after paragraph (3)(B):

"(C) Nothing contained in this section shall be construed to prohibit the Director from paying for the necessary expenses for assemblages of individuals providing consultation to the Director in developing the National Drug Control Strategy.".

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

Section 1011 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1508) is amended by striking "4" and inserting "9".

SEC. 10. TERMINATION OF OFFICE OF NATIONAL DRUG CONTROL POLICY.

Section 1009 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1506) is amended by striking "the date which is 5 years after the date of the enactment of this subtitle" and inserting "September 30, 1998".

DRAFT

ONDCP REAUTHORIZATION BILL

SECTION-BY-SECTION ANALYSIS

Section 1. Structure of the Office

This section renames the Deputy Directors to reflect a shift in their program responsibilities and elevates the Associate Director of the Bureau of State and Local Affairs to a Deputy Director level. These changes are necessary to realign the duties and responsibilities of the Deputy Directors and the Associate Director to reflect the Administration's drug policy focus.

The Deputy Director for Supply Reduction would become the Deputy Director of International Programs and would oversee all source-country, transit, and border interdiction programs, including foreign intelligence programs.

The Deputy Director for Domestic Programs would be responsible for domestic matters, including drug abuse education, prevention, treatment, research, rehabilitation, domestic intelligence, and domestic law enforcement programs.

The Associate Director of the Bureau of State and Local Affairs would be elevated to the Deputy Director for Community Programs. This would give the Associate Director the same stature and responsibilities afforded to the other Deputy Directors. The Deputy Director for Community Programs would coordinate State and local drug-related matters that are linked to Federal drug programs, pursuant to the policies, objectives, and priorities of the National Drug Control Strategy.

Finally, this section provides a conforming amendment to ensure the new Deputy Director of Community Programs receives the same salary as the other Deputy Directors.

Section 2. National Drug Control Program Budget

This section authorizes the Director of ONDCP, in consultation with the Secretary of a department or an agency head, to include in the department's or agency's budget submission to the Office of Management and Budget specific initiatives designated by the Director that are consistent with the National Drug Control Strategy. Under current law, the Director of ONDCP may certify as to adequacy of an agency's budget request, but the agency is not required to act on the Director's certification. This change would ensure that critical drug policy issues of interest to the President are properly addressed early in the Federal budget process.

Section 3. Report on Reprogrammings

Under current law, ONDCP must approve reprogrammings of drug-related resources that exceed $5 million. Further, ONDCP must report each quarter to Congress on all drug-related reprogrammings, regardless of their amount. This mismatch in the approval and reporting requirement has created an administrative burden for ONDCP and Federal drug agencies, as each is required to track drug-related reprogrammings under $5 million.

This section would change the reporting requirement so that ONDCP would only have to report those drug-related reprogrammings that exceed $5 million.

Section 4. National Drug Control Strategy Outcome Measures

This section adds the requirement that the Strategy include short- and long-term goals on the consequences of illicit drug use. Current law only requires goals on reducing drug use and availability.

Section 5. Director as a Member of the National Security Council

This section amends current law to make the Director of ONDCP a member of the National Security Council. Given the national threat posed by the illicit drug trade, this change would enhance the Director's ability to develop programs and policies to counter that threat.

Section 6. Special Forfeiture Fund Amendments

The Anti-Drug Abuse Act of 1988 created within ONDCP the Special Forfeiture Fund (SFF), which was intended to give the Director of ONDCP the supplemental program resources for special demand reduction and supply reduction program efforts. By creating the SFF, Congress expressed its view that the proceeds of asset forfeitures should not be used exclusively by law enforcement agencies. These proceeds should also be available to mitigate the deleterious consequences of the drug trade for demand reduction purposes.

Since the 1988 Act was enacted, sections of the U.S. Code related to the assets forfeitures were amended to create the Super Surplus within the Department of Justice and the new forfeiture fund within the Department of Treasury. These amendments had the effect of weakening the Special Forfeiture Fund by giving the Secretary of Treasury and the Attorney General discretion in making deposits to the SFP.

In particular, this section requires that deposits to the SFF by the Attorney General would continue to occur quarterly, based on estimates of unobligated balances. The Attorney

General's discretion to make such deposits would be repealed. The maximum amount to be transferred from the Justice forfeiture fund would be capped at $75 million.

Language effecting these changes for Treasury's Forfeiture Fund is also incorporated.

Section 7. COUNTER-DRUG TECHNOLOGY ASSESSMENT CENTER

This section makes three changes. The first change would extend CTAC's mission to include drug abuse addiction and rehabilitation research. Congress allowed CTAC to use part of its FY 1992 appropriations for such research, but CTAC's statutory mission has never been changed to allow such research permanently. This change would make this area of research a permanent part of CTAC's mission.

The second change would require the Director of DoD's Advanced Research Project Agency (ARPA) to render assistance, to the fullest extent possible, to support the Office of National Drug Control Policy and its Director. This change would permit the Director of ARPA to support CTAC's statutory mission.

The third change would delete obsolete language requiring ONDCP to conduct an Executive Reorganization Study by January 15, 1990 and replace it with the 1990 statutory language that created CTAC.

Section 8. Paying Certain Necessary Expenses for Strategy Consultation

The Director of ONDCP is required to consult with State and local officials, private citizens with experience and expertise in demand and supply reduction, and others in developing the National Drug Control Strategy. This section would give the Director authority to pay certain expenses for assemblages of individuals providing such consultation.

Section 9. Authorization of Appropriations

This section authorizes appropriations for the Office of National Drug Control Policy through the end of Fiscal Year 1998.

Section 10. Termination of the Office of National Drug Control Policy

This section extends the Office of National Drug Control Policy for five years, until September 30, 1998.