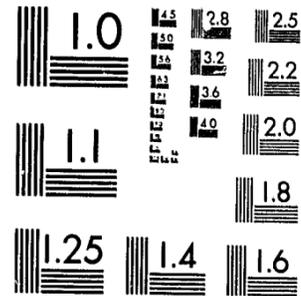


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National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

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101370



Department of Justice

STATEMENT

OF

VICTORIA TOENSING
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE THE

NCJRS

OCT 22 1985

SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY ACQUISITIONS
HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 2013, H.R. 2768, AND S. 630

ON

OCTOBER 17, 1985



101370

U.S. Department of Justice
National Institute of Justice

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- 1 -

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to be here today to present the views of the Department of Justice on H.R. 2768, the Narcoterrorism Information Rewards Act of 1985, and H.R. 2013 and S. 630, the Federal Drug Law Enforcement Agent Protection Act of 1985. These bills are aimed at facilitating the apprehension and conviction of those individuals who seek to debilitate the efforts of our courageous law enforcement officials in the war on drug trafficking by kidnaping and murdering these officials, or, as addressed in H.R. 2768, members of their immediate family. We greatly appreciate the Subcommittee's willingness to hold this hearing to deal with legislation which may be a major aid in our efforts to combat illicit drug trafficking both within our borders and internationally.

The increasing pressure brought to bear on major drug-trafficking cartels in this country and abroad by this Administration's enhanced efforts in drug law enforcement has produced a desperate response by these drug traffickers in the form of acts of terrorism against federal personnel involved in drug law enforcement and their families, as evidenced by the recent kidnaping and murder of Drug Enforcement Administration Special Agent Enrique Camarena-Salazar in Mexico. We must take steps now that will assist in the efforts to either prevent such terrorist acts or swiftly bring the perpetrators to justice. Because these bills provide the mechanism of monetary awards for information useful in pursuing these efforts, we support their

purpose wholeheartedly. Nevertheless, we have serious reservations about some aspects of H.R. 2013 and S. 630. These reservations are, however, removed by the language used in H.R. 2768 and we fully support the tenor and the thrust of that measure. We will discuss our reservations as to some aspects of H.R. 2013 and S. 630 in the context of what we view as the curative provisions of H.R. 2768.

First, H.R. 2013 and S. 630 both structure a reward system funded through the Department's Assets Forfeiture Fund, which was established by the Comprehensive Crime Control Act of 1984 (codified at Section 524(c), Title 28, United States Code). We are strongly of the view that the Assets Forfeiture Fund must be reserved exclusively to pay the forfeiture-related expenses for which it was established. ^{1/} The legislative history of the Act indicates that Congress established the Fund for the specific purpose of defraying the expenses of forfeiture in those cases where the expenses associated with the forfeiture of a particular piece of property exceed the amount realized by the sale of the property. (See S. REP. NO. 98-225, 98th Cong., 1st Sess. 216 (1983).) Therefore, we respectfully oppose opening up the Fund

^{1/} Congress specifically delineated in 28 U.S.C. 524(c) (1) that the Fund may be used to pay forfeiture-related expenses for the seizure, maintenance and forfeiture of property; liens and mortgages; orders of mitigation or remission; orders of equitable sharing with state and local law enforcement agencies; awards for forfeiture information; equipping conveyances placed into official use for drug law enforcement; and purchases of evidence of any violation of the Controlled Substances Act or the Controlled Substances Import and Export Act.

for other purposes, even those as laudable as intended by H.R. 2013 and S. 630. While we could develop many worthwhile drug enforcement purposes for which the Fund might conceivably be used, if we were to add all such costs to the expenses which may be paid from the Fund, it would only be a short period of time before the Fund were totally bankrupt. In such an event, the laudable purpose of these bills would be frustrated by the unavailability of funds in the Assets Forfeiture Fund. In comparison, the reward system established by H.R. 2768 is to be funded through the normal appropriations process. Through the appropriations authorization contained in Section 8 of H.R. 2768, the integrity of the Fund is preserved so as to achieve the forfeiture-related purposes of the Fund as specifically delineated by Congress, and the viability of H.R. 2768 is insured by authorizing funding independent of the Assets Forfeiture Fund.

Second, we are of the view that the language of H.R. 2013 and S. 630 is not sufficiently broad to achieve the purpose of the bills. While H.R. 2013 and S. 630 are the seminal bills addressing the problem of personal attacks on federal officials involved in drug law enforcement, comparisons of these original bills with H.R. 2768 reveal improvements in H.R. 2768 over its predecessor bills, which we view as necessary to fully achieve the purpose of all three bills. In this regard, please allow me to note the provision in H.R. 2768 (Section 2, Paragraph (2)), which provides for the payment of a reward to any individual who provides information as to the kidnap or murder of a member of the immediate family of a federal officer or employee

engaged in drug law enforcement. ^{2/} Neither H.R. 2013 nor S. 630 addresses the threat to the family of the officer or employee. Moreover, H.R. 2768 clearly applies to any federal official involved in drug enforcement without regard to whether the official is employed by a drug enforcement agency, such as an Internal Revenue Service official, while H.R. 2013 and S. 630 both are narrowly drafted to cover only federal drug law enforcement agents. We view this distinction as important because all officials involved in drug investigations and prosecutions are potential targets of violence by drug-trafficking cartels. Likewise, H.R. 2768 (Section 2, Paragraphs (3) and (4)) addresses the circumstances of an attempt or conspiracy to kidnap or murder a federal officer or employee involved in drug law enforcement or a member of his or her immediate family. H.R. 2013 and S. 630 are both mute on this aspect of the problem.

Last, we have serious reservation about the lack of recognition in H.R. 2013 and S. 630 of the role of the Department of State in the international aspects of the bills. In contrast, section 7 of H.R. 2768 appropriately provides that "the Attorney General shall consult with the Secretary of State before making any reward under this Act to a person outside the United States." It is our position that any bill in this area should recognize

^{2/} 18 U.S.C. 115, enacted as part of the Comprehensive Crime Control Act of 1984, makes criminal acts of murder or kidnapping directed at the immediate family of a federal law enforcement officer, if done with intent to intimidate or retaliate against such official in the performance of official duties.

the role of the Department of State as to an offer of a reward in a foreign nation, which could have serious foreign policy ramifications.

In closing, I wish to once again express my appreciation to this Subcommittee for its interest in the welfare of our drug law enforcement personnel, and their families, who fight the battle against drug trafficking, oftentimes on remote and foreign soil. In tailoring a bill to provide them with the utmost protection--in terms of an effective deterrent--we must, at the same time, realize the necessity of maintaining the inviolability of the Assets Forfeiture Fund for use only for forfeiture-related expenses, as intended by Congress. We believe H.R. 2768 admirably preserves both purposes, which is why the Department supports enactment of this important legislation.

Mr. Chairman, that concludes my statement and I would be happy to answer any questions the Subcommittee may have.