THE WHITE HOUSE

WASHINGTON

July 25, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Justice Report on Section 11(c) of H.R. 2912, the DOJ FY '84 Authorization Bill

Jim Murr has provided us with a copy of the proposed Justice Department report on section 11(c) of its pending FY 1984 Authorization Bill, and has indicated he will clear the report unless he hears from us to the contrary by noon today. You will recall that we urged the interposition of an objection to section 11(c) when we were first provided with a copy of the bill (copies of previous memoranda attached). Section 11(c), drafted in response to the EPA contempt controversy and the filing of United States v. The House of Representatives, basically provides that in such cases the Attorney General may not proceed in the name of the United States but only on behalf of a particular agency or the President.

Justice's proposed letter opposes 11(c), primarily for the reason stated in our earlier memorandum: the Attorney General always represents the United States, even when exercising the Executive's prerogative to determine that an Act of Congress is unconstitutional. Justice's draft goes on to make several other subsidiary objections, the most prominent being that the provision, if included at all, should be limited to inter-branch disputes. The Attorney General often refrains from defending the consitutionality of a provision in a manner unobjectionable to Congress, e.g., when the Supreme Court has indicated that a provision not affecting relations between the branches is unconstitutional.

I have no objection to the proposed report.

ID # _____ CU

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Jim Dunn

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

Subject: Justice Report on Sec. 11(c) of H.R. 2912, the DOT FY '84 Authorization Bill

ROUTE TO:		ACTION		DISPOSITION		
Office/Agency	(Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
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ACTION CODES:
A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
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I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:
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FOR OUTGOING CORRESPONDENCE:
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5/81

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

TO
Frank Seidl
Fred Fielding
Mike Horowitz
Mike Uhlmann

- [ ] Take necessary action
- [ ] Approval or signature
- [ ] Comment
- [ ] Prepare reply
- [ ] Discuss with me
- [ ] For your information
- [ ] See remarks below

FROM Jim Murr (x4870) DATE 7/22/83

REMARKS

Justice Report on Sec. 11(c) of H.R. 2912, the DOJ FY'84 Authorization Bill

There was a consensus during our earlier review of this bill that sec. 11(c) is objectionable. This section provides that, in certain cases, the Attorney General shall not proceed with a legal action in the name of the United States.

The attached Justice report expresses opposition to sec. 11(c). Unless I hear otherwise from you by noon on Monday, July 25, we will clear the report.

22

Attachment

SPECIAL

OMB FORM 4
REV AUG 70

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Section 11(c) of the Department of Justice Appropriations Authorization Act for Fiscal Year 1984, H.R. 2912, as reported by the Committee on May 16, 1983, provides:

> "During Fiscal Year 1984 and notwithstanding any other provision of law, in any case in which the Attorney General determines that the Department of Justice will refrain from defending or will contest the constitutionality of any statute or provision of law, or in which the Attorney General determines that the Department of Justice will bring, or authorizes the bringing of, an action challenging or contesting the validity of any statute or provision of law, the Attorney General shall not proceed in the name of the United States, but only in the name of the agency or department on whose behalf the Attorney General appears, or the President if the Attorney General appears on the President's behalf."

The Committee Report on the bill states that the purpose of the provision, which is proposed in this form for the first time,_/ is "to prohibit the Department of Justice from filing suit, as was recently done in the United States of America v. U.S. House of Representatives, et. al., in the name of the United States against a part of one of the branches which make up the sovereign United States." H.R. Rep. No. 181, 98th Cong., 1st Sess. 16 (1983). We oppose inclusion of § 11(c) in its present form in H.R. 2912 for the reasons set forth below.

_/ A differently worded provision in the Department's Appropriations Authorization Act for FY 1980 deals with the same subject matter. See § 21(c) of P.L. No. 96-132, 93 Stat. 1049-50, incorporated in P.L. No. 97-92. We have similar interpretive difficulties with this enacted version which we would be glad to share with the Committee if it so desires.

We assume that it was merely because of a drafting error that § 11(c), unlike § 11(a) and (b), is not explicitly limited to federal statutes. On its face, § 11(c) appears to apply to state statutes as well. There are times when the Attorney General brings suit to challenge a state statute on the ground that it is preempted by the Constitution or a federal statute. We do not believe that Congress intended in H.R. 2912 to address that situation, which does not create any potential conflict between the Executive and Legislative Branches. We assume, therefore, that § 11(c) is intended, like § 11(a) and (b), to apply only to federal statutes. The remainder of our discussion depends on this assumption, which should be clarified in the text of the provision if it is enacted.

Section 11(c) raises several problems. When the Attorney General, on behalf of the President, evaluates the constitutionality of a provision of federal law, and makes a determination not to enforce or defend that provision, he exercises the Executive's constitutional obligation flowing from the "take care" Clause of Art. II, § 3. Such instances are exceedingly rare. Nevertheless, they have occurred in the past, particularly when the Department concluded that a statutory provision intruded on the Executive's constitutional prerogatives. In even fewer situations, the Department concluded that prior precedent overwhelmingly indicated that a federal statute was unconstitutional. To the extent that the provision prevents the Attorney General from informing the Court that the views of the Executive Branch are the views of the United States insofar as the enforcement of the statute is concerned, we believe that it constitutes an impermissible infringement on the powers of the Executive Branch as the legal representative of the United States.

Section 11(c) as drafted is overbroad if its purpose is merely to prohibit the Attorney General from proceeding in the name of the United States in cases in which Congress or one House thereof is a party. By its terms, § 11(c) applies to <u>all</u> cases in which the Attorney General (1) refrains from defending, or contests the constitutionality of, any federal statute, or (2) brings or authorizes an action to challenge or contest the validity of any federal statute. There are cases in the first category in which the Attorney General concludes, on the basis of prior precedent, that he cannot defend a federal statute. Until the recent amendments to the social security laws, for example, certain provisions contained gender-based distinctions long after repeated holdings by the Supreme Court and the lower federal courts that such distinctions were unconstitutional. The Attorney General has at times concluded, in the fulfillment of his constitutional responsibilities, that he could not defend such provisions, at least after they had been held unconstitutional by a trial court. In light of the amendments by congress to the social security laws, termination of the defense of the prior version actually may be said to effectuate the intent of Congress, as well as, of course, to uphold the Constitution. Moreover, we are unaware of any situation as described by the second clause where the Attorney General has authorized the bringing of "an action to challenge or contest the

validity of any statute or provision of law" other than in an interbranch dispute. For these reasons, we believe that, at a bare minimum, § 11(c) should be amended explicitly to limit its application to cases in which Congress is a party.

There are independent reasons for deleting the first clause of § 11(c). This first category seems to describe cases in which the Government is the defendant. Thus, on the premise that the only cases to which Congress intends § 11(c) to apply are cases involving interbranch disputes between the Executive and Legislative Branches, this first clause of § 11(c) is unnecessary because Congress would be the plaintiff in these cases and can effectuate its intent that the Executive Branch not call itself "the United States" simply by styling the case to name the defendant by the agency or department, or the President, as Congress apparently wishes the defendant to be called.

The application of the first clause of § 11(c) to cases other than those in which the Congress is the plaintiff is troublesome, not only because it does not accord with the intent of Congress as described in the House Report quoted above, but also because the specific procedure envisioned is unclear. If the plaintiff has named the "United States" as the defendant, and that designation is otherwise correct in the particular case, we are unclear just what the Attorney General should do in order not to "proceed in the name of the United States." Presumably, the Attorney General, upon determining that he cannot defend the constitutionality of the provision,[1] is expected also to notify that court that the proper named defendant from that point on is the agency or department involved, or the President, and to move for "substitution" of the defendant. If the first clause of § 11(c) is retained, some clarification of what is meant by "not proceed[ing] in the name of the United States" in cases in which the "United States" is the correct named defendant would seem to be necessary.

There is also a discrepancy between the first and second categories of cases to which § 11(c) now refers. The first clause refers to a case contesting the "constitutionality" of a provision of law, while the second clause refers to an action challenging or contesting the "validity" of a provision of law.

---

[1] The first clause of § 11(c) also relates to instances in which the Attorney General "will contest the constitutionality of a provision of law." We are not aware of a case in which the United States as the defendant has "contested" the constitutionality of a provision of law. We believe that the better description of the Attorney General's action in cases of this sort is simply that he refrains from defending the provision. We recommend that if the first clause of § 11(c) is to be retained at all, it should be amended to delete the words "or will contest."

The Executive has historically been exceedingly cautious in exercising its independent responsibility and authority to assess the enforceability of a provision of law. We believe that the proper characterization of the assessment which is made relates to the narrower concept of the "constitutionality" and not what may be the broader concept of the "validity" of the provision. Thus, we recommend that the second clause of § 11(c) be amended by substituting "constitutionality" for "validity."

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell
Assistant Attorney General

THE WHITE HOUSE

WASHINGTON

June 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: H.R. 2912 as Reported (Report Number 98-181) the "Department of Justice Appropriation Authorization Act, Fiscal Year 1984"

James Murr of OMB has asked for our views by close of business June 10, 1983 on sections 11 and 13 of H.R. 2912, the Department of Justice Appropriation Authorization Act for Fiscal Year 1984. The bill has been reported out of the House Judiciary Committee.

Section 11 requires the Attorney General to report to Congress whenever he decides either to refrain from enforcing an act of Congress on the ground that it is unconstitutional, or to contest or refrain from defending the constitutionality of an act of Congress. In addition, section 11(c) provides that in the latter circumstance the Attorney General shall proceed not in the name of the United States but only in the name of the department on whose behalf he appears, or in the President's name if he appears on behalf of the President. Section 13 would suspend the effectiveness of the new FBI Guidelines until January 1, 1984.

The requirement that the Attorney General advise Congress when he takes action or declines to take action on the ground that an act of Congress is unconstitutional does not strike me as objectionable. The Committees report notes that such a requirement has been added as a floor amendment to the Justice authorization bill "each year." Section 11(c) is unprecedented, however, and highly objectionable. Whenever the Attorney General appears in court, he represents the United States, regardless of whether the Congress agrees with his position. Part of the Attorney General's representation of the United States involves the exercise of the independent prerogative of the Chief Executive to determine that a given act is unconstitutional.

Although the impact of section 11(c) would be largely symbolic, we should nonetheless be loath to accept any infringement of the related principles that the chief legal

officer of the United States acts for the United States -- not just the executive branch -- and that he so acts even when deciding that an act of Congress is unconstitutional.

Section 13 would suspend the new FBI Domestic Security, Informant, and Undercover Guidelines until January 1, 1984. The Committee report states that the purpose of the delay is to permit consultation between the Committee and the Department on the new guidelines. In fact, such consultation took place prior to announcement of the new guidelines and again after their promulgation. The new guidelines are the result of a painstaking process, and reverting to the old guidelines for a "consultation period" would cause confusion in the field and demoralize the agents.

I have drafted a memorandum to Murr registering our objections to subsection 11(c) and section 13.

Attachment

THE WHITE HOUSE

WASHINGTON

June 7, 1983

MEMORANDUM FOR JAMES C. MURR
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: H.R. 2912 as Reported (Report Number 98-181) the "Department of Justice Appropriation Authorization Act, Fiscal Year 1984"

You have asked for our views on sections 11 and 13 of the above-referenced reported bill. Subsections 11(a) and 11(b) would require that the Attorney General file reports with Congress in the event that he takes certain action or declines to take certain action on the ground that an Act of Congress is unconstitutional. We have no serious objection to these provisions.

Subsection 11(c) provides that under certain specified circumstances the Attorney General shall not proceed in the name of the United States but only in the name of the department or agency on whose behalf he appears, or the President if he appears on behalf of the President. Under our system of separated powers, however, whenever the Attorney General appears in court, he appears on behalf of the United States, even if he exercises the independent prerogative of the Chief Executive to determine that an Act of Congress is unconstitutional. We object to subsection 11(c) as an infringement on the principle that part of the Executive's authority and responsibility to enforce the law on behalf of the United States includes the authority to assess the constitutionality of legislation.

While we defer to the Department of Justice with respect to section 13, it is our understanding that the department has already had extensive consultations with the Committee with respect to the new FBI Guidelines. It is difficult to see what purpose would be served by delay in implementing the new rules, and any such delay could have the adverse effect of confusing and demoralizing agents in the field.

cc: The Attorney General

FFF:JGR:aw 6/7/83

cc: FFFielding/JGRoberts/Subj./Chron

THE WHITE HOUSE

WASHINGTON

June 7, 1983

MEMORANDUM FOR JAMES C. MURR
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

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FFF:JGR:aw 6/7/83

cc: FFFielding/JGRoberts/Subj./Chron

ID # 144992 CU

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Roberts

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: James C. MURR

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

Subject: HR 2912 as reported (Report Number 98-181) the 'Department of Justice Appropriation Authorization Act, Fiscal Year 1984"

ROUTE TO:	ACTION		DISPOSITION		
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
CWH011	ORIGINATOR	83/06/01 WG			/ /
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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 27, 1983

LEGISLATIVE REFERRAL MEMORANDUM

Legislative Liaison Officer

TO:

144992 cu

Department of Justice

Department of Health and Human Services

SUBJECT: H.R. 2912, as reported (Report Number 98-181), the "Department of Justice Appropriation Authorization Act, Fiscal Year 1984."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than cob June 10, 1983.

Direct your questions to me at (395-4870).

James C. Murr for
Assistant Director for
Legislative Reference

Enclosures
cc: Roger Greene
K. Wilson
Frank Seidl
V. Zafra (Sec. (2(8)(A))
Adrian Curtis
Tara Treacy

M. Uhlmann (Secs. 11 and 13)
F. Fielding (Secs. 11 and 13)
M. Horowitz (Secs. 11 and 13)

Justice's program structure submitted to the Committees on the Judiciary of the Senate and the House of Representatives,

(3) any reprograming action which involves less than the amounts specified in paragraphs (1) and (2) if such action would have the effect of making significant program changes and committing substantive program funding requirements in future years,

(4) increasing personnel or funds by any means for any project or program for which funds or other resources have been restricted,

(5) creation of new programs or significant augmentation of existing programs,

(6) reorganization of offices or programs, and

(7) significant relocation of offices or employees.

SEC. 10. Notwithstanding section 501(e)(2)(B) of the Refugee Education Assistance Act of 1980 (Public Law 96–422; 94 Stat. 1810), funds may be expended for assistance with respect to Cuban and Haitian entrants as authorized under section 501(c) of such Act.

SEC. 11. (a) The Attorney General shall transmit a report to each House of the Congress in any case in which the Attorney General—

(1) establishes a policy to refrain from the enforcement, in fiscal year 1984, of any provision of law

enacted by the Congress, the enforcement of which is the responsibility of the Department of Justice, because of the position of the Department of Justice that such provision of law is not constitutional, or

(2) determines that the Department of Justice will contest, or will refrain from defending, in fiscal year 1984, any provision of law enacted by the Congress in any proceeding before any court of the United States, or in any administrative or other proceeding, because of the position of the Department of Justice that such provision of law is not constitutional.

(b) Any report required under subsection (a) shall be transmitted not later than thirty days after the Attorney General establishes the policy specified in subsection (a)(1) or makes the determination specified in subsection (a)(2). Each such report shall—

(1) specify the provision of law involved,

(2) include a detailed statement of the reasons for the position of the Department of Justice that such provision of law is not constitutional, and

(3) in the case of a determination specified in subsection (a)(2), indicate the nature of the judicial, administrative, or other proceeding involved.

(c) During fiscal year 1984 and notwithstanding any other provision of law, in any case in which the Attorney

General determines that the Department of Justice will refrain from defending or will contest the constitutionality of any statute or provision of law, or in which the Attorney General determines that the Department of Justice will bring, or authorizes the bringing of, an action challenging or contesting the validity of any statute or provision of law, the Attorney General shall not proceed in the name of the United States, but only in the name of the agency or department on whose behalf the Attorney General appears, or the President if the Attorney General appears on the President's behalf.

SEC. 12. Section 408(c) of the Act of November 6, 1978 (Public Law 95-598, 92 Stat. 2687(c)) is amended by striking out "April 1, 1984" and inserting in lieu thereof "September 30, 1986".

SEC. 13. All investigations conducted prior to January 1, 1984, by the Federal Bureau of Investigation of activities relating to domestic security shall be conducted in accordance with—

(1) The Attorney General's Guidelines on Domestic Security Investigations,

(2) The Attorney General's Guidelines on Use of Informants in Domestic Security, Organized Crime, and Other Criminal Investigations, and

(3) The Attorney General's Guidelines on FBI Undercover Operations,

as in effect on October 1, 1982.

SEC. 14. None of the sums authorized to be appropriated by this Act may be used for any activity the purpose of which is to overturn or alter the per se prohibition of resale price maintenance, in effect under the Federal antitrust laws.

SEC. 15. None of the sums authorized to be appropriated by this Act may be used to transfer any position from any legal division of the Department of Justice to any office of any United States Attorney or to pay the salary of any employee occupying any such position so transferred after April 1, 1983.

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98TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
No. 98-181

DEPARTMENT OF JUSTICE AUTHORIZATION ACT, FISCAL YEAR 1984

MAY 16, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. RODINO, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL AND SUPPLEMENTAL VIEWS

[To accompany H.R. 2912]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2912) to authorize appropriations to carry out the activities of the Department of Justice for fiscal year 1984, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in italic type in the reported bill.

PURPOSE

H.R. 2912 authorizes appropriations for the purpose of carrying out most activities of the Department of Justice for the fiscal year beginning October 1, 1983.

BACKGROUND

Since 1837 the Rules of the House of Representatives have included the provision now found at clause 2 of rule XXI:

> [N]o appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law.

11-006 O

The Department of Justice was created by act of Congress in 1870, more than 30 years following the adoption of the rule. Legislative jurisdiction over almost every activity within the Department reposes in the Judiciary Committee. Yet the Department, until 1978, had never been required to come before the Judiciary Committee, nor indeed before the larger Congress, for authorization of its annual appropriations.

In 1976, however, the Congress enacted Public Law 94-503, title II of which explicitly states that beginning in fiscal year 1979 no sums shall be deemed to be authorized to be appropriated for the Department of Justice. Under the terms of the 1976 statute, specific authorizing legislation is now required in order for the Department to qualify for the appropriating process.[1]

The bill, H.R. 2912, was retained at the full Committee. Prior to the mark up in the Committee, each of the subcommittees of the Committee on the Judiciary had an opportunity to examine those aspects of the authorization within their respective jurisdiction. Several of the subcommittees held oversight hearings and specifically focused on the authorization process in those hearings. Each of the subcommittees then had the opportunity to submit their recommendations for the authorization bill. The recommendations of the subcommittees were incorporated in H.R. 2912. On May 10 and 11, 1983, the full Committee met to mark up H.R. 2912 and by voice vote, a quorum being present, ordered the bill reported as amended.

Moneys Provided by the Bill

Section 2. The provisions of H.R. 2912 are based on the budget proposals of the Administration, with certain exceptions. The five exceptions are:

1. continued authorization for the U.S. Trustees in Bankruptcy ($10 million);
2. an increase of $8.85 million for the DEA;
3. an increase of $94.2 million for INS ($26 million transferred to CRS);
4. an increase of $17 million for the Federal Prison System;
5. an increase of $269 thousand for the Community Relations Service.

The bill, as reported by the Committee, authorizes $3,295,353,000 ($3.3 billion) for the Department for fiscal 1984. Authorizations for fiscal year 1984 for the Civil Rights Division, the U.S. Trustees in Bankruptcy, the Community Relations Service, the Immigration and Naturalization Service, the Office of Special Investigations (Nazi War Criminals), the Drug Enforcement Administration, and the Federal Prison System are discussed below.

[1] Sec. 204. No sums shall be deemed to be authorized to be appropriated for any fiscal year beginning on or after October 1, 1978, for the Department of Justice (including any bureau, agency, or other similar subdivision thereof) except as specifically authorized by Act of Congress with respect to such fiscal year. Neither the creation of a subdivision in the Department of Justice, nor the authorization of an activity of the Department, any subdivision, or officer thereof shall be deemed in itself to be authorization of appropriations for the Department of Justice, such subdivision, or activity with respect to any fiscal year beginning on or after October 1, 1978. (Public Law 94-503, Oct. 15, 1976, 90 Stat. 2427).

Section 2 of the bill authorizes appropriations in the following amounts:

(1) For general administration, $56,364,000;
(2) For the U.S. Parole Commission, $7,836,000;
(3) For general legal activities, $160,440,000;
(4) For the Antitrust Division, $45,791,000;
(5) For the Foreign Claims Settlement Commission, $954,000;
(6) For the U.S. Attorneys and Marshals, $362,707,000;
(7) For the U.S. Trustees, $10,000,000;
(8) For support of U.S. prisoners, $44,768,000;
(9) For fees and expenses of witnesses, $38,266,000;
(10) For the Community Relations Service, $33,238,000;
(11) For the Federal Bureau of Investigation, $1,055,690,000;
(12) For the Immigration and Naturalization Service, $606,807,000;
(13) For the Drug Enforcement Administration, $284,473,000;
(14) For the Federal Prison System, $498,070,000;
(15) For organized crime drug enforcement activities $89,949,000;

The bill also contains one open-ended authorization (Section 5, "such sums as may be necessary") for fiscal 1984. The authorization therein provides for nondiscretionary increases in salary, pay, retirement and other employee benefits authorized by law.

Civil Rights Division

The Committee takes notice that for the first time since its creation in 1957, attorneys representing minorities, women and the handicapped have come before this Committee and made passionate pleas that we take steps to prevent the Civil Rights Division from doing "harm" to their clients in pending civil rights litigation. Without exception, they catalogued instances where the Division's changed civil rights policies have sought to limit the rights of protected classes. In fact, in a May 1, 1983 article for the Hartford Courant, the former Assistant Attorney General for Civil Rights described activities of the current Civil Rights Division as a "War Against Civil Rights."

In earlier years many of these same witnesses have asked this Committee to increase the Division's resources and to urge its participation in greater numbers of civil rights cases. Some of those same witnesses now ask that we consider dismantling the Division and transferring staff, resources and litigating authority to other federal agencies or appointing a special counsel to investigate the "malfeasance" of the Division's leadership.

The present Assistant Attorney General is proud of the Division's increased number of a criminal civil rights prosecutions—a record which he suggests is at an all-time high—and is seeking increased staff for this activity in 1984. But we must wonder whether this is the best use of the Division's limited resources. As one witness pointed out, the Detroit Police Chief submitted an affidavit opposing the Division's recently announced challenge to the police department's affirmative action plan in which he stated that, "[T]he success which earned the Detroit Police Department this award (presented by Attorney General Smith to the Department for its effective crime fighting program) is a direct result of the Assistant

Attorney General's program which the Department of Justice now seeks to halt." It was the view of this witness that school desegregation and affirmative action will do more to improve the quality of life in this nation than criminal prosecutions against individuals for police brutality.

These are serious allegations which the Committee must review in further hearings during the current and 1984 fiscal years.

Office of Special Investigations

For the sixth consecutive year, the Committee has specifically earmarked funds for the Office of Special Investigations (OSI) in the Criminal Division, which is responsible for investigating and prosecuting denaturalization and deportation cases against suspected Nazi war criminals who have found sanctuary in the United States.

For fiscal year 1984 the bill sets aside $2.753 million for OSI, the same amount earmarked for the unit in last year's authorization bill. This level is $77,000 more than the $2.676 million that was requested by the Department for fiscal year 1984. The Committee believes the budget reduction proposed by the Department, although small, is unwarranted on both substantive and symbolic grounds.

As a substantive matter, the Committee notes that OSI's litigation activity has increased markedly in the past two years and is expected to continue to rise. Thirty-one cases have now been filed against alleged war criminals (12 more than in 1981) of which 26 remain pending, 11 denaturalization proceedings and 15 deportation actions. (The five other cases—all denaturalization proceedings—were terminated after the defendants died.) This additional trial work will appreciably increase expenditures, especially for travel and associated costs.

The investigation caseload also does not warrant a cut in OSI's budget. Approximately 267 cases are pending in the investigative stage (not including those matters in litigation), and over 100 new cases have been referred to the unit in the past year. Despite this heavy burden, the Committee notes with approval the fact that OSI has made substantial inroads in the 651 cases which have required investigation. Of the 350 cases inherited by OSI when it was established in 1979, 263 have now been closed. Of the 301 cases which have been referred to, or discovered by, the unit since its creation, 121 have been closed. Through the first four months of 1983, 25 cases have been closed.

As a symbolic matter, the Committee also believes that the Department's proposed reduction in OSI's budget is unwise. Such a reduction would convey precisely the wrong signal about our nation's renewed efforts to live up the spirit of Nuremburg. After a sordid thirty-five year history of inaction on the Nazi war criminal problem, our government has finally moved aggressively to prosecute those who have found refuge here. At the Committee's insistence, OSI was set up in the Criminal Division and given the funding and staffing to do its job. Its subsequent achievements have been notable; just one month ago, Hans Lipschis became the first alleged war criminal in over 30 years deported from the United States. A second was criminal suspect, Valerian Trifa is under a non-appeal-

able order of deportation and will leave as soon as a country can be found willing to accept him. Thirteen other war criminals are in various stages of deportation proceedings. A landmark decision in OSI's favor was rendered by the Supreme Court in *United States* v. *Fedorenko,* 449 U.S. 489 (January 21, 1981), which will significantly ease the Government's burden of proof in denaturalization actions. Particularly after these successes, the Committee feels a reduction in OSI's budget is unwarranted.

In addition to believing that the $2.753 million level is necessary, the Committee also feels that earmaking of the amount is required. Despite the Committee's expressed wishes, there have been a number of problems over the years in making certain that funds authorized for Nazi investigations and prosecutions have actually been made available. In fiscal year 1983, for example, the Department reprogrammed some $308,000 out of OSI. (Since the Committee's authorization bill for fiscal year 1983 was not enacted, there was no barrier to this reprogramming.) That reprogramming, and past bureaucratic problems, make it imperative that we continue to mandate that this small amount of funding be set aside for OSI. More importantly, the Committee's earmarking of these monies over the past six years has become a symbol of our commitment to make certain that these criminals are finally brought to justice. Like a reduction in the authorization level, deletion of the earmarking language would have unfortunate symbolic repercussions.

The Committee first raised the Nazi war criminal issue publicly in 1974, and since that time has been responsible for creating OSI, for drafting the law providing for the deportation of Nazi persecutors, and for first approaching foreign governments about cooperating in these investigations. In short, Committee has devoted substantial energies to this matter over the past decade and intends to see it through to a successful conclusion. This is a short-term project to which our nation is morally committed. It should be allowed to coninue with whatever resources are necessary.

U.S. Trustees in Bankruptcy Program

The United States Trustees are charged with supervising the administration of cases filed pursuant to chapters 7, 11, and 13 of title 11 in the eighteen judicial districts set forth in 11 U.S.C. § 1501. In general, among many other duties, the U.S. Trustees are responsible for policing the bankruptcy system, for ensuring that bankruptcy cases are carefully and correctly administered, and for ensuring that debtors do not improperly dispose of or waste assets to which creditors are entitled. The U.S. Trustees monitor the process of appointments, the hiring of attorneys and experts, fees, expenses, and the day-to-day operations of reorganizing businesses to avoid favoritism and excessive costs of case administration and attempt to eliminate any actual dishonesty or impropriety. In a chapter 11 business reorganization case, the U.S. Trustees, or a creditors' committee functioning under the supervision of the U.S. Trusee, ensure that a case is not collapsing, that taxes and insurance are being paid, that the public health is not being threatened, and that the bankruptcy case itself is not running up bills which cannot be paid.

Notwithstanding that the pilot program for U.S. Trustees has been underfunded and understaffed since it began, the program has been performing well in meeting its major objectives. H.R. 2912 provides that the pilot program be funded at $10 million for fiscal year 1984 to ensure that the U.S. Trustees program can continue to fully operate in the eighteen pilot judicial districts.

Community Relations Service

Staff in the headquarter and regional offices.—The Committee believes the Community Relations Service should not reduce its staff below the approximately 100 persons currently on board. The Committee has authorized funds for the purpose of maintaining the staff at 100 persons, nation-wide; this is exclusive of the 30 positions transferred from the Department of Health and Human Services to administer the program for Cuban and Haitian entrant program discussed below.

Cuban and Haitian entrants.—Administering a program which provides for the placement of and services to Cuban and Haitian Entrants is a new function for the Community Relations Service (CRS) but one which the Committee believes CRS is particularly able to handle because of its expertise in assessing community sensitivity. The Committee is also mindful that this new function could compromise the primary mission of the Service which is to mediate and conciliate community conflicts arising from discrimination based on race, color or national origin.

CRS is directed to provide the Committee with a report on the administration of this program. The report should be submitted by September 30, 1984 and should address a number of issues including:

1. an assessment of the transfer of staff and resources from the Office of Refugee Resettlement in the Department of Health and Human Services to the Community Relations Service, ,

2. an assessment of the effectiveness of this program. The assessment should include a discussion of the progress under the court orders of Judge Shoob, and Judge Spellman. It should also address the results of the secondary resettlement program. Finally, the monitoring activities in all aspects of the program should be analyzed, and

3. an assessment of the impact of this new function on the traditional civil rights mandate of the Community Relations Service should be discussed.

An interim report addressing the points set forth above should be available for the Committee's review during consideration of the fiscal year 1985 Authorization Request of the Service.

Immigration and Naturalization Service

The responsibility for administering the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1011 et seq.), rests with the Immigration and Naturalization Service of the Department of Justice and the Bureau of Consular Affairs of the Department of State. The Immigration and Naturalization Service (INS) administers and enforces the provisions of that act which relate to admitting, excluding, deporting, adjudicating status of, and naturalizing aliens. The Border Patrol of INS patrols the U.S. borders between land ports of entry; its inspection force checks aliens and citizens coming into the country through international airports, seaports, and the land ports of entry; its adjudication force determines and adjusts the status of aliens; its naturalization examiners review and investigate applications for naturalization; and its detention and deportation personnel detain and deport illegal aliens.

H.R. 2912 authorizes a funding level of $606,807,000 for the Immigration and Naturalization Service for fiscal year 1984. It further establishes a permanent position level of 12,214. Committee action increases funding by $94,201,000 and positions by 1,713 over the budget request submitted by the Administration.

The bill provides for the following modifications to the fiscal year 1984 budget request as submitted by the Administration for the Immigration and Naturalization Service: ($26 million of the $94 million increase indicated above was subsequently transferred to the Community Relations Service for Cuban/Haitians)

IMMIGRATION AND NATURALIZATION SERVICE FISCAL YEAR 1984 DECISION UNIT COSTS

[Dollars in thousands]

Decision unit	1984 congressional submission			House authorization committee—Requested add-on			House authorization committee allowance		
	Permanent positions	WY	BA	Permanent positions	WY	BA	Permanent positions	WY	BA
Inspections	1,357	$1,798	$69,962	255	$191	$7,310	1,612	$1,989	$77,272
Border patrol	2,866	2,810	113,554	1,052	789	46,658	3,918	3,599	160,212
Investigations	1,029	793	42,294		141	8,556	1,029	934	50,850
Antismuggling	299	278	13,352	85	64	2,526	384	342	15,878
Detention and deportation	1,040	1,077	71,893	118	89	8,898	1,158	1,166	80,791
Subtotal	6,591	6,756	311,055	1,510	1,274	73,948	8,101	8,030	385,003
Adjudications and naturalization	1,143	1,151	40,616	140	105	4,672	1,283	1,256	45,288
Refugees and overseas	108	115	7,529				108	115	7,529
Subtotal	1,251	1,266	48,145	140	105	4,672	1,391	1,371	52,817
Training	61	60	6,378	10	8	396	71	68	6,774
Data and communications systems	183	176	47,600	2	2	90	256	178	47,690
Information and records management	1,245	1,288	41,305				1,245	1,288	41,305
Intelligence	26	25	1,614	3	2	151	29	27	1,765
Research and development	2	2	513	1	1	47	3	3	560
Construction and engineering	15	17	4,278			13,485	15	17	17,763
Field management and support	272	281	11,343				272	281	11,343
Legal proceeding	167	153	6,360	13	9	535	180	162	6,895
Subtotal	1,971	2,002	119,391	29	22	14,704	2,000	2,024	134,095
Executive direction and control	196	212	9,291				196	212	9,291
Administrative services	492	473	24,724	34	25	877	526	498	25,601
Subtotal	688	685	34,015	34	25	877	722	710	34,892
Total	10,501	10,709	512,606	1,713	1,426	94,201	12,214	12,135	606,807

The personnel and funding levels adopted were agreed to by the Subcommittee on Immigration, Refugees, and International Law after an oversight/authorization hearing on March 8, 1983 and after Subcommittee Members observed various aspects of INS operations during official trips to Frankfurt, Hong Kong, Florida, Vienna, Rome, Southeast Asia, and Southern California.

Last year in its report on the authorization legislation the Committee expressed some satisfaction in having noted an improvement in the attitude of the Department of Justice towards the Service. For years, the Committee has felt that INS has been underfunded, undermanned, and neglected by the Department and by OMB. The chaotic state of the immigration situation in the U.S. today can be directly attributed to this inattention and lack of appreciation of the Service's mission.

Last year the Committee recommended an increase of 642 positions and $29 million to the budget, mainly for additional inspectors, border patrol, adjudicators and investigators. In spite of the Committee action, the number of positions allocated to enforcement in fiscal year 1983 was lower than the fiscal year 1982 level. The Committee especially noted the substantial cuts in inspector positions and in the funding of permanent positions in investigations.

This year the Committee was surprised to see that the budget request for fiscal year 1984 was mostly a "status quo" budget, except for including a sum of $20 million for ADP programs and $10 million for a National Record Center. The level of funding for enforcement and service to the public activities remained essentially the same as fiscal year 1983. While the Committee is happy to see an increased effort in ADP systems, it can only deduce from the budget submission that the signal the Committee attempted to send last year with regard to getting increased personnel and funding for the Service was totally disregarded.

The additional resources called for by the Committee in this bill seeks to make up for ground lost last year, where there were no real increases, as well as to provide a sound basis for enhanced enforcement leading to the implementation of the pending Immigration Reform and Control Act of 1983, H.R. 1510.

The Select Commission on Immigration and Refugee Policy, in considering the enforcement activity relating to immigration, concluded that "increased enforcement * * * should be an integral part of the package of recommendations to curb the flow of illegal immigration".

Whatever the legislative outcome of H.R. 1510, the Committee considers it absolutely necessary that the enforcement and service activities of the Immigration and Naturalization Service must be strengthened and improved.

It is publicly known that the United States has been inundated by illegal immigrants from Mexico and other countries to the south of us. The rapidly rising working age populations of these countries, coupled with serious internal economic conditions causing large scale unemployment and underemployment, lead the Committee to believe that more and more nationals from these countries will be seeking to enter the United States surreptitiously between ports of entry, many others will be using fraudulent means

to gain admission, while others will overstay the conditions of their entry visa or enter into fraudulent marriages in an attempt to remain in the United States.

The principal method of preventing these occurrences is to provide the Immigration and Naturalization Service with sufficient manpower, funding, and support to allow it to meet its statutory obligations.

The Committee intends to continue its actions on behalf of the Service until the Department of Justice and the Office of Management and Budget demonstrate in a positive manner a commitment to provide INS with all the means necessary to discharge its responsibilities.

Drug Enforcement Administration

The Drug Enforcement Administration is the lead agency in the nation's fight against drug trafficking. The Administration's request of approximately $275.6 million for fiscal year 1984 does not restore the cuts that resulted from the 1982 reprogramming, or provide sufficient resources to the foreign cooperative investigations program. The Committee added $8.85 million in H.R. 2912 for these purposes to provide an additional 168 workyears for foreign cooperative investigations (15 WY), state and local training (23 WY), intelligence (69 WY), and diversion control (61 WY). The Committee believes that $284.47 million is appropriate for the DEA in fiscal year 1984.

Federal Prison System

The Committee has approved three modifications from the Department of Justice's request: (1) removal of the $100,000 ceiling on the Bureau of Prisons legal assistance program; (2) an additional $5 million for the National Institute of Corrections; and (3) an additional $12 million to add to the Bureau's request which will increase by 1,000 the number of beds available in community corrections contract facilities. The reasons for each of these modifications are listed below.

The $100,000 ceiling on inmate legal assistance has been removed, since the Committee finds that, consistent with Supreme Court rulings, reasonable access to legal assistance and materials is necessary for inmates and helpful to the institutions, as well. There are now approximately 30,000 prisoners in federal prisons, many of them at great distances from their families, and sometimes in remote areas.

Presently only 13 of the approximately 40 institutions are receiving any funding through the Bureau to improve inmate legal services at the total level of approximately $100,000. The removal of the ceiling is meant to encourage the Bureau to expand these services to more institutions and, where appropriate to increase the annual contribution. The Committee recognizes the value of providing inmate legal services to assist inmates in resolving legal disputes which may exist relating to their confinement or be complicated by it. Clarification of inmate legal problems and their resolution are helpful, not only to the inmates involved, but also to their families, to the institution, and to the courts. Such assistance serves to reduce the filing of frivolous actions.

The Committee bill adds $5 million to the Department's request for the National Institute of Corrections, bringing its fiscal year 1984 funding to $16,665,000. The Committee received testimony this year about the unmet needs for technical assistance and training which NIC is requested to fill to help state and local jails and prisons. In light of jail and prison overcrowding, the need to improve conditions there, and to develop appropriate classificiation procedures, additional funds have been added. The Committee has been impressed with the important activities of NIC and its efficiency.

The Committee is aware of the recent increase in the federal prison population, but agrees that, as the General Accounting Office has noted, that the Bureau of Prisons should make greater efforts to place more prisoners for reasonable periods of time in community contract facilities, which are less costly than prison beds, and assist in the reintegration of the offender into the community.

In the past, the Bureau has diverted funds for such use, including transition back into the community during pre-parole and parole periods, and has cutback on community placements and the period of such placement. This practice is detrimental to the prisoners and to the supply of community-based resources. Therefore the Committee has added $12 million to add 1,000 beds in contract community facilities to bring the average daily population to 3,300. The Bureau is encouraged to make increased use of such facilities at the time of commitment, when appropriate, and for the transition back to the community.

The Committee recommends that the Bureau of Prisons increase its programming for relevant educational and vocational training and for parenting programs, to expedite the reintegration of the offender back to his or her community. It also recommends that adequate procedures be developed to insure quality medical assistance to inmates, including through the Public Health Service, where appropriate.

The Bureau is encouraged to continually examine the security and custody needs of its inmates and to designate and transfer offenders to less secure facilities when appropriate. The Bureau is urged to open at least one minimum security camp to women, based on documentation in 1980 that almost 50 percent of the women were classified at level 1 security. No camps exist for women, although the Bureau has at least 15 camps housing approximately 4,000 male inmates.

Other Provisions

Section 7. Certain FBI undercover operation exemptions and reporting requirements

Since fiscal year 1978, Justice Department authorization acts (including continuing resolutions) have included a section that provides exemptions for FBI undercover activities from various banking, leasing, and other financial laws. The justification for these exemptions has been that application of these laws would prevent the

FBI from undertaking activities that normally are essential for disguising government involvement in a situation.

In view of the potential problems that can arise from eliminating the requirements of the various exempted laws, the authorization acts also have always included the requirement that detailed financial audits be performed on certain operations and that reports of those audits be provided to the Congress.

The exemptions and report requirements contained in previous authorization law have been renewed, with some modifications. After several years of experience with these provisions, it became clear to both the FBI and the Committee that further refinements were needed. It is also clear that a permanent, and considerably more comprehensive law governing undercover operations is needed. Until such time as that legislation is enacted, however, the Committee believes the temporary provisions in the authorization bill are necessary.

The modifications were adopted by the Committee based upon an accommodation of the Bureau's requests for further exemptions and refinements and the oversight Subcommittee's request for more useful and timely reports.

(1) Subsection (a)(1) adds an exemption to permit the purchase of property, buildings, or other facilities for undercover operations. This expansion of the exemptions is necessary because it has been the practice of the FBI to lease sites from which surveillance of targets is conducted, but the current real estate phenomenon of converting apartments to condominiums has jeopardized the continued use of some of the long standing sites, particularly in the area of foreign counter-intelligence cases.

(2) Subsection (a) provides that the certification by the Director and the Attorney General that reliance on an exemption is "necessary" for the conduct of a particular undercover operation will continue for the duration of the operation, rather than having to be renewed each fiscal year. However, it is not intended that a certification granted in an undercover operation which subsequently under goes a significant shift in focus or locale, be considered continuing indefinitely. The fact that an operation has retained the same code name, agents, or informants should not in itself suggest that the certification process need not be repeated. If the basic nature of the operation has changed, then the justification for the reliance on the exemption must be made anew to the Director and the Attorney General at the time of the change. The Certification process was intended to operate as an important element in the supervision and oversight of undercover operations by the highest levels of the FBI and the Department of Justice, and the rationale for eliminating this process is valid only where the recertification would tend to be pro forma.

(3) Subsection (d)(1) continues to provide that the FBI conduct detailed financial audits in certain undercover cases. The category of operations for which audits must be prepared have been changed from previous authorization acts as has the timing of these audits and reports to Congress thereof. Formerly, all "closed" undercover operations (excluding those involving foreign counterintelligence [FCI]) with gross receipts (from business entities and other sources) in excess of $50,000, were to be audited and a report submitted to

Congress thereof. The Subsection now requires that the FBI conduct an audit of "each undercover investigative operation in which covert activities are concluded in fiscal year 1984, and in each undercover investigative operation in which covert activities are concluded before fiscal year 1984 but which is closed in such fiscal year. . ." Furthermore, the category of operations to be audited has been changed, so that Subsection (e)(4) now covers not only non-FCI cases with $50,000 or more in gross receipts, but also, operations with expenditures in excess of $150,000. The first change has the effect of altering the time frame for preparing audits and submitting the audit reports from the time an operation is "closed" to the time the covert stage is terminated.

The justification for this change is to make the financial data available to Congress in a more timely fashion. "Closed" had been interpreted by the FBI as meaning that all litigation (criminal and civil, and including all appeals) arising out of the operation had been concluded. Thus, even though it was the practice of the Bureau to conduct the audit soon after covert activities had been concluded, the reports on these audits had not been turned over to the Congress until years later. However, the financial information contained in these reports has been in no way revealing of evidence, targets, sources, techniques, or anything else that might affect future investigations or prosecutions. The delay in submitting these reports, therefore, was not justified. Financial data was coming to the Congress years after the activities they reflected had occurred. In the interim, FBI practices and priorities had changed. Effective and accurate oversight was jeopardized. (See Testimony of Director William Webster before Subcommittee on Civil and Constitutional Rights, April 4, 1983).

Since the time period when audits must be reported has been changed, in effect, from post-litigation to a set period (see below) following the cessation of covert activities, this section contains a grandfather clause covering operations in which covert activities have been concluded in a previous fiscal year, but which were not closed until fiscal year 1984.

The bill also provides that the audit report for an undercover operation must be submitted to the Congress not later than 1 year after covert activities have been concluded when that operation was initiated or directed in a major field office, i.e. one of the twelve largest field offices. The reports on all other included operations must be submitted within two years of the cessation of covert activities. The different schedules are provided in order to permit the FBI to conduct these audits in the normal course of its inspection rotations, since the practice of the Bureau has been to perform audits in the 12 major field offices at least once a year, and every two years at other field offices. By virtue of these changes, the FBI will be relieved of the necessity of sending separate teams of auditors to the field solely in order to satisfy the reporting requirements. Furthermore, Congress will receive this financial data at an earlier stage in the process.

As noted above, subsection (e)(4) makes modifications in the trigger that determine which operations must be audited. Under present law, only operations which involved the creation of business entities must be audited, and then, only when gross receipts

exceed $50,000. The new provision extends the audit requirement to undercover that did not involve a business front, but which involve expenditures of at least $150,000, excluding salaries. Salaries are excluded because current FBI record-keeping systems do not track salary expenditures for individual cases or techniques. The provision is also modified so that the calculation of the $50,000 in gross receipts now excludes money earned in interest, since interest, unlike other receipts may not be used to offset expenses incurred in the undercover operation.

(4) Finally, in Subsection (d)(2), an additional reporting provision is added that goes beyond financial information, to require on an annual basis,[1] that Congress be provided a report that will give both statistical and descriptive information regarding the utilization of the undercover technique by the FBI.

Unlike the financial audit reports required under Subsection (d)(2), the undercover operations from which the statistical and descriptive data is drawn are all non-FCI undercover operations.[2] Thus, Subsection (d)(2) (A) and (B) state that the report specify the number, by programs, of all undercover investigative operations pending or commenced during the stated time periods. By "programs" is meant the programatic divisions used by the FBI in describing such operations: white collar crime, organized crime, personal crimes, general government crimes, and general property crimes. Categorization by "group" (i.e., Group I or Group II, a designation relating to expected duration and expense) is also intended.

The same aggregate statistical information is required for cases closed in the one year period preceding the report. In addition, with respect to closed operations only,[3] additional information must be reported. With respect to each non-FCI undercover operation closed in the year preceding the report, the report must also separately describe the "results" obtained, to wit, complaints, informations indictments, convictions (with statutory references), fines, recoveries, restitutions, potential economic loss prevented, etc.

Finally, with respect to significant closed cases, descriptive information must be provided. "Significant" is defined in Subsection (e)(3) as meaning operations involving either sensitive circumstances specified in the Attorney General's Guidelines on FBI Undercover Operations undercover guidelines (e.g. involving political corruption, the activities of a religious, political or news organization, a significant risk of violence, injury or financial loss, etc.) or "any unusal or substantial legal managerial, or other issues."

In the detailed description required for each of these closed significant cases, the report must describe the operation (the nature of the criminal activity and targets investigated, the basis for initiating the investigation, the activities of the undercover agents, informants, and middlemen, evidence adduced, and findings) and describe the results of the operation, civil claims which has arisen out of the operation (including claims filed administratively with the Department of Justice) and "any unusual or substantial legal, managerial, and other issues."

By the latter phrase (which, as noted above, also provide a criteria by which to select "significant" cases), it is intended that the FBI will select for description those cases involving developments that are relevant to the Congress's ability to assess the impact, problems, and value of the use of this technique, and to determine what, if any, legal and practical adjustments are necessary.

In operations which have resulted in criminal prosecutions, these issues often will be raised in the judicial process, and this occurrence provides one test for selecting the operation as "significant." An operation that has been particularly successful also should be included, as should operations that achieved less than their expected results. Examples from the past would be the investigation of case-fixing in the Cleveland Municipal Court and the operations in Galveston, Texas, and Bridgeport, Conn., wherein FBI agents or informants were arrested or detained by the local police who were being investigated.

The Committee anticipates that the selection and analysis of significant cases by the FBI under this provision will not only provide the Congress with extremely useful information, but also will encourage the FBI to engage in a constructive process of self-examination. Honest and open appraisal will permit the FBI to make those policy and practical changes necessary to render the use of this technique more productive.

Section 8. Program evaluations

The bill requires program evaluations to be undertaken by the Attorney General for all elements of the Department. It is the intent of the Committee that the formal process of period review and evaluation of programs be continued. Without objective program audits, the Department and its subordinate organizations cannot knowledgeably establish the goals of significant programs and evaluate their success. Further, the ability to modify existing programs, discard unfruitful programs and to know better if Federal dollars are being spent wisely is dependent upon informed assessment of those programs.

Section 9. Reprograming

The bill continues the reporting requirements adopted by the Committee in 1979. The Department of Justice is required to report to the House and the Senate Judiciary Committees when funds are being reprogramed by the major components of the Department. The language applies to reprograming of funds in excess of certain specified amounts as well as to reorganizations or creations of new programs which may not have been previously authorized. The provision is necessary to facilitate the Committee's oversight responsibilities and to assure that public funds are expended in a manner consistent with congressional intent.

[1] By "annual," the Committee intends that the report be submitted not later than the end of the fiscal year. In contrast, the audit reports required under subsection (d)(1) are to be submitted as soon as they are prepared, and no later than the period stated in that subsection.

[2] An amendment clarifying this point was adopted by the Committee by voice vote.

[3] For purposes of this report to Congress "closed" is defined in Subsection (e)(1) of the bill. That provision provides that an operation is deemed closed when all criminal proceedings (other than appeals) are concluded or covert activities are concluded, whichever occurs later. The latter contingency is included for those rare instances where criminal proceedings (i.e., trial court proceedings or the decision not to seek or proceed with prosecution) have concluded, but covert activities have not.

Section 11. Departmental decisions not to enforce Federal statutes

The Committee has included in the reported version of the bill the substance of an amendment which has been adopted on the floor each year. The amendment specifically requires the Attorney General to report to the Congress whenever he/she establishes a policy to refrain from the enforcement of any provision of law because the position of the Department is that the provision is unconstitutional. The section also requires the Attorney General to report to Congress whenever the Department decides that it will contest or refrain from defending any congressionally enacted provision of law because the Department deems that provision to be unconstitutional. The required reports must be transmitted within thirty days and shall specify the provision of law involved, include a detailed statement of the reasons the Department has taken such a position, and indicate the nature of the proceeding involved.

The provision has been modified in the fiscal 1984 authorization. It requires that, whenever the Attorney General brings an action challenging or contesting the validity of any statute or provision of law, the Attorney General not proceed in the name of the United States, but rather in the name of the agency or department on whose behalf he/she appears. The purpose of the revised language is to prohibit the Department of Justice from filing suit, as was recently done in the *United States of America* v. *U.S. House of Representatives, et. al,* in the name of the sovereign United States against a part of one of the branches which make up the sovereign United States.

Section 12. Extension of expiration date of U.S. Trustees pilot program

One of the central goals of the 1978 comprehensive bankruptcy legislation was to restore public confidence in the fairness of the bankruptcy court system and remove some real, and many perceived, abuses in the administration of bankruptcy cases. The 1978 law emphasized the role of the bankruptcy judges as impartial arbiters and expanded their judicial powers, while relieving bankruptcy judges from their previously active role in managing and administering cases. After long and careful review, the Congress created, as a 4½ year pilot program (which will expire on April 1, 1984), the United States Trustees program to perform the administrative functions that were transferred from the bankruptcy judges.

Active supervision of bankruptcy cases is necessary because of the public administration of bankruptcy, "the significant potential for fraud, self-dealing and diversion of funds" (House Report No. 95-595 (1977), p. 88), and the many people affected by bankruptcy proceedings. The United States Trustees perform the essential administrative and supervisory functions in bankruptcy proceedings and generally act as the watchdogs of the bankruptcy system and its participants. Among the duties and responsibilities of the U.S. Trustees are overseeing the qualifications and appointments of private trustees in bankruptcy cases and supervising their performance, serving as trustees in certain cases, investigating misconduct or impropriety, monitoring the hiring of professionals and experts

and the reasonableness of their fees and compensation, examining the debtor or presiding at meetings where the creditors examine the debtor, objecting in appropriate cases to the discharge of the debtor, reviewing the adequacy and completeness of financial statements submitted by the debtor, reviewing the final reports on estates that trustees have administered, forming representative creditors' committees, and supervising creditors committees to ensure that they perform their statutory duties.

The role of the United States Trustee is to eliminate favoritism, opportunities for fraud, and such improprieties as the operation of a company with no insurance during the pendency of a Chapter 11 business reorganization proceeding, engendering administrative expenses (such as, rent, utilities, and taxes) which cannot be paid, or failing to pay withholding taxes during the Chapter 11 proceeding.

Annual reports submitted to the Congress by the Attorney General indicate that the program to date is achieving the objectives for which it was established.

Present law contemplates that the Congress will review this pilot program prior to April 1, 1984 to determine whether to expand, modify, or terminate the program. A comprehensive, independent study and evaluation of this program, required by Public Law 95-598, must be transmitted by the Justice Department to Congress before January 3, 1984. The General Accounting Office and other organizations are also reviewing this program and will be submitting reports. Because there is no possibility of the Congress being able to adequately review and evaluate this program and consider whether to expand, modify, or adopt a substitute procedure for the performance of these crucial administrative functions prior to the expiration date of this pilot project, H.R. 2912 would extend the expiration date of the experimental program until September 30, 1986. This will allow Congress the time necessary to carefully review and evaluate the extensive investigations and studies which have been undertaken and are currently being prepared by independent contractors pursuant to statute, the GAO, and various organizations affected by this program.

Section 13. Domestic security guidelines

The Committee's purpose in adopting Section 13 is to delay implementation of the new Attorney General Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations until January 1, 1984.

On March 7, 1983, Attorney General William French Smith announced new guidelines governing the FBI's domestic security investigations. The Smith Guidelines replace Attorney General Guidelines on Domestic Security Investigations in effect since April 6, 1976. Both documents were designed to cover the FBI's investigation of politically motivated violent crime by indigenous persons or groups, that is, those not acting on behalf of a foreign power.

The heart of the original guidelines, authored by former Attorney General Edward Levi, was the notion of a criminal standard—that an investigation could be launched only "on the basis of specific and articulable facts given reason to believe that an individual or a group is or may be engaged in activities which involve the use of force or violence and . . . the violation of federal law. . ." Fol-

lowing this standard, the FBI would no longer be able to investigate individuals or groups on the basis of lawful—but unpopular or radical—political activity. The impetus for the Levi guidelines grew out of the revelations of massive domestic intelligence abuses by the FBI. This Committee, as well as other Congressional committees, was instrumental in documenting those abuses and the ineffectiveness of domestic intelligence investigations from a law enforcement perspective.[1]

The Levi guidelines were drafted in an effort to give new direction to the FBI in this area, and to prevent such abuses in the future by focusing the FBI's investigative activities on actual or suspected criminal activity.

The guidelines were the result of a long process of consultation and review—a process in which this committee was integrally involved. In the ensuing years, the FBI has maintained in various public statements, including before this Committee, that the Levi guidelines have served them well.

The Committee notes that the Smith guidelines, which went into effect on March 21, 1983, make a number of changes from the old Levi guidelines. the most visible change is one of format. Two separate sets of guidelines have been incorporated into a single document—the domestic security guidelines and the criminal investigative guidelines. The purpose of this reorganization, according to the Department of Justice, is to "integrate domestic security investigations into the mainstream of FBI responsibility by reconciling these investigations with other criminal intelligence work and using the terminology and concepts applied to investigations of other organized criminal enterprises."

In theory, the Committee believes this approach has several positive attributes. It does appear to integrate domestic security cases into the structure and vocabulary of the FBI's criminal investigations with their inherent focus on violations of federal criminal law. It brings consistency of approach and language to what has been described as a confusing and often contradictory set of regulations.

The result, however, of this attempt to "streamline" the guidelines has been to eliminate or significantly alter several important features of the Levi Guidelines—features which in the past the Committee believed were necessary to protect the First Amendment activities while giving the FBI sufficient flexibility to investigate actual or potential criminal activity.

The Committee notes that it has been engaged in a discussion with the Department and the FBI on these new guidelines even prior to their release. The purpose of that discussion has been to obtain clarification of some of the new provisions. The Committee further notes that specific language changes have been suggested to the FBI which the Committee believes provide that clarification and are consistent with what the Department and the FBI have said is their actual intent.

[1] "FBI Domestic Intelligence Operations—Their Purpose and Scope: Issues That Need To Be Resolved," report to the House Committee on the Judiciary by the Comptroller General of the United States, Feb. 24, 1976.

The Committee has already taken testimony from the Department and additional hearings will be scheduled in an attempt to seek the necessary clarification and to give the FBI an opportunity to explain and justify those changes which are substantive. The Committee agrees that if changes in the guidelines are needed because of specific problems the FBI has encountered, these changes should be made. However, to date, neither the FBI nor the Department has produced any evidence justifying such changes.

Until that evidence is provided and until the consultation and clarification process can be completed, the Committee believes the status quo of the Levi guidelines should be maintained. Section 13 is designed to accomplish that purpose by delaying implementation of the Smith guidelines for a limited period of time. The language of H.R. 2912 as introduced delayed implementation until September 30, 1984—the end of fiscal year 1984. During the mark-up, however, an amendment was offered and adopted by voice vote which delays implementation until January 1, 1984.

It is the Committee's expectation that resolution of these issues will be achieved within the time frame provided for in Section 14, as amended, and commits itself to working closely with the Department to achieve that goal. The Committee is compelled to note, however, that adoption of § 14, as amended, is meant to send a message to the Department regarding the depth of its concern about the Smith guidelines and the importance of the issues raised by them.

Section 14. Resale price maintenance prohibition

In Section 14, the Committee directs that no funds appropriated by H.R. 2912 shall be used to "overturn or alter the per se prohibition of resale price maintenance, in effect under the Federal antitrust laws." The Committee takes this action to ensure that the national policy against vertical price-fixing will continue to be upheld, and not weakened, by officials of the Antitrust Division whose constitutional duty it is to enforce the antiturst laws.

Despite an unbroken chain of Supreme Court decisions going back 70 years and Congress express bipartisan message in passing the Consumer Goods Pricing Act of 1975, the current policy of the Antitrust Division is to ignore, or distinguish, the per se prohibition on resale price maintenance ("RPM"). Statements by Department officials that they would not enforce the per se ban on retail price fixing, or do so selectively, coupled with the total failure of the Department to challenge such conduct have sent a disquieting message of permissiveness to potential violators. More recently, the Department has urged the Supreme Court [1] in a private action to which the United States is not a party, to overturn a precedent that has served as the polestar for congressional and executive action over that same period.

As recently as March 10, 1983, before the Subcommittee on Monopolies and Commercial Law,[2] Assistant Attorney General Baxter

[1] Monsanto Co. v. Spray-Rite Service Corp., *petition for cert. filed*, 51 U.S.L.W. 3461 (Dec. 7, 1982) (No. 82-914); *cet. granted* 51 U.S.L.W. 3633 (Feb. 28, 1983).

[2] *See* Oversight and Authorization Hearings before Subcommittee on Monopolies and Commercial Law, March 10, 1983, Transcript of Proceedings, at pp. 17-19, 38-40, 49-55.

reiterated his view that RPM was not strictly prohibited by either Congress or the Supreme Court.[3] The statement is troubling because it ignores the consistent treatment accorded the issue by the Supreme court since 1911.

In *Dr. Miles Medical Co.* v. *John D. Parks & Sons, Co.,* 220 U.S. 373 (1911), the Supreme Court struck down a resale prices maintenance scheme as illegal per se [4] by reasoning that the Sherman Act has accorded all participants in the distribution of goods the same freedom to make business decisions and that simply because a manufacturer makes the product and initiates the distribution scheme, "it does not follow [that] . . . he may impose on purchasers every sort of restriction." 202 U.S. at 404. In every situation in which the Supreme Court has subsequently been faced with the issue of vertical price restraints, it has reaffirmed the holding in *Dr. Miles.*[5]

It is also significant that the Supreme Court held to this view even during the same period that it openly expressed uncertainty as to the appropriate treatment of non-prive vertical restraints.[6] It, therefore, cannot be asserted—at least by resort to legal precedent—that the authorities on this point remain unsettled although that has been precisely the argument posited by the Department in its amicus filings.[7]

Congress, likewise, in 1975 affirmatively expressed its view that retail price-fixing is illegal under the antitrust laws by passing the Consumer Goods Pricing Act.[8] This action culminated a determined effort by Congress to reach a uniform policy on the RPM question that, with the benefit of past experience, would benefit consumers nationwide. The history of Congressional involvement is therefore instructive.

Following the enactment of the Sherman Act in 1890, Congress remained content with the Act's prohibition on resale price-fixing until the Depression. However, during this same period, individual states proceeded to enact "fair trade" laws, which permitted a manufacturer to enter into an agreement stipulating the minimum price at which a product could be sold. Because such laws invari-

[3] For its part, the FTC has continued to support the rule that vertical price-fixing is per se illegal, most recently in its pending action in Russell Stover Candies, Inc. v. FTC. (no. 9140, July 7, 1982) appeal docketed, No. 82-2036 (8th Cir.). (FTC Chairman Miller, dissenting).

[4] Before extending the rule to vertical price fixing, the Supreme Court first crafted the so-called "per se" standard of illegality in the context of horizontal antitrust cases. *See, e.g., United States v. Joint-Traffic Ass'n, 171 U.S. (1898); United States v. Addyston Pipe & Steel Co., 85 F.271 (6th Cir. 1898), aff'd, 175 U.S. 211 (1899).*

[5] *See* United States v. Colgate Co., 250 U.S. 300 (1919); United States v. Schrader's & Son, 252 U.S. 85 (1920); FTC. v. Beech-Nut Packing Co., 257 U.S. 441 (1922); United States v. Line Material Co., 333 U.S. 287 (1948); Kiefer-Stewart Co. v. Jos. E. Seagram & Sons, Inc., 340 U.S. 211 (1951); United States v. Parke Davis & Co., 362 U.S. 29 (1960); Simpson v. Union Oil Co., 377 U.S. 13 (1964); California Liquor Dealers v. Midcal Alumnium, Inc., 445 U.S. 97 (1980); Rice v. Norman Williams Co., 102 S.Ct. 3294, 458 U.S. ——(1982).

[6] In a 14-year period (1963-1977) the Supreme Court changed its ruling on vertical territorial restraints no less than three times, first subjecting them to a "rule of reason" analysis (White Motor Co. v. United States, 372 U.S. 253 (1963)), then declaring them illegal per se (United States v. Arnold, Schwinn & Co., 388 U.S. 365 (1967)), and finally returning to the rule of reason standard (Continental T.V. Inc., v. GTE Sylvania, Inc., 433 U.S. 36 (1977)). Throughout this time of analytical revision, the Court never considered judging vertical price-fixing under any test other than the illegal per se standard, and in *GTE Sylvania, supra,* the Court expressly noted that fact. *See* 433 U.S. at 51 n. 18.

[7] *See,* most recently, Brief of the Department of Justice, Monsanto Co. v. Spray-Rite Service Corp., No. 82-914, at pp. 5, 15-18.

[8] 89 Stat. 801 (1975), *amending* 15 U.S.C. §§ 1,45(a) (1976).

ably affected goods in interstate commerce, in violation of the federal antitrust laws, Congress responded by passing in 1937 the Miller-Tydings Act,[9] thereby exempting state fair trade laws from the reach of the Sherman Act. In 1952, Congress passed the McGuire Act,[10] which permitted suppliers even greater authority to fix resale prices by extending the privity of fair-trade contracts to "non-signer" distributors.

By 1975,[11] repeal of the fair trade laws was called for by, among others, President Ford, the Department of Justice and the Federal Trade Commission.[12] Studies conducted by the Justice Department under President Nixon indicated that the consumer would be saved $1.2 billion by the elimination of the fair trade laws and that such practices increased prices for the affected goods by 18 to 27 percent.[13] President Reagan, writing at the time for the Copley News Service, also decried these practices. In a column reprinted in the Congressional Record, Mr. Reagan condemned resale price maintenance as stifling competition, adding to inflation and bereft of consumer benefits.[14]

Congress responded decisively: After both the House and Senate Judiciary Committees unanimously reported the legislation, the Senate approved the bill by unanimous consent;[15] and the House voted 380 to 11 in favor of the bill.[16] In signing H.R. 6971 into law on December 12, 1975, President Ford succinctly stated the legislation's intended effect:

> [the Act] will make it illegal for manufacturers to fix the prices of consumer products sold by retailers. This new legislation will repeal laws . . . which amend the Federal Antitrust Laws so States could authorize *otherwise illegal agreements* between manufacturers and retailers setting the price at which the product could be sold to consumers.[17]

In this context of congressional and Supreme Court consensus, the Committee notes that in the past two years, no actions involving resale price maintenance have been brought to court. During the same interval, however, the Department has expended substantial resources to intervene on behalf of defendant-manufacturers

[9] 50 Stat. 693, *amending* 15 U.S.C. § 1 (1976).

[10] 60 Stat. 632, *amending* 15 U.S.C. §§ 45, 45 note (1976).

[11] In the interim, many states had repealed or curbed their fair trade statutes; four states had their own statutes declared unconstitutional; and 25 states have declared "non-signer" clauses to be unconstitutional. *See* P. Areeda, *Antitrust Analysis,* 517 (1974).

[12] Contemporaneous with Congress' reconsideration of the problems posed by the fair trade laws, other nations also took action to correct similar economic effects stemming from vertical price-fixing. In 1973, the West German parliament passed a law changing what had been a limited, rule-of-reason restriction on vertical price fixing to an absolute ban. *See* 1973 BGB1. 917 (1973 Amendment to Act Against Restraints of Competition). In 1976, British Parliament passed the Resale Prices Act which prohibits the enforcement by suppliers, acting individually or collectively, of a minimum resale price. *See A Review of Monopolies and Mergers Policy* (London 1978) at p. 126. Among other nations, Austria, Canada, Denmark, Finland, France, Ireland, Japan, the Netherlands, Norway, Spain and Switzerland all prohibit or severely limit resale price maintenance. *See Comparative Summary of Legislations on Restrictive Practices* (OECD Publications 1978).

[13] *See* S. Rep. No. 94-466, 94th Cong., 1st Sess., pp. 1-3 (1975).

[14] 121 Cong. Rec. 1268 (Jan. 23, 1975).

[15] 121 Cong. Rec. S20874 (Dec. 2, 1975).

[16] 121 Cong. Rec. H7104 (July 21, 1975).

[17] Public Papers of President Gerald R. Ford, vol. 11, no. 50, at p. 1368 (emphasis supplied).

charged with pricing conduct violations at both the trial and appellate levels.[18]

The Division's amicus intervention in *Monsanto Co.* v. *Spray-Rite Service Corp.* No. 82-914 (1983), is particularly disturbing. *Monsanto* is a private lawsuit involving a manufacturer's termination of a distributor of herbicides. Although neither of the parties to the action challenged the continued validity of the per se rule as applied to vertical price restraints, the Department of Justice sidestepped the narrower questions raised by the parties,[19] and urged the Supreme Court to review the case as a means of revoking the 70-year old holding in *Dr. Miles.*[20] At the very least, this expansive use of certiorari to accomplish a sweeping revision of the law relating the RPM indicates an insensitivity to the respective roles of the Congress and the Judiciary in the formulation and application of antitrust policy. More seriously, the Department's conduct in this private matter may prove to be a wholly unjustified allocation of resources in a bold attempt to circumvent the Congress.

Only last year, the Supreme Court in *Arizona* v. *Maricopa Medical Society,* 73 L.Ed. 2d 48 (1982), counselled litigants challenging the per se rule in price-fixing cases to direct their arguments for change to the Congress.[21] 73 L.Ed. 2d. at 65. The Committee considers this to be sound advice, and so indicated to Assistant Attorney General Baxter at the time of his appearance before the Subcommittee on Monopolies and Commercial Law on March 10, 1983. Thereafter, the Department has persisted in its public statements and amicus intervention projects, all aimed at overturning congressional policy in the area of resale price maintenance. The inclusion of Section 14 in H.R. 2912 is the Committee's missive that it will not tolerate change in the carefully crafted, and congressionally-approved, antitrust policy concering retail price-fixing without the consent of the people's elected representatives.

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[18] *See, e.g.,* Battle v. Lubrizol Corp., 673 F.2d 984 (8th Cir. 1982); Paschall v. Kansas City Star Co., No. 81-1963 (8th Cir. 1982); O.S.C. Corp. v. Apple Computer, No. CV-81-6132 (C.D. Cal. 1983).

[19] Before the Seventh Circuit and, now, the Supreme Court, the appellant-manufacturer has urged for reversal of a damage verdict on the familiar grounds of insufficiency of evidence and improper jury instruction.

[20] In its arguments to the Court, the Department makes the point that "while the 1975 legislation terminated the States' authority to immunize certain conduct from all antitrust scrutiny, it does not prescribe the standard for such scrutiny," DOJ Brief, at p. 17 n.26. In his subsequent appearance before the Subcommittee on Monopolies and Commercial Law, on March 10, 1983, Assistant Attorney Baxter indicated what he considered to be the appropriate test in the absence of an explicit statutory command: "Well, I call it either the rule of reason interpretation under Section 1 of the Sherman Act that Congress enacted in 1890 or, alternatively, following the Congressional language that appears throughout the Clayton Act, where the test is: Is the effect likely to significantly lessen competition?" Transcript of proceedings, at p. 55. Besides disregarding the 70 years of substantive content provided by the Supreme Court in the area of vertical price-fixing, this approach would also cast in doubt the standard to be applied to horizontal price fixing. More significant, it ignores the well documented history of the 1975 legislation that placed Congressional opinion about RPM in line with that of the Court. *See, e.g.,* H.R. 94-341, 94th Cong., 1st Sess. 2 (1975) in which it is explained:

"An agreement between a manufacturer and a retailer that a retailer will not resell the manufacturer's produce below a specified price is an obvious form of price fixing. As such, it is per se illegal under Section 1 of the Sherman Act. . . ."

[21] *Cf.* Jefferson County Pharmaceutical Ass'n v. Abbott Laboratories (No. 81-827) (Feb. 23, 1983). In that decision, involving an application of the Robinson-Patman Act, the Court stated:

"Although Congress is aware of these criticisms [of policy and effect], the Act has remained in effect for almost half a century. And it is certainly 'not for [this Court] to indulge in the business of policy-making in the field of antitrust legislation. . . . Our function ends with the endeavor to ascertain from the words used, construed in the light of relevant material, what was in fact the intent of Congress.'" *Slip Opinion* at p. 20, *quoting* United States v. Cooper Corp., 312 U.S. 600, 606 (1941).

Section 15. Transfers from Department's legal divisions

By letter dated April 19, 1983, the Department advised the Committee of a plan to transfer 125 positions from its various legal divisions to U.S. attorneys offices around the country. Of these 125 positions, 55 would come from the Antitrust Division. Approximately $6.1 million would be reallocated from the General Legal Activities and Antitrust Division appropriations to the U.S. Attorneys and Marshals appropriation. The Department explained the proposal as a response to the burgeoning caseloads of U.S. Attorneys.

In reply to follow-up questions from the Committee, the Department stated that it intended to transfer a number of vacant positions as well as 55 occupied positions from the Antitrust Division. The Department would select the 55 employees first by asking for volunteers, and if that were insufficient, by closing the Cleveland Field Office of the Antitrust Division. Next, it would adapt Reduction-in-Force procedures to select the remainder, if necessary. The Department stated it has made no estimate of the cost of training a new attorney to the point of proficiency in carrying out the work of the Antitrust Division.

The major purpose of Section 15 is to postpone the proposed reallocation to allow further study. Although the Committee is sensitive to the staggering workload of the U.S. Attorneys offices, the proposed transfer of individual employees would be a major, virtually irreversible step that would significantly deplete the law enforcement resources of the Antitrust Division.

The Committee is well aware of the specialized skills that most Antitrust Division employees possess and believes that the accumulated expertise of 55 employees should not be casually cast away. The Antitrust Division's enforcement mission is vital in the battle to control inflation and keep our industries competitive with strong foreign companies. The need for a strong, vigilant antitrust enforcement presence is heightened by the difficulties in uncovering many of the most common, and most harmful, cartel practices.

The Committee was particularly concerned with the apparantly unstudied manner in which the Department considered the closing of the Cleveland Field Office of the Antitrust Division. The Department stated that it would close this office if enough volunteer transferees were not available. The Committee considers the field offices vital in uncovering and breaking local and regional cartels that violate federal law, but may not draw the attention of Washington-based staff. Section 15 demonstrates the Committee's opposition to any proposal to close the Cleveland office without a thorough review. The Committee expects that, in the future, the Department will advise it well in advance of any decision to close, or significantly reduce the resources of, any field office of the Antitrust Division.

While Section 15 will prevent any transfer of positions from legal divisions, including the field stations of the Divisions, to the U.S. Attorneys offices, it will not prevent the Department from filling an opening in a U.S. Attorney's office that exists in the absence of any reallocation of resources by transferring a volunteer employee from a legal division of the Department.

Inflationary Impact

Rule XI, clause 2(l)(4).—The Committee believes the legislation will have no significant inflationary impact on prices and costs in the operation of the economy, even if every dollar specifically authorized by H.R. 2912 is in fact appropriated.

Oversight

Rule XI, clause 2(l)(3)(D).—No finding or recommendations of the Committee on Government Operations were received.

Rule XI, clause 2(l)(3).—The Committee views H.R. 2912 specifically, and the authorization process generally, as a critically important lever for the exercise of its oversight responsibility. While the Committee approached its inquiry in H.R. 2912 as primarily a legislative inquiry aimed at assisting the markup of a single authorization bill, the Committee believes the year-round, ongoing process of oversight engaged in by the subcommittees is greatly enhanced by the fact of the authorization process.

Estimate of Cost

Pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee states that it concurs with the estimate submitted by the Congressional Budget Office as set forth below.

Budgetary Information

Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because the instant legislation does not provide new budgetary authority. Pursuant to clause 2(l)(3)(C) of rule XI, the following estimate was prepared by the Congressional Budget Office and submitted to the Committee.

Congressional Budget Office,
U.S. Congress,
Washington, D.C., May 13, 1983.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 2912, the Department of Justice Appropriation Authorization Act, Fiscal Year 1984.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

James Blum
(for Alice M. Rivlin, Director).

Congressional Budget Office Cost Estimate

1. Bill number: H.R. 2912.

2. Bill title: Department of Justice Appropriation Authorization Act, Fiscal Year 1984

3. Bill status: As ordered reported by the House Committee on the Judiciary, May 11, 1983.

4. Bill purpose: This bill authorizes the appropriation of $3,295 million to the Department of Justice for fiscal year 1984. Of this amount, $1,056 million is for the Federal Bureau of Investigation (FBI), $607 million is for the United States prison system. The bill also authorizes such sums as may be necessary for increases in pay, retirement and other employee benefits.

In addition to these provisions, the bill limits the Attorney General's authority to transfer funds to other areas and requires the Department to make a number of reports to the Congress. The bill also allows the Director of the FBI to collect fees to cover the cost of processing fingerprint identification records for any organization other than a criminal justice agency.

The $3,295 million authorized by the bill is $130 million higher than the President's 1984 budget request for the Justice Department. A large part of this difference is attributable to an authorization for the INS that is $68 million higher than the President's request.

5. Estimated cost to the Federal Government:

[By fiscal years, in million of dollar]

	1984	1985	1986	1987	1988
Estimated authorization level:					
Function 750	3,294				
Function 920	112				
Function 150	1				
Total	3,407				
Estimated outlays:					
Function 750	2,937	317	36	4	
Function 920	107	5			
Function 150	1				
Total	3,045	322	36	4	

Basis of Estimate

The estimate assumes that the full amounts authorized will be appropriated prior to the beginning of fiscal year 1984. It also includes $112 million to reflect CBO's baseline estimate of a 5.5 percent federal pay increas for fiscal year 1984. Estimated outlays are based on historical spending patterns for the major Department of Justice programs.

6. Estimated cost to State and local government: None.

7. Estimate comparison: None.

8. Presvious CBO estimate: On May 13, 1983, CBO prepared a cost estimate for S. 1192, a bill authorizing appropriations to the Department of Justice for fiscal year 1984. That bill authorized 1984 appropriations totaling $3,314 million.

9. Estimate prepared by: Charles Essick.

Estimate approved by: C. G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

Section 408 of the Act of November 6, 1978

AN ACT TO ESTABLISH A UNIFORM LAW ON THE SUBJECT OF BANKRUPTCIES.

* * * * * * *

UNITED STATES TRUSTEE PILOT

SEC. 408. (a) * * *

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(c) Chapter 15 of title 11 of the United States Code and chapter 39 of title 28 of the United States Code are repealed, and all references to the United States trustee contained in title 28 of the United States Code are deleted, as of [April 1, 1984] *September 30, 1986.* The service of any United States trustee, of any assistant United States trustee, and of any employee employed or appointed under the authority of such chapter 39 is terminated on such date.

ADDITIONAL VIEWS OF REPRESENTATIVES EDWARD F. FEIGHAN, JOHN F. SEIBERLING, GEORGE W. CROCKETT, JR., THOMAS N. KINDNESS, AND MICHAEL DEWINE

We commend the Committee's decision to include language in Section 15 of this bill to prevent the precipitous closing by the Department of Justice of the Cleveland Field Office of the Antitrust Division. In all the materials forwarded to the Committee, there is no explanation of why the Department plans to sacrifice the Cleveland office, among all its divisions and offices.

The Cleveland Antitrust office currently has responsibility for antitrust enforcement in Ohio, Kentucky, West Virginia and eastern Michigan. The office therefore has responsibility for such major metropolitan areas as Cleveland, Detroit, Cincinnati, Louisville, Toledo and Columbus. The office covers one of the most economically diverse and industrialized regions of the country, with significant and deep-rooted linkages.

The presence of a local field office is essential to the efficient and effective enforcement of the antitrust laws. Geographic proximity and visibility are important factors in generating leads with respect to criminal price fixing and other predatory activities. Geographic proximity is also of the utmost importance in the investigation of leads. Prompt and effective investigation of leads will necessarily suffer if the investigating attorney must travel up to 500 miles to determine the validity of a complaint. In particular, the expense involved in investigating complaints may result in the decision not to follow up on otherwise meritorious allegations.

The Cleveland Field Office has been historically effective in both the civil and criminal enforcement of antitrust laws. From 1972 to 1979, of the 186 criminal cases filed by the Antitrust Division, 148 (or 80 percent) were filed by the field offices and 38 (or 20 percent) were filed by the Washington sections. Aside from generating leads and allowing for effective investigation, having a local presence is essential to subsequent enforcement efforts since attorneys in the local field office are able to become familiar with the courts, judges and attorneys in the area.

From 1977 to 1982, the Cleveland office obtained fines totaling $6.7 million stemming from criminal convictions for violations of the antitrust laws. The imposition of these fines, which greatly exceeded the Cleveland office's operating expenses, has benefitted regional consumers both in the form of direct monetary recovery and through deterrence of future unlawful conduct.

For example, the success of the Cleveland office in the highly celebrated "Supermarket Case," (United States v. First National Supermarkets, Inc. et al.), has been of direct benefit to Cleveland-area consumers, resulting in the imposition of $5 million in gross fines ($3 million suspended). A related private civil action which

dove-tailed the criminal action resulted in the distribution of $20 million in rebate coupons to area consumers.

The Committee rightly places a high value on the Antitrust Division's field offices, which afford a cost-efficient and highly effective tool for moving against regional or local antitrust violators. No acceptable justification has been advanced for the possible closing of this particular office, which has a long and distinguished record in enforcing the antitrust laws in the Cleveland metropolitan area, in the State of Ohio, and throughout the midwest.

EDWARD F. FEIGHAN
Member of Congress.
GEORGE W. CROCKETT, JR.
Member of Congress.
RICHARD M. DEWINE,
Member of Congress.
JOHN F. SEIBERLING,
Member of Congress.
THOMAS N. KINDNESS,
Member of Congress.

ADDITIONAL VIEWS OF MR. FISH

During the full Judiciary Committee's deliberations on the Department of Justice authorization bill, (H.R. 2912), I offered an amendment to facilitate the protection of federal law enforcement officials and their families when they are faced with a threat to their lifes or property. Under current rules and regulations, in life-threatening situations, agents of the FBI, INS, and DEA are forced to move to localities outside their current duty stations to protect themselves and their families. My amendment would have permitted the payment of per diem allowances to an emloyee serving in a law enforcement capacity and relocation/travel expenses for members of his immediate family, to cover the cost of a move within the employee's current duty station area when faced with such threats. Astonishingly, my amendment was defeated in the full Committee by a vote of 17 to 12.

The payment of per diem and related travel expenses is ordinarily not permitted when a federal employee relocates within the same geographic area where he or she is assigned. Under normal circumstances, this is a reasonable standard. Moving a family outside the law enforcement officer's duty station is a costly procedure in terms of money, in terms of law enforcement efficiency, and in terms of family morale. Obviously, such moves on short notice have a seriously disruptive effect on the lives of an employee's spouse and children.

As an example, given the current pattern of such incidents, the Federal Bureau of Investigation estimates that approximately 20 of these relocations for their special agents are to be anticipated in the next fiscal year. Based upon this estimate, with the cost of each relocation approximately $6,000, the cost just for FBI relocations in Fiscal Year 1984 would be $120,000. If my amendment is adopted, so as to allow temporary quarters to be maintained within the duty station area, considerable savings could be recognized by the Federal Government.

It is my intention to re-offer this amendment when the Department of Justice Authorization bill is considered on the House floor. I am hopeful that, next time, the amendment will be adopted.

HAMILTON FISH, JR.

SUPPLEMENTAL VIEWS OF MESSRS. SENSENBRENNER, FISH, MOORHEAD, KINDNESS, McCOLLUM, GEKAS AND DeWINE ON H.R. 2912

As originally introduced, H.R. 2912 contained two provisions which were vigorously opposed by the Republican Members.

The first provision would, for fiscal year 1984, have suspended the FBI's revised guidelines on domestic security/terrorism which updated and replaced the old guidelines promulgated by former Attorney General Edward Levi in 1976. The new Smith guidelines are needed to ensure protection of the public from greater sophistication and the changing nature of domestic groups that are prone to violence. In Committee, an amendment offered by Mr. Sensenbrenner to strike this provision from the bill. However, a compromise was worked out which would keep the current guidelines in effect until September 30, 1983. At that time, the new Smith guidelines would be suspended until January 1, 1984. However, we are very concerned the Committee report does not reflect the agreement on the record. As a practical matter, the only time frame that this bill can effect is fiscal year 1984, which begins on October 1, 1983. this will give the full Committee and the Justice Department time to work out an agreement. If no agreement is reached by January 1, 1984, the new Smith guidelines will go back into effect. Efforts to tinker with this provision on the House floor will receive our vigorous opposition.

For the record, the following point should be made. It has been alleged that the Smith guidelines currently in effect since March 21 would allow the FBI to investigate mere "advocacy" of detrimental statements made against our government. This is totally without foundation. The new Smith guidelines allow an investigation "when fact or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of furthering political or social goals wholly or in part through activities that involve force or violence and a violation of the criminal laws of the U.S. . . ." In determining whether an investigation should be conducted, the FBI shall consider all of the circumstances including: (1) the magnitude of the threatened harm; (2) the likelihood it will occur; (3) the immediacy of the threat; and (4) the danger to privacy and free expression posed by an investigation." Thus, it is crystal clear that "advocacy" alone of violence or terrorism will not trigger an investigation.

The second provision would have, for fiscal year 1984, prevented the Secret Service from using the FBI's national computerized telecommunications system for the surveillance of individuals who have made threats against the life of the President of the United States and other Secret Service protectees. These guildelines, which went into effect on April 27, enable the Secret Service to place into the National Crime Information Center (NCIC) computer data of

individuals considered to be threats to their protectees. This data includes the name, sex, date of birth, height, weight, hair and eye color. The Secret Service estimates this will include only about 125 persons at any one time who are not confined to penal, mental, or other institutions.

It should be noted that within two hours' implementation, an individual considered dangerous to a Secret Service protectee and whose whereabouts were unknown was stopped as a result of a traffic violation. That individual, whose residence was on the West Coast, was located in a Southern State in possession of a stolen vehicle. An amendment offered by Mr. Sensenbrenner which deleted this provision from the bill passed on a voice vote.

We should not be second guessing the Secret Service. Safeguards have been taken to ensure the information is only submitted to law enforcement personnel for law enforcement purposes. If amendments are reintroduced to change these regulations, they should be strongly opposed. We should not have to wait until another assassination attempt on a Secret Service protectee occurs to serve as an impetus for implementing these important guildelines.

JAMES F. SENSENBRENNER, JR.
GEORGE W. GEKAS
HAMILTON FISH
MICHAEL DeWINE
CARLOS MOORHEAD
THOMAS N. KINDNESS
BILL McCOLLUM

○

98TH CONGRESS
1ST SESSION

H. R. 2912

To authorize appropriations to carry out the activities of the Department of Justice for fiscal year 1984, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 1983

Mr. RODINO introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To authorize appropriations to carry out the activities of the Department of Justice for fiscal year 1984, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Department of Justice Appropriation Authorization Act, Fiscal Year 1984".

SEC. 2. There are authorized to be appropriated for fiscal year 1984, to carry out the activities of the Department of Justice (including any bureau, office, board, division, commission, or subdivision thereof) the following sums:

(1) For general administration, including—

(A) the hire of passenger motor vehicles, and

(B) miscellaneous and emergency expenses authorized or approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Assistant Attorney General for Administration:

$56,364,000.

(2) For the United States Parole Commission for its activities, including the hire of passenger motor vehicles: $7,836,000.

(3) For general legal activities, including—

(A) the hire of passenger motor vehicles,

(B) miscellaneous and emergency expenses authorized or approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Assistant Attorney General for Administration,

(C) not to exceed $20,000 for expenses of collecting evidence, to be expended under the direction of the Attorney General and accounted for solely on the certificate of the Attorney General,

(D) advance of public moneys under section 3324 of title 31, United States Code,

(E) pay for necessary accommodations in the District of Columbia for conferences and training activities, and

(F) not to exceed $50,000 which may be transferred from the "Alien Property Funds, World War II", for the general administrative expenses of alien property activities, including rent of private or Government-owned space in the District of Columbia:

$160,440,000 of which $2,753,000 shall be available for the investigation and prosecution of denaturalization and deportation cases involving alleged Nazi war criminals.

(4) For the Antitrust Division for its activities: $45,791,000.

(5) For the Foreign Claims Settlement Commission for its activities, including—

(A) services as authorized by section 3109 of title 5, United States Code,

(B) expenses of packing, shipping, and storing personal effects of personnel assigned abroad,

(C) rental or lease, for such periods as may be necessary, of office space and living quarters for personnel assigned abroad,

(D) maintenance, improvement, and repair of properties rented or leased abroad, and furnishing fuel, water, and utilities for such properties,

(E) advances of funds abroad,

(F) advances or reimbursements to other Government agencies for use of their facilities and services in carrying out the functions of the Commission,

(G) the hire of motor vehicles for field use only, and

(H) the employment of aliens:

$954,000.

(6) For United States attorneys and marshals, including—

(A) purchase of firearms and ammunition,

(B) lease and acquisition of law enforcement and passenger motor vehicles, without regard to the general purchase price limitation for the current fiscal year,

(C) supervision of United States prisoners in non-Federal institutions,

(D) bringing to the United States from foreign countries persons charged with crime, and

(E) acquisition, lease, maintenance, and operation of aircraft:

$362,707,000.

(7) For United States trustees: $10,000,000.

(8) For support of United States prisoners in non-Federal institutions, including—

(A) necessary clothing and medical aid, payment of rewards, and reimbursements to Saint Elizabeths Hospital for the care and treatment of United States prisoners, at per diem rates as authorized by section 2 of the Act entitled "An Act to authorize certain expenditures from the appropriations of Saint Elizabeths Hospital, and for other purposes", approved August 4, 1947 (24 U.S.C. 168a),

(B) entering into contracts or cooperative agreements for only the reasonable and actual cost to assist the government of any State, territory, or political subdivision thereof, for the necessary physical renovation, and the acquisition of equipment, supplies, or materials, required to improve conditions of confinement and services, of any facility which confines Federal detainees, in accordance with regulations which are to be issued by the Attorney General and which are comparable to the regulations issued under section 4006 of title 18, United States Code:

$44,768,000.

(9) For fees and expenses of witnesses, including expenses, mileage, compensation, and per diem of witnesses in lieu of subsistence, as authorized by law, including advances of public moneys: $38,266,000. No sums authorized to be appropriated by this Act shall be used to pay any witness more than one attendance fee for any one calendar day.

(10) For the Community Relations Service for its activities, including—

(A) the hire of passenger motor vehicles, and

(B) assistance provided under section 501(c) of the Refugee Education Assistance Act of 1980 (Public Law 96–422; 94 Stat. 1809) to individuals who are Cuban and Haitian entrants within the meaning of paragraphs (1) and (2)(A) of such section:

$33,238,000 of which $26,655,000 shall remain available until expended to make payments in advance for grants, contracts and reimbursable agreements and other expenses necessary to provide assistance under subparagraph (B).

(11) For the Federal Bureau of Investigation for its activities, including—

(A) expenses necessary for the detection and prosecution of crimes against the United States,

(B) protection of the person of the President of the United States and the person of the Attorney General,

(C) acquisition, collection, classification, and preservation of identification and other records and their exchange with, and for the official use of, duly authorized officials of the Federal Government, of States, of cities, and of other institutions, such exchange to be subject to cancellation if dissemination is made outside the receiving departments or related agencies,

(D) such other investigations regarding official matters under the control of the Department of Justice and the Department of State as may be directed by the Attorney General,

(E) purchase for police-type use, without regard to the general purchase price limitation for the current fiscal year, and hire of passenger motor vehicles,

(F) acquisition, lease, maintenance, and operation of aircraft,

(G) purchase of firearms and ammunition,

(H) payment of rewards,

(I) not to exceed $70,000 to meet unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General and to be accounted for solely on the certificate of the Attorney General, and

(J) classification of arson as a part I crime in its uniform crime reports:

$1,055,690,000. None of the sums authorized to be appropriated by this Act for the Federal Bureau of Investigation shall be used to pay the compensation of any employee in the competitive service.

(12) For the Immigration and Naturalization Service, for expenses necessary for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration, including—

(A) advance of cash to aliens for meals and lodging while en route,

(B) payment of allowances to aliens, while held in custody under the immigration laws, for work performed,

(C) payment of expenses and allowances incurred in tracking lost persons as required by public exigencies in aid of State or local law enforcement agencies,

(D) payment of rewards,

(E) not to exceed $50,000 to meet unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General and accounted for solely on the certificate of the Attorney General,

(F) purchase for police-type use, without regard to the general purchase price limitation for the current fiscal year, and hire of passenger motor vehicles,

(G) acquisition, lease, maintenance, and operation of aircraft,

(H) payment for firearms and ammunition, and for attendance at firearms matches,

(I) operation, maintenance, remodeling, and repair of buildings and the purchase of equipment incident thereto,

(J) refunds of maintenance bills, immigration fines and other items properly returnable, except deposits of aliens who become public charges and deposits to secure payment of fines and passage money,

(K) payment of interpreters and translators who are not citizens of the United States and distribution of citizenship textbooks to aliens without cost to such aliens,

(L) acquisition of land as sites for enforcement fences, and construction and maintenance incident to such fences,

(M) research related to immigration enforcement,

(N) payment of expenses related to the purchase of privately-owned animals for official use and expenses related to the maintenance of animals so used (whether donated, leased, hired, or purchased), and

(O) assistance provided under section 501(c) of the Refugee Education Assistance Act of 1980 (Public Law 96–422; 94 Stat. 1809) to individuals who are Cuban and Haitian entrants within the meaning of paragraphs (1) and (2)(A) of such section:

$606,807,000 of which not to exceed $100,000 may be used for the emergency replacement of aircraft upon the certificate of the Attorney General, not to exceed $160,212,000 may be used for the Border Patrol, and not to exceed $77,272,000 may be used for inspections at ports of entry.

(13) For the Drug Enforcement Administration for its activities, including—

(A) hire and acquisition of law enforcement and passenger motor vehicles, without regard to the general purchase price limitation for the current fiscal year,

(B) payment in advance for special tests and studies by contract,

(C) payment in advance for expenses arising out of contractual and reimbursable agreements with State and local law enforcement and regulatory agencies while engaged in cooperative enforcement and regulatory activities in accordance with section 503a(2) of the Controlled Substances Act (21 U.S.C. 873(a)(2)),

(D) payment of expenses not to exceed $70,000 to meet unforeseen emergencies of a confidential character to be expended under the direction of the Attorney General and to be accounted for solely on the certificate of the Attorney General,

(E) payment of rewards,

(F) payment for publication of technical and informational material in professional and trade journals and purchase of chemicals, apparatus, and scientific equipment,

(G) payment for necessary accommodations in the District of Columbia for conferences and training activities,

(H) acquisition, lease, maintenance, and operation of aircraft,

(I) research related to enforcement and drug control,

(J) contracting with individuals for personal services abroad, and such individuals shall not be regarded as employees of the United States Government for the purpose of any law administered by the Office of Personnel Management,

(K) payment for firearms and ammunition and attendance at firearms matches,

(L) payment for tort claims against the United States when such claims arise in foreign countries in connection with Drug Enforcement Administration operations abroad:

$284,473,000. Of sums authorized to be appropriated for fiscal year 1984 and made available for the purchase of evidence and payment for information (PE/PI), an amount not to exceed $1,700,000 shall remain available for expenditure until October 1, 1985.

(14) For the Federal Prison System for its activities, including—

(A) for the administration, operation, and maintenance of Federal penal and correctional institutions, including supervision and support of United States prisoners in non-Federal institutions,

(B) purchase and hire of law enforcement and passenger motor vehicles, without regard to the general purchase price limitation for the current fiscal year,

(C) compilation of statistics relating to prisoners in Federal penal and correctional institutions,

(D) assistance to State and local governments to improve their correctional systems,

(E) purchase of firearms and ammunition, and medals and other awards,

(F) payment of rewards,

(G) purchase and exchange of farm products and livestock,

(H) construction of buildings at prison camps and acquisition of land as authorized by section 4010 of title 18, United States Code,

(I) transfer to the Health Services Administration of such amounts as may be necessary, in the discretion of the Attorney General, for the

direct expenditure by such Administration for medical relief for inmates of Federal penal and correctional institutions,

(J) for Federal Prison Industries, Incorporated, to make such expenditures, within the limits of funds and borrowing authority, and in accordance with law, and to make such contracts and commitments without regard to fiscal year limitations as provided in section 9104 of title 31 of the United States Code, as may be necessary to carry out the program set forth in the budget for the current fiscal year for such corporation, including purchase and hire of passenger motor vehicles,

(K) for planning, acquisition of sites and construction of new facilities, and constructing, remodeling, and equipping necessary buildings and facilities at existing penal and correctional institutions, including all necessary expenses incident thereto, by contract or force account, to remain available until expended, and the labor of United States prisoners may be used for work performed with the sum authorized to be appropriated by this subparagraph,

(L) for carrying out the provisions of chapter 319 of title 18, United States Code, relating to the National Institute of Corrections, and

(M) assistance provided under section 501(c) of the Refugee Education Assistance Act of 1980 (Public Law 96–422; 94 Stat. 1809) to individuals who are Cuban and Haitian entrants within the meaning of paragraphs (1) and (2)(A) of such section:

$498,070,000.

(15) For organized crime drug enforcement activities relating to the detection, investigation, prosecution, and incarceration of individuals involved in organized criminal drug trafficking, not otherwise provided for: $89,949,000.

SEC. 3. Sums authorized to be appropriated by this Act may be used for—

(1) the travel expenses of members of the family accompanying, preceding, or following an officer or employee if, while he is en route to or from a post of assignment, he is ordered temporarily for orientation and training or is given other temporary duty, and

(2) benefits authorized under paragraphs (5), (6)(A), (8), and (9) of section 901 and under section

904 of the Foreign Service Act of 1980 (22 U.S.C. 4081(5) et seq.),

under regulations issued by the Secretary of State.

SEC. 4. (a) Sums authorized to be appropriated by this Act which are available for expenses of attendance at meetings shall be expended for such purposes in accordance with regulations issued by the Attorney General.

(b) Sums authorized to be appropriated by this Act may be used for the purchase of insurance for motor vehicles and aircraft operated in official Government business in foreign countries.

(c) Sums authorized to be appropriated by this Act for salaries and expenses shall be available for services as authorized by section 3109 of title 5, United States Code.

(d) Sums authorized to be appropriated by this Act to the Department of Justice may be used, in an amount not to exceed $35,000, for official reception and representation expenses in accordance with distributions, procedures, and regulations issued by the Attorney General.

SEC. 5. There are authorized to be appropriated for fiscal year 1984, such sums as may be necessary for increases in salary, pay, retirement, and other employee benefits authorized by law, and for other nondiscretionary costs.

SEC. 6. Notwithstanding the second paragraph relating to salaries and expenses of the Federal Bureau of Investiga-

tion in the Department of Justice Appropriation Act, 1973 (Public Law 92–544; 86 Stat. 1115), sums authorized to be appropriated by this Act for such salaries and expenses may be used in fiscal year 1984 for the purposes described in such paragraph.

SEC. 7. (a) With respect to any undercover investigative operation of the Federal Bureau of Investigation which is necessary for the detection and prosecution of crimes against the United States or for the collection of foreign intelligence or counterintelligence—

(1) sums authorized to be appropriated for the Federal Bureau of Investigation by this Act may be used for purchasing property, buildings, and other facilities, and for leasing space, within the United States, the District of Columbia, and the territories and possessions of the United States, without regard to section 1341 of title 31 of the United States Code, section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)), section 305 of the Act of June 30, 1949 (63 Stat. 396; 41 U.S.C. 255), the third undesignated paragraph under the heading "Miscellaneous" of the Act of March 3, 1877 (19 Stat. 370; 40 U.S.C. 34), section 3324 of title 31 of the United States Code, section 3741 of the Revised Statutes (41 U.S.C. 22), and subsections (a) and (c) of section 304 of the Federal Property and Ad-

ministrative Services Act of 1949 (63 Stat. 395; 41 U.S.C. 254(a) and (c)),

(2) sums authorized to be appropriated for the Federal Bureau of Investigation by this Act may be used to establish or to acquire proprietary corporations or business entities as part of an undercover investigative operation, and to operate such corporations or business entities on a commercial basis, without regard to section 9102 of title 31 of the United States Code,

(3) sums authorized to be appropriated for the Federal Bureau of Investigation by this Act, and the proceeds from such undercover operation, may be deposited in banks or other financial institutions, without regard to section 648 of title 18 of the United States Code and section 3302 of title 31 of the United States Code, and

(4) the proceeds from such undercover operation may be used to offset necessary and reasonable expenses incurred in such operation, without regard to section 3302 of title 31 of the United States Code,

only upon the written certification of the Director of the Federal Bureau of Investigation (or, if designated by the Director, an Executive Assistant Director) and the Attorney General (or, if designated by the Attorney General, the Deputy Attorney General), that any action authorized by paragraph

(1), (2), (3), or (4) of this subsection is necessary for the conduct of such undercover operation. Such certification shall continue in effect for the duration of such undercover operation, without regard to fiscal years.

(b) As soon as the proceeds from an undercover investigative operation with respect to which an action is authorized and carried out under paragraphs (3) and (4) of subsection (a) are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited in the Treasury of the United States as miscellaneous receipts.

(c) If a corporation or business entity established or acquired as part of an undercover operation under paragraph (2) of subsection (a) with a net value of over $50,000 is to be liquidated, sold, or otherwise disposed of, the Federal Bureau of Investigation, as much in advance as the Director or his designee determines is practicable, shall report the circumstances to the Attorney General and the Comptroller General. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(d)(1) The Federal Bureau of Investigation shall conduct a detailed financial audit of each undercover investigative operation in which covert activities are concluded in fiscal year 1984, and each undercover investigative operation in which

covert activities are concluded before fiscal year 1984 but which is closed in such fiscal year, and—

(A) submit the results of such audit in writing to the Attorney General, and

(B) submit a report to the Congress concerning such audit. In the case of an undercover investigative operation initiated or directed by the head of a major field office of the Federal Bureau of Investigation, such report shall be submitted not later than one year after such covert activities are concluded. In the case of any other undercover investigative operation, such report shall be submitted not later than two years after such covert activities are concluded.

(2) The Federal Bureau of Investigation shall also submit a report annually to the Congress specifying—

(A) the number, by programs, of undercover investigative operations pending as of the end of the one-year period for which such report is submitted,

(B) the number, by programs, of undercover investigative operations commenced in the one-year period preceding the period for which such report is submitted, and

(C) the number, by programs, of undercover investigative operations closed in the one-year period preceding the period for which such report is submitted

and, with respect to each such closed undercover operation, the results obtained. With respect to each such closed undercover operation which is significant, such report shall contain a detailed description of the operation and related matters, including information pertaining to—

(i) the results,

(ii) any civil claims, and

(iii) any unusual or substantial legal, managerial, and other issues,

that arose at any time during the course of such undercover operation.

(e) For purposes of subsection (d)—

(1) the term "closed" refers to the earliest point in time at which—

(A) all criminal proceedings (other than appeals) are concluded, or

(B) covert activities are concluded,

whichever occurs later,

(2) the term "employees" means employees, as defined in section 2105 of title 5 of the United States Code, of the Federal Bureau of Investigation,

(3) the term "significant" means involving—

(A) any of the sensitive circumstances specified in the undercover guidelines established by the Attorney General, or

(B) any unusual number or type of results, civil claims, or unusual or substantial legal, managerial, or other issues, and

(4) the terms "undercover investigative operation" and "undercover operation" mean any undercover investigative operation of the Federal Bureau of Investigation (other than a foreign counterintelligence undercover investigative operation)—

(A) in which—

(i) the gross receipts (excluding interest earned) exceed $50,000, or

(ii) expenditures (other than expenditures for salaries of employees) exceed $150,000, and

(B) which is exempt from section 3302 or 9102 of title 31 of the United States Code.

SEC. 8. (a) The Attorney General shall perform—

(1) periodic evaluations of the overall efficiency and effectiveness of the Department of Justice programs and any supporting activities funded by appropriations authorized by this Act, and

(2) annual specific program evaluations of selected subordinate organizations' programs,

as determined by the priorities set either by the Congress or the Attorney General.

(b) Subordinate Department of Justice organizations and their officials shall provide all the necessary assistance and cooperation in the conduct of evaluations described in subsection (a), including full access to all information, documentation, and cognizant personnel, as required for such evaluations.

(c) Completed evaluations performed under subsection (a) shall be made available to the Committee on the Judiciary of the Senate, the Committee on the Judiciary of the House of Representatives, and to other appropriate committees.

SEC. 9. During the fiscal year for which appropriations are authorized by this Act, each organization of the Department of Justice, through the appropriate office within the Department of Justice, shall notify in writing the Committee on the Judiciary of the Senate, the Committee on the Judiciary of the House of Representatives, other appropriate committees, and the ranking minority members thereof, not less than fifteen days before—

(1) reprograming of funds in excess of $250,000 or 10 per centum, whichever is less, between the programs within the offices, divisions, and boards as de-

fined in the Department of Justice's program structure submitted to the Committees on the Judiciary of the Senate and House of Representatives,

(2) reprograming of funds in excess of $500,000 or 10 per centum, whichever is less, between programs within the Bureaus as defined in the Department of Justice's program structure submitted to the Committees on the Judiciary of the Senate and the House of Representatives,

(3) any reprograming action which involves less than the amounts specified in paragraphs (1) and (2) if such action would have the effect of making significant program changes and committing substantive program funding requirements in future years,

(4) increasing personnel or funds by any means for any project or program for which funds or other resources have been restricted,

(5) creation of new programs or significant augmentation of existing programs,

(6) reorganization of offices or programs, and

(7) significant relocation of offices or employees.

SEC. 10. Notwithstanding section 501(e)(2)(B) of the Refugee Education Assistance Act of 1980 (Public Law 96–422; 94 Stat. 1810), funds may be expended for assistance

with respect to Cuban and Haitian entrants as authorized under section 501(c) of such Act.

SEC. 11. (a) The Attorney General shall transmit a report to each House of the Congress in any case in which the Attorney General—

(1) establishes a policy to refrain from the enforcement, in fiscal year 1984, of any provision of law enacted by the Congress, the enforcement of which is the responsibility of the Department of Justice, because of the position of the Department of Justice that such provision of law is not constitutional, or

(2) determines that the Department of Justice will contest, or will refrain from defending, in fiscal year 1984, any provision of law enacted by the Congress in any proceeding before any court of the United States, or in any administrative or other proceeding, because of the position of the Department of Justice that such provision of law is not constitutional.

(b) Any report required under subsection (a) shall be transmitted not later than thirty days after the Attorney General establishes the policy specified in subsection (a)(1) or makes the determination specified in subsection (a)(2). Each such report shall—

(1) specify the provision of law involved,

(2) include a detailed statement of the reasons for the position of the Department of Justice that such provision of law is not constitutional, and

(3) in the case of a determination specified in subsection (a)(2), indicate the nature of the judicial, administrative, or other proceeding involved.

(c) During fiscal year 1984 and notwithstanding any other provision of law, in any case in which the Attorney General determines that the Department of Justice will refrain from defending or will contest the constitutionality of any statute or provision of law, or in which the Attorney General determines that the Department of Justice will bring, or authorizes the bringing of, an action challenging or contesting the validity of any statute or provision of law, the Attorney General shall not proceed in the name of the United States, but only in the name of the agency or department on whose behalf the Attorney General appears, or the President if the Attorney General appears on the President's behalf.

SEC. 12. Section 408(c) of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2687(c)) is amended by striking out "April 1, 1984" and inserting in lieu thereof "September 30, 1986".

SEC. 13. During fiscal year 1984, the Attorney General may exercise the authority under paragraphs (1), (2), and (3)

of section 534(a) of title 28, United States Code, only to acquire, collect, classify, and preserve—

(1) criminal identification, crime, and other similar criminal records, and

(2) records relating to the identification of individuals who are deceased or reported as missing.

SEC. 14. All investigations conducted in fiscal year 1984 by the Federal Bureau of Investigation of activities relating to domestic security shall be conducted in accordance with—

(1) The Attorney General's Guidelines on Domestic Security Investigations,

(2) The Attorney General's Guidelines on Use of Informants in Domestic Security, Organized Crime, and Other Criminal Investigations, and

(3) The Attorney General's Guidelines on FBI Undercover Operations,

as in effect on October 1, 1982.

SEC. 15. None of the sums authorized to be appropriated by this Act may be used for any activity the purpose of which is to overturn or alter the per se prohibition of resale price maintenance, in effect under the Federal antitrust laws.

SEC. 16. None of the sums authorized to be appropriated by this Act may be used to transfer any position from any legal division of the Department of Justice to any office

of any United States Attorney or to pay the salary of any employee occupying any such position so transferred after April 1, 1983.

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