

NOMINATION OF JANET RENO, TO BE ATTORNEY GENERAL OF THE UNITED STATES

WEDNESDAY, MARCH 10, 1993

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m., in room SD-106, Dirksen Senate Office Building, Hon. Joseph R. Biden, Jr. (chairman of the committee), presiding.

Also present: Senators Kennedy, Metzenbaum, Leahy, Heflin, Simon, Kohl, Feinstein, Moseley-Braun, Hatch, Thurmond, Simpson, Grassley, Specter, Brown, Cohen, and Pressler.

The CHAIRMAN. Welcome, Ms. Reno, back to the committee; it is a pleasure to have you back.

Today we are going to proceed until we are finished. My expectation is that will not be the whole day. If there is any possibility of finishing before lunch, we will move the lunch hour back. But right now it is my intention, along with my colleague, the ranking member, to recess no later than 12:30, and come back at 2 o'clock and proceed. But if it looks like we are going to finish around lunch, we will continue and bring the hearing to a close. For the record, let me state again what was stated by several people here yesterday, myself included: every nominee we have has allegations of impropriety. Every allegation, coming from responsible as well as irresponsible sources, has been followed up on by a member of the minority investigative staff and a member of the majority investigative staff, as well as by the FBI. There is no credible evidence related to any of the accusations that have come forward.

I might add, I don't want you to feel particularly special, Ms. Reno. Even less significant people who come before this committee have bizarre accusations made about them. This whole process seems to attract them. But I want to state for the record that those who wished to submit testimony are able to submit testimony. From a political opponent of yours to others who are less well known, they have all been invited to submit testimony in writing which will be made part of the public and official record of your nomination.

It is the usual practice of this committee to do it that way, and it is a continuing practice. So I want to make it clear to anyone who is listening that there is nothing that anyone has said about Ms. Reno that we haven't checked out. And anyone who wishes to submit his or her testimony in writing is invited to do so.

To date, we have received no such testimony. As of last Friday, we invited several individuals, who indicated they had something to say, in writing, to submit their views to the committee.

Some of these accusations related to someone who went to your office and thought the office of 900 persons did not pursue a claim they had against a third party enough. Although this sounds reasonable, I don't know a single, solitary prosecutor in the Nation who does not have someone disgruntled because they didn't pursue an indictment for whatever reason. This accusation is not directed at you, but directed at your office.

So I just want to state again, all of these views will be part of the public record. Apparently there is a talk show host up in New York who is suggesting that the committee has failed to investigate you, and the FBI is keeping great secrets under wrap. None of this is true, but it does keep the ratings up.

Now I expect I have made myself a target of those ratings, and I should stop while I am not too far behind. Let me yield now to our first questioner this morning, the distinguished Senator from Maine, Senator Cohen. Thank you again, Senator Cohen, for yielding your time yesterday so we could recess and start in this morning.

Senator COHEN. Mr. Chairman, Senator Specter just advised me that your opening statement came out of my time. Is that right?

The CHAIRMAN. No. That comes out of the Senator from Pennsylvania's time. He does not get a second round.

Senator SPECTER. May I start on my third round now? [Laughter.]

OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. Thank you, Mr. Chairman.

Ms. Reno, you have exercised some very good judgment in the past. Perhaps the best example of that is having an uncle who resides and practices medicine in Bangor, Maine. I am told he is about to depart shortly to return to that practice.

Ms. RENO. He is a good Republican, too.

Senator COHEN. Well, I was going to say the bad judgment you exercised is by not following his example. [Laughter.]

But it occurred to me that you wouldn't be sitting here had you followed his example.

I would like to talk about a young lady named Conchita Canfield. I don't know if you have had an opportunity in recent days to follow the news accounts here in the city, but a very bright, young, teen-aged girl, 15 years old, was shot in the heart last Saturday night while she was waiting with her twin brother and cousin to call home to get a ride from her mother. She was hit by a stray bullet in the heart.

After reading that heart-rending story, I reread an article that was written by Senator Moynihan for the American Scholar. Senator Moynihan quoted a New York Judge, Judge Torres, who said:

The slaughter of the innocent marches unabated, subway riders, bodega owners, cab drivers, babies, in laundromats, at cash machines, on elevators, in hallways. This numbness, this near narcoleptic state can diminish the human condition to the level of combat infantry men who, in protracted campaigns, can eat their battlefield rations seated on the bodies of the fallen, friend and foe alike. A society that loses its sense of outrage is doomed to extinction.

Then Senator Moynihan went on. He said,

There's no expectation that this will change nor any efficacious public insistence that it do so. The crime level has been "normalized."

The thrust of Senator Moynihan's article is that what was once considered deviant or unacceptable behavior is now treated with indifference or resignation. The title of his piece is "Defining Deviancy Down." What was once deviant behavior is now accepted as being quite normal.

At the other end of the spectrum of this story of crime comes another illustration of the problem. About 10 days ago, a friend of mine, Sheila Weidenfeld, went to take her two sons to school. She went outside and found that her Jeep had been stolen. She called the police within a matter of hours. The police apprehended four young boys, ages 12 through 14, who had stolen the vehicle, stripped it clean, damaged it significantly, and were being held by the local police.

She went over to meet with the young teenagers, and at that point she said,

Well, look, the car has been stripped, it has been damaged, I assume the insurance will take care of that. But please give me my license and registration back. It will take me days to go through the bureaucracy to get it. Just give me the license and registration back.

One young boy, I believe he was either 12 or maybe 14, said, "It'll cost you \$10." So while in the presence of the police officer, she spent several minutes negotiating with the young boy as to whether she had to pay the \$10 up front or after the delivery of the license and registration. This was all to the chagrin and frustration of the police officer who was standing there watching this plea bargaining of sorts going on between a victim and the young juveniles.

I mention this because it does run the spectrum from Conchita Canfield's murder and the tragedy of her family to the other end of the spectrum. I want to explore with you just for a moment perhaps your views on what we should do in these cases.

You don't have to read Rush Limbaugh—I don't know if that is the gentleman you are referring to—to know that—

The CHAIRMAN. No, I am not. I don't know who he is.

Senator COHEN [continuing]. This is not the way life ought to be. This is not the way life ought to be, not for Conchita Canfield, nor for the Sheila Weidenfelds of the world.

I want to pose to you a hypothetical. Suppose Conchita Canfield's killer and his mother come to you and say, "Look, my son is essentially a good boy." By the way, the accused killer is 20 years old. "He was abused as a child. His father has abandoned him. He has been addicted to crack cocaine. He has no job, no father, no hope. Please help to rehabilitate him." What would your reaction be?

Ms. RENO. I would look at each case, and I obviously can't comment on this case. But what we have tried to develop in Dade County is an expectation on the part of young people that there will be punishment for a crime that is so severe.

What we have suggested that we do, and we still have not been able to implement it, is to say—too many police officers are coming to me and saying, "Look, when I pick up a kid even for a violent

crime, they just look at me, kind of thumb their nose at me, and say, 'Nothing is going to happen to me.'

What I think is imperative that we do in these situations, if it is a very young person, not a 20-year-old but a 14-year-old, is let them know that there is an expectation of punishment, that they will be punished.

I, for example, envision giving the juvenile court judge both the authority to supervise the case as an adult, but at the same time continue supervision of a juvenile case, and say to a young person 13 or 14 who has committed an armed robbery, put a gun to a tourist's head, "Look, I am going to sentence you to jail." A little kid, everybody will say that is outrageous, but that kid will know that he faces some punishment.

But I am going to suspend entry of the sentence if you agree to a performance agreement. You have got to bring up your reading level. I have got to work with you on this. You report back to me every two weeks. And if you comply with my performance agreement and we monitor your progress over the next three or four years, we will help you get off to the right start. But if you foul up, you face punishment.

I think what has happened in America amongst our young people is that they take life for granted. They have seen violence in the home. They have seen violence as the principal cause of death on their streets, and it is imperative that we combine punishment and, for the very young offenders, the opportunity for rehabilitation.

Senator COHEN. Let me make it clear for the record that I have no idea of the background of the accused killer of Conchita Canfield. I am just raising a hypothetical that if someone comes to the Justice Department or to one of the prosecuting attorneys and gives a story of hardship, neglect and abuse as motivation or perhaps the rationale as to why he has killed a young girl, that that is not acceptable.

As a matter of fact, I think in the event that you do not share the belief that there should be a death penalty imposed in murder cases, at a minimum we should insist that anyone who takes an innocent life should have mandatory life imprisonment without parole.

I don't think we should have a situation in which someone can kill a young, bright, promising young girl like this and then we say, We hope to rehabilitate you within a period of 5 or 10 years.

Ms. RENO. Senator, on each case, you look at the case. Under a death penalty statute that is going to stand up to constitutional muster, you look at the aggravating circumstances and the mitigating circumstances. I look forward to working with you in developing death penalty statutes that can withstand the most vigorous scrutiny so that we can see that people who commit a crime for which the death penalty should be imposed receive the punishment and that it is carried out in the realistic future so that people know that there is a consequence for intentionally shooting somebody in those circumstances.

Again, I don't want to address that particular case because I think it is—I don't have the information on the case.

Senator COHEN. First of all, it is a local case, but I am just trying to get at the basis. You have been said to be part police officer and

part social worker. I want to know what level the social worker aspect is going to play in your position?

Ms. RENO. As I tried to describe it yesterday, for what I call the "mean bads," for the people who commit crimes that are totally contemptuous of human life, including clear malicious first-degree murder where the aggravating circumstances appropriately outweigh the mitigating circumstances under the laws as this Nation and the States are defining them, they should get the death penalty.

You talk to some of the prosecutors in my office who are very pro-death penalty, and they will tell you I am the one, in the face of pleas about this poor person, who says you can't waive it. If the law requires it and if the procedure is right, you ask for it.

Senator COHEN. There is a belief, Ms. Reno, by some in this country, that in spite of all of the civil rights legislation that has been passed over the years, there is one fountain of justice in the front of the courtroom for whites and another in the back of the courtroom for blacks and other minorities. The case of Rodney King is one that comes to mind because it is so recent and in the news even as we speak.

I was wondering if you are familiar with the case of *McClesky v. Kemp*, a 1987 decision of the Supreme Court, in which the Court upheld the Georgia death penalty law despite a statistical study that showed that defendants convicted of killing whites are 11 times more likely to be sentenced to death as those who kill blacks. This discrepancy is much higher when the killer is black and the victim is white.

I was wondering what your reaction is to efforts on the part of some in Congress who would pass legislation that would impose a racially disproportionate pattern test. In other words, the death sentence could not be carried out or executed if it could be demonstrated there was a racially disproportionate pattern.

I raise this in connection with your statement yesterday that you do not support quotas. Very few people do. But there have been articles written, for example, by an American Bar Association task force that defined bias in a way that seemed to talk about disparate impact theories. I was wondering if you would support or oppose legislation that would seek to impose this kind of racially disproportionate pattern test?

Ms. RENO. I would have to look at such legislation very, very carefully because I don't think you should sentence based on statistics. I think you should do everything you can to prevent disparate treatment of that kind in every way possible. And in my office, we have tried to do that.

I mentioned yesterday the study done by the Florida legislative staff, totally independent, through a very sound statistical analysis, after allegations had been raised about disparate handling of our career criminal statute. Our office was one of only two in the State which was found not to discriminate in any way with the use of that statute. And at every level of decision making in our office, we constantly try to reinforce procedures to make sure that that will not happen, whether it be in the case of a direct file of a child as an adult, nol pros's, sentences, diversion. Any of those decision-

making points along the way that a prosecutor must take, we try to make sure that there is no disparate treatment.

Senator COHEN. Do you support affirmative action programs?

Ms. RENO. I think that affirmative action programs can be very important. What we have tried to do, for example, in terms of hiring minorities is work with the schools to give young students who are interested in careers in the law opportunities in the office during the summer and after school, working with law schools in terms of internship programs, going to minority job fairs, trying to do everything we can to attract the very best people and to recognize that diversity is critical.

One of the things that I mentioned I do is speak on the average of about once a week to a different public school, and it is fun to see the students that I spoke to 5 and 10 years ago suddenly in law school and talking about coming to work for us.

Senator COHEN. Ms. Reno, yesterday Senator Leahy asked you whether we were federalizing too many crimes. It seemed to me that the question ought not to be directed toward the Attorney General nominee, but rather to those of us who sit here. We are the ones, after all, who are federalizing crimes.

An article that appeared in Forbes magazine this past week indicated, for example, that at the time of the founding of this country, we had exactly three Federal crimes on the books: treason, counterfeiting, and piracy on the high seas. Since that time, we now have adopted 3,000 crimes at the Federal level. Congress is imposing more and more work upon the executive branch.

Recently, for example, Senator Biden and I sponsored legislation that was adopted that would call upon the National Institutes of Justice to develop a model law to prevent stalking. We hope to develop that law as a model for the States to follow.

There is also legislation pending that would federalize anti-stalking laws, and I was wondering whether or not you have an opinion as to whether it should be federalized at this time or whether or not we should allow the States to deal with this issue.

Ms. RENO. I think this is a very important issue. Florida's anti-stalking law went into effect on July 1 of last year, and we have tried to focus on that law, utilizing it in every way possible and defending it against attack, because I think it is extremely useful. I cannot tell you how many times over the last 15 years I have received calls from people who are terrified, but under the laws that existed prior to the antistalking law it was impossible to develop evidence sufficient to prosecute. So I would like to work with you.

Again, I think we have to look at the resources, and what I would like to do is work with you and Senator Biden in trying to provide a model for all States and then make a determination as to whether it should be federalized as well.

Senator COHEN. I can see my time is running out. Just one more question.

Reference was made several times yesterday to the Independent Counsel Act, and you indicated you felt it should be reauthorized. The next question was: Should it apply to Members of Congress? I would like to state that it does apply to Congress. As the law is currently written, the Attorney General has the discretion any time

there is a potential conflict or for any other reason to ask for the appointment of a special counsel.

That act expired last December. Senator Levin and I intend to proceed to bring it to the floor once again this year. But we also, just to remove any doubt or ambiguity about it, specifically authorized the Attorney General that whenever he or she feels there is a conflict or for any reason whatsoever, they can call upon the appointment of a special counsel.

Now, there are some, particularly on my side of the aisle, who want to mandate that whenever an allegation of misconduct or criminal wrongdoing is alleged against a Member of Congress, the Justice Department must appoint an independent counsel. I would like to respectfully suggest to you that I believe that would render the law unconstitutional. It would violate the separation of powers clause and nullify the law, unless there were a separate provision that said if any provision is unconstitutional it would not affect the rest of the statute.

This is a law that applies to Members of Congress. I would point out that the Justice Department has never hesitated to investigate or, indeed, prosecute Members of Congress. So there does not appear to be any kind of an obstacle for the Justice Department to go forward. But in the event that you felt that because of the position of any Member of Congress, either the chairman of a committee or a freshman Congressman, precluded you from exercising your independent judgment, you could call upon an independent counsel to proceed against that individual.

I hope you will look carefully at the request coming from at least this side of the aisle, insisting that the laws mandate that you must cover all Members of Congress and that you must appoint an independent counsel.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.
Senator Kohl.

OPENING STATEMENT OF SENATOR KOHL

Senator KOHL. Thank you very much, Mr. Chairman.

Ms. Reno, I would like to talk with you this morning about young people in trouble in the juvenile justice system. As you know, 700,000 young people enter the system every year, and it is a system in crisis. In 1990, you yourself said, and I quote,

Our juvenile justice system desperately needs revision. It doesn't need repair. It needs to be stopped and started all over again. If we closed the system tomorrow, it probably wouldn't have too much of an impact on crime. It is spread so thin it doesn't do anybody any good. Among other things, it needs dollars.

As you know, we have young people today all over the country warehoused by the hundreds and spending time incarcerated, getting no treatment and no education whatsoever. We also have young people who are being jailed with adult criminals and coming out worse than they went in.

If you are confirmed, you will be in a position to do something about the juvenile justice system. Can you tell us what to expect from you in the event that you are confirmed?

Ms. RENO. I think you have to look far earlier than traditional juvenile justice systems are looking now to start having an effect

on children in trouble. It is troubling to me to see a 13- and 14-year-old who is charged with a serious crime, first time charged with a crime. But you go back through that child's record, truant from the time he is in the third grade, obvious behavior problems in school. Nobody really takes action because that child is too young and people don't care, and they are not looking at him either as a criminal or as a person who is so troubled that they really need help.

But the danger signs are all there, and without labeling children like that, I think the schools, the juvenile justice system, the health care system working together can have far greater impact with the expenditure of far less dollars than they have now when they wait until that child is 13 or 14, and has become confirmed in his ways.

But I don't want to give up on that child 13 or 14. I want to develop a balance where that child knows that he faces a punishment for committing a serious violent crime, a punishment that is reasonable, fair, and, wherever possible, separates that child from adults who will simply teach the child more of what crime is about.

In those words, I was speaking from the vantage point of Florida, which I think has underfunded its juvenile justice system and paid too little attention to it for too long. But for that 13-year-old when he is arrested, even if there had not been significant intervention previously, I would like to see the combination that I described yesterday of: OK, you are facing certain punishment; here is the program we have developed for you; you are beginning with a drug problem; you are 13 years old, but your reading level is at age 10; but your IQ indicates that you can bring that up real quick if you put your mind to it. We are going to work with you in terms of trying to locate you in appropriate housing, with appropriate supervision.

If we really worked with that child, providing a continuum of care until the child had successfully reintegrated into the community as a constructive person, we could make a difference. The tendency in Florida too often is to say, "Go to that program." Oftentimes the program is in another part of State so that the child has no connection with the community that he is coming back to. We leave him in the program for 5 months. That doesn't begin to address his problems, and then we say come back to the community and go and God be with you and we hope you don't get in trouble any more.

That is just a plain stupid approach to how to do it. And what I would like to see us do in all these cases, where you have a young person 13 or 14 who has committed their first crime, who obviously has serious problems, is do a thorough evaluation and then provide a followup that provides for supervision, but the opportunity to reintegrate into the community.

Senator KOHL. Well, if we are going to do something like that on a Federal level, and if you are going to be the Attorney General with an opportunity to implement such a program, then juvenile justice is going to have to be funded much more generously than is presently the case. Right now juvenile justice at the Federal level is funded at \$75 million, \$30 million less than 10 years ago.

Will you push for a significant increase in juvenile justice funding?

Ms. RENO. What I would like to try to do is see how moneys are being spent now and make sure they are spent as wisely as possible. I see Federal moneys coming to Florida, and I wonder what path they have taken to get where they are going. I see Federal moneys come as a grant for 1 year, and I think: What does somebody think is going to happen in 1 year to change things? I would like to make sure that Federal moneys are used as wisely as possible, at the most sensitive points possible, to develop models for all the Nation without dumping on the States. And I would like to work with you in that effort.

Senator KOHL. Did you say you would support increased funding for juvenile justice?

Ms. RENO. Didn't say. [Laughter.]

I said I wanted to make sure that money we are spending now is spent wisely. Then I would like to work with you, and if we need more money, then I think juvenile justice is one of the most critical areas. But I am not prepared to say that until I make sure that moneys being spent now are spent as wisely and as effectively as possible.

Senator KOHL. I appreciate your saying that, but I hope you also understand—and I am sure you do—that the kind of treatment that you suggest that we give each and every young person in the juvenile justice system requires a great deal more attention in terms of our time and our funds than what we are presently giving. I think you understand that.

Ms. RENO. I do, Senator.

Senator KOHL. With respect to that, as you know, we need a new director of OJJDP, and I would hope very much that you will give us an opportunity to participate with you in the selection of that person.

Ms. RENO. I have indicated to Senators that I really want to have a good line of communication with you, and I would like to do that.

Senator KOHL. All right. I would like to talk for a minute about kids and guns, Ms. Reno. It is by all accounts an epidemic in our country. We are at a crisis stage. There isn't any organization, be it the NRA or whoever, that disputes the notion that we have to do something to get guns out of the hands of kids.

What do you suggest?

Ms. RENO. First of all, we have to prosecute those who use them unlawfully, but I think much can be done in terms—and I think this is one of the imperatives in America. I think youth violence, as I have indicated to you previously, is one of the most critical problems we face. I think you can't solve it by warehousing the kids. You can't solve it by just saying, well, here, we will give you an opportunity at rehabilitation. You have got to provide the vigorous expectation of punishment with the opportunity for treatment. But I think we can do far more.

Some of the programs that I have seen implemented in Dade County, in our Dade County public schools, on conflict resolution and violence reduction have been impressive to me. I think we can teach kids far more about guns than we have. I think we can do with violence and with guns and kids very much what we have

done through DARE programs and other such programs with drugs and kids in terms of education and prevention.

I would like to do what I can to explore those programs, see what is being done around the Nation, and try to provide models for all States who have not implemented such programs.

Senator KOHL. I was referring to and trying to zero in on kids getting guns in the first place. As you know, it is not difficult for a young person to walk down the street in almost any city and buy a gun for \$10 or \$20.

What are we going to do—what do you suggest we do—to get that problem resolved?

Ms. RENO. Frankly, Senator, most of the time, the way I see children get guns is take it from the adult in the house who has probably stolen it. And so I think you have to find out how they—too often it is going to be after the fact, but I think we have got to address the problem long range in terms of violence reduction. If I can prove that an adult has unlawfully sold a gun to a child, I think that is an abomination, and we should take vigorous action.

Senator KOHL. Do you support the Brady bill?

Ms. RENO. I do.

Senator KOHL. Do you support any stronger measures to place restrictions on the ability to own handguns in this country?

Ms. RENO. No, sir.

Senator KOHL. You don't?

Ms. RENO. No.

Senator KOHL. And you nevertheless feel that we can and will be able to get restrictions?

Ms. RENO. Senator, I want to be candid about that. Wait a minute. Let me go back.

Senator KOHL. All right.

Ms. RENO. Because I don't want to mislead you.

Senator KOHL. All right.

Ms. RENO. I am reflecting the President's position, but just for the record, because I don't want to mislead anybody, Florida has a licensing law that doesn't provide for, I think, effective testing to demonstrate that before somebody can get a license, they need to know how to safely and lawfully use—demonstrate that they know how to safely and lawfully use it. And I personally, in the Florida context, advocated a far more rigorous testing mechanism for that.

Senator KOHL. You have supported testing people and training people before they can own firearms in Florida. Would you support that on a national level?

Ms. RENO. That has been my personal position, but I am reflecting the President's position with respect to the Brady bill.

Senator KOHL. All right.

I would just like to touch on weed and seed which, as you know, is a program that weeds out crime in communities and plants seeds of community development. It is a very important program. It has just begun, and it is starting out successfully. In my own State of Wisconsin, in Madison, Paul Soglin, the mayor, has told me personally that it is already a vital part of his operation today, after just a year. And I know Milwaukee would also like a weed and seed program.

Do you have an interest in weed and seed? Would you be sympathetic to seeing its continuance in places like Madison and perhaps Milwaukee?

Ms. RENO. Not just places like Madison and Milwaukee, but one of the things that has impressed me from our conversations is what you did to make sure that there was close implementation between agencies in Washington and agencies and other groups on the streets in Wisconsin, so that there was close coordination and that the moneys were used as wisely as possible.

I was very gratified when the U.S. attorney called me last summer and said,

I really want you to be involved in the weed and seed program because we know what you have done in terms of community programs, both in public housing and in other areas in the community.

I chaired a committee composed of police and other interested groups to select areas that would be susceptible to a weed and seed program. I think much can be done, however, to coordinate the efforts and make sure that it is a balanced approach, that police officers are perceived as part of a team in terms of focusing on the community, and that, as importantly, it is not just a one-shot or short-term approach, but that it is developed as part of a plan, a comprehensive plan to deal with the community over a period of time.

Senator KOHL. Very good. Let's get back to the Brady bill. The Brady bill calls for a waiting period. Do you support a waiting period for the purchase of handguns?

Ms. RENO. I think we will have to wait and see. Once the Brady bill is fully implemented, we will have statistics, we will understand, and we will be able to address the issue.

Senator KOHL. All right. I would like to talk with you for a moment about tort reform, product liability. I know that, as you said the other day, you are not fully up to speed on it. But I imagine you have some opinions on things like the joint and several liability concept, which, as you know, would hold someone who holds 1 percent of an interest in a company liable for 100 percent of the damages if the others cannot pay. You may also have some thoughts on caps on damages.

Do you have opinions on those two issues?

Ms. RENO. What I would really like to do, because obviously I have come back to address the issue of civil justice reform after 15 years in rather a pressure-cooker atmosphere of the last 3 weeks, and I would really like to make this a priority for the Department of Justice and study it carefully.

Traditionally, I have opposed, prior to my experience in prosecution, I have opposed caps. But I want to look at it, consider it, and make sure that access to our courts is maintained for all people and that we have an opportunity to get into court. But I would like to look at the whole issue of civil justice reform and make as informed a judgment as possible on the issues.

Senator KOHL. I want to talk for a moment about court secrecy, which refers to agreements between parties, as you know, which keep information from the public. Oftentimes a company will settle with a person who is suing them and give him or her a settlement which is generous in return for the person agreeing to keep the

verdict secret. As a result, issues of public health and safety are kept from the public.

How do you feel about those kinds of court settlements.

Ms. RENO. During the campaign, President Clinton had spoken out against keeping health and safety information from the public, and I would like to work with you and member of the committee in seeing if we can address this problem.

Senator KOHL. Thank you.

Thank you very much, Mr. Chairman.

Senator KENNEDY [presiding]. Senator Pressler.

Senator LEAHY. Mr. Chairman, would you yield just for one moment for me to make a comment before Senator Pressler speaks, if I could? Would you just yield for one moment?

Senator KENNEDY. Yes.

Senator LEAHY. It was stated earlier, Mr. Chairman, regarding a question that I asked Ms. Reno yesterday about the federalizing of crimes, and I don't think Ms. Reno understood my question to suggest that it was the executive branch that was federalizing crimes, but, rather, the thrust of my question was how she felt about the Congress federalizing just about everything from jaywalking on through. And I was most satisfied with her response to that. I just wanted to make that very clear for the record. I was not suggesting that the executive branch was passing those laws.

OPENING STATEMENT OF SENATOR PRESSLER

Senator PRESSLER. Good morning. I have, first of all, a letter from Mark A. Vargo who praises you very highly, who used to work with you, who now lives and works in Rapid City, SD. So I make this part of the record, if I may.

Ms. RENO. You are very fortunate to have him in South Dakota, Senator. He was one of the fine young prosecutors in our office and came to our office to gain prosecutorial experience, knowing that he was going back home. So we hope we did well by him.

Senator PRESSLER. I am sure all of Rapid City, SD, is listening. [The letter of Mr. Vargo follows:]

Senator JERRY PRESSLER,
U.S. Senate,
Washington, DC.

Dear Senator Pressler: I spoke earlier this afternoon with Mr. Wiley, your Judiciary Committee counsel, to give him my impressions about Attorney General designate Janet Reno. I hope I was able to answer some of the specific questions that he had about the functioning of her office and my opinions of her.

He suggested that I might additionally provide you with a brief summary of my opinion. As I informed him, my opinion has to be somewhat biased, since I am one of Miss Reno's most ardent fans. I hope you will take into account, however, that my bias is one born of a working relationship and knowledge of Miss Reno's abilities.

In Miss Reno you have a nominee for the Office of Attorney General who, intellectually, ethically, and professionally embodies the highest standards for those who would aspire to such a position. In Dade County she placed a premium on innovation. She was receptive to initiatives rising from her employees, as well as those arising from the community.

I have been a prosecutor my entire professional career and went to work in Dade County specifically because of Miss Reno's reputation. I strongly urge you to support her nomination to Attorney General.

If you or any member of your staff has any additional questions, I would be happy to answer those that I can or to be of assistance in any other way.

Sincerely,

MARK A. VARGO,
Deputy State's Attorney.

Senator PRESSLER. I want to cover an area regarding Native Americans, as I mentioned to you in my office that I would be raising these questions.

Throughout the United States, there is a movement for sovereignty on the part of Indian tribes, not only in South Dakota but everywhere. Indeed, I was in Hawaii recently, and the native Hawaiians, a different situation, I realize, are seeking sovereignty. The Governor of Hawaii had flown the flag of native Hawaiians above the U.S. flag and caused quite a controversy. Those are not necessarily interconnected.

But let me just ask you a few questions. First of all, under the Indian Gaming Regulatory Act of 1988, Indian tribes can have the same level of gambling activity as any place in the State. This has led to the phenomenon of gambling on the reservations on a fairly large scale in many States. Indeed, I think your State and my State are among them.

What is your view of Indian gaming.

Ms. RENO. Senator, this whole issue of the authority and jurisdiction of native American tribes is something, when after I met with you, I started to get into it. And it is clear to me that the whole area is complicated. I don't have the expertise at this point to really give you an informed judgment on it, and I would like to work with you in addressing concerns that you might have.

Senator PRESSLER. The States very much want to be able to tax part of that gambling, the gambling that is occurring on reservations, for purposes of schools and paying State expenses. Is this something that should be?

Ms. RENO. Again, that would have to be something that I looked at in terms of the legal basis for it. I don't really have the information, nor have I researched it carefully enough to give you an informed judgment.

Senator PRESSLER. Let me say that you will be one of two or three people—along with the Secretary of the Interior—who has responsibility for native Americans. The Attorney General's Office frequently carries out Indian policy through its various offices. I urge you to spend time on Indian issues for this reason, as they are very controversial issues. The rights of both Indians and non-Indians are involved.

I also would like to call your attention to the situation in what is called by the courts Indian country. At the turn of the century, Congress invited non-Indians to homestead on Indian reservations. Part of the public policy reason behind this was to assimilate Indians into the predominantly non-Indian culture. Of course, this is no longer the policy of the U. S. Government.

Now, however, ranchers and business owners in my State who operate on fee-owned land within the boundaries of Indian reservations have been targets of laws passed by the reservations' governing tribal leadership that require them to pay licensing fees or risk civil fines and forfeitures. The ranchers and business owners feel this amounts to taxation without representation as they have no

means to participate in tribal government, which is open only to Indian participation.

Tribal leaders maintain that such laws are within their sovereign rights. To resolve this and similar jurisdictional problems, these business owners must go to court, costing them considerable time and expense.

What do you think Justice Department policy should be toward a government entity that exercises power over residents of an area under its jurisdiction if those residents cannot participate in that government? That is the question that non-Indians raise who are within the reservation, and it is not only in my State, but in other States as well.

Ms. RENO. Again, Senator, what I would like to do is have it carefully researched, work with you in trying to address concerns, and try to come up with a result that is just.

Senator PRESSLER. There are a number of other issues on the reservations that I hope you will take into account. There is the law enforcement issue. Tribal leaders—I met with tribal leaders last fall, I meet with them frequently, and I work a great deal with them—one of their chief concerns is law enforcement. On the reservations, they have tribal judges; they have BIA police; they have the Federal Bureau of Investigation. They also have State troopers. There are clashes over jurisdiction.

It is really a knotty problem, and I don't know if you have had a chance to take a look at any of these issues since our discussion or not.

Ms. RENO. As I mentioned to you, we have experience with that because we have native Americans residing within our jurisdiction. We also have the Everglades National Park quite nearby, so you have park rangers, you have the FBI, you have a myriad of enforcement authorities. And I have tried to work with the various agencies involved, and to date I think we have been relatively successful in providing effective, fair law enforcement without conflict between the agencies involved. I would like to take that limited experience and, to the extent the Department of Justice is involved, do that throughout the Nation.

Senator PRESSLER. I think we need—and I am not advocating another task force or another study, but we really need the Attorney General to take a real close look at the problems of law enforcement and of the legal conflicts over fishing and hunting. There is a case in the Supreme Court right now regarding the rights of a tribe to control the fishing and hunting rights on the Missouri River in certain areas.

There is going to be a number of pieces of litigation about ownership of land as well as the tribes get more and more into gambling, which is big business throughout the country. The States are going to be looking at ways to possibly tax that. We have real problems in "Indian country."

I would urge you to try, as I am sure you have, not only study these issues but to involve yourself heavily, because we need an Attorney General who is heavily involved in this area.

Ms. RENO. I will do so, sir. And if you think I am remiss, pick up the phone and call me and I will come visit with you, and we will try to come up with—

Senator PRESSLER. OK. Finally, I point out one more issue I wanted to call to your attention. In *Santa Clara Pueblo v. Martinez*, the Supreme Court held that suits against the tribe for violation of Indian civil rights may not be brought in Federal court. As a result, individual tribal members, although citizens of the United States, are limited to relief, if any, in their respective tribal court systems. Many tribal governments do not provide for a court system independent of the executive, creating the possibility of intimidation of the tribal judiciary by the executive leadership.

Several years ago, I cosponsored a bill with my friend from Utah, Senator Hatch, which would have permitted individuals who had exhausted their remedies in tribal courts for violation of the Indian Civil Rights Act to bring an action in Federal court. The measure did not become law, but I feel that this is something that you should address as Attorney General.

Let me turn my attention to two or three other matters quickly here, because many of my questions have been covered by the committee. The March 1 issue of a legal publication, *Corporate Crime Reporter*, stated—I don't know if it is true or not—that you were a very close friend of Mr. Wayne Black. It is my understanding that the House Interior Committee sent you a report and one to the Justice Department that Mr. Black possibly has violated several Federal and State criminal laws. I also note that the article said that Mr. Black was one of your former investigators.

My question is: Has your office received such information from the House Interior Committee, and did you take any action against Mr. Black or investigate the matter further? And if you are confirmed at Attorney General, would you be hampered in any way from looking into these allegations by the House Interior Committee?

Ms. RENO. The answer is I would not characterize Mr. Black as a good friend. He did work for me once. He no longer works for me. When we received the allegations, we referred it for investigation. That matter is under review in my office now, and I can't comment other than to say that it is a pending matter.

Senator PRESSLER. Let me turn to the District of Columbia. For many years, I have lived in the District of Columbia while serving in Washington. I have taken an interest in the District of Columbia and all its problems. I have been out on patrol with the Orange Hats, the volunteer crime patrol. I have gone over to Howard University to meet with administrators on what Congress can do.

It has been a real struggle. We have over 400 people killed in the District each year. If there were 40 people killed, it would be enough to call out the Marines. If 40 people got killed in a coal mine or a mudslide or something, we would—but we seem to accept a killing a day here.

You are going to be one of three or four people in the United States who really has the President's ear. You are in a position of great leadership in terms of solving these inner-city problems.

Based on the criterion that we normally send our military out if 400 people a year we killed somewhere, we send the Marines or send somebody to occupy the place, what can we do for the District of Columbia to lessen the crime in the Nation's capital that everybody is concerned about?

Ms. RENO. Well, first of all, let me not be presumptuous to comment upon the District of Columbia, when I don't have firsthand information, but obviously it is of concern. Let me instead comment on my own jurisdiction, which has had an extraordinarily high crime rate, often through forces beyond its control.

Senator Cohen spoke earlier about the acceptance of violence in this Nation and people don't think that they can have an impact on crime. That is true, but I think we are showing in Dade County, that we can have an impact that programs and policies can make a difference.

We have just gotten the crime figures for the first 6 months of 1992 in Dade County, and I frankly didn't believe them and have asked people to double-check them. These are not our figures. These are maintained by the Florida Department of Law Enforcement. And in the first 6 months, murder was down in Dade County by 26 percent, sex batteries by 26 percent, robbery by 16 percent and total violent crime by 10 percent.

Now, I am not going to suggest to you that it is my policies or my prosecutions that reduce crime. But what I think it is is a combination of people working together, of providing vigorous enforcement at the end of the line, going after the murderers, the rapists and the robbers and prosecuting them as vigorously as possible, and trying to select these offenders and make sure that their sentences are as long as possible and that they are not prematurely released from prison.

We have also focused on career criminals, which I think is one of the most effective programs that has been initiated in Florida. We work with local police, so that our career criminal unit and the local police work together hand-in-hand daily, focusing on people that they expect are committing series of crimes, and in many instances proactively going after them.

Under our law, we can enhance the sentence of a person determined to be a career criminal and we can prevent their early release through use of enhanced gain time. I think that has been an excellent tool.

I think for those offenders who come into the system as drug abusers, the concept of diverting them without the threat of punishment won't work, but it is the combination of the carrot and stick approach. You are going to get punished, unless you go for treatment and you are going to be monitored each step of the way.

I think it is imperative, though, as we mentioned earlier when we talk about these 13- and 14-year-olds that I see coming into the system, you just look at that child's previous history and you could almost anticipate what was coming.

We have got to develop more effective programs for early intervention, prevention and treatment that give our children an opportunity to grow as strong, constructive human beings. We have got to develop violence programs and antiviolenace programs in the schools. We have shown, America has shown in so many different programs throughout the Nation that education in the schools about drugs can work. I think we can do the same thing and have an impact with respect to violence.

So the program that we have undertaken as a collective community in Dade County, we have a long way to go, but the idea of a

balanced approach, with punishment meaning what it says, but giving our young people an opportunity to grow as strong and constructive human beings I think can have an impact and I think—I don't claim credit for these figures, but I think that a combination of these policies has produced these figures in Dade County.

Senator PRESSLER. Out in the small business world, there is a terror of the Federal Government in terms of the Federal Government deciding to target a small business or, indeed, assume a small business has done something wrong. Frequently a small business owner might as well pay a fine or just yield, as opposed to fight, because by the time he hires his lawyers and tries to defend himself, he cannot.

It isn't just small business. I suppose it is anybody, but there is a terror of the Federal Government or Federal agencies moving against small business. They feel helpless that they don't have recourse. I speak as ranking member of the Small Business Committee, so I hear a lot of these stories. What can we do about this?

Ms. RENO. I think the concept of anybody, small business person or citizen, having a terror of the Federal Government is a concept because of doing something unjust to them is a concept that I would like to work with you and members of this committee and Congress in doing everything possible to eliminate.

People should look at the government as us, not as them and not in terror. Clearly, the problem of trying to pursue allegations concerning wrong-doing, balanced with an innocent person's rights, particularly an innocent person who will have to pay a lawyer to defend them, is one of the knotty problems you face as a prosecutor.

And it hurts me sometimes when I get a perfectly legitimate allegation, I know it has to be pursued, if we didn't, you would be asking me questions about why I wasn't pursuing it, but it is costing the person money to protect themselves during the investigation. At the conclusion of the investigation, we may well find that there is not a basis for action. But I think we are going to have to do everything we can to make sure that the resources of government are used in the right way.

Senator PRESSLER. I am sure Congress is part of the problem. For example, we have been putting pressure on you to tell us what your statistics are for prosecuting people, and I suppose if an OSHA inspector doesn't get 50 percent fines issued and collected, he is thought not to be doing his job. A battle of statistics here.

You have all these small businesses and people out there who are targets, but, on the other hand, if the agencies do not get a certain percentage of fines, the Congress asks why not. Is this a problem, this percentage business?

Ms. RENO. Well, I have tried to avoid statistics whenever possible. As I say, they can tell different stories, but sometimes there are clear patterns and understandings and trends that you have to look at.

What I want to try to do is remember that justice can't be based on statistics, it has got to be based on the evidence and the law and the particular case, and I want to make sure that I do everything I humanly can do, if you confirm me, to make sure that the Department of Justice seeks justice.

Senator PRESSLER. Now, maybe you have covered this, but do you support maintaining the Federal Sentencing Guidelines?

Ms. RENO. Yes, I do.

Senator PRESSLER. OK. I understand, as I am speaking, Senator Heflin is reintroducing the bankruptcy bill which passed the Senate last year. What is your view of the complaint that I hear on main street in small towns that the bankruptcy laws are too lenient, that they let people keep too many things, too many assets, that it drives up credit costs, and that people are afraid to extend credit?

On the other hand, if you don't give people a chance to have a fresh start, the bankruptcy laws lose their purpose. Should Congress, in rewriting the bankruptcy law this year, which it will be doing, regard the current provisions too lenient for people who go through bankruptcy?

Ms. RENO. Again, Senator, in these last 15 years, I haven't had an occasion to really address the bankruptcy laws, and I would look forward to working with Senator Heflin and the Congress in whatever role the Department of Justice can play in making sure that the laws are looked at from the point of view of where we are at in America now.

Senator PRESSLER. I do have another question on the exclusionary rule. I will submit it for the record, if we do not have a second round. I have some questions on price fixing and agricultural antitrust. I will just squeeze in one last question, and then I will be through here.

The CHAIRMAN. Sure.

Senator PRESSLER. On the agricultural antitrust exemption, some of these big agricultural cooperatives which were started to buy seed and so forth for farmers are now doing everything, and people say we should not have the Capper-Volstead Act, the agricultural exemption. In your State, I think you have some big agricultural cooperatives in, I don't know, fruit maybe, but do they deserve an antitrust exemption?

Ms. RENO. Senator, what I will do, if you confirm me, is ask the Assistant Attorney General in charge of the antitrust division to address this issue and I would like to fully inform myself of the considerations.

Senator PRESSLER. Mr. Chairman, I have some additional questions. If we don't have a second round, I would like to submit them for the record.

The CHAIRMAN. Well, I will tell you what I am going to try to do. Everyone has been so cooperative on both sides of the aisle here, that I think we would be better served if people had additional questions to just ask the questions rather than submit them in writing. That will speed the confirmation process up a little bit here.

My reading of the membership of the committee here is that there is no desire to delay, nor is there insistence at this moment to proceed under the prescribed rule for voting on a nomination. This rule states that there shall be no vote on a nomination until 7 days after we have completed the hearing, and no vote on the floor until 3 days after a committee report is filed, which would

mean, at a minimum, we are 10 days away from a final confirmation of this nominee.

Legitimately, everyone is concerned that they get all their questions answered before we vote on the nominee, and so my objective here today will be to try to let every Senator get the answers to his or her questions as quickly and as easily as that can be done. My instinct tells me that the best way to do that is while we have the nominee under oath in front of us, rather than submit questions to her in writing. It would actually take longer for the nominee to draft answers and get them back to us, so to the extent that we can keep the process moving, I would like to do that.

Again, any member of this committee is fully within his or her rights to suggest that the committee follow the "normal procedure," which is to have the 7 days between the end of the hearing and the vote. The hearing cannot close officially until we get the answers to all questions in writing. That is why I think that if Senators have second rounds they should come back, and I will give every Senator time to ask any question he or she wishes to ask.

With that, rather than take more time—

Senator SIMON. Mr. Chairman?

The CHAIRMAN. Yes?

Senator SIMON. May I suggest that in the second round we try for 10 minutes, rather than 15?

The CHAIRMAN. Unless there is objection, we will cut the second round to 10-minute rounds. Some Senators on both sides of the aisle have already indicated to me that they will not have any further questions, so we can move this along.

Again, there is no desire on the part of the Chair to speed this hearing up in any way that would prevent any Senator from asking any question he or she wishes to ask of the nominee.

The Senator from California.

OPENING STATEMENT OF SENATOR FEINSTEIN

Senator FEINSTEIN. Thank you, Mr. Chairman.

Ms. Reno, I might just say how delighted I am to see you here. Not only do I think you have handled this well, but I think you have shown that a woman can have an intense knowledge of the criminal justice system and law enforcement, and I for one think you are going to be an Attorney General that will be articulate and lead extraordinarily well.

Ms. RENO. Thank you, Senator.

Senator FEINSTEIN. Having said all of that, my main interest in wanting to be on this committee was to have some input into the passage of an omnibus crime bill, which has been too long delayed here.

It is my understanding that there are three areas that really forge the delay. One was habeas reform, the other was the exclusionary rule, and the third was the Brady bill, and I wanted to ask you a couple of questions. I think Senator Kennedy covered your thoughts on the Brady bill, and I did want to clarify a question that Senator Kohl asked, because he asked whether you have any further thoughts on gun control, and you said no. However, you had answered an earlier questions by saying that you did support an assault weapons ban. I trust that is still true?

Ms. RENO. That is correct. I had understood the Senator as talking just about handgun limitation in the handgun context. But you are entirely correct, and thank you for clarifying that.

Senator FEINSTEIN. Thank you. And I trust that if you found, after reviewing the statistics on waiting periods, that a waiting period in excess of 5 days would yield better investigation of mental instability, of felony record, et cetera, that you would then be inclined to support a longer waiting period?

Ms. RENO. What we will have, if the Brady bill is passed, we will have a track record, I think we will have information where we can make an informed judgment, and I would like to look at it from that perspective.

Senator FEINSTEIN. Thank you very much.

With respect to habeas corpus reform, if I may, I would like to send you the opinion letter of the States' attorneys general and ask that you review that letter, which states their position on this legislation, and inform the committee and me in writing of your reaction to it.

I find myself in substantial agreement with the opinion expressed in this letter. Would you be willing to do that?

Ms. RENO. Certainly, Senator.

Senator FEINSTEIN. Thank you very much.

We talked a little bit, when you came to my office, on the subject of the exclusionary rule, and the Senator on the other side also mentioned that. I was wondering if you would like to make any comment at this time on your feelings with respect to the exclusionary rule?

Ms. RENO. Generally, the exclusionary rule has been perceived by some as limiting law enforcement. What I think we have learned over the 15 years that I have been State attorney is the prosecutor and police working together can develop some clear understandings of what needs to be done, that properly trained with the opportunity to go—and we have 24-hour search warrant duty, we work with police in terms of training tapes and rollcalls, we try to be as responsive as we can, sending prosecutors directly to the scene, and the protection of our warrant I think is invaluable to a police officer. In the context of a good-faith exception for a warranted search, if you will, I think that provides the protection that law enforcement needs.

Senator FEINSTEIN. So you are saying reasonable cause plus a warrant?

Ms. RENO. For the probable cause for the warrant——

Senator FEINSTEIN. Probable cause, rather.

Ms. RENO [continuing]. Then if there is a good-faith mistake made in the process of the warrant, the police officer knows that he has gone to the court, that there is a process that he can follow. With respect to the warrantless searches, I would like to consider that much more thoroughly before reaching a conclusion that the good-faith exception should apply.

Senator FEINSTEIN. Would you please consider it? Because I would be most interested in your point of view on that, because I think that issue is going to come before this committee.

Ms. RENO. Senator, again, because I think I can talk about promises and things like that and what I think, but, obviously, what I

have learned over 15 years, working with the other States attorneys in Florida, working with our attorney general and local police legal advisors, that it is important not to become too dogmatic on where you stand, because you can learn something, but it is important to adhere to principles and to try to base what you do on principles.

I think if you talk to the prosecutors in Florida who have supported me, sometimes they say, well, there goes Janet, but they have elected me their president for a 2-year term, they know that when I approach a problem I try to approach it based on an informed judgment, based on the best application of the law that I can make, and that is what I would like to try to do with respect to this issue.

Senator FEINSTEIN. Thank you very much.

I would like to talk with you for a moment on the subject of drugs. I was very interested in your comments which I interpret as saying that we must not only fight drugs on the supply side, but we must also fight them on the demand side. America has never really launched a major fight on the demand side with prevention, with education, with rehabilitation in the way in which it could be done.

I would like to ask if you would be willing to take a look at the crime bill with respect specifically to the drug provisions and submit to this committee an amendment which would, in fact, change the balance so that it was 50 percent on the supply side and 50 percent fighting it on the demand side? I would be most interested in that amendment.

Ms. RENO. Senator, I don't want to commit to submitting an amendment that I didn't feel I could support. What I would like to do and what I told you and Senator Biden's staff is I think one of my first priorities, if you confirm me, is to sit down with that crime bill and understand it.

To commit to a certain balance I don't think would be appropriate at this point, because I don't know all the budgetary issues involved, but I would like to work with you. You obviously know of my concern for early intervention, prevention and treatment, and yet I also know what local law enforcement is faced with on the streets of our Nation. They are overwhelmed. Working together, I think we can achieve an appropriate resolution.

Senator FEINSTEIN. I appreciate that very much, because, for example, Medicaid will not pay for the treatment of a pregnant crack addicted woman to get off crack, to be able to have a baby that is not crack addicted. Yet, people come to this country to have their babies and use Medicaid to have their babies and then return to their own country, and this is something that I hope we will be able to concentrate on and begin to correct, because to me it does not make very good sense.

Ms. RENO. Senator, one of the most perplexing problems for me, and this is a perspective that I bring to Washington, is to sit around a table and have somebody tell me Medicaid does not cover this, it does cover that, but you can get the woman into treatment through this program, but she is not eligible if you don't do this, and it is one of the most confused patterns that I have seen.

With respect to the neighborhood resource team that I spoke to you about, as we sit around the table at our regular meetings, I am amazed at the number of programs out there that people would like to find access to, but the rules and regulations are so confusing and people are so ill-informed with respect to the Federal programs and they don't coordinate between each other, that it is really frustrating.

But to put it bluntly, if a man had five stiff drinks and drove up U.S. 1 going 90 miles an hour and killed two people and broke his two arms, his two arms would be fixed tonight at Jackson Memorial Hospital in Miami. But the person who is the crack addict who has hit rock bottom and begging for treatment will not. Something has got to change on that.

Senator FEINSTEIN. Thank you. I find I agree with you very much. I also believe that this point of view does not at all preclude being very tough and strong in street enforcement and with respect to interdiction, and in that regard I would like for you to comment, if you would be willing to, on how you would see RICO laws, as well as the future of asset seizures and forfeiture laws playing a major role with respect to large-scale narcotic activity.

Ms. RENO. RICO is one of the most effective tools that vigorous prosecutors have, but we have got to make sure that it is used wisely and correctly, and I will constantly be vigilant to that effort. I think you can use it effectively, while at the same time making sure that there are not abuses, and I don't think you need to limit the use of RICO by at the same time protecting against abuses.

Yesterday, I mentioned the case of the fellow who I had heard about long after he was gone who had been—and I never found out what his name is, so it may be an apocryphal story, but he was allegedly in Federal prison in South Dade County for 5 years for drug dealing, and this person who talked with him said he said, "Look, I've got three square meals a day, clean sheets, an opportunity for recreation and to work on my college degree. When I get out, my assets are waiting for me and I will never have to work again."

Asset forfeiture is one of the most important tools I think we have, but I think it is imperative that the Department of Justice, working with other agencies who receive the benefits of asset forfeitures, look at how these monies are being used, that we do it the right way up front in terms of the seizures, that the seizures are done fairly and according to appropriate process, and then that we see how that money is being used to make sure that it is being used without waste and in the most effective manner possible.

Senator FEINSTEIN. My experience is, as a former mayor, that the local sheriff asset seizures is increasingly being used to support antinarcotic activity in the police department, in other words, the narcotic units, which is certainly a good use of that fund.

I would like to talk for just a moment on immigration. You heard from some of my colleagues earlier their concern about the Immigration and Naturalization Service. I am specifically concerned about the Border Patrol and the fact that there are many more positions authorized in the Border Patrol than there are monies appropriated for their filling, and I would hope that you would be vigorous in setting the priorities of your department to allow for full

funding of the Border Patrol. I think full funding could make a huge difference, as we try increasingly to see that our borders are secured.

Ms. RENO. As you heard yesterday, I want to make immigration one of the priorities of the Department of Justice. It is something where I have seen the impact daily in Dade County. I want to do everything I can to give you a specific commitment that I can do X or Y, without getting into the whole budgetary process of the Department of Justice. It would not be fair to you. It is something that I will address as soon as possible.

Senator FEINSTEIN. Right. I mean this is a question of your setting your priorities. It is a big department with a big budget, and some of us have a great deal of difficulty understanding why these positions cannot get funded, if an attorney general really cares enough to order the priorities of the budget to be able to do that. It is particularly important in the southern part of California, I can assure you of that.

Ms. RENO. I have an aunt living in southern California, as you know, so I have got somebody keeping tabs on me.

Senator FEINSTEIN. Good. I may find out where she is. [Laughter.]

I would like to also know, do you have a position on a police officers bill of rights?

Ms. RENO. We have a police officers bill of rights in Florida, and we have worked with local police agencies in terms of that with respect to the—

Senator FEINSTEIN. So you would be supportive?

Ms. RENO. Again, what I would like to look at—

Senator FEINSTEIN. You would like to see the specifics, I am sure.

Ms. RENO. I would like to see the specifics and review it, but certainly I think it has been useful to the police in Florida, and I have seen no disadvantages to it at all.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Moseley-Braun?

Senator MOSELEY-BRAUN. Thank you, Mr. Chairman.

Ms. Reno, I am delighted to have this opportunity. I just left the Banking Committee, where we are trying to create jobs, so now we will fight crime for a while, and I am really delighted to shift gears and talk with you for a bit.

As part of our job to advise and consent on appointments, it is incumbent on the members of this committee to evaluate a nominee's competence for the job, as well as character, and I am just delighted to say that your credentials are impeccable and you come very, very highly recommended as a person of integrity, who is respected in the community, who has been responsive and accountable.

On the one hand, I want to congratulate you for your stamina to go through this and to sit in a chair and answer questions for 8 and 9 hours straight, but also to say that it really makes me very proud, because we can clearly demonstrate, this hearing demonstrates in my mind that the best qualified man for the job is very often a woman, and you have demonstrated that very clearly. And

must say, given this is my second hearing in this regard, this has been a veritable love fest for you.

The CHAIRMAN. I promised you they would all be easy, when you came to this committee.

Senator MOSELEY-BRAUN. You did, Senator Biden, and this makes up for it, actually. [Laughter.]

I do have some specific questions regarding the issue that has come up in some of your testimony regarding coordination and making our law enforcement efforts work better where it matters in terms of the people who see the results of our action, as opposed to all the planning and the funding issues and the like.

In a 1984 article that you wrote, you recalled a particularly difficult undercover drug investigation conducted by your office and the local police in conjunction with the Federal authorities, and you wrote, and I am going to quote from that article:

The tremendous time and effort involved in trying to get other agencies to cooperate was frustrating. We had tried to be innovative and adhere to the law, yet, Federal action discouraged us. The big and bureaucratic Federal law enforcement apparatus still seems at times unwieldy.

Frankly, that is a perception that many of us have. Our State and local enforcement agencies are overwhelmed. Even though the Federal Government has provided millions of dollars in assistance to those agencies in a year, the sheriffs and police chiefs in my State of Illinois and around the country have said that cooperation on the part of the FBI and the DEA and other Federal offices is sometimes unfortunately difficult to obtain.

What specific steps would you recommend or would you take, as Attorney General, to insure that the Federal law enforcement efforts work more effectively with State and local departments?

Ms. RENO. Senator, first of all, someone said I was almost having a good time sitting here. I can't quite describe a confirmation hearing as a good time, but in my meeting with all the Senators and with the questions that I have had, if you confirm me, it is as good way to become Attorney General and develop a good working relationship and a dialogue and a communication.

The cases I was referring to was a classic example of something that we started early on. I suspect if the Federal authorities had known me a little bit better, they wouldn't have given us such a hard time on the investigation that we conducted. It was one of the major drug investigations and one of the major prosecutions early on. It was commenced in September of 1978 and it finally resulted in over 120 defendants being charged. It was an incredibly complex case, with electronic surveillance involved, stings and the like.

As I recall, I made two trips to Washington. It is the only time I have ever been to the Department of Justice. I sat around with deputy attorney generals and assistant secretaries of this, and I was prepared to be in awe. I left kind of confused, and they kind of questioned about how we did things. I don't know if they ever followed up on the footnote, but the footnote is our courts affirmed our process, said we had handled it the right way and, generally, the convictions were sustained. But that is what I was referring to in that article.

Using that as a basis—and I think you will find this typical of what I try to do—instead of saying, well, I am not going to deal

with the Feds any more, I have had it with the Feds, I continued to try to communicate, to develop trust, to give them the opportunity to trust me, to have confidence in me and my lawyers. That was followed, obviously, by the prosecution of the river cop case, where they not only said yes, we will work with you on that effort, but they cross-designated two of my best prosecutors and together we did it as a joint effort.

That is the way I want to try to approach it, if you confirm me, talk with officials in Washington, continue the communication, let people know that I don't care about turf, I don't care about credit, I just want to do it the right way.

Senator MOSELEY-BRAWN. Would you see then as a part of that sharing of databases and information and encouraging these agencies to maintain ongoing communication and funding and sharing of resources with regard to the efforts of the local police departments?

Ms. RENO. I think that is one of the biggest problems, because they say, well, they can't have our data base, because we don't know them and we can't trust them. I think probably so much is lost in not sharing data bases, that whatever might be lost by some security leak, it overwhelms it. But that is what goes back again to the development of trust and that is what I think is important in trying to forge through.

If somebody has as problem, what I would do is say, now, why don't you trust that person? And they would say XYZ. I would say let's pursue XYZ. We would pursue it. And it was like some of the information the committee has received about me. What I would try to do is make sure that people are not labeled by some comment, some allegation that somebody heard some place. And when you do that, when you build the trust, you find law enforcement sharing ever more often.

Senator MOSELEY-BRAUN. Mr. Chairman, you see this cooperative approach is yet another evidence of how the best person for a job can be a woman.

The CHAIRMAN. I have never doubted that.

Senator MOSELEY-BRAUN. Thank you very much.

Ms. Reno, following on and talking about the U.S. attorneys, based on your experience as a prosecutor, the judgment and approach of the local U.S. attorney is critical to the success of a coordinated crime fighting effort.

As Attorney General, what kind of background and experience will you advise the President with regard to appointing U.S. attorneys, and how important do you see diversity in terms of opening up the U.S. attorneys offices to women and to minorities? How important do you see that as a factor, and what would you recommend to the President?

Ms. RENO. I see it, based on my own experience in Dade County, as critically important, in just looking at my office and talking about my office and what we have tried to do to achieve diversity.

I think there is nothing that gives people confidence in the system as to see an office, a public office reflect the people of America. I can speak very clearly for the President who—I don't remember too much about the night I met him in the Oval Office, but one of

the clear messages is I want my appointments on the judiciary, the U.S. attorneys office to reflect excellence and diversity.

Senator MOSELEY-BRAUN. I was going to ask another question about United States attorneys. I came out of a U.S. attorneys office, and so I have a particular interest and love for that level of government. But I want to move on, because I don't want to use up all of my time talking about coordination. I am sure that, based on our initial conversations, we will have an opportunity to consult in that area.

Let's talk a little bit about victims' rights. According to the latest Bureau of Justice Statistics, in 1991, there were 34 million victimizations, more than 22 million households, 23.7 percent of all households were victimized by criminal activity. Violent crimes included more than 21,000 murders, 5 million assaults and 150,000 rapes. Only 38 percent of all crimes and less than 50 percent of violent crimes were reported to the police.

In a 1986 speech, you said:

Our victims and witnesses continue to be the forgotten people in the system. The system must be as sensitive to the inconveniences and problems suffered by victims, as it is now to defendants' rights.

I think you are absolutely right. No crime victim should feel like a trip to the station house or the courthouse is a second assault on his or her dignity. Nor should entire neighborhoods continue to be terrorized by vicious gangs and drug lords, because the system doesn't offer sufficient safeguards for ordinary citizens who want to do their civic duty and testify.

What steps, as Attorney General, would you implement to make the criminal justice system more responsive to the needs of victims and witnesses?

Ms. RENO. Again, I would like to look at my track record, because when I became State attorney, I was appalled at the lack of coordination amongst victims and witnesses. Victims didn't know what to anticipate, didn't know what to expect, and very early on we developed a victim-witness coordination unit, trying to do everything we could to provide people who were sensitive to victims, who understood their problems, to give them notification, to tell them what to expect.

We prepared booklets and information so that they could be advised up-front about what a deposition would be like, why something might have to be plea bargained. We made a clear policy that you don't plea bargain a case without consulting with the victim and the arresting officer, and if the victim disagreed, there may be a valid reason why that case should be plea bargained, but they should have the opportunity to talk to me before it was done.

I think you can protect victims' rights, while at the same time insuring to all defendants their constitutional rights, and I think it is important to remember that the victim is a citizen just like that defendant is.

Then I went a step further and I decided that I really wanted to put our office under scrutiny. One of the people who was responsible for founding the Mothers Against Drunk Drivers in Dade County asked me for a job, and I said you can't work on these cases, because there will be a conflict, but you can work in the of-

rice, so you can sensitize prosecutors to what it is like. She has been an invaluable member of our office.

And two representatives of Parents of Murdered Children work in the office, and what those two people have done in terms of sensitizing everybody that they come in contact with, with the anguish of being a survivor, is just incredible and they both are so wonderful at that effort.

These are the types of things that I think are imperative to use as an example around the Nation, and so I would like to work with all victims groups and look forward to that opportunity and doing everything we can to make sure that we never forget victims.

Senator MOSELEY-BRAUN. I think that is wonderful.

To take it a step further, you mentioned in earlier testimony you were discussing the impact and the use of fines as a way of pursuing the crime-fighting approach and emphasizing the collection of fines. What about restitution, that is, victim restitution, where a fine can be levied as part of a sentencing, or an order of restitution can be entered as part of a sentencing to make certain that the victims, even though you could never make up for a violent crime when it has been committed, can obtain some level of restitution, where resources are or should be or should be available to them?

Ms. RENO. I think restitution is one of the critical tools for the criminal justice system. In a system where 60 to 70 percent of the people are indigent and are represented by court-appointed counsel or the public defender, and where another 10 percent may be indigent for cost, you are going to have a limited number in the long run that can pay restitution, but I think it is imperative that we try to follow up.

We work closely with the Office of Probation Services in trying to make sure that we follow up to enforce restitution orders. But I will tell you that, in this day and time, it is one of the most frustrating experiences we have had in the last year or two in Dade County, in trying to get these orders enforced, because we have to prove in some instances to some judges the ability of the defendant to pay, and that becomes a difficult problem.

Senator MOSELEY-BRAUN. Well, I would encourage you in that regard, because that is important with regard to victims' rights, and I think frankly that makes the system work better, because it is proactive and people will feel some investment or feel some consequences from their criminal activity which often does not exist in the current system.

Ms. RENO. But I would like to go a step further because oftentimes the restitution is out of the proceeds of the crime, if you will, and where they have the proceeds of the crime, I would like to try to go deeper in the pocketbook, if that is all I can get, to let them know that they just didn't have a chance to use that person's money interest-free for a while.

Senator MOSELEY-BRAUN. In looking at the whole approach to crime prevention, because, again, stopping the victimization before it happens and setting up disincentives to criminal activity I think is so important, and you have talked since yesterday at length about your approach to crime prevention.

I want to quote you again another speech that you made. I wound up reading your speeches and your writings and saying, yes, yes, yes, so I am really the choir in this situation, I am afraid.

In 1990, you made a speech to the Florida Legislature and you said, and I quote:

"I would like to start out with some basic assumptions about what we can do about crime. The first very important assumption is that we can have an impact on crime, if we do it right. We can have more of an impact, if we had more money, but without money, we can have some measurable impact.

Then you go on to say:

In Dade County, we have 26 different police agencies going in 26 different directions with different priorities. If you don't have any new dollars, make us all go together, focusing on priorities that count.

In talking about the priorities that count in violent crime, given that we have limited crime fighting resources, what specific steps can you take as Attorney General to focus those resources on violent crime and the career criminals who wreak so much havoc in our cities and towns?

Ms. RENO. One of the points I had difficulty getting from the Federal authorities in Dade County, the number of cases that we had referred through Operation Trigger Lock that Senator Specter had asked me, but this is an example I think of where the Federal Government can be very effective in supporting the States. Operation Trigger Lock is where they take jurisdiction of armed career criminals. And since the program was initiated in 1987, of the cases that we have transferred to the Federal court through Operation Trigger Lock, there have been 120 indictments, over 90 convictions and the sentences have ranged from 15 to 50 years.

So many of the armed criminals that we see, career criminals that we see that have crossed State lines who go from place to place, and I think that is the type of effort that the Federal Government can undertake using our prisons, because I am told there is no gridlock in Federal. If there is no gridlock, then I want to see those career criminals there, because in Florida's prisons we have got the gridlock. Dangerous prisoners are being released.

And it comes back to saying, look, we have got tremendous resources in this Nation, let's develop guidelines. They may differ from community to community, because the laws may be different in one State than in another. But let's use our resources the right way, to focus on violence, on the crimes that undermine the very fabric of society, while at the same time working together to determine through the massive amount of research available to the Federal Government, in the research capabilities how we can use our monies to really deal with effectively with the problem of drug abuse.

If we can send man to the moon, we ought to be able to help a lady get off crack somehow or other a lot easier than what we do now.

Senator MOSELEY-BRAUN. Or help a lady to walk home at night, without having to worry about her chances of getting there.

Ms. RENO. Right on.

Senator MOSELEY-BRAUN. My time is up.

The CHAIRMAN. If you have another question, you go ahead, Senator, and that will help speed things up.

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman. The President, in his economic program, talks about putting 100,000 more police on the street at the street level. From your perspective, what would be the most effective strategies at that level to fight violent crime, the community policing approach, which in my mind is a new way of the old beat cop that we knew 20 years ago, special narcotics units or special emphasis on preventing juvenile crime? Where would you put those 100,000 new police?

Ms. RENO. What I want to do is make sure that Washington doesn't tell the community what to do, because the leaders of the community and the people of the community know a lot better how to use money wisely than an attorney general sitting up in Washington saying do it my way. So I want to work with communities to make sure it is done as effectively as possible, based on community needs, not on how the community wants to divvy up the money necessarily, but let the community reflect the needs.

I have obviously got some suggestions that I want to share with people, but I don't want to be dogmatic about it. The resource team that I described is a wonderful mixture of a police officer who is respected in the community, he doesn't take guff from the kids, he knows when to go after the kids, when to give them a second chance, but he is working with the public health nurse and a social worker as a team right there on the streets in that community, in that neighborhood, addressing the problems as a whole.

When you look at a community, if you just took a snapshot of some of our communities at a certain period of time, you would find 5 social workers in that neighborhood, probably 10 health care professionals dealing with people coming from that neighborhood, 3 different police units dealing with that neighborhood. And do they talk too often? They don't. If we can bring them together, I think we can be far more effective with the resources we have.

Senator MOSELEY-BRAUN. Thank you very much.

The CHAIRMAN. What I would like to suggest we do now is that we give you a 5-minute break.

Ms. RENO. I am fine, if you want to continue.

The CHAIRMAN. Well, I can see you are getting the hang of this. [Laughter.]

We might as well keep the momentum going. It is obvious that your skills as a prosecutor are coming into play.

With that, we will go into our second round at 10 minutes apiece. Why don't we at this moment yield to our friend from Iowa, Senator Grassley, for a second round.

Senator GRASSLEY. I was hoping she would think that maybe we needed a 5-minute break. [Laughter.]

I want to ask questions in three areas: terrorism, alternative dispute resolution, and international antitrust. But before I do that, I will discuss—and this will not be a question, just a comment to kind of let you know where I am coming from, as I talked to you yesterday about the independent counsel law and as it has been brought up for discussion today, and particularly whether or not bills that require independent counsel to be used for the executive branch of Government, whether or not there ought to be discretion in the use of that law as it applies to Members of Congress.

I think the premise underlying the law, as I understand it, is that the Attorney General may have a conflict of interest in criminal investigation of a fellow Presidential appointee; therefore, to ensure independence of the investigation, an independent counsel is the right way to go.

If that is the case for the executive branch, I believe the same is true in the case of a Member of Congress. First, the same premise operates where a Member of Congress is of the same political party as the Attorney General, and, second, the same premise operates where the Member and Attorney General are of different parties.

I think it is a fair argument to put forward that the Attorney General of one party may, in a sense, go after a Member of Congress of the other party, and I want it to be even-handed. Whichever party is in power, I think it is very important that we be even-handed.

Therefore, I am firmly of the belief that the independent counsel law must apply to Members of Congress and the executive branch on the same terms and same conditions.

Now, I know that some of my colleagues say that this violates the separation of powers. That is an argument that is frequently used around here, whether or not laws ought to apply to Congress the same way they might apply to the country at large. It was an argument that was used, for instance, in whether or not the civil rights laws ought to apply to Congress. And yet I overcame those arguments, and that is now an aspect of our civil rights law that wasn't there before.

I believe that the Supreme Court has said that the law is not unconstitutional simply because it violates the concept or some abstract principle of separation of powers. I think that is what the Supreme Court said in *Morrison v. Olson*, the case in which the constitutionality of the independent counsel law was upheld.

There must be some precise clause or provision of the Constitution that has been violated in order for the law to be found unconstitutional. So on that basis, I am going to still continue to work, and you obviously will be involved in that. When we consider the independent counsel law, I want to work to make sure it applies to Congress the same way it applies to the executive branch.

On the subject of terrorism, and, of course, this is more near term now because of what happened at the World Trade Center. I think it demonstrates that American targets here at home may be fair game, as well as Americans overseas have been fair game for decades. And I am pleased that last year we enacted a bill that I sponsored to allow victims of terrorism to sue for damages in Federal courts. That is not going to bring back the people who were killed, but it is one more tool for victims of terrorism to use against those people committing the crime.

Now, recently there were allegations that a radical militant Islamic fundamentalist movement called Hamas may have important bases here in the United States. About 2 weeks ago, 56 Senators joined me in writing to Secretary of State Christopher about including Hamas in the annual report on terrorism. And if you are interested, I will provide a copy of that to you.

But my question is the extent you see dealing with terrorism generally, but more specifically what action would you expect the Department of Justice to be taking or that you would like the Department of Justice take in the future to ensure that terrorist cells are not operating in the United States. And also, if you could address the subject of fundraising in the United States to support terrorist groups. What we can do about that?

Ms. RENO. Senator, I think it is clear that one of the first priorities I have if you confirm me is to focus on this issue. It is a horrible, horrible act. Americans are very concerned about it, and I think the first step is to see what is being done to promote the closest coordination between all concerned agencies in law enforcement and the Department of State, that we talk together, that we understand each other's language so that we make sure we share information in an appropriate fashion, and that we have an organized, understood policy and game plan to deal with this problem.

Senator GRASSLEY. Do you see that that could maybe get at fund raising as well? Let me follow that up, and I know you said to a previous question you didn't want to take a specific position on provisions of the crime bill and you were going to study it. But let me suggest to you that in this area there was a provision in the crime bill that made it a crime to "provide material support for an act of terrorism" as one possible tool get at fund raising that might support terrorist activity.

Ms. RENO. I think any tool we could use to get at that is an important tool, and I will look at the crime bill with that in mind.

Senator GRASSLEY. On ADR, again, this has been an interest of mine because I have felt that anything we can do to keep disputes out of the adversarial and costly environment of a courtroom ought to be pursued. It would be more efficient and responsive, I think, to people who maybe have legitimate disputes that we haven't promoted great enough use.

Now, there are many ideas on tort reform, and I don't want to go into those, but alternative dispute resolution is one of those. It may be too general of a question, but it gives me an opportunity to see what your thinking is. Do you see opportunities for greater use of ADR? Do you see yourself wanting to promote those sorts of ideas as Attorney General?

Ms. RENO. It has been sometime since I have dealt with the civil justice area, but prior to the time I became State attorney, I was actively involved in court reform and, as staff director of the Florida House Judiciary Committee, initiated some studies with respect to alternative dispute resolution and became convinced that it is a very effective tool. I don't think it should be used to bar people from our courts, but I think the more we can do in terms of resolving disputes, resolving them early on by being as frank and forthcoming as possible, trying to minimize the terrible cost too often involved in litigation, is an important step. And I am not sure of how the Department would be structured, but one of the first things I would do if you confirm me is to focus on how to provide a Department focus for civil justice reform, including the best possible uses and the most appropriate uses for ADR.

Senator GRASSLEY. And let me say that my philosophy is that I would not bar access to the courts just because of ADR as well.

You will find in your work with Congress that we are always proposing laws and passing laws that have a great tendency to create and expand rights and to give the courts the burden of vindicating and protecting those rights. I would not dispute the granting of rights, but obviously that does burden the courts. And that gives another area for the use of alternative dispute resolution and—as recently the consideration of the family leave bill, I tried to get greater use of ADR. I guess I would ask that you would also, as you consider efforts that may be made either by Members of Congress or even by your administration to do this, that you would look for ways of including workable ADR provisions in them, and to try to do what we can through that use of not burdening the court and hopefully have the court as a jurisdiction of last resort, but not one that is withheld.

Along this line, we will be reauthorizing the Court Annexed Arbitration Act. I think it has worked very well. I think it is very useful in eliminating some of the backlog in these courts. Would you have a view on the reauthorization of that or the expansion of the use of these demonstration projects beyond 10 districts?

Ms. RENO. I would like to look at what is going on. I am not familiar with just what is going on now, Senator, but I would like to understand it and, again, focus the Department of Justice's resources, to the extent possible, on both the projects that are ongoing and what can be done to properly expand them.

Senator GRASSLEY. You and the Department of Justice, I think, can be a very effective tool in helping President Clinton accomplish what he has set out very strongly to do: level the playing field for the United States and our businesses to get a fairer deal in foreign trade. And maybe your predecessor, Attorney General Barr, took a small step in this direction in making use of the antitrust laws in the international arena to a greater extent. I think it was a very timid step, but yet a good forward step, and this has brought Senator Metzenbaum and myself to introduce legislation to expand the use of the antitrust laws in the international arena.

Do you have any thoughts pro or con on that? And, more importantly, would you see the Attorney General and the Department of Justice as being a tool, along with so many other departments that are already involved, special trade representative, Treasury, et cetera, in this battle?

Ms. RENO. One of the points I have committed to in my mind, to the extent I would let myself think beyond the confirmation hearing, is to selecting the best possible Assistant Attorney General in charge of the antitrust division. One of the first things that I will do, because all my instincts tell me, though I am certainly not an expert, is that I don't want foreign cartels causing problems to competition in America. And I certainly don't profess to be an expert, but it is something where all my instincts tell me we have to look at it and look at it very, very carefully.

Senator GRASSLEY. Thank you, Mr. Chairman.

Thank you, Ms. Reno.

The CHAIRMAN. Thank you very much.

Senator Kennedy.

Senator KENNEDY. Thank you very much.

Ms. Reno, yesterday we talked about a rather basic and fundamental right in our society, and that is to the extent that we can be free from violence in our communities, free from violence in our homes. I thought you spoke very eloquently and knowledgeably about the domestic violence situation, and freedom from violence in our streets. And we talked a bit about gun control issues and what might be done. We want to have freedom from violence in our schools, in our businesses, and to the extent that we can, I think do whatever must be done in enforcement of laws, other steps that can be taken to at least assure that rather basic and fundamental freedom.

Today I would like to address a number of other areas quickly. We have talked about these matters previously, and I have a pretty fair idea of where you are, a good idea of where you are. But it is basically on the issues of achieving equal justice under law, and I am talking now really about discrimination and what needs to be done both in enforcement and what might have to be done in terms of support for statutes to provide the remedies and achieve the outcomes which have been guaranteed by the Supreme Court. I think initially now about *Roe v. Wade* and the freedom of choice legislation to try and guarantee that particular right. And I understand that you are in support of that legislation as the President is as well.

Ms. RENO. That is correct, Senator.

Senator KENNEDY. And I think of also the *Bray* decision which prohibited women from actually exercising that particular right. At the present time, there are different legislative proposals to try and address that issue in an appropriate way. It is not easy, but as I understand it, you will work closely with us in the House and the Senate to try and remedy that decision by the Supreme Court so that accessibility will be available to people to give them assurance of that right.

Ms. RENO. That is correct, Senator.

Senator KENNEDY. Also, in another area, the Americans With Disabilities Act, this is, I think, one of the really very major pieces of legislation that we passed in recent years. It had bipartisan support to try to include the 43 million Americans that have some form of disability in our society. I am always reminded by my son it isn't they that have the disability, it is us that have the disability in trying to treat them differently or uniquely.

I understand just from a report this morning—there is no reason that you are probably aware of it—that in the Justice Department at the present time there are only 10 attorneys that are working on implementation of that act. There was a good job done with the administration in developing the regulations at the present time. In the year since those provisions actually took effect, the Department has received 900 complaints of discrimination, and filed exactly one lawsuit. There are only 10 Justice Department attorneys enforcing the provisions. Again, maybe 10 can do it.

I hope you would have a chance to review what resources, both technical resources for enforcement as well as enforcement procedures that ought to be taken to guarantee that legislation actually is realized.

Ms. RENO. Senator, that is a real concern for me. I am proud to say that Disabilities of Florida recognized our office as the employer of the year 2 years ago because of our concern and our work in this area. I am very sensitive to the issues and very dedicated to doing what I can to see that it is vigorously enforced.

Senator KENNEDY. Well, that is encouraging. I know my friend Tom Harkin has worked hard. Many of us on this committee have as well.

Moving into the voting rights area, many of us supported the Voting Rights Act, the extension of the Voting Rights Act, and we are aware of the attempts to circumvent the Voting Rights Act.

Last year, the Supreme Court in what is called the *Presley* decision basically found that after the election of a black member to a local county commission, the actions that were taken that reduced the functions and the authority of individual members of that board and the Court said that that was not a violation of the Voting Rights Act.

Senator Danforth and I and others have sought to develop legislation to address that particular holding. And—well, I think we were going to—we were waiting to hear from you, I guess, is where we are. I am corrected by staff. But we had tried to address that issue last year. We would like to address it this year. We would like to do it in a way which is consistent with your own judgment on this matter and the President's.

Ms. RENO. And I would like to work with you on that effort, Senator.

Senator KENNEDY. Also, on the issues of immigration, I think all of us obviously are horrified by the bomb explosions and the other forms of violence that we have seen. And we deplore it, whether it is done by illegal aliens or by America citizens. I would hope that as we focus on the implementation of the law, the existing laws that we have, for individuals that are either going to violate the immigration laws and ought to be dealt with appropriately, that we also are going to recognize that we have millions of Americans whose skin is not white and who speak with foreign accents. And as someone who has watched immigration laws over a long period of time, too frequently in the past when there has been an opening for discrimination, discrimination has taken place.

I would hope you would be sensitive as we go about the vigorous enforcement of the laws that we certainly want to be sensitive to the very legitimate rights of millions of our fellow citizens and also those that have been reunified either with their families or have otherwise legal standing here before the laws.

Ms. RENO. The memory of the man who was teased about his funny clothes and his funny accent will make me not forget that. At the same time, the community that has absorbed wave after wave and been stronger by entrants and refugees and people who have come to our shores, but who have also had to bear the burden puts the other side of the coin to me.

I am convinced that if we pursue it in the real tradition of America, if we give immigration and naturalization the resources to do the job properly, somehow or another we can continue to perfect that extraordinary balance that has made America great.

Senator KENNEDY. Well, I will certainly do everything I can to help. I know I can speak on this issue for Senator Simpson and Senator Simon that we will want to work with you very closely in that area.

Also, on the questions of remedies and enforcement, you mentioned I guess in one of your speeches about the discrimination which you as an individual felt as a woman who is qualified to be an attorney, a member of the bar, and how you felt the sting of discrimination when you were first out of law school and gaining entry into the practice of law, and then came to the point where you were actually a partner in the firm.

As you are well aware, there are dual kinds of remedies for women in our society on the basis of discrimination in employment. I think when we have second-class remedies, too often we can have second-class citizenship. And the equal-remedies legislation which I and others have introduced I think is an important remedy for millions of women in our society, and I would be interested in your view on this issue.

Ms. RENO. I agree absolutely, Senator.

Senator KENNEDY. Well, we will look forward to working with you.

Finally, Mr. Chairman, we are covering a good deal of ground, but I think these are important policy questions, on the issues of legal services. I know I don't have to talk to you about those issues, or the President because Mrs. Clinton has been a very active member formerly on the board of the Legal Services Corp., and I know that they are strongly committed to those programs. I know you know what has happened to the whole Legal Service Program over the period of recent years since the early part of the 1980's. In my own State of Massachusetts, the best studies demonstrate that only about 15 percent of the legal needs of poor people are being looked after by Legal Services.

The law firms in this country have been—with all respect to those that do a rap on the lawyers, the law firms I know in my own city of Boston have been enormously responsive in terms of trying to pick up the slack with pro bono work. I know this has been a special interest of yours in the development of that program in Florida, and maybe you could tell us a little bit about it at the end, as my time is running out. But I would hope that you would submit names to the Legal Service board in a timely fashion of qualified people because we have the vacancies, and also that you would work with us, given your experience as we come back to the reauthorization. We had intended to do this last year, but we were blocked by the Bush administration. It was going to be a bipartisan effort, with Senator Warren Rudman, myself, and many others, and it does need attention.

I think we have someone, yourself, who has a unique interest in it. Perhaps in the remaining time that I have before that goes red, you could tell us a little bit about the program that was developed in Dade County.

Ms. RENO. Dade County has developed an excellent program. Our chief judge has led the way. It is called "Put Something Back" on the part of local lawyers. But we have a very fine Legal Services Program that is overwhelmed by so many of the problems that we

face. I think I have worked together closely with them, and I am committed to doing what I can to ensure that the Legal Services program in America is effective.

Senator KENNEDY. Thank you very much.

The CHAIRMAN. Thank you.

Senator Hatch.

Senator HATCH. I want to compliment you on your testimony so far. I think you have done very well, and I fully intend to support you for this position. I do not intend to take all of the time allotted to me, but let me just raise a couple of issues.

I raised the *Inslaw* case to you. I don't know who is right there and who is wrong. All I know is that it is an important matter, and it is one that stands as a pall over the Justice Department until it is resolved one way or the other.

But are you familiar with the Danny Casalero case?

Ms. RENO. No, I am not, sir.

Senator HATCH. Well, I would like you to write that down because I believe tonight on a segment of "Unsolved Mysteries" there will be a discussion of the Danny Casalero case, and it is related to the *Inslaw* matter. Casalero was an investigative journalist, as I understand it, who was very seriously pursuing that particular matter when suddenly, according to the police in Martinsburg—I think it was Martinsburg, WV they claimed he committed suicide in a hotel or motel there.

The suicide looks as though it might not have been a suicide, and there are many in the media who believe that it was not a suicide and that Casalero was murdered in order to prevent the findings that he had, according to many, made headway on.

I would like to see some effort made to get to the bottom of that one way or the other.

There are some serious problems with the investigation as conducted by the police in that area, and there are some serious questions which have arisen. And it is just something that I think the Justice Department needs to clear up to the best of its ability. It may not be able to, but at least it needs to be cleared up.

If Casalero was on the trail of unsavory people, then we ought to find that out, and we ought to know what he was talking about. And I have to admit the circumstances and facts surrounding that incident raise a lot of questions in my mind. So you may want to watch that. I believe it is tonight. You may want to watch that segment, and I will be also, and look at it and see what you think. But it is something that I think ought to be given a full investigation by the Justice Department since it is on point with this other problem that needs to be resolved.

One other thing. This committee has gone through an awful lot of problems with regard to sexual harassment issues. I believe I held one of the first committee hearings on sexual harassment back in 1982. People were not nearly as interested in it then as they are today. But since the Thomas-Hill hearings, I have had many women, in Utah and elsewhere, come to me and say that in their pursuit of sexual harassment action, it is almost impossible to recover or get it resolved, especially against large companies, because they delay it interminably, appeal it, make it so difficult and expensive for the woman, who in most cases is a salaried employee,

that they just can't pursue it to fruition or completion. And I can give you some terrific cases in that regard.

It may be that we need to look into the law there and see if there is some way that we can resolve these issues so that we get these women back to work, so that we get the issue resolved, so that the problems are resolved in some sort of a more reasonable way, so that there is justice done in those areas.

I have had innumerable women come to me and say that they—one out in Utah spent \$18,000 pursuing her case, and finally just had to throw her hands in the air and give up even though her case was probably a very valid case. And I think it is something you might want to look at, not only from your perspective but from ours, and see if we can come up with some way of helping to resolve this, short of having millions of cases of litigation and have some reasonable approach to it that would resolve these problems and create a better workplace environment for not only women but others who claim that they have suffered from sexual harassment. I have had a number of men come to me and mention these problems as well.

But there has got to be a better way than allowing those with all the money to drag these things out interminably, to the point where the poor individual employee, there is no way that they can continue. And there has got to be some ways, maybe compulsory arbitration or something. I don't know. But I would be happy to explore it with you, and I am sure other members of this committee would as well, and see if we can come up with some reasonable approach towards this that would really get people together rather than pulling them apart and causing the court to become congested with no real hope of getting the problem solved.

Ms. RENO. I would look forward to working with you on that effort, sir.

Senator HATCH. Well, I appreciate it, and I don't want to take any more of your time. I am satisfied with your testimony, and I have been for a long time, to be honest with you. I think that you have been very candid, very straightforward. I think you are going to make an excellent Attorney General, and I am sorry that you have had to go through some of the difficulties that you have gone through. But you are tough enough to do it, and I have to say I commend you for it and I commend you for your good graces and your good approach here yesterday and today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Metzenbaum?

Well, before the Senator starts, Ms. Reno, you just sort of raise your hand. You know that old joke. Our job is to speak and yours to listen. If you finish your job before we finish ours, raise your hand. You just let us know, OK?

Senator Metzenbaum.

Senator METZENBAUM. Thank you. Nice to see you again, Ms. Reno. You certainly had a tremendous amount of good publicity in the Post and Times and elsewhere.

The New York Times today reports on a very disturbing story that the drug manufacturers are going to ask for an antitrust exemption. And we know that in discussions being held with ref-

erence to the health care plan of the future that they are talking about exemptions for the doctors and the hospitals.

Now, nobody is going to convince me that the drug companies are coming in and asking for a letter which would give them that kind of an exemption in order to keep prices down. That ain't the way it has been and it ain't the way it is going to be. It is in order to keep prices up.

I am not asking you to commit yourself on the subject, but I am asking you to reassure us that if such a meeting is to be held in the antitrust division, some of us in the Congress who have a strong interest in the enforcement of our antitrust laws and think that they work well for the people of this country to provide competitive forces, that such a dialog will not just be with the drug companies, and that we won't suddenly wake up some morning and find it is a fait accompli, but that some of us would be invited to participate in a meeting.

Ms. RENO. Senator, as I have told you, I look forward to this communication. I come from a particular vantage point that is a lot smaller and a lot more insignificant than the U.S. Congress, but nonetheless an important entity. And the experience that I had as staff director of the House Judiciary Committee I think gave me an understanding and an appreciation of the legislative process and how important it is for both branches of Government to consult on a regular and ongoing way about matters that we obviously both have great concerns about. So I look forward to that.

Senator METZENBAUM. I just hope that the horse won't be out of the barn and then we find out about it and try to reverse it. That would be horrible for the people of this country, and I think it would be bad as far as Government is concerned.

Ms. RENO. Well, I am going to try not to bite off more than I can chew, but one of the things that I learned is if I announce something before really talking to people about it, it gets shot down. If I talk to people and try to build something that reflects people's views, even if you disagree with me, you know that we have tried to reach the point where we have resolved as many disagreements as possible and that we understand where each other are at.

Senator METZENBAUM. I am not only suggesting that we be consulted before an announcement is made, but that if such a meeting is to be held with the drug manufacturers, that some of us in Congress, very few in number, at least be present to be a part of the dialogue. Would that be possible, do you think?

Ms. RENO. Let's look at it, Senator. I am not sure that you want me to bring the drug manufacturers—

Senator METZENBAUM. No, we are willing to go there.

Ms. RENO. You see where my perspective is coming from.

Senator METZENBAUM. We will go there.

Ms. RENO. The drug manufacturers with me to a meeting with you. But clearly I think we can work out something so that there is full communication and that I don't present you with a fait accompli.

Senator METZENBAUM. Thank you very much.

The U.S. Civil Rights Commission is asking for a major Federal investigation into the hangings of inmates in Mississippi jails. Last August, Andre Jones, a black Mississippi teenager, was found

hanging from shoelaces in the Simpson County Jail. When I read about this story and how he had been picked up one day, put in a jail, moved from one county to another, and then in the next county the next day, they find him hanging from his shoelaces. He was the 42d inmate to die by hanging in Mississippi State jails since 1987. That is incredible. Twenty-three of these inmates were African-Americans. I can't believe that all of them decided just to hang themselves.

I am aware the Department looked into the circumstances of Jones' death and concluded there was not enough evidence to justify prosecution. I am not satisfied. I am also aware of the history of race relations in this country. I am also aware of Mississippi's record.

I believe the circumstances of Andre Jones' death, and the sheer numbers of so-called suicides in Mississippi jails points a strong finger of suspicion toward Andre Jones' jailers.

Will you be willing to review the Department's investigation of Andre Jones' death and the recent deaths in prisons in Mississippi and other places as well?

Ms. RENO. Yes, Senator.

Senator METZENBAUM. Thank you.

A number of Senators on the committee have raised the issue of the Brady bill. You have indicated your support for the legislation which is consistent with the President's position on the bill. The American people want the Brady bill to be enacted quickly. I am proud of my authorship of that legislation and the fact that we have come close, but we have never totally succeeded. We may have to move the Brady bill on a stand-alone basis before taking action on an omnibus crime bill.

If confirmed, will you work with me and with other Brady bill supporters on this committee, as well as in the Congress, as well as with Sarah Brady and her husband, Jim, to ensure swift enactment of the Brady bill even if that means considering it separately from an overall crime bill, which I believe would be the best way to assure passage of it?

Ms. RENO. The President and I are committed to getting it signed as fast as possible, and we rely on your judgment as to how that should be.

Senator METZENBAUM. Let me change the subject. Last year, I chaired a Judiciary Committee hearing that revealed a number of examples of how professionals drain the financial life out of a bankrupt company by charging exorbitant and often unnecessary fees. Bankruptcy cases provide a ripoff for hundreds and maybe thousands of attorneys in this country. Not all of them overcharge. Many do not. But attorneys get as much as \$500 per hour for their services. Investment bankers get \$135,000 a month, plus success fees of 1.5 percent of the price of the assets sold, and consultants over \$200 an hour for their services, which include such responsibilities as packing and unpacking of boxes. We have actually had cases and testimony before our committee of law firms billing for packing and unpacking boxes, of law firms charging \$127,000 just to prepare the bill. Nothing more, just for the matter of preparing the bill.

The worst abuse that I have heard of was in the January 11, 1993, edition of *Business First*. It revealed that in the Cardinal Industries, Inc., bankruptcy, a private trustee and his accounting firm charged an outrageous \$1,064 an hour in fees. The private trustee, Jay Alex, defended himself by citing cases in which private trustees have been awarded as much as \$6,000 an hour.

Now, when professionals take that much, there is little or nothing left for those our bankruptcy system is supposed to protect: the creditors, the shareholders, pension plans, employees, and others.

Would you be willing to work with this committee to assure that the U.S. Trustee's Office does a better job of helping bankruptcy courts police professional fees?

Ms. RENO. Certainly, Senator.

Senator METZENBAUM. Thank you.

I know that you have indicated earlier that you don't consider yourself an authority on antitrust legislation, but the fact is—and this is not a subject that most of us who have practiced law over the years know about—the Justice Department has supported the elimination of special antitrust protection for the insurance industry under the McCarran-Ferguson Act. They have been on our side to repeal the McCarran-Ferguson exemption.

I share their view. American consumers are overcharged countless billions of dollars because insurers can legally fix prices and force tying arrangements under their antitrust exemption. Insurers have also used their exemption to limit the kind of insurance coverage that consumers can buy.

In a case argued before the Supreme Court last month, 19 States charged that 4 of the Nation's largest insurance companies had conspired to deny consumers coverage for environmental hazards such as underground pollution. The Justice Department sided with the States and urged the Court to reject the company's claims that such market manipulation was covered by their antitrust exemption.

What will your position be on ending the special antitrust exemption for the McCarran industry? Will it be consistent with your predecessor who supported repealing the antitrust exemption?

Ms. RENO. One of the first things that I will do, Senator, is to ask the Assistant Attorney General in charge of antitrust to look at that issue and consult with me.

Senator METZENBAUM. I hope we can hear from you soon, and I hope we will have your support.

Some industries are calling for relaxation of our Nation's antitrust laws. They claim that the weaker antitrust laws will make U.S. companies more competitive internationally and will better enable the military and the health care industry to downsize. There are more reasons, that I hear regularly, as to why somebody should have an antitrust exemption than almost any other subject I know of. Everybody thinks theirs is a special industry that ought to have an exemption. Frankly, I believe almost all of them are wrong.

I share the view of Harvard business professor Michael Porter that a strong antitrust policy, especially in the area of horizontal mergers, alliances, and collusive behavior, is essential to upgrading our economy. Leniency toward anticompetitive conduct in any in-

dustry is a trap that we must avoid if we are to bolster our competitiveness internationally as well as domestically and improve our economy.

I am particularly concerned that you will be pressured to relax your antitrust review of mergers in the defense industry. The defense industry is currently undergoing some painful downsizing which it claims has been hampered by the antitrust laws. As a Member of Congress, Defense Secretary Les Aspin took a similar position in a letter to the Federal Trade Commission. He states that, "The normal standards of review for mergers may not be applicable in the defense industry and that antitrust goals and defense goals may not be compatible." I have great respect for Les Aspin, but I disagree with him on that point.

The proposed merger about which Mr. Aspin was concerned was between the only two U.S. companies that make a particular type of tank ammunition. The FTC found evidence that the merger would have cost taxpayers up to \$115 million in overcharges.

Will the Justice Department follow the example set by the FTC to apply tough antitrust standards to defense industry mergers?

Ms. RENO. I want to see our antitrust laws vigorously enforced. Obviously, I will consult with Secretary Aspin, if I were confirmed, but somehow or another I would like to work out the way to continue to ensure vigorous enforcement while addressing the issues that face different industries today.

Senator METZENBAUM. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Before I yield to Senator Specter, I would like to clarify the record. Yesterday I mentioned, Ms. Reno, that there was an individual in the employ of the National Rifle Association, the NRA, who was identified as the source of some of the unfounded allegations that were raised and that we investigated and the FBI investigated against you. I indicated that in fairness to the NRA, Mr. Jim Baker, speaking on behalf of the NRA—not former Secretary Baker—indicated that that person was not speaking for the NRA and they were going to resolve the matter.

Mr. Baker called, to his credit, to tell me that the person in question has resigned from the employ of the NRA this morning and that he is no longer associated with the NRA in any way. I just thought I would pass that on to you and to the committee members.

Now, with that, I will yield to our friend from Pennsylvania. I can see the Senator from Ohio has additional questions, which is fine. Although I had indicated to Senator Brown that it would be useful for him to continue after the Senator from Pennsylvania, I think what we will do is, after the Senator from Pennsylvania finishes, we will recess as planned until 2 o'clock, and we will come back for whatever Democrat has the next series of questions, and then go to Senator Brown. So another 10 minutes, Ms. Reno, and we will break for 1 hour and 20 minutes or thereabouts.

Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Ms. Reno, in pursuing some further questions, I hope to avoid any repetition. I have been present for most of the session, but we

all have other duties. People watching on television might wonder where this committee is, but there are many competing committees and meetings, and there is floor action, and there is a great deal which is going on. So if I cover something which has already been covered, if you tell me, I will try to abbreviate it.

I will begin with a subject which you discussed yesterday with Senator Grassley where I agreed with your conclusion that if the President called you and asked you about a pending investigation which has been publicized on the front pages, you would decline to give any information about that. I think that is the correct answer. I would like to explore with you your thinking as to how you reached that conclusion.

As a district attorney—or in your capacity as a State attorney, independently elected—when I was D.A. of Philadelphia and you were D.A. of Dade County, you don't have to answer to anybody except your constituents, which I really should say is answering to plenty of people.

But the President is the Chief Executive Officer, and the Attorney General is employed by the President. And if the President were to say, "Madam Attorney General," assuming confirmation, "I just want to be sure as the chief executive officer of the country that there is an adequate case here," and assume that politics are not involved, and you decline, what would your doctrinal basis be for the refusal to respond?

Ms. RENO. My response to the President of the United States is my response to the average citizen or to a newspaper reporter who said, "Ms. Reno, the Department of Justice is about to bring charges, we understand, according to the morning newspaper. Are you sure you have an adequate case?" is to say that the Department of Justice, so far as I am concerned, isn't going to take steps such as prosecuting somebody unless they have an adequate case based on the evidence and the law.

Senator SPECTER. And if the President responded by saying to you, "I am your superior in government. I appoint you. I can terminate you. And I want to be sure that the case is adequate. After all, I am a graduate of Yale Law School and know what a prima facie case is"——

The CHAIRMAN. Are you implying that Yale is a better law school than Harvard Law School? Is that the point?

Senator SPECTER. No, I won't imply that.

The CHAIRMAN. As you know, the Senator went to Yale Law School.

Senator SPECTER. I was talking about the President. But in response to Senator Biden's question, on his time, I am not implying Yale is a better law school. I am saying it flatly. [Laughter.]

Ms. RENO. There would be some people who say State law schools are far better.

Senator SPECTER. Well, I think I would agree with that. I was just talking about Harvard. [Laughter.]

But the President says to you, "I hear you. I don't doubt your integrity or your independence or your ability. I just want to know what the evidence is to see if there is an adequate case."

Ms. RENO. I would say, "Mr. President, that is not the way to do it. Let the Department of Justice pursue it in the regular course

of business. Let's not mix things up. And if you don't want me to be your Attorney General, I will go home."

Senator SPECTER. That is the point I was waiting for you to come to.

There was an interesting editorial in the Wall Street Journal yesterday that I would like to discuss with you very briefly—and perhaps someone has already taken it up with you—dealing with the controversy on the committees being chaired by the First Lady, Mrs. Hillary Clinton. The Wall Street Journal article raises questions under two statutes: First, the Federal Advisory Committee Act; second, the Anti-Deficiency Act.

Dealing with the Advisory Committee Act first, it provides in 1972 legislation that all meetings of advisory committees must be open to the public unless they are made up entirely of Federal employees.

Now, you may not want to express a definitive opinion, but if you did, I would appreciate it. If you don't, I would like to know what your thought process would be in analyzing this kind of an issue.

Ms. RENO. Let me be as candid as I can with you, which is what I have tried to be. I obviously don't have a totally informed judgment. I haven't looked at all the issues. What I am told as the basis of the process to date is that the First Lady is recognized in statute. Congress has authorized an office and staff, and that for purposes of this act, she should be considered as a Federal officer.

But to tell you that I have thought through this completely, Senator, that would be wrong.

Senator SPECTER. Well, I think that is a sound conclusion, and I have said it publicly. We are asked all the time for our judgments, and we don't have the constraints that nominees do. We are not subject to confirmation, just ouster on election day. But I would hope that there would not be a hypertechnical view which would exclude the First Lady from taking on that kind of a role.

The Anti-Deficiency Act prohibits having volunteer servants, people giving voluntary service so that you don't circumvent budget requirements. Again, I would be interested in your thinking on that if you would care to share it with us.

Ms. RENO. I am just puzzled by that. I would have to look into that much more. I don't understand it.

Senator SPECTER. Well, here, again, I would hope that there would not be a hypertechnical decision which would exclude somebody like the First Lady from helping out.

I would like to explore with you for a moment or two the issue of an international criminal court, a subject which I have pushed for some time, and we have had a number of Senate and sense of the Congress resolutions and action taken by the Congress, and finally this has evolved now on to the front burner as a result of the war in Bosnia. The reason that I have favored an international criminal court is to deal with the rising problem of terrorism where nations have been unwilling to send terrorists to the United States for prosecution. Abu Abbas was a good illustration. He was in Egypt, his plane, on its way somewhere else, was forced down in Italy, and the Italians surrounded the plane and refused to turn Abu Abbas over to the United States.

Also, an international criminal court would have great utility in the narcotics field where we have had cases, such as a celebrated case of an international drug dealer named Matta in Honduras who was turned over to the United States, and an angry mob surrounded our Embassy. And now the matter has been brought to a head, and I think quite properly so, with the atrocities reported in Bosnia.

My sense is that we ought not to respond just to one circumstance, but there is a good precedent with Nuremberg and there are ways to set up a court, and I would be interested in any thoughts you would have on that subject.

Ms. RENO. I think Nuremberg has certainly been instructive, but I have not really considered it. I would like to explore that with you if you confirm me and address it long range.

Senator SPECTER. OK. I would like you to take a close look at it, if confirmed.

Ms. RENO. I certainly will.

Senator SPECTER. Because I think this is going to be very much a front-burner issue.

A related subject involves the efforts by the United States to secure extradition of two Libyans who are under indictment for the sabotage of Pan Am 103, and there has not been a successful effort in that respect. The Libyans apparently have been making a number of collateral efforts to contact people, and I was contacted and asked to discuss the matter with the putative foreign minister of Libya, a man representing himself to be the foreign minister, and wanted to establish some procedure where these people could be tried, but wanted to have a discussion with United States officials. And our State Department has refused to undertake any of these discussions on the ground that it would perhaps encourage other nations to have dealings with the Libyans, and we want to keep the Libyans out of dealings with other nations and to work only through the United Nations and to let us have these individuals.

I communicated all of this to the former Secretary of State and the current Secretary of State. It is a State Department matter. But I have grave questions about the advisability of that course of action in the face of our ability to put our hands on those Libyans and to try them.

We have expanded extraterritorial jurisdiction—that is, to reach crimes not committed in the United States—with very important legislation, in 1984 on hijacking of planes and our Anti-Terrorist Act of 1986. And I would like to see a review of this issue at the executive branch level because that is where the authority lies.

But, again, I would be interested in any views you have on that subject.

Ms. RENO. I obviously don't have any immediate views that would be based on full information, and what I would like to do is to talk with the Secretary of State and try to give you thoughts on a more informed basis.

Senator SPECTER. In the business of being a district attorney, Ms. Reno, you and I know that very often we and our subordinates deal with murderers to get more important murderers, to go up a chain and to reach the top level. And I think some serious thought needs to be given as to how we are approaching that, that there

is a lot of value to bring terrorists to this country and trying them and convicting them. There have been some questions about the World Trade Center, and this is a big item.

Senator Hatch asked you a question about your view on obscenity prosecutions, and you responded that you thought that it was an important item, and you emphasized the subject matter of child pornography and child exploitation. My question is a very direct one, and that is, would you be prepared to make a commitment to maintain the obscenity enforcement section of the criminal division if confirmed?

Ms. RENO. I don't know how it is structured, and I don't know what its processes and procedures are. But I am committed to looking at it and trying to structure the Department so it addresses those issues in the most effective manner possible.

Senator SPECTER. You don't have any reason to oppose it at this time?

Ms. RENO. I don't have any reason to oppose it because I haven't really looked at the structure. But I want to look at the structure since I am not that familiar with all the inner workings of the Department of Justice, and this is an important issue for me. I want to address it in as effective a manner as possible. If it is not properly structured now, I would like to make it more effective.

Senator SPECTER. The red light is on, so I will thank you, Ms. Reno, and I thank the chairman.

The CHAIRMAN. Thank you, Senator.

I might point out that the Senator from Pennsylvania and others have talked with me about the issue of terrorism, and the leadership of the Senate has asked me as Chair of this committee to have the committee review the applicable laws on terrorism and make some determination as to whether or not they are adequate and how they should be changed. It is the intention of the Chair, prior to the recess in 2 weeks, that we will have an initial hearing on that subject. Hopefully by that time you will be confirmed, Ms. Reno, and we may ask you or someone at the Justice Department to be participating with us.

Now, what we are going to do—

Senator LEAHY. Mr. Chairman, on that point, I might note that my Subcommittee on Technology and the Law, just a few years ago, held a series of hearings especially on techno-terrorism here in the United States. We discussed terrorist incidents that could involve bombings, the things directed against our power grids, communications grids, and so on. Dr. Robert Kupperman and others testified then. It was interesting because there were a couple parts of that testimony that were almost prescient, unfortunately, in what we saw in the World Trade Center. And I applaud you and the leadership in looking into this issue because I think that one of the things we found in those hearings is that there are some very major gaps here in the country, not so much in the laws, but just in some of the things we could do to protect ourselves without infringing on the basic liberties we hold so valuable in this country.

The CHAIRMAN. Thank you, Senator.

As previously announced, we will recess until 2 p.m. When we reconvene at 2 p.m., we will begin promptly with Senator Leahy followed by Senator Brown.

Thank you very much.
 [Whereupon, at 12:40 p.m., the committee recessed, to reconvene at 2 p.m., this same day.]

AFTERNOON SESSION

Senator LEAHY [presiding]. Ms. Reno, thank you and welcome back.

In case anybody thinks that during the national search for an Attorney General, we also had a similar search for the Chair of the Senate Judiciary Committee, I want to hasten to assure everybody that we are not swapping one Irishman for another up here. Senator Biden is covering a couple of other things and is on his way over and asked me to begin the hearings.

Ms. Reno, I must tell you that frankly I have enjoyed these hearings more than I have enjoyed a hearing for an Attorney General nominee for quite some time. I say that because of your frankness and your candor and the fact that you bring a prosecutor's view to the job. I don't think you are surprised that that might appeal to me, and a number of others around here.

But it also is because in the chief law enforcement officer of the country, most of us, frankly, look for somebody who brings practical experience to that position rather than all the theory in the world. And I can't help but think, too, of the challenge you are going to face, in some ways a remarkable one.

I was thinking of this this morning on my way in to work. This is the first change in parties for an administration in 12 years. I don't mention this for any sense of partisanship, but it also means that it is the first wholesale change in U.S. attorneys, the prosecutors on the line, in 12 years.

Now, with a whole new group of U.S. attorneys coming in, because all will have to be cleared through you, and, of course, appointed by the President, I suspect that they will be men and women of the highest caliber. But they are also people who are going to take their directions from the Attorney General. Obviously they will make decisions based on their judgment in individual cases, but you are really going to set much of the standards for what they should do; what kind of cases they prosecute, do they put more emphasis on white-collar or violent crime, what kind of cases are de minimis and shouldn't be bothered with, what kind should you involve yourself in, how should they work with State law enforcement and so on.

You know, we have said before, the Supreme Court has the last word on what our laws mean, especially our criminal laws, but the Attorney General often has the first word. Sometimes that first word is the most important one.

There have been some real morale problems over the past few years at the Department of Justice, which I think is unfortunate because Department officials include some of the most talented men and women I have ever met in my life during the years I have been here, with both Republican and Democratic administrations in the Department of Justice.

So I would hope that you would give some of the highest priority and the highest amount of your personal attention, no matter who you have as the head of the Criminal Division or any other divi-

sion, but as much of your personal attention as you possibly can to the kind of guidelines that will apply to the U.S. attorneys.

That is not so much a question, but I would just hope that you would give that strong, strong personal attention.

Ms. RENO. I want to give personal attention to the guidelines, Senator, and I also want to do everything I can to build a team, a team spirit with the U.S. attorneys. That is the way I have tried to approach my office. They know the buck stops with me. They know that I can be very demanding when the occasion arises. But what I want to do is look to U.S. attorneys as my colleagues, as my partners, as people who can, in one jurisdiction where there is a particular problem, address it, understanding the general guidelines that are spelled out in Washington.

I have had my share of frustrations having to go to Washington as a local prosecutor. I can understand some of those constraints. But you are right. I think the bottom line is it is an extraordinary challenge. It is one I look forward to, and it is one that I think working with President Clinton's appointments we can really build a great team at Justice.

Senator LEAHY. I believe you can. I would also suggest that one thing you look at are the civil forfeiture statutes. These are powerful tools to dismantle drug operations, but that same power can make them very susceptible to abuse. If one person dealing with drugs has a significant business or home or real estate, it doesn't mean that he or she is necessarily more of a danger to the public than a drug dealer who operates out of a rental car and a rented building and so on.

Some of these forfeiture cases have involved the taking of a person's home. Now, in most cases, with most of us, a home is the sum of our life's work. For most Americans, if they can point to one major asset, it is their home.

Now, the claimants in a forfeiture case don't have the procedural protections provided by the presumption of innocence in criminal proceedings. Have you thought about what kind of guidelines you would set in such cases? For example, would the guidelines be different if you are going after somebody's cigarette boat versus somebody's home? What have you thought about these forfeiture statutes?

Ms. RENO. Obviously a home is a separate type of property in people's minds, but the drug dealer who builds the big mansion on the hill with the proceeds of illicit drug trade, I don't think that home should be immune.

Senator LEAHY. No, of course not, and I don't think anybody at this table would suggest that. And as a coauthor of some of these forfeiture laws, nor would I. But what about the person who has got the five rows of marijuana plants in their backyard on their property or in the window box—to make it even easier, the window box on their home, 15 years of its 20-year mortgage having been paid? You know, hard cases make hard law, but at some point there has to be a guideline for that.

Ms. RENO. I think we can spell out guidelines that address that from a common sense point of view, Senator.

Senator LEAHY. How do you pick the kind of control that U.S. attorneys would have over their own cases?

Ms. RENO. How do you—

Senator LEAHY. How do you decide when the U.S. attorney has to call home to the main Justice Department in Washington to find out what he does. When do you have the "E.T., call home" kind of syndrome, and when do you say, to a U.S. attorney, "You are on your own, you make your own judgment"?

Ms. RENO. What I have tried to do as State attorney, what I would try to do as Attorney General, is spell out general guidelines where U.S. attorneys knew what they could do and not do. I would like them to make—what I want most of all is for them to think of main Justice as a place they can go for good advice, for solid advice, as colleagues, as supporters, so that it is not me trying to ram something down somebody's throat, but rather both of us approaching it from a collegial point of view with common understanding.

Sometimes guidelines can't spell out the problem areas, but I would like to work with U.S. attorneys in devising guidelines that would set a theme and a tone for justice throughout the United States.

Senator LEAHY. The Transactional Records Access Clearing House at Syracuse University issued a report late in 1990 that raised questions about the staffing level in various U.S. attorney's offices. Have you had a chance to either look at something like this or to set priorities of staffing, urban versus rural offices, or anything of that nature?

Ms. RENO. As I told Senator Hatch, I am very sensitive to the issue of rural offices. I can't forget them. I have rural areas in my own county.

What I would like to do is look at caseloads, and I think one of the problems we face in the Department of Justice, from what I understand, is a lack of uniform information as to what caseloads exist, what the problems are. I would like first to address that problem so we have a sound basis for developing guidelines both for staffing and for case management based on that solid information, not neglecting rural areas, remembering that urban areas have their own set of problems, but trying to address what is a remarkably diverse nation.

Senator LEAHY. And also addressing the fact that simply the numbers of cases are not the whole picture. We have got a lot of qualitative facts that go in there. We have all seen a major criminal case which may end in one day with a plea and another one that could go on for three months. They each count as one conviction.

Do you have in your own mind the types of areas that should be preeminent in prosecution for U.S. attorneys?

Ms. RENO. The type of?

Senator LEAHY. What type of cases, or type of crimes, perhaps I should say. If you were setting major priorities, do you have in your own mind, say, the two or three areas that would be at the top of your list?

Ms. RENO. Public corruption, major drug trafficking, complex economic crime that cuts across State lines and that focuses on individual citizens in large numbers, where a large number of people are affected who cannot, through the procedures of their own State,

properly protect themselves against what would be an interstate complex criminal activity.

Senator LEAHY. You are giving an answer that, frankly, is music to my ears. Before my time ends—incidentally, seeing Senator Cohen here, I want to add something I mentioned when he was out of the room. Again, when I spoke of federalizing crimes, I earlier clarified that I was speaking of the fact that we in Congress are the ones who write the laws federalizing crimes, not the executive branch. And I emphasized my own concerns on that.

I know you discussed possible legislation to address the *Bray* decision when you talked with Senator Kennedy. Justice Kennedy pointed out in his concurrence in *Bray* that the Attorney General has the authority to place Federal resources at the disposal of State authorities to enforce the laws. In my own State three years ago we had 95 abortion protesters, almost all of whom were from out of State, try to literally shut down the Vermont judicial system. Ninety-five people suddenly going into court is an awful lot of people in a State like mine.

Until we have criminal legislation, are there circumstances where you would consider employing Federal resources, including Federal marshals, to protect access to clinics?

Ms. RENO. When I started considering the whole issue of *Bray*, this is one of the issues that came to mind, and I would like to explore that.

Senator LEAHY. To the extent you feel you can, can you keep this committee apprised of what you are going to do on that? Because while we can pass specific legislation, I don't think there is a person up here who doesn't feel that it would be a lot better to leave the discretion within the executive branch if the executive branch is going to be using that discretion.

Ms. RENO. Again, to the extent that it is appropriate so that it is not commenting on a pending investigation or a prosecution or an initiative that is about to be undertaken, I would like to keep you as informed as is consistent with what is the right thing to do.

Senator LEAHY. Thank you.

Senator Hatch, who was next?

Senator HATCH. Senator Brown.

Senator LEAHY. Senator Brown, I am sorry. I yield to Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

Ms. Reno, you had the pleasure of going through this for quite a while and have stood up admirably. I just had a couple questions to finish off the line of inquiry that we had chatted about briefly back in February and then covered yesterday.

My focus of attention related to *ex parte* communications when someone contacts you or the Justice Department with regard to an ongoing case, ongoing criminal case. I had two questions in that area. I think we had sent written copies of them to you last evening that you may have seen this morning.

The first one dealt with trying to identify the policy of meeting with people to discuss policy, but not meeting with non-parties to discuss certain matters in *ex parte* communications.

The one point that I still had a question about was whether or not you would consider it appropriate to meet with an *ex parte* con-

tact when the subject of the discussion was to be a particular and a specific motion in the case itself.

Ms. RENO. If it related just to the motion and to no policy, what I would suggest to that person who wanted to meet with me is that any contact be made through the litigant's attorney and give them the information concerning the motion that didn't relate to policy.

Senator BROWN. Well, I appreciate that. That is a very forthright answer, and I think very helpful in looking at the process.

I had also inquired about the kind of decision you would have made had you been our Attorney General at the point the request had come in to dismiss the empaneled jury, the very difficult matter that Mr. Gerson had been in a position to decide at the time. You had rightly suggested you wanted an opportunity to review the facts before you would indicate or felt comfortable in indicating how you would have acted under those circumstances.

Have you had a chance to look at that and form an opinion as to how you would have acted in response to that request?

Ms. RENO. If the Black Caucus came to me and said, "Look, we don't want to talk about the specific facts of the case, the specific evidence of the case, but we are concerned that the United States Government does not think that a person can be tried in a major city of this country," then I would talk to them.

Senator BROWN. Well, I was thinking more in terms of the specific decision that Mr. Gerson made; that is, to reverse the position of the Justice Department, or at least their representative that was handling the case, and join the defense in the motion to dismiss the empaneled jury.

Ms. RENO. If you are asking—because I understood the question related to the meeting and the discussion of the meeting. But if you are asking me to comment on specific action that the U.S. Government has taken in a case pending trial, I don't think it is appropriate for me to comment on that. I mean, that goes back to the other issue.

As Mr. Gerson has said, from his statement, because this issue has arisen in a case pending trial and because we insist that trial be a fair one, this will be the only statement that we make about this action. And this is a pending case, and that is getting deep into the issues, the very specific issues that don't go to policy about the pending case.

Senator BROWN. Fair enough. We are batting 50 percent. I had been left yesterday, I think, thinking that you would take a look at this and tell us how you would have ruled if the decision had been yours.

Ms. RENO. Understand, Senator, what I said yesterday—and I don't know how possible it is with the demand, but I think every lawyer for their client should be ultimately accountable to their client. In my instance, as I have indicated to you, my philosophy of this position is that I represent the American people. So it is an extraordinary balance. But using the experience that I have had in Dade County, what I say again and again to people is: I cannot comment on this pending case. I am not going to be influenced by you politically. But at the conclusion of this case, at the conclusion of this investigation if we do not file charges, I will tell you why I did it and my reasons.

And in many instances—and I don't want to set a precedent for all United States attorneys because I don't know about their workload—what we try to do, for example, in our more sensitive cases is do close-out memoranda explaining our actions. So I am not suggesting to you that I am stonewalling you for all time, but I don't think I should comment on pending cases and the specifics. And I think you should, when this litigation is all over and I am still the Attorney General, if I am, or whatever the case, when it has reached a conclusion and it is not pending, I think the buck stops with me as to how it got handled, or at least for the time I was on watch.

Senator BROWN. Thank you.

Mr. Chairman, I have no further questions.

Senator SIMON [presiding]. Ms. Reno, in response to Senator Cohen, I believe, you said, "Our office is one of two not found to discriminate." This is in the State of Florida, I assume.

Ms. RENO. This is on career criminal. This was a very specific study that was done, Senator, because of allegations that there was disparate application of the State's career criminal statute which provides for enhanced sentencing and the elimination of gain time that produces premature releases.

Senator SIMON. I mention it simply to suggest—I saw an article in the Atlanta Constitution. I confess I don't ordinarily read the Atlanta Constitution, but it was an article suggesting discrimination in sentencing in Georgia. There is going to be a conference at Dana College in Nebraska in the middle of April, as I discussed with you briefly, on the whole question of sentencing and crime. And Prof. Norville Morris of the University of Chicago will be speaking on this area of discrimination.

I mention all this simply to underscore that whoever is appointed Assistant Attorney General for Civil Rights, it is an extremely-sensitive, important position. And I have no candidate for this, the one office I have no candidate to recommend. But I think it is important that you look very carefully.

Ms. RENO. I couldn't agree with you more. That is going to be a position that I focus on very, very carefully.

Senator SIMON. One of the most important, perhaps the most important function that you will perform as Attorney General is to advise the President in terms of Supreme Court nominees. My belief is, having studied what Presidents have done over the years, that President Gerald Ford approached this probably as wisely as anyone. He did not rush into it. He consulted with several members of the Senate of both political parties. He asked people around the Nation who would be the best possible nominee to the Court. He submitted 22 names to the American Bar Association for evaluation.

The most recent nomination we have had, action was taken in 5 days. One name was submitted to the Bar Association. To my knowledge, no members of the Senate were consulted. The advice and consent portion of the Constitution was not followed. And I am not trying to regurgitate past battles. But I am concerned that we recognize this is one of the most important functions that the executive branch has and the legislative branch has, and that you urge that we approach it carefully, thoughtfully.

It is kind of a softball question, but it is an extremely important one. I am just interested in your reaction.

Ms. RENO. I can tell you what I have done in terms of appointments in my office and in terms of the approach that I think, as I walk down the street and think, now, don't think beyond confirmation, and then I find myself doing it. I share your view of a wide-ranging, thoughtful search. Clearly it is one of the most important appointments. Any of these appointments are just extraordinarily important.

There are so many magnificent people out there who would be splendid jurists at every level of government, and I think—in short, I agree with you, Senator.

Senator SIMON. This one takes on a special measure of importance, obviously.

Thanks for the cooperation of the members of this committee and my colleagues in the House and the Senate, we passed a bill giving antitrust exemption to the television industry for 3 years to establish standards on violence. And I am pleased to say about 6 weeks ago the 3 networks came to me with standards they have agreed upon that should affect fall programming in 1993.

The cable industry has also indicated they are going to move in this direction, and the movie industry has indicated they will participate in a conference called by television and cable in July in Los Angeles to look at this question.

The June 17 issue of the American Medical Association, which—and I know you are going to get bombarded with material, but it deals with violence as a public health issue. One of their articles is a study by the University of Washington suggesting that up to half the violence in our society is caused by television violence.

I have no way to gauge this, but the studies are just overwhelming that television violence adds to violence in our society. After you are in office 8 weeks and have a chance to reflect a little bit, if you believe that the television industry and the movie industry are moving in the right direction to reduce that violence, I think it would be very appropriate for the attorney general of Illinois and 49 other States and for the Attorney General of the United States to praise those who are moving in this direction and to indicate that you believe violence on television is a problem, obviously, if you feel comfortable doing it at that point.

If I can just add a little, I have a 3-year-old granddaughter. I see her imitating what she sees on television, and I think what is true of my granddaughter is true in our society even of adults, sometimes unfortunately. Any reaction?

Ms. RENO. Well, I can tell you this, that as we were being raised, our mother didn't let us have a television. Her first point was that it contributed to mind rot, and, second, I think she was concerned about the violence. We have a television now, so be that as it may.

Senator SIMON. Did you get that before your mother died?

Ms. RENO. Yes. Yes. Yes. I didn't get it, though.

Senator SIMON. All right.

Ms. RENO. It is of concern to me, because I think television and video communication can be one of the most wonderful resources for our children imaginable, but I don't think there is any doubt that children copy what they see, come to accept what they see,

and I would love to work with the industry to see what could be developed as appropriate guidelines.

But going beyond that, Senator, that very AMA article on violence as a public health issue reflects what so many people are coming to recognize, that the criminal justice system, just as it can't solve the drug problem by itself, can't solve the problem of violence by itself. It has got to be addressed in public schools, just as drug education has been addressed. It has got to be addressed in those first 3 formative years when the child learns the concept of rewards and punishment and develops a conscience.

We have got to again understand that there is no one point in a continuum of human life where we can come in and have the best impact. And the bottom line of so much of what I see is I would far rather expend the dollars up front in violence reduction programs in cooperation with the schools and the health profession, than spend all the money in the world to house somebody after an armed robbery or to send them to the electric chair after they have killed. I would rather save the life.

Senator SIMON. I concur completely. We passed legislation I guess about 2 years ago now to ask the FBI to keep track of hate crimes, so that there is not simply anecdotal evidence about what is happening in our society. We have received the first preliminary reports and I am pleased Judge Sessions is following through. This is our chance to lobby you, Ms. Reno. If you can put in a good word saying you think this is important, I think that would be helpful.

Ms. RENO. I certainly will. Interestingly enough, I just received correspondence from my office, because I haven't forgotten that I have a role there, though these last 3 weeks have been interesting—but I got a letter wherein there has apparently been some problem in the reporting of hate crimes from our State, and I want to make sure that any such problem is straightened out, because I think it will be valuable information in which we can plan both State and national strategies.

Senator SIMON. I appreciate that.

Just an observation, if I may have the attention of my colleague from Maine here, also, Senator Cohen: You mentioned the special counsel bill that you and Senator Levin are going to be introducing. I am going to vote for it. I have to confess I feel a little uneasy, because I think sometimes when we appoint a special counsel, that person, whoever he or she is, feels an obligation, you know, you have got to make a name for yourself. It seems to me we ought to structure it in such a way that he or she can take a look at it and come back, and if it is the right thing to do, say we really shouldn't do anything on this, that there ought to be that kind of balance there,

I say that both to my colleague from Maine and to the person who I think is going to be Attorney General perhaps with 48 hours, the way things are moving right now. It is just one of those things that I think we should keep in mind.

Senator COHEN. If you would yield?

Senator SIMON. I would be pleased to yield.

Senator COHEN. Prior to the Iran-Contra investigation by Judge Walsh, I think you will find that most of the investigations by independent counsel led to a recommendation not to prosecute.

Senator SIMON. I did not realize that.

Senator COHEN. The Iran-Contra investigation is the one that has caused so much controversy, and many people feel that the investigation was in fact abused. But I think if you look prior to that, you will find even Attorney General Meese, who initially opposed the creation of the Independent Counsel Act, called upon the independent counsel to investigate allegations against him, because he knew that if the Justice Department conducted the investigation, it would appear whitewashed. What he wanted was an independent investigation that would clear his name, which in fact the independent counsel did.

Senator SIMON. I thank you, and I feel better about it.

I am going to take 60 seconds for one more. Since I have the gavel here, I can do that. There was an article the other day suggesting that as many as 2 million semiautomatic weapons, AK-47's, were coming in from China. I know the trade issue is not your area of specialty. But when weapons come in in massive numbers, that obviously should be a concern. I have no idea whether the article is accurate or not accurate.

I guess the question to you is what is your reaction and are we being too provincial, if we say weapons can't be imported into the United States for nonmilitary and nonpolice purposes?

Ms. RENO. Let me check on that article and follow up for you, Senator.

Senator SIMON. Great.

Senator Hatch, do you—

Senator HATCH. I think Senator Cohen is next.

Senator SIMON. Senator Cohen.

Senator COHEN. Thank you, Mr. Chairman.

Ms. Reno, you managed yesterday to please both Senator Thurmond and Senator Metzenbaum on the issue of habeas corpus, and so you performed something that would rival the Delphic Oracle. [Laughter.]

You indicated one way to deal with the need to shorten the habeas corpus process was to guarantee the appointment of competent counsel. That raised in my mind, at least, whether you would consider creating a pool of competent criminal defense attorneys that could be appointed within a certain jurisdiction to represent those accused of committing crimes.

Let me simply suggest that even though that may be one option, the mere appointment of someone considered to be competent legal counsel does not at all guarantee that competent counsel will perform competently. One of the things that I found out when practicing law is that no matter how competent you might be during the course of defending someone accused of committing a crime, the very first thing that happens once that individual is incarcerated is that he files a petition alleging incompetent counsel.

So the mere fact that you have a pool of those considered to be competent counsel doesn't at all deal with the structural problem we have got in terms of what kind of judgments we make to cut off the time to process habeas corpus through the Federal appeals courts.

Ms. RENO. Senator, I would agree with you completely on that. Even in Florida, where we have probably a public defender system

more advanced than others, the problem of resources and everything else still exists and the problems still arise and the best lawyers I know have such motions filed against them, so I know that is not the sole answer.

Senator COHEN. On product liability, I was wondering what your views would be. Traditionally, tort law or personal injury law has been left to the jurisdiction of the States. Would you support a Federal law that would establish a uniform standard for liability?

Ms. RENO. Senator, as I said yesterday, I am a long-time removed from civil justice reform issues. It is something that I have started to look at very carefully in these last three weeks as I have prepared for this hearing. I don't think I am prepared yet to make some recommendations, but I am very interested in this area and we want to focus on it.

Senator COHEN. Well, I will forego the questions on contingency fees and other related issues in that regard.

Let me turn to the interpretation or at least your interpretation of the constitutional provision pertaining to the right to bear arms. You indicated you agree with the Brady bill and the President's position on that. Do you have a personal opinion as to whether Congress should go further and ban handguns?

Ms. RENO. No, I don't think Congress should ban handguns. I have watched handguns save lives in Dade County. Innocent people had their lives saved, because they had handguns, and I think it is clearly effective.

Senator COHEN. What about semiautomatic weapons?

Ms. RENO. Again, I don't profess to be the expert on what is this and what is that, but semiautomatic weapons that are used for hunting by sportsmen for sportsman's purposes I don't think should be banned. And I think how we characterize it and what the classification is, I am concerned about weapons that are assault weapons and I support the President's intent to ban those.

Senator COHEN. Would you advocate holding a manufacturer of weapons otherwise legally distributed in this country liable for injuries caused to innocent third parties?

Ms. RENO. I would have to look at the individual case and see what the evidentiary basis was, before I looked at what injury might be foreseeable.

Senator COHEN. Well, that is an issue you are going to have to focus on, because, as you may or may not know, the District of Columbia did pass a law that would impose such liability. It has caused repercussions within Congress—some are seeking to overturn it or prohibit the distribution of funds pending its appeal.

You and I talked briefly about covert action when we had occasion to visit. Let me just say that in the field of foreign policy, it is my personal belief—this is not shared, I am sure, with the executive branch, that Congress bears a coequal responsibility in the formulation of foreign policy. Many people feel that because the President is the Chief Executive and the chief spokesperson for foreign policy, he is the chief architect. I do not believe that to be the case, and I think that Congress does have a coequal responsibility in the formulation of that policy.

Normally, we formulate foreign policy in a session such as this, a public forum, and we ventilate our respective viewpoints as to

whether we should be engaged in military actions in Bosnia or the Persian Gulf or wherever. But sometimes it becomes important for a President to seek to carry out a legitimate—and I put the emphasis on the word legitimate—foreign policy objective through covert means, for a variety of reasons which I won't go into here. But sometimes it is necessary to do that.

In order to make sure that Congress still plays a role in formulating foreign policy, we have passed laws, one in particular back in 1980, which requires that whenever a covert action is implemented or prior to its implementation, the President must notify key members of Congress about the plan.

In extraordinary circumstances, however, he may give notice in a timely fashion. The words "timely fashion" have been interpreted by the Justice Department, in a memorandum to support the action taken in the Iran-Contra matter, to mean whenever the President decides to notify Congress. I was wondering if you had a chance to look at the interpretation that was offered by the Justice Department and to give me your opinion of that?

Ms. RENO. No, Senator, I have not had the opportunity, but if you confirm me, I would be happy to do so and understand the—

Senator COHEN. I hope you will, because it really is key to the Executive maintaining a proper balance with the Congress. We have had two occasions in our recent history, from the Watergate period through the Iran-Contra period, where attempts were made to circumvent Congress to implement a foreign policy objective that did not have the consent or the knowledge of the Congress. I think it is important for you to take a look at what "timely notification" or "timely fashion" means.

I think the way it is interpreted now could be a day, a month, a year or whenever the President decides it is time for Congress to be notified. This interpretation is inappropriate.

I want to return to the discussion we had this morning about the young juveniles who had stolen a car. I guess the reason I mentioned that is because I think the four young men or boys are on a fast track to a world of crime. I think there is very little that has been done, to date, that would deter them from going into crime and to have a victim then yield to extortion in front of a police officer who tells you how brazen crime has become.

As Attorney General, you no longer would have any jurisdiction for the most part over our juvenile justice system. Nonetheless, I think there are things you can do with Senator Kohl and myself on that subcommittee in trying to formulate some programs that will, in fact, set out the kinds of things that you talked about and letting them know there is going to be punishment that follows from that.

I raise the issue of the man who killed that innocent 15-year-old girl, because I hope that we don't put too much emphasis on looking back at what the experiences of that individual who committed the crime had been. I notice in the Wall Street Journal there was a rather critical reference to your statement that the highest priority is to protect the rights of the accused and not to convict the guilty. But once the guilty are convicted, to me the highest priority is to make sure that they pay the penalty which is proportionate to the crime.

In the case of murder, I believe that a person should never walk outside jail again. That is my personal judgment and it doesn't take into account the need for "rehabilitation." But I think when anyone takes a life, they should not be allowed to say, "Well, I was abused as a child, I have been hooked on cocaine, I am deprived from economic sustenance and so forth." The penalty ought to be proportionate.

We have been dealing with mandatory sentencing, which most prosecutors and most courts really don't approve of because it takes away their flexibility. The reason that we have mandatory sentencing imposed by Congress or by State legislatures is because many people feel the courts have become too interested in social engineering or explanation or rationalization. The anger that stems from that says we must have minimum mandatory penalties, we don't trust the courts any more. We don't trust the prosecutors any more. We want tougher penalties.

When dealing with this issue of penalties, I hope you will focus upon the legitimate outrage that people feel that we have lost control of our streets, we no longer feel safe in going outside, we always look over our shoulders, we can't send our daughters and sons out to parties without getting a phone call at midnight that we have just lost one or two of them.

So that was the reason I mentioned that today in connection with your positions. I think the purpose of punishment obviously is, number one, deterrence, number two, to protect the public, and, number three, to satisfy the private or, in a collective sense, the public instinct for revenge. And unless you satisfy those three elements, then you are going to see a breakdown of the rule of law where people start taking the law into their own hands.

That is not a question that you have to respond to. It is just a statement that I feel that I should make.

Ms. RENO. Well, let me first of all say that the only thing that has come into these hearings that is attributable to my one-time opponent is something you just mentioned, in which you said my highest priority is to protect the rights of the accused.

Senator COHEN. I did not say that.

Ms. RENO. That is his statement. My consistent statement spelled out in our policy manual is the first objective is to make sure that innocent people don't get prosecuted. If the United States Attorney came in here and said, "Senator Cohen, you are coming with me for a crime you didn't commit," your sense of outrage would be the equivalent of the sense of outrage and much more than the lady who had to deal with the extortionate little thugs. That is how I feel.

The second is to convict the guilty according to principles of due process. Third, with respect to the concept of punishment, as I have spelled out again and again, punishment must be swift, it must be fair to be accepted, and it must be certain. There has got to be an expectation of punishment, because otherwise we cannot deter, and it is contributing to the condition in society that you described so eloquently as we commenced this morning.

To protect the public goes hand in hand with deterrence, but the sense of revenge, if you will, I have got to be able to express myself is the reason for my consistent policy of not to negotiate any case

without the approval of the victim and the arresting officer, and that is one thing I have felt very, very strongly about ever since I took office. I think a victim can't dictate, but a victim can certainly have a voice, and if it is a reasoned voice and everybody understands it is a reasoned voice, it is extremely important.

I try whenever I can to make sure that our judges hear from victims who want an opportunity to be heard, so that they can have an expression about the system. The more we are able to involve victims in the system and let them understand what is going on and keep them informed and keep them part of the process, the more they feel that they played a role, a part, and they have some sense that the system can work.

Senator COHEN. Thank you very much.

Senator SIMON. I am advised by the committee staff that this would be an appropriate time for a 5-minute break, so we will take a 5-minute break and then resume our hearing.

[A short recess was taken.]

Senator METZENBAUM [presiding]. The committee will be in order.

Ms. Reno, I have a few more questions, but not too many.

Prescription drugs are not something that one would normally think about, when you are talking about the confirmation of an Attorney General of the United States. But the prices of prescription drugs are out of control, and the Department of Justice actually can play a crucial role in holding down prices.

The best example involves the AIDS drug AZT. That drug came on the market costing over \$10,000 a year, and now, after enormous pressure on Burroughs Wellcome Co., it costs around \$3,500 a year. Now, the National Institutes of Health believes it is a co-inventor of AZT. They feel that they were there in the invention of this—I don't know if you invent a drug, or if you discover a drug. If that is so, the Government could license one or more generic companies to sell AZT at a fraction of its current cost.

Now, here is where the Justice Department gets into it. In July 1991, the National Institutes of Health entered into an agreement with the generic drug company, Barr Laboratories, which obligated Barr to pursue NIH's claim that the Government was the co-inventor of AZT, and Barr has lived up to its responsibilities and is now in a lawsuit with the current patent holder, Burroughs Wellcome.

It is my understanding that the Department of Justice has provided some assistance in this case, but the Department will not intervene as a party on behalf of the NIH. Frankly, I do not understand that. I do not know why the Department would refuse to represent the Government's patent claim. And it is painfully clear that the cost of AZT has caused many AIDS sufferers to impoverish themselves to become eligible for Medicaid. It is equally clear that AZT costs Federal, State, and local governments more than \$100 million a year.

I am not asking you if you know about this subject, because my guess is it is totally new to you. I am asking you if you will be good enough to investigate it and inquire into it, what reason, if any, exists for the Department not to be in this case, and whether the Department's position should not be reconsidered.

Ms. RENO. I certainly will, Senator.

Senator METZENBAUM. Thank you very much.

The Justice Department's Office of Special Investigations—I am not sure if you are familiar with this at all—has the responsibility of bringing Nazi war criminals to justice. They have done a pretty good job. Since 1979, 44 former Nazis who entered this country illegally have been stripped of their American citizenship by OSI and 34 have been removed from the United States.

Last year, OSI's caseload grew, because access to files in Eastern Europe has triggered new leads in the effort to prosecute war criminals. I believe that the OSI's mission continues to be vitally important to the people of this country. Would you be willing to work with me to ensure that OSI has the resources and support which it needs to carry out its mission?

Ms. RENO. Senator, what I would like to do is look at the structure and make sure that everything is done as effectively as possible, and I would look forward to working with you in that effort.

Senator METZENBAUM. Thank you.

On another subject, the riots in Los Angeles had a profound effect on this country. I don't think any of us can ever forget the horror of the violence and the fires and the looting, and we are seeing some replays of that on television even as we meet here today.

But equally memorable for me was the film of those African-Americans who saved the white truckdriver, Reginald Denny, from certain death at the hands of his attackers. I was also inspired by the joint efforts of Asian-Americans, African-Americans, Hispanics and Whites to clean up after the Los Angeles riots and begin to rebuild their devastated community once again.

The Federal Government, including the Department of Justice, can do more to help diverse members of a community work together for racial, ethnic, and religious tolerance. For example, the Department's Community Relations Service provides assistance to communities in resolving disputes based on race, color, or national origin.

I plan to introduce legislation that I have been working on for a long period of time to increase the Federal Government's role in preventing racial, ethnic, and religious intolerance and violence. My bill provides funding for the development of diverse coalitions, and for community projects that are designed by these coalitions to reduce community tensions.

The program would be administered by and utilized by the resources of the Community Relations Service. It would require very little money, and I mean really very little money. Would you support an expanded role for the Community Relations Service that would help administer demonstration projects that involve diverse groups and communities that are experiencing racial, ethnic, or religious tensions?

Ms. RENO. Senator, I have been there in my own community. I have seen my community in the same situation. I understand how it feels. And one of the groups that I think has been most helpful to me and to so many others has been the Community Relations Section. I would like to look at it now from this perspective, rather than from the receiving end, and working with you and other Members of Congress and representatives of the service to do what I can

to make sure its efforts are effective as possible in all the communities of America before problems happen, not after.

Senator METZENBAUM. Good. In the past, the prosecution of white-collar crime has not been a high priority for the Department. Today, however, most of us have first-hand experience or knowledge of the devastating effect that white-collar crime has on our society.

When a savings and loan closes its doors as a result of criminal activity, it is the overburdened taxpayer who is required to bail out the savings and loan and replace the life savings of middle-class families.

Telemarketing fraud often preys on the most vulnerable of society, such as senior citizens, the less educated, the poor, and immigrants. Even when a white-collar criminal is charged, convicted, and sentenced to prison, they usually do their time in very comfortable settings. Although the so-called common criminal goes to some overcrowded facility, white-collar felons go to Federal prison camps that allow prisoners access to tennis courts and daily deliveries of the Wall Street Journal. Now, I am not saying that the people convicted of white-collar crime should have to do their time on a chain gang.

The CHAIRMAN. Or that they only read the Wall Street Journal. I just thought I would mention that. [Laughter.]

I hope the reporter for the Wall Street Journal would note there was laughter following that comment, and it was meant to be humorous.

Senator METZENBAUM. But I don't think we should spend money to send these criminals to places that bear some resemblance to a health spa. Do you agree that we should eliminate the perks of minimum security prisons, use the money to provide vocational training, to relieve the overcrowded and appalling conditions that exist at most Federal prisons, and substitute for the Wall Street Journal the Delaware newspapers? [Laughter.]

The CHAIRMAN. That fits.

Ms. RENO. Senator, I have heard stories of what some Federal minimum security prisons are like, and I really can't believe it. One of the things I would do after I meet these priorities that you have shared with me and concerns that you have shared with me is take a look at some of these minimum security prisons, because it doesn't make too much sense to me. I would like to make sure that, again, the limited resources that Federal, State, and local governments have are used in the most effective manner possible.

Senator METZENBAUM. Thank you very much. I look forward to working with you as our country's next Attorney General.

The CHAIRMAN. Thank you, Senator.

Senator Pressler?

Senator PRESSLER. Thank you very much.

I have just a few more questions.

Let me return to native Americans for one final question, if I may. Indians feel that nobody pays much attention to them at a high level in the Federal Government. I spend about a fourth of my time working on Indian matters, as a Senator from South Dakota. Indians tend to vote Democratic, so I am not just doing it for votes, I am doing it as part of my job.

But States feel that the Justice Department does not listen to them, that is, the various States in lawsuits. Now, the Department of the Interior has a trust relationship with Indians in this country, and this whole issue of Indian gambling, and the other problems that we have, have come to the fore. The Secretary of the Interior has a responsibility, as the trustee for the native Americans. But in many areas, the various States have a responsibility for maintaining law enforcement, roads, land, and so forth. The State attorneys general have complained many times that the Justice Department does not listen enough to the States when lawsuits are brought, dealing with fishing and hunting rights, and so forth.

This is a dilemma that you are going to have to resolve. How much deference do you feel the Justice Department should give to recommendations by the Department of the Interior on legal matters affecting the Indian tribes as compared to the States? The State of California has been very interested in that question.

Ms. RENO. In terms of deference, Senator, I think we should listen to the Department of the Interior and to the States and make the best judgment we can. I don't think we should defer because of some special interest that the law dictates otherwise.

What I would like to do and have indicated to the attorneys general with whom I have spoken, if I am confirmed, I would like to work with them in every way possible in terms of a close line of communication, clear understanding, and obviously with the various Federal agencies, whether it be Interior, the Department of State is another matter raised here a moment ago, all of these agencies I want to work with them, to communicate carefully, to give a sense of a coordinated Federal Government that has as policy that is thought out from agency to agency. And to the extent that the department had a role in any particular function, I would like to make sure that we reached out to cooperate in every way possible.

Senator PRESSLER. I just returned from the White House, where, along with about 300 other people, the President made an announcement that we are reducing paperwork on small business and reducing paperwork on bank loans. That is good and I strongly applaud it.

The dilemma we get into here is, for example, the Americans with Disabilities Act, something that everybody would be for on the surface, it would seem, or certain pieces of legislation requiring additional environmental reports for bankers before they give loans to small businesses. The President today had a thick packet of papers that you have to fill out to get a loan. He had another packet—a very thin one—and this one was going to be the new revised version, thus reducing paperwork.

That is the dilemma in government, I suppose. Every time we pass a bill up here like the Americans With Disabilities Act, we obviously are putting more burdens on local school districts and small businesses, with more reporting requirements and so forth, and it becomes an endless dilemma. Someday I might get out of here and teach in a university and tell people about all these dilemmas we have.

My question to you is, in enforcing the provisions of the Americans With Disabilities Act, would your emphasis be on seeking out

individual violations, or would you use a broader enforcement approach aimed at common practices or conditions in business or government?

Ms. RENO. I would like to look at it, talk to the section about it and make the best judgment possible in discussion with the community, trying to find out what the best way to enforce that act is, so that we send a clear message to Americans that Americans with disabilities are entitled to the rights spelled out in that act.

I have been on the receiving end of too many Federal requirements to fill this in and fill that out, not to be very sympathetic to your concerns about what we face in that regard.

Senator PRESSLER. Good. I am glad to hear that. On the crime bill, everybody says they want to be tough on crime. During the last campaign, President Bush said he wanted to pass a crime bill, the Democrats said they wanted to pass a crime bill, but they basically are talking about two different approaches. The rhetoric coming out of Washington confuses citizens. But there were some real basic differences, and I am not arguing which one is the best here, but I might ask you for your reaction.

You already have been asked some things about the exclusionary rule and habeas corpus, and they both sound like Greek to the average citizen. Basically, President Bush's bill called for an exclusionary rule that would allow more evidence to be admitted; it would give the police basically more tools. Whereas, the Democratic version would have required that the officers and issuing magistrate be detached and neutral before you could admit the additional evidence. There is quite a difference there.

On habeas corpus, you already covered it. As I understood it, President Bush's bill or the Republican bill said that you just have one bite at the apple in habeas corpus review and it would not go on and on and on forever. Whereas, as I understood it, the Democratic bill took a more lenient position on habeas review.

What I am trying to say is that there are differences in the bills. Now, from what you know about those two crime bills that were talked about so much and everybody went out to the country and said we want a strong crime bill, which one would you have favored?

Ms. RENO. I do not know the details of either bill. What I do favor and where I think there is such significant consensus in my discussion with each one of the members of the committee individually is that we have got to shorten the time for that penalty to be carried out. To let a case go on for 13, 14, and somebody mentioned 17 years before you send somebody to the electric chair renders that penalty ineffective. You have got to, in the minds for the citizenry, match a punishment with the act, so that people know immediately in terms of consistent due process what the result will be if you commit that act.

I don't find anybody in disagreement about that. Second, I think everybody is concerned that a case will go up and get reversed, because a lawyer didn't know what they were doing, because the person wasn't properly represented by counsel, because, as Senator Cohen has pointed out, even if you get a good lawyer, he may have two or three different cases and there may be delay there.

We have got to have a system where competent counsel is provided pretrial, so that these cases can have, whenever possible, final resolution initially. In between those large areas of agreement, it seems to me we have got to work together in this next year to see if we can pass a bill, that Congress can pass a bill that addresses these issues and addresses the other concerns of putting police officers on the streets where the real problems of crime lie in America today.

Senator PRESSLER. Good. What you have said about habeas corpus is music to my ears. The next time we have one of those cloture votes on the Senate floor, I may quote you, because you are very eloquent.

Now that we have finished with habeas corpus, let me ask a final question on the exclusionary rule. Would you favor a modification of the Federal exclusionary rule to allow the admission of evidence obtained in good faith with or without a warrant?

Ms. RENO. I support the good-faith exception on what I call a warranted search. I would like to look a lot longer at whether it is really necessary in the interest of law enforcement to provide the good-faith exception, if you have not obtained the search warrant. Again, as I pointed out, we have tried to provide resources to police officers in terms of 24-hour search warrant duty, where we send prosecutors to the scene, make them available to get the warrants, so that the officer will know that he has the protection of that court's determination.

Senator PRESSLER. Let me ask a question on these big corporate fines. You can pick up the daily newspaper and read that corporation X has been fined \$5 or \$10 million for violating the antitrust laws or pricing laws. The fact of the matter is—and most of those big corporation's have executives who make base salaries in excess of \$1 million a year—these fines are all passed on to the consumers. The consumers of the corporation's product pay them, especially if it is a public utility, and the executives who carried out the crimes never pay anything from their salaries. Presumably, \$10 million is not much to a big corporation. It is not even a slap on the wrist.

How can we structure these fines so that the people who have committed the crimes—and it could be in labor unions, too, let me add—how can we structure these fines so that the people who actually commit the crimes pay the fines?

Ms. RENO. I think this is one of the most difficult issues that the criminal justice system faces, either the State or Federal level, how can you structure a sentence, whether it be a president of a large corporation or the average citizen who commits particularly an economic crime, knows that crime will not pay, that it is not just a matter of giving the money back or passing it on to the consumer, but that it is coming out of that defendant's pocket. I don't have ready answers for you in terms of what you have just described, but it is an area that I would like to look at.

Senator PRESSLER. My final question is one of general philosophy. You are going to be confirmed as Attorney General and you, more than any other citizen other than the President of the United States, are going to be looked to as a symbol of justice and hope. I have a feeling that across our country a lot of average citizens

feel the justice system in our country is expensive, unfair, and unapproachable.

I have in my State Indians and non-Indians living near each other who feel they have no recourse except keeping weapons. I live in Washington, DC, where people feel criminals are not punished; there is a hopelessness with the system. In the business community, there is the tort system, where everybody is suing everybody. We are told that our medical costs could be 10 percent lower, if we could eliminate the lawsuits.

Everybody is suing everybody. Maybe the answer is in our law schools. But we seem to have lost that sense of idealism about justice. You will be the spokesperson. What outlets will you use? How will you raise the standard for justice?

Ms. RENO. I think first you talk about victims and you talk about punishment, and I want to do everything I can to carry forward what I have started in my office by making sure that all America understands that victims have rights, too; and that we can talk about the scales of justice, but a victim is a citizen, a victim has certain rights to have be heard. I think a victim should have a right to be heard in court. I think a victim, if they can't come to court, ought to have a means of being easily accessed by the court.

I am looking forward to the day when the victim can, on a telephone, do a closed-circuit TV interview with the judge rather than having to come down to express their views at sentencing or to see what is going on.

The more you give victims an involvement and a sense of participation in the system, the more they have confidence in the system. As I indicated previously, we have representatives of various victims' groups working in our office to sensitize prosecutors to what it is like to be the survivor of a homicide, of what it is like to have been the victim of a drunk driver. These have been extraordinarily important in giving victims a sense that the system cares about them.

In the civil justice area, one of the things that is so frustrating to me—and it comes, again, to what Senator Cohen was talking about of the woman who just felt so frustrated having to negotiate with these little extortionate thugs. And people say, look, I might as well just settle, I don't want to be involved, it costs too much.

We have got to do everything we can, and as I have indicated previously, I want to develop a focus in the Department of Justice on civil justice reform that cuts down on the paperwork, cuts down on the delay, cuts down on the legalese and the gobbledygook that so confuse people. I want lawyers to start talking in small, old words that people can understand. And nothing I know could better help people appreciate the justice system.

I want to go to so many countless people who can't even begin to afford a lawyer, and where there are no Legal Services programs, to devise procedures where they can do it themselves. It goes back to the issue of the paperwork. We have created so much paperwork that a widow doesn't know how to deal with the Social Security Administration. They don't know how to deal with their insurance company on an automobile claim. Let's try to get that simplified so that the American people, who are basically intelligent and have an awful lot of common sense, can do it themselves

and don't have to constantly go to lawyers and pay a lot of money to do it.

Senator PRESSLER. Well, thank you. That is music to my ears. Good luck and Godspeed in your new work.

The CHAIRMAN. General—or, Ms. Reno—[Laughter.]

I learn quickly, don't I? As a matter of fact, you indicated that you wanted to shorten the time. We are going to shorten the time because of the great efforts of the Senator from Utah. I say to the press, who have been asking me when are we going to vote on this committee, that we are going to vote at 4 o'clock today in this committee, barring anything unforeseen such as Senators showing up and asking another half-hour's worth of questions each.

But that is the target. We are going to vote on your nomination today. You have become so controversial we are fearful to let it go over another day. [Laughter.]

Let me say two things to you, if I may, before I close out my participation in the questioning here.

The first has to do with child abuse cases. In the 1990 crime bill, a portion of which passed, I put in a provision that supported the use of closed-circuit TV testimony to help children who were victims of abuse testify in court without having to go into that God-awful cold courtroom. States were already doing this. We provided them funds to do that at a Federal level, and we are hoping they will pick up that notion as well. And so I share your view. If it can be done there, there is no reason why it can't be done in the sentencing phase.

Also, as my colleagues will tell you, all of us have certain hot-button issues that are of concern to us. I sincerely hope you take a long, long, long, long, long look at warrantless searches, for I am so unalterably opposed to that. I have never engaged in a filibuster; the only thing in 20 years I have ever indicated I would consider filibustering is a good-faith exception to warrantless searches. Good faith ain't good enough in that circumstance. So I hope you will look real closely at that provision.

Ms. RENO. I will.

The CHAIRMAN. And I share your view about good-faith exceptions for searches where there is a search warrant, because probable cause has been established. And if, in good faith, you walk up to the wrong door and knock on it, or the address is printed wrongly on the door—you know, there are a lot of reasons why there can be, in my view, an exception.

Let me ask just a few questions. One of the areas that you and I have spent a great deal of time on has been the drug war. I think we could have accomplished a great deal more than we have accomplished with the dollars we have spent, if we had made some changes.

As you pointed out in your early testimony yesterday, the Federal drug enforcement effort has been hampered by turf battles among Federal law enforcement agencies, Federal and State law enforcement agencies, Federal and local law enforcement agencies, and State and local law enforcement agencies.

In fact, these unproductive turf wars are one of the reasons I have fought for nearly a decade to pass a national drug director's office, and it is now in place. Although I don't think it was sup-

ported as much as it could have or should have been by previous administrations.

Now the drug director is specifically charged with controlling these interagency squabbles, but every Federal agency with specific guidance from the very top of the agency has to cooperate if, in fact, these turf battles are going to stop.

Now, Attorneys General have not liked drug directors, not in a personal sense, but in a turf sense. FBI directors have not liked drug directors. The CIA has not liked the notion of a drug director.

Now, I am asking you this question in the context of your soon-to-be, I hope, newfound role of being the Attorney General of the United States. Will you work to address the problem of turf wars and acknowledge the role and responsibility of the Drug Director in coordinating the antidrug efforts in this country?

Ms. RENO. First of all, the answer is an emphatic yes to the first question. Second, I think I have already done so, but I obviously have to familiarize myself with the statute to be more informed. But I think that the Drug Director's office can play an extraordinarily important role in coordinating budgets, in coordinating priorities, in developing a plan as to how best to use the resources of this Nation in terms of addressing the problem of drugs, both from the enforcement side and the prevention side and the treatment side.

One thing that has come out of these 3 weeks is this whole issue of turf, and I think one thing I can bring is an understanding of how those turf battles can hurt down below in the communities and what we could do here in terms of saying let's forget turf and let's start doing what is right.

The CHAIRMAN. If I were the Attorney General, I would rush to embrace the drug director. I do know a lot about these Federal turf battles. I have known all the players who have been involved since we have had this effort under way. And it amazes me that an Attorney General does not understand that he or she can get that problem taken off their watch; it is a great thing. The bottom line here is that you get a chance to make your case as to what the drug strategy should be.

But once it is made, the Drug Director is the Drug Director; the Attorney General is not the Drug Director. And I just want to make sure that you understand that.

Ms. RENO. Since you started calling him or her a director rather than a czar, I can rush to embrace him or—her

The CHAIRMAN. Right. Well, I quite frankly will expect you to embrace him or her, or I will be embracing you at that table frequently in oversight hearings. I mean this sincerely. And I am really counting on you, Ms. Reno, because I know you know this area. I know you know this problem.

Ms. RENO. Let me suggest to you my record in Dade County again. We called him a drug czar, but a circuit judge—

The CHAIRMAN. I didn't want to point out you had recommended to the then-Governor, when asked, that Florida should create a similar post.

Ms. RENO. Right. And he wasn't called director. At any rate, the Supreme Court authorized a circuit judge to be assigned to that role of coordinating, and we have regular meetings. And I think the

record of our office again speaks to the fact that we went to that drug director. We coordinated through him. It was through his office and the Office of Substance Abuse Control which he supervised that we got the drug court going, that we have been able to expand treatment programs. It has just been an excellent idea of what you are talking about. And if I don't do it right, you don't even have to haul me down here. Pick up the phone and call me and tell me to go over there and start talking if I am not talking enough.

The CHAIRMAN. No, but I really am hopeful. I mean, you have no idea how delighted I am that a person of your background is going to be the next Attorney General.

I have spent the bulk of my political life here in the U. S. Senate working on this problem and foreign policy, which is not of much interest to anybody except me, apparently. But these two issues are issues that are of overwhelming concern to me. I have invested myself, as you have. We all find ourselves, we sometimes get too invested in trying to find a solution to a serious problem. And it just seems to me the single greatest domestic problem facing this country is the drug problem: it increases our health care costs dramatically; it increases the murder rate on the streets dramatically; it increases the number of child abuse cases you testified to dramatically; it increases the number of spousal abuse cases dramatically. All the things that we have talked about today.

Talk to every major big city mayor, and ask them, Republican or Democrat, the following question: Were I in charge of the entire Federal Government, and I could wave a wand and solve only one of your problems, what would that problem be? And they say drugs. Drugs affect whether or not businesses locate downtown. Drugs affect whether or not neighborhoods can be saved. The drug traffic affects every single, solitary aspect, particularly of large cities.

And so we could do so much more, and that is why I am so delighted someone has the hands-on experience with it.

As you will recall, I came to see you in 1986 and asked for your ideas. I had no notion you would become the Attorney General at the time. But I went to you back then in Miami because of your reputation and your disdain and distaste for turf battles and your unwillingness to participate in turf battles for your office. And so that is why I am so pleased.

One of the things President Clinton has indicated to me that he is going to do is put the next Drug Director at the Cabinet table. They are going to sit next to you. Whether they physically are next to you or not, they will be in the room. They will be given Cabinet status. Because up until then, hopefully you were going to get into arguments and debates in that Cabinet room with your colleagues: you were going to be fighting with the Treasury Department and you are going to be arguing with the CIA—all in terms of what policies should prevail. And if the Drug Director is not at that table, he or she is not considered. The Drug Director is the one who is supposed to formulate the strategy, not force you to sign on, but when you do, have the authority to say to each agency, You ain't doing your part; you said you were going to do such-and-such, and you are not doing it.

And so I am looking forward to a change in atmosphere and attitude about how we begin to redirect our efforts on the drug problem. With all due respect to my colleagues who have spoken, it is not as simple as saying, Well, we will change the mix to 50-50. I agree we should be spending more money. I actually totally agree that we cannot take from the police to increase the funding mechanisms, which I strongly support. My alternative drug strategy—which hopefully is no longer going to be an alternative drug strategy—calls for considerably more effort on education and on treatment with a specific game plan.

As you know as well as I do, unless you set specific goals there is little chance of accomplishing a goal. You have got to have a target, a specific target against which you can measure the initiatives you have taken to reach that target. If you don't reach it, then you must reconsider whether the initiatives you put in place work or don't work. And the truth of the matter is, one of the things I agreed with the first Drug Director about, Mr. Bennett, was we don't know what will work. We know a lot more than we did 4 years ago.

I hope that you will be as helpful to the process of ending these turf battles as Attorney General as you clearly were as the prosecutor for Dade County, the D.A.

What do you all call it again? I keep saying D.A.

Ms. RENO. State attorney.

The CHAIRMAN. State attorney.

I have been working with a woman who is extremely well motivated and has the ability to do things you and I can't do by focusing on a serious problem in America. I mean this sincerely when I say that Oprah Winfrey, in my view, has had an incredibly positive impact on the issue of child abuse in America. Over a year ago she came to me with Gov. Jim Thompson, the Republican Governor from Illinois, and asked for some assistance and had some proposals. We changed her suggestions a little bit, but the bottom line was this: that many abused children are victimized in their home, but there is a large and growing number of children who are victimized outside the home.

Today about 6 million preschool children are in a day-care program for all or most of the day. By 1995, that number will have increased to approximately 8 million children in day-care centers essentially all day, out of necessity in most cases.

The rapid rise in the number of children in day-care must be met by an expanded national effort to ensure their safety in those day-care centers. This is the goal of the National Child Protection Act, which I often call the Oprah Winfrey bill. I introduced it in the last Congress, and I will reintroduce it this year.

The idea is simple: to detect convicted criminals before they are hired as child-care workers and not after a tragedy takes place; to attempt to identify pedophiles. Willie Sutton is alleged to have said, when asked why he robbed banks, "That is where the money is."

An overwhelming number of day-care providers are decent, honorable, good people. But if you are pedophile, the place to go is where the children are. We find that, unfortunately, day-care providers have no means by which they can now guarantee that the

person they are hiring is or is not appropriate with regard to taking care of children.

Data released by the Judiciary Committee revealed that in 1990 alone systems in just six States identified more than 6,200 individuals convicted of serious criminal offenses such as sex offenses, child abuse, violent crimes, and felony drug charges, seeking jobs as day-care providers. Over 6,200 individuals in just six States who applied for these jobs.

As Attorney General, would you be willing to work with me to support this or similar legislation? Because I think we can do it without violating anybody's civil liberties.

Ms. RENO. Senator, you had mentioned earlier the use of closed-circuit TV. Back in 1984, we began the investigation of a child-care center that resulted in a man being prosecuted, convicted, and sentenced to six consecutive life sentences. So I don't think he will ever be out, and I trust he will never be out.

In the process, we developed the closed-circuit TV procedure that was upheld by our courts. Dade County, working with us and the State of Florida, developed some requirements similar to what I think you discuss. I would look forward to working with you in that effort in every way possible.

The CHAIRMAN. I would like to put in the record your record on this issue as State's attorney in Dade County through the decade of the 1980's.

[The information referred to follows:]

In 1984, Ms. Reno investigated a case that points to the need for a nationwide system of background checks for child-care workers. This case involved a man—Francisco Fuster—whose wife operated a child-care center in their home—with an *extensive criminal record*.

Mr. Fuster had pled guilty to manslaughter in New York, and he served prison time for this offense; and, in 1981, Mr. Fuster was convicted of lewd assault for fondling a 9-year old girl, and the terms of his probation prohibited his involvement in child-care facilities.

The CHAIRMAN. I have 2½ minutes left to vote. Fortunately, my distinguished colleague from Pennsylvania is here. Do you have any more questions, Senator?

Senator SPECTER. I do.

The CHAIRMAN. I will yield to the Senator, unless you would like a break now.

Ms. RENO. No.

The CHAIRMAN. OK. Then hopefully we will be prepared to vote shortly after I return.

Thank you very much.

Senator SPECTER. Before Senator Biden leaves, I want the record to show that this is what I have been waiting for. There is nobody else on the committee but me.

The CHAIRMAN. If you had never left the Democratic Party, you would have this seat now.

Senator SPECTER. I am going to consider that a compliment and not reply for two reasons. Number one, it is a compliment, and, number two, there is no reply.

There are a number of other subjects that I would like to discuss with you, Ms. Reno. The vote has been scheduled for 4 o'clock, and you have done, I think, spectacularly well. You have known which questions to answer and, more to the point, which ones not to an-

swer, and I think you have done a fine job on both; perhaps better on the ones not answered than the ones that have been answered. But I think that is appropriate. I think that is a hallmark of a good lawyer or a good Attorney General not answering questions until you really know precisely how you want to handle them.

The antitrust field is a big one. There have been a number of comments on that subject to you. I believe that we are going to have to look closely at our antitrust laws with a view to helping some of our companies work together on overseas competition, not changing the laws in the United States where they are very important to protect consumers. But if we are to compete with the foreigners, we are going to have to let some of our giants join together.

We have an antitrust exemption on research and development, and I think that is going to have to be pursued. Would you care to comment on that, or is that a subject that is going to require some studying?

Ms. RENO. On the first, on the whole question of overseas competition, I don't really feel equipped yet to discuss it. It is obviously a matter that has to be addressed.

We have not only got to vigorously enforce the antitrust laws, but we have got to make them relevant to modern America and where we stand now in terms of global competition. I think we can have vigorous and effective enforcement with, at the same time, achieving our goals of being competitive around the world, and then looking forward to working with the committee and with the Assistant Attorney General in charge of the antitrust division on that.

With respect to joint ventures, was that the second question on research and development and then—

Senator SPECTER. Well, the research and development has been an exemption for the antitrust laws.

Ms. RENO. And my understanding is that there is now under consideration a joint production.

Senator SPECTER. Yes.

Ms. RENO. And these—again, you are looking at somebody that hasn't focused on antitrust, really, since law school, but it seems to me to make awfully good sense, and I would like to pursue it.

Senator SPECTER. The antitrust issue also has some important ramifications on sports not only in terms of the great American pastimes—football, baseball, hockey, and basketball—but also on dollars and cents for cities like Miami and Philadelphia.

I personally believe that if sports are going to go to pay-per-view that the football antitrust exemption, for example, on pooling receipts, is going to have to be reconsidered, and I would favor its abolition, if they are going to go to pay-per-view. Baseball has, also, some tough issues on player salaries and revenue sharing, and that is a subject which can await another day.

When you made a comment about not having looked at the antitrust laws for a long while, I think it might be worthwhile to have a comment on what problem you would see, if any, in taking over the job as Attorney General, given your limited Federal practice, and incorporate that, if you will, if no one has asked the question, the extent of trial practice that you have had and how you think that would impact on your handling the job of Attorney General.

Ms. RENO. First of all, I have had very little trial practice and have never held myself out as a great trial lawyer.

Senator SPECTER. How much have you had?

Ms. RENO. We had small, very small cases in terms of condemnation cases when I first started. The firm that I was with first, for 4 years, did primarily eminent domain work representing land owners, and I had extensive practice there, but mostly motion practice.

Senator SPECTER. Ever had a jury trial?

Ms. RENO. Yes, I have had a jury trial.

Senator SPECTER. Good.

Ms. RENO. But that—I was coming to that. I didn't do very—then had a small law firm and learned about the economics of law practice. I came to the State attorney's office and, I think, maybe tried one case before I went into private practice, and in private practice, I don't know how it happened, but I ended up with three or four jury trials in 1 year and did fairly well.

Senator SPECTER. Win them all?

Ms. RENO. What?

Senator SPECTER. Win them all?

Ms. RENO. Yes, ultimately. One got reversed on appeal, came back down, and was tried again after I had left. But—

Senator SPECTER. I count that a victory if you got it reversed and won it ultimately.

Ms. RENO. But I am certainly not an expert trial lawyer and I have not been an expert trial prosecutor and don't pretend to hold myself out as such, but I have come into the office with, I think, an understanding of all the functions of what it takes to be a good lawyer.

I think one of the things I pride myself on is being able to hire good lawyers with limited resources, to see that we develop excellent training programs, to understand what it is like to motivate them and keep them going, to develop guidelines, to understand policy, to move into these other areas of domestic violence, and the drug court, and understand how I can best use my limited resources.

It has been very important for my office, the prior experience I had as staff director of the House Judiciary Committee, in dealing with the Florida Legislature. I had been the State attorney amongst the 20 that has been primarily responsible for going to Tallahassee every spring to deal with them primarily on the issue of funding, but also other issues, and I think that will hold me. Although that is a very small forum compared to this forum, I think just in my experience of the last 3 weeks, so much of what I have learned there has been very helpful here.

With respect to the other issues, I have looked back over Attorneys General, and nobody comes in with having had experience as a prosecutor and antitrust litigator, a great civil lawyer, as a generalist, a person with a tremendous civil rights background. And I think that is where my skill, I hope—and I don't mean to sound immodest—if I have an ability, it is an ability to build a strong, vigorous team and to command their loyalty, but command their ability to disagree with me and tell me I am wrong and listen to them and work with them and consult with them and develop and

just to hash it out. I think that is what has marked my office, and that is what I am proud of and that is obviously how I am going to address the issues of antitrust and others.

I think you will talk to people in my office, though. The major crimes prosecutor is the best litigator—I guess my equivalent of Office of Legal Counsel—and we have a legal division, and they will say to you that I can ask—and they have told me this—that I can ask the hardest and best questions of anybody.

It is not delegation without checking and following up and being satisfied myself with the answers, and I think I have developed the capability dealing with so many different sections of the office and, also, with problems in the community of being able to ask the very hard questions, get the straight answers; if the answers aren't straight, finding out why not; and encouraging good, constructive disagreement, so that we move toward doing what is right.

Senator SPECTER. Ms. Reno, I think you have an excellent background for the job of Attorney General. You and I have had a few contacts over the years, not a great many. I came to Miami after we passed the armed career criminal bill in 1984, or thereabouts, and had hearings, and we did a little work together and you have testified before the committee.

You are a mature lawyer. You are well educated. You have got good practice, and I haven't been on the receiving end of your questions, but I have listened to a lot of your answers, and your answers demonstrate that you have a lot of talent, and the inference arises that you know how to ask questions as well. I think you come to the position with a good background.

Ms. RENO. Senator, you weren't in the room, I think, when I gave some figures. I want to thank you for what you did, because I remember talking to you about my frustration at people who crossed State lines who are career criminals, and you got that bill enacted. And you asked me when I visited with you how many had been referred to Trigger Lock. We have referred cases resulting in 120 indictments, 90 convictions with most of the remainder still pending, and sentences ranging from 15 to 50 years in Federal prison. I think it is the leading jurisdiction, and it has been one of the most effective tools that we in local law enforcement have had. ATF has worked with us in every way possible, and thank you.

Senator SPECTER. When you say one of the most effective tools, you are referring to the armed career criminal bill.

Ms. RENO. That is right.

Senator SPECTER. Well, you and I had discussed that, and so it is plain on the record, and to those who may be watching, the armed career criminal bill, passed in 1984 and amended in 1986, provides for Federal jurisdiction in street crime by making it a Federal offense to find that someone with three or more convictions, a career criminal, is carrying a firearm, and imposes a mandatory sentence of 15 years to life. It has been a model across the country and I am pleased to hear your good words about how effective it has been.

I think that the career criminal issue is the critical one for law enforcement. I also believe that the issue of diversion, which you have worked very well in your drug court and which I had discussed with you—I put into effect in a program in Philadelphia

back in 1971—is very important to clear the dockets for the important cases to be tried, and realistic rehabilitation is indispensable. It is no secret that when a functional illiterate, someone who can't read or write, without a trade or a skill, is released from jail, they go back to a life of crime. Thus it is important to have education and job training and realistic rehabilitation where possible for juveniles, first offenders; some second offenders; but when they are career criminal, they should be given the long sentences and the 15-years-to-life category. I am pleased to hear your comments.

Let me take up a couple of other subjects with you until my colleagues return and we have the vote in just a few minutes, and one is a very important question of judicial selection.

If you are confirmed, and it looks like it is going to happen, especially with the chairman scheduling the vote at 4 o'clock today and I think the view is to try to get it done this week, you will have a lion's share of the responsibility on judicial selection, and I urge you to expedite that process as much as you can, and it is going to take a lot of push.

Most of it is done in the White House, or it has been in the President Reagan and President Bush administrations. But I would urge you to do whatever is necessary to get those appointments made.

When you are confirmed, I will send you a copy of a letter which I sent to the President dated January 20 with my recommendations for vacancies in the Court of Appeals for the Third Circuit and vacancies in the Federal courts in Pennsylvania, and I realize that, with a Democrat in the White House and a Democrat-controlled Senate, that the lion's share of responsibility will not fall to me, as much of it has, and to Senator Heinz during the administrations of President Reagan and President Bush.

But with my work on the Judiciary Committee and with the keen interest I have in the judgeship issue and with my knowledge of Pennsylvania lawyers, I expect to be making recommendations and I am available to help you with that.

But we have two vacancies now in the western district and two vacancies in the middle district—and every day those vacancies are present, we are not disposing of cases and motions—and two vacancies on the Court of Appeals for the Third Circuit and many vacancies across the country. I think it is indispensable that they be filled. The diversity approach, I think is important; more women on the bench, more African-Americans, more Hispanics; that kind of diversity. So I would urge you to give that a very top-drawer attention.

Ms. RENO. That is going to be one of our highest priorities, Senator.

Obviously, I come from a district that has had many of the same problems, and I am very sensitive to it, as the U.S. attorney says, "Well, couldn't you take some more?"

Senator SPECTER. Right, right.

Let me raise another subject very briefly with you, and that is a question which has been made by a very able attorney, Victoria Toensing, who had been an assistant U.S. attorney and a Deputy Assistant Attorney General and counsel to the Intelligence Commission in the Senate, on a contention which she raises that U.S.

attorneys do not have adequate supervision or control, at least in her view, out of Main Justice in Washington.

Without objection, since there is no one here but me, we will put into the record an article, by Victoria Toensing from the Legal Times, week of January 11, 1992. And I do not vouch for her assertions of fact, but I recommend to you that you take a look at the issue, because she is a very knowledgeable and skilled person.

[The article referred to follows:]

(From the Legal Times, January 11, 1993)

TIME TO REIN IN U.S. ATTORNEYS

(By Victoria Toensing¹)

Zoë Baird, President-elect Bill Clinton's U.S. attorney general-designate, will find a Department of Justice with rusty instruments of authority more attuned to 18th century decentralization than to the crime-fighting needs of the 1990s. The new chief lawyer must reverse the outdated balance of power that favors U.S. attorneys and make clear that senior Department officials in Main Justice are responsible for policy and legal coordination of major national and international prosecutions.

Crime, like politics, used to be local. Not any more. Complex international financial cases do not stop at our borders. Following the evidence to prosecute today's crimes means acquiring access to foreign governments and their central banks, and exhuming information from the bowels of U.S. intelligence agencies. Just consider some of the most recent cases: Noriega, Marcos, BCCI, and the present BNL.

But the culture and organization of the U.S. Justice Department are designed for the days of bank robberies and stagecoach hold-ups, when the bad guy would flee with real, touch-it-and-feel-it money (no wire transfers or phony loan documents then), only to be found in the same county before dawn.

Two hundred years ago, when our national Justice system was created, U.S. attorneys and the U.S. attorney general were part-time public employees who kept their private clients. But while the attorney general had no staff and was not considered a powerful national figure, early U.S. Attorneys were the top federal law-enforcement officers in their federal court districts. At most, attorneys general acted as coordinators.

That concept has continued today. Many a U.S. attorney, when confronted by an attorney general over a policy disagreement, has waved that four-year presidential appointment document, flaunting his or her independence from Washington. Rarely, if ever, has a U.S. attorney been fired for a policy disagreement; only for misconduct.

NO CENTRAL AUTHORITY

Ironically, as criminal cases have become more complex, requiring policy coordination and international pursuit, the approach of modern attorneys general has been to give more, not less, control to local U.S. attorneys. "These are my field generals," snapped one recent attorney general who refused to rein in a U.S. attorney.

I know the argument, mostly from members of Congress, that it is good that Washington does not interfere with local federal law enforcement. But the new attorney general will have to consider this major problem: Independence of local U.S. attorneys means there is no central authority over major international and nationally significant investigations; rather, the U.S. attorney remains in charge of make-or-break case decisions.

The Banco Nazionale del Lavoro (BNL) in Atlanta is a case in point. Main Justice tried to keep its hands off, yet, inevitably, critical unresolved evidentiary and international problems finally landed on the desks of career Justice lawyers in Washington, D.C. These lawyers then had to evaluate what evidence was available, what else needed to be acquired and from whom (including from our intelligence agencies and other nations), and finally, how to draft a new indictment. But their contribution to the case had to be ad hoc and piecemeal rather than central and controlling. They got all the blame and had little, if any, of the responsibility until it was too late.

¹Victoria Toensing is a partner in D.C. office of Los Angeles' Manatt, Phelps, Philips & Kantor. Her views reflect here experiences as an assistant U.S. attorney (1976-81); deputy assistant attorneys general, Criminal Division, in the Justice Department (1984-88); and spouse of Joseph diGenova, former U.S. attorney for the District of Columbia.

Once a U.S. attorney's office drafts an indictment or decides the legal theory for a prosecution, those decisions, no matter how correct, are overruled only at the attorney general's political peril. Moreover, weeks or months will have to be spent publicly justifying these decisions. And the same members of Congress who demand authority for U.S. attorneys will be the first to cry foul when they conclude that cases like BNL and the Bank of Credit and Commerce International have not been pursued properly.

NEW AG SHOULD PUT MAIN JUSTICE IN COMMAND

Why is Main Justice in Washington a better place than local prosecutors' offices to control these investigations? As a lawyer who has served at both, I know. Acquisition of information from intelligence agencies, like the Central Intelligence Agency, requires the skills of Justice Department attorneys in Washington who have made it their practice to know what kind of information is kept, where, how it needs to be handled, and whom to ask for it. Similarly, evidence from foreign governments, banks, and corporations is not available upon a local federal prosecutor's oral request or even a grand-jury subpoena. Policy, comity between nations, and international treaties dictate the procedures for such exercises, and that expertise is at Main Justice, not in a U.S. attorney's office.

Likewise, politically appointed U.S. attorneys running midsize or small offices only rarely come across a complex fraud case, while these investigations are constantly prosecuted by Fraud Section lawyers in Washington. When I was deputy assistant attorney general, we found out by a fluke that there was a possible case against E. F. Hutton sitting in a midsize office in Pennsylvania. The investigation had been going on for two years. When Fraud Section lawyers studied the initial E. F. Hutton draft indictment, they could only scratch their heads. It was clear that the prosecutor's legal theory was unpersuasive and had to be restructured. The local federal prosecutor, who should be commended for his perseverance, knew something was wrong with the way E. F. Hutton was doing business; he just didn't have the experience or resources to know how to charge it.

When the Fraud Section lawyers saw the Ferdinand Marcos draft indictment for the first time, there were more than 20 counts that did not have the proper venue charged. Around the time the career Washington lawyers were fixing those counts, a "leak" developed that Washington was "trying to limit" the case.

Even more important is the coordination for foreign-policy decisions. It may be that there was an excellent legal case against a Manuel Noreiga, for example. But after that case was investigated, there should have been a meeting of senior Washington officials to decide whether it is wise policy to indict a head of state.

Or, as in the Marcos case, senior multi-agency government officials should be the ones to decide whether a former head of state who has been promised asylum if he or she steps down from office should be indicated for crimes that arguably could be soldiered having been committed before leaving his or her country.

So Baird ought to inform all U.S. attorney nominees that there will be nationally designated cases where Main Justice is in control. These cases would be "local" only in that they are initiated in the prosecutor's geographical district; they would become significant either for being on the cutting edge of a new legal theory, like E. F. Hutton, or for international implications, like Marcos or BNL. Moreover, these potential prosecutors should be expected to be smart enough to alert the attorney general prior to major decisions, when these cases are in the very early stages of the investigation.

What will govern an out-of-control attorney general if this restructuring is accepted? In part, the answer lies in the fact that senior career people in Main Justice—the section chiefs and deputy assistant attorneys-general—actually do the hands-on supervising of these nationally designated cases, thereby acting as such a protection. But it is also fair to ask what controls the discretion of U.S. attorneys today? Right now, nothing and no one unless there is actual criminal misconduct.

The new attorney general therefore should bite the bullet early on and confront Congress on the unfettered independence of local U.S. attorneys. If not, she will take the heat later for their mistakes.

Ms. RENO. I have seen those articles. I think there is a pro and a con in that edition or at least they were together.

Senator SPECTER. It is funny, she only sent me the one.

Ms. RENO. I have a stack in my office called "After Confirmation, If It Happens," and those two articles are in the "After Confirmation, If It Happens," pile.

Senator SPECTER. Well, you are obviously well organized, Ms. Reno.

Another issue which I want to raise and leave you some reading material on, because it is a complicated issue, involves the question of whether the Davis-Bacon Act applies to leased buildings or just to buildings which the Government has constructed where it has an outright ownership or fee ownership. I have raised these questions with your two—with the two predecessor Attorneys General. I better not make them yours yet.

I am going to put into the record, again, without objection, a letter I wrote to Attorney General Thornburgh dated April 25, 1990, his reply to me dated May 7, 1990, questions which I asked of Attorney General William Barr at Judiciary Committee hearings on November 13, 1991, and his reply to me dated July 27, 1992.

[The information referred to follows:]

U.S. SENATE,
Washington, DC, April 25, 1990.

Hon. DICK THORNBURGH,
Attorney General, Department of Justice,
Washington, DC.

DEAR DICK: During your testimony before the Judiciary Committee on April 3, 1990, on the subject of Justice Department authorizations, I raised my concern over a situation involving the Davis-Bacon Act.

It has been brought to my attention by the Building and Construction Trades Department that the regulations of the Department of Labor which pertain to the Davis-Bacon Act have been disrupted by a Department of Justice opinion. The Office of Legal Counsel of the Department of Justice issued a June 6, 1988, opinion concerning a Veterans Administration contract for lease of space for an outpatient clinic in Crown Point, Indiana. According to the Building and Construction Trades Department this opinion has prevented the Department of Labor from assuming its responsibility for administration and interpretation of the Davis-Bacon Act. The matter was litigated and the District Court ruled in favor of the Department of Labor and stated that the Justice Department's opinion was only a statement of the government's litigation position.

As you know, pursuant to the Reorganization Plan No. 14 of 1950, the Secretary of Labor issued regulations designed to "assure coordination of administration and consistency of enforcement" of the Davis-Bacon Act and some 70 related statutes. The Department of Labor has the responsibility to assure that compliance with Federal labor standard requirements, including Davis-Bacon prevailing wages, are applicable when Federal construction contracts are performed.

On the face of this litigation record, it appears that the Department of Labor's position should prevail in the absence of further Appellate Court rulings.

According, I ask that you personally review this situation, and consider modification of the Department of Justice opinion which would again allow the Secretary of the Department of Labor to administer the Davis-Bacon Act as intended.

My best.

Sincerely,

ARLEN SPECTER.

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, May 7, 1990.

Hon. ARLEN SPECTER,
Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR ARLEN: I appreciate this opportunity to respond to several issues you raised when I appeared before the Senate Judiciary Committee on April 3.

During my testimony, you mentioned the Department's investigation into the MOVE incident, which took place in Philadelphia several years ago, and your answer that the statute of limitations is about to run. As you know, the Civil Rights Division has conducted an extensive investigation into this incident. Based on the evidence it examined, it decided to close its investigation in September, 1988, with-

out seeking a federal indictment. We nonetheless continue to review any and all evidence and information that might change our original conclusion that no prosecutable violations of the federal criminal code, including prosecutable violations of the federal criminal code, including the criminal civil rights laws, can be established. Since his confirmation, Assistant Attorney General John Dunne has begun a personal review of the matter. As he indicated when he met with you on April 2, we will be happy to review any evidence or information you can furnish us.

You also mentioned the Davis-Bacon Act, and you inquired about regarding an opinion, issued last June by the Department's Office of Legal Counsel (OLC), along with a district court decision. I also received your follow-up letter of April 25.

In late 1987, the Veterans Administration, now the Department of Veterans Affairs (VA), asked OLC to provide it with legal advice as to the applicability of the Davis-Bacon Act provisions governing "contract[s] . . . for construction, alteration, and/or repair" to the lease by the VA of a privately owned facility. The VA had concluded that the Davis-Bacon Act did not apply to such a lease. OLC solicited the views of the Department of Labor, which disagreed with the legal views of the VA. The Department of Defense and the General Services Administration also submitted written views to OLC, supporting the VA's interpretation of the Davis-Bacon Act. After considering the submitted arguments and researching the relevant legal questions, OLC concluded that the Davis-Bacon Act does not apply to leases by the VA of privately owned facilities. The language of the Davis-Bacon Act, its legislative history, the distinction drawn by Congress between leases and contracts for construction in numerous statutes, and opinions of the Attorney General and the Comptroller General all support the conclusion that the coverage of the Act does not extend to leases under the circumstances presented by the VA's request.

Congress authorized the VA to "require the opinion of the Attorney General on any question of law arising in the administration of the [Department of Veterans Affairs]." 38 U.S.C. §211(b). The application of the Davis-Bacon Act *vel non* to the VA's leases is clearly such a question of law. Thus, OLC's role in interpreting the Davis-Bacon Act was fully appropriate. See also Executive Order 12146 (authorizing the Attorney General to resolve legal disputes between departments within the Executive Branch). The general authority of the Secretary of Labor under Reorganization Plan No. 14 of 1950, mentioned in your letter and raised in 1988 by the Department of Labor, does not conflict with the statutory command of Section 211(b) or with the Attorney General's role as the Executive Branch's chief legal officer.

The decision of the District of Columbia district court in *Building and Construction Trades Department, AFL-CIO v. Turnage*, D.D.C., Civ. No. 87-2827 (GHR), referred to in your letter, has not led the Department of Justice to change its opinion on this matter. The district court decision is, in our view, quite clearly mistaken as a matter of law, for the reasons set forth in the June 6, OLC opinion.

Despite our views regarding the flaws in the district court's opinion, the Administration decided for procedural reasons, not to appeal to the circuit court. The decision not to appeal, however, does not in any way affect the validity of the June 6 OLC opinion. Among other things, I note that principles of "offensive" collateral estoppel may not be invoked against the United States based upon a failure to appeal an adverse district court decision. See, e.g., *United States v. Mendoza*, 464 U.S. 154, 159-64 (1984).

In short, the Department of Justice continues to believe that the June 6 OLC opinion is correct and binding on Executive Branch agencies.

You also asked us to address detention issues in Eastern Pennsylvania. By 1992, we expect to have a 300-bed detention unit activated at our Federal Correctional Institution in Fairton, New Jersey, about 50 or 60 miles from Philadelphia. Construction of this detention unit has already been funded. Admittedly, the Fairton unit is a short-run solution to the detention problem in Eastern Pennsylvania. We are, however, continuing to work on a long-run solution to the problem and, indeed, now have one under consideration.

Last, you and Senator Biden both asked me to provide you with specifics regarding possible improprieties by FBI personnel in the Alcee Hastings case, the Department's misconduct mechanisms, and so forth.

In response to your request, I have reviewed the FBI's actions in the Alcee Hastings case, including the process of attempting to interview the subject of the investigation and the service of a subpoena duces tecum. After reviewing Departmental correspondence and the associated court documents, I am satisfied that the FBI agents acted properly, and within the scope of their authority, in attempting to conduct the interviews and in serving the subpoena.

Hastings challenged the propriety of the subpoena during pretrial proceedings. Our memorandum in opposition to Hastings' motion to quash the physical evidence carefully set forth the actions of the FBI agents and included their affidavits. The

District Court agreed with attorneys from the Public Integrity Section of the Criminal Division that no improprieties occurred during these proceedings. I believe the FBI and the Office of Legislative Affairs have already provided responses to fairly detailed Congressional inquiries about this matter.

As you know, every investigation of allegations of criminal conduct has its own unique characteristics. As such, we can not impose strict operational rules on all agents as to when they must inform a person that they are the subject of an investigation. First of all, the definition of "subject" is quite broad and covers the vast range of people, including those against whom there is little or no evidence of criminality. *United States Attorneys' Manual* §9-11.150 (October 1, 1988). Second, some investigative scenarios would be foreclosed if we laid down a hard and fast rule requiring that all persons who are subjects of an investigation be notified of that fact by the investigative agents. Because each investigation has its own requirements, no firm rule on notification would be practical.

However, the Department does have a specific policy on advising a grand jury witness of his or her status if the person is a "target" of the investigation. The term "target" is far more concrete than the term "subject." It is defined as "a person as to whom the prosecutor of the grand jury has substantial evidence linking him/her to the commission of a crime and who, in the judgment of the prosecutor, is a putative defendant." *Id.* The Department has determined that at the grand jury stage fairness requires a person be informed that he or she is a target before testifying. In addition, it is the Department's policy that grand jury targets will not be subpoenaed to testify. They will be extended an invitation to appear, if they wish, after having been told that they are targets.

I hope that this adequately addresses your concerns about contacts with subjects of investigations. Please rest assured that Director Sessions constantly monitors the actions of FBI agents and that any improprieties will be answered with appropriate action. I continue to be concerned that the rights of our citizens are fully protected from unwarranted, invasive actions by investigators and I will continue to strive to ensure that both the rights of both the innocent and the guilty are protected, while assuring that the guilty are fully prosecuted.

I hope this information is helpful to you. Please let me know if I can be of further assistance.

Sincerely,

DICK THORNBURGH,
Attorney General.

QUESTIONS ASKED BY SENATOR SPECTER AT THE NOMINATION HEARING OF WILLIAM P. BARR, TO BE ATTORNEY GENERAL OF THE UNITED STATES, WASHINGTON, DC, NOVEMBER 13, 1991

Senator SPECTER. My yellow light is on, so let me take up one more question before yielding to my colleagues. That is an issue which I raised with Attorney General Thornburgh and am still concerned about, and it relates to the question about leased properties being subject to the same rules as properties which are constructed. And the issue relates to a decision made by the Department of Labor with respect to a lease of a building constructed for use as a VA outpatient clinic in Crown Point, Indiana.

The Department of Labor concluded that it was a contract for construction of a public building. The fact that it was leased does not mean that it wasn't a contract for construction. That issue went to the Wage Appeals Board, and it is a very serious matter on two lines: first, as to the substantive issue, but, more importantly, Mr. Barr, because the Department of Justice has not followed a court ruling, which is of great importance.

But let me just take a moment. After the Department of Labor had decided that the lease was the same as construction for purposes of being a public building, the Department of Justice Office of Legal Counsel, on June 6, 1988, ruled that the Crown Point lease is not a contract for construction.

This involves a technical point of law. When you have a long-term lease, for all intents and purposes it amounts to the same thing as construction. But it is subject to interpretation.

Then on September 6 of 1988, the Federal court in the District of Columbia, with Judge Revercomb making the decision, held that the Attorney General's opinion did not vacate or supersede the Wage Appeal Board's decision. I then raised the question with Attorney General Thornburgh in one of the hearings, and he wrote back to me saying, in a letter dated May 7, "The District Court's decision is, in our view, quite clearly mistaken as a matter of law. Despite our views regarding the flaws

in the District Court's opinion, the administration decided for procedural reasons not to appeal to the Circuit Court. The decision not to appeal, however, does not in any way affect the validity of the June 6-OLC opinion."

Now, the first question I have, Mr. Barr, is: How can it be that the Justice Department disregards a District Court's decision? I appreciate the fact that the Attorney General has responsibility for handing down legal opinions if there is a dispute between the Department of Labor and the Veterans Administration. But after the court rules, isn't the Justice Department bound to follow the court's ruling or, in the alternative, to take an appeal?

Mr. BARR. Senator, I am not that familiar with the circumstances of this issue, and so I would want to look into it and examine what the circumstances were, and also look at the issue itself.

Senator SPECTER. Well, I would appreciate it if you would because the issue of the Justice Department's not following the District Court's decision appears to me to be very questionable. In fact, I would say I think it is wrong. If the District Court makes a decision, the court ought to be followed and not the opinion of the Department of Justice. And if the Department of Justice disagrees with it, I respect that, but they have to take an appeal. They can't disregard the District Court's opinion.

I would like you to respond on that, and then I would like you to take a look at the underlying question. Because according to the information provided to me, the Department of Labor is unwilling to buck the Justice Department, and so you have this situation where you have leased premises, which are about the same as a construction, because if it is a long enough lease—a 99-year lease is about the same as a fee interest. So I would like you to look at both those issues for me.

Mr. BARR. Certainly, Senator.

Senator SPECTER. Thank you very much, Mr. Barr.

OFFICE OF THE ATTORNEY GENERAL,
Washington, DC, July 27, 1992.

Hon. ARLEN S. SPECTER,
Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: This responds to questions you have raised concerning the Davis-Bacon Act (Act) and the Department of Justice's adherence to a 1988 district court decision that the Act's provisions governing "contract[s] . . . for construction" applied to the long-term lease of a building by the Veterans Administration (now the Department of Veterans Affairs (VA)) to be constructed to VA specifications in Crown Point, Indiana.

The Department of Justice is clearly bound under the doctrine of res judicata by the district court's decision in the case you mentioned, *Building & Construction Trades Dept., AFL-CIO v. Turnage* (D.D.C. 1988). In that case, the court considered an issue that had previously been addressed in an opinion by the Department of Justice's Office of Legal Counsel (OLC). OLC had concluded in a June 1988 opinion that the Davis-Bacon Act did not extend to the long-term lease entered into by the VA for the building in Indiana. The district court, however, issued an order holding that the OLC opinion did not supersede a prior decision of the Labor Department's Wage Appeals Board and that the Board had reasonably concluded that the Act applied to the lease.

That decision was not appealed, and the Department of Justice is bound by the decision as it applies to the parties to that case. Nonetheless, as was stated in a prior letter from Attorney General Thornburgh to you on this issue, principles of "offensive" collateral estoppel may not be invoked against the United States based on its failure to appeal an adverse district court decision. See *United States v. Mendoza*, 464 U.S. 154, 162-64 (1984). The Supreme Court in its unanimous opinion in *Mendoza* distinguished between the doctrine of res judicata, which "prevents the Government from relitigating the same cause of action against the parties to a prior decision," *id.* at 163 (footnote omitted), and the doctrine of offensive collateral estoppel, which "does not apply against the Government in such a way as to preclude relitigation of issues" in a case against a "litigant who was not a party to the earlier litigation." *Id.* at 162. Among the rationales offered by the Supreme Court for not applying offensive collateral estoppel against the Government were its concern with preserving the Government's discretion not to appeal adverse decisions, which may be exercised for a variety of reasons, including "the limited resources of the Government and the crowded dockets of the courts," *id.* at 161, and its conclusion that this result "will better allow thorough development of legal doctrine by allowing litigation in multiple forums," *id.* at 163.

Thus, the Department's position on the *Building and Construction Trades Dep't, AFL-CIO v. Turnage* case has been that it is clearly bound by that decision as it applies to the parties to that case, but not bound with respect to other parties in subsequent litigation. In a January 23, 1989 letter, the Department informed the Labor Department that the OLC opinion on the inapplicability of the Davis-Bacon Act to long-term leases was still binding on the Executive Branch, based on the language of the Davis-Bacon Act, its legislative history, the distinction drawn by Congress between leases and contracts for construction in numerous statutes, and past opinions of the Attorney General and the Comptroller General. No contrary legal arguments have been brought to our attention that would cause us to doubt the analysis and conclusion of the OLC opinion. We would be happy to consider any legal arguments that you or others might suggest.

I hope this letter satisfies your concerns. If you have questions concerning this or any other matter, please do not hesitate to contact me.

Sincerely,

WILLIAM P. BARR,
Attorney General.

Senator SPECTER. The essence of the issue is that a court held that a leased building was the same for Davis-Bacon purposes on the basic proposition that if the same rule did not apply to a lease as to a fee interest, someone could have a 99-year lease and avoid the impact of the law.

The Justice Department did not appeal the decision and then took the view on offensive collateral estoppel, a doctrine too complicated to begin to discuss here; that they were not bound by that except just to those parties. I would ask you to take a look at this issue and to give me your view of it.

With your experience as a district attorney from a city like Miami and a county like Dade, Florida, as one of my concluding questions, I would like your observations on what you think you might do as Attorney General, if confirmed, to promote cooperation among Federal, State, and local law enforcement.

Ms. RENO. One of the first things that I would undertake, Senator, is to discuss with my colleagues here in Washington—the Secretary of Treasury, for example, in the environmental area, with the Director of EPA, with all concerned—what we can do at this level.

I have had some conversations with representatives of the National Association of Attorneys General, and I think we can do so much in terms of that organization in developing understandings and guidelines, so that there is no duplication.

The National District Attorneys Association will obviously be a place that I will work together. I want to go to communities where there seems to be problems and see what I can do by telling the example of what we have been able to do in Dade County.

There is, I think, so much that can be done if we develop open lines of communication and if I can send a clear message that: Justice isn't worried about turf; it is worried about doing it right.

Senator SPECTER. Well, I am glad to hear you emphasize that approach. There has been coordination in the Eastern District of Pennsylvania on a program which we put into effect in 1988, and it has had extraordinary results.

My final question to you, Ms. Reno, is what do you think you can do as Attorney General of the United States, if confirmed, on assisting equality of opportunity for women.

Ms. RENO. One of the things that I can do is the same thing I did when I took office: make sure that the Department of Justice hires based on excellence and diversity.

In terms of pursuing remedies for women and working with others, I think there is so much that can be done, but the most important area I know is to make sure that qualified women, qualified minorities, of which there are so many, are represented at every level in which the Department of Justice has a say.

Senator SPECTER. And beyond the Department of Justice, what ideas do you have as to dealing with a glass ceiling, which has been such an inhibiting factor, in promoting opportunities for women on a broader basis?

Ms. RENO. I would hope the fact that if you all vote to confirm me and if Congress—if the U.S. Senate votes to confirm me and I get sworn in that I will set an example that will enable people to understand: if a woman can be Attorney General of the United States, she can do anything.

Senator SPECTER. I think that is a good concluding answer.

[Applause.]

Senator LEAHY. I hate to be the one to tap the gavel on that, but in keeping with the Chair's admonition on applause, even things that this Senator would join the applause for, I believe that now under the unanimous consent agreement, the hour of 4—

Senator SPECTER. If I may conclude, Mr. Chairman.

Senator HATCH. Also, Mr. Chairman, I have just a couple of questions for the record.

Senator LEAHY. In that case, even though we have reached the hour of 4, I would ask unanimous consent that Senator Specter have a few moments to be allowed to conclude, and then I yield to Senator Hatch.

Senator SPECTER. Ms. Reno, I just wanted to say in conclusion that I intend to vote for you, as I have suggested and intimated.

I look forward to what you have articulated as one of your purposes to be a role model. You couldn't have a better forum to do that than Attorney General of the United States. I think you have unique opportunities in the drug field where you have had a lot of experience and unique opportunities as the chief Federal law enforcement officer, with the understanding you have of State prosecutions, to bring a coordinated effort that would be unparalleled in United States law enforcement.

Thank you very much.

Ms. RENO. Thank you, Senator.

Senator LEAHY. Senator Hatch has asked unanimous consent to include something for the record.

Senator HATCH. Ms. Reno, just to clarify for some colleagues who raised these issues with me, and I am sure you can, you were quoted in today's Wall Street Journal as saying your, quote, "highest priority," unquote, is to, quote, "protect the rights of the accused, not convict the guilty," unquote. Now, that appears to be a quote from a speech of yours and not your testimony yesterday.

In fact, the New York Times on February 12 said,

Some of Ms. Reno's critics here, including police organizations, have even argued that she is not tough enough on crime or criminals. In particular, she has drawn

fire for once having declared, quote, "my highest priority is to protect the rights of the guilty, not to convict the guilty," unquote.

Now, is there any inconsistency between this view and the view you expressed yesterday that cracking down on violent crime, drug trafficking and public corruption will be among your highest priorities as Attorney General?

Ms. RENO. No, sir. That quote comes from opponent in 1988, who took a statement that I made in the course of a debate and twisted it into that. What I have always said is I approach a case from the beginning. The first objective is to make sure that innocent people don't get prosecuted, to look and to make sure that we have got the right person, because as I told Senator Cohen earlier, if somebody came in here now and said, Senator Cohen, you are coming with me—

Senator COHEN. Senator Hatch, Senator Hatch. [Laughter.]

Ms. RENO [continuing]. Or Senator Hatch, for a crime you did not commit, the sense of outrage would be horrible, and so that is the first objective in the process of prosecution. The second objective is to convict the guilty according to principles of due process. I don't want to convict somebody and have that conviction come back down two and three times because I didn't follow due process.

Senator HATCH. So you are going to respect their constitutional rights, just like any reasonable person should.

Ms. RENO. But then within that framework, taking the resources that I have, I have consistently said that the first priority in allocation of resources is the prosecution of violent crime. We have a major crime section that is devoted to the prosecution of homicides and other serious violent crimes. We have developed a sex battery unit that focuses on that, a children's center that focuses and enables us to successfully prosecute cases involving victims of child abuse, our career criminals unit working with local police.

Again, if you look at the way resources are allocated in the office, the way cases are assigned, you will see that that is a clear priority, and that has consistently been my priority as I have seen the death penalty imposed 102 times with respect to 72 defendants. That has got to be the priority in terms of allocation of resources in prisons, in criminal courts, in prosecutors' offices, and with police.

Senator HATCH. Now, you have also been one of the Nation's leaders in helping crime victims. Can you tell us about your victim assistance program in Dade County?

Ms. RENO. When I came into office, I was frankly upset and very frustrated by the fact that too often victims were the forgotten person in the system. Defendants had rights, but nobody paid attention to victims too often. They didn't know what was going on. They didn't get notice of hearings.

We developed a victim witness coordination unit that tried to keep victims and witnesses notified of what to expect. We prepared pamphlets so that they could be advised of what plea bargaining would be about; that they had the right to object, that I would talk to them if they objected. We developed counselors who could work with fragile victims.

One of my favorite stories, quite frankly, was of the little old lady who called me and she says, Reno, I am not coming in. And I said,

well, what are you talking about? She said, I just got mugged 10 days ago, I have just gotten out of the hospital and I just don't want to be bothered and I don't want to come in. I said, could I send a victim witness counselor out to talk to you because this is a bad guy? "Yes, but I am not coming in."

Well, the counselor went out to talk to her, and parenthetically she said that she gained 30 pounds in the course of that prosecution because the little old lady had wonderful pastries, homemade pastries, waiting for her. After an hour with the lady, she convinced her to prosecute and she sat with her, worked with her. We provided transportation. The lady was a marvelous witness and we got a conviction, and the letter that I will always remember, and I have never been able to find it in the last 3 years, is that lady saying, thank you for giving me the courage to go forward.

That is what we try to do in involving victims in the process, giving them a right to be heard, trying to help them, trying to work with them, including representatives of MADD and Parents of Murdered Children on our staff so that they can sensitize prosecutors as to what it is like to be a victim, what it is like to be a survivor.

Senator HATCH. Now, one last question just to clarify this for the record because some Senators have raised this, and I think your answers are more than adequate. What has been your stand on victims' rights in Florida?

Ms. RENO. I have long supported victims' rights because prior to our constitutional amendment we tried to get legislation passed and were successful, but our victim witness program put into effect those rights before they became law in many instances in terms of giving them an opportunity to be heard, in terms of giving them an opportunity to participate in the process.

Florida then passed a constitutional amendment recognizing this, to the extent that it could under Federal principles and the Constitution of the United States, and we have done everything we can both to fight for funding and to use our limited funding to make sure that those rights are recognized and enforced.

Senator HATCH. Well, then to sum it up, you have been concerned about the rights of accused, as any decent prosecutor ought to be, but you have also been very concerned about victims' rights, and I commend you for it and just wanted to make sure that record is clear and clarified for your benefit.

Ms. RENO. Thank you.

Senator HATCH. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator HATCH. We are prepared to vote.

The CHAIRMAN. We are not going to vote at this moment. We will vote in a moment. Let me, before we dismiss the witness, thank you, Ms. Reno, and I would also like to thank your family. Your family has sat there loyally and steadfastly. I am sorry we were not able to provide any fireworks for you. I am sure it disappointed you a great deal, but thank you very, very much for being here, and thank you, Ms. Reno.

I would like to thank the White House staff and the folks who were working with you for accommodating all of the requests we have had for information. I think the next thing we are going to

see is one of your assistants. One of the people who helped you in this was Jamie Gorelick. Jamie is going to be sitting at a table, just as you are, before the Armed Services Committee soon, and I wish her well. She has had a lot of practice now in helping prepare you.

At any rate, I want to thank you very much, and if there are no further questions for the witness, we will dismiss the witness. You are more than welcome to stay in the room, but you are dismissed from the table.

Ms. RENO. Thank you.

[Whereupon, at 4:09 p.m., the committee was adjourned.]

APPENDIX**QUESTIONS AND ANSWERS**

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 12, 1993

The Honorable Joseph Biden
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Attached are the Attorney General Janet Reno's responses to questions raised as a result of her confirmation hearing. Please accept my sincere apology for the delay in getting these answers to you.

If I can be of any further assistance to you on this matter, please feel free to contact me.

Sincerely,
Sheila Anthony
Sheila F. Anthony
Assistant Attorney General

Enclosure

SENATOR DENNIS DeCONCINI
 QUESTIONS FOR ATTORNEY GENERAL JANET RENO
 CONFIRMATION HEARING

QUESTION: RELATIONSHIP BETWEEN INTELLIGENCE AND LAW ENFORCEMENT

Ms. Reno, there have been several recent instances in which issues involving the intelligence community have created problems for criminal prosecutions. The most recent example is the controversy surrounding the Italian bank BNL.

Investigators and prosecutors are generally unfamiliar with what the intelligence community may have to offer, while intelligence agencies are leery of becoming entangled in legal proceedings where their source and methods might be disclosed.

We have seen in the BNL case that what intelligence agencies do, as well as the information they produce, can have a bearing on a significant criminal prosecution.

How would you restructure or establish coordination between intelligence and law enforcement?

ANSWER: The Department of Justice has already undertaken several steps to increase understanding and cooperation between the Intelligence and Law Enforcement Communities and we are currently considering what additional measures should be required.

For example, FBI and other intelligence agency personnel have conducted joint training exercises addressing internal guidelines and the rules of procedure and evidence that are implicated when intelligence information is involved in criminal prosecutions; liaison personnel from FBI, DEA, and INS serve in one or more of the CIA's Counterintelligence, Counternarcotics, and Counterterrorism Centers. The Criminal Division has been working with the United States Attorneys to designate and train international/national security contact points in the U.S. Attorney's Office to help handle cases involving intelligence issues.

The Law Enforcement/Intelligence Community Task Force was established by the Department, in coordination with the CIA, to study the issues that arise in the course of operations and prosecutions, to review the legal issues that arise when these two communities work together, and to address the specific questions that may arise in the course of court proceedings. The task force reports and recommendations about improving coordination and cooperation are due to be completed shortly.

QUESTION: FBI FOREIGN COUNTERINTELLIGENCE

Ms. Reno, with the end of the cold war, the FBI's foreign counterintelligence program (CI) must be refocused.

In your view, what sort of domestic activities by foreign intelligence services would warrant FBI investigations?

ANSWER: With changes in Eastern Europe, the FBI initiated an examination of its Foreign Counterintelligence (FCI) program. This led to the creation and institution of the National Security

Threat List (NSTL) program. The NSTL program contains two parts; a Country Threat List and an Issue Threat List. Necessary changes in the Attorney General Guidelines to accommodate NSTL were approved by former Attorney General Barr in 1992. These Guidelines call for an FBI Counterintelligence response with regard to specified countries/entities which are recognized as constituting such a threat to U.S. security as to warrant extensive coverage. An FBI counterintelligence response is also warranted when any foreign power engages in intelligence activity involving any one of seven issues that affect the national security of the U.S., such as special weapons proliferation, critical technologies, or covert intelligence activity.

The changes have instituted a shift in focus away from countries that represent traditional military threats to national security, many of which are no longer a military threat, and toward foreign power activities, whatever the country, that can cause economic, political, or military harm to U.S. national security.

The changes in traditional intelligence activity have not affected our international counterterrorism program which may well become more necessary than ever before, because of the tendency for more localized military and political conflicts to result in international terrorist activities.

Traditionally, the intelligence community has focused its efforts on producing strategic intelligence assessments for policy makers and tactical intelligence officials to oversee interdiction. This intelligence is necessary, however it does not provide law enforcement with detailed information concerning those drug organizations which represent the greatest threat to this country. The focus of the intelligence communities collection and analysis efforts in concert with their high level classification of the intelligence produced, results in a wealth of usable intelligence.

In addition, the intelligence community is precluded from the collection and analysis of domestically driven intelligence on drug trafficking organizations, which is the most useful form of intelligence. The National Drug Intelligence Center (NDIC) is in a position to resolve this problem, in that their number one customer and the focus of their efforts is domestic law enforcement agencies. NDIC is in a position to merge both organizationally focused domestic and international intelligence in a manner which will best support law enforcement efforts.

QUESTION: FBI FOREIGN COUNTERINTELLIGENCE

In general, what role do you see for the FBI in protecting U.S. companies from the intelligence activities of foreign services or of foreign companies?

ANSWER: The FBI's counterintelligence mission is to investigate and neutralize the intelligence activities of foreign powers that threaten the national security of the United States. This mission is implicated by foreign intelligence activities against U.S. companies, particularly those involving critical technologies and proprietary economic information. Since this sort of foreign intelligence activity often involves illegal conduct, the FBI, with its dual counterintelligence and law enforcement components, is well-suited to play a role in dealing with economic espionage. I look forward to working with Congress to define the content of that role.

QUESTION: NATURALIZATION PROCESS/INS INITIATIVES FOR PROMOTING CITIZENSHIP

Over ten millions adults residing in this country are not U.S. citizens. What are the responsibilities of the INS toward this non-citizens population? What is the proper role of the INS in promoting U.S. citizenship?

Naturalization has historically been an ignored part of the service mission of the INS. What specific steps will you take to put the "N" back into the Immigration and Naturalization Service?

Over the last three years, application fees for U.S. citizenship have increased dramatically (from \$90 to \$160 back to \$90). Should there be a cap on current U.S. citizenship application fees?

The INS currently has significant backlogs in its processing of naturalization applications. There are currently millions of legal immigrants who are eligible for naturalization, and less than a year from now, in November 1993, the nearly three million additional immigrants who received their residency through the legalization program will start becoming eligible to apply. As the applicant pool grows, how will you direct the INS Commissioner to reduce the current backlogs and ensure the timely processing of every U.S. citizenship application?

In recent years it has been recommended that five million dollars be authorized for citizenship promotion efforts. What is your position regarding requesting these funds in this year's amended budget?

Section 406 of the Immigration Act of 1990 currently requires the INS to widely disseminate information promoting the opportunities of U.S. citizenship, and authorizes the appropriation of funds for this purpose. Under your leadership, how will the INS implement the provisions of this section?

ANSWER: Improving all aspects of INS management and operation is one of my priorities as Attorney General. I intend to work closely with the next Commissioner to address concerns about naturalization activities.

I will seek to ensure that fee account resources are made available to provide emphasis on the prompt and efficient operation of naturalization activities. We are currently conducting a review of the naturalization fee structure to determine what, if any, changes are appropriate to prevent the fee structure from becoming a deterrent to naturalization, while ensuring that an undue strain is not placed on INS's resources.

Current Section 344(f)(2) of the Immigration and Nationality Act (8 U.S.C. 1455(f)(2)) requires INS to consult with the Senate and House Judiciary Committees before changing naturalization fees. I believe this affords proper Congressional oversight of these fees.

The overall immigration benefit workload has increased 90% over the past six years while the naturalization workload remained constant. However, a substantial increase in naturalization requests will begin in FY 1994 as a result of the Legalization Program. The INS anticipates that the completion of implementation of the automated system (CLAIMS) and the Direct Mail Program will

allow field offices to handle the increased workload in naturalization. Under that initiative the responsibility for most non-interview related cases will be moved from field offices responsibility to INS's regional Service Centers. The time saved by shifting the non-interview workload will enable the field offices to dedicate more resources to conducting quality interviews and reducing any backlogs in cases requiring interview.

The President's 1994 budget request does not include additional resources beyond what is currently provided in the Examinations Fee Account for promotional activities that have been traditionally carried out by INS. However, I intend to work with the Commissioner of INS to examine the requirements for additional resources necessary to provide increased promotional efforts for naturalization.

QUESTION: REFUGEE PROCESSING

In view of the growing concern about procedural fairness in U.S. overseas refugee processing, especially in Haiti, the former Soviet Union, Southeast Asia and Central America, what is your and the Clinton Administration's plan to insure due process protections (such as access to counsel, detailed denial decisions, and independent review) to these applicants who claim they are fleeing persecution?

ANSWER: Again, I plan to work closely with both the INS Commissioner and the Congress to assure that measures are in place to ensure that refugee applicants receive a full and fair opportunity to present their claims, notwithstanding the fact that the constitutional protections of due process generally are not held to extend to aliens outside the United States.

Refugee applicants, as applicants for admission who are outside the territory of the United States, do not have the right to representation by counsel. However, voluntary agencies or joint voluntary agencies, under contract with the Department of State, routinely counsel refugee applicants on access to the U.S. refugee program and assist applicants in preparation of their applications for U.S. resettlement.

Question: EMPLOYER SANCTIONS

This committee and the media have recently paid a great deal of attention to the question of employer sanctions. Unfortunately, it is quite clear that one of the side effects of employer sanctions is employment discrimination against Latinos, Asians, and others who seem "foreign" to their employers. It seems that this problem has gotten worse as a result of all of the recent media coverage on employer sanctions. At least nine major newspapers or magazines have published information to employers which is discriminatory. What kind of action will the Department of Justice take to alleviate the discrimination problem caused by employer sanctions?

ANSWER: Recent media reports regarding the hiring of illegal migrants evidence confusion or a lack of understanding with regard to the antidiscrimination provision of the Immigration Reform Control Act (IRCA). When this unfamiliarity with the law is

coupled with the fear many employers have of being sanctioned by the Immigration and Naturalization Service (INS), the type of discrimination you describe may result. The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) has undertaken efforts to combat this lack of awareness through education and enforcement of the law.

Because IRCA conferred a new set of rights and responsibilities upon workers and employers, OSC and INS developed a public education campaign, designed to inform the public about how to exercise its rights effectively and to educate employers. OSC is also taking steps to improve enforcement and to make better use of the tools provided by Congress to combat discrimination including civil penalties. The INS also is working on several additional initiatives which address the discrimination issue, including preparation of new training material regarding the employment eligibility verification process and anti-discrimination protection, simplification of the Telephone Verification System (TVS) pilot project, which allows employer access to an INS database to verify information provided by individuals claiming to be aliens authorized to work in the United States.

I intend to use the resources available to the Department to continue and expand these efforts.

QUESTION: The Office of Special Counsel was created under IRCA to address employer sanctions-generated employment discrimination. However, the Office is severely underfunded, with only a modest budget for outreach and enforcement. How will the Department of Justice work to strengthen this Office and its enforcement efforts?

ANSWER: The Department will have to meet the challenge of accomplishing OSC's mission in the most cost effective manner possible.

For example, OSC is working with state agencies in an effort to create Memoranda of Understanding (MOU) to facilitate the referral of charges to the Office. OSC currently has such agreements with 29. With regard to education, OSC has expanded its public education unit. Finally, the Department is supportive of OSC's efforts to install a comprehensive computerized database that will not only improve the efficiency of its operation, but provide accurate data that will enable the Department to focus its enforcement and public education activities more effectively.

QUESTION: The Immigration Act of 1990 instructs the government to make sure that antidiscrimination efforts related to employer sanctions are as vigorous as the enforcement of employer sanctions. If we don't achieve this balance, employers have incentive to discriminate. Yet, employer sanctions enforcement is probably four or five times as vigorous as antidiscrimination enforcement in terms of total fines and total enforcement resources. How will the Department of Justice achieve a balance?

ANSWER: The Department is committed to aggressive and effective enforcement of the antidiscrimination laws. I am actively exploring what more can be done to bolster these efforts, and will be pleased to work with you and other committee members toward that end.

The Department of Justice is committed to effective enforcement of the employer sanctions and the antidiscrimination provisions. The Office of Special Counsel and INS will work together on programs to raise public and employer awareness of potential discriminatory actions.

QUESTION: INTEROPERABILITY

In the New York City World Trade Center bombing, a top ranking New York Police Department Official reported that a lack of radio interoperability prevented effective coordination of rescue efforts between the four law enforcement agencies and emergency medical services units on the scene. That official believed more injuries may have resulted to people trapped in the bombing based on these agencies' inability to communicate with one another.

In a case where I am sure your are all too familiar, Hurricane Andrew, radio interoperability also interfered with the ability of law enforcement and medical emergency units to coordinate services. There are many other situations where law enforcement agencies are severely handicapped in this way.

With a lack of compatible communications being cited again and again as a problem in joint operations, what priority will you place on establishing interoperability standards for land mobile radio to permit rapid communication between agencies and to alleviate confusion among such agencies?

ANSWER: Radio communications interoperability is an enormously complex issue which is of great concern to all law enforcement agencies, particularly in joint task force investigations which can include state, local, and various Federal law enforcement agencies. The Department of Justice has been working to promote interoperability between Federal, State, and Local law enforcement agencies through involvement with the ONDCP Interoperability Working Group and the National Communications System's Federal Telecommunications Standards program.

Recognizing our need to closely communicate on a continuing basis with State and Local law enforcement agencies, the Department of Justice, the Treasury Department and other Federal Agencies are participating in the Associated Public Safety Communications Officers' Project 25 Program to work toward determining common standards that civilian law enforcement agencies can use to procure radio equipment.

The interoperability issue is also complicated by encryption. Federal law enforcement and many state and local law enforcement agencies utilize encryption to protect their communications from unauthorized listeners who could interfere with their investigations and responses to emergency situations. In order for radios to interoperate in the encrypted mode not only must they be in the same frequency band, they must utilize the same type of encryption, implemented in the same manner and be operating on the same code.

While much progress has been made to address the problems you describe a great deal remains to be done and we look forward to working with you to address this issue.

QUESTION: INDIAN COUNTRY -- VIOLENT CRIMES

Last June we had Attorney General Barr before this Committee. I asked him about the high declination rate by U.S. Attorneys of violent crimes committed in Indian country. He told me that the Department was looking at trying to increase enforcement against violent crimes in Indian country and that he would get back to me on the program. I never heard back from him.

First, have you given any thought to how you will address violent crime in Indian country?

Let me ask you -- after you are confirmed, will you get back to me on whether the Department has implemented any initiatives for increased enforcement in Indian country?

ANSWER: I will make every effort to keep you informed of progress in this area.

As you know, in 1975, a Department of Justice Task Force conducted a study of law enforcement in Indian Country and recommended that the FBI shift some of its investigative responsibilities to the BIA and increase its training of BIA and Tribal Police to more effectively address reservation crimes.

After a decade of negotiations, the FBI and BIA recently reached an agreement, and the resulting Memorandum of Understanding (MOU) addressing the recommendations of the Task Force is now in the final stages of review within the Department.

I intend to work closely with the Indian Affairs Subcommittee of the Attorney General's Advisory Committee of United States Attorneys, the Office for Victims of Crimes (OVC), and others to address the concerns you have raised.

I will be happy to look into these issues and provide you with my conclusions and any recommended changes that I believe to be necessary, after I have had the opportunity to study this question in greater detail.

The Indian Affairs Subcommittee of the Attorney General's Advisory Counsel, in coordination with the Child Exploitation and Obscenity Section and OVC, recently conducted a policy meeting to discuss current initiatives and to identify ways to improve the response to child victims of sexual abuse in Indian country. U.S. Attorneys and Assistant U.S. Attorneys from 24 Federal Districts, Federal Victim Witness Coordinators, FBI Special Agents in Charge in Indian country, and staff from Indian Health Services and Bureau of Indian Affairs attended the three day seminar. An action plan is being formulated that will involve all responsible Federal agencies in improving the response to victims of child abuse in Indian country.

OVC has initiated numerous efforts to improve the response to victims of Federal crime in Indian country. These include an emergency services fund that can be accessed by U.S. Attorneys offices on behalf of victims of violent crime when local services are not available; the Victims Assistance in Indian Country Grant program which establishes "on-reservation victims assistance services" for Federal crime victims in Indian country on land areas of Federal jurisdiction; and the Children's Justice Act Discretionary Grant Program which awards grants directly to Indian tribes to improve the investigation, prosecution, and handling of serious child abuse cases to include child sexual abuse.

In addition to the direct services program, OVC has pursued numerous initiatives to provide training for tribal and Federal law enforcement officers, prosecutors, victim-witness assistance professionals, and social services, health, and mental health staff regarding best approaches for assisting victims of violent crimes. These efforts are detailed below:

Emergency Services Fund (\$100,000): Annually, \$100,000 is identified to meet the needs of Federal crime victims. U.S. Attorneys Offices request support in providing services to victims of violent crime when local services are not available. The fund has been used primarily by Federal Districts in Indian country as there are generally fewer local services available. The fund has been used to provide services such as therapy for victims of child sexual abuse, shelter placement for domestic violence victims, travel related to victims' participation in criminal justice proceedings, and forensic medical examinations.

Victim Assistance in Indian Country Grant Program (\$595,000): OVC initiated the Assistance for Victims of Federal Crime in Indian Country Discretionary grant program in 1988 to establish "on-reservation" victim assistance programs in remote areas of Indian country where there were no existing or limited services for victims of crime. Since 1988, OVC has awarded over \$4.4 million to fifteen states under this grant program. As a result, 52 Native American victim assistance programs were established in the States of Arizona, Idaho, Kansas, Michigan, Minnesota, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming. Programs are providing direct services to victims in Indian country, including crisis intervention, emergency and temporary shelter, mental health counseling for victims of child abuse and their families, court advocacy in Federal court proceedings, and salaries of victim service providers. In FY 1993, OVC anticipates making four new awards totaling \$206,745.

Children's Justice Act Grant Program for Native Americans (\$675,000 per year): In 1987, OVC became aware of the extent of the problem of child sexual abuse on Indian reservations and proposed that the Victims of Crime Act, (VOCA) be amended. VOCA was amended in 1988 to make \$675,000 available annually to Indian tribes and organizations to improve the handling of child sexual abuse cases and to limit the trauma to child victims. To date \$2,252,307 has been awarded to 23 different Federally recognized Indian tribes. In 1993, OVC anticipates making 8 new awards totaling \$717,748.

Tribes funded have been able to improve their response to child victims in numerous ways to include: training for multidisciplinary teams; revision of tribal codes to address child sexual abuses; establishment of child advocacy services for children involved in court proceedings; development of protocols for reporting, investigating, prosecuting, and treating child sexual abuse; developing special interview rooms for children; and improve case management and treatment services.

Fifth National Indian Nations Conference (\$155,000): This conference provides training to victims service providers and tribal, state, and Federal individuals working to address child abuse cases in Indian country.

Training for Federal Districts (\$15,000): OVC co-sponsored the "Four Corners Indian Country Child Abuse Conference" which brought together approximately 200 Federal, tribal, and state

prosecutors, law enforcement officials, and health, social services, and victim assistance professionals, who work in Indian country on behalf of child victims, in Durango, Colorado, in September 1993. OVC authorized funds to allow scholarships for approximately 70 Native Americans to attend the conference. The four-day conference featured interactive, regional problem-solving workshops and concluded with a very successful Federal child sexual abuse mock trial. Other sponsors were the U.S. Attorneys Offices in Utah, Arizona, Colorado, and New Mexico and the Bureau of Indian Affairs.

Video Project for Native American Children required to Testify in Federal or Tribal Court (\$1,068): In April 1992, OVC involved U.S. Attorneys' Offices and other agencies providing assistance to child victims in distributing a new ten-minute video, produced by the District of Arizona and funded by OVC, entitled "B.J. Learns About Federal and Tribal Court." This culturally sensitive film meets the special needs of Native American child victims who are required to testify in either Tribal or Federal court by attempting to answer questions frequently asked about the courtroom, courtroom procedures, and the people who participate in court proceedings. Approximately 700 films and Instructor's Guides were distributed to appropriate tribal, Federal, State and local agencies across the country.

Video for Tribal Leaders on Addressing Child Sexual Abuse in Native American Communities (\$30,000): Through an OVC grant, the National Indian Justice Center developed a video entitled, "Bitter Earth - Child Sexual Abuse in Indian Country." The film is intended for tribal leaders and tribal personnel who work on a daily basis to prevent, investigate, or otherwise handle child sexual abuse at the tribal level. The film defines and gives an overview of child sexual abuse, the harm it causes, the approaches the community can take for handling it, the available resources, and presents a call-to-action for communities to address this devastating crime. A Discussion Guide will be distributed with the video to appropriate tribal, Federal, state and local agencies across Indian country.

SENATOR HOWELL HEFLIN
QUESTIONS FOR ATTORNEY GENERAL JANET RENO
CONFIRMATION HEARING

QUESTION: Over the course of the Reagan-Bush years, some have questioned the Justice Department's enthusiasm for enforcing older consent decrees, particularly those dealing with monopolization, predatory pricing, and vertical practices. Some have expressed the concern that such decrees have not been actively enforced due to policy disagreements with all or some portion of the underlying lawsuits. As Attorney General, do you intend to instruct the Antitrust Division to vigorously enforce all extant consent decrees?

ANSWER: I firmly believe that outstanding consent decrees should be enforced vigorously. I also recognize the possibility that an antitrust consent decree might outlive its procompetitive purposes. While it has become common Department practice in recent years to include self-termination provisions in consent decrees, our older decrees frequently were drafted to run ad infinitum. Therefore, I support the ongoing efforts of the Antitrust Division to modify or terminate, when appropriate, consent decrees that no longer serve a useful purpose. However, the Division will not seek modification or termination of a consent decree if such action adversely affects competition.

QUESTION: The INS has had understaffing problems at many of our international gateways, particularly Miami and San Juan. These problems translate into long processing times and missed connections for passengers and cargo. What are your thoughts on this situation and what steps do you intend to take to make INS a more efficient and responsible agency?

ANSWER: The mission of INS at our nation's borders remains two-fold. The first is to stop the entry of those individuals coming to the United States illegally and the second is to work with all responsible parties to expedite the entry of the legal immigrants and international travelers at all of our Ports-of-Entry.

I intend to work with the Commissioner of INS to take all steps possible to improve the management and operations of the agency. Although I am aware that the goal of processing every international flight in 45 minutes has not yet been achieved, I can assure you that I will seek to continue our efforts to comply fully with this mandate without compromising the mission of INS. In addition, I will seek the cooperation of the airline and tourism industries to work with the INS in order to expand upon INS' current initiatives and programs such as preinspection, the provision of advance passenger information and the use of biometrics technology.

QUESTION: Administrative law judges, which settle disputes arising from the rules and regulations of federal agencies, are called on to be independent actors who are not beholden to either their agencies or other parties. However, these judges continue to be paid, housed and staffed by the agencies for whom they resolve cases. In response to the allegations of abuse and bad faith being raised by the agencies and the judges, I have regularly

sponsored legislation which would establish an independent corps of administrative law judges operating under the executive branch of government. Do you believe a problem exists with the status quo, and if so, what action should be taken?

ANSWER: I am advised that the Administrative Procedures Act provides safeguards intended to ensure the independence of Administrative Law Judges. To the extent that these provisions fall short of establishing adequate independence, I would be happy to review proposals aimed at redressing this shortcoming. I am please to report that the substitute bill introduced on September 15, 1993, resolved the Department's Constitutional concerns regarding the bill as introduced. We will provide further comments when our review of the substitute is complete.

QUESTION: I've had a recent complaint from an Alabama constituent about how an alimony enforcement action was handled by your office. Essentially, my constituent was dissatisfied with the way in which your office handled her case, which languished with the state of Alabama alimony decree *not* being enforced. What is your record regarding enforcement of foreign judgements on alimony and child support -- were you satisfied with the way your office handled matters of this nature?

ANSWER: I am not familiar with the specific case to which your question adverts, but I have always taken support enforcement very seriously and placed a high priority on these matters. Unfortunately, because these are often complicated and delicate cases, they are not always resolved satisfactorily.

SENATOR PAUL SIMON
 QUESTIONS FOR ATTORNEY GENERAL JANET RENO
 CONFIRMATION HEARING

QUESTION: CHURCH/STATE ISSUES

During your tenure as Attorney General, the Department of Justice will have opportunities to become involved in legislation and litigation affecting the separation between Church and State. You are, no doubt, aware that the Supreme Court has used a three-part test, known as the Lemon test, to determine whether statutes or government actions have the effect of advancing religion or entangling the government in religious matters.

You are also aware, I'm sure, that the Department of Justice has filed *amicus* briefs in the past urging the Supreme Court to abandon the Lemon test and replace it with a less restrictive standard -- perhaps one that would require "government coercion" as a necessary component of an Establishment Clause violation.

o Do you share my view that the strict separation of church and state is essential to protect the right of individuals to practice their own religious observances in the United States?

o Do you think the Lemon test has operated well to ensure church/state separation, or: do you think a different balancing test would better safeguard religious liberties?

ANSWER: I believe that the protections of the First Amendment regarding religion are among the most fundamental guarantees of freedom in our society. Government must observe neutrality toward different religions and as between religion and no religion. Equally importantly, government must avoid excessive entanglement with religions or religious institutions. Nor should government restrict the ability of individuals to practice their religious beliefs in the absence of a compelling interest in doing so. Only in this environment can the rights of individuals to practice their religions be preserved to the fullest extent possible.

To say that much, however, does not necessarily provide an answer to the many difficult cases involving claims arising under the Establishment Clause or the Free Exercise Clause. As those cases arise, the Department will examine each in light of the First Amendment values implicated in each instance.

The Supreme Court continues to apply the Lemon test in Establishment Clause cases, and I do not anticipate asking the Court to adopt a different standard.

QUESTION: "GUNS FOR FELONS" BILL

During the last congress, Senator Lautenberg and I introduced the Stop Arming Felons Act, S. 2304. Because of a legislative loophole, the Bureau of Alcohol, Tobacco and Firearms (BATF) is statutorily required to review applications from former felons to reinstate their ability to own a firearm, a privilege revoked upon conviction. In this past decade, some 22,000 applications have been processed by BATF, at a taxpayer cost of over \$3 million a year. Our proposal would

eliminate this federal program, as well as prohibit state governments from reinstating firearm privileges to violent felons. Non-violent felons would still be eligible to apply to their state in order to have their firearm privilege restored.

Although we were unsuccessful in our attempts to pass S. 2304 last Congress, we did ensure that language was included in the Treasury, Postal and General Government Appropriations bill to eliminate funding for the program during Fiscal Year 1993. Now that the Appropriations bill is law, no money can be spent by the Bureau in 1993 to rearm felons. I intend to pursue the permanent ban this Congress and would welcome the Department's support.

o What is your view on this proposal? Would the Department of Justice be supportive of this and other measures to control the flow of firearms to felons?

ANSWER: While the details of this proposal are still under review, the Department of Justice is supportive of the concept of keeping firearms out of the hands of convicted violent offenders and drug felons.

We are deeply concerned about the frequent use of firearms in the commission of crimes and the attendant danger to federal, state and local law enforcement officers and generally favor actions that would reduce the ready access to weapons by persons whose disposition to criminal activity has already been demonstrated.

QUESTION: OFFICE OF THE INSPECTOR GENERAL

You are probably aware of an Attorney General Order, signed December 11, 1992 by Deputy Attorney General George Terwilliger as Acting Attorney General, which severely cut back the authority of the Office of the Inspector General to conduct investigations. It is the belief of some of my colleagues, Senator Glenn in particular, that this Order unlawfully decimated the effectiveness and authority of the IG office.

o Will you rescind this Order?

ANSWER: Attorney General Order 1638-92 has been the subject of much controversy regarding its purpose and intent. I have already been briefed regarding the background of this Order and what Mr. Terwilliger evidently sought to achieve.

The Department is actively reviewing the relative jurisdictions of the Offices of Professional Responsibility and Inspector General. Section 112 of the FY 1994 Senate Appropriations Bill prohibits funding for the purpose of carrying out the provisions of order 1638-92. Should Section 112 be included in the Conference Report, the Department will of course comply with its requirements and will not implement the Order. Until such time as the Department's review is completed and implemented, the Department will follow the provisions of the underlying Inspector General Act with respect to allocation of responsibilities between these two offices.

While I am sure that other divisions of responsibility between the two offices are possible, I expect to study the issues that have led to the conflicts between OPR and the OIG, as well as their

practical experiences in implementing the Order since December, before making any decisions regarding those offices. My foremost concern is to make sure that the Department has in place the best mechanisms to root out internal malfeasance. We cannot afford to have these watchdog offices distracted by wasteful "turf battles."

QUESTION: CIVIL RIGHTS ENFORCEMENT
Civil Rights Act of 1991

The U.S. Supreme Court recently agreed to hear cases next fall on the issue of the retroactivity of the Civil Rights Act of 1991. It seems clear to me that when we effectively overturned the Wards Cove and other cases that Congress intended the law to be changed for all workers, not just for future cases of discrimination. Nonetheless, some courts have ruled the Act is retroactive while others have not. In one 7th Circuit case, Moses v. American Commercial Marine Service Company, it was decided that the substantive portions of the Act should not apply retroactively but the procedural and remedial provisions should.

o Will the Department of Justice take a strong stand before the Court this fall in favor of retroactivity?

o A related piece of unfinished business in the area of the Civil Rights Act is the Ward Cove exemption itself. With Senator Adams and other colleagues, I opposed giving one company an exemption from the Civil Rights Act and leaving unprotected approximately 2000 Filipino and Asian American victims of job discrimination. The President wrote a letter to Congressman Jim McDermott of the State of Washington supporting his repeal bill. What can you do to make this a priority for the Department of Justice?

ANSWER: The Department filed an amicus brief in the Supreme Court on April 30 on behalf of petitioners in Landgraf v. USI Film Products, Inc., and Rivers v. Roadway Express, Inc., arguing that the Civil Rights of 1991 applies to cases that were pending on the date of enactment. Oral arguments have been made and the case is under submission to the Court. As we have argued on many other occasions in the Supreme court, Bradley v. School Bd. of City of Richmond, 416 U.S. 696 (1974), requires a court "to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary." Moreover, in our view, the language of the Act supports the conclusion that Congress intended the Act of apply to cases pending at the time of its enactment.

I believe strongly that all similarly situated employees should receive the same protection under the Civil Rights Act of 1991 and expect to work closely with the Congress to achieve that goal.

QUESTION: ABA TASK FORCE ON MINORITIES & THE JUSTICE SYSTEM

You served on the ABA's Task Force on Minorities and the Justice System. It concluded that "Minorities lack equal access to courts because linguistic, information and cultural barriers combine to make the justice system

hostile and forbidding." Your report also concluded that minority court personnel are under-represented and that all court personnel do not receive adequate cross-cultural training.

o What can you do to monitor this in the federal courts so that non-English speaking victims of crime and witnesses as well as the accused have adequate services so they can have faith and confidence in the criminal justice system?

ANSWER: It is well documented that minority citizens, and particularly those who do not speak English, represent a disproportionately large percentage of those who are victimized by violent crime. The trauma of being victimized can be particularly difficult for non-English speaking victims. Often they do not understand how the criminal justice system operates in the United States. They become bewildered by the actions of law enforcement officers and prosecutors, confused by the court process, and unclear about the final dispositions of their cases.

The Department is acutely aware of needs in this area from our day-to-day experience in Court. While the solutions to these problems must primarily be addressed in the Court system, the Department will do all that it can to cooperate and see that there are adequate services to insure the fundamental fairness of all court proceedings. A step in the right direction is the appointment of a victim witness coordinator in each United States Attorney's Office. These coordinators are charged with assisting victims to know and obtain their legal rights and help ease the court room experience of witnesses. For U.S. Attorneys' Offices that have additional program staff, particular attention can be placed upon recruiting service personnel for essentially the same racial/cultural background as the majority of victims whose cases are handled by that District. For example, Federal jurisdiction for the District of Arizona includes a large portion of Federally-recognized Indian tribes. Many of the cases handled by this District include Native American victims/witnesses of violent crime. In an effort to make information and services more culturally-relevant and accessible to these victims, the U.S. Attorney has hired a Native American victim advocate. In addition, many coordinators have translated the Department's pamphlets entitled "Preparing to Testify," and "The Victim-Witness Handbook" into Spanish.

The Office for Victims of Crime (OVC) through various resources and programs is making relevant information and services more accessible to these victims. A few examples include: an agreement between OVC and the FBI will result in the translation of an FBI brochure entitled "Information for Victims and Witnesses of Crime" into Spanish -- copies of the pamphlet will be distributed to field offices that commonly interact with Hispanic victims and witnesses and arrangements have also been made to translate the pamphlet into other languages such as Vietnamese, Chinese, and Arabic; the distribution of a ten-minute video intended for Native American child victims and witnesses who are required to testify in either Federal or Tribal Court entitled, "B.J. Learns About Federal and Tribal Court;" and the development and dissemination of a video focussed on informing Native American victims of Federal crime about financial assistance available by state victim compensation programs entitled, "Financial Assistance for Victims of Crime."

OVC also recently conducted a training project for victim service providers on the special needs of Hispanic victims. That project developed a training curriculum that covered a range of issues, including the nature and impact of crime among Hispanic

Americans; general elements needed by programs serving Hispanic victims; and issues related to serving victims of particular types of crime (e.g., family violence, sexual assault, homicide). The curriculum was presented at a training conference in Albuquerque, New Mexico, for professionals and volunteers who serve Hispanic crime victims. After the conference, the curriculum was revised and submitted as a training manual entitled, "Responding to Hispanic Victims of Crime: A Training Course for Victims Service Providers." Included in the manual are supplementary information and training materials in both Spanish and English.

QUESTION: MINORITY AND WOMEN BAR ASSOCIATIONS

In early 1992, your predecessor William Barr met with leaders of the Hispanic, African American, Native American, Asian American and women's bar organizations to start a dialogue to promote diversity and responsiveness within the Department.

o I want to see an Attorney General moving forward with energy on civil rights. Your record shows you are that type of person. Will you make yourself accessible to minority bar and other civil rights groups to address these concerns?

ANSWER: I am deeply committed to enforcing the civil rights laws aggressively and with all of the vigor that the Department can muster. I am also committed to working closely with Congress to develop new civil rights laws when we discover that existing laws are inadequate. As an example, we have reviewed existing federal law to determine whether it provides federal protection for women seeking access to abortion clinics and determined that it is inadequate. As a result, the Department attorneys have worked closely with the Senate and House of Representatives to develop new legislation to attack this problem.

I assure you that I will make every effort to hear and respond to the views and concerns of minority bar and other civil rights groups. I value their expertise, as well as their ability to voice the concerns of real people with problems.

**QUESTION: HATE CRIMES
COMMUNITY RELATIONS SERVICE**

Currently, the Department of Justice has two agencies which have jurisdiction over hate crimes, the FBI and the Community Relations Service (CRS). However, these two agencies define hate crimes differently. As you know, the FBI collects statistics on hate crimes based on race, ethnicity, sexual orientation, and religion. The CRS, however, provides assistance to communities in resolving disputes based only on race and ethnicity.

Several of my colleagues and I have expressed a desire to expand the jurisdiction of the Community Relations Service so that they are empowered to respond to incidents involving sexual orientation and religion, as well. CRS, claiming that its hands are tied by its limited statutory mandate, has consistently refused to expand its scope of activities.

o What is your position on the present CRS definition of hate crimes?

ANSWER: Our communities have endured too much hate-motivated violence and crime, including religious and sexual orientation based animus. We must work to address this problem at its root. Part of this approach entails working in the communities to address hostilities before they spill over into crime.

The Community Relations Service has been a valuable tool in defusing tensions based on race, national origin, and ethnicity. I would be happy to review with the members of the Judiciary Committee the efficacy of deploying the Service's resources to the problem of crimes motivated by sexual orientation or religious hostility as well as the legal requirements for such a deployment.

QUESTION: IMMIGRATION/EMPLOYER SANCTIONS

This Committee has paid a great deal of attention recently to the issue of employer sanctions. The General Accounting Office has reported that sanctions do have the side effect of causing discrimination against citizens or other legal residents who may speak with an accent or "look" foreign.

Because of this added concern, Senator Kennedy and I, as part of the IRCA law in 1986, added anti-discrimination provisions that established the DOJ Office of Special Counsel.

We can reduce discrimination caused by employer sanctions by educating prospective employers and by enforcing the anti-discrimination provisions. What steps will you take to accomplish these goals?

ANSWER: Education of employers, coupled with aggressive enforcement of the antidiscrimination provisions, is necessary to ensure that IRCA's mandate to eradicate unfair immigration related employment practices is realized. The Department of Justice and the Office of Special Counsel have taken steps to educate employers of their responsibilities, to educate victims of discrimination as to their rights, and to enforce the antidiscrimination provisions of IRCA. For example, recognizing the need to inform the public of the new rights and responsibilities conferred by IRCA, the Office of Special Counsel developed a public education unit.

The Employer and Labor Relations (ELR) Program within INS was originally established with the goal of obtaining voluntary compliance by educating employers about their responsibilities under the Act. The Program was made permanent by a policy directive issued May, 1988. At the present time, the ELR Program is responsible for all aspects of employer education, including anti-discrimination activities. ELR personnel conduct speaking engagements and informational mailings, serve as a liaison to industry and organized labor, and respond to public inquiries. The objectives of these activities are to promote voluntary compliance and reduce discrimination by employers. The ELR Program will continue to conduct an aggressive employer education campaign and outreach activities. I look forward to working with the Judiciary Committee, the Office of Special Counsel, and the Immigration and Naturalization Service to see how education and enforcement activities can be improved.

QUESTION: The Office of Special Counsel exists in Washington, D.C., and relies on EEOC local offices and cooperation with employer and community groups. What is really needed is a local presence through regional offices in Chicago, Houston, Los Angeles and other cities with large Hispanic and Asian American populations. Will you consider stepping up the Office of Special Counsel in this way?

ANSWER: Because the perspective "inside the Beltway" tends to differ from that found in communities throughout the nation, the Department needs to ensure that, in fulfilling its vast mission of federal law enforcement, its attorneys are mindful of and sensitive to the issues and concerns peculiar to the many jurisdictions comprising this country. Moreover, the constituency that needs to be reached is one that poses peculiar problems due to its diverse nature, in terms of language, race, and ethnicity. I know that the previous administration examined the possibility of opening regional offices but found the cost prohibitive. I would look forward to working with the committee to seek a cost effective means of providing a local presence for the Office of Special Counsel.

QUESTION: JUDICIAL NOMINATIONS
DIVERSITY ON THE BENCH

Senators Biden, Kennedy, Metzenbaum and I wrote to Attorneys General Meese and Thornburgh about the need for quality and diversity throughout the federal judiciary. During the previous Administrations, the federal courts expanded but the representation of women and minorities did not.

o What steps will you take to work with women and minority bar organizations and others to see that you have access to all sectors of individuals qualified and willing to serve in the judiciary?

ANSWER: President Clinton has been unrelenting in his call for judicial appointments that reflect the excellence and diversity our great nation has to offer. I am in whole-hearted agreement with him on this score. I will work to impress upon the various bar associations and other interested parties the importance of these values in selecting judicial nominees. In addition, as you know, the process involves close consultation with individual Senators. I plan to do what I can to encourage each Senator to consider these criteria as they participate in the judicial nominee selection process.

QUESTION: JUDICIAL NOMINATIONS
LOCAL BAR ASSOCIATION INVOLVEMENT

I had great concern about one policy, among others, of the previous Attorneys General. This concerned the involvement of local and specialty bar organizations in meeting with and evaluating judicial nominees. The previous Attorneys General directed nominees not to meet with such bar organizations. I objected to that policy. I believe it should be up to the individual nominee to use his or her judgment in deciding whether to meet with bar groups or not.

o Have you given thought to eliminating the requirement imposed by your predecessors that nominees refuse to meet with bar organizations?

ANSWER: I do not agree with former Attorney General Thornburgh's insistence that state and local bar associations, and specialized bar groups, not participate in the evaluation of prospective judicial nominees. I recognize the need to avoid a perception that a nominee may be beholden to particular groups. But it is also important to recognize that various bar groups often may be valuable sources of information on a candidate's qualifications and temperament. Accordingly, I will leave it to each candidate to exercise his or her judgment regarding contacts with interested bar groups.

QUESTION: In October of last year, Senator Carl Levin issued a report concluding that senior Justice Department officials locked a federal prison inmate, Brett Kimberlin, into a segregation cell during the 1988 presidential election, apparently to prevent him from airing damaging accusations about the Republican vice-presidential candidate. Even more troubling are allegations that Mr. Kimberlin's parole date was delayed by his efforts to exercise basic First Amendment rights. I understand that the Justice Department's Inspector General's office is investigating these matters.

o What steps will you take as Attorney General (1) to assure that Mr. Kimberlin's parole date is not being affected by political or other improper considerations, and (2) to resolve the serious allegations that this inmate's speech was unlawfully stifled in 1988?

ANSWER: As you are aware, the Office of the Inspector General (OIG) has conducted an inquiry at the request of Senator Carl Levin regarding the Bureau of Prisons (BOP) and the Parole Commission's treatment of inmate Brett Kimberlin in the fall of 1988. The OIG has completed its investigation and issued a report regarding the BOP's actions; a second report addressing the Parole Commission's activities is expected in the next several weeks.

The OIG found that BOP's treatment of Mr. Kimberlin was not due to political pressures. The OIG did find, however, that certain actions taken by officials of the BOP, including the former Director, did not have a sound basis in policy or procedure. The report further found that Mr. Kimberlin had knowingly attempted to violate BOP policies and manipulate the press.

As you know, Mr. Kimberlin has filed a lawsuit against the United States and former officials of the Department based on his treatment by the BOP in the fall of 1988. Mr. Kimberlin's claims of the First and Fifth Amendment violations are pending before the United States Courts of Appeals for the District of Columbia Circuit. The district court for the Western District of Tennessee rejected Mr. Kimberlin's allegations that his parole was delayed because of his allegations against Mr. Quayle, and that decision is currently under review by the United States Court of Appeals for the Sixth Circuit. Upon receipt and review of the OIG's second report, I will decide what steps are needed to ensure that justice is served in Mr. Kimberlin's case...

SENATOR HERB KOHL
QUESTIONS FOR ATTORNEY GENERAL JANET RENO
CONFIRMATION HEARING

QUESTION: DEADBEAT PARENTS

As you know, last year my Subcommittee, and eventually Congress, enacted legislation which the President signed into law, making it a federal crime to fail to make child support payments while living outside of a state in which the judgment was ordered. We wanted to make it easier to enforce court-ordered child support payments in interstate cases. Some critics have said we are imposing an undue burden on U.S. Attorneys and federal courts.

Do you agree with those critics--is this too great a burden for U.S. Attorneys and federal courts?

I understand that you have made dramatic improvements in Dade County's child support enforcement practices. Are there improvements you made in Florida that can be made on the federal level to strengthen child support enforcement nationwide?

ANSWER: The anticipated impact on Federal prosecutors and Courts will be significant; nevertheless, the Department of Justice is committed to discharging these new responsibilities effectively.

The Department has formed a working group composed of representatives of the Criminal Division, the FBI and the United States Attorney's Offices who are working with representatives of state prosecutors and other Federal agencies to resolve many complex legal and policy issues raised by implementation of the new act.

The success of child support enforcement efforts in Dade County, Florida is due in large part to the persistent dedication of the staff of the Child Support Enforcement Division. I am committed to inculcating this spirit at the federal level and to developing innovative techniques to strengthen child support enforcement nationwide.

QUESTION: SENTENCING GUIDELINES

A number of critics have claimed that the sentencing guidelines unfairly tie judges' hands, and give too much power to individual prosecutors. In fact, recently one of Wisconsin's best federal judges told me that the individual sentencing guidelines were [QUOTE] "absurd." Another jurist recently wrote me to point out that prior to the adoption of sentencing guidelines and mandatory minimum sentences, probation was very effective with young offenders.

You have the benefit of looking at this from the perspective of 15 years of prosecuting criminals. Put on your policy-making hat for a minute, and tell me whether Congress needs to revisit the sentencing guidelines -- as many judges contend? If yes, what changes do you suggest be made?

ANSWER: I will listen to the arguments of those who say that the sentencing guidelines and mandatory minimums need to be decreased or abolished as well as to those who believe that they need to be increased. I want to talk to the U.S. Attorneys and get their sense of how these devices work in practice. I also want to have an open mind about the many objections that federal judges have lodged to these sentencing mechanisms. Furthermore, I think we must consider the impact of mandatory minimums on federal prison population growth and their relationship to public safety.

I also want to be clear that this administration will not do anything to let up in our efforts to punish drug and violent offenders. I will not support any reforms that weaken our approach. If there are legal changes that are necessary to strengthen our attack against drug and violent criminals, I will certainly consider them.

QUESTION: ASSET FORFEITURE

The Justice Department's Asset Forfeiture Program -- where police seize money and property thought to be connected to illegal drug profits -- is considered a major weapon in the war against drugs. Since the program's inception in 1985, federal authorities have confiscated almost \$3 billion worth of cash and other property. Yet, this program has been criticized because it allows for the seizure of any assets which may be connected to a crime. Consequently, a conviction for a minor drug related offense may result in the seizure of all of an individual's assets.

You once said, "[m]y highest priority is to protect the rights of the guilty, not to convict the guilty." In light of this comment, and given your policies as a State Prosecutor toward first time drug offenders -- first time drug offenders don't have to go to jail if they complete drug rehabilitation -- do you think the asset seizure program allows for unfair and inappropriate fines? If so, what restrictions if any on asset forfeitures do you think will "protect the rights for the guilty?"

Do you think the program's policies violate the 8th Amendment's bar on excessive fines and cruel and unusual punishment? Would the asset seizure program be more effective if a higher standard of proof was required before the possible seizure of illegal assets?

ANSWER: Asset forfeiture is an effective means of deterring crime: it demonstrates that criminal activity will result in substantial economic penalties--that crime literally will not be allowed to pay. The Asset Forfeiture Program is based on a sound premise: that one should not be allowed to retain assets used or gained in pursuit of a crime. In practice, the Asset Forfeiture Program is profitable and facilitates coordination with state law enforcement agencies.

Of course, the Asset Forfeiture Program is not perfect. We must be vigilant in assuring that property is not seized from innocent owners. I will work with relevant Department officials to review procedures for the forfeiture and seizure of assets to ensure that the due process rights of innocent third parties are protected. It is my understanding, however, that asset forfeitures have generally been handled in a highly professional manner, and that the program has proven both effective and profitable.

I understand that the Asset Forfeiture Office of the Department's Criminal Division is currently drafting comprehensive legislation--designed to increase protections for innocent property owners and to expand the forfeiture program in the white collar crime area--that we will review upon completion.

QUESTION: DRUG COURT

As Dade County State's Attorney, you are known for advocating alternatives to imprisonment. For example, I understand you (have) a Drug Court in which first time drug offenders would not go to jail if they completed drug rehabilitation.

Can you elaborate on the policy of Dade's Drug Court in terms of what criminal activity -- drug use v. drug dealing -- would be considered in this court?

Do you think Dade's Drug Court policy should be extended to the national level? If so, what would you do in your role as Attorney General to implement a national policy?

ANSWER: The Drug Court is a three-phase comprehensive substance abuse intervention strategy designed to intervene at the earliest stages with offenders charged with substance abuse related offenses. The Drug Court was initially created as a diversion program for first time cocaine offenders and has since expanded to encompass second and third time felony offenders convicted of non-violent crimes involving drugs. It involves a one-year program focusing on treatment and vocational counseling. The program is designed to entice drug abusers into treatment and return them to society as productive citizens. If the offender successfully "graduates" from one year of treatment and lives within society at-large for one year without another arrest, the offender's record is expunged of the offense.

Assessment of the various drug courts operating nationwide must still be regarded as tentative. Nevertheless, there are some general conclusions which can be drawn from Cook, Dade, and Milwaukee Counties and Philadelphia: (1) segregating drug cases helps speed their disposition; (2) courts can improve their processing of drug cases by utilizing tested and established court management strategies; (3) lenient sentences are frequently associated with quicker dispositions; and (4) drug cases can be given priority without adversely affecting the disposition of nondrug cases.

Moreover, the Bureau of Justice Assistance (BJA) has commissioned a comprehensive evaluation of a drug court in New York City, which will also include a comparative analysis of the existing drug courts in Chicago, Miami, Oakland, Portland and other cities. While New York is the only site to be evaluated on a comprehensive level, the study will also synthesize the findings from various studies of special drug courts over the past few years. The program brief should be available by late 1993.

Based on these results, a comprehensive model or prototype that involves the prosecution, court, and defender services components as well as availability of treatment for both post and pre-adjudicative referral will be developed. This prototype design will be field tested through BJA discretionary grant funding for future replication by BJA block funding.

QUESTION: DRUG CONTROL

In Milwaukee County there is a program which has specialized courts to hear cases involving drug crimes, homicides, and sexual assaults respectively. The goal of these specialized courts is to bring cases to trial within 90 days, and thereby address court congestion without infringing on a defendant's rights. The results of this court reform is impressive. They have:

- provided immediate relief to victims and witnesses.
- restored community confidence in the system.
- reduced jail overcrowding.
- reduced policy overtime and increased on-street time.
- increased the number and quality of cases disposed.

The American Bar Association has evaluated these courts and cited them as a national model for court reform. If confirmed, could you have someone from the Department consider the Milwaukee Courts project for wider application? I would be happy to provide additional information and work with the Department.

ANSWER: The right to a speedy trial has played a fundamental role throughout our nation's history. Not only because it protects the accused, but also because the expeditious resolution of cases is necessary to maintain the public's confidence in the rule of law. The increasingly lengthy delays caused by our burgeoning dockets have undermined confidence in our system of justice. Consequently, I would look forward to working with the Judiciary Committee to ensure that justice is meted out quickly and fairly and would be happy to review any suggestions you have in this regard.

QUESTION: JUVENILE JUSTICE

Last year, as Chairman of the Juvenile Justice Subcommittee I worked with others to reauthorize the Juvenile Justice and Delinquency Prevention Act.

- We strengthened key provisions in the Act that had never been carried out.
- We added a Delinquency Prevention and State Challenge Grant program to improve juvenile justice on the state and local level.
- We added provisions authorizing gang prevention programs (Senator Simon), mentoring programs (Senator Lautenberg), and a White House Conference on Juvenile Justice (Senator Graham).

O-J-J-D-P's Final FY93 Programs Priorities do not include many of these provisions. Will you direct the new Administrator to review the FY93 plan to see if the Congressional mandates can be followed?

ANSWER: One of the most important fronts in the war on crime is juvenile justice and delinquency prevention. If we want to be rid of hardened criminals, we must get to them when they are children, before they become incorrigible. I assure you that this area will be one of the important focuses of the Department of Justice. Once a new administrator is in place, I look forward to working with the administrator and the Committee to see that we are all satisfied that we are doing everything that can be done given our resources in this area.

QUESTION: INSPECTOR GENERAL:

The Office of Inspector General at the Department of Justice was created in 1988. A strong, effective Inspector General office is one of the best tools we have for ferreting out fraud, waste and abuse involving taxpayers dollars and ensuring the integrity of Justice Department programs and operations. But a strong IG cannot be effective without the support and encouragement of the Attorney General.

Do you support the Office of Inspector General in the Justice Department, and will you work to make it as strong, independent and effective as possible?

You are probably aware of an Attorney General Order, signed on December 11, 1992 by Deputy Attorney General George Terwilliger as Acting Attorney General, which severely cut back the authority of the Office of the Inspector General to conduct investigations. It is the belief of some of our colleagues, Senator Glenn in particular, that this Order unlawfully decimated the effectiveness and authority of the IG office.

Will you rescind this Order?

At the time the IG Office was created at Justice, there were already in place certain offices within FBI, INS and others which conducted internal reviews. Those offices were left intact and not consolidated with the new IG office, at the request of the Attorney General. The Conference Committee report suggests that the Attorney General should review the issue of merging those offices into the Office of the Inspector General:

"In deference to the request of the Attorney General, the Senate recedes to the House with respect to not transferring the Department's Office of Professional Responsibility (OPR) into the OIG. In the future the Attorney General may determine that OPR and the other audit, internal investigation and inspection units remaining outside the OIG should be consolidated in the OIG... Such a transfer would be consistent with the inspector general concept."

Will you take a look at this issue or merger, with an eye towards centralizing the "watchdog" function of the agency?

ANSWER: SEE THE RESPONSE TO SENATOR SIMON'S QUESTION ON THE SAME ISSUE

SENATOR DIANNE FEINSTEIN
QUESTIONS FOR THE ATTORNEY GENERAL JANET RENO
CONFIRMATION HEARING

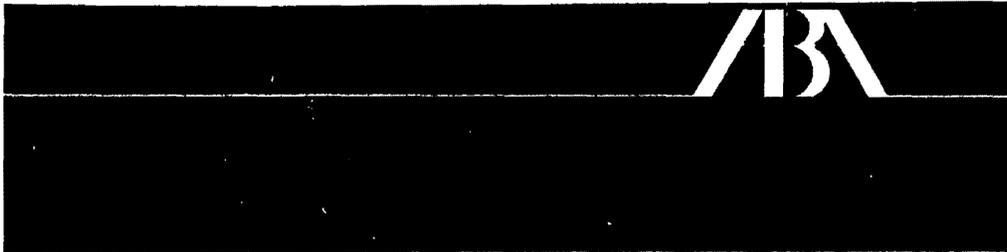
QUESTION: California has \$3.5 billion at risk in a tax case that Barclays Bank is asking the U.S. Supreme Court to review. The Bush Administration opposed California in this case, while President Clinton pledged last year to be "pro-California in this litigation." I am concerned that the Solicitor General may, as a routine matter, file a brief in support of the bank and against California. As Attorney General, will you see that California's interests in the Barclays case are fairly and thoroughly reviewed, under your direction, before the Solicitor General files any briefs on this case with the U.S. Supreme Court?

ANSWER: We are well aware of this matter, and I can assure you that we will give careful consideration to California's interests before the Department takes any further position in the Barclays case.

QUESTION: Attached is the letter and supporting information from California Attorney General Daniel E. Lungren, which I referred to in your confirmation hearings, on the issue of habeas corpus. I would be most grateful for your comments.

ANSWER: The need for habeas corpus reform is obvious from all perspectives. From the state's perspective, the many years of delay that often attend a habeas corpus appeal are unacceptable. From the defense perspective, there is a need to improve the availability and quality of representation. I believe that the habeas corpus reform proposal developed in negotiations between yourself and the National District Attorneys Association (S. 1441) strikes an appropriate balance and merits enactment.

ADDITIONAL SUBMISSIONS FOR THE RECORD



STATEMENT OF

J. MICHAEL McWILLIAMS

PRESIDENT

AMERICAN BAR ASSOCIATION

before the

COMMITTEE ON THE JUDICIARY

of the

UNITED STATES SENATE

in support of the nomination of

JANET RENO

to be

ATTORNEY GENERAL OF THE UNITED STATES .

March 9, 1993

Mr. Chairman and Members of the Committee:

I am J. Michael McWilliams, a lawyer in private practice in Baltimore, MD, and the current President of the American Bar Association. I am pleased to submit this statement to you on behalf of our Association with respect to the nomination of Janet Reno to be Attorney General of the United States.

You have heard extensive testimony about the nominee's record as an attorney in private practice, her experience as staff counsel in the Florida legislature, and her service as State's Attorney for Dade County. My statement will address her service to the legal profession and the public through her extensive work in the activities of the American Bar Association.

Ms. Reno has been extraordinarily generous with her time and talents on projects which affect some of the most difficult and important aspects of the justice system in this country: the treatment of juveniles charged with crimes, the problems of overcrowded jails, the crisis we face in dealing with a great increase in criminal cases in our courts, and the complex and sensitive issue of racial bias in our justice system. In each instance, she has contributed significantly to the national dialogue on these issues.

Ms. Reno's first service to the ABA was as a member of the Joint Commission on Juvenile Justice Standards of the ABA and the Institute for Judicial Administration. Under the leadership of Judge Irving Kaufman, the Commission in the 1970's developed the 20-volume Juvenile Justice Standards

which have become the blueprint and Bible for the operation of juvenile justice systems in this country. Their coverage extends from the police handling of juveniles to proper sentences for youth. Numerous jurisdictions have effected changes in their laws and rules of procedure based on the Standards. Ms. Reno was one of the most energetic and thoughtful contributors to the project.

She then turned her talents in 1983 to the problems of overcrowding in the Nation's jails. Serving as chair of the Committee on Overcrowded Jails of the Judicial Administration Division, she helped author an analytical and thoughtful analysis of this difficult issue.

In 1986 she became a member of a nine-member Special Committee on Criminal Justice in a Free Society, chaired by Professor Samuel Dash of Georgetown. That group elicited comments from hundreds of police, prosecutors, judges and defense attorneys about the state of the nation's criminal justice system.

The study disclosed that these criminal justice professionals believed that the major impediment to successful apprehension, prosecution and conviction of criminals was seriously inadequate funding -- not constitutional safeguards, as the public is often thought to believe.

Finally, last year we asked her to once again assist us by serving as a member of a Task Force on Minorities and the Justice System, a group we formed in the wake of the first Rodney King trial in Los Angeles. The Task Force report contained thirty-eight practical recommendations which it is

hoped will stimulate the legal profession to consider new and different approaches to combat racial and ethnic bias in our justice system. Ms. Reno was an active and vocal member of the Task Force, particularly with regard to recommendations concerning the need for the legal profession to address the needs of children before they become enmeshed in the juvenile justice system.

In sum, Janet Reno has made a significant contribution to the work of the organized bar in seeking to improve the administration of justice in this country. The experience and knowledge, the sensitivity and wisdom, and the dedication and vigor she has brought to these activities should serve her extraordinarily well as Attorney General.

JUDICIAL SELECTION MONITORING PROJECT

A project of the Free Congress Foundation's Center for Law & Democracy

• 717 SECOND STREET, N.E. • WASHINGTON D.C. 20002 • PHONE: (202) 546-3000 • FAX (202) 543-8425

Thomas L. Jipping, M.A., J.D.
Director

Marianne E. Lombardi
Deputy Director



March 15, 1993

PROJECT SUPPORTERS:
(Partial Listing)

Alabama Family Alliance
American Conservative Union
American Constitutional Law Foundation
American Family Assoc.
Americans for Tax Reform
Arkansas Family Research Institute
Arkansas Family Council
The Assoc. for Families (TAF)
Assoc. of Christian Schools Int'l
Black Family Forum
Christian Coalition
Citizens Against Violent Crime
Citizens for Law and Order
Coalitions for America
Concerned Citizens of Florida
Concerned Women for America
Conservative Campaign Fund
Delaware Family Foundation
Eagle Forum
Equal Opportunity Foundation
The Family Foundation (FA)
Family Research Council
Free Speech Advocates
Georgia Public Policy Foundation
Home School Legal Defense Assoc.
Institute for Justice
Landmark Legal Foundation
Lincoln Legal Foundation
Memory of Victims Everywhere
Michigan Family Forum
National Assoc. of Evangelicals
National Coalition for Restoration of the Black Family
National Empowerment Television
National Family Foundation
National Law Center for Children and Families
National Tax Limitation Committee
New Yorkers Family Research Foundation
New Yorkers for Constitutional Freedoms
Pennsylvania Parents Committee
Resource Institute of Oklahoma
Students for America
Traditional Values Coalition
U.S. Business and Industrial Council

Sen. Joseph Biden
Chairman
Senate Judiciary Committee
221 Russell Senate Office Building
Washington, D.C. 20510-0802

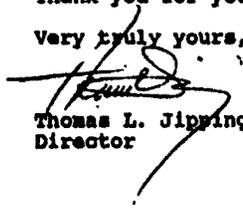
Dear Senator Biden:

Enclosed please find a copy of an analysis detailing Attorney General Reno's record as Dade County's State Attorney. Prior to her confirmation, we delivered a copy of the report to each member of the Senate. We hope you had a chance to read it.

We request that this report be included in the record of the Senate's consideration of this appointment.

Thank you for your cooperation.

Very truly yours,


Thomas L. Jipping, M.A., J.D.
Director


Marianne E. Lombardi
Deputy Director

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Concerned Women for America
Conservative Campaign Fund
Delaware Family Foundation
Eagle Forum
Equal Opportunity Foundation
The Family Foundation (VA)
Family Research Council
Free Speech Advocates
Georgia Public Policy Foundation
Home School Legal Defense Assoc.
Institute for Justice
Landmark Legal Foundation
Lincoln Legal Foundation
Memory of Victims Everywhere
Michigan Family Forum
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National Law Center for Children and Families
National Tax Limitation Committee
New Yorkers Family Research Foundation
New Yorkers for Constitutional Freedoms
Pennsylvania Parents Commission
Resource Institute of Oklahoma
Students for America
Traditional Values Coalition
U.S. Business and Industrial Council

THE JANET RENO NOMINATION: SACRIFICING QUALITY FOR QUANTITY

An analysis of
President Bill Clinton's nomination of
JANET RENO
to be Attorney General of the United States

by
Thomas L. Jipping, M.A., J.D.

March 8, 1993

**THE JANET RENO NOMINATION:
SACRIFICING QUALITY FOR QUANTITY**

by
Thomas L. Jipping, M.A.,J.D.¹

On February 11, 1993, President Bill Clinton exercised his power under Article II, Section 2 of the United States Constitution² and nominated Janet Reno to be Attorney General of the United States. This analysis is provided by the Judicial Selection Monitoring Project³ to assist the U.S. Senate in fulfilling its constitutional role of "advice and consent" and in considering Miss Reno's nomination.

Janet Reno was born in Miami on July 21, 1938. She received a degree in chemistry from Cornell University in 1960 and a law degree from Harvard in 1963. Miss Reno practiced law from 1962 to 1971, when she became staff director of the Judiciary Committee in the Florida House of Representatives. From December 1972 to 1976, Miss Reno occupied difference positions in the state attorney's office and, in 1976, again entered private practice. She was appointed state attorney for Florida's Dade County in 1978. She was elected that year and re-elected several times since then. Miss Reno has received numerous awards and holds memberships in many bar associations and civic organizations.

THE FIRST FEMALE ATTORNEY GENERAL

President Clinton promised a Cabinet that looks like America, a pledge that the *Washington Post* said had "Clinton cornered."⁴ The media widely reported on the lobbying efforts by feminist groups hoping that he would name women to as many as half the

¹ Director, Center for Law & Democracy, Free Congress Foundation. B.A. with honors, Calvin College (1983); J.D. cum laude, State University of New York (SUNY) at Buffalo (1987); M.A., SUNY-Buffalo (1989). Law clerk, U.S. Court of Appeals, Third Circuit (1988-89).

² Article II, Section 2 states in part that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint...all other Officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law." This includes Cabinet members.

³ A project of the Free Congress Foundation's Center for Law & Democracy, the Judicial Selection Monitoring Project is supported by more than 40 national and state organizations. It was launched in August 1992 to expand the Foundation's ability to participate in the debate over nominations to judicial and Department of Justice posts.

⁴ Marcus & Balz, "A Campaign Promise Has Clinton Cornered," *Washington Post*, February 10, 1993, at A1.

positions in his Cabinet. With all the Cabinet posts but Attorney General filled, however, President Clinton faced the prospect of having no more women in his inner circle than President Bush did. The search for a woman to head the Justice Department began.

President Clinton's first choice, corporate lawyer Zoë Baird, withdrew by the close of her nomination hearing. She admitted having deliberately broken the law by hiring illegal aliens as servants and refusing to pay Social Security taxes for those employees. The American people spoke swiftly, loudly, and nearly unanimously that a deliberate lawbreaker ought not to become the nation's top law enforcement official. The Clinton administration didn't think it was such a big deal; excuses ranged from "everyone is doing it" to "it was just a technical violation." The American people said the Clinton administration just didn't get it.

President Clinton's second choice, U.S. District Judge Kimba Wood, also withdrew her name from consideration. She admitted having hired illegal aliens, though it was not illegal to do so at the time. The blame game quickly began, with Clinton administration sources insisting that Judge Wood had given "lawyerly" answers to questions about whether she had a "Zoë Baird problem." The search for a woman to head the Justice Department continued.

The Clinton administration came under increased pressure to pick someone with unquestioned integrity, significant experience, and strong leadership. That pressure included calls that the demand for a woman be dropped. As expected, names of men supposedly being considered surfaced on the media's reported "short lists." This fooled virtually nobody. The administration which was turning taxes into contributions and spending into investment had turned tokenism into diversity.

When President Clinton nominated Miss Reno on February 11, he claimed that "a determination to have a woman as the first Attorney General" guided his selection only "somewhat." In fact, Miss Reno was reportedly pushed by Patricia Ireland, president of the National Organization for Women; Harriet Woods, president of the National Women's Political Caucus; and Marian Wright Edelman, president of the Children's Defense Fund.⁵ Feminist groups were quick to cheer her nomination.⁶ Her nomination demonstrates, however, that such a drive for quantity can compromise quality.

⁵ The *Miami Herald* reported on February 9, 1993, that Miss Reno was helped "immeasurably" by Mrs. Edelman's strong support.

⁶ See, e.g., Goldman, "Women's Groups Quick to Rally Around Reno," *Legal Times*, February 15, 1993, at 1.

JANET RENO'S QUALIFICATIONS

Miss Reno has no federal experience of any kind. This is one stated reason why President Clinton declined to nominate her earlier.⁷ The closest she comes to federal experience is that she "has worked successfully with federal authorities on a number of cases."⁸

Her complete lack of federal experience arguably makes Miss Reno even less qualified than President Clinton's first two choices. Zoë Baird had served in the Justice Department and the White House Counsel's office, while Kimba Wood is a sitting federal district judge. It appears that Miss Reno's social activism better explains not only her choice, but the degree to which feminist activists are so strongly backing her nomination.

The most common theme pushed by Miss Reno's supporters is that she has integrity. No doubt most individuals who remain otherwise unqualified to be U.S. Attorney General have integrity. President Clinton cited this as "one quality most essential to being Attorney General."⁹ The *Miami Herald* endorsed Miss Reno's opponent in 1984 by focusing on her record in office. Four years later, the paper endorsed Miss Reno by focusing on her "personal honesty."¹⁰ Personal characteristics are important, but credentials and a record of achievement are equally or more persuasive. When the focus shifts from the personal to the professional, the case for Janet Reno's nomination looks very different.

Another example. In 1980, Miss Reno prosecuted four white Dade County police officers who had beaten black motorist Arthur McDuffie to death. All four were acquitted by an all-white jury and three days of rioting swept Miami, killing more than a dozen people and costing nearly \$100 million in damage. A committee appointed by then-Governor Bob Graham "strongly criticized Dade State Attorney Janet Reno, saying that while she is not a racist, she runs her office 'in such a way as to support the black community's perception of the office as racist.'"¹¹

⁷ See Berke, "Clinton Picks Miami Woman, Veteran State Prosecutor, to Be His Attorney General," *New York Times*, February 12, 1993, at A1; Marcus, "Clinton Nominates Reno at Justice," *Washington Post*, February 12, 1993, at A23.

⁸ Davidson, "Miami Prosecutor Janet Reno Is Picked By President to Be Attorney General," *Wall Street Journal*, February 12, 1993, at A3.

⁹ Quoted in Berke, *supra* note 7.

¹⁰ Davidson, *supra* note 8.

¹¹ Tasker, "Panel: Miami Was Ripe for a Riot," *Miami Herald*, November 30, 1980, at 1A.

Performance such as this made her, according to one prominent black lawyer, "the public official most criticized in the black community."¹² He eventually changed his mind about her. Explaining why, he cited Miss Reno's skill as a politician. Indeed, her friends say her "shrewd political skill" is her "most striking attribute."¹³ One former Reno assistant put it this way: "She is very reactive. The issue of the moment becomes everybody's top priority....I think the chances are she's honestly concerned, but sometimes it looks a little like politics."¹⁴ No doubt many skilled politicians remain otherwise unqualified to head the Justice Department. Another article concluded that members of Miami's black community are "Reno's toughest critics" though many like her personally.¹⁵

Miss Reno's supporters also claim that her success at being re-elected Dade County state attorney somehow qualifies her to be Attorney General. President Clinton stated at the February 11 press conference that this "support of the people who know her best is the most telling testament to her skills that I know of." He did not identify the skills to which he referred. Re-election is testament to political skills, to be sure, though it turns out that Miss Reno had no Republican opponent in 1978 and ran unopposed in 1980. Yet Miss Reno's advocates, including President Clinton, have yet to explain why vote-getting skills qualifies anyone to be Attorney General.

JANET RENO'S RECORD

At the press conference announcing Miss Reno's nomination, President Clinton painted a picture of a top-flight manager with a tough and effective law enforcement record. Reality belies the rhetoric on both counts.

In spite of President Clinton's praise of Reno as a good manager, the *Miami Herald* reported as early as 1979 that with Reno in charge, turnover of personnel was high and morale was low. The *Herald* later reviewed her record and said that upon Reno's election,

¹² Quoted in Rohter, "Tough 'Front-Line Warrior'," *New York Times*, February 12, 1993, at A22.

¹³ Isikoff and Von Drehle, "Prosecutor Wins High Marks Battling Miami Vice," *Washington Post*, February 12, 1993, at A23.

¹⁴ Quoted in Kurtz & Dunnigan, "Reno's Record in Court: About Average," *Legal Times*, March 1, 1993, at 23.

¹⁵ Nickell, *XS*, February 17, 1993.

"the state attorney's office plunged into chaos. Big cases were thrown out on technicalities. And conviction rates plummeted."¹⁶ The *Legal Times* called her more of a delegator than an administrator.¹⁷

In 1982, after a two-year investigation of a drug smuggling ring, a trial judge threw out critical wiretap evidence that had taken months and nearly a quarter million dollars to collect. The *Miami Herald* at the time blamed this on a "glaring misjudgment"¹⁸ by Reno's office. As a result, "Reno dropped all charges" and the drug dealing continued. In the wake of the Arthur McDuffie fiasco, critics similarly charged Miss Reno's office with "total lack of judgment," for charging the wrong officers.¹⁹ President Clinton on February 11 said Reno was "schooled in the management of tough and complex problems and difficult-to-call legal cases." The truth is that, according to the *Herald*, she "developed a reputation for losing the big ones."²⁰

Actually, it appears that she loses the small ones as well, belying the image of a tough and effective law enforcement officer. One analysis of her record showed that her office brings just 2% of all felony defendants to trial, the lowest rate in the state.²¹ Her defenders might say this is because she obtains numerous guilty pleas. Wrong again. Miss Reno's office has the lowest rate of guilty pleas before trial in the state. Her office loses almost 40% of the felony cases they do finally bring to trial, ranking 19th out of the state's 20 judicial circuits.²² In Dade County, 97% of criminal cases are resolved through plea bargaining, a far higher proportion than elsewhere in the state.²³ The ratio of arrests to actual incarceration in neighboring Broward County, which has a similar crime rate, was 10:1 in 1990. In Dade County, under Janet Reno's command, the ratio was 30:1.²⁴

¹⁶ Lee & Van Natta, "Some Wins, Some Losses and Lots of Respect: Janet Reno's 15 Years as a Prosecutor," *Miami Herald*, February 10, 1993, at 6A.

¹⁷ Kurtz & Dunnigan, *supra* note 14.

¹⁸ Rieder, "Errors Lead to Tick-Talks Toss-Out," *Miami Herald*, October 3, 1982, §2, at 1.

¹⁹ Miller, "Hindsight: Advice, Criticism Plentiful," *Miami Herald*, May 20, 1980, at 18A.

²⁰ Lee & Van Natta, *supra* note 16.

²¹ Kurtz & Dunnigan, *supra* note 14.

²² "Losing Rate High for Reno's Office, But Numbers Don't Tell Full Story," *Miami Herald*, February 21, 1993, at 1B.

²³ United Press International, October 20, 1985.

²⁴ This analysis was based on data from the Florida Department of Law Enforcement and the Florida Department of Corrections and was conducted by Daniel Insdorf, a former Metro Dade County police officer.

The *Miami Herald* reviewed her career and listed 13 of the major cases prosecuted during her career. Only two resulted in convictions and one in a guilty plea. Four resulted in acquittals, two were turned over to federal officials. In one case, she refused to re-prosecute after a new trial was ordered. A major sting operation resulted in 24 cases, and 15 defendants pleaded guilty, but not a single one went to jail.²⁵

Of the 55,000 people arrested each year on felony charges in Dade County, more than 20,000 are released under the supervision of the Pre-Trial Release (PTR) agency. The U.S. Department of Justice found that nearly 30% of those under PTR supervision failed to show up for their court date, 10 times the rate when the PTR program began in 1966.

In 1989, 76% of the re-arrest warrants issued in Dade County were for defendants released through PTR, which itself admitted that nearly half of its defendants were classified as "unsuccessful referrals"²⁶ who violated the basic conditions of their release.

Another review of Dade County's bail system concluded that "an uncountable number [of defendants] are released before authorities are able to positively identify them....[D]uring the past half-dozen years, the Pretrial Services Bureau has become a model of bureaucratic inefficiency, unable to function properly."²⁷

FORM OVER SUBSTANCE

The basic facts do not form a solid law enforcement record. Miss Reno's advocates, therefore, often point to other efforts, innovative or unique approaches to problems. These, however, also turn out to look interesting on the outside but to be less than effective upon close scrutiny. Indeed, this has been her reputation for years. One review stated that "a Reno plan articulated is not necessarily a plan implemented."²⁸

President Clinton praised Miss Reno for her innovative approach to law enforcement. He cited the special drug court she established. He failed to mention that she hired a convicted drug dealer as a prosecutor assigned to the drug court. That prosecutor, Eugene Cipriano, had succeeded in having his criminal record sealed and Miss Reno refuses to say whether she knew of his criminal record when she hired him.

²⁵ Lee & Van Natta, *supra* note 16.

²⁶ See generally Carlisle, "Criminal Welfare: A Jail Reduction Failure," *Policy Insights* No.406 (April 1992).

²⁷ Villano, "Get Out of Jail Free," *New Times*, July 10-16, 1991.

²⁸ Hardin, "Reno: Year One," *Tropic*, March 11, 1979, at 12.

The *Wall Street Journal* reported that Miss Reno "established a special public corruption unit."²⁹ Establishing a unit is one thing; the actual performance of that unit may be something else entirely. The *Miami Herald* editorialized in favor of Miss Reno's appointment, yet included this blistering assessment of Miss Reno's record in this very area:

*The Dade state attorney's office has a miserable record in pursuing public corruption; it avoids such cases like the plague....Reno's response: Bring me the evidence and I'll prosecute. That's a cop-out. Prosecutors are supposed to dig up their own evidence and make their own cases. It's called "investigation."*³⁰

The *New York Times* similarly noted: "Many Miami lawyers and judges, though, have also criticized Ms. Reno for not being aggressive enough in pursuing big, tough cases, especially those involving police and public officials."³¹ The *Washington Post*: "She has also been criticized for losing several high-profile public corruption cases and for failing to bring charges in other local scandals."³² The *New York Times*:

*There are, however, specific criticisms of [Reno], most of them muted now that she has been nominated to be the nation's top legal official. Some lawyers and community leaders privately suggest that she has not been aggressive enough in pursuing some police brutality cases. Others said her office had too often backed away from complicated drug trafficking and conspiracy cases, preferring to allow Federal prosecutors to press them. And some criticize her office for allowing too much plea bargaining, resulting in lighter sentences for offenders.*³³

During the presidential campaign, Bill Clinton was pressed about the future of the Child Exploitation and Obscenity Section, part of the criminal division of the Department of Justice. The liberal establishment has called for elimination of the section, formerly the Obscenity Enforcement Unit, and a trade association of pornographers took out newspaper ads during the campaign endorsing Clinton's candidacy. In letters to concerned citizens, the

²⁹ Davidson, *supra* note 8.

³⁰ Haasen, "Reno Has Spunk -- But Does She Have the Spine?," *Miami Herald*, February 11, 1993.

³¹ Rohrer, *supra* note 12.

³² Marcus, *supra* note 7.

³³ Smothers, "Choice for Justice Dept. Earns Hometown Praise," *New York Times*, February 15, 1993, at A12.

Clinton/Gore campaign stated: "Be assured that aggressive enforcement of federal obscenity laws by the Justice Department--particularly by the Child Exploitation and Obscenity Section--will be a priority in a Clinton-Gore administration."

These may be nice-sounding words, but the person who wrote them has nominated someone with a very different record on the subject. Miss Reno appears to have turned a blind eye to this very subject. She has long been criticized for failing to prosecute obscenity in Dade County. The American Family Association of Florida issued a press release on February 9 opposing Reno's nomination. It stated that "Dade County has more outlets for hardcore pornography than does the rest of the entire State of Florida....Janet Reno has not seriously prosecuted an obscenity case since she has taken office."

In June 1990, then-Governor Bob Martinez appointed a special prosecutor to investigate allegations that prosecutors in Miss Reno's office assigned to the Sexual Battery Unit frequently organized parties where they "watched pornographic evidence tapes in their office for fun" including tapes of women having sex with animals.³⁴ All Miss Reno would acknowledge was "bad judgment and poor taste." Miss Reno's advocates may be quick to claim that these staffers did nothing illegal. This misses the point entirely. Dismissing this as nothing more than bad judgment or poor taste demonstrates either total ignorance or profound insensitivity to the crisis of obscenity and the impact it has on the lives of so many American women and children. Later, she refused to accept petitions signed by hundreds of concerned Dade County residents and child advocate groups which charged that "too many sex crimes go unprosecuted in Dade [County]."³⁵

At her February 11 press conference, Miss Reno stated she wanted "to do everything I possibly can to protect America's children from abuse and violence." It is impossible to protect women and children in America from exploitation and violence without attacking obscenity. Yet Miami has but one officer assigned to prosecute obscenity.

JANET RENO'S SOCIAL ACTIVISM

At the press conference announcing her nomination, Miss Reno mentioned enforcement of the civil rights and environmental laws as important priorities, but gave less emphasis to criminal law. This is consistent with evaluations of her tenure in Dade County. Reports often note her broad social agenda, including her being "in the forefront of efforts

³⁴ Evans, "Special Prosecutor Named in Case of Porn-Tape Parties," *Miami Herald*, June 16, 1990, at 3B. The special prosecutor apparently found no evidence of anything unlawful.

³⁵ "Activists Demand Reno Investigation," *Miami Herald*, September 7, 1990.

to increase money for state education programs and for preschool programs.³⁶ It is certainly unusual for a law enforcement officer to be such a social activist; it is more than unusual for a law enforcement officer with such a poor law enforcement record as Miss Reno has compiled.

Reports from Miami indicate that social activism may actually be a higher priority for Miss Reno than law enforcement. "Janet Reno has never particularly liked being a prosecutor....She has always wanted to do the legal-reform thing, so I guess she's an excellent choice for this job under this Administration."³⁷

In 1988, Miss Reno stated during a debate against her opponent that her biggest priority was to protect the right of the guilty, not to convict the guilty. The *New York Times* put it in fit-to-printese: "She has also expressed doubts about minimum mandatory sentences and has a reputation for respecting the rights of defendants."³⁸ The Fraternal Order of Police endorsed her opponent, a political neophyte with no chance of winning the election.

At the press conference announcing her nomination, Miss Reno admitted that she personally opposes the death penalty. She insisted that she would, nonetheless, ask for it "when the evidence and the law justify the death penalty." President Clinton stated, and various news reports have repeated, that her office "won 80 death penalty convictions during her tenure."³⁹ This figure means nothing without knowing more. A few of the questions it begs include: How many of those who received the death penalty have actually been executed? In what percentage of cases involving a death-eligible crime was the death penalty sought?

The scandal in the criminal justice system is not that the death penalty is never sought. The scandal is that the death penalty is never carried out. A variety of means exist at the federal level to frustrate implementation of the death penalty. Nothing is known, for example, about Miss Reno's views on habeas corpus reform.

Another liberal attempt to eliminate the death penalty through legislative sleight-of-hand involves imposition of racial quotas through the so-called "Racial Justice Act." Miss Reno stated at the February 11 press conference that enforcing the civil rights laws would be a high priority for the Department of Justice during her tenure. It is by no means clear whether she considers the death penalty a civil rights or a criminal justice issue.

³⁶ Smothers, *supra* note 33.

³⁷ Quoted in Rohrer, "Justice Dept. Nominee Is a Hands-On Leader," *New York Times*, February 16, 1993, at A15.

³⁸ Rohrer, *supra* note 12.

³⁹ Davidson, *supra* note 8.

Miss Reno's views on a variety of issues contribute to the conclusion that her political correctness rather than her law enforcement record caught the attention of the Clinton administration. She supports far more onerous controls on gun ownership than is discussed even in the liberal Congress. She believes that citizens must pass a written test and obtain insurance before being allowed to own guns.⁴⁰ She has even advocated complete prohibition of gun ownership,⁴¹ apparently believing that disarming the law-abiding public will help control crime.

Miss Reno has consistently spoken and written about how crime is a function of broad social factors. Rarely, if ever, does she talk about it as a matter of right and wrong, of personal accountability, or of public safety. She has expressed the view that poverty causes crime,⁴² and consistently calls for massive social programs and "new networks for delivering services" as the cure.⁴³ Whether she will press for an even greater expansion of the Department of Justice's budget to make room for such social engineering in a time of soaring deficits remains unanswered. The Department's payroll is already growing 4.5 times faster than civilian payrolls and its budget has quadrupled since 1980.⁴⁴

She believes that drugs are a medical problem that itself is a cause of crime, rather than a criminal justice problem itself.⁴⁵ This, of course, is the same argument used by those who would de-criminalize various addictive drugs.

Miss Reno has abused the power of her office by commandeering the grand jury process to further her social activism. Under Florida law, grand juries are convened to investigate crimes or the conduct of public officials and institutions. Miss Reno convened grand juries to, in effect, conduct hearings on social issues. In 1983, for example, she launched a nine-month investigation of the school dropout problem, assigning prosecutors to supervise preschool programs, organize baseball leagues, and establish "mom-and-pop grocery stores for welfare mothers to run."⁴⁶ In 1992, she convened a grand jury that reported on public management of the Miami River and firearms regulation. A legal analysis of the latter issue concluded that this was "an unlawful exercise of authority by the grand jury."

⁴⁰ Tanfani, "Grand Jury: Register Guns, Test Owners," *Miami Herald*, May 12, 1992, at 2B.

⁴¹ See details in *Florida Firing Line* (March 1993), at 1.

⁴² See, e.g., "Janet Reno's Call to Arms Against Crime," *Legal Times*, February 22, 1993, at 13.

⁴³ See, e.g., Reno, "To Protect Our Children is to Prevent Crime," *Florida Bar Journal*, March 1990.

⁴⁴ See Novack, "How About a Little Restructuring?," *Forbes*, March 15, 1993, at 91.

⁴⁵ See *Miami Herald*, December 11, 1981, at 33A.

⁴⁶ Klaidman, "The Long Arm of Janet Reno," *Legal Times*, February 22, 1993, at 8.

Such forays into playgrounds and social issues occurred while few felony cases went to trial, few were won once they got there, conviction rates plummeted, the obscenity trade flourished unchecked, plea bargaining multiplied "resulting in lighter sentences for offenders," and thousands of potentially dangerous criminal defendants were let loose to roam unsupervised. It appears that Miss Reno played while Dade burned.

CONCLUSION

President Clinton said in his State of the Union address that his administration would support what works, not what doesn't. Gender politics don't work. Miss Reno was chosen because of her gender and her politically correct social views. Her record perhaps clarifies President Clinton's claim on February 11 that "based on my criteria I think she's the best." Perhaps he was looking for a social activist rather than a law enforcement officer. If so, Miss Reno fits the bill. However, those who think a stricter and more focused commitment to law enforcement is essential for leadership in the Justice Department will be disappointed.

A WORD ABOUT ALLEGATIONS AND THREATS OF INTIMIDATION

On February 17, the Free Congress Foundation became aware of an allegation that, if true, would disqualify Janet Reno from serving as attorney general. We brought this allegation to the attention of Senate Judiciary Committee staff so that it could be appropriately handled. The Committee was already aware of the allegation. We did not go to the press, but fulfilled our responsibility as citizens to raise such potentially serious information through proper channels.

An individual in Florida who had been raising other matters about Miss Reno took it upon himself to tell the media that I personally knew about or otherwise had information concerning this allegation. It appears few in the media took him seriously, since little else he had every claimed about Miss Reno has ever been corroborated. A *Roll Call* reporter interviewed me on March 2.⁴⁷ Since I did not want to be sucked into a matter I neither originated nor knew much about, I insisted that the interview be off the record. The reporter agreed and said that, if he wrote a story about this allegation, he would call me back to verify what I would say on the record.

⁴⁷ The reporter, of course, has a different account of the groundrules for this interview.

He never called back, even to correct the spelling of my name. Rather, *Roll Call* published a front-page story on March 4 that portrayed the Free Congress Foundation, along with the National Rifle Association, as the originator of this allegation.⁴⁸ It claimed that I "related the allegations to committee staff at a meeting on the Hill."⁴⁹ I never attended any such meeting, and the reporter admitted to me that this was an error.

On March 4, Senator David Pryor (D-AR), President Clinton's legislative operative, took the Senate floor to denounce the Free Congress Foundation. He claimed that bringing an allegation that, if true, would disqualify a Cabinet nominee to the attention of the relevant Senate committee so that it could receive appropriate attention constituted "lobbying" activity in violation of the Foundation's tax-exempt status.

The Free Congress Foundation will not be intimidated into shirking its duty to engage in a robust debate about matters of such critical national importance. The idea that this communication is lobbying is laughable on its face, perhaps explaining why this portion of Senator Pryor's diatribe against the Foundation received virtually no media attention. Senator Pryor's hysterical reaction to a possibly unfounded allegation about a nominee seemingly on her way to confirmation reflects something else. Perhaps the Clinton administration knows something about Janet Reno that the American people do not. At the very least, Senator Pryor's attack was intended to bully critics of this administration into silence.

In 1989, Senator Pryor and others welcomed information from the Free Congress Foundation about the late Senator John Tower, President Bush's nominee to be Secretary of Defense. He thought then that bringing potentially disqualifying allegations against Republican nominees to be a virtuous act of civic duty. Now he thinks that bringing potentially disqualifying allegations about Democratic nominees to be virtually unlawful. Senator Pryor accused the Free Congress of hypocrisy; we think he should look in the mirror.

⁴⁸ Simpson, "Conservatives, NRA Promote Derogatory Allegations Against Nominee Janet Reno," *Roll Call*, March 4, 1993.

⁴⁹ *Id.* at 20.