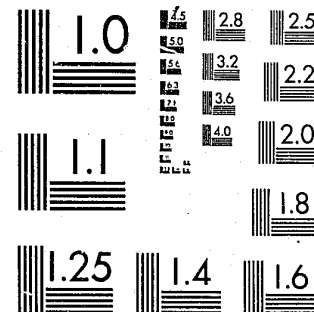


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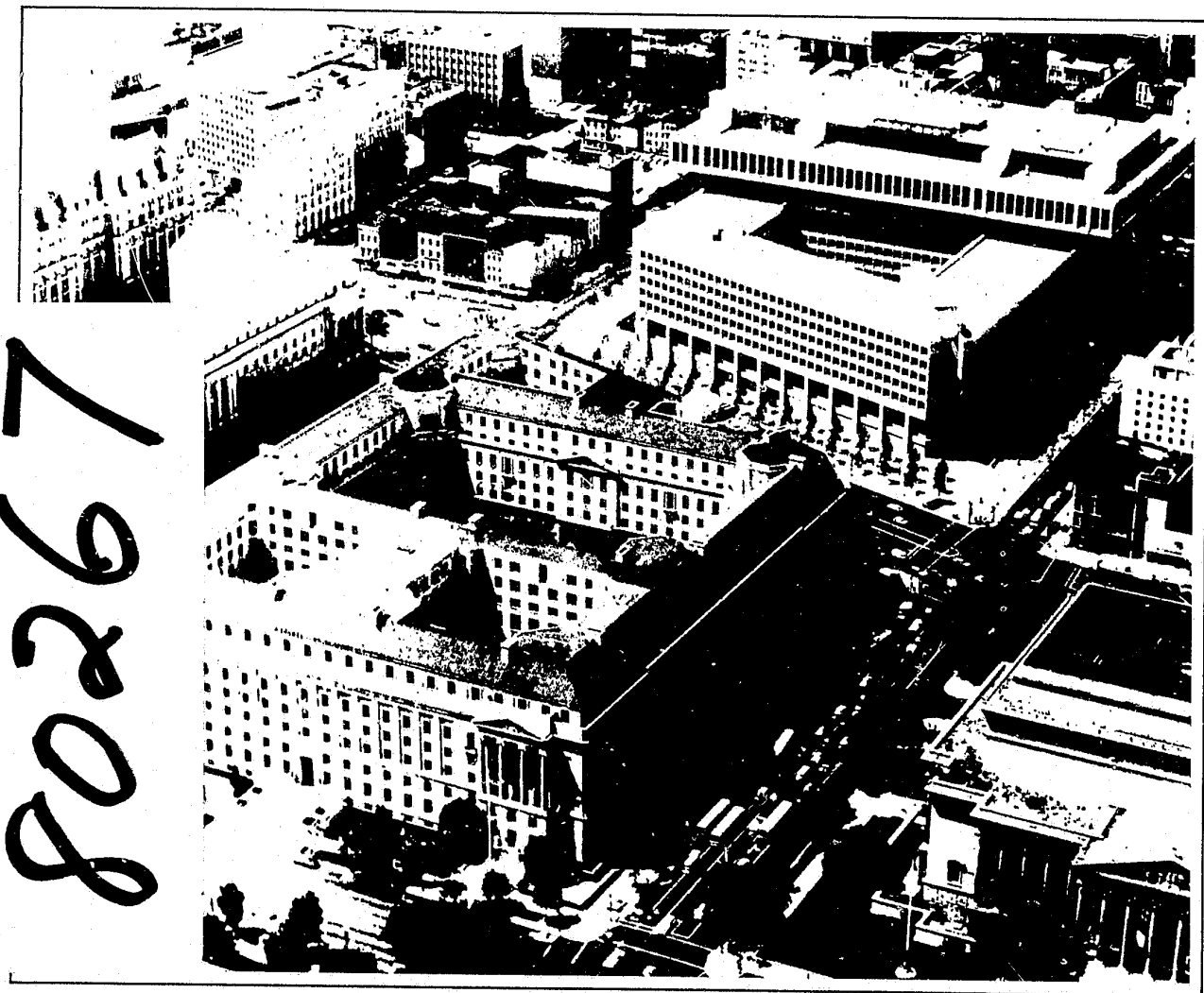
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Office of the Attorney General

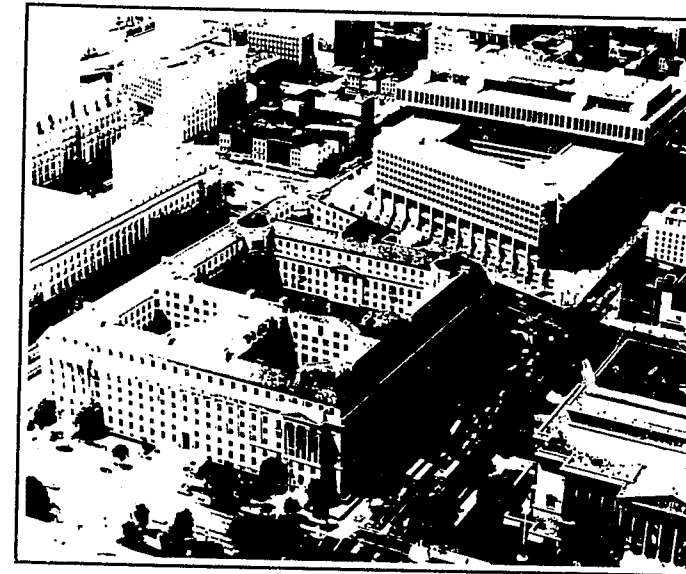


MF-1

The Annual Report of the Attorney General of the United States 1980



The Annual Report of the Attorney General of the United States 1980



U.S. Department of Justice
National Institute of Justice

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ACQUISITIONS

Summary of Activities and Accomplishments Fiscal Year 1980

The Department of Justice experienced unprecedented challenges in fiscal year 1980 — the massive influx of refugees, the Abscam investigations and prosecutions, and the intricate dealings with Iran come most readily to mind — but these complex twelve months also underscored the need to adhere to basic principles such as professionalism, evenhandedness and openness in all of the Department's affairs.

In keeping with the wishes of Attorney General Civiletti, the Department gave high priority to vesting the enforcement of the criminal law with greater rationality and planning, the better to remove the high risk of disparate treatment.

Close attention was also paid to the continuing work of selecting a broadly representative group of men and women to fill places on the significantly expanded federal bench. During the combined tenures of Attorney General Griffin Bell and Attorney General Civiletti, more than 250 nominations — an unprecedented number — were processed by the Department.

Passage of the Refugee Act of 1980, which became effective April 1, 1980, provided a new definition of "refugee." It increased the annual quota of refugees from 17,400 to 50,000 and allows the President, after consultation with the House and Senate Judiciary Committees, to determine whether conditions necessitate the admission of more than the 50,000 ceiling.

As a result of the American hostage situation in Iran, a revised regulation was issued for the maintenance of status for nonimmigrant students from Iran. Over 75 percent of the estimated 75,000 Iranian students in the United States complied with the regulation. The regulation was in accordance with President Carter's mandate that any Iranian students not in compliance with the terms of their entry visas be identified and, where appropriate, subjected to deportation proceedings.

The sudden arrival of many thousands of Cubans and Haitians in the United States without overseas processing and valid documentation prompted the Administration to introduce special legislation to regularize the status of Cuban-Haitian entrants. Until the enactment of such legislation, Cubans and Haitians who were in Immigration and Naturalization Service proceedings as of October 10, 1980, were recalled to have their temporary admission into the country renewed until January 15, 1981 as "Cuban-Haitian entrants (status pending)."

Investigative efforts by the Federal Bureau of Investigation (FBI) against organized crime resulted during the year

in 597 convictions, including a number of members and associates of traditional organized crime groups. Cases against more than 850 other organized crime subjects were still pending at the close of the fiscal year.

While the FBI pressed its Organized Crime Program, approximately 23 percent of the Bureau's investigative manpower was devoted to handling white-collar crime investigative matters — an effort that resulted in nearly 3,200 convictions. Additionally, more than \$151.3 million in ill-gotten gains was recovered and potential economic losses prevented totaled \$706.2 million.

Other significant accomplishments by the FBI included:

Public Corruption — During the first three quarters of fiscal year 1980, convictions increased by 16 percent over the previous year.

Financial Crimes — Bank fraud and embezzlement investigations resulted in approximately \$35.8 million in recoveries and more than \$15.7 million in potential economic loss prevented.

Foreign Counterintelligence — Several international political events had substantial impact from a counterintelligence perspective. Among them were the sudden influx of Cuban refugees and the Iranian and Afghanistan crises. These upheavals taxed the FBI's counterintelligence resources, already sorely strained to meet the needs growing out of the normalization of relations with the People's Republic of China and the unceasing flow of Soviet emigres to the United States.

Civil Rights — Of 69 misdemeanor convictions and 29 felony convictions obtained in civil rights cases investigated by the FBI, 47 misdemeanor and two felony convictions involved interference provisions of the Fair Housing Act and 11 felony convictions were obtained in cases involving the Involuntary Servitude and Slavery statutes.

Terrorism — the Terrorism Section made numerous arrests of individuals from organizations that resort to such tactics as assassination, firebombing and kidnapping to gain their ends. This program was also responsible for the successful management of the security for the 1980 Lake Placid Olympics, the expulsion of the Iranian diplomats from the United States in April 1980, and the contingency planning for terrorist acts occurring during the Republican and Democratic National Conventions.

Identification of victims — The specially trained group of fingerprint experts who comprise the FBI Disaster Squad assisted in the identification of the victims of an airplane

crash which occurred on March 14, 1980, at Warsaw, Poland, including 22 boxers, coaches, trainers, and officials of a U.S. Amateur Athletic Union Boxing Team. The squad also assisted in the identification of victims of the eruption of Mount St. Helens in Washington State on May 18, 1980. Of 47 victims examined in these two disasters, 26 were identified by fingerprints or footprints.

The Antitrust Division filed 83 cases in fiscal year 1980, including 55 criminal cases — more than the criminal tally for any year since 1942. The division initiated a major criminal enforcement program in the road building and airport construction industries; more than a score of corporations were prosecuted for conspiracies to rig bids on public highway and airport construction. Conspiracies to fix the resale price of goods sold to consumers were also singled out for enforcement priority.

Criminal Division activities were as wide-ranging as participation in negotiations with seven nations on new extradition treaties and the first prosecutions produced by Abscam.

The division's Organized Crime and Racketeering Section secured convictions of the Kansas City crime syndicate leader for bribing a prison warden, a former New York syndicate boss for obstructing justice, and the entire hierarchy of a Rochester, New York, faction for offenses arising from a mob war.

In the battle against white-collar crime, the division expanded to 21, from seven, the number of Economic Crime Enforcement Units concerned with fraud and public corruption. Increased emphasis on energy-related fraud matters resulted in a \$500,000 fine in the first conviction of a producer of natural gas, a \$1 million fine for evading federal controls on natural gas shipments, and \$20 million in civil penalties and refunds in the settlement of a case in which two petroleum companies and three top executives pleaded guilty to pricing violations.

In the national security area, a Belgian national pleaded guilty to violating the Export Administration Act and the Commercial Bribery Statute of Virginia. The charges grew out of his efforts to obtain sensitive computer information on behalf of foreign business interests. In another spy case, a Navy enlisted man was sentenced to eight years on his plea to one count of espionage.

In its efforts against public corruption at all levels of government, the Public Integrity Section created an Election Crimes Branch to oversee federal election prosecutions. In addition to its participation in Abscam prosecutions, the section's major accomplishments included the conviction of the former head of the Federal Highway Administration for misapplication of government program funds to defraud the government, and the convictions of the former Director of the Bureau of Engraving and Printing, and his former assistant, for conflict of interest.

The Office of Intelligence Policy and Review (OIPR)

promulgated a series of procedures governing a broad range of intelligence activities. OIPR analyzed, negotiated, interpreted, and facilitated Attorney General approval of over 30 discrete sets of procedures required under Executive Order 12036 to regulate the intelligence activities of the FBI, National Security Agency, Central Intelligence Agency, Departments of Defense and Treasury. OIPR also prepared and delivered comments and recommendations concerning the proposed intelligence charter legislation and performed interpretative, coordinating, drafting and analytic functions for the Administration in this regard. The office also participated in the development of the Department of Justice's proposals for amendments to the Freedom of Information Act and new criminal proscriptions against the revelation of the identities of undercover intelligence personnel.

Another major project was OIPR's comprehensive revision of the Attorney General's FBI Foreign Intelligence and Foreign Counterintelligence Guidelines, first promulgated in 1976. The revision incorporated new procedures mandated by Executive Order 12036 and addressed ambiguities in the previous guidelines which were identified during the past several years.

As part of the President's reorganization of the executive branch, the Legal Education Institute was moved to the Department of Justice and became a part of the newly-formed Office of Legal Education within the Executive Office for U.S. Attorneys. The institute, formerly a part of the Civil Service Commission, is charged with providing continuing legal education for lawyers of all the federal departments and agencies. First courses were held in June.

The Attorney General's Advocacy Institute, established in 1973 and now a part of the Office of Legal Education, continued to expand the scope and depth of its courses, training over 2,100 Assistant U.S. Attorneys and other Department lawyers during the year.

The pilot phase of a project to automate caseload management was begun in four districts varying in size and caseload volume. Expansion of the project to all U.S. Attorney Offices is contingent upon the results of this sample.

The Justice Management Division (JMD) was established during the early part of fiscal year 1980 in concert with the Attorney General's efforts to improve the administration and management of the Department.

Noteworthy projects initiated or completed by the division in fiscal year 1980 included implementation of a multi-pronged strategy for affirmative action set forth by the Attorney General. In addition to affirmative action plans for each component of the Department, the plan includes a talent bank for women and minorities and employment review committees for personnel actions above the GS-12 level.

JMD also undertook audits of complex programs, with an emphasis on the detection of waste, fraud, and error in

Department activities. Responsibility for budget formulation, review, and execution, previously located in separate staffs, was consolidated in one staff, permitting more comprehensive knowledge of program operations.

The Office for Improvements in the Administration of Justice (OIAJ), which had done much of the preparatory work, was gratified by the enactment of the Dispute Resolution Act. This statute creates a resource center in the Department to promote nonjudicial resolution of minor civil disputes and will provide seed money grants to the states to establish innovative dispute resolution mechanisms. OIAJ also helped draft legislation to create a new Court of Appeals merging the Court of Claims and the Court of Customs and Patent Appeals.

During the first year of expanded jurisdiction in the investigation and apprehension of federal fugitives, the U.S. Marshals Service succeeded in making arrests in 10,000 out of 15,000 cases. A major unanticipated call for help to which the Marshals Service responded was occasioned by the massive influx of Cuban refugees. The Marshals Service's Special Operations Group provided security assistance at several of the refugee holding camps. The group also assisted with the Iranian consulate problem and updated its training and operational capabilities, with emphasis on counter-terrorist tactics.

During fiscal year 1980, the Land and Natural Resources Division filed the first 50 hazardous waste cases under section 7003 of the Resource Conservation and Recovery Act, including one addressing the highly publicized Love Canal site in the state of New York. The division also successfully defeated, in a series of appellate cases, attempts to keep the Secretary of the Interior from continuing oil and gas leasing programs on the outer continental shelf.

In the pollution control area, the division successfully defended the government in the first of a series of major constitutional challenges to provisions of the Clean Air Act requiring certain states to adopt automobile emission control inspection and maintenance programs.

The year saw many significant changes in world drug traf-

ficking patterns, most serious of which was the shift in majority opium cultivation and supply from Mexico to Southwest Asia (Iran, Pakistan and Afghanistan).

The opium crop from Southwest Asia, estimated at 1,600 metric tons in 1979, made available an estimated 50 metric tons of heroin for the illicit world market.

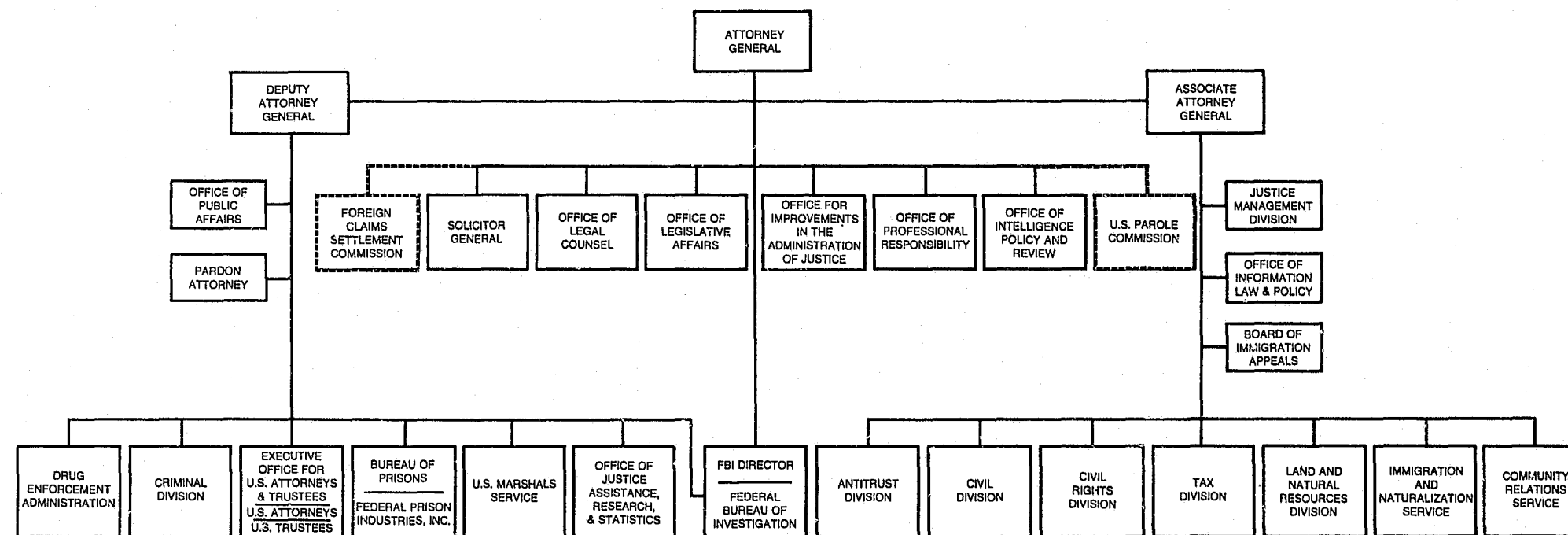
To combat this threat, the Drug Enforcement Administration created a Special Action Office for Southwest Asian heroin. This office and the Office of Intelligence initiated a Domestic Monitor Program in 17 cities to provide federal, state and local authorities with intelligence.

During the initial year of operations of the U.S. Trustee system, a Chapter 7 liquidation proceeding was filed by a methadone center located in a large eastern city. The threatened termination of treatment led to a great amount of publicity, including demonstrations and threatened violence. The U.S. Trustee arranged for another medical facility to operate the debtor's facility temporarily and obtained court approval for the continued operation of the facility until addicts could be transferred to another program.

The Civil Division improved significantly its case tracking information system with expanded management reporting capability and development of workload analysis systems. This enhanced the division's effectiveness in areas of emerging importance that included:

- International Law — the myriad of litigation arising from the taking of hostages in Iran.
- Transportation Safety — the defense of regulations which authorize expenditures over the next 30 years to make public transportation accessible to the handicapped and a variety of automobile "recall" litigation to correct safety risks.
- Energy Law — the defense of the constitutionality of the Natural Gas Policy Act, a cornerstone of the comprehensive National Energy Act of 1978.
- Tort Product Liability — defense of the United States for alleged injuries from exposure to radiation, to "Agent Orange" chemical herbicide, and to asbestos.

U.S. Department of Justice



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Office of the
Deputy Attorney General

Charles B. Renfrew
Deputy Attorney General

The Deputy Attorney General's primary task is to assure the fair and professional administration of criminal justice. He implements the policies of the Attorney General, acts as the Attorney General in his absence, and assists the Attorney General in directing the day-to-day activities of all criminal justice units of the Department. These units are the Criminal Division, Bureau of Prisons, Drug Enforcement Administration, Executive Office for U.S. Attorneys, Federal Bureau of Investigation, U.S. Marshals Service, INTERPOL, and the Pardon Attorney.

The Deputy Attorney General also supervises the handling of criminal matters in the Antitrust, Civil Rights, Land and Natural Resources, and Tax Divisions. Final recommendations from the Department of Justice on all petitions for executive clemency are made by the Deputy Attorney General to the President.

As part of his responsibility for the Department's investigative functions, the Deputy Attorney General has sought to improve the review and oversight of law enforcement activities. He has, for example, taken steps to ensure that investigations are conducted as expeditiously as possible. He has additionally overseen the development of guidelines that provide for formal approval of proposed undercover operations by the Criminal Division and the Federal Bureau of Investigation and should increase the effectiveness of those operations.

The Deputy Attorney General coordinated the law enforcement effort necessitated by the mass immigration of Cubans to Florida this year. He directed the development and implementation of law enforcement policies to meet the actions of boat runners and pilots involved in the flotilla, and directed and coordinated the effort to provide adequate security in the processing camps.

The Deputy Attorney General has taken an active role in shaping the federal government's response to the serious threat of increasing supplies of heroin from Southwest Asia (Iran, Afghanistan, and Pakistan). Because of the magnitude of the threat that the record opium harvest in Southwest Asia poses both to the United States and to the American servicemen stationed in Western Europe, the President has made the fight against Southwest Asian heroin an Administration priority. The Deputy Attorney General has actively worked not only to strengthen the response of the Drug Enforcement Administration, the Criminal Division, and the U.S. Attorneys, but also to improve the ability

of affected states and cities to respond effectively to this threat.

At the direction of the President and the Attorney General, the Deputy Attorney General has been coordinating interdepartmental law enforcement efforts. The Deputy Attorney General chairs the Executive Group to Combat Fraud and Waste in Government. Since its formation in May 1979, the Executive Group has sought to curtail fraud in government programs through the coordinated investigation and enforcement efforts of the Inspectors General and the Federal Bureau of Investigation. The Deputy Attorney General has also been actively involved in the organization of the Law Enforcement Coordination Council, which includes representatives of all major federal law enforcement agencies and provides a forum for the discussion and resolution of issues of government-wide importance. In addition, a member of the Deputy Attorney General's staff chairs an interdepartmental working group of the National Security Council that was created to improve compliance with, and explore new initiatives related to, the export control laws.

The Deputy Attorney General also supervises the activities of the agencies established by the Justice System Improvement Act: the Office of Justice Assistance, Research, and Statistics; the Law Enforcement Assistance Administration, including the Office of Juvenile Justice and Delinquency Prevention; the National Institute of Justice; and the Bureau of Justice Statistics. As part of the Administration's effort to balance the federal budget, the Law Enforcement Assistance Administration is currently being phased-out. The Deputy Attorney General is closely monitoring this phase-out to ensure that it is accomplished in an orderly and responsible manner.

The Deputy Attorney General additionally oversees the Office of Small and Disadvantaged Business Utilization which was established on October 1, 1979. This office was mandated by Public Law 95-507 which amended the Small Business Act to provide for assistance to small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals. The office has already made significant progress in ensuring that such concerns receive the maximum practicable opportunity to participate in the performance of contracts let by the Department.

Among the most important management responsibilities

of the Deputy Attorney General is reviewing the budget submissions of the units under his jurisdiction and making final budget recommendations to the Attorney General. In accordance with the mandate of the President and the Attorney General, budget requests are examined closely to ensure conformity with policy direction and effective use of available resources.

The Deputy Attorney General has been actively involved in a number of the Department's legislative initiatives. For example, he participated in the successful effort to enact the *Stanford Daily* legislation, which will protect the news media from unnecessary searches without interfering with effective law enforcement, and the graymail legislation, which will facilitate the trial of cases involving sensitive national security information. Other legislative activity has included the agent identities bill, which would protect intelligence agents from unauthorized disclosures of their identity that threaten their life and work, and amendments

to the Tax Reform Act of 1978, which would permit more effective utilization of information obtained by the Internal Revenue Service without impairing the necessary privacy of tax returns.

The Deputy Attorney General served as the head of the United States Delegation to the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. He is a principal participant in the interagency Executive Committee and the related Working Group to Combat Terrorism in this country. He is also responsible for coordinating and controlling the Department's reaction to civil disturbances.

The Deputy Attorney General serves on the Under Secretaries Group of the Council for Urban Affairs and the Interagency Council for Minority Business Enterprise. He has also served as the Department's representative to various Presidential task forces.

Office of the Associate Attorney General

John H. Shenefield Associate Attorney General

As the third-ranking official of the Department, the Associate Attorney General acts as Attorney General in the absence of the Attorney General and the Deputy Attorney General. The Associate Attorney General is responsible for the Department's civil law activities, and supervises the work of the Antitrust, Civil, Civil Rights, Land and Natural Resources and Tax Divisions, as well as the Immigration and Naturalization Service, Board of Immigration Appeals, Community Relations Service, Office of Information Law and Policy, and the Justice Management Division.

Most government agencies are represented by the Department of Justice lawyers when the agencies are involved in civil litigation. The vast majority of such cases require coordination between the client agencies and Department litigators. One function of the Associate Attorney General's Office is to review the manner in which this litigation is handled — both to improve the quality of representation and to assure that the positions being presented in court represent the views of the United States.

In providing direction for the activities of the Immigration and Naturalization Service, the Associate Attorney General handles a wide-range of policy and management issues. During fiscal year 1980, these efforts have been directed at several emergencies — including the massive Cuban flotilla to Florida, the ever-increasing flow of Haitians into the country, and the registration of over 50,000 Iranian students in the United States as a result of the crisis caused by Iran's seizure of American hostages.

At the direction of the Attorney General, the Associate Attorney General established and chaired the Steering Committee for the President's Management Improvement Council project in the Immigration and Naturalization Service. The project is a comprehensive, independent management effort to assist the Service, by working closely with senior agency officials, in finding long-term solutions to fundamental operational deficiencies. Information systems and automation have been the project's priority assignment. Significant improvements also have been achieved in the planning, procurement, fiscal management, and personnel practices of the agency. The office has worked closely with the White House and executive agencies in the passage of the Refugee Act of 1980, development of the Cuban/Haitian Entrant legislation, and the work of the Select Commission on Immigration and Refugee Policy — a statutory body of which the Attorney General is a member.

Another important function of the Office of the Associate Attorney General is the responsibility for directing the Department's efforts to recruit talented, young lawyers to replace experienced attorneys who either retire each year or who go into private law firms or other agencies. The Associate Attorney General oversees the hiring of all attorneys by components of the Department under his supervision and for other units within the Department not supervised directly by the Attorney General or the Deputy Attorney General.

The Associate Attorney General's Office administers the Attorney General's Employment Program for Honor Law Graduates, which recruits outstanding third-year law students and judicial law clerks for permanent attorney positions in the Department's litigating divisions. During fiscal year 1980, 2,566 applications were received for this program, representing virtually every law school and Federal Judicial District in the country. Department attorneys interviewed approximately 1,504 candidates, and 127 of the highest-qualified individuals were hired. Each year, the Associate Attorney General's Office also coordinates the hiring of second-year law students to serve as Summer Law Interns. This program is scholastically oriented and highly competitive. In the 1980 selection process, 915 candidates competed for 122 summer positions in the Department.

During the past year, the Associate Attorney General's Office has been the focal point of intensive efforts initiated by the Attorney General to improve the management of litigation and the use of computers within the Department. Working with the Attorney General's Special Assistant for Litigation, the office coordinated the development of a "plan for compatible, comprehensive case management information and tracking systems" required by the Department's 1980 Authorization Act. The plan, submitted to the Congress by the Attorney General on April 15, 1980, committed the Department to the development of a center for coordinating the collection of litigation information obtained from the various divisions and the U.S. Attorneys' Offices. Following through on that commitment, the Attorney General created on July 30, 1980, the Department of Justice Information Systems Center.

The Information Systems Center will also oversee development of two systems for which the Department was given responsibility by Executive Order 12146. The Litiga-

tion Notice System will alert lawyers with certain types of cases that similar cases are being litigated elsewhere in the government. The government-wide Automated Legal Research System will, using systems already in existence where possible, make automated legal research available to all government agencies.

The Office of the Associate Attorney General has responsibility for coordinating the efforts of and providing staff support for the Federal Legal Council. The council, established by Executive Order 12146, is composed of the General Counsel of 15 executive agencies and is chaired by the Attorney General. The council works to improve management of federal legal resources. In fiscal year 1980, the council held three meetings and studied a number of issues involving the efficient and effective management of

federal legal resources. Annual reports were requested and received from all federal agencies. These reports will set the agenda for further action.

The Office of the Associate Attorney General oversees the operation of the Office of Privacy and Information Appeals. This office processes administrative appeals from initial denials of data requested under the Freedom of Information Act and Privacy Act. It also processes initial requests for records of the Offices of the Attorney General, Deputy Attorney General and Associate Attorney General, provides staff support to the Department Review Committee which reviews classified records and carries out various other responsibilities under the Freedom of Information Act and Privacy Act. During the year, it will complete the processing of more than 2,500 administrative appeals.

Office of the Solicitor General

Wade H. McCree, Jr.
Solicitor General

The Solicitor General, with the assistance of a small staff of attorneys, is responsible for conducting and supervising all aspects of government litigation in the Supreme Court of the United States. In addition, the Solicitor General reviews every case litigated by the federal government that a lower court has decided against the United States, to determine whether to appeal, and also decides whether the United States should file a brief as *amicus curiae* in any appellate court.

A significant part of the work of the office involves government agencies that have conducted lower court litigation themselves such as the National Labor Relations Board and the Securities and Exchange Commission. In addition, many cases arise from activities of executive departments of the government.

During the past term of the Supreme Court (July 3, 1979 to July 2, 1980), the office handled 2,023 cases, 42 percent of the 4,781 cases of the Court's docket as compared to 38 percent a decade ago [Table I]. Of the 3,902 cases acted on during the term, there were 1,498 in which the government appeared as the respondent, 67 petitions for writs of *certiorari* filed or supported by the government and 24 cases in which it appeared as *amicus curiae* supporting the respondent [Table II-A]. During the same period, the court acted upon 12 appeals filed or supported by the government and 15 cases where the office either represented the appellee or appeared as *amicus curiae* supporting the appellee [Table II-B]. In addition, the office participated in nine cases on the court's original docket [Table II-D].

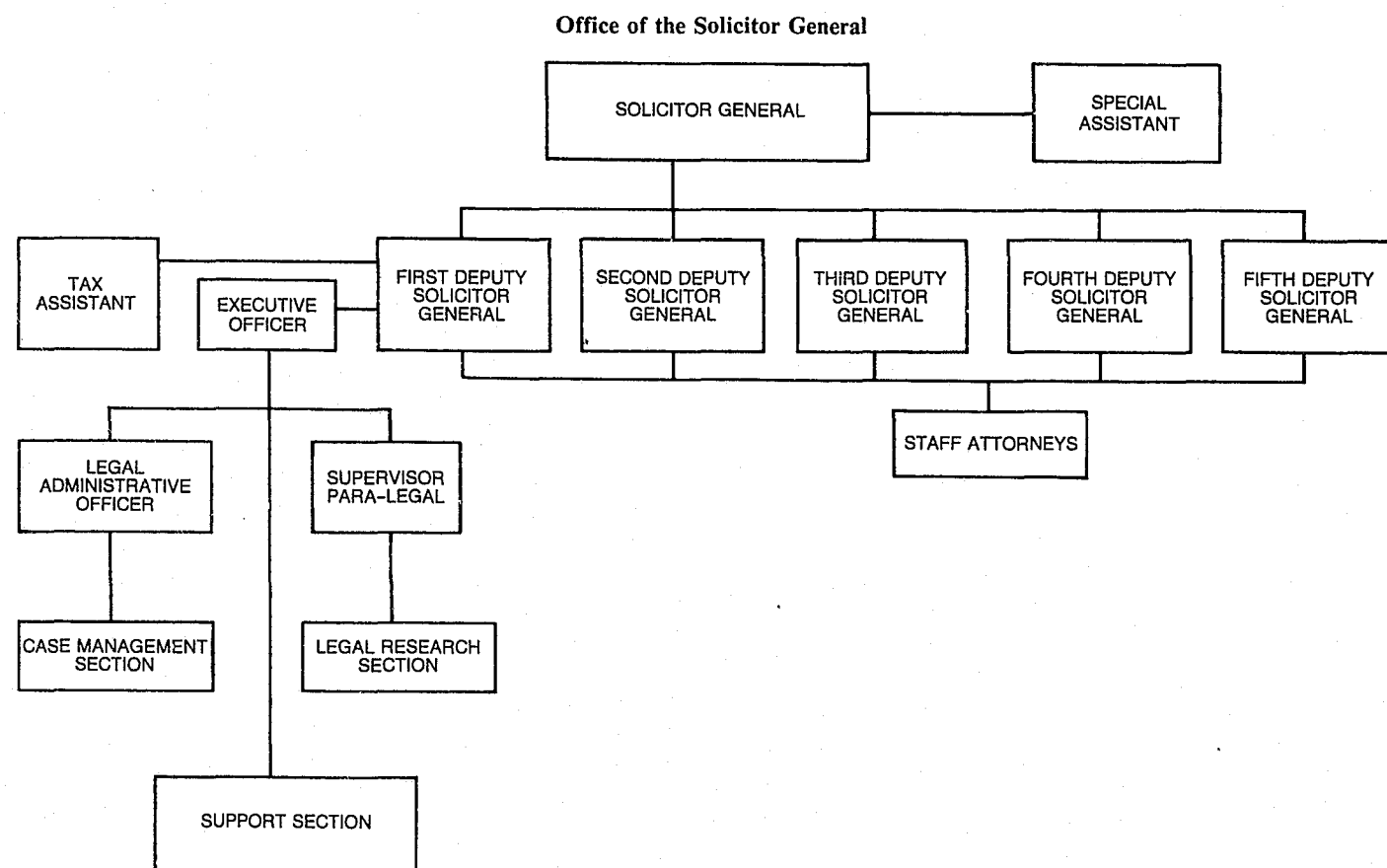
Of the 3,590 petitions for writs of *certiorari* docketed and acted upon, only six percent were granted during the term. Of those filed or supported by the United States (excluding two protective petitions which were denied when the opposing petitions were likewise denied) 80 percent were granted. This reflects the careful screening of the government cases by the Solicitor General and his staff before the decision is made to file a petition. Of the 12 appeals filed or supported by the government, probable jurisdiction was noted by the court in three [Tables II-A and B].

The government participated in argument or filed briefs as *amicus curiae* in 108 (69 percent) of 156 cases argued on the merits before the Supreme Court. Six of these cases were decided after reargument and one was carried over for argument in the 1980 term. Of the cases decided on the merits, with or without argument, the government participated in

158 of 281 cases, 66 percent of which were decided in favor of the government's position and two percent of which were decided partially in favor of the government's position.

During the same period, there were 426 cases in which the Solicitor General decided not to petition for *certiorari*, two cases in which he decided not to take a direct appeal and 1,517 cases in which the Solicitor General was called upon to decide whether to authorize taking a case to one of the courts of appeals, plus 251 miscellaneous matters. This made a total of 4,219 substantive matters the office handled during the year.

Government cases handled by the Office of the Solicitor General resulted in the following decisions by the Supreme Court among 156 cases heard on the merits: 1) the provisions of the Public Works Employment Act setting aside ten percent of federal construction grants for minority business enterprises are constitutional (*Fullilove v. Secretary of Commerce*, No. 78-1007); 2) the Freedom of Information Act requires federal agencies to disclose only those nonexempt documents that are within their custody and control (*Forsham v. Harris*, No. 78-1118); 3) the Federal Rules of Evidence do not embrace a common law "legislative privilege" that prohibits the federal government from introducing evidence of legislative acts by a state legislator in a federal criminal prosecution (*United States v. Gillock*, No. 78-1455); 4) the Occupational Safety and Health Act allows an employee to refuse to perform an assigned task where he has a reasonable apprehension of death or serious injury and no less drastic alternative is available (*Whirlpool Corp. v. Marshall*, No. 78-1870); 5) illegally-obtained evidence may be used for impeachment of a defendant's statement made in response to proper cross-examination (*United States v. Havens*, No. 79-305); 6) the Hyde Amendment, which prohibits the expenditure of federal funds to provide abortions under the Medicaid program except where the life of the mother is in danger, is constitutional (*Harris v. McRae*, No. 79-1268); 7) nursing home residents have no due process right to a hearing before a state may revoke the home's authority to provide them with nursing care at government expense (*O'Bannon v. Town Court Nursing Center*, No. 78-1318); 8) the Equal Employment Opportunity Commission may seek classwide relief under Title VII of the Civil Rights Act without being certified as the class representative under Rule 23 of the Federal Rules of Civil Procedure (*General Telephone Company of the Northwest*



v. *Equal Employment Opportunity Commission*, No. 79-488); 9) a judge may consider, as one factor in imposing sentence, whether the defendant has refused to cooperate with law enforcement authorities in investigating related criminal activity (*Roberts v. United States*, No. 78-1793); 10) under the enforcement section of the Fifteenth Amendment, Congress is not limited to prohibiting purposeful discrimination but may outlaw voting practices that are discriminatory in effect (*City of Rome v. United States*, No. 78-1840); 11) the statute requiring the government to prove expatriation only by a preponderance of the evidence is constitutional (*Vance v. Terrazas*, No. 78-1143); and 12) the civil penalty provisions of the child labor statute are constitutional (*Marshall v. Jerico*, No. 79-253). In addition, the Office of the Solicitor General was successful in defending the President's decision to terminate the treaty with Taiwan and in persuading the court not to review a challenge to the Attorney General's regulations requiring the verification of alien status of Iranian students (*Goldwater v. Carter*, No. 79-856, and *Narenji v. Civiletti*, No. 79-1270).

The Office of the Solicitor General filed briefs as a friend

of the court in many other cases, including cases in which the court held that: 1) the real estate brokerage business is within the coverage of the Sherman Act (*McLain v. Real Estate Board of New Orleans, Inc.*, No. 78-1501); 2) Title VII of the Civil Rights Act authorizes a federal court to award the prevailing party attorney's fees for legal services performed in prosecuting an employment discrimination claim in state administrative or judicial proceedings in which Title VII requires federal claimants to invoke (*New York Gaslight Club v. Carey*, No. 79-192); 3) an agreement among competitors to eliminate the extension of trade credit constitutes a per se violation of the Sherman Act (*Catalano, Inc. v. Target Sales*, No. 79-1101); 4) states may apply their workers' compensation schemes to land-based injuries that fall within the coverage of the Longshoremen's and Harbor Workers' Compensation Act (*Sun Ship, Inc. v. Commonwealth of Pennsylvania, et al.*, No. 79-243); and 5) states may permit individuals to exercise free speech and petition rights on property of a privately-owned shopping center to which the public is invited (*PruneYard Shopping Center v. Robins*, No. 79-289).

Table I
Office of the Solicitor General—Supreme Court Litigation
October Term, 1979
(July 3, 1979—July 2, 1980)
Total Cases

	1975		1976		1977		1978		1979	
	No.	%	No.	%	No.	%	No.	%	No.	%
1. Total number of cases on dockets	4760	100	4829	100	4704	100	4734	100	4781	100
a. Brought over from preceding Term	821	17	955	20	812	17	837	18	795	17
b. Docketed during the Term	3939	83	3874	80	3892	83	3897	82	3986	83
2. Disposition of cases on dockets at the Term:										
Total	4760	100	4829	100	4704	100	4734	100	4781	100
a. Cases acted upon and closed	3804	80	4017	83	3867	82	3939	83	3811	78
b. Cases acted upon but not closed	101	2	92	2	80	2	93	2	91	2
c. Cases docketed but not acted upon	855	18	720	15	757	16	702	15	879	18
3. Cases carried over to next Term	956		812		837		795		970	
4. Classification of cases acted upon at the Term:										
Total	3905	100	4109	100	3944	100	4030	100	3902	100
a. Certiorares	3586	92	3790	92	3664	93	3763	93	3648	93
b. Appeals	224	6	260	7	195	5	187	5	170	4
c. Miscellaneous Docket, original writs	84	2	53	1	77	2	64	2	71	2
d. Original Docket	10		6		8		16		13	
e. Certifications	1									
5. Cases participated in by the Government	2219	47	2444	51	2243	48	2211	47	2023	42
6. Cases not participated in by the Government	2541	53	2385	49	2461	52	2523	53	2758	58

Table II-A
Office of the Solicitor General
Classification of Cases Upon Which the Supreme Court Has Acted
This does not include cases in which the Court has merely acted on application for stays, extensions of time, or similar matters, or denied petition for rehearing

	1975		1976		1977		1978		1979	
	No.	%	No.	%	No.	%	No.	%	No.	%
A. PETITIONS FOR WRITS OF CERTIORARI										
1. Total number docketed and acted upon	3506	100	3720	100	3594	100	3715	100	3590	100
a. Petitions filed or supported by Govt:	69	2	59	2	68	2	68	2	67	2
(1) Government as petitioner	50	2	48	2	57	2	52	2	55	2
(2) Government as amicus, supporting petitioner	19		11		11		16		12	
b. Petitions not filed or supported by Government	3437	98	3661	98	3526	98	3647	98	3523	98
(1) Government as respondent	1506	43	1880	51	1653	46	1723	46	1498	42
(2) Government as amicus, supporting respondent	30	1	21		21		20	1	24	1
(3) No participation by Govt.	1901	54	1760	47	1852	52	1904	51	2001	56
2. Total number of petitions granted	236	7	233	6	188	5	212	6	222	6
a. Petitions filed or supported by Govt:	55	80	45	76	40	59	49	72	53	79
(1) Government as petitioner	38	76	37	77	33	58	37	71	43	78
(2) Government as amicus, supporting petitioner	17	90	8	73	7	64	12	75	10	84
b. Petitions not filed or supported by Govt:	181	5	188	5	148	4	163	4	169	5
(1) Government as respondent	42	3	77	4	49	3	51	3	51	3
(2) Government as amicus, supporting respondent	24	80	8	38	10	48	14	70	11	46
(3) No participation by Government	115	6	103	6	89	5	90	5	107	5
3. Total number of petitions denied or dismissed	3252	92	3465	93	3379	94	3473	93	3354	94
a. Petitions filed or supported by Govt:	14	20	14	24	28	41	16	24	12	18
(1) Government as petitioner	12 ¹	24	11 ¹	23	24 ¹	42	12 ¹	23	11 ¹	20
(2) Government as amicus, supporting petitioner	2	10	3	27	4	36	4	25	1	8
b. Petitions not filed or supported by Govt:	3238	94	3451	94	3351	95	3457	95	3342	95
(1) Government as respondent	1458	97	1789	96	1592	96	1664	97	1445	97
(2) Government as amicus, supporting respondent	6	20	13	62	11	52	6	30	13	54
(3) No participation by Government	1774	93	1649	94	1748	94	1787	94	1884	94
4. Total number of petitions mooted or dismissed	18	1	22	1	27	1	30	1	14	0

¹Includes protective and cross-petitions denied upon government recommendation after disposition of related cases.
NOTE: Percentages based on participation.

Table II-B, C, D, E
Office of the Solicitor General
Classification of Cases Upon Which the Supreme Court Has Acted

	1975		1976		1977		1978		1979	
B. APPEALS	No.	%	No.	%	No.	%	No.	%	No.	%
1. Total number docketed and acted upon	205	100	232	100	180	100	162	100	153	100
a. Appeals filed or supported by Govt:	13	6	23	10	16	9	9	6	12	8
(1) Government as appellant	11	5	17	7	11	6	8	5	10	7
(2) Government as amicus, supporting appellant	2	1	6	3	5	3	1	1	2	1
b. Appeals not filed or supported by Govt:	192	94	209	90	164	91	153	94	141	92
(1) Government as appellee	26	13	26	11	16	9	12	7	15	10
(2) Government as amicus, supporting appellee	5	2	6	3	5	3	6	4	5	3
(3) No participation by Government	161	79	177	76	143	79	135	83	121	79
2. Total number dismissed, affirmed or reversed without argument	163	80	188	81	136	76	131	81	124	81
a. Appeals filed or supported by Govt:	5	39	14	61	10	63	3	33	3	25
(1) Government as appellant	3	27	12	71	8	73	3	37	3	30
(2) Government as amicus, supporting appellant	2	100	2	33	2	40	-	-	-	-
b. Appeals not filed or supported by Govt:	158	82	174	83	126	77	128	84	121	86
(1) Government as appellee	20	77	22	85	12	75	9	75	13	87
(2) Government as amicus, supporting appellee	4	80	4	67	1	20	3	50	2	40
(3) No participation by Government	134	83	148	84	113	79	116	86	106	88
3. Total number Jurisdiction Noted or set for argument	42	20	44	19	44	24	31	19	29	19
a. Appeals filed or supported by Govt:	8	61	9	39	6	37	6	67	9	75
(1) Government as appellant	8	73	5	29	3	27	5	63	7	70
(2) Government as amicus, supporting appellant	0	-	4	67	3	60	1	100	2	100
b. Appeals not filed or supported by Govt:	34	18	35	17	38	23	25	16	20	14
(1) Government as appellee	6	23	4	15	4	25	3	25	2	13
(2) Government as amicus, supporting appellee	1	20	2	33	4	80	3	50	3	60
(3) No participation by Government	27	17	29	16	30	21	19	14	15	12
C. MISCELLANEOUS DOCKET—ORIGINAL WRITS										
1. Total number of applications for original writs docketed and acted upon	84	100	53	100	77	100	64	100	71	100
a. Filed or supported by Government	0	-	0	-	0	-	0	-	0	-
(1) Government as petitioner	0	-	0	-	0	-	0	-	0	-
(2) Government as amicus, supporting petitioner	0	-	0	-	0	-	0	-	0	-
b. Not filed or supported by Government	84	100	53	100	77	100	64	100	71	100
(1) Government as respondent	29	34	18	34	28	36	20	31	25	35
(2) Government as amicus, supporting respondent	0	-	0	-	0	-	0	-	0	-
(3) No participation by Government	55	66	35	66	49	64	44	69	46	65
2. Total number decided without argument	84	100	53	100	77	100	64	100	71	100
a. Filed or supported by Government	0	-	0	-	0	-	0	-	0	-
(1) Government as petitioner	0	-	0	-	0	-	0	-	0	-
(2) Government as amicus, supporting petitioner	0	-	0	-	0	-	0	-	0	-
b. Not filed or supported by Government	84	100	53	100	77	100	64	100	71	100
(1) Government as respondent	29	34	18	34	28	36	20	31	25	35
(2) Government as amicus, supporting respondent	0	-	0	-	0	-	0	-	0	-
(3) No participation by Government	55	66	35	66	49	64	44	69	46	65
3. Total argued or set for argument	0	-	0	-	0	-	0	-	0	-
a. Filed or supported by Government	0	-	0	-	0	-	0	-	0	-
(1) Government as petitioner	0	-	0	-	0	-	0	-	0	-
(2) Government as amicus, supporting petitioner	0	-	0	-	0	-	0	-	0	-
b. Not filed or supported by Government	0	-	0	-	0	-	0	-	0	-
(1) Government as respondent	0	-	0	-	0	-	0	-	0	-
(2) Government as amicus, supporting respondent	0	-	0	-	0	-	0	-	0	-
(3) No participation by Government	0	-	0	-	0	-	0	-	0	-
D. ORIGINAL DOCKET										
1. Total number acted upon	10	100	6	100	8	100	16	100	13	100
a. Government participating	6	60	3	50	4	50	10	63	9	69
b. Government not participating	4	40	3	50	4	50	6	37	4	31
E. CERTIFICATES										
1. Total number of certificates docketed and acted upon	1	100	0	-	0	-	0	-	0	-
a. Government participating	1	100	0	-	0	-	0	-	0	-
b. Government not participating	0	-	0	-	0	-	0	-	0	-

Percentages based on participation.

Table III
Office of the Solicitor General
Classification of Supreme Court Cases Argued or Decided on Merits

	1975	1976	1977	1978	1979
A. ARGUED					
1. All cases argued	179	100	176	100	164 ¹
2. Government participating	121	68	99	56	97
a. Government as petitioner or appellant ²	44	36	29	29	35
b. Government as respondent or appellee ³	32	27	36	36	40
c. Government as amicus ⁴	45 ¹	37	34 ¹	35	22 ¹
3. Government not participating	58	32	77	44	67
B. DECIDED ON MERITS WITH OR WITHOUT ARGUMENT					
1. All cases decided on merits ¹	351	100	372	100	276
2. Government participating	175	50	186	50	139
a. Decided in favor of Government's position ²	134	77	111	60	87
b. Decided against Government's position ²	33	19	64	34	41
c. Not classifiable as for or against ³	8	4	11	6	11
3. No participation by Government	176	50	186	50	137

¹ Includes cases summarily affirmed, reversed or vacated on the *In Forma Pauperis* Docket.

² Percentage is based on the total cases in which the Government participated.

³ Includes cases in which the Government filed briefs as *amicus curiae* but did not participate in the argument.

⁴ Includes cases set for reargument in succeeding Term.

Office of Legal Counsel

John M. Harmon
Assistant Attorney General

The principal function of the Office of Legal Counsel (OLC) is to assist the Attorney General in his role as legal adviser to the President and agencies in the executive branch. The office is headed by an Assistant Attorney General who has three deputies and, at present, a legal staff of 16 attorneys. The office drafts the Attorney General's formal opinions and renders its own formal and informal opinions on a variety of legal questions involving the operations of the executive branch.

Formal Attorney General opinions are relatively few in number and ordinarily involve issues of major significance. Legal advice provided directly by OLC itself is much more frequent. During fiscal year 1980, approximately 460 OLC opinions were issued to over 25 agencies of the government other than the Department of Justice. These opinions covered a wide range of legal questions, including both matters of constitutional interpretation and statutory construction. Examples of federal laws interpreted by this office during fiscal year 1980 include the International Emergency Economic Powers Act and the War Powers Resolution. Additionally, the office has been called on to interpret provisions in a number of recently enacted laws, including the Refugee Act of 1980 and the Energy Security Act. The office gives informal opinions and advice on a regular basis to components within the Department of Justice, and in the last year OLC rendered approximately 480 such opinions. The office is also called on to provide written opinions on constitutional issues raised by proposed legislation, and provided approximately 170 written opinions in this area.

All proposed executive orders and certain Presidential proclamations are reviewed by the office as to form and legality before issuance. During the past year, the office passed on more than 97 of these.

The office has continued to provide assistance to the President's Personal Representative for Micronesian Status Negotiations in connection with the arrangement of a new status for the Trust Territory of the Pacific Islands. A representative of the office also serves on the Secretary of State's Advisory Committee on Private International Law. The office chairs the Department Review Committee, which supervises and hears appeals concerning the declassification

of documents involving national security.

Although the office conducts no litigation, it is called on to advise and to assist other divisions of the Department in making litigation strategy judgments and in the preparation of briefs and memoranda relating to constitutional or statutory issues within the office's areas of expertise. For instance, the office assisted with litigation involving the Department of Interior's surface mining regulations, and the Department of Labor's Comprehensive Employment and Training Act regulations. It also assisted in the Department's handling of litigation that arose during the course of the crisis in Iran, including the presentation of the United States' case before the International Court of Justice. It assists the Attorney General, the Deputy Attorney General, the Associate Attorney General, and the Office of Legislative Affairs in preparing legislation desired by the Department.

The office also prepared and delivered congressional testimony on a number of other matters, including legislation providing for the disapproval by concurrent or by one-House resolutions of rules and regulations issued by the executive branch, the role of age in the selection of federal judges and various regulatory reform proposals.

In addition to assisting the Attorney General in his capacity as legal adviser to the executive branch, the office serves as his counsel with respect to Department activities. In this capacity, it reviews all orders and regulations submitted for the Attorney General's issuance.

The office has also taken on — at the direction of the Attorney General — the responsibility for publishing its legal opinions so that others in the Executive Branch and the public can have access to them. Historically, only the formal Attorney General Opinions have been published, but in recent years there have been few such opinions while the numbers of important legal opinions issued by this office has continued to increase. The first volume, containing approximately 90 selected OLC opinions from the first year of the Carter Administration, was published in January 1980 and the second volume, including opinions issued in 1978 and opinions issued to the President's Counsel in 1977 and 1978, will be published soon.

Office of Legislative Affairs

Alan A. Parker
Assistant Attorney General

The Office of Legislative Affairs (OLA) serves two primary functions. First, it helps formulate and coordinate legislative policy among the Department's offices, boards, divisions and bureaus. Second, it maintains Department liaison with Congress and other government departments and agencies.

OLA recommends and coordinates development of the Department's legislative proposals and its positions on legislation originating in Congress or referred for comment by the Office of Management and Budget. It monitors Congressional committees for matters of interest to the Department, and provides assistance to the President's staff in formulating the Administration's bills and in seeking their approval by Congress. OLA provides or arranges for testimony by Department witnesses at Congressional hearings and handles requests for information relating to Congressional investigations or constituent inquiries.

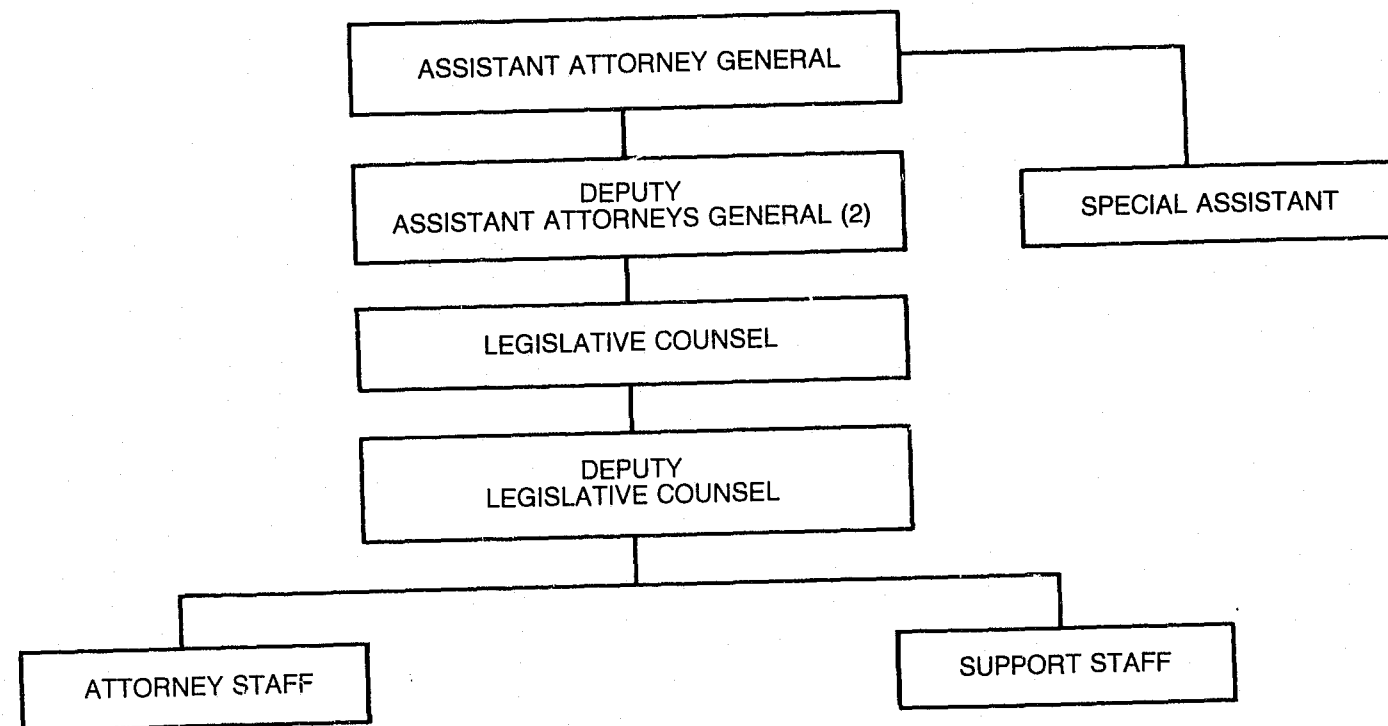
The volume of legislative business during the second session of the 96th Congress was substantial. OLA handled 1,109 requests for reports to Congress and the Office of Management and Budget on legislative proposals. Department witnesses testified at 136 congressional hearings. Responses were prepared to more than 10,000 letter inquiries from Congress, other agencies, or the public. Approximately 10,000 telephone inquiries were received from Congress and other sources.

Major legislative matters to which the office devoted substantial resources during the session include:

- The proposed new Federal Criminal Code, which would provide for the first time an integrated compendium of virtually all federal statutes and rules concerning crimes, the criminal justice process, and related matters.
- A Rights of Institutionalized Persons proposal which would authorize the Attorney General to bring actions for redress in cases involving deprivations of rights of institutionalized persons. This measure was signed by the President on May 27, 1980, as P.L. 96-247.
- "Stanford Daily legislation," which will provide a broad press protection statute covering the states as well as the federal government. With limited exceptions, it will preclude searches for the "work product" of any person preparing material to be published and distributed in interstate commerce. This bill was approved by the President on October 13, 1980, as P.L. 96-440.

- A "court improvement package," which would create a new Court of Appeals for the Federal Circuit and provide for various significant justice system improvements of a housekeeping nature.
- A "Dispute Resolution Act," which would create a minor dispute resolution resource center in the Department and provide seed money grants to states for creation of minor dispute resolution projects. This measure was signed by the President on February 12, 1980, as P.L. 96-190.
- Legislation to provide judicial procedures for the handling of classified information in criminal cases involving intelligence matters (the so-called "Graymail" proposal). This legislation was signed by the President on October 15, 1980, as P.L. 96-456.
- An "Intelligence Identities Protection Act," creating penalties for intentionally identifying a covert intelligence agent.
- Amendments to the Civil Rights Act of 1968 giving the Department of Housing and Urban Development administrative enforcement authority in housing discrimination cases.
- Amendments to the False Claims Act to facilitate the Department's efforts, through litigation, to deal with the growing problems posed by fraud and corruption in the government procurement process.
- A "Program Fraud Civil Penalties Act," which would provide an administrative alternative to judicial proceedings in smaller cases involving fraud against the government.
- Intelligence charter legislation, which provides statutory guidelines for the activities of intelligence entities and the congressional oversight process regarding intelligence activities.
- Regulatory reform legislation.
- Juvenile Justice and Delinquency Prevention Act amendments extending for four years the authorization of the Law Enforcement Assistance Administration to administer the Juvenile Justice and Delinquency Prevention Act and for funding authorization to combat juvenile delinquency and improve the juvenile justice system.

Office of Legislative Affairs



- "Tax Disclosure Amendments," which would facilitate federal law enforcement access to tax information in nontax criminal cases by clarifying ambiguities in existing law, streamlining disclosure procedures, and

making appropriate distinctions between privacy rights of organizations as contrasted with those of natural persons.

Office for Improvements in the Administration of Justice

Maurice Rosenberg
Assistant Attorney General

The Office for Improvements in the Administration of Justice (OIAJ) is the unit of the Department of Justice primarily responsible for developing measures to improve the systems of justice — civil and criminal, state as well as federal — with special emphasis on the federal judicial system. To carry out this mission, the office has a staff of 20 professionals, including six persons trained in social research. OIAJ works closely with other units of the Department, other federal agencies, the courts, and Congress to improve the capacities and performance of the courts and to enhance citizen access to them.

The work of OIAJ is conducted primarily within the framework of a two-year agenda adopted in 1977 and updated in 1979. The program has four major goals:

- To assure access to effective justice for all citizens.
- To reduce the impact of crime on citizens and the courts.
- To reduce impediments to justice unnecessarily resulting from separation of powers and federalism.
- To promote these goals by increasing and improving research.

The projects undertaken by OIAJ to achieve these goals fall generally into three categories: developing and supporting the enactment of legislative improvements in the justice system; formulating recommendations for improvements within the Department itself; and designing, financing, and overseeing related research efforts and demonstration projects. The work of OIAJ relates closely to the Attorney General's priorities of encouraging reforms in the overall system of justice and encouraging the use of research and demonstration projects to address the potential of specific proposals for systemwide improvements.

In fiscal year 1980, Congress enacted the Dispute Resolution Act, legislation developed by OIAJ to create a resource center within the Department to develop and promote innovative means of nonjudicial resolution of minor civil disputes and to provide seed money grants to the states to set up new forms of dispute-resolution mechanisms. The office will have responsibility for implementing the program at such time as funds are made available. In addition, the office worked with the Congress in the development of the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, legislation that establishes uniform procedures by which members of the judiciary can consider and

respond to allegations of misconduct or disability against federal judges.

During the year, OIAJ supported the enactment by the 96th Congress of a number of other bills developed in whole or in part by the office. These legislative proposals are:

Arbitration: Proposed legislation authorizes the use of mandatory, court-annexed arbitration on the experimental basis in federal district courts for the resolution of certain types of civil cases involving money damages only. In connection with this proposal, OIAJ has been monitoring the operation of arbitration programs established by local rule in 1978 with OIAJ assistance in three federal district courts.

Class Actions: OIAJ took the lead in developing a proposal that substitutes new statutory class damage suits in place of actions under Rule 23(b)(3) of the Federal Rules of Civil Procedure, and improves access to the courts for small businesses in civil penalty actions by government agencies.

Diversity Jurisdiction: OIAJ continues to support legislation substantially curtailing the grounds for lodging suits in federal courts based on the diverse state citizenship of the litigants.

Federal Criminal Code Reform: OIAJ has continued to work with the Criminal Division and other units of the Department to provide major assistance to the House and Senate Judiciary Committees in an effort to revise, reform and codify federal criminal laws.

Intermediate Federal Appellate Court: Another major bill OIAJ has developed would create a new Court of Appeals for the Federal Circuit through the merger of the Court of Claims and the Court of Customs and Patent Appeals. The bill also would effect a number of significant court improvements of a "housekeeping" nature.

Supreme Court Jurisdiction: OIAJ has proposed and supported the enactment of legislation that would convert the Supreme Court's appellate jurisdiction entirely to *certiorari* jurisdiction except with respect to appeals from three-judge courts.

Other important projects to which OIAJ devoted its energies in fiscal year 1980 include:

Affordable Litigation: OIAJ is attempting to develop means of enabling persons involved in disputes over modest sums of money to resolve those disputes through legal processes that are not disproportionately costly compared with the amounts at stake. One approach being explored consists of a unique combination of simplified procedures and at-

torney fee shifting provisions. Comments on the proposed approach are being solicited. If the proposal appears to have merit and wins departmental support, it will be incorporated into a model statute or rule designed for adoption by state authorities on a trial basis.

Handgun Control: During fiscal year 1980, OIAJ continued to develop empirical data that will inform future legislative and administrative initiatives to achieve control of the criminal misuse of handguns.

Prosecutorial Discretion: On the basis of extensive research and a study conducted by OIAJ of the prosecutorial policies and practices of U.S. Attorneys, the office developed and the Attorney General promulgated a set of Principles of Federal Prosecution designed to promote the reasoned exercise of prosecutorial discretion by attorneys for the government.

United Nations Congress on Crime Prevention and Treatment of Offenders: Representatives of OIAJ participated in the United States delegation to the Sixth United Nations Congress on Crime Prevention and Treatment of Offenders in Caracas, Venezuela. The Congress discussed international crime statistics, minimum standards for juvenile justice, and transfer of offenders.

The Federal Justice Research Program, administered by OIAJ, contracts for research on aspects of the civil and criminal justice systems related to the projects of the office or to other concerns of the Department. During fiscal year 1980, the \$1.7 million appropriation for the program was used to support a broad range of research projects, including:

1) A large-scale study of the history and characteristics of selected groups of claims to determine why some were taken to court for resolution while others were resolved by alternative mechanisms. This project will provide basic data shedding light on the important problem of correlating different dispute-settling mechanisms with the types of civil disputes they are most effective in resolving.

2) A study of the disposition of certain types of criminal cases by U.S. Attorneys' Offices in order to improve the process of allocating prosecutorial responsibility between state and federal authorities for criminal conduct that violates both state and federal laws.

3) A project to develop an empirical method for assessing the potential impact on the federal justice system of changes in substantive legislation or procedural rules. The focus of the effort is to develop means of estimating resources that will be saved or additionally required in consequence of proposed statutory or potential rule changes.

4) A two-year study of the activities and attributes of state

and federal courts and of their place in contemporary American society. The study is being conducted by the Council on the Role of Courts, an advisory group composed of distinguished judges, lawyers and scholars. It is expected that the study will produce published research on the work of courts and that it will develop principles and criteria that will be useful in determining which disputes to channel to the courts and which to send to nonjudicial agencies. The Council also will hold a national conference at which these issues will be explored.

5) A long-range study to develop data required for the formulation and evaluation of sentencing guidelines for the federal courts. These data can be used to improve sentencing practices and reduce disparity in sentences whether or not pending legislation to reform federal criminal law is enacted.

6) The preparation of a congressionally mandated study and report on the impact of the Speedy Trial Act on the work of U.S. Attorneys' Offices.

Other work of the office includes: preparation of a report to Congress on the performance of functions within the Department of Justice similar to those of an Inspector General; development, in cooperation with the Office of Legislative Affairs, of a departmental position on a variety of proposals concerning the award of attorney fees to a party who prevails in litigation against the government; drafting of voluntary standards, pursuant to the Civil Rights of Institutionalized Persons Act, for the development and implementation of grievance procedures for inmates of state and local correctional facilities; primary responsibility for the Attorney General's Task Force on Police Use of Deadly Force; and preparation of regulations, pursuant to the Magistrate Act of 1979, covering government participation in proceedings subject to a magistrate's jurisdiction.

New projects that are in various stages of early development include: developing a method for identifying cases of differing complexity and rules of procedure calibrated to the elaborateness of the case; examining the implications of increasing size and bureaucratization of the federal court system on the quality of the judicial process; developing measures to improve the handling of complex scientific and technical questions that arise in cases that come before the courts and devising means of resolving scientific disputes bearing on public policy questions that the government must address; codifying the major judicially-created doctrines relating to the final judgment rule and its exceptions; and designing and supervising empirical research on state experience with alternative mechanisms for handling malpractice claims.

Office of Professional Responsibility

Michael E. Shaheen, Jr.
Counsel

The Office of Professional Responsibility oversees investigations of allegations of misconduct by departmental employees. The head of this office is the Counsel on Professional Responsibility, who serves as a special reviewing officer and adviser to the Attorney General.

The Counsel and his staff receive and review information or allegations concerning conduct by a Department of Justice employee that may violate the law, Department orders or regulations, or applicable standards of conduct.

The Counsel is authorized to make a preliminary inquiry into such allegations. Those cases in which there appears to be a violation of the law are referred to the agency that has jurisdiction to investigate such violations. Other matters are referred to the head of the agency to which the employee is assigned or to the agency's internal inspection unit.

The Counsel on Professional Responsibility makes recommendations to the Attorney General on what further specific action should be undertaken on any matter involving a violation of law, regulation, order or standard. Such action may include direct supervision of an investigation when the Attorney General considers it appropriate.

The heads of the Department's Offices, Boards, Divisions, and Bureaus make periodic reports to the Counsel on administrative matters in which their employees have been accused of misconduct. The Counsel submits to the Attorney General an annual report reviewing and evaluating the Department's various internal inspection units. The Counsel also makes recommendations to the Attorney General on the need for changes in policies or procedures that become initiated by the office.

During fiscal year 1980, the Office of Professional Responsibility received 452 matters within its responsibility and closed 354 matters. These figures do not include the more than 1,200 investigations reported to and monitored by this office that are conducted by the internal inspection units, jurisdictionally a part of the Department's component agencies.

In addition to these duties, the Attorney General during fiscal year 1980, requested that the Counsel chair the Department of Justice's polygraph committee, which will review and advise the Attorney General on the Department's policy regarding the use of polygraphs in internal investigations.

Justice Management Division

Kevin D. Rooney Assistant Attorney General for Administration

The Justice Management Division (JMD) was established during the early part of fiscal year 1980 in concert with the Attorney General's efforts to improve the administration and management of the Department of Justice. Under the direction of the Assistant Attorney General for Administration, JMD performs two primary functions: it exercises Department-level oversight and control over selected management operations; and provides direct administrative services to the Offices, Boards and Divisions and to a limited extent, the Bureaus of the Department. In carrying out these responsibilities, JMD functions as the Department's principal liaison with other federal agencies, including the Office of Management and Budget, the Office of Personnel Management, the General Services Administration, and the General Accounting Office.

Within the division, staffs with similar functions and related areas of responsibility are grouped into one of three offices, each directed by a Deputy Assistant Attorney General. The Budget, Finance, and Evaluation Staffs constitute the Office of the Controller; the Personnel and Training, Property Management and Procurement, and Records and Publications Staffs constitute the Office of Personnel and Administration; and the Systems Policy and Planning, Systems Design and Development, and Systems Operations Staffs, and the Library constitute the Office of Litigation and Management Systems. Three staffs with unusually sensitive areas of responsibility report directly to the Assistant Attorney General or to his principal Deputy. These areas of responsibility include the administration of Department-level equal employment opportunity programs, the conduct of internal audits, and the development of security, health, and safety programs for the Department. The Administrative Counsel and the General Accounting Office Liaison also report directly to the Assistant Attorney General for Administration.

Several noteworthy projects were initiated or completed by the division in fiscal year 1980. A few are highlighted here, the remainder are described more fully in the sections that follow.

Office of Administrative Counsel

The Office of Administrative Counsel's (OAC) primary mission is to furnish legal advice and guidance to JMD staffs in the area of administrative law. Its legal respon-

sibilities include (in addition to providing advice to JMD staffs in such areas as budget, appropriations, procurement, and personnel) reviewing regulations prepared in JMD for legal sufficiency and advising JMD officials (and occasionally other Department officials) on the implementation of the Freedom of Information Act, Privacy Act, and Ethics in Government Act. In addition, OAC assists the litigating divisions in case preparation when the litigation involves actions taken by JMD. OAC also reviews all service of process by mail which names Department officials as defendants acting in either their official or individual capacities.

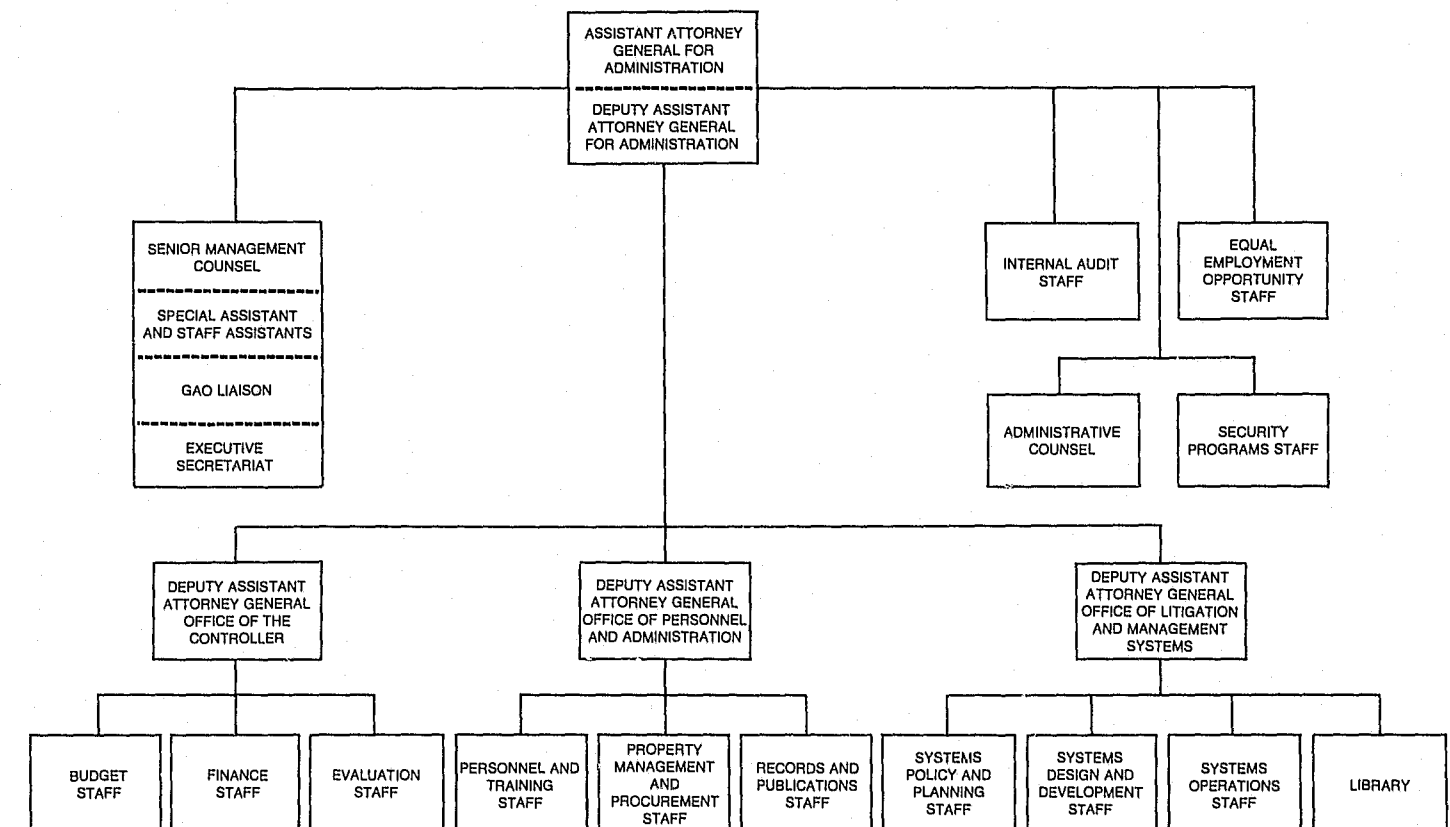
The OAC performs certain coordination and referral services as follows:

- Serves as the liaison with the Regulatory Council and the Office of Management and Budget in implementing Executive Order 12044, "Improving Government Regulations." This requires the coordination of the production of the semiannual regulatory calendars and regulatory agendas. Specifically, OAC edits all entries submitted by components for form, content, and legal sufficiency prior to their submission, as appropriate, to the Deputy Attorney General or the Associate Attorney General for approval.
- Coordinates all Ethics in Government Act compliance endeavors.
- Coordinates the Attorney General's responsibilities under the Newspaper Preservation Act.
- Analyzes and reviews Privacy Act system notices and Office of Management and Budget and congressional reports required under the Freedom of Information Act and Privacy Act for all components of the Department.
- Coordinates and prepares the Department's public notices regarding the Freedom of Information Act index of 5 U.S. Code 552(a) (2) materials.
- Reviews, synthesizes and prepares the Department's annual reports to OMB and to the Congress on the Freedom of Information Act and the Privacy Act.
- Supervises 1) the receipt and distribution of Department Freedom of Information Act and Privacy Act requests, and 2) the maintenance of the central reading room for JMD and all offices, boards, and divisions of the Department.

Security Programs Staff

The Security Programs Staff (SPS) develops, formulates, issues, and monitors Departmentwide policies, procedures,

Justice Management Division



and standards in the functional areas of personnel and document security, ADP and telecommunications security, physical security, special security (concerned with Sensitive Compartmented Information), occupational safety and health, and wartime civil emergency preparedness and contingency planning. These functions are performed under the authority of Executive Orders 10450, 11490, 12036, 12065, 12148, 12196; Public Laws 91-596 and 93-579, Office of Management and Budget Circulars A-108 and A-71; Attorney General Order 739-77; a number of National Security Council Intelligence Directives and Director of Central Intelligence Directives; and a myriad of Department of Justice Orders promulgated by the Security Programs Staff.

The Security Programs Staff is responsible for:

- Adjudicating and maintaining personnel security investigations, clearances, files, and records;
- Providing instructions and guidance for the proper care, custody and control of national security information;
- Establishing and administering technical programs for safeguarding ADP/telecommunications resources from accidental or intentional abuse;
- Establishing and ensuring proper physical security standards are met and maintained in the Department's

offices and buildings;

- Establishing and managing Departmentwide programs for the care, custody, and control of Sensitive Compartmented Information;
- Providing a safe and healthful working environment for Department employees including efforts to reduce/eliminate safety and health hazards; and
- Formulating and developing wartime emergency plans and procedures, and for the coordinating, monitoring, reviewing, and inspecting these plans and procedures.

The staff conducts physical, document, and ADP and telecommunications security surveys; occupational safety and health inspections; reviews of wartime emergency plans and procedures; and reviews of the security impact on proposals for acquisition of ADP equipment, software, or services. Additionally, the staff accredits facilities for the storage, use, and discussion of sensitive information pursuant to U.S. Intelligence Community Standards.

The staff participates in national-level security oversight and review committee activities, U.S. Intelligence Communitywide committees, subcommittees, and working groups responsible for the formulation of security policy,

government-wide ADP and telecommunications security and safety committees, and White House and National Security Council directed mobilization planning and continuity of government study groups.

In an effort to implement the Attorney General's established priorities, the staff has completed drafting its implementing regulations concerning Executive Order 12065, "National Security Information." In furtherance of the Attorney General's goals concerning personnel security, members of SPS participated in a number of government-wide working groups to identify updated investigative standards, appeals procedures, and adjudicative guidelines to be applied to the conduct and adjudication of full-field background investigations.

At the direction of the Attorney General, the staff has prepared security regulations to be employed by organizations and personnel affected by the Foreign Intelligence Surveillance Act of 1978.

The staff has placed increased emphasis on the emergency preparedness program to include the reestablishment and maintenance of current and informed emergency relocation cadres and publishing and distributing to Department components a Department Emergency Preparedness Program Concept of Operations.

The Department participated on a large scale in a major worldwide emergency preparedness exercise. The Department's participation involved approximately 45 senior level participants, up to the Assistant Attorney General level. Some participants were, in fact, actually relocated to the Federal Emergency Management Agency's Special Facility located in Western Virginia. This exercise was coordinated by the staff's Emergency Coordinator.

In keeping with the proposed major changes in the U.S. Intelligence Community's special access programs, members of the SPS actively participated in various subcommittees and working groups which resulted in the promulgation of new physical security regulations, newly developed security awareness briefings, the issuance of an up-to-date and comprehensive Non-Disclosure Agreement, and a myriad of other publications and administrative necessities required for the timely implementation of this new program.

The SPS has established a compliance and review program directed at ensuring compliance with the Department's security programs.

Additionally, the staff also provides limited operational security support services to the offices, boards, and divisions of the Department that require professional and technical security assistance.

Equal Employment Opportunity Staff

The Equal Employment Opportunity Staff (EEOS) develops, monitors and evaluates policies and programs for

the Department in the area of equal employment opportunity. The staff provides technical assistance to bureau-level equal employment opportunity (EEO) staffs, departmental managers and officials, employees and other agency EEO officials, and serves as liaison between various bureaus, the Equal Employment Opportunity Commission, the Office of Personnel Management and the Merit Systems Protection Board. The staff employs special emphasis program managers for the Federal Women's, Hispanic Employment, Black Affairs and Selective Placement Programs, as well as specialists responsible for affirmative action planning, recruitment and discrimination complaint processing. In addition, the staff provides trained and experienced EEO investigators who conduct investigations within the offices, boards and divisions. The investigators also provide assistance to bureau level EEO officers and staff.

During the past year, the Department's EEO efforts have focused on recruitment of qualified applicants for employment, appointment and training of EEO specialists and special emphasis managers and prompt resolution of discrimination complaints.

During fiscal year 1980, the staff provided technical assistance to the Attorney General and his staff by outlining a creative affirmative action program for increasing employment opportunities for minorities, women and handicapped persons in the Department. The Attorney General's program was officially released on March 12, 1980 and included the following elements: a) development of affirmative action plans by the head of each organization which contained meaningful goals and timetables; b) establishment of a departmental talent bank; c) establishment of employment review committees to review hiring and promotions at the GS-13 level and above; d) appraisal of Senior Executive Service personnel on the progress made in implementing affirmative action goals and timetables; and e) quarterly reporting to the Attorney General on progress made in meeting these goals.

The Department's employment of minorities, women and handicapped individuals continues to improve. At the end of June 1980, the Department employed 13,867 (23.9 percent) minorities; 21,813 (37.6 percent) women and 1,191 (2.1 percent) handicapped persons. This represents an increase over the previous year when minorities, women and handicapped persons represented 12,820 (22.8 percent), 20,416 (36.4 percent) and 1,189 (2.1 percent), respectively.

The Department continued to emphasize recruitment in its principal (key) occupations: attorneys, criminal investigators, correctional officers, border patrol agents, deputy marshals and immigration inspectors. At the end of June 1980, a total of 25,377 persons were employed in these six occupations. Minorities accounted for 3,846 (15.3 percent); women 2,325 (9.2 percent) and handicapped persons 432 (1.7 percent) of that total. Comparatively, at the end of

June 1979, the Department employed 24,702 persons in these occupations with minorities, women and handicapped persons representing 3,541 (14.3 percent), 1,954 (7.9 percent) and 360 (1.5 percent), respectively.

To supplement its outreach and recruitment efforts, the staff participated in a number of conferences and seminars to establish and maintain productive relationships with organizations concerned with the employment and advancement of minorities, women and handicapped persons; to inform the public of the Department's programs and policies; and to recruit minorities, women and handicapped persons for employment.

The staff continues to improve the Department's complaints system to allow for the timely and expeditious handling of discrimination complaints at every stage of the process. During the year, 132 complaints of discrimination were filed throughout the Department. The staff monitors the Department's discrimination complaint program in all Department of Justice bureaus to ensure compliance with regulatory procedures. Technical assistance is provided to bureau EEO officers, complainants and employees.

Internal Audit Staff

The Internal Audit Staff (IAS) performs internal audits and reviews of all organizations, programs, and functions in the Department of Justice. In addition, it evaluates the efficiency, accuracy, and effectiveness of automated data processing systems, reviews financial management information systems, and conducts administrative reviews at the request of the Office of Professional Responsibility.

The policy of the Department of Justice is to maintain an effective internal audit capability to assist the Attorney General and other officials in managing the Department's programs and functions. To accomplish this objective, IAS reviews operations, makes critical evaluations, reports conditions where improvements can be made, and recommends changes or corrective actions in all organizations, programs, and functions of the Department.

IAS has continued to undertake audits of increasingly complex program areas and has placed more emphasis on the detection of waste, fraud, and error in Department of Justice programs. The more significant reports issued during the year covered the following areas:

- *Immigration and Naturalization Service:* Financial management and procurement functions and a followup review of financial activities.
- *Drug Enforcement Administration:* Accounting system and Controlled Substances Act registration record system.
- *Federal Bureau of Investigation:* Negotiated contracts over \$10,000, the bureau accounting system, and applicant investigation program.

- *Law Enforcement Assistance Administration:* Management control over audit activities, grant program file system (PROFILE), and comprehensive career criminal program.
- *Bureau of Prisons:* Survey of the National Institute of Corrections, community programs, farm program, and controls over maintenance and construction activities.
- *Federal Prison Industries:* Management controls in the wood/plastics division and reviews of the financial activities at 17 field locations.
- *U.S. Marshals Service:* Protected witness payments and execution of the warrants program.
- *Offices, Boards, and Divisions:* Financial audit of grants awarded to New Jersey, Maryland, and Virginia (two audits); efficiency and effectiveness of the Executive Office for U.S. Attorneys; and Antitrust state grant program.
- *Justice Management Division:* Imprest fund activities, special report on overtime payments, and selected financial and management controls.
- *Departmentwide:* Telecommunications system (JUST) and management and utilization of aircraft.

The Internal Audit Staff has also provided increased staff support to the Office of Professional Responsibility during the past year and has made several referrals resulting from information disclosed in our audits. Additionally, the staff maintained a followup system for evaluating corrective actions taken by management on the findings and recommendations of internal audit reports.

Office of the Controller

The Office of the Controller was established on October 1, 1979. Its establishment consolidated into a single office the responsibility for all budget and financial activities, program evaluations, management and organization analyses and accounting operations. The Controller serves as the Department's budget officer, the financial manager of the Working Capital Fund, and serves as the Department's principal contact with the Appropriation Committees. In addition, the office develops program authorization requirements and provides staff support to the Office of Legislative Affairs in its liaison with the House and Senate Budget, Judiciary and Intelligence Committees. The office is comprised of three discrete staffs whose activities are described below.

Budget Staff

The Budget Staff is responsible for the Departmentwide budget formulation and executive functions. In carrying out those responsibilities it participates in the development of programmatic budget policy guidelines for Department

policy officials and in the preparation of budget "calls," instructions and estimates for all phases of the budget cycle and congressional authorization process.

It also administers Departmentwide controls on appropriations, reimbursements, outlays, numbers of personnel and other legal or administrative limitations pursuant to Office of Management and Budget or congressional directives and conducts financial analyses and review of funds, status reports, Apportionment and Reapportionment schedules and reports on budget execution.

In addition, it serves as program and financial witnesses with Department officials during Office of Management and Budget congressional hearings and serves as a source of expert advice to key Department officials on the development of effective program control and financial management techniques.

During fiscal year 1980, the Budget Staff had several notable achievements:

- The successful integration of budget formulation and budget execution functions which had previously been accomplished by separate staff offices. This action has resulted in more efficient and effective operations which provide a comprehensive knowledge of programs due to total responsibility being located in the same staff.
- The continued success of having Department organizations formulate their budgets (fiscal year 1982) in conjunction with the Attorney General's policy and program guidelines.
- Development of a fiscal year 1982 "Call" for estimates with various user organizations' representatives participating in an effort to provide a strengthened Department budget.

Finance Staff

The Finance Staff is responsible for developing and directing Departmentwide financial management policies, programs, procedures, and systems concerning financial accounting, planning, analysis, and reporting. The Finance Staff also provides technical leadership and support to new Department financial accounting and information systems, and directs the Department's financial management operations (including control of the accounting for appropriations and expenditures, voucher examinations and audit, promulgation of policies for travel and other necessary regulations). Moreover, through the newly established Automated Systems Group, the Finance Staff provides Department management with an automated, on-line financial data base for recalling and analyzing key decisions made throughout the budget planning-formulation-execution cycle.

The Finance Staff is also responsible for establishing the accounting principles and standards of the Department,

approving the Department's financial management systems, and coordinating reviews of operations.

In addition, the Finance Staff is responsible for the Department's Financial Management Information System (FMIS) which supports the planning and budget process of the Department and develops, maintains, and operates the accounting system for the offices, boards, and divisions and the U.S. Marshals Service.

During fiscal year 1980, the Finance Staff's notable achievements were:

- Approved the design documentation for the Working Capital Fund module of the Legal Activities and General Administration Accounting Systems, and subsequently obtained the approval of the General Accounting Office.
- Post-implementation reviews were made of the accounting systems of the Drug Enforcement Administration, Immigration and Naturalization Service, and Federal Prison Industries, Inc. Milestone plans were developed to obtain both departmental and General Accounting Office approval of such systems.
- Formulated Departmentwide policy in line with criteria established by the President's Management Improvement Council Debt Collection Project. Such policy set forth system descriptions and recommendations for improvement of the Department's debt collection activities in accounts and loans receivable owed to the government by the public, including fines and judgments resulting from successful litigation.
- Developed for the Bureau of Prisons, an FMIS-based distribution budget module for budget formulation and tracking, and integrated the Department's automated personnel and payroll systems.
- Developed a prototype application data base for maintaining machine-to-machine interfaces with similar computerized data bases at the Office of Management and Budget.
- Provided the offices, boards and divisions with a distributed, on-line data base for monitoring obligations and expenditures.
- Fully integrated U.S. Trustees accounting requirements into the centralized accounting system.
- Expanded the FMIS system by the development and implementation of Obligation Module III. This expansion permitted the recording and reporting of each obligation and payment into the FMIS at the lowest level by the Zero-Base Budget decision unit. Never before has such detailed information been available for management's use in the decisionmaking process.
- Coordinated the development of contingency plans to be used by the Department in the event funds are not provided in time for the start of a new fiscal year.

Evaluation Staff

The Evaluation Staff was established on October 1, 1979 to conduct, review, and coordinate program evaluation efforts throughout the Department in order to provide information to assist top-level officials in the assessment of program efficiency and effectiveness. In addition, it conducts management and organization studies and makes recommendations to top-level officials and program managers for improvements. It also develops Departmentwide policies for evaluation and management assistance, and advises the Assistant Attorney General for Administration on all matters relating to program evaluation, management and organization.

During its first year of operation, the Evaluation Staff completed the following studies:

- *Feasibility Study for the Transfer of the Litigation Functions of the U.S. Railway Association (USRA) to Another Federal Agency*: to determine the feasibility of transferring USRA's litigation functions to the Department of Justice.
- *Feasibility of the Relocation of the Drug Enforcement Administration's (DEA) Training to the Federal Law Enforcement Training Center (FLETC)*: to study the feasibility and cost-effectiveness of consolidating all or part of DEA's Headquarters training programs with those of FLETC in Glynco, Georgia. A re-study of this subject was also completed which reexamined several of the original issues.
- *Resource Assessment of the Security Programs Staff*: to review the staffing and funding needs for the Security Programs Staff and to determine where the Occupational Health and Safety Program should be located.
- *U.S. Marshals Service Motor Vehicle Fleet Allocation Study*: to identify the motor vehicle requirements for each Marshals Service district office.
- *Study of Equal Employment Opportunity (EEO) Complaint Investigations*: to identify the problems involved in processing EEO complaints, including the cause of time lags in EEO investigations.
- *U.S. Attorneys' Case Weighting System*: to project caseloads for fiscal year 1982 in an effort to integrate the case weighting system developed by the Institute for Law and Social Research into the Department's budget preparation process.
- *Study of Consolidation of Immigration and Naturalization Service (INS) Lawyering Functions*: to assist INS in designing a plan for the consolidation of INS lawyering functions and resources under the direction of the General Counsel.
- *Staffing Analysis of the Executive Office for U.S. Trustees*: to review the present organization and assignment of responsibilities and to develop a staffing pat-

tern which allows for the effective and efficient assignment of duties among the staff.

Office of Personnel and Administration

The Office of Personnel and Administration (OPA) and its staff elements are responsible for planning and coordinating Departmentwide programs in assigned functional areas and for developing and implementing policies and programs which fully support the various missions of the Department. The organization also provides direct support to the offices, boards, and divisions; serves as the focal point for liaison with other federal agencies with broad, cross-government policy responsibility, such as the Office of Personnel Management, the General Services Administration, the General Accounting Office, the Government Printing Office, and the National Archives and Records Service, on matters concerning the interpretation of Department or governmentwide policies in the substantive areas of OPA's activity. Finally, OPA reviews programs of Department organizations for overall effectiveness and for compliance with the legal and regulatory requirements.

OPA consists of three separate staff organizations and two small support units attached to the immediate office. The staffs include the Personnel and Training Staff, the Property Management and Procurement Staff, and the Records and Publications Staff. The material which follows identifies each staff's substantive functional areas and provides information on their achievements during fiscal year 1980.

Personnel and Training Staff

The Personnel and Training Staff plans and directs the Departmentwide personnel management and training programs, develops and implements personnel policies and programs which support the missions of the Department and ensure a productive and effective work force, and provides operating personnel and training support to the offices, boards, and divisions of the Department.

The Department of Justice received the Ribicoff/Percy Award for Excellence in Civil Service Reform Implementation "... for the innovative efforts of its managers and personnel staff in the development of merit pay concepts for application in the federal service." This award, accepted by the Attorney General, reflects the work of the Position and Pay Management Group which designed a merit pay system whereby supervisors and management officials in GS-13, GS-14 and GS-15 positions will receive nonpromotional pay increases based on performance appraisals. Operation of the Department of Justice Merit Pay System (JUMPS), which will be used to determine annual salary increases for approximately 4,000 supervisors and management officials

throughout the Department beginning with the October 1981 pay increase, was the subject of an intensive training program designed to familiarize merit pay employees and their supervisors with the system.

The Department's performance appraisal system was formally issued as a Department Order. As a part of this effort, intensive training was provided on the system to management and high level supervisory officials within the offices, boards, and divisions; Senior Executives completed the first appraisal cycle in July 1980, and performance bonus award determinations were made. Four Senior Executives were awarded "Meritorious Executive Rank" based on long term superior achievements. The latter are Presidential awards and carry stipends of \$10,000.

To assist in the reorganization and phase-down of the Law Enforcement Assistance Administration, now constituted as four separate agencies, optional early retirement authority was obtained from the Office of Personnel Management as well as authority to offer Law Enforcement Assistance Administration employees other lower level jobs within the Department with retained grade and pay as provided for in the Civil Service Reform Act. A proposed priority outplacement program was developed and is currently awaiting issuance by the Attorney General. This program will require that employees of the Law Enforcement Assistance Administration (and its successor organizations) be given priority for any competitive service vacancies which may occur throughout the Department for which they are minimally qualified.

Having previously obtained an excepted appointing authority for Drug Enforcement Administration agents, an Executive Order was obtained which now permits the conversion of agents to the competitive service when they have completed three years of fully satisfactory service. Thus, the dual objective was achieved—to provide the Drug Enforcement Administration with a much needed flexibility in making initial appointments while providing for the ultimate retention of those who perform satisfactorily in the permanent competitive service.

The Department completed its third year as a leader in the Presidential Management Intern Program. Ten outstanding interns completed their two year training program and were converted to career positions. Nine interns completed one year of the two-year program, and recently 17 new interns were selected from leading graduate schools throughout the nation for a variety of challenging assignments throughout the Department.

Approximately 900 of the Department's employees in 13 organizational elements are participating in a three-year test of alternatives to the standard five-day workweek. Public Law 95-390 authorizes agencies to experiment with flexible or compressed work schedules for the test period for the purpose of determining the feasibility of making such flex-

ibility available on a permanent basis to the entire federal work force.

Labor union activity remained at a high level during fiscal year 1980 as the result of the continued wholesale testing of the scope of negotiable matters by federal sector unions. To an amazing extent the unions were able to accomplish in the dispute settlement process which they were unable to gain in the legislative process. The new quasi-judicial bodies established to administer the Civil Service Reform Act of 1978, the Federal Labor Relations Authority and the Merit Systems Protection Board have, in many instances, strained statutory language and legislative history in order to grant the unions broader rights than Congress intended. The effect of such recent decisions have not yet been felt by the Department, in part because several have been appealed to federal appellate courts. Even so the Labor-Management Relations Group continues for the most part to be successful in keeping negotiations properly restricted in order to protect management decisionmaking authority.

The Department itself was charged with committing unfair labor practices in six separate cases. One was settled, two were dismissed, and three, which the group answered, are still pending and will, in all probability, be dismissed. The group assisted the bureaus by providing representation in two unfair labor practice hearings before Administrative Law Judges in circumstances where the bureaus concerned did not have their own trained representative available.

Title VII of the Civil Service Reform Act of 1978 created the independent Merit System Protection Board to handle federal employee appeals. The group has filed briefs with the Board on the issues of the relation of off-duty misconduct to the efficiency of the service, and indefinite suspensions. Although the case law on these issues appears to have been well-settled, the Board has apparently decided to forge ahead on its own in these areas and, perhaps, attempt to make new law. The reform act also provides for payment of attorney fees in the interest of justice for Board cases. The group has filed briefs in several attorney fees cases which have resulted in precedent setting decisions favorable to management.

The Employee Assistance Program provided counseling and referral assistance to employees who are experiencing difficulties with alcohol, drugs, or emotional problems. A series of seminars was held for executive level managers to familiarize them with the program and to elicit their support of the program. Training on the subject of dealing with the troubled employee has been institutionalized, and is now a regular part of supervisory development. Publicity for the program has been accomplished through a feature article in the October 1980 issue of Justice News and through information included on employees' earnings statements.

In order to reduce excessive centralization of personnel authority with its accompanying delays, red tape and ero-

sion of managers' authority and accountability, the Planning and Evaluation Group developed and obtained approval of three agreements entered into by the Department of Justice and the Office of Personnel Management which delegated eight personnel management authorities to the Department. A fourth agreement, delegating two additional authorities was submitted to the Office of Personnel Management for its approval.

The Career Management Group continued to expand and revise its Executive and Management Development programs to ensure that they met the needs of Department executives, Senior Executive Service candidates and high potential managers. A total of 354 individuals attended the 17 programs in the Attorney General's Seminar Series.

Over 100 paralegal specialists and technicians from the Department and other federal agencies attended the Paralegal Training Programs. Civil Litigation as well as Criminal Litigation options were offered.

Phases I and II supervisory training programs continued to be presented in fiscal year 1980 but with more classes offered than in fiscal year 1979. Six classes were given and a total of 96 participants were trained. During this period, the Phase I program was expanded from five to six days to accommodate additional supervisory training requirements.

Clerical training continued to enroll large numbers of trainees with 428 participating in this program during fiscal year 1980.

Property Management and Procurement Staff

The Property Management and Procurement Staff provides direct support to the offices, boards, and divisions in the areas of procurement, facilities, energy conservation, and material management. The staff is further responsible, within these areas, for departmental policy and program development, implementation, and guidance.

A Departmental Contract Review Committee was established which is intended to review and approve all proposals for significant contracts from the standpoint of procedural and legal sufficiency. The committee is to commence operation in fiscal year 1981. It will be comprised of three members selected from among Department organizations and appointed by the Attorney General for a term of up to three years. The committee is to be assisted by a permanent group of technical procurement analysts administratively assigned to the immediate office of the Deputy Assistant Attorney General, Office of Personnel and Administration.

Two Procurement Management Reviews were conducted on bureau contracting operations as a part of an effort to ensure that procurement action within the Department is conducted in the most efficient and economical manner consistent with statutory, federal, and departmental regula-

tions. The review of the Immigration and Naturalization Service was conducted during fiscal year 1980, and a report was completed and recommendations implemented. The U.S. Marshals Service review was begun with a report, summarizing the findings, to be issued in early fiscal year 1981.

During fiscal year 1980, the special purchase operation within the Procurement Operations Group was fully automated. This has provided more effective management control, provided current status to requisitioners, and expedited small purchase operations. A study of potential improvements available through automation of the contract operations resulted in a contract for development of a software program to implement automation of this function. In addition, efforts continued to implement the Federal Procurement Data System throughout the Department.

Use of the blanket purchase arrangement, imprest fund, and redelegation of contracting officer authority to designated Department employees outside the Washington metropolitan area continued to be emphasized to further expedite the procurement process.

During fiscal year 1980, 23,892 procurement actions valued at \$37,041,000 for a variety of supplies, equipment, and services in support of the offices, boards, and divisions were effected by the Procurement Management Section.

The Energy and Material Management Section developed and implemented a new automated property accountability system (with full interface to the Department's accounting system) in support of the offices, boards and divisions and the U.S. Marshals Service.

An evaluation plan was developed and approved which is designed to analyze all supply support activities throughout the Department.

Policies were developed concerning the acceptance, utilization, and disposal of gifts received from foreign governments.

A concentrated effort is underway to establish fuel assistance agreements with other federal agencies and state and local governments to ensure that federal law enforcement vehicles can obtain gasoline during shortage periods.

An agreement was finalized with the Department of Defense to recover precious metals (primarily silver from photographic processing) at numerous Department locations throughout the nation at no cost to the Department.

Over \$35,000 in office furniture was rehabilitated and reissued (in lieu of buying new items) with a cost savings to the offices, boards and divisions of over \$137,000.

The office, board, and division motorpool achieved a 16.7 percent reduction in the use of gasoline during fiscal year 1980. Further, by switching to the use of gasohol (90 percent gasoline, 10 percent renewable resource) the overall fuel reduction in motorpool vehicles was actually 27.1 percent from fiscal year 1979.

The Department's energy conservation programs were

unified and strengthened with the appointment of an energy coordinator to direct the various elements of energy conservation and management on a Departmentwide basis. The Department's 10-Year Plan for Energy Management in Buildings was completed and submitted to the Department of Energy and preparation began on the 10-Year Plan for Energy Management in General Operations.

Architectural, mechanical, and electrical renovations to the Main Justice Building, which began early in fiscal year 1979, are nearing completion. This contract, costing more than \$5.6 million, is the major phase of a \$15 million prospectus for the modernization of all facilities in the building as approved by the Congress in March 1976.

Preliminary work on an initiative for a departmental recycling program for aluminum and paper waste was completed. This program addresses a strategy for creating a method of implementation and an employee campaign for supporting recycling.

Records and Publications Staff

The Records and Publications Staff is responsible for Departmentwide policies and programs in the area of records and mail management and all phases of printing and publications management. It also provides direct operating support in these areas to the offices, boards and divisions including the provision of graphics services and the operation of a briefing and conference center.

A prototype program for the management of litigative files was developed for the Criminal Division. This prototype has been approved by the Archivist of the United States and will provide a model for similar efforts throughout the offices, boards and divisions. These litigative case files represent approximately 75 percent of the unscheduled Department records currently housed in National Archives and Records Center space. This effort should be completed during fiscal year 1981. File management program studies have been completed for the Office for Improvements in the Administration of Justice and the Tax Division.

In conjunction with the U.S. Department of Agriculture Graduate School, a Departmentwide Mail and Correspondence Improvement study was initiated. The proposed Phase I improvements will be scheduled for implementation during fiscal year 1981.

In-house printing and related facilities produced 125,448,000 copies and the Department's copying/duplicating requirements increased by 11.2 percent to 306,976,000 copies.

By exercising direct control of 1,527 leased copier/duplicators and through more effective equipment placement and utilization, an increase in the overall cost per copy was held to 6.9 percent (from .0230 per copy to .0246 per

copy), while manufacturers' rental cost increased an average of nine percent.

Office of Litigation and Management Systems

The Office of Litigation and Management Systems (OLMS) administers the departmental information and telecommunications systems policy and programs, provides information systems support to the legal divisions of the Department, and manages the large-scale, sophisticated data center in support of the offices, boards, divisions and bureaus of the Department.

In this regard, OLMS directly monitors and supervises the activities of the following staffs.

The Main Library

The Main Library, in conjunction with the division libraries, supports the legal research and information needs of Department of Justice attorneys and staff. The combined library network now totals 210,000 volumes, primarily in the areas of law, legislation and political science. Business and economics, medicine, international relations and public administration represent substantive areas of additional interest. Special collections include: rare and older legal materials, Department publications (as well as materials about the Department) and legislative histories. A growing microform collection of over 45,000 volumes is also maintained. Legal research assistance is provided through traditional manual resources as well as online legal and bibliographic data base searching. The library system maintains access to all currently available information retrieval systems. During fiscal year 1980, the Library implemented a legislative tracking system for purposes of following legislation of interest to the Department. Research librarians also utilize other governmental and private information resources through direct contact and interlibrary borrowing. Automation of traditional library functions continues in the effort to streamline recordkeeping and at the same time, to expand information access. An automated acquisitions system is now linked to an online catalog, serials check-in and circulation system. Cataloging of new materials is done through automated, shared cataloging networks.

Systems Policy and Planning Staff

The Systems Policy and Planning Staff (SPPS) was established in October 1979. The establishment of the SPPS provided for the concentration of specialized areas of information systems activities in one staff. These are the areas of policy, planning (resource and major systems), research, standards and auditing of information systems, and the

replacement of the central data processing facility. A major amount of the resources of the SPPS is concentrated in support of the budget formulation process. The SPPS reviews organizational requests for resources to be expended on ADP/telecommunications hardware, software, or services. The submissions of departmental organizations for fiscal year 1982 were reviewed and formal analyses and recommendations were prepared on several of the submissions. The first phase related to the replacement of the central data processing center was completed. Two Amdahl 470/V7 central processing units were acquired through an award made in December 1979. This provides the data center with the resources to meet the planned requirements of the Department through March 1983. The second phase involves the total replacement of the center to provide for the needs of the Department through fiscal year 1990. During the year, a contract was awarded to do a risk analysis study. The requirement for risk analysis evaluation of ADP systems and facilities is contained in Transmittal Memorandum No. 1 to Office of Management and Budget Circular A-71, dated July 27, 1978. Risk analysis is a systematic analysis and evaluation of the threats and the loss potential for ADP assets and facilities leading to an estimate of annual loss expectancy and the selection of cost effective remedial resources to reduce or eliminate the threat and loss factors. The SPPS has participated in, conducted or monitored contracts for special studies related to sensitive or complex automation efforts. During this year, this included participation in: the Jet Propulsion Laboratory evaluation of the Automated Identification Division (AIDS III) project, Federal Bureau of Investigation; an analysis of the Justice Retrieval and Inquiry System (JURIS); and the President's Management Improvements Council's Study of the Immigration and Naturalization Service. The SPPS also has conducted or is conducting information research studies to improve the use of data base management systems, optical character recognition, and hard copy output. The SPPS is developing policy orders for information system planning, audit, standards and the conduct of research and development.

Systems Design and Development Staff

The Systems Design and Development Staff (SDDS) develops and maintains information and communications systems that are Departmentwide in scope. This includes systems in support of legal research, protracted case litigation, caseload management, payroll and personnel administration and financial management processes. SDDS also helps departmental organizations acquire information and communications capabilities required to accomplish a wide range of managerial and/or operational tasks. In addition, SDDS conducts ongoing research into the applicability of evolving technologies to departmental information and

communication requirements, and develops education and training programs for Department personnel in the areas of information and communication sciences. These responsibilities are fulfilled within SDDS by three functional groups: the Legal Systems Development Group, the Administrative Systems Development Group, and the Systems Training and Special Projects Group. The legal group provides systems analysis and computer programming services to the U.S. Attorneys' Offices and to the legal divisions of the Department in support of legal activities. The administrative group develops and maintains the automated employment data systems and other administrative support systems for the Department, excluding the Federal Bureau of Investigation, providing systems analyses and computer programming services in areas such as personnel, payroll, accounting and property management. The systems group develops and implements education and training programs that relate to the fields of computer technology as well as information and communications systems.

The most significant system developed and maintained by the legal group is the Justice Retrieval and Inquiry System (JURIS), which provides online, interactive access (through remote terminals) to a vast body of federal and state caselaw, federal statutory and regulatory material, and attorney work products as an aid to legal research. There are presently 192 JURIS terminals accessing a 3.6 billion character general legal data base which includes the full text of 150,000 federal decisions, the West Digest for 150,000 federal and 380,000 state decisions, the full text of the U.S. Code and Public Laws, and numerous other files. There are over 5,200 user identification cards issued to lawyers in 250 organizations. JURIS continues to serve as the search and retrieval, and data base maintenance software for the Law Enforcement Assistance Administration National Criminal Reference Service, which has over 20,000 subscribers. In addition, JURIS is playing a large role as an automated litigation support tool. Automated litigation support is the application of modern computer technology and information science skills to the management of cases involving complex issues and massive numbers of documents. The Legal Systems Development Group has provided technical assistance to Department attorneys in the use of automated litigated support tools for over 30 cases. Examples of products and capabilities made available through this service are: 1) organizing and producing statistics from thousands of subpoenaed records to show questionable patterns; 2) searching thousands of pages of full text hearing transcripts for brief preparation; 3) compiling profile reports from thousands of arrest records; and, 4) impeaching witnesses using prior depositions, interrogatories and testimony loaded into computer searchable files. During the year, the group continued its involvement in the Department's litigation management activities. It is responsible for maintaining

the Docket and Reporting System which provides management statistics on the caseloads of the U.S. Attorneys, and provides assistance in studies of litigation management requirements of the Department.

The Administrative Systems Development Group continued development and maintenance of two major systems: 1) the Employment Data System, which produces approximately 350 reports on a recurring basis in support of the Department's personnel and administration, payroll accounting, security classification, employee training and equal employment opportunity programs; and, 2) the Office, Board and Division-U.S. Marshals Service Accounting System, which provides approximately 60 reports on a recurring basis to provide financial data. This data is used in the preparation and support of budget requests, reports to the Department of Treasury, the Office of Management and Budget, and to lower level organizational accounting offices. In addition, this group completed programming for the new Department of Justice Accountable Property System, which produces approximately 20 reports on a recurring basis in support of the Property Management and Procurement Staff.

The Systems Training and Special Projects group developed and implemented a number of education and training programs, including: 1) policy-oriented seminars for senior level Department officials who must employ information and communications systems in support of their program missions; 2) technical training programs for intermediate and entry-level personnel in ADP technology; and 3) instruction and assistance programs for Department and other federal attorneys in the use of JURIS. In addition, the group is involved in several projects which cut across system disciplines and/or involve other agencies or offices. Of particular note is the Sensory Assistance Center, which provides the visually impaired attorney with the ability to access JURIS through a specially designed remote terminal, receiving audio responses to legal research queries. The responses are direct translations of what the sighted attorney sees on a television display device using the regular JURIS terminal.

Systems Operations Staff

The Systems Operations Staff (SOS) manages the large-scale information processing facility of the Department, providing a broad range of modern information processing services to departmental components and selected outside organizations on a resource-sharing basis. Staff personnel review and approve all procurement actions, solicitations, proposals and contracts for information, automated office and communications equipment, and services consistent with approved plans, objectives and budgets; maintain departmental standards and procedures governing the

design, development and operation of information programs and communications; manage a Departmentwide message switching facility in support of domestic and worldwide communications requirements; operate all departmental information systems, including those concerning employment information, centralized payroll accounting budget formulation and execution, and litigation support and reference services. SOS functions are distributed through four services.

The Justice Employee Data Service maintains and operates the automated Justice Uniform Personnel System (JUNIPER) and Payroll Accounting System. JUNIPER provides the basic data resource for employee personnel administration. It produces 355 reports on a recurring basis in support of the Department's personnel administration, payroll accounting, security classification, employee training and equal employment opportunity programs. The data base serves as the basis for the Payroll Accounting System which provides for the payment of salaries of over 38,000 employees. During fiscal year 1980, 254 ad hoc personnel and payroll information reports were produced in response to particular needs of management.

The Justice Telecommunications Service has departmental policy oversight responsibilities, provides technical support on matters concerning the acquisition of telecommunications equipment and services, and serves as the Department's principal representative on the Inter-Department Radio Advisory Committee (IRAC). The service also manages the operation of the Justice Telecommunications System (JUST), the secure message and secure voice centers and the Department of Justice CENTREX II telephone system which serves all Department of Justice offices in Washington, D.C., except the Federal Bureau of Investigation, and provides 24-hour operator assistance. During fiscal year 1980, efforts were begun to replace the existing, paper-tape oriented teletypewriters in the departmental JUST Telecommunications Center. Terminal specifications are currently being developed for inclusion into a fully competitive Request for Proposal to upgrade the existing terminal systems. JUST provides 24-hour access to interconnecting telecommunications networks for the 444 terminals on the system in departmental offices throughout the continental United States, including Honolulu, Hawaii. In fiscal year 1980, 1,124,831 messages were transmitted over the JUST system, including a multitude of inquiries against the Federal Bureau of Investigation's National Crime Information Center System and the Immigration and Naturalization Service Master Index File. Communications terminals were installed in the U.S. Marshal's Office in Guam and the U.S. Attorney's Office in the Virgin Islands in an effort to improve communications between these overseas activities and JUST terminal locations. Preliminary work was begun on two significant initiatives which will have long-range im-

pacts on the telecommunications programs of the Department. The first endeavor is to study the feasibility of establishing a consolidated telecommunications network to serve the Department's data and administrative telecommunications requirements. The second endeavor is to accommodate the transmission of Time and Attendance Reports, replace existing field JUST teletypewriters in the U.S. Marshals Service, and replace the remaining JUST user teletypewriters with the same type of terminal system as required. The Justice Data Management Service, in operating the data center, has been actively making resource and software changes to improve response and job completion times. Two new AMDAHL V/7s were installed - one in December 1979 and the second in March 1980 - replacing three IBM 370/155s and an IBM 370/168 (the latter is scheduled to be removed November 15, 1980). These equipment changes, software changes, the installation of a highspeed line printer and the use of a hardware monitor installed in December 1979, have helped to eliminate resource contention and reduced backlogs from over 200 jobs to fewer than 100 at the close of business each weekday. It has acquired and is continuing to acquire higher density/faster access storage media, disk and tape, to reduce job processing time, equipment space, and costs. A new microform processor is being installed to reduce operator contact with toxic chemicals and to improve service. The microform equipment is being installed within the data center, resulting in increased physical security for this operation. One major system is being replaced by a more modern and security-oriented operating system, Multiple Virtual Storage. This conversion is actively being pursued and will be effected in fiscal year 1981. During the year, a major renovation project involving the data center was completed with the guidance of the Facilities and Security Group. The facility was increased in size by 87 percent, from 13,108 square feet to 24,448 square feet. The renovation also included a substantial upgrade in the quality of the environmental and utility support of the data center. The installation of a chill water system increased the amount of air conditioning by 110 percent. The improved environment eliminated the heat induced equipment failures which troubled the center during previous summers. The improved air conditioning also permitted the installation of new technology computers which are extremely sensitive to the ambient air environment. The expanded and improved data center facility has enabled SOS to install and operate equipment with sufficient capacity and capability to improve the quality of service to users, while simultaneously increasing the amount of processing resources available to the Department. The expanded center permitted the physical co-location of telecommunications equipment which provides support to all elements of the Department. This co-location of resources and staff results in improved management and coordination of the telecom-

munication and data processing elements of SOS. In addition to improving and expanding the facility, the renovation focused upon the physical protection of the data center. The physical security was greatly enhanced by the addition of improved entry and exit areas and input/output area. These improvements, combined with an Access Control Security System which is badge-operated and micro-processor controlled, will provide state-of-the-art physical security for the center and the associated information processing area. The security system installation will be completed during the first quarter of fiscal year 1981. An improved facility and revised procedures for the issue of data center output to users were established. User output is now stored in metal lockers until the user representative arrives to pick it up. The input/output room staff are required to check the identification and authorization of the user representative at each transaction. Issues are documented by a receipting system which provides an auditable trail. The Agency Assistance Service received and evaluated a monthly average of 65 requests for automatic data processing and communications products and services. It provided consultant services to the offices, boards, divisions and bureaus in the areas of federal ADP procurement regulations, technical approaches, and interpretations of federal ADP and communications policies. The service reviewed, advised and assisted in all major ADP equipment acquisitions throughout the Department. This service acted as the public-use reports form clearance office to the Office of Management and Budget. In this area, the service prepared and submitted to the Office of Management and Budget the Department's Information Collection Budget. As a part of the reports clearance function, it received, reviewed and forwarded for approval to the Office of Management and Budget, approximately 25 requests per month. While monitoring and assisting in the Intra-Agency Reports Program to the General Services Administration, the service reviewed and cleared approximately 20 requests for reporting requirements throughout the Department. Requests under the Freedom of Information and Privacy Acts of 1974 (5 U.S. Code §552 and 5 U.S.C. §552[a]) are managed for SOS by the service. During the year, approximately 110 such requests were received and processed. Staff members provided departmental representation to the Presidential Task Force on Paperwork Burden Reduction, the Federal Information Resources Management Committee and the Federal Information Locator System Task Force. Federal Property Management Regulations issued in fiscal year 1979 delineated program responsibilities for the Executive Branch of the government with regard to micrographics management. During fiscal year 1979, the Department established a position for micrographics program management within SOS. The first action taken under implementation of the property management regulations was the preparation of guidelines and procedures for the use of

micrographics within the Department, as well as providing consultative services to requesting departmental elements. Due to continued requests for consultative services on the use of microfilm as a litigation support tool, a paper presenting guidelines for microfilm use in discovery actions was prepared and distributed to interested parties. Through the use of microfilm, the government will avoid the normally large expenditures associated with storing paper copies of these discovered documents. Additional dollars will be saved in the future due to the selection of a new Computer

Output Microfilmer (COM). The Department has been an innovator in the use of COM-produced microfilm, but the existing system was no longer cost effective due to changes in the state-of-the-art and lower costs for new equipment. A new system was selected and installation was begun this year. Implementation of the system will be completed in fiscal year 1981. The use of microfilm has shown continued growth within many phases of the Department's operations and this continuing growth will ensure lower operational costs in the future.

Office of Information Law and Policy

Robert L. Saloschin
Director

The Office of Information Law and Policy (OILP) is the principal instrument for carrying out the Department of Justice's statutory responsibilities "to encourage agency compliance" with the Freedom of Information Act (FOIA). (5 U.S. Code §552d).

FOIA provides "any person" with judicially enforceable rights of access to the records of all federal agencies except to the extent that an agency can show that the records are exempt from mandatory disclosure under one of the Act's nine exemptions.

The primary functions of OILP demand a continuing dialogue with agency clients.

OILP's chief functions are "to advise this Department and other departments and agencies on all questions of policy, interpretation, and application of the FOIA . . . to coordinate FOIA policy among the executive agencies . . . and to undertake, arrange, or support training and . . . informational programs" in this field. (Department of Justice Order 803-78, 28 C.F.R. §0.2).

A number of procedures and programs are conducted to provide advice, guidance, and training for agencies in respect to FOIA. These activities include numerous informal telephone consultations, seminars for attorneys, publication of the quarterly newsletter *FOIA UPDATE*, and periodic editions of the *Freedom of Information Case List*.

OILP provides several services which encourage coordination between agencies and the Department, and also greater government-wide uniformity in the administration of FOIA. Agencies are encouraged to seek advice before a final denial of a FOIA administrative appeal, and are expected to do so where novel, difficult, or important questions are involved. Either the senior Deputy or a staff attorney is available for informal telephone consultations at all times. If either the senior Deputy or the agency feels further discussions are desirable, conferences may be held with the Director or with the Freedom of Information Committee.

OILP manages the committee, which advises agencies and components of the Department on FOIA issues of special difficulty and importance. This eight-member committee is chaired by the Director of OILP and consists of senior attorneys who have expertise in FOIA. The increased volume of activity and of litigation in the FOIA field has meant that

the committee increasingly reviews matters that are in litigation, sometimes at an appellate level, although the committee continues to deal with disputes at a prelitigation stage whenever practicable.

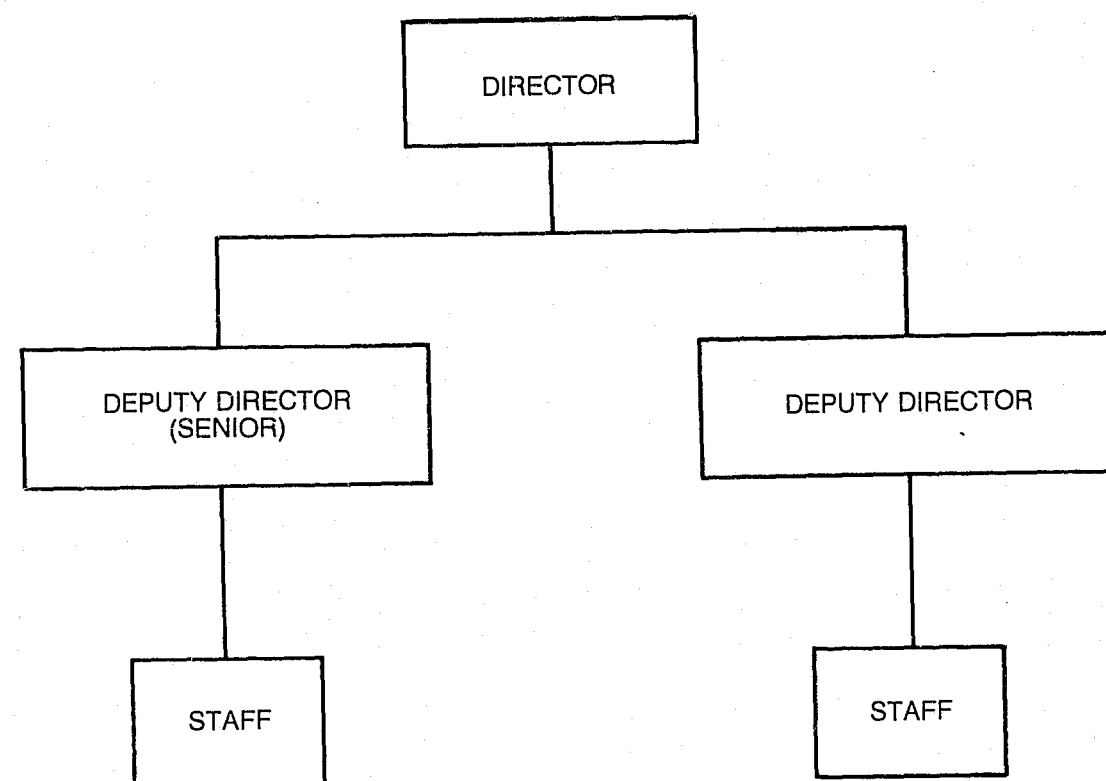
Education or training is of major importance in OILP's attempt to ensure uniformity in litigation and to encourage compliance with the FOIA. A Deputy Director works with the Legal Education Institute of the Department to provide agency attorneys and U.S. Attorneys around the country with training in FOIA. Seminars have been held separately for new attorneys in the field and for those who have already worked extensively in the area. The demand for these seminars has always exceeded their capacity. Additionally, OILP has provided speakers for programs by bar associations and others that are designed to improve understanding and administration of the Act.

All FOIA complaints filed are now being reviewed by an OILP staff attorney. This is to help spot cases which perhaps should not be defended, as well as those where OILP's expertise, past experience and research might be useful in the government's defense. This review should also help achieve greater uniformity of policy and legal positions in litigation.

OILP provides several resources which are designed to assist both the agencies and components of the Department in their FOIA work. The first of these is the *Freedom of Information Case List* which is updated annually. The September 1980 edition contains an annotated list of Privacy Act cases (5 U.S. Code §552a), and also Sunshine Act (5 U.S. Code §552b), and Federal Advisory Committee Act cases (5 U.S. Code App.). "A Short Guide to the Freedom of Information Act" was updated and expanded to reflect current case law for this edition.

The second resource is *FOIA UPDATE*, a quarterly newsletter, which began publication in the Fall of 1979. Each issue has legal and policy advice on topics of current interest. Agency solutions for the improved administration of FOIA are included regularly. The Nuclear Regulatory Commission, the Department of Health, Education and Welfare, and the Department of Defense have been discussed in past issues. *FOIA UPDATE* keeps subscribers informed of FOIA training opportunities, references and significant court decisions. Finally, OILP generates and distributes to

Office of Information Law and Policy



agencies, policy statements and informational papers on issues of particular interagency concern. The following were distributed in 1980:

1. "Status of Internal Audit Reports Under FOIA" (May 16, 1980).
2. "Disclosures to Members of Congress in Light of Murphy" (May 29, 1980).

During the year, FOIA became increasingly an object of international interest. The Attorney General focused his speech before the Canadian Bar Association on August 25, 1980 on FOIA. This is a current topic of concern in Canada, which is presently considering its own freedom of informa-

tion proposals. The Director and senior Deputy Director of OILP have also spoken at Canadian conferences concerning FOIA.

OILP has also provided briefings in Washington to several foreign officials and scholars whose countries are contemplating the enactment of freedom of information legislation. These included representatives of Australia and Japan in addition to Canada. They hope to learn from the experience of the United States with its disclosure laws. The United States, in turn, may be able to benefit by looking at the types of proposals enacted by other advanced democracies after reviewing our experience.

Office of Intelligence Policy and Review

Kenneth C. Bass
Counsel

During the past several years, the Attorney General has been given additional responsibilities with regard to the activities of United States intelligence agencies; principally through Executive Order 12036 "United States Intelligence Activities" and the Foreign Intelligence Surveillance Act of 1978. The Attorney General's responsibilities, in addition to providing guidance to the intelligence community on questions of law and procedures, relate as well to oversight of certain intelligence activities.

The Office of Intelligence Policy and Review (OIPR), under the direction of the Counsel for Intelligence Policy, is principal staff adviser to the Attorney General in his execution of these responsibilities, as well as the operational office of the Department representing the government as legal counsel in certain intelligence activities. These dual functions are carried out in several ways.

OIPR advises the Attorney General and organizational units of the Department, as well as intelligence and other executive branch agencies, on questions relating to the interpretation and application of statutes, executive orders, regulations and procedures relating to United States intelligence activities. OIPR staff attorneys conduct necessary legal research, consult with intelligence agency counsel, and the Department's Office of Legal Counsel where appropriate, and prepare legal memoranda and opinions for the Attorney General, the Counsel for Intelligence Policy and other federal agencies.

In fiscal year 1980, the office provided legal and policy advice on various intelligence-related matters to the Attorney General, the Deputy Attorney General and Associate Attorney General, the Special Coordination Committee of the National Security Council, their staff, the Department of State, the White House Office of Science and Technology Policy, the Department of Commerce, the Federal Bureau of Investigation, the National Security Agency, the Central Intelligence Agency, the Department of Defense, the Assistant to the President for National Security Affairs, the Office of the Director of Central Intelligence, the Department of Treasury and various components in the Department of Justice.

Representing the Attorney General in fulfilling his responsibilities under Executive Order 12036, OIPR attorneys play a significant role in establishing or approving procedures for the conduct of intelligence and counterintelligence activities in the United States and abroad. These

procedures must be balanced and permit all necessary intelligence and counterintelligence activities consonant with protection of individual constitutional rights and privacy. During the past year, through continuous consultation with intelligence agency counsel, National Security Council staff, and other appropriate individuals in the legislative and executive branches, OIPR attorneys participated in the drafting and analysis of, and facilitated approval of, over thirty discrete sets of procedures required under Executive Order 12036 to regulate the intelligence activities of the Federal Bureau of Investigation, the National Security Agency, the Central Intelligence Agency, the Departments of Defense and Treasury. These procedures are now being reviewed and revised to take account of the past year's experience. OIPR also prepared a comprehensive revision of the Attorney General's Federal Bureau of Investigation Foreign Counterintelligence Guidelines, which were first promulgated in 1976. The revision, which was approved by the Attorney General, incorporated new procedures mandated by Executive Order 12036 and addressed ambiguities in the previous guidelines which were identified during the past several years.

The office also represented the Attorney General and the Department of Justice on the National Foreign Intelligence Board, the Interagency Coordinating Committee for United States-Soviet Affairs, the Director of Central Intelligence Committee on Exchanges, the National Security Council Ad Hoc Technology Transfer Group, the Intelligence Charter Legislation Working Group, the Commerce National Foreign Intelligence Board Working Group, the Export Control Enforcement Working Group, the National Security Council/Special Coordination Committee/Central Intelligence Working Group, and various subcommittees of these and other groups.

The OIPR plays a substantial role in the development of legislative initiatives concerning the conduct of United States intelligence activities. During fiscal year 1980, the office prepared and delivered comments and recommendations concerning the proposed intelligence charter legislation and performed interpretative, coordinating, drafting and analytic functions for the Administration in this regard. These efforts culminated in the enactment of new legislative oversight arrangements as part of the Intelligence Authorization Act of 1980. The office also participated in the development of the Department's proposals for amend-

ments to the Freedom of Information Act and new criminal proscriptions against the revelation of the identities of undercover intelligence personnel. The office also provided comments, on an ad hoc basis, on various other bills under consideration in the Congress.

In the area of intelligence operations the office's responsibilities primarily involve the Foreign Intelligence Surveillance Act of 1978. The requests of the Federal Bureau of Investigation and other intelligence agencies that the Attorney General authorize the filing of applications to conduct intelligence-related electronic surveillance and other intelligence and counterintelligence activities, are reviewed by OIPR attorneys. Based on their findings of legal sufficiency and consistency with applicable guidelines and directives, applications for electronic surveillance are drafted and recommendations are made to the Attorney General to approve or disapprove these requests. In certain types of intelligence activities, the Attorney General has delegated approval authority to OIPR, and in those cases authorizations are made by OIPR.

Applications for electronic surveillance that are authorized by the Attorney General are presented to the U.S. Foreign Intelligence Surveillance Court by OIPR attorneys, who appear as legal counsel for the applicant intelligence agencies. When required, legal memoranda, motions and other legal papers are also prepared and filed with the Court. During fiscal year 1980, the office created a new series of forms for applications under the Act, special procedures to minimize electronic surveillance, and associated legal papers.

OIPR also prepared the Attorney General's semiannual report to the Congress on electronic surveillance conducted under the Foreign Intelligence Surveillance Act. Supplementary briefings on electronic surveillances and other intelli-

gence activities of interest to the House and Senate Intelligence Committees are also undertaken as required. From time to time, the Counsel for Intelligence Policy and Deputy Counsels have testified before the two Intelligence Committees to explain the Department's views on intelligence policy and to discuss certain intelligence matters.

A substantial number of Federal Bureau of Investigation requests to conduct undercover activities in counterintelligence cases were reviewed under the Department of Justice Appropriation Acts for fiscal years 1979 and 1980. Recommendations for Attorney General approval of these operations were developed by OIPR in appropriate cases. In addition, a substantial number of other counterintelligence operational activities were also considered by the office and appropriate recommendations were made to the Attorney General for his approval of these activities.

The office also monitors certain intelligence and counterintelligence investigations and other activities by executive branch agencies to ensure conformity with statutes, Executive orders, and procedures and guidelines regulating such activities. During the past year, as part of its oversight functions, OIPR attorneys conducted a field evaluation of how the procedures governing electronic surveillance in foreign intelligence and counterintelligence cases were being implemented. This study was conducted for the Attorney General and involved trips to field facilities of intelligence agencies, interviews of operational personnel and review of surveillance logs.

Finally, the office also reviewed a number of full domestic security investigations conducted by the Federal Bureau of Investigation under the requisite standards set forth in the Attorney General's guidelines for these investigations, and recommended to the Deputy Attorney General that he approve or disapprove their continuation.

United States Parole Commission

Cecil C. McCall
Chairman

The United States Parole Commission was established in May, 1976, by the Parole Commission and Reorganization Act. Prior to that time the agency was known as the United States Board of Parole, which was created by Congress in 1930.

The commission is an independent agency in the Department of Justice. Its primary function is to administer a parole system for federal prisoners and develop federal parole policy, as required.

The commission is authorized to:

1. Grant or deny parole to any eligible federal prisoner.
2. Impose reasonable conditions on the release from custody of any prisoner on discretionary parole or mandatory release by operation of "good-time" laws.
3. Revoke parole or mandatory release.
4. Discharge offenders from supervision and terminate the sentence prior to the expiration of the supervision period.

In addition to the above parole authority, the commission is also authorized, under the Labor Management Reporting and Disclosure Act and the Employees Retirement Income Security Act of 1974, to determine if certain prohibitions on holding office in a labor union or an employer group may be withdrawn for offenders who apply for exemption.

The commission consists of nine commissioners appointed by the President with the advice and consent of the Senate. They serve six-year terms and may hold office for no more than 12 years. The Commissioners are a policymaking body and meet at least quarterly for such purpose.

The Chairman and three Commissioners are stationed in Washington, D.C. The other five act as Regional Commissioners for the Regional Offices in Philadelphia, Pennsylvania; Atlanta, Georgia; Kansas City, Missouri; Dallas, Texas; and San Francisco, California. The three Commissioners in Washington, D.C., make up a National Appeals Board.

Hearing examiners in the Regional Offices and at Headquarters conduct parole hearings with eligible prisoners. They travel to each institution on a bi-monthly schedule. The examiners function as two-person panels to conduct hearings and make recommendations to the Regional commissioner relative to parole or parole revocation.

Assisting the commission are officials and staffs of the Bureau of Prisons and United States Probation Officers attached to each federal district court. The Bureau of

Prisons staffs prepare institutional reports for the commission, make the arrangements for hearings and carry out the release procedures to implement an order to parole. Probation Officers act, according to statute, as parole officers for the commission. In such capacity they make preparole investigations and reports and provide community supervision over prisoners released to the jurisdiction of the commission.

The Probation Officers report apparent violations of conditions of release. If an apparent violation occurs, the commission may issue a warrant for the retaking of the alleged parole violator. The Probation Officers also make recommendations to the commission regarding early termination of the supervision period for certain releases.

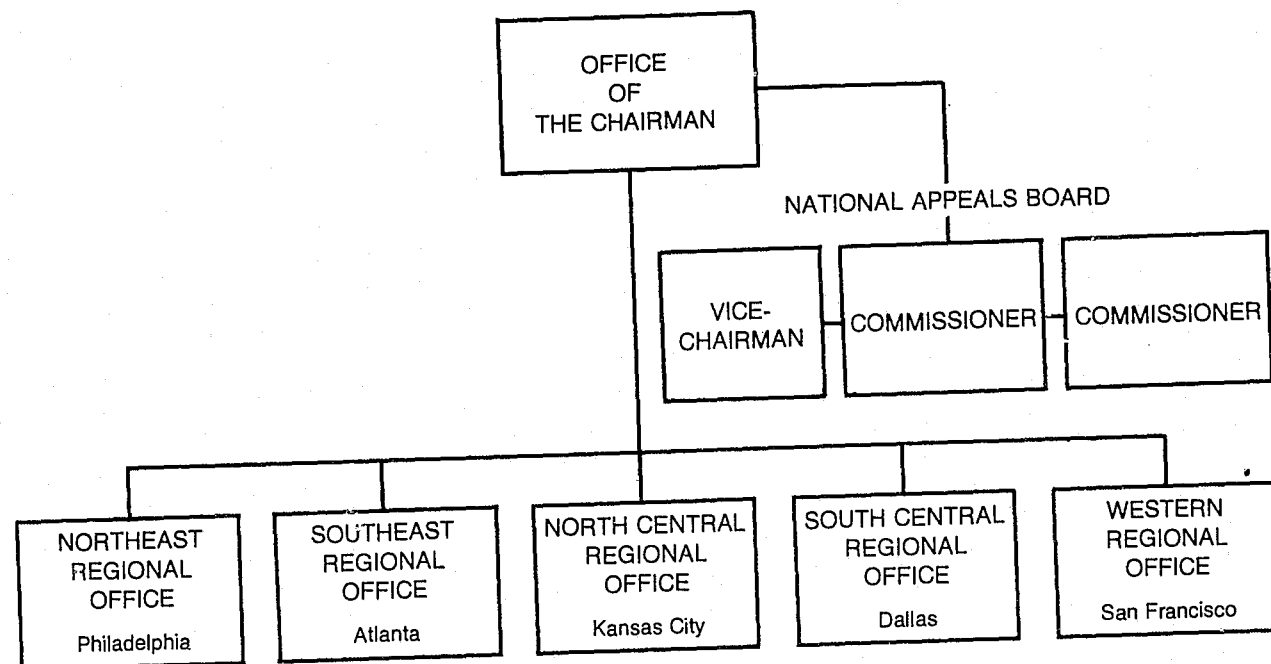
U.S. Parole Commission procedures seek to eliminate unnecessary uncertainty for incarcerated offenders regarding the date of their eventual release. By informing prisoners at the outset of confinement of their probable release date, the commission hopes to defuse a substantial source of institutional tension and enable both prisoners and staff to better organize institutional programs and release plans.

Under commission regulations, all federal prisoners serving a maximum term exceeding one year are afforded parole hearings within 120 days of confinement at a federal institution except those prisoners with a minimum term of parole ineligibility of ten years or more. These prisoners must serve their minimum term before receiving an initial hearing.

At the initial hearing, the commission's examiner panel discusses with the prisoner his offense, criminal and social history, institutional plans and programs. Following the interview, the panel may recommend, after consulting the commission's paroling policy guidelines, either: 1) a presumptive date of release (which may be either a parole date or the prisoner's mandatory release date on good time reductions) or 2) a ten-year reconsideration hearing, if a presumptive date should not be established within ten years of the hearing. If the panel's recommendation is approved by the Regional Commissioner, the panel's proposed decision becomes effective; otherwise the Regional Commissioner may refer the case to the National Commissioners for reconsideration.

If denied parole, the prisoner may appeal to the Regional Commissioner on both substantive and procedural grounds. If he remains dissatisfied, he may appeal to the commission's National Appeals Board. In certain cases the

U.S. Parole Commission



Commissioners, after a hearing by an examiner panel, assume "original jurisdiction" over a case and make the parole decision by the concurrence of three votes. Appeals of these types of actions may be made to the full commission.

Following the initial hearing, the prisoner is scheduled for interim hearings every 18 or 24 months (depending on the length of the maximum term imposed). At this hearing, the commission considers only those developments in the prisoner's case from the date of his last proceeding, along with his release plans. After this review, the commission may order no change in the previous decision or it may advance the presumptive date based on superior program achievement or other clearly exceptional circumstances or retard the date due to disciplinary infractions.

If a prisoner has committed serious disciplinary violations, the commissioner may conduct the interim proceeding as a "rescission" hearing to determine whether the presumptive release date should be forfeited or substantially retarded.

The commission also conducts revocation hearings to determine whether a releasee has violated the terms of his

community supervision, and if so, whether he should be reincarcerated. The Parole Commission and Reorganization Act of 1976 establishes definite time limits of 60 or 90 days for conducting these hearings, depending on whether the hearing is scheduled at the locale of the violation (or arrest) or at a federal institution.

At local revocation hearings the alleged violator is accorded the unqualified right to retained or appointed counsel, right to present witnesses and documentary evidence, and the right to cross-examine adverse witnesses. In institutional revocation hearings, the same procedural rights are applicable with the exception of the right to cross-examine adverse witnesses.

Finally, the commission is required to formally review cases of released prisoners to determine the appropriateness of terminating the sentence earlier than the maximum term imposed by the court. Two years after release on parole, and at least annually thereafter, the commission must review the status of the parolee and determine the need for continued supervision. If continuation on parole beyond five years is contemplated a hearing must be conducted at that time and annually thereafter if requested by the parolee.

Office of the Pardon Attorney

David C. Stephenson
Acting Pardon Attorney

The President exercises the pardon power in Article II, Section 2, clause 1 of the Constitution based on formal application and the recommendation of the Attorney General.

The Pardon Attorney, in consultation with the Deputy Attorney General, receives and reviews all petitions for Executive Clemency, initiates the necessary investigations and prepares the recommendation of the Deputy Attorney General to the President in connection with the consideration of all forms of Executive Clemency, including pardon, commutation (reduction) of sentence, remission of fine and reprieve.

The granting of a pardon generally is considered only after the completion of sentence and a three to five-year waiting period, depending on the seriousness of the offense. The ground on which a pardon is usually granted is in large measure the demonstrated good conduct of a petitioner for a significant period of time after conviction and completion of sentence. All relevant factors, including the petitioner's prior and subsequent arrest record and his reputation in the community, are carefully reviewed to determine whether the petitioner has become and is likely to continue to be a responsible, productive and law-abiding citizen. In addition to petitioner's conduct in his postconviction life, the recentness and seriousness of the offense also are considered.

Although a pardon does not expunge the record of conviction, it serves as a symbol of forgiveness and is useful in removing the stigma incident to conviction, restoring basic civil rights and facilitating restoration of professional or other licenses that may have been lost by reason of the conviction. A pardon does not connote innocence unless given for that specific reason.

Commutation or a reduction in the term of a prison sentence is a restricted form of pardon. Executive Clemency in the form of commutation is rarely granted since the consideration of inmates for early release is primarily the function of the U.S. Parole Commission. The President intervenes to reduce an inmate's sentence to time already served, to a shorter term or simply to accelerate his eligibility for parole consideration, only in the most exceptional circumstances.

Remission of fine and reprieve are less common forms of clemency. A remission of fine is usually granted when fur-

ther collection efforts by the government would impose as undue financial hardship under a petitioner. Of course, applicants for remission also must demonstrate satisfactory postconviction conduct.

A reprieve temporarily suspends the effect of a sentence. Traditionally, reprieves have been used to delay the execution of a death sentence.

It may be said generally that the President's pardoning authority is absolute and extends to all offenses against the United States, except impeachment cases. He has no authority to pardon state offenders.

The decision to grant or deny a pardon is wholly discretionary with the President. The exercise of his authority may not be limited by legislative restrictions and is not subject to review by the courts. There is no appeal from a clemency decision. Although not required to do so, the President has directed the promulgation of rules governing the consideration of petitions for Executive Clemency. While they are published in 28 Code of Federal Regulations 1.1 et seq., they are regarded as internal advisory guidelines for officials concerned with the consideration of clemency petitions and create no enforceable rights in clemency applicants.

Executive Clemency Statistics

In fiscal year 1980, 355 pardon petitions and 168 commutation petitions were received. The President granted 155 pardons and commuted the sentences of 11 persons. Of 1,140 clemency petitions available for consideration during the year, 500 were denied. During fiscal year 1980, the Pardon Attorney received a total of 11,685 pieces of correspondence, mailed out 15,696 items and answered 357 congressional inquiries.

The following table represents statistics for fiscal years 1976 through 1980.

Fiscal Year	Received	Granted		Denied	Pending
		Pardons	Commutations		
1976	604	78	11	244	658
1977	722	129	8	300	863
1978	641	162	3	836	508
1979	710	143	10	448	617
1980	523	155	11	500	474

Federal Bureau of Investigation

William H. Webster
Director

The Federal Bureau of Investigation (FBI) investigates violations of certain federal statutes, collects evidence in cases in which the United States is or may be an interested party, and performs other duties imposed by law or Presidential directive.

If a possible violation of federal law under the jurisdiction of the FBI has occurred, it will be investigated and the facts presented to the appropriate U.S. Attorney or Department of Justice official who will determine whether prosecution or further action is warranted. The FBI does not give an opinion or decide whether an individual will be prosecuted.

The overall objective of the FBI is to have a significant impact on criminal activity, to investigate civil matters in which the federal government has an interest, and to provide information to the executive branch relating to national security. Top priority investigative emphasis has been assigned to those areas that affect society the most—organized crime, foreign counterintelligence, and white-collar crime.

Investigative Efforts Organized Crime

During fiscal year 1980, the FBI has continued to emphasize quality investigations directed against those aspects of illicit organized criminal activity determined to be the principal revenue sources for organized crime and which, therefore, have the greatest adverse impact on society. This high priority program has sparked investigative efforts to combat labor racketeering, illegal infiltration of legitimate business by organized crime and official corruption having organized crime involvement. Targets of investigation have also been designated against the more traditional, illicit activity engaged in by organized crime elements in the areas of loansharking, illegal gambling, arson-for-profit, major pornography and child pornography operations, prostitution, cigarette smuggling, and gangland slayings.

During the year, FBI investigative efforts against organized crime resulted in 597 convictions, including a number of members and associates of traditional organized crime groups. Cases against more than 850 organized crime subjects, with good prospects for successful prosecutions, were still pending at the close of fiscal year 1980.

Resources are also committed to assisting the Drug Enforcement Administration and state and local narcotics enforcement agencies. This commitment is largely in the form

of conducting narcotics-related investigations in conjunction with substantive FBI violations, utilization of joint ad hoc task forces and the development and dissemination of intelligence information relative to illicit drug trafficking.

Intelligence information concerning illegal gambling activity is also gathered and disseminated to state and local law enforcement agencies on a regular basis.

Liaison with the Office of Enforcement Operations in the Criminal Division, the U.S. Marshals Service, and the Bureau of Prisons is also maintained regarding the Witness Security Program. This program remains an important tool for successful prosecution of organized crime cases.

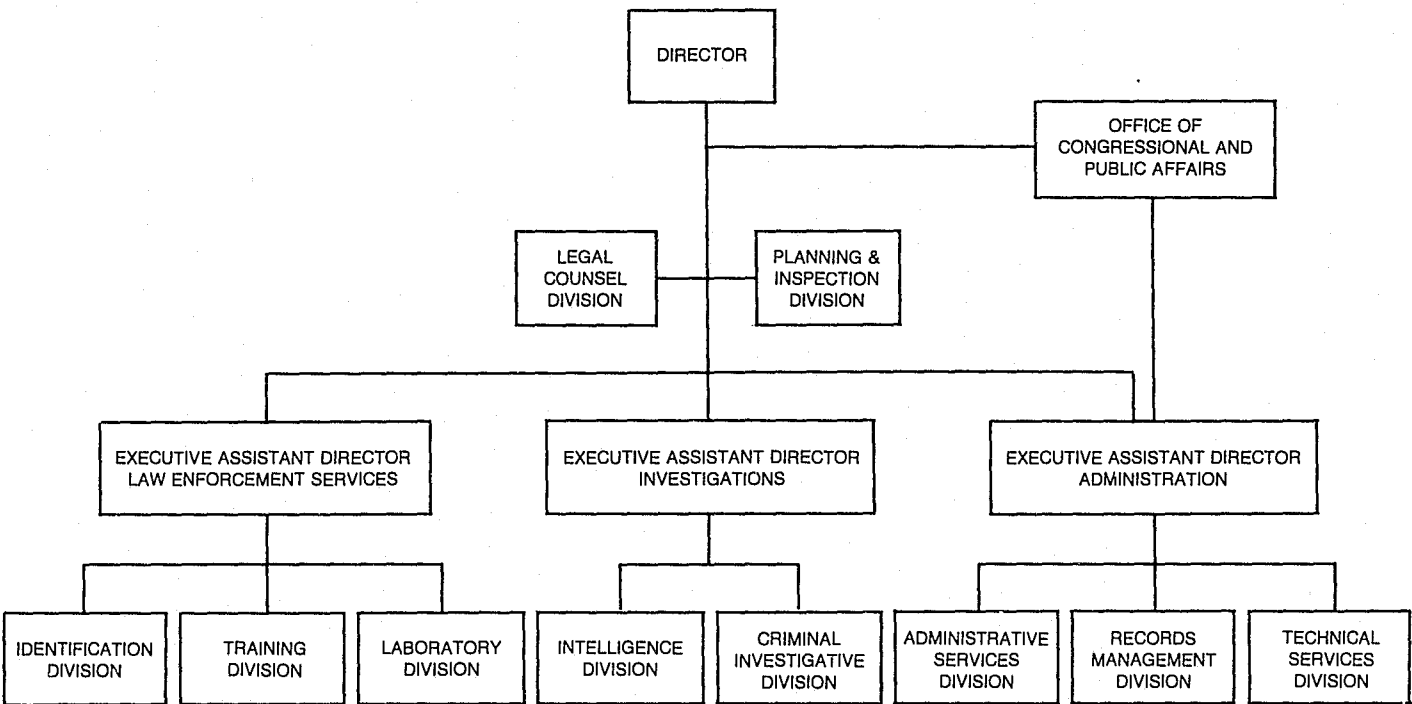
Due to the increasing complexity and sophistication of investigations being undertaken against the various elements of organized crime, a computer system, known as the Organized Crime Information System, has been developed. When fully implemented, the system will significantly improve the FBI's ability to assess the impact of organized crime on society and will be a valuable asset to program management as well as an excellent means of enhancing the field Agent's investigative abilities.

The following are examples of accomplishments of particular significance:

A noteworthy FBI investigation, code named BRILAB, went into an overt phase in February 1980, with the surfacing of the undercover operatives. This case, which also utilized court ordered electronic surveillance coverage, targeted Carlos Marcello of New Orleans, Louisiana, and also targeted union officials and political figures who were allegedly soliciting kickbacks and payoffs for their assistance in obtaining health and life insurance contracts for various employee groups. A New Orleans, Louisiana, federal grand jury returned indictments in June 1980, against Marcello and three others on charges of fraud, extortion, and racketeering. Additional indictments are being sought in Los Angeles, California, and Oklahoma City, Oklahoma.

In May 1980, a prosecution derived from an FBI investigation of the New York maritime industry culminated in the conviction of Michael Clemente and six other defendants for violations of the Racketeer Influenced and Corrupt Organizations (RICO) Statute and the meting out of severe fines and incarceration. This case was significant in that the RICO Statute was used to root out a racketeering enterprise composed of officials of the International Longshoremen's

Federal Bureau of Investigation



Association and organized crime members plotting to control and influence the waterfront industry in the Port of New York and other ports in the Eastern United States. The defendants were organized criminals who worked in concert through a system of extortion, labor payoffs, and influence to control unions and businesses. The convictions successfully established that elected officials of a major labor organization had conspired with organized, professional criminals who controlled the unions in a classic racketeering fashion. This case was one phase of an extensive undercover investigation, code named UNIRAC, in which 109 convictions, including that of labor leader and organized crime figure Anthony Scotto, and 127 indictments have resulted as of October 1980.

The covert phase of a two-and-one-half-year undercover FBI operation, code named MIPORN, terminated in February 1980, with the indictment and arrest of 54 individuals on charges under the conspiracy, Interstate Transportation of Obscene Material, Interstate Transportation of Stolen Property, copyright violations and RICO statutes. Search warrants for 30 business enterprises were executed simultaneously with the arrests. This nationwide investigative effort, initiated by the Miami, Florida FBI Field Office, penetrated some of the biggest producers/distributors of hardcore pornography, including a number of organized crime figures. This case was also directed against alleged

pirating and distribution of major, legitimate motion pictures.

Anthony Giacalone, leading organized crime figure in Detroit, Michigan, was sentenced in October 1979, to a twelve-year federal prison sentence for violation of the Extortionate Credit Transactions statute. Giacalone was considered for many years to be in charge of hoodlum loan-sharking activities in the Detroit area. The FBI undercover investigation which led to his sentence involved use of extortion tactics against numerous Saginaw, Michigan businessmen to force them to repay shylock loans.

Following an extensive gambling and corruption investigation conducted jointly by the FBI and the Baltimore, Maryland Police Department, indictments were returned in December 1979, by a Baltimore federal grand jury against ten individuals charging them with violations under the RICO statute. As of May 1980, all ten subjects were convicted. These ten, along with seven other subjects, were also charged in state court with conspiracy to violate Maryland gambling laws. Three Baltimore police officers operated in an undercover capacity and accepted bribe money over a sixteen-month period from major bookmakers who had attempted to solicit the cooperation of the police to allow illegal gambling to operate freely.

In July 1980, Nicholas Civella, alleged to be "boss" of the Kansas City, Missouri organized crime "family," and

two associates were convicted on charges of conspiracy to offer a bribe to a federal prison warden. This case derived from court-ordered electronic surveillance of Civella in which it was learned that Civella was plotting to get his nephew transferred from one prison to another.

Through the cooperation of a private citizen, consensual monitoring of conversations, and court-ordered electronic surveillance, Joseph Charles Bonanno, Sr., reputed to be a leading organized crime figure, was convicted in U.S. District Court, San Jose, California in September 1980, on charges of conspiracy to obstruct justice. Bonanno's nephew, Jack DiFilippi, was also convicted on the conspiracy charge plus three counts of perjury. The substance of the case was that Bonanno conspired to establish hidden ownership in numerous Cadillac dealerships and other businesses.

During May 1980, Alphonse Persico, alleged to be one of the most powerful organized crime figures in the United States, and his associate Michael Bolino were convicted of violating the Extortionate Credit Transactions statute in U.S. District Court, Eastern District of New York. Bolino was sentenced to five years federal custody. Persico has not yet been sentenced and remains in a fugitive status. This lengthy investigation focused upon a large-scale loansharking operation in which the victim of a series of extortionate loans was an FBI informant. Due to threats against the victim, he and his family were enrolled in the Witness Security Program.

During June 1980, trial was held in U.S. District Court, Cleveland, Ohio regarding the bribery of a former FBI Cleveland Division clerical employee, Geraldine Rabonowitz, by persons reputed to be members of the Cleveland organized crime "family." Defendants in this trial were James Licavoli, reputed "boss" of the Cleveland "family;" John Calandra, and Anthony Liberatore, reputed "capos" in the Cleveland "family;" and Thomas Lanci and Kenneth Ciarcia, associates of Liberatore. Ciarcia, Lanci, and Liberatore were convicted and sentenced on bribery charges and freed on bond pending appeal. Liberatore was sentenced to 12 years in the custody of the Attorney General, while Lanci and Ciarcia were each sentenced to eight years in the custody of the Attorney General.

As a result of an FBI regional team approach, a significant case against cigarette smugglers was successfully prosecuted in Pennsylvania, under the RICO statute, resulting in the conviction and sentencing of nine individuals in November 1979. One of the defendants was the President of Southern Wholesalers, Inc., Goldsboro, North Carolina, the main supplier of the bootleg cigarettes. It is estimated that the trafficking in contraband cigarettes by this organization caused the Commonwealth of Pennsylvania a loss in cigarette excise tax revenue of approximately \$7.5 billion.

In February 1980, following a novel investigation conducted jointly by the FBI and the Drug Enforcement Administration in Miami, Florida, Robert Platshorn, Robert Meinster, and five other subjects, comprising what was referred to as the "Black Tuna Gang," were convicted for narcotics-related violations under the RICO and the Continuing Criminal Enterprise statutes. This case, code named BANCO, achieved its objectives of identifying illicitly gained money and the sponsors of major narcotics cartels through financial flow evidence. The narcotics traffickers were immobilized, and this successful investigation has been said to represent a landmark achievement in drug law enforcement.

The ultimate impact of the FBI's Organized Crime Program on American society will be realized in the progressive curtailment of the sphere of organized criminal activity and influence, in the seizure of assets of organized criminal groups; in the recovery of lost tax revenues, in the reduction of consumer costs, and in the restoration of public confidence in the integrity of government at all levels.

White-Collar Crime

White-collar crime consists of illegal acts that use deceit and concealment rather than the use or threat of physical force or violence to obtain money, property or services; to avoid the payment or loss of money; or to secure a business or personal advantage. Perpetrators of white-collar crimes are often regarded as "pillars" of their communities and occupy positions in government, industry, professions, and civic organizations. By betraying their positions and the citizens' trust, white-collar criminals undermine professional and government integrity. They are responsible for the loss of billions of dollars annually to the nation's economy.

The following offenses constitute the primary jurisdictional areas investigated by the FBI in the category of white-collar crime: antitrust violations, corrupt acts committed by public officials, fraudulent interstate and international schemes, bribery, obstruction of justice, perjury, frauds perpetrated against federal agencies, racketeer influenced and corrupt organizations, and interstate transportation of stolen or counterfeit securities.

During the year, approximately 23 percent of the FBI's investigative manpower was devoted to handling white-collar crime investigative matters—an effort that resulted in nearly 3,200 convictions. More than \$151.3 million in ill-gotten gains was received and the potential economic losses prevented totaled \$706.2 million.

Special Agent vigilance and expertise concerning white-collar crime investigations were enhanced through specialized training programs and seminars. Special Agent personnel also continued to assist and instruct a concerned

citizenry regarding schemes and tactics used by white-collar criminals.

Public Corruption

Investigations involving corruption of public officials are generally initiated upon receipt of information that individuals who hold positions of trust within the government have violated their trust for personal gain. The majority of these matters are investigated and considered for prosecution under the provisions of the RICO and Hobbs Act—extortion statutes. Investigations of these matters are among the highest priorities of the FBI.

During the first three quarters of fiscal year 1980, convictions on public corruption matters increased by 16 percent over the previous fiscal year.

The increased emphasis on the investigation of those who violate their public trust for personal gain has recently been highlighted by a number of sophisticated undercover operations.

A review of the convictions in the public corruption area recorded in 1980 disclosed that they include individuals in mid- to high-level management positions in all types of government throughout the United States.

Financial Crimes

Financial crimes generally involve intricate schemes to manipulate documents or large sums of cash and attempts to defraud innocent victims and institutions. Because many of these operate under the guise of legitimate entrepreneurial ventures, their detrimental "success" or their enervation by the FBI bears directly on the necessary confidence in our free enterprise system. FBI investigations addressing financial crimes are often based on statutes pertinent to interstate transportation of stolen or counterfeit securities, bank fraud and embezzlement, wire/mail fraud, racketeer influenced and corrupt organizations, and bankruptcy frauds.

Approximately 24 percent of the investigations in this general category are directed at bank frauds and embezzlements. Bank fraud and embezzlement investigations by the FBI during the year resulted in approximately \$35.8 million in recoveries and more than \$15.7 million in potential economic loss prevented.

Greater emphasis has been placed on investigations of sophisticated "con men" who use wire fraud and mail fraud to perpetrate swindles that are national or worldwide in scope. Major investigative efforts are currently directed toward violations of the mail and wire fraud statutes involving "bogus" offshore banks, commodity frauds, fraud in the coal and petroleum fields, computer-related frauds, and fraud in spurious insurance companies. Fraud-by-wire convictions for fiscal year 1980 indicate a 17 percent increase over last year.

Increased emphasis has also been directed at investigations relative to economic crimes under the RICO statute. Such cases include bankruptcy fraud and spurious trafficking in legitimate or counterfeit stocks, debentures, bonds, and certificates of deposit. These investigations, and those concerning wire/mail fraud, involved the successful cooperative efforts of foreign authorities and FBI officials in the United States and abroad that resulted in increased prosecutive accomplishments during the year.

The interstate transportation of stolen securities and negotiable instruments and violations of the National Bankruptcy Act have also been areas of investigative focus in the category of financial crimes.

Fraud Against the Government and Bribery

Investigations in the fraud area are aimed at the criminal misuse of federal funds appropriated for executive branch programs involving billions of dollars.

Fraud and bribery investigations represent approximately 29 percent of the total manpower resources committed to the White-Collar Crime Program. Undercover operations targeting specific fraud problems have proven to be another successful method in combating fraud. An FBI undercover operation in California, code named MEDFRAUD, was directed toward widespread fraud in the government funded health care industry. The operation ran for 20 months and identified approximately 200 cases of fraud, bribery and corruption resulting in substantial losses to the government. The subjects in these cases are doctors, health clinics, clinical laboratories, and other members of the health care industry.

Investigation of bribery of federal government officials, at all levels, continues to be a priority area. This crime is extremely difficult to identify, investigate, and prosecute. A number of "Hot Lines" have been established in FBI Field Offices to receive complaints from the public of bribery, fraud, and corruption.

A recent 57 count indictment in the Eastern District of Virginia of a large computer firm and its corporate executives on charges resulting from the bribery of a General Services Administration contracting officer is an example of the complex matters being handled by the FBI.

Copyright Matters

"Piracy" is the term used to describe the unauthorized duplication, distribution, and sale of sound recordings and motion pictures for private gain. Piracy continues to plague the industry, causing losses estimated in the millions of dollars. The FBI has adopted the Department of Justice's White-Collar Crime Law Enforcement Priorities in the area of crimes against businesses. Investigative resources are directed toward those copyright violations that involve

manufacturers or distributors in three or more states or countries and \$500,000 or more in aggregate losses. The industry, the public, and the taxpayer are all financial victims of the "pirate."

The motion picture industry faces problems which are significantly different from those of the recording industry, because of the unique nature of the marketing system in the motion picture industry. The emerging problem comes in the introduction of pirate films, and particularly pirate video cassettes, into markets which have not been developed by the motion picture distributing companies, especially overseas markets.

Because of widespread home video cassette taping of movies, X-Rated films were once the hottest item among prerecorded video cassettes but now, according to the industry, the greater availability of film titles has caused mainstream films, like "Superman" and "Patton," to become the dominant factor in the market. Representatives of the sound recording industry have determined, through surveys, that some counterfeit products appeared in 90 percent of the retail outlets. The pirates, as evidenced above, continue to expand into lucrative areas as the markets develop.

Current investigative techniques utilized by the FBI to pursue the stated priorities involve undercover operations, use of body recorders, Title III intercepts, and traditional law enforcement techniques.

The success of FBI investigations in the copyright area has been highlighted by several operations within the past year. In late 1979, the Miami, Florida Field Office concluded a major investigation with the arrest of 18 individuals charged with copyright violations involving pirated cassettes of new movies, such as "Rocky II" and "Star Wars." Seven truckloads of sophisticated recording equipment were seized and it was determined much of the illegal business was transacted in South America.

Cooperation with the Royal Canadian Mounted Police in another case revealed a major connection between Canadian pirates and their counterparts in several states throughout the United States.

The FBI continues to investigate aggressively major copyright violators and has been successful through the U.S. Attorneys around the country in prosecuting pirates for copyright violations of the U.S. Code and violations of other federal statutes, such as fraud by wire and interstate transportation of stolen property, both of which are felony offenses.

Obstruction of Justice

The FBI pursues allegations of obstruction of justice, perjury, and contempt of court in an effort to ensure that transgressions which challenge the dignity and sanctity of

the judicial system are thoroughly and expeditiously investigated and brought to our U.S. Attorneys for prosecutive decisions. Violations of these statutes investigated by the FBI resulted in 13 convictions and \$20,100 in fines imposed during fiscal year 1980.

Antitrust—Civil Matters

The Antitrust and Civil Matters program is, in terms of time expended, one of the smallest of the FBI's investigative programs. However, the results achieved are always proportionately very high because of the selectivity of investigative initiation.

All investigations instituted in this program are at the specific request of the Department or an individual U.S. Attorney. Antitrust investigations pertain to restraint of trade and monopolistic business practices. Many civil investigations are initiated to recover funds ascertained, through separate criminal fraud investigations, to have been stolen from one of the many federal aid programs.

Through antitrust and civil investigations in fiscal year 1980, 94 convictions have occurred and fines of \$7,263,500 and recoveries of \$2,465,253 were secured.

Foreign Counterintelligence

The efforts of the intelligence apparatus of a number of nations to obtain illicitly information vital to the interests of the United States continue. These efforts were most graphically illustrated within the past year with the public identification of a Soviet "illegal" and his family, who labored some 12 years to establish legitimacy in America in order to serve the Soviet intelligence apparatus. Similarly, the arrest and conviction of one Marc DeGeyter, a foreign national, who, at the behest of his Soviet clients, paid \$500,000 to an undercover FBI Agent for embargoed advanced computer technology, pointed up yet another attempt of hostile intelligence to acquire privileged information.

Meanwhile, several international political events, some of which had substantial impact from a counterintelligence perspective, took place in the preceding year. The sudden influx of Cuban refugees and the Iranian and Afghanistan crises were in this category. These political upheavals taxed the FBI's counterintelligence resources, already strained to meet needs growing out of the normalization of relations with the People's Republic of China and the unceasing flow of Soviet emigres to the United States.

In brief, the breadth and scope of counterintelligence requirements has not diminished. Instead, they have grown more diverse over the past year.

Civil Rights Violations

The Civil Rights Program of the FBI investigates matters that involve the actual or attempted abridgement of rights

provided to the citizens and inhabitants of the United States under the Constitution and laws of the country. The primary objective of this program is to enhance and protect those rights through expeditious investigation of matters within FBI jurisdiction. Both civil and criminal matters are investigated in close coordination with the Civil Rights Division.

During fiscal year 1980, 69 misdemeanor convictions and 29 felony convictions were obtained in civil rights cases investigated by the FBI. Of these, 47 misdemeanor and two felony convictions were obtained in cases involving interference provisions of the Fair Housing Act and 11 felony convictions were obtained in cases involving the involuntary servitude and slavery statutes.

Since May 29, 1980 the FBI has been conducting an exhaustive investigation to identify the individual who shot Urban League executive director Vernon E. Jordan in a motel parking lot in Fort Wayne, Indiana. In Miami, Florida FBI investigation resulted in the indictment of a police officer in the death of a black insurance executive who died as a result of a beating he suffered subsequent to a high-speed chase. A Florida Highway Patrol officer, indicted on charges stemming from lewd and lascivious assault on a minor, is in fugitive status. The FBI also investigated possible civil rights violations stemming from a confrontation in Greensboro, North Carolina between members of the Workers Viewpoint Organization, also known as the Communist Workers Party of North Carolina, and members of the Ku Klux Klan and American Nazi Party.

Personal Crime

The Personal Crimes Program of the FBI addresses violations of federal criminal statutes that involve the common characteristics of threatened or actual personal injury or loss of life. These crimes, which include bank robbery, extortion, kidnaping, and skyjacking, among others, frequently have considerable impact on the communities and individuals affected because of their violent nature, the high profile of their victims, and the possibility of substantial monetary losses. The objective of this program is to reduce the impact of personal crime victimization by conducting logical investigation to identify, locate, and apprehend criminals involved, and by providing support to U.S. Attorneys. FBI investigative activity in this program during fiscal year 1980 resulted in 1,011 arrests and 1,788 convictions, 96 percent of which were for felony offenses, and 88 percent resulted in confinement for the offender. In addition, more than \$18.9 million worth of stolen and illegally possessed property was recovered during FBI investigations.

Bank Robberies and Related Crimes

Federal Bank Robbery and Incidental Crime Statute violations include robberies, burglaries, and larcenies com-

mitted against federally insured banks, savings and loan associations, and credit unions. An investigative response by the FBI is afforded to each reported violation. Convictions in federal court for bank robbery and related crimes totaled 1,502 during fiscal year 1980. FBI investigation of these crimes resulted in the recovery of over \$5.2 million in stolen bank funds and other illegally possessed property. Related investigations of extortionate demands against financial institutions are performed by the FBI under the provisions of the Hobbs Act. There were 39 convictions for these extortion/hostage-style offenses during the year. Recoveries exceeded \$500,000. The FBI also conducted 1,558 seminars dealing with bank security procedures and actions to take during a robbery, reaching more than 77,000 financial institution employees across the nation.

Extortion

Victims of extortion are faced with demands for money or other things of value under threat of physical injury, kidnaping, death, or property damage. FBI investigation in these cases seeks to identify the originators of extortionate demands and prevent them from following through with their threats. Convictions for violating the federal extortion statute numbered 49 in fiscal year 1980. Extortionate demands against commercial institutions engaged in interstate commerce are investigated by the FBI under the provisions of the Hobbs Act. Twenty-four convictions in this area were recorded during fiscal year 1980.

Kidnaping

The FBI's primary consideration in kidnaping investigation is always the safe return of the victim. After all efforts have been expended to ensure this objective, the identification, arrest, and prosecution of the persons responsible are pursued. Kidnaping cases require extensive and extended manpower commitments, which the FBI recognizes and provides. These cases also often involve violation of various local statutes and, as a result, perpetrators find themselves charged on both the federal and local levels on the basis of FBI kidnaping investigations. Federal kidnaping statute convictions totaled 65 in fiscal year 1980.

Assaulting or Killing Federal Officers or Other Government Officials

The FBI is charged with the investigation of assaults committed against certain federal law officers, members of Congress, and the President. In fiscal year 1980, investigations under these statutes resulted in 86 convictions. Major FBI investigations continued into the assassinations of a U.S. district court judge and a Congressman.

Skyjackings and Related Crimes

Twenty-four attempted and actual aircraft skyjackings

occurred during fiscal year 1980, involving 22 commercial and two private aircraft. Successful resolution of this type of crisis, which may involve the taking of numerous hostages by the hijacker, requires close coordination and teamwork among the FBI, the Federal Aviation Administration, airport authorities, airline industry, and local law enforcement. To foster the development of these relationships, the FBI and the Federal Aviation Administration convened in late 1979, a meeting at the FBI Academy, Quantico, Virginia of representatives of the airline industry, airline pilot associations, and airport operators to encourage a common strategy in the problem of air piracy. This meeting led to 13 regional conferences aimed at further development of the strategy among federal and local law enforcement personnel, airport authorities, airline officials, and pilots involved in managing crises of this type. Investigations of crime aboard aircraft by the FBI in fiscal year 1980 led to 23 convictions in federal court.

General Property Crimes

Property crimes account for approximately 90 percent of all reported crime in the United States. Property crimes increased in the country 49.1 percent between 1970 and 1979. Because many property crimes affect business, the huge theft costs involved must be absorbed or passed on to the consumer. This adds to inflationary pressure. To combat the problem, during the past few years the FBI began redirecting its investigative resources, where possible, toward the targeting of top thieves, fences, and organized criminal groups who handle millions of dollars in stolen property annually.

FBI investigations have established in many instances a direct connection between property crime, organized crime, white-collar crime, and public corruption. Many thieves and fences are controlled by organized criminal figures, and the outlets for stolen goods are business establishments that buy stolen property at a lower cost to give them a competitive edge in the market place. In certain instances, these activities are allowed to continue based on cooperation from local government officials and persons engaged in private commerce.

Described below are some of the recent accomplishments in the General Property Crimes Program:

The FBI, beginning in 1978, developed an operation, code named ABSCAM, targeting major property thieves, swindlers, and organized criminal groups which ultimately led to political corrupters. Six Congressmen, as well as several local politicians and middlemen/influence peddlers, were indicted. Eight convictions have resulted, including two against Congressmen. Also, \$690 million in art and fraudulent certificate of deposit recoveries had been registered.

In December, 1979 the FBI's Jacksonville, Florida Field Office, in cooperation with the Duval County Sheriff's Office, ended an undercover project which targeted pirating of eight-track and cassette tapes and heavy equipment and vehicle thefts. This investigation culminated in the arrests of 120 individuals in Maine, North and South Carolina, and Florida; 82 convictions resulted through mid-September 1980, and property valued at \$1.7 million was recovered.

The FBI's Oklahoma City Field Office initiated and directed an operation against heavy equipment and oil field thefts with undercover Agents posing as fences. This investigation was successfully concluded in October of 1979, ultimately resulting in 54 arrests, 87 convictions, and almost \$3 million in recoveries.

During fiscal year 1980 1,235 persons were convicted, 902 were arrested, and 145 were located. In this period, stolen or illegally possessed personal property in the amount of \$100,458,921 was recovered while \$723,312 in fines was assessed, and \$59,904,410 in potential economic loss was prevented. At the end of September 1980, 70,505 stolen trucks and automobiles currently valued in excess of \$415 million were listed in the National Crime Information Center.

Terrorism

The Terrorism Section of the Criminal Investigative Division has the dual role of reaction (criminal investigation) and prevention (intelligence gathering) in its effort to combat the actual and potential terrorist threat in the United States.

As a result of the judicious use of manpower and an increased emphasis on the terrorist threat, this section oversaw investigations resulting in the identification and subsequent conviction of 11 members of the Puerto Rican terrorist group known as the Armed Forces of Puerto Rican National Liberation. This included a "Top Ten" fugitive and his wife who were responsible for numerous bombing and terrorist attacks in New York and Chicago. Other cases involved identification of the two main subjects in the investigation of the New World Liberation Front, a terrorist organization which perpetrated over 70 bombings between 1974 and 1978; positive identification of two members of the Black Liberation Army and tentative identification of six others as participants in the firebombings of black churches in the San Francisco area; the neutralization of an assassination plot by the Cuban terrorist group, Omega 7, against the visiting president of a foreign country; development of information that the Libyan Government had sent "hit teams" to the United States to assassinate its enemies and to harass and intimidate its vocal opponents, and the expulsion of six Libyan diplomats for involvement in these activities. Other matters included development and dissemination of

information to the Dutch and Israeli Governments, which resulted in the arrests of terrorists wanted in their respective countries; the arrests and convictions of two members of the Revolutionary Communist Party for assaulting United Nations diplomatic personnel in New York; the arrest of a member of the Taiwanese Independence Movement for assaulting a foreign official in Los Angeles, California; and the arrest of an individual for sending threatening letters to the sister of the late Shah of Iran. This program was also responsible for the successful management of the security for the 1980 Lake Placid Olympics, the expulsion of the Iranian diplomats from the United States in April 1980, and the contingency planning for terrorist acts occurring during the Republican and Democratic National Conventions. The rapid arrest of two suspects and charges pending for a third suspect in the assassination in his suburban Washington, D.C. home of a strong critic of the revolutionary regime in Iran should also be noted.

The Terrorist Research and Bomb Data Unit of this section has, as a result of the research and analysis of bombing incidents and terrorist activity, published 43 bulletins relating to bombing incidents and 14 bulletins relating to terrorist organizations. It conducted six Bomb Scene Investigator Schools, five Bombing Technician Seminars and seven Regional Terrorism Seminars. In addition, the unit conducted an Executive Symposium and a Bomb Squad Commanders Seminar at the FBI Academy, Quantico, Virginia.

Fugitive Matters

In fiscal year 1980, 1,179 FBI fugitives were arrested or located. FBI resources in this area are being directed toward the apprehension of individuals wanted for violent crimes such as murder, manslaughter, rape, robbery, or aggravated assault; for crimes resulting in the loss or destruction of property values in excess of \$25,000; and for crimes involving substantial narcotics trafficking. The decline in the number of fugitives apprehended by the FBI during this fiscal year is attributable to the transfer to the U.S. Marshals Service of responsibility for locating federal probation, parole, mandatory release and bond default violators, as well as handling violations of the Escape and Rescue Statutes. This transfer was made on October 1, 1979 on the authority of the Deputy Attorney General.

An integral part of the FBI's efforts to effect the timely apprehension of wanted persons is the "Ten Most Wanted Fugitives" Program. Three "Top Ten" fugitives were apprehended during the year.

General Government Crimes Program

The General Government Crimes Program has as its objective the identification, investigation, and prosecution of

criminals and criminal groups whose activities are directed against property owned by the U.S. Government and/or individuals who are located on property where the U.S. Government has investigative jurisdiction. These crimes generally involve theft of government weapons, explosives, or high-value property, and acts of violence. Among these crimes are homicide, assault and robbery occurring on government reservations, in Indian country, and in federal penitentiaries. Some 430 major Department of Defense installations and 125 Indian reservations are within the program's purview. During fiscal year 1980, 1,521 complaints, informations, and indictments were obtained, 1,005 persons were convicted, 585 were arrested and/or located, and recoveries amounted to \$4,166,746.

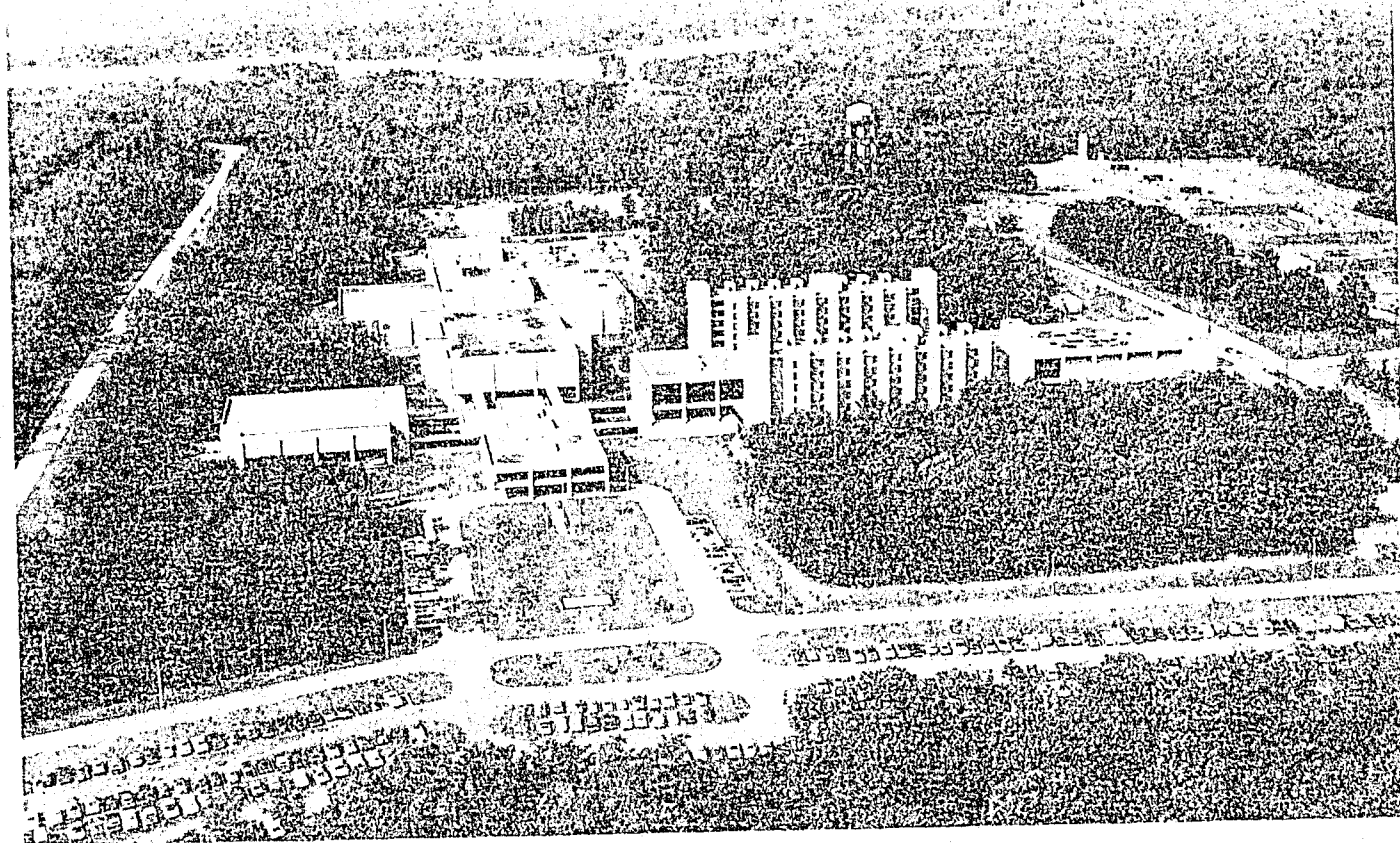
Crimes on government reservations frequently involve violence. In a recent case, individuals broke into a federal penitentiary, held guards and inmates hostage at gunpoint, and subsequently executed an inmate. Investigation by the FBI resulted in the arrest and conviction of two individuals. Another investigation resulted in the arrest and conviction of nine individuals who, under the guise of a religious sect, perpetrated crimes involving impersonation, extortion and theft of government property.

The nation's Indian reservations are extremely vulnerable to violent civil disturbances which can result in widespread looting, arson and crimes of violence. The FBI and the Departments of Justice and Interior have recently drafted a proposed memorandum of understanding which delineates the respective roles of federal law enforcement agencies in future Indian reservation civil disturbances. It is anticipated that this will improve reactive response in future civil disturbances, enabling law enforcement to lessen the magnitude of disruption.

Applicant Investigations for Other Agencies

The FBI continues to render assistance to other governmental entities, such as The White House, congressional committees, the Administrative Office of the U.S. Courts, the Department of Energy, the Nuclear Regulatory Commission, the Office of Personnel Management, and also the Department of Justice, by conducting background investigations concerning persons who will occupy important and sensitive positions in the federal government. These inquiries are instituted only upon written request and are performed pursuant to various statutes, Executive orders, departmental orders, and agreements established with the Attorney General's approval. During fiscal year 1980, 4,269 individuals were investigated under this program.

In order to concentrate resources in the top-priority areas, it is anticipated that the proposed FBI Charter will reduce to a considerable extent FBI responsibility for conducting these investigations.



FBI Academy at Quantico, Virginia.

Cooperative Services Training Division

The FBI Academy, Quantico, Virginia is the focal point of all the Bureau's training programs. The Bureau offers field police training programs throughout the country which are supervised and coordinated by the Training Division.

Two of the Academy's most important programs are New Agents' Training and In-Service Training programs, designed for FBI field Agents. Another major program is the FBI National Academy which trains midlevel and senior police administrators. Since its foundation, the FBI National Academy program has graduated 14,395 municipal, state, and federal officers. Other major programs include the National Executive Institute for police executives of ma-

ior departments; the Senior Executive Program for FBI executives; and the Executive Development Institute for FBI mid-level managers. Other programs reflect the profession's concern for significant law enforcement training needs.

During the past year, 8,950 criminal justice personnel have received training at the Academy. This includes 3,988 agent personnel, 724 FBI support employees, and 4,238 police officers. A total of 273 schools, symposiums and in-service classes, not including new agents' classes, were offered.

The most comprehensive course offered at the Academy is the fifteen-week training program for newly appointed agent personnel. A total of 497 new agents were graduated during fiscal year 1980.

During fiscal year 1980, 3,491 veteran field agents attended 122 in-service schools. Training in white-collar crime, computer crime, and corruption was afforded 1,776 of these. Other law enforcement subject areas emphasized were organized crime, management aptitude and management development. Thirty-three in-service training programs were attended by 724 FBI support personnel.

During fiscal year 1980, the FBI National Academy, which provides 11 weeks of advanced instruction to career members of the law enforcement profession, held four sessions and graduated 996 officers. The University of Virginia accredits both the National Academy's undergraduate and graduate courses.

The Academy conducted specialized schools and courses dealing with a broad range of police-related topics, such as Management for Law Enforcement, Police Personnel Management, Leadership, Management Planning and Budgets, Police Labor Relations and Collective Bargaining, Human Resource Development in Education and Training, Effective Communications, Hostage Negotiation, Terrorism and Counterterrorism, Death Investigations, Interpersonal Violence, Firearms and related subjects, and Sexual Exploitation of Children. During fiscal year 1980, the Academy presented 114 special schools attended by 3,242 law enforcement officers.

In addition to classroom training, Academy instructors provided comprehensive research on such subjects as psycholinguistics and hypnotic interviewing techniques. Members of the Behavioral Sciences staff furnished 117 personality profiles of criminals involved in serious personal crimes. Research information was also furnished on hostage negotiation, crisis management and special events planning. Training and operational support for the bureau's aviation program was provided by the Academy staff.

Among the many conferences, symposiums and seminars offered to the law enforcement community during fiscal year 1980 were:

- *Executive Development Institute*, sixth and seventh sessions, a one-month development program for potential mid-level FBI managers.
- *Third International Symposium on Terrorism*, presented to over 180 top federal, state and local law enforcement officials, which featured distinguished lecturers from four foreign countries.
- *Investigative Techniques of Computer-Related Crimes*, a four-week computer fraud program for FBI Agents.
- *National Symposium on Economic Arson* (186 attendees).
- *FBI Executive Symposium on Bombing and Terrorism* (59 attendees).
- *Crime Laboratory Symposium* (187 attendees).

Agents trained as police instructors are assigned in the FBI's 59 Field Offices and serve as the driving force behind the FBI's Field Training program. During fiscal year 1980 they provided 61,764 hours of instruction while participating in 5,129 law enforcement schools attended by 168,259 criminal justice personnel.

Instructors from FBI Headquarters, in support of the field program, conducted 327 specialized schools in a wide variety of subjects such as Forensic Science, Applied Criminology Identification Matters, Executive Development, and Uniform Crime Reporting.

Laboratory Division

The FBI Laboratory is one of the largest forensic science laboratories serving law enforcement today. Since its inception nearly 50 years ago, the FBI Laboratory has been, and will continue to be, dedicated to the maximum utilization of physical evidence in support of the nation's criminal justice system. To keep pace with the increasing and often exigent demands of modern law enforcement, many scientifically educated men and women have been further trained in a variety of forensic science disciplines. Assisted by competent technicians and an array of the most modern equipment and instrumentation, these experts apply their knowledge to assist in the successful solution of thousands of investigative and prosecutive matters annually.

The FBI Laboratory encompassing many highly specialized disciplines, is divided into three major sections: Documents, Scientific Analysis, and Special Projects. These sections are subdivided into smaller units, each of which performs a variety of related examinations. This enables each unit to concentrate on a rather narrow area of expertise to ensure that the most comprehensive examinations are performed on the evidence submitted.

The work of the Document Section deals with scientific examinations of physical evidence involving handwriting and hand printing; ink and paper; obliteration and alteration of documents, shoe prints and tire treads. This section also translates and interprets a wide variety of written and spoken foreign language material, examines evidence in gambling cases, and conducts cryptanalytic examinations of secret/enciphered communications.

The Scientific Analysis Section is composed of several units which handle a variety of highly specialized scientific examinations such as chemistry toxicology, arson, firearms, toolmarks, hairs and fibers, blood, metallurgy, mineralogy, number restorations, glass fractures, explosives, paints and plastics.

The services provided by the Special Projects Section are helpful to both the investigator and prosecutor in discharging their responsibilities. The craftsmen, artists, and photographers who work in this section provide unique services and products. These include concealment devices

prepared for cameras, recorders, and transmitters to assist the investigator. Assistance to the prosecutor includes a wide variety of visual aids, such as charts and models to be used as demonstrative evidence in court. The Special Projects Section also fabricates all of the identification cards and badges, retirement plaques and many of the decorative wall hangings used by the FBI.

The FBI Laboratory provides its services to federal and nonfederal agencies through two broad programs, the Forensic Services Program and the Forensic Research and Training Program.

Through the Forensic Services Program the Laboratory provides technical and scientific forensic examination and expert court testimony to both federal and nonfederal law enforcement agencies. During fiscal year 1980, the Laboratory Division conducted 619,454 forensic examinations. Of these examinations, 357,640 were in support of FBI investigations and 20,509 were conducted for other federal agencies. The remaining 241,305 examinations were conducted for state and local law enforcement agencies or their laboratories.

Through this service many examinations are made in cases of significant national interest, including many involving white-collar and organized crime.

The highly publicized eight week trial of convicted pornography kingpin Michael George Thevis and codefendants Alton Bart Hood and Ana Jeanette Evans dramatically illustrated the capabilities of the FBI Laboratory. Testimony in the field of firearms, metallurgy, document examination, photographic analysis and visual information preparation was presented by Laboratory experts during this lengthy trial.

One of the more interesting aspects of this case from the Laboratory and Judicial viewpoint was the introduction by the defense of a defense produced motion picture which was alleged to depict how the eye would accurately see a man standing off the side of a highway, located just outside Atlanta, Georgia. This was extremely significant to the defense inasmuch as a previous prosecution witness had testified that he had observed Michael George Thevis standing at the spot depicted in the motion picture at approximately the same time that a key prosecution witness and former partner of Thevis was murdered a few hundred yards from the highway. It was the defense's assertion that the witness who had passed that area in a motor vehicle could not have accurately observed Thevis, or any other individual, standing in the spot illustrated in the film.

The FBI Laboratory Document Examiner, having previously testified in this case, was at the previewing of the defense's motion picture exhibit. The Document Examiner in this matter was also qualified as a photographic analyst and was allowed by the court to testify in rebuttal during the middle of the defense's presentation. The testimony he gave

challenged the defense's contention that the film accurately depicted what the eye of a passing motorist would see.

Thevis, Hood and Evans were found guilty on all counts of the RICO indictment. They were also found guilty of conspiracy in the murder of a government witness.

In a recent case tried in Denver, Colorado, involving well known con-men and swindlers operating internationally and within the continental United States, Assistant U.S. Attorneys trying the case determined that they would need numerous court exhibits in order to make the case understandable to the jury. These exhibits were necessary to portray visually the criminal activities of the defendants. Working in close cooperation with the attorneys, visual information specialists from the Special Projects Section developed exhibits which proved invaluable in explaining the prosecution's case during the month-long trial. One defendant was convicted of all 24 counts and two were convicted of 16 counts of the original indictment.

The division made substantial contributions to state and local government agencies by processing 1,011,464 fingerprint cards of applicants for employment and licensing submitted under the authority of Public Law 92-544. This statute also authorizes record checks for federally chartered or insured banking institutions, and 318,224 cards were received for this purpose. Additionally, 88,198 cards were submitted by certain segments of the securities industry under the authority of Public Law 94-29. The division also contributed to the security and safety of the Winter Olympic Games at Lake Placid, New York during February 1980, by conducting 14,905 record checks for the New York State Police.

Individuals desiring to determine what records the Identification Division maintained about them made 5,171 requests under the authority of Department of Justice Order 556-73. Subjects of FBI identification records submitted 526 challenges to the accuracy or completeness of their records which were forwarded to law enforcement agencies throughout the country for verification and/or correction.

The division continues to provide an important service to the criminal justice community by posting wanted notices against the fingerprint card records of persons being sought as fugitives. Based on these notices, the division was able to provide information concerning the possible whereabouts of 17,330 fugitives when new fingerprint card submissions were matched with records containing wanted notices.

As a result of court-ordered expungements and purge requests received from criminal justice agencies, 400,665 fingerprint cards were removed from the division's files.

The division's latent fingerprint specialists examined evidence in 23,040 cases, including 440 cases for other federal agencies and 10,525 for state and local governmental agencies. These cases required 305,155 examinations and resulted in the identification of 3,994 suspects and 112

deceased persons. There were 342 court appearances by these specialists which resulted in 2,011 years in prison terms, 322 life terms and seven death sentences. Fines of \$144,247 were also imposed.

The division continued to experience success in the use of laser equipment to detect latent fingerprints. Latent fingerprint evidence was detected in 93 cases where previous use of conventional methods of detection, such as dusting powders and chemicals, had been unsuccessful.

The specially trained group of fingerprint experts who comprise the FBI Disaster Squad assisted in the identification of the victims of an airplane crash which occurred on March 14, 1980 at Warsaw, Poland, including 22 boxers, coaches, trainers, and officials of a U.S. Amateur Athletic Union Boxing Team. The squad also assisted in the identification of victims of the volcanic eruption of Mount St. Helens in Washington State, which occurred on May 18, 1980. There were 47 victims examined in these two disasters and 26 were identified by fingerprints or footprints.

The Division continues to make significant progress toward the automation of its work functions. During fiscal year 1980, the name and arrest data appearing on the fingerprint cards of more than 745,000 first-time offenders were computerized. The file presently numbers over 4.9 million computerized arrest records and is growing at the rate of approximately 3,000 new records per workday. In addition, the division achieved its goal of scanning and computerizing the fingerprint data on 13.5 million criminal fingerprint cards over a three-year period, ending September 30, 1980. The division now has a computerized fingerprint data base of over 14 million criminal fingerprint cards, which is also growing at the rate of about 3,000 new records per workday.

A significant milestone was reached during fiscal year 1980 when automated name searches against the computerized name and arrest data file were instituted. This new capability has become an integral part of the division's work operations. By the end of the year, it was responsible for performing approximately 27 percent of the division's name searches.

Uniform Crime Reporting Program

The Uniform Crime Reporting (UCR) Program celebrated 50 years of service to the criminal justice community with the publishing of "Crime in the United States-1979." UCR continues to be a highly visible example of mutual cooperation and support within the law enforcement community. Through the combined efforts of nearly 15,000 state and local law enforcement agencies, data concerning crime, arrests, property stolen and recovered, law enforcement strength, and other information, is collected, processed, and disseminated. Such data assists the law enforcement administrator in discharging his public responsibilities effectively. Also, statistical information on crime

published under the program is widely used by public administrators, legislators, criminal justice researchers and planners, law enforcement officers, and the general public.

The national UCR program receives guidance in policy matters from the International Association of Chiefs of Police and the National Sheriff's Association. Training courses concerning UCR procedures are provided to program participants throughout the United States.

Ancillary programs include data presentations detailing information on law enforcement officers feloniously killed, bombing matters, and assaults on federal officers.

In 1978, Congress mandated that the crime of arson be added to the index of crimes covered by the UCR program and, during fiscal year 1980, this data was included in the program. Efforts are continuing to develop a format which would gain the most meaningful statistical data concerning this crime.

Administrative and Support Services Administrative Services Division

Organization of the FBI

Operations of the FBI's 59 Field Divisions and 12 foreign liaison posts are coordinated and supervised from FBI Headquarters in Washington, D.C.

The FBI Field Divisions and their 432 Resident Agencies (suboffices) are located throughout the United States and in Puerto Rico and Guam.

The 12 foreign liaison posts make feasible the timely exchange of information. They also provide assistance to foreign law enforcement agencies, particularly with regard to investigations that cross international boundaries. In addition, they serve as an effective adjunct to the FBI in carrying out its domestic investigative responsibilities, especially in the areas of terrorism, organized crimes and fugitive investigations.

Personnel

At the close of fiscal year 1980, there were 18,171 persons on the FBI payroll, including 7,844 Special Agents and 10,327 clerical, stenographic and technical personnel.

Office of Equal Employment Opportunity

The Office of Equal Employment Opportunity has an active recruitment program for minorities and women in an effort to make FBI ranks more representative of the American people.

Minority employment statistics in fiscal year 1980 indicate the success of FBI efforts to recruit both minorities and women into its Special Agent ranks. The 328 female Special Agents on duty at the close of the fiscal year represent a 67 percent increase in the number of female Special Agents

over the prior year. In addition, the 543 Special Agents on duty who are members of minority groups constitute a 15 percent increase for the same period.

Records Management Division

The Records Management Division processes, stores and maintains the records of the FBI's Central Records System in support of the investigative and administrative functions of the FBI. Its other responsibilities include: administration of the UCR Program; processing requests under the Freedom of Information Act and Privacy Act; classification/declassification matters and ensuring the protection of national security information pursuant to Executive Orders 11652 and 12065; handling requests for information from other federal agencies under the Name Check Program as provided in Executive Order 10450; and responding to requests for information and documents related to court orders and civil litigation.

During fiscal year 1980, the Records Management Division routed, processed, and filed approximately two million incoming and outgoing pieces of mail, dispatched over three million pieces of correspondence and opened 111,939 cases in the criminal, security and applicant categories, bringing FBI record holdings to over 6.5 million files.

To continue effective management and control of these vast records holdings, a computerized cross-reference file was initiated to facilitate access to information relating to the date, source, destination, classification, and status of all incoming and outgoing correspondence that has been placed on record.

Freedom of Information Act and Privacy Act

The Freedom of Information Act and Privacy Act (FOIA/PA) Branch of the FBI's Records Management Division received 16,076 new FOIA/PA requests in fiscal year 1980. Of these requests, 11 percent originated with incarcerated individuals. Scholars, news media representatives, historians, and various organizations collectively accounted for 10.4 percent of these requests. These requests were in addition to 4,510 already on file at the end of fiscal year 1979. Estimated cost during fiscal year 1980 of FOIA/PA operations exceeded \$9,375,000. There are currently more than 622,000 pages of public interest material available for review without charge in the FBI's public reading room.

During fiscal year 1980, there was an average of more than 300 people working on FOIA/PA matters at FBI Headquarters. During this period, 1,351 appeals were received within the branch. As a result, 21.5 percent of analyst time was spent on handling these appeals in addition to handling other litigation matters. No final decision has been reached by Congress on proposals submitted by Director Webster during fiscal year 1979 concerning amendments to the two Acts.

Planning and Inspection

The Planning and Inspection Division is composed of three separate offices: the Office of Inspections, the Office of Planning and Evaluation, and the Office of Professional Responsibility.

The Office of Inspections is responsible for conducting in-depth examinations of the FBI's investigative and administrative operations to determine whether: 1) there is compliance with applicable laws, regulations, and policies; 2) resources are managed and used in an effective, efficient and economical manner; 3) desired results and objectives are being achieved; 4) financial operations are properly conducted; and 5) financial reports are presented accurately and fairly. These examinations are conducted for all FBI field offices, legal attaches, and Headquarters divisions at least once every two years. The work product of the Office of Inspections provides valuable input for management's short-range planning and decisionmaking, and serves as a viable administrative tool in the evaluation of FBI managers. During fiscal year 1980, the Office of Inspections conducted a total of 44 inspections of FBI field offices, FBI Headquarters divisions, and legal attaches. Additionally, there were 21 financial audits conducted—five because of Special Agent in Charge changes, five of FBI Headquarters funds, ten of selective operations in field divisions, and one of a field division off-site operation.

The Office of Planning and Evaluation conducts surveys, studies and program evaluations of the FBI's investigative and administrative activities. These functions determine whether existing policies, procedures and operations meet present and anticipated requirements, and whether they are efficient, effective and economical. During fiscal year 1980, the Office of Planning and Evaluation completed four evaluations of FBI investigative programs and initiated several others.

The primary objectives of the Office of Professional Responsibility are to supervise and/or investigate all allegations of criminality; moral turpitude, and serious misconduct on the part of FBI employees, monitor disciplinary action taken concerning all employees of the FBI, and maintain close liaison with the Office of Professional Responsibility in the Department of Justice.

Technical Services Division

The Technical Services Division furnishes essential technical support to the FBI Field Offices and Headquarters divisions. This division is responsible for the management and operation of FBI Automatic Data Processing and Telecommunications services, as well as the design, development, distribution, and installation of technical support equipment necessary to carry on the FBI's investigative mission.

During fiscal year 1980, significant progress was made in achieving greater effectiveness in the collection, maintenance, and dissemination of investigative information. The FBI Computer Center was upgraded with the acquisition of two new NAS 5000 host processors and an NAS 7000 computer. These have enabled the FBI to become more cost-effective in supporting diverse information processing needs. The development of "user"-oriented systems continues, with emphasis on investigations of organized crime, white-collar crime, and foreign counterintelligence matters. In addition to providing automatic data processing required by the FBI, a significant amount of the resources are used to support information processing requirements of the entire criminal justice community.

In view of the limited automatic data processing/telecommunications resources, it was necessary to establish a Technical Resources Committee to review and rank major initiatives by priority. This committee, which includes the Assistant Directors of the major "user" divisions, functions as a policy board to provide top-management guidance for the distribution of automatic data processing resources.

A significant accomplishment during fiscal year 1980 was providing 50 field divisions with sophisticated technical equipment and onsite technical expertise. Major technical installations were achieved in the ABSCAM, BRILAB, and MIPORN FBI undercover operations and in the WOODMUR investigation into the fatal shooting of a federal judge. Fifty-nine field offices requested and received technical equipment and guidance in support of criminal and foreign counterintelligence investigations. A total of 567 forensic examinations of electronic listening devices were made by trained FBI experts.

To ensure the FBI's awareness of energy conservation, 1200 Class II compact automobiles were procured in fiscal year 1980 as replacement law enforcement-type vehicles. This acquisition included 800 six-cylinder, fuel-efficient cars, which will contribute significantly in reducing the overall fuel consumption of the FBI's automobile fleet. Energy efficiency has also been significantly realized with the acquisition of the new computers. The NAS 5000 requires approximately 84 percent less power, generates approximately 86 percent less heat, and requires less floor space than the computer formerly used for the same functions.

Legal Counsel Division

The Legal Counsel, along with his staff, furnishes legal

advice to the Director and other FBI officials, researches legal questions concerning law enforcement matters, and supervises civil litigation and administrative claims involving the FBI, its personnel and records. The Legal Counsel staff also represents the FBI at administrative proceedings before the Merit Systems Protection Board and the Equal Employment Opportunity Commission and administers a legal training program for FBI personnel and other law enforcement officers.

To ensure constancy in legal training, a legal advisor is appointed to assist all assigned investigative personnel in each of the 59 field offices. These legal advisors are experienced Special Agents who hold law degrees. Their role is to offer advice to fellow Special Agents regarding arrest problems, search and seizure, the preparation of affidavits, and other similar documents. Recognizing the need to keep these advisors current, in-service refresher courses are conducted by the FBI to ensure that investigations conform to the letter and spirit of the law.

Office of Congressional and Public Affairs

The Office of Congressional and Public Affairs is an adjunct of the Director's Office which handles news media requests and related matters of a public information nature, and provides the American people with a factual accounting of FBI programs, operations, and services on a continuing and timely basis.

This office also maintains liaison on Capitol Hill concerning legislative and oversight matters pertaining to the FBI and analyzes proposed or enacted legislation affecting FBI operations.

Notable among these matters are proposed Amendments to the Federal Tort Claims Act, the pending FBI Charter, reform of the Federal Criminal Code, and proposals to amend the Freedom of Information Act.

Tours

A visit to FBI Headquarters continued to rank high on Washington, D.C., visitors' priority lists. During fiscal year 1980, nearly 500,000 persons toured the J. Edgar Hoover FBI Building viewing displays and learning about the Bureau's investigative jurisdiction, service function, and history. Tours are offered daily between 9:00 a.m. to 4:15 p.m., except weekends and holidays.

Drug Enforcement Administration

Peter B. Bensinger
Administrator

The Drug Enforcement Administration (DEA) enforces the controlled substances laws and regulations of the United States. The overall objective of DEA is to bring to the appropriate criminal and civil justice system those organizations and their members involved in the growing, manufacture, or distribution of controlled substances destined for illicit traffic in the United States. DEA also recommends and supports nonenforcement programs aimed at reducing the availability of illicit controlled substances on the domestic and international market.

In carrying out its mission, DEA is the lead agency responsible for developing overall federal drug enforcement strategy, programs, planning and evaluation. DEA's primary responsibilities include:

- Investigating and preparing for prosecution, major violators of controlled substances laws who operate at interstate and international levels.
- Regulation and enforcement of compliance with the laws governing the legal manufacture and distribution of controlled substances.
- Management of a national narcotic intelligence system in cooperation with federal, state, local and foreign officials to collect, analyze, and disseminate data as appropriate.
- Coordination and cooperation with state and local law enforcement officials on mutual drug enforcement efforts and enhancement of such efforts by exploiting potential interstate and international investigations beyond local jurisdictions and resources.
- Operation of all programs associated with drug law enforcement officials of foreign countries.
- Provision of training and research, scientific and technical, and other support services that enhance DEA's overall mission.
- Liaison with the United Nations, INTERPOL and other organizations on matters relating to international narcotic control programs.
- Coordination and cooperation with other federal, state, and local agencies, and foreign governments in programs designed to reduce the illicit availability of abuse-type drugs on the United States market through nonenforcement methods such as crop eradication, crop substitution, training of foreign officials, and the

encouragement of knowledge and commitment against drug abuse.

Office of Enforcement

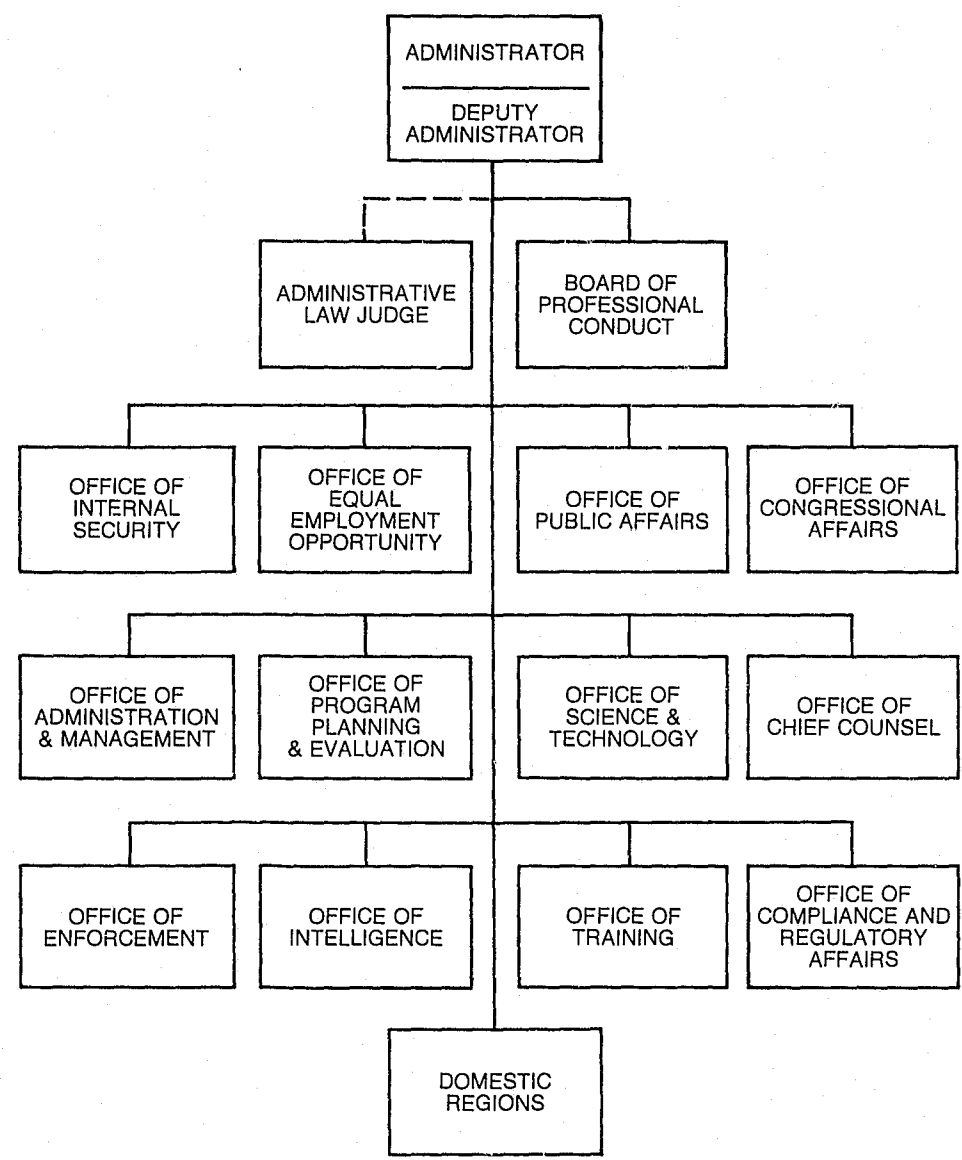
The objectives of the Office of Enforcement for fiscal year 1980 were:

- Focus on the Southeast Asian and Southwest Asian heroin threat and the possible resurgence of the heroin trafficking to the United States through Europe.
- Stem rapidly increasing clandestine manufacture and trafficking of Phencyclidine Hydrochloride (PCP).
- Disrupt the flow of bulk marijuana and cocaine from Colombia and the Caribbean.
- Continue efforts to encourage the drug eradication efforts of the Mexican Government.
- Identify, investigate and prosecute key violators responsible for drug trafficking in the United States.
- Expand the use of civil forfeiture provisions of 21 U.S. Code 881 (a)(6).

During fiscal year 1980, a drought in the traditional opium growing areas of the Golden Triangle reduced the flow and enabled DEA to develop an expanded intelligence base and selectively target the major organizations trafficking in Southeast Asian heroin. Increased enforcement activity on the part of host country authorities led to the dismantling of several significant international organizations.

During fiscal year 1980, the availability of brown Mexican heroin was at record low levels as a result of the success of enforcement operations and the Mexican poppy eradication effort; however, it was recognized that an enormous threat existed in the availability of Southwest Asian heroin in Europe and its ever-increasing presence in the Northeast United States. In order to combat this threat, a Special Action Office for Southwest Asian heroin (SAO/SWA) was created by the Office of Enforcement at DEA Headquarters. The SAO/SWA program and the Office of Intelligence initiated the Domestic Monitor Program in 17 United States cities. This program was designed to provide federal, state and local authorities with intelligence relating to heroin availability, source area, purity, price, unique adulterants, color, packaging, distribution networks, trends, and to give DEA an overview as to the extent of the SWA heroin threat in the United States. In connection with

Drug Enforcement Administration



DEA's emphasis on the Southwest Asian heroin threat, 21 Special Agents were reassigned to permanent change-of-station in fiscal year 1980. The manpower ceiling of the New York Regional Office has been raised by 15 positions which are due to be filled during the first part of fiscal year 1980. Foreign operations have been bolstered with the increase of six Special Agents to key European offices. Additional agents will be assigned to new and existing European and Middle Eastern offices in fiscal year 1980. Additionally, 35 Special Agents, three Intelligence Analysts and two U.S. Customs Service dog handlers were sent to key Southwest Asian heroin areas. All of the permanent and temporary assignments were designed specifically to impact on the

Southwest Asian heroin threat to the United States. As a result of SAO/SWA's initiative and added emphasis directed against the Southwest Asian heroin threat, domestic and foreign DEA offices recorded some significant investigative accomplishments that ultimately had a considerable impact on the flow of Southwest Asian heroin from Southwest Asia and Europe to the United States.

During the period from 1975 through 1978, there was a dramatic increase in PCP abuse in the United States and a commensurate increase in the number of seizures of clandestine laboratories. In 1978, Congress passed legislation that required the reporting of the sale, importation, and theft of Pipedrine, the immediate precursor of PCP. In fiscal year

1979, the availability of PCP began to diminish and 51 PCP laboratories were seized as compared with 79 in fiscal year 1978. In fiscal year 1980, this trend continued with the seizure of 41 PCP laboratories. Although the problem of PCP abuse remains, significant progress in attacking this problem has been made.

In an effort to contain the flow of bulk marijuana and cocaine from Colombia and the Caribbean, two major operations were initiated during fiscal year 1980, Operation Boomer/Falcon, which was a concentrated DEA/U.S. Customs Service interdiction effort targeted at aircraft smuggling along the Southeast United States coast, and Operation Tigre which is a multi-national program operation designed to identify, track and interdict private aircraft moving drugs from the Caribbean/Central American area. A third operation was initiated at the end of fiscal year 1980 (Operation Tiberon), was designed to identify, track and interdict drug smuggling to the United States via marine vessels.

Based on figures available for the first nine months of fiscal year 1980 under DEA domestic arrest by G-DEP classification, 64.8 percent of DEA domestic arrests were made in Class I and II investigations. This is an increase over last year and reflects DEA emphasis on higher level conspiracy and substantive investigations aimed toward immobilizing the most important violators and their organizations.

DEA's Central Tactical Units program (Centac) continues to focus on conspiracy prosecutions of the highest levels of national and international drug traffickers. During fiscal year 1980, nine Centacs have resulted in the arrests of 84 offenders of which 65 percent are Class I and Class II violators. To date, these nine Centacs have indicted 440 offenders of which 55 percent were Class I and Class II violators.

Of the nine Centac operations which were active during fiscal year 1980, two have been concluded by the achievement of objectives and seven remain operationally active. Each new Centac continues to vigorously apply the Continuing Criminal Enterprise and RICO provisions of federal law to immobilize the targeted groups. Three new Centacs were initiated in fiscal year 1980. Centac 23 focuses on dismantling a major Greek/Turkish/Lebanese heroin smuggling organization. This group is a large, highly organized, efficient and sophisticated conglomerate involved in the smuggling and distribution of large quantities of Southwest Asian heroin into the United States. Centac 24 focuses on a high-level Asian heroin trafficking group, operating between Bangkok, Chiang Mai, Hong Kong, Taiwan, San Francisco, Los Angeles, and New York. This group has also been moving money into the San Francisco Bay area to buy prime real estate.

Centac 25 focuses on dismantling a third high-level heroin trafficking group. This organization is a major heroin

manufacturing and smuggling group operating between Palermo, Sicily, and New York City. The new forfeiture statute, along with the Continuing Criminal Enterprise and RICO provisions of federal law, is being applied to immobilize the targeted groups of these three new Centacs.

In fiscal year 1980, DEA initiated an interim asset seizure/forfeiture reporting format. This format identified DEA investigative efforts relative to the financial aspects of drug investigations. DEA was able to realize the seizure of \$75,647,415. Of that total, \$28,185,624 has been forfeited. The figures include assets seized and/or forfeited as a direct result of DEA cooperative efforts with other federal and state/local agencies.

The largest total seizure and forfeiture was \$3.2 million in Los Angeles, California. The largest white-collar forfeiture was \$1,097,044 from a pharmacist in New York. The drug asset removal program at DEA is playing an increasingly important role in the DEA integrated enforcement effort of trafficker arrests, drug removals, and drug asset removals.

In accordance with Presidential directives, the European/Middle Eastern Regional Office was relocated to Washington, D.C. from Paris, France. DEA, thereby, was reduced by 20 overseas positions.

As a result of political changes in Bolivia, DEA personnel have been withdrawn. The impact of DEA's withdrawal is expected to severely affect the overall South American Enforcement Program. During fiscal year 1980, approximately 12 percent of all cocaine seizures and .06 percent of all arrests made in South America were made in Bolivia. Moreover, intelligence previously gathered in Bolivia resulted in frequent arrests and seizures in the United States and other countries. This information is no longer available. The duration of DEA's withdrawal from Bolivia is unknown.

Office of Intelligence

The mission of the Office of Intelligence is to provide drug-related intelligence support to DEA offices and to take the lead in providing intelligence to other law enforcement entities, including federal, state and local agencies and foreign governments. Intelligence regarding trafficking organizations, methodologies and trends is shared through weekly and quarterly reports as well as special reports addressing specific interests. Distribution of reports has been increased widely. As the enforcement emphasis has shifted to larger, more complex drug trafficking networks, there has been an increased need and role for intelligence participation at all levels, from investigative support to forecasting of trends to assist in policymaking.

The mechanisms by which intelligence support is provided to investigative entities have been strengthened by extensive reorganization of the Operational and Strategic Intelligence

Divisions and the El Paso Intelligence Center (EPIC). A management support staff has also been added to facilitate administration of intelligence programs.

EPIC continues to be a major conduit for intelligence support to state and local governments as well as to federal agencies concerned with stopping smuggling, whether it relates to illegal aliens, drugs or other types of contraband. Five states became EPIC affiliates during fiscal year 1980, bringing the total to 42. In addition, improvements in cooperation between federal agencies continued with the assignment of Federal Bureau of Investigation and U.S. Marshals Service personnel to EPIC on a permanent basis. This is in addition to the DEA, Immigration and Naturalization Service, U.S. Coast Guard, U.S. Customs Service, Bureau of Alcohol, Tobacco and Firearms, and Federal Aviation Administration personnel already on board. A number of additional agencies continue a close association with EPIC. Total transactions handled by the EPIC staff increased from 116,000 in fiscal year 1979 to 164,000 in fiscal year 1980 and the hit rate has remained high at 34 percent.

The primary focal point for much intelligence gathering is foreign since the sources for illicit substances are, to a large extent, foreign. As the Central Intelligence Agency eliminated foreign drug-related tactical intelligence collection from its activities, DEA assumed that role. In cooperation with host countries, foreign intelligence collection increased.

A joint DEA-Department of State Drug Identification Handbook was published and distributed worldwide as a guide for intelligence and enforcement entities in countries which grow, produce or serve as transit for international drug traffic.

The increased concentration on multinational drug trafficking networks has also resulted in increased emphasis on Special Field Intelligence Programs. While sections within the Office of Intelligence have primary responsibility for intelligence related to the priority drug areas, increased resources, both foreign and domestic, have been devoted to these programs, resulting in greater responsiveness to DEA priorities. As these intelligence programs expanded, the increased need for efficiency was met by changes in program administration. A panel was set up to prioritize and approve proposals, and stricter monitoring of ongoing programs was instituted.

Intelligence forecasters supplied strategic intelligence which led to the decision to give increased support to investigations into Southwest Asian heroin during fiscal year 1980. As emphasis shifted in this direction, the Office of Intelligence increased support toward Southwest Asian heroin investigations, but Mexican and Southeast Asian heroin destined for the United States were monitored closely for early detection of trend changes. The Domestic Monitor Program, which was launched in March 1980, assisted in this effort. Its purpose is to provide intelligence information

relating to heroin source, availability, purity, price, adulterants and distribution trends. By the end of the year, monitor programs had been completed in 12 major cities. Results of this program were extremely useful in identifying the influx of Southwest Asian heroin into the United States during the latter part of the year. Based on these successes, Monitor has been added as an ongoing program.

The emphasis on increased efficiency was the impetus behind development of the PATHFINDER computer system. The program has completed its first year of manipulation of cocaine and hashish trafficking data through the computer, and timely, current and predictive intelligence is being produced.

The National Narcotics Intelligence Consumers Committee published its second annual Narcotics Intelligence Estimate in January 1980. This document is the most comprehensive estimate available on the supply of drugs to the illicit United States market. The committee is made up of representatives of various federal agencies and is chaired by the Assistant Administrator for Intelligence of DEA.

As implementation of these and other new programs continues, increased effectiveness and productivity are resulting in increased support to investigative efforts and in greater forecasting accuracy.

Office of Compliance and Regulatory Affairs

DEA's compliance and regulatory function entails regulating and enforcing compliance with laws governing the legal manufacture and distribution of controlled substances for medical purposes and bona fide research. This is accomplished through the monitoring of all imports and exports of controlled substances; the establishment of manufacturing quotas for all Schedule I and II substances; assigning drugs to controlled substance schedules; annual registration of all handlers and prescribers of controlled substances; pre-registration investigations prior to approval of applications and periodic investigation of registrants to ensure continued compliance with security and recordkeeping requirements. The federal enforcement effort has been aimed at the upper levels of the licit distribution chain (i.e., manufacturers, distributors). DEA also has an extensive federal/state cooperation program with state law enforcement and regulatory agencies to enhance their capabilities to monitor practitioner-level handlers. A significant accomplishment in fiscal year 1980 was the levying of nearly \$3 million in fines and civil penalties against registrants based on DEA's investigative activity.

Due to DEA's activity at the manufacturer/distributor level, diversion at this level has been significantly reduced to the point that it is estimated that only 10-20 percent of diversion from legitimate sources occurs at this level. The bulk of diverted drugs comes from practitioner-level registrants. In

fiscal year 1980, in response to this growing problem, DEA initiated Operation Script which involved the investigation and prosecution of G-DEP I and II registrant violators. Operation Script was valuable in 1) decreasing the diversion of controlled substances; 2) demonstrating the federal government's concern; 3) increasing public awareness of the diversion and abuse of legitimately manufactured controlled substances, and 4) encouraging states to address practitioner diversion. Building on the experience with Operation Script, DEA will establish, in fiscal year 1981, an ongoing Targeted Registrant Investigations Program involving suspected G-DEP I and II registrant violators.

Another initiative in fiscal year 1980 is the Drug Oriented Investigations which focus on specific drugs of abuse. The major thrust of this program is to track the distribution of a targeted drug from the bulk manufacturer through the legitimate chain to the practitioner level, with coordinated nationwide action at the distribution levels. This program will seek to reduce the abuse of these selected drugs (and thereby reduce deaths and injuries) by developing actionable cases throughout the distribution chain and providing documentation to support significant quota reductions.

In order to more effectively utilize available manpower and provide the necessary support for the Targeted Registrant Investigations Program and the Drug Oriented Investigations, the Office of Compliance and Regulatory Affairs revised its cyclic investigation procedures. Under the new procedures, DEA will concentrate more of its effort at investigations of "high risk" registrants and significantly reduce manhours committed to firms that have historically been in compliance and pose a lesser threat of diversion.

In fiscal year 1980, the magnitude of the international diversion of legitimately produced controlled substances became apparent. International diversion has become a major problem for the United States. Drug traffickers are diverting large quantities of legitimately produced pharmaceuticals from European manufacturers to illicit tableting operations in South America. The tablets are then smuggled into the United States by aircraft and vessel. DEA has assigned two Compliance Investigators to foreign countries to establish and maintain liaison with host country law enforcement officials and pharmaceutical industry representatives. The investigators, experts on regulatory matters, serve as advisors/consultants to foreign governments in establishing national compliance programs. These investigators have been instrumental in identifying the source of diverted substances and are working with source countries in an effort to curtail this diversion.

A major part of the state assistance effort is the establishment of Diversion Investigation Units which concentrate on diversion at the practitioner level. DEA provides "seed money" to establish these state-run units. At the end of the funding period, the states continue the units with full state

funding. In fiscal year 1980, two additional units were established, bringing the total to 21 states. During the year, phenyl-2-propanone (P₂P, phenylacetone), an immediate precursor to methamphetamine and amphetamine, was placed into Schedule II of the Controlled Substances Act. P₂P had been relied upon as an essential ingredient by clandestine laboratory operators in the great majority of illicit laboratories seized by DEA. In other scheduling activity, DEA recommended that three anorectic drugs (Diethylpropion, phentermine, and phendimetrazine) be rescheduled into Schedule II.

Office of Training

DEA's training program provides entry level and advanced training for DEA employees and multi-level training in drug law enforcement skills to other federal, state, local, and foreign officials.

Programs for DEA employees are: Basic and Advanced Agent Schools; Basic and Advanced Compliance Investigator Schools; Intelligence Analyst School; Intelligence Collection School; Chemist Orientation School; Supervisory, Mid-Level Management and Executive Training Programs; Foreign Language Training; Advanced and Special Skills Training in Conspiracy, Firearms, Electronics, Emergency Medical, Security, Financial Investigations, etc.; Domestic Law Enforcement Orientation; In-Service Individualized Training and Testing; Equal Employment Opportunity, Upward Mobility, Labor Relations; and Technical and Clerical Training.

Other federal, state and local officers are trained in Washington, D.C. and other locations in the United States in two-week Law Enforcement Training Schools; three to five day Intelligence/Conspiracy Schools; Anti-Smuggling Seminars; two-week Advanced Schools; and in Washington, D.C. in eight-week Drug Enforcement Officers Academy Classes, three-week Supervisory Drug Enforcement Officers Seminars, and one-week Forensic Chemist Schools. In addition, federal, state, and local officers attend Conspiracy, Intelligence Analysis, and other DEA Employee Programs as applicable to the specific duties.

DEA conducts training programs for foreign officials under the auspices and funding of the Bureau of International Narcotics Matters, U.S. Department of State. Foreign officials are trained in the United States in multilingual five-week Advanced International Schools for drug enforcement managers; five-week Advanced International Schools for drug enforcement training managers, developers, and planners; two to three-week Chemist Schools; and Executive Observation Programs. Mobile training teams also provide training throughout the world in two to three week Drug Enforcement and Drug Enforcement Instructor Training Schools; one to two week Criminal Information Research

Schools; and variable length Special Subject Schools.

During fiscal year 1980, DEA placed increased training emphasis on programs such as Financial Investigation Training, designed to enhance participants' specialized skills and knowledge required for continuing criminal enterprise, conspiracy, and RICO cases, as well as financial aspects of drug investigations. In fiscal year 1980, DEA provided training to 1754 DEA employees, 8129 state, local, and other federal agency employees, and 900 foreign officials. Availability of international training funds was significantly reduced for fiscal year 1980 resulting in severe constraints on DEA's ability to conduct the same level of international training as in previous years.

In order to reduce training costs, DEA has adopted new housing alternatives for its entry level Special Agent classes. Further reductions can be expected as a result of the decision to participate in the Federal Law Enforcement Training Center. To cope with the reduced international training funds, DEA developed a special program for self-funded English speaking foreign officials.

Office of Chief Counsel

Attorneys of the Chief Counsel's Office prepared 58 orders to show cause why action should not be taken by DEA to revoke, deny or suspend a registration to engage in controlled substance activities. Thirty-four of these matters were docketed with the DEA Administrative Law Judge for hearings which occupied 21 hearing days.

Approximately 900 hours of instruction were provided by attorneys at DEA training schools for basic special agents as well as in-service trainees. The courses included Search and Seizure, The Law of Arrest, Rules of Evidence, Forfeitures, Conspiracy, The Controlled Substances Act, etc.

During the year, attorneys processed 1,267 matters concerning seized vehicles, vessels, aircraft and other assets for the legal sufficiency of their seizure. Over \$6 million in cash and other valuables, exclusive of vehicles and aircraft, was ultimately forfeited to the United States. Rulings on 460 petitions for remission or mitigation of forfeiture were made.

The attorneys in the office are assigned regional responsibility for the five DEA regions and are in frequent contact with management in the field to render assistance on enforcement questions as they arise. They advise Headquarters officials on procurement and personnel as well as enforcement matters. The office has produced substantial legal reference works in areas relevant to DEA's activities.

In the past year, the office published comprehensive manuals on such topics as The Controlled Substances Act,

Search and Seizure, The Law of Arrest, Rules of Evidence and Airport Interceptions of Drug Couriers. The manuals are extensive research documents which can be and are used by agents and prosecutors alike, not only for quick answers but for in-depth research as well.

The DEA Office of Chief Counsel drafted the Model Drug Paraphernalia Act which in 1980 has withstood attack in every federal court in which it has been challenged. At a time when dozens of state legislatures and hundreds of communities have banned or are considering banning commercially available drug paraphernalia, and when other such laws have been declared unconstitutional, federal judges have gone out of their way to recommend the Model Act. No court has invalidated the Act.

Office of Science and Technology

The mission of the Office of Science and Technology is to assure that DEA has and utilizes the scientific and technical resources and capabilities needed to achieve its objectives, plans and programs.

In carrying out this mission, the office provides operational and scientific support and conducts research directly related to the DEA law enforcement, intelligence and regulatory functions.

Forensic laboratory support has continued at a high level by providing drug analysis for prosecution of drug law violators.

Clandestine laboratory seizures continue to increase; during fiscal year 1980, forensic laboratory assistance was provided in 147 cases.

Chemical signatures have been developed for identification of Southwest Asian Heroin sources. Seizures are being monitored for determination of purity and distribution patterns of the recent threat.

Research and engineering efforts have produced new covert tracking devices for automobiles and boats, miniature sized agent alert devices and the field testing of a voice privacy radio system for regional communications networks. New techniques have been developed for quick reaction support to on-going investigations to deter drug traffickers.

Technical Operations support for the apprehension of Class I and Class II violators has been enhanced through use of newly developed covert equipment and operations. The radio communications system has been upgraded through procurement of replacement equipment for regional offices. The secure teletype system has been enlarged; there are now 103 domestic installations.

Criminal Division

Philip B. Heymann
Assistant Attorney General

The mission of the Criminal Division is to serve the public interest through development and enforcement of criminal statutes in a vigorous, fair and effective manner.

All federal criminal laws are under the division's general supervision—except those assigned to the Antitrust, Civil Rights, Land and Natural Resources, or Tax Divisions.

In addition, the division supervises certain civil litigation arising under the federal liquor, narcotics, counterfeiting, gambling, firearms, customs, agriculture, and immigration laws.

It is responsible for civil litigation resulting from petitions for writs of habeas corpus by members of the Armed Forces, actions brought by or on behalf of federal prisoners, alleged investigative misconduct, and legal actions related to national security issues.

Division activities are directed by an Assistant Attorney General, assisted by four Deputies and performed by seven line sections and seven staff offices. The Assistant Attorney General also provides representation to Congress on criminal matters, and to the Office of Management and Budget and the White House; maintains liaison with the 95 U.S. Attorneys and federal investigative agencies; and establishes federal criminal law enforcement policies and facilitates their implementation.

The following descriptions outline the functions of each section and office.

Office of the
Assistant Attorney General

The Office of the Assistant Attorney General provides national leadership, centralized coordination and effective policy direction for federal law enforcement.

A division reorganization in 1979 resulted in enhanced programs in the priority areas of organized crime, narcotics trafficking and, particularly, white-collar crime and public corruption. The division played a major role in developing national enforcement priorities announced by the Attorney General. The new Office of Policy and Management Analysis strengthened policy and management analysis capability. It helped implement new programs and developed management improvement projects, including a case tracking system and a divisionwide management review process.

The Office of the Assistant Attorney General also provided Department leadership to the Executive Working

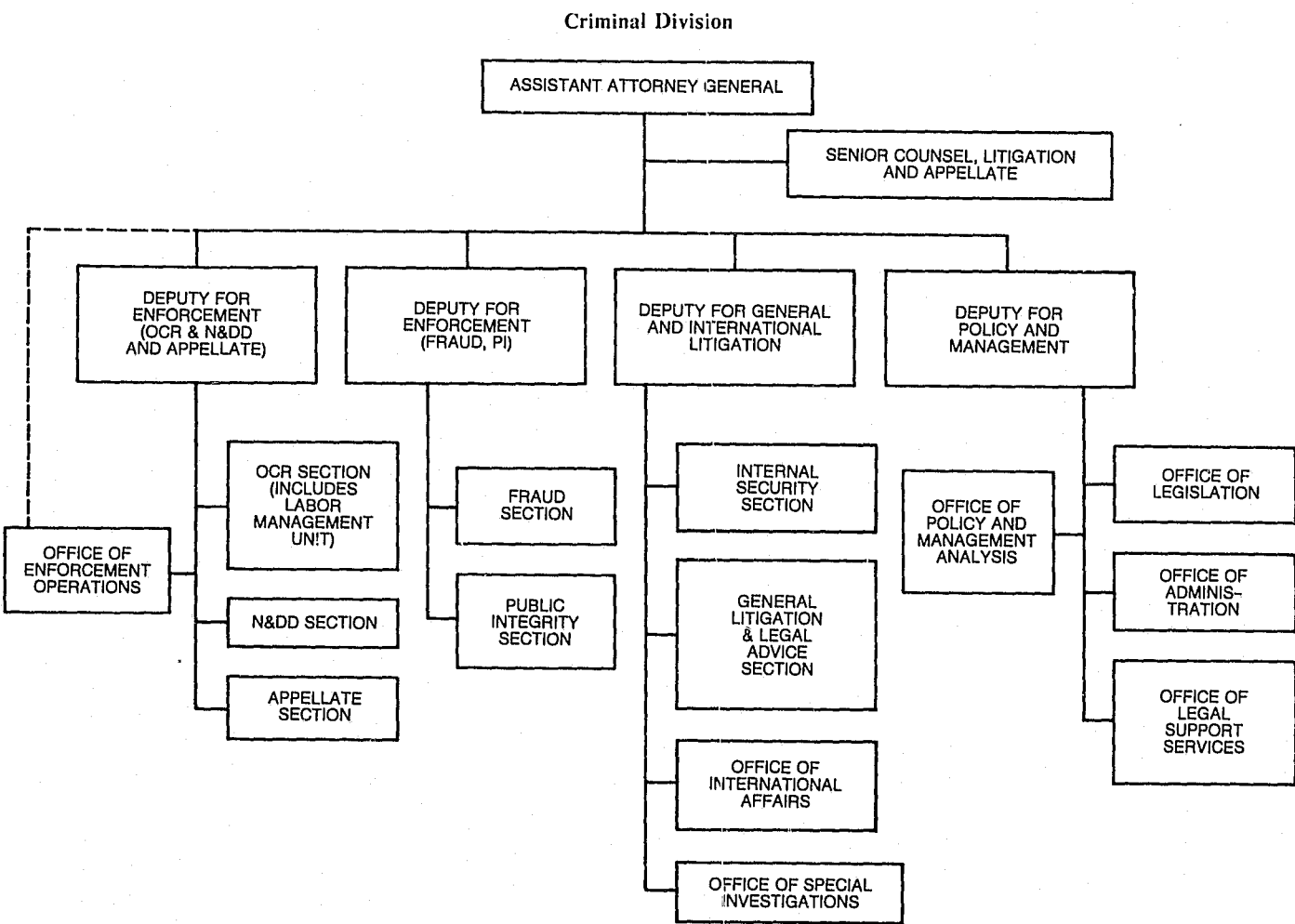
Group for Federal-State-Local Prosecutorial Relations. The group was established in fiscal year 1980 to provide the first formalized liaison among the Department, the National District Attorney's Association and the National Association of Attorneys General to improve relations among federal, state and local prosecutors.

Organized Crime and
Racketeering Section

This section develops and coordinates nationwide enforcement programs to suppress the illicit activities of organized criminal groups. Historically, these activities have included narcotics dealing, loansharking, and the illegal infiltration of legitimate business, labor unions, law enforcement groups and government.

Functions of the section include: coordinating the efforts of federal investigative agencies and U.S. Attorneys against organized crime; participating in development and evaluation of federal criminal statutes related to organized crime; selection of cases developed in all sections of the Criminal Division which are appropriate for prosecution under Title IX of the Organized Crime Control Act of 1970 and maintaining civil responsibility over penalties, forfeitures and civil injunction actions arising out of that Act; working in conjunction with the National Organized Crime Planning Council to concentrate enforcement efforts; analyzing and disseminating to relevant law enforcement agencies information on organized criminal groups; and overseeing the enforcement of federal criminal statutes in the area of labor-management relations, internal labor union operations—including the operations and investments of employee benefit plans—and various vice-related crimes.

Resources have been concentrated against leaders of criminal organizations, labor-management racketeering, infiltration of legitimate business, corruption of public officials and major narcotics trafficking. Section personnel have developed increasingly sophisticated cases involving intricate financial arrangements and documentation. Examples of accomplishments include: conviction of Congressmen Michael Myers and John Jenrette in the ABSCAM cases; conviction of the former Mayor of East Chicago, Indiana, John Nicosia, for obstruction of justice for ordering his associates to testify falsely about \$1 million in bribes paid him relative to a local sewer project; conviction of former Federal Bureau of Investigation Agent Stephen S.



Travis for conspiring to steal from interstate shipments; conviction of Harmon W. Shields, former Director of the Florida Department of Natural Resources, for extortion of \$235,000 from a realtor; conviction of John A. Gibson, General Secretary-Treasurer of the Hotel, Restaurant Employees and Bartenders Union, for embezzlement of union funds; conviction of Teamster Union General Organizer Francis Richard Fitzsimmons for Racketeer Influenced and Corrupt Organizations (RICO) offenses arising out of labor bribes paid by trucking companies hauling steel to Detroit, Michigan auto makers; conviction of San Francisco, California Teamster leader Michael Rudy Tham for embezzlements used to pay restaurant and hotel bills for mobsters; conviction of Miami, Florida developer George Wuagneux for payoffs made to obtain union pension fund loans; conviction of New Jersey State Senator David Friedland and his father for reception of \$360,000 in payoffs for arranging \$4 million in loans from a Teamster pension fund; conviction of a mob leader and former Teamster local union president, Anthony Provenzano, for

taking labor bribes from Seatrain Lines, a major shipper; conviction of New York syndicate leader and labor official Anthony Scotto for labor bribery; conviction of Boston, Massachusetts independent gang boss Howard Winter, two Las Vegas, Nevada casino executives and others for fixing horse races at tracks in several Northeastern states resulting in over a \$1 million profit (the conviction was in one of five such cases which, to date, have resulted in 22 convictions); conviction of Fremont Hotel and Casino slot manager James Hamilton for tax offenses arising out of a multi-million dollar skim from four Las Vegas, Nevada casinos operated by Argent Corporation; conviction of Los Angeles, California mob figures Raymond DeRosa and Alfred Ponticelli for drug dealing carried on at the behest of the Los Angeles syndicate; conviction of Lynn Platshorn for paying mob member Joseph Cataldo (who died during trial) to disrupt the narcotics trial of Miami, Florida's "Black Tuna" drug gang; and conviction of former Philadelphia, Pennsylvania labor leader Ralph Natale in Miami, of cocaine trafficking following his Philadelphia arson con-

viction the previous year.

Mob and syndicate cases included: conviction of Brooklyn, New York underboss Alphonse Persico for loan-sharking; conviction of Buffalo, New York lieutenant John Sacco for counterfeiting; conviction of the entire hierarchy of the "Team B" faction of the Rochester, New York mob for offenses arising out of a mob "war" in which explosives were indiscriminately used; conviction of Chicago lieutenant James Inendino for loansharking \$309,000 at interest rates up to eight percent per week; conviction of the third-ranking Cleveland, Ohio mob figure, Anthony Liberatore, for bribing a Federal Bureau of Investigation clerk to supply him with sensitive investigative information; and conviction of Kansas City, Missouri mob boss Nicholas Civella for bribery of a federal prison warden.

Most of the attorneys in this section are assigned to Organized Crime Strike Forces and field offices operating in major cities across the country. The section's Washington, D.C.-based activities primarily involve liaison with the National Organized Crime Planning Council and formulation and coordination of general policies and litigative support services as required by field operations. One Strike Force based in Washington works to discover and prosecute infiltration of labor unions and legitimate business perpetrated on a national scale.

The section's jurisdiction over matters involving subjects associated with criminal organizations requires that it maintain close liaison with the Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service, Internal Revenue Service, Bureau of Alcohol, Tobacco and Firearms, Secret Service, Postal Inspection Service, Customs Service, and the Office of Inspector General of the Department of Labor — plus state and local law enforcement agencies.

Fraud Section

The Fraud Section directs and coordinates the federal effort against white-collar crime. It focuses primarily on frauds involving government programs and procurement, transnational and multidistrict trade, the security and commodity exchanges, banking practices, and consumer victimization.

The Office of Economic Crime Enforcement is included in the Fraud Section, and is a joint U.S. Attorney/Criminal Division program. Its mission is to establish approximately 30 Economic Crime Enforcement Units throughout the nation to be focal points for efforts against fraud and public corruption. These units coordinate federal white-collar crime enforcement efforts in their districts, and prosecute complex, important cases. The units facilitate the implementation of the Attorney General's national and district white-collar crime priorities program. Each unit is part of the U.S.

Attorney's Office in the city in which it is located. Twenty-one units have been established so far, 11 during fiscal year 1980. Each unit assists the Office of Economic Crime Enforcement in implementing a five-point program of prevention, detection, investigation, prosecution, and sentencing enhancement that is designed to reduce white-collar crime.

Functions of the Fraud Section currently include: developing and implementing nationally coordinated white-collar crime enforcement policies; coordinating and in appropriate situations litigating cases involving large, complex transnational or multi-district frauds; coordination in the administration of the Foreign Corrupt Practices Act Review Procedure; maintaining effective liaison with federal, state, and local agencies; providing advice and litigation support services to U.S. Attorneys; cooperating in the development of legislation concerning white-collar crime; and conducting governmentwide training for personnel involved in fraud prosecutions.

Examples of the section's accomplishments working in conjunction with the U.S. Attorneys' Offices was the increased emphasis on fraud matters relating to energy (oil and natural gas) which included: 1) the conviction of two executives of the Dalco Petroleum Corporation in Oklahoma for oil reselling; 2) in one of the first criminal enforcement actions under the Natural Gas Act of 1938, Tenneco, Inc. pleaded guilty to charges of evading federal controls on natural gas shipments and was fined \$1 million; 3) Mobil Oil Company did not contest charges in an information alleging the abandonment of interstate natural gas sales in violation of the Natural Gas Act. Mobil was fined \$500,000, in the first conviction of a producer of natural gas under the Act; 4) Donald E. Pratt, an independent crude oil producer in Kansas, pleaded guilty to willfully violating Energy regulations and was fined \$10,000, the maximum allowed under the statute; 5) Coastal Corporation, Coral Petroleum, Inc. and three of their top executives pleaded guilty to charges of evading federal oil pricing regulations. It was agreed that civil penalties and refunds totaling \$20 million would be paid to the government as part of the case settlement; 6) Guilty pleas were obtained from a prominent Texas attorney and an oilman in a case involving Uni Oil. The attorney paid \$1 million and the oilman \$3 million to the government in this crude oil reseller case involving the false certification of crude oil; 7) The Di Vinci Corporation and its principal, Sidney Clark, pleaded guilty to violations of the Emergency Petroleum Allocation Act of 1973. The Corporation agreed to pay back \$430,000 and has already tendered \$380,000. The corporation will also pay a civil penalty of \$50,000; 8) George Benson and Charles Goss were sentenced to six months imprisonment and fined a total of \$34,000 each following conviction for their activities in a crude oil reselling scheme; 9) Elm City Filling Stations, Inc. (ELMCO), a Connecticut importer and distributor of petroleum prod-

ucts, pleaded guilty to violating Energy regulations. ELMCO was fined \$5,000, the maximum allowed under the statute, and agreed to make restitution to the federal government of \$68,010 plus interest; 10) Cloyce Box pleaded guilty to violations of the Emergency Petroleum Allocation Act, was fined \$115,000 and entered into a civil consent decree with the Department of Energy, paying a \$5,000 penalty and \$500,000 towards any judgement, the Department of Energy may obtain as a result of overcharges; 11) OKC Corporation entered into a consent decree with the Department of Energy paying a \$4.75 million civil overcharge penalty, a penalty of \$500,000 and agreeing to a \$20 million reduction of its unrecovered costs;

The commodities and procurement fraud areas included 1) Alan Abrahams, president of a Boston-based Lloyd-Carr Company pleaded guilty to a commodities fraud. Abrahams, who was an escaped state convict at the time of the fraud, built the Lloyd-Carr empire into an international commodities option house that defrauded consumers of nearly \$30 million; 2) Treasure Isle, Inc. the Department of Defense's largest supplier of shrimp, and two of its top principals were convicted on fraud and RICO charges involving a scheme to substitute inferior shrimp for quality shrimp. The corporation was fined \$192,000, the two principals received a one year prison sentence and three years probation with conditions, and one was also fined \$25,000. This was one of a series of major Department of Defense procurement cases begun in 1975.

The activities of the Fraud Section require expertise across broad areas of law, including regulatory, interstate, trade, tax, banking, government programs, procurement, and international trade. The section's policymaking, litigation, and litigation support activities involve close liaison with, among others, the federal investigatory agencies, the 15 statutory Inspectors General, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Department of Energy, and all of the U.S. Attorneys' Offices.

Narcotic and Dangerous Drug Section

The mission of the Narcotic and Dangerous Drug Section is to combat drug abuse through the prosecution and conviction of high level offenders and members of criminal organizations involved in the manufacture, shipment, or distribution of illicit narcotics and other dangerous drugs.

Its functions include: representing the division at the highest levels of drug enforcement policy formulation; developing and coordinating an effective mechanism for the nationwide implementation of narcotics and dangerous drugs prosecution policy; participating in negotiations with foreign governments for the prosecution of foreign nationals involved in illicit drug traffic; supervising and

evaluating field operations; analyzing and evaluating current narcotic-related legislation; assisting in the development of new drug control legislation, litigating large and complex cases involving illegal drug traffic; providing legal support to U.S. Attorneys; facilitating information exchange in the narcotic enforcement community through the publication of a Narcotics Newsletter; litigating matters connected to the regulatory functions of the Drug Enforcement Administration; conducting training seminars for attorneys and investigative personnel; and contributing to governmental studies relative to the federal drug abuse effort.

The section's major accomplishments in fiscal year 1980 include the conviction in Miami, Florida of Robert Meinster, Lynn Platshorn and Eugene Myers for operating a continuing criminal enterprise generating gross income from marijuana trafficking of approximately \$300 million in a one and one-half year period; the chairing of a federal interagency study group on international financial transactions; negotiation of the Mutual Legal Assistance Treaty between the United States and Colombia which was signed by both nations on August 20, 1980; the successful litigation of *NORML, et al. v. Bell, et al.*, which resulted in a three judge federal district court decision upholding the constitutionality of the criminal sanctions against simple possession of marijuana; the publication of two monographs entitled *Forfeitures Pursuant to 21 U.S.C. §881* and *Narcotics Prosecutions and the Bank Secrecy Act*; and the initiation of a litigation project designed to conduct, through the use of sophisticated techniques and the coordinated efforts of several federal agencies, major financial investigations directed at the money laundering activities of major international drug traffickers.

This section's ability to provide litigation and litigation support requires close liaison with all the U.S. Attorneys' Offices, the Drug Enforcement Administration, U.S. Customs Service, the Internal Revenue Service, the Immigration and Naturalization Service, the U.S. Coast Guard, the U.S. Marshals Service, the Federal Bureau of Investigation, the Department of State, and drug enforcement agencies at all levels of the government.

Public Integrity Section

The mission of the Public Integrity Section is to coordinate federal efforts against corruption of public officials at all levels of government, a problem which is a major target of the Attorney General's National Priorities for White-Collar Crime. Its broad mandate is to oversee the enforcement of all federal statutes dealing with bribery, conflicts of interest, election fraud, and other public corruption. It prosecutes selected cases against federal, state and local officials who have abused their public trust, and is

available as a source of advice and expertise to law enforcement officials and prosecutors at all levels of government. The section is thus both: 1) a team of skilled litigators, trained to prosecute cases under the complicated criminal statutes that govern the conduct of public officials; and 2) a center for planning, coordination and implementation of nationwide programs against public corruption.

In fulfilling this role, the functions of the Public Integrity Section include: overseeing the enforcement of all federal criminal statutes governing the conduct of officers and officials of the federal government; developing new investigative and prosecutorial techniques against public corruption, and training others in their use; coordinating the nationwide enforcement of election fraud statutes; using its enforcement jurisdiction over state and local corruption to target problems areas; investigating and prosecuting all matters involving crimes by federal judges; handling public integrity cases when the local U.S. Attorney's Office has recused itself; providing U.S. Attorneys' Offices with litigative support, especially in large, complex or multiregional corruption cases; reviewing and processing all matters referred to it under the Special Prosecutor's Act; and participating in the development of more effective laws dealing with public integrity.

Among the section's many operational accomplishments in fiscal year 1980 was its participation in the ABSCAM investigation, including the trial and conviction of Congressman John Jenrette and the continuing investigation into official corruption in New Jersey. Other highlights include two long-term investigations that came to a head in fiscal year 1980 as a grand jury began returning indictments involving possibly far-reaching corruption of the Kentucky state government, and as indictments and numerous guilty pleas were obtained after corruption was uncovered in the activities of the Community Currency Exchange Association of Illinois. The former head of the Federal Highway Administration, Karl S. Bowers, was convicted after a jury trial for willful misapplication of government program funds and conspiring to defraud the United States, and sentenced to five years imprisonment. In a rare and difficult conflict-of-interest prosecution, the former Director of the Bureau of Engraving and Printing was convicted, and his Assistant Director pleaded guilty. Both men actively participated in Bureau decisions which benefited a company with which they were negotiating for future employment. Very recently, a Food for Peace officer of the Agency for International Development was indicted for accepting \$129,000 in kickbacks for granting a contract to supply seed rice to Cambodian refugees.

Procedural innovations during fiscal year 1980 are facilitating the section's new focus on white-collar crime priorities. An Election Crimes Branch has been formed within the section to coordinate the handling of abuses of

the electoral system during this election year. The branch has already mounted major investigations in several states. Its prosecutorial initiatives promise to serve as catalysts for effective, uniform enforcement of election laws nationwide. Generally, supervisory responsibility within the section has been reorganized along the lines of substantive areas, enhancing accountability, efficiency, and expertise. An experimental Management Information System, designed to provide current information on the status of all the cases under the section's supervision, has been implemented.

The Public Integrity Section's responsibility for overseeing and participating in active litigation requires close and continuous cooperation with many of the U.S. Attorneys' Offices, and with the Public Corruption units of the Federal Bureau of Investigation. Because of financial overtones to many crimes committed by public officials, the section maintains frequent liaison with the investigative offices of the Internal Revenue Service. The development of Offices of Inspectors General within federal agencies has provided the section with new opportunities for interagency coordination of investigations. Its work with investigators from such Departments as State and Treasury resulted in successful public corruption prosecutions this year. The section also offers advice and prosecutive support to state and local law enforcement officials in appropriate cases.

Internal Security Section

The Internal Security Section is responsible for the enforcement of criminal statutes affecting national security and foreign relations. The section also administers and enforces the Foreign Agents Registration Act of 1938, as amended, and related statutes.

Functions of the section include: supervising the investigation and prosecution of offenses involving treason, espionage, sabotage, and violations of the Atomic Energy Act, neutrality statutes, the Trading With the Enemy Act, and the Arms Export Control Act; providing policy guidance and litigative support to U.S. Attorneys, intelligence services, and law enforcement agencies involved in cases related to internal security or foreign relations; administering and enforcing the Foreign Agents Registration Act through civil and criminal prosecutions, as well as supervising investigations and conducting inspections pursuant to the Registration Act; providing specialized legal support to U.S. Attorneys in the areas of policy interpretation, legal research, and the drafting of indictments, pleadings and other legal papers; serving as the focal point for inter-agency coordination in cases such as espionage, neutrality, and arms export control violations; developing, analyzing, and evaluating proposed legislation relative to the internal security fields; and providing personnel, including the Executive Secretary, for the Interdepartmental

Committee on Internal Security.

Among the most significant cases during the past year are: Marc Andre DeGeyter, a Belgian national, pleaded guilty to violating the Export Administration Act and the Commercial Bribery Statute of Virginia, involving a lengthy undercover investigation that disclosed his efforts to obtain sensitive computer information on behalf of the Soviet Union; the Space Research Corporation, Dr. Gerald V. Bull, President, and Rogers L. Gregory, Vice President, of the corporation, pleaded guilty to an information charging them with the exportation of 155 MM artillery, 155 MM projectiles, and other weapons-related equipment from the United States to South Africa in violation of the Arms Export Control Act; a Navy enlisted man, Eugene Madsen, who sold top secret documents to an undercover Federal Bureau of Investigation agent in violation of the espionage statutes, was sentenced on October 26, 1979 to imprisonment for eight years, after he had pleaded guilty to one count of espionage; on July 17, 1980 the Fourth Circuit sustained the convictions of Truong Dinh Hung and Ronald L. Humphrey, a U.S. Information Agency employee, for espionage, for which each had been sentenced to imprisonment for 15 years (the case was remanded to the District Court for review of certain documents to determine whether they should have been made available to the defendants under the Jencks Act); the espionage conviction of William P. Kampiles, which involved the transmission of highly sensitive top secret material to representatives of the Soviet Union, was sustained on November 15, 1979. Kampiles is currently serving 40 years for his crime. He has filed motions seeking a new trial and for a reduction of sentence, which are now pending hearing in the U.S. District Court for Northern Indiana.

This section is the focal point of much of the liaison activities involving other federal departments and agencies and, in particular, federal investigative agencies and intelligence agencies, which deal with cases and matters concerning security and foreign relations.

During fiscal year 1980, registrations under the Foreign Agents Registration Act increased by 90, bringing the total to 3,152—of which 656 are active. There were 640 new short-form registrations in fiscal year 1980, and approximately 6,328 are active. Pursuant to its statutory responsibility, the section prepared a 572-page "Annual Report of the Attorney General to the Congress of the United States on the Administration of the Foreign Agents Registration Act."

In a significant case, a final judgment was entered on November 8, 1979 permanently enjoining the American-Chilean Council, Marvin Liebman, and Marvin Liebman, Incorporated, from violating Section 2 of the Foreign Agents Registration Act by failing to provide true and complete information concerning their representation of the

Government of Chile; from violating Section 4 of the Act by failing to properly label the propaganda disseminated by them on behalf of the Government of Chile; and from violating Section 5 of the Act by failing to adequately maintain the books and records required to be kept.

Following extensive investigation and effort by unit personnel, the Department filed a civil suit and entered into a consent agreement on July 14, 1980 which resulted in the registration of William A. (Billy) Carter, III, under the Foreign Agents Registration Act. In accordance with the terms of the Final Judgment, Mr. Carter set forth the details of his relationship with the Government of Libya and his activities on its behalf.

Personnel of the Internal Security Section also represent the Department on four of the five subordinate groups of the Interdepartmental Committee on Internal Security (ICIS). The section provides the Executive Secretary of the ICIS, which is directed by its charter to effect the coordination of all phases of the internal security field—except those specifically assigned to the Interdepartmental Intelligence Conference. It takes action necessary to ensure the highest practicable state of internal security, including planning and preparing for adequate internal security in the event of a war-related emergency. ICIS is comprised of representatives of the Departments of Justice, State, Defense, and Treasury. The Department of Justice representative also serves as the Committee's chairman, and is appointed to that position by the President.

General Litigation and Legal Advice Section

The General Litigation and Legal Advice Section has broad criminal jurisdiction which encompasses approximately 75 percent of all federal criminal statutes. It also has a wide variety of civil responsibilities. The section's jurisdiction is divisible into six major areas: 1) Regulatory Enforcement (e.g., protection of safety, health and consumer interests in mining and other occupations, nuclear materials handling, marketing of agricultural products, and disposition of hazardous and toxic wastes); 2) Crimes Against Government Operations (e.g., attacks on designated federal officials — including the President, Vice President, and Members of Congress — candidates for federal office, foreign officials, and official guests of the United States; violations of the recently funded Selective Service Act; counterfeiting; obstruction of justice; perjury; escape; prison offenses; and customs violations); 3) Crimes Against The Public (e.g., aircraft and maritime piracy, kidnapping, extortion, bombing, bank robbery, illegal electronic surveillance, copyright infringements, obscenity, and firearms violations); 4) Special Civil Matters (e.g., defense of civil actions to obtain information on or to interfere with

criminal justice and national security operations, and enforcement of forfeitures and civil penalties imposed pursuant to violations of Criminal Division statutes; 5) Prison/Parole Matters (e.g., defense of suits challenging legality of federal sentences, probation and parole actions, conditions of confinement, prisoner transfer within the United States and from foreign custody to the United States, and treatment of mentally incompetent prisoners); and, 6) Immigration and Naturalization Matters (e.g., defense of civil suits challenging Service procedures or practices, defense of appeals taken from deportation proceedings, initiation of denaturalization proceedings, and prosecution of alien smuggling violations).

The section's functions are equally broad as indicated by the following summary of discrete responsibilities: 1) It serves as an enforcement section in certain key areas where special requirements dictate centralization. In these areas, the section is directly involved in case development and litigation. 2) The section performs a general litigation function, handling litigation under any of its vast range of statutes when appropriate due to recusal, lack of resources or pertinent expertise in a particular U.S. Attorney's Offices, etc. 3) It provides legal advice on any of its statutes, or issues emanating from actions taken thereunder, to U.S. Attorneys' Offices as well as to investigative and client agencies. 4) The section staffs the division's programmatic crime prevention initiatives, including a number of major undertakings in the area of federal-state cooperation on dual jurisdiction offenses.

The section's enforcement initiative pertaining to regulatory violations endangering life or health has been designated by the Attorney General as a national white-collar crime priority. To date, the section's efforts have been in the nature of "pump priming," that is to build the agencies' capabilities to screen and develop potential cases. Joint endeavors with the Mine Safety and Health Administration and the Occupational Safety and Health Administration have produced several cases in which the section has been directly involved in litigation. Similar arrangements are being developed with the Environmental Protection Agency and the Nuclear Regulatory Commission.

The section has assumed responsibility for the re-implemented Selective Service Act and is currently developing prosecutive policy concerning violations of that legislation. The section is working with the Federal Bureau of Investigation and the Selective Service System so that when the first matters are referred to the Department in late November, 1980, they will be handled expeditiously.

Examples of the section's fiscal year 1980 accomplishments included: the conviction of and imposition of a \$1,900,000 fine against the Southern Railway on 95 counts of granting unlawful concessions to shippers by furnishing free entertainment; the conviction of the Van Dyke

Coal Company and its President for Mine Safety and Health Administration violations involving the death of a miner; the conviction of the P and P Coal Company for a mine safety violation resulting in four deaths; the indictment of Sears, Roebuck and Company for alleged introduction and conspiracy to introduce imported television sets into the United States by means of fraudulent statements; the indictment of two managers of the Farmers Export Company for alleged Occupational Safety and Health Administration safety violations as a result of a grain elevator explosion that killed 18 persons and injured 22 others; the determination of which vessel masters should be prosecuted and which vessels should be seized as a result of their participation in the "Cuban Flotilla;" the defense of civil cases arising out of the seizure of commercial vessels participating in the "Cuban Flotilla;" the defense of class actions brought by Haitian nationals seeking political asylum and authority to work in the United States; the defense of prison officials of the Lewisburg Penitentiary in a suit alleging that they brutally assaulted prison inmates; the establishment of the Executive Working Group for Federal-State-Local Prosecutorial Relations, the first formalized liaison among the Department of Justice, National District Attorney's Association, and National Association of Attorneys General; the handling of 110 petitions for remission or mitigation of forfeitures; and the preparation of approximately 100 U.S. Court of Appeals briefs in the immigration area.

Given the assignment of aiding in the enforcement of well over 1,000 statutes, the General Litigation and Legal Advice Section must coordinate its work closely with the U.S. Attorneys' Offices in allocating prosecutorial resources and supplying support in areas where it is most needed and most productive.

Appellate Section

The mission of the Appellate Section is to secure favorable constitutional and statutory interpretations in criminal cases being heard on appeal before the U.S. Supreme Court and the 11 U.S. Courts of Appeals.

Its functions include: preparing briefs in opposition to petitions for certiorari to the U.S. Supreme Court; securing favorable precedents by making appropriate recommendations to the Solicitor General for or against the review of adverse decisions in the U.S. District Courts or U.S. Courts of Appeals; briefing and arguing significant criminal appellate cases before the federal Courts of Appeals; reviewing appellate briefs prepared by Assistant U.S. Attorneys; and providing general assistance to U.S. Attorneys and the Assistant Attorney General on appellate matters, legislative research, and other special projects.

The Appellate Section's Supreme Court activity during

fiscal year 1980 included 18 briefs on the merits and four government petitions for certiorari. The section also drafted responses to a total of 497 petitions for certiorari. Of those cases that were disposed of by the Supreme Court last term, the section acquiesced in granting certiorari in five cases, and in only five cases did the Supreme Court grant certiorari over the section's opposition.

Non-Supreme Court workload handled by the Appellate Section during fiscal year 1980 included approximately 703 adverse decision recommendations, 422 memoranda to the Solicitor General and 195 briefs, petitions, and other pleadings in the Courts of Appeals.

The division's Appellate attorneys maintain close liaison with all litigating entities of the Department. Of particular significance is the section's relationship to the Office of the Solicitor General, which has responsibility for all arguments on behalf of the government before the Supreme Court.

Office of Special Investigations

Established in May 1979 by order of the Attorney General, the Office of Special Investigations (OSI) investigates and prosecutes denaturalization and deportation cases involving Nazi war criminals. The legal framework within which this office operates is the Immigration and Nationality Act, which makes specific provisions for dealing with persons involved in such war crimes.

The Office of Special Investigations has a staff of 50 persons—including 20 attorneys, ten investigators, five historians, and support staff—supervised by a Director, two Deputy Directors, and an Assistant Deputy Director in charge of administrative law matters, liaison with the Central Intelligence Agency, and special projects.

A "team concept" was implemented among attorneys, historians, and investigators to use effectively the expertise of various disciplines. The OSI investigative staff works on a worldwide scope. Historians at OSI search government and private repositories in the United States and Europe for evidence to be used by OSI investigators and attorneys. Beyond extracting materials of interest to OSI from existing sources, historians analyze the data for pertinence, adequacy, completeness, and overall value to cases under investigation. The staff includes clerical support personnel, paralegals, translators, a program analyst, and an archivist.

OSI established a working relationship with Jewish survivor organizations in the United States and disseminated a questionnaire to the members of such organizations to elicit names of witnesses and evidence. OSI has a working relationship with the Central Intelligence Agency that allows unrestricted access to relevant Agency material.

Three cases were prosecuted and eight new cases filed in fiscal year 1980. Among major accomplishments were the

implementing of the Moscow agreement of January 1980 by obtaining on videotape nine depositions of Soviet witnesses introduced in evidence in one prosecution, the making of firm arrangements for additional depositions in Estonia, and establishment of regular informal consultation with the Soviet Consul in Washington to expedite OSI-USSR communications.

Office of Policy and Management Analysis

The Office of Policy and Management Analysis completed its first full year of operation during fiscal year 1980. It is responsible for analyzing and recommending positions on policy and management issues of concern to top-level decisionmakers in the division and the Department. It also assists division managers in implementing new programs and management improvement projects.

The work of the office includes seven major functions: recommending positions in the development of policy affecting the role, functions, and mission of the division; advising the Assistant Attorney General on the establishment of priorities and objectives for the division and for federal law enforcement generally; developing plans for enforcement programs in conjunction with the division's litigation sections; conducting systematic evaluations of existing law enforcement programs and policies; advising the Assistant Attorney General on issues of budget policy and resource allocation; evaluating and developing improvements in the division's management systems and practices; and providing for the exchange of information and the coordination of policies, programs, and research with other public agencies and private institutions in the field of law enforcement.

The office uses an interdisciplinary approach to decision-making and problem solving. Its professional staff includes attorneys, program analysts, and management analysts in such areas as public and business administration, economics, organizational behavior, criminology, program evaluation, information systems design, data processing, statistical methods, financial analysis, and operations research.

Examples of projects in which the office has played a major role include the development of national priorities for the investigation and prosecution of white-collar crime; the analysis of proposed federal actions to combat a threatened increase in heroin importation from Southwest Asia; the development of a case management information system for the division's litigating sections; the initiation of a division-wide management review process; the design of a system for evaluating federal efforts to combat organized crime; and the review of U.S. Attorneys' policies for declining to prosecute certain categories of offenses.

Office of International Affairs

The Office of International Affairs supports the division in the formulation and execution of international criminal justice enforcement policies.

Its functions include: participating in the negotiation of international agreements and treaties on subjects relating to criminal law enforcement; representing the division in Executive Branch policy planning sessions when issues of international criminal justice are under consideration; negotiating, executing, and overseeing extradition, judicial assistance and prisoner transfer arrangements; preparing, processing and directing extradition matters forwarded by the Department of State before federal courts; providing advice to U.S. Attorneys and state attorneys general on preparing extradition requests and on international foreign practice and procedure; coordinating and reviewing all requests to and from foreign governments and courts to obtain evidence for criminal matters being investigated or prosecuted in the United States; and developing division policy on those aspects of federal criminal law enforcement that require extraterritorial involvement.

During fiscal year 1980, the office participated in negotiations on extradition treaties with Sweden, Colombia, Portugal, Canada, Ireland, France and The Netherlands; treaties on mutual legal assistance in criminal matters with Mexico, Colombia, Canada, France and The Netherlands; and a treaty for the recovery and return of stolen vehicles and aircraft with Mexico.

In fiscal year 1980, the office participated in the return to the United States of approximately 33 fugitives and caused the removal of approximately 45 foreign fugitives. The office directly represented foreign governments in court in twelve extradition proceedings, and has arranged for the return to their native countries of 128 aliens in exchange for the return to this country of 105 U.S. citizens.

The functions of the office require continuing contact with the Department of State and other foreign affairs agencies of the federal government, all of the federal investigative agencies, and departmental units involved in international prosecutions, as well as direct contacts with foreign ministries of justice and foreign affairs, and foreign embassies in Washington, D.C.

Office of Enforcement Operations

The Office of Enforcement Operations oversees, within the constraints of law and Department policy, the effective use of the most sophisticated investigative tools at the Department's disposal—including electronic surveillance, the division's confidential funds and witness relocation.

The office supervises all aspects of the Witness Security Program for the Criminal Division and responds to Con-

gressional, White House, press, and public inquiries regarding the Witness Security Program. It also receives and adjudicates all requests for use of the division's confidential funds; and all applications for electronic surveillance under Chapter 119 of Title 18 of the U.S. Code. It oversees all electronic and consensual monitoring efforts being pursued within the federal justice system, and prepares special analyses and evaluation reports relating to such activities.

The office continuously monitors each of those programs, and serves as liaison to investigative agencies, prosecutors, the U.S. Marshals Service, the Bureau of Prisons, and others involved in the implementation of these investigative tools.

The Justice Management Division's Evaluation Staff has been invited to do a general evaluation of the office and to make recommendations on improving office performance. The objective of the evaluation is "to develop an integrated system for monitoring, measuring performance of, and assessing the impact of using the special investigative tools under the jurisdiction of the office."

During the year, 315 witnesses and their families entered the Witness Security Program. There were 18 emergency authorizations. A total of 118 applications under Title III for court-approved intercepts of communications were approved (33 others were withdrawn and three denied), 8,803 requests were approved for consensual use of electronic devices, and the use of hypnosis to interrogate witnesses was authorized in 85 cases.

Office of Legal Support Services

The Office of Legal Support Services is designed to provide various components of the division with a wide range of services related to litigative assistance and prosecutive support.

Its functions include: reviewing and processing all requests for authorizations to compel testimony in federal prosecutions and congressional inquiries (immunities), as well as making the final recommendations to the Assistant Attorney General on granting or denying such requests; adjudicating all requests received from the public for access to Criminal Division records pursuant to the Freedom of Information Act and the Privacy Act; reviewing and processing all requests made to the Internal Revenue Service for access to return information and taxpayer return information; receiving and processing all requests to subpoena members of the news media for testimony in criminal proceedings; preparing a complete history of all legislation enacted by Congress that affects the responsibility of the Criminal Division; compiling, indexing, and maintaining a file of all division legal briefs and memoranda that involve policy matters or extensive legal research; coordinating, in conjunction with other division components, the prepara-

tion of the Criminal Division's portion of the U.S. Attorneys' Manual and other Department reports; processing requests for electronic surveillance checks directed to the several federal investigative agencies made in criminal prosecutions pursuant to 18 U.S. Code 3504; preparing grand jury letters authorizing division attorneys to conduct and attend grand jury sessions; responding to requests for authorization of Department personnel to testify at federal, state, and local civil and criminal proceedings; coordinating the collection of criminal fines and bond forfeiture judgments by the U.S. Attorneys' Offices; processing requests from U.S. Attorneys for access to information filed with the Secretary of the Treasury under the Currency and Foreign Transactions Reporting Act; and collecting and preparing a monthly report of significant criminal cases and matters of the Division components and the U.S. Attorneys, as well as collecting briefing matters and reports of significant criminal matters for the Attorney General.

Major accomplishments in fiscal year 1980 included the processing of 1,636 witness immunity requests involving 3,454 witnesses and the processing of 7,495 letters, of which 2,589 were referrals from the White House and 665 from congressional sources. The office also processed 270 requests to the Internal Revenue Service for tax information, 472 requests for testimony by Department employees in civil or criminal proceedings, and 72 requests for electronic surveillance checks. In addition, the section received and processed 544 requests for Freedom of Information material and 759 requests under the Privacy Act.

The wide range of responsibilities assigned to the office entails close liaison with all of the federal investigative agencies, the U.S. Attorneys' Offices, the Executive Office for U.S. Attorneys, and the administrative staff of the division and the Department.

Office of Legislation

The Office of Legislation contributes to the division's policy formulation through the systematic review, analysis, implementation and evaluation of criminal justice legislation and other Congressional actions.

In most areas of Congressional activity, there are many organizations, both public and private, engaged in assisting the Congress through the drafting and analysis of legislative proposals. Criminal legislation, however, is not the beneficiary of such widespread public interest. As a result, the Criminal Division has endeavored to devote substantial resources to the development and support of measures to revise and improve the federal criminal justice system.

Office functions include: developing—in cooperation with other federal justice agencies—legislative proposals, legal memoranda, and statements to be given before Congress by officials of the Department; drafting responses to

inquiries from Congressional committees and government agencies concerning proposed legislation; preparing legal memoranda relating to the implementation of recently enacted statutes; and requesting substantive opinions and recommendations on legislation from the division's sections and offices for presentation to the Congress.

Principal accomplishments during fiscal year 1980 include substantial progress toward enactment of the new Federal Criminal Code, which has been reported favorably by the respective House and Senate Judiciary Committees for consideration by the 96th Congress in late 1980. This complete revision of Title 18 of the U.S. Code, would establish a modern and conceptually uniform Federal Criminal Code. The office also drafted and provided necessary staff support for landmark measures to govern the issuance and execution of search warrants directed at persons engaged in First Amendment activities and to establish procedures that enhance the ability of the Department to prosecute criminal cases involving sensitive national security information without compromising vital national security interests. Both measures have been approved by the 96th Congress. Other accomplishments include testimony in jurisdiction over crimes committed on Indian reservations and detailed briefings and development of supporting and explanatory materials to facilitate Congressional consideration of amendments to the Federal Rules of Criminal Procedure. The office also participated substantially in development of the Program Fraud Civil Penalties Act, expected to be submitted to the 97th Congress, and assumed a primary role in Department implementation of such laws as the Speedy Trial Act and the Right To Financial Privacy Act which require significant modifications in the procedures and practices of federal prosecutors.

Office of Administration

The Office of Administration provides administrative support services to each of the enforcement services, staff offices and field units of the division.

Its work involves assisting in the formulation and implementation of plans for efficient administrative management; working with the Office of Policy and Management Analysis to develop and compile the annual budget estimates of the division; planning and executing the fiscal operating plan for the current year; administering management programs dealing with the delivery, maintenance, storage and use of federal records and official correspondence; coordinating personnel processing functions within the division; assisting in the collection and dissemination of caseload and workload statistics; maintaining and procuring inventories of supplies, equipment and furniture; processing requests for work space, telephone changes, office renovations and equipment repairs; administering a

variety of miscellaneous support services, such as travel vouchers and advances, travel reimbursements, duty station transfers, parking permits, identification cards, duplicating services, printing requisitions, and the distribution and maintenance of division handbooks and manuals; ensuring the security of classified and sensitive materials; and inspect-

ing the division's work space to assure compliance with Occupational Safety and Health Administration standards.

The office's wide range of duties requires close liaison with all of the division's components, the Justice Management Division, the General Services Administration, and contractor personnel associated with the division.

Executive Office for United States Attorneys

William P. Tyson Acting Director

Under the supervision of the Deputy Attorney General, the Executive Office for U.S. Attorneys provides general executive assistance and supervision to the 95 Offices of the U.S. Attorneys and coordinates and directs the relationship of other organizational units of the Department with these Offices.

In fiscal year 1980, the Executive Office assumed the responsibility for managing its own affirmative action program for U.S. Attorneys' Offices and, in compliance with Equal Employment Opportunity Commission and Office of Personnel Management regulations, an Affirmative Action Plan was developed. The plan includes specific hiring goals and timetables for the hiring of minorities and women. An employment review process was instituted to monitor the hiring and promotions of non-attorney personnel for grades GS-1 through GS-12, as well as all attorneys. The Executive Office developed a special recruitment program for specific occupations to attract persons with severely handicapping conditions.

New pay and performance appraisal systems were developed for Assistant U.S. Attorneys. They are designed to meet the requirements of the Civil Service Reform Act of 1978, closely link pay and performance appraisal decisions, and recognize outstanding non-supervisory trial attorneys by their designation as Senior Litigation Counsel.

During fiscal year 1980, the Executive Office established a Management Support and Information Systems Services Section, which initiated a project to provide automated caseload management capabilities to U.S. Attorneys' Offices. The pilot phase will test the applicability of using a generalized case-tracking software package called PROMIS and the practicability of installing a decentralized data processing system in U.S. Attorneys' Offices. Four pilot districts will make operational use of the new system in fiscal year 1981 and the project will be evaluated during that time. The continuation and expansion of the project to all U.S. Attorneys' Offices is contingent upon the recommendations resulting from the pilot evaluation.

Office of Legal Education

During fiscal year 1980, a new office was created for the expanded activity of the Attorney General's Advocacy Institute (AGAI) and the new responsibility for continuing legal education for all federal lawyers. As part of the Presi-

dent's reorganization of the Executive Branch, the Legal Education Institute (LEI) was transferred to the Department of Justice from the Office of Personnel Management and placed in a new Office of Legal Education. All U.S. Attorney training and education is coordinated through this office, for both the Department and other agencies.

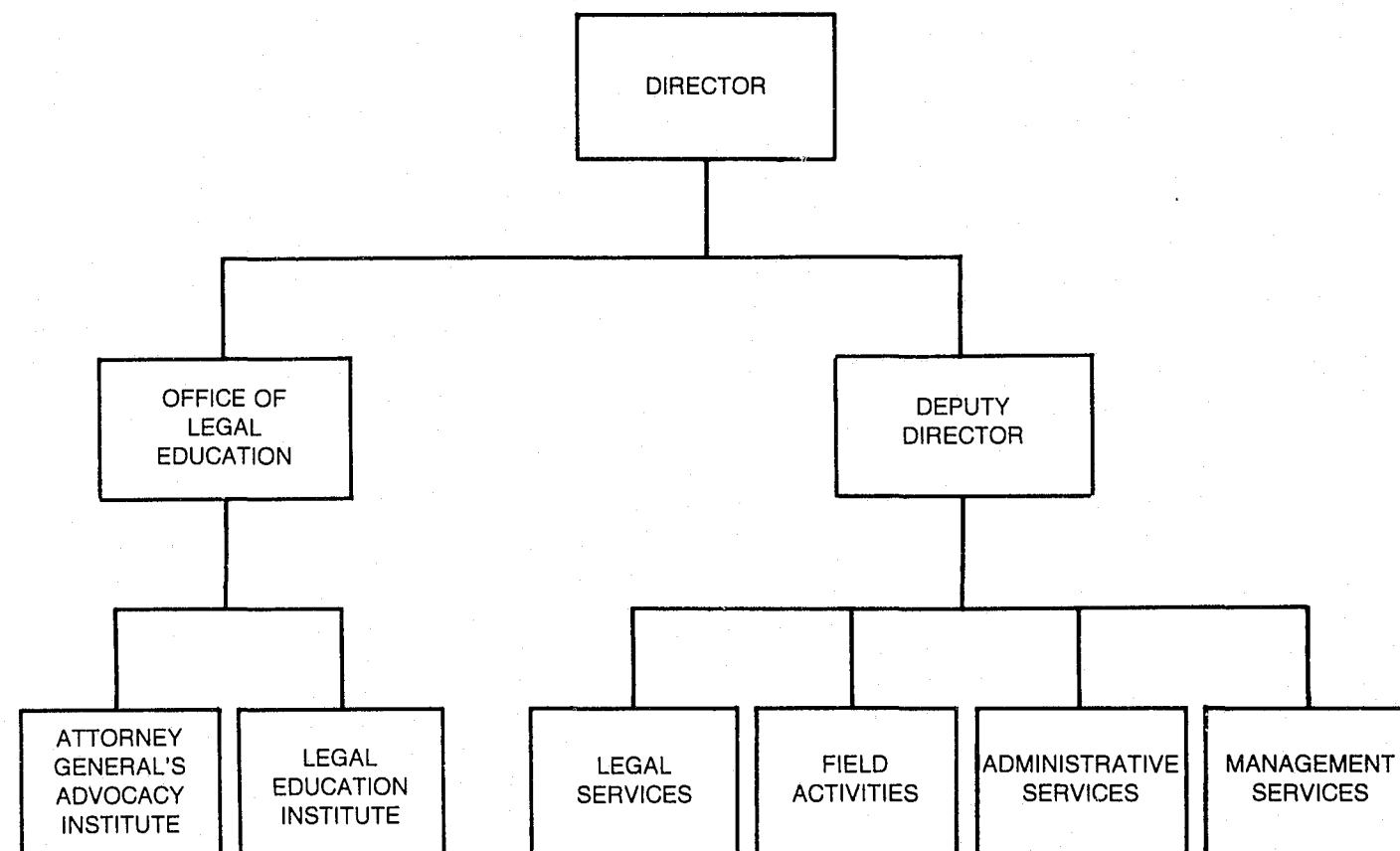
During the year, the AGAI offered 12 Criminal and Civil Trial Advocacy programs and four courses in Appellate Advocacy. New case materials reflecting the Department's white-collar crime priority were added to the basic and advanced courses. For the first time, civil law material was featured with criminal material in the Appellate Advocacy Course. Through specialized seminars, the AGAI offered training in each of the major priorities of the Department, including narcotics and dangerous drugs, public corruption and fraud, and other economic or white-collar crime areas. The Federal Bureau of Investigation and Drug Enforcement Administration were included in the planning and delivery of the seminars. In conjunction with the creation of new enforcement responsibilities in the Land and Natural Resources Division, new seminars were planned for litigating division attorneys and Assistant U.S. Attorneys, beginning with wildlife enforcement. Departments of Treasury, Interior, and Agriculture attorneys and investigators were brought into the planning as well as the delivery of the new wildlife seminar.

The expansion of the civil caseload in U.S. Attorneys' Offices was reflected in three new seminars for Assistant U.S. Attorneys—in Aviation Law, General Civil Litigation, and Medical Malpractice Litigation. The last was done with the participation of military and Veterans Administration lawyers and doctors. A special session was held covering the large number of swine flu cases. During fiscal year 1980, more than 800 attorneys were trained in all of the basic courses, and 1,300 participated in seminars.

The Office of Legal Education's first courses were offered in June, all on an inter-agency basis, and were in two categories: 1) training of broad application for a number of agencies, such as freedom of information law and federal employment law; and 2) training which can promote better working relationships among agencies, particularly where the Department of Justice represents them. The Department offers the courses without cost to the agencies.

In addition to wildlife enforcement, LEI also began work on advocacy training for other agencies, concentrating on

Executive Office for United States Attorneys



such areas as examination of witnesses and federal court motions practice for those agencies with separate litigation authority. These courses also complement the defensive litigation courses for agencies without litigation authority.

In determining LEI training priorities and evaluating effectiveness, the Office of Legal Education works closely with the Federal Legal Council, through its committee on training.

Legal Services

The Executive Office provides legal opinions, interpretations and advice to U.S. Attorneys on concerns such as legislation, regulations, and departmental guidelines. It also drafts, reviews, and testifies on legislative proposals and regulations; and is responsible for maintaining effective liaison and guidance in intergovernmental legal affairs. During fiscal year 1980, activities included:

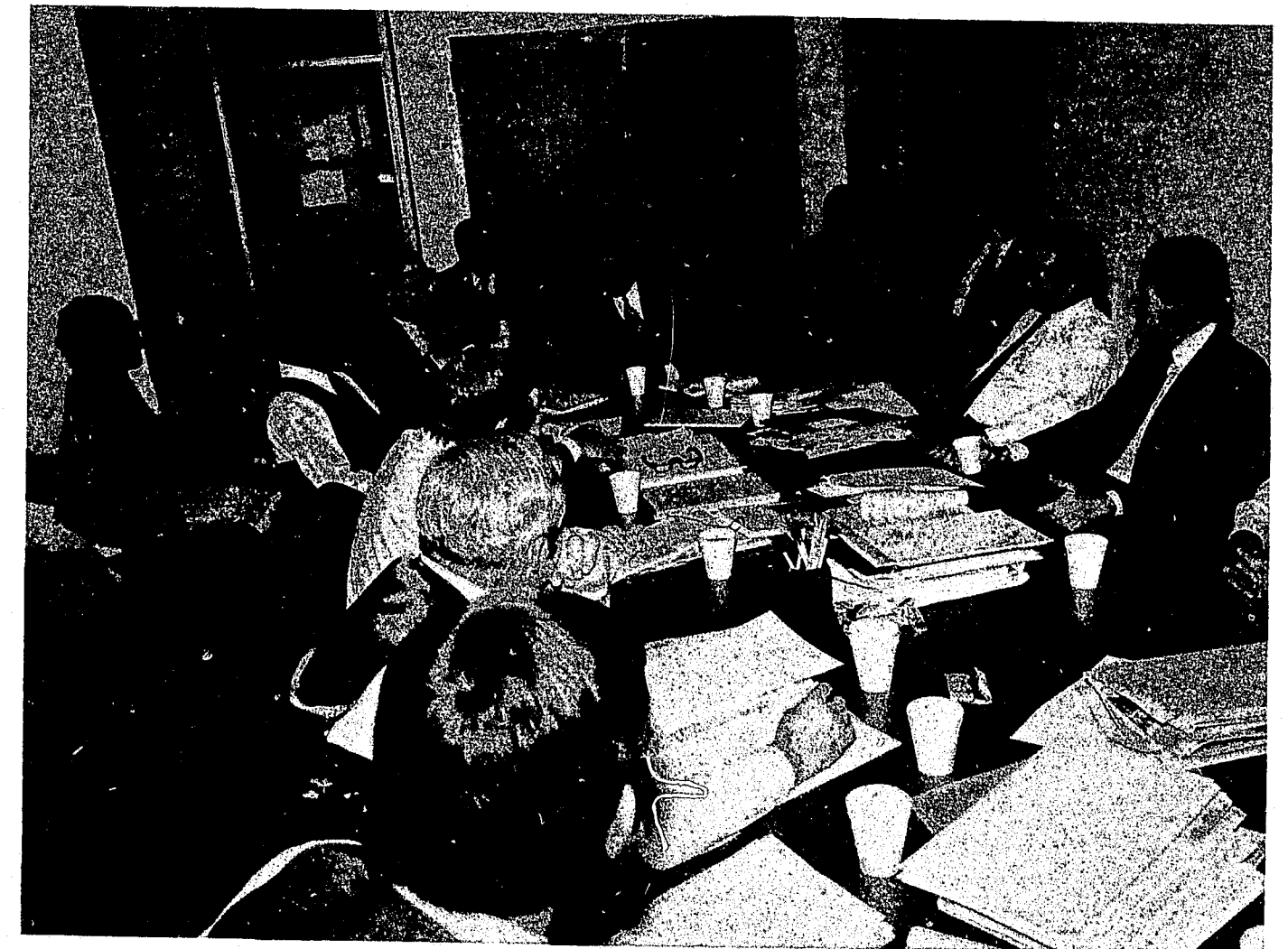
1. Participation in committees preparing revisions to the Federal Rules of Civil and Criminal Procedure.

2. Extensive communication and testimony before three subcommittees of Congress on subjects such as the Speedy Trial Act, Pretrial Diversion, and the Omnibus Court Reorganization Act.

3. Processing of and response to more than 600 Freedom of Information Act and Privacy Act requests, representing more than six million documents and extensive court filings.

4. Supervision and coordination of the efforts of the Department to comply with the Speedy Trial Act, which became effective July 1, 1980. Training and reference manual materials were prepared and distributed throughout the U.S. Attorneys' Offices and a system of government-wide speedy trial coordination set up to monitor and implement departmental compliance.

5. Publication of three new sections of the Department's primary reference source, the U.S. Attorneys' Manual: a complete revision of Title 8, the Civil Rights Division; the addition of the "Principals of Federal Prosecution" to the Criminal Division's portion of the manual; and the addition of Title 10, prepared and published by the Executive Office



Attorney General's Advisory Committee of United States Attorneys December 1980.

to assist U.S. Attorneys with the administrative tasks necessary to support their litigation activities.

Attorney General's Advisory Committee of U.S. Attorneys

The Advisory Committee, established in 1973 and formalized in 1976 by order of the Attorney General, makes recommendations with respect to establishing and modifying policies and procedures of the Department; improving management, particularly with respect to the relationships between the Department and the U.S. Attorneys; cooperating with state attorneys general and other state and local officials for the purpose of improving the quality of justice in the United States; promoting greater consistency in the application of legal standards through the nation and at

various levels of government; and aiding the Attorney General, the Deputy Attorney General and the Associate Attorney General in formulating new programs for improvement of legislation and court rules.

The committee is made up of 15 representative U.S. Attorneys who serve at the pleasure of the Attorney General. It has standing subcommittees on allocation of case responsibility, Department of Justice field offices, investigative agencies, legislation and court rules, professional proficiency and management standards, and federal-state relations.

At each bimonthly meeting, the committee reviews with the Attorney General and the Deputy Attorney General matters of mutual concern relating to the operations of U.S. Attorneys.

The committee also meets on a regular basis with the Assistant Attorneys General in charge of the various divi-

sions of the Department of Justice and those Department representatives having specific responsibility for the areas of discussion.

Members of the Attorney General's Advisory Committee are regularly called upon to contribute to Department committees and task forces. Through ad hoc committees, the committee responds and suggests modifications to initiatives generated by the Department, such as prosecutorial principles, open judicial proceedings, declination guidelines study, and development of Economic Crime Units. At other times, the committee itself suggests policy changes, such as streamlining the multiple levels of review in criminal tax cases. The committee, on behalf of interested U.S. Attorneys, also initiated a border conference on immigration policy during the year.

In addition, the Advisory Committee and its Subcommittee on Investigative Agencies held meetings during the year with top officials of all the federal investigative agencies and Inspectors General's Offices in an effort to improve working relationships between the agencies and the U.S. Attorneys.

The committee was active in Department budget presentations and in proposals and conferences involving the overall improvement of fiscal and litigative management of the Department. Its advice and evaluations were also given on a continuing basis in matters involving the conduct of the AGAI.

The U.S. Attorneys

Within each of 95 federal districts in the 50 states, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands, and the Canal Zone, the U.S. Attorney is the chief law enforcement representative of the Attorney General—enforcing federal criminal law and handling most of the civil litigation in which the United States is involved.

U.S. Attorneys are appointed by the President, with the advice and consent of the Senate, for four-year terms, serving at the pleasure of the President. Assistant U.S. Attorneys are recommended by the U.S. Attorneys and appointed by the Attorney General.

U.S. Attorneys carried out their responsibilities with the support of 1,954 Assistant U.S. Attorneys and 2,267 non-attorney personnel. Their offices ranged in strength from two Assistant U.S. Attorneys to 163 Assistants, with 38 having fewer than ten Assistants. The budget for U.S. Attorneys' Offices for the year totaled more than \$155,175,000.

During the year, a National Conference of U.S. Attorneys was held in Washington, D.C., and other general and special conferences were held throughout the year—focusing on the Attorney General's priority programs and addressing common problems encountered in the conduct of

the U.S. Attorneys' Offices.

The U.S. Attorney for the Southern District of Ohio, with the assistance of his staff of 16 attorneys, prepared and published a revised and expanded version of *Proving Federal Crimes*, a manual for federal prosecutors. The new edition helps to meet the need for concise and current resources in the increasingly complex investigations and prosecutions in the white-collar and organized crime areas.

Economic Crime Enforcement Units have been established in 22 districts to facilitate the investigation and prosecution of priority economic crimes by the U.S. Attorneys' Offices and the Criminal Division.

Major Drug Traffickers Prosecution Units in 24 of the larger districts continued to provide greater coordination with Federal Bureau of Investigation and Drug Enforcement Administration offices.

Civil Rights Units were established in 37 districts to enforce federal civil rights statutes and to provide close liaison with state and local civil rights agencies and organizations and the Civil Rights Division.

From May 1980, when the President announced that any person going to Cuba to bring back "illegal aliens" would be prosecuted, until September, more than 600 persons were charged with bringing in illegal aliens or with conspiracy to violate the immigration laws of the United States. Of that number, 344 persons were indicted in 85 cases. More than 600 civil fine cases were referred by the Immigration and Naturalization Service to the U.S. Attorney's Office for collection, and an additional 800 were expected. Forfeiture actions were initiated against 15 vessels used in the Cuban refugee "boat-lift," and many more forfeiture actions were to be filed. To handle this sudden influx of "illegal aliens" and the criminal prosecutions the "boat-lift" generated, a special task force of trial attorneys from the Department and Special Assistant U.S. Attorneys from other districts was created in the Southern District of Florida. In one of the first civil actions involving the government's boat-lift policy, suit was brought by various vessel owners seeking injunctive relief from the seizure of their vessels. The District Court issued a preliminary injunction which mandated the release of the vessels if the owners followed a detailed set of guidelines which provided for bonds to be obtained and assurances of no further boat-lift participation. Rather than appeal, the government used the Court's order as a model for implementing a more expansive program for the release of additional vessels seized under the same circumstances.

The presence of the Cuban Refugee Relocation Consolidation Center at Ft. Chaffee, Arkansas, also caused an increased workload primarily in misdemeanor and felony cases. There are currently over 800 Cuban refugees at Ft. Chaffee. Thirty to 60 minor and petty offenses arising in the Cuban compound are processed weekly by the U.S. Magistrate. Since the beginning of the refugee relocation process

in May 1980, approximately 300 such cases have been disposed of by conviction, acquittal, or dismissal. Eight felony indictments against Cuban refugees have been returned by the Grand Jury, with felony assaults the most prevalent. Four cases have resulted in convictions thus far.

White-Collar Crime

U.S. Attorneys continued their efforts against fraud involving job training funds disseminated pursuant to the Comprehensive Employment and Training Act (CETA). The conviction of three individuals in the food service industry and a Bridgeport CETA official, in connection with the theft of \$35,000 in CETA funds earmarked for the economically disadvantaged and unemployed, brought to ten the number of convictions for CETA fraud by a newly-created Special Prosecution Unit in Connecticut. A Kansas City, Kansas, businessman was convicted of fraudulently obtaining CETA funds in excess of \$120,000 from a CETA grant, designed to train economically disadvantaged persons as screw machine operators, provided for the use of the defendant's business facilities as part of the training program.

Two University of Wisconsin professors were prosecuted in connection with the theft and misapplication of federal grant funds. In one case, a pathology professor pled guilty to charges of theft of National Institute of Health funds by using funds for personal travel purposes, and was fined a maximum fine. In the other case, a professor of education pled guilty to charges of theft and misuse of funds which he had received from the Department of Health, Education and Welfare as director of the Wisconsin Teacher Corps Program. He was sentenced to 60 days in jail. Both cases have had wide impact in the university community in Wisconsin and in the academic community nationally, resulting in considerable tightening up of the use of federal grant money.

In Chicago, two primary officers of Northlake Hospital were convicted of the use of hospital funds to finance personal business ventures and home improvements. This resulted in a defrauding of the defendant's business partners and a use of medicare funds for personal purposes.

In the Middle District of Georgia, an agricultural management specialist was sentenced to five years probation and six months in jail after pleading guilty to charges of embezzling and converting funds, in his official capacity, from 20 low-income, rural purchasers of Farmers Home housing by requesting and receiving downpayments from purchasers when no such downpayments were required; of falsely stating that he had no interest in the ownership of a Farmers Home Administration-financed home which was financed by Farmers Home and the loan processed by the defendant; and of submission of a loan application to the Farmers

Home Administration for a rural housing loan for a home owned by him.

In Southern Georgia, a former state senator and chairman of the State Senate Banking Committee, and a president and a director and member of the loan committee of a bank, were convicted of fraud involving \$2 million in unsecured loans made by the bank. The former senator received a ten-year sentence and a \$55,000 fine; the president received a three-year sentence and a \$5,000 fine; and the member of the board and loan committee received a ten-year sentence and \$60,000 fine.

An audit of the accounts of the officer-in-charge of the Batavia, New York branch of the Liberty National Bank & Trust Company revealed misapplication of approximately \$1.3 million. It was determined that he had made fictitious loans in the names of existing bank borrowers, then diverted the proceeds through fictitious savings and checking accounts. He was sentenced to three and a half years imprisonment for embezzlement of \$248,606.

Ann Lockley and Hazel Richmeier were convicted of embezzling more than \$800,000 from the First of Denver Bank and were sentenced to two years each. Richmeier, a bank supervisor, used her position in the bank Master Charge and VISA division to open 178 phony accounts which Lockley used in her chain of local stores. Richmeier established accounts in the bank's computers which resulted in credit cards being issued to each of the stores. Lockley then wrote phony charges, signed fictitious names, and sent payment demands to the bank for reimbursement. Lockley and Richmeier shared the proceeds when the bank transferred the funds to Lockley's account at another bank.

Lester L. Moline, a prominent western Oklahoma physician and director and shareholder of the Foss State Bank, kited some 58 checks between various accounts in banks in Oklahoma and Kansas and unilaterally caused the failure of the Foss State Bank when the Nonsufficient Funds checks failed to clear. The bank sustained a loss of some \$220,000, driving it into insolvency. Moline was sentenced to five years. The president of the bank pled guilty to aiding and abetting Moline in the scheme and received probation.

A defendant was sentenced to two years imprisonment on his guilty plea to an indictment charging him in an international check-kiting scheme that resulted in a \$107,000 loss to a Buffalo, New York bank. The defendant had taken advantage of a 14-day delay in processing checks between the bank of Montreal at Fort Erie, Ontario, and Erie Savings Bank at Buffalo.

A Columbia, Missouri, car dealer and his secretary were convicted for defrauding two Missouri banks of a total of approximately \$700,000 as a result of a three-bank check-kiting scheme. In addition, defendants were charged with making false statements on loan applications to banks. Several vehicles were used as security on "floor plan" loans

with two different banks. The car dealer was also charged with odometer rollbacks.

Following the Mirage series in the Chicago Sun Times, in which undercover operatives of that newspaper exposed a network of accountants and tax preparers in Chicago who advised small tavern owners in the techniques of skimming profits, the U.S. Attorney conducted a joint investigation with the Internal Revenue Service of the tax preparers and their clients. Eight tavern owners were convicted of tax fraud in understating the purchases and gross receipts of the tavern.

A tax accountant was convicted in the Western District of Virginia of defrauding the United States through fictitious tax shelters involving several South Carolina resort properties. In executing the scheme, the defendant utilized false documentation to the Internal Revenue Service, dilatory response to audit requests, and obstruction of the functions of the Service through deceit and intimidation tactics. The defendant pleaded guilty to conspiracy and to filing false tax returns and received a five year prison sentence.

Official Corruption

David Friedland, a New Jersey state senator, and his father, a former state assemblyman, were convicted of receiving kickbacks for arranging a \$4 million loan from a Teamster Pension Fund. The Friedlands, who were attorneys to ten of the 35 Teamster unions in New Jersey, were also convicted of obstructing justice and failing to report interest income from their secret Swiss bank accounts.

In Los Angeles, in one of the largest and most egregious investment advisor fraud cases ever prosecuted, Aaron Kleinman, President, Chief Executive Officer and sole stockholder of Manus, Inc., an investment advisory firm, pleaded guilty to charges that he solicited a total of more than \$1.6 million from clients for investment purposes, then diverted the funds to other uses. He was sentenced to five years in prison.

In Northern Illinois, the Attorney General of the state was convicted of filing a false income tax return for 1972. He received a sentence of one year and a day.

In Western Wisconsin, an assemblyman in the state legislature was sentenced to six months imprisonment for testifying falsely before a grand jury when he denied his involvement in a plot to export a laser device from Wisconsin to Guatemala. The evidence had shown that he was one of several persons involved in an effort to have such a device built, to be used by the Guatemalan Government to demoralize and weaken opponents to its regime. The assemblyman resigned his seat in the Wisconsin legislature. This was believed to be the first prosecution of a member of the Wisconsin legislature by this U.S. Attorney's Office.

A South Carolina state senator was convicted along with

his "bag man" with violations of RICO. The gravamen of the charge was the use of his position as a State Senator to sell state jobs.

The former director of the Florida Department of Natural Resources and a real estate broker were each sentenced to five years imprisonment and \$30,000 in fines for their part in an attempted Hobbs Act extortion of a real estate agent who was attempting a \$12 million land sale to the state under the Environmentally Endangered Lands Program.

A former investigator in the Consumer Protection Division of the Massachusetts Attorney General's Office was sentenced to 18 months imprisonment for directing a shakedown scheme of used car dealers in the Worcester area whereby the dealers were to pay money in return for his overlooking suspected violations of criminal and consumer protection laws. In imposing the sentence, the judge stated that there was "no more despicable crime than a public official taking a bribe."

A former Mahoning County, Ohio sheriff and four deputies were found guilty of extortion and racketeering, and sentenced to mandatory prison terms for their part in schemes that included a mandatory office "flower fund" and an "escort service" for overweight or oversized trucks. Haulers of heavy equipment were able to skirt the law by paying a fee to the sheriff's office, which in turn provided a cruiser to usher the hauler to his destination. The sheriff was also found guilty of compelling certain deputies to help remodel his home.

Appeals were affirmed against a sheriff and six codefendants for charges arising from the operation of a Northern Mississippi county sheriff's office, including interstate travel in aid of racketeering, extortion, and obstruction of justice.

In Western Virginia, a former Commonwealth's Attorney for Roanoke City, who later served for a time as Chief Minority Counsel to the House Judiciary Committee during the Impeachment Hearings, pleaded guilty to embezzling \$46,000 from a bankruptcy estate of which he had been appointed trustee. The case received national attention due to the role the defendant, Sam Garrison, played in the Watergate Hearings. Garrison received a sentence of one year and one day to serve in prison.

James Bunnell, a former county judge in Brown County, Texas, was found guilty of conspiracy to manufacture methamphetamine, and two codefendants pled guilty to the conspiracy charge. Bunnell had resigned as county judge to enter the race for district attorney. He met with a Drug Enforcement Administration agent, acting in an undercover capacity, only hours after he had filed the necessary papers to enter the race, to discuss the purchase of chemicals and glassware necessary to manufacture methamphetamine.

In Arkansas, a Memphis man pled guilty to bribing 17 Arkansas county judges. Four of the judges named had been

convicted previously of accepting bribes from other vendors under the racketeering and travel acts. Four other judges had been convicted for accepting bribes under the racketeering and travel acts in an ongoing investigation by the Federal Bureau of Investigation and the Postal Inspectors in the Eastern District of Arkansas. Arkansas county judges are primarily administrators, with the responsibility of purchasing materials for county-maintained roads and other functions of court government. Bribes were, for the most part, in the form of kickbacks and the splitting of payments for undelivered materials.

A former commissioner for Knox County, Tennessee, was convicted for the extortion of approximately \$117,500 from a garbage collection company, in exchange for his favorable vote on a landfill site in Knox County. The defendant was sentenced to four years imprisonment and received a fine of \$2,000.

At the time of his indictment, Robert Leonard was the prosecuting attorney at Genesee County, Michigan, a position he had held since 1963. In addition, Leonard was the President of the National District Attorney's Association. In 1967, the Genesee County Commissioners established a budget line item referred to as "Criminal Investigations," to permit the prosecuting attorney and his office to pay informants, make undercover drug purchases, and the like. From 1967 to 1977, the last year this line item was in existence, Leonard personally received checks totaling \$524,494, all made payable to Leonard and promptly converted to cash. The records of the prosecuting attorney could only account for \$15,000 of the funds received by Leonard from 1973 to 1976, leaving \$216,000 unaccounted for. The government contended that Leonard embezzled substantial sums, with most of it being used to purchase a home in Pebble Beach, California. In November 1979, a jury convicted Leonard of four felony counts arising out of the embezzlement of these funds. Under Michigan law, Mr. Leonard's office became immediately vacant upon his conviction. He was sentenced to three concurrent sentences of five years and one of three years, with fines totaling \$20,000. Leonard was subsequently convicted of criminal contempt for wilful failure to obey a grand jury subpoena and received an additional six-month sentence.

In Northern Mississippi, a county supervisor was convicted for assaulting a Federal Bureau of Investigation agent while the agent was conducting an investigation into alleged racketeering and acceptance of kickbacks by the supervisor and other public officials.

In Middle Alabama, a continuing investigation into public corruption with respect to the purchase of pipe, chemicals and petroleum products by county commissioners and municipalities resulted in the convictions of six county commissioners, a city manager, a chief of police, three superintendents of municipal utility boards, the presidents

of two chemical supply business firms, and the president of a pipe and road maintenance supply company. All of these convictions involved violations of the RICO and mail fraud statutes; the suppliers were paying kickbacks to the public officials in order to sell their products and, in some instances, the supplier agreed to pay a greater kickback in return for the payment of bogus invoices where the items invoiced were never shipped.

In Middle Pennsylvania, two members of the Shamokin Area School Board were successfully prosecuted for Hobbs Act Violations. They were found guilty of having extorted \$12,350 under color of official right and fear of economic injury from an architectural firm that did work for the school district in the mid-1970's.

Late in 1978, the U.S. Attorney in Eastern New York received allegations of a major pattern of corruption among New York City marshals. These marshals, who are appointed by the mayor, are authorized to collect judgments obtained by creditors in the Civil Court of the city by selling debtors' property at public auction sales. The investigation disclosed a conspiracy among city marshals in which they routinely accepted bribes from a group of regular buyers who attend marshal sales in return for rigging the auction sales and selling the debtors' property at deflated prices. The investigation further disclosed that the creditors failed to recover the true amounts of their judgments and debtors were deprived of the true value of their property due to this corrupt practice. The investigation resulted in the conviction of ten marshals and reduced the number of city marshals by nearly 20 percent. In addition, ten auctioneers who had conspired with the marshals were also convicted on various charges.

Eleven persons were indicted in a case involving the illegal operation of a large-scale numbers business in Pontiac, Michigan. An extensive Federal Bureau of Investigation undercover investigation was conducted in cooperation with the Oakland County Organized Crime Task Force. Three Pontiac Police Officers, one Pontiac City Commissioner, and seven other individuals were charged with carrying on an illegal numbers business and conspiracy to obstruct state law enforcement. Eight individuals, including a Pontiac Police Lieutenant, were convicted and received sentences of up to three years incarceration.

The senior member of the Columbus, Georgia Police Department Vice Squad and another vice officer were convicted of conspiracy to distribute various controlled substances including heroin, percodan, marijuana, phenylcyclidine, ritalin, and preludin. The investigation and trial revealed a variety of methods by which the policemen procured the drugs: arresting persons for possession, then charging the defendants with amounts less than they actually possessed and officers keeping the remainder; checking pharmaceuticals out for presentation to grand juries in drug

store robbery and burglary cases and later supposedly destroying the evidence; procuring materials from the state crime laboratory ostensibly for use in the police department drug display kit used as a visual aid during speeches at high schools and civic clubs; and fake destruction of large quantities of marijuana and heroin. The drugs were then sold by various females who had prior associations with the vice officers and the proceeds divided.

The chief of detectives of the Covington, Kentucky Police Department was convicted of receiving payoffs from gamblers in exchange for supplying information tipping them off in advance of raids of their establishments.

Twelve persons were arrested while unloading ten tons of marijuana from two shrimp boats. Four were Key West, Florida, police officers. All defendants were convicted of narcotics offenses.

In Western Missouri, a \$47,000-a-year Department of Health, Education and Welfare regional officer was convicted of converting to his own use the services of his secretary, causing her to type reports, letters and other documents for his personal business during official duty hours without reimbursing the United States for her services. The evidence showed he spent a substantial portion of his duty time operating the business and that his secretary for several months spent more than 90 percent of her time working on it. His defense was that he and other Department of Health, Education and Welfare employees in his office went for weeks or months with little or nothing to do, and that it was better to have the secretary employed on private business than to be doing nothing at all. He further contended that such activities were routine in the regional office and that the government was engaging in "selective prosecution."

As a result of a two-year investigation into U.S. Customs Service irregularities, supervised by the New Jersey U.S. Attorney's Office, 28 defendants pleaded guilty to a variety of offenses including conspiracy to defraud the government, accepting gratuities, supplementing salary of government officials, and obstruction of justice. The defendants included the area director for the U.S. Customs Service as well as the assistant area director and the chiefs of the Warehouse Section, Import Specialist Section, and Merchandise Control Branch, and the area assistant chief inspector.

Architect-Engineer Robert D. Goodoak was sentenced to a three-year term of imprisonment for a scheme to defraud the Department of Housing and Urban Development in connection with over \$500,000 in federal funding of low-income housing administered by the Somerville, Massachusetts Housing Authority. Goodoak drew plans and specifications for the contracts. The bidding on the contracts was then manipulated to assure award of the contracts to favored contractors, who were permitted to provide substantially less than complete performance on the contracts, while

payments from funds for performance of the contracts were diverted to bank accounts under Goodoak's control. The three-year federal sentence imposed was designated to begin after Goodoak completes the two-year sentence he is presently serving for a scheme to defraud the Somerville Housing Authority relating to state funding of low-income housing. In imposing the federal sentence, the court observed that Goodoak, who interrupted his trial after four days to plead guilty to all counts of the 22-count indictment, had abused a public trust as a consulting engineer at the Somerville Housing Authority and had engaged in acts which threatened the safety of one of the "most vulnerable segments of our population," those who live in public housing. Evidence indicated that the scheme netted Goodoak \$361,760 of the \$648,778 in federal funds disbursed by the Somerville Housing Authority on two modernization contracts.

A former investigator for the Medi-Cal Fraud Unit of the California State Department of Justice was sentenced to two years in prison for extortion involving use of his official position as a special investigator to demand money from medical providers on the pretense that he could interfere with, delay, or stop pending criminal investigations being conducted by the unit. There was no evidence that the individuals approached by Caldwell were actually under investigation. This case was one of many successfully prosecuted as a result of a year-long undercover investigation by agents of the Federal Bureau of Investigation working with the Office of the U.S. Attorney in Los Angeles. The Assistant U.S. Attorney and the Bureau agents testified before the Subcommittee on Health of the Senate Finance Committee about this program during the summer.

Organized Crime

Three union officials and a Little Rock businessman were convicted of 26 counts of conspiracy, racketeering, and embezzlement of union funds in the Eastern District of Arkansas. The three-week trial was the culmination of a Federal Bureau of Investigation investigation which began in 1977. Among the offenses were the solicitation by union officials for the murder of an international representative who was investigating the affairs of the local in 1978 and embezzlement of funds from a training program funded by the federal government.

In New Jersey, Anthony Provenzano and three others were convicted of extorting labor payoffs from Seatrain Lines in return for allowing Seatrain to violate their Teamster Union contract. In return for the payoffs, Seatrain did not pay any benefits or overtime to any of their trucking employees and their unorganized employees were not unionized. Provenzano was able to accomplish this scheme through his autocratic control of Teamster Local

560, one of the largest in the country. Following his conviction, in an unprecedented action, Provenzano's bail was revoked because the court found him to be an economic danger to the community.

Also in New Jersey, Tino Fiumara, a reputed organized crime chieftain, and three of his lieutenants were convicted of Hobbs Act extortion as a result of their efforts to extort a 25 percent interest in a local restaurant. The owner of the restaurant had originally come to Fiumara for assistance to settle a problem he was having with members of organized crime in another state. The conviction was obtained even though the frightened victim had, at trial, completely disavowed his earlier grand jury testimony. The trial judge ruled that, under the new Federal Rules of Evidence, the victim's grand jury testimony in which he described his deathly fear of Fiumara was admissible as substantive evidence.

George Poulos and Kim Kilgore were convicted on charges resulting from the arson of a Wichita, Kansas, real estate business that was in competition with Kilgore. In 1976, Poulos was hired by Kilgore to destroy certain business records of a competitor, and Poulos hired a third man who actually set the fire. All three participants had extensive criminal records; Poulos had been arrested over 250 times. Poulos was sentenced as a Dangerous Special Offender to 25 years in prison, and Kilgore was given three years after entering a plea to misprison of a felony and testifying against Poulos. The man who set the fire was given immunity and placed under the Witness Security Program.

In Eastern Missouri, 14 persons were charged with narcotics and RICO violations in connection with a large-scale drug operation of a St. Louis organized crime group. Nine pled guilty prior to trial and three received jury verdicts of guilty; one was acquitted and one is a fugitive.

Controlled Substances

Eleven defendants were convicted on continuing criminal enterprise charges for their participation in one of the largest heroin distribution rings ever uncovered in Chicago. The multimillion dollar street operation was active 24 hours a day on a three-shift basis, employing cutters of heroin, street dealers, and street supervisors. Conviction on the continuing criminal enterprise charge was the first such conviction in this district in a narcotics case and carries a minimum sentence of ten years and a maximum of life imprisonment.

A major heroin trafficker in the Tidewater area of Virginia was convicted of conducting a continuing criminal enterprise. The defendant, who had attempted to kill one government witness and was implicated in the contract murder of another, was sentenced to life imprisonment without possibility of parole. Also in Virginia, Shahrokh Bakhtiar, an Iranian national, was convicted of the importation of 20 kilograms of pure heroin from factories in Iran.

The prosecution of Bakhtiar and two accomplices involved the use of a Drug Enforcement Administration undercover agent playing the role of an organized crime buyer of bulk heroin, the use of \$1 million in cash as a "flash roll," a seven-pound heroin seizure, and a Title III wiretap.

In Western New York, 13 defendants were indicted for conspiracy, over an eight-year period, to import and distribute more than 300 pounds of pure white heroin. The heroin was refined in France, shipped to Italy, then to Canada, and finally smuggled into the United States. Two defendants were sentenced to ten years imprisonment; another, due to his age and poor health, received five years. Of the remaining defendants, two Italian nationals alleged to be major sources of the heroin are incarcerated in Italy awaiting extradition, three other defendants have pled guilty, three are fugitives, one is deceased, and one is awaiting trial.

A major heroin importing and distributing organization, which involved heroin smuggled from Thailand to Guam and on to Hawaii and the West Coast, was destroyed by a successful prosecution by the U.S. Attorney in Guam. Pan American cargo employees were used to divert baggage in Guam to avoid U.S. Customs. Several million dollars worth of China white heroin was brought into the country over a five-year period. The heroin brought to Guam supplied 60 to 80 percent of the addicts on that island. Using numerous financial records, tax documents, and approximately 106 witnesses, 13 of the 14 persons indicted were successfully prosecuted. The three leaders in the organization received prison sentences ranging between 13 and 18 years.

In Brooklyn, New York John Grammatikos, described by the Drug Enforcement Administration as one of the biggest volume narcotics dealers in the world, was convicted of heading a continuing criminal enterprise and of having engaged in distribution of controlled substances. Grammatikos utilized the contacts and expertise he had acquired as a merchant seaman to operate a far-flung system for the procurement, importation, and distribution of vast quantities of controlled substances, principally hashish. Grammatikos was sentenced to 15 years imprisonment with no parole, and fined \$50,000. In addition, the jury required Grammatikos to forfeit a yacht and discotheque-hotel he owned in Greece.

The U.S. Attorney in Southern Indiana presented a 36-count indictment for 24 defendants in a major international drug smuggling organization called "The Company." Sixteen defendants have been sentenced and almost \$1 million in assets have been forfeited to the government.

Twenty members of a major drug importation/distribution conspiracy were indicted in the Middle District of Georgia. Seven were convicted after a four-week trial, two entered guilty pleas during the trial, one pled guilty prior to trial, and others were fugitives. The Drug Enforcement Ad-

ministration said the group imported or attempted to import approximately \$200 million worth of drugs. Sentences ranged up to 20 years and a \$100,000 fine.

In a joint effort between agents of the Drug Enforcement Administration, officers of the Dallas, Texas Police Department, and investigators of the Texas Medical Board, two doctors were convicted of illegally dispensing controlled substances. A Connerville, Indiana, physician and his associates were convicted of the distribution of vast quantities of various controlled substances which were diverted from the physician's quasi-legitimate medical practice. The physician was convicted of income tax evasion, conspiracy, distribution of controlled substances, and false recordkeeping in regard to controlled substances. He received ten years and a fine of \$25,000.

Two San Francisco pharmacists were sentenced to two years imprisonment with all but six months suspended, and fined, together with two pharmacies which they owned, a total of \$120,000 after guilty pleas by the four defendants to conspiracy to distribute controlled substances by filling prescriptions which they knew had not been issued in the usual course of professional conduct or for valid medical reasons. The defendants were charged with distributing approximately 1.2 million Ritalin tablets, 250,000 Quaalude tablets, and other Schedule II controlled substances during a period of approximately two and one-half years during which the defendants earned over \$250,000 in profits and submitted well over \$100,000 in fraudulent claims to Medi-Cal.

After a two-day jury trial, a Waterville, Maine, school teacher was convicted of conspiracy to distribute a kilogram of cocaine valued at more than \$55,000.

An Austin, Texas, jury convicted Jamiel (Jimmy) Alexander Chagra for a continuing criminal enterprise violation involving importation and distribution of cocaine and marijuana. A native of El Paso, Chagra is a self-styled "high stakes" professional gambler who has resided in Las Vegas and has been a documented drug smuggler since 1969. In 1977-1978, while living in Florida, Chagra directed drug importations from Colombia to Florida, with distribution of the drugs to Texas, Colorado, New Mexico, California, Oklahoma, and Connecticut. During that period, three boatloads netting over 100,000 pounds of Colombian marijuana were seized off the Florida coast. Although after the verdict the government moved to remand Chagra to custody or to increase the bond to \$3 million, Chagra was continued on \$400,000 bond pending sentence. Testimony at the trial revealed that Chagra had gambling losses of approximately \$2.5 million during a six-month period in 1978 and had lost \$915,000 in one night. Chagra failed to appear for a bond hearing and also failed to appear for sentencing. In jumping bond, Chagra forfeited his \$400,000 bond and remained a fugitive until his arrest in Las Vegas shortly before his

sentencing hearing. At the time of his arrest, he was in possession of \$180,000 in cash. Chagra was sentenced to 30 years imprisonment and a fine of \$100,000 on the continuing criminal enterprise count and 15 years imprisonment and a \$25,000 fine on a substantive cocaine count, plus a special parole term of life. Chagra was subsequently convicted of failing to appear after being released on bond. On this bond jumping charge he received a sentence of five years imprisonment to run concurrent with the 30-year sentence.

Nine members of a massive heroin trafficking group centered in Los Angeles and distributing heroin and cocaine throughout the United States pleaded guilty to various charges of narcotics trafficking, currency reporting, and income tax violations. Bank records revealed that, over a four-year period, the organization received in excess of \$32.9 million from sales of narcotics—approximately \$900,000 per month. The case was developed through a lengthy joint investigation by the Drug Enforcement Administration, the U.S. Customs Service, the Internal Revenue Service, and local agencies. The principal defendant was convicted of conducting a continuing criminal enterprise and was sentenced to 35 years in prison and fined \$1.2 million. Two weeks after the sentencing, pursuant to a search warrant, agents seized approximately 175 pounds of narcotics from a residence maintained by the organization.

Other Significant Criminals

Terrorist activities have increased in the Northern District of Illinois in the past several years. An indictment has been pending in this district since 1977 against Carlos Torres, alleged national leader of the Puerto Rican terrorist group FALN (Armed Forces of National Liberation). Torres, once number one on the Federal Bureau of Investigation list of the ten most wanted fugitives, is alleged to have been involved in a number of FALN bombings in major cities through the country. He was arrested in Evanston, Illinois, on April 4, 1980.

An eight-year FBI investigation into the activities of the terrorist group known as SOPO, a Serbian nationalist organization, resulted in the conviction of six members of the group on charges of conspiracy, possession of explosives, and illegal construction and transportation of explosive devices. Their targets were individuals and organizations in the United States sympathetic to the government of Yugoslavia. The terrorists bombed the Morton Grove home of a Yugoslav official in December 1975. They were arrested in New York in 1978 as they prepared to bring dynamite to Chicago for the purpose of bombing a Yugoslav consulate reception. Prison sentences ranging from three to 20 years were imposed.

Just one day before he was to be sentenced in the above case, Nikola Kavaja jumped bond and skyjacked a Boeing

727 in route from New York to Chicago. Saying he was armed with explosive charges, Kavaja tried to gain the release from jail of fellow defendant Stojilko Kajevec, the bomb plot leader. Kajevec refused to join Kavaja. Kavaja released the passengers in Chicago, and then forced the three-man flight crew to fly him to Shannon, Ireland, where he surrendered. Kavaja was sentenced to 40 years in prison for skyjacking, the sentence to be concurrent with the 20-year sentence he received in the bombing conspiracy case.

A large Vermont munitions firm and its two major officers pled guilty to shipping an entire 155 mm. gun system to South Africa without an export license. The shipments took place during 1976-1978 and called for a purchase price in excess of \$30 million.

In the Middle District of Pennsylvania, two inmates were convicted of the fatal stabbing of a third inmate at the Federal Penitentiary at Lewisburg. Evidence showed that it was a contract killing for the purpose of controlling illegal narcotics traffic in the penitentiary. The two defendants received consecutive sentences of 30 and 25 years, respectively.

The rarely-used Dangerous Special Offender statute was invoked in the Western District of Virginia to enhance punishment of a federal prisoner convicted of attempted escape while held in the Roanoke City Jail. The defendant, convicted in the previous year of extortion, had a violent criminal history. At the sentencing for attempted escape, the defendant was determined to be a Dangerous Special Offender and received a 20-year prison sentence.

A warden of the Georgia Earned Release Corrections Center and four corrections officers were convicted of violating the civil rights of a 20-year-old inmate by beating him, in an unsuccessful effort to extract a confession that he had received sexual favors from a staff nurse. The officers pled guilty and testified that the acting warden, by his words and actions, implicitly authorized and condoned their conduct. All received jail sentences.

In Northern Ohio, Melvin Bay Guyon was sentenced to life imprisonment for the slaying of a Federal Bureau of Investigation agent. Guyon had pleaded self-defense, testifying that he thought the agent was a "hit man" for the jilted suitor of the woman with whom Guyon lived. Guyon shot and killed the agent when he and five other Bureau agents went to Guyon's girlfriend's apartment to arrest Guyon on an unlawful flight warrant issued on offenses of kidnaping, armed robbery, and rape.

Dr. Glennon Engleman, a St. Louis, Missouri dentist, was convicted in a murder-for-profit scheme. Engleman and a young woman who worked for him as a dental assistant conspired to select a victim. The young woman then married the intended target and proceeded to purchase life insurance policies on her new husband. Nine months after the marriage, she led him to a secluded spot outside the city where

Dr. Engleman shot him in the back with a high-powered rifle. Engleman and the young woman then collected and shared in the life insurance proceeds. Engleman was also convicted for the death of a woman who owned and operated a dental laboratory with which he did business. The woman had sued Engleman for a large back debt. The case was set for trial in the Circuit Court, and one week before the trial was to begin, the woman was killed when her car was blown up. The case resulted from a cooperative investigation by the St. Louis County Police Department, St. Louis City Police Department, the Bureau of Alcohol, Tobacco, and Firearms, and the Postal Inspection Service.

A Cleveland, Ohio grocer, Joseph E. Nader, was convicted of mail fraud and conspiracy in connection with arson and fire insurance. Nader fraudulently double-insured a house and paid a confessed arsonist to burn it. The conviction brought to a close a two-year joint investigation by the Federal Bureau of Investigation and Cleveland Arson Squads of more than 30 fires which had been set in Nader-owned properties. Nader is presently awaiting trial on state charges of attempting to bribe a city housing inspector.

A group of seven youths responsible for approximately 23 armed bank robberies in Brooklyn and Staten Island, New York which resulted in a loss of over a quarter of a million dollars, pled guilty and received substantial sentences. The youths ranged in age from 19 to 26. Informant information led to the tentative identification of some of the suspects, most of whom had no previous records and could not be easily identified. As the "gang" committed more robberies, evidence was developed leading to the arrests of some of the individuals and, eventually, to the indictment of all seven. As a result of the investigation, evidence was developed that suggests that several of the defendants are tied to organized crime families.

The largest counterfeit seizure in Nevada's history, naming four defendants, one of which was the minister of a local church, arose out of a tip from the local police department when the defendants approached a confidential informant seeking financial backing for their proposed counterfeit operation. Thereafter, the group was infiltrated by undercover agents of the U.S. Secret Service; the entire counterfeit operation, lasting ten days, was videotaped by hidden cameras. One of the defendants, a fugitive from Atlanta, Georgia on counterfeiting charges, printed in excess of \$10 million before being arrested. One of the defendants agreed to cooperate with the government and testify against the remaining three defendants, all of whom were convicted.

As a part of a continuing program of increased enforcement with respect to Motor Carrier Safety Regulations, the subsidiary of a nationally-known corporation as well as its supervisor were prosecuted in Western Wisconsin for violations of Federal Motor Carrier Safety Regulations in an in-

stance where the continued use of a truck with a known defective brake led to the complete deterioration of the braking system and a collision resulting in two deaths. The prosecution demonstrated both the extraordinary negligence of the corporation in the use of a truck during a period when it was not economical to have a truck idle, and the extraordinary limitations of the existing federal regulatory scheme designed to deal with violations leading to violence and physical injury.

In Western Louisiana, a defendant pled guilty to a charge of peonage in connection with the concealing and harboring of Mexican aliens.

Major Civil

A case in Connecticut threatened the continued viability of the Mexican-American Prisoner Transfer Treaty which has enabled the transfer of approximately 450 American prisoners from Mexico to this country since its ratification in 1977. Three former inmates at the Federal Correctional Institution at Danbury sought writs of habeas corpus challenging transfers from Mexican to United States custody under the terms of the treaty on the theory that the treaty effected an unconstitutional suspension of the writ of habeas corpus because a transferring prisoner is required to waive any right he may have in the U.S. Courts to challenge the underlying Mexican conviction. The Court of Appeals held the prisoners' consents to be valid and that they were estopped from challenging the treaty after having taken advantage of its provisions knowingly and voluntarily.

A consent decree was obtained in Middle Tennessee prohibiting the city's police and fire departments from discriminating against blacks and women and requiring those departments to establish annual and five-year hiring goals. In reaching these goals, the police and fire departments are required to fill one-third of their vacancies each year with blacks. In addition, one-fifth of police vacancies and one-twentieth of fire department vacancies will be filled by women.

In Alaska, the U.S. Attorney litigated the first case which ruled that the Fisheries Conservation and Management Act was constitutional, that the Act did not deprive aliens of any constitutional right, and that law enforcement personnel had authority to board and search foreign vessels in the 200-mile Fishery Conservation without either a criminal search or an administrative warrant. Rather than take the facts to a forfeiture trial, the defendant settled the case upon payment to the United States of \$700,000, the largest settlement ever under the Act.

The Court of Appeals ruled that the United States was not liable for alleged negligence of an employee of a contractor providing security services to a Puerto Rico Naval base while driving a federal vehicle, inasmuch as he was not an

employee of the United States, within the meaning of the Federal Tort Claims Act at the time of the accident. The Court held that the United States did not exercise sufficient day-to-day control over the driver even though the contract with the government specified the training and qualifications required for the contractor's employees, the Navy furnished the contractor with most of the equipment needed to execute the agreement, and naval personnel conducted inspections of the contractor employees' performance pursuant to the contract.

In the first action of its kind brought in the United States to enforce the bilingual provisions of the Voting Rights Act, a three-judge court entered a consent decree requiring the city and county of San Francisco, California to conduct election activities in Chinese and Spanish.

In Mississippi, the U.S. Attorney successfully concluded a significant number of land condemnation suits in the massive Tennessee-Tombigbee waterway project. One hundred sixty miles of this 253-mile, billion-dollar-plus project traverses the entire eastern side of the Northern District of Mississippi and involves the ultimate acquisition of approximately 2,500 tracts in the District.

In an Eastern Oklahoma case, the Supreme Court affirmed the decision that preferential bids cannot be let to Indian firms under the Buy Indian Act on road construction contracts. This decision requires advertised bids on Bureau of Indian Affairs' road construction contracts.

An action was filed in the Northern Marianas seeking to set aside a 1975 decision for the Micronesian Claims Commission denying an application for "war claims" under the Micronesian Claims Act. The relief sought was to have the commission ordered to reconsider the plaintiff's claim. That commission had been out of existence for approximately three years before the filing of plaintiffs complaint. The motion of the United States to dismiss was granted.

In Northern Georgia, a major airline challenged the authority of the Federal Air Surgeon to grant medical exemptions to airline pilots. Federal regulations list certain medical conditions which disqualify a commercial pilot. The Federal Air Surgeon had evolved a policy under which a medically disqualified pilot could qualify for a return to flight status if he passed certain examinations. After extensive discovery and briefing, the District Court held that the Federal Air Surgeon had the statutory authority to grant the administrative procedures and regulations, but gave the agency a reasonable time to implement these changes.

In the first swine flu case to be tried in Ohio, and one of the first such cases to be tried on all the liability issues in the country, the Court entered judgment in favor of the United States. The plaintiff had alleged that, as a result of a swine flu vaccination received in 1976, she contracted in 1978 a rare neurological disorder known as Guillain-Barre Syndrome (GBS). The court held that plaintiff had failed to

prove that her neurologic disorder resulted from GBS and that, even if it did, plaintiff had failed to establish a direct or proximate cause between the GBS and the inoculation administered by the government.

A 1978 amendment to the forfeiture provisions of the federal drug laws was utilized to forfeit \$3,185,090 to the United States as illegal proceeds of a narcotics transaction. The money was seized in Los Angeles, California but forfeiture was contested by a Miami, Florida law firm that alleged that a Colombian client had assigned the money to the firm in return for legal services.

In Los Angeles, individual employees and a labor union filed a class action seeking to enjoin the Immigration and Naturalization Service from entering factories and surveying the work force as to its immigration status. The government prevailed in opposing class certification, dismissing the union for lack of standing, and affirming by summary judgment the Service procedure, as presented in the case, of entering a factory to question employees.

Environmental

The first jury trial conviction ever obtained for criminal violations of the Federal Mine Safety and Health Act occurred in the Western District of Virginia, when a coal company and its president were convicted of wilfully violating mandatory safety standards involving roof supports. As a result of failure to follow the mandatory roof support standards, a coal miner was killed in a mine owned by the company. The defendants received fines totaling \$60,000 and probation.

In New Jersey, a 69-count complaint seeking millions of dollars in damages was filed against 11 defendants and their companies who were engaged in collecting and transporting liquid wastes to a landfill for disposal. The complaint charged that the defendants accepted over 70 million gallons of toxic wastes which they allowed to seep into adjacent waterways and tidelands. A partial settlement of the case was reached which requires the companies involved to act under the Environmental Protection Agency's supervision to correct the problems and ensure they do not recur while the remainder of the case is litigated.

In the first suit brought by the United States against a water purveyor, a preliminary injunction was issued in Oregon requiring the purveyor to purchase and install automatic gas chlorinators on its water systems. When this

order was breached, the government initiated contempt proceedings which culminated in the defendants' agreement to the immediate divestiture of their water systems by a newly-formed public water district. The United States recovered \$5,327 of its expenses in pursuing the contempt, and the court assessed civil penalties of \$26,400 against the defendants because of their numerous and recurring violations of the Environmental Protection Agency drinking water regulations.

A Kentucky coal corporation holding long-term contracts with Ohio-based utilities brought suit in the Eastern District challenging the constitutionality of Section 125 of the Clean Air Act on the grounds that it interfered with the Interstate Commerce Clause and other sections of the Constitution. The suit was initiated by the Kentucky coal company out of concern that the Administrator of the Environmental Protection Agency would adversely interpret the Act restricting the Ohio utilities to burning only regionally mined coal. Ohio coal has a high sulfur content, the clean burning of which requires the installation of expensive scrubbers. That interpretation would eliminate the purchase of Kentucky coal, which has a low sulfur content and does not need scrubbers to burn cleanly. The court ruled that the Agency has the authority to permit the burning of coal mined from a specific region even though that region is removed from the location of the generating plant of the utilities. Although the Agency's authority, pursuant to the Act, may have some adverse effect on interstate commerce, it does not violate the commerce clause.

Litigation was initiated to abate air pollution at the Cos Cob power plant in Greenwich, Connecticut. The plant, the oldest coal-fired power facility in the United States, is the sole source of electric power for commuter trains on the New Haven line to New York. The ultimate goal is the total phase-out of the plant as the signal control and traction systems of the line are modernized so as to allow the procurement of electric power from other sources. A district court appointed a special administrator to monitor a settlement which resulted in the temporary substitution of oil for coal-fired boilers, thus effectively eliminating air pollution.

A broadside attack on metropolitan Atlanta's massive Interstate Highway Improvements Program was made by a local civic club coalition. After lengthy hearings and briefs, the District Court upheld the Federal Highway Administration's decisions to implement the projects despite challenges to the adequacy of the Environmental Impact Statement.

Executive Office for United States Trustees

Richard L. Levine
Director and Counsel

The enactment of the Bankruptcy Reform Act of 1978 (Public Law 95-598, 92 Stat. 2549) effective October 1, 1979 was the first substantial revision of the bankruptcy law since 1938. Title 1 of the Reform Act enacts Title 11 of the U.S. Code, and is called the Bankruptcy Code. One of the goals of the U.S. Code was to remove the bankruptcy judge from the administration of the bankruptcy or its reorganization, thus divorcing the administrative functions of the bankruptcy judge from the adjudicative role. To achieve this objective the Congress adopted an experimental approach and created the position of U.S. Trustee, each of whom works under the supervision of the Attorney General.

The mission of the U.S. Trustee under the U.S. Code is to supervise the administration of bankruptcy cases (28 U.S. Code §586(a)(3)). The U.S. Trustee is assigned functions in three of the four types of bankruptcy proceedings defined under the U.S. Code. These are: 1) proceedings under Chapter 7 in which the assets of the debtor are liquidated; 2) reorganization proceedings under Chapter 11 which provides a mechanism for rehabilitation of the debtor; and 3) adjustment of debts of an individual with regular income under Chapter 13 pursuant to which an individual can discharge debts by arranging for payments over a period of time, usually not to exceed 36 months. The U.S. Trustee has no role in proceedings under Chapter 9, which relates to the adjustment of debts of a municipality.

The U.S. Trustee system is a pilot program and was established by the Congress in ten geographic areas encompassing 18 of the federal judicial districts (28 U.S. Code §581). The ten geographic areas, the judicial districts involved, the names of the U.S. Trustees, and the location of the headquarters office for each, are as follows:

- 1) Districts of Maine, New Hampshire, Massachusetts and Rhode Island; William H. Tucker, Boston, with an Assistant U.S. Trustee in Portland, Maine.
- 2) Southern District of New York; Irving H. Picard, New York City.
- 3) Districts of Delaware and New Jersey; Hugh L. Leonard, Newark.
- 4) Eastern District of Virginia and District of Columbia; Francis P. Dicello, Alexandria, with an Assistant U.S. Trustee in Norfolk.
- 5) Northern District of Alabama; Billy Jack Rivers, Birmingham.

- 6) Northern District of Texas; Arnaldo N. Cavazos, Jr., Dallas.
- 7) Northern District of Illinois; David H. Coar, Chicago.
- 8) Districts of Minnesota, North Dakota and South Dakota; William P. Westphal, Sr., Minneapolis.
- 9) Central District of California; James T. Eichstaedt, Los Angeles.
- 10) Districts of Colorado and Kansas; Mrs. Dolores B. Kopel, Denver, with an Assistant U.S. Trustee in Wichita.

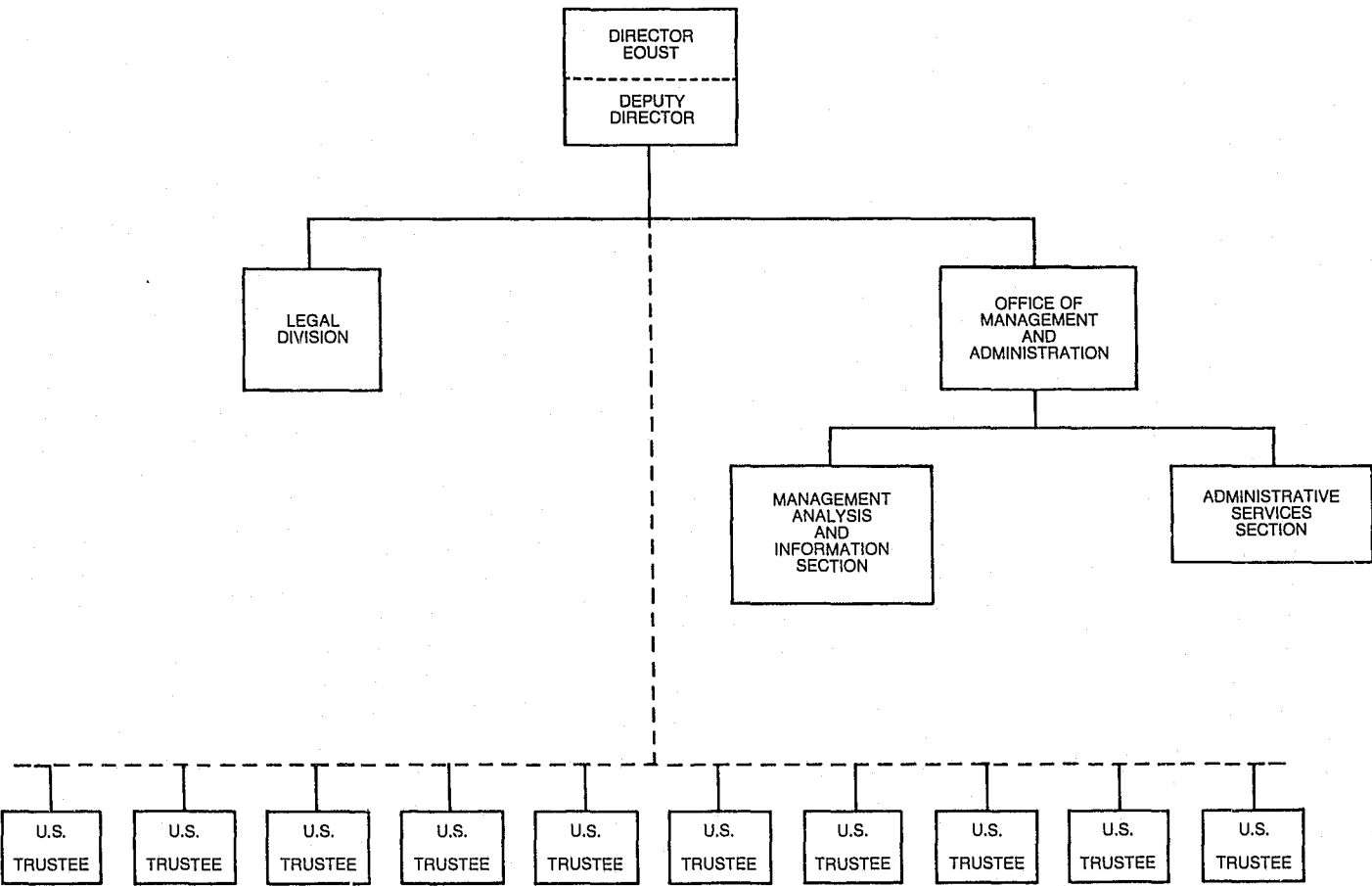
The ten pilot districts were apparently selected because of their geographic, demographic and economic diversity as well as the fact that 28 percent of the bankruptcy cases filed in 1978 were filed there.

By virtue of 28 U.S. Code §581 and §586, added by the Reform Act, the Attorney General is charged with the appointment, supervision and coordination of the U.S. Trustees and Assistant U.S. Trustees. The ten U.S. Trustees, appointed by the Attorney General after review of several hundred applications from qualified attorneys, assumed their posts and were functioning with skeleton staffs on October 1, 1979, the effective date of the U.S. Code.

Duties and Responsibilities of The U.S. Trustees

Pursuant to 28 U.S. Code §586(a), the Attorney General issued regulations establishing standards for the selection of private bankruptcy trustees (28 C.F.R. §58.3). A panel is appointed by each U.S. Trustee after review by the Executive Office of each trustee's qualifications; these panels constitute those individuals who are eligible to serve as U.S. Trustees in liquidation cases under Chapter 7. Compensation of the panel trustee is fixed by the Code at \$20 per case plus a small percentage of the assets handled (11 U.S. Code §330(b)). For the first year, almost 95 percent of the cases were so-called "no-asset" cases, i.e., those in which there were no assets to handle; therefore, the \$20 became the maximum compensation, and in some districts has been considered totally inadequate. Panel trustees in some areas of the country have expressed their unwillingness to continue to serve as trustee, which could then force the U.S. Trustee

for the Executive Office for the U.S. Trustees



to serve as trustee in those cases (11 U.S. Code §15701(b)).

In a proceeding under Chapter 11 of the U.S. Code, the U.S. Trustee has the critically important statutory duty to appoint a creditors' committee (11 U.S. Code §151102). These committees have the power to file motions and complaints, and to represent creditors in negotiating with debtors concerning the contents of the Chapter 11 plan. All districts require debtors to file a list of their largest creditors, and it is from this list that the U.S. Trustee selects the members of a creditors' committee. In some areas, the creditors' lists are inadequate, and this renders the task of the U.S. Trustee in soliciting appropriate creditors more difficult. In most areas of the country, both the pilot districts administered by the U.S. Trustees, as well as in the non-pilot districts in which the judge is responsible for the selection of the creditors' committees, it is frequently difficult to convince creditors to serve. However, in the pilot districts, at least, the U.S. Trustees have expended a considerable amount of time and effort in educating creditors and in encouraging active involvement with competent counsel or other functionaries, such as accountants. Another major

role of the U.S. Trustees in Chapter 11 cases is to decide whether to petition the court for approval to appoint trustees or examiners. That decision is frequently the most pivotal one in a Chapter 11 proceeding, and is often contested. If the petition is granted by the court, the U.S. Trustee must appoint the trustee or examiner.

In every case under Chapter 7, the U.S. Trustee must appoint, from the panel, a trustee (except in the rare instances of creditor elections). Section 341 of the U.S. Code requires a formal meeting of creditors after the filing of a petition in bankruptcy. The U.S. Trustees have the responsibility for setting the date and place for these so-called "341 meetings," and for designating the presiding officer at these meetings. Ordinarily the panel member selected to be the trustee in the case will preside at the 341 meeting for a Chapter 7 debtor. In a Chapter 11 reorganization proceeding, the U.S. Trustee will preside at the initial 341 meeting, or may designate an appropriate person, such as the chairman of the creditors' committee. The Code prohibits the bankruptcy judge from presiding at or attending any section 341 meeting. The U.S. Trustees also have a

direct responsibility for being heard on fee applications.

In proceedings under Chapter 13 of the U.S. Code, the U.S. Trustee, and the Executive Office, have a major responsibility in monitoring the work of the standing trustees who administer Chapter 13 cases.

The Bankruptcy Reform Act not only substantially revised substantive bankruptcy law, but also addressed itself to the administration of bankruptcy cases. In the 18 pilot districts the U.S. Trustee is responsible for fair and efficient bankruptcy administration which directly affects not only the amount of recovery for creditors, but fair treatment for the debtor as well. Under the supervision of the Attorney General the experimental U.S. Trustee pilot program has a significant responsibility for the vitality, efficiency and fairness of the country's bankruptcy system.

Significant Actions By U.S. Trustees

During the initial year of operations of the U.S. Trustee system, several cases typify the activities of the U.S. Trustees.

1) A Chapter 7 liquidation proceeding was filed by a methadone center located in a large eastern city. The U.S. Trustee immediately appointed a trustee in the case. The threatened termination of methadone treatment led to a great amount of publicity, including demonstrations and threatened violence. The U.S. Trustee arranged for the trustee to provide for another medical facility to operate the debtor's facility temporarily; the U.S. Trustee also obtained court approval for the continued operation of the facility until addicts could be transferred to another program. The U.S. Trustee and the appointed trustee arranged for the drugs to be safeguarded by the Drug Enforcement Administration and also arranged for the U.S. Marshals to take custody of the files.

2) In several jurisdictions it has come to the attention of the U.S. Trustee that some persons or entities who are not attorneys were engaged in the practice of bankruptcy law. In those instances the U.S. Trustee advised appropriate local authorities.

3) In a case in a large city, the U.S. Trustee discovered a large number of abuses by counsel for several debtors, which has led to the debtors' having lost valuable rights. The U.S. Trustee reopened these cases, and obtained court rulings directing that the counsel return his fees to the debtors.

Relationship With Other Components of the Department of Justice

During its initial year of operation, the Executive Office for U.S. Trustees and the U.S. Trustee program have re-

ceived excellent cooperation from other divisions of the Department. A working arrangement with the Civil Division has resulted in an even distribution of the workload of cases which involve issues concerning constitutional attacks on the Bankruptcy Code. The Executive Office and the Criminal Division have developed a procedure for cases where criminal conduct may exist.

In the area of administration, and at the request of the Executive Office, the Justice Management Division has completed a management study of the structure of the Executive Office resulting in a reorganization to provide expanded services to the U.S. Trustees with greater efficiency and economy.

The Executive Office for U.S. Trustees has, with the approval of the Solicitor General, intervened in litigation that drew into question the constitutionality of provisions of the Bankruptcy Reform Act, including the Bankruptcy Code, or which raised questions affecting the administration of bankruptcy cases. An example of the latter is *Stewart v. Kutner* in which the Executive Office has filed a brief in the U.S. Court of Appeals for the Fifth Circuit, in response to a challenge to certain rights of a U.S. Trustee in a Chapter 13 case.

Fiscal Year 1980 Bankruptcy Cases Filed* in Pilot U.S. Trustee Districts
October 1, 1979 to September 30, 1980

District	Chapter 7	Chapter 11	Chapter 13	Total
D. Maine	605	26	342	973
D. Mass.	2,281	165	453	2,899
D. N.H.	637	46	12	695
D. R.I.	729	16	172	917
S.D. N.Y.	2,822	202	419	3,243
D. Del.	313	14	42	369
D. N.J.	3,172	202	877	4,251
E.D. Va.	4,725	51	447	5,223
D. D.C.	472	16	48	536
N.D. Ala.	2,545	67	4,089	6,701
N.D. Tex.	1,471	135	230	1,836
N.D. Ill.	10,422	280	5,652	16,354
D. Minn.	3,705	63	516	4,284
D. N. Dak.	486	14	14	514
D. S. Dak.	543	27	70	640
C.D. Cal.	16,421	285	1,888	18,594
D. Colo.	3,026	82	2,041	5,149
D. Kan.	3,037	44	1,006	4,087
TOTAL	57,212	1,735	18,318	77,265

* Unaudited totals, subject to final adjustment.

Bureau of Prisons

Norman A. Carlson
Director

Federal Prisons Today

The Federal Bureau of Prisons is responsible for carrying out the judgments of the federal courts and provides offenders with opportunities for self-improvement through education, vocational training, counseling, and a variety of other programs. Highlights for fiscal year 1980, the Bureau's 50th anniversary year, include:

- Eight more federal facilities were accredited, assuring high standards of professionalism in operations and programs.
- Overcrowding was further reduced, and two new institutions opened.
- Two of the largest and oldest institutions, marked for closing, were reduced in size and plans were made for reducing a third.
- Inmate work and training opportunities were expanded and improved, as were medical services and programs for female offenders.
- Minority and female employment continued to climb for the ninth straight year.

Professional Standards

To assure that correctional programs and operations are carried out in a humane and professional fashion, eight more Federal Prison System institutions were accredited by the Commission on Accreditation for Corrections during fiscal year 1980. That brings to 12 the number of facilities accredited. By the end of the year, 11 others were in the accreditation process.

Standards of Conduct

The Bureau's Office of Inspections reports directly to the Director of the Federal Prison System and is responsible for overseeing the Bureau's efforts to assure the highest standards of professional conduct, integrity and managerial competence.

Inmate Population

The number of incarcerated offenders was 24,268 at year's end, down from 24,810 at the close of fiscal year 1979. Overcrowding has been significantly reduced in most of the Bureau's 43 institutions and nine Community Treatment Centers.

During the year, new institutions were opened at Otisville and Ray Brook, both in the State of New York. A satellite camp was opened in late fiscal year 1980 at the Federal Correctional Institution in El Reno, Oklahoma.

Community Programs

Institution population has been reduced, partly by the Bureau's expanded use of community facilities. During fiscal year 1980, nearly half of all offenders discharged were released through federal and contact community treatment centers. Some 9,000 inmates participated in community treatment center and halfway house programs during the year, and at the end of the year there were more than 2,400 offenders in these facilities.

Work and Training

To keep offenders constructively employed and to prepare them for jobs upon release, Federal Prison Industries, Inc. (UNICOR) had 82 industrial operations in 39 locations during fiscal year 1980. Though the inmate population continued to decline, inmate employment in industries remained at approximately 6,000.

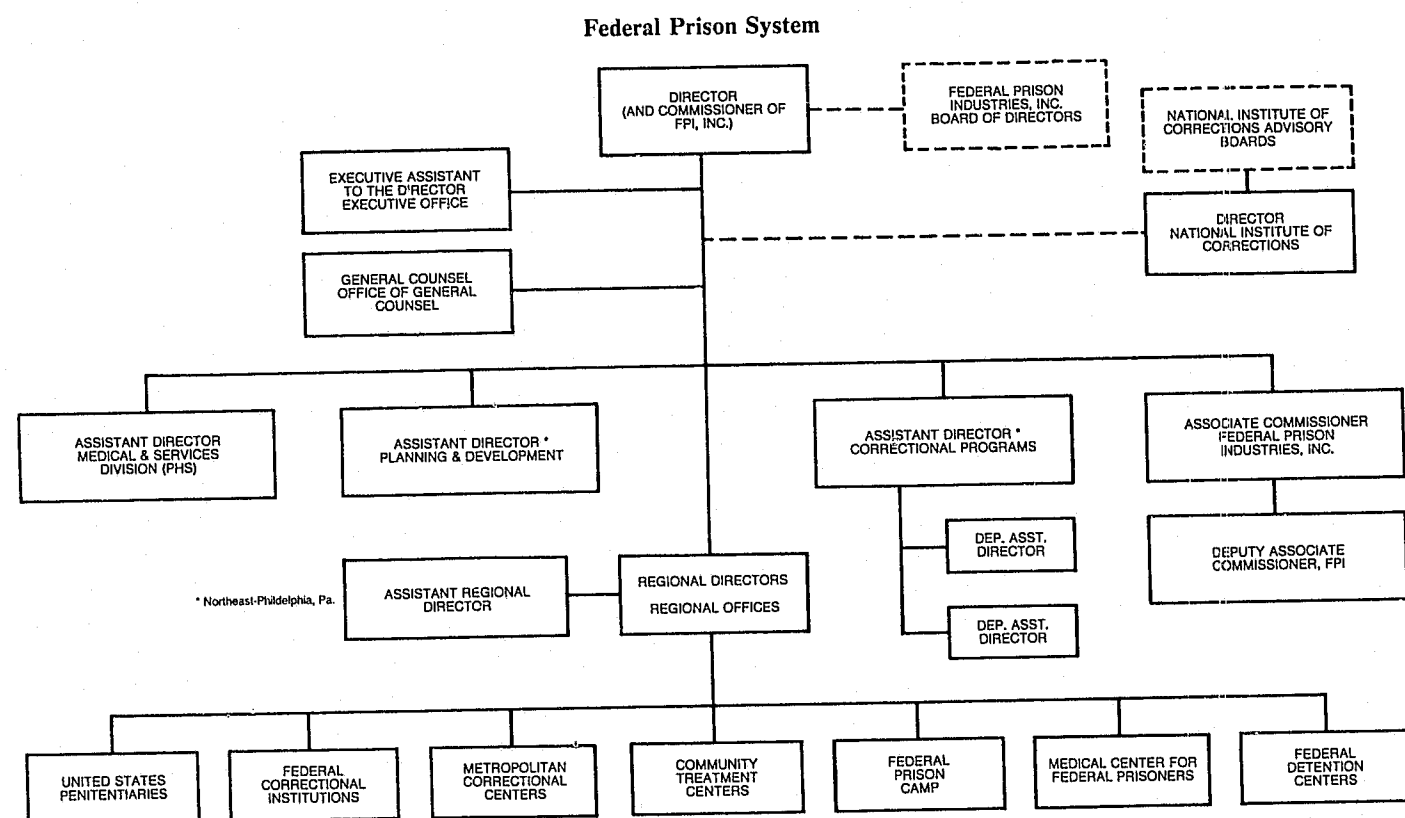
Sales in fiscal year 1980 exceeded \$116 million compared to \$103 million for the previous year. Inmate wages amounted to \$7.7 million. Payment to other inmates in the form of meritorious service awards amounted to about \$3 million. The corporation also funded \$3 million for vocational training programs for federal offenders, including apprenticeship training.

The Bureau's occupational training program includes on-the-job training, vocational education and approved apprenticeship programs.

The Bureau now has apprenticeship programs in 30 institutions with 201 training programs in 75 different trade classifications registered by the U.S. Department of Labor's Bureau of Apprenticeship and Training—compared to 173 programs in 64 trades at 25 institutions in fiscal year 1979. The Bureau's goal is to have apprenticeship programs in all 43 of its institutions.

Female Offenders

The Bureau acted to further improve programs for female inmates as recommended by the Task Force on Female Of-



enders, established in fiscal year 1979. The Federal Correctional Institutions at Lexington, Kentucky and Terminal Island, California now serve as female medical referral centers. During the year, a psychiatric unit was established at Lexington to treat women with acute mental and emotional problems. Additionally, a health education program was implemented that will improve women's understanding of health care issues and help them make better use of health care services available both at the institution and upon release.

With assistance from the Bureau of Apprenticeship and Training and its Women's Bureau, accredited apprenticeship programs for women have been started in such non-traditional vocations as auto mechanics, electricians, plumbers, painters and bricklayers. The four institutions housing female offenders now offer 44 apprenticeship programs in 25 different trades, the majority of which are normally reserved for males.

Drug abuse units exist in all four institutions for women and counseling and therapy are provided.

Health Care

During fiscal year 1980, the health program for federal offenders was substantially expanded as 24-hour coverage was established in six more institutions, making 23 in all,

and plans are to have such coverage for the remaining appropriate institutions by 1982.

Major changes have taken place at the Medical Center for Federal Prisoners at Springfield, Missouri. One hundred new professional positions have been added, including physicians, psychiatrists, and nurses. The Medical Center functions as a modern hospital and inmates are transferred there to receive intensive medical, surgical and psychiatric attention that other institutions cannot provide. A psychiatric in-patient service is also maintained at the Medical Center.

Health care facilities in each federal prison range from small dispensaries to accredited hospitals. They are staffed with 674 professional, technical and support personnel, including 77 physicians. Their efforts are supplemented by 600 local consultants. Dental care needs are met by 49 dental officers. Currently in its 43 major institutions, the Bureau employs 20 full-time psychiatrists and 110 full-time psychologists.

Equal Employment Opportunity

Since 1971, 27 percent of all new Bureau of Prisons employees have come from minority groups. The level of minority employees was 22 percent at the end of fiscal year 1980 compared to 20.4 percent in 1979, and 6 percent in

1970. Minorities now account for 28 percent of the Correctional Officer force, as compared to 8 percent in 1971.

Women now represent 18.6 percent of all Bureau of Prisons employees compared to 17 percent in 1979 and 10 percent in 1970. Female correctional officers are employed in all institutions, with the exception of the maximum security penitentiaries.

Other Developments

During fiscal year 1980, the Bureau of Prisons also:

- Expanded its automated inmate information system, SENTRY, so it can now provide locator information on all inmates housed in Bureau facilities.
- Assisted other agencies by receiving over 1,700 Cuban detainees and by accepting more than 350 inmates from New Mexico and 111 from Idaho following disturbances in institutions in those States.
- Signed an agreement with the Correctional Services of Canada to exchange staff and information, develop joint research and study programs, and to hold annual meetings.
- Improved staff training through introduction of a new program for managers.
- Completed a research project that revealed that inmates in the Federal Prison System are relatively free from sexual exploitation by other inmates.
- Dropped plans to build a Federal Correctional Institution at Camarillo, California and a Federal Prison Camp at Madera, California.

Resources

Bureau appropriations for the year totaled \$333,244,000 and there were 10,391 authorized positions. Anticipated appropriations for fiscal year 1981 are \$351,435,000 and 10,166 positions.

Approximately \$500,000 worth of energy saving improvements in facilities were completed during the year. These improvements, coupled with a staff awareness program, resulted in a significant reduction of energy use.

Organization and Administration

The Federal Prison System is a career service and a majority of new employees enter on duty as Correctional Officers. Administration is carried out by four divisions located in Washington and five regional offices. The four divisions, each headed by an Assistant Director, are Correctional Programs, Planning and Development, Medical and Services, and Federal Prison Industries, Inc. (UNICOR).

The five regions have headquarters in Atlanta, Georgia; Burlingame, California; Dallas, Texas; Kansas City,

Missouri; and Philadelphia, Pennsylvania. Each is headed by a Regional Director.

Future Plans

During fiscal year 1980, the Bureau continued with its plans to close the McNeil Island and Atlanta penitentiaries. McNeil Island was reduced to essentially a small detention operation with some space used temporarily for the custody of Cuban immigrants. It is anticipated that McNeil Island will be fully closed this coming year. The phase-down of Atlanta began in 1980, with the planned closing scheduled for 1984.

Future plans also call for the reduction of the size of the Leavenworth Penitentiary. Housing quarters will be completely renovated to meet current standards. Completion is scheduled for 1985.

The El Reno Satellite Camp is scheduled to open late in fiscal year 1980. Construction is under way for additional satellite camps at Danbury, Connecticut, and Texarkana, Texas. New housing units are also under construction in Sandstone, Minnesota, and La Tuna, Texas. A new Federal Detention Center is under construction in Tucson, Arizona, and a new Federal Correctional Institution is planned for Phoenix, Arizona.

National Institute of Corrections

Attached administratively to the Bureau of Prisons is the National Institute of Corrections (NIC) created in 1974 to assist state and local corrections. It is governed by a non-partisan 16-member Advisory Board, and is administered by a Director appointed by the Attorney General.

During fiscal year 1980, NIC made 222 awards totaling \$10,181,034 to state and local correctional agencies, organizations and individuals. The grants were for training and staff development, technical assistance projects, research and evaluation, policy formulation and clearinghouse activities.

NIC provided technical assistance in response to 656 requests by state and local correctional agencies in all 50 states for staff training and development, improving jail operations and prisons, upgrading probation and parole, and similar requests.

Its clearinghouse, established in fiscal year 1979, was shifted to Boulder, Colorado, named the National Information Center and expanded to include probation, parole, prisons and community program information. Nearly 7,200 individuals and organizations were served by the clearinghouse in fiscal year 1980 compared to 1,000 the year before.

During the year, more than 2,000 correctional managers and employees were given in-depth training in specific areas

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of need. Because agency trainers can effectively multiply the benefits of training, 160 trainers and managers of staff training programs were accommodated in training specific to their needs.

The Institute's Jail Center at Boulder, Colorado continued to develop as a national source of assistance to state and local jails. The Institute's efforts enabled 12 states to develop or revise jail standards, eight states to implement standards and nine states to develop strategies to serve jails.

The Jail Center conducted eight management training programs for 250 sheriffs and administrators, trained 170 participants from 37 communities to plan a new jail, and trained 80 more on opening a new institution. Special seminars were also held on such topics as mental health in jails, classification and intake services, and developing state jail capacity.

Six more jails—bringing the total to 12—were funded in fiscal year 1980 to serve as extensions of the NIC Jail Center

in providing training, technical assistance and information to jailers. The six were funded by money made available by the Law Enforcement Assistance Administration. These jail area resource centers responded to 150 requests for technical assistance from jailers during the year.

NIC's Correctional Services Division helped 19 prison systems and 54 probation agencies to improve their classification systems or caseload management during fiscal year 1980. It responded to 120 requests for technical assistance, and undertook a number of projects to help state and local corrections to comply with judicial decrees and develop alternatives to litigation. In addition, the division sponsored workshops to familiarize corrections staff with benefits available to incarcerated veterans, a national symposium on parole, seminars for state legislators on alternatives to new prison construction, and seminars on the mentally retarded offender, probation classification, current trends in sentencing and parole reform, and community corrections.

United States Marshals Service

William E. Hall
Director

The U.S. Marshals Service is the nation's oldest federal law enforcement agency, created by the Judiciary Act under President George Washington in 1789. Its Marshals and Deputies serve as both officers of the federal courts and law enforcement agents of the Attorney General. This dual responsibility has resulted in a multi-faceted mission:

- Support to the federal judicial system through service of civil and criminal process; execution of warrants, including those for most federal fugitives; retention in custody and transport of federal prisoners; custody and control of seized property;
- Security or security assistance in the areas of federal property and buildings, including federal court facilities, and other security missions as required; and
- Law enforcement activities at the request of other federal agencies or as required by the Attorney General.

The Service has grown in size from the 13 original U.S. Marshals to 94, with a supporting staff of over 2,100 Deputy U.S. Marshals and administrative personnel throughout the United States, Guam, Puerto Rico, and the Virgin Islands.

Enforcement Operations Division

As a result of the reordering of law enforcement priorities by the Department of Justice, fiscal year 1980 marked the expansion of the Marshals Service's jurisdiction to include areas of responsibility previously within the domain of the Federal Bureau of Investigation. Historically, the Service has been active in apprehending federal fugitives. But in fiscal year 1980, by Attorney General directive, it acquired formal responsibility for investigation, apprehension, and prosecutive assistance for the majority of federal fugitives. The Enforcement Operations Division coordinates and directs the Service's expanded warrant program.

Of the 15,000 fugitive cases received in fiscal year 1980, the Marshals Service made arrests in nearly 10,000 of the cases. To further enhance this level of performance, the division, in conjunction with the Employee Development Division, conducted a training course for Enforcement Specialists and increased the Specialist force by twenty. It revised operational and administrative guidelines extensively, and reorganized, establishing staff specialists for major case coordination, international assistance, and analysis.

International extraditions of fugitives to and from the United States increased significantly in fiscal year 1980. The

division concluded negotiation of important agreements establishing permanent Marshals Service representatives to INTERPOL and EPIC (El Paso Intelligence Center) to meet the increased fugitive responsibility. The division began a review of the potential for an automated system to track program trends, assist in budget preparation, and provide automated file data to field offices to support fugitive investigations nationwide.

The Enforcement Operations Division also oversees the execution of other, non-fugitive warrants, of process, and of special court orders. Of the 78,000 federal warrants issued during fiscal year 1980, more were executed by the Marshals Service than by all other federal law enforcement agencies combined, resulting in a decrease of the fiscal year 1979 backlog of warrants on file.

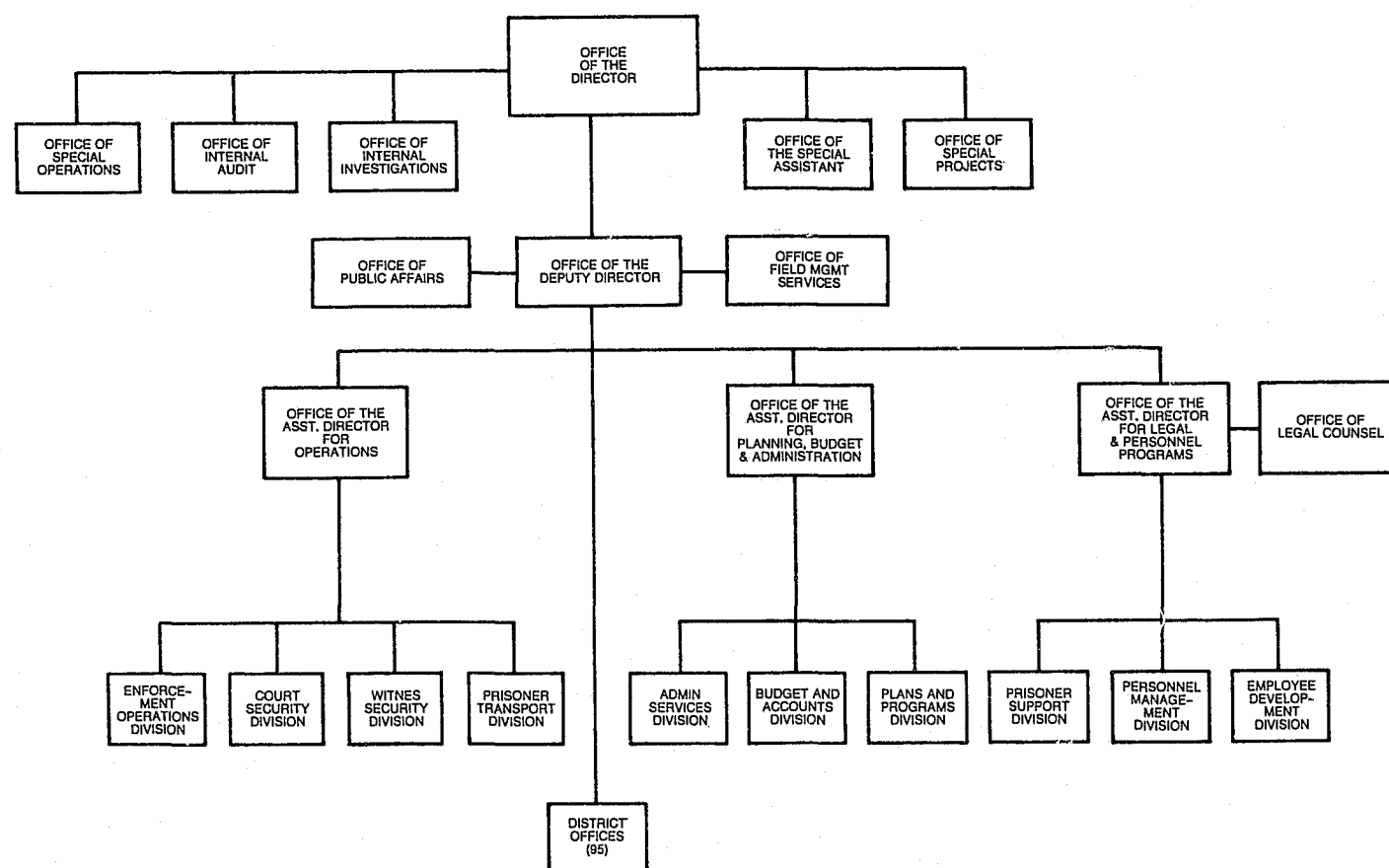
Over 730,000 pieces of process were served and \$7 billion in property seized by the Service. Proceeds from the sale of this property amounted to \$1 billion with an additional \$700,000 returned to the U.S. Department of Treasury from the execution of federal traffic warrants.

Court Security Division

Ensuring the lives and safety of federal judicial officers is a high priority of the Service. The number of death threats directed toward federal judges and magistrates, U.S. Attorneys and their assistants escalated considerably last year. In response to the increased number of physical attacks and intimidations, the Service initiated numerous round-the-clock personal security details on court officials and their families. Selectively employed, off-duty local law enforcement officers were contractually employed to augment the Service's court security force, assisting specially-trained Deputy U.S. Marshals in providing security. This arrangement has furthered cooperation between federal and local officers and has yielded valuable information about the local area and potential local threats.

Highly sensitive and difficult trials requiring extraordinary security measures increased in fiscal year 1980. Court Security Inspectors served as advisers to the federal judiciary on security matters and provided technical guidance and direction to U.S. Marshals in the handling of these trials. The Service placed Deputies in courtrooms with a potential for trouble and used sophisticated devices to detect disruptions in the courtroom or other judicial areas.

United States Marshals Service



During the past year, Court Security Inspectors specializing in physical security analysis conducted 189 site inspections and developed comprehensive security plans for buildings housing the U.S. Courts. The U.S. Postal Service and the General Services Administration, with whom the Service worked closely, by way of a reimbursement agreement, installed new equipment in 60 facilities, provided 276 guard positions, and maintained existing security equipment throughout the country. Inspectors also provided security for judicial conferences, workshops, and other meetings within their assigned circuits.

As a result of its continued close cooperation with other federal and local law enforcement agencies, the Service has been able to collect and disseminate valuable intelligence data regarding threats against the judiciary. Such coordination also has enabled the Service to get the support it needs to identify and apprehend perpetrators of such threats.

Witness Security Division

The Service's Witness Security Division is responsible for the protection of individuals whose safety is jeopardized as a

result of their testimony on behalf of the Government. Physical relocation, a new identity and a variety of services are provided to those who are entered into the Witness Protection Program.

In fiscal year 1980, protected witnesses testified for Government prosecutors in such well-publicized proceedings as Hell's Angels, Church of Scientology, and Bri-Lab trials. During the year, 327 new witnesses entered the program, increasing the total number of witnesses who have participated in the program to over 3,400. The division increased its efforts to successfully address the emotional trauma experienced by witnesses and their families, including the incorporation of new requirements for the provision of social services in Service-wide orders and procedures. Instruction in social and behavioral sciences was made an integral part of Witness Security training, and more time was devoted to providing employment assistance to witnesses.

Key Headquarters personnel met with field specialists at regional conferences to resolve unusual problems, apprise personnel of new policy and management techniques, and assure continuity of witness services nationwide. As a result

of the increased, intensive training and emphasis on social services, there was a significant drop in the number of complaints received from witnesses in the program.

Documentation, medical, and employment services were enhanced and provided more expeditiously in fiscal year 1980 than in previous years. The Service continues to face unique challenges with the Witness Protection Program. There is a need for program personnel to travel abroad and engage the cooperation of foreign officials to secure bona fide documentation. The Service provides continued protection to many high level Organized Crime witnesses who are being actively pursued by those against whom they have testified.

In fiscal year 1980, the Witness Security Division installed a secure computerized records and financial reporting system. In response to recommendations by the Department of Justice's Internal Audit Staff to further improve fiscal accounting and financial control capabilities, it also revised funding policies and procedures.

Prisoner Support Division

One of the Service's primary responsibilities is to negotiate contracts with local governments for the housing of federal prisoners at a level of confinement which is consistent with proposed federal detention standards. Of the 79,500 prisoners received into custody by the Marshals Service in fiscal year 1980, approximately 57,500 (75 percent) were committed to over 750 city and county detention facilities at a cost of \$19 million.

The Service also serves as the Department of Justice's contracting agent for procurement of jail space in facilities to be used jointly by the Bureau of Prisons, Immigration and Naturalization Service, and the Marshals Service. During fiscal year 1980, the Service was successful in negotiating special contracts with private organizations, such as the Salvation Army, to provide safe, minimum security detention and adequate child care for illegal alien material witnesses and their dependents. This contracting initiative should help increase the availability of jail space for regular federal prisoners who require maximum security detention.

The continuing critical shortage of non-federal detention space—especially in metropolitan areas—poses a serious challenge to the Department's capability to fully and effectively support the federal judicial system. Court mandates for substantial physical plant improvements, as well as inmate population ceilings, have made local governments unable or extremely reluctant to continue to provide housing for federal prisoners.

The Prisoner Support Division conducted a survey during fiscal year 1980, which revealed that the number of contract jails under court order for substandard conditions of confinement increased from 33 to 59—a 79 percent in-

crease—from fiscal years 1979 to 1980.

In response to the growing national jail crisis, the Marshals Service has developed the Cooperative Agreement Program (CAP) to provide financial assistance to contract detention facilities to support improvements in such areas as inmate medical care, security, sanitation, food service, etc., which will help the federal government in obtaining guaranteed detention space in local facilities. Statutory authority for the CAP has been included in the Department's fiscal year 1981 budget, and limited funding (\$3 million) has been requested in the fiscal year 1982 budget.

Pending approval and implementation of the CAP, the Service continues to provide limited technical assistance to those facilities identified as having substandard conditions of confinement as a result of Marshals Service contract compliance inspection activity.

Prisoner Transportation Division

The Prisoner Transportation Division operates the Service's National Prisoner Transportation System (NPTS), which was responsible for the scheduling and transportation of over 36,000 federal prisoners in fiscal year 1980, an increase of 16 percent over fiscal year 1979. The division relied increasingly in airlifts supported by a ground-feeder system of Bureau of Prisons buses and Marshals Service vans. By using leased aircraft to transport prisoners, use of commercial airlines—which costs \$574 more per prisoner—was reduced by 30 percent over fiscal year 1979, while long-distance bus transfers were reduced by over one-third.

During the year, the Service also provided an aviation training course to ensure air safety and secure handling of prisoners by Deputy U.S. Marshals who perform as cabin crewmembers.

Updating modes of transporting prisoners allowed the NPTS to reach peak efficiency in fiscal year 1980. To further cut costs in the future, the division developed a plan for the operation of Marshals Service aircraft acquired either as other-agency surplus property or from law enforcement seizures. The results of surveys it conducted showed that Service-operated aircraft would save enough money to permit aircraft modification and route expansion to accommodate the needs of the Immigration and Naturalization Service in transporting alien detainees.

Special Operations Group

The Marshals Service maintains an elite, well-trained, highly disciplined, mobile reaction para-military force known as the Special Operations Group to provide a federal law enforcement response to emergency situations of national significance, and to provide law enforcement assistance to other federal and state agencies designated by the Attorney General.

Special Operations Group members are volunteers who have shown they can meet the service's rigorous standards of physical and mental ability and strength of character. These full-time Deputy U.S. Marshals are on call 24 hours a day and can be assembled anywhere in the United States—fully equipped and self-supporting—within a matter of hours.

In fiscal year 1980, the Special Operations Group was assigned such missions as: providing law enforcement management, operational, and tactical training to the Knoxville, Tennessee Police Department in preparation for an international exposition to be held in that city; assisting with the Iranian consulate problem; and providing security assistance at several Cuban refugee holding camps. Additionally, in fiscal year 1980, the group updated its training and operational capabilities, with emphasis on counter-terrorist tactics and techniques.

The Possee Comitatus Act limits the use of military forces for the enforcement of local laws. Therefore, the unique capabilities of this small, elite group provides a reasonable means of handling emergency situations of national interest when adequate resources are not available on the local level.

Plans and Programs Division

In accordance with the Attorney General's policy and program guidelines, the Service became more involved with automated data processing for operational and managerial activities in fiscal year 1980. The division set up the case management segment of the Witness Security System and a system that produces Marshals Service warrant statistics using National Crime Information Center (NCIC) data. The division also completed a study of prisoner handling and transportation functions and established an employee position control system to track allocated personnel resources by organization. It began a project to provide workyear projections and is developing a plan for creating a Servicewide information system.

Administrative Services Division

The Service's Communications Center provides round-the-clock communications links to the NCIC and the National Law Enforcement Telecommunications System. During fiscal year 1980, the Service entered over 8,500 federal arrest warrants into the NCIC Wanted Persons Files and processed activity against more than 5,500 of these files. Over 1,500 of these actions represented arrests of individuals by other agencies, based on warrants entered into NCIC by the Service.

During fiscal year 1980, the division completed acquisition of the first phase of the Service's new radio communi-

cations system. The system will permit mobile radio communications among districts and between Marshals Service personnel and state and local law enforcement authorities. The Service continued to obtain superior mobile radio communications equipment at a price approximately 40 percent less than the price for similar equipment already available to the government through established source contracts.

Employee Development Division

During fiscal year 1980, more than 600 Marshals Service personnel were trained in 26 separate sessions held at the Federal Law Enforcement Training Center in Glynco, Georgia. The division conducted training for five Criminal Investigator Schools, six Basic Deputy U.S. Marshal Schools, three Chief Deputy Management Seminars, one Financial Management School, one Basic Community Detention Enforcement Operations Specialist School, three Advanced Enforcement Specialist Schools, one Basic Witness Security Specialist School, one Equal Employment Opportunity-Affirmative Action Program Counselor/Investigator School, one Immigration and Naturalization Service/Marshals Service Defector Protection School, one Protective Service School, and one Fugitive Investigative Techniques Specialized Training School. The division also sponsored two special Management Training Seminars for Headquarters management and supervisory personnel. The Service continued to provide training to other agencies with training programs at Glynco, Georgia.

In fiscal year 1980, the Employee Development Division devised an Advanced Enforcement Specialist Training program to meet the Service's added training needs as a result of its newly acquired investigatory mission. It revised and updated curriculums for middle management training for Chief Deputies and for financial management training for Chief Deputies and accounting clerks. To make the management of course subject matter easier, the Service developed and began using packaged training modules in the basic, advanced, supervisory, and specialists training courses.

The Service analyzed its Criminal Investigator Training program and Basic and Advanced Deputy Training programs, and found positive job-relatedness for 95 percent of the overall curriculum. The study resulted in an expansion of the curriculum in two of the three schools and produced a "knowledge, skills, and abilities" assessment inventory for each subject.

The division designed a study skills program for each incoming basic class, began revising and developing administrative training programs, and set up a Senior Executive Service Candidate Development Program.

Personnel Management Division

Foremost among the accomplishments of the Personnel Management Division in fiscal year 1980 was the development of a new Merit Promotion Plan which took effect October 1, 1980. Consistent with the Service's policy of filling positions on the basis of merit, the new plan will help assure that the Service is staffed by the best qualified candidates available, encouraging employees to take advantage of opportunities to develop and advance to their full potential. A National Merit Promotion Board was established to monitor the new plan and to resolve questions and/or disputes over selections or validity of application packages.

The division also devoted its efforts in fiscal year 1980 to the implementation of the Department's Merit Pay and Performance Appraisal System, as mandated by the 1978 Civil Service Reform Act.

The Service sought and obtained approval from the Office of Personnel Management to have specialized positions in the Marshals Service covered by the provisions of the federal law enforcement retirement law.

In its Affirmation Action Plan for 1980/1981, the Service targeted the field positions of Deputy U.S. Marshal, administrative clerk, and accounting clerk as the occupations requiring specific recruitment efforts and devised strategies for meeting the plan's recruitment goals. As a result, the Service met or exceeded all of its affirmative action goals for newly hired Deputy U.S. Marshals. For example, twice as many female Deputies were hired as were targeted in the plan for fiscal year 1980. Of the approximately 130 Deputy

U.S. Marshals recruited, 44 were female. This represents about a 70 percent increase in the female Deputy workforce over the previous year.

In fiscal year 1980, the first woman was appointed to an Senior Executive Service position within the Marshals Service. Additionally, three blacks in top and middle management positions at Headquarters received promotions, and the first woman was appointed to the position of Chief Deputy U.S. Marshal on a temporary assignment. Consideration of women and minorities for management and specialized positions in the field continued.

The division began a program for making equal employment opportunity (EEO) concerns more visible to all Service employees with orientation sessions at headquarters and four district offices. Emphasis was on the value of EEO to all employees, with a view toward engendering a more positive attitude toward the program.

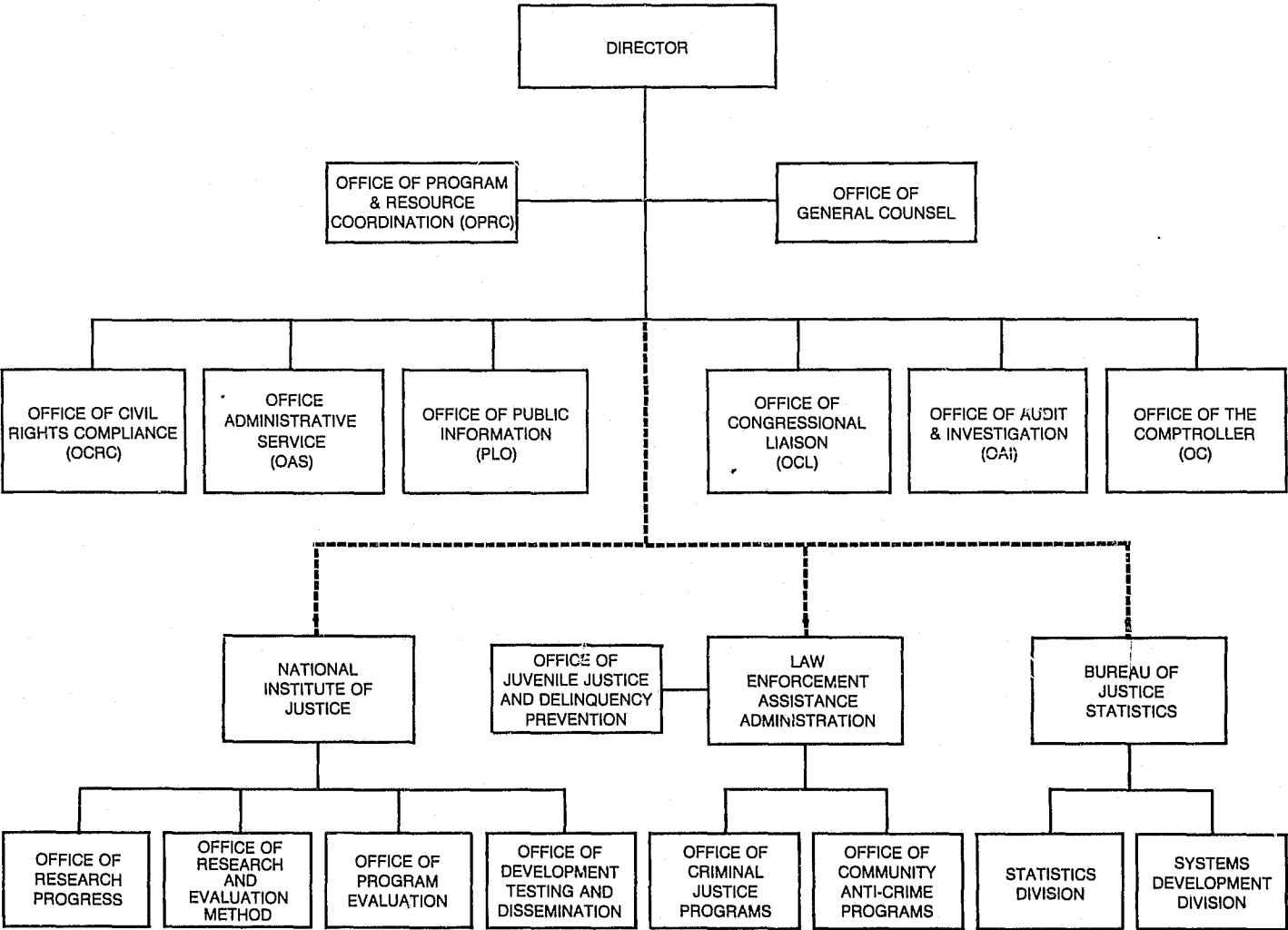
Throughout fiscal year 1980, the division's Affirmative Action Staff sought to increase the visibility of the Marshals Service within the Department and with other federal agencies, both as a recruitment strategy and as a demonstration of the positive aspects of the Service's EEO programs. Personnel Management Division representatives took an active part in interagency groups, including the Women in Federal Law Enforcement Task Force and the Interagency Minority and Female Recruitment Association. In addition to assisting district offices in their presentations at local high school and college career days and other community outreach efforts, the Service participated in a number of national conferences related to affirmative action.

The Justice System Improvement Act Agencies

The Justice System Improvement Act (JSIA) (Public Law 96-157) was enacted on December 27, 1979, to reauthorize and restructure the Department of Justice's program to improve the administration of state and local criminal justice. The Act created four agencies, the Office of Justice Assistance, Research, and Statistics (OJARS), the Law Enforcement Assistance Administration (LEAA), the National Institute of Justice (NIJ), and the Bureau of Justice Statistics (BJS). Each operates under the general authority of the Attorney General and was authorized for the four years through fiscal year 1983. Fiscal year 1980 was a transition year from the earlier LEAA program.

The maximum authorized appropriation for each year is \$25 million each for NIJ, BJS, and LEAA's Community Anti-Crime Program, and \$750 million for other LEAA programs. At least 19.15 percent of the appropriated funds must be used for juvenile delinquency programs, with the primary emphasis on programs for juvenile criminal offenders. This is in addition to amounts authorized separately under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. Such sums as are necessary are also authorized for the Public Safety Officers' Benefits Act, under which LEAA provides a \$50,000 benefit to the survivors of public safety officers killed as the result of a personal injury sustained in the line of duty.

Office of Justice Assistance, Research, and Statistics



Office of Justice Assistance, Research, and Statistics

Robert F. Diegelman
Acting Director

The Office of Justice Assistance, Research, and Statistics (OJARS) coordinates certain activities for itself and the other Justice System Improvement Act (JSIA) agencies and provides staff support.

During the year, it developed a comprehensive reorganization plan in anticipation of a substantial reduction in appropriations for the Law Enforcement Assistance Administration (LEAA) block grants. The plan's goals are to create an LEAA structure that will efficiently end the state and local assistance program, create independent structures for the National Institute of Justice (NIJ) and the Bureau of Justice Statistics (BJS), prepare for an Office of Juvenile Justice and Delinquency Prevention (OJJDP) that is independent from LEAA, and disperse OJARS support functions to the independent agencies by September 30, 1981. The plan was designed to make sure that interested employees in the JSIA agencies are offered positions in the reorganized units or elsewhere in the Department of Justice or other executive branch agencies.

During the past year, OJARS and the National Council on Crime and Delinquency cooperated with the Advertising Council in sponsoring a major effort to help prevent crime in America. It brought together 36 national nonprofit organizations and seven federal agencies. This coalition, the National Citizen's Crime Prevention Campaign, encouraged all citizens to initiate new crime prevention programs or enhance existing ones, emphasizing that crime can, indeed, be prevented through citizen action. The campaign was given national publicity through television, the newspapers, and other media through the "Take a Bite Out of Crime" program.

OJARS established a special 16-person task force to help its Office of Civil Rights Compliance reduce a backlog of 180 complaints of discrimination. The office still receives approximately ten new complaints of discrimination by state or local agencies that are funded with JSIA grants. The task force staff includes several people on detail from the Drug Enforcement Administration, the Immigration and Naturalization Service, and the Department of Justice.

Office of General Counsel

The Office of General Counsel writes legal opinions and offers interpretations and legal advice on all JSIA activities,

such as the congressional authorization, the appropriations legislation, regulations, and guidelines. It also gives advice about the resolution of audit findings. The office has the primary responsibility for drafting legislative proposals and regulations. It writes and reviews contractual documents for legal sufficiency and provides advice on legal matters concerning grants, contracts, and other aspects of federal law.

During the year, the office was actively involved in the drafting and passage of the Justice System Improvement Act of 1979, which reorganized federal criminal justice assistance, research, and statistics efforts.

The office also amended the OJARS nondiscrimination regulations to specify that JSIA funding recipients cannot subject any group of persons to physical abuse or a denial of their constitutional rights on the basis of their race, color, national origin, religion, or sex.

Office of Civil Rights Compliance

The Office of Civil Rights Compliance monitors compliance with the civil rights responsibilities of recipients of federal criminal justice system assistance. This includes enforcing Title VI of the Civil Rights Act of 1964, Section 816(c) of the Justice System Improvement Act of 1979, Section 504 of the Rehabilitation Act of 1973, as amended, and the Age Discrimination Act of 1975, as amended. During the year, extensive reviews were conducted in the Arizona Department of Public Safety; the Hamilton County, Ohio Pretrial Services; and the Shawnee County, Kansas Sheriff's Department. Two resolution agreements were signed and others were in the process of negotiation at the end of fiscal year 1980.

Thirteen notices of noncompliance were issued advising of possible fund suspension if compliance was not secured. Suspensions were imposed in three cases.

During the year, 122 complaint cases were resolved, resulting in more than \$100,000 in cash settlements to complainants. Plans for the training and utilization of detailees to the office were in progress at the year's end. They will assist in the early resolution of the complaint caseload.

Office of Public Information

The Office of Public Information is responsible for keeping the news media and the general public fully informed

about JSIA agency activities. It responds to questions and prepares news announcements and feature stories about all agency programs of general interest.

The office arranges news conferences and briefings to explain the details of significant research findings or important new program initiatives and prepares speeches, briefing papers, and policy statements for JSIA agencies' administrators and directors.

As the Freedom of Information Act office, it encourages the widest possible dissemination of information consistent with the law. During fiscal year 1980, the office responded to 386 Freedom of Information Act and Privacy Act requests.

The office publishes a newsletter, Justice Assistance News, which is distributed ten times a year.

The office issued 42 news features about matters of national interest.

During the year, the office also issued more than 500 news releases of general and regional interest.

Office of Equal Employment Opportunity

The Office of Equal Employment Opportunity responsibilities include evaluating the JSIA agencies' personnel management policies, practices, and programs for their impact upon equal employment opportunity (EEO) and the development and implementation of the agency's Annual Affirmative Action Plan. It processes informal and formal EEO complaints of discrimination and implements the required Special Emphasis Programs.

Fiscal year 1980 activities included:

- The JSIA agencies participated in 18 major national conferences on civil rights and equal opportunity for minorities and women.
- The office continued to study and collect data concerning developments in the area of EEO. In addition, quarterly statistical reports on female and minority employment in relation to the agency's goals were analyzed.
- Heritage Week activities for black, Hispanics, women, Asian/Pacific Americans included a wide range of activities during each special week, i.e., educational workshops, films, displays, and receptions with ethnic displays.
- The EEO Advisory Committee, which is made up of six representatives of the Black Affairs Program, Hispanic Employment Program, Federal Women's Program, Asian/Pacific American Program, Native American, and one employee union official continues to advise and assist the EEO staff.

Office of Planning and Management

The Office of Planning and Management provides general policy direction for OJARS planning, management, and evaluation activities. It facilitates the coordination of these activities with LEAA, NIJ, and BJS by providing information and advice on management and program topics of mutual interest. The office is the principal advisor to the Director of OJARS on issues that cut across all JSIA organizations.

During fiscal year 1980, the office was involved in the following major activities:

- It chaired task forces that developed the OJARS reorganization proposal resulting from passage of the Justice System Improvement Act of 1979.
- It participated in the contingency planning for the phase-out of LEAA resulting from the President's revised fiscal year 1981 budget.
- It prepared the OJARS Reorganization Proposal dated July 9, 1980.
- The office conducted a management review of civil rights processing procedures that resulted in improvements in complaint processing and the appointment of a task force to clear out the backlog.
- It conducted a management review of audit resolution procedures that resulted in improved processing and the creation of an Audit Review Committee to deal with those audit resolution issues that require bureau head policy decisions.
- It managed the Ad Council Campaign—"Take a Bite Out of Crime."
- It monitored the grant to the National Governors Association on the institutionalization of criminal justice planning in state governments.

Office of the Comptroller

The Office of the Comptroller is the principal advisor to the Director of OJARS on financial management. It is responsible for establishing agency policy about financial management, planning and administering the budget, operating an agencywide accounting and reporting system, supervising contract activity, and formulating procedures for the financial administration of grants. It also provides technical assistance and training to the other JSIA agencies, criminal justice councils, and other grantees in financial management, grant administration, budgeting, accounting, and contracting. It coordinates the JSIA agencies' compliance with financial and grants management regulations and directives. The office has five divisions—the Information Systems Division, the Accounting Division, the Budget Division, the Grants and Contracts Management Division,

and the Policy Development and Training Division. The Public Safety Officer's Benefits Program was transferred from the office to the new Law Enforcement Assistance Administration by the Justice System Improvement Act of 1979.

The Office of the Comptroller is responsible for providing data processing support. This includes internal, functionally-oriented systems, as well as national level grant management and criminal justice statistical systems that provide information to the 57 states and territories, the Congress, the Office of Management and Budget, the General Accounting Office, and program managers in the JSIA agencies.

To help criminal justice councils develop and maintain accurate financial and grant monitoring information, the office financed, coordinated, and monitored the development and installation of state-level management information systems. The data bases provide a wide variety of reports on current and completed grants. Twenty-four states have obtained grants to implement automated management information systems. Each is providing more accurate and complete information to JSIA agencies about their grants. The states have been taught to code programmatic information about their own grants using the program classification system. Fifty states and territories have implemented this system. This will allow JSIA agencies to report accurate programmatic information about state subgrants.

The office has developed the capability to track grants and contracts from initial application through final close-out and has compiled an inventory of all JSIA agency grants, subgrants, contracts, interagency agreements and cooperative agreements. Accomplishments in this area include:

- Computer generated grantee financial reports (H-1 Turnaround Documents) with preprinted field and financial data entered by OJARS for the previous quarter. This H-1 Turnaround Document has resulted in fewer errors for the Accounting Division to resolve.
- System expansion to immediately log the receipt of H-1 reports and quarterly progress reports.
- Computer generated letters to grantees who are delinquent in submitting H-1 reports.

Twenty-two computer terminals provide agency staff with immediate access to information in the grants PROFILE system. Training about PROFILE and the use of these terminals have been provided to all offices within OJARS, including the five area audit offices. Additionally, an automated audit system was developed and implemented to keep track of audit findings and their resolution. The system provides audit staff with immediate access to the data.

In addition, a system was developed to track awards made under the Public Safety Officer's Benefit Program. This

system provides detailed information on all aspects of this program. It is now in the process of being implemented.

Office of Operations Support

The Office of Operations Support is responsible for directing and coordinating all activities concerning the internal and organizational support of OJARS and the other JSIA agencies. In addition, the office is responsible for coordinating all international antiterrorism programs.

The Personnel Division provides employee services to all components of OJARS and the other JSIA agencies. This includes the recruitment, selection, and placement of all employees. It also represents management in all labor-relations matters. Major activities during the year centered on the implementation of the legislative reorganization of the agency caused by the passage of the Justice System Improvement Act of 1979. These activities, along with the substantial decline in the agency's personnel strength (from 621 in fiscal year 1979 to 490 at the end of fiscal year 1980), have resulted in increased efforts to provide innovative methods of dealing with expanding workloads while facing major resource reductions.

The Administrative Services Division is responsible for the management and provision of security, furnishings, telephone systems, equipment, maintenance, office space, mail services, and safety and health programs. In addition, it assists grantees in obtaining federal excess personal property. During fiscal year 1980, grantees obtained property originally costing \$767,400 at a cost of \$191,850 for a total savings of \$575,550.

Office of Audit and Investigation

The Office of Audit and Investigation is responsible for reviewing grants and contracts awarded by the JSIA agencies. It investigates alleged irregularities, conducts special inquiries which it coordinates with other federal and state investigative agencies, and provides training and technical assistance to state and local audit agencies. The office also is responsible for the federal audits of 57 criminal justice councils and approximately 100 nongovernmental units. In addition the office coordinates the audits of contracts and grants performed by other federal and state audit agencies of agency activities.

During fiscal year 1980, the office issued 692 audit reports to various OJARS, LEAA, NIJ, and BJS program and staff offices. The office also issued 160 significant issue bulletins on matters pertaining to investigation activities and closed 92 investigations.

Office of Congressional Liaison

The Office of Congressional Liaison is responsible for maintaining effective communications with the Congress and for providing general guidance in intergovernmental affairs.

The office performs liaison activities with congressional leaders, committees, and with individual members of the

Congress on legislative matters affecting OJARS and the criminal justice community. It is responsible for the review of proposed legislation affecting criminal justice and for the preparation of statements for officials of JSIA agencies testifying at congressional hearings.

It maintains a close working relationship with significant national organizations interested in the criminal justice system, particularly concerning mutual legislative interests.

Law Enforcement Assistance Administration

Homer F. Broome, Jr. Administrator

Congress created the Law Enforcement Assistance Administration (LEAA) in 1968 to provide federal financial, technical, and research support to improve state and local criminal justice systems. Congress subsequently expanded LEAA's responsibilities by including programs to improve juvenile justice and delinquency prevention and to assist community-oriented anti-crime programs. In addition, LEAA was directed to administer the public safety officers' death benefits program.

LEAA awards grants to all parts of the criminal justice system—police, courts, prosecutors, probation, parole, corrections, public defender, and juvenile justice agencies. It sponsors comprehensive state planning for more efficient criminal justice administration and finances new approaches to such specific nationwide problems as arson, victim-witness needs, organized crime, drug abuse, and police and corrections accreditation. In addition, LEAA finances higher education for criminal justice personnel and sponsors improved criminal justice curricula in colleges and universities and provides specialized training for criminal justice officials at the state and local level.

A major aspect of the LEAA legislation is the control it places in state and local governments. LEAA awards grants to the states proportional to their relative population that can be used for any criminal justice improvement program that is consistent with LEAA guidelines.

Budget

LEAA's fiscal year 1980 budget was \$430.1 million, compared to \$646.5 million for fiscal year 1979 and \$647.2 million for fiscal year 1978.

Fiscal year 1980 funds were allocated as follows:

- \$239,234,000 for Part D Formula Grants.
- \$60,000,000 for Juvenile Justice Formula Grants.
- \$39,969,000 for Juvenile Justice Discretionary Grants.
- \$34,759,000 for Part F - General Criminal Justice Grants.
- \$25,382,000 for Part E - National Priority Programs.
- \$10,000,000 for Community Anti-Crime Grants.
- \$10,000,000 for Public Safety Officers' Benefits Program.
- \$7,000,000 for Technical Assistance.
- \$2,620,000 for Training and Manpower Development.
- \$850,000 for Research and Evaluation.

Public Safety Officers' Program

The Public Safety Officers' Benefits Act of 1976 authorizes LEAA to pay a benefit of \$50,000 to the eligible survivors of state and local public safety officers found to have died as the direct and proximate result of a personal injury sustained in the line of duty.

Public safety officer is defined as "a person serving a public agency at the state or local level in an official capacity, with or without compensation, as a law enforcement officer or as a fireman." Among those for whom coverage is intended are persons involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws, including police, corrections, probation, parole, and judicial officers. Paid and volunteer fire fighters are also covered.

The Act applies to death occurring from injuries sustained on or after September 29, 1976.

During fiscal year 1980, 291 claims were filed under the Act. During the same time, 231 claims were determined to be eligible and 76 ineligible. This resulted in benefit payments of \$11.6 million.

The program now has an active appeals system. There are at present 19 hearing officers who have been delegated the authority to hold appeal hearings throughout the country. After a comprehensive analysis of all testimony presented at the hearing, and in some cases consultation with legal and medical experts, these officers make a determination in accordance with the program criteria.

Office of Criminal Justice Programs

The Office of Criminal Justice Programs (OCJP) was created at the start of fiscal year 1978. It is the largest program office within LEAA and the principal contact for state and local criminal justice agencies. It awards, monitors, evaluates, and terminates all planning and block action grants and manages most of LEAA's discretionary grants and technical assistance activities.

The office is composed of five criminal justice assistance divisions, six program divisions, an arson desk, two staff units and a critical issues team.

Criminal Justice Assistance Divisions

The five Criminal Justice Assistance Divisions are responsible for management of the LEAA block grant program. Each division services a particular geographic region of the country—Northeast, Southeast, Midwest, Southwest, and Far West. The staff maintains close liaison with the states and monitors formula grants. During the year, the divisions administered block grant awards to the states totaling \$242,232,000—\$239,234 in JSIA Part D funds, and \$2,998,000 in reverted block grant funds.

Program Divisions and Arson Desk

The six program divisions—Enforcement, Criminal Conspiracies, Adjudication, Corrections, Correctional Standards Accreditation Program Management Team, and Special Programs—and the LEAA Arson Desk have responsibility for administering the Discretionary Grant Program. They make project grants for the purpose of testing, implementing, and evaluating programs at the national, state and local level. During fiscal year 1980, the office awarded \$80,066,000 in discretionary funds.

Enforcement Division

The Enforcement Division funds projects related to the deterrence, detection, investigation, and control of crime by state and local law enforcement agencies. The objective of these projects is to improve and strengthen law enforcement capability through specialized technical assistance to operating agencies, training for management and line personnel, research to develop new information and techniques, and operational programs to test, demonstrate, and market enforcement technology.

The Commission on Accreditation for Law Enforcement Agencies was formed by LEAA in December 1979. The goals of the program are to:

- increase the effectiveness and efficiency of delivery of law enforcement services,
- increase citizen and individual officer confidence in law enforcement standards and practices, and
- effect greater standardization of administrative and operational practices.

The Commission has 21 members: 11 officials from the enforcement community and ten representatives from government and private sector agencies. The commission will adopt standards by which to measure the strengths and weaknesses of law enforcement services provided to the public through an agency accreditation program.

Four participating law enforcement associations: the International Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives, the National Sheriff's Association, and the Police Executive

Research Forum are working together to provide a staff of law enforcement professionals for the commission. They are reviewing the work of previous commissions and the products of ten years work by LEAA, researching contemporary management methodologies, and recommending standards for law enforcement administration, operations and support services.

Upon completion of the standards, the process of accreditation will be developed and instituted. The commission will act as an independent, not-for-profit corporation administering the process and then conferring accreditation status on those agencies which have met the standards. The goal of the commission is to become completely self-sustaining within five to ten years.

The Integrated Criminal Apprehension Program is a national priority program that provides grants and assistance to more than 40 selected municipal police departments throughout the United States in order to enable them to develop and install a comprehensive and structured management and operations system that seeks to improve the efficiency and effectiveness of the total police operation. Improvements in computer-based resource allocation planning and assignments, the upgrading of analytic capabilities of police managers and operational units, the use of crime and disorder analysis, the management of the calls-for-service workload by adoption of alternative responses to selected calls, the development and implementation of directed patrol strategies and tactics, and the targeting of information and resources on career criminal populations, as well as innovations in crime prevention programs are included in the program. In cities where it has been developed and maintained impressive results have been demonstrated, such as a 31 percent increase in criminal apprehension by patrol units, an 18 percent increase in cases filed with the courts, and an 85 percent rate of apprehensions attributed to wanted or warrant bulletins prepared by program analysts.

The Police Technical Assistance Project provides support and assistance in the form of advice, publications, workshops and conferences to police departments throughout the United States that have received national priority grants from the Integrated Criminal Apprehension Program, the Managing Criminal Investigations Program and the Criminal Conspiracies Program. More than 60 municipal, county and statewide law enforcement agencies are currently recipients of such technical assistance services coordinated through the Enforcement Division. The project also provides support and assistance to the newly established Commission on Accreditation for Law Enforcement Agencies. Other products include special studies and reports of importance or interest to LEAA, the most recent of which was the highly acclaimed monograph entitled "The Prevention and Control of Urban Disorders: Issues for the 1980s."

The Managing Criminal Investigations Incentive Program

provides grants and technical assistance support to 18 municipal police departments and one state police agency to enable them to improve the efficiency and effectiveness of the criminal investigation process in their local jurisdictions. This program seeks to increase the ratio of convictions to arrests by changing the manner in which patrol units respond to and process a criminal investigation, assisting patrol and investigator supervisors in making more rational allocation of resources in continuing the investigation of certain types of crimes, and improving the process of the follow-up investigation and the preparation of criminal cases for prosecution.

The Police Management Training Program has provided courses in organization, administration, management, and community services to police agency personnel. Offerings in 1980 included the Police Executive Program, Management Training for Sheriffs, and Police Services to the Elderly.

The Counterterrorism Training Program funded six courses during fiscal year 1980: Hazardous Devices Training, Management Seminars in Terrorism, Special Operations and Research Staff, Federal Bureau of Investigation Bomb Data, Federal Aviation Administration Airport Security, and Citizen Security Training. To date, more than 6,000 people have been provided training through this program.

Criminal Conspiracies Division

The Criminal Conspiracies Division is responsible for planning and managing programs targeted at the detection and prosecution of criminal conspiracies and activities in the areas of fencing, organized crime, white-collar crime, economic crime, and fraud against the government.

The Anti-Fencing/STING Program is directed at disrupting the illegal redistribution system for stolen goods. To date projects under these programs have netted more than \$291,421,308 in savings and recovered stolen property; approximately 90 percent of recovered property was returned to rightful owners.

The Organized Crime/White-Collar Crime Program funds projects directed toward seven major areas: intelligence development, prosecution, prevention councils, training, strike forces, corruption detection and investigation, and undercover fencing operations. In fiscal year 1980, 19 new and continuation grants were made under this program.

Adjudication Division

The Adjudication Division's mission is to encourage and assist the criminal justice system leadership, to improve and reform the nation's court systems.

In 1975, LEAA initiated the Career Criminal Program which emphasizes the expeditious prosecution of persons

accused of serious crimes who have had previous felony convictions. Thus far, 57 jurisdictions have implemented the full program. By the end of the year, there had been more than 10,000 defendants prosecuted in 46 reporting jurisdictions. Of these, 12,987 were convicted of 8,983 crimes. The program is characterized by 1) early case screening, 2) identification of career criminal defendants using predetermined selection criteria, 3) vertical prosecution (i.e., one prosecutor handles the case from acceptance of disposition), 4) elimination of plea bargaining, and 5) a high rate of convictions and incarceration. The average sentence has been 15.1 years for convicted offenders. To date 29 projects have been continued with local funds.

The Fundamental Court Improvement Program awarded 11 grants in fiscal year 1980 to help states reform their state court systems or state indigent defense delivery systems. In 1975 only three states had formal court planning. Today 41 states have statewide judicial plans largely as a result of LEAA support and technical assistance. Court unification programs are being developed. Major LEAA support has been given to unification efforts in Alabama, Kansas, Kentucky, Massachusetts, Minnesota, Missouri, and North Dakota.

The Court Delay Reduction Program has matured as a major court reform effort over the past year, with nearly 60 metropolitan and state court systems benefiting from the technical assistance, demonstration grants, and training. The program helps both state trial and appellate courts improve case management. Major grants are currently operating in Massachusetts, New Jersey, Alabama, and Washington, D.C. Thirty new metropolitan courts have participated in intensive regional workshops, where court teams develop delay reduction plans that they can implement.

The Jail Overcrowding Program assists metropolitan counties and states in dealing with overcrowded jails, focusing on the pretrial jail population. Many of the jails are under court mandated population limits. Forty-five metropolitan counties and three states are currently participating or have participated in this program.

The Courts Training and Technical Assistance Program provides training for judges, prosecutors, defenders, lawyers, and court administrators to disseminate advances in court organization, administrative technique, technology applications, and substantive law reform. It also gives immediate short-term assistance to the major components of the adjudicatory process—courts, prosecution, and defense—through direct on-site consultation and through clearinghouse service. The training component serves almost 7,000 court practitioners annually. In the past year training was provided for an estimated 3,500 judges, 1,110 prosecutors, 900 defenders, 700 lawyer advocates, and 600 court administration personnel. Approximately 150 on-site assignments were completed.

The objective of the Juror Utilization and Management Program is to improve jury systems to ensure that juries are more representative of the populace as a whole and less costly for taxpayers and employers. Currently, nine states and three localities have received grants to apply the management techniques that were shown to be effective in an earlier LEAA research and demonstration program.

Corrections Division

The Corrections Division supports the operation and improvement of agencies and programs providing residential and nonresidential services to pretrial detainees, inmates, probationers, parolees, and ex-offenders. The division's goal is to provide financial and technical assistance for the development of techniques, methods, and programs that will lead to more effective correctional systems and improve capabilities of correctional functions, with special emphasis on offender rehabilitation, correctional administration, diversion, treatment of drug abuse offenders, and an improved correctional environment.

The Treatment Alternatives to Street Crime Program seeks to create criminal justice intervention mechanisms so that appropriate substance abusing offenders can be identified, referred to existing community-base treatment programs, and monitored in treatment. The program is primarily a pretrial diversion mechanism; 51 percent of all clients accepted are at this point within the criminal justice system.

The Treatment and Rehabilitation for Addicted Prisoners Program attempts to reduce illicit drug use and related criminal activity by providing treatment and rehabilitative services for serious substance abusing offenders while they are incarcerated in state correctional institutions and on subsequent parole release.

The Presentence Investigation Report Program study resulted in 64 recommendations to help courts and probation officers develop a more systematic approach to presentence report design and utilization. In order to implement these recommendations, many jurisdictions require additional resources in the form of specialized staff, technical assistance and training.

The purpose of the Free Venture Prison Industries Program is to develop prison industries that will duplicate the conditions of private industry as closely as possible. The Free Venture model includes a full work week, inmate wages based on worker output, real world productivity standards, hire and fire authority at the shop supervisor level (within the limits of due process), self-supporting or profit-making business operations, and post release job placement mechanisms. Preliminary results of these evaluations will be available in the Spring of 1981.

The Medical Care-Health Services Program is designed to transfer the technology and expertise developed under

earlier LEAA grants to new jails in additional states. In fiscal year 1980, a continuation grant was made to the American Medical Association which has selected 23 state medical societies to participate in this year's program. Each of the participant medical societies in turn will select a minimum of ten jails in its area. It is anticipated that this program will serve 230 jails and reach several hundred thousand inmates over the course of the funding year.

The Legal Services Program has demonstrated effective and economical ways to ensure that incarcerated offenders have access to legal services and to the courts. Program activities include hiring staff, locating office space and acquiring equipment, and coordinating with various criminal justice agencies. Based on performance to date, it is estimated that 90 percent of requests for assistance are resolved administratively as a result of this program.

The purpose of the Community Service Restitution Program is to test alternatives to typical correctional processing of selected offenders with a view toward lowering costs (as compared with incarceration) and providing service to the community, while at the same time benefiting the offender. During fiscal year 1980, six grants totaling \$1,019,000 were made under this program.

The goal of the Correctional Facilities Energy Conservation Program is to reduce energy consumption among jails, prisons, and correctional facilities through a \$175,000 technical assistance grant coupled with an Interagency Agreement with the Department of Energy. LEAA initiated an effort to provide self help support to corrections management in their audit of energy consumption, development of plans to reduce consumption, and implementation of facility retro-fit measures and conservation methods.

The Correctional Standards Accreditation Program Management Team was created to develop, demonstrate and implement correctional standards. Eleven states have been selected by LEAA as demonstration sites for systemwide accreditation. The purpose of these projects is to demonstrate and evaluate the accreditation process as a method of implementing correctional standards.

The American Correctional Association has completed the revision of all standards with the exception of those for jails which are in the final draft. The revision process will be completed by February 1981.

Special Programs Division

The Special Programs Division is responsible for the development and funding of multidisciplinary, national scope projects spanning the range of criminal justice disciplines. During the past year, the division's activities have focused on programs in victim-witness assistance, domestic violence, public interest groups, and Indian Justice.

The objective of the new National Victim-Witness Strat-

egy Program is to develop, expand and improve services to crime victims and witnesses through the creation or support of centralized structures or networks of victim-witness service providers, and the mobilization of existing nongovernmental groups and organizations. During fiscal year 1980, 15 grant awards were made to establish statewide networks and national organizations to stimulate development of victim-witness programs.

The Integrated Police-Prosecution Program supports projects to improve treatment of victims and witnesses by both the police and prosecutor, thereby increasing the rate of successful prosecutions within a given jurisdiction. The program integrates and merges victim-witness activities across the spectrum of criminal justice disciplines to provide a unified approach to the handling of victims and witnesses. During fiscal year 1980, three grant awards were awarded under this program.

The Family Violence Program is designed to reduce and prevent violence between members of the same family or between persons who live together in the same household, including spousal abuse, child abuse, sexual abuse of children, abuse of parents by children and other forms of intra-family violence. The program supports both urban and rural projects designed to test the effectiveness of a communitywide approach. To date, 35 local projects have had direct contact with more than 8,000 victims and approximately 2,000 children. Through these projects, approximately 5,000 days of shelter were provided as well as 6,000 counseling interventions.

The Indian Criminal Justice Program funds projects to improve the quality of law enforcement and criminal justice on Indian reservations. Projects address all areas of the justice system — prevention, enforcement, adjudication, corrections, and juvenile justice. Five awards were made in fiscal year 1980 to: 1) continue the Northwest Intertribal Courts Project, 2) implement a model court project to negotiate full faith and credit between tribal courts and state courts in selected states, 3) provide training and assist with negotiating cross-deputization in California between tribal, state and county officers, 4) assist the Great Lakes tribes in examining the legal requirements for retrocession, and 5) assist South Dakota tribes to extend the due process capability of tribal judiciaries through help with appeals courts.

The Arson Control Assistance Program combines investigative and prosecutorial expertise of federal criminal justice agencies with their financial and technical assistance capabilities. The objective of the program is to assist state, regional, county, and local efforts to reduce the incidence of arson and the human and economic loss related to arson. Some 34 projects have been selected for funding.

Policy and Management Planning Staff

The Policy and Management Planning Staff provides

guidance and direction to office divisions in the interpretation and implementation of LEAA policies and provides analyses, information, and advice to the Assistant Administrator for the effective review and management of office operations.

Program Development and Evaluation Staff

The Program Development and Evaluation Staff is responsible for establishing and coordinating the implementation of LEAA's program development and evaluation policies by the office's program divisions.

It assists program divisions in the design of programs and projects that can be evaluated.

Critical Issues Team

The Critical Issues Team plans, develops, and administers a continuing program that provides direct management support and programmatic input to the Assistant Administrator and takes action in situations of critical importance to the nationwide implementation of LEAA programs.

During the past year, the team coordinated LEAA's responses to the Miami-Dade County riots and the eruption of Mount St. Helens.

Office of Community Anti-Crime Programs

The Office of Community Anti-Crime Programs was established by the Crime Control Act of 1976 to provide technical assistance, award grants, disseminate information, and coordinate groups in crime prevention efforts designed to mobilize communities and citizens in combating crime problems in both urban and rural America. The office has three major programs—Community Anti-Crime, Comprehensive Crime Prevention and the Urban Crime Prevention Programs.

Community Anti-Crime Program

The program continues to provide financial and technical assistance to community and neighborhood groups throughout the country. During fiscal year 1980, 88 non-profit organizations received second-year funding and received on-site assistance in financial and program management, community organizing and crime prevention techniques. In addition, residential, university-like training was provided to 400 community representatives at the program's Crime Prevention Institute at Southwest Texas State University.

Comprehensive Crime Prevention Program

The 16 jurisdictions participating in the Comprehensive Crime Prevention Program are part of a national

demonstration program designed to test the effect of establishing a well-planned comprehensive approach to managing crime prevention programs in medium-sized cities. Each program integrates criminal justice and non-criminal justice resources, specifically citizens, police, private business and local government in an effort to implement a broad range of strategies simultaneously in order to have a greater total effect on the prevention of crime, the reduction of fear, and the stimulation of citizen action and involvement.

Urban Crime Prevention Program

The Urban Crime Prevention Program is a Presidential initiative jointly managed and administered by LEAA and ACTION. Eleven awards will be made from \$4.9 million to private nonprofit grantees to address urban crime problems and social and economic factors related to crime in low and moderate income neighborhoods. The principal goals of the program are to increase neighborhood participation and problem-solving capacity and to forge a working partnership among neighborhood groups, criminal justice agencies, and other public and private organizations.

Office of Criminal Justice Education and Training

Educational Development Program

These projects support the improvement of the quality of criminal justice higher education and educational responses to criminal justice manpower needs.

Black College Initiative Program

In fiscal year 1980, three grants and two continuation projects implemented the President's Black College Initiative, authorized by Executive Order 12232. Included is a minority fellowship program that supported the achievement of 15 masters degrees and the largest concentration of minority criminal justice doctoral candidates in the country. Also, six monographs were issued as resources for teaching criminal justice with a minority perspective. An award to Atlanta University supports the establishment of a Criminal Justice Institute encompassing a master's degree program, a research directorate, and a community service unit. Talladega College in Alabama will continue the institutionalization of a criminal justice baccalaureate degree in response to the need for qualified minorities to fill responsible positions in the criminal justice system.

Graduate Research Fellowship Program

The office administered the Graduate Research Fellow-

ship in fiscal year 1980. Fourteen universities received fellowship awards to support 20 doctoral candidates conducting research and writing dissertations on topics related to criminal justice.

Law Enforcement Education Program

Since its inception in 1969, the Law Enforcement Education Program made grants to institutions for higher education to provide financial assistance for more than 330,000 criminal justice students. On May 4, 1980, the authority for the administration of this program was transferred from LEAA to the Department of Education.

Training Program

In fiscal year 1980, the office assumed the responsibility for two major programs, the Criminal Justice Training Centers and the Technical Assistance Resource Centers.

The national system of five centers are located at Northeastern University, University of Wisconsin-Milwaukee, Florida State University, Washburn University, and the University of Southern California.

Other projects completed in fiscal year 1980 included a nationwide study of Police Training Standards and Commissions, which was conducted by the National Association of State Directors of Law Enforcement Training, and the research phase of a project to study the sources of stress for law enforcement officers, which was investigated by the University of South Florida.

Office of Juvenile Justice and Delinquency Prevention

The Office of Juvenile Justice and Delinquency Prevention is responsible for coordinating and providing policy direction to all federal juvenile delinquency-related programs. Within the office is a research and information branch, the National Institute for Juvenile Justice and Delinquency Prevention. The office administers a special emphasis discretionary grant program through which it develops and implements national scope juvenile justice and delinquency prevention demonstration programs.

Concentration of Federal Effort

An aggressive new level of concentration of federal efforts and coordination with other federal agencies came about following specific recommendations endorsed by the President in a July 1, 1980 message to Congress regarding the Coordinating Council on Juvenile Justice and Delinquency Prevention.

National Institute for Juvenile Justice and Delinquency Prevention

During fiscal year 1980, the institute supported ten new and 25 continuation projects in specific areas pertaining to delinquent behavior and prevention; juvenile justice system processing of delinquents, status offenders and other juveniles; alternatives to juvenile justice system processing; training, standards development and implementation; and information development and dissemination.

The institute designed and funded a long-range Delinquency Prevention Research and Development Program to implement and test selected intervention strategies, and a violent Juvenile Offender Program to identify and test promising reintegration and other intervention program models.

Formula Grants

During fiscal year 1980, 44 states and six territories (Puerto Rico, American Samoa, Guam, Trust Territories, the Virgin Islands, and Northern Marianas) received formula grant awards. The total amount of the formula grants awarded was \$60,286,000. State and territory allocations are based on the juvenile population (under 18 years of age). The minimum allocation to each state was \$225,000, the minimum allocation to each territory was \$56,250.

The deinstitutionalization of status offenders and the separation of juveniles from adult offenders in jails and correctional facilities continues to be the major emphasis of activities during the year. In fiscal year 1980, 36 states continually participating since 1975, demonstrated substantial or full compliance with the deinstitutionalization of status offenders, thus meeting the requirements of the Juvenile Justice and Delinquency Prevention Act.

Technical Assistance

More than 500 instances of technical assistance were provided in fiscal year 1980 by the office's national contractors, including alternatives to the juvenile justice system, removing juveniles from adult jails, deinstitutionalization of status offenders and non-offenders, legislative reform and delinquency prevention.

Special Emphasis Division

New initiatives that were implemented and funded during fiscal year 1980 include: Alternative Education, preventing delinquency through the development of alternative education options for youth whose educational and social developmental needs are not being met in traditional classroom settings in targeted jurisdictions; New Pride Replication, establishing non-residential comprehensive, community-based treatment projects for adjudicated youth with a history of serious offenses; Violent Juvenile Offender, implementing action programs designed to meet the special needs of the violent juvenile offenders in the juvenile justice system in an attempt to reduce the incidence of repeated serious offenses; Removal of Juveniles from Adult-Jails and Lock-Ups, assisting communities in developing and implementing a systematic plan for meeting requirements of the Act through the removal of juveniles from adult secure facilities; and Youth Advocacy, assisting projects in implementing a comprehensive and/or statewide program to improve the services for children and youth who must come in contact with the juvenile justice, social service and educational systems.

Approximately 100 grants and interagency agreements were funded under these new and other existing juvenile justice and delinquency prevention discretionary programs.

National Institute of Justice

Harry M. Bratt
Acting Director

The National Institute of Justice (NIJ) is a criminal justice research, development, and evaluation agency located within the Department of Justice. Created by the Justice System Improvement Act of 1979, NIJ builds on the foundation of the former National Institute of Law Enforcement and Criminal Justice, which was the first major program of federal support for research into crime and justice.

The new legislation authorizes NIJ to support both basic and applied research on a wide range of criminal justice issues as well as related civil justice matters, to conduct tests and demonstrations of new approaches, to identify successful programs, and to disseminate research results through training, special workshops, and other dissemination vehicles, including an international clearinghouse of justice information for use by both practitioners and researchers.

The Costs of Crime and Criminal Justice Services

As part of its emphasis on long-term basic research on criminal behavior, the institute has funded a number of external research centers for interdisciplinary studies of such fundamental concerns as unemployment and crime, criminal violence, white-collar crime, and career criminals.

One such center, located at the Hoover Institute, has been investigating cost-related aspects of crime and the criminal justice system. Applying economic theory, econometrics, and the latest cost-modeling techniques, Hoover has addressed a number of related issues. In particular, the researchers have attempted to develop and improve techniques for estimating the costs of providing various criminal justice services both in the aggregate and as marginal costs for specific types of crime. In addition, efforts have been undertaken to consider questions concerning the costs of crime control and prevention and the relationship between unemployment and crime. Much of the research is nearing completion, and a series of reports is being prepared for publication.

Employment and Crime

Based in part on the exploratory efforts of the Hoover Institute studies, NIJ has established at the Vera Institute of Justice in New York City a center to determine the relationship between employment and crime, particularly as it relates to youth. This study is examining such topics as

movement by individuals between legitimate and criminal activities and employment opportunities for high-risk youth. The study, which has completed the second year of a five-year program, has already generated some useful insights. At a minimum, it appears that the relationship between employment and crime is far more complex than indicated by the simple statement that "unemployment causes crime." The objective of the research is to explore and document the nature of the relationship.

Another long-range research program begun last year will explore organized crime under a framework that emphasizes the economic, business-related nature, and impact of organized criminal enterprises. The information gained is expected to help improve enforcement efforts and expand the range of intervention options beyond the traditional strategies of criminal investigation and prosecution.

White-Collar Crime

Research in this area includes a long-term study conducted by Yale University that is investigating several aspects of white-collar crime, including conceptual frameworks for white-collar crime, the differences between the prosecution of white-collar crime and street crime at the federal level, the factors governing judicial decisions in sentencing each type of offender, and the range of sentences given at the federal level to white-collar criminals. Another element of the study is an analysis of the enforcement practices of the Securities and Exchange Commission.

Other recently completed research on white-collar crime includes fraud and abuse in government benefit programs, employee theft, corporate illegalities, and sources of data on white-collar crime.

Two new centers were funded during the year. One at Cornell University will study race, crime, and social policy. The aim is to obtain information useful in devising social policies that can ameliorate criminal justice problems affecting various racial and ethnic groups. The second center, located in Albany, New York, will explore the interrelationship between the abuse of drugs and alcohol and crime.

Sentencing

The past decade has seen a trend toward determinate sentencing and a reappraisal of the purpose of criminal sanctions. To pull together and assess the growing body of

research in this controversial area, the institute awarded funds to the National Academy of Sciences to establish an expert panel to synthesize the current state of the art in sentencing and outline directions for future research.

One sentencing reform of recent years—voluntary guidelines for judges—is the subject of a field test in two states. The aim is to assess the effectiveness of the guidelines in promoting consistency in sentencing within and across jurisdictions.

Dispute Resolution

Another trend gaining momentum in recent years is the use of forums other than the courts to resolve minor criminal cases. A field test supported the creation of three experimental Neighborhood Justice Centers in Atlanta, Georgia; Kansas City, Missouri; and Los Angeles, California. An evaluation of the program was completed during the

year. The evaluators found the centers to be "a concept and a process that works."

During the test period, the centers handled nearly 4,000 cases. Nearly half were resolved before or during the mediated hearing. Generally, disputes were handled faster than in courts. The evaluators also found that the disputing parties abided by the settlement terms in 70 to 80 percent of the cases, with roughly the same percentage reporting that they were satisfied with the outcome and would return to the center again in a similar situation.

In addition to advancing the state-of-the-art on criminal justice research, NIJ utilizes research findings in the identification or development and testing of model or innovative programs. Programs are evaluated and techniques validated and results disseminated through such publications as the Exemplary Project series, and Program Models and Policy Briefs.

Bureau of Justice Statistics

Benjamin H. Renshaw
Acting Director

The Bureau of Justice Statistics (BJS) collects, analyzes, and disseminates criminal and related civil justice data and promotes the development of comparable interstate statistics by encouraging the active participation of the states through its Federal-State Cooperative Program.

It provides a wide variety of statistical services as well as recommends to other organizations appropriate standards for the generation of data, including security, privacy, and confidentiality considerations.

The bureau actively seeks the advice of the justice community, especially through its 21-member Advisory Board, which is appointed by the Attorney General.

National Crime Victim Survey

The bureau's most important statistical series is the National Crime Survey, which is the nation's only regular crime rate measurement that collects data through national household surveys similar to the manner in which basic labor force statistics are gathered.

The survey statistics are gathered through U.S. Bureau of the Census interviews in 60,000 households in which persons 12 years of age and older are asked if they were a victim of crime during the preceding six months. The survey measures the amount of rape, robbery, assault, personal larceny, household theft and burglary, and motor vehicle theft within the United States population. It also provides detailed information about the characteristics of the victims, the victim-offender relationship and the criminal incident, including the extent of any loss or injury and whether or not the offense was reported to law enforcement officials.

During the year, the bureau began work on a methodology to release preliminary survey data at periodic intervals throughout the year so that the Congress and the general public will have a more timely indication of fluctuations in the levels of all measured crimes, including those not reported to the police.

In June 1980, BJS released (in Spanish as well as English) its first report on "The Hispanic Victim," a detailed examination of the particular characteristics of victims of Hispanic background.

In April 1980, BJS published another study of victims that showed that relatives and persons, who knew their victims well, are responsible for more than a fifth of all rapes, robberies, and assaults occurring in the United States. Other

survey publications reported that thefts of personal and household property show strong seasonal patterns, whereas violent crimes do not, and that violent crime in central cities is more than twice that occurring in rural areas.

Information from the National Crime Survey continues to affect criminal justice legislation at the federal, state, and local levels, for example, in matters concerning crime against the elderly, rape, stranger-to-stranger street crime, and costs of victim compensation programs. The survey is the only source of information about the detailed characteristics of the victims of crime throughout the nation. Thus, it provides legislators as well as the general public an aggregate view of which subgroups in the population are disproportionately victimized as well as the impact of such criminal victimization in their lives.

Methodological work is currently underway to redesign the National Crime Survey based on a detailed analysis conducted by the National Research Council of the National Academy of Sciences. This work will incorporate advances in knowledge of victimization methodology which have been acquired since the program's inception in 1972 and will broaden the scope of the survey—changes that are intended to further increase its usefulness to the Congress, the Administration, criminal justice professionals, and the general public.

Correctional Statistics Program

The Correctional Statistics Program is a national series of sample surveys and consensus in the fields of parole, probation, and corrections. It has four components, the National Prisoner Statistics Program, Special Studies in Correctional Statistics, Uniform Parole Reports, and the National Probation Reports Study.

The National Prisoner Statistics Program provides data on prison population, the characteristics of prisoners, characteristics of correctional facilities, and persons under death sentences. During fiscal year 1980, four reports were published: the 1978 and 1979 data editions of "Prisoners in State and Federal Institutions" and the 1978 and 1979 data reports on "Capital Punishment."

Special Studies in Correctional Statistics focus on information that is not available from regular administrative sources. In fiscal year 1980, a special report on the characteristics of jail inmates was prepared based on data collected

from a national survey of local jails. Field work was completed on a national survey of inmates of state prisons and a national census of state correctional facilities. The bureau plans to publish reports on these two studies in fiscal year 1981.

The Uniform Parole Reports Program collects statistics on the characteristics of persons on parole, the number of parole agencies, the number of parole offenders, and caseloads. These statistics are published annually in "Parole in the United States." Statistics are also kept on how many individuals complete parole successfully and how many are returned to prison within a three-year period immediately following their release. These are published annually in "Characteristics of the Parole Population."

The fourth program, National Probation Reports, explores ways of collecting probation statistics to assure that these statistics are comparable to those for prisoners and persons on parole. In fiscal year 1980, the National Probation Reports produced a directory of all the state probation agencies and offices in the United States and laid the framework for collecting and publishing aggregate probation statistics in the future.

Expenditure and Employment Data

The collection, analysis, and publication of expenditure and employment data for the justice system continued during the year. Some of the highlights of those data include the fact that federal, state, and local governments expended \$24 billion for criminal and civil justice activities, an increase of 130 percent since 1971, the base year used in current reports. During the same period, public employment for justice activities increased 34 percent and that most of the expense of the justice system occurs at local levels of government, which accounted for nearly 60 percent of the total justice expenditure in 1978, compared to 28 percent at the state level of government and 13 percent at the federal level. The bureau also published for the first time data on the sources of revenues used to fund justice activities.

Courts Statistics

The bureau continued to fund the National Center for State Court's National Court Statistics Project in fiscal year 1980. This project is designed to reestablish the Census Bureau's court caseload series, which was discontinued in 1946. The project produced two reports to improve the quality of data available through state court administrators' offices. The first of these, the State Court Model Statistical Dictionary, presents definitions and reporting instructions for major caseload categories. The State Court Model Annual Report sets forth a recommended caseload classification scheme and data presentation format for state court administrators' annual reports. In addition, the project

provided technical assistance to state court administrators' offices in statistical matters.

Dissemination of General Justice Statistics

During the year, BJS published the seventh annual edition of the Sourcebook of Criminal Justice Statistics. It presents data from about 100 separate sources in an easy-to-use single volume and has proved to be extremely popular with policy makers, researchers, and other users.

The National Criminal Justice Data Archive, operated by the Inter-University Consortium for Political and Social Research at the University of Michigan, expanded its activities in support of criminal justice data analysis. It has continued to acquire and disseminate data files for secondary analysis, and its holdings now include more than 50 data sets. The archive has begun to disseminate microfilmed tabulations of National Crime Survey data prepared by the U.S. Bureau of the Census for those data users lacking access to computing facilities.

White-Collar Crime Statistics

Several projects were undertaken to address the general area of statistics on white-collar crime, computer crime, and fraud in public assistance. The bureau has begun methodological work to establish definitions and classifications for white-collar crime, the identification and analysis of problems associated with measuring the extent and impact of these crimes, and the identification and analysis of existing and potential sources of data.

A major contract was awarded to provide a series of workshops and conferences in the area of computer crime.

A project was initiated to analyze the feasibility of collecting data on electronic funds transfer crime and electronic mail crime.

Finally, a project was funded that will assess the utility of management information systems for estimating the extent of fraud in public assistance programs.

Federal-State Cooperative Program

To date, the funding of state statistical programs has resulted in the establishment of statistical analysis centers in 40 states. Fourteen have been institutionalized and now are funded entirely by the states. The centers produce periodic and special statistical reports and analyses on crime, criminal justice processing, and criminal justice resources for each state's governor, legislature, criminal justice agencies, and the public. For example, a budget analysis conducted by one center into the number of correctional personnel needed to staff new facilities resulted in a new staffing plan with a substantial savings.

Bureau funding also has resulted in the establishment of state-level uniform crime reporting centers in 46 states, 42 of

which are now state funded. In addition to reporting crime data to the Federal Bureau of Investigation, the states use the information for planning, budgeting, and evaluation.

A system of crime classification is being developed for the bureau for use by police departments in analyzing crime patterns. BJS also began the development of procedures to assist state corrections departments in such areas as prison population forecasting, prototype statistical reporting, and the more effective use of existing data bases. When implemented it will provide analytic tools that can be utilized by corrections analysts in meeting state and national reporting requirements and information requests from state legislators, the media, and federal and state government agencies.

During the year, the bureau continued to support the development of statistical components of state and local information systems. These components deal with corrections, state courts, and state and local prosecutors.

Privacy and Security

Numerous projects were undertaken concerning the

legislative mandate that the bureau ensure both the confidentiality of statistical and research data and the privacy and security of criminal history information.

One project is identifying substantive and operational relationships between the Act's requirements and other federal and state requirements, and appraising the effect of these requirements upon the quality, utility, and confidentiality of data. Another project is analyzing the various techniques employed in maintaining confidentiality and security standards in operational and research computer centers. The objective of this latter project is to identify cost-effective techniques which can be used by researchers to protect identifiable data maintained in a computer.

Projects were funded to help states and local agencies comply with the bureau's regulations on the privacy and security of criminal history dissemination.

Several documents were released which reviewed recent legislation regarding privacy, security and confidentiality, and which discussed issues relevant to this area.

Board of Immigration Appeals

David L. Milhollan
Chairman

The Attorney General is charged by law with the administration and enforcement of all laws relating to the immigration and naturalization of aliens. Certain aspects of his power and authority for the administration of such laws have been delegated to the Board of Immigration Appeals (8 C.F.R. 3.1). The Board is a quasi-judicial body operating under the supervision and control of the Associate Attorney General. It is independent of the Immigration and Naturalization Service, the agency charged with enforcement of the immigration laws.

The Board is composed of a Chairman and four members. Supporting the Chairman is an Executive Assistant/Chief Attorney Examiner, who has authority to act as an alternate member, and an administrative officer. Of the total board staff of 41, there are 16 Attorney Advisors who assist in the preparation of board decisions and 18 clerical and administrative personnel.

As the highest administrative tribunal charged with interpreting and applying the provisions of the immigration laws, the board's primary missions are to establish guidelines for the exercise of the Attorney General's discretion and to carry out the Congressional mandate that immigration laws receive uniform application throughout the United States. The board accomplishes this in part by analyzing, refining, and clarifying policy and procedure in its decisions and, in part, by reconciling inconsistent orders issued by different officers of the Immigration and Naturalization Service.

The board has jurisdiction to hear appeals from specified decisions of the Immigration and Naturalization Service in which the Government of the United States, through the Service, is one party and the other party is either an alien, a citizen or a business firm. Pursuant to a Department of Justice Order (No. 45-54, April 23, 1954), which has been endorsed by the courts, the board is called upon to exercise its independent judgment in hearing appeals for the Attorney General.

The wide variety of cases reaching the board consist of appeals from decisions rendered by immigration judges and district directors involving formal orders of deportation, discretionary relief from deportation, exclusion proceedings, claims of persecution, stays of deportation, bond and detention, petitions for preference immigration status for alien relatives of U.S. citizens and permanent resident aliens, and administrative fines imposed upon carriers because of violation of the immigration law.

Appeals are decided by the board in written opinions. Unless modified or overruled by the Attorney General, board decisions are binding on all officers of the Immigration and Naturalization Service. Decisions relating to final administrative orders of deportation, which constitute the bulk of the board's caseload, may be reviewed in the United States Courts of Appeals. Other Board decisions may be reviewed in the federal district courts.

The most important Board decisions — which address issues of first impression or resolve unsettled areas of law — are published as precedent decisions. These decisions, in addition to being binding on the Immigration and Naturalization Service, are looked to for guidance by the Department of State, the Public Health Service, and the Department of Labor in order to coordinate their operations with those of the Service.

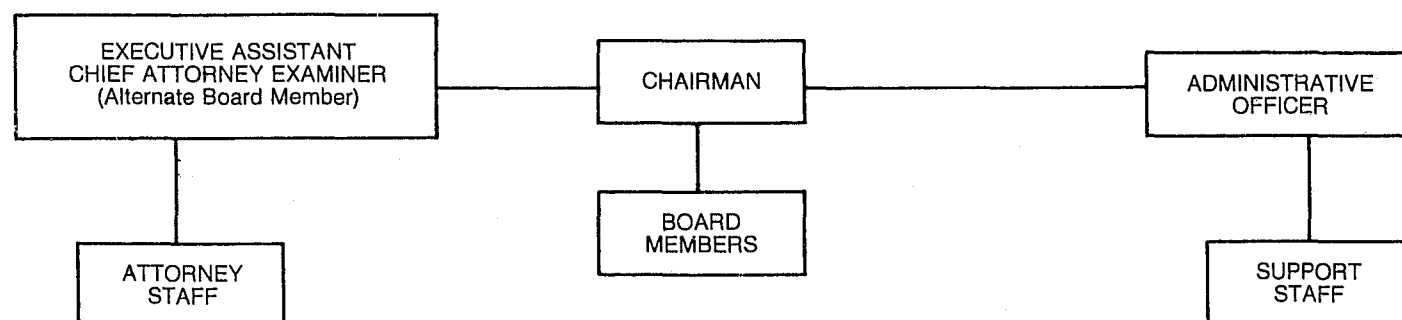
During fiscal year 1980, the board disposed of 2,762 cases involving 3,189 aliens. This represents an increase of more than 367 cases resolved in fiscal year 1980 over fiscal year 1979. Seventy-three of these cases were designated as precedent decisions for publication. In this period, no decisions of the board were modified or overruled by the Attorney General.

Aside from its primary responsibilities of interpreting the immigration laws and ensuring that they are uniformly applied, the board is also responsible in large part for reviewing the qualifications and professional conduct of attorneys and representatives who practice before the Service and the board. In this regard, the board is responsible for "recognizing" various qualifying nonprofit social agencies, which in turn may seek to have the board "accredit" their representatives for practice before the Service and the board. During fiscal year 1980, the board issued 27 decisions involving "recognition" questions and 61 decisions concerning applications for accreditation of representatives. The board, with the approval of the Attorney General, is also responsible for suspending or barring from practice before the Service and the board any representative or attorneys, if the public interest so requires.

Following are a representative selection of Board of Immigration Appeals' decisions issued in fiscal year 1980 involving various areas over which the board exercises appellate jurisdiction.

Two international events affected the nature of the cases before the board in fiscal year 1980. The first was the

Board of Immigration Appeals



unlawful seizure of the United States Embassy in Tehran, Iran, on November 4, 1979. Following the seizure of the Embassy and the imprisonment of the embassy personnel as hostages, President Carter directed the Attorney General to identify any Iranian students in this country who were not in compliance with the terms of their entry visas and to take the necessary steps to commence deportation proceedings against those who had violated applicable immigration laws and regulations. As a result, the Attorney General issued a regulation, 8 C.F.R. 214.5, requiring Iranian students to report within 30 days to their local immigration office to provide information relevant to their immigration status. Deportation proceedings were brought against many Iranian nationals, who were allegedly in the United States in violation of law and regulations. Many appeals from those Iranians ultimately ordered deported were taken to the board.

The board's decision in *Matter of Sedghi*¹ involved the interpretation of one aspect of the regulation requiring Iranian students to report to local Service offices. It was required in 8 C.F.R. 214.5 that each student present "[e]vidence from the school of [his or her] enrollment and payment of fees or waiver of payment fees for the current semester." The student in question had been unable to pay the required school fees. The school did not waive the student's ultimate obligation to pay but allowed him to continue with his studies over an extended period of time. The board affirmed a decision of the immigration judge terminating deportation proceedings against the students. In view of the purposes underlying the regulations, a "waiver of payment of fees" for maintenance of student status purposes was found to have arisen because the school permitted the student to register and attend classes for two successive semesters, because the student in fact continued with his studies, and because there was no evidence offered that the school did not consider the individual to be a student in good standing.

The second major international event affecting the nature of cases before the board in fiscal year 1980 was the exodus

of Cubans from their homeland to the United States in the spring of 1980. Over 100,000 Cubans landed in South Florida by boats during the months of May and June 1980 alone. This influx followed the enactment of the Refugee Act of 1980² which went into effect on April 1, 1980. The President determined that the legislation had not contemplated such a sudden, massive arrival of persons without valid documentation who had not been processed overseas. Accordingly, on June 20, 1980, it was announced by the U.S. Coordinator for Refugee Affairs, Department of State, that special legislation would be sought to regularize the status of designated categories of Cubans and Haitians and that, in the interim, immigration proceedings against the affected persons would be withheld.

This withholding of exclusion and deportation proceedings, however, did not apply to "criminals." A significant number of proceedings were convened against Cubans whom the Service concluded were both inadmissible to the United States because of criminal acts and ineligible for relief under the Refugee Act of 1980 because of the commission of "serious nonpolitical offenses." These cases led to the first interpretations by the board of the Refugee Act. In *Matter of Rodriguez-Palma*³, the board addressed the issue of what a "serious nonpolitical offense" was within the meaning of section 243(h) of the Immigration Act, as amended by the Refugee Act of 1980. It was held that under the facts of that case, the applicant's conviction in Cuba for the crime of robbery was a "serious nonpolitical offense" under any definitional standard. The appeal from the immigration judge's order finding the applicant excludable from the United States and ineligible for asylum or relief under section 243(h) was accordingly dismissed.

Another very significant case decided by the board was *Matter of Belenzo*.⁴ That case dealt with the appropriate procedure for terminating the lawful permanent resident status of an alien who had obtained adjustment of status pursuant to section 245 of the Act. A specific rescission provision is provided in the Act, and prescribes a five-year

statute of limitation for rescission of adjustment of status cases. In this case, however, the Service proceeded first in deportation proceedings, instead of rescission proceedings, against an alien whose status had been adjusted over five years previously. The charge of deportability was that the alien was excludable at the time of his last entry because his adjustment of status was fraudulently obtained, despite the fact that the five-year statute of limitations for rescission had already expired. The board concluded that in section 246 of the Act, Congress provided the exclusive method for rescinding adjustment of status and ordered the deportation proceedings terminated. A recent Service motion to reconsider this decision was denied by the board.⁵

*Matter of Bowe*⁶ involved an application for discretionary relief under section 212(c), one of the most litigated sections of the Act. In *Bowe*, the majority of the board held, rejecting the Service's argument to the contrary, that we were bound, in the Ninth Circuit, by Ninth Circuit precedents holding 212(c) relief to be unavailable to aliens facing deportation under section 241(a)(11) for drug-related crimes. The board has previously held that 212(c) was available to such aliens⁷, except in the Ninth Circuit, and the alien and the Service both argued in *Bowe* that the relief should be available to these aliens in the Ninth Circuit as well. Although we agreed with both the Service and the alien that the Ninth Circuit precedents in this area were conflicting, and that they were contrary to the position taken by this board and by other courts with regard to the availability of section 212(c) relief, we did not consider ourselves free to ignore the court's decisions in a case arising in the Ninth Circuit. One board member dissented, arguing that the fact that the alien's 212(c) application was being made in conjunction with an adjustment of status application under section 245 distinguished this case from those Ninth Circuit precedents which the majority had found to be controlling.

A Service motion to reconsider our decision in *Bowe* is presently pending before the board. The motion is based in part on the fact that the Supreme Court recently remanded to the Ninth Circuit a case similar to *Bowe*, to enable that court to reconsider its position on section 212(c) relief in light of present Service policy.

Two recent visa petition cases warrant some comment. In the first, *Matter of McKee*⁸, the board decided to follow the rationale of the District Court for the District of Columbia in *Chan v. Bell*⁹, where the court held that the Service could not deny a visa petition based on a marital relationship solely because the parties were no longer living together. Previously, the board had required proof that the marriage was not only bona fide at its inception but also that it con-

tinued to be viable at the time the visa petition was adjudicated. Upon information from the Service that it was in agreement with the court's ruling, the board modified its earlier precedent decisions and concluded that separation of the marital partners was not in and of itself a valid basis for denial of a visa petition. It was acknowledged, however, that separation was nevertheless a relevant factor in determining whether the parties intended to establish a life together at the time they were married and, thus, whether their marriage was bona fide at its inception. In subsequent decisions, the board has extended the rationale in *Matter of McKee* to situations involving the admissibility¹⁰ and adjustment of status¹¹ of persons seeking lawful permanent resident status on the basis of their marriage to a U.S. citizen or lawful permanent resident, but has limited its effect to those cases where the separation has not been pursuant to the terms of a legal separation agreement.¹²

In another case involving a visa petition, *Matter of Rivers*¹³, the board addressed the issue of who has the right to the legal custody of a legitimated child. Earlier board cases had held that legal custody for purposes of section 101(b)(1)(C) of the Act vested only by natural right or court decree, and that as a general rule only a child's mother had a natural right to a child's custody. In *Rivers*, we modified those cases, and held that the natural father has a right to the legal custody of a child he has legitimated which is equal to that of the natural mother, and that, absent affirmative evidence indicating otherwise, the natural father will be presumed to have the legal custody of that child at the time of legitimation. This result in no way deprives the mother of her right to her child's custody; it simply recognizes that a natural father who has legitimated his child has a right to custody as well, and that he will, therefore, be presumed to have met the legal custody requirement of section 101(b)(1)(C).

CITATIONS

- (1) Interim Decision 2788 (BIA 1980)
- (2) Public Law No. 96-212, 94 Stat. 102 (March 17, 1980)
- (3) Interim Decision 2815 (BIA 1980)
- (4) Interim Decision 2793 (BIA 1980)
- (5) *Matter of Belenzo*, Interim Decision 2841 (BIA 1980)
- (6) Interim Decision 2819 (BIA 1980)
- (7) *Matter of Silva*, 16 I&N Dec. 26 (BIA 1976)
- (8) Interim Decision 2782 (BIA 1980)
- (9) 464 F. Supp. 125 (D.D.C. 1978)
- (10) *Matter of Pierce*, Interim Decision 2812 (BIA 1980)
- (11) *Matter of Boromand*, Interim Decision 2811 (BIA 1980)
- (12) *Matter of Lenning*, Interim Decision 2817 (BIA 1980)
- (13) Interim Decision 2802 (BIA 1980)

Antitrust Division

Sanford M. Litvack
Assistant Attorney General

The mission of the Antitrust Division is to make competition work throughout the American economy.

The Antitrust Division fulfills its mission first as a law enforcement agency bringing civil and criminal antitrust cases, primarily under the Sherman and Clayton Acts, to promote or maintain competition in particular markets. Second, the division participates in proceedings of federal (and occasionally state) regulatory agencies where those proceedings involve important questions of antitrust law or competition policy. Third, the division appears before Congressional committees and within the Administration as an advocate of more competitive legislative and policy solutions to many of the nation's problems. Finally, division personnel participate in seminars and speak before professional associations, business groups, and other organizations as advocates of competition.

With a congressionally-authorized strength of 939 full-time positions, the division filed 83 cases during fiscal year 1980. It opened 364 formal investigations of possible violations of the antitrust laws, initiated 275 contested proceedings involving enforcement of various consumer protection laws, and spent more than 4,644 attorney days in court on antitrust and consumer protection matters. The division's Appellate Section filed briefs in 19 antitrust cases and 290 administrative law cases in the Courts of Appeals and the Supreme Court. The division also participated in 66 federal regulatory agency proceedings—filing briefs, appearing at hearings, and presenting oral arguments—during the past year.

The Antitrust Division devoted significant resources to competition advocacy in the legislative area during fiscal year 1980. The Assistant Attorney General, or his representative, made 21 appearances before congressional committees on matters relating to antitrust law and policy. The division answered 295 requests from the Office of Management and Budget and from the Congress for comments on proposed legislation. The division also continued to provide information on a wide variety of matters to Congress and to the public: it responded to 341 mail inquiries from Congress, 51 inquiries referred to it by the White House, and several thousand inquiries directly from the general public. Three hundred ninety-six requests were received under the Freedom of Information Act and Privacy Act.

Competition advocacy by the division in fiscal year 1980 also occurred in a wide variety of other forums. Division personnel participated in 79 interagency and international committees dealing with a wide range of issues, such as

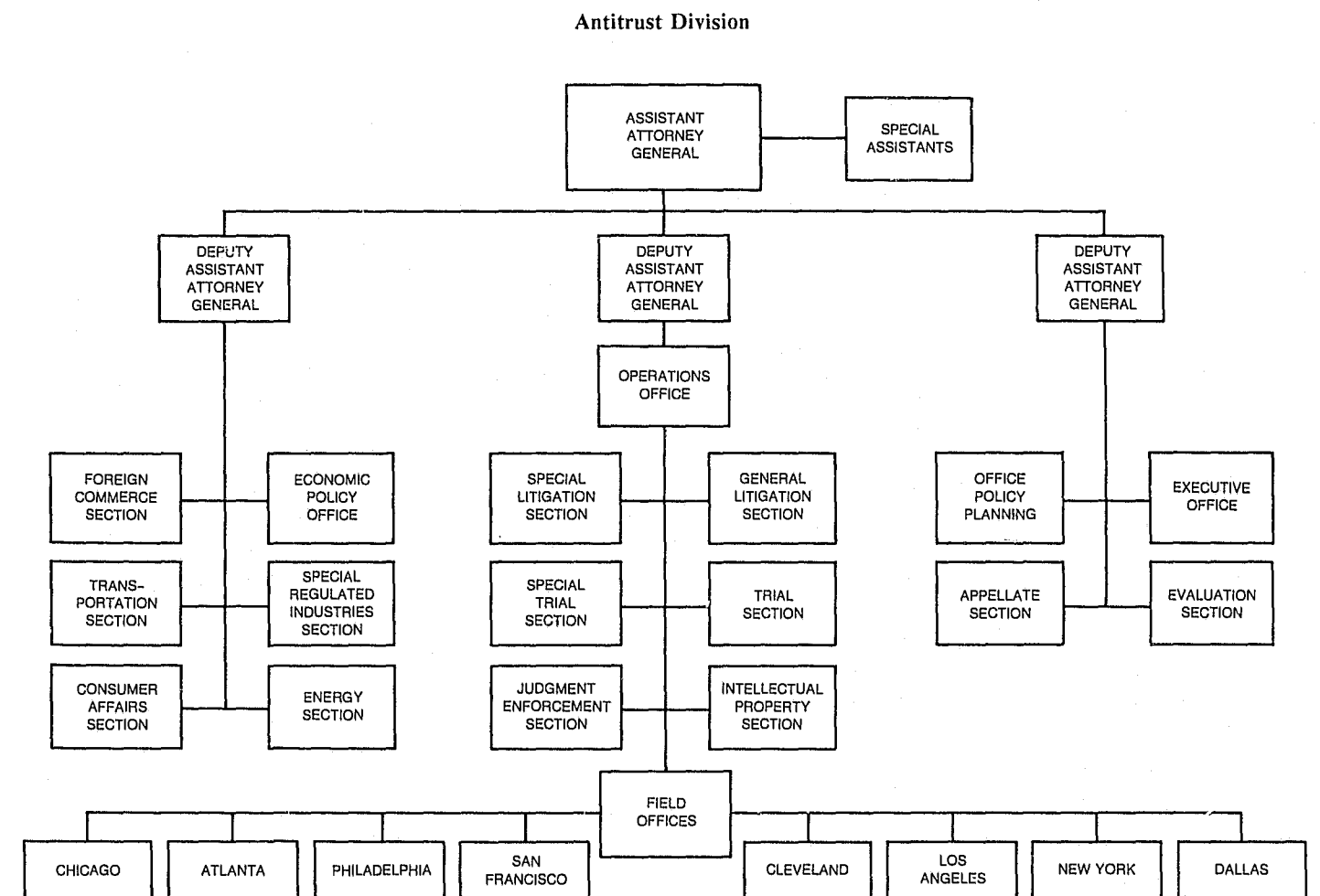
deregulation in the trucking and ocean shipping industries, government patent policy, energy, international transfers of technology, trade policy, and industrial innovation. As required by various statutes, the division provided advice to other federal agencies on the competitive implications of more than 691 proposed transactions, including mergers and acquisitions of financial institutions, disposition of surplus government property, federal coal leases, and outer continental shelf lease sales. Finally, the division prepared 14 statutory reports to the President and to Congress on a variety of competitive issues. Examples include reports on the activities of the International Energy Agency, the state of competition in the coal industry, identical bidding in public procurement, and an investigation of gasoline shortages.

Price Fixing and Other Restraints of Trade

The Antitrust Division has continued and, in fact, increased its emphasis on criminal enforcement as the major deterrent to white-collar antitrust violations. Fifty-five criminal cases were filed during fiscal year 1980 (compared with 27 in fiscal year 1979); more criminal cases were filed this year than in any year since World War II. The division's emphasis on criminal enforcement was also reflected by an increase in jail sentences from 1,265 days to be served in fiscal year 1979 to 1,441 days in fiscal year 1980. Fines and recoveries totaled more than \$12.5 million in fiscal year 1980, the second largest amount in the division's history.

Reflecting its concern with restraints of trade that impact directly upon consumers, the division filed its first felony charges against resale price maintenance in September of 1980, alleging a conspiracy to fix the retail price of certain food processors, and announced a policy of increased criminal enforcement attention to these anticompetitive practices.

Enforcement actions against price-fixing and other restraints of trade in a wide variety of products were successfully concluded in fiscal year 1980. Examples include wiring devices, dairy products, steel reinforcing bars, linen supplies, carcass beef, windows, fuse products, pressure sensitive tape, and cigarettes. Cases filed in fiscal year 1980 and pending at the close of the fiscal year challenged anticompetitive practices affecting the sale of such products as motion picture cable-TV rights, industrial nitrocellulose,



greaseproof paper, screws, art materials, and shopping carts.

The division also continued its increased scrutiny of anticompetitive conduct in the service industries. It filed a civil antitrust suit charging a nursing home association with conspiring with its members to refuse to enter into new contracts with the state except on terms agreed upon by the association and its members, and favorably concluded a similar suit filed in fiscal year 1979. It challenged a prohibition on competitive bidding by a state board of registration for professional engineers and land surveyors. Other cases in the service industries focused on waste disposal, stenographic reporting, realty, and escrow services.

The division's enforcement program had a particularly strong impact on the road building and airport construction industries. During the year, the division initiated 35 prosecutions involving 20 corporations and 28 individuals in connection with conspiracies to rig bids on public highway or airport construction in five states. Almost all of these cases ended in pleas of guilty.

Although the Supreme Court did not consider any government antitrust cases in its last term, the Antitrust Division actively participated as *amicus* in three private cases. The court's decisions in those cases should materially assist the division's own enforcement program.

Potentially, the most significant of these decisions was *Catalano, Inc. v. Target Sales, Inc.*¹ Accepting the division's *amicus* position, the Supreme Court reversed a court of appeals decision and held that an agreement among competitors to fix credit terms is equivalent to an agreement to fix prices and, like all price-fixing agreements, is unlawful per se. *Catalano* refutes the recently voiced notion that the Supreme Court had begun to narrow the per se rule in recent years, and should facilitate antitrust enforcement.

*California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*² involved a California statute that established a resale price maintenance scheme for the sale of wine by wholesalers. In finding in this scheme a violation of the Sherman Act, the court rejected the argument that it was immune from the antitrust laws as state action under the ra-

tionale of *Parker v. Brown*, 317 U.S. 341 (1943). The court held that no such immunity exists unless the challenged restraint is "one clearly articulated and affirmatively expressed as state policy" and the policy is "actively supervised" by the state. The "active supervision" requirement was not satisfied by a statute that merely authorized and enforced private price-fixing agreements.

In *McLain v. Real Estate Board of New Orleans, Inc.*³ the Supreme Court resolved the question of whether an alleged price fixing conspiracy among real estate brokers was within the jurisdictional reach of the Sherman Act. The court held that the "in or affecting interstate commerce" requirement may be established by a showing that the defendant's activities had a substantial effect on interstate commerce, and that there is no requirement for a more particularized showing that the alleged anticompetitive conduct itself actually had restrained interstate commerce.

Most government antitrust cases in the courts of appeals during fiscal year 1980 involved criminal law issues. Perhaps the three most significant decisions by appellate courts during the last year were *In re Grand Jury Proceedings (Northside Realty)*,⁴ *United States v. Azzarelli*,⁵ and *United States v. SIGMA*.⁶

In *Northside Realty*, the court held that a target of a grand jury investigation is not entitled to a statement of issues and a summary of such factual matters as might be relevant to the division's decision of whether to seek an indictment where the government has offered the target the opportunity to argue that no indictment is warranted. In *Azzarelli*, the court reaffirmed that the alteration of a product, or its mixing with other materials, does not necessarily interrupt the flow of interstate commerce and thus defeat antitrust jurisdiction. The court also rejected the argument that the per se rule is inapplicable in an "affecting commerce" situation as opposed to a "flow of commerce" situation. Finally, in *SIGMA*, the court rejected an expansive interpretation of the Supreme Court's decision in *United States v. United States Gypsum Co.*⁷ involving the evidence necessary to establish intent in criminal Sherman Act cases. The *SIGMA*, the court concluded that where the alleged conduct is per se illegal, no inquiry need be made beyond whether the defendant joined or formed the anticompetitive conspiracy.

Monopoly and Oligopoly

The division's second major enforcement effort focuses on market structure and on anticompetitive practices that may lead to or stem from overly concentrated markets or monopolies. Under Section 7 of the Clayton Act, the division challenges mergers that threaten undue market concentration and a reduction in existing or potential competition. It also invokes Section 2 of the Sherman Act to seek in-

junctive and structural relief from the adverse effects of monopolistic acts or practices.

Effective merger enforcement requires information about an anticompetitive acquisition before it is consummated so that, where possible, it may be challenged before the damage is done. The Antitrust Division (and the Federal Trade Commission) obtain information on significant mergers pursuant to the premerger notification provisions of the Hart-Scott-Rodino Antitrust Improvements Act; 782 premerger notification reports were reviewed during fiscal year 1980. After initial review of these reports, 62 more thorough investigations were begun. The division also reviewed over 600 other mergers and acquisitions by banks and other financial institutions.

In all, the divisions filed ten merger cases in fiscal year 1980. Three were purely "horizontal," i.e., they alleged the elimination of existing competition; six involved the elimination of potential competition; and one "vertical" case concerned anticompetitive effects resulting from a merger of buyer and seller. In four of these ten cases, the defendants settled on terms favorable to the government or abandoned the acquisition. One preliminary injunction was granted; one was denied. One case filed last year was tried and lost. Five of the cases filed in fiscal year 1980 were pending or on appeal at the end of the year.

The division's efforts to curb monopolization continued. Significant relief was obtained in two consent decrees—one entered and one lodged with the court—that would terminate civil antitrust suits against the Columbia Broadcasting System, Inc., and the American Broadcasting Companies, Inc. A similar suit against the National Broadcasting Companies, Inc. was settled in 1977. Filed in 1974, these three cases against the major television networks sought to eliminate their dominance of prime time network programming. The decrees are aimed at eliminating restrictive and anticompetitive network practices.

Substantial progress was made in the division's major monopolization cases against the International Business Machines Corp. (IBM) and the American Telephone and Telegraph Co. (AT&T). The trial in IBM is reaching its final stages and should be completed in fiscal year 1981. In AT&T, the division filed a 2,000-page third statement of contentions and proof; a similar statement was filed soon thereafter by the defendant. The parties also have engaged in extensive negotiations to narrow the issues for trial, which is set to begin in January of 1981.

In January 1980, the division consented to a major modification of the 1920 consent judgment in *United States v. Swift & Co.* The principal immediate effect of the modification is to permit the defendants to enter, subject to certain limitations, into the manufacturing, distribution, and retailing of some 114 food product lines from which they were barred by the original judgment. Because the com-

petitive concerns, which gave rise to the judgment, have been substantially eliminated by changed circumstances, the modification further provides for termination of the judgment after five years, unless the government, prior to expiration, seeks to extend any or all of its provisions.

Progress also was made in the division's systematic review of competitive conditions in concentrated industries. The division is proceeding on the theory that the adoption of various mechanisms by members of an industry may facilitate noncompetitive interdependent behavior which is subject to antitrust challenge.

Other Antitrust Actions

Significant legislation affecting antitrust enforcement was signed into law in fiscal year 1980. The Antitrust Procedural Improvements Act of 1980, implementing a number of recommendations submitted by the National Commission for the Review of Antitrust Law and Procedures to the President in 1979, makes needed improvements in the enforcement procedures available to the Antitrust Division and to private antitrust litigants, and clarifies substantive antitrust law in several areas. The Act provides procedures whereby the Antitrust Division can issue a civil investigative demand to obtain materials that have been discovered by parties to prior judicial or administrative litigation. It also clarifies the authority of the Antitrust Division to employ outside data processing services and experts to assist in processing and reviewing information obtained by a civil investigative demand. The Act clarifies the application of the common law doctrine of collateral estoppel to antitrust litigation and expands the jurisdictional reach of Section 7 of the Clayton Act. Finally, to help avoid unnecessary delay in antitrust litigation, the Act establishes procedures for the imposition of prejudgment interest on actual antitrust damages in certain circumstances and expands the liability of attorneys who unduly delay litigation.

Regulated Industries

During fiscal year 1980, the Antitrust Division pursued competitive goals in regulated industries through direct antitrust enforcement and advocacy of regulatory reform. It urged the adoption of statutes, rules and regulations that promote competition or that limit competition only to the extent necessary to accomplish a legitimate regulatory objective.

Recognizing transportation as a vital sector of the economy, the division participated actively in many proceedings before the Interstate Commerce Commission, the Civil Aeronautics Board and the Federal Maritime Commission. The division urged the Interstate Commerce Com-

mission to limit its long-standing policy of imposing certain anticompetitive operating conditions upon merging railroads. It successfully argued that where a merger itself is not anticompetitive, it would be counterproductive to place restraints on the merged carriers' ability to compete. The division also promoted a procompetitive alternative in a major rail merger proceeding and urged that the Interstate Commerce Commission remove several anticompetitive clauses from a joint-line agreement between two railroads for the hauling of low-sulfur western coal.

The division participated in three significant proceedings before the Civil Aeronautics Board and filed comments in several others. The division advocated the prohibition of collective rate setting by air carriers flying overseas routes; the Civil Aeronautics Board ordered independent rate setting in the important North Atlantic market. The division supported a plan to auction airport "slots" at four crowded airports. It also advocated the prohibition of unnecessary restraints on the sale of airline tickets by travel agents and others.

The Antitrust Division filed two antitrust cases in fiscal year 1980 alleging price-fixing in connection with transportation. One, a civil suit, involved the adoption and use of a rate book by oil tanker ship brokers. The other, a criminal prosecution, alleged price-fixing by the three dominant firms in the casual auto-drive-away industry. Both cases were pending at the close of the year.

The 96th Congress passed three major pieces of legislation during fiscal year 1980 of significant interest to the Antitrust Division in connection with its work in regulated transportation industries. The Motor Carrier Act of 1980 and the Household Goods Transportation Act of 1980 increase competition and decrease regulation in the trucking industry. Several of the Acts' major provisions eliminate unnecessary regulations that increase the cost of hauling freight or household goods without providing substantial benefits to the trucking industry or the public. The new laws make it easier for additional competitors, including particularly minority-owned firms and small businesses, to enter the trucking business and to receive Interstate Commerce Commission approval to operate over new routes. They increase pricing flexibility for carriers, and they provide for an end to collective rate making and antitrust immunity for single-line rates (rates charged by one carrier during an individual haul) as of January 1, 1984.

The Staggers Rail Act of 1980 makes similar changes in the railroad industry, moving toward competition and deregulation. Among its major features: 1) the Act increases the ability of rail carriers to change rates within a defined zone of flexibility; and 2) it permits the Interstate Commerce Commission to exempt carriers from unnecessary regulations and makes it easier for rail carriers both to build new lines and abandon old lines. The Act also removes the anti-

trust immunity for discussions and agreements on single-line rates effective immediately and reduces the antitrust immunity available for discussion and agreements concerning joint-line rates beginning January 1, 1984.

The division filed several comments in the past year with federal bank regulatory agencies. It urged the Federal Reserve Board to refrain from certain regulation of automated clearing houses, arguing that the proposed rules had not been shown to be necessary and might impede the emergence of competition. The division also recommended that the Depository Institutions Deregulation Committee not adopt a proposed rule prohibiting depository institutions from offering premiums and finder's fee to attract deposits. The committee prohibited the use of finders fees, but permitted the use of premiums of very limited value. The division urged the Federal Home Loan Bank Board to adopt procompetitive policies on branching by federal savings and loan associations, and to adopt a pricing schedule for check clearing and settlement services provided by Federal Home Loan Banks.

Direct antitrust enforcement was also pursued in the banking industry: the division filed a civil case against two trade associations (one comprised chiefly of bankers who handle foreign exchange transactions and the other comprised of foreign exchange brokers) alleging that they had illegally agreed on commission rates for handling foreign exchange transactions.

The division filed comments in several important proceedings before the Federal Communications Commission. It recommended deregulation of radio broadcasting to allow normal market forces to determine programming content. It also urged the allocation of a portion of the broadcast spectrum to digital termination services and the authorization of cellular radio communication services—proposals that could provide effective competition to the existing telephone system. The division recommended that cellular licenses not be granted to companies providing local telephone service in the same markets.

The division also filed comments in two Federal Communications Commission proceedings concerning international telecommunications services. In one it recommended the resale and shared use of international telecommunications services, thereby permitting small users to take advantage of volume discount rates. In the other, it urged the commission to permit COMSAT to sell international satellite communications services directly to end users. If adopted, this proposal would inject a new competitor at the retail level in international telecommunications services.

Division efforts to promote competition in crucial energy markets continued in fiscal year 1980. Concerned with the competitive implication of shipper ownership of crude oil and petroleum product pipelines, the division actively participated at the Federal Energy Regulatory Commission in

the *Trans-Alaska Pipeline* proceeding and the *Williams Pipeline* rate case. On February 1, 1980 a commission Administrative Law Judge in the *Trans-Alaska Pipeline* case issued an initial opinion which adopted the division's positions on rate making methodology and rate of return. Final commission decisions had not yet been issued in these proceedings at the end of the year. The division also participated in a commission evidentiary hearing involving a refusal by a utility to wheel electric power to a municipal wholesale customer of another utility. Its intervention was intended to ensure adequate consideration of competitive factors as required by the Federal Power Act.

Pursuant to its oversight responsibility under Section 252 of the Energy Policy and Conservation Act, the division, along with the Federal Trade Commission, monitored approximately 40 meetings of the International Energy Agency in the United States and overseas. On April 4, 1980 the Department issued a report to Congress regarding the activities of the International Energy Agency.

The division also rendered antitrust advice to the Nuclear Regulatory Commission in connection with applications to construct and operate nuclear power plants. It participated in the *South Texas Project* and *Comanche Peak* commission proceedings to determine whether a concerted refusal to deal by major utilities for the purpose of avoiding federal energy regulation is inconsistent with the antitrust laws and their underlying policies. A proposed settlement in these proceedings was submitted on September 15, 1980 to the Atomic Safety and Licensing Board.

On May 25, 1979 President Carter directed the Department of Justice to investigate the gasoline shortages then affecting California and certain other states to determine whether antitrust violations caused or contributed to those shortages and to report to him the results of that investigation. The Antitrust Division initiated an immediate inquiry and submitted a report to the President on June 1, 1980. While this investigation did not disclose any basis for instituting an enforcement action under the antitrust laws, it did reveal a number of factors that may have caused or contributed to the gasoline shortages, including a worldwide crude oil shortage, potential inaccuracies in industry predictions regarding domestic production, weather conditions that were more severe than predicted, the impact of regulatory uncertainty on drilling activities, a decline in gasoline yields, and defects in gasoline price and allocation controls.

Foreign Commerce

During the year, the Antitrust Division continued to monitor import and export trade for cartel or other restrictive business practices which adversely impact on prices or supplies of important consumer goods. Several investiga-

tions of such activity were initiated or continued.

The division increased its participation in proceedings before international trade regulatory agencies in fiscal year 1980, filing comments in several antidumping, countervailing duty, and escape clause matters. It also continued its work as the Attorney General's representative to the Trade Policy Committee, the Trade Policy Review Group and the Trade Policy Staff Committee. The Trade Policy Committee is an interagency group which develops trade policy and advises the President on the resolution of particular trade cases.

The division participated actively in the work of the Committee of Experts on Restrictive Business Practices. This committee recently completed a study on antitrust and buying power and continued examinations of international antitrust investigative methods and the relationship between antitrust and the learned professions in member countries. At the United Nations, the division took a leading role in developing a set of voluntary principles and rules for the control of restrictive business practices. These rules will provide guidance for United States enterprises doing business in developing countries and will create a mandate for continuing the United Nation's expert and technical assistance work in the antitrust field. The Division also was part of the U.S. Delegation seeking to negotiate a Code of Conduct for the International Transfer of Technology.

The division continued to participate in bilateral discussions and negotiations with other countries concerning antitrust enforcement cooperation. Also, during the year, the division received delegations of antitrust and other legal officials from several foreign nations interested in American antitrust law, enforcement policies, and programs.

Consumer Affairs

The division (through its Consumer Affairs Section) is responsible for litigation arising under the Federal Food, Drug and Cosmetic Act, the Consumer Product Safety Act and other statutes administered by the Consumer Product Safety Commission, civil penalty and forfeiture cases arising under the Federal Trade Commission Act, and various provisions of the Consumer Credit Protection Act. The division also enforces federal injunctive, civil penalty, and criminal provisions prohibiting automobile odometer tampering and requiring accurate mileage disclosure.

During fiscal year 1980, the division successfully concluded a number of cases under the Federal Trade Commission Act, including a major civil penalty case involving deceptive "sweepstakes" promotions. The penalty awarded, \$1,750,000, was the largest civil penalty ever awarded in such cases. The division also prosecuted civil penalty cases dealing with a number of allegedly unfair and deceptive business practices, including advertising in connection with

hair implants, car rental rates, music publishing, magazine subscription solicitation, and aluminum siding sales. It handled several cases alleging violations of a Federal Trade Commission rule to preserve credit purchasers' remedies against holders of loans. The division also filed a number of cases alleging violations of the Fair Debt Collection Practices Act, and filed one case under the Equal Credit Opportunity Act.

In its enforcement of statutes administered by the Consumer Product Safety Commission, the division prosecuted a large number of injunction and civil seizure cases to halt the distribution of unstable and hazardous refuse bins. It also litigated several cases relating to amusement park rides under investigation by the Consumer Product Safety Commission following accidents in which consumers were injured.

The division also continued its vigorous enforcement of the Food, Drug and Cosmetic Act, obtaining a criminal conviction of the operator of a commercial blood plasma collection center for conspiracy to falsify donor records and obtaining convictions or guilty pleas against a number of food warehouse operators for storage of food under unsanitary conditions. The division defended the Food and Drug Administration in a variety of cases dealing with such diverse regulatory matters as a suit to obtain approval for the use of cyclamates for beverages; efforts to compel the Food and Drug Administration to regulate cigarette filters as medical devices and to regulate nitrite in bacon as a color additive; and challenges to their regulations dealing with coal tar hair dyes, high protein diet supplements, and caffeine in foods and beverages. The division also defended challenges to the Food and Drug Administration's regulations specifying manufacturing practices for drugs and defended a number of suits attacking these regulations pertaining to generic drugs. In one action, the division successfully defended the authority of the Food and Drug Administration to require patient package inserts—informational labeling for patients—for prescription drugs.

During fiscal year 1980, the division increased its enforcement of federal odometer statutes. It initiated a program to coordinate investigations of alleged odometer tampering in various locations around the nation. Working with the National Highway Traffic Safety Administration, the Federal Bureau of Investigation and a number of U.S. Attorneys and state officials, the division conducted grand jury investigations of a number of companies and individuals alleged to have participated in illegal odometer rollback activities.

In all, the division's Consumer Affairs Section maintained an average total caseload of 868 cases during fiscal year 1980 and obtained judgments for fines, penalties and forfeitures in the amount of approximately \$2,896,300.

Business Reviews

Although the Department is not authorized to give advisory opinions to private parties, in certain circumstances, under published regulations, the division reviews proposed business plans at the written request of interested parties and states its present enforcement intentions. The regulations provide that the request and response will be announced at the time a business review letter is issued. These letters, and the supporting information supplied by the requesting party, are also available for public inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530. Supporting information will be withheld from public inspection only if the requesting party shows good cause for doing so.

The division responded to 21 business review requests during fiscal year 1980. Examples of proposals that received favorable review include the formation of a facility to aid export companies with customers who must pay in goods rather than currency, a proposal to establish a mechanics lien program to preserve and enforce such lien rights, and a joint account agreement between two securities dealers handling orders for certain specialized securities.

The division was unable to provide favorable business reviews in several instances. For example, it expressed objection to a prepaid legal services plan sponsored by a bar association and an indemnity company because the negotiated fee schedule would constitute an agreement among attorneys as to fees. A proposed agreement between providers of health care services that would prevent one from offering specific health care services for a ten-year period also received unfavorable review.

The Antitrust Division is preparing a comprehensive summary of its previous business review letters, both for the use of its staff and for publication in a form usable by the private bar. An antitrust guide to issues raised by joint research ventures was also nearly complete at the close of the year.

Federal/State Relations

In fiscal year 1980, the Antitrust Division completed its task of dispensing federal grants-in-aid to state antitrust enforcement pursuant to the Crime Control Act of 1976. For fiscal year 1980, Congress appropriated \$4 million for the state antitrust grant program; the grants to individual states ranged in size from \$67,000 to \$195,000. Since 1977 more than \$24 million has been awarded to over 40 states, resulting in a doubling of state antitrust personnel and of state antitrust cases and investigations, as well as improvements in state antitrust laws.

The division also assisted state antitrust enforcement in fiscal year 1980 by making investigative material available to state attorneys general. During the year, the division responded to 62 requests for such material pursuant to Title III of the Hart-Scott-Rodino Act. The division also participated in several cases involving the right of state attorneys general to obtain grand jury materials from the division. Accepting the division arguments, two courts have concluded that while a state attorney general does not have an absolute right to such materials, he does not have the initial burden of showing a particularized need for their disclosure under Title III.

Management Initiatives

A number of significant management initiatives were undertaken to improve division efficiency and allocation of resources. In order to improve coordination and communication with the litigating sections and field offices, the Assistant Attorney General initiated a policy of conferring on a regular basis, in Washington, D.C. and in the field, with the chiefs of those sections and offices. Improved litigation management was a division priority during fiscal year 1980; these conferences enabled the Assistant Attorney General and other top division officials to monitor carefully the progress of ongoing investigations and cases and to establish deadlines for achieving certain goals.

The division initiated a program to obtain computer support for the analysis of over 1,200 outstanding antitrust decrees, amassed over the last 90 years. With this new capability, the division plans to study the decrees for enforcement purposes and to make certain that they are functioning as intended. The division also made progress in fiscal year 1980 in the use of modern information handling tools to support litigation. In the past three years, approximately 40 matters have received automated litigation support for document indexing, transcript processing, and data analysis. The total document indexing workload since the division instituted this program is nearly 500,000 documents, or 3 million pages.

CITATIONS

- (1) 100 S. Ct. 1925 (1980).
- (2) 445 U.S. 97 (1980).
- (3) 444 U.S. 232 (1980).
- (4) 613 F.2d 501 (5th Cir. 1980).
- (5) 612 F.2d 202 (7th Cir. 1979).
- (6) 624 F.2d 461 (4th Cir. 1979).
- (7) 438 U.S. 422 (1978).

Civil Division

Alice Daniel
Assistant Attorney General

The Civil Division has overall responsibility to represent, effectively, the interests of the government, its 98 plus departments and agencies, and its officials through civil litigation. In cooperation with client agency attorneys and other parts of the Department, the division sought to secure solutions to problems as wide ranging as litigation arising from the Iranian hostage crisis to multi-billion dollar product liability litigation resulting from the use of "Agent Orange" chemical herbicide.

The reorganization of the litigation functions of the division in 1979 and the subsequent establishment of an Office of Planning, Policy and Management in fiscal year 1980 created a crucial momentum in litigation and resource management directed toward more effective and efficient accomplishment of the Civil Division's objectives.

The former organizational change provided a more flexible use of legal and support staff (i.e., larger pools of trial attorneys with wider litigation experience) and increased specialization at the initial supervisory level which permits the early recognition of the more significant cases and allows better resource allocation decisions. The latter change addressed many of the division's management and support problems in the areas of budget formulation and administration, program evaluation, information systems and management, and administrative support services. Particular emphasis was placed on the further refinement of automated litigation case management and tracking systems, as well as valid financial management systems.

The division is organized into three branches - Commercial Litigation, Federal Programs and Torts, and the Office of Planning, Policy and Management.

Commercial Litigation Branch

This branch pursues the government's affirmative civil claims arising from official misconduct, fraud, bribery, and breach of contract. The branch is also responsible for the collection of money judgments and claims arising out of numerous government grant, loan and benefits programs. In addition, the branch defends contract actions brought against the government in state and federal district courts, as well as in the Court of Claims. The government's interests in foreclosures, bankruptcy proceedings, renegotiation cases, patent and copyright infringement suits and customs related cases are also represented by the branch. The branch also includes an Office of Foreign Litigation which coordinates representation of the interests of the United States in foreign proceedings as well as representing the government

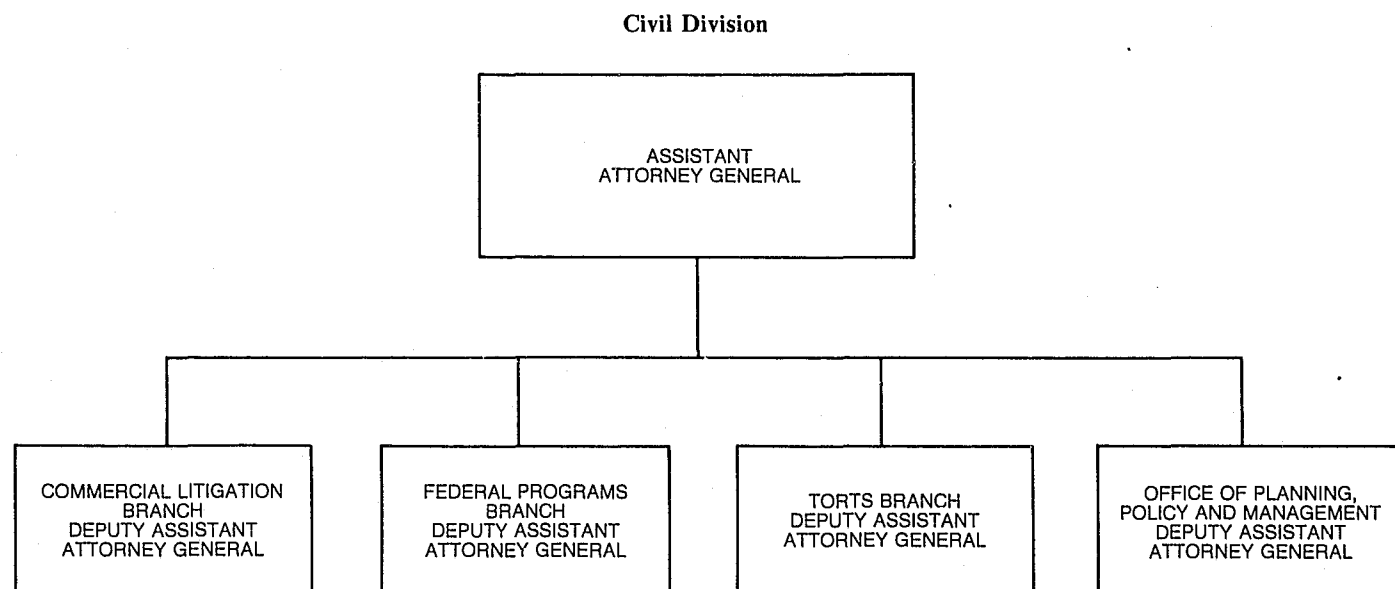
in domestic cases involving questions of international and foreign law.

The national and international significance and impact of the litigation in which the Commercial Litigation Branch was involved was illustrated by branch attorneys' representation of the interests of the United States in the myriad of litigation arising as a result of the Iranian hostage crisis. These cases raise complex questions involving the President's "freeze" of the Iranian assets and the relationship of the litigation to the negotiations for the release of the hostages.

Another example of special litigation handled by the branch is the Congressional Reference case, in which the Congress refers a bill to the Chief Commissioner of the Court of Claims for a recommendation as to whether the bill represents an "equitable claim." Illustrative of this type of litigation is a bill which would compensate 122 claimants who allegedly suffered damage resulting from the occupation of Wounded Knee, South Dakota, in February 1973. The claimants have raised substantial issues concerning the proper response of a government to terrorist, hostage-and-barricade type situations. A lengthy trial was conducted in Washington, D.C., during which the government offered expert testimony on the issue of proper governmental response to terrorist activities. The case is currently being briefed to the Commissioner. His recommendation will be returned to the Congress for a vote on the bill, which then must be signed or vetoed by the President.

Branch attorneys participated in another action in the Court of Claims which established that determinations regarding eligibility for participation in the Witness Protection Program of the Department of Justice under the Organized Crime Control Act of 1970 and the range of benefits to be afforded those permitted to participate are a completely discretionary function of government officials.

An important precedent for the integrity of public contracting was established when the Court of Claims recognized the right of the United States to recover all consideration paid to a contractor under three contracts obtained through the bribery of a government official, without requiring proof that actual damages were incurred by the government. In furtherance of this strong public policy decision against the bribing of a public official for the purpose of obtaining a government contract, the court denied the plaintiff any entitlement to receive or retain payments for work actually performed or benefits actually received by the government.



The branch has pursued the government's civil remedies for fraud, bribery and official corruption through actions in the District Courts as well. These actions reflect branchwide involvement in the Attorney General's White-Collar Crime Priorities dealing with public corruption and federal program and procurement fraud. Since 1976, the branch has worked closely with the Department of Agriculture to develop and pursue civil damage claims against grain export corporations which systematically shortweighted and misgraded grain shipments. During the past year, the branch negotiated a \$1,950,000 settlement in one such case. Claims against another grain corporation were settled for \$1,050,000. Damage claims against additional corporations are pending. In another recent case, the branch, on behalf of the Army and Air Force Exchange Service, sued a former Service contracting officer who had received gratuities and kickbacks from corporations and individuals doing business with them. The branch obtained a judgment encompassing 100 percent of the bribes and kickbacks paid to the employee.

A great variety of litigation has arisen under the Bankruptcy Reform Act of 1978. That Act expanded the scope of bankruptcy jurisdiction and liberalized the protection afforded petitioning debtors. In addition to representing the government's interests as a major creditor in bankruptcy proceedings, the branch has defended the constitutionality of this new Act. Pursuant of 28 U.S. Code §2403, the Attorney General has been requested to intervene in cases in which the constitutionality of provisions of the Bankruptcy Act have been challenged in suits between private parties. These suits have included a challenge to 11 U.S. Code §522 (f) which invalidates judicial liens and non-possessory, purchase money security interests to the extent

such liens would impair the exercise of an exemption available under the Bankruptcy Code. Other suits have presented issues pertaining to the fundamental structure of the Bankruptcy Reform Act. These suits seek to establish that the nontenured judge is in violation of the requirements of Article III of the Constitution. The government has intervened in these suits, asserting that the creation of the Bankruptcy Courts, as constituted, is a proper exercise of Congress' Article I powers.

Also, proceedings under the former Bankruptcy Act concerning the government's interests in railroads in the Northeastern United States were concluded during the past year.

The branch handles significant, and often complex, foreclosure litigation on behalf of the United States. In two of these suits, the United States sought to foreclose on a Department of Housing and Urban Development's liens for failed new towns established under their new Communities Program. The projects involved represented more than \$50 million of federal investment. The developers could not sustain the projects primarily due to the severe recession in the housing industry in the mid-1970's and due to lack of local support. Both suits were settled in fiscal year 1980. The settlements recovered part of the Housing Department's substantial investment; but, perhaps more importantly, the suits focused local attention on the need for development in these important areas and settlements, which were structured to stimulate local investments, have occurred in both areas and several projects have begun.

Other major legislation which has increased the scope of the branch's involvement in various types of litigation is the Customs Courts Act of 1980, Public Law 96-417, by which the Congress completely revised and expanded the jurisdiction of the Customs Court and the Court of Customs and

Patent Appeals. The legislation changes the name of the Customs Court to the "Court of International Trade" and grants jurisdiction to this court to entertain suits which are now instituted in the District Court. Included within this type of case, are suits instituted by the United States to recover customs duties and suits involving civil fraud under 19 U.S. Code §1592. The legislation resulted from a bill recommended by the Department nearly two years ago.

Several major trade secret and patent cases were concluded by the branch this year. In one case, the plaintiff failed to prove that the government had unlawfully disclosed or used its alleged trade secret concerning the use of a laser to separate uranium isotopes. The Court of Claims also found that there had been no unconstitutional taking of property under the Fifth Amendment. A major patent infringement claim involving transistor circuits used in nearly all electronic equipment was settled. In another major case, the Court agreed with the government's contention that a patent relating to an explosive device for inoculating clouds with seeding materials was invalid.

Significant accomplishments of the branch's Office of Foreign Litigation are highlighted by the return to the United States of \$5.5 million of Peoples Temple assets from Panama, recovery of \$6 million of U.S. Government funds which were originally frozen because of a suspected interest of the Vietnamese Government in such funds and the successful reversal by a Greek Appellate Court of an adverse lower court judgment against the United States which would have required the Voice of America to abandon or to relocate its radio transmitting facilities in Greece at a cost of \$8-12 million.

The branch also includes a Judgment Enforcement Unit, which specializes in collecting seemingly uncollectible money judgments obtained by the rest of the division. Besides ordinary collection activities, the unit initiates new litigation to protect and enforce the government's credit rights; for example, where the debtor had devised a scheme to conceal and place assets out of the reach of creditors, or where transferee or other third-party liability is sought—usually against the officers of insolvent corporations whose official acts violated creditor rights of the United States, such as the government's statutory priority. Resolution of just four such cases during the past year resulted in recoveries of \$215,000.

Federal Programs Branch

This branch principally handled injunctive litigation by and against the federal agencies, Cabinet officers, and other officials. Typically, the suits seek injunctions and declarations regarding the lawfulness and operations of many government decisions and programs. The work of the branch includes enforcement litigation aimed at remedying

statutory or regulatory violations, the defense of federal government employment policies and personnel actions, litigation relating to the disposition and availability of government records, judicial review of agency decisions and injunctive and mandamus actions charging that statutes or regulations are invalid under the Constitution or federal laws. The branch also includes the Appellate Staff, which conducts appellate litigation for the entire division.

In fiscal year 1980, the Federal Programs Branch litigated many cases of national and international significance.

In the area of national security, branch attorneys successfully defended against a suit by several Congressmen opposed to the Salt II Treaty.

When Iranian students in the United States challenged the Immigration and Naturalization Service regulations requiring nonimmigrant Iranian students to report to local immigration offices and to demonstrate that they were in compliance with the terms and conditions of their stay in the United States, branch attorneys sustained the legality of the challenged regulations.

And when, in protest of the Soviet Union's invasion of Afghanistan, members of the International Longshoremen's Association refused to load goods onto vessels bound for the Soviet Union, despite the existence of export licenses for those products, the branch expressed United States policy concerns. The courts, relying in part on the Government's Statement of Interest, ordered that the ships be loaded.

The 1980 Olympics also provided a forum for branch participation. In a suit by Taiwanese athletes seeking to utilize the name "Republic of China," as well as its flags, anthem and symbols at the Winter Games, the branch stressed the importance of noninterference by private parties with the conduct of the foreign relations of the United States and the need to honor international political decisions of the International Olympic Committee. The branch also filed an *amicus* brief in support of the U.S. Olympic Committee's decision not to participate in the Moscow Olympic Games.

In fiscal year 1980, branch attorneys successfully handled a number of actions challenging the validity of Central Intelligence Agency secrecy agreements and the remedies that can be obtained for their breach. The government was successful in obtaining a refund of the earnings from the publication of books by former Central Intelligence Agency agents without prior clearance and in violation of the Central Intelligence Agency's secrecy agreements.

Also, in the area of national security, the branch is handling a number of cases challenging reinstitution of registration for the draft. These cases typically involve claims that the exclusion of women from draft registration is unconstitutional and that draft registration requirements discriminate unconstitutionally on the basis of age, denial of liberty without due process and denial of right to privacy.

Pending litigation of national significance handled by

branch attorneys includes the defense of several suits filed against the Census Bureau in an effort to compel the Bureau to adjust the population count from the Decennial Census to reflect the alleged "undercount," which is an estimate of the number of persons believed to reside in the United States, who are not actually counted during the Decennial Census.

In fiscal year 1980, the branch litigated several important cases on the limits of executive power that significantly affected the national economy. The branch defended actions by a number of states challenging the President's decision to restrain government spending by deferral of a \$1.15 billion expenditure in federal aid highway funds and allocation by the Federal Highway Administration of the funds remaining available after the deferral. The branch successfully fought litigation involving the largest civil works project ever undertaken by the Army Corps of Engineers, the Tennessee-Tombigbee Waterway, challenged by plaintiffs claiming that Congress had not authorized the project at its current channel width.

While the energy situation continued to affect the national economy, the branch successfully defended a number of challenges to the Administration's Energy Program and to the Department of Energy's regulatory schemes. The branch successfully defended the constitutionality of the Natural Gas Policy Act, one of the five energy acts comprising the comprehensive National Energy Act of 1978. The branch handled the litigation involving the President's imposition of an oil import fee which would have raised the price of gasoline ten cents a gallon on May 15, 1980. The branch also upheld the broad discretion of the Secretary of Energy to allocate hydroelectric power from federal projects to municipalities and other entities which have a right to such power under federal reclamation laws.

In fiscal year 1980, the branch also handled significant litigation in the area of government personnel and ethics. Branch attorneys were successful in upholding the constitutionality of the financial disclosure provisions of the Ethics in Government Act as they apply to federal judges. The branch also defended successfully a suit brought by several supporters of Senator Kennedy, seeking to enjoin Cabinet members and senior White House staffers from allegedly misusing general funds for electioneering purposes.

Increasingly important litigation was handled in the areas of Human Services and Resources. For example, branch attorneys were successful in upholding the authority of the Secretary of Health and Human Services to continue Medicaid and Medicare reimbursement for drugs until a final decision by the Food and Drug Administration that a drug lacks substantial evidence of effectiveness.

The branch also successfully defended regulations issued by the Department of Transportation which authorize the expenditure of more than \$3 billion over the next 30 years to make each individual model of public transportation (bus,

subway, streetcar and commuter rail) accessible to the handicapped. Other significant litigation upheld the validity of the Secretary of Agriculture's decision to restrict the sale of minimally nutritious foods for use in the school lunch and breakfast programs sponsored by the Department of Agriculture.

The branch also handled a number of significant enforcement actions. It successfully prosecuted claims against several individuals and corporations allegedly engaged in a "daisy chain" scheme to increase the prices of certain fuel oils in violation of the Department of Energy's Pricing Regulations. The action was settled when defendants agreed to a \$5 million payment to be used to compensate overcharged individuals and entities. The branch also obtained restitution of over \$8 million of overcharges paid by consumers when a refiner engaged in a scheme involving the unlawful treatment of millions of barrels of oil, always destined for domestic markets, that were sold as export oil, exempt from Department of Energy's price regulations by refining the oil in the Bahamas and then returning it to the United States. The branch is currently handling a lawsuit brought against Fiat Motors of North America to enforce an order of the National Highway Traffic Safety Administration requiring, among other things, that Fiat recall certain number of its automobiles which posed a safety risk owing to structural corrosion.

Torts Branch

This branch represents the interests of the United States, its officers and agents, in suits seeking money damages for negligent or wrongful acts of government employees. The branch also prosecutes affirmative tort claims on behalf of the United States.

In fiscal year 1980, the Torts Branch handled a wide range of litigation. Its docket now includes not only a growing volume of traditional problems in tort law, such as personal injury and medical malpractice litigation, but also encompasses novel issues such as radiation and asbestos litigation and regulatory torts. Through reorganization, improved case management techniques, and the growing use of modern technology, the branch has been able to meet the challenge of large-scale lawsuits through more efficient use of litigation resources.

Many of the branch's most complex cases raise tort law issues unique to the government. For example, in fiscal year 1980, the United States was named third party defendant in a multi-billion dollar product liability case brought by over 2,000 veterans and their families against manufacturers of "Agent Orange" chemical herbicide used in Vietnam, alleging that exposure to the herbicide has caused a variety of injuries, including birth defects in offspring and cancer. More

than 15 federal agencies are involved; documents sought in discovery may total 15 million pages.

The branch has continued to handle a very substantial number of administrative claims and lawsuits arising out of the Swine Flu Immunization Program, any claims against the United States attributable to the vaccine. By the end of the year, some 3,965 administrative claims, seeking approximately \$2.8 billion had been filed. Thirteen hundred and eighty-four suits have been filed, over half of which were filed during fiscal year 1980 and most of which are still pending; \$13 million has been paid in compromise settlements or in cases where liability was stipulated.

The caseload of the branch reflects the growing national concern with potential hazards of radiation. The branch is currently defending approximately 30 cases based on alleged personal injuries from exposure to radiation. Half of these cases have been filed by servicemen or their survivors. In addition, residents of Southern Utah have filed two suits against the United States alleging that they have developed leukemia and other forms of cancer as a result of their exposure to fallout from the nearby nuclear test site. Attorneys in the branch are also defending two suits seeking orders that would require various federal agencies to issue warnings of adverse health effects to servicemen who took part in nuclear tests.

Defending the United States in regulatory tort suits has become a significant part of Torts Branch litigation. In these cases, plaintiffs seek compensation for injuries stemming from federal regulatory agencies' alleged failure to carry out properly their inspection, examination, and enforcement responsibilities. In recent years, suits have been based on such diverse regulatory functions as occupational health and safety regulations, mine safety, food and drug laws and consumer protection activities.

The Torts Branch continues to lead a team of attorneys from numerous federal agencies and U.S. Attorneys' Offices in defending suits against the United States in 11 district courts and the Court of Claims arising out of the exposure of workers to asbestos and various manufacturing, shipbuilding and other construction sites. In these cases, parties seek to impose liability on the United States based on theories such as failure to warn the workers, failure to ensure a safe workplace, failure to inspect or inspecting in a negligent manner, and strict liability. In the first case to proceed to trial, the asbestos industry was denied indemnity from the United States for the personal injury damages paid to a civilian employee of the Navy. Issues relating to the alleged liability of the United States for the regulatory activities of the Department of Labor and this health research activities of the Department of Health and Human Services in connection with asbestos exposure are expected to be litigated in the near future. The success of the asbestos defense team to date demonstrates the value of a strong and

committee interagency effort.

Since the 1971 Bivens decision by the Supreme Court, there has been a dramatic increase in the number of suits against present and former government officials in their individual capabilities for money damages. The Torts Branch is responsible for processing requests for Department of Justice representation by these individuals and providing representation, either directly or through private counsel. While litigation in this area initially involved primarily law enforcement activities, recently there have been a growing number of cases arising out of personnel, regulatory and other governmental activities. These cases raise novel questions concerning the extent to which the Constitution creates a cause of action against government officials and the scope of immunity available to federal officials. To date, no federal official has had to satisfy a judgment personally, but there are several decisions adverse to federal officials now in the appellate process.

The serious impact of potential and actual litigation against federal officials has prompted the Department to propose amendments to the Federal Tort Claims Act, that would make the United States liable for constitutional torts by federal officials and bar suits against these officials in their individual capacity in most circumstances. This proposal would enhance the likelihood that individuals will be compensated when their constitutional rights are violated by the tortious conduct of federal officials. At the same time, the proposal would permit involvement by the victim in initiating and pursuing disciplinary procedures against federal officials whose conduct gave rise to a constitutional violation, to retain the deterrent effect now accomplished through litigation against officials in their individual capacities.

The Torts Branch remains actively involved in the aviation and maritime areas. Fiscal year 1980 had been marked by an increase in both the volume and complexity of aviation tort matters.

In the area of maritime litigation, the Torts Branch has responsibility for seeking damages pursuant to the Federal Water Pollution Control Act, which was enacted to shift the cost of pollution cleanup from the taxpayer to industry by making dischargers strictly liable up to a maximum of \$100 per gross ton in the case of vessels (now \$125 per ton), unless the discharger proved that the sole cause was an act of God, of war, of third party negligence, or of negligence by the United States.

Office of Planning, Policy and Management

Working in close conjunction with the Assistant Attorney General, the staff and the litigating branches, the newly created Office of Planning, Policy and Management has

made significant progress in the development and implementation of management improvements and initiatives. These have included:

1) the nurturing of the 1979 reorganization of the litigation functions through the creation of a well staffed centralized management structure to provide management and administrative support and relieve the attorneys of the burden of these services so they can concentrate on litigation;

2) the improvement of the automated case management and tracking systems by the incorporation of the majority of the division's cases to include appellate and customs cases, the development of additional case status information and the capability to provide litigation management systems and reports, to abstract and index voluminous legal documents and analyze workload trends;

3) the development of more efficient and effective financial and budget management systems to include improved accounting, contracting and payment procedures,

automated financial control systems and long-term budget planning;

4) the enhancement of resource and operation support to include the procurement of word processing and other office equipment and the centralization of mail flow, messenger and supply services;

5) the increased emphasis on personnel programs to include the development of Affirmative Action plans, implementation of elements of the Civil Service Reform Act, such as Senior Executive Service, Merit Pay and employee evaluation programs, and the analysis of training and development needs and the design of specialized training courses to meet the specific needs of the division's supervisors and its secretarial staff; and

6) the development and publication of policy and procedural directives and guides to aid supervisors and managers in uniformly performing their management and administrative duties.

Civil Rights Division

Drew S. Days, III
Assistant Attorney General

The Civil Rights Division was established in 1957 following enactment of the first civil rights statute since Reconstruction. The division is staffed by 170 attorneys and 215 support personnel organized into seven major enforcement sections and two offices.

The division enforces the Civil Rights Act of 1957, 1960, 1964, and 1968; the Voting Rights Act of 1965, as amended in 1970 and 1975; the Equal Credit Opportunity Act; and civil rights provisions in numerous other statutes. These laws prohibit discrimination in education, employment, credit, housing, public accommodations and facilities, voting and certain federally funded and conducted programs. The division also now enforces the Civil Rights of Institutionalized Persons Act of 1980 which gave the Attorney General the right to sue in redress systemic deprivations of constitutional rights of persons confined in state and local mental and penal institutions.

In addition, the division prosecutes actions under several criminal civil rights statutes, coordinates the civil rights enforcement efforts of the federal agencies whose programs are covered by Titles VI and IX of the 1964 Act and Section 504 of the Rehabilitation Act of 1973 *as amended*, and assists federal agencies in identifying and eliminating sexually discriminatory provisions in their policies and programs.

Six of the sections have jurisdiction over particular subject areas and the related statutes. The seventh handled legislative and appellate matters. Complex or cases outside sections' normal jurisdictions that cannot be undertaken by them are handled by Special Counsels for litigation.

During fiscal year 1980, the division filed 35 civil suits, brought 42 criminal actions against 77 defendants, participated in 61 other new suits, obtained 46 consent decrees, and reviewed 2,422 submissions under Section 5 of the Voting Rights Act. At the end of the year, the division had approximately 3,900 cases and matters under its supervision.

Appellate Section

The Appellate Section is responsible for all division cases in the Supreme Court and the courts of appeals, for legislative matters, and for Department and agency legal counsel. The section's litigation included participation as a party and as *amicus curiae*.

During the year, the Supreme Court decided 15 division cases on the merits. In nine of these, the decisions were in accord with the division's position.

The Courts of Appeals decided 66 division cases on the merits. Of those, 57 substantially supported the division's position.

A major Supreme Court decision¹ upheld the constitutionality of the Minority Business Enterprise provision of the Public Works Employment Act of 1977, which requires that in most circumstances ten percent of each public works spending program grant will be expended on contracts with minority-owned businesses. This was a case in which the division worked closely with the Department of Commerce to prepare the defense of the Minority Business Enterprise provision.

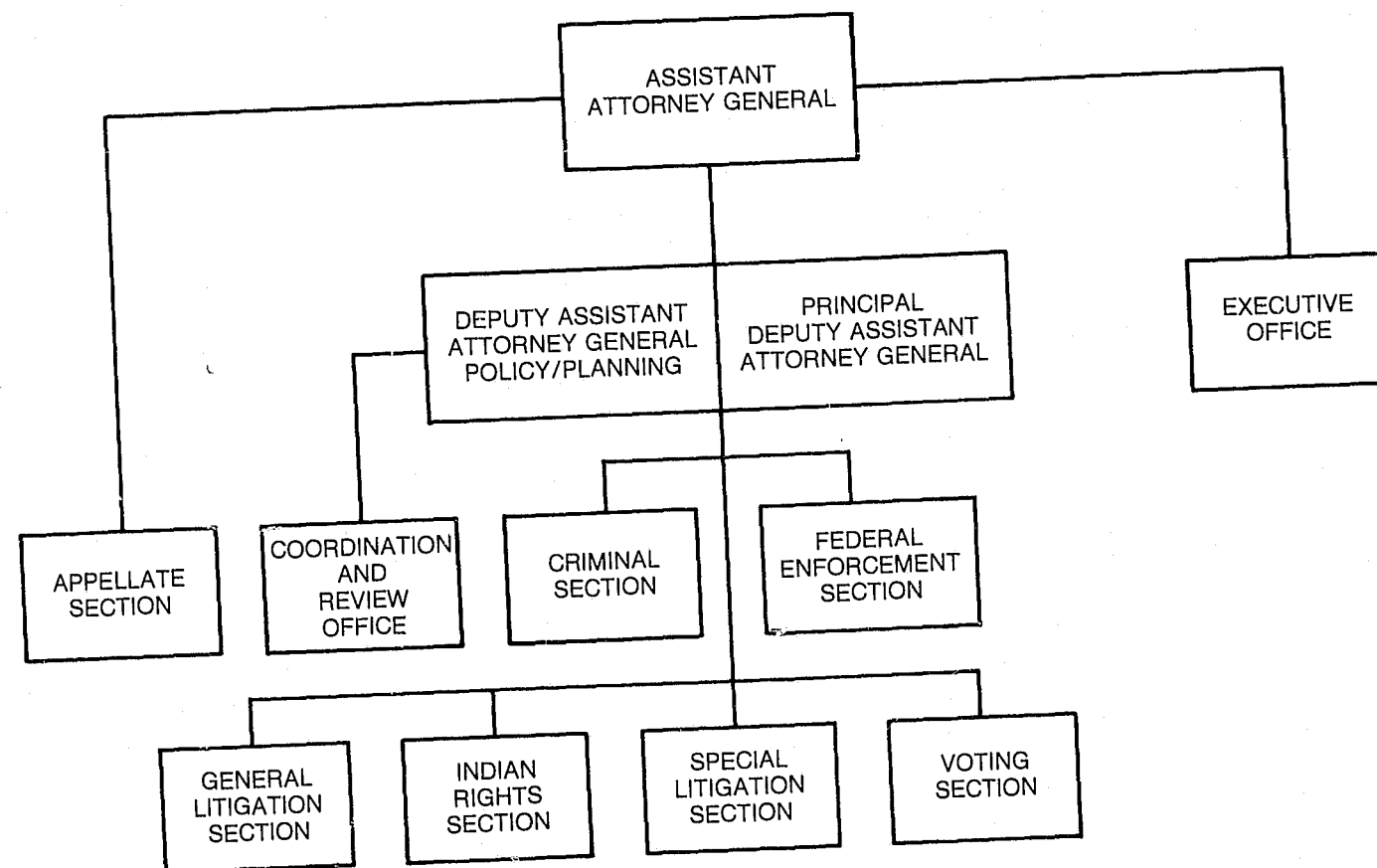
On the issue of sex discrimination, the division represented the Department of Education in four Courts of Appeals, defending the position that Title IX of the Education Amendments of 1972, which prohibits sex discrimination in federally assisted education programs, applies to employment discrimination against women. Because the decisions rendered in the Courts of Appeals conflict on the issue, the issue is being taken to the Supreme Court to resolve the conflict.

In addition to defending civil rights statutes, the Appellate Section represented the United States in government civil rights laws enforcement cases. As a result of appellate decisions, after years of litigation the school systems in St. Louis, Missouri, and Ferndale, Michigan, are operating under desegregation plans. In addition, the school desegregation remedy in Indianapolis, Indiana, will include both the city and its suburbs. In two cases dealing with the employment of minorities and women by the Virginia State Police and Fairfax County, reversals of adverse lower court decisions were obtained relating to the nondiscrimination obligations of public employers. As *amicus curiae*, the division participated in litigation involving discrimination against handicapped persons.² The Court of Appeals held that Pennsylvania's limitation on state payment to support education for handicapped children violated the Education for All Handicapped Children Act; the Act requires that states provide a free, appropriate education for handicapped children.

Assistance was provided to other federal agencies in the development of their affirmative action plans. The section provided interpretations of federal law and the *Bakke* decision to promote consistent application of civil rights responsibilities in federal contract and aid programs.

In the area of monitoring and coordinating civil rights legislation in Congress, Congress passed a major new civil

Civil Rights Division



rights law that protects the rights of persons in mental and penal institutions by authorizing the Attorney General to sue institutions that violate the constitutional and statutory rights of inmates.

Criminal Section

The Criminal Section enforces statutes designed to preserve personal liberties. Two of these laws, passed during Reconstruction, prohibit persons from acting under color of law or in conspiracy with others to interfere with an individual's federally protected rights. Other statutes enforced prohibit the holding of individuals in peonage or involuntary servitude. The section is also responsible for the enforcement of the provisions of the 1968 Civil Rights Act which prohibit the use of force or threats of force to injure or intimidate any person involved in the exercise of certain federal rights and activities.

During the year, the section reviewed 10,254 complaints alleging criminal interference with civil rights; 3,224 of these complaints were investigated by the Federal Bureau of Investigation. The results of 76 investigations were presented

to federal grand juries; 36 indictments were returned and six informations were filed charging a total of 77 defendants including 42 law enforcement officers. Twenty-nine cases were tried, resulting in 29 convictions and 12 acquittals. Mistrials were declared in two cases because the juries were unable to render verdicts. In addition, 31 defendants pleaded guilty to violations of criminal civil rights statutes and charges were dismissed against ten other persons.

Investigations into complaints alleging summary punishment by law enforcement officials continued to account for much of the section's activity. Of the 42 cases filed, 24 involved possible violations of 18 U.S. Code 242 (deprivation of rights under color of law) or Section 241 (conspiracy against rights of citizens). Twenty-one of the 29 cases tried involved alleged violations by police or other law enforcement officials.

Significant cases included the indictment of a former Dade County, Florida police officer for his alleged participation in a coverup of the death of Arthur McDuffie in Miami, Florida,³ and the conviction of a former jailer and an inmate in Fairfield, Texas, for assaults on inmates in a county jail.⁴ Four other defendants in this case tendered

guilty pleas prior to trial and the seventh defendant was acquitted. In Tulsa, Oklahoma,⁵ prior to the government closing its case-in-chief, two police officer defendants pleaded guilty to the beating of a handcuffed prisoner and to conspiracy to obstruct a criminal investigation. The victim's car in the case was pelted with a shotgun in an effort to discourage him from complaining to the Federal Bureau of Investigation.

Due to increased Ku Klux Klan activity around the country, the section continued the vigorous prosecution of Klan members for violations of federal civil rights statutes. Five Klan members in Detroit, Michigan, were charged with conspiracy against the rights of citizens and interference with federally protected activities by making shotgun attacks upon a black victim and for racial harassment and threats against a black family living in a white neighborhood.⁶ In California, two Klan members entered guilty pleas to charges of interference with housing rights after having fired a sawed-off shotgun into the mobile home of a black family.⁷ In other Klan related prosecutions, two defendants were convicted of civil rights violations and two other defendants tendered guilty pleas; three defendants were prosecuted for cross burnings; and a Massachusetts defendant was indicted for attempting to intimidate a black family living in the neighborhood.⁸

Greater emphasis was placed on civil rights violations involving Hispanic victims. A mistrial was declared in Tucson, Arizona, when the jury was unable to reach a verdict against two defendants charged with violating the Hobbs Act. They allegedly abused and tortured several illegal aliens who crossed the border onto the defendants' property.⁹ A retrial in this case is planned. Ten other prosecutions this year involved Hispanic victims, including two cases involving charges against border patrol agents for allegedly abusing undocumented alien workers.¹⁰

The section continued to enforce the involuntary servitude and peonage statutes to protect the rights of migrant workers and other minorities. In North Carolina, migrant crew leaders were convicted for violating 18 U.S. Code 1583 (kidnaping with intent to hold as a slave),¹¹ and two crew leaders in South Carolina pleaded guilty to violating the same statute.¹² Guilty pleas to violations of 18 U.S. Code 1584 were tendered by three officials of the Church of God and True Holiness in Durham, North Carolina, for holding nine teenagers in a condition of involuntary servitude.¹³

In investigations involving alleged police misconduct, a procedure was initiated to notify each victim, complainant and subject when an investigation is closed without prosecution.

Federal Enforcement Section

The Federal Enforcement Section, which was created in

April 1979, enforces statutes that prohibit discriminatory employment practices by state and local governments, provisions of the law that require equal employment opportunity by federal contractors and subcontractors and provisions of the law that prohibit discrimination in programs or activities, other than housing and education, receiving federal financial assistance.

Equal Employment Opportunity

Fiscal year 1980 was marked by steady progress and significant achievements in the enforcement of equal employment opportunity laws. Fourteen affirmative systemic ("pattern or practice") suits were filed, and 19 decrees were obtained, including five decrees after full trial. Among the consent decrees obtained were those entered in suits involving the Syracuse, New York; Nashville-Davidson, Tennessee; and Fort Lauderdale, Florida police and fire departments; the Chicago, Illinois fire department; the Cincinnati, Ohio police department, the Ohio State Police; 12 New Jersey municipal fire departments; and the entire governments of Baltimore County, Maryland; and Pinellas County, Florida. Final decrees were obtained after trial in suits against the New York State Police, Buffalo, New York police and fire departments, St. Louis, Missouri fire department, and, on a motion for supplemental relief, the Milwaukee, Wisconsin fire department. The decrees obtained after trial and upon consent typically included a comprehensive plan of prosecutive relief, covering recruitment, hiring goals, promotion goals, as well as reform of selection practices.

In the Courts of Appeals, favorable decisions were obtained sustaining and increasing the relief obtained in the trial courts in the suits against Jefferson County, Alabama, and the Philadelphia, Pennsylvania police department. Reversals of unfavorable district court decisions were obtained in suits against Fairfax County, Virginia, the St. Louis fire department, the Virginia State Police, and 45 municipal fire and police departments in Louisiana.¹⁴

The year was marked by the successful resolution of two hard-fought, long-term lawsuits. In *United States v. Lee Way Motor Freight*,¹⁵ after eight years of litigation including a full trial and appeals, a final decree was entered. The decree provided for \$2.7 million in back pay for 82 black applicants and employees, as well as full prospective relief. Similarly, in *United States v. Philadelphia*¹⁶ (police department), after more than six years of litigation that included a trial and several appeals, a final decree was agreed upon and entered. The decree provides for \$700,000 in back pay for the women harmed by sex discrimination in the police department, as well as full prospective relief.

The year was also marked by two suits against suburban school districts, alleging hiring and promotion practices that

discriminate on the grounds of race or national origin. One of those, *United States v. Jefferson County Board of Education*,¹⁷ was resolved by a consent decree, as was an earlier suit charging racial discrimination filed against the Garfield Heights, Ohio, school system.

Private sector litigation included not only the *Lee Way* decision,¹⁸ but seven new defensive suits brought for the judicial review of actions by the Department of Labor or other agencies. One of these cases, *Prudential Insurance Company*,¹⁹ was successfully settled within a few weeks of filing. In another of these cases, *E. E. Black v. Marshall*,²⁰ the first suit involving federal contractor's obligations toward qualified handicapped persons under Section 503 of the Rehabilitation Act, a favorable district court decision was obtained.

Services Discrimination

During the year, investigative procedures were developed and implemented that permitted the assessment of comparative services rendered by municipalities, such as streets, sewers, and water, on the basis of the race and national origin. At the end of the year, one investigation had been completed and several others were nearing completion. One suit alleging services discrimination, *United States v. Bexar County Hospital*,²¹ was tried and lost.

Complaints filed included an intervention in a suit alleging police strip search practices that discriminate on the grounds of sex.²² Substantial relief was obtained in the case. Two other such investigations have been completed.

An investigation was also conducted into charges of racially discriminatory police practices in the use of force by the city of Memphis, Tennessee and substantial relief in the form of a negotiated agreement was obtained.

General Litigation Section

The General Litigation Section was established in April 1979, through a merger of the Education and Housing and Credit Sections. The section enforces the federal laws designed to ensure nondiscrimination in public elementary and secondary schools and colleges; the Fair Housing Act of 1968, which outlaws discrimination in residential housing; and the Equal Credit Opportunity Act, which forbids discrimination in all aspects of credit transactions.

Education

During the year, emphasis was placed on desegregation efforts in metropolitan school systems outside the South. Letters were sent to the cities of Yonkers, New York and Lima, Ohio notifying the local officials that the public school systems were being operated in violation of Titles IV and VI of the Civil Rights Act of 1964 and the Fourteenth

Amendment. The Yonkers letter also stated that decisions concerning the location of public and subsidized housing contributed to racial segregation in the schools and that this conduct violated Title VIII of the Civil Rights Act of 1968. This is the first time that the government has combined fair housing and school violations in the single proceeding. Pre-suit consent decrees are being negotiated in Yonkers and Lima. The division obtained favorable decisions in school desegregation cases in Indianapolis, Indiana²³; Cleveland, Ohio²⁴; St. Louis, Missouri²⁵; Kansas City, Kansas²⁶; and Tucson, Arizona.²⁷ Student desegregation plans were implemented in each of these systems. In the Indianapolis suit the relief includes inter-district transfers of students. In St. Louis, after its earlier decision was reversed by the Court of Appeals, the district court ordered immediate, intradistrict relief and has instructed the parties to formulate a plan for extending the desegregation process to other school systems in the metropolitan area. The decisions in the St. Louis and Cleveland suits also found state officials liable for local school segregation, and in the Cleveland case the court appointed an administrator to supervise the desegregation process.

Other non-Southern desegregation actions include the successful defense to a case challenging a teacher assignment plan approved by the Department of Health, Education, and Welfare;²⁸ and three instances—Chicago, Illinois²⁹; South Bend, Indiana³⁰; and Flint, Michigan³¹; where for the first time in non-Southern suits, the section successfully negotiated comprehensive consent decrees before the cases were filed. On the same day the division filed the Chicago case, a consent decree was entered that requires the board to develop and implement a systemwide desegregation plan. The decree, which eliminated the need for a trial on the question of liability and shifted the focus of the case to the formulation and implementation of a desegregation plan, resolved matters that had been under investigation and the subject of discussions between the government and the Chicago school board for more than 15 years.

In addition to the cases brought in the North and West, the section continued to press for completion of the desegregation process in the southern states. A suit was filed against the Big Spring, Texas³² school board. In Marshall County, Texas officials were notified that violations of Titles IV and VI had been found. Court decrees were obtained that ordered implementation of comprehensive desegregation plans in Austin, Texas,³³ Gregory-Portland, Texas,³⁴ Rapides Parish (Alexandria), Louisiana,³⁵ Harrison County, Mississippi,³⁶ Conway County, Arkansas,³⁷ Marengo County, Alabama,³⁸ and Linden, Alabama.³⁹ In the Conway County case there was a finding of state liability for local school segregation and requiring interdistrict relief. The section secured a favorable decision from the Court of Appeals in a case challenging as too limited the relief

ordered by the district court in Tuscaloosa, Alabama,⁴⁰ and prevailed on a motion for summary judgment in its East Baton Rouge Parish (Baton Rouge), Louisiana case,⁴¹ which resulted in a court order requiring that a new comprehensive plan be formulated and implemented before the next school year. Trials were also held to obtain further relief in Lubbock, Texas,⁴² and Monroe, Louisiana.⁴³ In the Monroe suit, where interdistrict violations were found, the division is appealing the limited relief ordered by the district court. The Texas cases have not yet been decided.

Consent decrees were negotiated to resolve the remaining issues in the government's suit against the Birmingham, Alabama, school board,⁴⁴ and to settle questions concerning the senior high school construction sites and high school student assignments in Mobile, Alabama.⁴⁵ In Houston, Texas,⁴⁶ the section moved to add 22 suburban school districts to the existing case and obtain interdistrict relief. This motion was denied. The request for reconsideration is pending.

The section's higher education litigation was substantially advanced in fiscal year 1980. The court-ordered merger of the predominantly black Tennessee State University and the predominantly white University of Tennessee at Nashville⁴⁷ became effective, and a partial settlement of a suit in Mississippi resulted in desegregation plans being adopted for ten junior colleges.⁴⁸ The Mississippi consent decrees included enrollment and hiring goals at the formerly white facilities. The section also completed discovery in statewide higher education cases in Mississippi and Louisiana.

The section continued its efforts to remedy sex-based discrimination in schools by intervening in two private suits, moving for student recruitment goals in an existing case against a state-operated maritime school,⁴⁹ and filing an *amicus curiae* brief in a Michigan case which raised questions concerning the application of Title IX of the Education Amendments of 1972 to a high school athletic program.⁵⁰ The complaints in intervention charged that Texas A&M University⁵¹ has excluded women from elite organizations associated with the ROTC corps of cadets and that the University of Alaska⁵² has discriminated against women students athletes.

Other actions taken by the section include intervention in multidistrict litigation in Texas which resulted in a determination that a statute which prohibited the use of state funds to educate undocumented alien children violated the Fourteenth Amendment;⁵³ the trial of a case in Texas that challenged the failure of the state schools to provide adequate bilingual education;⁵⁴ intervention in a suit involving discrimination against Iranian students at Mississippi State University;⁵⁵ and, at the invitation of the court *amicus* participation in a similar suit against New Mexico State University.⁵⁶ The Mississippi case resulted in an order preliminarily enjoining implementation of a state statute

that would have charged Iranians attending school on valid visas an extra \$4,000 tuition. The court in New Mexico entered a judgment declaring that a motion of the school's Board of Regents that denied Iranian admission was unconstitutional, and the Regents were permanently enjoined from enforcing the motion.

Housing

During the year 12 new suits, one motion for supplemental relief, and one *amicus curiae* brief under the Fair Housing Act were filed. In addition, 15 consent decrees were obtained in Fair Housing Act cases. These actions were taken in cases in 14 states involving apartment rental and management companies, housing developers, real estate agencies, multiple listing services, public housing authorities, municipal governments, and race track owners. Most of these actions involved racial or national origin discrimination against Hispanic-Americans, Cubans, Iranians, and Soviet Jewish immigrants; one involved religious discrimination.

Three of the new suits filed involved racially exclusionary municipal land use practices, an area to which the Attorney General and the Assistant Attorney General have accorded a high priority. In one of these cases,⁵⁷ the United States intervened as plaintiff in a private suit that charges that the attempt by the town of Manchester, Connecticut to withdraw from the Community Development Block Program violates both the Fair Housing Act and the Fourteenth amendment. While participation in the block program is a voluntary matter under normal circumstances, the United States alleges in this case that the town's attempted withdrawal coincided with the establishment of a fair housing office in the town and is part of an official practice of maintaining an all-white municipality⁵⁸ by excluding blacks and Hispanics from housing opportunities. Another suit filed against the city of Birmingham, Michigan, alleges that it has pursued a policy and practice of preventing the development of racially integrated low-income housing within its boundaries. This case seeks to establish that the city has taken actions which blocked the construction of federal- and state-assisted housing, thereby maintaining the city's virtually all-white character. In a suit against the city of Dunkirk, New York (which, unlike Manchester and Birmingham, has a significant minority population), the United States alleges that the city has prevented the construction of integrated low-and moderate-income housing in white neighborhoods within its boundaries.⁵⁹ Landmark decisions were obtained in two other cases challenging similar kinds of racially exclusionary practices. In a suit by the United States against the public housing authority of Chickasaw, Alabama, the district court held the use of a residency requirement as a prerequisite for admission to

tenancy to be unlawfully discriminatory where the authority is located in a city that is virtually all-white.⁶⁰ In the most systemic challenge yet mounted against exclusionary suburban practices, the district court found the city of Parma, Ohio, liable for violating the Fair Housing Act. The court found that since passage of the Act in 1968, Parma had followed a consistent policy of making housing unavailable to blacks and perpetuating its all-white character. Elements of this policy that the court held unlawful included rejecting publicly and privately sponsored low-income housing, refusing to allow the county metropolitan housing authority to operate in Parma,⁶¹ defeating a proposed fair housing resolution, enacting four restrictive land use ordinances, and refusing to submit an adequate housing assistance plan in its CDBG application. The *Chickasaw* and *Parma* decisions are important precedents for other challenges to racially exclusionary land use practices.

Other cases initiated during the year involved important and novel issues. For example, the United States filed an *amicus curiae* brief in support of the authority and standing of the state of New York to file an action in federal court under the Fair Housing Act in its *parens patriae* capacity to redress alleged racial steering by a Nassau County real estate broker.⁶² In lawsuits against several major race tracks in New York and Florida, the United States is challenging, under the Fair Housing Act, the failure to supply rent-free dormitory housing to female stable employees while supplying such housing to male stable employees.⁶³ Another sex discrimination case challenges the refusal to count alimony or child support income for purposes of determining qualification for rental.⁶⁴ In the United States' second effort to enforce the Fair Housing Act's prohibition of racial exclusion from multiple listing services, a suit was filed challenging membership requirements that systematically and unnecessarily preclude participation by black-owned real estate companies, as well as alleged retaliatory severance of business relations with black realtors who had filed their own suit challenging such exclusionary practices.⁶⁵

Judicial decisions were rendered in three other housing cases. An unfavorable decision in a racial steering case is now on appeal.⁶⁶ A favorable decision was rendered in an enforcement case holding the defendant in contempt of court and providing supplemental relief.⁶⁷ Finally, in a significant decision, the Court of Appeals for the Fifth Circuit upheld a finding of civil contempt and an award of \$30,000 in attorneys' fees and costs against a major Atlanta, Georgia realtor; the court also upheld the use of "testing" evidence to establish the contempt.⁶⁸

During fiscal year 1980, the section's credit work focused primarily on litigating existing cases. In one suit, *United States v. Beneficial Corporation*, 492 F. Supp. 650 (D. N.J. 1980), the district court ruled that the Attorney General cannot obtain damages for victims of discrimination in Equal

Credit Opportunity Act (ECOA) cases. The complaint had alleged that the lender violated the statute by discriminating against applicants because of age and marital status, and had failed to provide the notice of adverse action required by law. The section is continuing to pursue equitable remedies in the litigation, and once these issues are resolved, the Department will consider whether to appeal the decision on damages. The section also completed negotiations leading to a settlement of its case against four trade associations that alleged that standards for residential real estate appraisals violated the Fair Housing Act,⁶⁹ and obtained a consent decree in a case where it was charged that a land developer violated the ECOA and the Fair Housing Act by discouraging blacks, Hispanics, elderly persons, and persons receiving public assistance from seeking financing for home purchases.⁷⁰ One other ECOA suit was authorized during the year, and the provisions of a consent decree were successfully negotiated.

The section participated in two private cases as *amicus curiae*. In one case, the court ruled that a white woman living in a predominantly black section of Atlanta who had her credit application rejected in part because of the location of her residence, had standing to challenge a credit evaluation system that allegedly discriminated against blacks.⁷¹ In addition, the court found that an effects test standard, rather than discriminatory intent, should be applied to ECOA action. In the second case, a plaintiff brought suit in federal court alleging racial redlining by a mortgage lender and then sought to remove a foreclosure action filed in state court.⁷² Our brief addressed the removal question, which has not yet been decided.

In addition to its litigative activities, the section conducted approximately 100 credit investigations during the year.

Indian Rights Section

This section enforces federal civil rights statutes in matters involving American Indians.

During the year, the section filed three new lawsuits, successfully negotiated three consent decrees, won two litigated cases, appealed to a higher court an unfavorable decision, and continued the litigation of a number of previously filed law suits. Two of the cases represent new initiatives in areas not previously explored. In one case, the section brought the first employment discrimination suit in which Indians were the primary victims.⁷³ The complaint alleged that the city of Farmington, New Mexico, engaged in a widespread practice of discrimination against Indians, as well as women and Hispanics, in recruiting, hiring, assignment, and promotion. The section also filed the first suit alleging that a restaurant failed to serve Indians on the same basis as non-Indians.⁷⁴ In the third suit, the United States intervened on behalf of

an Indian tribe which alleged that the State of Washington and local defendants had unlawfully withheld federal funds, resulting in a lack of needed housing and increasing an already serious health hazard.⁷⁵ This is one of very few cases brought to assure the non-discriminatory use of federal funds and raises many important and far-reaching legal issues.

Two particularly important consent decrees were negotiated by the section. In one case,⁷⁶ the San Juan County, New Mexico, Board of County Commissions agreed to restructure the way the county elects public officials from an at-large system to a single-member district system. The result will mean that for the first time in history the 30 percent Navajo minority will effectively participate in county government. In the other case,⁷⁷ the same defendants agreed to provide greatly expanded bilingual assistance to Navajo speaking voters.

The section was successful in two of three litigated voting decisions. In two cases brought pursuant to the special provisions of Section 5 of the Voting Rights Act,⁷⁸ the courts held that state imposed election restrictions that adversely affected the voting rights of Indians could not be implemented without Department of Justice approval. An appeal was sought in a South Dakota case⁷⁹ where a federal judge ruled that, while Indians had the right to vote, they could not run for elective office.

Special Litigation Section

The Special Litigation Section is responsible for the protection of rights secured under Title III of the Civil Rights Act of 1964, which prohibits discrimination in public facilities on the basis of race, color, religion or national origin, and the enforcement, *inter alia*, of Section 504 of the Rehabilitation Act of 1973, 29 U.S. Code 794, *et seq.*, the Civil Rights of Institutionalized Persons Act, P. L. 96-247, the Education of Handicapped Act, 20 U.S. Code 1401, *et seq.*, and the Revenue Sharing Act, 31 U.S. Code 1227, *et seq.*, where these statutes protect the rights of institutionalized and other handicapped persons.

In May 1980, the Civil Rights of Institutionalized Persons Act, P. L. 96-247, was signed into law. The Act gives the United States Attorney General authority to initiate action on behalf of civilly and criminally institutionalized persons where "egregious or flagrant" conditions are believed to exist that deprive those persons of their federally protected and constitutional rights. This statute clarifies the government's right to sue to vindicate the rights of institutionalized persons. This is an area in which the government's jurisdiction has previously been under challenge.⁸⁰

The section also coordinates the U.S. Attorneys' enforcement of Title II of the Civil Rights Act of 1964 which prohibits discrimination in places of public accommodations.

No cases have been filed under P. L. 96-247. However, under its mandate, four notices of intent to investigate have been sent to the appropriate authorities. Three were notices of intent to investigate actions in the prison and jail area concerning unconstitutional conditions of confinement; the fourth concerns the adequacy of treatment provided to juveniles confined in two facilities in Puerto Rico.⁸¹

During the year, the section took action in 21 cases, including the entry into nine new cases as *amicus*.

The section participated in several major prison cases where the conditions of confinement such as overcrowding, unsafe and unsanitary facilities, lack of adequate medical care, environmental inadequacies, classification inadequacies and guard brutality were at issue. Among these cases was the continuing trial of *Ruiz and the United States v. Estelle*,⁸² the longest federal civil rights trial in history. The United States, as plaintiff-intervenor, undertook an issue-by-issue analysis of practices, procedures, treatment, and housing of some 24,000 persons committed to the custody of the Texas Department of Corrections. This suit challenged, *inter alia*, overcrowding, inadequacy of medical and psychiatric treatment and use of inmates as building tenders within the Texas prison system. Similar conditions of confinement issues were successfully adjudicated in a case involving the Washington State Penitentiary.⁸³ The four-day trial in this suit was unique in that testimony was submitted through the affidavits of lay and expert witnesses. The most all-encompassing decree, which addressed 25 separate categories of concern, came as a result of our *amicus* participation in a suit against a facility that houses 1,800 inmates in Ohio.⁸⁴ Comprehensive orders that set out timetables for population reduction, improved maintenance, medical and psychiatric services, increased and better trained personnel, and improvements in recreational programs and facilities have also been issued in *Costello v. Wainwright*,⁸⁵ *Kendrick v. Bland*,⁸⁶ and *Capel and the United States v. McCarthy*.⁸⁷

Other actions in the prison facilities area included the designation by the courts in *Stewart v. Rhodes*⁸⁸ and *Guthrie v. Evans*⁸⁹ of special monitors to ensure that the defendants execute the remedies required by the court orders. In the latter case, the government was appointed to assist the special monitor in determining the adequacy of medical care provided inmates.

Section efforts on behalf of institutionalized mentally handicapped persons included the obtaining of an order from the court in *Wyatt v. Ireland*,⁹⁰ placing Alabama's mental health and mental retardation systems in the receivership of the Governor. The court also named an independent monitor who would be responsible for assisting in the compliance effort.

A noteworthy remedy in the mental retardation area was obtained in *NYSARC & Parisi v. Carey*,⁹¹ a case in which

the United States participated as *amicus*. An order was obtained requiring that stipends be paid for home care assistance to parents who took their retarded children out of the Staten Island Developmental Center. In another aspect of the case, the court prohibited the segregation of mentally retarded hepatitis B carrier children into segregated public school classrooms. Additionally, the Board of Education was ordered to readmit previously barred children to prevent the substantial harm that separation would inflict. In similar actions, the section, as plaintiff-intervenor, litigated a ten-week trial on behalf of residents of a New Hampshire institution⁹² and was admitted as friend of the court in a case in Connecticut.⁹³ The section undertook active discovery in *Jenkins v. Cowley, sub. nom. R.A.J. v. Kavanaugh*,⁹⁴ which challenges the treatment and conditions of confinement provided to residents of eight state operated mental health facilities in Texas.

Voting Section

This section enforces voting laws, including 42 U.S. Code Sections 1971 and 1974 and the Voting Rights Act of 1965, as amended in 1970 and 1975. These statutes are designed to ensure that all qualified citizens have the opportunity to register and vote without discrimination on account of race, color, membership in a language minority group or age. The section also enforces the Overseas Citizens Voting Rights Act.

Section 5 of the Voting Rights Act of 1965, as amended, requires that covered jurisdictions submit all changes in voting practices or procedures to either the U.S. District Court for the District of Columbia for judicial review or to the Attorney General for administrative review. Changes not submitted and those that are not precleared are not legally enforceable. The determination of the Attorney General, which must be made within 60 days of receipt of a complete submission, concerns whether changes have the purpose or effect of discriminating against racial and/or language minority groups.

During the year, 2,422 submissions involving a total of 7,312 voting-related changes were submitted to the Attorney General under Section 5. This is the largest number of changes yet submitted for Section 5 review in a fiscal year. Objections were entered to 32 submissions, including a Selma, Alabama redistricting plan that would have ensured that a majority of the city council would be comprised of white members. Other significant objections included an objection to South Dakota legislation that would have foreclosed persons in two counties, both of which are predominantly Indian, from voting for the officials who provide governmental services; an objection to a referendum that proposed the adoption of a method of electing the Port Arthur, Texas, City Council in a way that would in-

crease the discriminatory impact of the consolidation by Port Arthur with nearby white cities. This consolidation was previously objected to because the consolidation diluted the voting strength of blacks; and an objection to a Corpus Christi, Texas, school district apportionment plan that prevented Mexican-Americans from having a fair opportunity to elect persons of their choice.

In addition, proposed revisions to the procedural guidelines for the administration of Section 5 were published in the Code of Federal Regulations to reflect changes made in the law since 1971, when the guidelines were issued, and to give jurisdictions more helpful instruction about the submission process.

Other provisions of the 1965 Act authorize the Attorney General to assign observers to monitor elections to ensure that the right to vote and to have the vote properly counted is not denied during the election process. Under these provisions, 1,269 observers were assigned to cover 13 elections in five states, including elections in ten counties that were initially certified by the Attorney General during fiscal year 1980. This is the third largest number of federal observers to have been assigned, and the third largest number of counties to have been certified in any fiscal year since the Voting Rights Act was enacted in 1965. Eight of the counties certified were in Georgia.

The section participated in 16 cases during the year. The cases included two cases filed against the government, where the section gave support and advice to the U.S. Attorney in litigating actions that sought to restrict the operation of the language minority provisions of the Voting Rights Act (Section 203); 13 cases involving enforcement of the preclearance requirements of Section 5; and one case attacking the apportionment of the South Carolina Senate.

Noteworthy among the cases concluded was the obtaining of a consent decree that ended four years of litigation in a vote dilution case. Because of the decree, blacks will now have a fair opportunity to elect school board members of their choice under a single-member district plan that replaces a multi-member district method of election in East Baton Rouge Parish, Louisiana.⁹⁵ Another case involved the rights of Indians in Apache County, Arizona, where a three-judge court agreed that procedures used in successive elections should be compared in order to determine whether a change has occurred under Section 5, notwithstanding the fact that the elections were held for different purposes. The court agreed with the Attorney General's position that practices that violate the language minority provisions of the Voting Rights Act do not meet the requirements of Section 5.⁹⁶

In a case involving St. Landry Parish, Louisiana,⁹⁷ on remand the Fifth Circuit Court of Appeals found that a vote-buying scheme alleged to have diluted the voting rights of blacks could state a cause of action under the Voting

Rights Act; the election in question was voided pursuant to a consent decree; and the white perpetrators of the vote-buying scheme, including the white candidate, pleaded guilty to offenses under 18 U.S. Code 242. In an action against San Francisco, California, where the section worked closely with the U.S. Attorney's Office, a three-judge court entered a sweeping and comprehensive consent decree detailing needed outreach activities to ensure the providing of bilingual poll officials, the establishing of an advisory citizen task force, the maintaining of records and the furnishing of reports of activities, all designed to achieve the city's compliance with the language minority provisions of the Voting Rights Act (Section 203) with respect to Chinese and Spanish speaking citizens of San Francisco, California.⁹⁸

Because of a decision made by the Supreme Court in a case relating to Mobile, Alabama,⁹⁹ a major section effort during the year was the reassessing of the facts involved in pending and proposed vote dilution cases. The case reopened the question of the degree of proof that must be presented to find that an at-large or multi-member method of election unlawfully dilutes the voting rights of minorities. This case and cases decided after it may well have more impact on the voting rights of minorities than any other voting decisions made in the 1980s. There have been two cases with court action since the Supreme Court's decision: the East Baton Rouge Parish, Louisiana, case and the Uvalde, Texas Consolidated Independent School District case. The East Baton Rouge case involved single-member districts replacing multi-member districts for the election of school board members. The Uvalde case, a decision by the Fifth Circuit Court of Appeals, held that vote dilution cases may be brought by the Attorney General under Section 2 of the Voting Rights Act.¹⁰⁰ An intensive effort by the Voting Section is under way to participate in vote dilution cases in a way that best aids in the development of the law in this area.

Plans are under development to receive and apply data from the 1980 census, which will be used to determine whether reapportionments and redistrictings of states, counties, and other political units have an unlawful discriminatory impact on the opportunity of minorities to fairly elect representatives of their choice.

Office of Coordination and Review

This office is responsible for coordinating federal departments' and agencies' enforcement of Title VI of the Civil Rights Act of 1964, which prohibits racial and ethnic discrimination in programs and activities receiving federal financial assistance, and for coordinating federal departments' and agencies' identification of and elimination of sex discrimination from their laws, regulations, policies, and programs.

Title VI Activity

The office's Title VI component coordinates the Title VI enforcement of approximately 35 departments and agencies that disburse more than \$100 billion annually in over 400 federally assisted programs. During the year, the primary work objective of the office was the implementation of a new Title VI regulatory enforcement procedure. Under the procedure agencies were asked to amend their Title VI regulations to include specific time limits and notification terms, and centralize all agency civil rights functions into one office. The regulatory enforcement procedure is designed to be extended to cover responsibilities under Section 504 of the Rehabilitation Act of 1973, as amended, Title IX of the Education Amendments of 1972, and specific programmatic civil rights provisions of each agency.

The new procedures have been implemented by the Community Services Administration and the Department of Energy.

In approving DOE's regulations, the President specifically endorsed this regulatory procedure. Both the Office of Management and Budget and the General Accounting Office have also approved this approach. All of the agencies and departments have been contacted about the new procedures, and 15 have submitted revised regulations for Department review.

After several years of findings, recommendations, and negotiations, the Department of Labor has agreed to centralize its civil rights operations and to increase the staff resources devoted to civil rights enforcement. Both of these actions are in conformity with the recommendations made by this office.

During the year, the office issued reports of findings and recommendations after conducting interagency reviews of the Small Business Administration, Farmer's Home Administration, and the Agricultural Extension Service; entered into memoranda of understanding with the Departments of Interior and Housing and Urban Development, which implemented previous interagency survey reports' recommendations; and prepared and distributed instructional guidelines for agencies' use in developing civil rights enforcement plans and program-specific civil rights guidelines which make recipients and beneficiaries aware of their Title VI rights and responsibilities. The civil rights staffs of the Department of Housing and Urban Development, the Civil Rights Commission, and the Departments of Agriculture and Health and Human Services were trained by office staff members.

The Office of Management and Budget was assisted by this office and the Equal Employment Opportunity Commission (EEOC) in drafting a government-wide policy permitting the collection of data, under certain conditions, pertaining to race, ethnic background, age and sex of ap-

plicants for benefits under federal programs. In conjunction with this policy, the Assistant Attorney General, pursuant to his authority under 28 C.F.R. 42.412, directed all agencies administering Title VI-covered programs and those subject to similar nondiscrimination provisions to collect data on persons applying for services or benefits under their programs, provided such data are needed for compliance or enforcement purposes. The office is currently working with EEOC to revise the policy to include handicap.

Elimination of Sex Discrimination

The office's Task Force on Sex Discrimination coordinates departments' and agencies' elimination of sex discrimination by the federal government.

At the year's end, corrective action had been completed by 20 of the 65 agencies and most of the major components in the Departments of Commerce, State and Treasury. New legislation was enacted to eliminate sex discrimination affecting spouses of foreign service personnel, and the Internal Revenue Service has agreed to develop unisex actuarial tables. The Administration also urged, without success, the elimination of sex discrimination in the Selective Service System.

The Task Force drafted and had published a proposed regulation implementing Title IX of the Education Amendments of 1972 for all education programs and activities receiving federal financial assistance from the Department of Justice. This regulation improved upon the Title IX regulations of the Departments of Health, Education, and Welfare, and Agriculture.

The Task Force developed a training module on Title IX of the Education Amendments of 1972, presented it to regional Department of Agriculture staff, and modified it for presentation to the staffs of other federal agencies.

The Task Force continued to consult with the Social Security Administration on proposals to implement Advisory Council recommendations for the division of earnings credits between spouses at divorce and inheritance of earnings credits.

The office assisted the Department of Agriculture in the development and negotiation of a consent agreement with the Virginia Cooperative Extension Service regarding allegations of extensive race and sex discrimination violations by the Extension Service. Finally, the Task Force commented on a proposal by the Internal Revenue Service to improve pension protection for women by restricting discriminatory vesting requirements.

Management Improvements

During fiscal year 1980 the division continued to develop and improve its office automation and use of computerized information systems for more accurate, complete and timely

management information and control of resources. The programs and methods that received particular attention were systems designed to provide on-line interactive access from all management offices to centralized data, including a docket control system, attorney workload analysis and future requirements prediction, a simplified attorney time reporting system, organizational and personnel data, pre-programmed report formats, and an electronic mail system that allows transmission of data and information between buildings and floors within the Main Justice building.

Direct case oriented litigation support through the use of the information sciences was also improved. This included the ability to perform complex statistical analysis of large amounts of data after being systematically extracted from evidentiary documents, and displaying the results in a form immediately useful to the staff attorneys. Personnel have been trained to access both Department and commercial data bases used in the search for information on a large, fast reaction scale far beyond the ability of former manual research methods.

Internal relations and communications were improved as a result of a two-day management meeting that covered an exchange of current objectives of all sections and set in motion methods to correct problem areas both of a litigative nature and in the many supporting services. These interchanges of ideas and opinions included personnel at all levels at subsequent smaller working group meetings.

Section level managerial improvements included: the commencement by the Criminal Section of the routine issuing of non-prosecution notices to victims and subjects; the reorganization of the Voting Section's staff that handled Section 5 submissions and the use of microfiche records systems to assist in their work; and the publication of revised Section 5 procedural guidelines that clarified the actions required for entities desiring to make voting changes.

CITATIONS

- (1) *Fullilove v. Klutznick*, 48 U.S.L.W. 4979 (July 2, 1980).
- (2) *Battle v. Commonwealth of Pennsylvania*, ___F.2d___ (3rd Cir. 1980).
- (3) *United States v. Veverka*, No. 80-299-CR-WMH (S.D. Fla.).
- (4) *United States v. Whitley, et al.*, No. W-79-CR-16 (W.D. Texas).
- (5) *United States v. Johnson, et al.*, No. 80-CR-90-Bt (N.D. Okla.).
- (6) *United States v. Bishop, et al.*, No. 80-80536 (E.D. Mich.).
- (7) *United States v. Scanlan*, Cr. No. F-80-112 MDC (E.D. Calif.).
- (8) *United States v. Gauthier*, No. 80-303 (D. Mass.).
- (9) *United States v. Hanigan*, No. CR79-206 UC-RMB (D. Arizona).
- (10) *United States v. Otherson, et al.*, CR. No. 79-0682 (S.D. Calif.); *United States v. Wood, et al.*, CR No. 80-2982 (S.D. Calif.).
- (11) *United States v. Booker, et al.*, No. 80-19-03-CR-5, (E.D. N.C.).
- (12) *United States v. Wilson*, No. 80-54 (D. S.C.).
- (13) *United States v. Carr, et al.*, No. 79-195D (M.D. N.C.).
- (14) *United States v. City of Alexandria, Louisiana, et al.*, (E.D. La., No. 77-2040-Sec. I).

(15) *United States v. Lee Way Motor Freight*, 7 FEP Cases 710 (findings of fact and conclusions of law or liability issues); final judgment awarding \$1,800,000 in back pay 15 FEP Cases 1385 (W.D. Okla. Oct. 11, 1977); aff'd impact and reversing on our appeal 625 F.2d 918 (10th Cir. 1979); final order approving consent decree awarding \$2,740,000 in back pay entered September 29, 1980.

(16) *United States v. Philadelphia (Police)*, 573 F.2d 802 (3rd Cir. 1978) cert. denied, 438 U.S. 830 (1978) 19 EPD Para. 9011, 19 FEP 849 (E.D. Pa. 1979).

(17) *United States v. Jefferson County Board of Education*, (D. Colo. Civ. No. 79-F-170).

(18) *United States v. Lee Way Motor Freight*, supra.

(19) *Prudential Insurance Company v. Marshall*, (D. N.J. No. 170-48096).

(20) *E. E. Black v. Marshall*, (D. Ha. Civil No. 79-0132).

(21) *United States v. Bexar County Hospital*, 484 F. Supp. 855 (W.D. Tex. 1980).

(22) *Jane Doe No. 1-191, et al. and United States v. City of Chicago, et al.* (N.D. Ill., Civil Action No. 79-C-789).

(23) *United States and Buckley v. Board of School Commissioners of the City of Indianapolis*, ___F.2d___ (7th Cir. 1980).

(24) *Reed v. Rhodes*, Civil Action No. C73-1300 (N.D. Ohio) order finding state liable entered September 23, 1980; order appointing administration entered July 25, 1980.

(25) *Adams v. United States*, 620 F.2d 1227 (8th Cir. 1980), on remand *Liddell v. Board of Education*, 491 F. Supp. 351 (E.D. Mo. 1980).

(26) *United States v. Unified School District No. 500, Kansas City (Wyandotte County), Kansas*, Civil Action No. KC-3738 (D. Kans. July 3, 1980).

(27) *Mendoza v. Tucson School District No. 1*, Appeal No. 78-3352 (9th Cir. July 1980).

(28) *Zaslowsky v. Board of Education of the Los Angeles City Unified School District*, 610 F.2d 661 (9th Cir. 1979).

(29) *United States v. Board of Education of the City of Chicago*, Civil Action No. 80 C 5124 (N.D. Ill. September 24, 1980).

(30) *United States v. South Bend Community School Corporation*, Civil Action No. S80-0035 (N.D. Ind. February 8, 1980).

(31) *United States v. Flint Community Schools*, Civil Action No. 80-40075 April 29, 1980).

(32) *United States v. Big Spring Independent School District*, Civil Action No. 1-80-53 (N.D. Tex. filed September 18, 1980).

(33) *United States v. TEA and Austin Independent School District*, Civil Action No. 70-CA-80 (W.D. Tex. January 2, 1980).

(34) *United States v. State of Texas (Gregory-Portland ISD)*, Civil Action No. 5281 (E.D. Tex. August 6, 1980).

(35) *United States and Valley v. Rapides Parish School Board*, Civil Action No. 14,796 (W.D. La. August 6, 1980).

(36) *United States v. State of Mississippi (Harrison County)*, Civil Action No. 4706 (S.D. Miss. July 14, 1980).

(37) *United States v. State of Arkansas (Conway County)*, Civil Action No. LR72-C-290 (E.D. Ark. 1980).

(38) *Lee and United States v. Marengo County School System*, ___F.2d___ (5th Cir. 1980).

(39) *Lee and United States v. Linden City School System*, 617 F.2d 383 (5th Cir. 1980).

(40) *Lee and United States v. Macon County Board of Education*, 616 F.2d 805 (5th Cir. 1980).

(41) *Davis v. East Baton Rouge Parish School Board*, Civil Action No. 1662-A (M.D. La. September 11, 1980).

(42) *United States v. TEA and Lubbock Independent School District*, Civil Action No. S-806 (N.D. Tex.).

(43) *Andrews v. Monroe City School Board*, Civil Action No. 11297 (W.D. La. May 19, 1980).

(44) *United States and Armstrong v. Board of Education of City of Birmingham*, Civil Action No. 63-613 (N.D. Ala. October 21, 1980).

(45) *Davis v. Board of School Commissioners of Mobile County*, Civil Action No. 30003-63 (S.D. Ala. October 31, 1979).

(46) *Ross and United States v. Eckels*, Civil Action No. 10,446 (S.D. Tex.).

(47) *Geier v. Blanton*, 427 F. Supp. 644, aff. 597 F.2d 1056 (6th Cir.).

(48) *Ayers and United States v. Winters*, Civil Action No. GC75-9-K (N.D. Miss.).

(49) *United States v. Massachusetts Maritime Academy*, Civil Action No. 76-1696-M (D. Mass.).

(50) *Othen v. Ann Arbor School Board*, Civil Action No. 79-73709 (E.D. Mich. brief filed September 5, 1980).

(51) *Zentgraf v. Texas A&M University*, Civil Action No. H-79-943 (S.D. Tex. filed November 19, 1979).

(52) *Pavey v. University of Alaska*, Civil Action No. A79-019 (D. Alaska, filed November 20, 1979).

(53) *In Re Alien Children Education Litigation*, Civil Action No. MDL No. 398 (S.D. Tex. July 21, 1980).

(54) *United States v. State of Texas*, Civil Action No. 5281 (E.D. Tex.).

(55) *Shabani v. Simmons*, Civil Action No., ED-80-160-LS-P (N.D. Miss. July 3, 1980).

(56) *Tayyari v. New Mexico State University*, Civil Action No. 80-447 (D. N.M. August 29, 1980).

(57) *Angell and United States v. Zinsser*, C.A. No. H-79-229 (D. Conn.), motion to intervene filed October 5, 1979, motion granted October 23, 1979.

(58) *United States v. City of Birmingham, Michigan*, C.A. No. 80-70991 (E.D. Mich.), filed March 7, 1980.

(59) *United States v. City of Dunkirk, New York*, C.A. No. 80-144 (W.D. N.Y.), filed February 13, 1980.

(60) *United States v. Housing Authority of the City of Chickasaw, Alabama*, C.A. No. 79-0099-H (S.D. Ala.), March 7, 1980, P.H.E.O.H. Rptr. Para. 15,325.

(61) *United States v. City of Parma, Ohio*, C.A. No. C73-439, June 5, 1980, P.H.E.O.H. Rptr. Para. 15,336.

(62) *People of the State of New York v. Data-Butterfield*, C.A. No. CV 80-0365 (E.D. N.Y.), brief filed June 6, 1980.

(63) *United States v. New York Racing Association*, C.A. No. 80-1332 (E.D. N.Y.), filed May 15, 1980; *United States v. Calder Race Course*, C.A. No. 80-1171-Civ-JAG. (S.D. Fla.), filed May 15, 1980.

(64) *United States v. Wood Properties*, C.A. No. 79-3605 (M.D. Tenn.), filed November 20, 1979.

(65) *United States v. South Suburban Multiple Listing Service of Lake County, Indiana*, C.A. No. H80-307 (N.D. Ind.), filed June 2, 1980.

(66) *United States v. The Welles-Bowen Co.*, C.A. No. C78-307 (N.D. Ohio), decided October 19, 1979, P.H.E.O.H. Rptr. Para. 15,314, appeal pending, 6th Cir. No. 80-3014.

(67) *United States v. Worrell*, C.A. No. 3193 (S.D. Ga.), decided January 29, 1980, P.H.E.O.H. Rptr. Para. 15,321, appeal pending, 5th Cir. No. 80-7118.

(68) *United States v. Northside Realty Associates*, 605 F.2d 1348 (5th Cir. 1979). The court of appeals also held that the Attorney General could not seek to recover damages on behalf of victims of discrimination even in a contempt proceeding.

(69) *United States v. American Institute of Real Estate Appraisers*, Civil Action No. 76 C 1448 (N.D. Ill. Dec. 7, 1979).

(70) *United States v. Sumer Advertising Agency, Inc., and Mitchell Development Corporation of the Southwest*, Civil Action No. SA 78 CA199 (W.D. Tex.). A proposed consent decree was initially filed on September 3, 1980, but was not entered until October 16.

(71) *Cherry v. Amoco Oil Company*, 481 F. Supp. 727 (N.D. Ga. 1979).

(72) *Emigrant Savings Bank v. Elan Management Corp.*, Civil Action No. CA 1631 (E.D. N.Y. filed motion to participate as *amicus* July 8, 1980; *amicus curiae* brief formally accepted by the court October 3, 1980).

(73) *United States v. City of Farmington, et al.*, Civil Action No. 80-037-C (D. N.M. 1980).

(74) *United States v. Z&E Enterprises*, Civil Action No. (D. N.M.).

(75) *Lummi Tribe and United States v. Hallauer, et al.*, Civil Action No. 79-682R (W.D. Wa. 1979).

(76) *United States v. San Juan County*, Civil Action No. 79-507JB (D. N.M. 1979).

(77) *United States v. San Juan County*, Civil Action No. 79-408JB (D. N.M. 1979).

(78) *United States v. South Dakota*, Civil Action No. 79-3039 (D. S.D. 1979) and *Apache County High School District No. 90 v. United States*, Civil Action No. 77-1815 (D. D.C. three-judge court, 1977).

(79) *United States v. South Dakota and Fall River County*, Civil Action No. 78-501 (D. S.D.).

(80) *United States v. Solomon*, 563 F.2d 1121 (4th Cir. 1977); *United States v. Mattson*, 600 F.2d 1295 (9th Cir. 1979); *Santana and the United States v. Collazo*, C.A. 75-1187 (D. P.R. Sept. 11, 1980).

(81) *Santana and the United States v. Collazo, supra*.

(82) *Ruiz and the United States v. Estelle*, C.A. H-78-987 (S.D. Texas).

(83) *Hoptowit v. Ray*, C.A. 79-359 (E.D. Wash. May 23, 1980).

(84) *Stewart v. Rhodes*, 473 F. Supp. 1185 (S.D. Ohio 1979).

(85) *Costello v. Wainwright*, 430 U.S. 325 (1977).

(86) *Kendrick v. Bland*, C.A. 76-0079P (W.D. Ky., May 28, 1980, July 22, 1980).

(87) *Capel and the United States v. McCarthy*, C.A. LV-77-118 (D. Nev. May 23, 1978).

(88) *Stewart v. Rhodes, ibid.*

(89) *Guthrie v. Evans*, C.A. 3068 (S.D. Ga., January 7, 1980).

(90) *Wyatt v. Ireland*, 503 F. 2d 1305 (5th Cir. 1974).

(91) *NYSARC and Parisi v. Carey*, 466 F. Supp. 479 (E.D. N.Y. 1978).

(92) *Garrity and the United States v. Gallen*, C.A. 78-116 (D. N.H.).

(93) *Connecticut Association of Retarded Citizens v. Mansfield Training School*, C.A. H-78-653 (D. Conn.).

(94) *Jenkins v. Cowley sub. nom. R.A.J. v. Kavanaugh*, C.A. 3-74-394C (N.D. Tex.).

(95) *United States v. East Baton Rouge Parish, Louisiana*, C.A. No. 76-252 (M.D. La., June 6, 1980).

(96) *Apache County High School District No. 90 v. United States*, C.A. 77-1815 (D. D.C., June 12, 1980).

(97) *United States v. St. Landry Parish School Board*, 601 F. 2d 859 (5th Cir. 1979).

(98) *United States v. City and County of San Francisco*, Civil No. C-78 2521 FCP (N.D. Cal.).

(99) *City of Mobile v. Bolden*, ___U.S.___ 100 S. Ct. 1490 (1980).

(100) *United States v. Uvalde Consolidated Independent School District No. 79-1498* (5th Cir., September 2, 1980).

Tax Division

M. Carr Ferguson Assistant Attorney General

The Assistant Attorney General in charge of the Tax Division represents the United States and its officers in civil and criminal tax litigation arising under the revenue laws, other than proceedings in the U.S. Tax Court. While the division's primary client is the Internal Revenue Service (IRS), it also represents other federal departments and agencies in their dealings with state and local taxing authorities.

In civil tax litigation, the division is responsible for the conduct of cases in the federal district courts, the U.S. Court of Claims, and the U.S. Courts of Appeals. The division also is responsible for cases in state courts. The division participates in cases before the U.S. Supreme Court, including oral arguments on assignment by the Solicitor General.

In criminal cases arising under the Internal Revenue laws, the division's responsibilities include the control and supervision of criminal proceedings and collaboration with U.S. Attorneys in the conduct of such proceedings in trial and appellate courts.

The division's primary missions are to help the IRS collect federal revenue, to deter willful deception through prosecution of criminal offenders, and to establish uniform legal principles of taxation that will serve as nationwide guidelines to taxpayers and the IRS. Therefore, an important task of the division is to coordinate its litigating policies with IRS administrative policies and the Department of Treasury's tax legislative concerns. The division believes that taxpayers are entitled to uniformly fair and speedy treatment before federal and state courts, and endeavors to cooperate with attorneys in the private sector to attain this end.

Among the types of litigation in which the Tax Division represents the federal government are:

1. Criminal prosecutions involving attempts to evade taxes, willful failure to file returns or to pay taxes, filing false returns and other deceptive documents, and making false statements to revenue officials.

2. Refund suits brought by taxpayers to recover taxes alleged to have been erroneously or illegally assessed and collected.

3. Suits brought by the United States to collect unpaid assessments, to foreclose federal tax liens or to determine the priority of such liens, to obtain judgments against delinquent taxpayers, to enforce IRS administrative summonses, and to establish tax claims in bankruptcy, receivership, and probate proceedings.

4. Proceedings involving mandamus, injunctions, and other writs arising in connection with Internal Revenue matters.

5. Suits against IRS employees for damages claimed because of alleged injuries caused in the performance of their official duties.

6. Suits against the Secretary of the Treasury, the Commissioner of Internal Revenue, or similar officials to test the validity of regulations or rulings, including declaratory judgment actions pursuant to Section 7428 of the Internal Revenue Code, challenging initial denial or revocation of an organization's tax-exempt status under Code Section 501(c)(3).

7. Proceedings against the Tax Division and the IRS for disclosure of information under the Freedom of Information Act or for the alleged improper disclosure of information under the Privacy Act.

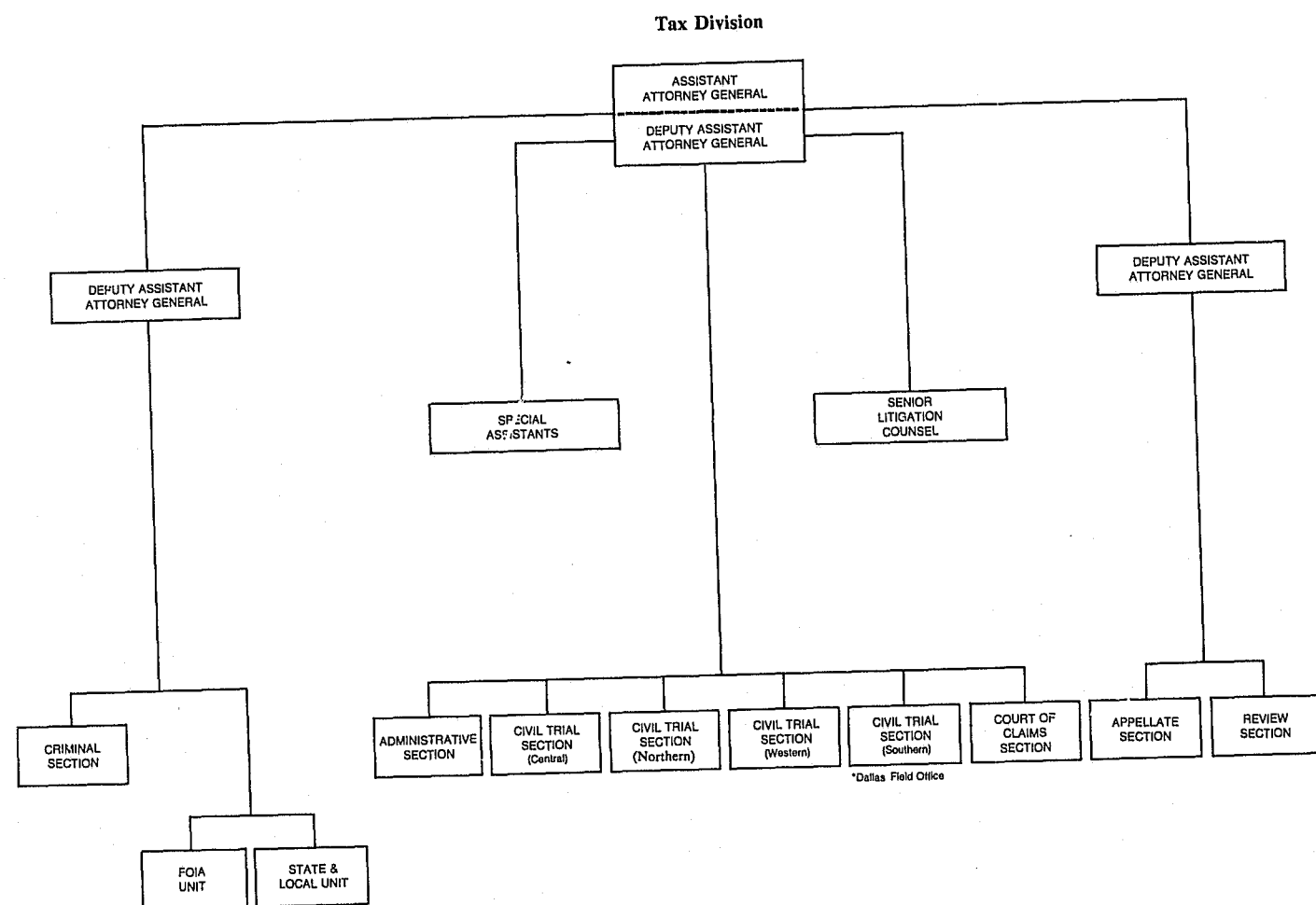
8. Intergovernmental immunity suits in which the United States resists attempts to apply a state or local tax to some activity or property of the United States.

9. Suits brought by taxpayers pursuant to Code Section 7429 for a judicial determination as to the reasonableness of IRS use of jeopardy/termination assessment procedures and the appropriateness of the amount so assessed.

10. Suits brought by individuals to foreclose mortgages or to quiet title to property in which the United States is named as a party defendant because of the existence of a federal tax lien on the property.

In addition to its litigating responsibilities, the Tax Division has become very active in the legislative process. The division endeavors to keep Congress informed of the impact of existing and proposed legislation affecting substantive tax law and tax litigation, and to keep division attorneys informed of legislative developments which will affect their work.

In accordance with the Attorney General's commitment to developing the best possible litigating skills in the Department, the division conducts a comprehensive training program for new attorneys. The program includes lectures and workshops devoted to the handling of all phases of criminal and civil litigation, with special emphasis on problems unique to tax litigation and the development of advocacy skills. Guest lecturers from both within and without the government participate in the program.



Appellate Cases

The Tax Division is responsible for handling all appeals from judgments of the federal district courts in civil and criminal tax cases and all appeals from decisions of the U.S. Tax Court. The division also handles appeals to state appellate courts in cases involving certain tax-related issues, such as the enforcement of federal tax liens and the applicability of state and local taxes to the federal government and those with whom it deals. In connection with tax litigation in the U.S. Supreme Court, division attorneys in the Appellate Section prepare petitions for certiorari and memoranda in opposition to taxpayers' petitions, and prepare briefs and memoranda of law on the merits, under the supervision of the Office of the Solicitor General.

In fiscal year 1980, the division processed 330 appeals from Tax Court decisions and 649 appeals from the federal district courts. The division also handled eight appeals from state courts and 150 criminal appeals. During the year, 182

petitions for certiorari were pending or received, 176 of which were taxpayer petitions. The Supreme Court acted on 155 petitions for certiorari in tax cases: 149 taxpayer petitions were denied and one granted, and three government petitions were denied and two granted.

The Appellate Section prepared 741 briefs on the merits and presented oral argument in 519 cases. The government prevailed in 525, or 88 percent, of the 681 tax cases decided by the Courts of Appeals.

Supreme Court Cases

During its 1979 term, the Supreme Court decided two federal tax cases, ruling in the government's favor in both of them.

The Court reversed a decision of the Eighth Circuit and held that the IRS had authority under its administrative summons power to compel a taxpayer to execute handwriting exemplars. (In this case, the exemplars were to be

used to determine whether funds in various bank accounts held in the names of several different persons in fact belonged to the taxpayer.) The court ruled that this exercise of the summons power did not violate the taxpayer's rights under the Fourth and Fifth Amendments.¹

The Court also reversed a Sixth Circuit decision and held that a taxpayer charged with falsifying a federal tax return had no standing under the Fourth Amendment to seek suppression of documents illegally seized by the government from a third party. The Court reasoned that the taxpayer had no legitimate expectation of privacy with respect to the seized documents. It further held that the supervisory powers of the federal courts did not include the power to suppress otherwise admissible evidence on the ground that it was seized illegally from a party not before the court.²

Appellate Decisions

During the year, the Tax Division was responsible for several significant appellate decisions in the government's favor.

An unusually large number of the decisions involved major corporate tax issues. For example, in cases arising out of ITT's acquisition of the Hartford Fire Insurance Company, the First³ and Third⁴ Circuits ruled in the government's favor on the issue whether tax-free reorganization treatment is available where one corporation acquires more than 80 percent of another corporation's stock in a stock-for-stock exchange, and, as part of the same acquisition, acquires another eight percent for cash. Both Circuits, reversing lower courts, held that tax-free treatment was not available, even though 80 percent of the stock was acquired with stock, if the cash acquisition was part of the same over-all transaction. In another reorganization case, the government successfully argued that a taxpayer could not bail assets out of corporate solution at preferential capital gains rates via a sale of corporate assets to another corporation controlled by the taxpayer, followed by a liquidation of the seller corporation. The Third Circuit held that the liquidation-reincorporation constituted a reorganization, and the cash distributed to the taxpayer was an ordinary income dividend, rather than a capital gains liquidating distribution.⁵

In one of the very few appellate decisions dealing with the difficult problems of computing corporate "earnings and profits," the Second Circuit ruled in the government's favor, holding that a non-dividend redemption distribution to a dissident shareholder reduced earnings and profits only to the extent of the redeemed stock's paid-in capital, not by the stock's share of the "valuation surplus" representing the appreciation in value of the corporation's assets.⁶

The government also prevailed in a Seventh Circuit decision reversing the Tax Court and holding that a distribution of stock warrants incident to a corporate "spin-off" consti-

tuted a taxable dividend to the recipients. The court refused to treat the transaction as a distribution of stock, even though all of the warrants were exercised and none were sold.⁷ The Fifth Circuit agreed with the government's argument that taxpayers must comply with the statutory rules set forth in Internal Revenue Code Section 334(b)(2) in order for a purchase of corporate stock, followed by a liquidation of the acquired corporation, to be treated as a direct purchase of corporate assets. The court rejected the purchaser's subjective intent as controlling, in effect holding that the *Kimbell-Diamond* doctrine has been superseded by Section 334(b)(2).⁸

The Tax Division also obtained several favorable appellate decisions involving non-corporate issues. In a case that appears to be the only appellate decision to consider commuting "expenses" as income to the traveler, the Fifth Circuit held that a corporate executive and shareholder realized additional dividend income when his company provided a private plane to transport him between his home in Florida and his office in Alabama. The court found that the executive's income should be measured by the cost of comparable charter flights.⁹ In a decision interpreting the Internal Revenue Code Section 274 on the deductibility of business entertainment expenses, the Fourth Circuit denied a corporate taxpayer's claimed deductions for a hunting and fishing lodge. The court held that the expenses relating to the lodge were not directly related to the active conduct of the taxpayer's trade or business, and that they were not adequately substantiated.¹⁰

In two cases involving tax-exempt organizations, the Third¹¹ and Ninth¹² Circuits ruled that a non-stock corporation providing laundry and linen services to its members was not a tax-exempt organization. In the employment tax area, the Fifth Circuit ruled in the government's favor, holding that the value of meals and lodging furnished in kind by an employer to his employees who were away from home overnight was includable as "wages" in the employees' tax base for FICA and FUTA purposes.¹³

The government prevailed in an estate tax case in which the Second Circuit held that property over which the decedent held a general power of appointment was includable in her estate, notwithstanding the fact that she had been legally incompetent to exercise the power since the time it was created.¹⁴ And, in a potentially far-reaching decision, the Second Circuit again ruled in the government's favor, holding that a gift of income-producing property, subject to a mortgage in excess of the property's basis, generated taxable capital gain to the donor in the amount of the excess.¹⁵

Criminal Tax

The Tax Division reviews and supervises all cases involving criminal violations of the Internal Revenue Code.

Centralized review enables the government to maintain a consistent and uniform prosecution policy in criminal tax cases conducted throughout the country. The division's supervisory responsibilities also include review and decision on immunity requests and participation in grand jury proceedings, case preparation, and trials.

The review function of the division begins after an investigation by agents of the IRS Criminal Investigation Division of possible violations of the Internal Revenue laws. The resulting investigative report and exhibits are then reviewed by appropriate IRS District Counsel. Those cases that contain evidence to support a criminal prosecution are forwarded to the Tax Division's Criminal Section for a decision on prosecution. The evidence is analyzed and a detailed written recommendation is made to the Assistant Attorney General as to whether the case warrants prosecution and, if so, what criminal tax charges should be brought. During fiscal year 1980, division attorneys prepared 1,587 criminal prosecution memoranda, involving more than 2,000 potential defendants.

When prosecution is authorized by the Tax Division, the file containing the prosecution memoranda and IRS reports and exhibits is forwarded to the appropriate U.S. Attorney, with the request that an indictment or information be filed. The Tax Division sets forth in its letter of transmittal the charges that are to be brought and any special instructions applying to the case. Regular follow-up reporting is required to keep the Department abreast of the prosecution through indictment, plea or trial, and final disposition.

All applications for immunity from prosecution in connection with criminal tax cases are extensively reviewed by Tax Division attorneys before they are forwarded to the Assistant Attorney General for final action. At the beginning of fiscal year 1980, 35 immunity applications were pending; during the year, 239 were received by the Tax Division from U.S. Attorneys and the various divisions of the Department of Justice. A total of 188 immunity applications were approved, 71 were denied or withdrawn, and 15 were pending at the year's end.

U.S. Attorneys and the various Strike Forces continue to request the assistance of division attorneys in grand jury investigations, trial preparation, and in the actual conduct of criminal trials. In addition, investigations and cases of national importance, and cases developed under the Attorney General's drive on organized crime and racketeering, which are generally of great complexity, and have ramifications beyond the borders of a federal judicial district or state, are often handled directly by specialists from the division. During the year, the Criminal Section received 94 new trial assignments, 27 new grand jury investigations, and 54 grand jury presentments.

The Tax Division and the Criminal Division coordinate closely in criminal tax cases involving organized crime

figures and activities. The Criminal Division consults with the Tax Division on the tax aspects of matters developed through Criminal Division investigations. The Tax Division also has assigned experienced tax prosecutors to maintain liaison with each of the Criminal Division's Strike Forces in major cities throughout the country. These procedures enable the division to supervise criminal tax matters arising in racketeering cases and to apply the same high evidentiary and policy standards to these cases as in all other criminal tax cases. During fiscal year 1980, the division received 289 organized crime cases (an increase of 53 percent over fiscal year 1979). Fifty-one of these cases involved narcotics traffickers.

During the year, the division received 2,373 new criminal tax cases. The total docket of pending criminal tax cases as of the close of fiscal year 1980, including those in the hands of U.S. Attorneys and those in the Courts of Appeals, was 4,306. The Tax Division handled 150 criminal tax appeals this year.

Convictions were obtained in 95 percent of all criminal tax cases prosecuted. A total of 1,601 defendants were convicted. Most were found guilty on pleas of guilty or *nolo contendere* (accepted over the Department's continued objection to *nolo* pleas). A total of 344 criminal tax cases were tried, and the conviction rate after trials was 76.7 percent. Trial attorneys from the Tax Division prosecuted 37 cases, obtaining convictions in 28 of them.

Defendants in criminal tax prosecutions included taxpayers from the full spectrum of occupational activities and social positions. Non-racketeer convictions included doctors, lawyers, accountants, school teachers, farmers, pornography dealers, corporation executives, and numerous so-called "tax protesters." In addition, substantial resources were expended to combat the apparently growing number of criminal tax violations committed by promoters of abusive tax shelter schemes.

Civil Tax Cases

Civil cases account for approximately 83 percent of the division's tax work. In fiscal year 1980, 7,098 civil tax suits and tax related actions (excluding appeals) involving more than \$889 million were instituted. Taxpayers filed 1,664 suits involving more than \$202 million in tax liabilities and \$587 in tort claims; 956 of these were bankruptcy suits. The government filed 1,747 suits involving approximately \$99 million. The government also filed 3,687 petitions for enforcement of IRS administrative summonses.

Trial Court Proceedings

Division attorneys tried 272 cases in lower courts, of which 257 were before federal district and state courts and

15 were before the Court of Claims. Division attorneys took part in 2,587 discovery actions and 1,806 pretrial appearances and proceedings in active preparation for trials.

The government prevailed in 894 of the 1,068 cases decided by the trial courts.

Trial Court Cases

The Civil Trial Sections represent the government in refund suits brought by taxpayers to recover taxes alleged to have been erroneously or illegally assessed and collected. All sections other than the Court of Claims Section also represent the government in other types of civil tax and tax-related suits in federal and state courts.

In a refund suit involving an ordinary loss deduction claimed under Internal Revenue Code Section 165, the Court of Claims, sitting *en banc*, held that taxpayer's loss was a capital loss under Section 165(f). The loss was incurred by a taxpayer/investor who allowed a brokerage firm to use his securities to satisfy stock exchange capital requirements through a subordination agreement, and then exchanged his claim under the agreement for a new class of securities in the brokerage firm.¹⁶

The Hawaii District Court decided in the government's favor in a \$1 million case of first impression involving the proper treatment of taxpayers' gain on the sale of so-called "development rights." The Court held that a \$1.5 million mortgage assumption by purchasers constituted ordinary income to the taxpayers, and not a return of capital.¹⁷

The Nevada District Court granted the government's motion for summary judgment in a case involving the accrualability of gambling "markers" as income to a Nevada casino. The court held that the markers in issue represented total collections outstanding at year's end, less a reserve for uncollectible markers, notwithstanding taxpayer's argument that the markers were not legally enforceable. This decision may have an enormous impact on the tax liability of gambling casinos.¹⁸

In a novel refund suit involving a dividend paid in rare United States gold coins, a California District Court granted partial summary judgment in the government's favor. The court rejected taxpayer's argument that the amount of the dividend was the face value of the coins, and held that the amount must be measured by the fair market value of the coins at the time the dividend was given. The coins' fair market value, which far exceeds the face value, remains to be determined.¹⁹

The Tax Division litigated several cases involving the racially discriminatory admissions policies of private schools enjoying tax-exempt status. In a refund suit involving well over \$100,000 in employment taxes, a North Carolina District Court entered judgment in the government's favor, finding that taxpayer, a private school, was

not entitled to tax exemption under Internal Revenue Code Section 501(c)(3) because of its discriminatory admissions policies.²⁰ The court also denied taxpayer's motion for attorneys' fees, on the ground that the government was the prevailing party.²¹

In the District of Columbia, the court dismissed a nationwide class action challenging the adequacy of the IRS's non-discrimination guidelines and enforcement procedures relating to tax-exempt private schools. This action was dismissed on jurisdictional grounds, including standing and the doctrine of non-reviewability.²² In another case in the same district, the court ruled that the IRS had not violated a 1971 injunction (*sub nom. Green v. Connally*)²³ that imposed on the Service affirmative non-discrimination enforcement obligations with respect to specified private tax-exempt schools in Mississippi.²⁴ Although the court's order imposed additional policing and enforcement obligations on the IRS for the future, the plaintiffs have appealed.

The Tax Division obtained several favorable decisions in the area of intergovernmental immunity. In a case that has been in litigation for eleven years, the government was awarded a judgment of more than \$1.3 million for unconstitutional Mississippi taxes levied on government procurement of alcoholic beverages from vendors outside the state.²⁵ A District Court in California granted the government an injunction on constitutional grounds, preventing that state from collecting sales or use taxes on government leases of personal property within the state,²⁶ and denied the defendant's motion for a stay pending appeal.²⁷ In another intergovernmental immunity suit, the Maryland District Court upheld an Act of Congress defining the breadth of immunity of members of Congress from state and local income taxation. The court's decision includes important holdings concerning limits on the Attorney General's non-statutory power to sue, limits on Congress' power to legislate, and the rights, privileges, immunities, and status of members of Congress.²⁸

The Tax Division's Freedom of Information Act litigation has increased steadily over the past several years, as more and more corporate and individual taxpayers attempt to use the Act to gain access to information in the government's files for their own use in tax disputes. During the year, several significant decisions were rendered in this area. One large corporation was denied access to more than 500,000 documents and records relating to a complex and ongoing criminal tax investigation of its activities and its subsidiaries. The District Court upheld the Commissioner's determination that release of the records would seriously impair tax administration, in effect holding that Internal Revenue Code Section 6103(e)(6) preempts the Freedom of Information Act's general disclosure provisions as they relate to tax returns and return information.²⁹ This decision has been followed or cited with approval in several decisions

in other districts, and will continue to be helpful in resisting taxpayers' attempts to use the Act as a discovery tool.

In another Freedom of Information Act suit instituted by an individual taxpayer, the court held that the disclosure restrictions of Internal Revenue Code Section 6103 supersede the broad disclosure provisions of the Act. The court also found attorney-client, attorney work product, governmental, and informant privileges applicable to the documents sought.³⁰

In the first damage suit under Internal Revenue Code Section 7217 to go to trial, a Colorado jury returned a verdict in favor of the defendant, an IRS employee.³¹ And the Tax Division successfully defended similar damage action in South Carolina.³²

The Tax Division was responsible for a number of significant decisions in the summons enforcement area. In New York, a federal district court ruled that Internal Revenue Code Section 7602 did not permit a taxpayer to intervene in proceedings to enforce a summons issued to a telephone company. The court held that the telephone company was not a statutory "third-party recordkeeper."³³ A Massachusetts court enforced summonses issued to tax shelter partnerships and general partners for production of their books and records for use in determining the civil tax liabilities of shelter investors.³⁴ The case was complicated by the existence of a parallel grand jury investigation of the shelter promoters.

A summons issued to an accounting firm for its tax pool analysis files relating to the Amerada Hess Corporation was enforced by the District Court in New York, which rejected the firm's claim of accountant-client privilege and declined to follow a pertinent decision of the Tenth Circuit.³⁵ However, the court refused to enforce the summons as to the firm's audit program and workpapers, on grounds of relevancy and the work product doctrine.³⁶ An Illinois court enforced a summons seeking internal audit reports prepared by an accounting firm for the corporate taxpayer. The court held that the IRS need only show that the reports "may be relevant" to the tax audit to prevail in an enforcement proceeding.³⁷

Finally, a federal district court upheld a \$4 million jeopardy assessment against the owner and operator of Nevada's most famous brothel, the Mustang Ranch.³⁸

Compromise of Civil Tax Cases

During fiscal year 1980, the division took final action on 1,081 settlement offers in matters in litigation, of which 871 (approximately 81 percent) were approved and 210 (approximately 19 percent) were rejected. The following table summarizes final actions taken on settlement offers during the year:

	Accepted	Rejected	Total
Associate Attorney General	54	0	54
Assistant Attorney General	48	9	57
Chief, Review Section	275	27	302
Chiefs of other Sections	494	174	668

Of the 102 settlements approved under the authority of the Associate Attorney General and the Assistant Attorney General, 44 involved refunds or concessions in excess of \$200,000, which were transmitted to the Joint Committee on Taxation of the Congress, pursuant to Internal Revenue Code Section 6405.

Review Section

This section appraises settlement offers in light of litigating potential and policy considerations, giving particular attention to settlements that are significant in terms of the legal issues or amount of money involved. The section takes final action on those settlements within its redelegated authority and advises the Assistant Attorney General or his delegate on settlements which require final action at a higher level within the division or Department. During fiscal year 1980, the section processed 446 settlement offers.

The Review Section also monitors and prepares reports concerning pending or proposed legislation in which the division has an interest or on which the division has been asked to comment. During the year, substantial efforts were expended on: legislation to modify procedures for challenging third-party recordkeeper summonses issued by the IRS and to permit issuance of summonses solely for a criminal purpose; legislation to revise aspects of the Internal Revenue Code which deal with bankruptcy, insolvency and discharge of indebtedness; legislation to make technical corrections to the Bankruptcy Code enacted by P.L. 95-598; proposals to allow awards of attorneys' fees against the government; revision of the Criminal Code; legislation to restructure the federal appellate court system and to create a court of tax appeals; and congressional hearings on the "underground economy." The section also devoted substantial time and effort to evaluating and commenting upon numerous amendments to the Federal Rules of Civil Procedure being considered by the Advisory Committee on Civil Rules of the Judicial Conference.

Accomplishments and Initiatives in Fiscal Year 1980

In the Supreme Court, the government won both of the federal tax cases decided. In the Courts of Appeals, the government's position was upheld in 525 of 681 decisions, a success rate of 88 percent. In trial courts, the government

was successful in 894 of 1,068 decided cases, a success rate of 83.7 percent. And 1,601 criminal convictions were obtained. Each success represents a savings or recovery of federal revenue, and more significantly, a contribution to the development of sound interpretations of the revenue laws.

The charts that follow depict the work of the Tax Division over the last five years. The volume of the division's work has increased steadily from 14,005 new cases in fiscal year 1976 to 17,633 cases during fiscal year 1980. The division's caseload grows ever more diversified and complex, reflecting, *inter alia*, changes in revenue and bankruptcy laws; increased use by taxpayers of the Freedom of Information Act and Privacy Act; the growth (in size and sophistication) of tax protester movement; the proliferation of tort suits, involving hundreds of millions of dollars, initiated by disgruntled taxpayers and protesters; and an alarming increase in the promotion and use of abusive tax shelter schemes.

The Tax Division undertook a number of case management initiatives and improvements during the year. A unit of Special Litigation Counsel was established to handle civil litigation involving large dollar amounts and issues of nationwide significance. (Special Litigation Counsel are also used in appellate and criminal proceedings.) The division's independent computerized research capabilities were substantially upgraded. In addition, an effort was made to obtain LEXIS training for all division attorneys.

The Tax Division's computerized case management system was also improved. The system now has more and better case and task tracking and retrieval capabilities. New equipment was installed to afford division personnel easier access to computerized case management data. The division is now developing a case-weighting system, which will assist supervisory personnel in assigning cases and monitoring dockets.

Last year, the Tax Division reported its successful use of intragency and interagency committees to develop and coordinate litigating positions and policies in problem areas. During fiscal year 1980, the division's committees have flourished and expanded. A new division committee was established to deal with cases and problems arising under the Windfall Profits Tax Act of 1980. And a Tax Shelter Coordinating Committee, comprised of representatives from the Tax and Criminal Divisions, the IRS, and the Securities and Exchange Commission was created to coordinate and monitor tax shelter investigations and prosecutions and to develop positions, policies, and strategies for coping with the growing shelter problem.

Improved coordination with the IRS continues to be a primary goal of the Tax Division. This year, division personnel worked closely with IRS management officials in developing uniform prosecution guidelines relating to *de minimis* deficiency amounts for use in future criminal case development. The division also participated in developing the IRS's Compliance Program Guidelines for fiscal year 1981. Division attorneys regularly meet with IRS officials to discuss and resolve problems with grand jury referral procedures, the division's dual prosecution policy, criminal investigations and prosecutions involving tax shelter schemes, and several other types of criminal cases. These efforts are expected to improve greatly the quality of cases referred by the IRS for prosecution and will expedite the processing of criminal tax cases.

Fiscal year 1980 was another successful year in tax litigation handled by the division. The following tables compare this year's work production and results with recent years:

	(IN PERCENT)				
	1976	1977	1978	1979	1980
Government wins	81	86	87	82	88
Criminal convictions	94	86.4	94.8	94.9*	95

Comparison of Work Received and Closed

	1976	1977	1978	1979	1980
Received:					
Civil cases (including appeals)	3,991	4,304	4,691	4,874	4,928
Criminal cases (including appeals)	2,182	2,699	2,939	2,945	2,523
Total cases	6,173	7,003	7,630	7,819	7,451
Liens	6,342	6,455	6,016	5,855	6,430
Miscellaneous	1,490	1,988	3,676	3,715	3,752
Total miscellaneous	7,832	8,443	9,692	9,570	10,182
Total	14,005	15,446	17,322	17,389	17,633
Closed:					
Civil cases	3,518	3,830	4,283	4,421	4,515
Criminal cases	1,858	2,395	2,529	2,364	2,761
Total cases	5,276	6,225	6,812	6,785	7,276

Comparison of Work Received and Closed

	1976	1977	1978	1979	1980
Liens	6,310	6,455	6,016	5,855	6,430
Miscellaneous	1,436	1,816	2,749	3,691	3,446
Total miscellaneous	7,746	8,271	8,756	9,546	9,876
Total	13,122	14,496	15,577	16,331	17,152

Comparative Workload Summary

	1976	1977	1978	1979	1980
Pending, beginning of fiscal year	8,872	9,755	10,705	12,450	13,208
Received	14,005	15,446	17,322	17,389	17,633
Closed	13,122	14,496	15,577	16,631	17,152
Pending, close of fiscal year	9,755	10,705	12,450	13,208	13,689

Work Production

	1976	1977	1978	1979	1980
Pleadings prepared	5,406	5,647	6,205	5,473	5,524
Discovery action	2,973	2,879	2,567	2,377	2,587
Pretrials	944	998	927	809	742
Trials and appearances	1,049	904	1,152	1,144	1,151
Appellate arguments	347	394	340	328	519
Briefs prepared	2,243	2,213	2,097	2,245	2,104
Legal memos	5,237	5,142	6,647	5,342	6,325

CITATIONS

- (1) *United States v. Euge*, 444 U.S. 707 (1980)
(2) *United States v. Payner*, 46 A.F.T.R. 2d 80-5174 (1980)
(3) *Commissioner v. Chapman*, 45 A.F.T.R. 2d 80-1290 (1980), taxpayer pet. for cert. pending
(4) *Commissioner v. Heverly*, 45 A.F.T.R. 2d 80-1122 (1980), taxpayer pet. for cert. pending
(5) *Atlas Tool Co. v. Commissioner*, 614 F. 2d 860 (1980), cert. denied *sub nom. Schaffan v. Commissioner*, 10/6/80
(6) *Uris v. Commissioner*, 44 A.F.T.R. 2d 79-5493 (1979)
(7) *Redding v. Commissioner*, 46 A.F.T.R. 2d 80-5654 (1980)
(8) *In re Chrome Plate, Inc.*, 614 F. 2d 990 (1980), cert. denied, 10/6/80
(9) *Ireland v. United States*, 46 A.F.T.R. 2d 80-5387 (1980)
(10) *Berkley Machine Works & Foundry Co. v. Commissioner*, 46 A.F.T.R. 2d 80-5055, cert. denied, 10/20/80
(11) *HCSC-Laundry v. United States*, 46 A.F.T.R. 2d 80-5101 (1980)
(12) *Hospital Central Services Assn. v. United States*, 46 A.F.T.R. 2d 80-5473 (1980)
(13) *Rowan Companies, Inc. v. United States*, 624 F. 2d 701 (1980)
(14) *Est. of Alperstein v. Commissioner*, 613 F. 2d 1213 (1979), cert. denied, 4/28/80
(15) *Est. of Levine v. Commissioner*, 46 A.F.T.R. 2d 80-5349 (1980)
(16) *Michtom v. United States*, 46 A.F.T.R. 2d 80-5235 (Ct. Cl. 1980)
(17) *Look v. United States*, No. 78-0506 (D. Hawaii, February 11, 1980)
(18) *Flamingo Resort, Inc. v. United States*, 485 F. Supp. 926 (D. Nev. 1980)
(19) *Cordner v. United States*, 45 A.F.T.R. 2d 80-1677 (C.D. Calif. 1980)
(20) *Goldsboro Christian Schools v. United States*, No. 75-0020-CIV-8 (E.D. N.C. May 7, 1980), appeal docketed, No. 80-1473 (4th Cir.)
(21) *Goldsboro Christian Schools v. United States*, No. 75-0020-CIV-8

- (E.D. N.C. April 29, 1980)
(22) *Wright v. Miller*, 45 A.F.T.R. 2d 80-515 (D. D.C. 1979), appeal docketed, No. 80-1124 (D.C. Cir.)
(23) *Green v. Connally*, 330 F. Supp. 1150 (D. D.C. 1971)
(24) *Green v. Miller*, 45 A.F.T.R. 2d 80-1556 (D. D.C. 1980), appeal docketed, No. 80-1913 (D.C. Cir.)
(25) *United States v. State Tax Commission of the State of Mississippi*, No. 4554 (S.D. Miss. March 31, 1980)
(26) *United States v. California State Board of Equalization*, No. CV 79-03359-R (C.D. Calif. December 20, 1979)
(27) *United States v. California State Board of Equalization*, No. CV 79-03359-R (C.D. Calif. March 19, 1980)
(28) *United States v. Maryland*, 488 F. Supp. 347 (D. Md. 1980)
(29) *Zale Corp. v. Internal Revenue Service*, 481 F. Supp. 486 (D. D.C. 1979)
(30) *Moody v. Internal Revenue Service*, 45 A.F.T.R. 2d 80-1035 (D. D.C. 1980)
(31) *Rodgers v. Hyatt*, No. 79-462 (D. Colo. April 31, 1980)
(32) *Calhoun v. Wells*, 45 A.F.T.R. 2d 80-1686 (D. S.C. 1980)
(33) *United States v. New York Telephone Co.*, 45 A.F.T.R. 2d 80-608 (E.D. N.Y. 1980)
(34) *United States v. Tudor Associates, et al.*, Nos. 80-1807-S, 80-1809-S, 80-1811-S, 80-1812-S (D. Mass. September 25, 1980)
(35) *United States v. Coopers and Lybrand*, 550 F. 2d 615 (10th Cir. 1977)
(36) *United States v. Arthur Young & Company*, 80-2 U.S.T.C., par. 9655 (S.D. N.Y. 1980)
(37) *United States v. The Riley Company*, 45 A.F.T.R. 2d 80-1164, 80-1 U.S.T.C., par. 9157 (N.D. Ill. 1979)
(38) *Conforte v. United States*, 45 A.F.T.R. 2d 80-575 (D. Nev. 1980)
(39) In last year's Annual Report, this statistic was erroneously reported as 85.7 percent.

Land and Natural Resources Division

James W. Moorman
Assistant Attorney General

The Land and Natural Resources Division represents the United States, its agencies, and officials in litigation relating to the federal government's acquisition, management, control, protection, use, and disposition of land and natural resources within the territorial limits of the United States, on or over the Outer Continental Shelf of the United States, and, to the extent permitted by international law, in or under the high seas. This includes civil and criminal matters relating to the control and abatement of sources of pollution, the preservation of wetlands and wildlife, and the protection generally of the physical environment. In addition, the division handles litigation on behalf of Indian tribes and individuals to assert, protect or defend their rights to property, including hunting, fishing, and water rights. The division also defends the United States against claims by Indian tribes that argue they received inadequate compensation for, or unfair treatment with respect to, the lands and resources that the federal government has acquired from them or administers on their behalf.

The litigating functions of the division are discharged through 12 sections. Aiding in the work of the division are two nonlitigating sections: the Appraisal Section, which renders assistance in land acquisition matters, and the Administrative Section, which is responsible for internal management, fiscal matters, and litigation support services.

The division has field offices in Anchorage, Alaska; Denver, Colorado; Miami, Florida; New York, New York; and Portland, Oregon.

At the end of fiscal year 1980, the division had 339 employees—196 attorneys and 143 support staff.

General Litigation Section

The General Litigation Section is the broadest and most varied of the units comprising the Land and Natural Resources Division. It handles litigation concerning several Presidential priorities including energy, water resources, public lands, and Alaska National Interest Lands. The section's program is directed at litigation involving a variety of national problems and needs including protection of the environmental and natural resources of the United States; balancing energy and environmental considerations; orderly use and disposal of the public lands, waters, minerals and other resources of the United States; protection of the United States' interest against monetary claims based on in-

verse condemnation, including claims that governmental regulations constitute a taking of property; and other national programs for which the section has litigation responsibility involving over 70 statutes.

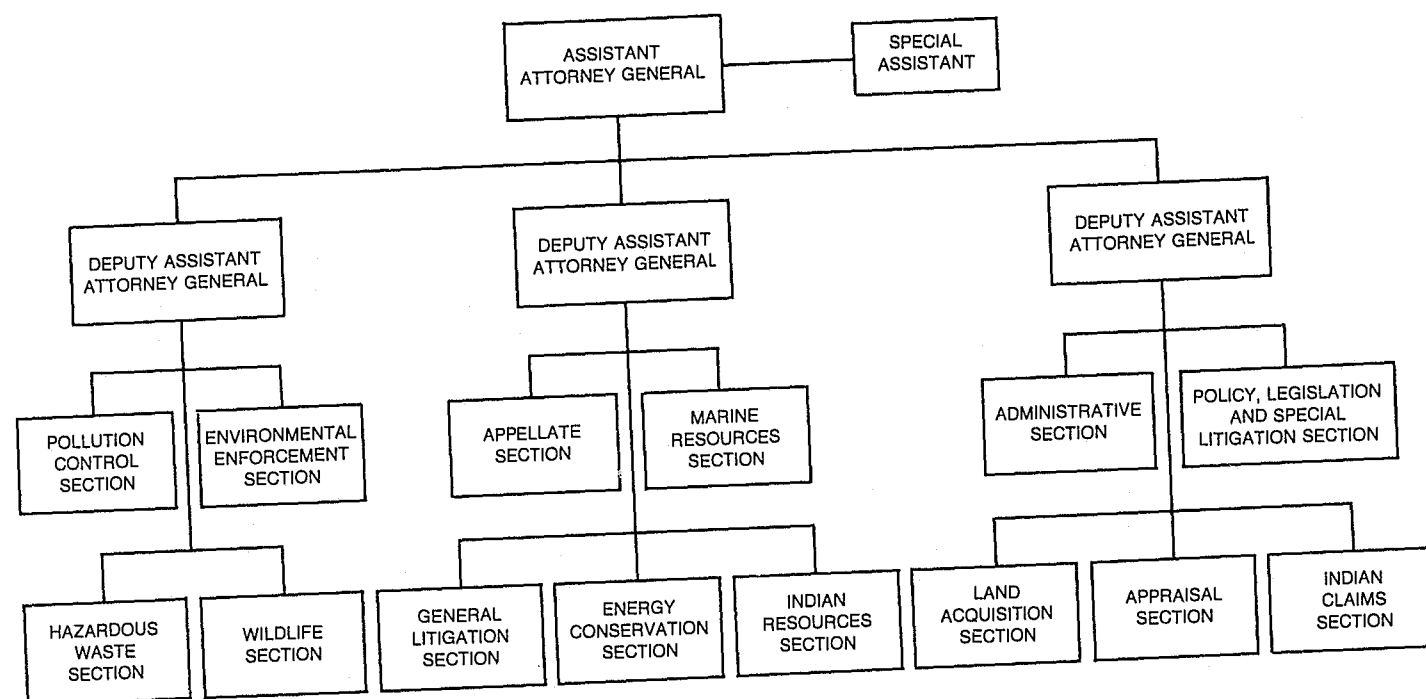
The government policy is to foster energy development while protecting the environment. In this regard, the Surface Mining Control and Reclamation Act, litigation is most notable. The case activity under this Act, passed in 1977, is growing rapidly. There are now over 175 pending cases under this Act, and the number is growing substantially each month.

Water resources is another area of priority. In the western states, water is a scarce and extremely valuable commodity, limiting or aiding in development of resources, depending on its availability. The President has announced a policy of quantifying federal reserved water rights in order to alleviate the uncertainty over development in the West. At the present time, as the result of the McCarran Act, the United States can be brought into state court to protect federal water rights. Colorado is the most advanced state in terms of developing procedures that comply with the McCarran Act, but most of the western states are rapidly enacting their own statutes to permit general stream adjudications to define water rights. There are presently approximately 20 general stream adjudications pending - each involving hundreds of claims; the number of adjudications is expected to grow to about 100 over the next several years.

Another priority is the protection of Alaska federal lands. The section has defended several suits filed in Alaska and in Washington, D.C., which seek to block or invalidate the President's current efforts at protecting federal lands in Alaska. The State of Alaska and others have filed these suits and the section has devoted several lawyers to a defensive effort which thus far has been successful.

The section has over 300 cases pending under the National Environmental Policy Act (NEPA). These cases necessitate counseling and defending agencies alleged to have violated the Act which requires the preparation of environmental impact statements (EIS) on major federal actions significantly affecting the quality of the environment. These cases are typically fast-moving through the trial and appellate courts and consume much attorney time. The President's Council on Environmental Quality (CEQ) has recently promulgated extensive new NEPA regulations applicable to all federal agencies. As a result, the section anticipates an increase in

Land and Natural Resources Division



the number of NEPA cases. Further, when NEPA questions arise in cases for which the primary responsibility rests with other sections of the division or in other divisions, this unit coordinates the government's response to such NEPA issues. With increasing frequency, the section has been receiving requests from client agencies and CEQ to undertake an active, problem-solving role in applying NEPA with regard to complex issues involving the protection of the environment and natural resources of the country. Often this involves disputes among federal agencies.

The section is responsible for defending the Guam lands compensation claims lawsuits involving approximately 625 claims pending under §204 of the Omnibus Territories Act of 1977. At issue is the government's liability for additional compensation for numerous tracts of land acquired by condemnation in Guam from 1944-1963. The district court has ordered trials to begin in December 1980 to determine the fair market value of every tract. The court will hear evidence of liability, and fair compensation will be decided by six-person juries. The section has assembled a team of attorneys and paralegals to handle this difficult and complex litigation. It will take approximately three years to try all the claims in the district court. Then there is the possibility of the various parties pursuing appeals.

Finally, the section is also currently handling suits disputing United States ownership or right to possession of the public lands; suits for monetary damages against the

United States for inverse condemnation under the Tucker Act, in which it is defending millions of dollars of claims; disputes by Indians and Indian tribes against the United States; cases challenging federal mineral leasing and public regulation decisions; and miscellaneous suits totaling 2,300 cases. In some of its public lands litigation, there are signs of the "Sagebrush Rebellion," a movement by the western states to claim control or title to public lands.

The accomplishments of the section are most clearly displayed by looking at some of its recent cases:

1. *Peshlakai v. Schlesinger*. Plaintiffs have challenged all uranium leasing, milling and regulatory activities of the federal government because, *inter alia*, a single comprehensive EIS was not prepared pursuant to NEPA. The defendants include the Department of the Interior, Department of Agriculture, Environmental Protection Agency (EPA), Nuclear Regulatory Commission, and Tennessee Valley Authority. Defendants have prevailed in this litigation thus far and plaintiffs' motions for injunctions and summary judgments were denied. The court wrote a significant decision on behalf of the federal defendants dealing with the nature of programmatic EIS's and their timing.

2. *Massachusetts v. Andrus*. The State of Massachusetts and the Conservation Law Foundation challenged the legality of an Outer Continental Shelf oil and gas lease sale by the Department of the Interior on Georges Bank in the Atlantic Ocean. They sought an injunction alleging violations of,

inter alia, NEPA, the Endangered Species Act, and the Marine Sanctuary Act. The district court denied the motion for a preliminary injunction, ruling in essence that plaintiffs are not likely to prevail on the merits. The court in its written decision described how the federal agencies met their legal obligations on this controversial matter and that it was not for the court to substitute its judgment for that of the administrators. The First Circuit Court sustained that ruling. The Supreme Court refused to enjoin the sale. The sale was held and the leases issued. Federal defendants' motion for summary judgment is pending in the district court and settlement negotiations are underway.

3. *United States v. The Atlantic-Richfield Company and Anaconda Co.* Final settlement was reached in this complex suit brought by the United States. The complaint sought damages for injury to vegetation, timber, and wildlife in the Flathead National Forest and Glacier National Park as a result of fluoride emissions from Anaconda's aluminum reduction plant in Columbia Falls, Montana. An injunction was also sought to require the defendant to reduce fluoride emissions to a level that would not cause damage to the plant and animal life. At the time suit was filed, the plant was emitting fluorides at a rate approximately twice as high as the Montana clean air standard allowed. Fluoride emissions have since been voluntarily reduced to a level lower than the state standard. This was an important factor in deciding to settle this case rather than pursue the litigation to final judgment. The settlement provides for alternative methods of compensation to the United States involving either a land exchange whereby the United States will exchange up to 2,279 acres of land allegedly damaged by fluorides in Flathead National Forest for other lands that Anaconda will obtain for the United States, or the payment of money.

4. *Brozowski v. Andrus*. Plaintiff, a farmer, claimed that his property was taken because the United States was protecting the eastern timber wolf by classifying it as a threatened species under the Endangered Species Act. Protecting the wolves, he alleged, led to the increased killing of his livestock and in essence subjected his land to a "wolf servitude." In a decision by a United States magistrate, the court denied plaintiff's claim for compensation, ruling that the regulatory action of the government did not constitute a compensable taking under the Fifth Amendment. The Federal Tort Claims Act was not applicable because the federal action fell within discretionary function exception.

5. *Sierra Club v. Andrus* (D.D.C.). In this case the court rejected a claim that various government agencies must act affirmatively to judicially establish federal reserved water rights in the West. The court noted that such rights exist whether or not they are asserted in court or other proceedings and cannot be impaired by court proceedings to which the United States is not a party — in particular, by

state court general stream adjudications. The court also concluded that any directive that defendants assert reserved rights would simply duplicate the ongoing efforts of the Federal Reserved Water Rights Task Force, which has already undertaken the task of quantification and assertion of such rights. Finally, the court held that the National Park Service has no "trust" responsibility with respect to assertion of reserved water rights apart from the statute, that is, the obligations under the Organic Act.

6. *In Re: Permanent Surface Mining Regulation Litigation*. In a largely favorable decision, the U.S. District Court for the District of Columbia upheld numerous regulations promulgated by the Secretary of the Interior establishing the permanent surface mining program under the Surface Mining Act. In particular, the court upheld the Secretary's authority to regulate the surface impacts of underground mining, the restoration of prime farmland to crop land and the regulations involving alternative post-mining land uses. In rejecting the challenge to the Secretary's regulations establishing procedures for alternative post-mining land uses brought by Illinois, the court held that there was no infringement upon the Tenth Amendment. The court also upheld the Secretary's regulations establishing guidelines for *ex parte* contacts between the Department of the Interior and state officials during the period of time after state programs were submitted to Department of the Interior. The court further found that involvement by Council of Economic Advisors in the Secretary's consideration of air quality regulations was not improper. The court, however, narrowly construed the authority of the Secretary to regulate air pollution in holding that the Secretary could only regulate air pollution attendant to erosion. Also, the court held that the Secretary may not approve provisions of state programs that contain regulations which the court herein found to be arbitrary or capricious. The coal companies have taken an appeal.

7. *National Center for Preservation Law v. Landrieu*. This suit involves a much publicized controversy resulting from the City of Charleston, North Carolina, plans to revitalize its economy by the construction of a convention center and related structures in a portion of its famous historic area. In a 55-page opinion, the district court granted defendants' motions for summary judgment and denied that of plaintiffs. The court held that: 1) the Housing and Community Development Act authorized the Department of Housing and Urban Development to permit applicants for Urban Development Action Grants to assume responsibility to prepare an EIS and its National Historic Preservation Act duties; 2) the Department of Housing and Urban Development funds had not been approved for an unauthorized purpose; 3) the federal defendants properly complied with the Advisory Council on Historic Preservation's historic review regulations; 4) Congressional influence on federal agencies

was not improper; and 5) the EIS prepared by the grant applicant was adequate. Plaintiffs have noticed an appeal.

8. *Environmental Defense Fund v. Andrus*. The Environmental Defense Fund filed this lawsuit seeking an declaratory judgment that a comprehensive EIS and an order scheduling its preparation were required on the entire Colorado River Basin. A number of western states and a utility intervened and took the position that a comprehensive EIS was not legally required. The Secretary of the Interior took the following position: 1) the Department of the Interior would like to prepare the comprehensive EIS; 2) Congress has refused to specifically fund its preparation; 3) in the interim, it would consider cumulative and synergistic impacts in site-specific EIS's on particular projects and programs; and 4) no schedule should be ordered. The parties filed cross-motions for summary judgment. The court granted the Department of Interior's motion holding that questions of whether and when to prepare the EIS were within reasonable discretion rather than being issues strictly resolved by law. The Department of Interior's position not to prepare the EIS at this time was not arbitrary or capricious. The court, relying on *Kleppe v. Sierra Club*, 427 U.S. 390 (1976), noted that since cumulative and synergistic impacts will be considered in site-specific EIS's, "the absence of a [comprehensive EIS] does not mean that the sort of comprehensive consideration discussed in *Kleppe* is altogether lacking." This together with other factors led the court to conclude that the Department of the Interior was within the bounds of its reasonable discretion when it chose to postpone preparation of the comprehensive EIS. The Environmental Defense Fund and the states have appealed.

Pollution Control Section

This section now supervises and conducts defense of civil cases involving the abatement of pollution and protection of the environment. The section's caseload is composed of litigation in which regulations, permits, or other actions or determinations by EPA and other agencies have been challenged by industry or environmental organizations. The section has responsibility for defensive actions under the Clean Air Act, the Clean Water Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Toxic Substances Control Act, and the Safe Drinking Water Act.

The section reorganized its wetland case management during the year in order to place greater emphasis on the existing docket of wetland enforcement cases, and is focusing its energies on cases in which restoration of disturbed areas is required. This has resulted in substantial movement of the cases, particularly in southern Florida.

The Pollution Control Section is co-counsel with the Marine Resources Section in actions brought to recover monetary damages arising out of the widely-publicized oil

spill from the Ixtoc I oil well in the Gulf of Mexico.¹ A complaint has been filed against the owner of the rig, a domestic corporation, under the admiralty law, the Clean Water Act and the Refuse Act.

The section's caseload is split between the district courts and the Courts of Appeals. It defends lawsuits brought against EPA, the Army Corps of Engineers and other agencies arising out of environmental regulatory activities of the agencies and out of their other operations, if environmental issues are raised in the district courts. It also defends petitions for review of EPA rules or individual regulatory actions such as permit determinations or administrative penalty assessments, brought originally in the Courts of Appeal.

A series of major constitutional challenges to provisions of the Clean Air Act requiring certain states to adopt automobile emission control inspection and maintenance (I/M) programs arose during the year. The section successfully defended the first of these suits, *Mountain States Legal Foundation, et al. v. Costle, et al.*,² in the Tenth Circuit Court and has been successful so far, at the preliminary injunction stage, in the second such suit, *Pacific Legal Foundation, et al. v. Costle*,³ in the eastern district of California. In these cases, the plaintiffs have contended that the various methods available to EPA to induce states to enact I/M legislation contravene the Tenth Amendment to the Constitution.

The legality of EPA's action promulgating federal sulfur dioxide clean air regulations in Ohio, in the face of the state's failure to do so, was upheld in a series of cases decided by the Sixth Circuit Court. In *Republic Steel Corp., et al. v. Costle*,⁴ the court approved EPA's use of computer modeling techniques in establishing numerical limitations for the Ohio regulations.

The section handled several significant district court cases arising under the federal pesticide and toxic substances laws. In *Dow Chemical Company v. EPA*,⁵ the district court in Delaware refused to overturn EPA's inclusion of chemicals called monochlorobiphenyls within the scope of its regulations implementing a statutory ban on the manufacture and use of polychlorinated biphenyls (PCBs). In *Chevron Chemical Company v. Costle*,⁶ the same court turned aside a constitutional challenge to section 3(c)(1)(D) of the Federal Insecticide, Fungicide and Rodenticide Act, which provides a mechanism by which EPA uses research data produced by initial pesticide registrants to form the basis of registration decisions with respect to similar chemicals produced or formulated by other registrants. This is one of seven similar lawsuits the section is handling, another of which was tried in a three-week trial in the western district of Pennsylvania late in the year.⁷

The section's success in wetland litigation has continued. In *Creppel, et al. v. Corps of Engineers*,⁸ the district court

held that the Corps of Engineers properly modified a levee project on the basis of impacts on wetland areas. In *United States v. Plaquemines Parish Mosquito Control District*,⁹ the court ruled that a permit is required to dredge or fill wetlands adjacent to a river, and that the Tenth Amendment does not bar the Corps from requiring the state to submit to its jurisdiction.

In a case whose scientific complexity is enormous, EPA's new ambient air quality standard for lead was upheld against substantial challenges mounted by the regulated industry. The District of Columbia Circuit Court upheld the standard *in toto*,¹⁰ holding that EPA properly utilized conservative assumptions in fashioning the standard around the most sensitive group in the total population, children, and properly utilized margin of safety considerations in setting the standard below the level at which adverse health consequences had been demonstrated.

In *Chrysler Corporation v. Costle*,¹¹ the District of Columbia Circuit Court, in a case of first impression, upheld EPA's order to recall certain Chrysler cars that were violating federal pollution standards. The court agreed with the agency's position that Chrysler's defective design of the pollution control devices and the complex service procedure required to maintain them were responsible for the widespread misadjustments of the devices, which in turn resulted in violations of relevant federal standards.

The section successfully defended several lawsuits in which plaintiffs sought judicial review of informal guidelines used by EPA in carrying out its regulatory responsibilities. In *Rubber Manufacturers Association, Inc. v. Costle*,¹² the district ruled that "control technique guidelines," used by EPA as guidance to states in fashioning air pollution implementation plans, are not reviewable.

Finally, a number of non-regulatory government actions were subject to litigation during the year. In one case, construction of a portion of the Tennessee-Tombigbee waterway was successfully defended in *Atcheson, Topeka and Santa Fe R.R. et al. v. Alexander et al.*,¹³ in which the plaintiffs contended that the activity was not authorized by Congress.

Environmental Enforcement Section

Because of the growth and importance of enforcement litigation, the Attorney General created a new Environmental Enforcement Section during fiscal year 1980, which has assumed the enforcement responsibilities heretofore handled by the Pollution Control Section under the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Toxic Substances Control Act, Federal Insecticide, Fungicide and Rodenticide Act and Rivers and Harbors Act. The Environmental Enforcement Section has set the development and prosecution of environmental criminal cases and serious

environmental harm cases as its highest priorities. Increased emphasis will also be placed on cases in which preliminary injunctive relief is appropriate to halt illegal discharge of pollutants.

The section has developed new "fast track" litigation procedures that it is employing to expedite the review and handling of routine cases. The fast track system enables the section to concentrate its efforts on the preparation and trial of complex resource-intensive cases and cases involving issues of national importance.

During fiscal year 1980, enforcement of environmental laws continued to be an important part of the division's caseload. Civil enforcement actions were filed against major sources of air and water pollution. Over 102 cases were concluded in which sources agreed to judgments requiring compliance with applicable environmental statutes.

The prosecution of criminal cases also continued successfully. In *United States v. Burns*,¹⁴ guilty pleas were obtained against individuals charged with illegal disposal of PCBs, and in *United States v. Oxford Royal Mushroom Products, Inc., et al.*,¹⁵ guilty pleas for violation of the Clean Water Act involving discharges without permits resulted in fines of \$100,000 for the corporation and \$100,000 and a five-year probation for the president.

Substantial civil penalties were obtained following trial in *United States v. Delaware County Incinerators*,¹⁶ (\$100,000 for violations of the Clean Air Act at a municipal incinerator) and in *United States v. International Harvester Co.*,¹⁷ (\$339,500 for failure to meet statutory deadlines and for violations of a permit under the Clean Water Act). The *International Harvester* decision established important precedent on the obligation of a polluter to install alternative compliance technology upon discovery that its initial equipment was not able adequately to control its discharges. The court also clearly recognized the strict liability aspect of the Clean Water Act. Substantial civil penalties were also obtained in settlement of an enforcement action against NL Industries,¹⁸ for its violations of the Clean Air Act. NL Industries agreed to pay a civil penalty of \$1.1 million (divided evenly between the United States and the State of New Jersey) and to install pollution control equipment on its pigment manufacturing plant in New Jersey. It is anticipated that litigation against major industrial polluters during 1981 will establish important precedent in the environmental enforcement area.

Marine Resources Section

The Marine Resources Section handles litigation relating to mineral and biological resources of the adjacent seas and seabed. This includes cases involving the determination of the location of the coastline and other maritime boundaries of the United States. It is responsible for cases dealing with

the rights of the United States in submerged lands, particularly as those rights involve increasingly valuable oil and gas resources. The section also handles cases concerning the conservation and management generally of the living resources of the adjacent seas, including marine mammals, such as whales and porpoises, and the more than 70 species of fish located in our newly established 200-mile fishery zone. The volume of litigation handled by the Marine Resources Section increased in almost all of these areas in fiscal year 1980.

Significant advances were made in litigation involving offshore oil and gas leasing—all in furtherance of the Attorney General's stated policy of encouraging energy production and the national goal of energy independence. *United States v. Louisiana*,¹⁹ an original Supreme Court action which has already brought the federal government more than \$2 billion in disputed oil and gas revenues, was argued in the Supreme Court on exceptions to the Special Master's recommendations. The United States won approximately 85 percent of the area at issue in this case.

A second original action, *United States v. California*,²⁰ was also acted on by the court in fiscal year 1980. Upholding its Special Master's recommendation, the court found that artificial piers, built on piles and jutting out to sea from the California coast, are not part of that state's "coastline" for purposes of measuring its three mile Submerged Lands Act grant. By measuring instead from the natural coastline, the federal government gains title to offshore oil and gas lands estimated to be worth \$16 million in royalties.

Yet another original action was accepted by the Supreme Court between the United States and the State of Alaska.²¹ This concerns title to offshore oil and gas lands in the area of Prudhoe Bay. The lands are estimated to contain resources worth \$2 million to \$3 million in bonuses and royalties to the successful sovereign.

In order not to delay the production of valuable oil and gas in the area, the parties entered an agreement whereby the disputed submerged lands would be leased and all revenues from them would be impounded to await the outcome of the litigation.

Finally, three other original actions saw significant progress. The federal government and the State of Massachusetts,²² agreed on terms to resolve their disputes as to the seaward limits of that state's jurisdiction. Terms worked out in close cooperation with the Departments of State and Commerce provide federal jurisdiction over approximately 90 percent of the area in dispute but give the state additional guarantees of environmental protection beyond the limits of state jurisdiction. Significant progress has been made in a similar controversy with the State of Rhode Island.²³ Oil lands in the Gulf of Mexico are the subject of an original action instituted by the States of Mississippi and Alabama.²⁴

In addition to the original actions, the section has had a

substantial increase in the number of lower court suits under the Outer Continental Shelf Lands Act.²⁵ In each of the major cases plaintiffs have attempted to enjoin oil and gas leasing on the Outer Continental Shelf. In each of these challenges the section and division have done everything possible to assure that energy production has not been delayed. The cases have typically been filed no more than a month before the targeted lease sale was scheduled. They have always involved issues that concern both the Marine Resources and General Litigation Sections. For these reasons, the litigation has been handled by trial teams made up of experts in each of the areas attacked in the complaint, along with an appellate attorney. In addition, an attorney from each of the concerned client agencies has been assigned. This has enabled us to provide a quick and informed response to any matter that arises and is largely responsible for the recent success in such litigation.

In fiscal year 1980, the section was able to put additional emphasis on enforcement of laws to protect the living resources of the adjacent seas. In prior years, the section sought to take the prominent role in the prosecution of such litigation. Now that there is precedent and practice in the area, greater responsibility has been delegated to U.S. Attorneys and even to client attorneys. Especially active has been enforcement under the Fishery Conservation and Management Act, the Marine Mammal Protection Act and the Endangered Species Act.

The Fishery Act also seeks to protect species threatened by overfishing by Americans. It provides for conservation management plans for such species with some such plans providing quotas for fishermen. The section, in cooperation with the Department of Commerce, has instituted a firm enforcement policy against violators of these quotas, and numerous actions have been brought to forfeit fish caught in excess of quotas. Although each case brought under the Act is reviewed by the section and authorized by the Assistant Attorney General, actual litigation is being conducted in most instances by the U.S. Attorneys.

American fishermen and other groups have also challenged a number of the management plans. Attorneys from the section have worked closely with representatives of the client agency in the defense of these plans in court, as well as, cooperating informally during earlier stages. To date the section has been successful in defending plans against injunctions. These cases have a significance that transcends judicial districts and have typically been handled by the section.

Of major importance to enforcement of the Act is its provision for administrative penalties to be assessed by the Department of Commerce. The section is presently working with that Department and the U.S. Attorney's Office to establish procedures for the collection of those penalties once assessed. An efficient collection system will greatly

enhance the use of administrative penalties and thereby the purposes of the Act.

Maintenance of the close liaison with other departments and agencies is furthered through participation by the section on various interagency groups and task forces. The section continues to represent the Department on various committees relating to coastal and marine problems, both domestic and international, including the National Security Council Interagency Law of the Sea Task Force.

Land Acquisition Section

This section initiates and prosecutes condemnation proceedings in the U.S. District Courts for the acquisition of lands necessary for public use.

Condemnation proceedings are instituted pursuant to the sovereign power of eminent domain, as codified in the General Condemnation Act, 40 U.S. Code 257, the Declaration of Taking Act, 40 U.S. Code 258a, and other statutes authorizing the acquisition of land by condemnation.

The ultimate issue for decision in a condemnation case is the amount of compensation to be paid by the United States for the property acquired. Other issues frequently litigated are the authority of the United States to condemn the property and the right to possession.

Condemnation proceedings are initiated by this section upon application by federal agencies authorized by law to acquire land for public purposes. Acquisition by condemnation is means of last resort, as acquiring agencies are required by law,²⁶ to the greatest extent practicable, to make every reasonable effort to acquire property by negotiation before requesting condemnation.

Some client agencies and projects for which this section acquires land by condemnation are the Corps of Engineers, Department of the Army (military facilities; projects for the improvement and protection of navigable waters; projects for flood control); the National Park Service, Department of the Interior (national parks, preservation of scenic and wild rivers, lake shores and sea shores); the Water and Power Resources Service, the Department of the Interior (reclamation and irrigation of arid lands in the western states); the Fish and Wildlife Service (wildlife reservations); the Forest Service, the Department of Agriculture (national forests); the General Services Administration (buildings, offices and facilities for federal agencies); the Department of Energy (petroleum storage facilities, nuclear waste storage facilities, and energy-related projects); the Department of the Navy (military facilities); the Department of the Air Force (military facilities); the Federal Aviation Administration (air navigation facilities); and the Washington Metropolitan Area Transit Authority (METRO subway system).

Trial of the issue of just compensation often involves difficult and complex valuation problems because of the

unusual character of the estate taken such as flowage easement, temporary construction easement, scenic easement, subsurface fee, subordination of minerals, and occasionally a mix of several different estates in a single property), or because of the character of the property in suit. Properties involved in litigation include industrial facilities, office buildings, farms, railroad facilities, timberland, swamp, mountaintops, historic buildings, islands, and properties containing such mineral deposits as gold, coal, oil, gas, peat, oil shale, limestone, salt, clay, sand and gravel.

The section began fiscal year 1980 with 21,230 tracts of land in pending condemnation proceedings. During the year, new condemnation actions were filed to acquire 3,978 tracts of land. The appraised value of these tracts is \$96 million. The section closed 6,245 tracts (2,267 more than received), thereby reducing the backlog by 2,265 tracts for a year-end total of 18,963 tracts pending. The aggregate total of claims for the tracts pending at the end of the fiscal year is approximately \$7 billion.

A number of major cases pending, involving enormous compensation claims have required teams of trial attorneys and support staff to work solely on these acquisitions, due to the tremendous quantities and complexity of pleadings, discovery, expert reports and technical background materials involved: 1) condemnation proceedings have been instituted to acquire five salt dome sites in Texas and Louisiana on behalf of the Department of Energy for underground storage of crude oil in connection with the Strategic Petroleum Reserve Project.²⁷ Along with the dome sites themselves, extensive pipeline easements and terminal facilities were also condemned so as to properly service these sites. The claims in these cases total almost \$200 million. 2) Congress by Public Law 95-250 authorized the expansion of the Redwood National Park and by this Act condemned approximately 49,000 acres for which \$300 million has been deposited in court.²⁸

The largest land acquisition program currently being handled in terms of acreage and number of tracts is the Big Cypress National Preserve, a project of the National Park Service. This project encompasses more than 570,000 acres of land, comprising some 45,000 to 75,000 individual tracts, in southern Florida. Land acquisition for the Preserve began in 1976, and there are presently about 7,500 tracts in pending condemnation actions for this project.

Fiscal year 1980 accomplishments of the Land Acquisition Section include the following:

A settlement was negotiated in one of the section's major cases (the *Klamath Indian* case,²⁹ involving the acquisition of 135,000 acres of valuable timberland) for \$130 million — the most valuable land acquisition concluded in memory.

United States v. 1,109.45 Acres of Land, Etc.,³⁰ and consolidated cases. This was a taking of 1,317 acres of forested and prairie land for the St. John's National Forest, Florida,

a project of the Department of Agriculture. The government's testimony as to value was \$559,000 and that of the landowners was \$1,374,500. The jury returned a verdict in the exact amount of the government's testimony. The verdict was \$47,500 less than the government's deposit of estimated compensation, and the government had judgment in its favor for this difference plus interest.

*United States v. 204.87 Acres of Land, Etc.*³¹ This was a taking of 100 acres of land for the Cuyahoga Valley National Recreation Area, Ohio, a project of the National Park Service. The government's trial testimony was \$396,000 and that of the landowner was \$700,000. The jury's verdict was in the exact amount of the government's testimony.

*United States v. 622.59 Acres of Land, Etc.*³² This was a taking of 487.07 acres of land for the R. D. Bailey Lake, West Virginia, a project of the Corps of Engineers. The government presented value evidence of \$66,950 and the landowner presented evidence of \$1,095,000. The jury returned a verdict of \$100,000.

*United States v. 63.18 Acres of Land, Etc.*³³ This was a taking of 63.18 acres of land for the Big Thicket National Preserve, Texas, a project of the National Park Service. The government's valuation testimony was \$105,000 and the landowner's was \$402,620. A court-appointed commission awarded \$106,079 as compensation.

*United States v. 795.97 Acres of Land, Etc.*³⁴ This was a taking of 150.29 acres of land for the Buffalo National River, a project of the National Park Service. The range of testimony in this case was \$277,800 for the government and \$1,110,960 for the landowner. The jury returned a verdict of \$297,202.

In the Big Cypress National Preserve project, in Florida, the court consolidated numerous tracts for trial before a commission. The awards in these cases have been very favorable to the government's testimony. The most recent awards were in a trial of 44 consolidated cases where the government's testimony for the two categories of land involved was \$1,500 per acre and \$2,200 per acre, respectively, and the landowners' testimony was \$2,300 per acre and \$6,000 per acre, respectively. The commission awarded compensation in the exact amounts of the government's testimony.

The Land Acquisition Section, in conjunction with the Attorney General's Advocacy Institute, held a national seminar on eminent domain, October 30 through November 2, 1979, for both attorneys and support personnel. More than 200 attorneys and support staff attended.

The section's computerized caseload tracking system reached operational status in August 1980 with the completion of data input for all pending tracts (approximately 19,000). The availability of this system will significantly

enhance the section's ability to manage the sizeable condemnation caseload.

Indian Resources Section

The United States has, by law and treaty, assumed certain duties to protect and assert the rights of American Indians. Litigation in this sphere is conducted by the Indian Resources Section. The primary issues handled during the year concerned the extent to which states may license and tax non-Indian operations on an Indian reservation; the ability of Indian tribes to tax non-Indians on their reservations; the authority of the United States to take land in trust, held by a tribe in fee, thus depriving a municipality of the ability to tax; whether the Stevens Treaties entitled tribes to artificially-reared fish and to have the resource protected from adverse environmental actions or inactions; and the extent of Indian water rights.

During the year, there were several major developments in the area of Indian law in cases handled by the section with the assistance of the U.S. Attorneys and appellate lawyers of the Department.

After some 16 years of litigation, a settlement was approved in the case of *Littell v. Andrus*,³⁵ in which Littell sought \$2.6 million in legal fees for representing the Navajo Tribe. The claim was settled for \$795,000 to be paid out of the tribe's trust fund.

The workload of the section increased substantially during the year. This was due largely to the fact that 28 U.S. Code 2415 (statute of limitations) was supposed to expire on April 1, 1980, as to claims for damages that accrued more than six years ago. As a result, several hundred old claims were referred to the section for action before April 1, 1980. Congress ultimately extended the statute until December 31, 1982.

There were significant developments in the area of states' attempts to tax non-Indian operations on reservations. In *White Mountain Apache Tribe v. Bracker*,³⁶ the Supreme Court reversed the Arizona Court of Appeals and held that the state could not impose its motor carrier license and fees taxes upon a non-Indian contractor conducting timbering operations on the Fort Apache Reservation pursuant to a Bureau of Indian Affairs-approved contract with the tribe. The court found that the pervasive extent of federal regulations over tribes' logging operations, when considered with the lack of any function or service performed by the state which would justify assessment of the tax, allowed "no room for these taxes in the comprehensive federal regulatory scheme." Similarly in *Central Machinery Co. v. Arizona State Commission*,³⁷ Arizona had attempted to levy a sales tax upon a corporation which sold the Gila River Tribe several tractors in a Bureau-approved transaction conducted on the reservation. Reversing the state court, the Supreme

Court held the comprehensive federal statutes and regulations governing trading with Indian tribes preempted the field and barred the state from imposing the tax. The court rejected the argument that the transaction was subject to state taxation because the corporation was not a licensed trader and because it did not maintain a permanent place of business on the reservation.

There were also substantial developments in the area of a tribe's authority to tax the activities of non-Indians because it did not maintain a permanent place of business on the reservation. In *Merrion v. Jicarilla Apache Tribe*,³⁸ the Court of Appeals for the Tenth Circuit Court (en banc) held that the tribe had an inherent power to levy a privilege tax on occupation of land and severing of oil and gas from reservation land even though the tax fell on nonmembers. Non-Indian lessees who produce oil and gas within the tribe's reservation pursuant to leases granted them under the auspices of the Secretary of the Interior had sued the tribe and tribal council, and the Secretary sought a declaratory judgment and an injunction that would prohibit enforcement of the tribe's oil and gas severance tax which was measured by the production of oil and gas wells within the reservation. The district court granted the relief sought and the Court of Appeals reversed and remanded. The Supreme Court subsequently granted certiorari.

In another action in which Indian tribes sought to impose a sales tax on cigarettes sold on the reservation to nonmembers, the Supreme Court held in *Washington, et al. v. Confederated Tribes of the Colville Indian Reservation, et al.*,³⁹ that the power to tax transactions occurring on trust lands and significantly involving an Indian tribe or its members is a fundamental attribute of sovereignty that Indian tribes retain unless divested of it by law or necessary implication of their dependent status. At the same time the court held that the tribal tax did not preempt state taxes on sales to nonmembers.

In another significant development, the U.S. District Court for the District of Columbia in *City of Sault Ste. Marie v. Andrus*, held that the United States could take property in trust for a tribe that had acquired it in the first instance. Several municipalities had challenged the authority of the Secretary of the Interior to take tribally-owned land in trust, thus rendering it nontaxable by a state or local government.

The extent of the Indian Treaty rights to fish in the State of Washington was again before the court this year. In *United States v. Washington*,⁴⁰ the U.S. District Court for the Western District of Washington held that hatchery-reared fish were to be included in the 50-percent share of the available harvest that earlier court decisions had awarded the tribes as a result of the Stevens Treaties, and that implicit to the treaty fishing clause was the right to have the fishery protected from manmade despoliation.

Finally, while no major decisions were rendered during the year, three major water adjudications were either tried or partially tried. On November 2, 1980, a two-week trial was completed in the case of *Truckee-Carson Irrigation District v. Secretary of the Interior*.⁴¹ Four weeks of trial between September 2, 1980, and September 26, 1980, were held in *Arizona v. California, et al.*,⁴² before the Special Master. Similarly, several weeks of trial were held in the case of *In Re the General Adjudication of All Rights to Use Water in the Big Horn River System and All Other Sources, State of Wyoming*.

Indian Claims Section

This section defends the United States against legal, equitable and moral claims asserted by Indian tribes under the Indian Claims Commission Act of 1946. Since the Indian Claims Commission was terminated on September 30, 1978, all claims are litigated in the Court of Claims.

During the year, final judgments awarded by the Court of Claims on Indian claims were \$38,134,894, approximately 48 percent of the amount requested. These final judgments covered tribal claims for approximately 15 million acres of land, as well as awarding \$10 million for other claims. The total claimed in these cases was \$78,708,867. Three cases were dismissed, two on their merit and one at the request of the plaintiff.

The Supreme Court granted certiorari on two Indian claims cases. In one, the award to the Sioux Nation for approximately \$105 million was affirmed, with the court ruling that the United States had taken the Black Hills of South Dakota in violation of the Fifth Amendment.⁴³

In the other Supreme Court decision on Indian claims, the government obtained a reversal of a Court of Claims decision that it has jurisdiction under 28 U.S. Code 1491 and 1505 to hear breach of trust claims for alleged mismanagement of Indian property held in trust by the United States.⁴⁴

Two final decisions have been rendered in a series of litigation arising from the 1961 termination of federal supervision of the tribal affairs of the Menominee Indians of Wisconsin. The first decision of the trial judge which had held that Congress, by enacting termination legislation, committed a breach of trust, was reversed and dismissed by the Appellate Division of the Court of Claims.⁴⁵ The tribe's petition for writ of certiorari was denied.⁴⁶ The government's motion to dismiss a claim for loss of tax exemption was granted by the Appellate Division of the Court of Claims.⁴⁷ The Supreme Court denied the tribe's petition for writ of certiorari.⁴⁸ Two other trial judges' decisions in the Menominee cases are before the Appellate Division on review and a third has been remanded to the trial judge before review.

The Department has approved proposed settlements

negotiated in 24 dockets involving approximately \$29.2 million as a result of an evaluation of those dockets. These settlements remain subject to formal approval by the tribes, the Secretary of the Interior and the Court of Claims.

Energy Section

The Energy Section was organized in fiscal year 1980 to consolidate various aspects of the division's multi-faceted and growing energy caseload into one cohesive unit. First, the section is responsible for the conduct of litigation arising under various statutes passed as part of the National Energy Act of 1978. Foremost among these are the Powerplant and Industrial Fuel Use Act of 1978, which requires electric utilities and other major fuel burning installations to convert from oil and gas to coal or other alternate fuels, and the Public Utility Regulatory Policies Act, which calls for the consideration of federal standards by state public utility commissions in their ratemaking proceedings. The section is currently involved in litigation challenging the constitutionality of both of these statutes. In addition, the section is currently defending the Department of Energy's program to displace foreign oil imports by allowing utilities to burn natural gas temporarily under the Fuel Use Act.

The section will also be responsible for litigation arising under the Ocean Thermal Energy Conversion Act of 1980. This new statute establishes a comprehensive licensing and regulatory system for ocean thermal energy conversion facilities, which are designed to use temperature differences in ocean water to produce electricity. In signing the bill into law, the President noted that the Ocean Thermal Energy Conversion is a technology that will contribute greatly to the goal of meeting 20 percent of the United States' energy needs from renewable resources by the year 2000.

The section has also assumed responsibility for certain energy-related litigation previously handled by the General Litigation Section. This includes several broad areas relating to energy development, including oil and gas leasing on federal lands, coal leasing on federal lands, and certain aspects of nuclear energy. Given the increasing importance to our nation's future of energy development on federal lands, this litigation is best handled by a specialized section having a permanent cadre of lawyers experienced in the area. Moreover, transfer of work to the section helps to relieve the over-burdened General Litigation Section.

Finally, the section is responsible for implementation of the division's proposal, approved by the Attorney General, to explore and pursue litigation opportunities to promote energy conservation and reduce waste. Working in conjunction with its client agencies, the section will pursue such matters as preventing waste of oil and gas by federal lease holders, protecting the government's interests as a customer

of public utilities, and promoting the recovery of waste materials for use as energy.

Creation of the section is expected to result in increased managerial and staff-level efficiency by centralizing the division's energy-related litigation in one section having the specialized expertise necessary to keep pace with fast-moving developments in this area and capable of developing and implementing new initiatives to promote energy conservation through litigation.

Policy, Legislation and Special Litigation Section

This section handles the division's policy functions along with the legislative responsibilities. It has also assumed a new responsibility for developing innovative litigation programs and approaches designed to solve novel problems. For example, a special litigation program is developed when client agencies present unique legal problems not previously confronted in the routine programs of the division. The section was the first to address the problems of wildlife enforcement and to coordinate the various provisions of federal law that control the discharge and disposal of toxic and hazardous wastes. More recently, the section produced a study of various alternatives to promote the goal of energy conservation through litigation. This study has been shared with the Energy Section which may follow up on those initiatives. The section works very closely with all other sections in the division.

During the year, the section's Special Litigation Unit has been involved in several cases. *Amicus curiae* briefs were filed in *Agins v. Tiburon*, an important land-use planning case decided by the U.S. Supreme Court in a manner consistent with our position; *San Diego Gas & Electric v. City of San Diego*, a follow-up case to *Agins*; *Graham v. Estuary Properties, Inc.*, a wetlands case before the Florida Supreme Court; *Hybud Equipment Co. v. City of Akron*, before the Sixth Circuit Court involving energy conservation; *State of Minnesota v. Clover Leaf Creamery*, before the U.S. Supreme Court in support of a state's ban on plastic containers; and *Oklahoma v. Pile*, involving a delicate balancing of First Amendment and environmental interests under the highway beautification program. In *Pagedas v. Andrus*, an oil and gas leasing case, the Special Litigation Unit has filed all motions and memoranda and will argue when scheduled before the District of Columbia District Court. In *Colon, et al. v. Carter, et al.*, the unit provided emergency litigative assistance in preparing briefs before the District Court for Puerto Rico, the First Circuit Court of Appeals, and the U.S. Supreme Court. The unit has also contributed briefs in cases concerning the Oneida Indians and the effects of interstate compacts on water policy. Legislative jurisdic-

tional issues have also been successfully resolved over Gateway National Recreation Area, Metropolitan Correctional Center-New York and Metropolitan Correctional Center-Chicago.

The section was also responsible for several significant studies in the policy area. For example, the section completed a draft memorandum for the radiation unit in the Hazardous Waste Section, mandated by the Uranium Mill Tailings Control Act of 1978, concerning the liability for costs of remedial action at inactive uranium mill processing sites. Legal memoranda or studies have also been produced on historic preservation, acid rain, soil erosion, threats to resources, National Park Service land acquisition procedures, an inventory of the handling of consumer problems by the division, Indian Claims Section resource needs, and support personnel needs. The last two were done in conjunction with the Administrative Section.

The section wrote the Department's regulations for Floodplain Management and Wetland Protection and the draft for the Department's Historic Preservation regulations. In addition, it participated in the drafting of the Department's NEPA regulations.

The section has also been involved in numerous legislative matters, particularly in the environmental area. The legislative unit actively participated in the development of the Amendments to the Resource Conservation and Recovery Act, enacted in October 1980, which, *inter alia* provides criminal penalties of up to five years' imprisonment and/or a \$250,000 fine for individuals (\$1 million for corporations) who knowingly place another person in danger of death or serious bodily injury through disposal or mishandling of hazardous wastes. The section also participated in the development of "Superfund" legislation for the clean-up of hazardous waste sites and of hazardous materials spills. It was involved in the revision of the Criminal Code with respect to environmental crimes and of the Lacey Act which includes certain penalties for wildlife offenses. In addition, the section was also active in certain aspects of the Alaska lands legislation, amendments to the Safe Drinking Water Act, regulatory reform, and legislation on Indian claims.

Aside from specific legislative topics mentioned above, the section: 1) processed the division's comments on approximately 350 legislative proposals, 2) responded to 140 congressional complaints or inquiries and 3) drafted testimony to be presented to congressional committees.

The section, being responsible for the Division's responses to Freedom of Information Act (FOIA) requests, has also developed a guide for responding to such requests for use by other staff in the Division. The guide standardizes procedures and will hopefully reduce time spent by the other Sections in this area. During the past year, 105 FOIA requests were processed, which represents a tripling in FOIA

requests over the previous fiscal year.

Other responsibilities include answering citizens' mail, processing Privacy Act requests, and representation of the Attorney General at meetings of the Advisory Council on Historic Preservation, the National Trust for Historic Preservation and the Water Resources Council.

Wildlife Section

Created in 1979, the Wildlife Section is responsible for both civil and criminal litigation arising under wildlife laws. Statutes under the section's jurisdiction include the Endangered Species Act, the Lacey Act, the Fish and Wildlife Coordination Act, the Airborne Hunting Act, and the Migratory Bird Conservation Act. The section is also responsible for prosecuting violators of customs laws whenever wildlife is involved.

In civil wildlife cases, the section represents various federal agencies. These civil cases, particularly those arising under the Endangered Species Act, often affect energy and other major construction projects, including refineries, oil leases and dams that are of economic and environmental importance to the nation. Significant civil cases handled by the section include *Pittston Oil Company v. Endangered Species Committee* (D.D.C.) and *Defenders of Wildlife v. Endangered Species Scientific Authority* (D.D.C.). The first case involved litigation over whether the Pittston Oil Company must await final EPA action on its request for a waste water discharge permit for its proposed Eastport Marine Refinery before seeking an exemption under the 1978 Amendments to the Endangered Species Act. EPA's preliminary decision to deny the permit was based on grounds that the refinery would jeopardize the survival of certain endangered species. The district court upheld the government's position that before the exemption could be sought, final agency action was required. In the second case, defenders of wildlife sued to prevent export of bobcats from the United States during the 1979-1980 season, alleging that the Endangered Species Scientific Authority's decisions to allow export were arbitrary and capricious and in violation of the Convention on International Trade in Endangered Species. After a four-day combined hearing on a preliminary injunction and the merits, the district court substantially upheld the Authority's decisions. Continued export of approximately 93 percent of the bobcats involved was permitted. The International Association of Fish and Wildlife Agencies, representing the states, and various groups representing the fur industry, intervened as defendants and participated at trial.

The section's eight attorneys concentrate chiefly on criminal enforcement of the wildlife laws. Criminal cases are jointly prosecuted by section attorneys who are appointed Special Assistant U.S. Attorneys in local U.S. Attorneys'

Offices. Following a one-year study in fiscal year 1979 of the illegal wildlife trade, the division discovered that wildlife enforcement cases often involve sophisticated, international, fraudulent transactions and that most of the illegal trade is accomplished through falsification of the documentation that must accompany wildlife imports. A lesser but still substantial percentage of the trade is accomplished through straight smuggling.

Based upon that same study, the division concluded that the nature of wildlife enforcement cases requires a collaborative investigative effort as well as close supervision of such an effort by the Department of Justice. Therefore, the Wildlife Section developed mechanisms to ensure effective coordination with and among the other agencies in the implementation of the Administration's program to combat illegal trade in wildlife and plants. The section successfully supported the concept of formal interagency Memoranda of Understanding in the wildlife area and proposed the establishment of interagency enforcement task forces. As a result of the section's efforts, two memoranda of understanding were signed by the Land and Natural Resources Division and by the Fish and Wildlife, National Marine Fisheries, Animal and Plant Health Inspection, and Customs Services. The first established the Wildlife Law Enforcement coordinating committee and a general framework for cooperative efforts among committee members. The memorandum committed the committee to the creation of investigative task forces chaired by the Department of Justice. The Texas Task Force set up the first of these task forces consisting of Special Agents from the Customs Service, Special Agents from the Fish and Wildlife Service, a Compliance Officer from the Department of Agriculture, and a Wildlife Section attorney. At least nine formal task forces will be established at each major area of entry for wildlife into the United States including Miami, Florida; New Orleans, Louisiana; Chicago, Illinois; Southern California; New York-New Jersey; San Francisco, California; Seattle, Washington; and Honolulu, Hawaii. In most of these areas, informal task forces are now operating.

Many of the Wildlife Section's activities are designed to prevent the recurrence of the 1971 and 1979 outbreaks of exotic Newcastle's Disease that cost the federal government \$58 million to control. In January 1980, for example, the Wildlife Section successfully convicted an individual who stole diseased birds from his own quarantine station and then sold them throughout the United States.⁴⁹ Significantly, the case led to discovery of serious flaws in the United States' quarantine program and a complete revamping of it. The 120 healthy birds that were seized in connection with that case were later sold for approximately \$50,000, including \$2,100 for each of four macaws and \$2,300 for a pair of eclectus parrots.

The section's efforts have led to the first significant con-

victions and sentences for illegal activity in the wildlife area. In *United States v. Global Zoological Imports Inc.* (C.D. Cal.), several defendants were convicted of importing wildlife using false documentation and obstruction of justice as well as for the theft described above. The principal defendant was sentenced to 18 months in jail, given an additional five years probation, and enjoined from engaging in the importation and sale of birds or animals for the term of his probation. Two other defendants received short jail terms, probations and were required to do 1,500 hours of public service. In *United States v. Molt* (E.D. Pa.), approximately 12 individuals were convicted of illegally importing reptiles into the United States. Molt, the lead defendant, was given a 14-month jail sentence, probation, a substantial fine and enjoined from engaging in the importing of wildlife. Another defendant received one year in jail. Others received substantial fines. In *United States v. Martin* (S.D. Cal.), a defendant who had served two months in jail for smuggling birds and was on probation had his ten month probation revoked after he was caught with more illegal birds. In *United States v. Carrigan* (D. Minn.), Carrigan was convicted of violating the Endangered Species and Migratory Bird Treaty Acts. He received a three-year jail sentence.

Hazardous Waste Section

This section was organized in 1979, to develop an aggressive and effective litigation program to deal with hazardous waste disposal problems. The section was assigned responsibility for litigation arising under the Resources Conservation and Recovery Act of 1976, as amended, as well as other authorities covering the disposal of hazardous wastes including the Clean Water Act, the Refuse Act, the Safe Drinking Water Act, the Clean Air Act and federal common law of nuisance. In April 1980, a Radiation Hazards Unit was created within the section to investigate and litigate recovery of costs incurred by the government in remedial actions at uranium mill tailings sites under the Uranium Mill Tailings Radiation Control Act of 1978 and to address other hazards posed by disposal of radioactive materials. Much of the workload consists of civil enforcement cases and investigations. The rest involves defense of EPA regulations and other agency actions under the Resource Conservation and Recovery Act, and legislative reference concerning hazardous wastes.

In its first year, the Section, with the EPA, had 167 sites under investigation and brought the number of hazardous waste cases filed to 51. These cases were largely brought under statutory provisions authorizing actions where there is an endangerment to health or the environment. Because there are no effective regulations governing treatment, storage and disposal of hazardous wastes, a broad range of

inquiries is involved in each case. The actions address a variety of problems such as groundwater contamination, stream pollution, fires that emit toxic fumes and explosions, airborne contamination involving pesticide wastes and asbestos, and physical contact. Some of the cases involve nationally known tragedies such as the action against Hooker Chemicals concerning Love Canal.

Significant results have been obtained in court orders and opinions and by consent decrees. In *United States v. Vertac Chemical Corp.*,⁵⁰ which involves migration of toxic herbicide production wastes into a stream, the court ruled that the term "endanger" in the statutory provisions means that harm need only be threatened rather than actually occurring. Moreover, the court held that a preliminary injunction may be issued in the absence of proof of actual injury. The court ordered the capping of disposal areas, construction of underground cutoff walls to contain buried wastes, replacement of an earthen wastewater treatment basin and monitoring. Vertac did not fully comply with the court's directive regarding the basin. On the government's motion, the court directed Vertac to take specific steps in replacing the basin.

In *United States v. Solvents Recovery Services*,⁵¹ which concerns groundwater pollution from disposal lagoons, the court rejected arguments that attempted to limit the applicability of the endangerment provision in the Resource Conservation and Recovery Act. The court held that the federal common law of nuisance governs in an action under the endangerment provision of the Resource Conservation and Recovery Act; there need not be interstate effects on ground-water pollution; the acts of disposal which gave rise to the condition need not continue to the date of filing and that the Act is not impermissibly retroactive; and relief is not limited to restraining of ongoing conduct.

Clean-up of hazardous waste sites is being obtained in several cases under consent decrees. Pursuant to the terms of the decree in *United States v. Northeastern Pharmaceutical and Chemical Co.*,⁵² co-defendant Syntex Agribusiness, the corporate successor to the lessor of the plant that generated the wastes, is removing a substantial quantity of dioxin, one of the most toxic chemicals known, from a disposal site on a nearby farm. Other consent decrees, such as in *United States v. Automated Industrial Disposal and Salvage Co.*,⁵³ require the defendant to prepare a plan of study to determine the extent of contamination, to prepare a report on contamination and a remedial plan to abate the contamination and to implement remedial measures. The assignment of investigatory and analytical work to the polluter is an important aspect of the government's approach.

At the close of the year, final orders, including consent decrees, had been entered regarding six sites. In eight cases there have been preliminary orders, partial consent decrees or

precedent-setting memorandum orders. The filing of numerous actions within the section's first year of existence and the results obtained are a consequence of coordination with the EPA in early stages of investigations and case development.

The section is defending challenges to regulations under the Resource Conservation and Recovery Act establishing the initial phase of a comprehensive program to regulate solid and hazardous wastes. The first group of cases present challenges to regulations regarding solid waste plans prepared by states which will require disposal of garbage in sanitary landfills and prohibit open dumps. The second group of cases involves the hazardous waste management program, including lengthy regulations which identify those wastes which are hazardous, identify requirements applicable to generators and transporters of wastes, establish interim standards applicable to active disposal facilities before a permit is issued, establish federal permit requirements and procedures, and establish requirements a state must meet to assume the permit program. There are 45 petitions challenging the hazardous waste management regulations; this will be one of the largest cases challenging agency action in the District of Columbia Circuit Court.

When the regulations become effective in late 1980, the section will bring civil actions to require disposal sites to comply with interim standards and, together with the Criminal Division, will initiate criminal actions against those acting outside the regulatory system, such as the so-called midnight dumpers.

The Radiation Hazards Unit, with the Policy, Legislation and Special Litigation Section in the Land and Natural Resources Division, was involved in preparation of a report to the Congress under the Uranium Mill Tailings Act on liability of those who left uranium mill tailings at sites which are being rectified at government expense under the Act. The unit is also investigating liability at several individual sites that the Department of Energy, in cooperation with the states, will clean up. EPA and the unit are investigating and preparing enforcement actions regarding sites where the disposal of radioactive waste is presenting an endangerment to health.

The section provided substantial input and support to the division's legislative work on the Solid Waste Disposal Act Amendments of 1980 and Superfund bills. The Solid Waste Disposal Act amended the Resource Conservation and Recovery Act and substantially increased criminal liability. Superfund legislation would create a fund to clean up abandoned and existing dumps and include a liability provision for those problems.

Appellate Section

The Appellate Section is responsible for handling the appeals from district court decisions. The section prepared

briefs and other substantive papers and presented oral argument in 1,075 cases for the federal and state appellate courts, an increase of 122 cases over fiscal year 1979. Documents filed in the Supreme Court for division cases — briefs on the merits, petitions for certiorari, briefs in opposition, jurisdictional statements, and miscellaneous memoranda — were also drafted. legislative matters were commented on and research papers were produced on several problem cases.

Significant environmental decisions included the Supreme Court's affirmance of the EPA's disapproval of a Clean Water Act permit issued by a state, agreeing that disapproval is in effect a denial of a permit and, hence, reviewable initially and exclusively by the Courts of Appeals,⁵⁴ as are enumerated EPA actions and other final decisions, even though informal in nature, under the Clean Air Act.⁵⁵ Persons objecting to Clean Water Act permits for the discharge of pollutants are not entitled to adjudicatory hearings unless they specify factual issues.⁵⁶ A "civil" penalty for discharging oil in navigable waters, which discharge was reported pursuant to the Clean Water Act, was upheld against a claim of compulsory self-incrimination.⁵⁷ A Court of Appeals turned aside a threshold challenge to restrictions on federal grants for highway and sewerage projects and to a moratorium on construction permits in areas with highly polluted air and no acceptable improvement plans.⁵⁸ The Airborne Hunting Act, which prohibits hunting from aircraft, was held to be within Congress' interstate commerce authority and not to inappropriately impinge on state game management powers.⁵⁹ Refusal to terminate grand jury proceedings, involving conspiracy to defraud the EPA regarding dangerous pesticides, was affirmed, rejecting allegations of continuing misconduct by prosecutors.⁶⁰ The Department of the Interior's programs to lease tracts on the Outer Continental Shelf for development of oil and gas were successfully defended against various environmental arguments.⁶¹

The Surface Mining Control and Reclamation Act of 1977 was the focus of litigation in several cases. The Department of the Interior's regulations, setting forth permit application requirements to be contained in state programs submitted to the Secretary for his approval, were sustained.⁶² General challenges to the interim regulations implementing the Act were successfully resisted, including adequacy of the basis and purpose statement, lack of a variance procedure and economic analyses, and strictures on surface mining of Indian lands. But provisions regarding blasting, exemptions for prime farmlands, and water quality were invalidated.⁶³ Decisions holding parts of the 1977 Act unconstitutional were appealed to the Supreme Court, which has stayed the decisions pending appeal and noted probable jurisdiction.⁶⁴

The Supreme Court also rendered important land use decisions, holding that a state's constitutional provisions

permitting individuals to exercise free speech and petition rights in a privately owned shopping center does not violate the shopping center owners' rights under the First, Fifth, or 14th Amendments;⁶⁵ and that a municipal zoning ordinance with density housing restrictions did not take the owners' property without payment of just compensation.⁶⁶

In Indian litigation, the Supreme Court agreed that the General Allotment Act did not impose fiduciary duties upon the United States to manage the timber on Indian allotments, nor constitute a consent to be sued for damages for alleged mismanagement, and that Tucker Act jurisdiction for individual claims and Indian Claims Commission Act jurisdiction for tribal claims were lacking.⁶⁷ The court denied local governments authority to acquire Indian trust lands by physical seizure (inverse condemnation), requiring institution of formal proceedings in federal, not state, courts.⁶⁸ But it disagreed with the section's view that the Sioux were compensated by material assistance and food rations for a legislative taking of some seven million gold-rich areas in the Black Hills, and approved an award totaling \$105 million, including interest;⁶⁹ and that the Buy Indian Act authorizes the Department of the Interior to enter into road construction contracts with Indian-owned companies without first advertising for bids.⁷⁰ States may impose their cigarette and sales taxes on on-reservation purchases by non-tribal members, but not motor vehicle and mobile home taxes on vehicles owned by tribes or their members; state assumption of civil and criminal jurisdiction over two reservations was held unlawful.⁷¹ The 1971 Alaska Native Claims Settlement Act, under which Alaska Natives received nearly \$1 billion and 40 million acres in "settlement" of all claims, was ruled to have extinguished their pre-1971 trespass claims in the North Slope area against the state and several oil companies.⁷² A non-Indian purchaser of an Indian allotment was judged not to have acquired Indian reserved water rights.⁷³

In the public land and water law areas, the Supreme Court ruled that farmers in the Imperial Valley of California were entitled to continue receiving federal reclamation project water irrespective of federal law restricting delivery of such water to farms no larger than 160 acres.⁷⁴ The Supreme Court agreed that the Carey Act does not require the Department of Interior to reserve public desert lands for possible state selection for reclamation, nor preclude rejection of a particular application;⁷⁵ and that Department of the Interior properly excluded certain mineral-rich public lands from tracts Western states may select in lieu of lost school-grant lands.⁷⁶ It disapproved the Department of the Interior's refusal to issue patents to holders of oil shale claims filed prior to 1920, even though the holder may not be able to show present marketability; some five million acres of public lands may be affected.⁷⁷ The public right of navigation without compensation was denied in a former

fishpond in Hawaii which had been deepened and opened to a bay and the Pacific Ocean, creating a highly developed private recreation area.⁷⁸ Dismissal was upheld, for non-justiciability, of a suit to compel the President to provide a detailed statement of reasons to support his budget requests for Forest Service activities.⁷⁹ Federal unitizing of a private company's oil bearing lands outside the Elk Hills Naval Petroleum Reserve No. 1 in California but within the "same geologic structure" was approved, as provided by contract; approximately 100 million barrels of oil were at stake.⁸⁰

Condemnation decisions were highlighted by the Fifth Circuit Court's according 53 landowners new trials and prescribing guidelines for the conduct of proceedings involving numerous landowners and tracts, to assure fundamental fairness to owners as well as the public.⁸¹

Appraisal Section

The Appraisal Section is staffed by one secretary and three professional appraisers who perform as consultants and analysts in all matters, except the law, involving real and personal property presented by any of the Department's divisions or bureaus, and other agencies of the government. The section handles matters involving complicated questions of appraising for just compensation as it relates to the law of federal land acquisition. Analyses of the section result in settlement recommendations for the condemnation cases and critiques as to the adequacy of appraisals for support of just compensation, or use in trial.

The Appraisal Section reviewed and commented on 2,790 analyses of appraisals in fiscal year 1980.

Administrative Section

This section has provided the division with professional financial management, systems, administrative and analytical support services in response to the rapid growth experienced in this division this year.

Two of the responses to this growth have been the initiation and implementation of the division's computerized docket tracking case management and attorney time systems. These systems are currently being implemented throughout the division and will provide statistical control information vital to the management of the division including attorney time by case, feedback to managers on the accuracy of case weights, and the handling of case prioritization. The data obtained through these systems will aid in developing models and schedules by case type and weight, developing performance measures for program evaluation, performing trend analysis of case costs to determine changing resource requirements, and developing an effective system for program planning and resource allocation. The entire docket tracking case management system is

expected to be converted from the present manual system by the end of the first quarter of fiscal year 1981, with further development of the data base following.

Computerized litigation support systems have been implemented for capturing, indexing, and referencing large numbers of case-related documents as well as statistical and financial information to support legal actions. This capability is crucial to the successful litigation of major division cases, particularly those cases involving toxic and hazardous waste, energy, pollution control, radiation hazards, and land acquisition.

Fiscal Year 1980 Workload Statistics

Land Acquisition:	
Tracts Start	21,230
New Tracts Opened	3,978
Tracts Closed	6,245
Tracts End	18,963
Pollution Control and Environmental Enforcement	
Matters Start	1,833
New Matters Opened	928
Matters Closed	425
Matters End	2,336
Hazardous Waste:	
Matters Start
New Matters Opened	272
Matters Closed	52
Matters End	220
Marine Resources:	
Matters Start	136
New Matters Opened	97
Matters Closed	89
Matters End	144
Indian Resources:	
Matters Started	264
New Matters Opened	398
Matters Closed	60
Matters End	602
Indian Claims:	
Matters Start	119
New Matters Opened	8
Matters Closed	9
Matters End	118
General Litigation and Energy	
Matters Start	2,222
New Matters Opened	1,360
Matters Closed	1,019
Matters End	2,563
Appellate:	
Matters Start	521
New Matters Opened	553
Matters Closed	452
Matters End	622

PLSL:	
Matters Start	165
New Matters Opened	870
Matters Closed	881
Matters End	154
Wildlife:	
Matters Start
New Matters Opened	750
Matters Closed	240
Matters End	510
Division Totals:	
Matters Start	26,490
New Matters Opened	9,214
Matters Closed	9,472
Matters End	26,232

CITATIONS

- (1) *In the Matter of the Complaint of Sedco, Inc.*, No. H-79-1880 (S.D. Tex., filed Sept. 11, 1979).
- (2) *Mountain States Legal Foundation, et al. v. Costle, et al.*, No. 79-2261 (9th Cir., Aug. 29, 1980).
- (3) *Pacific Legal Foundation, et al. v. Costle*, No. S-79-925 (E.D. Cal., Mar. 10, 1980) (order denying preliminary injunction) *aff'd*. No. 80-4108 (9th Cir., Aug. 12, 1980).
- (4) *Republic Steel, et al. v. Costle*, 621 F.2d 797.
- (5) *Dow Chemical Company v. EPA*, 484 F.Supp. 101 (D.Del. 1980) *appeal docketed*, No. 80-1498 (3d Cir., Mar. 24, 1980).
- (6) *Chevron Chemical Company v. Costle*, Civil Action No. 79-532 (D.Del., filed June 5, 1980), *appeal pending*, No. 80-2037 3d Cir.).
- (7) *Mobay Chemical Corp. v. Costle*, Civil Action No. 79-591D (W.D.Pa.).
- (8) *Creppel, et al. v. Corps of Engineers*, Civil Action No. 77-25 (E.D.La.).
- (9) *United States v. Plaquemines Parish Mosquito Control District*, F.Supp. (D.La.) (Unreported).
- (10) *Lead Industries Association, Inc. v. EPA*, Nos. 78-2201, 78-2220 (D.C. Cir., June 27, 1980).
- (11) *Chrysler Corporation v. Costle*, No. 78-2273 (D.C. Cir. June 19, 1980).
- (12) *Rubber Manufacturers Assoc., Inc. v. Costle*, 14 E.R.C. 2108 (D.Del., 1980).
- (13) *Atcheson, Topeka and Santa Fe R. R. et al. v. Alexander, et al.*, 480 F. Supp. 980 (D.D.C. 1979).
- (14) *United States v. Burns*, No. 78-56-CR-5 (E.D.N.C.).
- (15) *United States v. Oxford Royal Mushroom Products, Inc., et al.* No. 78-211 (E.D.Pa.).
- (16) *United States v. Delaware County Incinerators*, No. 99-804 (E.D. Pa. February 27, 1980).
- (17) *United States v. International Harvester Co.*, No. 75-C-4264 (N.D. Ill. June 12, 1980).
- (18) *United States v. NL Industries, Inc.*, No. 80-1015 (D.N.J.).
- (19) S.Ct. No. 9, Original.
- (20) S.Ct. No. 5, Original.
- (21) *United States v. Alaska*, S.Ct. No. 84, Original.
- (22) *United States v. Maine* (Massachusetts), S.Ct. No. 35, Original.
- (23) *United States v. Maine* (Rhode Island), S.Ct. No. 35, Original.
- (24) *United States v. Louisiana* (Mississippi/Alabama), S.Ct. No. 9, Original.

- (25) 43 U.S.C. 133, *et seq. Massachusetts v. Andrus*, D. Mass., Civil No. 78-1084. *North Slope Borough v. Andrus*, D.D.C., Civil No. 79-3193.
- (26) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq.*
- (27) *United States v. 290.30 Acres of Land in Cameron Parish, State of Louisiana, and Mrs. Agnes Elender Lowery, et al.*, Civil No. 77-045 (W.D. La.); *United States v. 374.94 Acres of Land in Iberville Parish, State of Louisiana, and Gulf Oil Corp., et al.*, Civil No. 77-127 (M.D. La.); *United States v. 499.72 Acres of Land in Brazoria County, Texas, and Freeport Minerals Company, et al.*, Civil No. G-77-70 (S.D. Tex.).
- (28) *Louisiana-Pacific Corporation, et al. v. United States*, Civil No. 78-0874-CFP (N.D. Calif.).
- (29) *United States v. 134,960.62 Acres of Land in Klamath County, Oregon, Etc.*, Civil No. 74-894 (D. Or.).
- (30) Civil No. 75-417-ORL-CIV-Y (M.D. Fla.).
- (31) Civil No. 78-61-C-A (N.D. Ohio).
- (32) Civil No. 77-1127-BL through 77-1131-BL (S.D. W. Va.).
- (33) Civil No. 78-627-B-CA (E.D. Tex.).
- (34) Civil No. 77-3026 (W.D. Ark.).
- (35) Civil No. 19917-W (D.Md.).
- (36) 100 S.Ct. 2578 (1980).
- (37) 100 S.Ct. 2592 (1980).
- (38) 617 F.2d 537 (10th Cir. 1980).
- (39) 100 S.Ct. 2069 (1980).
- (40) Civil No. 9213, Phase II (W.D.Wash.).
- (41) Civil No. R-74-34 BRT (D.Nev.).
- (42) S.Ct. No. 8, Original.
- (43) *United States v. Sioux Nation*, U.S. , 100 S.Ct. 271 (June 30, 1980).
- (44) *United States v. Helen Mitchell, et al.*, 445 U.S. 535 (1980).
- (45) *Menominee Tribe v. United States*, Docket 134-67 (Basic) Ct. Cl. , 1979, *cert. denied*, U.S. (March 31, 1980).
- (46) *Id.*
- (47) *Menominee Tribe v. United States*, Docket 134-67-F, Ct. Cl. (March 31, 1980), *rehearing denied*, Ct. Cl. (April 25, 1980).
- (48) U.S. (October 14, 1980).
- (49) *United States v. Global Zoological Imports, Inc.*, (S.D. Cal. 1980).
- (50) 489 F. Supp. 870 (E.D. Ark. 1980).
- (51) F. Supp. , 14 E.R.C. 2010 (D. Conn. 1980).
- (52) Civil No. 80-5066 (W.D. Mo. 1980).
- (53) Civil No. 2-80-139 (E.D. Tenn. 1980).
- (54) *Crown Simpson Pulp Co. v. Costle*, U.S. (1980).
- (55) *Harrison, et al. v. PPG Industries Inc.*, U.S. (1980).
- (56) *Costle v. Pacific Legal Foundation*, U.S. (1980).
- (57) *United States v. Ward*, U.S. (1980).
- (58) *Pacific Legal Foundation v. Costle*, F. 2d (9th Cir. 1980).
- (59) *United States v. Helsey*, 615 F.2d 784 (9th Cir. 1979).
- (60) *In re November 1979 Grand Jury (Velsicol Chemical Corp.)*, 616 F.2d 1021 (7th Cir. 1980).
- (61) *Conservation Law Foundation v. Andrus*, 617 F.2d 296 (1st Cir. 1979); *Texas and Louisiana v. Andrus*, unreported (5th Cir. 1979); *Energy Action Educational Foundation v. Andrus*, F.2d (D.C. Cir. 1979); *North Slope Borough v. Andrus*, F.2d (D.C. Cir. 1980).
- (62) *In re Permanent Surface Mining Regulation Litigation*, F.2d (D.C. Cir. 1980), *in banc rehearing granted*.
- (63) *In re Surface Mining Regulation Litigation*, F.2d (D.C. Cir. 1980).
- (64) *Virginia Surface Mining and Reclamation Ass'n v. Andrus*, 483 F. Supp. 425 (W.D. Va. 1980), *jurisdiction noted*, U.S. ; *Indiana v. Andrus*, F.Supp. (S.D. Ind. 1980), *jurisdiction noted*, U.S. .

- (65) *Prune Yard Shopping Center v. Robins*, U.S. (1980).
- (66) *Agins v. City of Tiburon*, U.S. (1980).
- (67) *United States v. Mitchell*, U.S. (1980).
- (68) *United States v. Clarke*, U.S. (1980).
- (69) *United States v. Sioux Nation of Indians*, U.S. (1980).
- (70) *Andrus v. Glover Construction Co.*, U.S. (1980).
- (71) *Washington v. Confederated Tribes of the Colville Indian Reservation*, U.S. (1980).
- (72) *United States and Inupiat Community of the Arctic Slope v. Atlantic Richfield Co., et al.*, 612 F.2d 1132 (9th Cir. 1980), *cert. denied*, U.S. .
- (73) *Colville Confederated Tribes, et al. v. Walton*, F.2d (9th Cir. 1980), *reh. pending*.

- (74) *Bryant v. Yellen*, U.S. (1980).
- (75) *Andrus v. Idaho*, U.S. (1980).
- (76) *Andrus v. Utah*, U.S. (1980).
- (77) *Andrus v. Shell Oil Co.*, U.S. (1980).
- (78) *Kaiser Aetna v. United States*, U.S. (1980).
- (79) *National Wildlife Federation v. United States*, F.2d (D.C. Cir. 1980).
- (80) *United States v. Standard Oil Co. of California*, 618 F.2d 511 (9th Cir. 1980).
- (81) *United States v. 320.0 Acres in Monroe County, Fla. (Ciccone, et al.)*, 605 F.2d 762 (5th Cir. 1979).

Immigration and Naturalization Service

David Crosland
Acting Commissioner

The Immigration and Naturalization Service (INS) administers and enforces the immigration and nationality laws by admitting, excluding, removing, or naturalizing non-United States citizens. The Service's activities are organized into four areas of operation: examinations, enforcement, management, and operations support.

Examinations

The Examinations Division's functions cover: the inspection of persons arriving at United States ports of entry to determine the admissibility of such persons; the adjudication of requests for benefits and privileges under the immigration laws; the examination of applicants for naturalization; the refugee and parolee concerns of the Service; and the Service's Outreach Program efforts.

Inspections

The Inspections program of the Immigration and Naturalization Service administers immigration laws regarding the inspection, for admission, of all persons arriving at ports of entry in the fifty states, Puerto Rico, the Virgin Islands, and Guam. It also administers the preinspection of persons departing from preclearance facilities in Canada, Bermuda, and the Bahamas for entry into the United States.

Immigration inspectors determine the nationality of each person seeking admission. If a person is determined to be an alien, the inspector conducts an examination and decides whether the alien is eligible for admission into the United States. In fiscal year 1980, over 300 million persons were inspected for entry, and of this number, 180 million were aliens.

Aliens found to be ineligible for entry number 915,600. Of those found ineligible, 59,000 were crewmen who were not permitted to land; 600 were stowaways who were located and detained aboard the vessels on which they arrived; and 856,000 chose to withdraw their applications for admission rather than appear in formal exclusion hearings before immigration judges.

The Department of Justice's Office of Legal Counsel, after detailed study, has concluded that INS has the legal obligation to exclude homosexuals from the United States under Section 212(a)(4). However, it will be done solely upon the voluntary admission by the alien that he or she is homosexual.

Under the new policy, persons will be excluded without a medical examination when non-medical evidence establishes them as homosexual.

Immigrants

The immigration laws in this country apply to aliens. An alien is any person who is not a citizen or national of the United States. Alien applicants for admission are divided into two general classes: namely, immigrants and nonimmigrants. Immigrants are those aliens who come to this country as permanent resident aliens. Nonimmigrants are those aliens who enter for a temporary period and for some lawful purpose. All aliens, whether immigrants or nonimmigrants, must be admissible under the general immigration laws.

There are two major ways in which resident aliens are classified each year. The first distinguishes immigrants according to whether or not they are subject to the numerical limitations established by amendments to the Immigration and Nationality Acts, effective December 1, 1965 and January 1, 1977. The second distinguishes immigrants according to whether they arrived in the United States as new permanent resident aliens or became new permanent resident aliens after a stay in the country as nonimmigrants.

Adjudications

Fiscal year 1980 marked the first time in INS history that the number of individuals applying for adjudications benefits exceeded two million. More than 92 percent of these cases were completed during the fiscal year.

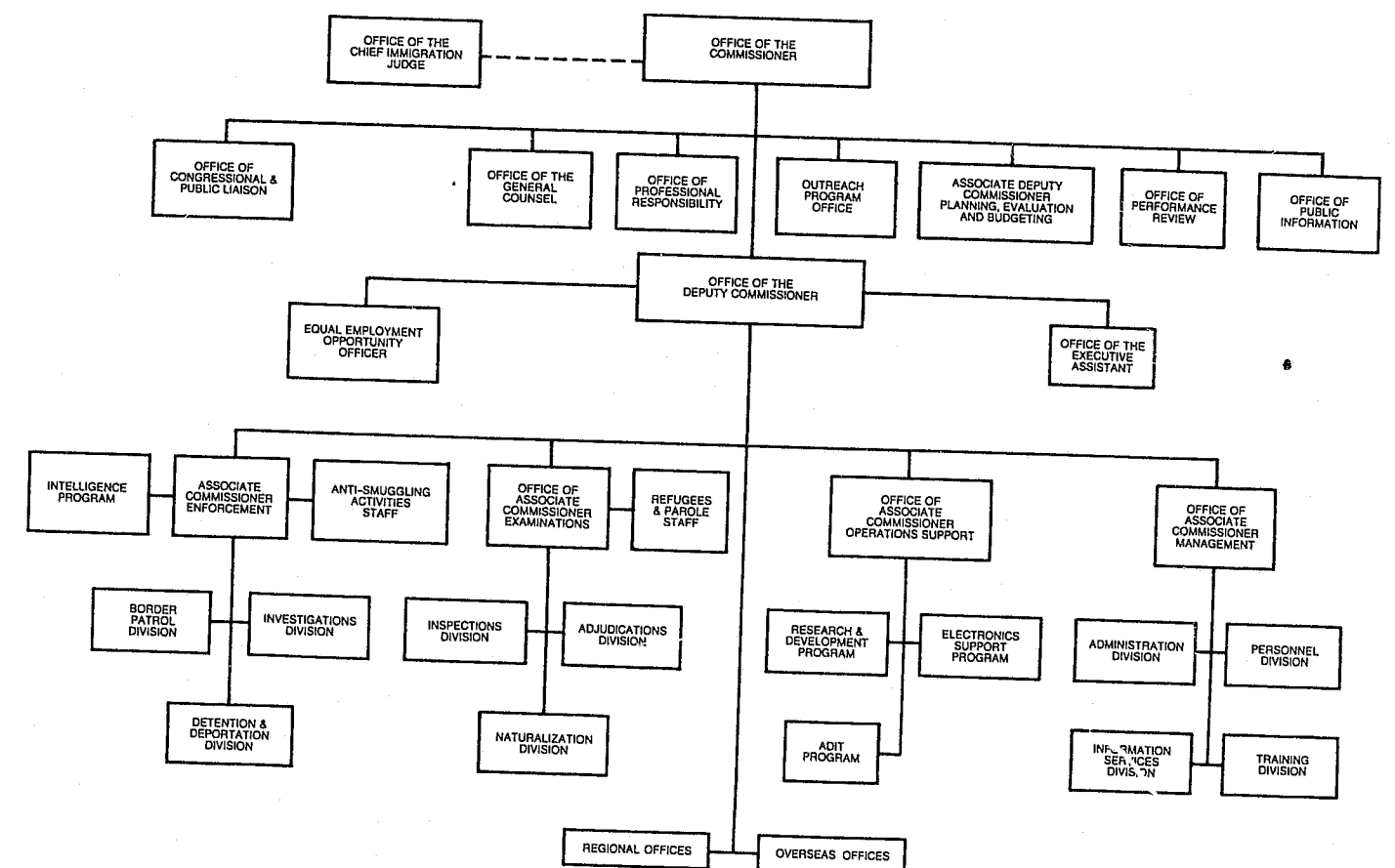
The complete revision of the Service regulations and instructions for adjudicating applications for political asylum in the United States occurred in fiscal year 1980. The revision was necessitated by the changes made in the asylum process, subsequent to the enactment of the Refugee Act of 1980 (Public Law 96-212).

Other adjudications highlights in fiscal year 1980 included participation in the Iranian student interview program and the processing of refugees arriving in the Cuban boatlift.

Office of Refugee and Parole

The Office of Refugee and Parole has the responsibility for monitoring Service refugee programs, INS offices overseas, and requests for the exercising of the Attorney

Immigration and Naturalization Service



General's parole authority in cases embodying humanitarian factors or cases deemed to be in the public interest.

Of major importance during the year was the passage of the Refugee Act of 1980, which was signed into law by the President on March 17, 1980.

A total of 231,700 refugees were authorized to enter the United States from Africa, Asia, Eastern Europe, Latin America, the Middle East, and the Soviet Union. This constitutes a 113 percent increase over the 108,875 refugees authorized in fiscal year 1979. There is every indication that this level of refugee admissions will continue over the next several years.

In addition to refugee processing, the overseas offices process applications and petitions, conduct investigations dealing with suspected fraud in immigration matters, and provide liaison with other agencies, which are foreign and American, and public and private in nature. Moreover, assistance is provided to United States citizens and permanent residents in the area of immigration.

Naturalization

In the past ten years, there has been a sharp increase in the number of persons who have come to the United States to live permanently. After the period of residence required for naturalization has passed, which is usually five years, applications are made for citizenship. The increase in immigration resulted in a corresponding increase in naturalization applicants. Receipt of applications climbed from 147,954 in fiscal 1971 to over 278,000 in fiscal 1980.

Special consideration is given to the naturalization cases of servicemen and aliens joining their spouses who are United States citizens serving overseas in the military.

Outreach Program

The Service began the Outreach Program in fiscal year 1978 after determining that many aliens are eligible for benefits under immigration and nationality laws but often do not apply for them. Specifically, many aliens are not aware of immigration laws or how to obtain benefits; lack

the expertise to prepare immigration petitions and applications; are reluctant to deal with the Service because of fear of deportation; and believe their problems are so complex that they have to rely on so-called experts who often charge exorbitant fees for services which INS and voluntary agencies can provide gratis.

The INS Outreach Program continued its series of training workshops during fiscal year 1980, informing community participants how eligible aliens can obtain immigration benefits. Overall, the Outreach Program conducted 46 workshops for 2,215 community participants during the year, with 314 voluntary immigration counseling agencies (volags) and other community organizations involved in the effort. Although the program offered its usual training courses on family reunification, adjustment of status, and visa processing abroad to volags and other local groups, emphasis in the fiscal year was placed on citizenship.

Workshop participants were advised to inform prospective applicants of the English language and civics requirements for naturalization, and of the fact that interested persons could enroll in citizenship courses in local public schools or other sites to master these prerequisites. The program was designed to ensure that the volags' would submit accurately prepared, well documented forms and screen out deficient applications.

The Outreach Program also held workshops on family reunification/adjustment of status and visa processing abroad, with participation from the Department of State's Visa Office and featured talks by Department of Labor officials.

This action was based on an anticipated increase in naturalization applications, particularly from Indochinese and other lawful permanent residents. It had been estimated that half of the Indochinese refugees who entered the United States in 1975 and adjusted their status 2 years later would apply for naturalization in 1980.

In brief, the Outreach training is geared toward helping documentable aliens obtain permanent residence status or other immigration benefits. It is made clear to all participants that the program is not to be used to help illegal aliens without equities or to charge for counseling services. Nor is the Service asking Outreach workers to turn in names and addresses of the undocumented individuals for apprehension purposes.

Enforcement

The enforcement of the regulatory and criminal provisions of the Immigration and Nationality Act and related federal statutes is the responsibility of the Border Patrol, Investigations, and Detention and Deportation Divisions of INS. These divisions are directed toward the prevention and detection of illegal entry into the United States and toward

the apprehension and removal of foreign nationals who are here in violation of the law.

Border Patrol

The Border Patrol Division of INS received an additional 291 border patrol positions for 1980. Some of the positions were used to enable patrol agents to work in teams of two at unusually hazardous areas. On May 3 and May 5, 1980, an operation coordinated on both sides of the international boundary (i.e., between the United States and Mexico) resulted in a total of 355 apprehensions by the United States border patrol agents.

Border patrol operations continue to result in significant narcotics seizures. For example, on May 20, 1980, border patrol agents at the checkpoint at Florida City, Florida, apprehended two United States citizens for transporting controlled substances, in two separate incidents. One man had approximately 426 pounds of cocaine valued at \$40 million wholesale, with a \$200 million street value. This was the largest domestic seizure at that time. The second man was arrested for transporting 500 pounds of marijuana.

The United States Border Patrol participated in two special programs during fiscal year 1980: the program concerning the identification of Iranian students who were out of status, and the Cuban Refugee Control and Screening Program. At one time more than 200 Border Patrol agents were reassigned to these special tasks.

The Service has curtailed area control and farm and ranch operations since April 1, 1980 in order to assist the Census Bureau during its count of the Hispanic community. Apprehensions were down approximately 40 percent during this period. The detail of officers to Cuban processing sites, during the Cuban influx, and gasoline shortages in the Southern Region contributed to the reduction in apprehensions.

Detention and Deportation

During fiscal year 1980, approximately 736,500 apprehended undocumented aliens were expelled, of which 17,300 were deported and 719,200 — mostly Mexican nations — were required to depart without the issuance of a formal order of deportation.

Detention and Deportation developed Servicewide detention standards for Service Processing Centers, which will meet the needs of both the Service and individual detainees. The major areas addressed by these standards are detention population, personnel services and programs, and physical plant.

Investigations

The Investigations Division of the INS gathers and reports information to determine whether proceedings may

be instituted, or privilege granted, under the Immigration and Nationality Act and locates and apprehends aliens residing in the United States in violation of immigration laws. Fiscal year 1980 presented to Investigations unprecedented assignments brought about by world crisis situations.

Subsequent to President Carter's directive resulting from the American hostage situation in Iran, a revised regulation was issued for the maintenance of status for nonimmigrant students from Iran. Of the estimated 75,000 Iranian students in the United States, over 75 percent complied with the regulation by reporting either to the nearest INS office or at their school.

The next phase of the Iranian program involved locating the Iranian students who failed to report. All INS records relating to the students were reviewed and forwarded to the districts concerned.

Area control operations to locate and apprehend aliens residing in the United States in violation of immigration laws were completed by observing special precautions during the "1980 Census," to ensure that apprehension of illegal aliens would not adversely affect the Government's efforts to secure full participation by minority groups. A key provision stipulated that a search warrant or court order must be obtained before entering residences or places of employment. (The main priority in area control operations is to seek out the employed undocumented aliens).

Smuggling

The Office of Anti-Smuggling Activities has the responsibility of identifying and disrupting major alien smuggling organizations. Responsibilities also include jointly prosecuting, with other governments, organizations which conduct smuggling activities outside the United States.

Anti-smuggling enforcement efforts were enhanced by the new seizure law, Public Law 95-582, which became effective on May 17, 1979. This law permits, for the first time, the seizure of conveyances used by smugglers to smuggle and transport illegal aliens.

Mexican and American government efforts to curtail alien smuggling operations along the southern border continued with good results. The Mexican government assigned special units to work on alien smuggling cases only.

Cooperation with Canadian authorities was favorable also. A joint program exists whereby information about international smugglers is exchanged. The program has been very effective as it has resulted in numerous prosecutions in Canada. The prosecutions were based on a Canadian law that permits prosecution of persons who conspired to violate in Canada a law of another country.

Intelligence

The INS Intelligence staff's responsibilities include the formulation of policies, plans, and procedures for the collection, production, dissemination, and utilization of tactical and strategic intelligence to support the various operational and managerial functions of the Service. During fiscal year 1980, a reorganization which transferred the Intelligence Program functions from the Office of Operations Support to the Office of Enforcement was implemented in order to consolidate such functions and eliminate fragmentation of the program.

Working level liaison, support to other government agencies, and two-way exchange of information were expanded and improved, especially with the Department of State's Visa and Passport Offices and the U.S. Customs Service.

Operation of the El Paso Intelligence Center continued jointly with the Drug Enforcement Administration, and with the participation of the U.S. Coast Guard, Federal Aviation Administration, U.S. Customs Service, and the Bureau of Alcohol, Tobacco, and Firearms, in support of Service activities.

Management

Throughout fiscal year 1980, the INS Management Division attempted to develop more efficient operations within the Service. Employee training, facilities improvement, and form simplification procedures were emphasized, refined, and implemented to enhance public services. Also, adjustments in the Service's records systems resulted in faster and more accurate document filing and retrieval. Better capabilities for compiling statistics were developed from the improved systems as well.

Furthermore, the growing concern about excessive government spending prompted Management to find innovative ways to economize. Thus, in order to effectuate better control of funds, newly designed accounting procedures were initiated.

Administration

The Administration Division provides support activities for the Service's operating units. The contracting and purchasing functions were reorganized and the upgrading of inspection facilities at International airports was continued.

Other achievements during fiscal year 1980 included publication of the semiannual regulatory agenda, the interim refugee and asylum procedures implementing the Refugee Act of 1980, and the proposed rule for alien work authorization; and receipt of a major grant from the Department of Energy to install solar energy systems at six locations in various parts of the United States.

Information Services

The Information Services Division is responsible for the centralized management of the Service's alien files and records; the responses to oral and written inquiries from the public, the Congress, the Attorney General, and the President, regarding immigration and naturalization matters; the development and reporting on the Service's Freedom of Information Act and Privacy Act reporting requirements.

Control and Maintenance of "A" Files on Persons Naturalized on April 1, 1956, and After

In fiscal year 1980, Service policy was revised regarding the control and maintenance of "A" files on persons naturalized on April 1, 1956, and after. These files are now maintained and controlled by the office having jurisdiction over a subject's place of residence rather than by the office where the naturalization took place. The revised policy eliminates the problem posed when several files control offices process naturalization cases in areas that are otherwise under the jurisdiction of other files control offices.

Retention of Service Case Files, 100 Years

As a result of a survey/study, the National Archives and Records Service (NARS) requested that INS evaluate existing retention periods for INS records — particularly the 100-year retention period for most case files — and determine whether the periods can be reduced. After consulting with the Office of General Counsel, it was determined that there is no legal impediment to reducing the 100-year retention period. The INS Management Team has approved a proposal which will reduce record retention to 75 years from the date the file is sent to the Federal Records Center.

Freedom of Information-Privacy Act

Each year, INS receives about 35,000 information requests which are subject to the provisions of the Freedom of Information Act or the Privacy Act of 1974 — more requests than are received by any other single Federal Government agency. Such public interest in INS missions and functions is mirrored by INS attempts to meet the public's requests. In 1980, over 100 INS offices around the world assumed the responsibility for responding to Freedom of Information Act and Privacy Act requests, in addition to meeting normal operational demands. More than 98.5 percent of the requests received were granted in their entirety. Such responses are indeed a notable contribution to the goal of openness in government and reflect maximum disclosure according to the provisions of applicable federal statutes and regulations and policies of the Department of Justice.

Iranian Crisis

The actions taken by the INS during the Iranian crisis occurred in three phases.

The first phase began in mid-November when President Carter ordered that all Iranian nonimmigrant students in the United States report current addresses and submit evidence showing that they are bona fide students in compliance with the laws under which they entered the country.

During the interview period from mid-November through December 31, INS interviewed 56,694 students. Nearly half of them were interviewed at schools and campuses. Some 50,238 were found to be in status, and, therefore, in compliance with the law. There were 6,456 students who were not in compliance.

The second phase of INS activities began January 1, immediately after the interview period expired. This phase consisted of identifying those students who did not report and expelling those students who were not in compliance with the law.

In December, while INS was continuing to interview Iranian students, President Carter ordered that all — except 35 — Iranian diplomats leave the United States.

The Department of State then provided to INS a list of the names of 226 diplomats, with directions to locate and remove those diplomats through the deportation process.

Furthermore, during this period INS moved to tighten controls over all foreign students. Proposed changes in regulations were published March 19 in the Federal Register. The proposed changes would require all foreign nonimmigrant students attending post-secondary schools to report to INS for a review of their status.

The third phase of INS activities tightened the procedures concerning Iranians still further. On April 7, the President announced that all Iranian visa holders could neither enter nor re-enter the United States after that date without having their visa revalidated by the Department of State. Revalidation was to be done only for compelling humanitarian reasons. Orders immediately went to INS field offices, and by the end of the day the President's directive was in effect. The directive effectively prohibited the entry of most Iranians into this country.

On April 12, INS announced that extensions of adjustments of status for Iranians already in the United States would be discontinued to bring the policy in line with that for new entrants.

In a further action, the President ordered the departure of all Iranian military trainees attending schools in the United States. The Department of State advised that they were not considered representatives of a foreign government; thus, they were declared persona non grata. This meant that if they did not leave the country by midnight Friday, April 11, they would be subject to the deportation procedure and rights of appeal.

INS assisted the Departments of State and Defense in initiating a system to determine the departure time for each individual covered by the order. INS personnel were present at airports to ensure that those leaving actually boarded the planes and to collect the departure documents. In addition, INS was able to obtain the identity of 217 Iranians who were known to be here in training on A-2 visas.

Cuban Refugee Influx

In late April, INS sent 100 additional border patrol agents into Florida to help handle the influx of Cuban refugees. The agents were sent to watch for the entry of boats and aircraft carrying undocumented aliens and to assist in processing Cubans who arrived in Florida. Also, two light aircraft and 30 vehicles were sent to help in the operations.

All persons entering were screened medically under the direction of the Public Health Service. Those persons found in need of medical treatment were so provided. Hospitalization, if required, was arranged through public health facilities, military hospitals, or local hospitals.

The INS also screened every entrant to determine if he or she was excludable from the United States. By early June, 659 persons had been identified as having been mental cases or convicted of serious crimes.

From the beginning, the government discouraged the bringing of Cubans to the United States via a dangerous and illegal boatlift. Since April 23, when the first boat carrying Cubans docked at Key West, INS had issued a notice of intention to fine to each boat captain, master, or owner \$1,000 for each alien brought to this country without documents.

Prior to the President's statement on May 15, only boats that met certain criteria were being seized by the Customs Service. Just nine had been seized up to that date. Since May 15, however, all boats returning to the United States with undocumented Cubans aboard were seized by the Customs Service and/or INS. INS has served notices on all arriving boats. The combined policies of fining and seizing were effective in bringing the boatlift to a halt.

Haitian Emigration to United States

For the past several years, Haitians have been arriving in the United States in increasing numbers. One of the earliest arrivals occurred on December 12, 1972 when a small ship landed near Pompano Beach, Florida with 65 Haitian men, women, and children aboard. As of May 1980, there were 6,903 Haitians in exclusion proceedings and 7,754 in deportation proceedings.

Cuban-Haitian Entrants Policy

The Carter Administration concluded that the situation presented by the sudden massive influx of Cubans and Haitians into the United States, without overseas processing and

valid documentation, was not within the contemplation of the Refugee Act of 1980, which became effective on April 1, 1980. Therefore, the Administration sought special legislation to regularize the status of certain Cuban-Haitian entrants. Such legislation would allow them to remain in the United States and make them eligible for certain public assistance benefits, but it would not provide the status or benefits afforded to those admitted as refugees or granted political asylum.

Personnel

Various Civil Service Reform Act provisions had a significant impact on the Service's personnel management program in fiscal year 1980: namely, full implementation of a Senior Executive Service system; training of all supervisors and managers on the merit pay and related performance appraisal system (to be fully implemented during fiscal year 1981); assumption of new personnel authorities delegated from the Office of Personnel Management through the Department of Justice to the Service, including authority for the maintenance of the Border Patrol Register; and implementation of a probationary period for new supervisors and managers.

In accordance with Equal Employment Opportunity Commission requirements, two Affirmative Action Program Plans — one for minorities and females and one for handicapped individuals — were developed. The plans included the development of hiring goals and barrier analysis.

The Upward Mobility Program was improved by executing both the approved training agreement and the change of procedures in the basic plan. The number of program participants increased from seven employees in February 1979 to 70 in June 1980.

Training and Employee Development

During fiscal year 1980, the Service developed a four week training program and delivered the course to 93 immigration officers from the nation of Nigeria. The course included three weeks of classroom orientation concerning immigration policy and procedures and one week of field observation at our land, sea, and airport facilities at El Paso, Texas, and New York City, New York. The training was received well by the Nigerians. Unofficial reports indicate that immigration procedures have improved significantly at the airport in Lagos, Nigeria. This effort has been beneficial in fostering good will with Nigeria, the second largest supplier of crude oil to the United States.

Operations Support

There are four programs which compliment the efforts and activities of INS Central Office operations and INS field office operations: the Electronics Support Program;

the Alien Documentation, Identification, and Telecommunications Program; the Automated Data Processing Systems Program; and the Research and Development Program.

Electronics Support

The Electronics Support Program was involved in three major efforts during fiscal year 1980. The efforts encompassed the Telephone Information Processing Systems program, the radio communications program, and the intrusion detection program.

Alien Documentation, Identification, and Telecommunications (ADIT) Program

The ADIT Program completed its fifth year of operation in fiscal year 1980. Program objectives included the design, production, and issuance of a fraud-resistant alien identification card; and the development and implementation of automated support to the inspection function at ports of entry.

Two significant accomplishments occurred in April 1980 at the Immigration Card Facility located in Arlington, Texas: the one millionth Alien Registration Receipt Card (I-551) was produced and issued; and the facility began production of the Nonresident Alien (Mexican) Border Crossing Card (I-586).

Automated Data Processing Systems

The Automated Data Processing Systems Branch is responsible for the research, development, and operation of various automated systems. These systems support the records maintenance, statistical, and operational functions of the Service. During fiscal year 1980, improvements were made in both the completed and incompleted automated systems.

Ten locations were provided with direct electronic access to the automated Master Index System through Cathode Ray Tube terminals, bringing to 17 the total number of locations that now have this capability. Over four million searches are performed annually in the field. The manual searching capability averages 245 per man-day. The automated capability has increased the average to 600 per man-day.

Clerical productivity has been improved greatly by the use of word processing equipment. All regional offices and 22 field offices now have word processing equipment. INS plans are to continue efforts in improving productivity by expanding word processors to other offices over the next few years. Many routine documents, such as reports and letters, which used to take 5 to 7 minutes to complete can now be completed in 1 minute or less.

Research and Development (R&D)

Research and Development Staff continues to work with other agencies in exploring new technologies of common interest. A joint CustomsService/INS' Research and Development program has developed a system concept for automatically identifying the license plates of moving vehicles. This concept would be operative at unmanned ports of entry. A current pattern-recognition study has revealed that the concept could provide, at both manned and unmanned ports of entry, the capability for automatically entering license plate data into a system and thereby identifying the vehicle owner(s).

Operational tests of improved portable personnel-detecting radar were performed during the year. Joint initiatives by defense agencies were explored for the possibility of developing radar systems better suited to INS requirements. Experiments conducted jointly with the Drug Enforcement Administration determined the potential value of satellites as communications relays to support enforcement operations. A line-watch simulator developed in this staff is now available for producing the automatic evaluation of alternative methods of utilizing border patrol resources.

The Office of the Associate Commissioner for Operations Support also includes the Systems and Technology Planning Staff. This staff is primarily responsible for the development of long range plans for the employment of technology-based systems in support of INS mission goals. The staff reviews proposed and existing projects in terms of cost effectiveness and conformity of objectives with respect to agency goals. Technological assessments are being conducted to determine the broad operational impact of INS systems and technologies in terms of quality of working life, value of service provided to the public and effectiveness of enforcement.

Community Relations Service

Gilbert G. Pompa
Director

The Community Relations Service (CRS) is an arm of the Department of Justice that helps citizens to settle their race-related differences voluntarily rather than in the courts or the streets. Created by the Civil Rights Act of 1964, it is the only agency to which Congress has assigned the task of providing direct help to communities in the resolution of "... disputes, disagreements or difficulties relating to discriminatory practices based on race, color, or national origin. . . ." CRS helps communities at the request of state or local officials, or local citizens and organizations. The agency may also assist on its own motion when it suspects that peaceful relations among citizens are threatened.

CRS' basic resource is its men and women who are experienced in the techniques and processes of the emerging field of racial and ethnic dispute resolution. The triracial, bilingual staff works individually or in teams, but always in the agency's role of objective third-party neutrality.

The approach is flexible and geared to cope with specific community disputes ranging from disagreements in education, law enforcement, housing, and health and welfare services to those associated with American Indians' claims to land, hunting and fishing rights, Ku Klux Klan, and the influx of Indochinese refugees.

The focus is on helping local communities to solve their own problems in a way that is equitable to all. There is no direct cost to communities for CRS services.

Assistance Stresses Voluntary Action

CRS' greatest asset lies in its third-party neutrality role. Agency professionals enter troubled communities with no investigative powers or authority to dispense funds. A voluntary settlement of the problem is the goal. Depending on the circumstances, help takes one of two forms.

If a dispute is flaring, help comes as conciliation. In operational terms, this is an informal agency process of easing community tensions and of starting the disputants to talking to each other. Techniques applied are influenced by the problem. But usually they include 1) gathering varying perceptions and viewpoints, 2) presenting and interpreting facts, 3) initiating discussions between antagonists, 4) identifying resources that might influence a positive outcome, and 5) making suggestions and offering alternatives.

Help could also come as mediation. Unlike conciliation, this is a formal process, and is tried only if the parties agree to it. In mediation, the agency's mediators, the most experienced staff members, undertake predetermined actions

to get the disputants to the negotiation table. Upon completing this task, the mediator chairs the negotiations, always trying to move the parties toward a clear and durable settlement of differences.

One objective of mediation is a written agreement setting forth specific steps each side agrees to take to end the problem. Another is to create a self-enforcing mechanism to assure timely implementation of its provisions.

Inherent in both services is the technical assistance that CRS professionals provide. Such can range from conducting training in dispute resolution and crisis management to providing resource materials and program tools and models indicating how other agencies or communities dealt effectively with similar problems or issues.

Fiscal Year 1980 Caseload

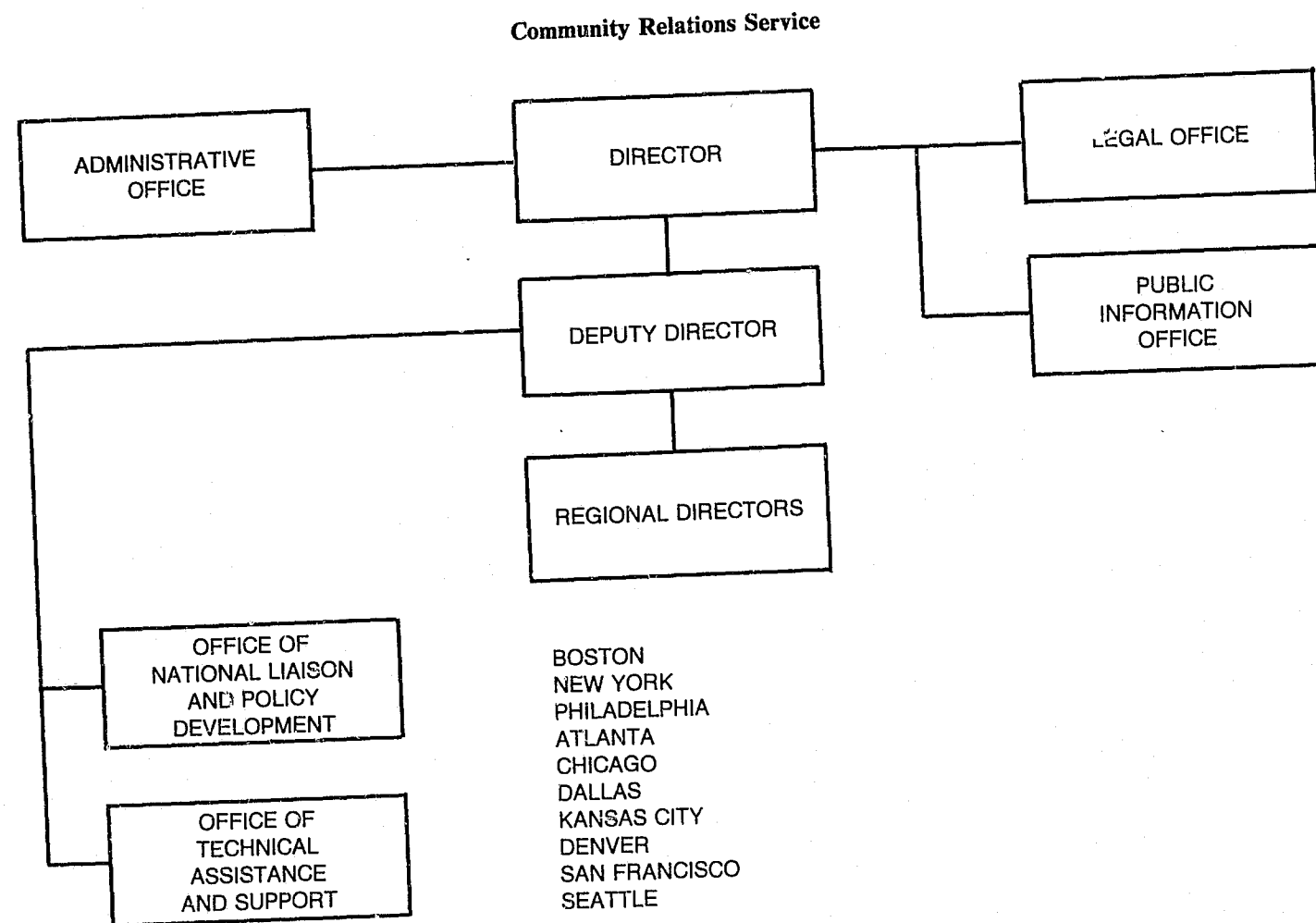
Fiscal year 1980 was marred by riots in such places as Miami, Orlando, and Tampa, Florida; Wrightsville, Georgia; Chattanooga, Tennessee; Flint, Michigan; and Wichita, Kansas; and by deep racial and ethnic bitterness and hostility generally.

Much of the turmoil was the result of a huge backlog of unresolved problems that lingered or had grown worse since the 1960s and early 1970s. But some of the trouble was generated by new problems or new twists to old problems. Many communities for the first time experienced deep-seated disputes related to new immigrant populations from Indo China, Cuba, Haiti, Mexico, the Caribbean, and South America. And charges of police use of excessive force in their relations to minorities, heretofore mainly confined to the local scene, grew to become a national issue.

Lurking as an underlying factor for much of the racial and ethnic hostility was an apparent perception by many white Americans that minorities, mainly blacks and Hispanics, were getting a better deal than anyone else, and that attention and continued efforts to bring them into the mainstream threatened their welfare.

Minorities, on the other hand, perceived a creeping indifference and decreasing emphasis on efforts to improve their plight, and cited, as justification, an increasing number of "reverse" discrimination charges and a marked resurgence in the activities of the Ku Klux Klan.

The CRS received 1,431 alerts to such racial and ethnic disputes and incidents during the year. Of this number, its staff conciliated and mediated 923 cases, and carried over 261 into fiscal year 1981. The remaining number were



turned away because they were not of sufficient volatility to take staff away from problems that were potentially more explosive or serious.

CRS Structure

The CRS has ten regional offices, an Office of Technical Assistance and Support, Public Affairs Office, Office of National Liaison and Policy Development, Administrative Office, and Legal Office.

The regional offices provide on-the-scene assistance that helps communities to settle problems that arise from charges of racial and ethnic discrimination. Virtually all casework is done by mediators and conciliators from these offices.

The Office of Technical Assistance and Support helps the regional offices on all specialized casework. Its specialists in education, administration of justice, and technical writing advise and assist, often on site, regional staff members who are, of necessity, generalists. The office also arranges for the use of consultants and develops materials to meet conciliation and mediation needs.

The Office of National Liaison and Policy Development monitors national trends in racial/ethnic relations, evaluates programs for efficiency and effectiveness, and proposes planning and policy guidelines based on their evaluations and trends ascertained. The office also maintains liaison with major national organizations to aid in the development of agency programs and to elicit outside resources to help CRS in its work.

The Public Affairs Office handles inquiries from the news media and private citizens, advises field staff on media-related aspects of conciliation and mediation, and advises the Director on the public affairs implications of new programs and policies. This office also develops a variety of the written materials needed by the Director and prepares a number of regular and special-purpose reports. It is also responsible for the agency's Congressional Information Program, which provides information requested by members of Congress or their staffs.

The Administrative Office provides logistical support with respect to space and equipment requirements, budget,

procurement, and personnel matters.

The Legal Office's primary responsibility is to serve as the legal advisor to the Director and agency staff. It is also responsible for responding to requests to the agency of a legal nature.

Some Areas of Assistance

Mediation of Court-Referred Cases: Alternatives to Litigation

CRS mediated its first case for the Federal Judiciary in 1973, when it resolved the complaints of a suit filed by black inmates against officials at the Louisiana State Prison at Angola. In light of evident dissension over the judiciary's growing backlog, agency officials moved to test the value of mediation as an alternative to civil rights litigation when, in May 1979, at a workshop attended by 27 of the 31 district judges of the Seventh Judicial Circuit, the CRS Director invited, as a pilot effort, the referral of civil rights cases in Illinois, Wisconsin, and Indiana.

During fiscal year 1980, CRS worked on 19 court referrals from nine judges and three magistrates. Agreements reached include:

Cairo, Illinois. CRS was asked to mediate a class action suit in which black voters sought to abolish the at-large election of City Council members and replace it with ward elections. Blacks represented about one-third of Cairo voters, but none had been elected to the City Council since before 1900. The resulting consent decree provided for an elected mayor and a six-member council. The mayor and one council member would be elected at large and five council members would be elected from wards. Settlement of this case, in a community torn by more than a decade of bitter racial controversy, was hailed by attorneys as an important step toward racial cooperation. Had mediation not been successful, a long, costly, and complex trial would have resulted.

Waupun, Wisconsin. In suits filed in both the Eastern and Western Districts of Wisconsin, three inmates alleged discriminatory treatment of prisoners in the predominantly black Adjustment Center of the Wisconsin State Prison in Waupun. The District Court judge requested CRS intervention. A series of meetings with prison administrators, corrections department officials, a Wisconsin assistant attorney general, the state Public Defender's Office and the inmates brought about agreement on complaints related to food service, exercise, visiting privileges, the use of mace, racial discrimination and housing assignments. In addition, the agreement called for the hiring of a crisis intervention counselor to work in the Adjustment Center.

Chicago, Illinois. In *United States v. Elrod*, the Department's Civil Rights Division charged that housing assignments at Cook County (Illinois) Jail were made on the basis

of race. When counsel reported to the court on May 10, 1979, that they had been unable to reach a settlement, Senior Judge Hubert L. Will assigned CRS to assist them. The CRS-mediated agreement: 1) established a classification system consistent with the consent decree's provisions and the security interests of the Department; 2) developed a tiering plan, outlining the rational and objective criteria to be used in assigning inmates to various housing units; 3) proposed the establishment, modification, or abandonment of housing units for inmates with special needs; 4) developed standard operating procedures to assist defendants' employees in the day-to-day classification process; and 5) developed a training program for defendants' employees assigned to classification duties.

Chicago, Illinois. CRS was asked to mediate a case in which a coalition of community organizations brought suit against the city of Chicago and the U.S. Department of Commerce. The coalition alleged that the city failed to provide minorities and low income persons a role in shaping the Chicago Overall Economic Development Plan (OEDP) as required by federal regulations. An agreement was reached whereby the city would appoint to its OEDP Advisory Committee an agreed upon number of persons selected from a list of nominees submitted by a group of designated community organizations.

Police/Minority Problems

Of all the institutions protested, law enforcement stood out as the most plagued by minority resentment and indignation. It was also the most dangerous and potentially explosive area.

Two conditions characterized police/minority relations. First there was general day-to-day growing out of charges of inadequate police services and countercharges of a lack of community cooperation, allegations of police verbal abuse, lack of respect, insensitivity, and charges of discrimination in police hiring, assignments, and promotions. Secondly, there were the more serious charges of police use of excessive force, the feeling by a large number of minority citizens that law enforcement officers had "one trigger finger for us and another for whites."

To deal with police/minority day-to-day stress, agency professionals undertook to open channels of communications between the two, promote community support of and participation in the police effort, train police in human relations and conflict resolution, evaluate police/community relations programs, and mediate disputes between police departments and citizens or those among white and minority police officers that spilled over into the community.

In 1974, the Black Police Organization filed suit against the city of Louisville, alleging racial discrimination in police recruitment, hiring, assignment, promotion, and discipline practices. The Fraternal Order of Police intervened on

behalf of the city in 1975. Both suits had the effect of dividing the police department along racial lines, a division that surfaced in a community already beset by tensions from school desegregation.

CRS offered its help, and an out-of-court settlement of the six-year-old dispute was soon reached.

The May 1980 agreement, like those CRS mediated in Atlanta, Georgia; Humboldt County, California; Battle Creek, Michigan; Longmont, Colorado, and other communities across the nation were looked upon by public officials and community leaders as practical and cost-effective ways of resolving affirmative action and other types of complaints. In negotiating face-to-face, the dissidents get to know each other and to understand each other's points of view and concerns.

CRS sought to address the issue of police use of excessive force by involving the most knowledgeable sources, local police and local citizens in the search for an answer to the question: When and under what circumstances should a police officer use the weapon?

Thus, efforts of the past fiscal year of involving law enforcement officials, minority leaders and others concerned about the problem in local discussions on the issue were expanded to include a national consultation on the subject.

Cosponsored by the National Urban League and League of United Latin American Citizens, and supported by a grant from the Law Enforcement Assistance Administration, the agency convened a December 1979 consultation in Silver Spring, Maryland, a Washington, D.C. suburb, of 254 black and Hispanic leaders and police officials to collectively discuss the use of excessive force, come up with recommendations, and return home and implement them.

The issue was hotly discussed for two and one-half days. But in the end the participants jointly made 31 recommendations for federal, community, and police action, and police/community action. Uppermost among the calls, and perhaps the one most agreed on, was the recommendation for a federal policy requiring that police use deadly force only to defend or protect human life, to be enforced through civil rights prosecutions.

Another recommendation called for the Department of Justice to promulgate a model policy on police use of guns, after consultation with police officials and minority groups, and for state legislators and municipal executives to reconsider and restrict policies on police use of excessive force. (A single free copy of the consultation proceedings can be obtained from the Community Relations Service, U.S. Department of Justice, Washington, D.C. 20530).

Among local recommendations were calls for creating civilian review boards, simplification of citizens' complaint review processes, and city or metropolitan-wide meetings to improve communications and understanding of points of view between minorities and the police.

As the result of the consultation, CRS is helping 17 communities to implement violence-preventive recommendations they agreed to take to demonstrate the value of police-minority cooperation.

General Community Disputes

Contributing to the agency's workload were a growing number of disputes and disagreements and community tensions especially surrounding new immigrant populations from Indo-China, Cuba, and Haiti.

The 32 Indochinese refugee resettlement cases that CRS helped to resolve in fiscal year 1980, compared to five it helped with in fiscal year 1979, illustrate the growing degree of friction.

In Colorado, Pennsylvania, California, and along the Gulf Coast lines of Texas, Mississippi, and Louisiana, community resistance to resettled Indochinese arose from perceptions that the newcomers generally preempted scarce low-cost housing and jobs, and made unfair inroads into local fishing industries.

In several instances, open clashes were the result.

Seadrift, Texas is one community where violence occurred. The problem sprang from the different fishing practices of Indochinese and white fishermen for the limited harvest available in Seadrift-area waters. The differences fed constant threats, unexplained fires, and general fear. In August 1979, a white man was murdered, allegedly by two Vietnamese.

Accompanied by an interpreter, CRS met with public officials and white and Vietnamese representatives to allay the intense fears and quell rampant rumors. With the cooperation of local leaders, it then convened a biracial group whose members agreed to unite as the Seadrift Community Council. The group initiated weekly meetings to address diverse concerns and find solutions to problems. As many of the problems extended beyond Seadrift's bounds, CRS urged the involvement of such agencies as Catholic Charities, the U.S. Immigration and Naturalization Service, Texas Department of Public Safety, and state and local church and business leaders. This effort prompted a seminar on local and state rules, customs, and regulations for fishing, crabbing, and shrimping in area waters. These rules and regulations were subsequently published in Vietnamese.

Acquittal of the two Vietnamese murder suspects prompted renewed threats of violence, including the shot-gunning of a Vietnamese home. The Ku Klux Klan announced an anti-Vietnamese meeting for the area. Harassment and threats of violence were so intense that all but one Vietnamese family fled Seadrift, as did a number of Hispanic families. The fish packing plant closed its doors. The town's restaurants and other places of business closed.

Again, CRS intervened to provide conciliation assistance. At the agency's recommendation, the mayor called a town meeting that was attended by 600 of the 1,100 residents, who overwhelmingly supported a city council resolution condemning violence and reckless conduct. The following day, the Klan called off its demonstration. Half of the Seadrift Vietnamese population of 120 returned; the others did not. Half of the 12 Vietnamese fishing boats also returned. The situation remained tense at the end of the fiscal year. But the Council remains to function as a pressure point valve.

Assistance During and After Rioting

As in past years, CRS, in fiscal year 1980, sought to help communities to address in advance problems believed to generate racial disturbances. However, it also attempted to help quell disturbances like the one in May in Miami, Florida, and racial violence in Tampa and Orlando; Flint, Michigan; Nampa, Idaho; Chattanooga, Tennessee; Wrightsville, Georgia; and Philadelphia, Pennsylvania.

In Miami, for example, the agency opened a temporary office and staff is working to reduce interracial antagonism, restore minority confidence in the administration of justice system, mobilize public and private community resources to address economic problems, improve communications between police and blacks and blacks and other minorities, and to institute controls to eliminate charges over allegations of police use of excessive force.

Comparison of Workload Data for Fiscal Years 1979 and 1980

Item	Number		Percent of Increase
	FY 1979	FY 1980	
New Alerts processed	1,317	1,404	6.6
Total Dispute Activity processed	1,055	1,155	9.5
Assessments processed	962	1,043	8.4
Conciliation and Mediation cases conducted ..	749	924	23.4

Foreign Claims Settlement Commission

Richard W. Yarborough
Chairman

In 1948, the War Claims Commission was established by and with the responsibility of administering the War Claims Act of 1948 (Public Law 80-896, 62 Stat. 1240, 50 U.S. Code App. 2001-2016).

In 1949, the International Claims Commission was established within the Department of State by and with the responsibility of administering the International Claims Settlement Act of 1949 (Public Law 81-455, 64 Stat. 12, 22 U.S. Code 1621-1627).

After a few years of operations, the executive branch decided that one independent agency would better serve the American public who had sustained these property losses. Therefore, in 1954 the Foreign Claims Settlement Commission of the United States was established as a quasi-judicial independent federal agency, on July 1, 1954, pursuant to Reorganization Plan No. 1 of 1954 (68 Stat. 1279, 22 U.S. Code 1622 note).

Under the Reorganization Plan, the two national claims commissions were abolished and their functions and personnel were transferred to the new Foreign Claims Settlement Commission.

The Commission was transferred to the Department of Justice as a separate agency within the Department by Public Law 96-209, approved March 14, 1980 (94 Stat. 96, 22 U.S. Code 1622a).

The Foreign Claims Settlement Commission has jurisdiction to determine claims of United States nationals against foreign governments for losses and injuries sustained by them, pursuant to programs which may be authorized under its organic legislation.

Available funds have their sources in international settlements, or liquidation of foreign assets in this country by the Departments of Justice or Treasury, and from public funds when provided by the Congress.

In carrying out its function, a staff of attorneys reviews the evidence submitted in each claim and seeks additional information from a wide variety of sources and researches legal issues under international law.

The work and recommendations of the staff are submitted to the Presidentially appointed Commissioners, who issue an initial or proposed decision, determining the validity and amount of the claim. After review of the proposed decision, the claimant is afforded an opportunity to object, submit more evidence or have an oral hearing before the Commissioners, after which a final decision is issued.

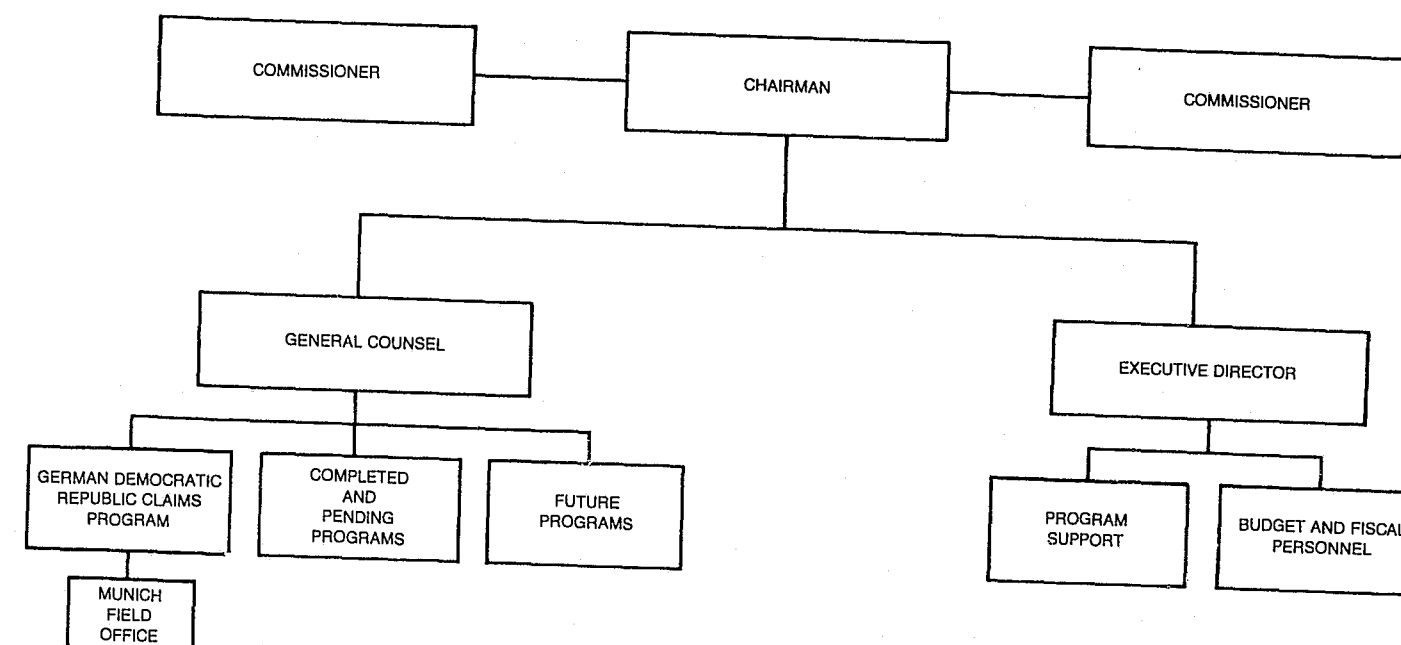
At the present time, the Commission is actively engaged in three claims programs, anticipates the imminent passage of legislation authorizing a fourth claims program and continues to service requests relating to the 33 past programs involving 650,000 claims which have previously been adjudicated by the Commission.

The programs in which the Commission is presently actively engaged are as follows:

- Claims by United States citizens against the German Democratic Republic for the nationalization, confiscation or other taking of property by that Government. This program, authorized by Title VI of the International Claims Settlement Act of 1949, involves the adjudication of 3,900 claims. By statute this program must be completed no later than May 16, 1981. The Commission presently has approximately 800 claims upon which initial adjudication has not yet been made. In addition, the Commission must consider a presently unknown number of objections which have been or may be filed to the initial determinations of the Commission.
- Claims by United States citizens against the People's Republic of China for the confiscation of property by that Government between November 6, 1966 and May 11, 1979, as authorized by section 4, Title I of the International Claims Settlement Act of 1949. The Commission has completed initial adjudication of the 82 claims which were filed and presently has pending consideration of objections relating to 47 claims.
- Claims by or on behalf of American servicemen who were prisoners of war in Vietnam for certain per diem payments authorized by section 6(f) of the War Claims Act of 1948. The Commission presently has pending the consideration of one such claim and five objections to previous decisions of the Commission. These involve individuals who had been carried by the military as missing in action. We are informed that there may be a small number of additional such claims.

During its last session, Congress gave consideration to a bill authorizing the Commission to adjudicate claims for the confiscation of property by the Communist Government of Vietnam. This legislation passed the House of Representatives and in identical language was passed by the U.S. Senate as an amendment to a Department of State supplemental authorization bill. However, neither bill has been acted upon by the other legislative body.

Foreign Claims Settlement Commission



The Commission anticipates, however, that, as both houses of Congress have passed identical legislation, it is probable that the legislative process on this statute will be completed during the next session of Congress. It has been estimated that this may involve the adjudication of as many as 1,000 claims.

The remaining activities of the Commission fall into two categories: responding to requests both from individuals and Congress concerning claims previously adjudicated by

the Commission in the 33 past programs and responding to requests concerning possible additional claims programs.

At the year's end, the Commission has been called upon to testify before Congressional Committees concerning potential outstanding claims against the Government of Czechoslovakia and legislation changing the method of payment of awards previously given in the China I Claims Program.

END