THE WHITE HOUSE

WASHINGTON

March 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Proposed Testimony on S. 336: Labor Management Racketeering Act of 1983

The Department of Justice has submitted the above-referenced testimony, which Lowell Jensen proposes to deliver on the Ides of March before the Subcommittee on Labor of the Senate Labor and Human Resources Committee. The testimony repeats the generally favorable testimony Jensen delivered last year on the same bill, which passed the Senate. The bill would increase penalties for corrupt payments to union officials, and strengthen the provisions of 29 U.S.C. §§ 504 and 1111, which bar those found guilty of certain crimes from holding certain union offices. The proposed testimony suggests several changes in the bill to strengthen its provisions. The testimony opposes section 5 of the bill, which would give the Department of Labor the responsibility to investigate criminal violations involving pension and welfare plans. The Department of Labor currently investigates some such criminal violations by delegation from Justice units, and refers other matters to Justice.

I see no legal objections to the testimony, the substance of which has been clear on prior occasions.

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Subject: Statement Covering S. 336 - Labor Management Racketeering Act of 1982

ROUTE TO: | **ACTION** | **DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
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FOR OUTGOING CORRESPONDENCE:
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5/81

U.S. Department of Justice

Roberts Draft

STATEMENT

OF

D. LOWELL JENSEN
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

COMMITTEE ON LABOR AND HUMAN RESOURCES
SUBCOMMITTEE ON LABOR
UNITED STATES SENATE

CONCERNING

S.336 - LABOR MANAGEMENT RACKETEERING ACT OF 1983

ON

MARCH 15, 1983

I am pleased to be here today to present the views of the Department of Justice on S.336, a bill entitled the "Labor Management Racketeering Act of 1983."

On February 3, 1982, I testified before this Committee in support of almost identical legislation which was passed by the Senate in the 97th Congress but on which the House of Representatives failed to act. At that time the Department of Justice recommended that the Committee consider certain amendments which we believe will significantly strengthen federal safeguards against corruption both in labor-management relations and in the internal operation of labor unions and employee pension and welfare plans.

The Department recommends that the Committee again consider many of those proposals which I would like to discuss today. As you may be aware, these proposals have been assembled by the Administration in one title of a legislative package to be known as the Comprehensive Crime Control Act of 1983 which was introduced in the Senate on March __, 1983, as S._____. I would appreciate having the labor-related portion of that bill, Title Eleven or Sections 1101 through 1108 of the proposed Act, entered in the hearing record.

Increased Penalties for Corrupt Payments to Labor Union Officials

Convictions in recent years involving labor-management corruption on the waterfront and in other industries have demonstrated the continuing need for strong federal

legislation to deter the use of extortion, bribery, and payments involving conflicts of interest among the parties to collective bargaining. Most cases of outright extortion on the parties to collective bargaining may currently result in the imposition of felony sanctions under the Hobbs Act (18 U.S.C. 1951). However, the current penalty for a substantive offense under Section 186 of Title 29 (Section 302 of the Taft-Hartley Act), which is the only federal criminal statute that expressly outlaws bribery and the payment of graft to labor union officials, is limited to a misdemeanor which carries a maximum fine of $10,000, imprisonment for not more than one year, or both. Although a violation of Section 186 also can be a predicate offense for purposes of the Racketeer Influenced and Corrupt Organizations (RICO) Act (18 U.S.C. 1961-1968), prosecution under the latter statute requires a pattern of racketeering activity, whereas Section 186 is aimed at singular criminal acts. In our view, the misdemeanor penalty for an isolated payment or receipt, which may reelect a significant corruption of labor-management relations and which may or may not involve a substantial amount of money, is not always sufficient for the crime.

Therefore, we agree with the bill's sponsors that improper payments to union officials in excess of $1,000 involve a high risk of corruption in labor-management relations and deserve the imposition of a felony penalty. However, we also believe that a high risk is demonstrated where the payment is specifically directed at affecting the recipient's conduct as an official of his union or as a representative of employees regardless of the total value of any consideration paid. It seems to us that where any payment secures or is intended to secure the disloyalty of a union official to the workers whom he represents or could represent, it offends the basic principles underlying the Taft-Hartley Act. This is true despite the unfortunate fact that some union officials may in effect be brought for less than $1,000 which is the amount that Section 2 of the Labor Management Racketeering bill proposes should be the basis for punishment as a felony. In other words, we think that the greatest degree of deterrence would be afforded by enacting the felony sanctions for unlawful payments as provided in the Labor Management Racketeering bill and by also enacting a separate labor bribery statute with felony penalties in Title 18 of the United States Code.

Therefore, the Justice Department proposes that the Committee consider the enactment of the provisions in Sections 1101 and 1105 of the Comprehensive Crime Control bill. Section 1101 is identical to Section 2 of S.336 and the Labor Management Racketeering bill which passed in the Senate last year. The proposal in Section 1105 of the comprehensive bill would transfer the only portion of the Taft-Hartley Act which specifically requires proof of bribery and a connection between the payment and the recipient's office, that is, 29 U.S.C. 186(a)(4), as a felony to Title 18 of the U. S. Code. Other substantive provisions of the Taft-Hartley statute would remain in Title 29 of the Code.

We believe that the new statute in Title 18 would appropriately focus the imposition of felony sanctions on the corrupt nature of the payment in conformity with the penalty structure of existing federal statutes which cover bribery and graft in other contexts, for example, such as those involving corrupt payments to public officials (18 U.S.C. 201) and persons associated with employee pension and welfare plans (18 U.S.C. 1954). In fact, section 1104 of the comprehensive bill proposes to amend the pension and welfare kickback statute to impose a five-year imprisonment penalty similar to that proposed for the Taft-Hartley Act

and the new labor bribery statute in Title 18, rather than three- year imprisonment penalty currently available for those convicted of pension and welfare bribery.

Moreover, the statutory format which we propose would leave intact the general prohibition against employer payments to labor organizations and representatives found in Section 186 whose continuing operation is necessary for purposes of the criminal and civil enforcement of restrictions on an employer's withholding and payment of union members' dues, contributions to union-sponsored pension and welfare trusts, etc. It would preserve the proposed higher burden of proof in Section 186 for the criminal prosecution of employer payments improperly made to labor unions, pension and welfare plans and labor-management cooperation committees found in the Labor Management Racekteering bill. Because we are aware of only one reported decision concerning the prosecution of the latter kinds of proscribed payments, which do not ordinarily involve employer "payoffs to union officials," the Deparment of Justice, like the AFL-CIO which expressed concern on this subject, believes that it is reasonable to require proof that the individual recipient knew that he was not entitled to the employer payment which was paid for

the use of the union, benefit plan, or cooperation committee. However, as paragraph (d)(2) in Section 2 of the Labor Management Racketeering Act and our identical proposal make clear, no such burden of proof will be imposed with respect to other employer payments which are not transmitted through and used by unions, benefit plans, and cooperation committees; the latter payments will continue to be prosecuted under Section 186 without proof of evil intent or bad motive as under current law.

Similarly, the new labor bribery statute in Title 18 which we propose would not support the prosecution of employer payments for the use of unions, benefit plans, and cooperation committees. Only individuals are proscribed as recipients under the Title 18 proposal. Prosecution will require proof of a known connection between the payment and the recipient's conduct concerning union business. We believe that the felony sanction would be appropriate under the Title 18 proposal only in cases clearly involving corruption of labor- management relations.

In addition, we believe that consideration of a separate labor bribery felony also provides the Committee with the opportunity of closing the existing gap between the criminal penalty for employer payments to labor representatives in the railway and airline industries and the penalty for similar payments in all industries covered

by the Taft-Hartley Act. Employer payments to labor representatives in the railway and airline industries are not prohibited by 29 U.S.C. 186, but rather are prohibited by the Railway Labor Act (45 U.S.C. 152) which carries a maximum penalty of imprisonment for 6 months, $20,000 fine, or both. Enactment of section 2 of the Labor Management Racketeering bill and elevation of 29 U.S.C. 186 to a felony without the comprehensive bill in Title 18 would have the effect of further widening the gap in penalties for bribery in the railway and airline industries. By including the railway and airline industries within the definitional terms of a new felony offense in Title 18, the gap can be closed with respect to corrupt payments without disrupting other regulatory provisions contained in each existing Act.

You will also note that the comprehensive bill also eliminates the current exemption under federal criminal law for corrupt payments made to officials of federal employee unions. The growth and proliferation of federal employee unions in recent years justifies elimination of this exemption. This is not a new proposal. It was contained in labor bribery proposals as part of a uniform criminal code considered by the Senate Judiciary Committee as long ago as 1979. There is no good reason to resort to state or local law enforcement authorities for the prosecution of bribery which could occur in the context of the federal government's own labor-management relations.

I would also like to call the Committee's attention to two (2) other proposals in section 1105 of the comprehensive bill. These proposals would create new crimes for any person to corruptly offer or pay a thing of value to a labor union official or agent in connection with the expenditure of labor union funds or in connection with the obtaining of union membership or work placement. The corrupt solicitation or receipt of such payments would also be a crime. No provision of federal criminal law currently punishes such corrupt payments directly. Corrupt payments made to a union official in return for the award of business dealings with his union can be prosecuted under the federal statute proscribing embezzlement of union property, but only where the kickback is derived at least indirectly from union funds. If enacted, our labor bribery proposal would do no more than impose on persons who corruptly profit from labor union financial transactions the same penalties now imposed by 18 U.S.C. 1954 on those who corruptly profit from welfare and pension plan transactions.

The last part of our labor bribery proposal deals directly with the kinds of corrupt payments which were the subject of hearings by the Senate Committee on Labor and Human Resources in May 1982. Corrupt payments made to union officials in return for obtaining union membership or work referrals have been criminally prosecuted under the federal statute which punishes embezzlement of union property, but

only where the union official has misused items of union property, for example, by in effect corruptly selling a union membership card or membership application form. The corrupt sale of a job referral which often does not involve misuse of union assets is not a theft of union property under the federal statute currently. Schemes whereby union members are defrauded of the loyal and faithful services of their representatives who receive corrupt payments for preferential treatment in work referrals have been prosecuted under the federal mail and wire fraud statutes (18 U.S.C. 1341 and 1343). But such prosecutions depend on the sometimes fortuitous use of the mails or interstate telephone calls to further the corrupt scheme.

A prosecution in the Southern District of West Virginia resulted in the federal conviction in 1980 of a union clerical assistant for extortion of approximately $280,000 from over 100 individuals in return for membership in the Pipefitters Union over a two-year period. Because the scheme involved the interstate travel of prospective individual members and employees between West Virginia and Texas, one judicial interpretation of the Hobbs Act (18 U.S.C. 1951) since the conviction has confirmed our use of the federal extortion statute. Another federal court of appeals, however, has since held that the extortionate

depletion of an individual employee's funds, as opposed to the depletion of a business' funds, is not an extortion which affects interestate commerce for purposes of the Hobbs Act. Our proposal in the comprehensive bill is intended to punish all of the above examples of corrupt payments made or solicited in return for work referrals. Especially in these times of economic distress, I suggest that this kind of proposal is worthy of the Committee's close study and action.

Amendment of 29 U.S.C. §§504 and 1111: Prohibited Service with Labor Unions and Employee Welfare and Pension Plans

Because the Department of Justice believes that labor unions and employee benefit plans must be free of the control or influence of persons who pose a danger to the integrity of such organizations, as demonstrated by their conviction of significant crimes, the Department supports those portions of the Labor Mangement Racketeering bill which would strengthen Sections 504 and 1111 of Title 29, United States Code, and bring the two companion statutes closer to conformity as to the crimes and positions covered. Therefore, the Department of Justice supports those portions of the Labor Management Racketeering bill which would 1) elevate each statute to a felony; 2) extend the period maximum of prohibited service under each statute from five

to ten years after conviction, or after the end of imprisonment, whichever is later; and 3) impose the disability of each statute in all cases immediately upon conviction in the trial court from the date of judgment.

With respect to disqualification pending appeal, recent prosecutions of widespread corruption on the waterfront and in other industries have demonstrated that convicted individuals may continue to hold union or benefit plan office for several months or years while their convictions are pending appeal. The Federal Bureau of Investigation has prepared a list of convicted individuals who would be barred from holding union or benefit plan position but for their pending appeals. I understand that the Committee has requested similar information from the Department of Labor. We strongly support the bill's disqualification of individuals immediately upon their conviction in a trial court. However, we do recommend that the disqualification of convicted corporations and partnerships from service with both unions and benefit plans follow a prior hearing before the United States Parole Commission as is the case currently under Section 1111.

In answer to the question raised by some as to why the Racketeer Influenced Corrupt Organizations (RICO) statute is not always sufficient to remove convicted individuals from union or benefit plan positions, I would offer the following observations. First, not all crimes involving union and

plan officials are sufficiently pervasive to permit prosecution of the crimes as a pattern of racketeering activity under the RICO statute. For example, in September 1982 a reputed organized crime leader and three other defendants who then held union office in the Laborers International Union of North America were removed under the forfeiture provisions of RICO at sentencing. This followed their conviction in Miami, Florida for a pervasive scheme to obtain kickbacks in return for awarding union-sponsored insurance and health care services. In contrast, Roy Williams, General President of the Teamsters union was convicted in Chicago in December, 1982 with a reputed organized crime leader and others of conspiracy to bribe a United States Senator and other crimes in connection with a scheme involving deregulation in the trucking industry. Because the latter scheme involved a single criminal episode and transaction, the case did not meet Department of Justice guidelines for RICO prosecution.

As a relatively new federal statute, the use of RICO in certain situations has come under considerable criticism from certain quarters. In order to not abuse or be seen to abuse this powerful statute, the Department of Justice has stressed that the RICO statute should be used only after a

careful determination that RICO is the most appropriate vehicle for prosecution. We believe that sound judgment required that RICO not be used in the Chicago case especially since the Supreme Court had not yet decided its Turkette decision at the time the indictment was returned in this case in May 1981. In Turkette the Supreme Court overturned lower court decisions to the contrary and held that RICO "enterprises" did include groups of individuals who were associated solely for the purpose of conducting specified criminal activities. Because not all participants who associated in the Chicago transaction for the purpose of commiting unlawful acts were affiliated with the same "legitimate" enterprises, there were doubts at the time of indictment that the scheme could be prosecuted under RICO.

Parenthetically, the sentencing hearing in the Chicago case will resume on March 21, 1983. The government has filed a memorandum in support of its argument that the court has power under the Federal Probation Act (18 U.S.C. 3651, et seq.) to immediately remove Roy Williams from union office as a condition of a probated sentence if the court chooses to impose probation for any particular count of which Williams was convicted. Unlike the provisions we are considering here in the Labor Management Racketeering bill, removal is not mandatory. Furthermore, if any union official were to refuse to comply with the removal

conditions of such a probated sentence, the primary sanction could be revocation of probation and a sentence to imprisonment. Current law does not prevent the convicted individual from continuing to serve in union office from his prison cell while his appeal is pending.

A second reason why the RICO statute has not been sufficient to immediately remove convicted individuals from office in every case is that prior doubts as to the mandatory and immediate character of RICO forfeiture procedures were not resolved by the courts until a series of decisions which flowed from the Fifth Circuit Court of Appeal's 1980 opinion in the L'Hoste case. L'Hoste held that a trial judge has no discretionary power to limit or suspend forfeiture of any interest which the convicted individual has acquired or maintained in violation of the RICO statute or which affords him a source of influence in a racketeering enterprise. For example, when waterfront union officials were convicted of RICO charges after a 1979 trial in Miami, Florida, the trial court had stayed the forfeiture of their union offices because prior RICO convictions of union officials in the Fifth Circuit had resulted in the Court of Appeal's suspension of forfeiture orders pending appeal.

Another reason why the amendment of 29 U.S.C. 504 and 1111 will be a more effective deterrent of future misconduct in union and benefit plan postions is that RICO forfeiture has no effect on a convicted individual's ability to seek future office or to later reoccupy the same position he has given up. This is the ruling of the Rubin case which was decided by the Court of Appeals, Fifth Circuit, when it upheld the racketeering conviction of the Florida union official and benefit plan trustee who continued to hold office until he agreed to divest himself of these positions in lieu of withdrawal of bond pending appeal. At a bond revocation hearing, evidence was submitted that Rubin had continued to misappropriate substantial union and benefit plan monies after his conviction.

The civil remedies in the RICO statute (18 U.S.C. 1964) can be used to prevent a defendant from holding office as part of an action to enjoin him from conducting the same type of racketeering enterprise in the future that he is shown to have conducted in the past. This kind of relief is now being pursued by the government as part of a civil RICO action against Local 560 of the Teamsters Union in Union City, New Jersey. Although a consent judgement has been obtained against convicted former union official Anthony Provenzano permanently barring him from influencing the

affairs of any labor union or benefit plan, pre-trial procedures in the case delayed the commencement of trial until 10 months after the civil complaint was filed. Although the commencement of federal criminal trials is also sometimes delayed for several months after indictment, criminal proceedings do have the definite advantages of the Speedy Trial Act's accelerated docket and much tighter restrictions on pre-trial discovery of the government's proof. Accordingly, as a practical matter, civil relief under RICO will ordinarily follow criminal prosecution of the same or similar racketeering charges on which any civil action is based.

The RICO statute has come under attack with respect to procedures which could effect removals from office. The House of Delegates of the American Bar Association formally recommended in August 1982 over the Justice Department's opposition that RICO forfeiture be made a discretionary procedure in the criminal trial court. Similar criticism which might be directed at immediate removal from office under 29 U.S.C. 504 or 1111 pending appeal can be readily answered in our view by the escrow provisions in the Labor Management Racketeering bill. We agree with the report of the Committee last year on the identical proposal that the escrow provision reflects an equitable balance between the interests of the convicted individual during appeal and the interests of union members and benefit plan participants.

Moreover, additional avenues of relief are open to the convicted individual under 29 U.S.C. 504 and 1111 in the form of existing statutory exemptions from disqualification which can result from a full restoration of citizenship rights lost after conviction or action of the U. S. Parole Commission.

Disqualifying Crimes

Although the Department of Justice supports the Labor Management Racketeering bill's enlargement of the list of disabling crimes in each statute to also include certain offenses involving abuse or misuse of the convicted person's labor organization or employee benefit plan position or employment, we believe that such additional crimes should not be limited to felonies. In the majority of cases, misdemeanor crimes which specifically involve abuse of union or benefit plan office would by definition carry a serious risk to the integrity of the organizations. A prime example is the receipt of prohibited employer payments in violation of 29 U.S.C. 186 which will continue to be punished as a misdemeanor by the Labor Management Racketeering amendments if the amount paid is below $1,000. Because a union official can abuse his office and be convicted for the simple receipt of monies under Section 186 without proof of the listed crimes of "bribery" or "extortion," the union official who compromises his office cheaply will be free to continue to serve in union office following conviction.

We also recommend that the larger list of specifically enumerated crimes now contained in Section 1111 be added to Section 504. As I advised the Committee last year with respect to the Labor Management Racketeering amendments, there is presently a disparity between the list of crimes in Section 504 which is applicable to labor unions and employer associations and the larger list of crimes included in Section 1111 with respect to employee benefit plans despite the complementary application of the two statutes in certain cases. An individual convicted of perjury, for example, is forbidden to administer or be employed by an employee benefit plan, but he is free to occupy a responsible position in a union which is affiliated with the same plan and to bargain with employers about the funding of that plan. The same is true for the crimes of fraud, kidnaping and 14 other categories of statutory crimes which are not included in Section 504 and which we noted in our written comments as part of the February 3, 1982, hearing record before this Committee.

For example, when the late Jimmy Hoffa was convicted of obstruction of justice by jury tampering and mail fraud, crimes expressly included in Section 1111, it was the prevailing view that Section 504 did not disqualify him from regaining union office and that the special restriction attached to the Presidential commutation of his sentence was required to prevent his re-entry into union affairs.

The new "abuse of office" category which the Labor Management Racketeering bill will add to Section 504's list of disqualifying crimes will not close the glaring disparity which exists between the offense listed as "violation of narcotic laws" in Section 504 and a felony involving any controlled drug substance listed in Section 1111. Because of the narrower class of controlled substances which were criminally regulated by the federal government when Section 504 was enacted in 1959, controlled substances other than the "narcotic" classified drugs of heroin, opium derivatives, and cocaine are thought to fall outside the Section 504 prohibition. Some might not object to permitting an individual to serve in union office who had been convicted for the possession of a small amount of marihuana for his own use. But, I suspect that most union members would object to their local union president and two executive board members continuing to serve in office after conviction for smuggling large amounts of marihuana into the country. This occurred in a New Hampshire waterfront local union in 1980; the crime did not involve an abuse of union office for purposes of the single new category of offenses to be added by the Labor Racketeering bill as it is presently worded. I have already noted the problem of interpreting every 29 U.S.C. 186 conviction as "bribery" or "extortion" for purposes of the Section 504; Section 186 is not specifically listed in Section 504.

Therefore, we recommend that the list of specifically enumerated crimes in both statutes be identical. We believe that the larger list of crimes in Section 1111 generally reflects a more adequate basis of protection for union members equal to that which they already hold as pension and welfare benefit plan participants.

Prohibited Positions

In regard to the Labor Racketeering bill's enlargement of the class of positions protected from potential abuse by convicted persons, we strongly endorse the bill's elimination of the exception for exclusively clerical and custodial employees which is currently found in Section 504. The clerical exception is sometimes used as a vehicle for the rehiring, with substantial salaries, of convicted individuals who have vacated union office, but who continue to exercise the influence and control formerly enjoyed by virtue of the vacated office. Because a union official who uses his position corruptly may often wield great economic power over his fellow members and the employers with whom his union deals, it is sometimes difficult to prove that a convicted individual is in fact exercising more than exclusively clerical duties. For example, a Laborers union business agent in New York State became a clerk in his local

union following conviction for embezzlement of the union's funds. During a later investigation which led to his subsequent conviction for racketeering, receipt of employer payments, obstruction of justice, and further embezzlements, this individual warned an FBI undercover agent to not openly discuss the individual's activities inasmuch as his duties were supposed to be only clerical in nature. We also support the elimination of the clerical or custodial exception in Section 504 with respect to employees of employer associations.

Similarly, we support the added coverage of persons who serve as a "representative in any capacity" of a labor organization so as to clearly exclude convicted individuals from being shop stewards. Although shop stewards may not be readily classified as union officers or employees, they often have significant responsibilities under the LMRDA as the union's representatives who are closest to the working union member.

However, the Department opposes particular provisions of the Labor Racketeering bill which, in its opinion, would unduly expand the scope of the statutory prohibitions at the expense of union members' control of their own organizations, the principle of union democracy which is embodied

in the federal labor laws, and the rights of persons who do not occupy positions of real influence with respect to unions or employee benefit plans. We recommend that the Committee consider new language which would exclude the application of Section 504 as to any person whose decision making authority with respect to union property is limited solely to the exercise of rights which he enjoys as a member of a labor organization under the Labor Management Reporting and Disclosure Act.

We further recommend that the Committee consider elimination of paragraph (a)(4) in Section 4 of the Labor Racketeering bill and substitution of language which would disqualify only those convicted individuals who are engaged in the provision of goods or services to labor unions in a meaningful way. The paragraph is presently broad enough to require that any publicly held insurance company which does business with labor unions not permit the sale of its stock to any convicted individual on the open market. The Committee eliminated a similar proposal in last year's Labor Racketeering bill in regard to benefit plans, but did not make the same amendment with respect to labor unions. We suggest that incorporation of a definition for the term "consultant," like the definition in Section 3(c) of the bill, and the operation of the remaining prohibited

positions in Section 4 are sufficient to bar convicted individuals from formal positions of meaningful and threatening influence in labor unions.

Therefore, we urge the Committee to review Sections 1102, 1103, and 1108 of the Comprehensive Crime Control bill which, following the format of the Labor Management Racketeering bill, only adds those proposals which I have recommended and which we think will bring both the disqualification statutes into conformity as to the disabling crimes and prohibited positions covered. In this fashion, we think that your Committee will have reviewed all of the major problems which have surrounded the enforcement of the two statutes.

Proposed Authority of the Secretary of Labor to Investigate Violations of Title 18, United States Code

Section 5 of the Labor Management Racketeering bill essentially imposes on the Department of Labor the responsibility and authority to detect and investigate all criminal violations involving employee pension and welfare plans, including violations of Title 18 of the United States Code. As I advised this Committee last year on February 3, 1982 and the full Senate Labor Committee on February 3, 1983, the Labor Department is already able to investigate

Title 18 violations in regard to benefit plans by means of the delegation of such authority by United States Attorneys and the Organized Crime and Racketeering Strike Forces. We believe that system of delegation is functioning smoothly. The Labor Department's responsibility to refer evidence of criminal activity to the Justice Department for further investigation and/or prosecution is already imposed by statute. For the reasons which we more fully set forth in our comments at the February 3, 1982 hearing, we recommend that Section 5 of the Labor Racketeering bill not be enacted.

In summary, for the reasons which I have discussed, the Department of Justice supports the enactment of the Labor Management Racketeering bill proposals with the changes and amendments which we have suggested. We think that the proposals set forth in Title Eleven of the Comprehensive Crime Control bill have all of the strengths of the Labor Management Racketeering bill and also address other serious problems which have impeded the federal government's ability to protect the parties to collective bargaining, labor union members, and employee benefit plan participants from corrupt elements.

THE WHITE HOUSE

WASHINGTON

March 14, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Proposed Testimony of the Attorney General Before the House Judiciary Committee on Department of Justice Authorization

The Department of Justice has submitted the above-referenced testimony on its budget, which the Attorney General plans to deliver tomorrow. The focus of the General's remarks is on the organized crime and drug trafficking initiative. The testimony notes that the Department's budget reflects a shift from previous years to an emphasis on fighting violent and drug-related crime. The testimony discusses nine areas of budget increase:

- o investigative resources in the regional drug task forces;
- o prosecutorial resources in the regional drug task forces;
- o federal prison capacity;
- o federal detention capacity (for holding prisoners pending trial);
- o technological programs;
- o limited state and local assistance;
- o INS automation;
- o FBI foreign counterintelligence;
- o new personnel: FBI technology experts, FBI hostage rescue team, DEA foreign support and laboratory technicians, Prison System doctors, Marshals Service court security, and Civil Rights attorneys (for new voting rights responsibilities).

The testimony notes budget reductions in the area of juvenile justice grants, state and local drug grants, and service of private process by the Marshals Service.

While the proposed testimony lacks some of the panache of previous statements by the Attorney General, I see no legal objections. The interesting aspect of the hearing will not be the prepared statement but the questioning, which may touch upon Justice's handling of the E.P.A. controversy and the foreign films registration flap.

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STATEMENT

OF

WILLIAM FRENCH SMITH
ATTORNEY GENERAL

BEFORE

THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

DOJ AUTHORIZATION

ON

MARCH 15, 1983

TE 2nd Draft
3/10/83

SUGGESTED TESTIMONY BY THE ATTORNEY GENERAL
BEFORE THE HOUSE JUDICIARY COMMITTEE
MARCH 15, 1983

Mr. Chairman and Members of the Committee:

It is both my duty and pleasure to be here today to testify in favor of a budget for fiscal year 1984 that would enable the Department of Justice to take a giant stride forward in federal law enforcement. This budget proposes nothing less than the funds necessary for a significant escalation in the war on crime by adding $447 million to the Department of Justice's existing resources and, for the first time in history, by providing the Federal Bureau of Investigation with more than $1 billion. This budget clearly reflects the President's strong belief that the federal government must deploy its considerable talents and resources in the most effective ways possible to halt the spread of crime into American life.

Mr. Chairman, I am requesting today a budget of $3.4 billion for 55,431 positions and 58,249 full-time equivalent workers. That is an increase of 1,346 full-time equivalent workers over the number employed in fiscal year 1983. And the

dollar amount of the budget represents a 15.3 percent increase over the amount of spending expected for the current fiscal year.

The budget before you today requests increased funding for all the bureaus, divisions and offices within the department except Organized Crime Drug Enforcement and General Administration. The 17 percent decrease in Organized Crime Drug Enforcement results from a transfer of $12.7 million to Treasury Department appropriations and nonrecurring reductions of $54.9 million for equipment and construction costs. The decrease in General Administration is marginal and reflects our request not to fund the State and Local Drug Grant program that costs $9.4 million.

During the next week, Department officials will appear before you to answer specific questions you may have concerning programs under their direction. At this time I would like to dwell on the most notable feature of this budget -- its request for resources to deal effectively with crime.

Crime in America has become increasingly organized and sophisticated. Organized crime in particular has become especially lucrative because of the enormous profits in the illicit-drug business and other unlawful enterprises. Furthermore, as I have indicated on several occasions before this and other committees, organized crime and drug trafficking spawn violent crime. Violent crime damages and destroys property. It wounds and takes lives. It has forced citizens to stay home for fear of what may strike them on the streets. It has limited the activities of children and robbed them much too early of life's

innocence. Directly or indirectly, violent crime threatens each person and each institution in America.

When I assumed office, I found a Department of Justice staffed by many dedicated professionals who for years had not received sufficient support in the battle against crime. The Department had ceased to concentrate on curbing serious violent crime, incarcerating and holding in prison violent offenders, and providing state-of-the-art support for the front-line agent or prosecutor. We resolved to refocus the Department on these objectives and make it more responsive to the concerns of the public we serve.

The budget now before you, for fiscal year 1984, requests funding for our attack on drug-related and violent crime, for extensive new prison and jail construction, and for the large-scale application of modern technology to the federal justice system. The budget reflects our considered approach of applying resources in a balanced manner across the justice system. Our approach recognizes and supports the interrelationship of the various components of the system, which include investigations, prosecution, corrections and prisons, and federal assistance to states and localities.

Effective law enforcement requires that all the parts within the system of justice work in proper coordination. It makes no sense to have more investigators if there are not more prosecutors to handle the increased caseload. And it makes no sense to have more investigators and prosecutors if prison space is inadequate. Resources must be sufficient, and they must be

channelled in a way that enables each and every part of the system to work most efficiently.

Let me briefly discuss the problems we have identified in the fight against crime and how we propose in this budget to dealt with them.

First, this budget addresses the need for investigators. The budget continues funding for 760 Department of Justice investigative staff who will be participating in regional drug-task forces with funding for an additional 500 Department of Treasury investigators and support staff also provided.

Second, this budget addresses the need for more prosecutors. The budget completely funds the 340 persons who comprise the prosecutorial staff on the regional drug task forces. These 340 individuals, together with the 1,260 investigative staff in the Departments of Justice and Treasury, reflect the President's decision to commit a staff of 1600 persons to the fight against drug-related crime. The budget also continues funding for the 78 positions obtained last fall for the South Florida Drug Task Force.

Third, this budget addresses the shortage of space available for incarcerating federal prisoners. Federal prisons already are overcrowded; they have 22.9 percent more inmates than their rated capacity. The problem of insufficient space doubtless will be exacerbated as we increase our investigative and prosecutorial efforts.

Our budget request contains $96 million for new federal prison capacity. It requests funds for one 500-bed Federal

Correctional Institution (FCI) in the northeastern United States. It asks for planning and site acquisition funds for a second 500-bed FCI in the Northeast, construction of a 500-bed Metropolitan Correctional Center in Los Angeles, an additional 340 bedspaces at existing federal facilities (780 such bedspaces were funded in 1983), and funds for a number of modernization and rehabilitation projects throughout the Federal Prison System. And the budget includes an additional $6 million for Contract Community Treatment Centers that would hold eligible federal prisoners nearing their time for release.

The $96 million requested here builds on the $57 million provided for prison construction last fall through a 1982 supplemental appropriation and the 1983 budget amendment requested by the President.

Fourth, this budget addresses the need for more space for federal prisoners who have yet to be sentenced. It is best if unsentenced federal prisoners can be kept in facilities located relatively close to federal courts.

The budget also requests an additional $10.5 million for the Support of the U.S. Prisoners program. This represents a 31 percent increase over last year. An additional $10 million is provided through the Organized Crime Drug Enforcement initiative for the Marshals Service's Cooperative Agreement Program (CAP). The latter goes beyond the $5 million provided for CAP in the 1983 Organized Crime Drug Enforcement initiative.

The CAP effort provides state and local detention facilities with funds for equipment, remodeling services and, in

some cases, construction of more bedspace. This construction takes place upon agreement that a number of bedspaces in local jails will be available for housing federal prisoners in the custody of the Marshals Service. The CAP effort is critical to reopening the dozens of local facilities that in the past five years have quit offering space, or else offered much less space, for housing federal prisoners.

Fifth, this budget addresses the need for improved technology for the federal justice system. It includes more than $175 million in new funding for automatic data processing, data telecommunications, voice privacy radio systems, litigation support systems, and office automation for Justice investigative, prosecutive and litigative activities. This money specifically will assist the FBI, DEA and the Immigration and Naturalization Service as each enhances its automatic data processing capability. Too, the funds will facilitate completion of the FBI's Automated Identification Division System. This system will enable us to identify, within 24 hours, fingerprints taken in criminal investigations. As for the voice privacy radio system, it will enable agents in the street to communicate more effectively and securely with one another.

Sixth, this budget addresses the need to support worthy state and local assistance initiatives. Soon we will be forwarding legislation on this matter. The bulk of the $90 million we will seek would match dollar for dollar truly effective state and local criminal justice efforts.

Seventh, this budget seeks to improve record keeping by the INS. It includes $10 million request for establishment of an INS National Records Center. Inasmuch as INS will be converting to automatic data processing, thanks in part to the $17 million included in the general request for improved technology that I mentioned earlier, the new center should enable INS to maintain a more accountable and up-to-date records system.

Eighth, this budget addresses the need for an increased foreign counterintelligence capability. We seek more support both for staff and operations in the FBI's Foreign Counterintelligence program. The budget adopts recommendations made by the Director of Central Intelligence to improve the FBI's ability to deal with known and suspected hostile foreign intelligence agents operating within the United States. The budget also recognizes the need for additional FBI staff to counter the intense efforts by hostile foreign intelligence services to gain access to sensitive American technology.

Last, the budget addresses the need for personnel in key areas by including funds for more than 500 new positions. These are in addition to the positions that will be funded through the Organized Crime Drug Enforcement initiative and the FBI's Foreign Counterintelligence program.

Of these 500 new positions, 185 would be located within the FBI. Some 160 of these individuals would implement the Bureau's voice privacy and ADP initiatives. Another 25 would be assigned to a Hostage Rescue Team based in the FBI's Washington, D.C., Field Office.

Thirty-five other positions would go to the Drug Enforcement Administration. The new positions would be used in the DEA's foreign cooperative investigations, laboratory, ADP, and technical field support programs.

Another 212 positions will be created within the Federal Prison System, the majority in its Medical Services program. And 31 individuals would be added to the U.S. Marshals Service to provide additional court security under an agreement we reached with the Chief Justice this past spring.

The remainding 37 new employees would work in the areas of prosecution and litigation. The Civil Rights Division would have 15 new staff members who are needed to assist our prosecution of criminal civil rights violations and handle the increased workload expected as a result of the 1982 extension and amendment of the Voting Rights Act. The U.S. Attorneys would be given 32 new positions mainly to help in civil litigation. The administration plans to maintain the size of the prosecutive staff added by the Congress in 1983 to the U.S. Attorney's office for the District of Columbia.

The budget does not include funding for juvenile justice grants, state and local drug grants, and the service of private process program in the U.S. Marshall Service. These reductions would save almost $85 million. The proposed termination regarding the private process program builds upon P.L. 97-462, signed Jan. 12, 1983, which had already effectively minimized the Marshals Service role in that area.

Another proposed reduction would save $10 million in the INS Detention and Deportation program. In 1982 Congress funded the operation of the Ft. Allen, Puerto Rico, Service Processing Center, which was activated for the Haitian detention effort. Since there is no need for Ft. Allen, the funds for its operation can also be eliminated.

Mr. Chairman, I believe our programs promise a highly effective attack on all forms of crime, but especially drug-related and organized crime. This budget will require substantial new expenditures, but the total cost still will probably be less than what is spent in one week on illegal drugs in this country. Indeed, it will be less than what is spent in one week on many other federal programs.

On a number of occasions, the president has stated that his commitment to the war on crime, especially in drug trafficking is unshakable. I share that unshakable commitment. We intend to do what is necessary to end the drug menace and cripple organized crime. This budget will help accomplish just that. It is a comprehensive and carefully crafted budget that will improve law enforcement efforts throughout the Department of Justice. Although the battle cannot be won quickly, I firmly believe it can be won. I ask this committee to join us in the fight.

Mr. Chairman, that concludes my remarks. I am, of course, ready to answer any question you or the members of the committee may have.