



DEPARTMENT OF THE TREASURY
WASHINGTON

ASSISTANT SECRETARY

June 9, 1994

Christopher Edley
Associate Director
Economics and Government
Office of Management and Budget
Washington, DC 20503

Dear Chris:

This responds to your June 3rd fax encouraging Treasury to formulate a grant program so that we could effectively compete for scarce Violent Crime Reduction Trust Fund outlays in fiscal years 1995 and 1996. I am not clear whether or not you are asking us to "consider" a grant program or if a Treasury grant program is the only way for us to compete for scarce Crime Fund outlays.

Prior to receipt of your note, we had the impression that you merely wanted Treasury to consider the idea of a Treasury law enforcement grant program. On several occasions we provided you with our initial reaction. For example, we invited your staff to a question and answer session with some of our bureau liaisons so that they could experience, first-hand, Treasury law enforcement staff's initial response. Our liaisons were skeptical, but they did have some creative ideas. At that time the underlying assumption was that a Treasury grant program would be in addition to the \$286 million sought through the Crime Trust Fund.

It is hard to imagine OMB mandating Treasury to create yet another grant program when there are not sufficient funds to cover the proposed grant programs already contained in the Crime Bill. The establishment of a Treasury law enforcement grant program could undermine the Clinton Administration's commitment to a spirit of cooperation and coordination between Treasury and Justice law enforcement bureaus. Undoubtedly, two overlapping Federal law enforcement grant programs would produce dangerous and wasteful competition at the State and local level. Almost 10 percent (\$33.5 million and 365 FTE) of Justice's grant program is for administration and management. To assemble a comparable program within Treasury we would need to have dedicated staff within each bureau as well as an infrastructure to administer, manage, and evaluate a \$300-500 million grant program. If OMB is willing to provide these resources as well as to sustain the Administration's support for our Crime Bill proposals, we will develop scenarios to discuss with you and your staff. Moreover, your letter does not state whether Justice and Treasury are both required to substitute grant proposals for funding of crime fighting programs endemic to our missions.

Assuming your goal is to pursue an alternative to Federal FTE-intensive crime fighting programs, I share your view. Since my last meeting with you, I have held one-on-one budget sessions with each of my Bureau Heads. During these sessions the Bureau Heads and I acknowledged that massive FTE increases are no longer an option and that we must revamp our operations to become more efficient with a constant or decreasing level of staffing, and with greater utilization of other Federal, State and local entities.

Treasury continues to seek funding for Crime Bill proposals approved by Secretary Bentsen as well as those endorsed by The President on January 8, 1994. Also, we are willing to revise FTE-intensive proposals downward and/or re-fashion the proposals so that outlays spend-out at a slower rate. Except for Senator DeConcini's amendment, Treasury law enforcement was an oversight in the Senate Crime Bill because Treasury followed the Administration's directive and did not compete on the Hill for funds. Director Panetta later assured Secretary Bentsen that we could compete for the unallocated \$303 million (which is after Justice's allocation for border security and criminal records upgrade). Also, we were told that we would be able to propose programs worthy of support. Toward that end, we provided you what we consider viable and cost effective proposals. We thank you for your effort and Treasury looks forward to the Administration's continued support for our programs. We have not forgotten that because of your, Justice's, and Congressman Hoyer's support we were included in the House Crime Bill.

Sincerely,



Ronald K. Noble
Assistant Secretary (Enforcement)

cc: Bruce Reed
Ron Klain

 Jose Cerda



DEPARTMENT OF THE TREASURY
WASHINGTON

FEB 18 1994

ASSISTANT SECRETARY

MEMORANDUM FOR RAHM EMANUEL

Deputy Director of Communications
The White House

FROM:

Ronald K. Noble *RK*
Assistant Secretary (Enforcement)

SUBJECT:

Enhancing Customs' Anti-Smuggling Program

Treasury seeks amendments to Titles 18 and 19 to provide the Customs Service with permanent authority to investigate drug smuggling.

Under current law, Customs' 2,800 agents, who have primary responsibility for our border security, are authorized to conduct complete investigations into all import/export offenses **except those involving drugs**. Customs' role in investigating drug smuggling is limited by the Reorganization Plan No. 2 of 1973, which established the Drug Enforcement Administration (DEA), and which limited federal authority to investigate drug-related crimes to the Justice Department.

Since 1981, the Justice Department has "cross-designated" Customs agents to conduct drug smuggling investigations. Presently, 1300 Customs agents have temporary drug investigative authority, while Customs' other 1,500 agents are not permitted to share responsibility for this work. For several reasons, this state of affairs is inefficient and inconsistent with "reinventing government" principles.

First, Treasury must seek a separate designation on an annual basis for each of the 1300 designated agents. Moreover, because the designations are for only a limited period of time and are dependent on action by DEA, there have been frequent occasions when all 1300 designations were on the verge of expiring. Expiration of the temporary designations would deprive Customs agents of legal authority to investigate drug cases and fully enforce the drug laws, would disrupt numerous sensitive investigations, and would have a disastrous effect on federal drug enforcement efforts.

Furthermore, the 1500 **undesignated** Customs agents without authority to enforce fully the drug laws are required to "hand off" all cases in which they discover illicit drugs or identify leads related to drug smuggling. Such "hand offs" waste substantial resources by requiring two agents to complete work which could be accomplished by one. They also often require Customs agents to transfer cases to DEA agents who are not located near the origin of the case. In addition, significant investigative opportunities are often missed when agents without authority to investigate drug violations discover information indicating a potential drug smuggling violation.

All Customs agents should be provided with authority to investigate drug smuggling through the **existing** smuggling statute, 18 U.S.C. 545. Granting Customs such authority will enable Customs to perform fully one of its core functions - border enforcement - under its own statutory authority. Providing Customs with such authority by amending Title 18 U.S.C. 545, which is limited to smuggling offenses, instead of providing Customs with Title 21 authority, the statutory basis for DEA's jurisdiction, will ensure that Customs does not compete with DEA for drug investigations inside the border areas.

This initiative would make significant federal resources available immediately to combat drug-related crime at no additional cost to the taxpayer, by vesting all Customs agents with authority to investigate drug **smuggling** violations. Already, even though less than half of its agents have authority to investigate drug smuggling violations, in FY 1993, Customs agents handled 9,065 drug cases, made 6,821 drug-related arrests, which resulted in 4,215 indictments and 4,169 convictions. Moreover, in FY 1993, Customs seized 2,955 pounds of heroin, 175,318 pounds of cocaine, 26,089 pounds of hashish, 507, 249 pounds of marijuana, 2,129 pounds of opium, and 17,864,966 units of other drugs (e.g., pills, tablets, etc.). Therefore, empowering 1,500 additional Customs agents will contribute significantly to border interdiction. The initiative also will allow the government to "fill the gap" in the many border areas where Customs agents outnumber DEA agents and in the border areas where there is no DEA presence.

There is ample precedent for providing Customs with such authority. Although DEA is the lead agency for federal drug investigations, other agencies, including the FBI, the Postal Service, and the Park Service, have been provided drug investigative authority for their areas of responsibility.

Attached are the proposed amendments. The first two amendments, to 18 U.S.C. 545 and 19 U.S.C. 1595a, would incorporate enforcement penalty and seizure provisions in the laws Customs enforces, similar to those currently in Title 21. In addition, the Reorganization Plan No. 2 of 1973 would be amended to permit Customs to investigate fully and enforce the laws against controlled substances with respect to smuggling offenses.

Legislation Required:

Include specific provisions in 18 U.S.C. 545 to make unlawful the importation of controlled substances and the use of communication facilities for such importation

Statutory Language:

1. By designating the existing language as subsection "a.", and
2. By adding the following as subsection "b.":

b. Importations of Controlled Substances.

Any person who violates the provisions of this section shall be liable for a fine of not more than \$250,000 or imprisonment for not more than 20 years, or both, if any of the merchandise involved was a controlled substance.

3. By adding the following as subsection "c.":

c. Use of Communication Facility.

It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a violation of this section if any of the merchandise involved was a controlled substance. Each separate use of a communication facility shall be a separate offense under this section. For purposes of this section, the term "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

4. By adding the following as subsection "d.":

d. Attempts and Conspiracy.

It shall be unlawful for any person to attempt or conspire to commit any violation of this section.

Amend 19 U.S.C. 1595a to include specific provisions for the seizure and forfeiture of monetary instruments and real property related to unlawful importations and exportations of controlled substances

Statutory Language:

The following new subsection is inserted:

(d) Violations involving controlled substances.

Customs officers may seize and forfeit the following:

(1) all moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance that is intended to be imported or exported contrary to law or has been imported or exported contrary to law, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities, used or intended to be used to facilitate an importation or exportation of controlled substances contrary to law; and

(2) all real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to import or export a controlled substance contrary to law, or to facilitate an importation or exportation of a controlled substance contrary to law, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(3) This section does not restrict the liability of property to seizure and forfeiture under other provisions of this section, the Customs laws, or other laws enforced by Customs.

Analysis for the amendments to 18 U.S.C. 545 and 19 U.S.C. 1595a

Although the smuggling of drugs clearly constitutes a customs offense (e.g., a violation of the smuggling statute, 18 U.S.C. 545), prosecutors currently almost exclusively charge Title 21 violations in such cases because of the enhanced penalties and seizure authorities available under that Title. The proposed amendment to the smuggling and the customs seizure statutes would incorporate enforcement penalty and seizure provisions similar to those currently in Title 21 and therefore would enable Customs agents and prosecutors to take action against smugglers under the customs laws. To preserve the prosecutorial discretion of Assistant U.S. Attorneys, the amendment makes it clear that prosecutors will still have the option of

charging such violations as either Customs offenses (Title 18) or as violations of the Controlled Substances Act (Title 21).

In order to achieve actual sentencing parity between drug smuggling offenses charged under Title 18 and Title 21, Congress will also have to direct the Sentencing Guidelines Commission to amend the Sentencing Guidelines in accordance with that objective.

Amend the Reorganization Plan No. 2 of 1973, 87 Stat. 1091 to provide that certain seizures, detention, and apprehensions shall be turned over to the jurisdiction of the Attorney General.

Statutory Language:

1. The following language is deleted from Section 1:

Provided, that any illicit narcotics, dangerous drugs, marihuana, or related evidence seized, and any person apprehended or detained by the Secretary or any or any officer of the Department of the Treasury, pursuant to the authority retained in them by virtue of this section, shall be turned over forthwith to the jurisdiction of the Attorney General;

2. The following language is deleted from Section 2:

Provided, that any person apprehended or detained by the Secretary or his designee pursuant to this section shall be turned over forthwith to the jurisdiction of the Attorney General; and,

Analysis:

These amendments will reflect that the Customs Service may fully investigate and enforce smuggling offenses involving controlled substances. They will not restrict any other authorities vested by law in the Customs Service, nor do they restrict the discretion of the Attorney General to prosecute drug offenses, including cases constituting a violation of 18 U.S.C. 545, the Controlled Substances Act or the Controlled Substances Import and Export Act.



U.S. Department of Justice

Federal Bureau of Investigation

Noble
~~Hamber~~
MORRIS

Office of the Director

Washington, D.C. 20535

March 21, 1994

Honorable Jo Ann Harris
Acting Deputy Attorney General
Department of Justice
Washington, D.C.

Dear Ms. Harris:

I am writing to you in response to a request by the Department of Justice for comments on the "Department of the Treasury Crime Control and Community Safety Act of 1994." The FBI is strongly opposed to this legislation.

As I have indicated below, I believe the Department of Justice should resist the notion of sending forth any legislation that further confuses the responsibilities of the various law enforcement entities and dilutes the focus of the Attorney General as the Nation's Chief Law Enforcement Officer. Attached to this letter are brief comments outlining the FBI's concerns as to specific sections of the proposed bill. A more in-depth analysis of each area will be provided to you in the near future.

The Attorney General has made it a priority to improve the working relationship between law enforcement agencies at all levels. This is necessary in order to obtain the maximum effectiveness of the limited resources available throughout government and to address the burgeoning crime problem. Fiscal constraints mandate the reduction of duplication of efforts which not only waste resources but also detrimentally impact investigations and prosecutions. In the long run, the lack of a cooperative, coherent approach to the crime problems facing law enforcement also detrimentally impacts on society through confusion and a loss of trust and confidence in government. We in law enforcement have an obligation to work together so as to best carry out our sworn duties to protect the American people.



Honorable Jo Ann Harris

The Attorney General has initiated steps to accomplish her objective of improving law enforcement services through improved coordination and enhanced efficiencies. A cornerstone was the establishment of the Office of Investigative Agency Policies (OIAP). The OIAP has already made significant policy changes to improve investigative efficiencies within the Department of Justice. Further, my staff and I have initiated dialogue with Treasury officials toward these same ends. It is my firm belief and commitment that differences between law enforcement agencies should be resolved within the Executive Branch before the specific needs for legislation can be identified and pursued. Only through the auspices of the Attorney General, our Nation's chief law enforcement officer, should decisions be made as to the structure of federal law enforcement responsibilities.

Although there are some meritorious provisions in "The Department of the Treasury Crime Control and Community Safety Act of 1994," I firmly believe that on balance the proposed legislation would be counterproductive of efforts underway by the Attorney General and others within the Administration to marshall a unified, coordinated and consistent attack on crime. The proposed legislation leads to the very things that the Attorney General, OIAP and I are trying to correct and prevent: duplication of investigative efforts, wasted resources, and confusion and conflict in jurisdictional responsibilities.

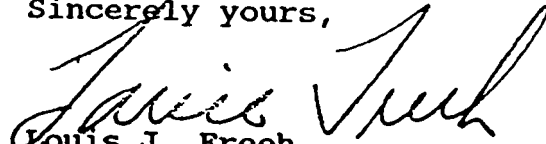
Further, I am personally very disappointed that the Treasury Department has come forward with this proposal, particularly at this time. I believed that we were engaged in good-faith discussions to resolve investigative issues with Treasury Department officials. This proposed legislation would negate these efforts and the efforts of many others within the Administration.

Once again, I cannot state too strongly my opposition to many aspects of the proposed legislation. The derogation of the Attorney General's position as the Nation's chief law enforcement officer is untenable. The proposed legislation raises issues that should be debated and resolved within the

Honorable Jo Ann Harris

Executive Branch. I am committed to that course of action and stand willing to meet with you, other Department of Justice officials, and Treasury Department officials to reach accord on any investigative issue raised in the proposed legislation or otherwise. I would be pleased to further discuss this critical issue at any time.

Sincerely yours,


Louis J. Freeh
Director

Enclosure

- ① - Honorable Ronald K. Noble
Assistant Secretary of the Treasury
for Enforcement
Department of the Treasury
Washington, D.C.
- 1 - Honorable Sheila F. Anthony
Assistant Attorney General
Office of Legislative Affairs
Department of Justice
Washington, D.C.
- 1 - Ms. Mary Lee Warren
Acting Deputy Assistant Attorney General
Criminal Division
Department of Justice
Washington, D.C.
- 1 - Mr. Roger Pauley
Director
Office of Legislation
Criminal Division
Department of Justice
Washington, D.C.



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D. C. 20530

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

Dear Mr. Panetta:

This letter sets forth the preliminary views of the Department of Justice on the draft Department of the Treasury Bill, captioned "Department of the Treasury Crime Control and Community Safety Bill of 1994." As discussed more fully below with respect to those provisions contained principally in Titles I (Anti-Crime Initiatives), III (Securing the Safety and Integrity of Our Borders), IV (Combating Programmatic Fraud and Waste) and V (Anti-Money Laundering), the Justice Department opposes the proposals in the bill and would urge that you hold up consideration of the proposed legislation pending discussions between the Departments of the Treasury and Justice.

The proposed legislation, analyzed in its entirety, proposes significant expansion of Treasury law enforcement agency authority and resources. In view of preliminary budgetary indications that overall spending for federal law enforcement initiatives will not increase at similar rates, the proposal essentially represents an apparent attempt to shift law enforcement resources and responsibilities from other agencies to the Treasury agencies, primarily Customs. We are not aware of any Administration decision to initiate that realignment, and thus must question the wisdom of seeking massive new programs without identifying offsetting reductions within the same agencies or Department. Moreover, it is our view that those aspects of the proposed legislation which seek to expand the jurisdiction of Treasury agencies would fragment and duplicate existing law enforcement efforts.

Title I has numerous technical concerns which, however, can be readily remedied. This title pertains to firearm license fees, expanding assistance to state and local law enforcement, illicit gun market, and community safety.

**Section 102: Requiring Compliance with State and Local Laws
Before Issuance of Firearms License**

This provision requires compliance with all state and local

requirements before the license is issued. Section 102 is too restrictive on prospective new dealers who are short of risk capital. If the license is never issued, the applicant will have expended and wasted much of his resources. Also, state and local governments may require security safeguards for the storage of firearms. Presently, 18 U.S.C. 923(d)(1)(E) allows "a reasonable time" to acquire the necessary premises.

Section 105: Requiring Licensees to Comply with Firearm Trace Requests

This section requires licensed firearms dealers to comply with requests for information respecting the disposition of firearms. The provision, however, only requires the providing of such information as directed by the Secretary of Treasury, presumably to ATF agents. Since firearms play a major role in crimes investigated by many Federal, state and local law enforcement agencies, licensees ought to be required to provide this same information to any Federal, state or local law enforcement officer. To require otherwise means that a non-ATF investigator must enlist the assistance of ATF to accomplish routine investigative tasks.

Section 113: National Firearms Program

Subsection (b) of this provision would provide \$9.56 million in each of fiscal years 1995, 1996, 1997, 1998 and 1999 for the hiring of 100 special inspectors. These inspectors would be stationed in 57 cities identified by ATF as having "high rates of violent crimes." While it is essential that ATF's inspection program be expanded, the program should not be limited. If there is heightened scrutiny in one major city, criminals will travel to rural areas to purchase their firearms. Accordingly, although the bulk of the regulatory effort may come in larger cities, funding limitations should not apply geographically.

Section 202: Mandatory Penalties for Firearms Possession By Violent Felons and Serious Drug Offenders

This provision amends the Armed Career Criminal Act (ACCA), 18 U.S.C. §924(e), by decreasing the number of required predicates from three to two, and increasing the minimum mandatory sentence of imprisonment from 15 years to 20 years. This statute ought to be considered as part of the entire Crime Bill, and with particular reference to "Three Strikes and You're Out." The amendment makes some sense because ACCA is effective as a "four strikes" provision as currently written. However, ACCA differs from the Administration's "Three Strikes" provision in a major respect particularly important to prosecutors; it does not require the filing of an enhancing information as would be required under "Three Strikes." If there is to be an amendment to the ACCA, serious consideration ought to be given to

the addition of a requirement that a prosecutor file an enhancing information as would be required under "Three Strikes" and has always been required in Federal narcotics cases, see 21 U.S.C. §851.

Section 501: Restriction of the Manufacture, Transfer, and Possession of Certain Semiautomatic Assault Weapons

This section regulates the manufacture, transfer and possession of certain semiautomatic assault weapons. Although appropriate, Treasury may wish to consider permitting the Secretary to promulgate regulations defining specific types and makes of firearms rather than defining the firearms in the statute. This will provide greater flexibility as new firearms come on the market. This same approach is now used for defining drug schedules under 21 U.S.C. §812.

Section 512: Theft of Explosives From Licensee

The explosives provisions in chapter 40 of 18 U.S.C. do not have "licensed collectors." They do have "permittees." Treasury should determine whether it wants to cover permittees. Treasury should also determine whether it wants that provision to cover licensed collectors, and if it does, it should remove the requirement that the firearm be from the licensee's business inventory.

With respect to Title III, the Department of Justice is opposed, at this time, to all aspects of this title pertaining to drug-related seizures, prosecutions, undercover operations and substantive drug-related offenses. It is our strongly held view, in particular, that Sections 701, 702, 703, 707 and 712, discussed in more detail infra, require further study and discussions between the Departments of Justice and the Treasury, and any other interested federal agency.

Sections 701 and 703: To make unlawful the importation of controlled substances, and the use of communication facilities for such importation; and to amend the Reorganization Plan No. 2 of 1973

We strenuously oppose Sections 701 and 703. Reorganization Plan No. 2 of 1973 was enacted to create the Drug Enforcement Administration (DEA) as a single, comprehensive Federal agency within the Department of Justice to lead the war against illicit drug trafficking. The Plan recognized that the Federal drug law enforcement effort was distinctly handicapped by division among several organizations in two different Cabinet Departments, which resulted in a loosely confederated alliance facing a resourceful, elusive, worldwide enemy. The Plan's objective was comprehensively to link, cross-reference and coordinate worldwide drug law enforcement responsibilities into a single enforcement

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system so that law enforcement officers would direct their efforts against drug traffickers and not be hampered with time-consuming coordination efforts.

More recently, the recommendations of the National Performance Review, directed by Vice President Gore, again stressed improved coordination by narcotics law enforcement components. To address those recommendations, the Attorney General determined that DEA would remain a specialized, single-mission agency conducting investigations of matters involving illicit trafficking in drugs. Further, the Attorney General established a new office within the Justice Department, the Office of Investigative Agency Policies, to resolve operational issues where there is overlapping jurisdiction among law enforcement agencies of the Department. The Director of the Office of Investigative Agency Policies (FBI Director Louis J. Freeh) is charged with establishing and implementing uniform standards for investigations, including intelligence gathering and dissemination, training and procurement.

As a threshold issue, it must be noted that all conduct encompassed by the proposal is already explicitly proscribed by existing law. The sole purpose of this proposal is to "ensure that Customs has independent investigative authority over drug smuggling offenses." Analysis at 19 (emphasis added). In practical effect, this would force a return to the pre-Reorganization Plan No. 2 days of dangerous, inefficient, fragmented and duplicative drug enforcement efforts.

This also would directly contravene National Performance Review directives to eliminate overlapping and potentially conflicting law enforcement activities. Moreover, the Treasury proposal, by setting up two parallel federal drug enforcement systems, would also contravene the objectives of the 1994 National Drug Control Strategy to ensure integration and reduce duplication of investigative effort. Also of concern are a number of provisions containing funding requests to enhance Customs' budget, at a time when the Administration has clearly directed consolidation of drug program resources.

Cross-designation of Customs agents is already under review to correct fragmentation of the Federal drug enforcement effort, lack of coordination and alleged violations of host country laws. Customs has not uniformly abided by the terms of the 1990 "Memorandum of Understanding among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," which sets out procedures for notice and coordination in money laundering investigations, as well as for designation of lead agency in jointly conducted investigations.

In the area of undercover investigations, there are

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sensitive areas which require policy coordination among the law enforcement agencies, including the purpose of undercover operations and controlled deliveries and the release into traffic of any controlled substances. Overseas drug and money laundering investigations require specific central coordination mechanisms and strict adherence to the Attorney General's domestic and international operations guidelines in narcotics and drug-related financial investigations.

Drug enforcement efforts have evolved to recognize that drug trafficking is a continuous process from production through transportation to distribution, frequently involving the same persons or organizations. Effective drug enforcement efforts require a comprehensive approach under the direction of the Attorney General, addressing all phases of the drug trade.

We disagree with the contention that the proposal will "ensure that Customs smuggling investigations complement the drug investigative efforts of DEA and FBI, which focus on kingpins, domestic violators, and organized crime." Analysis at 19. Even if Customs intends to strictly limit its investigations and arrests to instances of interdiction of controlled substances at the borders and ports of entry, its activities under this proposal would inevitably overlap and conflict with those of DEA and FBI. Contrary to Treasury's implication that a "bright line" may be drawn which will neatly separate investigative jurisdiction into "importation" on the one hand and "kingpins, domestic violators, and organized crime" on the other, in the reality of cocaine and heroin trafficking, no such line exists. In short, insofar as it would create a return to concurrent investigative jurisdiction, this proposal represents a 25-year regression in drug enforcement efforts. This would be especially damaging now, in light of recent significant progress to enhance cooperation, coordination and communication among law enforcement agencies.

We note, as well, that duplication of narcotics offenses in Title 18 will raise serious issues of unfair sentencing disparity. Title 21 sentencing options, which are statutorily created, include mandatory minimum sentences, possibility of life imprisonment and maximum fines of up to \$10 million. The Treasury proposal does not include these options, thus, sentences for conduct covered under both Title 18 and Title 21 will differ, depending on the statute charged.

It is our view that Sections 701 and 703 run counter to the 1973 mandate, as well as the National Performance Review and ONDCP drug strategy objectives. Thus, instead of advancing our objectives, we risk rendering U.S. drug law enforcement markedly less effective and efficient. We counsel strenuously against following the proposed course. We are, however, prepared to work with Treasury to ensure that Customs can participate in the drug

arena consistent with the referenced authorities and its border responsibilities.

Section 702: Seizure and forfeiture of monetary instruments and real property related to unlawful importations and exportations of controlled substances

This Section proposes to amend 19 U.S.C. § 1595a to expand Customs' authority to enforce the drug export and import control laws. Left unsaid in the analysis is that this amendment would allow Customs to pursue seizures and forfeitures in drug cases under the customs laws which would not contain the enhanced due process guarantees contained in the Department of Justice's proposed Forfeiture Act of 1994 (previously reviewed with Treasury and now under OMB consideration) which, if enacted, will apply to all other forfeitures, including drug forfeitures under Title 21.

Specifically, the amendment would allow Customs to pursue forfeitures involving the import or export of drugs without regard to the proposed shift in the burden of proof to the government, the proposed uniform innocent owner defense, and the proposed time limits for giving notice of intent to forfeit and for filing a civil forfeiture complaint.

The Administration should speak with one voice on forfeiture. It is our view that Customs should continue, through the cross-designation process, to exercise drug investigative authority under Title 21 and follow the procedures that all other agencies follow in such cases.

Section 707: Seizure and forfeiture of vehicles with concealed compartments

This Section would amend 19 U.S.C. § 1703 to permit the seizure and forfeiture of vehicles which contain sealed compartments. The Department of Justice's proposed Forfeiture Act of 1994, under OMB review, does not contain such a provision.

We are concerned that the provisions for vehicle seizure, in which the mere presence of any concealed compartment constitutes prima facie evidence of smuggling or other offenses, is overly broad. There are numerous crime-deterrence justifications for concealed compartments in vehicles. This prohibition would be less intrusive if limited to hidden compartments falsely denied by a vehicle operator in questioning by a Customs officer, or limited to hidden compartments of a specified size, design, and accessibility inconsistent with most legitimate uses by couriers, salesmen, people who use expensive equipment in their work. We oppose this Section and recommend further study.

(Note: Sections 708 and 713 have the same titles.)

Section 712: Customs Border Economic Strike Teams (BESTeams) Program

Section 712 of the Treasury Department's proposal permits Customs to hire 105 additional employees to establish financial operations centers in three U.S. cities. In addition, Customs is permitted to hire an additional 50 employees for investigative teams to conduct specialized financial investigations and 10 employees for an undercover financial services operation to gather intelligence and obtain access to criminal enterprises. In total, this program would authorize an additional 165 Customs employees at a cost of \$25.88 million over the next 5 years.

The Section-by-Section analysis articulates that Customs already has "broad statutory authority to conduct international money laundering investigations, specifically, the unlawful international import or export of any criminally derived proceeds." Analysis at 24. We note that this inaccurately identifies Customs' money laundering jurisdiction as "criminally derived proceeds," when in fact its jurisdiction is limited to "cash and monetary instruments" used in money laundering transactions. In any event, we believe Treasury should continue to operate under existing authority and should draw on existing resources.

The Treasury Department has not articulated specific roles for each of the entities -- the financial operation centers, the investigative teams and the undercover financial services operation. It appears that there would be significant overlap among the operations of these three groups.

Further, the Department of Justice believes that the Treasury proposal would be duplicative of existing anti-money laundering law enforcement efforts by other agencies. At the present time, the FBI already addresses the "need to target greater enforcement efforts on non-narcotic related money laundering." If Congress feels that there is a need for more resources in this area, it is suggested that such resources should be directed to already-existing efforts in the investigation of non-narcotic related money laundering.

Section 714: Pharmaceutical Fraud Program

This Section would provide funds for additional Customs personnel for the investigation of "pharmaceutical fraud," which is described in the Section-by-Section analysis as the trafficking in counterfeit and black market pharmaceuticals. This is an area in which the FBI ("Operation Gray Market"), DEA (for counterfeit drugs containing controlled substances) and HHS (for other misbranded and imitation drugs) already have considerable experience. Without further explanation and justification, we see no reason to create an investigative team

in another agency, which might well duplicate and complicate the efforts of existing agencies.

With respect to Title IV, our comments are as follows:

**Sections 801 and 803: Financial Institution Fraud Program;
and Resources for Financial Institution Fraud Program**

These Sections propose to amend 18 U.S.C. § 3056 to expand the authority of the Secret Service and to remove from its current mandate with respect to financial institution fraud the authority of the Attorney General to direct such investigations. We oppose this Section because it is unnecessary, duplicative and excessive in scope of jurisdiction, and could be disruptive and detrimental to the overall federal investigative and prosecutive effort to combat financial institution fraud.

Financial institution fraud investigations are complex, sensitive, resource intensive and time consuming. They require careful priority setting and an exceptionally high degree of coordination and cooperation by regulators, investigators and prosecutors. The proposed expansion of Secret Service authority would impinge on the Attorney General's existing jurisdiction over financial institution fraud-related criminal violations and unnecessarily complicate coordination of investigative efforts and prosecutive resources.

The necessary and proven expertise, organizational structures, training programs and coordination mechanisms exist in the Department of Justice's Federal Bureau of Investigation (FBI) and established interagency working groups and task forces. If the Secret Service wishes to devote additional existing resources to the investigation of financial institution fraud, that may be most effectively and efficiently accomplished by augmenting Justice Department task forces and appropriate cross-designations. Any new investigative resources to be dedicated to financial institution fraud enforcement would be most cost effectively allocated directly to the FBI and carefully balanced with appropriate increases in prosecutors and related judicial resources.

Section 802: Entitlement Fraud Program

Under this proposal, Treasury aims to expand its investigative authority over crimes committed against agencies administering federal entitlement programs (30 new agents). This would address many agencies which already have IGs, as well as the FBI, directing considerable resources to this area including HUD, FEMA, DOE, Dept. of Agriculture and several other agencies. As such, the suggested enhancement represents an unnecessary triplication of effort. To the extent the identified crime problem is increasing regarding these programs, an augmentation

of existing resources would be more appropriate.

With respect to Title V, our comments are as follows:

Section 901: Statutory Response to United States v. Ratzlaf

This Section provides a legislative fix to the adverse Supreme Court decision in United States v. Ratzlaf, 114 S. Ct. 655 (Jan. 11, 1994). However, the proposed language is inconsistent with that worked out jointly by Justice and Treasury already before Congress in H.R. 3235 (The Money Laundering Suppression Act of 1994) and S. 1664 (The Anti-Money Laundering Act of 1993). It is our view that the language in the bills currently before the Congress is superior to that contained here. To the extent that the other bills do not pass the Congress, and this becomes the only vehicle by which legislatively to overrule Ratzlaf, we would suggest amending this bill to include the language in the bill currently before Congress.

Section 902: BSA Summons Authority

The Treasury Department has proposed amending § 5318 of Title 31, United States Code, to broaden administrative summons authority for the Internal Revenue Service (IRS) and Customs in criminal investigations of money laundering offenses.¹ Such authority is limited (by subsection (b)) to "investigations for the purpose of civil enforcement of violations of this subchapter [Title 31]" (emphasis added). The Treasury Department's proposed amendment would expand the scope of § 5318 to include administrative summons authority for the IRS and Customs in the area of criminal money laundering investigations.

In addition, under this new proposal, an IRS agent would be empowered administratively to summon written documents and oral testimony from any "person" in connection with a criminal investigation of the above-referenced money laundering offenses. The substitution of the word, "person," for the previous category of "a financial institution, an officer or employee of a financial institution . . . , or any person having possession, custody, or care of the reports and records required under this

¹ The Secretary of the Treasury already has the power to "administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of records (including books, papers, documents, and tangible things which constitute or contain evidence) relevant or material to the investigation, [which, in the opinion of the Secretary of the Treasury, is necessary and proper to the enforcement of Section 545 of Title 18 with respect to any controlled substance]." Section 967 of Title 21, United States Code (1955 as amended).

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subchapter" significantly broadens the scope of the administrative summons authority. Due to the interrelationship of the money laundering statutes, the scope of the Treasury Department's administrative summons authority would be very broad.

Title 31 money laundering offenses (e.g., failure to file Currency and Monetary Instruments and structuring of currency transactions) do not require that the funds in question be unlawfully derived; however, in practice, such offenses most frequently do involve illegitimate proceeds. Therefore, investigations into narrow Title 31 offenses may spill over to more expansive Title 18 money laundering or other criminal investigations.

Such investigations may also expand to include any one of 104 money laundering predicate offenses, under an intent provision of 18 U.S.C. § 1956 which prohibits engaging in transactions with knowledge that they are designed to avoid a transaction reporting requirement. Since many serious federal crimes are specified unlawful activities under § 1956, authority to investigate violations of Title 31 may provide a procedure to investigate virtually any federal crime. Consequently, the proposed changes in § 5318 may result in the transformation of what is now a limited and circumscribed summons authority to extremely broad investigative authority.

The Justice Department has addressed general issues relating to summons authority in the context of previous requests by government agencies. In limited instances, Congress has extended the authority of a few government agencies to summon evidence in narrow areas.² In doing so, however, Congress has been extremely careful to craft legislation, so as not to encroach upon the functioning and protections of the grand jury system.

In sum, the Department of Justice believes that the Treasury Department's proposal would expand the administrative summons authority too broadly.

Section 903: Customs Authority to Search Outbound Mail

We believe that expanding authority to search outbound mail, which raises Constitutional issues, requires a showing of

² Congress has provided summons authority to the IRS in tax cases, but the legislature specifically limited its use only to the IRS audit function (26 U.S.C. § 7602); to Customs, limited in scope to its responsibilities for assessing import duties (19 U.S.C. § 1509); and to the Attorney General, to subpoena witnesses and compel testimony in connection with investigations involving controlled substances (21 U.S.C. §§ 875-76).

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substantial need and of the lack of less intrusive alternatives, consistent with the standards which we use to evaluate requests for expanded law enforcement powers from any federal agency. Consistent with the long-standing Department of Justice policy of opposing expansions of law enforcement authority absent both a demonstrated need and lack of less-severe alternatives, we oppose new search or seizure authority based solely upon the explanations provided to date.

Previously, Assistant Secretary of the Treasury (Enforcement) Ronald K. Noble stated in testimony before the House Banking Subcommittee that the Treasury Department and the U.S. Postal Service have been working closely to develop possible legislation regarding warrantless searches of outgoing mail leaving the United States. It was our understanding that such proposed legislation was not an immediate agenda item for Treasury, and we continue to feel now, as we did then, that the issue requires further study at this time, and should be held in abeyance while the Department of the Treasury, the Postal Service and other interested federal agencies review this issue.

Section 904: Criminal Penalties for "Causing" a Recordkeeping Violation

This proposed amendment would add the words "or willfully causing a violation of" to the Bank Secrecy Act section which criminalizes wilful violations. See 31 U.S.C. § 5322. According to Treasury, enactment of this provision would expand the criminal sanction to actions taken by third parties which result in, for example, the failure by a financial institution to maintain accurate records. The Supreme Court has recently construed the term "willfully," as contained in § 5322, in United States v. Ratzlaf, supra, and the Department of Justice believes that in light of this recent caselaw, this proposal requires further study.

Section 906: IRS Offset Authority

Pursuant to 26 U.S.C. § 7608, the IRS may, in narrow instances, use the proceeds from an IRS undercover operation to offset "necessary and reasonable" expenses incurred in such operation, notwithstanding 31 U.S.C. § 3302 (entitled "Custodians of money"), concerning undercover investigative operations. It is similar to the offset authority granted to the FBI and DEA in the yearly appropriations statute, see § 102 of Pub.L. 103-121, 107 Stat. 1163 (October 27, 1993), however, this process allows the Congress annually to review and evaluate the importance of such offset authority for FBI and DEA undercover operations.

Under the Treasury Department's proposal, the offset authority granted to the IRS would "apply to all periods after the enactment of this Act." If enacted, Congress would forever

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permit the IRS to offset such expenses of an undercover operation, without regard to 31 U.S.C. § 3302, and Congress would no longer have the opportunity for annual review of IRS undercover operations. The Department of Justice opposes permanent extension of IRS offset authority.

Section 907: Expansion of 18 U.S.C. § 981 and 1956 to cover proceeds of certain foreign crimes

Enactment of this provision would add certain foreign law predicates to those listed at § 1956(c)(7)(B), and would subject proceeds "involved in" the money laundering of those predicate offenses to civil forfeiture pursuant to 18 U.S.C. § 981. While the Department of Justice strongly supports the addition of specific, identifiable foreign predicates to the money laundering statutes, on a case-by-case, and fact-by-fact basis, the Department cannot endorse the wholesale addition of these predicates.

Our principal concern is the definition of the specific offense in the foreign jurisdiction. For example, while we have criminalized money laundering and tax evasion domestically, those offenses require proof of knowledge and intent, and apply to specific fact patterns that we would not necessarily be able to track in a foreign context. More directly, the precise definitions and contours of money laundering,³ public corruption, export control violations⁴ or tax evasion may be too imprecise for inclusion as predicates. While we may well want to add such predicates in the future, we cannot endorse wholesale inclusion as is here recommended.

You should be aware that § 206 of the Department of Justice's proposed Forfeiture Act of 1994 proposes to expand § 981 to include foreign crimes involving kidnaping, robbery, extortion and bank fraud. We have no objection, therefore, to expanding the ambit of § 981 to include foreign predicates already in the § 1956 statute.

Section 908: Additional Specified Unlawful Activities under 18 U.S.C. § 1956

³For example, with respect to the proposed money laundering predicate, countries in the European Community presently are in the process of enacting money laundering laws which appear to be broader than our own, and we are not certain that we should embark on the additional predicate without having first studied these and other foreign initiatives in this area.

⁴The issues of export control predicates centered around proliferation issues and components of mass destruction require further study.

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This provision would add additional domestic predicate crimes to the money laundering statutes. In particular, the provision would add violations of 18 U.S.C. § 541 (relating to entry of goods falsely classified); 18 U.S.C. § 2320 (relating to trafficking in counterfeit goods); and a Title 26 predicate relating to motor fuel excise tax fraud. The Department of Justice does not, in principle, oppose the addition of these new predicates, but again would like to defer submission at this time to permit us to work with Treasury to ascertain the extent and degree of the problem necessitating the addition of these predicates. In a different category, the excise fuel tax fraud predicate deserves further study.

Section 909: Disclosure on Returns of Cash Transactions

Enactment of this provision would permit the IRS to share Form 8300 information, filed under 26 U.S.C. § 6050I (Reports by Trades or Businesses for Cash or Monetary Instruments Received in Excess of \$10,000), with state, federal and foreign law enforcement. At present, while federal law enforcement may obtain such reports, the access provisions are cumbersome, as the Form 8300 is treated as "tax return information."

The Department of Justice supports this provision, with one possible reservation. We are uncertain about the necessity, at this time, of including a foreign law enforcement sharing authority. In any event, the eventual use by law enforcement of the information in this form should be consonant with that of the other BSA forms, such as CTRs and CMIRs. Again, the Departments of Justice and Treasury should discuss this matter further and review alternative approaches.

With respect to certain miscellaneous provisions:

Section 510: Summary Destruction of Explosives Subject to Forfeiture

This Section relates to the summary destruction of explosives subject to forfeiture. This provision is similar but not identical to § 210 of the Department of Justice's recently proposed Forfeiture Act of 1994, also under review by OMB. The Justice proposal in fact reflects a later version of § 510 that includes amendments suggested by the Treasury Department. We recommend support of the Justice Department version, which reflects the views of both Justice and Treasury.

Section 601: Missing and Exploited Children

This Section proposes to provide funding to expand the authority and capability of the Secret Service in cases of missing and abused children. Such cases are currently under the jurisdiction of the FBI, Customs and the Postal Service, who have

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developed the necessary forensic and investigative expertise. The Secret Service does not currently handle cases involving missing and exploited children, and this proposal would fragment federal efforts in this area. FBI has extensive forensic expertise and currently serves as a central contact for State and local authorities. Centralized communication is essential in missing child cases and the FBI provides this function at lower cost than is involved in creation of a new investigative component.

The Crime Bill currently under consideration in the Senate includes enhanced funding directed at existing efforts. We oppose the Treasury proposal, which, in our view, would divert funding from agencies currently capable of pursuing these investigative objectives.

Section 602: Live-Scan Fingerprinting Terminals

We oppose the expenditure of funds to procure this equipment in 1995, because of technological limitations which would require immediate upgrade -- and further expenditure of funds not included in this proposal -- to meet IAFIS image quality requirements. Although the IAFIS project is based on Federal, State and local agencies moving toward digital fingerprint image capture and electronic transmission, the system proposed poses limitations on conducting forensic latent fingerprint comparisons. This technology requires further study.

Section 603: Project Outreach

This provision appropriates funds for what are termed "the twenty one 'Weed and Seed' project sites." Since that number will shortly expand to forty, serious consideration ought to be given to whether the funding sought is sufficient and, if sufficient, whether the additional funding is appropriate.

Section 604: GREAT

This provision would establish 50 additional Gang Resistance Education and Training (GREAT) projects to be located around the country. The projected cost is \$38 million for each of fiscal years 1995-1999. Given the cost of this project, the level of funding must be questioned. Moreover, the proposal calls for \$6 million in each fiscal year for the Secret Service, an agency which has no gang-related responsibilities. This program could be transferred to the Office of Justice Programs to be divided between the Office of Juvenile Justice and Delinquency Prevention and the Bureau of Justice Assistance.

Section 606: Community Police Training

The legislation currently under consideration by the Senate

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states that the Attorney General will direct resources for community police training. We believe this is the appropriate designation of authority and there are several components to which resources should be made available. The FBI, for example, has provided community police training for over 10 years. The Behavioral Science Services Unit (BSSU), Training Division, has established national and international leadership in training law enforcement officers in community policing and crime prevention. Training by all appropriate components will create a partnership between the police and the law abiding citizens to create permanent solutions to problems and thereby enhance the quality of life in the neighborhood/community. Also, the Office of Juvenile Justice and Delinquency Prevention currently provides services with regard to juveniles.

Section 610: Tactical Response Range

Although the construction of an advanced, technically sophisticated "shooting house" for the training of hostage rescue teams and other tactical personnel from Federal, State and local law enforcement agencies may be desirable, the proposal contained in Section 610 is excessive in these times of budget restraint, and a duplication of existing FBI facilities. Construction funding in the amount of \$17.9 million is requested, with additional personnel funding through 1999 in the amount of \$2.63 million annually (for a total of \$31 million). The proposed facility would require at least 16 full-time positions to operate and maintain this individual range.

To provide a comparison of the scope of the funding and personnel issues for this one range, the entire FBI Firearms training and range maintenance staff (agent and support) at the FBI Academy is less than the 16 people required to operate this single range at FLETC. The funding package for this single range would be sufficient to upgrade all existing FBI ranges, facilitate new range construction and also fund a new building for the FBI/DEA firearms training staff and other entities.

An alternative to the construction of a new facility is the use of a facility that is readily available. The U.S. Marshal Service (USMS) has a facility located in Alexandria, LA. which is too costly for them to properly maintain. It has been suggested that USMS get FLETC to assume ownership, and allow USMS to utilize it. This may be very practical, as well as mutually beneficial, in line of the budget restraints.

Section 611: Enhanced Capacity for FinCEN Field Support in High-Intensity Drug Trafficking Areas (HIDTAs)

This Section would authorize an appropriation in the amount of \$564,000 to permit FinCEN to operate in HIDTA-designated areas such as the "gateway" cities of Miami, New York, Houston, and Los

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Angeles, the Southwest Border and the Washington-Baltimore corridor "distribution" HIDTA project. We do not view this additional tasking for FinCEN to be necessary or appropriate. Financial data generated by investigations in HIDTA-designated areas and by OCDETF participants currently are available to FinCEN for analysis and distribution. We do not see additional intelligence advantages to be gained by this proposal and we would like to speak further with Treasury about if, or on what basis, FinCEN is to become operational in the field.

Section 704: Entry of goods by means of false statements

This provision changes the penalty for 18 U.S.C. §542 from 2 years or a \$5,000 fine to 5 years or a \$10,000 fine. It is noted that the minimum felony fine under the Sentencing Reform Act (SRA), 18 U.S. C. §3551, et seq., is now \$250,000. Accordingly, even without statutory amendment, the fine is already \$250,000. If there is to be an amendment, it ought to conform to the SRA.

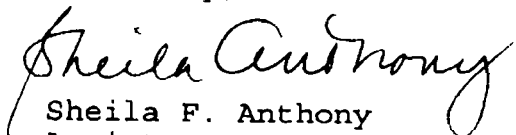
Section 710: Secret Service Anti-Counterfeiting Program

As currently written, this Section would authorize the Secret Service to create 5 new overseas offices, and increase staffing by 25 to address foreign counterfeiting activity. This Section requires further definition of Secret Service jurisdiction, which is limited to counterfeiting relating to "U.S. Government obligations", as compared to the FBI's broader jurisdiction in this area.

* * * *

In conclusion, we appreciate the opportunity we have been afforded to comment on this proposed legislation, and would appreciate OMB's taking all action possible to defer Congressional consideration of the proposed legislation. We have commented on those portions of the proposed legislation with which we take issue; there are many other portions which we would wholeheartedly support. We look forward to an opportunity to study and discuss all portions in depth with Treasury. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,



Sheila F. Anthony
Assistant Attorney General



FACSIMILE COVER SHEET

OFFICE OF ENFORCEMENT

DATE:

Page 1 of 3

To: José Cerdá

Phone: _____ Fax: 456-7028

From: Rebecca Hedlund

TELEPHONE:
FAX : 202-622-1465

MESSAGE/COMMENT:

As discussed. Thanks!

TALKING POINTS TREASURY CRIME CONTROL INITIATIVES

Treasury plays an important role in Federal law enforcement. Of the eight largest law enforcement agencies, four are Treasury bureaus: U.S. Customs Service, Bureau of Alcohol, Tobacco and Firearms (ATF), U.S. Secret Service, and Internal Revenue Service Criminal Investigative Division. Treasury Enforcement also is composed of a number of small offices and centers which provide training, collect intelligence, enforce sanctions, and provide other important law enforcement functions.

There are a number of initiatives in the House and Senate crime bills which affect Treasury. Two are important funding authorization measures, which when combined will provide Treasury the ability to expand a number of innovative pilot projects and enhance proven existing programs. The two measures total \$286 million per year:

- **"The DeConcini Amendment"** -- Sec. 5163 of the Senate bill authorizes for each of five years: 50 new Gang Resistance, Education and Training (GREAT) sites, at \$800,000 per site; \$30 million for ATF; and \$6 million for the Secret Service.
- **"The Hoyer Amendment"** -- Sec. 3016 of the House bill authorizes for five years \$210 million per year for Treasury law enforcement.

Once appropriated, the Department of the Treasury proposes to use these funds for a number of important crime prevention and control initiatives which directly or indirectly support state and local governments. The following is a description, by bureau, of how these funds would be used:

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS -- \$119 Million

The recently enacted Brady Law and many other provisions of the crime bill (assault weapons ban, juvenile handgun ban, federal firearms license reform, a ban on armor-piercing ammunition, etc.) would greatly increase ATF's enforcement and compliance activities. The crime bill could provide ATF with the resources necessary to carry out its greatly expanded mission, including the ATF programs that directly support to state and local law enforcement. Many are pilot projects and deserve to be expanded to other geographic areas. Such programs include:

- Gang Resistance Education and Training (GREAT) -- a school based gang, drug, and violence prevention program, run in conjunction with local police.
- Project UPTOWN -- an inter-agency, federal, state and local effort run by ATF to eliminate violence in public housing projects.
- ACHILLES Task Forces -- federal, state and local law enforcement task forces, organized by ATF, targeting violent, repeat offenders.
- National Firearms Tracing Center -- automating the backlog of records to enable ATF to conduct fast, efficient firearms traces in response to law enforcement inquiries.
- Operation CEASEFIRE -- an investigative tool which utilizes computer imaging technology to enter recovered bullets into a data base for automated comparison and matching.

U.S. SECRET SERVICE -- \$30 Million

The Secret Service shares its forensics capabilities, surveillance expertise and live-scan fingerprinting with state and local police. USSS would like to expand that assistance to include missing/exploited children investigations and crime control in public housing. In addition, a third of the resources would be used to combat the increasing global problem of U.S. currency counterfeiting. Finally, USSS would expand a number of fraud investigations under its jurisdiction, in particular financial institution fraud.

U.S. CUSTOMS SERVICE -- \$52 Million

Customs has the important role of ensuring that our borders are safe from both inbound and outbound smuggling attempts. Customs would use about half of these funds for border and port enforcement teams that would deal primarily with incoming drugs and outbound currency. The remaining half would go to other export controls, in particular working with local police in combatting the growing problem of car theft rings that smuggle vehicles out of the country, and munitions smuggling enforcement.

DEPARTMENTAL OFFICES -- \$16 Million

Most of this funding would be used to convert all Treasury law enforcement bureaus' field communications to new, efficient, cost-effective, wireless radio technology. \$500,000 would cover the expansion of Project OUTREACH, a Department-wide program encouraging volunteerism by Treasury employees in their communities, and other administrative costs.

FINANCIAL CRIMES ENFORCEMENT NETWORK (FinCEN) -- \$3 Million

This important network provides valuable financial intelligence to federal, state and local enforcement agencies for their financial crimes investigations. FinCEN proposes to expand its ability to link up with the increasing number of local law enforcement agencies that are seeking to go on line, and also plans to increase much needed assistance in each of the High Intensity Drug Trafficking Areas (HIDTAs).

FEDERAL LAW ENFORCEMENT TRAINING CENTER (FLETC) -- \$46 Million

FLETC provides law enforcement training not only to over 70 Federal agencies, but to state and local police as well. Passage of the crime bill will greatly increase the number of new Federal, State and local law enforcement agents over the next five years. Resources must be provided for adequate training of new federal recruits, for the trainers of new community police, and for specialized training. In addition, the center needs a new tactical response range which will take three years to construct.

IRS CRIMINAL INVESTIGATION DIVISION -- \$20 Million

IRS will use these resources for tax investigations, primarily in the increasingly problematic area of motor fuels excise tax evasion, which is costing the government an estimated \$1 billion in lost revenues annually. In addition, IRS will use about a third of the resources to participate in complex health care fraud investigations, which cost public and private health care approximately \$900 billion each year.

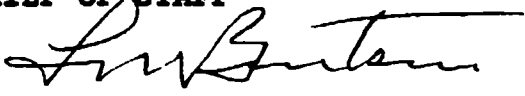


DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

March 1, 1994

MEMORANDUM FOR MACK McLARTY, CHIEF OF STAFF

FROM: Lloyd Bentsen 
SUBJECT: Response to Departmental Initiatives

SUMMARY:

This memorandum will outline Treasury's response to the proposals for an Administration wide-approach to the crime and violence initiatives. As a principal of the Federal law enforcement community, Treasury has an important role in combatting crime. Treasury's substantial law enforcement responsibilities include primary responsibility for gun control, Customs issues, and financial crimes. In this role, Treasury can make significant contributions to the Administration's commitment to address the nation's crime problem. Accordingly, Treasury has developed a range of programs and proposals to take on violent, gun-related crime that is complementary to the areas highlighted by the Administration.

The centerpiece of Treasury's anti-violence, anti-gun related crime initiative is Federal Firearms Licensing Reform. The aim in this initiative is to reduce the number of authorized federal firearms licensees by 80 percent and to eliminate illicit traffickers in guns. Specifically, Treasury has requested an increase in the annual FFL license fee to \$600. Prior to Brady, the fee was \$10 per year and Brady raises it to \$200 for an initial three year license and \$30 per year thereafter.

SPECIFIC RESPONSES:

1. Stop Importing of Military Surplus Firearms and Other Inexpensive Handguns.

Two solutions were presented to address the separate issues of (i) the importation of military surplus weapons and (ii) the importation of inexpensive rifles and handguns that are not "curios and relics" under the GCA, but are merely very inexpensive rifles suitable for "sporting purposes."

(i) Treasury's ability to amend the definition of "curios and relics" would address the problem posed primarily by the former Eastern bloc countries whose surplus weapons have been imported to this country under that exception. This amendment of the operative definition would be implemented through a rulemaking

proceeding. The revision would be highly controversial because of its effect on the existing domestic market. Until the Dole amendment on surplus military imports, "Curios and relics" was merely a category that allowed licensed collectors to acquire such firearms outside their states of residence. The "curios or relics" classification became a problem as the vehicle by which the U.S. market was opened to millions of surplus weapons from around the world.

However, amending the definition of "curios and relic" would still not solve the problem we face. This action would not address the problem of inexpensive rifles and handguns that are not surplus military weapons but which nevertheless threaten to flood our markets.

(ii) A solution which would resolve both the "curio and relic" and inexpensive imports concerns would be to encourage Department of State to address these concerns through the AECA. To the extent that State can ban firearm imports from the countries at issue, the need to address the "curio and relic" exception is diminished if not eliminated.

2. Anti-Gang Initiative.

Any response to violence in our communities must include efforts to address the organized criminal activities of our youth. One Treasury response in this area is a comprehensive anti-gun violence initiative and a federal firearms licensing reform package that will limit their uncontrolled access to guns through the black market. Part of the public outrage at today's violent crime has to do with numerous reports that kids in their pre-teen years are heavily armed and are killing other youth. Gang members have some of the most sophisticated and deadly firearms available.

There are a number of steps that need to be taken. A ban on assault weapons and regulatory reform of the Federal firearms licensing system (FFL) system are critical elements in this effort; both, however, require legislative action. In addition, Treasury recently has developed new FFL applications that require fingerprinting and even more detailed background information. In 43 high crime areas across the country, ATF is cracking down on gun dealers who do not operate within the letter of the law. Further, the Secretary of the Treasury has directed ATF to develop strategies for eliminating illegal gun markets in the 10 counties with the highest rates of crime, and for dealing with the potential problems of gun shows.

Enforcement. Treasury's flagship anti-gang enforcement program is Project Achilles. Treasury is responsible for enforcing the provisions of the Armed Career Criminal Act and the Comprehensive Crime Control Act through its federal firearms jurisdiction;

these laws go to the heart of the President's commitment to crack down on the small percentage of habitual violators who commit the majority of violent crimes. Project Achilles is an initiative to focus the toughest Federal gun laws into those communities where the most serious gun-related violence occurs. Since 1988, in cooperation with state and local authorities, Treasury has apprehended over 5350 armed career criminals who have received mandatory sentences without benefit of parole. The concept is to make the criminal use and possession of firearms the Achilles heel by which the most dangerous offenders may be apprehended. Achilles has gained the attention and respect of the entire law enforcement community. In 1991, the Department of Justice patterned its "Triggerlock" program to track the concept of the Achilles Program and named Treasury's ATF as the lead agency.

Treasury seeks additional legislation as a part of Project Achilles, under 18 U.S.C. sec. 922(g), that will enable it to deliver on the President's three-strikes-you're out promise. Treasury would seek additional discretionary funds and personnel to expand Achilles to other urban areas.

Gang Intelligence. The success of Treasury's Project Achilles demonstrates the wide expertise that is available within the Administration on the many faceted crime issue. However, an effective use of gang intelligence is not simply an issue of federal departmental jurisdiction. It is essential that Treasury and the Department of Justice develop cooperative efforts to share intelligence that is complementary to their respective jurisdictions and involvements with state and local law enforcement authorities.

Prevention/Intervention. Treasury administers the Gang Resistance Education and Training Program ("GREAT") that is designed to help 7th graders become responsible members of their communities. The goal of GREAT is to implement a gang resistance program. To date, over 400 officers from 200 agencies in 34 states have been trained by ATF agents to present core curriculum in Junior High and Middle School classrooms. Over 100,000 at-risk youngsters have been reached by this program. GREAT continues to receive nationwide support and Treasury seeks additional funding to expand GREAT to other cities.

Treasury is developing other programs to advance the prevention/intervention aspect of its anti-gang effort. Treasury urges the establishment of an interagency working group with representatives from Treasury, Education, HHS, HUD, Labor, ONDCP and DOJ to coordinate an approach to the complexity of gang violence.

3. Build on Secretary Riley's "State of American Education."

Treasury supports Education's efforts to promote close familial involvement with their children. Treasury recognizes the importance of reconnecting parents with their children because the result will be a reduction in drug abuse and violence in our communities and schools.

Family Involvement Campaign. Treasury is committed to participating in the "Safe Havens Programs" with Education, HUD and Justice. Safe Havens are multi-service educational centers used to deliver an array of educational and other youth services in an environment free from drugs and crime. Treasury's involvement includes implementing tutorial and mentoring programs in safe havens.

Reconnecting with At-Risk Youth. HHS' Center for Substance Abuse Prevention (CSAP) has approximately \$50 million for at-risk youth and should be included as a part of this initiative.

Police in Schools. This concept merits further clarification. Care should be taken not to imply in this proposal that a prison-like environment will be created in our schools. Greater emphasis should be placed upon coordinating and enhancing programs such as Drug Abuse Resistance Education (D.A.R.E.), Gang Resistance Education and Training (GREAT) and community policing efforts to reduce violence and crime in our schools.

4. Police in Public Housing.

Treasury is involved in various programs to combat drugs, violence and gang activity in public housing projects. Treasury's goals in these efforts is to increase the sense of safety provided for law-abiding residents of these areas, positive interaction between law enforcement personnel and law abiding residents and the development of a sentiment by the residents that they have a degree of control over their own communities.

Project Uptown. Project Uptown was launched in March, 1990, and is a joint effort between ATF, the Housing Authority of New York Police Department and the Office of the United States Attorney for the Southern District of New York to address the use of firearms in area housing developments. Through Project Uptown, Treasury had made over 400 search warrant-related arrests and over 600 street arrests. Crime in the targeted areas of New York has decreased 16% (felonies are down 13%; burglaries are down 22; robberies are down 46%) while arrests have increased 14% (felony arrests are up 34%; drug arrests have increased 49%). Since the inception of this Task force, 24 individuals have been sentenced to prison for the use of a firearm during a narcotics-trafficking crime or a Federal violent crime. A second Project Uptown Task Force became operational in Baltimore in August, 1993.

Treasury seeks additional funding to expand Project Uptown task forces at new sites throughout the country. Treasury proposes to expand this program to New Orleans, Chicago, Newark, Detroit, Denver, Atlanta and Boston. These locations were targeted in discussions with HUD.

Operation Safe Home. Treasury is cooperating with HUD in the Operation Safe Home program. In Safe Home, which is a comprehensive effort to combat crime in public housing, the United States Secret Service is helping to install security equipment, such as lighting and fencing, and advising HUD and public housing residents how these housing developments can be secured physically.

Weed and Seed. Treasury is involved with state and local law enforcement authorities to remove criminals from high risk communities. ATF shares intelligence with these authorities to ensure the success of the "weeding" campaign.

5. Law-Enforcement Technology Initiative.

Project Ceasefire. Treasury has a pilot project in Washington, D.C. in which ATF assists the Metropolitan Police Department to investigate homicide cases. Through new technology, a computer analyzes the marking in bullets to identify and match them to bullet markings that have already been entered into the system. In the few short months that this pilot project has been in place, a number of seemingly unrelated homicide cases have been linked as a result of this technology. This has been a tremendous asset to the MPD Homicide Division and a number of cities and states are asking ATF to expand this project to their jurisdictions.

FinCEN. The Financial Crimes Enforcement Network (FinCEN) has been operational for several years as a money laundering and financial crimes intelligence center. Although part of Treasury, FinCEN has participants from throughout the federal law enforcement and intelligence communities. Still a pilot program, Project Gateway permits on-line access to Bank Secrecy Act information to state law enforcement authorities. In the first 6 months, over 1,000 inquiries were made with positive hits for over half of them. FinCEN has received requests from over 35 states for access to the Gateway system.

6. Improve Boot Camps.

While incarcerated, "boot campers" should be provided with counseling services for their addictions, behavior problems and family problems.

7. Implement a Public Transportation Safety Initiative.

The success of Treasury's efforts with the Greyhound Bus Company to combat the violence that occurred on its buses during a recent strike underscores Treasury's expertise in implementing a public transportation safety initiative, especially where firearm violence is at issue. It is essential that Treasury participate in any collaborative effort in this Administration to develop an effective response to such crimes.