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FEDERAL DRUG ENFORCEMENT

HEARINGS
BEFORE THE
PERMANENT
SUBCOMMITTEE ON INVESTIGATIONS
OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
UNITED STATES SENATE
NINETY-FOURTH CONGRESS
FIRST SESSION

JUNE 9, 10, AND 11, 1975

PART 1

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FEDERAL DRUG ENFORCEMENT

MONDAY, JUNE 9, 1975

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met at 10 a.m., in room 3302, Dirksen Senate Office Building, pursuant to Senate Resolution 111, as amended, Hon. Henry M. Jackson [chairman of the subcommittee] presiding.

Members of the subcommittee present: Senator Henry M. Jackson, Democrat, Washington; Senator Abraham A. Ribicoff, Democrat, Connecticut; Senator Sam Nunn, Democrat, Georgia; Senator Charles H. Percy, Republican, Illinois; and Senator Bill Brock, Republican, Tennessee.

Members of the professional staff present: Howard J. Feldman, chief counsel; Philip R. Manuel, investigator; Frederick Asselin, investigator; Stuart Statler, chief counsel to the minority; Robert Sloan, special counsel to the minority; and Ruth Y. Watt, chief clerk.

Chairman JACKSON. The committee will come to order.

[Members of the subcommittee present at time of convening: Senators Jackson, Ribicoff, Percy, and Brock.]

Chairman JACKSON. The Senate Permanent Subcommittee on Investigations begins today a series of hearings on Federal drug enforcement. The subcommittee will use the hearings as a platform upon which national drug abuse control policies and methodologies will be examined, debated, defined, and evaluated.

The subcommittee will receive testimony from a variety of expert sources so that the Senators will have the opportunity to evaluate the effectiveness of the enforcement effort according to both traditional and new methods of evaluation.

Much of the subcommittee's preliminary staff investigation has focused on the Nation's major narcotic enforcement agency, the Drug Enforcement Administration, commonly referred to as DEA, located within the Department of Justice.

DEA was created on July 1, 1973, under the terms of Reorganization Plan No. 2 of that same year. Accordingly, the subcommittee will exercise its oversight function in assessing the manner in which executive branch proponents of the reorganization promoted the plan to the Congress.

The subcommittee will receive testimony regarding the staff's preliminary inquiry into the accomplishments of Reorganization Plan No. 2 of 1973 and the agency it set up, DEA.

One of the main results of Reorganization Plan No. 2 was to remove from the U.S. Customs Service virtually all narcotics enforce-

ment functions, particularly with regard to intelligence-gathering responsibilities relating to the smuggling of contraband narcotics into the United States and the investigative responsibility to pursue these cases.

Since all narcotics—opium, morphine base, heroin, cocaine—are foreign products and must be smuggled into the United States, the subcommittee will wish to receive information as to the impact on enforcement that occurred when the Customs Service was confined to border inspection only in narcotics enforcement.

The subcommittee will examine the staff's preliminary findings which indicate that more narcotics are being smuggled into the United States since Reorganization Plan No. 2 went into effect in July of 1973.

The subcommittee will inquire of executive branch spokesmen and other witnesses as to whether the illegal importation of narcotics is on the upswing. If narcotics smuggling is increasing, the subcommittee will inquire of executive branch spokesmen as to why this upswing has occurred when one of the key benefits of Reorganization Plan No. 2, according to executive branch spokesmen, was to have been an improved border mechanism to disrupt the flow of narcotics into this country.

The subcommittee will examine preliminary staff findings indicating that there is disagreement among Federal narcotics enforcement personnel as to where the primary focus of the Federal effort should be—at the street level or at levels higher up in the drug underworld where the possibility exists for disrupting the flow of narcotics across the American borders and in interstate traffic.

The staff's preliminary inquiry has shown that Federal drug agents, particularly those involved in the internal mechanism of enforcement, are subject to considerable pressures which have in some instances resulted in personnel compromise or corruption.

For that reason, the subcommittee will examine the system of internal security employed at DEA. The subcommittee will examine allegations that DEA's top management has in certain instances reflected an indifference to integrity and management problems regarding the conduct of its own personnel.

The subcommittee will evaluate preliminary staff findings that indicate a pattern of indifference to integrity investigations going back to DEA's predecessor agencies, the Bureau of Narcotics and Dangerous Drugs (BNDD) and the Federal Bureau of Narcotics (FBN) before that.

To a considerable extent, the integrity problems associated with drug agents may be related to the use of Federal agents in "indiscriminate undercover work" in which these agents, posing as drug dealers themselves, are sometimes forced to adopt the lifestyle of the criminals they are trying to expose.

The subcommittee's inquiry will place special focus on the enforcement methodology, commonly termed "buy-bust," in which undercover agents buy illicit drugs, hoping that these purchases will lead investigators to identify and ultimately apprehend violators high up in the drug hierarchy.

The subcommittee staff, working with the General Accounting Office, is gathering figures which will reveal how much money the DEA, through its "buy-bust" system, infuses into the illicit drug network;

and whether this system is effective in immobilizing major drug syndicates.

The subcommittee will evaluate the coordination and cooperation that exists between the enforcement and treatment arms of the Federal drug control effort.

The early period of the ongoing investigation will focus on allegations that a pattern of indifference to integrity matters exists at DEA.

Because the subcommittee wishes to hear from all aspects of the Federal drug abuse control effort testimony, exhibits and submitted statements will be received from organizations such as the Special Action Office on Drug Abuse Prevention, the Drug Abuse Council, and Federal agencies such as the Bureau of Prisons, the Veterans' Administration, the Department of Defense and its individual services, the Customs Service, the Federal Bureau of Investigation, the Justice Department, the Treasury Department, and from police departments of major cities, and from physicians and others involved in the treatment aspect of drug control.

I consider the drug problem one of the most important issues facing the country today. We have had enough slogans; now we need facts upon which to make evaluations. I believe this intensive examination of the narcotics problem will provide the facts necessary to propose constructive recommendations relating to Federal narcotics law enforcement.

May I just add, too, that Senator Ribicoff, the chairman of the subcommittee which handled the reorganization plan, pointed out quite perceptively what was apt to happen.

I may say to Senator Ribicoff and to Senator Percy who served as chairman of that subcommittee and ranking minority leader, respectively, that what has come to pass here, that the net result has not been what the proponents, when they presented the plan, had suggested it would do.

It would appear that most of the effort has been made at the end of the road; that is, out in the street where the pushers are, rather than at the source overseas and in the intelligence-gathering part of it which should be the Federal role.

All 50 States have drug enforcement laws.

We have the police at the city level. We have all the State investigative authorities, but purely from that standpoint there is indeed a real reason to believe that the administration of this program has not been what it was purported it would be when the plan was submitted.

Above all else, as we go through these hearings there is a lack of that degree of professionalism that I think is critical to an agency as sensitive as one involved in drug enforcement because the temptation for payoffs and corruption, is tremendous in this kind of an operation.

Professionalism is the key thing that is lacking here. One may criticize certain activities of the FBI, but I remember as a young prosecutor, in one of the unsolved kidnapping cases, being exposed to the professionalism of the FBI. It is something that has always impressed me, and the fact that they have through the years been able to run their organization in such a way in which they have avoided any suspicion of corruption is the greatest tribute that can be paid to that investigative organization.

I must confess on the other hand, I see a threat of a lack of professionalism running through this operation. We are not prejudging it. The testimony will come out, and it will speak for itself. But I did want to make those general observations after having read through the records and listened to some of the witnesses.

First, Senator Percy, do you have a comment?

Senator Percy. Yes. Thank you very much, Mr. Chairman.

I am delighted to join with you and with Senator Ribicoff with whom I did work very closely in the development of Reorganization Plan No. 2. It is true that we did issue warnings at that time. We were deeply concerned at that time about some of the possible abuses in Federal drug law enforcement. We tried to point them out at that time.

Now, it is our unhappy duty in this oversight hearing to see whether or not any of those abuses have developed.

I am delighted to join Senator Brock this morning, also.

The hearings that we are commencing today are hearings of great concern to all Americans. We must consider that in Washington, D.C., alone, about 65 percent of all crime, break-ins, robberies, burglaries, and assaults occur in daylight hours before 6 p.m. Ordinarily, one would associate crime with nighttime.

We can recognize that much of this crime is drug related, and the desperation of the people to get money for drugs, for drug abuse, drives them to the kind of crime that has made our society, particularly urban areas, highly undesirable places to live in.

The total cost of drug-related crimes to the United States today and to the American people is around \$10 billion to \$15 billion. So that what we are dealing with in these hearings is a matter of vital concern to the safety and well-being of all Americans.

This subcommittee has been very deeply involved in oversight of Federal drug enforcement programs since the inception of the Drug Enforcement Administration of July 1, 1973.

Drug abuse, the broken lives and human misery it causes, and the violent crime it generates has been well documented and often analyzed. From time to time, Federal, State, and local drug enforcement efforts have been organized, modified, and rearranged and completely altered in an effort to improve and adjust the direction of the narcotic problems.

The subcommittee will focus on the promises and results of one such Federal proposal, Reorganization Plan No. 2 of 1973, which amalgamated most of the Federal drug effort in the Drug Enforcement Administration within the Department of Justice.

As an active participant in the congressional review of this reorganization plan, I felt a particular need to consider the effectiveness of the present organization and structure of Federal drug law enforcement programs, the overall management capabilities of DEA, and the enforcement approaches now used by all Federal agencies involved.

Such a review is especially desirable at this time in view of reliable reports that illicit narcotics are now being imported and used in ever-increasing quantities. Not only have we not turned the corner in the so-called war on drugs, but mounting evidence from public and private sources indicates that we are being waylaid by a series of minor skirmishes.

Indeed, almost 2 years after a major reorganization of manpower and resources, we must ask whether the Federal antidrug effort is any more effective than before, or even worse, whether we are in a state of retreat.

In the course of this inquiry, the subcommittee staff has received and developed information concerning allegations of malfeasance and, in some cases, corruption by Federal narcotics officials, some of whom now occupy positions of considerable responsibility.

The special emphasis placed on integrity matters during these hearings may raise some unpleasant questions which have long remained in the background, never squarely faced, never fully considered. To gloss over these issues once again would be to ignore the crucial relationship between official organized corruption and the successful smuggling and sale of narcotics.

As Ralph M. Susman, an authority in this area, has recently written, Congress must: "take cognizance of the fact that heroin trafficking is a highly organized, relatively low-risk, lucrative commercial venture. As with other organized criminal activities, it simply could not continue to exist on any significant scale without the complicity and cooperation of law enforcement authorities and criminal justice personnel at all levels of government, not only in foreign countries but in the United States as well."

Integrity matters within the Federal drug enforcement bureaucracy will be discussed in detail by the past three chief inspectors of the Bureau of Narcotics and Dangerous Drugs, and the Drug Enforcement Administration.

In this regard, what concerns me most is not isolated indiscretions but rather allegations that organized patterns of corruption have emerged at the Federal level and that there does not now exist a well-staffed, adequately financed, fully supported Office of Inspections in DEA with a clear mandate to combat improprieties and corruption at all levels.

Our first witness today the chairman has called is our chief investigator for organized crime, Philip Manuel. All of us who have worked with him on the subcommittee know him to be one of the most thorough investigators and most knowledgeable men in the United States on the matter of organized crime.

I was particularly pleased to see that he emphasized at the conclusion of his report to this subcommittee the high quality of many people who do work in drug law enforcement. Mr. Chairman, I think that it is essential whenever we hold hearings of this type which point out some of our problems that we not lose sight of the fact that most men and women engaged in this activity are devoted, dedicated public servants.

There is always a problem of morale within the Federal agencies that we are investigating, and so it is important to try to get a balanced picture.

I should like to emphasize at this time my opinion that the vast majority of all Federal drug agents, supervisors, and administrators are individuals of outstanding ability, dedicated to eliminating the plague of drug abuse and the incredible human misery that it entails. I know this from personal knowledge, but my own knowledge in this area is minuscule compared to that of Mr. Manuel.

I am delighted we both quite independently came to the same conclusion. I would hope that these hearings, while critical of some procedures and programs now in use, in no way lessen our understanding of the extreme difficulty of the narcotics agents' tasks.

Cases involving specific Federal drug officials will be discussed from time to time during these hearings. Criticism will be made and recommendations will be offered in some instances.

But it is my firm belief that, while insisting on personnel of only the highest caliber in DEA leadership positions, and throughout the agency, these hearings should avoid focusing exclusively on personalities to the detriment of our broader purpose.

Rather, it is my hope, and I know that the chairman shares this desire, that our hearings will constitute a thorough and impartial review of the entire Federal drug effort.

What we are concerned with is not just the gathering of statistics and the ability of an agency to deliver an impressive report to the Congress.

What we are looking for is real results, not at the low level on the street, because that should be dealt with by local and State authorities.

We are looking for the arrest and conviction of offenders in the categories classified as class 1 and 2, at the top of the pyramid. We are not so interested in getting a little fish down below. That should be someone else's job. That is not the Federal Government's job.

Our job is to do what local and State authorities cannot do, do not have the power, the authority, or the responsibility really to go after. The Federal effort must be designed to get the class 1 and class 2 offenders at the top of the heap, where the real payoff is. That is the only chance we have to really make a dent in the illicit flow of drugs in this country which is so undermining the quality of life in America and the quality of life of every single American family.

I thank you, Mr. Chairman, very much, indeed.

Mr. Chairman, I would like to state that the Multinational Subcommittee which is a relatively small committee of foreign relations, is holding hearings on the Northrop question this morning and tomorrow morning. So I will have to go back and forth. We will always see that minority is represented at the hearings. I will spend most of my time in these hearings but have to excuse myself.

Chairman Jackson. We fully understand, Senator Percy, and appreciate your fine statement.

Senator Ribicoff chaired the Reorganization Subcommittee that had the responsibility of acting on the reorganization plan submitted by President Nixon back in 1973.

I would observe that we are not only conducting an investigation but we are monitoring in effect the impact of that reorganization plan on law enforcement.

Senator Ribicoff is more knowledgeable on this subject than anyone in the Senate because he went into it in depth. I would like for Senator Ribicoff to make some observations and comments at this point as we start these hearings.

Senator Ribicoff. Senator Jackson, I commend you for undertaking these hearings. The rapid spread of drug abuse is an epidemic and the way it is handled by the Government is really a scandal.

In 1971, we set up at the request of the administration the Special Action Office for Drug Abuse Prevention. It was placed in the White House with the assurance that it was so important that the White House would have an office to monitor the whole treatment problem of drug abuse.

In 1973, President Nixon sent up a reorganization plan which set up DEA. This agency was supposed to draw together all Federal law enforcement efforts to deal with drugs.

Yet, the problems and shortcomings we encountered then are still in existence because there is still no comprehensive long-term Federal strategy to coordinate drug treatment and enforcement programs.

There is still no role for the FBI in combating organized crime's major influence in heroin smuggling and other forms of illicit drug traffic.

There is still no accurate data. There is still no major enforcement program, and there is still no letup in interagency feuding and the internal corruption that have plagued drug law enforcement for these past many years.

The basic question, Mr. Chairman, is whether the reorganization plans really work. With this in mind, in 1973, I introduced a bill to turn over Federal drug enforcement responsibility to the FBI. Ironically, the FBI—the enforcement agency with the least corruption problem and the most experience in dealing with organized crime—is also an agency that has never been brought into the war on drugs. The reason for this is very simple. The FBI never wanted it and still doesn't want the job.

I am very critical of the FBI for not wanting a piece of this action.

[At this point Senators Brock and Percy withdrew from the hearing room.]

Senator RIBICOFF. It is a tough job. The results to be achieved are tough. Maybe there aren't any kudos and the FBI backed away from trying to move in against organized crime in the field of drugs.

At that time President Nixon rejected the FBI option and offered instead his reorganization plan setting up the DEA. At my insistence, the plan included a provision calling for maximum cooperation between the DEA and the FBI and the President's message promised a more effective anti-drug role for the FBI, especially in dealing with the relationship between drug trafficking and organized crime.

It became very obvious that DEA was picking up the small fish. It became very obvious that the big boys, organized crime, were not being gotten at and were not being prosecuted.

Your subcommittee investigation, Mr. Chairman, has indicated that these commitments by the Nixon administration have not been fulfilled and the FBI still has no drug enforcement role.

I recommend, therefore, that as we proceed with these hearings, we explore whether the time has not finally come to place drug enforcement responsibilities in our lead enforcement agency, the FBI.

The FBI's reluctance to take on this problem is understandable. But the need for clean, experienced hands at the drug enforcement helm are overwhelming. So that this proposal can receive the attention that it deserves, Mr. Chairman, I ask unanimous consent that my original bill, establishing the Division of Narcotics and Dangerous

Drugs in the FBI, and my floor statement of February 21, 1973, explaining it, be included in the appendix of these hearings.

Chairman JACKSON. Without objection, it is so ordered.

[The material referred to begins on page 235.]

Senator RIBICOFF. What becomes very obvious is that Congress and the Executive can pass any legislation coming forth with programs that are supposed to solve the problems facing our society. But somehow they don't work.

What we fail to understand is that organization is really policy and if we have a program that is badly organized, nothing effective will come from it.

So it becomes very important that we not only zero in on the abuses but I am sure, Mr. Chairman, you and the other members after we finish with these hearings, whether we have the cooperation with the executive branch or not, that this committee come up with its own organization plan to have constructive legislation, indicating where we should be going in the entire problem of drug enforcement and drug abuse.

I condemn the executive branch for closing its eyes to this problem and for failing to undertake the actions and the recommendations to make drug abuse programs really work.

Again, my commendation to you, Senator Jackson, for undertaking this problem that affects the people of the entire Nation.

Chairman JACKSON. I want to say that Senator Ribicoff, speaking as chairman of the full committee, is in a position to say that the subcommittee is not just involved in this investigation to bring out certain information which will not be very pleasant as we proceed through these hearings. It will be very disturbing to the American people in an area that is so sensitive and involves particularly the lives of millions of young people and their future.

Being chairman of the full committee, Senator Ribicoff, of course, has the responsibility of taking the legislative action. We are sitting today in the investigative role which will lead to the legislative action which we try to do.

Investigative committees of Congress are sometimes criticized. It is said they rush in and investigate and rush out and nothing happens. May I just point out two significant pieces of legislation that have been passed, Mr. Chairman, just in the last few months, one this last week.

One, there was the worldwide cutoff of supplies and the worldwide strategic alert. International American oil companies cut off the supply overseas of petroleum to the fleet and to the air forces.

That was a matter this committee investigated. We passed on Friday an amendment to the Defense Procurement Act which makes it a felony, 2 years imprisonment and \$100,000 fine for any individual to knowingly be involved in such an effort.

The second thing, Mr. Chairman, I wanted to mention is we have conducted extensive investigations in connection with stolen securities.

We offered an amendment on the Senate floor to the Senator Williams bill which the President just signed the other day which now requires all the brokerage houses and banks to register their bonds so that we have a way in which we can run down stolen securities. Our testimony shows a total of \$50 billion stolen securities that are floating around as valid.

So I think this, Mr. Chairman, is in the tradition of what the committee is trying to do. Out of these hearings there will be legislation because it is clear that the DEA has not worked.

First, to lay the foundation, since October 1973 we have been quietly, thoroughly investigating the Drug Enforcement Administration, starting with the Frank Peroff case.

We are all familiar with the misconduct of the Federal drug agents in the operations in connection with the debugging of Robert Vesco's home and his office. These things gave us certain leads that concerned us regarding the integrity of the organization.

When we say that, we recognize that undoubtedly only a few are involved here, that there are literally thousands of faithful, competent, capable, and dedicated men and women in the agency who are trying to do a job. But there appears to be at a minimum misconduct which will be brought out.

Such individuals were promoted in the organization. Some of them may still be in the organization of DEA. We want to find out all of those things.

At this time for a detailed background of the problem, the case, we will call on Philip R. Manuel, the investigator for the committee in this area, and who has done such an outstanding job, for his statement.

Will you stand and be sworn, both gentlemen?

Do you and each of you solemnly swear that the testimony you are about to give before this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MANUEL. I do.

Mr. ASSELIN. I do.

TESTIMONY OF PHILIP R. MANUEL, INVESTIGATOR, SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, AND FREDERICK J. ASSELIN, INVESTIGATOR, SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Chairman JACKSON. You may be seated.

Mr. Manuel, I believe you have a prepared statement. You may proceed in your own way. All of it will go into the record, but some of it does not need to be handled verbally.

The exhibits will be admitted as soon as the press have copies. I think we can expedite the testimony in that way. All right, sir.

Mr. MANUEL. Thank you, Mr. Chairman.

Mr. Chairman, at your direction this subcommittee is conducting an investigation into the manner in which the U.S. Government enforces laws concerning the illegal importation, smuggling, sale, possession, and use of narcotics and dangerous drugs, with particular attention to the possible existence of mismanagement, malfeasance, and corruption within those agencies with responsibility in the drug abuse field, especially the Drug Enforcement Administration.

It has been your stated intention, Mr. Chairman, that these hearings should serve as a platform wherein the national drug enforcement effort could be described, debated, and evaluated for the first time since DEA was created on July 1, 1973, according to the provisions of Reorganization Plan No. 2 of 1973.

This plan gave to DEA, within the Department of Justice, virtually all powers of narcotics enforcement both domestically and overseas, including the authority to conduct all internal enforcement operations from the time narcotics are smuggled into the country and the authority to collect and evaluate all foreign intelligence regarding sources of supply and distribution syndicates. The plan, however, left the authority to interdict narcotics at the border with the U.S. Customs Service. To that extent, these two agencies—DEA and Customs—have separate jurisdictions in the narcotics field.

The stated objective of Reorganization Plan No. 2, in combining the functions, assets, and talents of the Bureau of Narcotics and Dangerous Drugs [BNDD], a segment of the U.S. Customs Service, the Office of Drug Abuse Law Enforcement [ODALE], and the Office of National Narcotics Intelligence [ONNI], was to improve the aggregate effort of these individual agencies. DEA, therefore, has the incapable responsibility of achieving that objective.

A certain forbearance is called for, however, in view of the fact that law enforcement actions alone are not the complete answer to the complexities of international narcotics traffic or the national problem of drug abuse.

There are other factors which must be taken into consideration. They are the diplomatic, political, and economic methods which can be used to eradicate the production of narcotics at their foreign source and the treatment of the narcotics user to determine why there is such demand in this country for narcotics and drugs.

That being said, then, it is our purpose to measure how well DEA has performed since Reorganization Plan No. 2 and to determine if the stated objectives of the reorganization plan, together with the many representations of the proponents of DEA to the Congress, have been achieved.

The timeliness of these hearings is further accentuated by current reports from both Government and private sources that drug abuse is on the increase in this country.

There is evidence which this subcommittee will have the opportunity to evaluate which indicates that drug abuse problems are worse today than they were on July 1, 1973; that all types of narcotics, including heroin, cocaine, hashish, and marihuana, are being smuggled across U.S. borders in greater quantities than they were on July 1, 1973; and that the availability of narcotics and dangerous drugs on the streets of America is greater today than when DEA was created.

Conversely, it is ironic that the record shows that the period immediately preceding the reorganization—that is, from 1971 through early 1973—Federal narcotics law enforcement had its period of greatest success. During that period, massive criminal conspiracy cases imprisoned or otherwise immobilized major narcotics traffickers both within the United States and abroad. These conspiracy cases were effected as a result of the work of both BNDD and Customs. Usually these cases were developed by investigative work following an interdiction or arrest at the border or port of entry.

This enforcement success was a principal reason why there was a heroin shortage during the period of time shortly before the implementation of Reorganization Plan No. 2.

It would appear, therefore, that not only has there not been an improvement in narcotics enforcement since Reorganization Plan No. 2, but there has been a failure to hold the gains which were in hand at the time DEA was created.

The central issue to be examined in these hearings, therefore, is whether DEA has failed to adequately perform as envisioned by the proponents of the reorganization, and if so, why?

Stated another way, the issue is, have the American taxpayers received their money's worth in terms of a drug enforcement effort able to disrupt drug traffic at a high level, immobilize the criminal syndicates that traffic in narcotics, and prevent, to the extent possible, drugs from reaching the streets? This issue will be addressed in some manner by each witness in these hearings.

In order to best evaluate this central issue, testimony will be received during various segments of these hearings which will describe many pertinent topics which are components of the drug problem as a whole.

These pertinent topics will include—

The historical development of Federal narcotics enforcement agencies with a description of their past enforcement methodology, utilization of resources, and accomplishments;

Particular problems inherent in narcotics enforcement, especially the dangers of corruption;

An analysis and comparison of enforcement methodology within the United States, at the borders, and in foreign countries; and

An analysis of the so-called buy-bust technique and the use of undercover agents to purchase narcotics and its effectiveness in disrupting narcotics traffic and immobilizing major drug traffickers and syndicates.

The subcommittee must also determine the effectiveness of management of DEA by an analysis of the allocation of money, manpower, and equipment, and whether this allocation is consistent with the proper role of the Federal Government in combating drug abuse.

Mr. Chairman, the subcommittee has requested of the General Accounting Office (GAO), that a study be conducted into DEA's allocation of moneys, manpower, and equipment.

Accordingly, Mr. Chairman, I ask that two letters from you to GAO requesting this study, be made a part of this hearing record. These letters, dated March 6, 1975, and May 1, 1975, set forth the areas of study GAO was requested to undertake.

GAO spokesmen will testify before this subcommittee as to the results of this study.

Chairman JACKSON. Without objection, the letters will be received. They will be printed in the record at that point.

[The letters follow.]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C., March 6, 1975.

HON. ELMER B. STAATS,
The Comptroller General of the United States.

MY DEAR MR. STAATS: The Permanent Subcommittee on Investigations has been engaged in an ongoing inquiry into the Drug Enforcement Administration. The scope of this inquiry includes allegations concerning the effectiveness and

the integrity of the DEA as well as its entire approach to Federal narcotics law enforcement. Our goal, as we go forward with our investigation, is a thorough analysis of the ability of the agency to effectively deal with the ever-increasing narcotics problem.

It is my belief that the General Accounting Office can be of invaluable assistance to our effort. Accordingly, I am requesting that the General Accounting Office examine the following areas which are of major concern to the Subcommittee:

1. An analysis of purchase of evidence/purchase of information (PE/PI) funds used by DEA as an approach to drug law enforcement focusing on the number of convictions and significance of violators convicted, including (a) a study of the amounts of Federal dollars allocated to PE/PI over the last five years and to whom these dollars flow, and (b) an accounting of all such money so used since the creation of DEA.

2. An analysis of the results of the BNDD/DEA, U.S. Customs Service, and the former Office for Drug Abuse Law Enforcement efforts in drug enforcement, from fiscal year 1970 to present, focusing on the number of convictions, nature of the case, significance of violators convicted, and the nature, quantity, quality and/or street value of illicit drugs seized as well as an analysis of the law enforcement methodology utilized by each agency.

3. An analysis of DEA enforcement and intelligence manpower allocations to various activities and functions in the agency.

4. An analysis of the exchange of information between Customs and DEA, including the frequency and nature of requests for information or assistance by one agency or the other and the disposition of such request.

5. An analysis of the controls exercised by DEA over narcotics seized, including any information available on the nature, quantity, quality and/or street value of any narcotics unaccounted for after original seizures.

6. An analysis and accounting of any "confidential fund" maintained by DEA, including the purposes for which the funds were expended.

7. An analysis of the program of cross designation of DEA agents to allow them the same search and seizure authority as U.S. Customs agents, to include the number of DEA agents so designated and the number and quality of arrests made and convictions obtained by them in this capacity.

8. An analysis of the quantity and quality of intelligence information exchanged between DEA and the U.S. Customs Service since July 1, 1973 which would enable both agencies to function in the manner intended by reorganization plan # 2.

We also understand that your staff has done considerable work on the DEA compliance programs and we would like their views on the results of these programs.

Since time is of the essence with regard to certain of the above items, it would be appreciated if your representative contacted Howard Feldman, Chief Counsel to the Subcommittee, to discuss our priorities and the time required for your studies.

Your cooperation is greatly appreciated.

Sincerely,

HENRY M. JACKSON,
Chairman.

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C., May 1, 1975.

Hon. ELMER B. STAATS,
The Comptroller General of the United States.

MY DEAR MR. COMPTROLLER GENERAL: Pursuant to our continuing investigation of the Drug Enforcement Administration, I request that the General Accounting Office conduct an inquiry of the following pertinent subjects in addition to those identified in my letter to you of March 6, 1975:

1. A study and analysis of the type and quality of cooperation that exists between the Federal Bureau of Investigation and the Drug Enforcement Administration since Reorganization Plan No. 2 was implemented on July 1, 1973. As you are aware, testimony by Administration officials before the Congress when Reorganization Plan No. 2 was being considered, indicated that the creation of DEA would enable the FBI, for the first time, to become actively involved in drug enforcement.

Administration witnesses testified that the FBI would participate with the DEA in narcotics cases by providing both information and informants, especially in those cases dealing with organized crime figures and interstate and international conspiracies.

It is appropriate, therefore, as a part of our current investigation, that your agency determine how and under what circumstances the FBI has cooperated with DEA in the development of major narcotics cases and whether that cooperation has resulted in significant disruption of narcotics traffic.

2. A study and analysis of how federal money from LEAA is allocated, by DEA, to the various narcotics Task Forces currently in operation in the country.

We are especially interested in knowing what criteria is used by DEA for determining how much money is allocated to each task force; how that money is used; and what results have been achieved in relation to the stated mission or objectives of these task forces.

3. A study and analysis of the Unified Intelligence Center, a federally funded narcotics related operation in the New York City area.

With regard to this center, we are interested in determining the nature and scope of its operation, the amount of federal monies involved, the identity of participants in the system, the type of information utilized by the participants and any past instances of misuse of this information.

The results of your inquiry on the matters I have requested will be made part of the record of Subcommittee hearings on the operations of the Drug Enforcement Administration.

May I take this opportunity to express my appreciation for your cooperation in this investigation.

Sincerely,

HENRY M. JACKSON,
Chairman.

Mr. MANUEL. Among the requests the subcommittee has made of GAO are an analysis of how DEA uses money appropriated by Congress to purchase evidence and purchase information, and an assessment of whether the spending of this money disrupts narcotics traffic at a high level.

In that regard, it is significant to note that the GAO study has revealed that in 1969 the total Federal moneys appropriated for purchasing evidence and information amounted to about \$750,000. For fiscal year 1976, the amount had risen to nearly \$10 million.

The Law Enforcement Assistance Administration (LEAA) currently is providing funding in the amount of \$9.1 million to DEA-controlled task forces which operate in major metropolitan areas of the United States. The subcommittee has requested that GAO determine the extent to which portions of that money are used to purchase narcotics or information.

It is recognized by such studies as the Knapp Commission on Police Corruption and the report by the New York State Commission of Investigation entitled "Narcotics Law Enforcement in New York City," of April 1972, that drug enforcement, especially because it is concerned with so-called victimless crime and is attacked by enforcement by undercover penetration to effect a buy, presents unusual risks and temptations which can lead to problems of corruption within an agency.

Mr. Chairman, I have copies of both the Knapp Commission report and the State commission report. I request that these documents be received as exhibits.

Although both of these exhibits relate primarily to patterns of corruption at the local enforcement level, the principles derived from these studies are equally applicable to Federal enforcement since there are distinct similarities in both operational techniques and area of operation.

In addition, the staff's preliminary inquiry has established that the same kinds of corrupt practices have been discovered in Federal narcotics enforcement agencies in investigations conducted under the leadership of Andrew C. Tartaglino, who will testify in depth about them as these hearings progress.

At the time of Mr. Tartaglino's testimony and at other times thereafter, testimony, documents, and other evidence will be presented to the subcommittee to demonstrate various types of corrupt, questionable, or irregular practices which have existed in Federal narcotics enforcement.

With further regard to the issue of corruption, these hearings will seek to determine whether there have been effective policies and programs regarding internal security within DEA and its predecessor agencies commensurate with these inherent risks. The subcommittee should recognize that because of the way narcotics enforcement is conducted, with its basic dependence on undercover buys, the integrity of the officer is constantly challenged because he is forced to operate in the most potentially corruptive environment in the field of law enforcement.

Further, in order to penetrate this environment, he must often assume the appearance of a criminal in order to perform his duty.

It is the staff's intention to have the subcommittee examine the seriousness of past known or alleged corruption problems and the possibility that former FBN and BNDD officials with past integrity or mismanagement problems have risen to supervisory positions in DEA.

Chairman JACKSON. May I interrupt? Are you saying that people were involved in various investigations going back, I believe, to the sixties, and no action was taken? Were serious allegations of corruption made and the people moved on up the ladder anyway and are now in supervisory or higher positions within the agency?

Mr. MANUEL. Yes; Mr. Chairman. We have received both testimony and documentation which shows that pattern and those facts will be explored as this hearing progresses.

Chairman JACKSON. Has that gone covered up and not dealt with in a diligent prosecutorial manner?

Mr. MANUEL. It is a fact with respect to many individuals, there have been unresolved allegations which have carried over a great period of time. They evidently have not been dealt with in a forceful or decisive manner, Mr. Chairman, and that is what we are going to explore.

Before discussing the historical development of Federal narcotics enforcement and the differing methodologies which have evolved, it is appropriate at this point to introduce certain facts regarding Reorganization Plan No. 2 of 1973.

I will describe what the proponents of the plan told the Congress it would achieve and I will comment on certain developments that resulted from it, developments which this subcommittee should consider as you seek to evaluate the effectiveness of the plan and the subsequent ability of the Federal Government to enforce drug enforcement laws.

The Subcommittee on Reorganization, Research and International Organizations of the Senate Government Operations Committee issued a report dated October 16, 1973, on Reorganization Plan No. 2.

Mr. Chairman, I would like to, at this point, not read what is left of page 6 and page 6-A and also skip page 7 and page 8, and continue reading.

Chairman JACKSON. I think it would be good to read that part, if you don't mind. I think that lays the foundation here.

Mr. MANUEL. Mr. Chairman, the subcommittee report filed by Senator Abraham Ribicoff, with individual views of Senator Charles H. Percy, is a most informative and educational document. I request that it be made an exhibit.

Chairman JACKSON. Without objection, that will be marked for identification exhibit No. 1.

[The document referred to was marked "exhibit No. 1" for reference and may be found in the files of the subcommittee.]

Mr. MANUEL. I also request that the seven volumes of the hearing conducted by the Ribicoff subcommittee concerning the Reorganization Plan No. 2 of 1973 be made exhibits.

Chairman JACKSON. That will be marked for identification as exhibit No. 2.

[The documents referred to were marked "Exhibit No. 2" for reference and may be found in the files of the subcommittee.]

Mr. MANUEL. I would also add that the reorganization plan itself, as originally submitted to Congress, is reprinted in the report. The report, while not required by the reorganization statute, was submitted so that the Senate could be informed on the Government Operations Committee's consideration of the plan, including the drug enforcement problem which Senators Ribicoff and Percy and others felt had to be resolved successfully to insure the proper implementation of the plan.

From the report itself, it is clear that Senators Ribicoff and Percy and other Senators on the Ribicoff subcommittee foresaw the potential pitfalls inherent in Reorganization Plan No. 2. The Ribicoff subcommittee report envisioned the problems involved in Reorganization Plan No. 2 and made specific recommendations to avoid them.

For that reason, as these hearings go forward, the subcommittee staff will frequently refer to the observations made in the October 16, 1973, report, for this document put the executive branch on notice, particularly the Department of Justice, that if not carefully implemented and properly managed, Reorganization Plan No. 2 of 1973, and the superagency it created, DEA, could hinder rather than help the Nation's drug enforcement effort.

For example, the subcommittee report stressed that Federal drug enforcement should be uplifted to attack and disrupt the narcotics traffic at the highest levels of distribution. In turn, the report recommended that DEA focus its resources on disrupting interstate and international narcotics conspiracies.

As for pursuing lower level street narcotics distributors, the Senate report said:

The use of DEA agents to supervise ODALE-type operations against street-level pushers should be avoided unless specifically requested by a State or locality.

The report went on to say:

The primary mission of DEA should be to interdict the highest levels of the illicit drug traffic and to support State and local efforts aimed at the lower levels.

Senator RIBICOFF. Mr. Manuel, you may recall that in that period, we were deeply concerned that our narcotics agents were going after the little fish—

Mr. MANUEL. That is correct.

Senator RIBICOFF (continuing). The users more than the big sharks engaged in organized crime and syndicate drug activities. And we warned that their efforts should go right to the top and not just on the street level where it was easy to knock somebody off.

In your investigation, did you find whether the DEA went after the sharks, the syndicates, and the men on top of organized crime who were handling drugs?

Mr. MANUEL. Mr. Chairman, it has always been the stated objective of DEA to attempt to disrupt traffic at a very high level. However, our investigation has shown that that stated objective has not really been adhered to and we believe it is because of the nature of the traffic itself and the pressures of the traffic which, as you point out, makes it easy to penetrate at lower levels and stay there; the enforcement effort, that is.

So what we can say is that I am sure DEA has made some effort and can establish some sort of a record with respect to going after high level traffickers. But what we are really saying here is the subcommittee should evaluate whether that effort is sufficient and whether they can actually perform and accomplish their stated objective in the light of the nature of the traffic itself and the way they approach it.

Senator RIBICOFF. The statistics of success that they would give us indicated that they were really bringing in the users who were being found guilty, but their record of successes concerning the people up on top were meager, indeed. Isn't that correct?

Mr. MANUEL. That is true, Mr. Chairman. With regard to statistics, we will have much more to say about the validity of statistics; that is, arrests and seizure statistics with respect to establishing the effectiveness of a law enforcement agency. Too often, these statistics are the only guidelines that Congress and the American people have to determine whether a law enforcement organization has been effective and we would like and we would hope that the subcommittee would gather other facts besides statistics and deeply question the validity of the statistics themselves as a measure of effectiveness.

For example, we are going to point out in my testimony and in this statement that statistics given to Congress by DEA with regard to seizures of narcotics often do not reflect the purity of the narcotics that are seized. When DEA says they seized, for example, 500 pounds of heroin during a given period of time, they do not say that the purity of that heroin is quite a bit diminished and is very low. As a matter of fact, it would probably average out to maybe 10 percent. So what we are saying with respect to the 500 pounds is that that 500 pounds only contains 50 pounds of heroin, for example; but the statistics are presented in that manner.

Chairman JACKSON. In the figures that you have given, just following up on Senator Ribicoff's point, they are spending more than 10 times as much now on buys. This would indicate increased activity at the end of the road.

[At this point, Senator Percy entered the hearing room.]

Chairman JACKSON. Is \$10 million the amount that they had in their budget or spent for purchases?

Mr. MANUEL. That is for fiscal year 1976.

Chairman JACKSON. Yes; but at the time before they took over, it was less than \$1 million. It was \$750,000 on buys. It looks as if they just followed the opposite policy of the committee.

Mr. MANUEL. That is true, Mr. Chairman.

Reorganization Plan No. 2 of 1973 was submitted to the Congress by President Nixon, March 28, 1973. As previously indicated, the purpose of the plan was to place primary responsibility for Federal drug law enforcement in a single new agency, the Drug Enforcement Administration, in the Department of Justice.

Prior to the creation of DEA on July 1, 1973, 10 Federal agencies in five Cabinet departments performed drug enforcement functions.

The main reason for the creation of DEA was to eliminate reported jurisdictional overlapping among these agencies which, proponents of DEA claimed, was undermining the Federal drug control effort. In that regard, great emphasis was placed on the jurisdictional disputes and rivalries between BNDD and the Customs Service.

However, the executive branch proponents of Reorganization Plan No. 2 spotlighted the negative aspects of this overlapping, but little or no attempt was made to define for the Congress the differences between internal and border law enforcement in terms of organizational approaches and methodologies.

In these hearings, as we seek to enable the Investigations Subcommittee to evaluate the impact and the effectiveness of Reorganization Plan No. 2, the staff will try to define the differing methodologies and organizational approaches used by the internal enforcement mechanism as opposed to the border enforcement mechanism.

It is important to note that differing methodologies and approaches do exist and can be justified, and that DEA, in its short history, has appeared to have adopted one methodology at the expense of the other.

As specified in the reorganization plan, or as described in the President's message accompanying the plan, the new DEA assumed responsibility for the following activities:

1. The Bureau of Narcotics and Dangerous Drugs (BNDD) was abolished as a separate entity in the Justice Department. As a parenthetical comment, Mr. Chairman, I would like to point out now—and elaborate on it in more detail later in my statement—that BNDD, while it was abolished, was, in fact, the building block upon which the new DEA was created. BNDD procedures—even including the BNDD Agent's Manual—were incorporated into the new DEA right from the start, insuring that the BNDD methodology and organizational approach to drug enforcement would set the pattern for how DEA would function. In addition, former BNDD and ODALE personnel became the key administrators and policymakers in DEA. This consideration is of major importance in any evaluation of the effectiveness of DEA's activities. As I commented, I will have much more to testify about in this regard later in my testimony.

2. All functions of the Customs Service related to drug investigations and intelligence gathering and evaluation were transferred from the Secretary of the Treasury to the Attorney General. Customs retained its authority to interdict at the border. However, Customs

lost to DEA its authority to conduct intelligence-gathering operations overseas.

This foreign intelligence capability had previously enabled Customs to alert its personnel at the border as to the modus operandi of narcotics smugglers, profiles of distribution syndicates, and other critical information essential to the successful accomplishment of the Customs mission.

Under Reorganization Plan No. 2, DEA was given the responsibility for providing this information to Customs. In addition, on those occasions when Customs personnel would interdict smuggled narcotics or make arrests at the border, the new plan required them to immediately take both the contraband and the smuggler to DEA for further investigation.

3. The Office of Drug Abuse Law Enforcement (ODALE) was abolished in the Justice Department by Executive order. The functions previously carried out by ODALE—that is, those Federal operations designed to attack narcotics traffic at the street level in cooperation with local authorities—were transferred to DEA.

These functions are now carried out by DEA task forces funded in part by the Law Enforcement Assistance Administration (LEAA). LEAA funding for these pursuits this year will total more than \$9 million.

Senator PERCY. I would like to ask you your judgment again on the role that the Federal Government should actually be playing. In my own State of Illinois, we had an instance that is now known as the Collinsville break-in. As I pointed out in a report that Senator Ribicoff and I made in 1973, Federal agents, apparently from ODALE, on the evening of April 23, broke in on the residence of Mr. and Mrs. Herbert Giglotto and the residence of Mr. and Mrs. Donald Askew. A group of these agents, who were shabbily dressed and heavily bearded, barged into the houses without Federal no-knock authority, let alone order search warrants required by the fourth amendment, under circumstances that suggest an unannounced entry.

They didn't announce they were Federal narcotics agents or explain the nature of their authority for acting as they did. When they discovered that they had actually broken into the wrong homes, they were even at the wrong addresses, they just barged in; they left after disrupting the property, tearing the place apart, no apologies, no explanation, no offers to fully compensate for the damages done.

In your judgment, is this a proper function for Federal narcotics agents to be engaged in? What relationship does this have, then, to local law enforcement and to the jurisdiction that local people have in this regard? Is this what we are trying to point out, that Federal agents really should not be putting their effort, their time, into this kind of activity?

When we held hearings on this incident, we were flooded with complaints from across the country that this same type of thing had occurred not just in Collinsville, Ill., but occurred in many, many other places where overzealous agents were apparently trying to rack up some sort of a record.

Is this the point that you have been trying to make, that Federal agents really are wasting their time and the prestige of the Federal

Government in the wrong end of the business, especially when they undertake to make arrests in an illegal or unconstitutional fashion?

Mr. MANUEL. That is exactly right, Senator. That is exactly what we are trying to point out and further, we are trying to point out that the focus of Federal law enforcement should be uplifted to consider those interstate aspects of these conspiracies as opposed to the street action where Federal officers are actually in competition with local law enforcement.

Chairman JACKSON. But really running through all this is a lack of professionalism. Is that correct?

Mr. MANUEL. It would appear so, Senator.

Chairman JACKSON. I am talking about the higher levels. I am not talking about the lower level officers who have to carry out orders, but Senator Percy mentioned that they have a high degree of professionalism in the instances that he referred to.

You wouldn't have that sort of thing going on. The FBI wouldn't be involved in a thing like that. It is a matter of professionalism at the highest levels, it seems to me, and an esprit de corps that runs through the whole organization. It sounds to me more like a cops-and-robbers operation, some of these things that they have pulled down at the street level when they ought to be at the summit where all of this stuff originates, comes in from overseas.

It may not make the volume statistics look good. But in terms of eradicating and getting at the heart of the problem, progress was being made between 1971 and 1973. The amount of heroin and so on that was being interdicted was a substantial accomplishment, was it not?

Mr. MANUEL. Yes, it was.

Senator RIBICOFF. Along that line, over the past few years, hasn't there been a shift in the organized crime syndicates that handle drugs as against the syndicates that supervise other crime in America?

Mr. MANUEL. I don't know that I get the thrust of your question, Senator.

Senator RIBICOFF. Gambling and prostitution, theft of securities generally were in the hands of certain syndicates throughout this country. Hasn't there been a shift in the control of the syndicates that handle drugs?

Mr. MANUEL. I would say, Senator, there are many more organized criminal groups that now handle and distribute narcotics, both within the United States and abroad, as opposed to what was previously a rather monolithic type of organized crime that is now dispersed in terms of numbers.

Senator RIBICOFF. In other words, there are many more organized crime units today because of drug traffic than there had been in this country prior to the spread of drugs?

Mr. MANUEL. I would say that is correct, Senator.

Senator RIBICOFF. Has the DEA addressed itself, or the FBI or any other governmental agency to the proliferation of crime syndicates due to drugs?

Mr. MANUEL. I don't know exactly the answer to that question. I think probably the officials of those agencies when they come to testify will be the appropriate officials to answer that. I don't know to what extent they had adjusted to cope with the realities of the criminal syndicates that operate both internationally and domestically.

Senator RIBICOFF. The profit from drug crime and drug syndication, how would that compare with the profit from other crimes in America?

Mr. MANUEL. In narcotics traffic, you have a vast and complicated network of distribution and many, many levels of wholesalers and distributors, all of whom make profit as the drug approaches the street level to the user.

We will in these hearings, in my testimony, Senator Ribicoff, introduce a chart which gives some comparative figures of the amount of variance at the top level and also at the bottom. The difference is very great. The wholesalers pay relatively little for the narcotics and they sell them once they get to the street level or once the narcotics have reached through the level of distribution, the narcotics at a very low purity cost quite a bit.

Senator RIBICOFF. In other words, the distribution of drugs is probably more highly organized than any other crime in this country?

Mr. MANUEL. It is very highly organized; but that is not to say, Senator, and I think it is probably a mistake to assume that everybody in a given distribution network from the top to the bottom know each other and can identify each other and the status of the other's role in the same distribution syndicate.

It is more likely that the people in the lower levels of the narcotics distribution system do not know who the kingpins are. That is one of the reasons why it is very difficult to start at the bottom of the traffic and attempt to work up the ladder until you get the heavy dealer.

Senator RIBICOFF. That is why the local and State police have constantly complained that the Federal agents involved should allow them to handle the street level operations which is easy for local police to get at. The Federal agents should concentrate on going to the top where the syndicate bosses have the inflow and the large profits. Isn't that correct?

Mr. MANUEL. In my judgment, Senator, that is correct. That is the correct approach; yes.

Senator RIBICOFF. This has caused a great friction between local and State police and the Federal drug enforcement agencies?

Mr. MANUEL. That is correct. But I would hope that the committee would not suggest that the Federal Government doesn't have a proper role, even at the street level, in terms of support and in terms of intelligence distribution to the local police departments and State departments who have to combat this problem on the street in their jurisdictions.

So the Federal Government does have a proper role, I think, in my judgment, in dealing with local and State authorities. The question is, and for you gentlemen to evaluate, what is that role?

Chairman JACKSON. It is the emphasis, isn't it? There is a role, but as Senator Ribicoff, I think, is pointing out and you point out in your statement that what has happened here since DEA was formed, they shifted their resources to giving primary attention or an inordinate or disproportionate attention to the street level.

So it gives you all the statistics; but the number of accomplishments overseas and the sources, going right to the top level, getting at the heart of the beginning of the distribution of the drugs, that area

has fallen off as far as a real effort to stop it is concerned in comparison with what happened previously. Isn't that correct?

Mr. MANUEL. It is a fact, as you pointed out, and in my testimony I will also point out, and the GAO will also testify, that the majority of the resources of DEA are committed more to lower level activities than to upper level activities in terms of money, manpower, and resources.

I will continue reading the statement, starting on page 10.

Fourth, the Office of National Narcotics Intelligence (ONNI) was abolished in the Justice Department by Executive order. ONNI's conceived mission had been to collect and evaluate international, interstate, and domestic narcotics intelligence and integrate that data for the ultimate beneficial use of various interested agencies which then used this information to make narcotics control policy. ONNI's functions were transferred to what is now the intelligence section of DEA.

Implementation of the reorganization plan was to provide DEA with the 3,000 employees from the three Justice Department agencies—BNDD, ODALE, and ONNI—and about 500 special agents from the Customs Service of Treasury. The decision to assign which customs agents to DEA was based on an evaluation of the amount of time each agent was spending on narcotics related cases. For the most part, customs agents working 52 percent or more of their time on narcotics cases were designated to have special expertise in narcotics enforcement and were transferred to DEA.

It was the stated purpose of Reorganization Plan No. 2 to transfer these customs personnel into DEA so that a border enforcement capability, based on antismuggling expertise, would be integrated into the new agency. Plans called for former customs officials to have positions of influence in the making of policies and executing of operations, both in Washington and in regional offices.

Early in DEA's history, customs officials did assume relatively responsible positions in the new agency's structure. Customs officials John Lund, Wallace Shanley, and George B. Brosan became Deputy Director for Enforcement, Chief of Special Projects, and Deputy Chief Inspector, respectively. In addition, customs officials were made regional directors in 7 of the 20 DEA regions, 5 of which were in the United States and two in foreign countries.

As of today, however, there are no former customs officials at DEA headquarters with line responsibilities, with the possible exception of Martin Pera, who serves as head of a three-man conspiracy unit within the Enforcement Division. Former customs officials, as of the present time, retain regional directorships of DEA offices in New York City, Miami, Dallas, Los Angeles, Seattle, Caracas, and Mexico City.

In the transfer of these above-mentioned supervisors and the approximately 500 special agents, customs personnel had little or no choice. For the most part, they were simply told to make the move. This factor was to have an important impact on the performance of many of the customs personnel who made the move to DEA. Many customs agents have, since July 1, 1973, returned to customs and information that the subcommittee staff has developed indicates that several hundred more former customs personnel still at DEA have requested to return.

At a later point in my testimony, I will address myself to the difference in methodologies which existed in drug enforcement between the customs agents and those of BNDD and ODALE. For the time being, I will point out briefly only that the difference in methodology of BNDD, ODALE, and Customs were deep and often hard felt differences. In turn, as I have pointed out earlier, the new DEA was patterned for the most part of BNDD policies and procedures and managed by BNDD and ODALE personnel.

It is not surprising, therefore, to find that these differences in methodology of enforcement were made manifest when customs agents found themselves working on narcotics cases with former BNDD and ODALE personnel.

DEA was to be headed by an administrator, with a deputy administrator, both to be appointed by the President with the consent of the Senate. The first administrator was John R. Bartels, Jr., who came to DEA after serving as Deputy Director of ODALE. He named a Federal narcotics career employee, Andrew C. Tartaglino, to serve as Acting Deputy Administrator until a Presidential appointee could be named to that second ranking position in the agency. Mr. Tartaglino had served as both Chief Inspector and Assistant Director for Operations for BNDD.

Reflective of the focus the Department of Justice was to place on drug enforcement was the stated intention to create a separate Narcotics Division within Justice to be headed by an Assistant Attorney General who was to be legal adviser to DEA's Administrator and was to have specific authority over Federal narcotics prosecution in the same manner that the Tax Division oversees prosecution of tax violation laws.

Announcement of the intention to create such a Narcotics Division and the Assistant Attorney General slot was made by the then Attorney General Richard G. Kleindienst on April 4, 1973, 3 months before DEA was created. This, of course, was during the time when the Congress was considering the merits of Reorganization Plan No. 2.

According to Reorganization Plan No. 2, the Attorney General would be required to coordinate his drug law enforcement functions so as to "assure maximum cooperation" between and among the DEA, the Federal Bureau of Investigation (FBI), and other agencies in Justice. The role of the FBI in Federal drug enforcement effort was characterized by the proponents of the plan as a major step forward.

Previously, the FBI had had no significant narcotics enforcement function. Encouraging the Congress to go along with his reorganization plan, President Nixon cited the new role of the FBI in drug enforcement as one justification for implementing his proposal. President Nixon said in his March 28, 1973, message to Congress:

My proposal would make possible a more effective antidrug role for the FBI, especially in dealing with the relationship between drug trafficking and organized crime. I intend to see that the resources of the FBI are fully committed to assist in supporting the new Drug Enforcement Administration.

As originally submitted to Congress, Reorganization Plan No. 2 also provided for the transfer from the Attorney General to the Secretary of the Treasury those functions pertaining to the inspections of persons and documents at ports of entry.

This provision was to have involved the transfer of 900 inspectors from the Immigration and Naturalization Service (INS) within Jus-

tice to the Customs Service. President Nixon said this transfer was necessary to improve detection of illicit drugs at ports of entry and to "enhance the effectiveness" of DEA.

However, the Congress, and the executive branch, responding to criticism of the plan from a labor union representing INS employees, came to an understanding whereby the transfer of INS personnel was deleted from Reorganization Plan No. 2. It should be noted that this deletion of an important provision of Reorganization Plan No. 2 occurred 2 months after the plan was submitted to the Congress and after executive branch proponents had testified in favor of the plan as a whole. Therefore, only one of the two major jurisdictional changes in Reorganization Plan No. 2 became a reality.

Chairman JACKSON. What happened to that?

Mr. MANUEL. It appears, Mr. Chairman, according to information we have been able to establish, that the FBI does not play a significant role in drug enforcement, at least to the extent as the proponents of the plan told Congress it would or what Congress expected it would.

Chairman JACKSON. Isn't it a fact that they have been virtually left out?

Mr. MANUEL. We feel that they do not have an active role in drug enforcement. They may on occasion, and I think they have provided some intelligence information to DEA, but the effectiveness of that activity is something that we wish to explore.

Chairman JACKSON. Isn't it a fact that with the FBI dealing with the investigation of criminal law violations on a very broad scale, that it is inevitable that they run into drug operations?

Isn't that in the very nature of things? The FBI has responsibility in dealing with organized crime, and it is in this area that the FBI is deeply involved? Is that not correct?

Mr. MANUEL. That is correct, Mr. Chairman.

Chairman JACKSON. For the FBI to have a major drug enforcement role was the representation made to Senator Ribicoff and Senator Percy. I think that misrepresentation goes to the heart of part of the trouble here in this organization.

[At this point, Senator Ribicoff withdrew from the hearing room.]

Mr. MANUEL. It could very well be, Mr. Chairman.

As far as the creation of DEA was concerned, executive branch proponents of Reorganization Plan No. 2 put forward six prime benefits which, they said, would result from the proposal.

The Ribicoff subcommittee report of October 16, 1973, called attention to these promised benefits but cautioned that, unless Reorganization Plan No. 2 was implemented as its proponents said it would be, the plan itself could not achieve success.

The six major benefits, as promoted by representatives of the executive branch, were as follows:

1. The plan would put an end to the interagency rivalries that had undermined Federal drug enforcement, especially the rivalry between BNDD and the Customs Service.

2. The plan would give the FBI its first significant role in drug enforcement by requiring that the DEA draw on the FBI's expertise in combating organized crime's involvement in the trafficking of illicit drugs.

3. No. 3 benefit was that the DEA would provide a single focal point for coordinating Federal drug enforcement efforts with those of State and local authorities as well as with foreign police forces.

4. The consolidation of drug enforcement operations in DEA and the establishment of the Narcotics Division in the Justice Department would maximize coordination between Federal investigation and prosecution efforts and eliminate rivalries within each sphere.

Chairman JACKSON. What happened on No. 4? The recommendation was made that there would be an Assistant Attorney General in charge of DEA?

Mr. MANUEL. That is correct.

Chairman JACKSON. That never happened.

Mr. MANUEL. It never happened. There was never a separate Narcotics Division formed.

Chairman JACKSON. That was a strong representation made to Senator Ribicoff and Senator Percy.

Mr. MANUEL. That is correct, according to the hearing record.

Chairman JACKSON. And herein lies part of the corruption problem that we are going to run into as we go into these hearings in which very unfortunate things have happened. Despite all of the protestations to the contrary, Mr. Bartels was forced to leave. There was no supervision over him in the direct line authority, as I understand it, at the level of Assistant Attorney General in charge of Drug Enforcement.

Senator PERCY. Mr. Chairman, as I understand it, the U.S. attorneys objected to that, and I would like to ask Mr. Manuel who it is in the Department of Justice that has responsibility to oversee DEA and follow narcotic prosecutions? Where does that responsibility lie now?

Mr. MANUEL. To the best of my knowledge, Senator Percy, the responsibility lies primarily with the various U.S. attorneys who prosecute individual complaints or cases as brought to them by DEA.

There is within the Criminal Division, however, a unit, not a separate unit, but a unit to oversee narcotics at the Washington headquarters level. That is only a section within the Criminal Division, I believe.

That has always been there. It hasn't changed since reorganization.

Chairman JACKSON. I think, Senator Percy, that points up one of the basic defects in the organizational structure. Here you set up an agency that is supposed to pull together all the other agencies so that you have it under one roof, and there is no direct line authority to the top side of the Department of Justice.

That is certainly one of the basic weaknesses. Action on a number of these matters could have been obtained if there was a tough man in charge as Assistant Attorney General overseeing the activities and complaints that were coming up within DEA which were not acted upon. Is that not correct?

Mr. MANUEL. We will never know the answer to that question, Mr. Chairman, because of the fact the office was never established, and no Assistant Attorney General was ever named.

Senator PERCY. It is true that Mr. Bartels was supposed to operate at the level of Assistant Attorney General? To whom did he report? Do you recall?

Mr. MANUEL. I don't know, Senator Percy. I can't say that he was supposed to operate at the level of Assistant Attorney General. My

understanding is he was the Administrator of DEA, more a line position than the position within the prosecutorial portion of the Justice Department.

My understanding is that Mr. Bartels reported to the Deputy Attorney General.

Senator PERCY. That would then put him at the level of an Assistant Attorney General, wouldn't it, if he reported directly to the Deputy Attorney General? So it is not a question that it was not maybe in effect they complied with the request that was made.

Mr. Chairman, you have raised a very interesting point with respect to the FBI. As long as we are pausing for a moment here, could we go back to that, and could you tell us, Mr. Manuel, whether over the past 2 years the FBI has to your knowledge shared narcotics intelligence with DEA officials and what role does the FBI have in narcotics enforcement?

Mr. MANUEL. At this particular time, Senator Percy, I don't have the total answer to that question. I would like to state that we have asked the GAO to make for us a complete study of the role of the FBI and its interrelation with DEA.

It is my understanding that they have on occasion shared intelligence information. As I have said previously, I don't know at this particular time what the results of that activity are in terms of increased effectiveness of DEA.

The No. 5 promised benefit was that the establishment of the DEA as a superagency would provide the momentum needed to coordinate all Federal efforts related to drug enforcement outside the Justice Department, especially the gathering of intelligence on international narcotics smuggling.

6. By placing a single administrator in charge of Federal drug law enforcement, the plan would make the new DEA more accountable than its component parts had ever been, thereby safeguarding against corruption and such enforcement abuses as unauthorized and mistaken drug raids.

The emphasis of the Ribicoff subcommittee report was that unless the six benefits of Reorganization Plan No. 2 were achieved, the plan itself would not be successful.

I make the above observation, Mr. Chairman, because after examination of the six points, it is the finding of this subcommittee staff that at least two of the six promised benefits have not been accomplished.

It is the finding of this subcommittee staff that the FBI still has no significant drug enforcement role. We have asked the GAO to make a separate inquiry into the role of the FBI in drug enforcement. GAO spokesmen will testify on this point later in this hearing.

It is the finding of the staff that there is no Assistant Attorney General in charge of a Narcotics Division at Justice, and, indeed, there is no Narcotics Division at Justice.

As for the remaining four promised benefits that were to result from Reorganization Plan No. 2 of 1973, there are serious questions about each of them having been accomplished by DEA to the satisfaction of the Congress.

To begin with, the operational disputes in drug enforcement that were to be ended by reorganization still exist. While previously the

disputes were between BNDD and Customs, now the operational disputes are between DEA and Customs.

The subcommittee staff has found that one specific subject currently in dispute is a contention by Customs that Customs officials are not receiving in a timely fashion from DEA the kinds of intelligence information which would enable them to anticipate smuggling activities, couriers, and methods of operations of persons wishing to bring narcotics into the United States.

Consequently, according to Customs authorities whom the subcommittee staff has interviewed, most of the narcotics currently being seized at the border are either the result of the vigilance of individual Customs inspectors or of chance.

In fact, heroin seizures are markedly down, and almost no high level conspiracy cases have been initiated by DEA since July 1, 1973.

At this point, Mr. Chairman, I would like to depart from the prepared text to explain that the type of conspiracy cases I am referring to here are those which are initiated at the border following the arrest of a courier or seizure of kilo quantities of narcotics at the border.

In other areas, of course, DEA has a record of initiated conspiracy cases which the subcommittee will evaluate as these hearings progress.

Next—back to my prepared text—the much-heralded intention of DEA to improve coordination with State and local authorities is an intention subject to question.

The question is, "How much of a Federal presence should there be on the street level alongside what may be an adequate State and local capability to enforce local laws relating to the possession, sale, manufacture, and use of narcotics and drugs?"

Mr. Chairman, to put that question in perspective, we must go back in time some 45 years to a period when local and State police were not equipped to control the drug traffic within their jurisdictions. Often-times, in fact, local laws were inadequate or even nonexistent.

For many years thereafter, the Federal effort was of necessity the dominant effort. Today, however, the situation has changed significantly. There are enforceable narcotics laws in every State, and likewise, in many regions of the country there has developed vast State and local capability and expertise in drug enforcement.

Indeed, preliminary inquiry by the subcommittee staff has led to the conclusion that the combination of enforceable laws and specialized police training has resulted in adequate enforcement capability at the local and State levels.

This achievement has come about, to some considerable extent, because of Federal support in terms of training programs and the infusion of assistance funds for the acquisition of equipment and technology.

A key question to be examined as these hearings progress can be characterized this way: Is the presence of Federal agents on the streets and in the neighborhoods of American cities necessary any more—except in instances where such presence is needed in the direct development of cases involving the interstate aspects of narcotics traffic?

No one doubts the validity of the concept of Federal support for State and local narcotics enforcement units. However, it is the staff's intention that the subcommittee consider the possibility that the wide-

spread use of Federal agents on the streets constitutes a form of unnecessary duplicative investigative effort.

The Ribicoff subcommittee report of October 16, 1973, addressed itself to this very point when it said:

It is essential that all levels of the illicit traffic in narcotics and dangerous drugs be penetrated by effective law enforcement efforts. The highest levels must be interdicted to cut sharply into the aggregate supply and to bring to justice the most ruthless and desperate criminals known to society.

The middle and lower levels must likewise be assaulted to stop the spread of the drug contagion and to force addicts and abusers into treatment programs.

The roles of Federal, State and local drug enforcement agencies in the drug war should be based on their respective expertise and resources. Accordingly, Federal drug law enforcement efforts should be concentrated at the highest possible levels of the illicit international and interstate drug traffic.

State and local agencies should utilize their more limited resources by concentrating on lower level traffickers who operate primarily within their jurisdiction.

It is essential that there be cooperation at all levels—especially in intelligence gathering. The new DEA holds the promise of a unified command to consolidate Federal enforcement efforts against the major traffickers and to help coordinate State and local efforts against the lower levels of the traffic. But the promise can be fulfilled only with the proper structuring of the new agency.

Therefore, the subcommittee recommends that the following guidelines be followed in structuring DEA to assure maximum cooperation and minimum competition with State and local enforcement efforts:

(A) Primary emphasis should be placed on coordinating with State and local drug enforcement efforts by means of LEAA-funded Regional Task Forces and Metropolitan Enforcement Groups, as organized by BNDD.

(B) The use of DEA agents to supervise ODALE-type operations against street-level pushers should be avoided unless specifically requested by a State or locality.

(C) The primary mission of DEA should be to interdict the highest levels of the illicit drug traffic and to support State and local efforts aimed at the lower levels.

Mr. Chairman, we should recognize, however, that it is at the lower levels of the traffic that numbers of arrests and seizures can be made with relative ease.

These arrests and seizures at the lower levels do not significantly disrupt the flow of narcotics on an interstate basis. But the arrests and seizures statistics generated by lower level enforcement can give the appearance of effectiveness of enforcement.

It should be further recognized that those dealers arrested at the lower levels are either easily replaced or quickly back in action.

Moreover, the drugs seized at the lower levels of the traffic are of very low purity and very small quantity.

Preliminary inquiry by the subcommittee staff has found evidence to indicate that DEA focuses considerable effort in pursuit of lower level dealers and in the seizure of very small quantities of narcotics of a very low level of purity.

Very shortly in my testimony I will introduce documents obtained by the staff showing the results of studies made by one of DEA's largest and most active regions, region 14, which comprises California, Nevada and Hawaii.

The studies support the staff's preliminary finding that the Federal drug enforcement effort tends to focus at the lower levels of the narcotics traffic at the expense of its stated objective of disrupting the high level traffic.

Returning now to the six promised benefits of reorganization plan No. 2, I will call your attention to the fifth alleged advantage attested to by executive branch spokesmen.

That possible advantage to the reorganization was that the establishment of DEA would provide the momentum needed to coordinate all Federal efforts related to drug enforcement outside the Justice Department, especially the gathering of intelligence on international narcotics smuggling.

The smuggling issue is a most important consideration because it must be emphasized that in order for narcotics grown or produced abroad to be used on the streets of America, they must first be smuggled past our Nation's borders.

Therefore, it is logical to state that a priority for law enforcement is to prevent narcotics from getting into the country and, to the extent possible, Federal enforcement should be geared to support that concept. This principle applies both domestically where the narcotics are consumed and abroad where the narcotics are grown, processed and exported.

To graphically illustrate the fact that all narcotics traffic originates outside the United States and how it finds its way to the United States, the subcommittee staff has prepared a chart.

The chart is entitled "Examples of Narcotic Routes From Asia, Latin America, and Europe into the United States."

Mr. Chairman, I request that this chart be made an exhibit.

Chairman JACKSON. That will be marked for identification as exhibit No. 3.

[The document referred to was marked "Exhibit No. 3" for reference and faces this page.]

Mr. MANUEL. As can be seen from the chart, the United States can be assaulted by narcotics smugglers operating from Europe, Latin America, and Southeast Asia.

The narcotics will include morphine base, heroin, cocaine, marihuana and hashish.

These may be transported directly into the United States or transshipped via third countries by a variety of means limited only by the ingenuity of the smuggler.

Foreign operations with respect to narcotics control must be geared to two basic considerations.

First, to attack the problem at its foreign source by both diplomatic means and support of the enforcement capabilities of sovereign nations in ways that do not involve direct participation or unilateral action by American agents.

Second, the gathering of intelligence information which will enable domestic enforcement to interdict the contraband.

As I have stated above—and I cannot emphasize too strongly—narcotics in the various stages of the crime of smuggling—that is, from the time it leaves a foreign source to the time it crosses the border to the time it is delivered to its primary source of distribution within the United States—is in its purest form and its greatest quantity.

Once the narcotic is distributed through a vast complicated network of wholesalers and distributors, finally reaching the street, it is in its least pure form, having been cut many times. At the street level, the narcotics are also in their smallest quantity.

EXAMPLES OF NARC

AND EUROPE IN

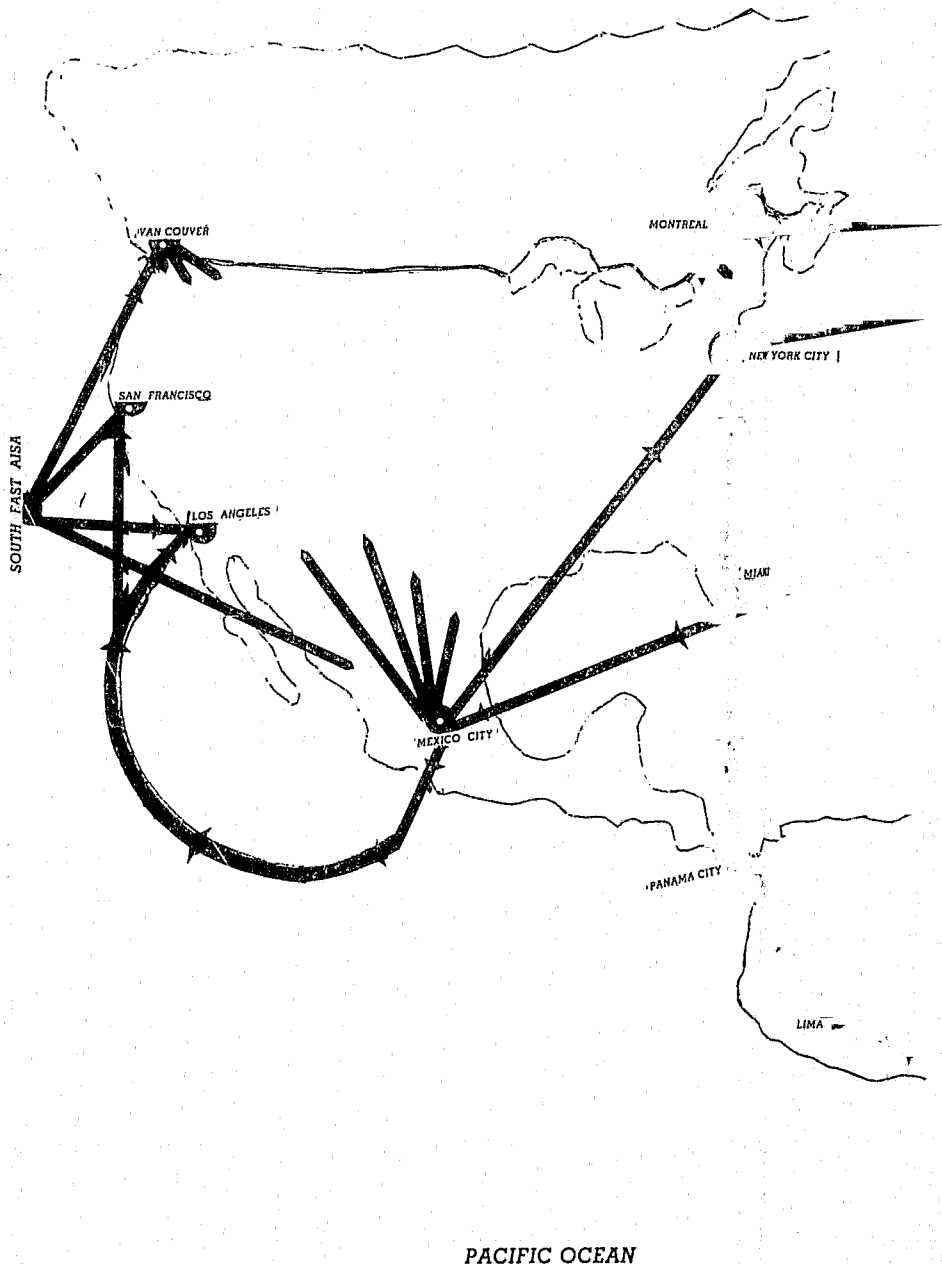
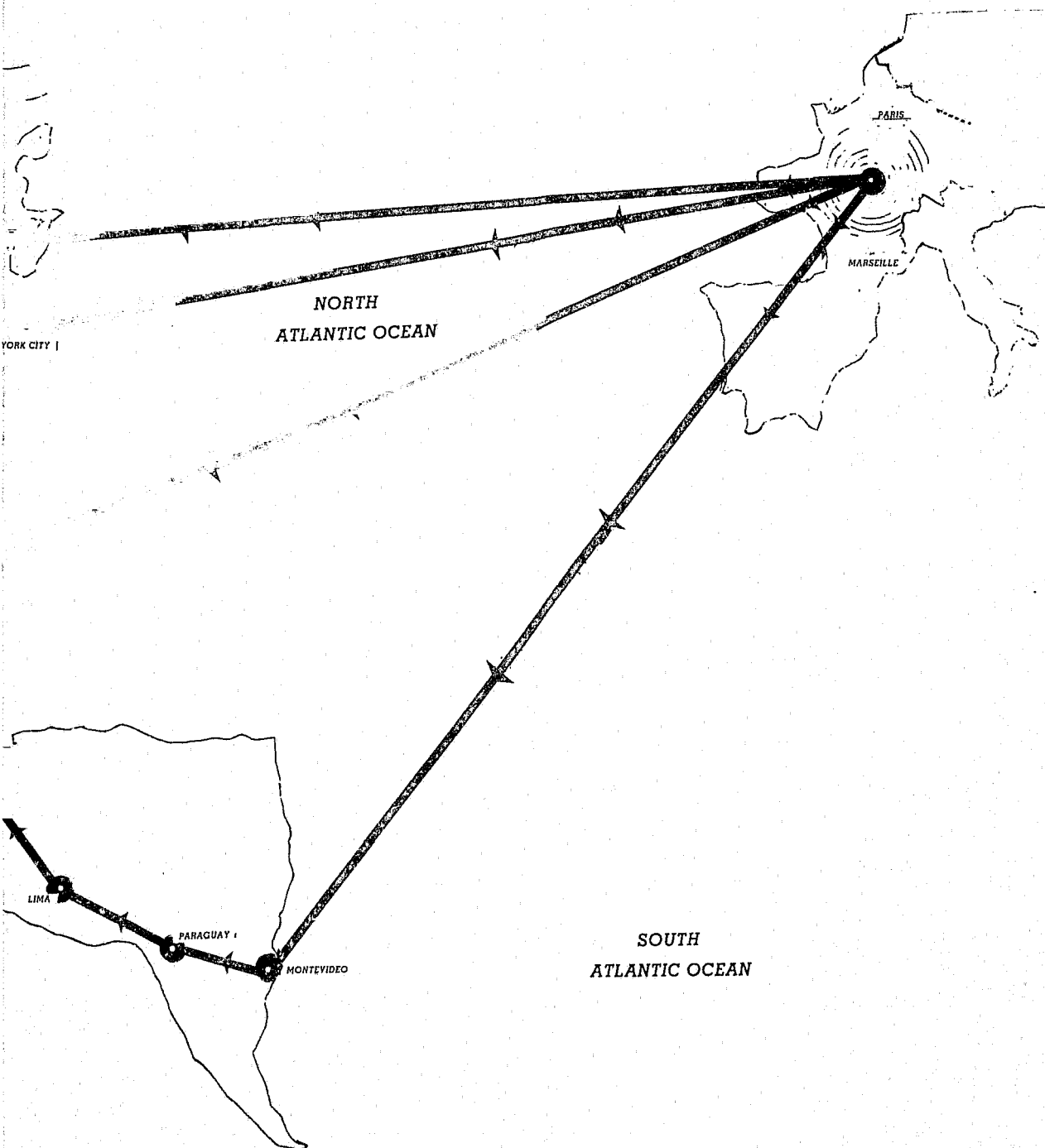


EXHIBIT 3

FNARCOTIC ROUTES FROM ASIA OPE INTO THE UNITED STATES



Senator PERCY. Mr. Manuel and Mr. Chairman, what I envisioned when we set up DEA was for the Federal Government to concentrate on the area where the State and local communities have no chance, no resources, and no intelligence to operate. They operate simply down at the user end. They are down at the D level down on the street.

But it was my assumption that the Federal Government was working primarily outside the country, working at points A and B, and then at point C. I also assumed that very little Federal effort, possibly just on a spot basis, would be focused at the D level on the street.

Could you put in perspective for us how much time is spent at these various levels, A, B, C, and D by the Federal Government?

Is it possible through your analyses to give us some approximations as to where the emphasis goes or do we have to get that from the Federal officials themselves as they appear here?

Mr. MANUEL. Both ways, Senator, really. As these hearings progress that is the question that will come up again and again. GAO has been requested by us to do a study in that regard. I am sure the Federal agencies themselves will have a lot to say about where and why they put certain resources in certain places.

However, it is the position of the staff based on our preliminary investigation that the majority of the resources of DEA has and does go at the lower levels of the traffic as we will point out as the explanation of the chart proceeds and as we study region 14 survey which I have just alluded to.

Senator PERCY. Even in region 14 in Los Angeles, as I understand it, when purchase funds were used extensively out there, is it true that those purchase funds generally did not lead to the identification and apprehension of higher level traffickers, that the effort just stopped at the D level?

Mr. MANUEL. That is correct.

Senator PERCY. They might have made purchases, they might have made arrests and convictions, but so what? Maybe it makes a good record on someone's personnel file, but does it really go to the source of the problem and do what the Federal Government is supposed to do?

Mr. MANUEL. In my judgment, no, Senator.

Senator PERCY. The purchase of evidence and information fund has grown from three-quarters of a million to about \$10 million. In your judgment, Mr. Manuel, is that kind of money, \$10 million, needed at the Federal level to in effect determine what is going on and get a feel of the street, I suppose? That looks to me like a fairly major effort.

Mr. MANUEL. Senator, I don't think it is appropriate for me to justify their appropriation request in that regard. However, the concern of the staff is that part of that money actually subsidizes the drug traffic at that level, if in fact there are no discernible, significant returns that come from the spending of that money.

Senator PERCY. In other words, it is creating demand and pushing prices up, possibly.

Did you find as you looked in detail at region 14 that the auditing procedures for the use of these funds are sound. Is all the cash accounted for, is every voucher authenticated, and does DEA know exactly where each voucher went and why?

Mr. MANUEL. Specifically in region 14?

Senator PERCY. In any region. I think you know more about region 14 probably.

Mr. MANUEL. That is true. We did find some things which raised serious questions in our mind, Senator, as we examined and investigated certain operations of exactly the points you have raised, how the money was accounted for, and so forth.

I think as the hearings progress we will have a lot more to say.

Senator PERCY. What were the largest amounts that you might have come across where you simply couldn't assert where that money had gone?

Mr. MANUEL. We studied an operation that took place in Las Vegas and ultimately came to its conclusion in California. We studied how certain flash rolls and purchase money was used. I believe the largest amount in that operation was some \$135,000. We had considerable difficulty, and Mr. Sloan was along during the investigation.

We had considerable difficulty in trying to determine exactly what the flow of that money was, how it was used, and so forth.

So those questions have arisen in our investigation and we would hope that the subcommittee will find out more about it as we go along.

Senator PERCY. Mr. Chairman, I have no further questions of Mr. Manuel. I think his testimony has been extraordinarily good. If at any point you or he should want to put the rest of it in the record, it would be perfectly satisfactory.

Chairman JACKSON. Following up Senator Percy's point, it occurs to me that there may well be a situation here where the Government of the United States has subsidized the drug traffic; that is, they have put more money in than they got out. May that not be the case?

Mr. MANUEL. Mr. Chairman, it is very possible that the technique of buy, so-called—that is, buying evidence from drug traffickers themselves—may be a form of preemptive buying that is counterproductive since there is no limit on the supply. You can keep buying out.

Chairman JACKSON. That is what I mean. But they were helping to reduce the inventory, but there is still an inventory left and the result of those buys did not overcome the inventory. So that there was more to push out on the streets.

Mr. MANUEL. That is true.

Chairman JACKSON. It further appears that DEA did not place the emphasis at the beginning, as the Ribicoff-Percy proposal envisioned.

Looking at the chart, it is A and B, particularly the high priority, the foreign countries at the border and then the next step, C, where the emphasis should be. But they turned it the other way around and went into the local areas.

But, knowing that there are adequate resources, generally speaking, at the end of the trail, the Federal enforcement ought to be concentrating its resources at the beginning of the trail, at points A, B, and C.

To put so much money into low level buys sounds to me like a farm subsidy program.

Senator PERCY. It is also true, Mr. Chairman, that when you take a dealer or distributor out at the bottom level, isn't it very easy for the top guys to replace him? Is there any evidence that arrests at the D level have dried up the supply in region 14, for example, or would you

say that the major traffickers were just able to put another distributor on the street?

Mr. MANUEL. At the street level, Senator, it would appear that the dealers and so forth who are more often than not users themselves—

Senator PERCY. They, themselves.

Mr. MANUEL. In a great majority of the cases that is true.

Chairman JACKSON. It isn't hard to get new pushers and new participants at the street level.

Mr. MANUEL. But it would appear that that is the case, that they are very easily replaced and even if they go away to jail for some period of time, they are right back at it.

Chairman JACKSON. What are the profits? You have made the significant point that when heroin is seized it is reported in pounds as if it were pure heroin. But the trouble is that when you get it at the lower level, it has been diluted. Instead of having 10 pounds of heroin, you really have 1 pound. It is diluted in the process of distribution. Is that not correct?

Mr. MANUEL. That is correct.

Senator PERCY. In dollar figures, \$50,000 at C, as I understand it, would end up to be about an inventory value of, when diluted, \$500,000 at D.

Mr. MANUEL. If you take the figures on the chart which are approximations, if, for example, at point C a major distributor was able to purchase a kilo of heroin which is 2.2 pounds, for let's say \$10,000. By the time that that heroin reached the street it will have been cut to a level of purity of between 6½ and 7 percent. That happens by taking the 95 percent pure heroin at point C, assuming it is that pure, and mixing it with 12 kilograms of innocuous material such as milk, sugar or what-not, so that you have, actually, 13 kilos at the street.

The 13 kilos at that rate of purity will translate into about 100,000 decks of heroin of 2 grains each. Two grains of heroin and all the rest is innocuous material, milk, sugar.

Chairman JACKSON. Is a deck a unit of sale?

Mr. MANUEL. That is correct, at the street level. So that kilogram at point C, if it can be caught at point C, will completely eliminate the 100,000 decks at point D.

Senator PERCY. Mr. Chairman, I would like to point out that the national information developed by our own investigative staff is borne out by a local intensive investigation carried on by the Chicago Sun Times. Allen Parachini, crime reporter for the Sun Times, pointed out that in the last 6 months of 1974, the survey of arrests by the U.S. Drug Enforcement Administration raised the question as to whether the stated national policy of pursuing big-time, multikilo, narcotics traffickers is actually followed in Chicago. So what the Sun Times did was examine court documents for a period of 2 weeks involving 138 DEA cases. They were believed to include nearly all the agency's arrests for the 6 months.

The conclusion made is that it looks as though it is just a street-level operation.

I would ask unanimous consent that the article from the March 2 Sun Times entitled "U.S. Drug Sleuths Running a Street-Level Operation?" be inserted in the record at this point as evidence that intensive

investigation in Chicago would reveal exactly the pattern that our own staff has detected nationally.

Chairman JACKSON. That will be included in the record at this point.

[The document referred to was marked "Exhibit No. 4" for reference and follows:]

EXHIBIT No. 4

[From the Chicago Sun-Times, Mar. 2, 1975]

U.S. DRUG SLEUTHS RUNNING A STREET-LEVEL OPERATION?

(By Allan Parachini)

A survey of arrests here by the U.S. Drug Enforcement Administration during the last six months of 1974 raised the question of whether the stated national policy of pursuing "big-time, multi-kilo narcotics traffickers" is followed in Chicago.

During the last two weeks The Sun Times examined court documents filed for each of 138 DEA cases. They were believed to include nearly all the agency's arrests for the six months. Several attorneys here had questioned the manner in which the agency follows the official Washington line in the Chicago area.

The local DEA office has declined to discuss particulars of the cases involved. Nationally, the agency's performance and internal harmony have come under increasing scrutiny during the last few months. A Senate committee is investigating charges of corruption and other irregularities in the DEA.

The Senate probe is being undertaken by the permanent subcommittee on investigations, of which Sen. Charles H. Percy (R-Ill.) is a member. A subcommittee spokesman said public hearings into DEA conduct probably will be held within a month.

"In the face of statistics that show an increase in heroin and cocaine use, it appears to us that some of the real problems associated with narcotics trafficking are not being addressed by DEA," the spokesman said.

Under a unified federal antidrug strategy adopted last summer, DEA is charged with pursuing "major drug traffickers," big-time smugglers and individuals involved at high levels in financing the drug trade.

However, the 138 local cases surveyed appear to reflect a much different pattern. Of the total, for instance, 62 cases involved arrests based on direct sales of drug quantities of three ounces or less—mostly heroin and cocaine.

Most sources, however, agree that such transactions represent one of the lowest "street" levels of drug trade, an area the federal strategy admonishes DEA to leave to local and state law enforcement agencies.

Four of the 62 cases involved sales of less than 1 gram (about .04 of an ounce). Another five arrests were made for sales of between 1 and 10 grams.

Another 17 cases involved sales of three to seven ounces—quantities still small enough to be associated with low-level street dealers.

In addition, eight cases involved sales of between half a pound and a pound of drugs; 14 cases involved sales of pills whose combined weight was not immediately apparent from court data, and public files spelled out no drug weight in 10 cases. One arrest involved no drugs.

The agency made 19 arrests in the same six months for sales of more than a pound of heroin or cocaine and seven for similar quantities of marijuana—cases that apparently do fall within the DEA mandate.

"Ten years ago the old BNDD (Bureau of Narcotics and Dangerous Drugs, DEA's predecessor) had 10, maybe 15 guys here and they made 5 or 10 good cases every year," said one local attorney. "Today, they've got more than 100 and they still only make 5 or 10 really good cases each year. What are those other guys doing?"

The agency, according to its Washington office, has 111 agents assigned to the Chicago region, some 70 of whom work from the Chicago office. They are augmented by police officers from several cities on temporary assignment to DEA. The agency has field offices in Milwaukee, Indianapolis, Hammond and Mount Vernon, Ill. DEA employs 2,200 agents stationed around the world.

According to affidavits, indictments and other court documents, "those other guys" in the last half of 1974:

Arrested a small-time heroin addict after the junkie had thrown a package containing 15 grams of heroin out of his car window while agents in another auto tried to pull him over for questioning.

Arrested one suspect for "possession with intent to distribute" .09 grams (less than three thousandths of an ounce) of cocaine and arrested another man on the same charge for .64 grams of amphetamines.

Arrested one suspect for possession of three ounces of marijuana after the drug was found in an overcoat left in the Federal Building.

Underwent embarrassment when an agent gave an informant \$1,225 to make a drug purchase and the informant absconded. He later was found and charged with the theft of the money.

Several big-time cases were made and pressure was exerted on a few individuals who apparently are major traffickers. DEA agents made a number of purchases of more than one or two pounds of heroin from at least four sellers. According to DEA figures, the local office recovered about 90 pounds of heroin in 1974.

In another case, DEA agents, alerted to a large marijuana shipment passing through Chicago en route to Michigan from Texas, followed a tractor trailer carrying the drug to Michigan. One person was arrested and 5,000 pounds of marijuana were confiscated under the leadership of agent Stanley Grobe.

But in most of the 138 cases surveyed, DEA agents apparently concentrated their investigative activities on buying relatively small quantities of drugs in apparently unrelated situations. There were numerous cases of small-time street sellers turning one- or two-ounce batches of heroin and cocaine over to agents in parked cars on the Near North and Northwest sides.

Milwaukee attorney James Shellow, who has wide experience handling drug cases in both Wisconsin and Illinois, said, "The DEA is primarily concerned with figures and with its cleared-by-arrest ratio.

"It is easier to accumulate favorable statistics by arresting street sellers and purchasers than it is by the time-consuming task of accumulating evidence against major importers and suppliers. My experience and those, I believe, of other lawyers about the country who defend drug cases is that the policy (of pursuing big-time traffickers) is not being implemented," he said.

DEA's regional director, George Halpin, declined to discuss any of his agency's activities with The Sun-Times. Hank Price, Halpin's public relation man, refused even to say how many agents are based in Chicago.

But in Washington, Jerry Jensen, DEA's recently appointed deputy director and former chief of the Chicago region, did agree to speak for the agency.

Jensen acknowledged that few drug "financiers" are arrested in the area, but he said that the lack of such arrests is because of the nature of Chicago drug traffic, not DEA deficiencies. He said most heroin supplied to Chicago is smuggled from Mexico by organizations usually involving several members of families of Mexican immigrants or native-born U.S. Latinos.

Jensen said he takes issue with the automatic assertion that three-ounce transactions always are indicative of street-level selling. "The drug traffickers themselves are aware of the way we operate," Johnson said. "They frequently will break down the quantity (of drugs) to fall in that level of so-called street traffic and try to avoid being a target for us," he said.

He said continuing arrests of small-time sellers can be defended as having "intelligence-gathering value" and he cited a continuing increase in the amount of heroin and other drugs being recovered by the Chicago office. The first seven months of 1974, Jensen said, yielded more confiscated heroin than the three previous years combined.

Chairman JACKSON. Senator Percy has made a good point there. The balance of the statement is excellent, Mr. Manuel. Suppose we complete the rest of it if you will go over to the chart and explain the procedures.

Start with A, the point of origin. Your associate will. Run through this so that we can get that picture. That completes for now, at least, the opening presentation.

Mr. MANUEL. Very well. To portray the flow of narcotics into the United States and to portray certain principles of internal distribution, the subcommittee staff has prepared a chart.

The chart is entitled "Basic Pattern of Narcotic Distribution in the United States."

Mr. Chairman, I request that this chart be made an exhibit with the understanding that the figures are approximations, and the configurations apply mostly to heroin smuggling.

Chairman JACKSON. It will be so understood. Then Mr. Asselin can point out the various points on the chart as you relate to those points in your comments.

[The document referred to was marked "Exhibit No. 5" for reference and faces this page.]

Mr. MANUEL. Before I do that, I would like to depart from my prepared text to make an explanation and correct probably what could be misunderstood by the chart.

I would like to make clear that the staff in presenting this chart does not in any way mean to imply that there is a monolithic structure headed by one group which smuggles and distributes narcotics in the country.

On the contrary, the staff recognizes, emphasizes the fact that there are many smuggling and distribution systems and networks in the country which exist independent of each other.

The configurations on the chart are meant to show the distribution principles of just one typical network.

Chairman JACKSON. This is merely illustrative of a pattern that can be followed. What you are saying is there can be hundreds of other patterns.

Mr. MANUEL. Right. From the chart it could be interpreted the other way, Mr. Chairman. I wanted to straighten that out for the record.

Chairman JACKSON. The record is made clear on that point.

Mr. MANUEL. This chart is helpful in demonstrating graphically the two differing methodologies which have evolved in drug enforcement.

As I have stated earlier in my testimony, those two methodologies have evolved because of the need and justification for both a border enforcement mechanism and an internal enforcement mechanism.

On this chart, point A represents the place outside the United States from which narcotics are shipped into the United States.

Point A also personifies the individual or syndicate with sufficient resources to assemble a quantity of narcotics large enough to justify the cost and risk involved in initiating a profitable smuggling effort.

Generally speaking, the narcotics to be smuggled will already have been sold or consigned to a person or group in the United States who will be the primary distributors.

Point B is any point on the United States border across which narcotics can be smuggled. Point B can also be any site in the interior United States which can be the destination for aircraft, either private or commercial, which can be used to smuggle narcotics.

It should be repeated that it is at point B—at the border—where narcotics entering this country are in their purest form and largest quantity.

Point B personifies the individual who actually smuggles the narcotics into the United States. This person's criminal stature ranges from the high level sophisticated smuggler with organized crime con-

BASIC PATTERN OF NARCO

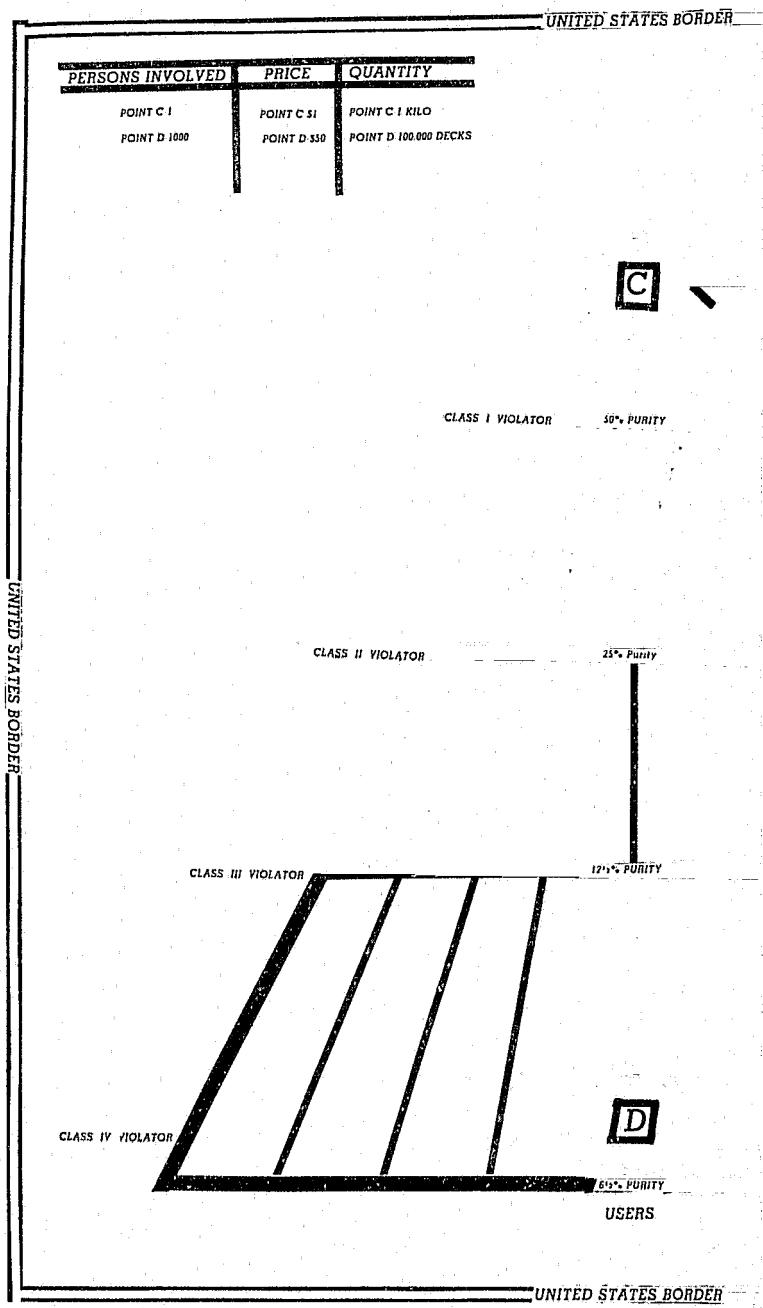
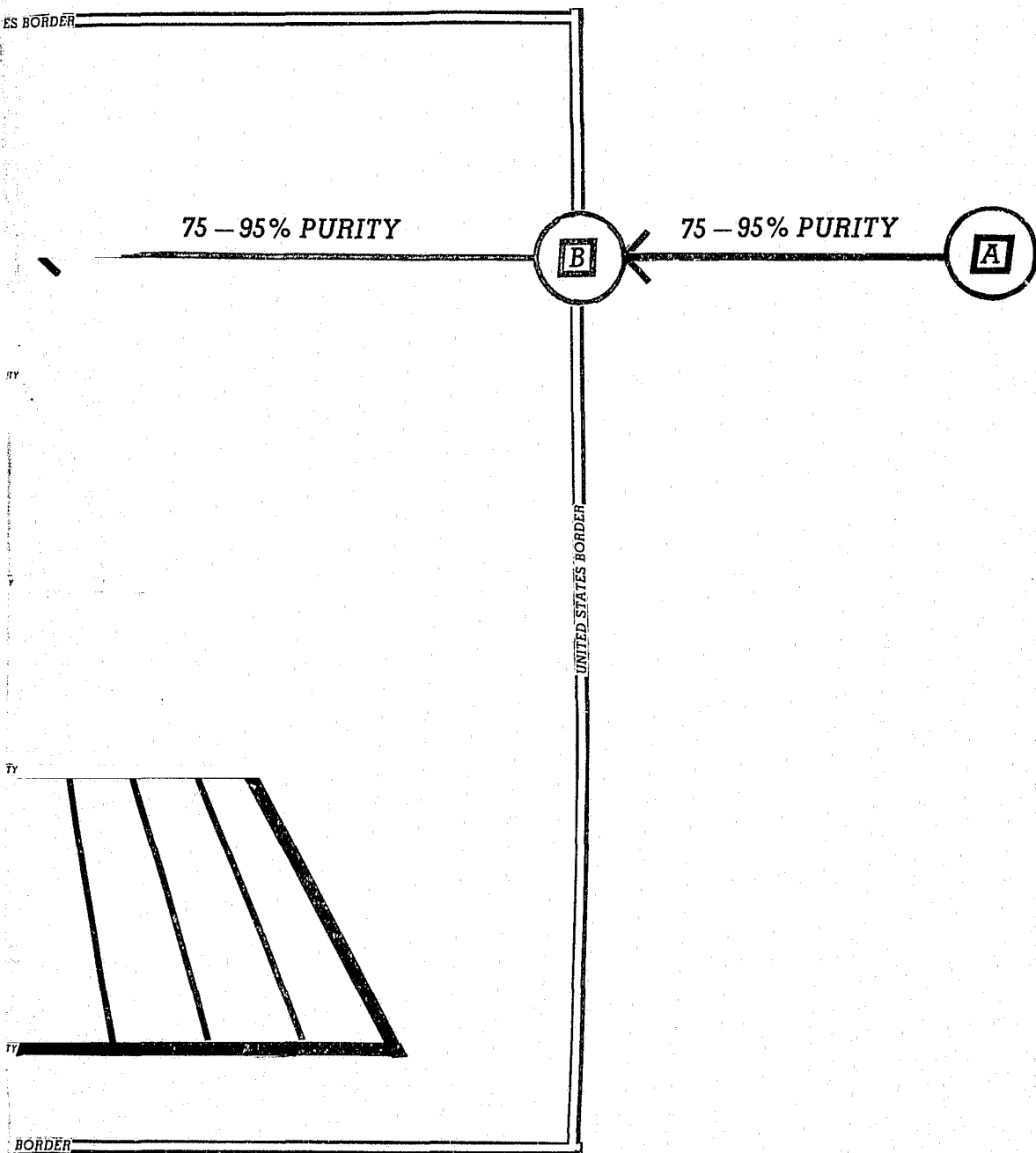


EXHIBIT 5

DRUG NARCOTIC DISTRIBUTION IN THE UNITED STATES



nections to the low level "mule" commissioned specifically to serve as a courier.

Whether point B is a high level smuggler or a low level mule, he or she will still know something or will have done something which can be developed investigatively about both point A and point C, thereby establishing an investigative trail between points A and C.

Historically, some of the biggest conspiracy cases in narcotics enforcement have been initiated by the capture or detection of the courier who, either unwittingly or in a cooperative manner, leads Federal investigators to top violators.

Point C is the first point of internal distribution of the narcotics in this country.

Point C also personifies the principal buyer or syndicate and the primary distributor of the smuggled narcotics.

These narcotics are then channeled through an intricate network of distribution until they finally reach point D.

DEA—and BNDD before it—categorizes this intricate network of internal distribution by four gradations of dealers, classes I through IV.

This categorization is spelled out in a DEA document entitled "Geo-Drug Enforcement Program, First Year Assessment, Fiscal Year 1974."

Mr. Chairman, I request this document be made an exhibit.

I will comment later in my statement on the type and quality of statistics relating to arrests and seizures.

Chairman JACKSON. It will be admitted as exhibit No. 6.

[The document referred to was marked "Exhibit No. 6" for reference and may be found in the files of the subcommittee.]

Mr. MANUEL. Point D is the lowest level in the narcotics distribution network and represents the pusher who sells to the addict.

Often, point D personifies a distributor who is himself an addict.

To repeat, at point D—at the street level—the narcotics are in their smallest quantity and their least pure quality.

For the record, I will read the figures from the chart which show that narcotics flowing through the A-B-C line usually are of a purity of from approximately 75 to 95 percent. For purposes of this illustration, we must assume that the narcotic involved is heroin. The same basic principles apply to other narcotics.

From C to D, according to the figures on the chart, the purity of the heroin declines steadily from purity levels of 50 percent to 61½ percent.

These figures must be approximations, of course, designed to illustrate the principles involved.

To further demonstrate the differences in the levels of drug traffic, I wish to call attention to the figures on the upper left-hand corner of the chart.

Assume that a single kilogram—2.2 pounds—of heroin reaches point C, a purity level of 95 percent.

Then assume that the 1 kilogram of heroin is inserted into various levels of the distribution system and it is cut—that is, diluted—by mixing it with innocuous materials such as milk sugar.

By the time that 1 kilogram of heroin reaches point D, the street, it will have been mixed with about 12 kilograms of milk sugar.

Thus, we have traced a process whereby a kilogram of 95-percent-pure heroin is converted into a substance of 13 kilograms of 6½ percent-pure heroin, which is 12 parts milk sugar and 1 part heroin.

Now, again, for purposes of illustration, let us take that same kilogram of heroin at point C and trace its movement through the distribution system not in terms of cuts or dilution but in terms of the individual packages or decks in which it is sold at point D, on the streets, to users.

At point D, that same kilogram would be contained in 100,000 decks of 2 grains of heroin each.

Each deck would sell for \$5. This figure is based on December 1972 prices.

Similarly, for each dollar of investment at point C to purchase narcotics, the selling price at point D is \$50.

In other words, if the major distributor at point C paid \$10,000 for 1 kilogram of heroin, by the time it reached the street level, point D, the same heroin, cut many times in purity, would be worth \$500,000.

Let us assume, again, for purposes of illustration, that point C is one person. That person is the head of an internal distribution network.

By the time the kilogram of heroin reaches the street—that is, point D—as many as 1,000 persons could have been involved in the distribution network.

In turn, it must be emphasized that the narcotics traffic, from points A to D, is a conspiratorial, subterranean and silent traffic.

And almost always top level conspirators and financiers are insulated from contact with the narcotic itself.

Generally speaking, then, the narcotics traffic surfaces—and therefore becomes vulnerable to detection and seizure in the United States—at two points, B and D; that is, B at the border, and D at the street or points very close to the street.

The ability of Federal enforcement agencies to disrupt the narcotics traffic depends in large measure on the level at which arrests and seizures are made.

It is obvious that arresting 1,000 distributors at point D may not be as successful a disruption of the narcotics traffic as a handful of arrests at point C.

By the same token, removing 100,000 decks of heroin from street pushers may not be as significant, in terms of disrupting the traffic, as seizing one kilogram of 95-percent pure heroin at point C.

There is a need for enforcement at all points on this chart, A, B, C, and D. What the staff wishes to do, however, is to provide the subcommittee with sufficient information to make an evaluation of where the major thrust of Federal enforcement should be and why it should be there.

One of the goals of Reorganization Plan No. 2 of 1973 was to integrate and coordinate all enforcement at all points, from A to D.

The reorganization plan gave to DEA authority to enforce laws at points A, C and D.

Customs, which is vested with the constitutional authority to safeguard the Nation's borders and is thus vested with extraordinary powers of search and seizure, was left with the responsibility for interdicting narcotics at the border, point B.

Reorganization Plan No. 2 of 1973, however, took from Customs its prior authority to develop pertinent foreign intelligence information—point A—and its prior authority to pursue criminal cases from point B to point C.

Thus, Reorganization Plan No. 2 forced a break in the jurisdictional authority in the A-B-C line.

Theoretically, what was envisioned by the executive branch proponents of Reorganization Plan No. 2 of 1973 was that DEA foreign intelligence data would be transmitted to Customs. Accordingly, Customs would be better able to interdict at the border.

When Customs would either make arrests or seizures at the border, Customs was then obliged to turn over to DEA either the seized narcotics or the arrested person, or both.

Theoretically, DEA would then conduct further investigation and substantially disrupt the narcotics traffic at the highest levels; that is to say, at points along the A-B-C line.

It is the staff's finding that this theory designed to improve the anti-narcotics smuggling effort along the A-B-C line, has failed to show significant results.

In addition, this method of operation has prolonged old inter-agency rivalries, created new ones and has thus far actually weakened this Nation's capability to interdict the flow of narcotics into the United States.

Senator PERCY. I would like to ask you about the question of rivalry. One of the problems prior to the reorganization plan was that there were a great many rivalries.

[At this point Senator Jackson withdrew from the hearing room.]

Senator PERCY. Do you continue to see rivalries between, say, Customs and DEA? Does that rivalry mean there is an unwillingness to share information and provide information, arguments over who has what information and who should share that information with whom? Is that now impeding the role of the Federal Government in this whole area?

Mr. MANUEL. It is probable, Senator, that it is.

Senator PERCY. As I understand it, the DEA has a separate intelligence computer system that they are building in El Paso, Tex.?

Mr. MANUEL. That is correct.

Senator PERCY. Customs now has a computer system in San Diego. Would two such computer systems be needed if there were adequate cooperation and a willingness to share information between these two agencies.

Mr. MANUEL. That is one of the questions that we hope the subcommittee will answer during the course of these hearings, Senator Percy. It is a fact that there are two systems. It is a fact that as far as we can determine, the information is somewhat duplicative. I should hope that the subcommittee would answer those questions.

Senator PERCY. As I recall my own military experience, the problem of rivalry between the services caused a tremendous amount of duplication, a tremendous amount of cost.

[At this point Senator Jackson entered the hearing room.]

Senator PERCY. Through the years, by creating a single Department of Defense, certainly by coordinating our intelligence activities, we have tried to avoid that. In other words, you do see a pattern which

persists to this date of interservice rivalry which creates extraordinary costs and does not permit each agency to be as effective as possible.

Mr. MANUEL. That is correct, Senator.

Senator PERCY. Thank you.

Mr. MANUEL. Customs and BNDD had separate jurisdictions before. Customs and DEA still have separate jurisdictions today. The effect of Reorganization Plan No. 2 was to leave Customs right at the border and give everything else to DEA. As I pointed out, that hasn't really cut down the rivalry.

When DEA was created, an attempt was made to insure that a border capability be built into the new organization. This was to be accomplished in part by the so-called cross designation of agents transferred to DEA from Customs.

Cross designation refers to the authority of the Customs Service to designate enforcement personnel from other agencies as customs officers for specific purposes.

This authority vests in the personnel of the affected agency the power to conduct searches and seizures at the border without moving to obtain a search warrant or having probable cause, as required by other law enforcement agencies bound by the restrictions of the fourth amendment to the Constitution.

Upon implementation of Reorganization Plan No. 2 in July 1973, the Justice Department requested that the Treasury Department cross designate a number of DEA personnel to have the authority of Customs at the border and at various ports of entry.

An agreement between DEA and Customs in this regard was formalized on January 11, 1974, ending several months of negotiation.

Preliminary investigation by the subcommittee staff revealed that the Treasury Department raised an argument about the legality of cross designation in connection with DEA personnel having search and seizure authority on a wide scale.

It is the staff's recommendation that the subcommittee explore the cross designation question. An appropriate time for gathering facts on this issue can be when witnesses appear from the General Accounting Office, the Treasury Department, and the Department of Justice. At the request of the subcommittee, the GAO has researched the cross designation issue.

Notwithstanding the need for an effective and strong antinarcotics smuggling capability, the staff does not mean to diminish the necessity for a properly focused internal enforcement mechanism.

For it is a fact that, despite the best efforts of border enforcement, a substantial amount of narcotics is successfully smuggled into the United States and thereafter moves interstate to its final points of destination.

Testimony before the Ribicoff subcommittee hearings on Reorganization Plan No. 2 reveals that an accurate figure for the amount of narcotics entering the United States is unobtainable.

In 1973, the best estimates of heroin which illegally enter this country range, for example, from 10 to 12 tons per year.

The fact that this much heroin is smuggled into the United States in a single year necessitates the existence of a Federal internal narcotics mechanism.

That mechanism is also necessary to enforce laws relating to the illegal manufacture and distribution of dangerous drugs such as amphetamines, barbiturates, and hallucinogens.

It is at this point that the staff can describe the basic differences between a border enforcement mechanism structurally competent to prevent smuggling and an internal enforcement mechanism capable of enforcing Federal laws relating to the traffic in narcotics and dangerous drugs.

As the chart demonstrates, the crime of smuggling is a continuum from points A through C. Federal law confronts this crime at point B and this is a "decreed confrontation."

This "decreed confrontation," is supported by constitutional power of search and seizure, designed to protect the threshold of the United States. In other words, it is at point B—the border—where the authority of the Government preempts the right of the potential smuggler to be free of constitutional protections against unreasonable search and seizure.

With regard to the internal mechanism, however, once the narcotics get into the mainstream of the distribution network—that is, anyplace between points C and D—a certain advantage passes to the criminal.

This advantage is that the criminal has constitutional protection under the fourth, fifth, and sixth amendments, and the authority of law enforcement is limited accordingly.

For example, while the border enforcement personnel may search and seize without probable cause, the internal enforcement agents must execute valid warrants upon justified and demonstrable evidence that a narcotics-related crime is taking or has taken place.

As I have previously said, narcotics traffic among dealers is conspiratorial, subterranean, and silent. In order to attempt to disrupt this flow of traffic, the internal enforcement officer must somehow insinuate himself between points C and D.

In order to do this, he must penetrate the violators. He has only two means of penetration, once he has selected his target. First, he may assume the role of an undercover agent posing as a narcotics dealer or user. The second choice he has is to use informants for the same purpose.

The objective for the agent then becomes to begin his operation at a relatively low level which is easily penetrated and hope to move up the ladder of the narcotics underworld hierarchy.

The agent's basic tool, either performing an undercover assignment or using informants, is money with which to buy evidence, the narcotics themselves, or information about narcotics traffic and traffickers.

The undercover buy—and, indeed, the entire act of penetrating points C and D—is, therefore, a contrived confrontation, which theoretically should be carefully planned and executed on a selective basis.

The staff wishes to point out that in the lower levels of the narcotics distribution system are dealers who are described by DEA as classes III and IV violators. It is relatively easy to penetrate this level of the traffic and make arrests and seizures.

Arrests and seizures at the lower levels can, in the aggregate, be turned into impressive statistical data which can then be used as a measure of effectiveness for the internal enforcement mechanism.

More often than not, these statistics do not accurately reflect to the public or to Congress what impact such activity has on narcotics traffic.

Seizure of narcotics statistics do not usually reflect the purity of the drug seized. As we have seen from the chart, at the lower levels narcotics are of an extremely low purity.

If, for example, it is reported that during a certain time period, 1,000 pounds of heroin has been seized, and if the seizures reflect lower level activity, it can be assumed that the substance seized was 10 percent or less actual heroin and 90 percent or more milk sugar.

Similarly, arrests at lower levels can generate equally impressive statistics in terms of numbers of violators apprehended.

But if most of these arrests take place at the classes III and IV levels, it is obvious that these persons can be easily replaced in the distribution network. Therefore, there is no significant impact on the ability of high level violators to continue their distribution activities.

To the Federal narcotics enforcement manager who is anxious to demonstrate the effectiveness of his agents, violators at the lower levels of the narcotics network can easily become "targets of opportunity."

The target of opportunity is often relatively easily identified, often an addict or user himself and inclined to cooperate with the agent after the agent has made a "buy."

Just as the narcotics enforcement supervisor comes to rely on statistics to demonstrate his agents' effectiveness, the agent on the street likewise begins to perceive of a kind of "quota system" under which he perceives that a certain number of arrests are required of him every month or quarter.

After preliminary inquiry, it is the staff's finding that arrests and seizures alone are not the most reliable indicators of an agency's effectiveness.

To say that a amount of narcotics were "taken from the market" can be misleading, since it is unstated and, therefore, unclear how such seizures impact on the availability of the drugs at high levels of distribution.

As I have noted, a substantial amount of narcotics is obtained by the internal enforcement mechanism through the use of the "buy."

The "buy" is a form of preemptive purchasing of drugs. It can be effective in reducing availability only when there is a limit on supply. Buying in this fashion can, in fact, create a market and even stimulate production.

With respect to narcotics, which all originate outside the United States, it does not appear that there is now, or in the foreseeable future, any practical limitation on the ability of the foreign syndicates to produce whatever is necessary to meet an increasing demand.

Under those conditions, the "buy" can be described as an infusion of money into the narcotics network, and it is likely that the Federal tax dollars to buy narcotics generate a profit at points above the level of trafficking where the "buy" was made.

The principle I have just discussed—that is, that narcotics seizures statistics may be misleading—also applies to arrest data. The arrests

of large numbers of class III and IV violators in an indiscriminate manner may make no significant impact on the high level distribution network.

A key issue for the subcommittee to address as these hearings progress is whether the benefit of Federal "buy" money on the Nation's narcotics problem is outweighed by the stimulation of the market that those dollars provide; and whether arrests inflicted on the lower levels of traffickers produce significant disruption of the narcotics availability.

Another vital question to be explored as these hearings go forward is, "Where should the emphasis of the Federal internal enforcement be placed? And how should it co-exist with local and State police departments?"

Having raised these questions about where the focus of internal enforcement should be, the staff would like now to call the subcommittee's attention to the DEA region 14 surveys which have already been referred to. I request they be made exhibits.

At the direction of the current Regional Director of DEA region 14, John Dan Diver, a special committee was established to study the expenditure of money which had been used for purchase of evidence and purchase of information (PE/PI). These funds are commonly referred to as "buy money."

The period of time involved in the expenditure of these funds was from July 1, 1973, the date DEA was created, through March 1974.

The study involved the compilation of statistical data from a sample of past case histories for the purpose of determining how PE/PI money was spent, on which class of violators and, to the extent possible, to determine the results of these expenditures.

The region 14 study committee was under the chairmanship of John Windham, a DEA official then assigned to the San Diego office. The committee issued an interim report on May 21, 1974, which indicated that in the cases studied the expenditures were divided as follows among the four classes of violators on a percentage basis: class I—8 percent; class II—16 percent; class III—67 percent; class IV—7 percent; and miscellaneous—2 percent.

In the same report, the committee issued these interim findings based on its review of the largest category of expenditure; namely, the 67 percent which was applicable to class III violators.

(1) In all cases an informant introduces an agent to a class III violator who reportedly can do large quantities of drugs.

(2) The agent usually makes two to four purchases from the class III violator.

(3) In no case was the source of supply arrested.

(4) In none of the cases reviewed did the file indicate a class I or class II violator became a target.

(5) In none of the cases was a class I or class II violator arrested.

(6) In the majority of the case files there was no indication that an attempt to identify the source of supply was made.

(7) In many cases substantial seizures were made of 1 pound or more. This represents a total of purchases plus whatever was seized at the time of arrest.

Following the submission of the May 21, 1974, interim report, the region 14 committee continued its analysis.

In October 1974, the region 14 committee issued its final report, a summary of which has been made an exhibit.

This summary, which was part of the final report, contained the findings, conclusions, and recommendations of the committee and was divided into five sections.

With respect to each section, the region 14 committee reported as follows:

PART ONE

Part 1 was accomplished by reviewing all DEA forms 103 issued for PE/PI expenditures during the period from July 1974 through March 1974. In those cases where no G-DEP identifier appeared, class of investigation was determined by case number and file review. The following was noted:

1. Seventy-four percent of PE/PI funds were drawn for class III and class IV investigations.
2. Twenty-four percent of PE/PI funds were drawn for class I and class II investigations.
3. The remaining 2 percent of PE/PI funds were drawn for GFT investigations.

The review of all forms 103 indicate that nearly \$3 of every \$4 drawn from PE/PI funds is drawn in investigations of the lowest two violator classes.

PART TWO

Part 2 consisted of the review of all class III investigations in which PE/PI funds were expended to determine if funds expended at that level led to the arrest of violators of a higher class. The following is pertinent:

1. PE/PI money drawn in class III investigations, when expended, result in the arrest of class III violators, and little else.
 2. When money was expended in a class III investigation, it was rare that a violator of higher class was arrested, or even identified.
- The case review indicated that cases begun at the class III level ended at the class III level. The theory that purchasing narcotics or information at the lower levels of the traffic will lead to the arrest or identification of higher traffickers appears to lack validity in most instances in region 14.

PART THREE

Part 3 consisted of interviewing special agents in charge, first line supervisors and special agents in field offices throughout the region to determine what they perceived the regional PE/PI policy to be, and what, if any, problems they encountered with present regional practices.

1. Interviews established that the office heads, supervisors, and special agents all understand that the goal of the Drug Enforcement Administration is the elimination of narcotic traffickers at the highest levels of the traffic. However, some first line supervisors and special agents indicated that there was a variance between stated policy and that which was practiced. The reason given was that they viewed routes of advancement within DEA to be open to them predicated on the numbers of arrests they made and the amounts of narcotics they seized.

PART FOUR

Part 4 is a summation of the conclusions reached in parts 1 through 3.

1. Region 14 has not devoted a sufficient percentage of available PE/PI funds to the elimination of violators in the top two violator classes.

2. The widely held and accepted tactic of purchasing narcotics from class III and IV violators in the hopes of working up has not led to accomplishment of DEA goals in region 14.

3. Although familiar with DEA violator level goals, most personnel recognized that the goals are not being met in region 14.

4. The committee concludes that regional management, in conjunction with headquarters management, must find ways to direct enforcement activities against the upper levels of the narcotics traffic.

Part No. 5 of the report consisted of seven recommendations which were designed to bring the expenditures of PE/PI money in region 14 in balance with DEA's stated objective of pursuing top violators.

On October 22, 1974, a final report was issued by John Van Diver and attached to that report was a summary of his committee's findings.

This report was submitted to the Enforcement Division of DEA headquarters in Washington and to other offices within DEA.

Mr. Chairman, in that all these documents have been made exhibits and are quite lengthy, I will quote pertinent excerpts from them now.

Among Regional Director Van Diver's conclusions were the following statements:

Region 14 recently conducted an arrest study for the period of July 1, 1973 through March 1974. The conclusion drawn by the study group was that 75 percent of our PE/PI was being spent on Class III and Class IV violators. . . .

Headquarters did a similar study on arrests by GDEP which revealed that approximately 70 percent of the arrests in this Region were Class III and Class IV. Further reports have revealed that most of our man-hours are being spent on other than Class I and II violators.

Mr. Van Diver then went on to say that focusing resources on low-level violators is contrary to DEA policy.

He articulated this point as follows:

I have stated DEA's National and Region 14's Policy on this matter many times. It is now being put in writing because apparently the verbal message is not being carried out. It is the policy of this Region to emphasize the investigations and arrests of Class I and II violators. This does not mean that Class III and IV violators will not be investigated. It does mean that when Class III's and IV's are investigated, the resources of this office will be pointed toward Class I's and II's. Class III's and IV's are not an end to themselves.

DEA is not in the numbers game and the day has passed when agents and officers are judged on quantities seized and numbers of arrest. DEA is seeking to be a disruptive influence in the larger narcotic organization and this can only be accomplished by utilizing all of our resources and energies toward that end result.

DEA has many investigative tools at its disposal. Among the main investigative tools is undercover penetrations and conspiracy investigations. Every agent in the Region is expected to be able to utilize both tools.

John R. Bartels, Jr., Administrator of DEA, has stated DEA's goals and priorities many times. He has also stated that he is willing to accept the responsibility for the decrease in arrests and seizures. He demands the quality of the class of violators be increased to Class I's and II's which would offset any decrease in seizures. That goes without saying, that this has been and is the policy of Region 14.

Law enforcement, as a rule, understands a substantive case when there is a seizure and arrest. The majority of law enforcement understands the conspiracy technique, however, this technique has not been emphasized to the degree which I think it should. You should adjust the direction of your investigations to people more than seizures. It is not necessary to have a seizure in order to have a successful prosecution. Adjust your thinking, your policy, and your emphasis accordingly.

It is requested that the trend for spending 70 percent of our PE/PI allowance for Class III's and IV's be reversed. Not only could there be a possible savings of money but you will have at your disposal adequate funds in which to institute imaginative types of probes against Class I's and II's.

It is, therefore, the policy of this Region that PE expenditures in Class III's and IV's are restricted to sample purchases, with a view to the apprehension of the violator and large seizures of evidence, unless it can clearly be shown to the SAIC or G/S that this investigation will lead to the arrest of a Class I or II, or a substantial seizure can be made, which would justify a larger expenditure of PE.

I have talked with the U.S. Attorneys throughout this Region. It is no longer necessary to make numerous purchases from a suspect to successfully prosecute him. Agreed, that it would be "nice to have," but not "a need to have." I am encouraging delivery of narcotics without necessarily the purchase of a sample or quality. This will force us to gather more evidence and it will also make better investigators of us. It might be necessary to try many of the cases in State Court. It will be incumbent upon you to foster relationships with all prosecuting attorneys, Federal and State, in order to successfully complete this. . . .

As I mentioned previously in my testimony, the subcommittee requested that GAO audit PE/PI money spent by DEA since its inception in all its regions.

Witnesses from GAO will testify in detail as to the results of their inquiries. That testimony will be given later today.

However, for the record, I would like to point out that GAO found that nationwide, for the first 6 months of fiscal year 1975, 82 percent of the money DEA expended for the purchase of evidence and 44 percent of the money expended for the purchase of information were on class III and class IV cases.

Mr. Chairman, I will now return to reorganization plan No. 2 of 1973 and comment upon the sixth and final advantage which executive branch spokesmen promised would result from the plan.

That promised advantage, according to the proponents of reorganization plan No. 2, was that by placing a single administrator in charge of Federal drug law enforcement, the plan would make the new DEA more accountable than its component parts had ever been, thereby safeguarding against corruption and enforcement abuses such as unauthorized and mistaken drug raids.

With respect to the problem of corruption within Federal narcotics enforcement, the subcommittee spent considerable time analyzing what has occurred in the past and what current problems exist in DEA.

The staff sought to determine what correlation exists between corruption problems and the manner in which the internal enforcement mechanism functions.

In addition, the staff sought to determine what correlation exists between corruption problems and the manner in which DEA is managed, and whether top management in DEA and its predecessor agencies have actively supported the inspection function by adequate staffing, equipment and decisive action.

The staff found that corruption problems have burdened Federal drug enforcement for many years.

In January 1975, the subcommittee heard in executive session the testimony of two men who are knowledgeable about the system of personnel integrity inspection that existed in the Federal Bureau of Narcotics, the Bureau of Narcotics and Dangerous Drugs and DEA.

The men are Andrew C. Tartaglino and George B. Brosan.

Mr. Tartaglino, the former Acting Deputy Administrator of DEA, was the Chief Inspector at BNDD and before that led a major investigation which exposed organized corruption in the New York Regional Headquarters of the FBN.

Mr. Brosan served as Acting Chief Inspector of DEA from September 1973 to December 1974. Prior to that, he was an official of the customs service where he conducted several personnel integrity investigations.

Based primarily on Mr. Tartaglino's and Mr. Brosan's testimony in executive session, the subcommittee requested and received from the Department of Justice documentation which indicated patterns of corruption within Federal drug enforcement.

It is the staff's view that these patterns continue to the present day.

During the course of these hearings, starting with the public testimony of Mr. Tartaglino and Mr. Brosan, the subcommittee will have the opportunity to review certain cases having to do with the alleged misconduct of Federal drug enforcement personnel.

In the preliminary investigation the staff has received and evaluated considerable information relating to these instances of alleged misconduct by drug enforcement personnel; and we have also evaluated the investigations that were made concerning these allegations by the internal security mechanism within DEA and its predecessor agencies.

In addition, the staff has conducted numerous interviews with drug enforcement officials, both past and present. We have interviewed persons who have worked in or were close to the internal security mechanism within Federal enforcement. And we have interviewed persons directly involved in the cases which the subcommittee will review. Persons in each of these categories will testify as the hearings proceed.

It is the staff's preliminary finding that, considering the dangers of corruption inherent in the manner in which domestic narcotics enforcement must operate with its heavy reliance on undercover operations and its proximity to the criminal element, there has never been an adequate effort in the field of internal security commensurate with the risks involved.

Senator PERCY. Mr. Manuel, that seems almost incredible. Can you explain why there never has been?

Mr. MANUEL. I could attempt an explanation, Senator Percy. It would be an involved one and possibly one that you may want to hear from Mr. Tartaglino and Mr. Brosan themselves, who have had direct knowledge and who have stated to us time and time again what the deficiencies were, what the chronology of this problem has been, and so forth.

Senator PERCY. If you will be in the room when they testify—

Mr. MANUEL. Absolutely.

Senator PERCY. I hope you would advise us if your investigations show any other reasons.

Mr. MANUEL. Absolutely.

Chairman JACKSON. Is there an area of law enforcement where the amounts of money constitute so great a temptation to buy off the officers?

Mr. MANUEL. As we have seen narcotics generate huge amounts of money. As we have also seen the narcotics agent who has to penetrate this system must himself sometimes assume the role of a criminal in order to penetrate the organization and to make his buys and make his arrests.

Therefore, it is likely that the nature of the business itself creates dangers that do not exist in other forms of criminal law enforcement.

I would say the dangers of corruption are more real in narcotics enforcement than in any other type of enforcement.

Chairman JACKSON. Would you say greater than any other area of law enforcement?

Mr. MANUEL. Right. All the essential ingredients of a corrupt atmosphere are present. There is the corrupt criminal element, the huge amount of money, and the undercover operation itself which places the agent, exposes him to these dangers.

What efforts have been exercised in internal security and what successes have been obtained in exposing and eradicating corruption, especially in the period of 1967 to 1971 in the New York office, can be characterized more as reactions to crises rather than systematic measures to prevent corrupt practices from occurring.

For that reason, it is the staff's preliminary finding that no one has ever known the true extent of corruption in Federal narcotics enforcement.

Many charges and allegations against narcotics agents have remained unresolved for extended periods of time, indicating that, with few notable exceptions, top management has been unwilling to deal with integrity problems in a forceful and decisive manner.

In conclusion, Mr. Chairman, it is the staff's hope that as this subcommittee seeks to evaluate the corruption question in Federal narcotics enforcement, all of us keep our perspective on this issue and understand that the overwhelming majority of agents are honest, dedicated, and incorruptible.

Just one last thing, Mr. Chairman. In the prepared text, there was a request to make the documents referred to, exhibits to the hearings. If it is all right with you, I would like to request that the region 14 studies, which I referred to in the statement but did not read exhaustively, be introduced as exhibits for the record.

Chairman JACKSON. All right. They will be exhibit No. 7.

[The document referred to was marked "Exhibit No. 7" for reference and follows:]

EXHIBIT No. 7

[Memorandum]

MAY 21, 1974.

To : Mr. John E. Van Diver, Regional Director, Los Angeles, Calif.

From : John H. Windham, Chairman, Regional PE/PI Survey.

Subject : Results of PE/PI Survey.

The Committee studying the expenditure of PE/PI Funds in Region 14 is now in its fourth week of work. Although the Committee has not finished its

work, the following facts have emerged from the study and are included in this memorandum in order that your office can be advised of the Committee's progress.

The statistical data listed below was obtained from the forms DEA-103 which show how much PE/PI was expended and on what class of violator. For the first three quarters of Fiscal Year 1974 Region 14 spent \$442,328 in the following areas:

CLASS I

PE, 7,580 or 2 percent equals 8 percent.
PI, 28,290 or 6 percent equals 8 percent.

CLASS II

PE, 26,946 or 6 percent equals 16 percent.
PI, 42,538 or 10 percent equals 16 percent.

CLASS III

PE, 197,015 or 44 percent equals 67 percent.
PI, 103,641 or 23 percent equals 67 percent.

CLASS IV

PE, 17,747 or 4 percent equals 7 percent.
PI, 11,215 or 3 percent equals 7 percent.

GENERAL FILES

Total 3 percent.

The percentages reflect expenditures for the entire Region and do not distinguish between individual offices. We have selected the months of August 1973 and February 1974 for review of each individual's office's expenditures to determine how closely they adhere to the Regional averages. We are also breaking out Task Force expenditures for the above test months to see how they affect our totals.

The Committee has selected 10% of the Class III cases for review in order to determine if higher caliber violators were uncovered as a result of starting at a Class III level. The review of those cases worked in Los Angeles has been completed and the following facts can be reported:

1. In all cases an informant introduces an agent to a Class III violator who reportedly can do large quantities of drugs.
 2. The agent usually makes 2 to 4 purchasers from the Class III violator.
 3. In no case was the source of supply arrested.
 4. In none of the cases reviewed did the file indicate a Class I or Class II violator became a target.
 5. In none of the cases was a Class I or Class II violator arrested.
 6. In the majority of the case files there was no indication that an attempt to identify the source of supply was made.
 7. In many cases substantial seizures were made of one pound or more. This represents a total of purchases plus whatever was seized at the time of arrest.
- The Committee is continuing to review the Class III cases for the District Offices. In addition, the Committee is studying the feasibility of a questionnaire to be sent to Senior Agents in Region 14 in order to gain input from the working agents.

JOHN H. WINDHAM.

[Memorandum]

OCTOBER 22, 1974.

To: See distribution.

From: John E. Van Diver, Regional Director, Los Angeles, Calif.

Subject: PE/PI funds.

Region 14 recently conducted an arrest study for the period of July 1, 1973, through March 1974. The conclusion drawn by the study group was that 75% of

our PE/PI was being spent on Class III and Class IV violators. Attached is a copy of that study for your review.

Headquarters did a similar study on arrests by GDEP which revealed that approximately 70% of the arrests in this Region were Class III and Class IV. Further reports have revealed that most of our manhours are being spend on other than Class I and II violators.

I have stated DEA's National and Region 14's Policy on this matter many times. It is now being put in writing because apparently the verbal message is not being carried out. It is the policy of this Region to emphasize the investigations and arrests of Class I and II violators. This does not mean that Class III and IV violators will not be investigated. It does mean that when Class III's and IV's are investigated, the resources of this office will be pointed toward Class I's and II's. Class III's and IV's are not an end to themselves.

DEA is not in the numbers game and the day has passed when agents and officers are judged on quantities seized and numbers of arrest. DEA is seeking to be a disruptive influence in the larger narcotic organization and this can only be accomplished by utilizing all of our resources and energies toward that end result.

DEA has many investigative tools at its disposal. Among the main investigative tools is undercover penetrations and conspiracy investigations. Every agent in the Region is expected to be able to utilize both tools.

John R. Bartels, Jr., Administrator of DEA, has stated DEA's goals and priorities many times. He has also stated, that he is willing to accept the responsibility for the decrease in arrests and seizures. He demands the quality of the class of violators be increased to Class I's and II's which would offset any decrease in seizures. That goes without saying, that this has been and is the policy of Region 14.

Law enforcement, as a rule, understands a substantive case when there is a seizure and arrest. The majority of law enforcement understands the conspiracy technique, however, this technique has not been emphasized to the degree which I think it should. You should adjust the direction of your investigations to people more than seizures. It is not necessary to have a seizure in order to have a successful prosecution. Adjust your thinking, your policy, and your emphasis accordingly.

It is requested that the trend for spending 70% of your PE/PI allowance for Class III's and IV's be reversed. Not only could there be a possible savings of money put you will have at your disposal adequate funds in which to institute imaginative types of probes against Class I's and II's.

It is, therefore, the policy of this Region that PE expenditures in Class III's and IV's are restricted to sample purchases, with a view to the apprehension of the violator and large seizures of evidence, unless it can clearly be shown to the SAIC or G/S that this investigation will lead to the arrest of a Class I or II, or a substantial seizure can be made, which would justify a larger expenditure of PE.

I have talked to the U.S Attorneys throughout this Region. It is no longer necessary to make numerous purchases from a suspect to successfully prosecute him. Agreed, that it would be "nice to have," but not "a need to have." I am encouraging delivery of narcotics without necessarily the purchase of a sample or quantity. This will force us to gather more evidence and it will also make better investigators of us. It might be necessary to try many of the cases in State Court. It will be incumbent upon you to foster relationships with all prosecuting attorneys, Federal and State, in order to successfully complete this.

This is a major priority which will be implemented immediately upon receipt of this memorandum and successfully carried out. The Deputy Regional Director

and/or myself will be visiting your offices in the near future, at which time, I expect the opportunity to discuss this policy—its why's and wherefore's with you, your staff, your group leaders and your entire office, if necessary.

Attached is a copy of DEA's goals and objectives on a national scale. It coincides with Region 14's problems and priorities and is completely adaptable to Region 14.

JOHN E. VAN DIVER.

Attachment.

COMMITTEE SUMMARY

A STUDY OF REGION FOURTEEN EXPENDITURE OF FUNDS FOR PURCHASES OF EVIDENCE AND INFORMATION FROM JULY 1973 THROUGH MARCH 1974, PRESENTED TO JOHN E. VAN DIVER, REGIONAL DIRECTOR, LOS ANGELES

SUMMARY

This summary contains the findings, conclusions and recommendations of the committee. The complete report is lengthy, containing methodology and will be presented independently. The summary, like the complete report, is divided into five sections.

1. Part One, fiscal data.
2. Part Two, review of investigative files.
3. Part Three, interviews.
4. Part Four, conclusions.
5. Part Five, recommendations.

PART ONE

Part One was accomplished by reviewing all DEA Forms 103 issued for PE/PI Expenditures during the period from July 1973 through March 1974. In those cases where no G-DEP identifier appeared, class of investigation was determined by case number and file review. The following was noted:

1. Seventy four percent of PE/PI funds were drawn for Class three and Class four investigations.
2. Twenty four percent of PE/PI funds were drawn for Class one and Class two investigations.
3. The remaining two percent of PE/PI funds were drawn for GFT investigations.

(See attached graphic illustrations.)

The review of all Forms 103 indicate that nearly three of every four dollars drawn from PE/PI funds is drawn in investigations of the lowest two violator classer.

PART TWO

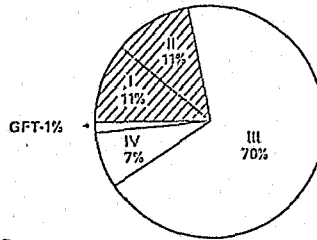
Part Two consisted of the review of all Class three investigations in which PE/PI funds were expended to determine if funds expended at that level led to the arrest of violators of a higher class. The following is pertinent:

1. PE/PI money drawn in Class three investigations, when expended, result in the arrest of Class three violators, and little else.
2. When money was expended in a Class three investigation, it was rare that a violator of higher class was arrested, or even identified.

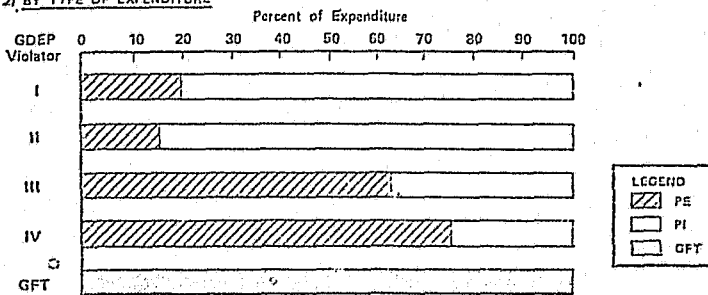
The case review indicated that cases began at the Class three level ended at the Class three level. The theory that purchasing narcotics or information at the lower levels of the traffic will lead to the arrest or identification of higher traffickers appears to lack validity in most instances in Region Fourteen.

PE/PI EXPENDITURES
FIRST QUARTER 1974

1) BY GDP VIOLATOR



2) BY TYPE OF EXPENDITURE

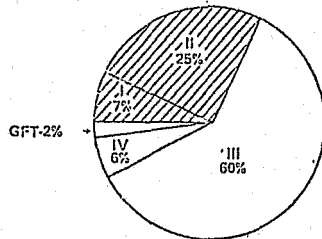


3) TABULATION OF EXPENDITURES

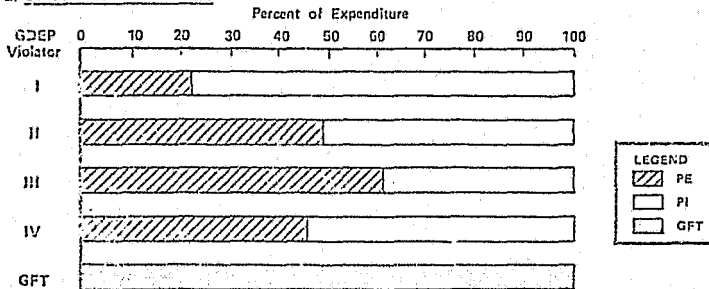
GDP VIOLATOR	TOTAL REGIONAL EXPENDITURES		
	PE	PI	TOTAL
Class I	\$ 2,000	\$12,085	\$14,975
Class II	2,100	10,917	13,017
Class III	54,210	32,316	86,526
Class IV	6,177	2,055	8,232
GFT			\$ 1,260
TOTAL	\$65,587	\$57,373	\$122,960

COMPOSITION OF TOTAL REGIONAL
PE/PI EXPENDITURES
SECOND QUARTER 1974

1) BY GDP VIOLATOR



2) BY TYPE OF EXPENDITURE

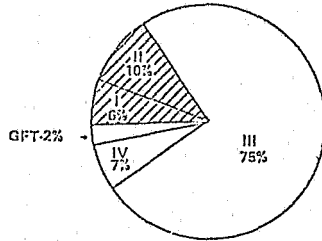


3) TABULATION OF EXPENDITURES

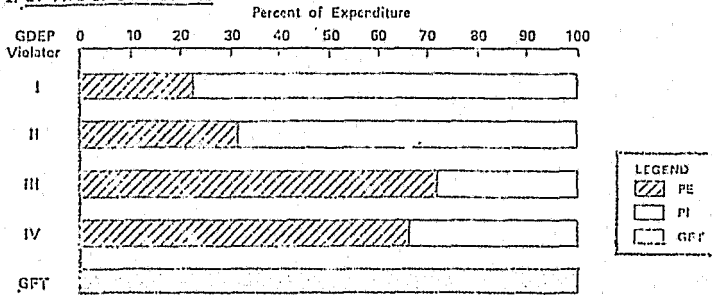
GDP VIOLATOR	TOTAL REGIONAL EXPENDITURES		
	PE	PI	TOTAL
Class I	\$ 2,450	\$ 3,575	\$ 11,025
Class II	10,486	20,750	40,236
Class III	59,402	33,575	97,977
Class IV	4,620	5,533	10,153
GFT			3,025
TOTAL	\$ 76,958	\$ 73,433	\$ 150,391

COMPOSITION OF TOTAL REGIONAL
PE/PI EXPENDITURES
THIRD QUARTER 1974

1) BY GDP VIOLATOR



2) BY TYPE OF EXPENDITURE

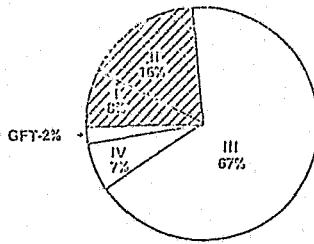


3) TABULATION OF EXPENDITURES

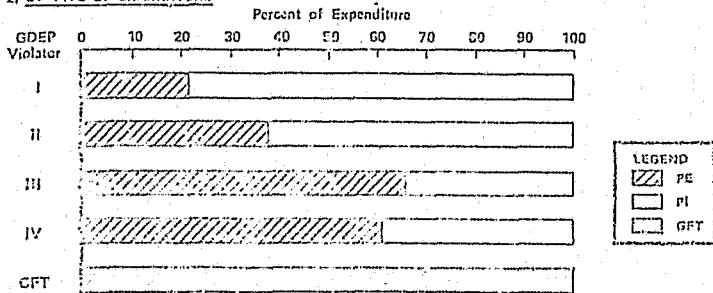
GDP VIOLATOR	TOTAL REGIONAL EXPENDITURES		
	PE	PI	TOTAL
Class I	\$ 2,250	\$ 7,620	\$ 9,870
Class II	5,000	10,921	15,921
Class III	83,111	31,880	115,003
Class IV	6,500	3,595	10,095
GFT			3,011
TOTAL	\$ 97,861	\$ 54,016	\$ 151,877

FIRST 3 QUARTERS 1974

1) BY GDP VIOLATOR



2) BY TYPE OF EXPENDITURE



3) TABULATION OF EXPENDITURES

GDP - VIOLATOR	TOTAL REGIONAL EXPENDITURES		
	PE	PI	TOTAL
Class I	\$ 7,670	\$ 23,290	\$ 30,960
Class II	24,553	42,533	67,086
Class III	197,915	103,641	301,556
Class IV	17,747	11,145	28,892
GFT			7,036
TOTAL	\$403,243	\$156,744	\$559,987

PART THREE

Part Three consisted of interviewing Special Agents in Charge, first line supervisors and Special Agents in field offices throughout the Region to determine what they perceived the Regional PE/PI policy to be, and what, if any, problems they encountered with present Regional practices.

1. Interviews established that the office heads, Supervisors, and Special Agents all understand that the goal of the Drug Enforcement Administration is the elimination of narcotic traffickers at the highest levels of the traffic. However, some first line supervisors and Special Agents indicated that there was a variance between stated policy and that which was practiced. The reason given was that they viewed routes of advancement within DEA to be open to them predicated on the numbers of arrests they made and the amounts of narcotics they seized.

2. Most managers felt that there were few firm guidelines on PE/PI policy, with two notable exceptions:

a. The suggested schedule of PI payments as set forth in the Regional Directors Memorandum of October 11, 1973;

b. The limits placed on their authority to approve expenditures of PE funds. Although they felt comfortable with the suggested PI payment schedule, they felt hampered by the limits placed on their authority to authorize (and thereby plan) PE expenditures. All office heads indicated that they could do a better job of planning expenditures if they had their own budgets. While they admitted that Regional approval was fairly given, they felt that they could do a better job of reaching Regional and National objectives if they knew how much money they had to work with.

While the Committee recognizes the significance of the individual budget theory, we note that initial budgets granted the Region in the past have never been adequate and have had to be supplemented frequently. Until such time as the region receives a realistic PE/PI budget at the beginning of a Fiscal Year, we feel it would be impractical to further budget funds to individual offices.

3. Office heads also indicated that they saw no advantage in breaking the PE/PI allotment into two separate funds. By doing so, they felt that we would be less flexible than we now are.

4. The question was asked of office heads if other investigative techniques were being utilized in conjunction with PE/PI expenditures to achieve optimum investigative results. For instance, Title III investigations could be more productive if we were able to effect undercover purchases from selected subjects during the life of the interception. Pre-buy and post-buy surveillance should be a must. Additionally, surveillance on days during which no buys are scheduled often lead to identification of associates and sources of supply. Often, managers admitted, these techniques which could enhance our returns from PE/PI expenditures are not employed. The reasons why they were not would appear to be lack of manpower, or, poor work habits. While we cannot always remedy the first reason, we can, and should, attend to the second.

PART FOUR

Part Four is a summation of the conclusions reached in Parts One through Three.

1. Region Fourteen has not devoted a sufficient percentage of available PE/PI funds to the elimination of violators in the top two violator classes.

2. The widely held and accepted tactic of purchasing narcotics from class three and four violators in the hopes of "working up" has not led to accomplishment of DEA goals in Region Fourteen.

3. Although familiar with DEA violator level goals, most personnel recognized that the goals are not being met in Region Fourteen.

4. The Committee concludes that Regional Management, in conjunction with Headquarters Management, must find ways to direct enforcement activities against the upper levels of the narcotics traffic.

PART FIVE

Part Five consists of the recommendations of the Committee. Some recommendations will be within the power of Regional Management to initiate, while others can be accomplished only by combined Regional and Headquarters initiatives.

1. Office heads and Supervisors must be convinced that the National policy of the Administration is, in fact, the policy which will be followed in Region Fourteen.

2. Office heads and Supervisors must be made aware that they will be held accountable by the Regional Director for failure to implement the Regional policy.

3. Regional Management should initiate contacts with Headquarters Training Officers requesting that Special Agent training should include strong emphasis on Drug Enforcement Administration goals, and the strengthening of courses which will lead to the accomplishment of those goals. These courses would include conspiracy investigations, intelligence, investigative techniques, cooperation with state and local agencies and similar subjects.

4. Regional Management should confer with Headquarters personnel to effect a change in the Special Agent rating forms. These forms should reflect to the officer being rated that he is expected to perform indepth investigations, and will be measured against that standard.

5. Supervisors and office heads must look closely at PE/PI expenditures before they give their approval. When expenditures are made, they should be aware that they must be able to show that the investigation is leading to the accomplishment of the Drug Enforcement Administration's mission.

6. Management should insure that existing reward systems at their disposal are used to reinforce the Drug Enforcement Administration's goals. These systems include, but are not limited to, promotions, letters of commendation, cash awards, special act or service awards, etc.

7. Regional Management should make a copy of this Committee summary to all personnel in Region Fourteen and those other officers within the Drug Enforcement Administration whom they deem appropriate.

**DEA OBJECTIVES—REDUCE NARCOTIC AND DANGEROUS DRUG ABUSE IN THE U.S.
BY CONTROLLING THE AVAILABILITY OF ILLEGAL DRUGS**

GOALS

I. Initiate and develop criminal investigations: a. toward the apprehension and prosecution of **MAJOR DRUG TRAFFICKING GROUPS** in the U.S. and Mexico with **PRIMARY ENFORCEMENT EMPHASIS** on the targeting, disruption, and immobilization of known foreign sources.

II. Collect and disseminate intelligence:

- a. identify major trafficking groups on both sides of the border
- b. identify sources of supply
- c. locate clandestine growing areas
- d. provide intelligence to other agencies for the interdiction of drugs and other contraband at the border area

III. Utilize the following enforcement techniques:

- a. undercover penetration through purchases of drug evidence
- b. undercover probes in Mexico in cooperation with MFJP
- c. pursue conspiracy, investigation to secure indictment of foreign heads of trafficking organization for extradition to U.S. or prosecution by the Mexican authorities.
- d. establish liaison programs with other Federal, State, and local agencies
- e. use all available enforcement techniques, i.e., Title III's, beeper devices, convoys, Letters Rogatory, etc.

Chairman JACKSON. Thank you, Mr. Manuel. Thank you, Mr. Asselin, for a very fine presentation.

The Chair would like to say that because the matter has been brought up, Mr. Tartaglino will be heard tomorrow and Mr. Brosan on Wednesday.

We will hear one of the Department's witnesses, Dr. Robert DuPont, now. Then we will continue this afternoon. I don't think we will be able to get the other three, obviously, in before that time.

Mr. MANUEL. If I may, Mr. Asselin reminded me we have two other exhibits we wanted in the record. They are a report by the New York State Commission of Investigations with respect to narcotics law enforcement.

Chairman JACKSON. That will be received as exhibit 8.

Mr. MANUEL. And the Commission report of the Knapp Commission in New York, which studied police corruption and specifically corruption in narcotics enforcement.

Chairman JACKSON. Exhibit 9 will be admitted.

[The documents referred to were marked "Exhibits Nos. 8 and 9" for reference and may be found in the files of the subcommittee.]

Senator PERCY. Mr. Asselin, I commented on Mr. Manuel's work. I should also like to commend you for your outstanding work in this regard. I know it has been a fine teamwork effort by the staff of the subcommittee. But your extraordinary efforts in helping to put together, with great care and thoroughness, this excellent presentation, especially with the severe time limitations under which you operated, are certainly to be commended.

Mr. ASSELIN. Thank you, sir.

Chairman JACKSON. I think it is a good example of bipartisan professionalism, too, on both sides. The minority staff has been most helpful.

Mr. FELDMAN. That was my comment, Mr. Chairman. Senator, Mr. Sloan on your right, has been invaluable in this investigation.

Chairman JACKSON. Thank you, gentlemen.

Dr. Robert DuPont, Director, Special Action Office on Drug Abuse Prevention.

Will you raise your right hand and be sworn?

Do you solemnly swear that the testimony you are about to give before this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. DUPONT. I do.

TESTIMONY OF ROBERT L. DUPONT, M.D., DIRECTOR, SPECIAL ACTION OFFICE ON DRUG ABUSE PREVENTION

Chairman JACKSON. You may be seated and state your name and identification for the record.

Dr. DUPONT. Mr. Chairman, I am Dr. Robert DuPont, Director of the Special Action Office for Drug Abuse Prevention in the Executive Office of the President; also the Director of the National Institute on Drug Abuse in the Department of Health, Education and Welfare.

As a Federal bureaucrat at a time like this, I point out that I am not part of the Justice Department and DEA.

Chairman JACKSON. You are part of the Medical profession?

Dr. DUPONT. Yes, sir.

Senator PERCY. Is this a disclaimer?

Dr. DUPONT. It is hard enough to deal with the problems on my side of the equation without dealing with all of them on this other side.

Chairman JACKSON. What is your medical background? What is your discipline?

Dr. DUPONT. I am a medical doctor, a physician and psychiatrist in terms of my specialty training.

Chairman JACKSON. Also now engaged in administrative work?

Dr. DUPONT. Yes, sir. I was Director of the District of Columbia

Narcotics Treatment Program for 4 years before coming to the Federal Government 2 years ago.

In the interest of time, I will submit my written statement for the record and not attempt to even summarize that in any detail.

[The statement follows:]

STATEMENT OF ROBERT L. DUPONT, M.D., DIRECTOR, SPECIAL ACTION OFFICE FOR DRUG ABUSE PREVENTION BEFORE THE SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, COMMITTEE ON GOVERNMENT OPERATIONS, JUNE 9, 1975

Thank you, Mr. Chairman, for the opportunity to testify on the extent of contemporary drug abuse patterns and the relationship between treatment and other demand reduction activities and supply reduction efforts.

There is currently a complex pattern of drug abuse in America; a pattern that reflects many real accomplishments on the part of those involved in drug abuse prevention as well as some continuing problems. With the establishment of the Special Action Office for Drug Abuse Prevention, four years ago, the Federal Government began a balanced, comprehensive effort both to reduce drug supply and to reduce demand for drugs on the part of American citizens.

My purpose today is to provide this Subcommittee with the current assessment of the nature and extent of drug abuse in the United States and review the activities of the Special Action Office during the past four years with special emphasis on its relationships to the criminal justice system.

DRUG ABUSE IN THE UNITED STATES

Heroin

In 1965, an epidemic of heroin use began in the United States. The rate at which new heroin users were created increased by a factor of 10 in less than 7 years. Both hepatitis data, and incidence data from clients in treatment demonstrate this phenomenon. (See Table 1 and Table 2).

This macro-epidemic was composed of several smaller epidemics linked to one another by a diffusion process which was surprisingly fast. The epidemic seems to have begun among minority populations living in major metropolitan areas on both coasts. (e.g., New York City, Washington, D.C., Los Angeles, San Francisco). It seems to have spread rather quickly to white populations living in those same metropolitan areas, and to other large metropolitan areas (e.g., Detroit, Boston, Miami, Phoenix). By about 1970, it had begun to appear in smaller cities of the United States. Table 3 shows the incidence of Black and White use from the hepatitis data. Table 4 shows the spread of heroin use to new metropolitan areas from DAWN emergency room visits. Table 5 shows incidence curves derived from analyses of small cities.

In 1972, the nationwide growth in prevalence and its disastrous individual and social consequences was interrupted. There are at least two contributing factors to this significant decline in the magnitude of the heroin problem. A nationwide system for the delivery of drug abuse treatment and prevention was established. Large numbers of heroin users were provided with an alternative to street life and an opportunity to return to a more productive role in society. Simultaneously, a combination of the Turkish Opium Ban, aggressive enforcement by the French police, and international conspiracy cases made by Federal Enforcement Agencies produced a shortage of heroin use on the East Coast. (See Table 6).

The effects of the shortage are very clear. In the cities on the East Coast where a substantial fraction of the users lived, the heroin problem improved significantly. While we have sometimes found it treacherous to use single cities as indicators of general trends in drug use, the experience of Washington, D.C. during this period of shortage is close to the experience of other East Coast cities. In Washington, D.C. both the incidence and prevalence of heroin use declined significantly. The decline in incidence is indicated by data derived from treatment including dramatically reduced numbers of users with recent onset of heroin use and progressive increases in average age of user population. (See Table 7). The decline in prevalence is indicated by declining heroin overdose deaths and diminishing rates of detection of heroin in the arrested population. The District of Columbia is used to illustrate these trends because the data available for this city is far more extensive and reliable than is the case for any other city in the United States. It also appears that the downward trend in 1972 and 1973 was more severe in the District of Columbia than in other cities.

In the environment of an East Coast heroin shortage, Mexico emerged as a major source country. The importance of Mexico as a source country was documented through intelligence and operations conducted in Mexico which exposed the existence of laboratories, fields, and organized smuggling activities. On the strength of these findings, diplomatic efforts were launched which resulted in a significant commitment from the Government of Mexico.

That brings us to the present. While our data for 1974 are not as clear as the historical data, it is possible to discuss several important features of the current situation.

First, incidence and prevalence of heroin use remain high on the West Coast and Southwest Border. These areas were not affected by the East Coast heroin shortage. While price seems to have increased in the West and Southwest Border, the number of data points is too small to make confident statements about the impact of our policies there.

Second, the East Coast heroin shortage appears to have leveled off. After increasing threefold over the period from June 1972 to March 1974, the price of heroin on the East Coast has remained steady (except for one significant decline in the 3rd quarter of 1974). The rise in purity throughout 1974 may indicate increasing availability despite steady prices.

Third, there are a number of cities which had shown a decline in heroin use in 1972-1973 which are now reporting an increase in prevalence based on rising numbers of heroin related emergency room visits and heroin related overdose deaths. These cities are also experiencing rising heroin purity (see table 8).

Fourth, supply threats abound. The resumption of poppy cultivation in Turkey—if not controlled—threatens a significant increase in the amount of heroin reaching the United States. Mexico continues to be a major problem. New connections and destinations for Southeast Asian heroin have been noted.

Fifth, the demand for treatment continues to grow. Moreover, the demand is geographically dispersed. How much of this growth in treatment demand is the result of increasing prevalence and how much results from more widespread recognition of the value of treatment is unclear.

These signs, taken together, are ominous. They say: 1) that the work of 1972-1974 is uncompleted; 2) that some of the significant gains that were achieved during this period may be lost again; and 3) that new losses will begin to accumulate. While these ominous signs should not be seen as causes for despair neither should they be the cause for complacency. We have the enforcement, treatment, training and research infrastructure to respond aggressively to this situation. We know that supply reductions can be secured through strategies that combine diplomatic initiatives with enforcement operations to attack illicit crops, diversion from legitimate crops, smugglers moving through the ports, and criminal organizations that coordinate the various steps. We know that when the supply is reduced, fewer people will experiment and many old users will abandon their habit. We know that we can assist users in overcoming their habits by producing treatment of various types. The recently published *Federal Strategy 1975* develops these themes extensively and well.

BARBITURATES AND AMPHETAMINE ABUSE

While heroin, marijuana and cocaine* are only available through illicit channels, psycho-active medications with abuse potential such as barbiturates and amphetamines are commonly prescribed by physicians, and thus widely used in the population at large. These medications are often used without medical supervision or are diverted from legitimate channels altogether to become part of the illicit drug market. Furthermore, data from the National Marijuana Commission Survey reveal that 56% of adults and 20% of all youth have had experience with one or more of the proprietary (over-the-counter) or prescription sedatives, tranquilizers or stimulants, and that about 70% of the "ever users" have used such drugs within the past year. Further, their data suggest that 10% of the adult and 6% of the youth have used these prescription psycho-active drugs for non-medical purposes.

An important study by the University of Michigan into the use patterns of amphetamine and barbiturates use noted a steadily increasing use of these drugs over a five year period:

*Cocaine is medically available but diversion from legitimate sources are thought to be nil.

TABLE 9
[In percent]

Year	Amphetamines		Barbiturates	
	Ever used	Use during last year	Ever used	Use during last year
1969	9	9	6	6
1970	15	13	9	8
1974	32	21	19	11

In this population of American males currently in their early twenties, use in both drug categories is clearly increasing.

The data from a continuing California county study of high school students now in its fifth administration reveals a different trend. Amphetamine use was reported by 16% of the high school students studied in 1968, with this proportion rising to a peak of 24% in 1972, since which time it has declined somewhat to 19%. Data from this group regarding barbiturate users was not collected until 1970, at which time 16% of the students reported having ever used. The rate in 1974 was 14%. Thus, at least in that particular population, rates of use of stimulants and depressants do not appear to be rising.

A look at the data from the jointly sponsored DEA-NIDA Project DAWN corroborates the fact that problems related to these substances are common. The sedative/hypnotics along with minor tranquilizers account for approximately 28% of the drugs reported to the DAWN system, with stimulants accounting for 9% of drugs mentioned. Among individuals experiencing problems with the sedative/hypnotics, women comprise the majority. Roughly equal numbers of males and females have problems with the stimulant group. Self destruction becomes a significant factor in the reported motivation of those involved with depressants, whereas psychic effects and dependence are more frequently cited by those having problems with the stimulants. Data from the medical examiner component of DAWN reveal 5,243 drugs mentioned in conjunction with deaths. The barbiturate sedative/hypnotics account for 20% of these drugs and are the second most common class of drugs reported in conjunction with deaths (the first being the narcotic analgesics with 25%). Non barbiturate sedative/hypnotics account for 4%. In all these drug categories, nearly 50% of the deaths were diagnosed as suicides, and from 18-25% as accidental overdoses. This is sharp contrast to the heroin/morphine deaths in which at least 85% were probable accidental overdoses. In addition, other drugs were identified in the tissues of the decedents. Thus, 63% of individuals from whom barbiturates were isolated had one or more additional drugs reported. Multiple drug use, then, is a very common pattern not only among those seen in treatment settings, but also among those who die.

Individuals involved with sedative/hypnotic and stimulant drugs have been treated for drug abuse within the current formal treatment system. Of the 126,000 individuals by CODAP, the National Institute on Drug Abuse Client Oriented Data Acquisition Process, from April 1973 to August 1974, the primary drug of abuse was barbiturates for 7,546 (6%) and amphetamines for 5,696 (5%).

Of great interest is the fact that these same substances constituted secondary drug problems for an additional 8% and 5% respectively. For both classes of drugs, daily use was the most common pattern. The majority of patients with barbiturates or amphetamine problems were under age 18 at the time they began using their problem drug. In general, these patients were white males.

Further information on individuals requiring treatment for problems related to the use of the sedative/hypnotics and stimulants has been obtained from the polydrug demonstration projects supported by NIDA. These projects are in-patient facilities designed to treat abusers of barbiturates and amphetamines which systematically exclude individuals with primary opiate or alcohol abuse problems. The projects are located in 12 major cities around the country. Among the patients treated during these programs first year of operation, the sedative/hypnotic drugs were by far the most common as primary drugs of abuse (48% of all patients treated). Stimulants were the second most common (18%) and the tranquilizers were third (10%). When compared with the general population of the cities in which the programs were located, it became apparent that individuals between ages 18 and 25 were represented out of proportion to their

share of the general population. Female patients tended to be somewhat older than male patients. These patients represent a group of drug users with an unusual amount of social pathology. The majority have not finished high school and are unemployed. The males have been arrested an average of 2 times and the females 1. About half had at least one acute drug overdose episode. A majority have received treatment on multiple occasions in the past: 12% have received previous treatment for alcohol related problems (35% of these on more than one occasion), 53% have received previous psychiatric treatment (38% of these on more than one occasion) and 56% have received previous treatment for drug abuse (50% of these on more than one occasion). In addition, 22% of all patients treated by the polydrug demonstration programs have had a concurrent problem with alcohol at the time of their admission. Clearly, these individuals represent an extreme degree of pathology in association with their drug use. What is not yet clear is the degree to which use of these drugs has played a causal role in the personal and social pathology of the drug abusers.

Trends in cocaine abuse

There has been much speculation about an increase in the use of cocaine in the United States. The suggestion regarding a sharp increase in the extent of cocaine use has received a great deal of attention in the popular press. Cocaine is now being referred to as the new "in" drug and the various implements and rituals associated with the use of cocaine have become subject to extensive commercial exploitation.

The most recent national survey (conducted in the Fall of 1972) revealed that 3.2% of the adults (age 18 and older) and 1.5% of the youngsters (age 12-17) reported that they had ever tried cocaine (4). Between 1-1.5% of all those interviewed reported that their most recent experience with cocaine had been during the six months prior to interview. Data summarized by the National Commission on Marihuana and Drug Abuse indicated that 1% of junior high school students, 3% of senior high school students and 10.4% of college students had had some experience with cocaine. As with many of the drugs under discussion here (except heroin), use seem to be higher among males, urban dwellers, Western U.S. residents and individuals with higher levels of income and education. Even among populations with relatively high rates of "ever use", (e.g., college students) rates of regular cocaine use are quite low, with 0.1% of respondents indicating use at least every 1-2 weeks during the year prior to interview.

During DAWN's first nine months of operation, cocaine comprised 1% of all drugs reported to the system (2,092 of 168,000 mentions). The vast majority of these reports were received by the crisis center component of DAWN. Cocaine problems coming to the attention of hospital emergency rooms and inpatient units occurred primarily in the setting of cocaine use in conjunction with other drugs, while the vast majority of cocaine mentions at crisis centers involved cocaine alone. It is of significance, however, that overall cocaine mentions have not increased as a percentage of all drug mentions within the past two years of monitoring at all facilities within the DAWN system.

Quarterly admissions for primary cocaine abuse to Federally funded treatment programs, as reported to CODAP, have been constant at about 1% of all admissions from mid-1973 to the present. During CODAP's first year of operation, 1,325 of the 125,600 individuals admitted for treatment reported cocaine as their primary drug problem. An additional 10% of patients reported to CODAP claimed that cocaine was a secondary drug problem (their major reason for admission being problems related to some other drug). The most frequent drug with which cocaine was mentioned as a secondary problem was heroin (12% of all primary heroin abusers report cocaine as the secondary drug problem). In general, the primary cocaine users reported to CODAP did not differ significantly in their age, race and sex characteristics from all other CODAP patients. The drug most frequently cited as a secondary drug problem among primary cocaine users was marihuana (28%) and over 23% of primary cocaine abusers reported having additional problems with more than three drugs at the time of entry into treatment. If many more individuals are using cocaine, this abuse does not lead them into either the medical or drug abuse treatment system.

Trends in marihuana abuse

The most current information regarding trends in the rates and patterns of marihuana use in the United States can be found in the 1973 and 1974 Marihuana and Health Reports prepared for Congress by the National Institute on Drug

Abuse. The demographic and geographic patterns of use of this drug have been fairly well characterized.

At least 15% of the general population age 11 and above has used marihuana on at least one occasion.

Among those who have ever used approximately half are current users (i.e., have used within the past month).

Among current users, at least half use marihuana at least once a week.

Rates of use may be considerably higher or considerably lower, depending on the segment of the population under study. The highest rates of use have been reported among so-called "hippies" and highschool dropouts. There appears to be a slight preponderance of males among marihuana users, although this distribution varies considerably from study to study. Other findings that have been reported with a high degree of consistency include:

Urban residents use at higher rates than rural residents.

Use is greater among those with higher levels of education and income.

Use is more frequent in the Northeast and Western United States than in other regions.

There are two longitudinal studies of drug use that are of particular interest in this regard. In the first, a nationwide sample of high school males selected in 1966 has been followed periodically since that time. When these individuals were high school seniors, approximately 20% had tried marihuana. At the most recent follow-up, in 1974 (five years later) over 62% had tried marihuana. In addition, the proportion of those using at least once a week rose from 6% to 21%.

The second longitudinal study that provides valuable data in monitoring marihuana use trends is the San Mateo, California series which looks at students from grades 7 through 12 (32). Rates of use by both class and sex have continued to increase during the seven years in which this study has been underway, with highest rates among seniors studies in 1974 (62% males and 58% females used once during previous years). However, the rate of growth of this trend appears to be slowing somewhat. It is interesting to note that student use of marihuana in this survey falls in the same general range as student use of tobacco.

From a treatment point of view, data available through CODAP shows that approximately 13% of patients enrolled in Federally-funded drug treatment programs, (and reporting to CODAP) report that marihuana is their primary drug of abuse. There is considerable controversy regarding the interpretation of these data, for a number of reasons. The frequency of use reported by these "primary marihuana abusers" is less than once a week for nearly 45% of the patients. This raises a serious question regarding whether entry into treatment is directly related to use of the drug from many of the patients. Some of these individuals are referred to treatment programs as a result of encountering the criminal justice system or other systems such as the schools, with marihuana in their possession. It is probable that many of these persons are having no problems directly related to their drug use but are referred because of concerns others have about their drug use. This is an area that is currently under further study, in an attempt to better understand these observations.

DAWN provides some interesting data on various drug crises attributed to marihuana. During the nine months between July 1973 and March 1974, there were nearly 160,000 drugs mentioned in reports to DAWN. Marihuana comprised 1% (n=1,273) of all emergency room drug mentions, 3% (n=236) of all inpatient unit drug mentions and 51% (n=7,483) of all crisis center drug mentions. This distribution of mentions by facility type reflects the kinds of acute problems likely to occur in association with the use of marihuana, with panic reactions or "bad trips" predominating over the more life-threatening types of over-dose seen with depressants, for example. The race and sex distribution among individuals reporting problems with marihuana reveals that young white males are most frequently involved.

Data currently available suggest that rates of marihuana use within the general population and within various population sub-groups have been rising steadily over recent years. This upward trend may be beginning to plateau in certain groups (high school students in California, for example), but it is too soon to be certain. Marihuana is becoming one of the most widely used psychoactive substances in this country, a trend that is of real concern in view of recently published experimental work on the health consequences of marihuana use. Urban youngsters in the Northeast and Western United States constitute the highest risk group within the general population but the data suggest that use of this drug is encountered in nearly all population groups in the entire

country. This upward, general trend highlights the need for a better understanding of the personal, social and medical consequences of marihuana use. This is even more important to understand because marihuana has now joined alcohol and tobacco as one of the primary drugs used daily in the United States. For the vast majority of Americans, the use of all other drugs, as Table 10 shows, is clearly on an episodic and intermittent basis.

If I were to summarize the trends of the past five years, I would have to say that drug abuse in the United States is not getting better. That is not significantly worse, however, I think we can attribute to the active role the Federal Government—in combination with State and local efforts—has taken in this area in the past several years. I like to think if the Federal efforts not in the analogy of a "war on drugs which requires "victory" or by definition there is defeat," but rather to make an analogy to the concepts of "weeding the garden", which requires continuing effort, vigilance, skill and good fortune.

Linking criminal justice system to treatment and rehabilitation

In his message to Congress of June 17, 1971 the President stated that the drug abuse problem had reached the dimension of a "national emergency" and that drug law enforcement must be balanced by a "rational approach" to the reclamation of the drug abuser himself. The importance of this decision to balance our long-standing law enforcement program with a new medical program and the subsequent close working relations which have been established between the health and the law enforcement community cannot be underestimated. By attempting to deal with drug abuse exclusively as a law enforcement problem, we made drug using individuals further outcasts from society, added to an already dehumanizing process and ignored the real health effects of such use. Reciprocally, a policy of exclusive reliance on drug abuse treatment can only encourage wide-spread drug use through increased availability. Our present Federal drug abuse strategy is thus a balance of strong supply reduction efforts with concern for the welfare of the drug abusing individual.

This policy of balanced efforts that complement one another has been implemented in a number of ways. An examination of the budget history (Table 11) indicates that total funds for law enforcement programs have been moving into balance with prevention programs after the higher initial start up costs of the prevention programs were authorized.

From this Office's inception, nearly all interagency coordinative activities have involved criminal justice agencies. Eleven of the fourteen major coordinative activities we have been active in have involved DEA, LEAA, The Bureau of Prisons and the U.S. Customs Service. These activities include reviewing and issuing methadone regulations, coordinating primary prevention programs and materials, the development of integrated Federal drug abuse indicator system, research coordination, developing an inter-agency training task force, the creation of a Federal level management by objectives plan for drug abuse prevention activities, and the development of regulations guarding the confidentiality of patient records.

The Special Action Office and the Drug Enforcement Administration have closely coordinated their efforts through staff representation and regular meetings of the heads of the respective agencies. These cooperative efforts have led to preparation and delivery of joint testimony and the creation of the Criminal Justice Branch at the National Institute on Drug Abuse to work with Federal, State and local criminal justice systems.

Outside of DEA, one of the earliest efforts to link treatment activities with criminal justice programs was TASC—treatment alternatives to street crimes. Many arrestees are found to be drug dependent.

TASC identifies, refers to treatment, and monitors the progress of drug dependent arrestees at the State and local level in an attempt to break the cycle of crime—drug abuse—crime. TASC was developed by the Special Action Office and implemented through a close and continuing relationship between the Special Action Office, the Law Enforcement Assistance Administration, and the National Institute on Drug Abuse.

The Special Action Office has sought to assist the Department of Justice in developing a program, modeled after TASC, for Federal arrestees. The pilot program was to have been implemented this month but has been delayed due to lengthy clearance procedures followed by the Department of Justice.

Once jailed, drug dependent Federal prisoners face a one in three chance of receiving treatment because of Bureau of Prisons limited treatment capacity in the face of increasing percentages of drug dependent prisoners. The Special Ac-

tion Office has worked with the Bureau of Prisons to expand its treatment capacity at a faster rate.

The Parole Bureau of the Department of Justice is another agency with which we seek to develop more effective linkage so as to better treat drug abusers who come into contact with the criminal justice system. Through coordinated efforts of identification, treatment and counselling, we hope to lower the social and individual costs of drug abuse in our nation.

Mr. Chairman, the range of activities involved in combatting drug abuse is necessarily a broad one. By grouping certain sets of activities under the heading of "demand reduction" and certain other activities under the heading of "supply reduction" as we have, we run the risk of occasionally forgetting that we are engaged in a common effort. Your invitation to testify on the relationship between demand reduction activities and supply reduction efforts encourages us to consider anew the interrelated nature of our tasks, to look for ways to improve coordinative measures, and to keep foremost in mind the need for a balanced Federal response to the problem of drug abuse as President Ford has proposed in the FY 1976 budget.

Thank you, Mr. Chairman, for the opportunity to present my views and I welcome any questions you may have.

TABLE 1

National Trends in Hepatitis: 1966 - 1971

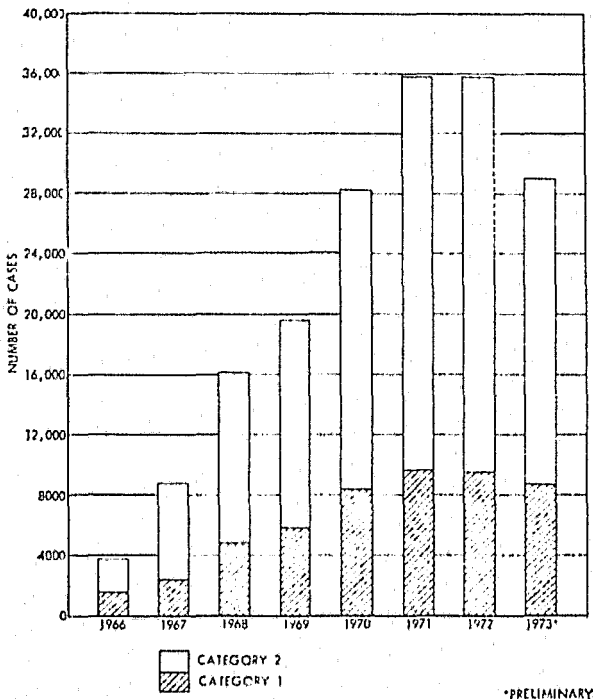


Figure 1. Category 1 Plus 2
Hepatitis Cases in the United States

TABLE 2

Estimated Incidences of Heroin Use: 1960 - 1971
(Derived from Treatment Data)

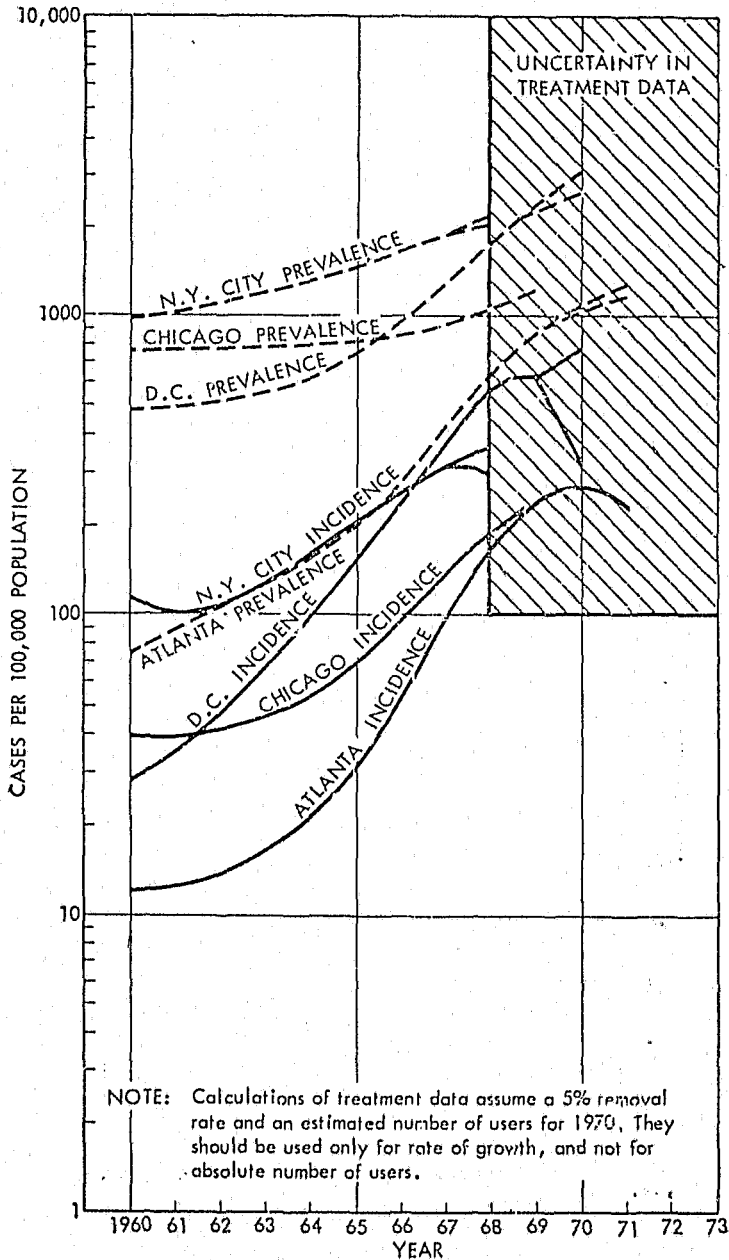
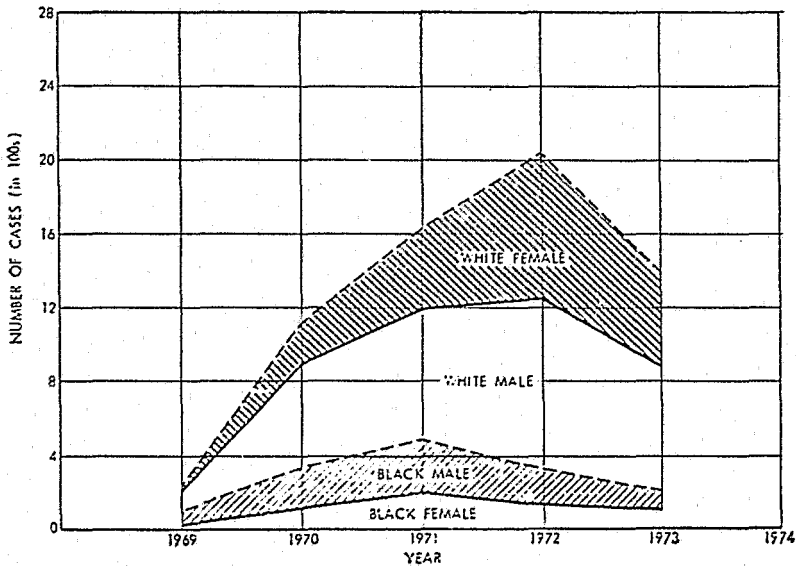


TABLE 3

Hepatitis Trends for Different Demographic Groups: 1969 - 1973



505-71-33

SOURCE: Viral Hepatitis Surveillance Program Reports

TABLE 4

The "Age" of the Heroin Problem in Major Metropolitan Areas

(Derived from DAWN Data)

SMSA	Census Division	SMSA Heroin Mentions Under 23 Years	First Heroin Use During 1970-1974
Los Angeles	Pacific	22	27
New York City	Mid Atlantic	25	33
Detroit	East N. Central	33	53
Boston	New England	41	59
Miami	South Atlantic	42	75
Minneapolis	West N. Central	45	60
Phoenix	Mountain	54	75

TABLE 5.—YEAR OF PEAK INCIDENCE IN SMALL CITIES

Study city	Peak year	Peak year	Nearest major city	Current status	Outlying city problem (?)
Austin	1970	1967	Dallas	?micro-epidemic ¹	San Marcos.
Boulder	1963	1967	Denver	Epidemic over	Brighton.
Des Moines	1970	1969	Chicago	? microepidemic ²	
Eugene	1972	1969	San Francisco	Growing problem ³	Junction City, Bend, Harrisburg.
Greensboro	1969	1969	Washington, D.C.	Epidemic over	High point.
Jackson	Current	1970	New Orleans	Epidemic current.	
Macon	1971	1970	Atlanta	Epidemic over	
Omaha	1971	1969	Chicago	? microepidemic ⁴	
Pensacola	1971	1970	Atlanta, New Orleans	Epidemic over	Fort Walton Beach.
Racine	1969	1969	Chicago	do.	Kenosha.

¹ Possible rising incidence in Mexican-American population.

² Possible rising incidence in white males and black females.

^a Possible rising incidence in young transient population.

4 Possible rising incidence in the white community.

TABLE 6

HEROIN PRICE AND PURITY: 1972-1974

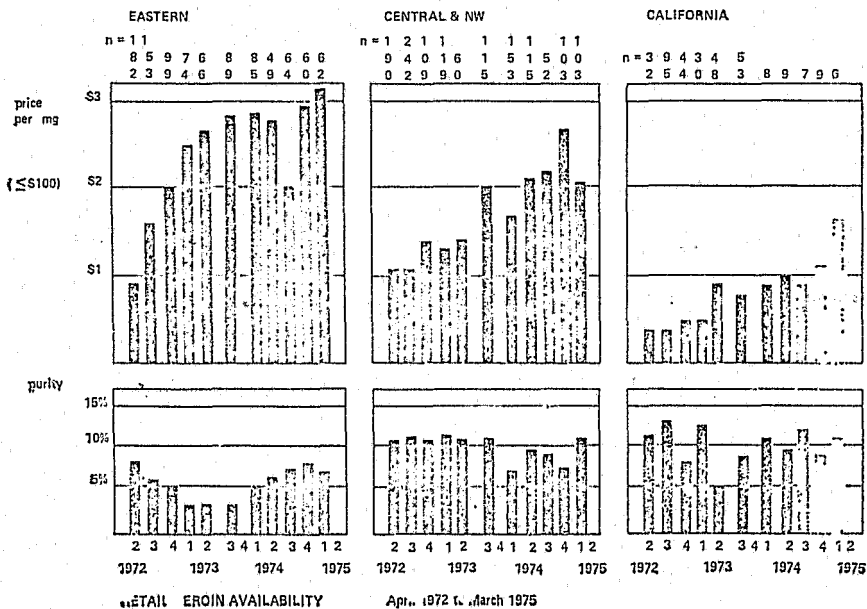


TABLE 7

Year of First Heroin Use Reported by New Patients Admitted to NTA
1970 - 1974

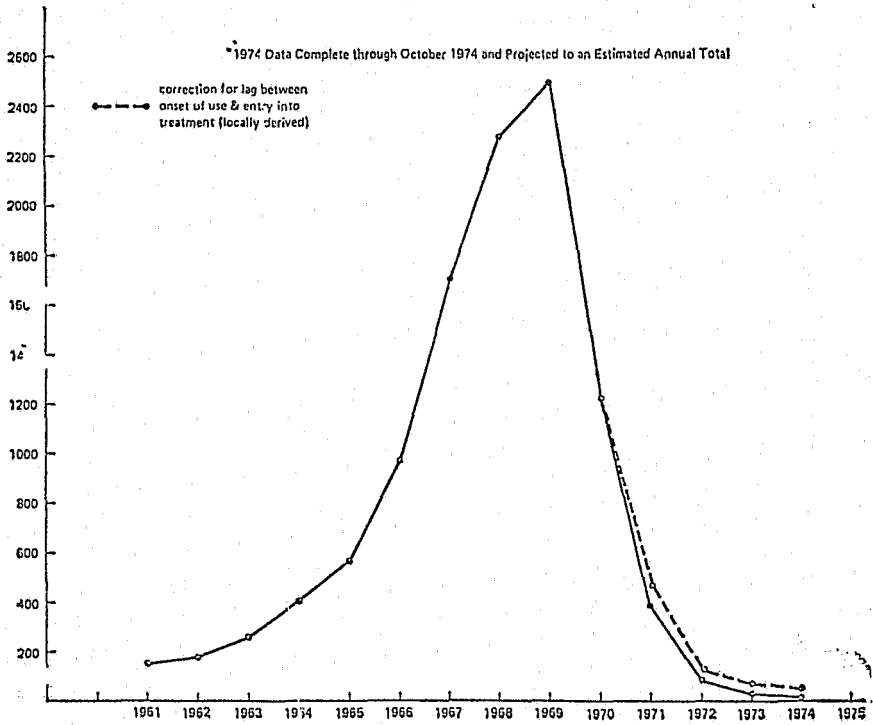


TABLE 8

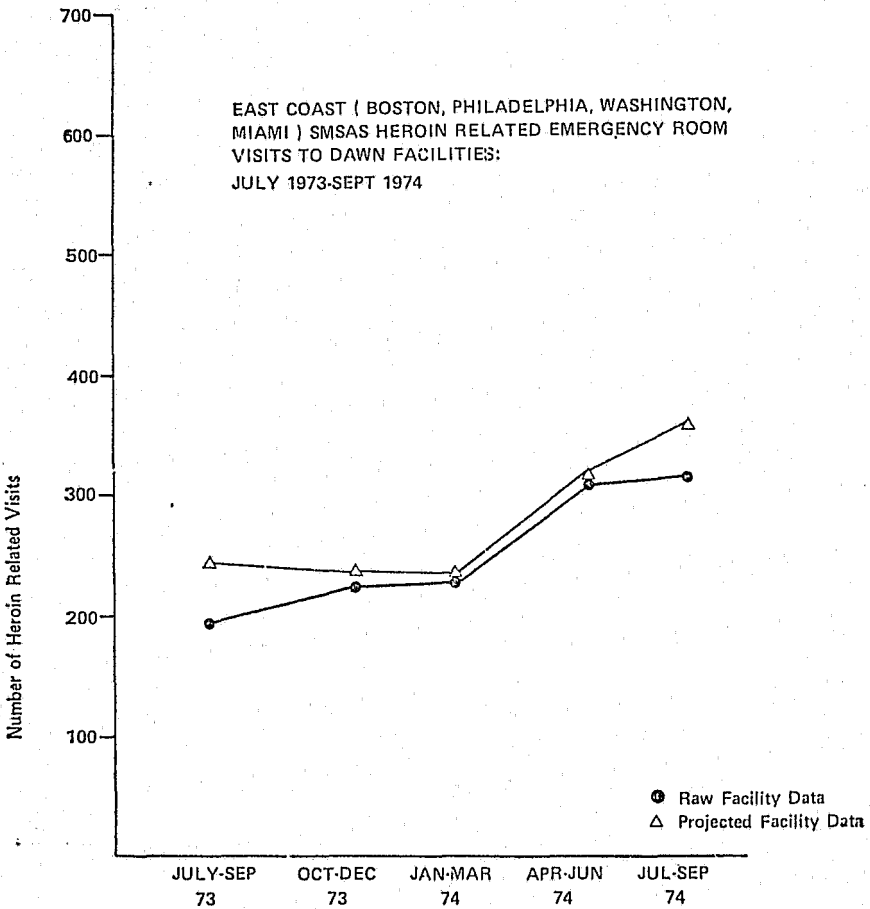
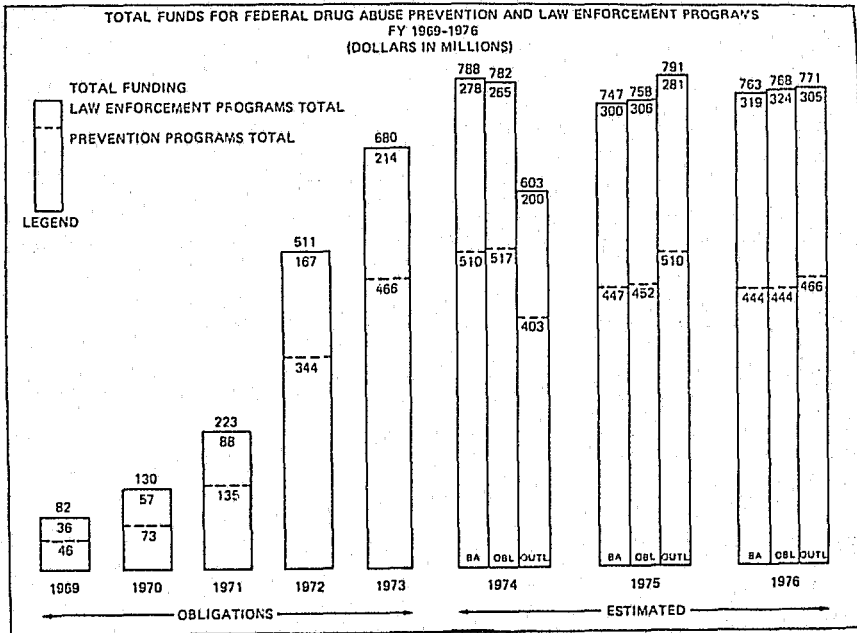


TABLE 10.—DRUG USE FROM A NATIONWIDE SAMPLE OF MALES, 1974
[In percent]

Drug of abuse	Ever used	Daily use during all or part of the previous year
Alcohol.....	97	14.0
Tobacco.....	79	47.0
Marihuana.....	62	10.0
Amphetamines.....	32	.1
Hallucinogens.....	22	.1
Barbiturates.....	19	.2
Heroin.....	6	.1

Source: Drugs and American Youth II (preliminary study), Institute for Social Research, University of Michigan, May 1975.

TABLE 11



Dr. DuPONT. I would also like to submit to the record perhaps to be included as an appendix the "Federal Strategy for Drug Abuse Prevention" which was released to the President just on June 1 of this year.

Chairman JACKSON. That will be received as exhibit No. 10.

[The document referred to was marked "Exhibit No. 10" for reference and may be found in the files of the subcommittee.]

Dr. DuPONT. Very brief summary, Mr. Chairman, I have enjoyed the morning and learned a great deal from the presentation. I would like to focus my comments on one aspect of the endlessly complex subject of drug abuse and that is heroin addiction and to focus specifically on the subject that has been considerably discussed in trends in heroin addiction in the United States over the last few years.

I don't say this in any way to minimize the other aspects of the drug abuse problem, but just in the interest of economy. In my written statement, I did describe trends with respect to other drugs as well.

Basically, Mr. Chairman, we had a period of very rapid escalation of heroin trends in the United States between, roughly, 1965 and 1971 during which time there was, roughly, a tenfold increase in the heroin problem in the United States.

Concomitant with this, there was a very substantial rise in crime in this country as well. Between 1971 and 1973 we did appear to be gaining ground on the heroin problem and there were a number of

indicators that showed a turnaround at that time, particularly in the eastern part of the United States, and most notably in the District of Columbia.

I would like to submit for the record also a paper that details in one city—that is, the District of Columbia—the dramatic decrease in heroin during the period 1971 to 1973.

Chairman JACKSON. That will be received as exhibit No. 11.

[The document referred to was marked "Exhibit No. 11" for reference and will be found in the appendix, beginning on p. 242.]

Dr. DuPONT. To cite just one example of this, Mr. Chairman, there was a drop in the number of heroin overdose deaths from 60 in the District of Columbia in 1971 to only 4 in 1973.

I point this out not because it is typical of the rest of the country, in fact it is atypical; it was more extreme, the downward trend than anywhere else in the country.

Even the downtrend that did exist was a phenomenon in the eastern coast of the United States, and the Southwest and West did not participate in this downturn. Beginning roughly in the end of 1973 and continuing to the present, we have had a pattern of either no further decreases or increases throughout the country in heroin trends.

Quickly, to address the question, three questions: Why did the heroin addiction rise in the 1960's? Why did it fall in the period 1971-73? Why is it rising again now?

If I could in brief outline, say, that I think in the 1965 to 1971 period there were a number of changes that happened that had a profound impact on this. Most noticeably was the very large increase in the youth population in the country that had a profound impact on all of our institutions that dealt with youth.

In addition, we had rapid travel and communications which we have never had before and heroin addiction which spreads as a contagious phenomenon, and had been isolated in larger coastal cities in the United States become truly a national phenomenon during those years.

The fall of the heroin trend, particularly in the east coast in 1971 to 1973 appears to be the result of several factors also, although this is even more complex to try to explain. First was a very dramatic increase in the extent of treatment services provided to drug abusers in the country.

This happened in a very short period of time and is one of the most remarkable changes in bureaucratic history: To see the emergence of a large-scale treatment system all across the country providing drug abuse services.

That was originally coordinated by the Special Action Office and by the National Institute on Drug Abuse. On the supply reduction side, there were dramatic changes in the enforcement pattern, some of which have been described here, both domestically and internationally, which gave a sense of optimism and a sense of activity energizing the entire supply reduction activity.

Finally, most subtly and perhaps most importantly was the leadership that was exerted by the President and Congress in calling national attention to this problem and generating a sense of commitment to resolving the problem.

The most difficult of all, Why does the new rise occur? First, we have had some discussion, but perhaps not enough, of the emergence

of Mexico as a major source of supply, a fact that was not adequately considered earlier, at least by me, and I think by others as well.

Similarly, as Mr. Manuel pointed out, we have had the emergence of smaller traffickers much more dispersed which has created a far more complex supply reduction problem. On the treatment side, we have had the dispersal of the heroin problem to truly a national phenomenon, whereas 5 years ago, even more, 10 years ago, heroin addiction was an inner city phenomenon of large coastal cities. It is now unfortunately nationally a true national phenomenon and it is fair to say there are no cities in the United States that don't have a heroin problem today. Suburban communities also have been affected.

This is a new phenomenon in these areas, whereas, in the larger coastal cities heroin addiction is a long-term problem.

In addition, there has been the problem of relative lack of leadership and thrust in terms of dealing with this problem as we have gotten to know more about it, as other issues have claimed rightly to a very substantial extent the national spotlight.

There has been a sense of lessening of commitment to deal with this problem. I am of the hope, Mr. Chairman, that these hearings of this committee will help turn that around and will bring back considerable attention to this problem that will have a very substantial effect.

I note that although I have testified many times on the subject of drug abuse trends, I have not seen as many press in any other hearing in the last 2 years.

In addition, the President is now conducting a major review of the national drug abuse policies under the direction of the Domestic Council. I have great hopes that this also will produce in the next couple of months a new sense of strong and effective drug abuse policy in the Federal Government. This will in fact affect local communities as well.

Finally, let me say this: We have changed and grown and learned in the last few years. I hope that as we recommit ourselves to dealing with the drug abuse problem we can do so with a greater sense of balance and realism than characterized our efforts in 1971 when it was difficult to communicate both a sense of the importance and a sense of understanding of what the problems really were.

I have in the last few months taken to emphasize more, that I will conclude on, that I think is terribly important; that is, it would not serve our interests well, I think, to rekindle the feeling that we are going to fight a war on drugs and eliminate drug abuse from our communities; that the imagery of a war is not compatible with the complexities of this problem and will lead, I think, to feelings of frustration and disillusionment.

On the other hand, I have emphasized the analogy of weeding a garden in which in fact attention must be paid continuously, vigilance, constant effort must be devoted, and that with this kind of effort good results can come; but that it requires a persistence and a not one-time kind of commitment.

It is that commitment to which I speak and to which I think these hearings are directed.

With that, I will end my statement.

Chairman JACKSON. That was a very good statement, Doctor, and we appreciate the fine work you have been doing.

I am at a loss to understand the big increase from 1973 to 1975. We had the Vietnam era in which American forces were involved overseas. That was wound down. American troops got out in 1973.

But I don't understand this big rise. It was coincidental with the reorganization of the Federal drug enforcement effort. DEA, the superagency, was set up to really go after illicit drugs.

You mentioned increased activity on the Mexican border. That leads me to believe that with the Customs Service not having the authority that they had before, especially in the intelligence area and with the dismemberment of their border capability, that a lot of heroin was not being stopped at the border.

What is your comment on that? I am at a loss to understand this large input from 1973 to 1975. We had a lot of data, especially out of Southeast Asia, indicating drug addiction taking place. But after we reorganized and got a superagency that was really going to move in on this, narcotics coming into the country increased.

What, in your judgment, really went wrong between 1973 and 1975?

Dr. DUPONT. I think 1973 was a very bad year to introduce a plan and promise a big improvement in the drug area because that was the low point, as you pointed out, of drug abuse supply or the high point of our success.

Chairman JACKSON. But it was going very well.

Dr. DUPONT. That is right. In the summer of 1973 it was going fine.

Chairman JACKSON. It was going well and they were stopping it at the border. The Customs Service played a key role in that. Under the new setup the Customs Service lost its narcotics gathering intelligence arm.

What I gather is that they were not getting the narcotics intelligence data sufficiently in advance. Customs did not have that advance intelligence from foreign sources which in the past has been a critical factor in getting the drugs at the source.

Am I not correct?

Dr. DUPONT. Yes, sir, you are. I am unable to zero in fully on the issues of organization and its impact on supply reduction. I could say, though, that there is no doubt that the threat from Mexico has been a major one and by many people was underestimated and much more could be done and should be done to stop that flow.

Whether changes in the organizational structure contributed to the decline or on the other hand could have contributed to an improvement, I don't feel I would be in a position to comment on that.

Senator PERCY. You did say, though, in your testimony, that you clearly state that the fact that the drug abuse problem is not even worse, is more severe, is "clearly due to the active presence of the Federal Government in this field."

Dr. DUPONT. Yes, sir.

Senator PERCY. You assert that the Federal Government's role has been an important one. Could you say which particular agency, DEA, State Department, Customs Service, should be given the credit for this?

Dr. DUPONT. Senator, as you know, in the history of this field, there has been a tremendous conflict between the doctors and the law enforcement people going back many years.

One of the major points of progress in the last few years has been the close cooperative relationships that have developed between the

law enforcement community and the medical community. It is one of the areas that I have paid most particular attention to.

In my own personal involvement and that of my agencies, we have related particularly to DEA. Let me say that—this may be somewhat of a surprise in relationship to the other testimony here—I have found them to be very cooperative and of a very high level in terms of working with us.

That doesn't mean that there aren't problems, but I worked very well with Mr. Bartels. I considered Mr. Ingersoll a friend and somebody that I respected a good bit who preceded Mr. Bartels. Mr. Henry Dogin I don't know so well. But I met him on Friday. I think he is a very fine professional individual as well.

Chairman JACKSON. How can you make judgments like that? You met him on Friday. He seems like a nice guy.

Dr. DuPONT. But I work closely with DEA. For example, we have a joint project called the Drug Abuse Joint Committee which we operate jointly with them. It worked out well.

I don't mean this in any way from what you are investigating, but I want to say those areas in which I am directly related to the Drug Enforcement Administration, we on the treatment side have found them very cooperative and eager to work with us in a very professional way.

Chairman JACKSON. But in fairness to you, you wouldn't want to testify here that you are intimately acquainted with—

Dr. DuPONT. No. I testified to the contrary on several occasions. I will take this opportunity to do it again.

Chairman JACKSON. I want to protect you on that because it wouldn't be fair. What you are saying is that your immediate contacts, not in depth, but in the contacts you have made in a professional capacity you have no complaints.

Dr. DuPONT. Yes.

Chairman JACKSON. Do you know how the enforcement operation is going of your own personal knowledge?

Dr. DuPONT. No. I would say also that I would like to have more successes than we have had. I have been patient for improvements as well. I have made that point very clear to them also. I think we can do more than we have done.

Chairman JACKSON. The papers are full of it again. Here is the Evening Star which has two different articles on the same day, "25 held in Maryland school drug raids." This is May 29. Then there is one from Los Angeles, "Student drug bust," all in the same day.

You go on and on. It seems to be coming out more and more at a time when the effort that we thought was being made was a maximum effort.

I noticed one article again, putting the drug abuse cost at \$10 billion to \$11 billion in the United States annually; linked to 15,000 deaths a year. Is that fair?

Dr. DuPONT. Yes, sir. That is a report we made to the President.

Chairman JACKSON. That is the Cabinet level report to the President.

Mr. FELDMAN. Is that in the record, Doctor?

Mr. DuPONT. Not the social cost item, but the summary of the social cost study is in the record.

Chairman JACKSON. We will have this included as an exhibit. I think it is very important. That will be exhibit 12.

[The document referred to was marked "exhibit 12" for reference and will be found in the appendix on p. 255.]

Senator PERCY. Mr. Chairman, I wonder if I couldn't ask Dr. DuPont to explain further some inconsistency in his own testimony today with statements he made to a reporter for *Time* magazine just a couple of months ago?

On page 15 in your testimony, you state that:

Drug abuse in the United States is not getting better. That it is not significantly worse, however, I think we can attribute to the active role the Federal Government—in combination with State and local efforts—has taken in this area in the past several years.

So we are led to believe things are not going downhill. They are moving up. That would be reassuring to the committee that engaged in setting up this reorganization; and has put as much effort as we all have into trying to back up the administration and support what it is doing in this field.

Yet in *Time* magazine, dated January 13, you are quoted as saying—I will just read it. "Recently, Dr. Robert DuPont, Director of the President's Drug Abuse and Preventive Office, said, 'We are sure heroin use has gone up. Just how much we don't know. But it is getting worse. The prospect for 1975,' he said, 'is ominous.'"

The article goes on to say that for the first half of 1974 alone the death toll was 691. Applicants at treatment centers are also increasing.

From July to September of last year, hospitals reported a 66 percent rise in overdose cases compared to the same period of the previous year.

The final sentence of this article says, "If DuPont is correct when he says, 'You can no longer talk about turning the corner on heroin anywhere,' crime is likely to increase."

So we don't want to have too rosy a picture painted if this represents your own deep concern.

Dr. DUPONT. Yes, it does, Senator. I do find myself in an awkward position; that is, this, that I do think the heroin problem is getting worse in the country. That is the thrust of what I intended to say in my extemporaneous remarks.

It is clear, I think, from an overall reading of what I said in my prepared remarks. On the other hand, I don't want to denigrate the efforts that have been made. That was the thrust of my sentence that you quoted, was the fact that it is not even worse than it is, is the result of the Federal efforts. That was what that sentence was trying to say, not to say things are better, but to try to keep, as I say, some balance in this.

Senator. PERCY. I think our job is to face up realistically to what it really is. I can appreciate the awkward position you are in. But I do feel that when we say things could be worse, that is really relative.

Dr. DUPONT. Yes.

Senator PERCY. The condition that you are reporting is that things are worse.

Dr. DUPONT. Yes, sir.

Senator PERCY. They are worse now than they were 3 years ago when we started this effort. So our job is to determine what has happened. Maybe we have been inadequate. Maybe we haven't fully funded the

program. Maybe it is our fault. Maybe we haven't backed it up as we should have backed it up.

We would like to know if that is the case. Possibly the organizational setup is faulty. Or maybe it is the nature of society in America, that no matter what we do, things are going to get worse. Maybe that should get us, Mr. Chairman, to a fairly fundamental question I think that Dr. DuPont is probably one of the possible experienced men in the country now to appraise for us, why is the problem of drug abuse so bad in the United States? We smoke. I saw a chart yesterday indicating that we smoke per capita twice as many cigarettes as any other country.

Sweden is trying very hard to stamp it out. Maybe the reason is affluence in our society means we can afford it. But I do not think it is just a question of affluence here. What is the nature of our society that causes this increasing problem with drug abuse? Despite all of our efforts to educate, to train, to correct, to use law enforcement and everything else, it is getting worse in America rather than better.

Dr. DuPont. I think one point is we need to have a slightly broader perspective in terms of what is happening internationally. There is a general concern throughout the world about increasing abuse patterns of all kinds.

So the trend toward increase is not just a U.S. pattern. I think one of the things that we have learned about the drug abuse problem is the importance of the availability in drug consumption patterns.

It is clear that these substances that we are talking about have the property of reinforcing the behavior; that is, that the individual who takes them like the feelings they produce and continue to use them in a fair percentage and so simply exposing a population to those drugs is the most fundamental aspect of why it spreads and why the use is so great.

That goes to the issue of the committee, which is the importance of supply reduction, in terms of reducing the spread and reducing the levels of consumption. I fully support that. I think a great deal more can be done to reduce the supply which will reduce the consumption.

On the other hand, there are also very many complicated factors. You pointed out that our cigarette consumption is increasing. A few years ago there was talk if young people would smoke marihuana more, they would drink alcohol less or smoke cigarettes less. There was talk that somehow marihuana was a safer drug and we could substitute one for the other.

In fact, our experience has been exactly the opposite; that is, that as consumption of marihuana has increased in the youth population, the consumption of alcohol and tobacco has gone up in those same populations right along with it.

So there is an overall increase in drug consumption, and the one increase comes at the expense of the other. Those young people who smoke the most marihuana also consume the most cigarettes and alcohol.

It is a very complex problem. I think our whole society is going to have to come to terms with problems that are very, very painful. It is the kind of problem we have had with alcohol for many years,

that led to prohibition. Our constant ambivalence about what the role of alcohol is and the problem of alcoholism and what the Government's role is in dealing with the problems of alcohol, it is the same problem with cigarettes.

What is our national policy with respect to cigarette smoking? Are we determined to reduce the level of the consumption of cigarettes in this country or to increase it?

Those are the kind of fundamental questions that I think are going to have to be addressed this time when we deal with the drug abuse issues that were not dealt with last time.

I would point out that the Shaeffer Commission report was an attempt to try to put the drug abuse issue in this larger perspective. I think it was very helpful.

On the other hand, I don't think we were ready for what the Shaeffer Commission was talking about 3 years ago. I hope we are this time.

Chairman JACKSON. Would it be fair to say that the heroin problem, hard drugs, all of it is more than just a city problem, it has become a suburban problem, a rural problem?

Dr. DUPONT. Absolutely.

Chairman JACKSON. What has happened here in the last few years, especially is the movement out from the inner city, the poor areas and so on, into the suburbs, even in the rural areas, small towns remote from all of the problems of the big cities, are now being subjected to the traffic.

Dr. DUPONT. That is absolutely true. It is one of the major disappointments and tragedies in this field.

Chairman JACKSON. I have just two other questions.

I understand your office in the White House is being eliminated as of July 1. What is the reason for that at a time when we are facing a very critical problem as I see it here, first in the growth of hard drugs, and indeed, the question of whether or not we have come up with the adequate means of getting at the problem?

I think you put your finger on something very important, the more the stuff is available, the more it is going to be used. Isn't that a general—

Dr. DUPONT. Yes. I think that is absolutely true.

Chairman JACKSON. It is going to spread. You start cutting it out, and then you can confine the effort, not confine all of it, but a large part of it to your profession, treatment medically?

Dr. DUPONT. Yes, sir.

Chairman JACKSON. Why are they eliminating the office in the midst of this? Who is going to take the overall responsibilities after July 1?

Dr. DUPONT. Senator, could I defer answering the question for just 1 second to make a point about something else? That is, one of the more hopeful signs I think in this field is the international cooperation in terms of supply reduction.

I hope this committee focuses particularly on that because one of the problems we have had in the last few years is many countries have viewed this as an American problem and not faced up to their own vulnerability in their own populations to the drug abuse problem.

That needs to be made a very high principle, it seems to me, of American foreign policy.

I think there are some successes being made in that regard.

Second, with respect to the question of the Office itself, the Office was set up from the beginning as a temporary office and is very atypical of Government organization to have an Office like this in the Executive Office of the President. It was set up to expire on June 30 of this year. That was the original legislative life of the Office.

The President decided not to ask for extension and in fact to oppose the extension because he did not want to have categorical offices like this in the Executive Office of the President, but preferred to have the responsibility vested in the departments and agencies which carry on these programs.

So his decision had nothing to do with his judgment about the nature and trends of drug abuse, but merely to do with his sense of what ought to go on, what is appropriate to go in the Executive Office of the President.

On the other hand, I would say this to you in all candor, that it seems to me we do have a way to go in figuring out what the coordinated mechanisms will be in the Executive Office to replace the Special Action Office, and there, it seems to me, that activity before this committee and elsewhere, including the executive branch review that is going on in the Domestic Council, will produce over the course of the summer a new plan for coordinating Federal drug abuse activities. I welcome that.

I think it is time for a new plan.

Senator PERCY. Mr. Chairman, could I respond to your question also in this way? In a sense, we are responsible for the phaseout because we created the Special Office for a period of 3 years. This is a technique that we have used in, say, the fight against cancer, to bring the fight right up to the top level, have someone report direct to the President for a short period of time, and then once it has had that impact, to put it into the agencies and departments where it belongs. This is a method to give a program a real shot in the arm.

We can't take every problem and have it reported directly to the President, as you know. But our problem now is what happens next? We haven't solved this problem. Three years haven't been enough.

So I have called the Vice President, as Chairman of the Domestic Council, and put this proposition to him with Dr. DuPont just a few weeks ago when we were discussing it. As I understand it, the Domestic Council has scheduled a discussion for sometime within the next week as to what will be done. We must be assured that drug abuse is not dropped to a lower priority.

But it is a matter that Dr. DuPont has been concerned about, I have been concerned about, and I felt it necessary to bring it to the attention of the Vice President.

Chairman JACKSON. I am glad to hear that because my question is, who will be the action officer? It is obvious that DEA is in trouble. Attorney General Levi is a very able and outstanding man in my book. He has been most cooperative. But he can't be the action officer, obviously, or have someone I think really in his shop to do it. It is broader than that. It involves many disciplines outside of just law enforcement.

It seems to me that at a time when we are running into serious trouble on the law enforcement side of it, I would hope and I would concur in what Senator Percy had to say, bring back to the executive

branch the urgent need here for some kind of summit coordination. It doesn't have to be directly reporting to the President.

But I think it is more than the Department of Justice should be involved in.

It involves all of these disciplines that we have referred to here. You are a professional man and well qualified. Do you sense that there is that degree of professionalism within DEA that you would expect from an agency having the responsibility that it has? I am not trying to put you on the spot.

Dr. DuPONT. I can report what I have observed. I am not sure what I have observed is relevant to your attention. Mr. Tartaglino is somebody I have gotten to know very well. I think very highly of him. I understand that.

Chairman JACKSON. His testimony will be rather devastating.

Dr. DuPONT. I understand. I have friends on all sides of this subject who I consider very fine people.

Chairman JACKSON. You mean some of my friends are for it and some are against it and I am for my friends? I understand. But in all seriousness, I take it you have not had the opportunity to be in a position to make an objective judgment.

Dr. DuPONT. Particularly between, in terms of the conflict between them. In my dealings with each of them on the subjects that I care about, things have worked out well, but that does not address the problem that you address.

[At this point Senator Percy withdrew from the hearing room.]

Chairman JACKSON. Thank you, Dr. DuPont.

We appreciate having your testimony and your very forthright answers.

The committee will resume at 2:30 to hear the balance of the witnesses and we will hear from Mr. Tartaglino tomorrow at 10 a.m.

[Whereupon, at 12:45 p.m., the subcommittee recessed, to reconvene at 2:30 p.m., the same day.]

[Members present at the time of recess: Senator Jackson.]

AFTER RECESS

[The subcommittee reconvened at 2:30 p.m., Senator Sam Nunn presiding.]

Senator NUNN. The subcommittee will come to order.

[Members of the subcommittee present at time of reconvening: Senator Nunn.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct hearings in public session, without a quorum of two members for administration of oaths and taking of testimony in connection with Drug Enforcement Administration on Monday, June 9, 1975.

HENRY M. JACKSON,
Chairman.
CHARLES H. PERCY,
Ranking Minority Member.

Senator NUNN. We are pleased to have with us this afternoon Dr. Thomas Bryant, Director of the Drug Abuse Council.

Dr. Bryant, I am informed by counsel that at this morning's hearings they started swearing in all witnesses and there won't be any exceptions to that. If you don't mind standing and holding up your right hand, do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. BRYANT. I do.

TESTIMONY OF THOMAS E. BRYANT, M.D., PRESIDENT, DRUG ABUSE COUNCIL

Senator NUNN. Why don't you proceed with your statement? I am sure we will have some questions.

Dr. BRYANT. Thank you very much, Senator. I am pleased to be here. I do have a long—not that long—but somewhat lengthy statement I would like to submit for the record and I will try to highlight it by reading sections of it. I think it would be most useful to you.

Mr. Chairman and members of the committee:

I appreciate the opportunity your invitation affords me to comment on various aspects of Federal drug law enforcement and treatment efforts and to share with you some of the Drug Abuse Council's findings in the area of drug use and misuse.

The Drug Abuse Council was established in 1972 by a consortium of private foundations to serve as an independent resource for public information and policy research and evaluation in the drug field.

During the past 3 years, we have undertaken several hundred projects designed to develop sensible, informed public discussion of complex, often highly emotional issues, with the hope that sound, just, and enforceable drug policies will result.

I would like to preface my remarks with a deeply felt concern, one that I am sure you share.

I certainly do welcome the invitation to appear before you today as you begin these potentially very important hearings. However, I confess I come with some sense of caution.

To state my concerns plainly, I hope we do not engage in the kind of discussions which will lead to yet another clarion call to the public for a new "war on drugs." Such a call will surely be followed by extensive media coverage of public statements reiterating tired old myths and promising simple solutions to problems we all know by now are extremely complex, and which are not at all amenable to simple solutions. I say this in no sense to be critical of the committee or the hearings or the topic we are discussing, but to remind us that the subject of drug use and misuse is one which historically generates more heated emotion and fervor than commonsense.

I believe it is time for some calm, dispassionate assessments, even some basic rethinking about our public policies in this field.

Psychoactive substances have been available to man for thousands of years. They will continue to be, despite wishes to the contrary. Men will use and misuse these substances for all of the varied reasons we know, and undoubtedly for reasons we have not conceived.

There is ample documented evidence to support the statement that modern-day Americans are using more and more of all such sub-

stances to escape reality, to avoid pain, to relax, to stifle fears, for simple pleasure and for a variety of more pernicious reasons.

This increasing use has occurred against a backdrop of a Judeo-Christian heritage that disapproves the use of nearly all such substances and which derives from a strong moral imperative that mortal man must ever be possessed of all his faculties and sensibilities.

In the past 10 to 15 years we have witnessed the development of a national schism on this issue, symbolized vividly on the one hand by Dr. Leary's now infamous call to tune in, turn on and drop out and on the other by a never-ceasing parade of news items reporting the seizure of millions of dollars worth of illicit drugs and the breakup of yet another drug distribution network by agents of this or that law enforcement agency empowered by our public laws to enforce the national moral edict prohibiting the use of these substances.

As with all such pronounced conflicts of societal values, forces, and dynamics of an awesome nature have been evident on the contemporary American scene.

Many in our midst call for new laws and policies which would inevitably lead to increased availability of psychoactive drugs and just as loudly, others in our society call for more stringent, repressive policies—each with the vain hope that the problem will thereby be solved, or better, will go away.

Along with these more polemically stated positions, there is genuine concern on the part of the public. In the last decade the openness with which young people have used drugs and the high visibility afforded such drug use by the media, together with the fear this use generated, led to something akin to hysterical concern on the part of many parents, citizens, and lawmakers.

People demanded action in the form of new policies, new programs, and new approaches. A crisis was perceived and a massive war on drugs was demanded—and declared! One of our major areas of concern has been the wisdom and efficacy of this most recent highly publicized war on drugs.

In 1960, Government officials estimated that there was considerably less than 100,000 heroin dependents in the country.

By 1970, these estimates had risen to between 250,000 and 400,000.

There were also marked increases in urban crime and many types of antisocial behavior, and the public, believing there was a direct correlation between such behavior and drug taking, reacted with fear that the drug epidemic was out of control.

The same period saw marked increases in the use of psychoactive drugs other than heroin as evidenced by that call to tune in, turn on, and drop out with LSD, and by survey data showing that by the end of the sixties, some 25 million Americans, mostly young Americans, had tried marihuana, and some 8 to 10 million were using it regularly.

There were similar increases in the nonmedical use of stimulants, tranquilizers, and sedatives—and through it all, could be consistently observed the continued use and misuse of the American psychoactive drug of choice—alcohol.

By 1971, public alarm over rising nonmedical drug use, particularly by young people, reached such proportions that major new Government programs were authorized, complete with new agencies and new personnel, to administer hundreds of millions of newly appropriated

dollars. The total Federal budget for drugs rose from less than \$100 million in 1969 to about \$800 million in 1974.

Yet, this enormous expenditure of resources seems to have had little impact on drug taking behavior.

Despite all the money and rhetoric, drug use has continued to climb. Supplies of illicit drugs have not been interdicted. The Drug Enforcement Administration concedes that heroin seems to be more readily available and of higher quality in New York City, Washington, and other large cities.

Our own studies, confirmed by Government agencies, have indicated that heroin use is spreading from major urban centers to smaller cities and towns across America.

Our efforts to curtail opium production abroad as a means of reducing the illicit heroin supply have proved largely ineffective. Despite considerable expenditures, it has proved impossible to develop a synthetic substitute for codeine for the treatment of moderate pain, and it appears unlikely to happen in the foreseeable future. This means that there will be a continuing need for legitimate opium cultivation.

We successfully persuaded the Turks to stop growing opium and with a drying up of the French connection there was a transient decline in the availability of heroin in certain sections of the country.

However, with a continuing unfilled market in the United States, the traffickers switched their operations elsewhere, chiefly to South America, and the amount of heroin reportedly coming in from that source, particularly Mexico, has jumped from 20 percent of the total in 1972 to 70 percent or more at the present time.

In addition, whereas before when heroin was chiefly being smuggled from Europe it was shipped in large quantities, and periodic seizures kept some kind of lid on the total flow, now with millions of people crossing the Mexican border every year and mainly independent operators bringing in small amounts it has become almost impossible to substantially reduce the flow across the border.

Crop substitution programs, especially in Southeast Asia, probably have substantial merit in their own right in helping impoverished tribal groups to broaden their economic base and become a more integrated part of their nation's rapid social and technological development. However, it has become clear that any expectation that these programs will have any appreciable impact on the availability of heroin in the United States is clearly unrealistic.

As Dr. Peter Bourne, formerly the Associate Director of the Special Action Office, has said:

The fundamental fallacy has been in the assumption that opium could only be grown in those places where it has traditionally been cultivated, and that by controlling it in those areas, we could control the world heroin supply.

It is now clear that opium has only been grown in a tiny fraction of the places in the world where it could grow, and that as long as there is a market in the world and immense profits to be made, traffickers will always be able to find sites for cultivation despite our most vigorous efforts to suppress it.

Another fundamental fallacy of our drug policies has been the belief that law enforcement efforts alone could have a lasting impact on heroin availability.

The magnitude of the flow of heroin into the United States, the relatively small volume of the drug required by addicts, and the immense profits to be made have insured that despite an avalanche of

new narcotics agents at both the Federal and local level, heroin is again as available as it ever was.

Earlier we believed too easily that the increasing number of seizures and arrests indicated the problem was being brought under control rather than merely being a reflection of the steadily increasing amount of heroin that was getting through undetected. Now it is clear, particularly in view of the development of Mexico as a major source of supply, that even an army of narcotics agents is unlikely to prevent the addict from getting his fix. The demand is great, and the unscrupulous among us in the world will meet the demand.

Another tough problem we have been reluctant to face squarely is corruption among law enforcement personnel. The Knapp commission exposed the extent of narcotics payoffs in the New York City Police Department, and there have been frequent indications that the problem is widespread.

As you are well aware, there have regrettably been recent allegations of corruption in the Federal Drug Enforcement Administration. As long as there continue to be such exorbitant profits available in heroin trafficking, the potential for corruption will continue to exist.

In reality, however, I believe that the continuing increase in the availability and use of heroin, cocaine and marihuana—the "illicit" drugs—signals a failure not so much of our law enforcement efforts but of the underlying absolute prohibition policy. In fact, the law enforcement agencies have in large measure, admittedly with some lamentable misjudgments and mistakes, tried to do what we as a people have asked them to do.

Aside from the exception we have made for alcohol, our response to nonmedical drug use have been consistent. We have labeled this use undesirable, we have enacted laws which reflect that value judgment and we have turned to our law enforcement agencies to enforce these stringent laws.

Our laws have contained provisions for criminal sanctions both to punish offenders and to deter drug use. These sanctions have served to brand users as well as illicit drug traffickers as criminals in the eyes of the public.

As the National Commission on Marihuana and Drug Abuse pointed out in 1973, our objective has been to eliminate all nonmedical drug use, with scarce inquiry as to whether this goal is desirable or attainable.

In order to allow the use of our favored drugs, alcohol and tobacco, we have used statutory vocabulary and social folklore to establish the fiction that they are not drugs at all.

By adherence to a policy of total prohibition of the nonmedical use of psychoactive drugs, we have ignored pharmacological variations among drugs and the importance of frequency of use, method of administration, dose, and nondrug factors as determinants of risk. We have, in fact, ignored the differences in degrees of risk.

The drugs have been declared dangerous and their use has been forbidden, except in those instances where certain drugs are prescribed by physicians.

Society's attitude toward a drug is not determined by pharmacological facts alone. Most often how a drug is perceived is substantially dependent on who uses it, when, and where and under what circumstances.

David Musto, the Yale psychiatrist-historian, in his very competently researched book "The American Disease: Origins of Narcotic Control" (1973) states that:

American concern with narcotics is more than a medical or legal problem—it is in the fullest sense a political problem. The energy that has given impetus to drug control and prohibitions came from profound tensions among socioeconomic groups, ethnic minorities and generations—as well as the psychological attraction of certain drugs and their effects.

In the latter half of the 19th century, the use of morphine for a wide variety of ailments became widespread—and addiction to morphine was not at all uncommon.

The majority of addicts were white, middle and upper class women who used opiate preparations for almost every conceivable ill. This addiction—never really condoned—was however tolerated, and was largely invisible except to the medical profession.

On the other hand, prohibition and intolerant attitudes seemed primarily to appear against drugs that were used by racial minority groups—groups that were initially feared and repressed for other reasons.

Large numbers of Chinese were brought to the United States as a source of cheap labor for railroad construction during the latter part of the 19th century. With the Chinese came their habit of smoking opium.

Eventually, when their presence provided a surplus of cheap labor, intense antagonism toward this group developed. Opium smoking was stigmatized as a means by which the Chinese were undermining traditional American values, and opium for smoking was excluded from the United States by law.

Similarly, exaggerated reports of the use of cocaine by blacks in the South proved a cause for grave concern on the part of southern whites, with the development of numerous terrifying myths and frightening stories, unsupported by basic facts, as to the effects of cocaine.

Such fantasies characterized the fears of whites, not the reality of cocaine's effects and provided additional "reasons" for the repression of blacks.

Much the same appears to have taken place with marihuana in the 1930's when we saw the development of racial prejudice against Mexican-Americans, who used marihuana extensively, and a subsequent blaming of the drug for all types of antisocial behavior falsely ascribed to this group.

In large measure, our drug policies in this country have been identified with underprivileged minorities, criminals and social outsiders in general—always with the common fear that drug use would spread to our children.

And, at long last, the sixties seemed to bring realization to those fears. Suddenly, the use of marihuana increased rapidly on university campuses, spreading quickly to other youthful groups.

Strange words became household terms: "joint," "grass," "getting high," and "smoke-in's." Drug use was now associated with new, unfamiliar life styles, campus unrest, and youthful defiance of the established order.

To millions who either could not or would not understand this new youthful behavior it became easy to blame drug use for these disturbing signs of social disorder.

But to millions more—parents who knew their children, teachers who knew them—affixing blame was not so easy and branding our children as criminals has proved a bitter pill to swallow.

Characteristic of such distorted perspectives is a tendency at the policymaking level to focus on the properties of the drugs themselves, ascribing to them magical capacities for overpowering the human mind. While there is, in truth, nothing supernatural about the effects of drugs, we have sought to describe them so—with a hope that innate fears of the mystical would serve to frighten people away from these substances.

We have filled our vocabulary and our laws with frightening words, loosely used, from “narcotic” to “dangerous drugs.” We have differentiated between “hard” drugs and “soft.”

Drug dependents have been labeled “dope fiends,” and we have insisted that these drugs drive people “mad” and lead inexorably to violent antisocial behavior.

In our fear, we have ignored much fact and reality, and we have paid—and continue to pay—tremendous social costs.

As we seek to determine why psychoactive drugs are being taken so widely and so indiscriminately, we must attempt to understand the influence of such complex concepts as rejection of traditional values, disillusionment, feelings of alienation and peer pressures in a society that seems in that oft-repeated phrase, to have become a society of “pill poppers.”

What has been the role of parental example? What has been the role of the media? What influence does drug advertising really have? And what messages have we conveyed with our often indiscriminate use of alcohol and tobacco while condemning other, demonstrably less harmful use?

While we ponder such difficult questions, we know that the demand, regardless of its roots, is easily met by a complex supply system, involving diversion of legally manufactured drugs to illicit channels, by basement laboratories manned by “junior pharmacologists” whose products are distributed by a network of friends, allies, and acquaintances, sometimes with profits, but oftentimes with none—and who seem capable of producing and distributing an endless supply of new drugs to satisfy every new whim or fad—and these in addition to the highly proficient organized international drug traffickers.

With the notable exception of the National Commission on Marihuana and Drug Abuse, there has been no comprehensive examination of the law enforcement and treatment mechanisms in countering the drug use phenomenon.

Without a clear policy decision as to whether drug users are criminals or citizens in need of assistance, or whether they constitute a serious threat to society or chiefly only to themselves, it is impossible to formulate a national policy for dealing with the drug abuser individually or for deciding how public funds will be allocated to address the more harmful societal aspects of this use.

Without this kind of basic policy direction and the requisite ensuing public dialog led by responsible public officials and private citizens, then it will prove to be continually frustrating as we try to assess where we have been or where we ought to go.

Absent these sort of basic decisions, our law enforcement agencies will no doubt continue to do the best they can—subject to all the human failings and bureaucratic shortcomings mentioned—as they pursue, at the behest of a misinformed and fearful public an unattainable goal; the complete prohibition of the use of “unapproved” psychoactive substances. We will continue to hear of the need for more agents, more dollars, and at times more constitutionally questionable tactics.

We will continue to read often of significant “drug busts of hard narcotics” and of dramatic arrests of major traffickers, which will all too often, on closer scrutiny, turn out to be unsubstantial confiscations of nonnarcotics roundups of drug users and petty dealers—all easily replaced—and few—and very few—real big-time traffickers.

I say this not to demean or belittle the numerous courageous contributions of the majority of these law enforcement agents. I do say this to point out the regrettable kinds of behavior which inevitably accompany policies of total prohibition, based too often on unsupportable assumptions and not a few myths.

Much drug use and most drug abuse is clearly harmful and regrettable. Individual lives are ruined and uselessly sacrificed daily in this country. Aside from the personal tragedy of this, we all suffer the consequences in a multitude of ways.

I honestly believe, however, that a major rethinking of our policies and laws is long overdue. As a society we are paying much—more than hundreds of million of dollars in pursuit of nonworking and nonworkable policies.

We are actually inviting disrespect for our laws and law enforcement agents as we insist that those agencies accomplish impossible tasks.

As we confront the impossibility of totally eliminating the supply of psychoactive drugs and the extremely high costs such efforts have incurred, we might consider a number of alternative approaches.

The Alaska State Legislature has recently followed Oregon’s example in adopting a civil fine for possession of marihuana. The Alaska Supreme Court has also ruled that the previous criminal penalties for illicit possession violated the constitutional right to privacy.

A Drug Abuse Council survey a year after Oregon decriminalized marihuana showed no significant increase in marihuana use—despite the fears of many law enforcement officials and others.

In light of the Oregon experience, we should at least study the concept of removing criminal penalties for the sale and cultivation of marihuana, with or without a civil fine.

We might also study the economic and social impact of legalizing marihuana and explore what kinds of regulation and distribution controls would be efficient and enforceable.

Surely we can devise effective means of expressing society’s disapproval of the use of marihuana and of realistically limiting its availability, particularly to the very young, without necessitating the full use of our law enforcement agencies who, in truth, have much more pressing demands. Perhaps the citizens and legislators of Oregon and Alaska are showing us a realistic, hopeful way to go.

I think we can apply this kind of reasoning to many other types of drugs, devise new approaches, and be far better off than we are now.

Recently, at a high level scientific conference held under the auspices of the National Academy of Sciences, a leading American biopharmacologist who is actively involved in opiate research and in the treatment of drug dependents posed the question that perhaps it was time we considered using, in very limited, carefully controlled ways, heroin itself in the treatment of intractable heroin dependents who apparently will not volunteer for the kinds of treatment now available.

He did not propose that we institute the so-called British system of heroin maintenance, but rather that in a carefully controlled manner, we use heroin to get intractable addicts into a treatment setting, hoping to add sufficient stability to their lives so that they could move on to other types of treatment, and with the hope that they might eventually be freed of their dependence on heroin.

Under our current laws and regulations, such an experiment or such an attempt is impossible. Aside from the serious logistical and technical obstacles to be encountered with such an attempt at treatment, it is worth considering and studying.

I know full well, however, that unless such an attempt is fully and persuasively explained, it will be misunderstood and, once misunderstood, never attempted.

If we can begin to focus our attention more on particular problems associated with drug taking and less on the drugs, if we can set realistic goals, rather than create expectations of utopian success, then we will begin to make progress in this field.

I would be remiss in my appearance before you if I did not emphasize some of the more hopeful and positive trends in the field.

At the Council we have recently written the President to commend him and his administration, particularly the Strategy Council for Drug Abuse Prevention, for the recent publication of the 1975 "Federal Strategy for Drug Abuse and Drug Trafficking Prevention," which was submitted for the record this morning by Dr. DuPont.

At long last, we have a realistic, human, hopeful document coming from an official Federal body. It is not perfect, with notably the law enforcement sections succumbing to many of the temptations to overstate the value and promise of questionable policies, but in general, it is far superior to previous such reports, chiefly because its tone and perspective are so human, realistic, and understandable. It is an example of the injection of that much needed commonsense to which I earlier referred.

There is also much good that must be said about the treatment of certain drug users now available throughout the country as a direct result of the dollars and programs of the last few years. Such treatment, particularly for heroin dependents, has undoubtedly proved a critical variable in lowering the demand for heroin, but more significantly, thousands of individuals now have hope.

This treatment, too, has not been an unqualified success—and for every heroin dependent who has sought treatment, at least two have not—and many I predict will never seek it.

Perhaps the most positive and hopeful development of all has been the demonstrable wariness of the public to believe simplistic, overblown slogans and statements about our winning the war on drugs.

When it was so loudly announced that "the corner had been turned on heroin" and when that corner turned out at best to be only a seg-

ment of a circle, the public seems correctly to have lifted its collective eyebrow somewhat cynically.

Drugs can destroy individual lives, their indiscriminate use can disrupt society. But the only hope for dealing with that problem is to call upon what is best in us, not what is worst. We must guard most fervently against our fears, our prejudices, our own lack of understanding. We must constantly reexamine our assumptions. We must separate real risks from imagined ones, and act to minimize potential harm from those that are real. We must strive to make our society one so filled with opportunities and hope, so exciting and so imbued with promise, that the need, and desire, the urge—or whatever it is that drives millions of people to use them and misuse them—for mind-altering drugs becomes of no lasting importance.

To harbor the thought that we can by our laws control human behavior in an area so innately expressive of human complexity and frailty is to pipe dreams for ourselves that inexorably lead to disillusionment and to disastrous effects on our fellow citizens and to our social fabric.

Thank you, Mr. Chairman.

Senator NUNN. Thank you very much, Dr. Bryant, for a very thought-provoking statement. I have several questions.

On pages 3 and 4 of your statement you make reference to the manner in which authorities announce the seizure of illicit narcotics.

Do I interpret your remarks correctly to mean that you are skeptical about some of the claims which law enforcement agencies make about the impact of these seizures on the narcotics traffic?

Dr. BRYANT. There was a great deal of discussion about that this morning. That is the concern I am expressing. These statements are always presented in sort of an overblown fashion.

So that I think the example used this morning, when we say we have confiscated 500 kilograms of heroin or 5 kilograms of heroin, you can downgrade that by a factor of about 10 in terms of the content of the actual heroin confiscated.

Similarly, there is always the use of the street value, saying so many millions of dollars' worth of the drug were confiscated.

These are, while they may be accurate in a sense, are misleading. They mislead us, the public, I think, into believing that we really are having a bad impact. If you add up all the newspaper stories, we seemed to have confiscated more heroin that was grown or made last year. I really think a lot of this is overblown.

Senator NUNN. Does your Council make any effort to determine, make any kind of evaluation about the effectiveness of various law enforcement agencies.

Dr. BRYANT. We don't monitor them, per se. What we do is monitor them in terms of their role and the larger scene, in terms of the balanced approach, between treatment, rehabilitation, and law enforcement.

As I indicated when I got the invitation from the committee we have not actually monitored the DEA or any of the different law enforcement agencies, per se, in terms of how they go.

In terms of the projection that we have underway around the country we inevitably come into contact with both local agents and the efforts at the local level. So, I think in fairness to us it can be said

we are fairly well informed about both the policies and the procedures and the implementation of regulations on the part of these law enforcement agencies.

Senator NUNN. On page 7 of your statement you note that heroin use is spreading from urban centers to suburbs and smaller towns. I know that happens to be the case in my own State.

Why do you think this has occurred?

Dr. BRYANT. We are studying that now. We have done this in concert with the Special Action Office for Drug Abuse Prevention. What we seem to have working is something analogous to the infusion theory whereby some new product will come on the market in an urban center where it is widely advertised and widely used and it diffuses out to the rest of America.

I would hasten to add to keep things in perspective, I think the primary heroin problem in this country is still in the cities. That is where the numbers are. That is where the real problem is.

However, we have evidence that, I think, will withstand almost any kind of scrutiny that shows that in smaller cities and indeed in the larger towns of America, heroin is now available and can be found by people who want it. This is a trend that has been going on for the past 2 or 3 years over the country.

Senator NUNN. Do you agree with the theory that when supply decreases and purity levels decline and prices go up, heroin use declines also?

Dr. BRYANT. I would say that it certainly does, Senator, under certain circumstances. There is no denying that with the interruption of the Turkish, the flow of Turkish opium through the French connection that heroin was for a period of time scarce on the streets of New York, that was followed by or at least accompanied by an increase in frequent enrollment in treatment programs in New York. It was a transient thing.

It only lasted a year or less at most. So that when heroin became available from another source, then this transient improvement, if you call it—it was an improvement—was transient. It proved to be just that.

So that it is commonsense that if you can interdict the supply for any city or any given area of the city, heroin actually will not be able to get there.

The point I keep trying to make is we don't seem to be able to make that happen with any lasting sort of way.

Senator NUNN. Are any other nations in the world experiencing as severe a problem as the United States? Do you have any analysis of how our problem here compares with others?

Dr. BRYANT. Yes. They are different. People from different cultures and from different countries have different—have different ways of handling drugs. They have almost a different philosophy for handling drugs. It is all over the map.

There are countries that have serious disrupting problems with certain kinds of drugs. Particularly one that comes to mind is the country of Sweden which has really had a devastating epidemic, if you can use that word—I like to use it in quotes because I don't think it is entirely applicable with heroin—but a very bad scene with amphetamines in Sweden.

The same was true in Japan at some point in the past. There are rumors now—I don't have any way of substantiating them—that drug use is indeed, including heroin, is on the rise in a number of Western European countries, which was not the case a few years ago.

Senator NUNN. How about England in their experiment with heroin, I suppose it could be legalization to a certain degree, under medical control?

Dr. BRYANT. It is referred to as the British system, the British heroin maintenance system. About the only thing really accurate about that is the term "British." It is really not a system. It is sort of an approach. While they did begin to provide heroin initially in 1968—let me give you a nutshell description of what happened.

Heroin has traditionally been treated differently in England than it has been in this country, particularly in this country since the passage of the Harrison Narcotic Act. So the physician in England could prescribe heroin to addicts as treatment for their addiction. This got out of hand in the sixties.

It got out of hand in a way that a few unscrupulous physicians seemed to be profiting from their ability to write prescriptions for heroin. In fact, they were writing double prescriptions and more than that. Heroin began to appear in the streets in London in particular, as a black-market item.

Prior to that time there had been no black-market system in England for the distribution of heroin. This went on for a few years.

The British Government reacted with, I think, admirable common sense and moved to create what has been termed the British heroin maintenance system whereby they set up a series of federally operated clinics manned by health personnel to provide heroin as it began.

The dependence of the drug dependents has shifted over the years to that now since 1968 most of those people who are maintained on drugs at the British expense and get their drugs in treatment through the British health system, more of them are now on methadone, the drug we use here, than are on heroin. But at least it began with heroin.

There are several things that should be said to put it in perspective. The British have never had the black market problem we have had. They never had the crime associated with the heroin addiction that we have had. Perhaps most significantly, they never had the numbers problems that we had. I forget the exact number now. But it is something like 3,000 addicts or less, 3,000 heroin dependents or less in all of England.

This is a number that you can deal with in a sense. You can have a series of 15 or 20 clinics and you get people who will go to them.

It has, in our opinion, the Drug Abuse Council, we have studied it fairly, I think, closely, in terms of the goals that the British had, it has worked. There is still no crime associated with heroin addiction, there is still no appreciable black market. Every now and then there are stories about that.

That is a different question, it seems to me, from saying whether it will work in this country. I think there are a lot of other variables here. After all, England is a tight, little island. Their methods of control there in terms of influx for the black market we don't seem to have.

But I think it has worked in terms of what the British wanted to accomplish. There are lots of problems with it, also.

Senator NUNN. Our staff has some evidence that Mexican heroin is becoming at least acceptable, if not preferable to other sources, for many heroin users in this country. Is this consistent with your findings?

Dr. BRYANT. I might use different terminology. I don't know it is necessarily preferable to the individuals dependent. It is available to the individual dependent. That is what he uses. We don't have any information about qualitative differences as such other than the fact that if it is more pure, the higher the purity, the better the product, the greater the demand there will be for it.

This has really been a real switch. Up until 2 or 3 years ago the amount of heroin that was coming into this country from Mexico and from South America through Mexico was really not that big a chunk.

The point is, and people say we should build a wall of agents between us and Mexico. I have a feeling then we will next year gather together and say the heroin is now coming from somewhere else.

It seems to be preferable to the addicts. The answer will be the same again. It will be because it is available.

Senator NUNN. On page 10 and 11 of your statement, Dr Bryant, you mention the availability of heroin is such that, "an army of narcotics agents is unlikely to prevent the addict from getting his fix."

We talked about the border problem, too. Can we draw any conclusions from this about the allocation of law enforcement agents to serve areas? If we took them off the street to some extent and concentrated more on the border or the other way around, can you make any generalizations and observations about the use of law enforcement agents, whether we are wasting the effectiveness?

Dr. BRYANT. What I would say, Senator, is I think it is a sticky wicket any way you cut it. We all talk sort of like we need to concentrate on the higher ups. The chart this morning was very graphic in that sense. I haven't found anybody that knows how to concentrate on the higher ups.

Most of these people are really isolated and protected, and well protected. It is very difficult to get to them. On the other hand, we pointed out so easily this morning, the easiest place to show a good record is to get on the streets and pick up a lot of users and pushers that are users and supporting their habit. The numbers look terrific. You could say I arrested 100 people this morning and everybody gets a star.

I don't think that is having much impact at all on the heroin distribution system in this country. These are by far the easiest replaced links in the whole distribution system.

I am dubious that, as I said in the testimony, of putting an army of narcotic agents, whatever they are, from the Customs Bureau or the DEA or FBI, or whoever, at the border, is really going to have—we are going to be satisfied that that works.

I just think, I really think, the point I tried to make in my testimony, it is time for us to begin to set some realistic limits as to what we expect any of these agencies to be able to do for us.

I don't think they can solve our problem for us. I don't think they can do it in Mexico at the border, on the streets of Chicago.

Senator NUNN. Let's assume there were a legalization of marihuana. Does that change the equation any? Does that mean we will have a

massive number of law enforcement officials at the State, local, and Federal level available—I don't want to use the word "hard" drugs because we have already talked about that—but in the other areas of drugs other than marihuana?

Dr. BRYANT. Some work is underway now in the States like Oregon. We are staying in Oregon and will in Alaska and in California. Exactly when you move to treat the marihuana differently, depenalize it, legalize it, or whatever, does that indeed free up law enforcement resources?

Oregon, after a year, it certainly seems to free up court time and certainly seems to free up a lot of local policemen's time.

That is what again has come through from our studies. So I think you could make a case if you did something like decriminalize marihuana that you could begin to free up law enforcement resources to concentrate on other things.

Unfortunately, as you know, the demands on particularly local jurisdictions for law enforcement are numerous in addition to drugs. So that to free up a chunk of time is almost instantly eaten up by something else.

So you will never get a one on one kind of thing, free you up for marihuana, therefore, you go concentrate on heroin.

But it seems to me it would be realistic to expect some benefit flow, and that is another point I am trying to make, is I think we need to concentrate where the real problems are.

To concentrate on the problem associated with, say, the hard drugs, like narcotics, like heroin, for instance, I think will in the long run be more beneficial to society than continuing to try to do everything, continuing to try to keep all drugs out under all circumstances.

Senator NUNN. Thank you very much, Dr. Bryant, for that excellent testimony. We appreciate your cooperation and look forward to continuing to working with you.

Our next witness is Dr. Vernon D. Patch, director, City of Boston Drug Treatment Program, associate professor of psychiatry, Harvard Medical School.

We are delighted to have you today. I suppose we can swear you in, too.

Do you solemnly swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. PATCH. I do.

TESTIMONY OF VERNON D. PATCH, M.D., DIRECTOR, CITY OF BOSTON DRUG TREATMENT PROGRAM, AND ASSOCIATE PROFESSOR OF PSYCHIATRY, HARVARD MEDICAL SCHOOL

Senator NUNN. Go ahead and proceed with your statement. We will have questions later.

Dr. PATCH. Thank you.

Mr. Chairman, in Yankee New England parlance, someone in the field of drug abuse has not been minding the barn. Mr. Chairman, men, persons involved in drug treatment across the United States refer to our national strategy for drug abuse as our national tragedy: something is seriously wrong.

Our national strategy for 1975 was made public in the summer of 1975. Something is wrong again.

Mr. Chairman and members of the subcommittee, I represent drug treatment program directors from six major cities in the United States; Atlanta, Baltimore, Boston, Chicago, New York and Philadelphia.

Our cities spend 30 percent of all Federal drug treatment dollars in the United States and our cities contain an estimated 55 percent of all heroin addicts in the country. I bring you today some facts and some questions. I do not expect to find answers to my questions today, but I do expect that this subcommittee will provide answers to my questions today, but I do expect that this subcommittee will provide answers to my questions before your work is done.

My present testimony supplements my statement before the Senate Subcommittee on Alcoholism and Narcotics on March 25, 1975. As at that time, I remind you that my appearance here is not without some hazard.

Federal funding agencies and Federal regulatory agencies need not be favorably disposed toward those who are publicly critical of their efforts. As a recipient of Federal funds for drug treatment and as a drug program director subject to inspection by the Drug Enforcement Administration, I now take the risk to which I have referred.

My next point concerns the quality of heroin. To avoid misunderstanding in this presentation, I want you to know that heroin is a pure chemical, diacetylmorphine, and that 10 mg. of heroin is the same, whether it originates in Mexico, Turkey, or the Golden Triangle. Mexican heroin is no more and no less dangerous than Turkish heroin.

When we refer to the quality of heroin, we refer to the extent of refinement of heroin and to the extent to which heroin is diluted for street sale with other substances such as quinine or milk sugar. A spoon or a bag of high-quality Mexican heroin is as addicting and as potentially lethal as high-quality heroin from any other source.

Next, I want you to know that one of the few undisputed facts in the field of drug abuse today is the reality that drug abuse is highly correlated with the availability of supply. If there is no opiate available, we cannot have opiate addiction.

Realists in this field recognize that it is unlikely that the supply of illegal drugs will ever be completely intercepted. We do, however, recognize that effective law enforcement efforts can decrease the quality and availability of illegal drugs as happened in 1972 with heroin.

Drug treatment is an exceptionally demanding, difficult and at times, dangerous occupation. Effective diminution of the quality and supply of drugs of abuse is a goal which I and my colleagues vigorously support. Our work will then be easier, we will have fewer patients, and some of us will gladly return to the original direction of our careers in medicine.

Across the United States there exists a drug surveillance network largely ignored, I think, numbering 200,000 persons. This network is comprised of old and new patients in local, State and federally funded drug treatment programs.

The communications from this surveillance network to treatment personnel, highly confidential and protected by Federal regulations, provide day-to-day street information on what is happening on the

local drug scene. This source permitted me to identify Valium's abuse potential as a street drug more than 2 years ago and to report its dangers in the New England Journal of Medicine. This source told me of the existence of brown heroin in Boston and of its rapid spread throughout Boston as early as August of 1973, a full year before DEA or NIDA or SAODAP referred publicly to the problem. During that intervening year, brown Mexican heroin became the major heroin supply for the entire United States. The same source has me now on the alert for other reports of a potential new hazard in Boston, for I have been told three times within the week of the existence of powdered, illegally synthesized methadone now available in our city.

Gentlemen, we ignore the surveillance network to which I have referred at our own peril. Treatment program personnel work on the front lines with addicts every day of the year in this country and can immediately foreshadow new trends in drug abuse and shifting patterns of supply. The counsel of treatment program personnel was ignored in 1973 and we have ourselves in greater difficulty today as a consequence.

Let me tell you more of what these treatment people would have you hear today about the current drug problems in our cities:

The facts: From New York City, Dr. Bernard Bihari, assistant commissioner for addiction programs and Steven Karten, his deputy assistant commissioner tell us that "New York City alone now has a large pool of untreated narcotics addicts numbering 70,000 persons" and they speak to us of "the need to deal with the growing prevalence of multiple substance abuse."

"Treatment facilities for multiple substance abusers are either non-existent or woefully lacking in the area of New York City."

Again from New York City, Dr. Paul Cushman, assistant professor of medicine at Columbia University and director of St. Lukes Hospital drug program tells us "that the quantity of heroin available in New York City is abundant," adding "that the concentration of heroin per unit has risen sharply." He tells us that "one-third to one-half of all active, unjailed, narcotic addicts are not being reached at present by current treatment facilities in the city."

He adds that potential patients in the city are deterred from seeking treatment because there are no local treatment facilities available where the potential patients are" and that the West Side of Manhattan "has a very sparse number of clinics and a heavy unmet demand for care."

From Baltimore, Md., Dr. Burt D'Lugoff, director of the Baltimore City Hospital drug program, tells us that: "Drug overdose deaths are now increasing, that brown heroin is available in the city but does not yet predominate over white heroin, and that the volume of new addicts with short addiction histories of only 1 year's duration is high."

From Philadelphia, Dr. Jacob Schut, assistant professor of clinical psychiatry at the University of Pennsylvania and director of drug abuse programs for West Philadelphia, tells us that: "The figures available during the last 6 months clearly indicate that heroin is easily obtained in the streets of the city and that brown heroin is plentiful and allegedly of a higher concentration."

Additionally, he tells us that he "estimated number of youth and adults using barbiturates and amphetamines is increasing because of easy availability."

From Atlanta, Dr. William Wieland, until last week director of Drug Abuse Services for the State of Georgia, tells us that: "Local law enforcement officials report that the quality of local heroin has improved," and he adds that: "There has been an increase in admissions to local drug treatment programs."

From Chicago, Dr. Edward Senay, director of the Illinois drug abuse program and professor of psychiatry at the University of Chicago, tells us that: "Heroin deaths are now at an alltime high in Chicago."

He adds that: "Treatment for polydrug users is practically nonexistent," and that: "There is a growing experimentation with a variety of dangerous drugs in the age range of 8 to 15."

Again from New York, Dr. Mitchell Rosenthal, president of Phoenix House Foundation, Msgr. William O'Brien, president of Daytop Village, Inc., and Dr. Judianne Densen-Gerber, president of Odyssey Institute, three national leaders in the self-help therapeutic community movement, have this to say: "Drug abuse is more prevalent today than it ever has been. The greatest increase in drug use has occurred among youngsters 8 to 14, and the fastest growing group of young drug abusers are not dependent upon some single substance like heroin. They are polydrug abusers, who use a wide variety of psychoactive substances, often with permanent detrimental effect."

Next, from Boston, a recently completed survey of drug use in public schools in grades 9 through 12 has shown a 15-percent increase in use of drugs other than alcohol in contrast with a similar 1972 survey.

We have demonstrated an increasing incidence of heroin addiction in 1974, and we have demonstrated that three out of every four criminal heroin addicts in our city prison are strangers to the city's drug treatment program.

We have seen long treatment waiting lists return to the city after a year's absence. We have seen brown Mexican heroin in our city for 21 months, and we have heard our new patients tell us that their heroin use has been "some white, some brown, mostly all brown." Finally, we have seen the quality of local heroin rise tenfold from 3 percent in 1972 to 30 percent of the DEA quality bust in 1975.

In 1972, the U.S. Department of Justice, Drug Enforcement Administration, developed an expensive drug abuse warning network for the United States known as DAWN. Dr. DuPont referred to it this morning.

Utilizing an elaborate reporting system, this early warning network gathered information from throughout the United States on drug abuse episodes appearing in general hospital emergency wards, crisis centers, and in the medical examiners' office or morgue.

All 13 DEA regions of the United States were represented in this network which included 320 reporting units located in 38 standard metropolitan statistical areas. During an 8-month period from September 1972 through April of 1973, 62,000 drug abuse episodes were reported in this system, many of which involved multiple drug use.

In Mr. Bartels' foreward to the Justice Department's report of this first 8-month warning network study, Mr. John Bartels, Adminis-

trator of DEA, said that the system was to be used "as a barometer to assist all of the officials concerned with the problem of drug abuse to identify the parameters of the drug abuse phenomenon."

During the 8-month period of 62,000 drug abuse episodes, episodes involving heroin were six times greater than for cocaine; drug abuse deaths associated with heroin were 27 times greater than for cocaine.

In comparing the last 3 months of the period with the first 3 months, heroin drug abuse episodes decreased by 7.5 percent, signaling the downturn in the heroin problem as announced by President Nixon 6 months earlier. To be quite honest, cocaine overdose episodes increased by 20 percent over that same period of time, the same comparison.

In an expansion of the drug abuse warning network for 1973 and 1974, 1,304 reporting units were involved, representing a fourfold increase in the reporting system. Covering a 9-month period from July 1973 through March of 1974, this system reported 116,000 drug abuse episodes, many of which again involved multiple drug use.

Senator NUNN. So many times I have read about crime statistics, and in general nondrug statistics, that the reporting of crimes goes up in the direct proportion to the intelligence system of reporting.

Do you think we are getting some of that syndrome here, or are we getting a better system of reporting? Therefore, are we getting more reports, or have you got this factored out?

Dr. PATCH. It is factored out at least by DEA as a report. They tested the system, and the early months of reporting were not included in this data. We are not involved in that, to the best of my knowledge.

Covering this second study period, 9 months, July 1973 through March of 1974, 116,000 drug abuse episodes, many of them involving drug use. Drug abuse episodes during this period involving heroin was still six times greater (5.7) than for cocaine, and DEA's report for this period did not even count cocaine-associated drug deaths, while counting nearly 700 heroin-morphine deaths.

In comparing the last 3 months of this period: January, February, and March of 1974, with the first 3 months of the period (July, August, and September of 1973), heroin drug abuse episodes increased by 16.5 percent for all reporting facilities across the Nation.

The downward trend of heroin drug abuse episodes noted for early 1973 was completely and substantially reversed by early 1974. This data belonged to DEA, SAODAP, and to the country. DEA kept the data, and the heroin problem grew worse in the United States.

Of some interest, for the same period, the same comparison for hospital emergency room drug abuse admissions showed an 18-percent increase in heroin drug abuse episodes by early 1974, in contrast to a 14-percent decrease in cocaine drug abuse episodes.

During January, February, and March of 1974, heroin was involved in drug abuse admissions to hospital emergency wards more than 10 times as often as cocaine.

The message is clear. Heroin was contributing to morbidity substantially in excess of cocaine throughout all of the warning networks history. Heroin was an increasing problem by early 1974 and cocaine was a decreasing problem.

Treatment program personnel knew in early 1974 that the heroin problem was increasing. In Boston we had developed waiting lists for

heroin addicts seeking treatment as early as February of 1974; we knew that Justice Department's DEA was making an open secret of its new emphasis on cocaine smuggling.

We were alarmed in March of 1974 when the Director of SAODAP and NIDA told the First National Drug Abuse Conference in Chicago of the Nation's coming austerity in drug abuse treatment funds.

My own cynicism came to the surface by April of 1974 when I spoke these words at the American Psychiatric Association meetings in May of that year:

Somehow, in the microcosm of the heroin addiction problem, the shell game of politics with people seemed revealed. Throw money at a problem, but don't study it.

Say that the victory is won when it isn't. Sooth the dissidents with patronage. Give the problem back to the States with revenue sharing. Make cocaine the new public enemy. Shift the priority to a new area and pray the voters won't catch up with you.

Four months later in Boston in August of 1974 when our treatment program had 50 percent as many heroin addicts waiting for treatment as we had in treatment; when brown heroin on the streets of the city was 10 times higher in quality than street heroin in 1972; when the National Institute of Drug Abuse was cutting drug treatment budgets in the Boston area by a million dollars; when regional DEA officials were saying publicly that there was no upsurge in the heroin problem; then, gentlemen, I read in Boston and Washington, D.C. newspapers articles liberally sprinkled with references and quotations from DEA officials, articles headlined "Cocaine No. 1 Drug Problem in United States."

One month later the consortium of large city drug treatment program directors, for which I now speak, formed and resolved its determination to do our best to reverse the Nation's mistaken idea that drug abuse and heroin addiction had disappeared around any corner.

That same month, September of 1974, I saw the first mention by any media of the new heroin problem (by then 12 months old for us in Boston). In a Boston Globe article by Congressman Charles Rangel he stated:

A recent internal memorandum prepared for Drug Enforcement Administration (DEA) use, found that "while a white heroin shortage may still exist, the increase in brown heroin seems to have at least partially filled the void in most areas of the country."

One month later, in October of 1974, the Director of SAODAP and NIDA suggested in congressional testimony that the heroin epidemic seemed to be spreading to small towns and he indicated that the heroin problem was perhaps resurging.

Five months later, in March 1975, he could tell the U.S. Senate Subcommittee on Alcoholism and Narcotics of a "marked increase in Mexican brown heroin in the United States" and he included in his statement a DEA estimate that "at least 60 percent of their current heroin seizures were of Mexican heroin." The questions:

Gentlemen, I hope that this history which I have just given to you is as disconcerting to you as it has been to me and my colleagues. I ask you to observe what appears to have been blindness, studied indifference, benign neglect, incompetence or, worse yet, gross neglect.

I ask you, who makes the decision to focus law enforcement efforts on one drug rather than another? I ask you, does the Attorney Gen-

eral focus on cocaine and permit, by oversight, the influx of Mexican heroin to the United States in preponderance of supply?

Does the Secretary of Health, Education, and Welfare ever talk to the Justice Department about drug enforcement priorities? I ask you, does the Attorney General ever talk to the Secretary of State about our relationship with Mexico and the impact of Mexican heroin in the United States?

And finally, I ask you, who decides what the budget will be for the National Institute of Drug Abuse and who decided that the budget for fiscal year 1976 should be \$100 million less than the Director requested? OMB? HEW? Justice?

Mr. Chairman, members of the subcommittee, America's effort early in this decade to combat drug abuse was unparalleled. A massive effort to treat and rehabilitate drug abusers and addicts created a national system for drug treatment. The job was started. The task, not completed. Austerity and oversight now threaten drug treatment as programs are defunded or dismantled while patients wait for treatment and the drug problem expands. The supply of drugs such as heroin increases, and America's activism and deep concern over the problem of widespread drug abuse and addiction in youth seems to have been effectively converted into gentle sleeping boredom.

Gentlemen, I have tried to give you a barn door. If there is a smaller or better target, I urge that you find it as this investigation continues.

Senator NUNN. Thank you very much. That was excellent testimony and I think it raises some very good questions for this committee's consideration, really for the whole Government's consideration.

I believe you were here when the previous witness, Dr. Bryant, testified?

Dr. PATCH. Yes, sir.

Senator NUNN. From your testimony I would not gather the degree of pessimism regarding the possibility of curbing supply that perhaps we got from Dr. Bryant. Is that a false impression?

Dr. PATCH. In 1972, in early 1973, it was working. The quality of heroin was drastically down. Our treatment programs were operating at 80 percent of capacity. Then as the new supplies started and I remember vividly it was the last week in August of 1973, a patient came in with great animation talking about the new brown stuff.

He said, "Doc, it is so good," he said, "it dissolves in the cooker without any heat, in cold water." Within 2 days that substance was in another part of the city. In a matter of 3 or 4 weeks it was all over the city. Our patients regularly were reporting the new brown stuff. It is pretty much all they talk about now.

Senator NUNN. Are you saying an effective national program with competent direction from the Federal level and working with State and local levels could indeed curb supply on a continuing basis?

Dr. PATCH. I believe that. I assume that it was not just luck that supplies were decreased in late 1972 and early 1973. I assume there was a measure of competence and effective action taken at that time.

Senator NUNN. So what you are saying is that there has been a severe erosion in the efforts at the Federal level?

Dr. PATCH. I believe myself, and I have talked with a number of DEA agents over the past year, I believe that DEA was resting on its

laurels. I believe that they shifted to cocaine after the President announced that a victory of sorts had been won and I think they paid less attention. Dr. DuPont, I have seen the graphs in his office, showing the influx of brown Mexican heroin in the United States starting in 1972, sort of a red colored surge into the United States from the Mexican border.

A year later it was reaching up toward Chicago, through 1974 it covered almost the entire United States.

This, I saw, 2 weeks before he had his congressional testimony last October. That has been around for some time.

Senator NUNN. Are you suggesting more border activity and less street activity or more street activity? Do you have any feeling about whether enforcement should be concentrated?

Dr. PATCH. I am not an expert in law enforcement. I know when the supply is limited, fewer people will have trouble with drug abuse. Fewer of our patients are going to die. I would be quite happy if the substance, the supply of the substance was in fact decreased. I would be much happier if that happened.

Senator NUNN. What is your view on decriminalization of marihuana and how it fits into this picture?

Dr. PATCH. I don't know that the closeness of my relationship with some of my colleagues would be improved by this statement, but it seems to me quite honestly that we talk about legalizing beer and we haven't discovered alcohol.

A lot of people have had experience with marihuana. I don't think nearly as many people have had experience with THC with the high concentration cannabis. A lot of high school students drink beer and not too many of them drink 100-proof alcohol.

I suspect as we move toward legalizing the substance like marihuana it will be a short step before the other THC containing substances are more widely available and I think it would be a tragedy if we learned at that point in time what the real casualties might be of widespread use of high concentration THC.

Senator NUNN. THC?

Dr. PATCH. That is the active ingredient in marihuana.

Senator NUNN. So you are saying, if I understand you correctly, that you do not advocate decriminalization of marihuana?

Dr. PATCH. Not at the present time. There are so many things we don't know in drug abuse and drug treatment that affect some substances. We haven't taken the human subjects into laboratories and loaded them up with maximum doses of THC. We don't know what the effect on the brain will be. If the substance is widely available, patients will do that and we will learn the effects that way.

Senator NUNN. In other words, you feel that there has been a let-down at the Federal level in intensity of effort and that this has caused or helped or at least not prevented an increase in the problem of heroin and other so-called hard drugs in the last 1½ to 2 years?

Dr. PATCH. I think there is no question. I think that runs right across the board in terms of enforcement, paying attention to Mexican heroin, in terms of the Federal Government's voice being muted.

People weren't talking about this until long after the fact that the substance had covered the entire United States.

Senator NUNN. Obviously the Federal Government is not coordinating very well with you and your group then. You had the information

well in advance of the Federal Government. Have you talked to people in DEA and other places?

Dr. PATCH. Yes, indeed.

Senator NUNN. Have you talked to people in high levels, or are they just closing their minds? What is the problem here; is it a communication problem or a political problem, or what?

Dr. PATCH. I hesitate to say for sure. I can speculate I am sure politics played some part. When the President announces a fait accompli, it must be very difficult for a subordinate administration to introduce evidence publicly that would be a disclaimer. It must be very difficult.

Senator NUNN. Thank you very much, Dr. Patch. This has been excellent testimony. What I am impressed with so much is you really have provided us with the nonstatistical data—we get plenty of statistics—but yours comes right from the grassroots level. We appreciate your being here.

Dr. PATCH. Thank you.

Senator NUNN. Our next witness is Victor L. Lowe, Director, General Government Division, General Accounting Office.

Mr. Lowe, are the other witnesses going to testify?

Mr. LOWE. I have two men with me here: Mr. Stanton and Mr. Arnold Jones.

Senator NUNN. Why don't all of you hold up your hands.

Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LOWE. I do.

Mr. STANTON. I do.

Mr. JONES. I do.

TESTIMONY OF VICTOR L. LOWE, DIRECTOR, GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY ARNOLD JONES AND DANIEL STANTON

Senator NUNN. Why don't we proceed with your statement, Mr. Lowe?

Mr. LOWE. Mr. Chairman, if I could introduce my colleagues here, Mr. Stanton on my left is in charge of all of our work in the Department of Justice and several other places; Mr. Arnold Jones is in charge of our small staff that we have assigned to the Drug Enforcement Agency.

Mr. Chairman, we are here today at your request to discuss certain issues related to Federal drug law enforcement. Our comments are based on the work done in recent years to develop several reports that we issued to the Congress and on work that we now have in process.

As you know, the Drug Enforcement Administration (DEA) of the Department of Justice is the investigative, intelligence gathering, law enforcement, and regulatory agency responsible for suppression of illicit traffic in narcotics and dangerous drugs. In fiscal year 1975, DEA had a \$135 million budget and over 2,000 special agents.

Other Federal agencies with major roles in drug control include the Department of State, the U.S. Customs Service of the Department of the Treasury, and the Immigration and Naturalization Service of the Department of Justice.

REORGANIZATION PLAN NO. 2 OF 1973

DEA was established by Reorganization Plan No. 2 of 1973. The plan was developed because of recognition that the fragmentation of Federal drug law enforcement among various agencies had resulted in "serious operational and organizational shortcomings." In announcing the plan, the President called for "creation of a single, comprehensive Federal agency within the Department of Justice to lead the war against illicit drug traffic."

In a 1972 report,¹ we discussed interagency conflicts between Customs and the Bureau of Narcotics and Dangerous Drugs (BNDD), a predecessor agency of DEA. These conflicts arose over the question of jurisdiction over the control of narcotics smuggling. In that report, we discussed the problems that arose on drug cases between Customs and BNDD and pointed out an illustrative case which was unsuccessful because of lack of cooperation. The digest to that report and certain other reports mentioned in our statement are attached. (Attachments 1 through 6.)

Implementation of the plan has not ended interagency conflicts. Because of overlapping jurisdictions, there have been problems between the Treasury Customs Patrol and the Justice Border Patrol, particularly along the Southwest border of the United States. Efforts have been taken to resolve the problems. For example, in April 1975 the Commissioners of Customs and Immigration and Naturalization signed a memorandum of understanding to emphasize and clarify the need for cooperation between the two services. We are continuing to examine into aspects of the reorganization plan as requested by the subcommittee, and will provide you a report on the results of this work.

BNDD'S APPROACH

Considerable interest has been expressed as to the Federal approach to fight drug trafficking. BNDD, believing that most heroin was smuggled into the United States by organized rings of traffickers through extensive national and international distribution systems, committed its resources to breaking up the major organized rings. In 1969 it initiated the "systems approach" to arrest and prosecute those major traffickers whose immobilization, BNDD felt, would most help reduce the availability of illicit drugs. It identified 10 major and 75 secondary drug distribution systems.

By January 1972, BNDD recognized that the systems approach was not producing the desired results. All 10 major systems were still operating, although two had been severely disrupted. BNDD modified its efforts into the geographic drug enforcement program (G-DEP). This program has been continued by DEA.

The G-DEP objective, like that of the systems approach, is to direct priority enforcement action against major illicit drug distribution organizations. The principal difference is that, under the systems approach traffickers were identified as members of specific illicit drug distribution systems whereas, under G-DEP, they are identified according to their importance and are classified by the type of drug they

¹ "Heroin Being Smuggled Into New York City Successfully," B-164031 (2), December 7, 1972.

traffic in and the general area where they traffic. Class I and II traffickers represent the most important violators in the drug traffic and their designation must be approved at the Headquarters level. Class III and IV traffickers are less important, much more numerous than I's and II's, and their designation does not require Headquarters approval. A general definition is shown as attachment 7.

The DEA policy under G-DEP provides for allocating 70 percent of enforcement resources to arresting and prosecuting class I, II, and III traffickers.

Our December 1973 report² to the Congress discussed BNDD and DEA's difficulties in immobilizing major traffickers. Our current work indicates that although improvements have been made, there are still difficulties in this area.

DOMESTIC ACTIVITIES

Other domestic Federal drug law enforcement activities include (1) efforts at the U.S. border to interdict drugs, (2) regulatory and enforcement programs to prevent illicit production of dangerous drugs and diversion of legally produced drugs with potential for abuse, and (3) efforts to arrest street-level traffickers (pushers). Antismuggling interdiction activities are primarily the responsibility of the U.S. Customs Service. In our December 1972 report,³ we discussed the programs for, and difficulties in, preventing smuggling of drugs at the Port of New York and John F. Kennedy International Airport.

In April 1972 we reported⁴ to the Congress on efforts to curb the flow of dangerous drugs from legitimate manufacturers to the illicit market. These drugs are manufactured for medical use but have potential for abuse. We said that BNDD needed to improve its information system regarding such drug diversions, increase its activity in monitoring the drug industry's compliance with Federal regulations, promote and encourage increased self-regulation on the part of the drug industry, and increase monitoring of retailers' activities.

In a followup report⁵ in June 1974, we said that the gravity of dangerous drug abuse indicated the need for a higher enforcement priority by DEA. During a 7-month period ending December 1972, only 8.6 percent of the total man-hours spent by domestic agents on criminal investigations were on dangerous drug cases. Further, during the first half of fiscal year 1973, only the equivalent of about 300 agents were assigned to dangerous drug investigations, about the same as in 1968, although the total number of agents had more than doubled since then to about 1,600. In the report, we discussed several other weaknesses in DEA's program for identifying and investigating illicit sources of dangerous drugs.

DEA also has a program in effect—the State and local task force program—which concentrates on heroin pushers in order to reduce the availability of heroin on the streets. This program is the successor to the function of the Office for Drug Abuse Law Enforcement which was established in 1972 and abolished in 1973. The Law Enforcement

² "Difficulties in Immobilizing Major Narcotics Traffickers," B-175425, December 21, 1973.

³ "Heroin Being Smuggled Into New York City Successfully," B-104031(2), December 7, 1972.

⁴ "Efforts To Prevent Dangerous Drugs From Illegally Reaching the Public," B-175425, April 17, 1972.

⁵ "Identifying and Eliminating Sources of Dangerous Drugs: Efforts Being Made, but Not Enough," B-175425, June 7, 1974.

Assistance Administration provides most of the funding in support of the non-Federal participants. For fiscal year 1975 this amounted to about \$9 million in support of 43 local task forces; only 35 are now operating. DEA also has programs providing specialized drug law enforcement training to assist State and local authorities in combating drug abuse.

OVERSEAS ACTIVITY

Because of national concern, GAO has conducted reviews of various international aspects of drug law enforcement and control. Copies of the reports have been provided to the subcommittee.

In our 1972⁶ report on U.S. antidrug efforts in Europe, we said that even with increased drug seizures and arrests on the part of host governments with the U.S. help, local enforcement was hampered by the following factors:

National police forces lack reliable means of exchanging intelligence and make little effort to recruit and use informers.

National laws prevent police forces from doing undercover work.

National laws, in some countries, do not permit law enforcement authorities to grant immunity or to bargain for reduced sentences.

Also, we found that:

BNDD agents assigned overseas did not have enough language training.

BNDD did not have a policy encouraging agents with special interests and skills to accept long-term overseas assignments.

Since then, considerable progress was made by BNDD, and now DEA is providing language training and incentives for agents assigned overseas.

In our recent report⁷ on U.S. antidrug efforts in Mexico, we said that DEA and the Mexican Government have intensified enforcement efforts in recent years, but the amount of drugs originating from or transshipped through Mexico to the United States continues to rise. DEA officials estimated that, as of September 1974, 70 percent of all heroin reaching the United States comes from poppies grown in Mexico. Although the U.S. Government can take certain steps to improve the planning and management of its operations and help to train and equip Mexican enforcement personnel, the Mexican Government must act if there is to be any real success. We reported that factors which have hindered greater effectiveness in reducing the flow of drugs from Mexico to the United States include:

Lack of full cooperation between the two governments regarding drug information and extradition; and

Limited Mexican manpower and technical resources.

I would like to mention, since the previous witnesses have mentioned the Mexican heroin problem that we just did issue a report concerning the DEA's work in Mexico in December 1974.

Last month we reported to the Congress on the results of our review of U.S. efforts in South America.⁸ Certain material included in that report has been classified and, therefore, we will be unable to discuss it

⁶ "Efforts To Prevent Heroin From Illegally Reaching the United States," B-104031 (2), Oct. 20, 1972.

⁷ "Efforts To Stop Narcotics and Dangerous Drugs Coming From and Through Mexico and Central America," GGD-75-44, Dec. 31, 1974.

⁸ "Problems in Slowing the Flow of Cocaine and Heroin From and Through South America," GGD-75-80, May 30, 1975 (confidential).

at these hearings except for providing the following general information on the nature of our findings. I might indicate that the general nature of these findings relates very closely to some of the previous reports issued in other parts of the world.

Senator NUNN. Who makes a classification decision on a matter of this nature?

Mr. LOWE. Not us. In this case, I think it was the State Department.

Senator NUNN. The State Department?

Mr. LOWE. Yes, sir.

Enforcement objectives in South America are to stop cocaine and heroin bound for the United States either by intercepting the drugs or eliminating local illicit production. The ambassadors are responsible for seeing that U.S. objectives are achieved in each country.

In 1971, the embassies formed drug control committees in each country. Since then:

Drug seizures and arrests have increased;

Cooperation on the part of some South American countries has improved;

Local government officials are more aware of drug abuse problems;

Foreign narcotic enforcement groups have been more effective; and

Better information has become available on drug trafficking.

However, for reasons generally beyond the control of U.S. enforcement agencies, cocaine and heroin continue to enter from South America.

Also, enforcement efforts have been hampered because of:

The need for increased intelligence gathering, sharing and cooperation among U.S. agencies involved in drug enforcement;

The need for more aggressive actions by the State Department to support drug agents and programs;

Inadequate extradition treaties or workable alternatives;

Inefficient use of the judicial system as a deterrent to trafficking;

Inadequate utilization of intelligence to make drug seizure at U.S. ports of entry;

Limited and ineffective efforts by local enforcement groups to combat the international drug problem;

The need for increased use of resources to identify and systematically immobilize major traffickers; and

Problems in allocating funds and manpower to accomplish enforcement objectives.

I realize that is sort of a general summary. If I get into any more specific details, it is classified. I didn't even bring a copy with me.

In another report currently in process on U.S. antidrug efforts in 18 countries in Europe, the Near East and South Asia, and the Far East, we discuss, among other things, problems associated with continued expansion of DEA overseas activities.

During the 6-year period ending in March 1975, the number of BNDD or DEA special agents overseas increased from 26 to 163. The number of special agents overseas is projected to increase to 233 in fiscal year 1976.

DEA believes that its drug suppression activities overseas provide the best return in terms of drugs removed from worldwide traffic and, therefore, intends to continue expanding these activities.

However, continued expansion of DEA overseas activities should be carefully considered in terms of potential problems with foreign government sovereignty, possible displacement of indigenous police functions, and appropriate development of foreign government enforcement capabilities.

OTHER MATTERS

Mr. Chairman, your letters of March 6 and May 1, 1975, requested that GAO provide you a report on several areas related to Federal drug law enforcement.

We are currently performing the work necessary to respond to the questions posed in your letters. Work done on several of the questions allow us to now respond in some detail, whereas some of the other questions require additional work, particularly in the DEA field offices. Our response to these questions, together with any subsequent information we acquire on the others will be provided you in a report later this year.

PURCHASE OF EVIDENCE AND INFORMATION

You asked us to obtain information on the use of Federal moneys by DEA agents to purchase evidence from suspected traffickers and information from informants.

In addition to being used to purchase evidence and information, these funds are also used by DEA to pay rewards and as flash rolls; that is, large sums of money are shown to drug traffickers as proof that DEA undercover agents can purchase large quantities of illicit drugs.

The budget for purchase of evidence and payments to informants has increased from \$775,000 in fiscal 1969 for BNDD to an estimated \$9 million in fiscal 1976 for DEA.

A relatively small amount of the money used to purchase evidence is recognized by DEA. For example, in fiscal year 1974, only about \$160,000 in purchase of evidence money was recovered by DEA compared to about \$4 million used for purchase of evidence in that year. Approximately 95 percent of the funds on purchasing evidence in fiscal year 1974 was lost in the illicit market for the purpose of buying in to apprehend upper level traffickers.

Senator NUNN. You say 95 percent of the money is not recirculated back to the Treasury. Is it annual appropriation?

Mr. Lowe. That is right, sir. It disappeared.

Senator NUNN. What is the reason for it again?

Mr. Lowe. It is used to purchase evidence, that is, drugs.

Senator NUNN. You are not saying evidence in terms of testimony? You are talking about physical evidence?

Mr. Lowe. Yes. Right. DEA considers the use of purchase funds one of the most effective tools for penetrating illicit drug trafficking organizations. The "buying in" technique is a major factor in DEA's intensified efforts to eliminate the major suppliers of illicit drugs.

Critics of this technique, however, question the rationale for a practice which stimulates the market for illicit drugs by adding to the monetary rewards.

DEA told us no overall study evaluating the effectiveness of purchase funds has been conducted. However, one DEA regional office made such a study. This study concluded that in the DEA Los Angeles

region, purchase funds were generally not leading to the identification and apprehension of higher level traffickers.

When purchase money was expended on a class III investigation, it was rare that a violator of higher class was arrested, or even identified.

On an agencywide basis, DEA since July 1, 1974, has had specific reporting requirements for purchase fund expenditures showing where the money is being spent, that is, on what level of trafficker.

An analysis of these reports for the first 6 months of fiscal 1975 showed that in the DEA domestic regions, 82 percent of the money expended for the purchase of evidence and 44 percent of the money expended for the purchase of information was on class III and class IV cases.

Senator NUNN. This may have come up at some other time, but would you clarify classes III and IV and the varying classes?

Mr. LOWE. Yes, sir. One of the attachments to this statement is a summary of what DEA uses to classify traffickers.

Class I obviously is at the highest level. Class III, those violators who are actually distributors of illegal drugs in quantity at the sub-wholesale level. Class IV—that is composed of those persons who don't meet class I, II or III definitions.

Senator NUNN. So the lowest levels are III and IV?

Mr. LOWE. Yes, sir.

Senator NUNN. Do you have any quantitative measurement there?

Mr. LOWE. We do have some numbers on that, Mr. Chairman. I think we will get to those in just a minute. We do get to those on manpower utilization. We have an attachment that sets them out.

DEA pointed out to us that because there are so many more class III and IV traffickers than I's and II's, some purchase moneys will understandably not pay off in identifying upper level traffickers.

Senator NUNN. Let's assume there is a class III or IV purchase for \$1,000. That purchase is made, and let's assume it doesn't lead to a class I or II arrest, does that mean they don't go back and make the arrest on class III and IV? Is that because the evidence is no longer current or what happens?

Does the class III and IV offender just disappear? What happens to him?

Mr. LOWE. I suppose it would depend on the particular case, Mr. Chairman.

Senator NUNN. Ninety-five percent of the funds disappear. I am just speaking hypothetically.

Mr. LOWE. Even if they arrest a guy, they get the man, but they have the evidence that the purchase was made of heroin but they don't have the money. That is gone in most cases.

It would depend on whether or not they thought by allowing this trafficker to continue in business he might lead them to a bigger fish, whether or not they would arrest him immediately or later.

Senator NUNN. I would agree with that. It looks like once you make the arrest there are certain civil remedies available. I am asking does the Government even attempt to get the money back?

Mr. LOWE. They would if it were available. In other words, if they arrested a trafficker with a large sum of money.

Senator NUNN. I notice the criminal process is usually more effective in collecting funds than the civil process. If they make the arrest,

spending \$9 million a year, and 95 percent is not being recirculated back into the Treasury, it seems to me that leads to a very serious question.

Mr. LOWE. I am not an expert in this thing, certainly not in law enforcement. I don't think the object of the game is to make one purchase from a trafficker and arrest him on the spot. It is to build up a continuing relationship and try to get back into what is going on at a higher different level, intelligence, that sort of thing.

Senator NUNN. I can understand that. I can see where there would be some lead time involved. If it just becomes an annual affair, for 15 to 20 years, you would have to really question it. I don't know how long a leadtime they are asking for.

Are they saying there is going to be a class I and II arrest at some point down the line and it takes 2 or 3 years to build up to this?

Mr. LOWE. They are hopeful of that. I think part of the problem here, as I say again, I am not in the law enforcement, but part of the problem here is this is a so-called victimless crime. Nobody is going to complain that this bag of heroin, it was only 5 percent instead of 6 percent, or whatnot.

So you don't have anybody to go to the police and make a complaint. This is one of the few ways they feel they can get some information on this particular crime, by buying the information or buying evidence.

Mr. STANTON. Six months would probably be a reasonable time they would work with a man to see if they could get something out of him. Over that period they may make a number of buys from him.

Senator NUNN. The budget has gone up from \$775,000 to almost \$10 million from 1969 to 1976, so there has been a period of almost 7 years here.

Is your figure 95 percent applicable to all of that money over that period of time, that 95 percent is not returned?

Mr. STANTON. We only have the figure for one period, sir, the most recent 6-month period.

Senator NUNN. You don't have the figure for the whole period?

Mr. STANTON. No.

Senator NUNN. Could you get that for us and trace the funds from 1969 to 1976? Is that in there?

Mr. LOWE. We have that information, from 1971 through fiscal 1975.

Mr. JONES. The first six months of fiscal 1975 in terms of recovered moneys.

Senator NUNN. Can you give us a summary of that? Is that part of your testimony.

Mr. JONES. No. That is not part of the testimony. We can submit that for the record or I can read some of the data.

Senator NUNN. Please give us a summary of that.

Mr. JONES. Recovered moneys, in fiscal 1971, it amounted to \$174,869.

Senator NUNN. \$174,000, approximately, in fiscal year 1971, out of how much money?

Mr. JONES. We have got the data. We can go back later. We have it here.

Senator NUNN. If you have got it, let's try to match it together. I am trying to get that. We will wait a minute and let you find it.

Mr. JONES. Let me give you now the respective budgets. Then I will give you the respective moneys recovered.

In fiscal 1971, BNDD had \$2,775,000 in purchase of evidence moneys. Senator NUNN. \$2 million?

Mr. JONES. \$2,775,000. This amount is the 1971 budget for purchase of evidence and for purchase of information.

Senator NUNN. You recovered how much?

Mr. JONES. The amount expended was \$2,605,000 in purchase of information and evidence.

Senator NUNN. Totaling about?

Mr. JONES. Totaling roughly \$5 million.

Senator NUNN. How much did you have returned?

Mr. JONES. In fiscal 1971, BNDD recovered \$174,869.

Senator NUNN. That sounds like something like 95, 96, 97 percent that is not returned.

Mr. JONES. That is right. It is not returned. I might just skip to fiscal 1974, because it illustrates the trend. In fiscal 1974, DEA had \$6,400,000 in purchase of evidence and information moneys; \$6,800,000, and they recovered \$160,200. That is the figure that we used in our testimony.

Senator NUNN. It sounds like the Federal Government is hooked. There must be an explanation here. Is the General Accounting Office satisfied with the explanation DEA has given—I am not asking you to be an expert in law enforcement—but what are your conclusions on this?

Mr. LOWE. I think that is investment money. That is not money that you really expect to recover. I don't think DEA does recover, I don't have any numbers on it, but I think they do once in a while in some kind of a raid come up with a fair amount of money. That is held in evidence, too, in the court session. I don't think there is a real expectation that most of this money will come back.

Mr. STANTON. In the continuing work we will be doing for the committee we will be examining specific cases and we will try to get more information on this point as to the controls over such money, how much they do recover, what happens with it.

Senator NUNN. What kind of controls do they have on the money? Are you reasonably certain or have you gone far enough into it to believe that the money is in fact being used for the purposes as recorded?

Mr. STANTON. Yes, sir. Their paper controls are certainly adequate. The procedures, as far as looking at what actually is happening, how they received the money, we haven't gone that far yet.

We have three regional offices now working in this area.

Senator NUNN. Do you have any analysis of how many people are the recipients of the money? In other words, I would assume class III and class IV violators are recipients of this money. How many of them are subsequently arrested and how many of them are still out on the street?

Mr. JONES. I think we have to make a point. I think there is a slight confusion between purchase of information in which you pay informants for information as versus the purchase of evidence that you might use to buy in for the purpose of reaching class I and II violators. So we want to make that distinction.

Senator NUNN. I think that is a good point. How does that break down in those fiscal 1971 and 1974 figures? About half and half, as I recall.

Mr. JONES. Roughly we can say two to one for those years, and 50 percent for fiscal 1976.

Senator NUNN. About 50 percent. We heard the figure \$5 million. About 50 percent of the \$5 million would be for information from which you wouldn't expect to get any money back?

Mr. JONES. Senator, the \$5 million is an error due to my totaling planned and actual purchase moneys. The 1976 budget was about \$9 million for purchase of evidence and information, divided roughly 50:50. You wouldn't expect to get any of that back. Your payoff for that would not be monetary. Your payoff ultimately is the immobilization of the major traffickers, the immobilization of I and II class violators. That is what it is all about.

Senator NUNN. The other 50 percent is what you might expect to get?

Mr. JONES. There would be those in the DEA who would contend that it is not exactly fair to look at the number of class III investigations that do not lead to higher class violators, that you would expect to lose some lower class in order to work at upper class. That is one interpretation.

The other interpretation is to look at the expenditure of moneys and look at what you get in return for it.

Senator NUNN. We have a good many questions here. Minority counsel wants to ask some questions. Could you try to summarize the highlights of the rest of it, briefly, for us? Then we will go directly to questions.

I am informed by counsel that the committee is not supposed to be meeting after 4:15 today.

Mr. LOWE. I guess, Mr. Chairman, you asked us in the two letters sent to us in March and May, to get some figures on the manpower utilization in DEA; on what class.

Senator NUNN. Let's go ahead with your testimony. You are down to page 16. Is that right? That is the conclusion?

Mr. LOWE. Yes. Page 12. There are 3 or 4 more pages.

Senator NUNN. Let's go ahead with it.

Mr. LOWE. I think we are dealing with what the committee asked us to look into.

Senator NUNN. Let's go ahead with it.

MANPOWER UTILIZATION

Mr. LOWE. DEA had on board in March of 1975 about 2,100 special agents (criminal investigators) and 200 compliance investigators. Although we have not yet made our analyses, we have collected some manpower utilization statistics from DEA headquarters which show what special agents are working on.

About 1,700 special agents are assigned to domestic regions. DEA's statistical data for these domestic special agents for calendar year 1974, showed that they were spending 61.6 percent of their time on criminal investigations—including tactical intelligence for making cases—3.3 percent on strategic broad intelligence, and 35.1 percent of

their time on other matters such as training, administration, and compliance.

In foreign countries, about 160 special agents are assigned to U.S. embassies. DEA manpower data for its six foreign regions for calendar year 1974 show that special agents spent 45.2 percent of their time on criminal investigations, including tactical intelligence; 6.2 percent on strategic intelligence, and 48.6 percent on other matters such as training, liaison, and administration.

A detailed breakdown of the time spent investigating class I through IV suspected traffickers is shown in attachment 8.

DEA is currently building up its intelligence capability both domestically and in foreign countries. All DEA regions have regional intelligence units which special agents are assigned to, often on a rotating basis.

DEA ARRESTS AND CONVICTIONS

You also asked for an analysis of the results of various Federal agencies' drug law enforcement efforts. Most of our work so far has been at DEA. For the benefit of these hearings, we will discuss some preliminary statistics on DEA arrests and convictions.

DEA maintains arrest and conviction statistics by class of violator and includes cases referred by other Federal agencies and State and local cooperative cases.

Semiannually, DEA projects the number of arrests it plans to make every 6 months, and has goals, striving for 10 to 15 percent of total arrests to be class I and II violators. DEA arrest goals, arrests, and convictions for 1974, by class of violator, are shown in attachment 9.

Statistics on arrests and convictions are not necessarily indicators of effectiveness. Increase in arrests and convictions can occur without any significant decrease in the availability of drugs if the arrests and convictions are for lower level traffickers. DEA's G-DEP enforcement program takes this into consideration, however, and provides objective criteria for identifying upper level traffickers.

That is what we just referred to a few minutes ago, the definition effect.

Senator NUNN. As I understand this attachment 9, it shows that DEA has its own goal in class I and class II arrests of 10 to 15 percent of the total. And the actual performance in calendar year 1974 in class I and class II would be about 8.6 percent, if you add the 3.6 to the 5. So they are 8.6 and their goal is 10 to 15 percent. Is that right?

Mr. LOWE. Yes, sir.

CONTROLS OVER SEIZED NARCOTICS

Another area of concern to the subcommittee and others, which you asked us to review, is the accountability and control over seized narcotics.

In March 1972, the Department of Justice's Office of Internal Audit completed a review of the accountability and control over narcotics and dangerous drugs acquired by BNDD. It found there was a need for BNDD to develop better accountability and disposal procedures for drug evidence which would effectively document the chain of custody and would assure complete and timely destruction once the evidence is

no longer needed. In their report, the internal audit group made several recommendations for improvement, which were implemented by BNDD.

Based upon our preliminary review of DEA's written procedures for controlling seized drugs, it appears that the controls are adequate, if properly carried out. In the DEA Los Angeles region, however, we found several instances where the controls had not been adhered to. Similar situations could exist in other DEA offices. We believe DEA inspectors should be cognizant of this sensitive area when conducting regional reviews and make sure that regional officials are fully implementing DEA custody controls over seized drugs. We plan to look at the controls over seized drugs at other DEA regions as part of our work for the subcommittee.

DESIGNATION OF CUSTOMS AUTHORITY TO DEA AGENTS

In your request to us, the subcommittee inquired as to the number of DEA special agents designated as "customs officers (excepted)" and how many times these agents had acted as customs officers.

The U.S. Customs Service has the authority at U.S. border areas to conduct searches and seizures without having to acquire a search warrant or having "probable cause" as required by other law enforcement agencies. Over the years, customs has designated employees of other agencies as customs officers with the authority to perform this function for the customs service in border areas.

DEA and customs entered into an agreement on January 11, 1974, whereby customs agreed to initially designate approximately 350 DEA special agents as customs officers (excepted). These DEA agents were former customs agents transferred to DEA under Reorganization Plan No. 2 of 1973.

The agencies agreed that customs' border search authority by these designated DEA special agents would be used when customs officers were not immediately available, or when a customs officer requested a DEA special agent to use his designation.

Further, the customs designation would be used by the DEA agents only in those circumstances where clear justification existed—where a search, seizure, or arrest cannot be otherwise justified on probable cause, or where necessary to protect the identity of a confidential informant.

Most of the designated DEA agents are located along the Mexican border and in major seaport cities. According to customs, DEA has reported only three instances in which the customs designated authority has been used. I understand some of the DEA records indicate there may be as many as 17, nevertheless, it is minimal.

This concludes our statement Mr. Chairman. As I previously mentioned, we plan to continue our work on the effectiveness of drug law enforcement pursuant to your requests and report to you our findings, conclusions, and any recommendations that we may have.

We have tried to abbreviate our statement, Mr. Chairman. I do think all of the information that we have is in the attachments. We would be glad to answer any questions that we can, realizing of course that we still have a long way to go to finish up a pretty substantial workload for you.

[The attachments to Mr. Lowe's statement follows:]

[Attachment No. 1]

COMPTROLLER GENERAL'S REPORT—HEROIN BEING SMUGGLED INTO NEW YORK CITY
SUCCESSFULLY

DIGEST

Why the review was made

Concerned over the flood of heroin which he said was destroying the Harlem community in New York, N.Y., Congressman Charles B. Rangel asked the General Accounting Office (GAO) to analyze the efforts of the Bureau of Customs, Department of the Treasury, to intercept heroin being smuggled into the United States at the Port of New York and John F. Kennedy International (JFK) Airport.

In a subsequent request, the Congressman asked GAO to look into the relationship between Customs and the Bureau of Narcotics and Dangerous Drugs (BNDD), Department of Justice. The conclusions in this report are based upon observations made in the New York City area, principally at the Port of New York and JFK Airport.

Findings and conclusions

It is unrealistic to expect Customs inspections to prevent most heroin from being smuggled into the United States, although its operations do provide some deterrent.

Magnitude and nature of the problem

The magnitude and nature of heroin smuggling combine to pose a complex and, as yet, unsolved problem.

Most heroin traffic is controlled by organized groups with tentacles extending to several continents. Their trade is characterized by cautious carefully planned activities. Their efficient and sophisticated operation is demonstrated by their ability to successfully meet the addict population's demand for 10 to 12 tons of heroin annually.

Traffic in heroin brings lucrative profits. The demand from an estimated 559,000 addicts nationwide (about half are located in the New York City area) can be translated into as much as \$17 million in daily sales.

Although it is uncertain how much heroin enters the country directly through New York City, it appears that most of it enters, or passes through, the city along various routes from other nations and from within the United States. Excellent cover for smuggling is afforded by hundreds of miles of waterfront and annual incoming traffic of six million passengers; cargo listed on about 1.4 million invoices; nearly one-half billion pieces of mail; and thousands of ships, aircraft, and trucks. The ease of concealing heroin compounds the problem. (See pp. 11 to 13.)

Customs activities

Customs inspection of cargo, passengers, and baggage is the nation's primary border defense against smuggling. Customs efforts to intercept heroin in the New York City area (Region II) are weakened in that:

Fewer than one-third of the Customs work force are trained inspectors.

Customs dual mission of collecting and protecting revenues and enforcing customs and related laws requires inspection personnel to perform myriad tasks.

The need to process a tremendous workload of cargo, passengers, baggage, and vehicles on a timely basis renders impractical any indepth heroin inspection program. (See pp. 19 to 22.)

To supplement its routine inspection activities, Region II has implemented several tactical programs to detect heroin and other narcotics. The programs consist mainly of intensified inspections of selected activities suspected of being major methods and routes of narcotics smuggling. (See pp. 23 to 28.)

Results of activities

Nationwide, Customs seized 1,309 pounds of heroin in 1971, or 6½ percent of the annual demand. Region II reported five major seizures involving a total of 537 pounds of heroin. These seizures resulted from a number of factors, including intensified inspection, advance information, inspector's judgment, and chance. One of Region II's tactical programs—the searching of all privately owned automobiles being shipped—resulted in two of the seizures.

Although the tactical programs carried out in Region II have had some effect in intercepting large quantities of heroin, the ratio of heroin seized to the available supply is negligible. Overall, Customs efforts to detect heroin depend heavily on judgment and are carried out, for the most part, without knowledge of how and where heroin is imported. (See pp. 29 to 32.)

Analysis of Inspection Procedures

Cargo

Most cargo enters Region II via the seaports. GAO found that certain factors inherent in the Customs mission and operation reduced the effectiveness of cargo examination as a means of detecting smuggled heroin. (See pp. 33 to 46.)

GAO believes—and Customs representatives agree—that (1) present cargo inspections are limited in relation to the large volume of cargo entering the country and thus afford little probability of detecting smuggled heroin and (2) mobile blitz forces would provide better cargo inspections.

Baggage and Passengers

Most passengers enter Region II through JFK Airport where the extent and intensity of baggage inspection is almost entirely dependent on the judgment of the Customs inspectors. It is estimated that 75 percent of arriving passengers are cleared for entry without inspection of their checked baggage and that 25 percent have a minimum of one piece of baggage examined. (See pp. 48 to 52.)

The level of inspection at JFK Airport depends, at least partly, on the volume of traffic. Customs has no established standard, or minimum, regarding the number of passengers to be selected for inspection. The volume of traffic, level of inspection, and rate of seizure all fluctuate from month to month.

Customs has made no studies to determine (1) the effect of the volume of traffic on the selection of passengers and baggage for inspection and (2) the effectiveness of varying levels of inspection. (See pp. 53 and 54.)

Recognizing the importance of the individual inspector, Customs is implementing a study at Honolulu International Airport in Hawaii to develop a system to measure inspector productivity. (See p. 54.)

Because the inspector is the key deterrent against smuggling in baggage, GAO believes that a management information system is needed to provide continuing data on the relative effectiveness of inspectors.

Mail

In Region II's processing of mail a special enforcement group searches every parcel suspected of concealing narcotics. These parcels are selected on the basis of certain criteria, such as suspect characteristics in names, addresses, and countries of origin. Region II is also planning to use newly developed equipment to X-ray parcels and thus improve its enforcement capability. (See pp. 57 to 61.)

GAO believes that the nature of mail operations and certain customs techniques for emphasizing enforcement make the mail examination function better suited to the detection of smuggled heroin than the inspection of cargo, passengers, and baggage.

Investigations

Although Customs may initiate its own investigations, most are made as a result of violations disclosed or detected during the course of normal operations, such as inspections.

Most intelligence received by Customs prior to a seizure is general and is derived from internal sources. Customs maintains a nationwide automated intelligence system which provides data on suspected smugglers and vehicles. However, the system has not yet been fully developed. (See pp. 62 to 67.)

Relationship between Customs and BNDD

Conflict between Customs and BNDD arises over the question of jurisdiction over the control of narcotics smuggling. Guidelines approved by the President in June 1970 designated BNDD as the primary Federal narcotics enforcement agency as assigned a supporting role to Customs. These guidelines, together with implementing instructions drawn up by both agencies, delineated

the responsibilities of each agency and provided for working arrangements in narcotics enforcement. (See pp. 68 and 69.)

At the operating level in New York, the cooperation and coordination called for by the guidelines had not been fully realized. Although Customs and BNDD contend that the relationship is usually good, they admit that conflicts, such as withholding intelligence and other information, have occurred in a number of cases. Most of the conflicts are symptomatic of the basic jurisdictional problem—Customs insists on controlling smuggling cases and BNDD asserts its role as the primary narcotic enforcement agency. (See pp. 69 and 70.)

In the past, Customs has not had full access to intelligence on smuggling routes and methods and has had to rely on BNDD for this information. Recent decisions of the Cabinet Committee on International Narcotics Control, the coordinating organization for Federal narcotics enforcement, may provide an atmosphere of greater cooperation and coordination between Customs and BNDD. The Committee has designated the first priority in narcotics enforcement to be interdiction at borders. A Presidential directive recommended that (1) 25 Customs agents be stationed abroad to gather intelligence and (2) the guidelines be made more flexible in order to recognize the expanded rule of Customs overseas. Additionally, in recent months the Commissioner of Customs and the Director of BNDD have held a series of meetings aimed at developing a more cooperative working arrangement. (See pp. 71 to 73.)

Evaluation of the effects of the Cabinet Committee's decisions, the Presidential directive recommendations, and the meetings between the top officials on the Customs-BNDD relationship would be premature at this point. However, in September 1972 GAO was informed by both agencies that efforts to establish working arrangements had been successful and that the lack of cooperation and coordination between the two agencies was no longer a major problem, although the jurisdictional question had not been resolved.

As long as the basic problem of jurisdiction remains, there is always the possibility of conflict between the two agencies. Therefore any joint agreement should stress the means of achieving day-to-day coordination at the operating level. (See p. 73.)

Recommendations

The Secretary of the Treasury should take the necessary actions to:

Establish, on a test basis, a mobile blitz force to make intensive searches of cargo which, on the basis of supplied intelligence, is a suspected means of smuggling. (See p. 47.)

Develop a management information system to provide continuing data on the effectiveness of inspectors. (See p. 57.)

Obtain intelligence from the National Narcotics Intelligence Office established by the President in the Department of Justice and from the international narcotics data bank being established by BNDD. (See p. 66.)

The Attorney General should take the necessary actions to furnish Customs with intelligence on smuggling methods and routes and, when available, on the ships and cargoes which should be searched. (See p. 47.)

Agency actions

GAO discussed its finding with officials of the Departments of Treasury and Justice. Their comments have been considered in preparing the report and are included in the applicable sections. Generally, they agreed with the findings and conclusions contained in the report.

[Attachment No. 2]

COMPTROLLER GENERAL'S REPORT—DIFFICULTIES IN IMMOBILIZING MAJOR NARCOTICS TRAFFICKERS

DIGEST

Why the review was made

Drug abuse—still a major social problem in the United States, although the number of addicts is believed to be decreasing—is the direct cause of death for about 2,000 people each year and is still a major cause of crime and property loss. Enforcement costs related to addict-initiated crimes continue to be substantial.

Because the correlation between drug availability and its abuse is high—over 500,000 heroin addicts in the United States require about 10 to 12 tons of heroin a year to satisfy their habits—GAO wanted to know what the Federal Government was doing to immobilize major narcotics traffickers and stop the flow of narcotics into the United States.

The programs and activities discussed in this report were the responsibility of the former Bureau of Narcotics and Dangerous Drugs (BNDD) in the Department of Justice. Effective July 1, 1973, BNDD was merged with other Federal agencies into the new Drug Enforcement Administration (DEA) within Justice.

Findings and conclusions

BNDD established the "systems approach" to arrest and prosecute those major traffickers whose immobilization would most help reduce the availability of illicit drugs in the United States. (See p. 9.)

Using this approach BNDD identified 10 major and 75 secondary drug distribution systems. About 1,100 individuals were identified as major traffickers in the 10 systems and were selected for investigation and immobilization. (See p. 10.)

Under the systems approach, BNDD's personnel had to make sure that: Individuals suspected of being major traffickers were identified as such with reasonable validity.

Regional offices' resources were directed toward immobilizing specific systems of traffickers.

Progress in achieving the objectives of the systems approach was evaluated. (See p. 10.)

Shortcomings in accomplishing these functions led BNDD to modify the approach into what is now the Geographic Drug Enforcement Program. At that time, July 1972, BNDD records showed that all 10 major trafficking systems were still operating, although two had been severely disrupted. (See p. 13.)

This program has been continued by DEA, and, if properly implemented, it will improve the effectiveness of Federal drug law enforcement. (See p. 16.)

Some of BNDD's accomplishments and problems in immobilizing traffickers under these approaches follow.

Arresting major traffickers

From July 1, 1971, to January 1, 1973, BNDD arrested 7,402 individuals for narcotics, marihuana, and dangerous drugs violations and cooperated with State, local and foreign agencies in making 4,575 arrests. BNDD generally made its arrests through the use of undercover agents.

Many individuals arrested were major traffickers. For example, an international heroin-trafficking ring operating in Europe, South America and the United States was broken up in October 1972. BNDD estimated that this ring was responsible for smuggling one-fourth of the heroin reaching the eastern part of the United States. Also, in April 1973, 65 traffickers, many of whom were major traffickers, were arrested in New York. (See p. 17.)

Although BNDD arrested many traffickers, temporarily disrupted the illicit activities of several of the 10 major systems, and decreased the amount of heroin available, many major traffickers still were considered by BNDD to be operating as of July 1972. (See p. 23.)

GAO's review of BNDD's case files for 90 major traffickers showed the traffickers to be skillful, well organized, and well insulated from normal enforcement techniques. Many live or operate outside the United States, making arrest more difficult. More major traffickers could be arrested if:

The State Department could (1) persuade the Government of Mexico to modify its laws which inhibit a proven method of gathering intelligence, undercover work, and (2) persuade the Governments of Mexico and some Central and South American countries to honor U.S. requests for extradition of their citizens for violations of U.S. drug laws or to prosecute their citizens on the basis of evidence supplied by the United States. (See p. 25.)

Individuals suspected of being major traffickers were properly classified and selected for enforcement action on the basis of current intelligence. (See p. 32.)

Increased efforts were made to investigate all persons classified as major traffickers except when circumstances dictate that it is unreasonable to do so. (See p. 27.)

Formal plans were prepared and periodically modified for investigating and immobilizing each major trafficker selected for enforcement action. (See p. 34.)

Arrested traffickers often not immobilized

Many major traffickers arrested (1) were released on bail for long periods and thus were free to continue their operations, (2) received short or no prison sentences which tended to negate the deterrent effect of prosecution, (3) were freed after trial, were acquitted, or had their cases dismissed, because of inadequate development or presentation of case, or (4) were permitted to plead to a reduced charge and thus were immobilized for a much shorter period than might have been the case if prosecuted further.

GAO examined the court proceedings for 128 traffickers arrested during 1971.

Of the 128 persons arrested, 88 were released on bail.

Of the 88 released on bail, 12 had been free on bail for an average 506 days and had not been brought to trial as of August 1, 1972, and 76 had been free on bail for an average 165 days before their trials or before their cases were dismissed.

Most of the 78 defendants convicted and sentenced to prison received sentences of 5 years or less.

Twelve convicted violators appealed their cases and were released on appeal bonds for an average of about 7 months. (See p. 38.)

Arrested major narcotics traffickers were not, overall, being effectively immobilized because:

Current bail laws do not consider the likelihood of a person's continuing to deal in drugs when released on bail. (See p. 40.)

BNDD did not generally keep a close watch on the activities of narcotics traffickers released on bail. (See p. 40.)

The law prescribes maximum penalties for certain narcotics violations but does not prescribe minimum penalties, except for persons who are engaged in a continuing criminal enterprise and for special dangerous offenders. (Controlled Substances Act of 1970 (84 Stat. 1242)). (See p. 41.)

BNDD did not evaluate cases after court proceedings to determine if its investigation had been weak and ineffective. (See p. 42.)

Recommendations

If major narcotics traffickers are to be arrested, the Attorney General should require DEA to:

Work closely with the Department of State to (1) persuade the Government of Mexico to change its laws which inhibit undercover work and (2) persuade the Governments of Mexico and other Central and South African countries to honor U.S. requests for extradition of their citizens for violating U.S. drug laws or to prosecute their citizens on the basis of evidence supplied by the United States. (See p. 36.)

Make sure that the classifications of individuals as major traffickers are correct and based on current intelligence. (See p. 36.)

Increase efforts to investigate all persons classified as major traffickers except when circumstances dictate that it is unreasonable to do so. (See p. 36.)

Prepare and periodically modify plans for investigating and immobilizing each major trafficker selected for enforcement action. (See p. 36.)

If arrested major narcotics traffickers are to be effectively immobilized, the Attorney General should require DEA to:

Monitor arrested narcotics traffickers who are most likely to continue trafficking while free on bail.

Establish a system for evaluating cases after court proceedings in order to assess and improve enforcement techniques and to train agents.

Maintain a close association with U.S. attorneys' offices to obtain legal advice when necessary in developing a case. (See p. 45.)

Agency actions and unresolved issues

The Department of Justice agreed in general with GAO and said that individual recommendations that had not already been implemented were being studied to determine their feasibility. (See app. I.) The Department of State and the Bureau of Customs, Department of the Treasury, reviewed pertinent sections of the report and their comments and suggestions were considered.

DEA officials informed GAO on November 7, 1973, that they were still considering various methods for implementing some of the GAO recommendations and that, when decisions were made, GAO would be informed of the corrective actions taken.

Matters for consideration by the Congress

Legislation has been introduced to:

—Amend Federal law to provide pretrial detention measures for heroin traffickers.

—Provide for mandatory minimum penalties for narcotics trafficking.

The information in this report should be of assistance to the Congress in its consideration of the legislation.

[Attachment No. 3]

COMPTROLLER GENERAL'S REPORT—EFFORTS TO PREVENT DANGEROUS DRUGS FROM ILLICITLY REACHING THE PUBLIC

DIGEST

Why the review was made

Increasing numbers of young people and adults abuse drugs widely used in medical practice. This abuse has reached epidemic proportions. The General Accounting Office (GAO) wanted to know what the Bureau of Narcotics and Dangerous Drugs was doing to stop diversion of these drugs from legitimate sources into the hands of illicit dealers where they become available to anyone wanting to buy them.

Findings and conclusions

The Bureau estimates that 90 percent of the dangerous drugs in the illicit market are diverted, intentionally or unintentionally, from licensed sources—manufacturers, distributors, doctors, and pharmacists.

Opportunities for this diversion appear to be endless. There are 450,000 registered drug handlers in the United States, and through them flow 8 billion doses of stimulants and depressants annually.

The Bureau is making some progress in curbing diversion, but much more needs to be done. (See p. 13.)

Information needed

The Bureau should be better informed. For example:

Drugs seized by State and local enforcement groups were not always examined to determine the manufacturer; this information is helpful and sometimes vital to learn how the diversion occurred. (See p. 14.)

Drug samples used to identify seized drugs were not obtained from all domestic and Mexican firms. (See p. 16.)

The Bureau received tips from drug manufacturers about unusually large or suspicious orders or purchases of dangerous drugs but did not maintain enough records to follow up leads systematically. (See p. 16.)

Procedures were not established requiring the military services to provide information to the Bureau on drug thefts and shortages. (See p. 18.)

State and local groups did not maintain uniform and reliable statistics on dangerous drug thefts, seizures, and arrests. These statistics would indicate the extent of the drug problem. (See p. 19.)

Drug industry compliance

The Bureau has responsibility for investigating about 6,000 drug manufacturers and wholesalers to see whether their safeguards over drugs are adequate and comply with Federal regulations. During fiscal year 1971 the Bureau's surveillance resulted in 151 seizures of drugs. This represented confiscation of over 100 million doses of stimulants and depressants, 64 arrests, and 27 convictions and brought about improved safeguards by some firms. (See p. 23.)

The Bureau has developed plans to increase its monitoring of the drug-manufacturing industry. If effective, this development should provide added compliance by industry. (See p. 24.)

Self-regulation by the drug industry

Self-regulation needs improvement. The drug industry has a public duty and—under Federal law—a legal responsibility to safeguard its products from illicit use. Industry has taken actions, and so has the Bureau, to reduce the potential for diversion of drugs to the illicit market. However, the continued diversion indicates a need for increased efforts. (See p. 28.)

Retail drug handlers

As of June 30, 1971, agreements had been signed between the Bureau and 45 States to share the responsibility for monitoring licensed drug retailers. Negotiations were under way with the other five States. (See p. 30.)

GAO's review of the activities of State enforcement agencies in California, New Jersey, and New York showed that they lacked both sufficient staff and authority to effectively monitor retailers and force corrective action. For example, the New Jersey Bureau of Drug Control had four investigators to oversee the activities of about 1,900 pharmacies and make investigations of private doctors. Many retailers were not covered adequately; therefore many diversions might not have been detected. (See p. 30.)

In August 1971 the Bureau began to evaluate systematically the capabilities of the States to carry out effective monitoring programs.

Recommendations

The Bureau should:

Obtain information on drugs seized by State and local enforcement agencies. Make sure that samples of drugs are obtained from drug manufacturers.

Establish a uniform information system that will show all drug firms in each of the Bureau's regions and will provide control over all reports received of unusual or suspicious purchases or orders of dangerous drugs.

Obtain information on drug thefts and shortages within the military and meet with the military on a regular basis to find out how to better control diversion.

Define better the type of information it desires from State and local enforcement groups.

Direct its regional offices to obtain available information from State and local enforcement groups on dangerous drug thefts, seizures, and arrests.

Work with industry to establish a program for better self-regulation. (See p. 29.)

Agency actions and unresolved issues

The Department of Justice agreed that GAO's recommendations were valid and said that they would be made effective, to the greatest extent possible, on a priority basis.

With respect to the need to better spell out the types of statistics needed, the Department said that the development of a uniform collection program would require extensive time, effort, and resources and would hamper present operations. The Bureau, the Federal Bureau of Investigation, and the Law Enforcement Assistance Administration, however, are establishing a task force to consider the entire matter. (See app. I, p. 37.)

Matters for consideration by the Congress

This report shows that much more needs to be done by the Bureau of Narcotics and Dangerous Drugs, the States, local agencies, and the industry to reduce the diversion of legitimately manufactured drugs into illicit channels where they become easily available to young people and adults.

The report is being sent to the Congress to keep it advised of the situation and because of increasing public concern with the problems caused by drug abuse.

[Attachment No. 4]

COMPTROLLER GENERAL'S REPORT—IDENTIFYING AND ELIMINATING SOURCES OF DANGEROUS DRUGS: EFFORTS BEING MADE, BUT NOT ENOUGH

DIGEST

Why the review was made

About 75 percent of dangerous drugs found on the illegal U.S. market today are being produced in illicit laboratories or are being smuggled in. (See pp. 6 and 7.)

Because of the increased availability of dangerous drugs illicitly produced—such as amphetamines and barbiturates and hallucinogens, such as LSD—GAO wanted to know what has been done to identify and eliminate illicit sources of these drugs.

GAO reported on Federal activities to control diversion of dangerous drugs from legitimate sources into the illicit U.S. market in April 1972 (B-175425).

Though availability from these sources continues, the main problem today is from illegitimate U.S. sources and from smuggling.

Findings and conclusions

Dangerous drugs

Are widely abused by children and adults,

Inflict physical harm,

Have physiological effects similar to those of heroin,

Cause more deaths than heroin, and

Are associated with more crimes of aggravated assault than heroin. (See p. 9.)

Use of dangerous drugs usually begins before an individual experiments with heroin. Along with marihuana, these drugs have become the prime drugs of youth, extending even to those of elementary school age. (See p. 10.)

Because of similar physiological effects, abusers often turn to dangerous drugs when heroin supplies are stopped. This hampers both heroin enforcement and rehabilitation. (See p. 12.)

The Drug Enforcement Administration established some programs for identifying and investigating illicit sources of dangerous drugs. These programs have brought about arrests of national and international drug traffickers and have closed illicit dangerous drug laboratories.

However, weaknesses in several areas of administration have limited the programs' effectiveness. (See p. 13.)

ENFORCEMENT

In the early 1960's the Congress created the Bureau of Drug Abuse Control to enforce dangerous drug laws. By 1968 this agency's efforts were about equal with those of the Bureau of Narcotics. The two were combined into the Bureau of Narcotics and Dangerous Drugs. The hearings leading to the merger indicated that the Congress expected dangerous drug enforcement to increase. (See pp. 15 and 16.)

However, the number of agents assigned to dangerous drug cases did not increase. Most of the Bureaus' resources were directed toward combating heroin use. (See p. 13.)

As of July 1, 1973, this Bureaus' functions and personnel were transferred to the new Drug Enforcement Administration. (See p. 5.)

By stressing dangerous drugs more in day-to-day work, the Drug Enforcement Administration had the opportunity to increase its intelligence on dangerous drugs without adding more agents.

The agency's policy was to interrogate informants thoroughly. However, many informants or arrested heroin traffickers were not questioned about sources of dangerous drugs, even though most heroin addicts also use dangerous drugs, especially if there is a shortage of heroin. (See pp. 9 and 23.)

In April 1973 marihuana enforcement was curtailed and the agents who became available were assigned to dangerous drug investigations. Putting this change into practice appeared difficult at first, because some regional officials believed that dangerous drug enforcement should be left to State and local authorities and some agents believed that promotions come faster to those working narcotics cases. (See pp. 14 and 15.)

One of the best means to immobilize drug traffickers is to eliminate the source of the chemicals (precursors) used by illicit laboratories to produce dangerous drugs. Because precursors also usually have various legitimate uses, their sale is not restricted.

A precursor control program was started in 1968 to obtain leads on suspicious sales of precursors from chemical firms. However, some source firms, including some of the largest chemical firms in the United States and in other countries, were not contacted regularly. Some times when the firms were contacted, they were questioned only about one drug rather than several. (See pp. 26 to 30.)

At times, after tangible leads had been received from drug firms, no further action was taken because the enforcement agents were assigned to other activities. (See p. 31.)

Production and smuggling of dangerous drugs from and through Mexico

A Drug Enforcement Administration official estimated that about 80 percent of the illicit drugs seized in the United States originate in Mexico. The agency's dangerous drug efforts in Mexico were practically nonexistent, primarily due to lack of agents. (See p. 33.)

Only 16 agents were assigned to Mexico and the Central American countries (except Panama). Most of their time was directed toward heroin, cocaine, and marihuana. One agent was assigned to the Mexico City regional office to increase dangerous drug efforts but was spending most of his time on other cases and duties. (See p. 33.)

An investigation to trace the shipment of bulk drugs and capsules to recipients in Mexico was delayed from November 1972 until June 1973 because of the reluctance of Mexican authorities to cooperate. During this period the agency made only limited efforts to follow up. (See p. 34.)

The agency also has encountered difficulties in obtain pill samples from Mexican drug firms to help identify possible sources of drugs originating there. (See p. 34.)

Diplomatic actions

In Mexico and in three Central American countries, the U.S. Embassies had established drug control committees to evaluate the countries' actual or potential use as sources of drugs shipped to the United States.

These committees use diplomatic channels to encourage cooperation by the countries in suppressing drug traffic. In some countries, however, the Drug Enforcement Administration did not keep the committees advised of dangerous drug trafficking. (See p. 35.)

Well-informed committees can support passage of effective legislation in their countries, such as the Convention on Psychotropic Substances, a pending United Nations treaty on psychotropic substances which include dangerous drugs. If passed, this treaty, similar to U.S. drug laws, could help restrict the easy availability of certain drugs.

As of April 1, 1974, the United States had not ratified this treaty. (See p. 37.) It is under consideration by the Senate Foreign Relations Committee.

Recommendations

GAO made several recommendations to the Attorney General to increase the Drug Enforcement Administration's effectiveness in identifying and eliminating sources of dangerous drugs. (See pp. 24, 31, and 38.)

Agency actions and unresolved issues

The Department of Justice stated:

Dangerous drug enforcement had received a lesser priority until early 1973 because the entire Federal community had emphasized heroin as the primary drug problem.

With the establishment of the Drug Enforcement Administration, substantial steps have been and are being taken to further strengthen dangerous drug enforcement. The new agency has begun an active dangerous drug program in its Domestic Investigations Division that increases the priority in this area.

Dangerous drug enforcement is a new and highly innovative endeavor and the Department is continually conducting studies which will result in revisions of concepts and approaches. Therefore, it could not provide definitive comments on the acceptability of GAO's recommendations without further analysis. (See app. I.)

Matters for consideration by the Congress

The primary purpose of this report is to keep the Congress informed of actions taken, as well as actions still needed, to identify and eliminate sources of dangerous drugs used in the United States.

The Senate can use the report in considering the Convention on Psychotropic Substances. (See pp. 36 and 37.)

[Attachment No. 5]

COMPTROLLER GENERAL'S REPORT—EFFORTS TO PREVENT HEROIN FROM ILLEGITIMATELY REACHING THE UNITED STATES

DIGEST

Why the review was made

Heroin addiction is one of the major social problems in the United States. Official intelligence indicates that most heroin reaching the United States has traveled through international narcotics pipelines controlled by Turkish and French traffickers; for instance, the Bureau of Narcotics and Dangerous Drugs

(BNDD) estimates that about 4,000 kilograms of heroin are manufactured annually in the Marseilles area of France from opium produced in Turkey. At the request of Congressman Charles Rangel, the General Accounting Office (GAO) made this review to determine what progress was being made in Europe and the Near East to control this illicit narcotics traffic.

Findings and conclusions

BNDD's mission in Europe and the Near East is to help host governments to stop the flow of opium/heroin at its most vulnerable point before it reaches the United States. BNDD and U.S. Embassy officials have succeeded in getting foreign governments to improve their capability to control illicit narcotics traffic. The more important actions taken include:

Controlling opium production (Turkey).

Increasing police forces assigned to narcotics control work (France, Germany, Italy, and Turkey).

Increasing the maximum prison sentence for serious narcotics crimes (France, Germany, and Turkey).

Improving border inspections (France and Germany).

These actions have resulted in significantly increased seizures of heroin and morphine base in Europe since 1970, when 461 kilograms were seized. In 1971, 1,341 kilograms of heroin or morphine base were seized in Europe. In the first 7 months of 1972, 1,312 kilograms were seized.

Problems

Even with increased drug seizures and arrests on the part of host governments with United States help, much remains to be done to overcome the following obstacles:

National police forces lack a reliable means of exchanging intelligence and make little effort to recruit and use informers.

National laws prevent police forces from doing undercover work.

National laws in some countries do not permit law enforcement authorities to grant immunity or to bargain for reduced sentences.

BNDD special agents assigned overseas do not have enough language training.

A BNDD policy encouraging agents with special interests and skills to accept long-term overseas assignments is lacking.

Recommendations

The Attorney General should take the necessary actions to:

Insure that all special agents assigned to foreign posts have proficiency in the host country language.

Establish a policy which would encourage agents with special interests and skills to accept long-term overseas assignments.

The Secretary of State should encourage U.S. Ambassadors to the appropriate countries to continue their efforts in getting the host governments to improve the narcotics control capabilities of their law enforcement agencies. Special attention should be given to:

Modifying the laws which prohibit undercover work or plea bargaining—two proven methods of gaining intelligence.

Encouraging police forces to develop and use paid informants.

Establishing exchange of intelligence between all narcotics law enforcement authorities by encouraging them to contribute to and use the international narcotics data bank being developed by BNDD.

Agency actions

GAO did not submit this report to the Departments of Justice and State for written comments; however, the contents of the report were discussed with officials of the agencies. BNDD officials agreed with the findings and conclusions contained in the report and told GAO that actions has been or would be taken to implement its recommendations. State Department officials also agreed with the findings and conclusions and told GAO that the recommendations coincided with the Department's ongoing programs.

[Attachment No. 6]

COMPTROLLER GENERAL'S REPORT—EFFORTS TO STOP NARCOTICS AND DANGEROUS DRUGS COMING FROM AND THROUGH MEXICO AND CENTRAL AMERICA

DIGEST

Why the review was made

The flow of narcotics and dangerous drugs from and through Mexico to the United States is increasing.

In 1971 about 20 percent of the heroin, 90 percent of the marihuana, 80 percent of the dangerous drugs, and much of the cocaine consumed in this country came from and through Mexico. By late 1973 heroin flowing from and through Mexico to the United States had increased to about half the total consumption.

In September and October 1974, Drug Enforcement Administration officials estimated that

- 70 percent of all heroin reaching the United States comes from poppies grown in Mexico;
- virtually all the marihuana seized comes from Mexico and the Caribbean;
- about 3 billion tablets of dangerous drugs, valued at more than \$1.6 billion on the illicit market, comes from Mexico in a year; and
- cocaine, which is becoming a preferred drug of abuse, passes through Mexico on its way from South and Central America.

Central America is also a potentially important transshipment point for drugs coming to the United States.

Accordingly, GAO examined U.S. programs designed to reduce the flow of drugs coming from and through Mexico and Central America.

Findings and conclusions

The United States is trying to stop the flow of drugs from Mexico by:

Forcibly preventing shipment of drugs to the United States (called interdiction).

Eliminating illicit production in Mexico.

Assisting the Mexican Government's antidrug efforts.

The U.S. Ambassador, as the President's representative, is responsible for seeing that U.S. objectives are achieved. In the drug area he is supported by—the Drug Enforcement Administration, the prime U.S. enforcement agency, maintaining liaison with Mexican Government narcotics enforcement agencies, and

drug control committees in each country. (See pp. 2 and 3.)

Progress

Since 1969 the United States and Mexican Government's antidrug efforts have:

Increased drug seizures, opium and marihuana eradication, and arrests.

Provided better information on drug trafficking.

Improved Mexican capability through material assistance grants and training.

Increased cooperation and discussion at high diplomatic levels. (See pp. 15 and 16.)

Problems

Even with this progress, increasing amounts of drugs continue to reach the United States.

Factors which have hindered greater effectiveness in reducing the flow of drugs to the United States include

Lack of full cooperation between the two Governments regarding drug information and extradition and

Limited technical resources and manpower. (See pp. 20 to 25.)

Cooperation

One way to reduce the flow of drugs to the United States is the exchange of accurate data about the activities of known and suspected drug traffickers

between the Drug Enforcement Administration and the Mexican Federal police. The Drug Enforcement Administration, however, has had only limited opportunity to interrogate persons arrested by the Federal police for drug crimes and sometimes was denied access to information the police obtained. (See p. 20.)

Immobilization of drug traffickers is further hindered because drug traffickers who flee to Mexico are not prosecuted and incarcerated. Mexico readily grants citizenship to persons having Mexican parents or background, regardless of the solicitant's place of birth. Some of them, before becoming Mexican residents, lived in the United States until they were convicted or suspected of violating U.S. drug laws.

The Administration estimates that more than 250 such persons now live in Mexico. Some still traffick in drugs. Because they are Mexican citizens, the Mexican Government refuses to extradite them to the United States for prosecution.

In a few cases, Mexican citizens have been convicted in Mexico for drug violations in the United States. Greater use of this procedure might deter Mexicans who have violated U.S. drug laws from using Mexico as a sanctuary from prosecution. (See p. 28.)

Material assistance

Mexico is not only a major transshipment area but also an indigenous source of drugs. Its sparsely populated and rugged mountains make location and eradication of clandestine cultivation areas difficult and time consuming.

Its extended border with the United States and two long coastlines afford traffickers virtually unlimited locations for smuggling. This, in turn, makes it harder for its ill-equipped police to locate trafficking routes. (See pp. 6 and 25.)

Since 1970 the United States has given Mexico \$6.8 million in equipment, such as helicopters for troop transportation. Additional equipment has been approved by the Cabinet Committee on International Narcotics Control. (See p. 26.)

More than 250 of the 350-member Mexican Federal police force have been trained in drug enforcement procedures by the Drug Enforcement Administration; this training is continuing. (See p. 26.)

The United States is also providing equipment and training to the Mexican Customs Service. (See p. 27.)

Other matters

DEA has had some success in locating and eliminating narcotics laboratories in other countries by publicly offering rewards for information about drug traffickers.

Though the Administration has had information for a number of years that heroin laboratories are operating in at least eight areas in Mexico, no significant laboratory had been seized until February 5, 1974. Since then six other laboratories have been seized.

GAO believes that publicly offering rewards would increase the identification of illicit laboratories, but the Mexican Government has not agreed to offer rewards for information, despite repeated U.S. requests.

Although the Drug Enforcement Administration recognizes that many ocean-going vessels and aircraft are used in moving drugs from Mexico illicitly, it had not monitored the use of oceangoing vessels and aircraft by drug traffickers. (See pp. 18 and 22.)

The Mexican Government recognized that corruption exists at many of its levels, including the Mexican Federal police, and developed plans to overcome this problem, such as reorganizing the police. This reorganization was to begin in January 1973, but no action had been taken as of September 1974. (See p. 18.)

Central America

Central America is not currently considered a prime source in transshipping drugs to the United States; however, it does offer traffickers many of the same benefits as does Mexico.

As enforcement improves in Mexico, the Drug Enforcement Administration expects traffickers to make greater use of the Central American countries. Plans are being developed, and the Administration plans to assign agents to these countries. (See p. 34.)

Recommendations

The Attorney General, in cooperation with the Secretary of State, should improve information gathering and cooperation in Mexico by encouraging the Mexican Government to—

share information obtained during interrogation and suspected drug traffickers and

prosecute traffickers fleeing to Mexico within the Mexican judicial system if Mexico continues to refuse extradition.

Agency actions and unresolved issues

Department of Justice

The unclassified version of the Department of Justice's comments are included in appendix I. A copy of the Department's classified response will be made available to authorized persons upon request.

The Justice Department—

agrees with GAO's analysis of extradition problems and the possibility of prosecuting people in Mexico for violations of U.S. statutes and

recognizes the merit of some observations concerning enforcement operations.

However, the Department believes GAO's findings, conclusions, and recommendations have serious weaknesses. The Department believes the report is a random collection of observations and includes items of secondary importance and that it ignores some significant issues, such as (1) investigative procedures used by the Mexican Judicial Police, (2) lack of operating agreements between the Drug Enforcement Administration and local Mexican police officers on custody and prosecution of arrested carriers, and (3) problems created for U.S. border investigations by the policy of the Government of Mexico which requires that known narcotics and dangerous drugs being smuggled out of Mexico be seized in Mexico. (This policy prevents the identification of U.S. traffickers by keeping the drug under surveillance until they are delivered.)

GAO recognizes that many problems affect the efforts to stop the flow of narcotics and dangerous drugs into the United States and that these problems and their seriousness change from time to time.

At the completion of GAO's fieldwork in late 1973, GAO's findings were discussed with appropriate U.S. agency officials in the field and in Washington. At that time GAO had not identified, nor had agency officials recognized, the three above areas mentioned by the Department as causing major problems.

If the Department has sufficient evidence to identify these areas as causing real problems to their efforts to stop the flow of narcotics and dangerous drugs into the United States, no additional work by GAO to develop these problems should be necessary. GAO suggests that the Department continue to work with the Government of Mexico to overcome these problems.

The Department also commented extensively on how it believed (1) the Government of Mexico could improve its drug enforcement activities and (2) U.S. operations on the border could be improved. It said that actions had been or were being taken to improve activities in both areas but that more efforts were needed.

The Drug Enforcement Administration's comments on specific actions planned or being taken on GAO's recommendations are included in the report.

[Attachment No. 7]

DEA G-DEP VIOLATOR CLASSIFICATIONS

Generally, the four classifications of G-DEP violators can be defined as follows:

Class I.—Those violators who are major illicit laboratory operators, heads of criminal organizations, smuggling heads, and those who consistently deal in volume quantity of high-purity drugs.

Class II.—Those violators who through the volume of their illicit activities are identified as significant wholesalers of illegal drugs supplying various other traffickers.

Class III.—Those violators who are active distributors of illegal drugs in quantity at the sub-wholesale levels.

Class IV.—Those violators who do not meet the criteria established at the I, II, and III levels.

[Attachment No. 8]

PERCENTAGE BREAKDOWN OF SPECIAL AGENTS TIME SPENT INVESTIGATING CLASS I THROUGH IV TRAFFICKERS
FOR CALENDAR YEAR 1974

	Domestic regions	Foreign regions
Class I cases.....	28	60
Class II cases.....	19	15
Class III cases.....	45	20
Class IV cases.....	8	5
Total.....	100	100

[Attachment No. 9]

DEA ARREST GOALS

	<i>Percentage of total arrests</i>
By class of violator:	
Class I and II arrests.....	10-15
Class I, II, and III arrests.....	60-70
Class IV arrests.....	30-40
By type of drug:	
Heroin/cocaine arrests.....	70
Dangerous drug arrests.....	20
Marihuana/hashish arrests.....	10

	DEA ¹ arrests for calendar year 1974		DEA ¹ convictions for fiscal year 1974	
	Arrests	Percent	Convicted	Percent
Class I.....	604	3.6	63	1.1
Class II.....	842	5.0	287	5.0
Class III.....	7,409	44.1	1,984	34.6
Class IV.....	7,941	47.3	3,405	59.3
Total.....	16,796	100.0	5,739	100.0

¹ Includes cases referred by other Federal agencies and State and local cooperative cases.

Senator NUNN. You have nine attachments here. Could you give us a review for summary purposes, as to each attachment, and give us a title for it?

Mr. Lowe. Yes.

Senator NUNN. Tell us briefly what it contains.

Mr. Lowe. Attachment 1 is a summary of the report dated December 7, 1972, entitled "Heroin Being Smuggled Into New York City Successfully."

Attachment No. 2 summarizes a report to the Congress dealing with the difficulties in immobilizing major narcotics traffickers.

Attachment No. 3 is a summary of a report to the Congress entitled "Efforts To Prevent Dangerous Drugs From Illicitly Reaching the Public."

Attachment No. 4 is a summary of a report to the Congress entitled "Identifying and Eliminating Sources of Dangerous Drugs, Efforts Being Made, but not Enough."

Senator NUNN. What date is that?

Mr. Lowe. That one is June 1974.

Senator NUNN. I see you identify on page 2 the problem in Mexico. How does this coincide with DEA's statement? Was the conclusion on

this data different from DEA's conclusion about the growing Mexican problem? You say here that it is estimated that 60 percent of the illicit drugs seized in the United States originates in Mexico.

Mr. Lowe. You are looking at attachment 4?

Senator NUNN. Page 2, attachment 4, bottom paragraph, right column. I will direct that to any of the witnesses. We just heard testimony that DEA was not—

Mr. Lowe. Yes. These are primarily from DEA figures, estimates furnished to us by DEA in that case. We wouldn't have any knowledge otherwise on that particular thing.

Mr. Jones. I might add we are talking about dangerous drugs as versus possibly what you heard from other witnesses concerning specifically heroin and/or cocaine. We are talking about, I think, what would generally be referred to as stimulants, depressants and hallucinogens. This is the sense in which we use dangerous drugs here.

Senator NUNN. In the broader sense?

Mr. Jones. In the broader sense. The other witnesses I suspect are referring to heroin and/or cocaine.

Senator NUNN. Go ahead.

Mr. Lowe. Attachment 5 summarizes a report on "Efforts To Prevent Heroin From Reaching the United States." This was one of our earlier reports in the drug area in October 1972.

Attachment 6 is a summary of a report on "Efforts To Stop Narcotics and Dangerous Drugs Coming From and Through Mexico and Central America."

Senator NUNN. What is the date on that particular one?

Mr. Lowe. December 31, 1974.

In that particular one, since you mentioned this a minute ago, the second paragraph in its summary says in 1971 about 20 percent of the heroin, 90 percent of the marihuana, 80 percent of the dangerous drugs and much of the cocaine consumed in this country came from and through Mexico. By late 1973, heroin flowing from and through Mexico to the U.S. had increased to about half the total consumption and some other figures.

Attachment 7 is our summary of DEA's descriptions of what a class I, II, III, or IV violator is.

Attachment 8 is a percentage breakdown of special agents time spent investigating the various classes of traffickers for fiscal year 1974. This is based on the agency's own time reporting system. Obviously, we have not verified that.

Attachment 9 is a summary of DEA arrest goals, DEA actual arrests for 1974 and convictions during 1974 by class of violator.

Senator NUNN. Thank you. At this point Minority Counsel has some questions he would like to ask.

Mr. Sloan. Thank you, Mr. Chairman.

Mr. Lowe, on page 3 of attachment 2, which is entitled "Difficulties in Immobilizing Major Narcotics Traffickers," one of the recommendations listed is to make sure that the classifications of individuals as major traffickers are correct and based on current information.

Could you tell the subcommittee if there have been any abuses by DEA with respect to assigning individuals to these various classes, what information is used to classify individuals, and where does that information come from?

Mr. STANTON. At the time of this report we did work at the regional offices and at headquarters. We got a list of what headquarters considered to be the major traffickers. Then we went to the regional office, say New York, and looked at the ones that were supposed to be in the New York region.

The regional office had a different list. There were discrepancies between the list of major traffickers in the regional office as in headquarters. This is essentially what we are referring to there. We don't know of any cases where someone was put on the list who was not a trafficker. However, he might have been misclassified based on their own criteria.

Mr. SLOAN. Based on their own criteria and their own intelligence?

Mr. STANTON. Yes.

Mr. SLOAN. But you know of no specific instances where people have been misclassified?

Mr. STANTON. We don't know of any; no.

Mr. SLOAN. On the question of controlling the flow of heroin especially from Mexico, I noted on page 2 of attachment 6, which I believe is your most recent study, that factors which have hindered greater effectiveness in reducing the flow of drugs to the United States include, one, lack of full cooperation between the two governments regarding drug information and extradition, and two, limited technical resources and manpower.

Are there any other factors? Specifically has there been any problem between the two governments with regard to the United States not cooperating fully with the Mexicans in controlling the flow of guns into Mexico? Has this led to their not cooperating with us with regard to our serious narcotics problems?

Mr. STANTON. I don't have any information on that. We have no indication that there is anything like that, a get-even thing.

Mr. SLOAN. Do you have any information at all that there is any connection between the flow of narcotics into this country and the flow of guns into Mexico.

Mr. LOWE. Not to my knowledge, no. As a matter of fact, that is the first time I ever heard of it.

Mr. SLOAN. Mr. Lowe, on page 2 of your statement you indicate that implementation of Reorganization Plan No. 2 "has not ended inter-agency conflicts." You specifically mention problems between the Treasury Customs patrol and the Justice border patrol along the southwest border of the United States.

Do any other interagency conflicts remain and have any new ones emerged since July 1, 1973?

Mr. LOWE. I think Mr. Stanton might be able to address that more specifically. Essentially, they are the same problems. Changing the names doesn't make the problem go away.

Mr. SLOAN. Problems between what agencies?

Mr. STANTON. Between BNDD and Customs, it would now be DEA and Customs.

Mr. SLOAN. Are there any other serious conflicts between agencies other than DEA and Customs?

Mr. LOWE. You have the Immigration Service to serve as border patrol, although I don't think they have a problem as far as drug arrest and that sort of thing, but the drug business is very much

involved at the border. But you have several agencies. I guess each one of them has its own Air Force and Navy, if you want to exaggerate a little bit.

Mr. SLOAN. Have you learned anything as to the specific nature of the conflict? Does it involve an argument over information?

Mr. STANTON. It is caused essentially by overlapping jurisdictions. It is failure to exchange information. There have been incidents where one agency maybe was trailing someone and another agency picked the first agent up and stopped him.

Mr. SLOAN. Reorganization Plan No. 2 was designed to eliminate any overlapping jurisdiction in the drug law enforcement area at the Federal level. I understand that once an individual is arrested by Customs he is to be immediately turned over to DEA.

So, theoretically, the problem of overlapping jurisdiction was eliminated by Reorganization Plan No. 2. Do your studies indicate that there are still problems regarding the exchange of information?

Mr. STANTON. Yes. This would be intelligence, one agency picks up information, someone is going through a checkpoint, they may not give it to the other agent, just wait and make a case themselves. Then there is appropriate turnover that would then be made, seizure or arrest is made.

Mr. SLOAN. On page 8 of your prepared testimony, Mr. Lowe, you stated that international enforcement efforts have been hampered because of the need for increased intelligence gathering, sharing, and cooperation among U.S. agencies involved in drug enforcement. What specific problems have you uncovered during your investigation?

Mr. LOWE. This is in reference to a report that we have in preparation right now, Mr. Sloan. I have to honestly say I have not seen the report itself. The work has just been finished. It was done mostly by our division, which has offices overseas, if I am not mistaken. I am sorry. I am looking at the wrong one. May I look at it just for a second?

Mr. SLOAN. Certainly.

Mr. STANTON. This problem is due to essentially different missions for the agencies involved. We have the Central Intelligence Agency operating overseas and they are the basic information-gathering agency for the Government.

They do not want to get publicity, not make court cases as such, whereas DEA would like to get information, build a case, go to court. So there is conflict because of the basic difference in the missions, their types of operation.

Mr. SLOAN. Is that a separate report that you are referring to?

Mr. STANTON. Yes; this is the classified report which the committee has been provided. I think you got a copy last week.

Mr. SLOAN. Thank you.

You have mentioned that there has been inadequate utilization of intelligence to make drug seizures at ports of entry. That is of great interest to the subcommittee. Why has that been a problem? This was one of the key problems considered in 1973. Why is it still a problem now and who is responsible?

Mr. STANTON. We haven't really gone into this in depth.

The information provided to us, which hasn't been verified, when customs had its 500 agents transferred to DEA it then lost much of

its intelligence-gathering capability. The flow of information that it got from DEA did not make up for this void. It is really a matter of implementing the Reorganization Plan No. 2 and there is need for adequate cooperation.

Mr. SLOAN. Based on your investigation are there inherent inadequacies in Reorganization Plan No. 2. Or rather has the plan not been properly implemented and intelligence not fully shared?

Mr. STANTON. If it were properly implemented, I don't see any problems with it.

Mr. LOWE. There is one thing, and this really has nothing to do with whether it is Reorganization Plan No. 2 or No. 15. Just as a contrasting example, we have done an awful lot of work on the illegal alien problem. It is common knowledge in the press and everywhere else that the principal border involved in illegal aliens crossing is the Mexican border.

I think this year they expect to send back about 900,000 illegal aliens. They don't know how many they don't send back or catch. So with the DEA, with the customs, with the border patrol, with every other Government agency you can think of, the border is a real sieve.

If you can't spot a 150- or 200-pound illegal alien, it is almost impossible to spot a pound of heroin, or a sack of marijuana. I think this is the problem we are really dealing with here.

All of the agencies I think have in mind that they want to do a good job. They just want to do it as opposed to the other agency doing it. This is, I think, the overlapping jurisdiction is what the basic problem is. No matter what you call the agency, as long as you have three or four of them on the border, we are going to continue to have those kinds of jealousies and problems.

Mr. SLOAN. Basically the Federal antismuggling agency is the U.S. Customs Service. It is in competition with no other agency in preventing the importation of illicit drugs, or other items.

Mr. LOWE. Or aliens or whatnot. I think that is the reason I was using that example. You can have hundreds of thousands of illegal aliens enter and each one of them individually is much bigger than a stash of heroin, we have had a real problem.

Mr. JONES. The reorganization plan never did specifically clarify the jurisdiction problem. It reaffirmed the authority of the Secretary of the Treasury for the interdiction of narcotics, dangerous drugs and marijuana at ports of entry and along the land and water borders of the United States; and at the same time reasserted the authority of the Attorney General to continue to do the same thing.

So inherent in section 1 of the reorganization plan is joint jurisdiction for the interdiction of controlled substances.

Mr. SLOAN. At ports of entry?

Mr. JONES. At ports of entry and along the land and water borders of the United States. That section 1 of the reorganization plan is there. It reserved for the Secretary of the Treasury the right to interdict other contraband, but it singled out controlled substances, and reserved it both to the secretary of the Treasury and both to the Attorney General at ports of entry, regular inspection stations and between and along the land and water borders.

Mr. SLOAN. Are you saying that today there is in fact a conflict between DEA and customs?

Mr. JONES. I didn't say DEA. I am saying it reasserted the authority of the Secretary of the Treasury and at the same time it reaffirmed it for the Attorney General.

Mr. SLOAN. And the Attorney General's arm would be DEA?

Mr. JONES. He has the Immigration and Naturalization Service, too. Yes, the border patrol, with 1,700 agents, I think, officers.

Mr. SLOAN. What specific changes would you recommend to identify and systematically immobilize major traffickers? That is language from the fourth point on page 9 of your statement.

Mr. LOWE. As I say, I did not bring even a copy of that classified report with me. So I cannot refer back to it.

Mr. SLOAN. I have not seen that as of yet, but the answer to those questions—

Mr. LOWE. It would be in the report; yes.

Mr. SLOAN. Let me just clear up one final matter.

Mr. LOWE, on page 10 of your testimony you state that DEA's budget for purchase of evidence and information funds for fiscal year 1976 is estimated at \$9 million?

Mr. LOWE. Yes.

Mr. SLOAN. We have obtained the figure of \$9,955,575 as the amount DEA asked for from the Congress. Which is the correct figure?

Mr. LOWE. I have to look it up.

Mr. JONES. We have the statement of John R. Bartels, Jr., before the Subcommittee on Appropriations for the Department of Justice in the House of Representatives, fiscal year 1976 budget justification before the House. We have an amount of \$8,978,000 which is an increase of \$2,157,000 over the fiscal 1975 base.

Mr. LOWE. That is from his statement before the Appropriations Committee. We can look that up.

Mr. SLOAN. I would appreciate it if you would, and let the subcommittee know because we have a difference of roughly \$800,000 or \$900,000.

Thank you, Mr. Chairman.

[The requested information follows:]

FISCAL YEAR 1976 BUDGET REQUEST FOR PURCHASE OF EVIDENCE AND
PAYMENTS TO INFORMANTS

We have confirmed with DEA that it is requesting \$9,028,000 for purchase of evidence and payments to informants for fiscal year 1976. Based on our discussions with DEA officials and our review of the agency's records, we cannot substantiate the \$9.9 million figure which has been referred to. The \$9,028,000 request was established as follows:

Fiscal year 1975 base-----	\$8,821,000
Increase for fiscal year 1976 to support current authorized agent work force-----	+2,157,000
	8,978,000
Increase for fiscal year 1976 to support 6 proposed agent positions scheduled for Mexico-----	+50,000
	9,028,000
Total PE/PI request for fiscal year 1976-----	9,028,000

Senator NUNN. Thank you all for appearing. We appreciate your presence here today and your testimony and the work you are doing for the committee.

The subcommittee will now adjourn until 10 o'clock tomorrow morning, at which time we will have the testimony of Mr. Andrew C. Targaglino, who was the Chief Inspector for the Drug Enforcement Agency.

[Whereupon, at 4:30 p.m., the subcommittee recessed, to reconvene at 10 a.m., Tuesday, June 10, 1975.]

[Members present at time of recess: Senator Nunn.]

FEDERAL DRUG ENFORCEMENT

TUESDAY, JUNE 10, 1975

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met at 10 a.m., in room 3302, Dirksen Senate Office Building, pursuant to Senate Resolution 111, as amended, Hon. Henry M. Jackson, chairman of the subcommittee, presiding.

Members of the subcommittee present: Senator Henry M. Jackson, Democrat, Washington; Senator Sam Nunn, Democrat, Georgia; Senator Charles H. Percy, Republican, Illinois; Senator Jacob K. Javits, Republican, New York; and Senator Bill Brock, Republican, Tennessee.

Members of the professional staff present: Howard J. Feldman, chief counsel; Philip R. Manuel, investigator; Frederick Asselin, investigator; Robert Sloan, special counsel to the minority; and Ruth Y. Watt, chief clerk.

Chairman JACKSON. The committee will come to order.

[Members of the subcommittee present at time of convening; Senator Jackson.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, permission is hereby granted for the chairman, or any member of the subcommittee as designated by the chairman, to conduct hearings in public session, without a quorum of two members for administration of oaths and taking of the testimony in connection with Drug Enforcement Administration on Tuesday, June 10, 1975,

HENRY M. JACKSON,
Chairman.
CHARLES H. PERCY,
Ranking minority member.

Chairman JACKSON. We resume our hearings in connection with the operation of the Drug Enforcement Agency. Yesterday there was considerable discussion about the increase in hard drugs and especially since DEA was reorganized. I just had received this morning in the mail from the Chicago Daily News an independent investigation of theirs and it shows this headline "U.S. Losing Smuggler War, Chicago Heroin Flood." This headline dramatizes the problem that we face around the Nation.

This particular reference is to an investigation conducted by Daily News investigative reporters on the subject, completely independent of any investigation on the part of this committee.

It does point up the urgency and seriousness of this problem as it pertains to the people of this country and above all else, the whole issue of integrity in the post-Watergate period of our law enforcement agencies.

I would like to, without objection, put it in the record.

[The document referred to was marked "Exhibit No. 13" for reference and follows:]

EXHIBIT No. 13

[From the Chicago Daily News, June 7-8, 1975]

UNITED STATES LOSING SMUGGLER WAR—CHICAGO HEROIN FLOOD!

SUBURBS EASILY OBTAIN COCAINE

(By William F. Mooney and William Clements)

Heroin is flowing across the border from Mexico at record rate and authorities say they are losing the war to stop the smuggling of the drug that turns addicts into the "walking dead."

And Chicago has now become the principal market for brown heroin—"Mexican Mud"—being shipped into the country. The Federal Drug Enforcement Administration admits it is probably intercepting as little as 15 per cent of this relatively pure heroin entering the United States.

In recent months, the street sale price of heroin has fallen 25 per cent—from \$1,200 to \$900 an ounce, indicating a ready supply.

When the heroin reaches Chicago or other markets, the dealers "cut" it to as low as 3 per cent purity for distribution to pushers and addicts.

Federal, state and local authorities all agree that effective drug enforcement is all but impossible by the time the drug is ready for street sale.

"We end up by playing defense—never offense," said Sgt. Kenneth Brandt of the narcotics section of the Chicago Police Department.

"They let the stuff sift through our borders, and by the time it gets to Chicago we're reeling backward trying to make busts on the streets. But it's too late by then."

Most authorities agree that the failure to intercept the big shipments of drugs belongs to DEA, the federal agency given a mandate by former President Richard M. Nixon in 1973 to wipe out all illegal drug traffic in the United States.

Furthermore, authorities say, the heroin supply will be increased sharply this summer because the government of Turkey has lifted its ban against the growing of poppies, the source of heroin.

The Turkish poppy produces "white heroin," prized by both drug wholesalers and drug addicts.

Turkey's three-year ban against growth of the poppy—now lifted—is the reason why white heroin has been in such short supply in this country.

"I shudder to think what's going to happen when the white stuff starts flowing," said Vernon D. Meyer, who took over last month as DEA regional director here.

In the face of this growing availability of heroin, DEA appears to be concentrating on small "buy and bust" street operations that trap the minor pushers, but stops far short of tracking down the big, main-line suppliers.

The Daily News spent weeks examining federal magistrate and U.S. District Court records to determine the effectiveness of DEA's performance.

Of the 387 DEA drug investigations contained in these records only a few resulted in seizures of a pound or more of heroin, the minimum that drug officials say a wholesale drug dealer would handle.

Most of the "buys" involved only one, two or three ounces of heroin, and even these relatively small amounts had been cut with milk sugar, caffeine or other additives.

In its investigation, the Daily News also found:

- Cocaine is the current glamor drug among many "in" people and status seekers. It is really available both on Rust St. and in the suburbs.

- Marijuana is now entering this country literally by the tons, and is so plentiful that its price is way down.

- There is no shortage of heroin, despite DEA announcement that it has smashed several drug rings.

The 25 per cent drop in the price of heroin—to \$900 an ounce—was described this way by Lt. Richard Joyce of the Chicago Police Department's narcotics section: "The only one paying \$1,200 an ounce is 'the man' (police). So our undercover agents are haggling—we're making lower offers for buys."

- Drug-related deaths in Cook County in 1974 were at a record-high—460 persons. This year the death rate is even higher.

- The status symbols on suburban high school campuses once were pill-popping and pot. Now, many are ready markets for pushers offering heroin, LSD and amphetamines, and such exotic new drugs as PCP, an animal tranquilizer.

- No drug seizures were made last year at either Navy Pier or Calumet Harbor by DEA or any other federal agencies, although both are ports of entry for foreign ships and considering natural for drug smuggling.

DEA is responsible for alerting the U.S. Customs Office at O'Hare Airport on drugs being smuggled into Chicago by airplane. Last year, DEA gave Customs only two cases, but both were considered so solid that they were placed in the top category known as "absolute referrals."

No arrests were made in their instance.

DEA for three months spent the major portion of its investigative time looking for junkies instead of dealers in black communities across the country. This occurred, according to a Washington source, after a black congressman complained that the federal agency was not concerned enough with the heroin problem in black neighborhoods.

For comparative purposes, The Daily News examined DEA's performance in the 21-month period from July 1, 1973, when it began operations, to March 31, 1975. The operations of DEA's predecessor, the Bureau of Narcotics and Dangerous Drugs (BNDD), were examined for a similar 21-month period.

The comparison shows DEA's investigations resulted in 155 criminal indictments, with 87 persons going to prison. The bureau's investigations resulted in 240 indictments and prison terms for 176 persons, double DEA's performance.

Meyer strongly defend DEA's record here during the last two years, pointing out that several "very important people" in the narcotic trade have gone to prison.

He also said that DEA begins every case with the objective of going "higher up the ladder until we get somebody important or realize we're beating our heads against the wall."

When that happens, he said, DEA will move in and make an arrest.

Meyer said DEA does not intentionally pursue a "buy and bust" approach, but defends it as an effective enforcement tool at times.

The court files provide a unique insight into the over-all performance of DEA and the federal war on drugs.

The agents operate undercover where they can, but because of the mistrust of most dealers, they have to use known pushers or addicts to make some buys.

Some of the pushers are themselves addicts who sell heroin to get money to feed their own habit.

The federal records also show that 1 out of 10 of the drug dealers arrested by DEA skip bond and flee to Mexico, leaving behind the small-fry pushers to stand trial alone.

At least 36 of these dealers forfeited bonds ranging up to \$200,000 and are listed in U.S. District Court records as fugitives.

In Mexico, DEA authorities concede, the fugitives "lay low" while training others in the intricacies of drug smuggling.

These recruits are sent to Chicago or other cities to replace the fugitives in the drug trade.

In contrast to the dealer who posts bond and flees the country the small-time pusher has been known to spend months in Cook County Jail unable to post bond as small as \$8,000.

His best chance to avoid a lengthy prison term is to cooperate with DEA by becoming a government informer, hoping that his court-appointed attorney can plea-bargain for leniency with the federal prosecutor.

Too often, according to authorities, the pusher knows only his own supplier and cannot take the government the one step beyond that will lead on the "big pinch" of a major dealer.

Federal judges here are becoming increasingly aware of the low quality of many of the arrests being made by DEA, according to Robert S. Bailey, a one-time federal prosecutor and now a defense attorney who has represented scores of persons charged with narcotic violations.

Of 38 recent sentences handed down in federal court here, the longest prison term was two years, with 20 of the sentences being a year or less.

In addition, 62 persons were granted probation.

Chairman JACKSON. Our witness this morning is Mr. Andrew C. Tartaglino, Chief Inspector of the Drug Enforcement Administration.

Mr. Tartaglino, if you will come forward. Mr. Tartaglino, if you will raise your right hand and be sworn.

Do you solemnly swear that the testimony you are about to give before this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. TARTAGLINO. I do.

TESTIMONY OF ANDREW C. TARTAGLINO, CHIEF INSPECTOR, DRUG ENFORCEMENT ADMINISTRATION, ACCOMPANIED BY STEPHEN H. SACHS, COUNSEL

Chairman JACKSON. You may be seated. I believe you are represented here this morning by counsel. If you would identify your counsel.

Mr. TARTAGLINO. Yes, Mr. Chairman.

Chairman JACKSON. Not that you need one.

Mr. TARTAGLINO. My counsel and very good friend is Mr. Stephen H. Sachs.

Chairman JACKSON. From Baltimore?

Mr. TARTAGLINO. From Baltimore.

Chairman JACKSON. We are delighted. Mr. Sachs is a former U.S. attorney for Maryland.

Mr. SACHS. May I say I shared the chairman's observation that Mr. Tartaglino needs no counsel. But I am an old friend, and we talk about these matters from time to time as he was coming to the decision he made. I consider it an honor to be asked by Mr. Tartaglino here today.

Chairman JACKSON. I understand fully. That is why I made the comment, too. I understand your role here. You are here as a friend, not just as a lawyer in the usual sense.

Mr. SACHS. Thank you, Mr. Chairman.

Chairman JACKSON. First, Mr. Tartaglino, may I say you have a prepared statement. I want to express to you my appreciation and I know the appreciation of the staff and members of the committee for the forthright way in which you have cooperated. You haven't been up here trying to leak a story. You have lived up to the finest traditions of the service, a man of honor and decency, and you have responded truthfully, as far as we have been able to ascertain, to the questions we have asked.

You have cooperated with this committee and I believe likewise with the investigation that the Attorney General has undertaken. I just wanted to make that statement at the outset.

I have read your statement. It is a very fine one. The members of the press all have copies now of the witness' statement.

Why don't you proceed? In view of the fact that it is available where you can speed it up, just announce you will skip the following, it goes in as if read. You understand?

Mr. TARTAGLINO. Yes, Mr. Chairman.

Chairman JACKSON. Areas where you can avoid a lot of detail just in the interest of time, but you are the boss and judge on that. You decide where and when you want to do that. Just indicate it, however, as you go along.

Mr. TARTAGLINO. I think there are certain enclosures that I will just summarize as I pass through, Mr. Chairman.

Mr. Chairman and members of the subcommittee, my name is Andrew C. Tartaglino, and I am the Chief Inspector of the Drug Enforcement Administration, and I am presently on detail to the Department of Justice, the Office of Management and Finance.

I am a native of Newport, R.I., and I attended local schools in Newport, and I am a graduate of Georgetown University here in Washington.

For the last 23 years, I have served as a career drug law enforcement officer, first in the Federal Bureau of Narcotics in the Treasury Department, then, following an executive reorganization in 1968, in the Bureau of Narcotics and Dangerous Drugs in the Justice Department, and finally in the Drug Enforcement Administration, also within the Justice Department.

During this time, I have served in a variety of positions both in the United States and Europe.

Following creation of the Bureau of Narcotics and Dangerous Drugs (BNDD), on April 8, 1968, I was named its Chief Inspector with responsibilities to continue an investigation of corruption in the New York office of the Federal Bureau of Narcotics, an inquiry previously begun by the Treasury Department, and to create an effective BNDD inspection service that would have the capability of safeguarding the agency's integrity and investigating any charges of misconduct or wrongdoing that might arise.

In May 1969, I assumed the position of Assistant Director for Enforcement and had the sole responsibility for drug enforcement activities under the general guidance of its Director, John E. Ingersoll.

My duties were to develop affirmative police programs aimed at disrupting the organizations that control the illicit drug traffic on a national and international basis. In 1971, I became Deputy Director for Operations and assumed responsibility for all enforcement, regulatory, intelligence, and training programs for the Bureau of Narcotics and Dangerous Drugs.

Upon the creation of the Drug Enforcement Administration (DEA) on July 1, 1973, John R. Bartels, Jr., the Acting Administrator, requested that I serve temporarily as his Acting Deputy Administrator until the position could be filled by an appointee.

The Deputy Administrator post in the newly formed DEA is the second ranking position and is subject to Senate confirmation.

I acceded to this request with the mutual understanding that the position would eventually be filled by a noncareer appointment other than myself, and that I would become the Chief Inspector of the Drug Enforcement Administration which is in the career service.

I served as Acting Deputy Administrator of the Drug Enforcement Administration for 15 months until the occurrence of events beginning in September 1974 which were intolerable and unacceptable to me from an ethical point of view.

Today, I am appearing before you with an appreciation of the gravity and importance of your inquiry, and I will be as candid and helpful as I can in making it a constructive one.

I wish I could say it is a pleasure to testify here today, but if you will permit me a brief personal comment, I must tell you that my emotions are mixed. What I have to say will be frankly and seriously critical of some practices of the law enforcement effort of which I have been a part for all of my professional life. I shall also be critical, in this public forum, of the recently resigned Administrator of DEA who was my immediate superior for 18 months and whom I tried to serve faithfully and well.

I sought in November of last year to bring to the attention of Acting Attorney General Silberman some of the episodes I relate herein. I did so only after considerable soul searching, and self-examination led me to the conclusion that a matter of fundamental principle was involved and that a failure to act was morally wrong.

I could scarcely foresee, however, that 8 months later I would be called upon to relate these matters publicly. Even had I known, however, I hope it would not have had any bearing on my decision, for it was clear to me that both from an ethical and management point of view, as well as the requirements of the Code of Federal Regulations, it was essential for me to raise these issues with higher authorities.

But that imperative scarcely lessens my regret at the necessity to do so and particularly the necessity to testify publicly. I come from a tradition which attempts to resolve its problems internally for fear that public discussion can impair the effectiveness of the law enforcement mission. And I am concerned that my remarks here will be seized upon and distorted by those who are unfairly hostile to the Federal drug enforcement effort in order to discredit the thousands of dedicated men and women who work very hard, at frequent personal risk to themselves, to curb the drug traffic in this country. It is extremely painful for me to appear in any way to lend support to unfair attacks on DEA.

[At this point, Senator Brock entered the hearing room.]

Mr. TARTAGLINO. I am also concerned that my actions of last November, and this testimony today, will be perceived by some to be self-serving, an effort to gain personal advancement for myself. Such attacks on my own motives have already been made.

I suppose I could hardly be expected to say anything else, but let me assure this subcommittee, and anyone else who cares, that I took the steps of last November in the full knowledge that they seriously jeopardized, rather than advanced, any career goals of mine. Subsequent events have borne this out. I ask no sympathy and I seek no praise; but neither do I want my motives depreciated.

In attempting to resolve the issues which compelled me to go forward I never once deviated from the formal system of command. I have never sought to have these issues aired in the press and have

responded to press inquiries only in consultation with, and permission by, the Public Information Office of the Department of Justice.

I knew that in coming forward I would run the risk that others would not be so restrained and they have not been.

In any case I am here because you have asked me to appear and, despite my concerns, I am pleased to aid your inquiry. I see this testimony as the inevitable consequence of my actions of last fall and I am sure I was right in what I did then. One cannot spend 23 years of his career in upholding the law and the integrity of the public trust and watch it compromised in silence.

Let me mention one further preliminary point. On March 31, 1975, shortly after he took office, Attorney General Edward H. Levi issued Order No. 600-75 for the purpose of empaneling a special group to make a full inquiry into the conduct of DEA.

I have cooperated fully in their inquiry, as well as with this subcommittee and its staff and I welcome the thoroughness and professionalism of the investigation conducted by both the Attorney General's group and by this subcommittee.

After the creation of the Drug Enforcement Administration, I was in many ways concerned with the progress of the new agency in coping with its various problems. I disapproved of some of its policies and personnel decisions which, in my view, were contrary to the civil service system.

As a result, there was a general lethargy and poor morale among a large number of DEA's employees. Nevertheless, I felt the situation could be improved and that the Drug Enforcement Administration could carry out its mission adequately.

Even though the manner in which some situations were handled by the Administrator strongly suggested indifference when measured by customary professional standards, I did not feel compelled to bring them to the attention of higher authority. Indeed, I made every effort to resolve differences of opinion in favor of Mr. Bartels.

Because of my future interest in the operation of the agency's internal inspection office, I naturally gave extra attention to this area for the purpose of supporting Mr. George B. Brosan, its acting chief, in organizing its staff and functions.

In addition, my prior service as Chief Inspector for the Bureau of Narcotics and Dangerous Drugs had convinced me of the importance of an active and vigilant internal security program.

Corruption within Federal, State, and local police agencies is a traditional and recurrent problem within the United States and represents merely one of the more common forms of the broader problem of corruption within the Government.

It is most apt to occur in an organized fashion within the lower levels of functional responsibility, but from time to time may infect the highest levels of authority.

Although criminal activity or abuse of power is generally condemned by the population, corruption within Government is particularly abhorrent to the citizens because of the special trust and wide discretion which has been vested by them in such officials.

[At this point Senator Brock withdrew from the hearing room.]

Mr. TARTAGLINO. This is all the more true of corruption within a law enforcement agency, because of all Government functionaries,

these are the officers charged with the special assignment of apprehending those who breach the criminal laws generally.

Therefore, it is viewed as a signal of the dominance of crime and criminals over society, that is, the very antithesis of civil government.

Realization of this public attitude and of its significance has resulted in the creation of the concept of "integrity" by those seeking to protect society from this special vice and the demoralizing effects which it produces.

The concept of integrity is meant to imply more than an absence of wrongdoing, but seeks rather to emphasize unshakeable and scrupulous dedication to honesty in which the citizens can trust as a protection against all circumstances which might arise, whether clear or ambiguous.

In other words, integrity is not the absence of corruption, but its opposite. It is not designed simply to ferret out corruption when it occurs, but to prevent it from arising.

Its maintenance, therefore, depends not only on abstention from clearly illegal acts but avoidance of circumstances which may reasonably be viewed as antecedent to illegal acts, that is, conduct or associations which may lead to compromise and complicity under probable or reasonably imaginable circumstances.

This positive concept has been created as the only assurance of continued honesty within Government or law enforcement, thereby enabling both to conduct their controversial business with the continued support and trust of the citizens.

It is, therefore, an armor against insidious decay of the body politic but, like all armor, must be constantly maintained and polished.

Some incidence of delinquent behavior within any given groups of individuals appears as an unavoidable consequence, but the particular conditions to which the individuals are subjected may radically affect the degree to which such behavior occurs.

To the extent that conditions tend to encourage this delinquency, the need for discipline and regulations increase in order to serve as a counterbalance influence.

The conditions under which enforcement officials, and particularly drug enforcement agents must perform their duties are such as to provide unusual opportunities, temptations, and pressures for delinquent or corrupt practices.

Even at a low level, officials are vested with wide discretion over matters involving large sums of money or vital human interests.

This is particularly the case in drug enforcement where opportunities abound for association with and profit from criminals if one exercises one's authority and discretion in desired ways.

Agents daily encounter situations in which they may solicit or be offered substantial sums of money, privileges, or illicit services if they will make certain decisions in favor of the criminals whom they are charged with apprehending.

This temptation is increased by the fact that such decisions can be easily hidden under the broad mantle of discretion with which they are invested.

The temptations and opportunities to engage in corrupt practices which exist within drug enforcement cannot be reduced. Underworld figures who fear incarceration or interference with their illegal enter-

prises will continue to offer big money for special favors to avoid such a possibility.

Being unscrupulous persons, they will naturally take advantage of any leverage they can acquire to bring pressure on the officers with whom they come in contact.

The only way in which these pressures can be offset is by strict regulation and enforcement of procedures, and a high development of dedication to the concept of integrity. Without such dedication and constant vigilance, corruption is not only certain to appear but to grow and thrust its tentacles into the highest levels.

The experience of the Treasury Department's Federal Bureau of Narcotics provides graphic illustration of the truth of these principles.

What I am saying here are not principles I have abstracted from a textbook, but rather the results of what many of us observed in the New York City office of the Federal Bureau of Narcotics in 1967-69, a situation that went unattended for almost a dozen years.

I think it would be helpful for the subcommittee to have some detailed background of the corruption investigation in New York in the late 1960's in which, as I have said, I was a principal investigator on behalf of BNDD.

My experience in that investigation explains a great deal of my subsequent concerns and conduct as Acting Deputy Administrator of DEA and sheds a great deal of light on problems which in my judgment continue to confront the agency.

I am afraid that the fallout of the New York experience has by no means disappeared.

In 1967, James P. Hendrick, the Assistant Secretary of the Treasury for Enforcement directed an intensive investigation into allegations of widespread corruption within the New York office of the Federal Bureau of Narcotics, and detailed me to lead a task force inquiry that spanned the greater part of 2 years.

The most concise summaries of the results of that inquiry are contained in memorandums I submitted in 1968 and 1969.

At this point, I would like to have introduced as exhibits at these hearings four memorandums which I, as Chief Inspector and as Assistant Director for Enforcement, prepared for John E. Ingersoll, the Director of the Bureau of Narcotics and Dangerous Drugs, concerning the charges of criminal misconduct at the New York office of the Bureau of Narcotics.

Chairman JACKSON. Without objection, the memorandums can be all one exhibit? Exhibit No. 14, and then it will be A, B, C, and D.

[The documents referred to were marked "Exhibit Nos. 14A, 14B, 14C, and 14D" for reference and will be retained in the confidential files of the subcommittee.]

Mr. TARTAGLINO. Mr. Chairman, these documents and others to which I will refer in my testimony, are from the files of the Drug Enforcement Administration and the Department of Justice.

[At this point, Senator Nunn entered the hearing room.]

Mr. TARTAGLINO. They were written by me and obtained by the subcommittee staff through established procedures from the Drug Enforcement Administration and the Department of Justice.

My use of the documents today is enabled by the subcommittee's having made them available to me.

Mr. Chairman, I request that I be allowed to excerpt information from these documents but that they be held on a confidential basis by the subcommittee because of their sensitive nature.

The documents are among those which were obtained from the Drug Enforcement Administration by the subcommittee staff. The documents are:

1. November 21, 1968, memorandum entitled "Integrity Investigation—New York Office, History, Recommendations, Conclusions."
2. May 30, 1969, memorandum entitled "Integrity Investigation—Individuals Resolved Since Inception."
3. June 1, 1969, memorandum entitled "Integrity Investigation—Status of Investigations—June 1, 1969."
4. June 23, 1969, memorandum entitled "Integrity Investigations—Resolved and Unresolved—June 1, 1969."

Chairman JACKSON. As I understand it, they mentioned individuals, and it would be unfair to make them public at this time. We will receive them and place them in a sealed envelope. They will be identified. They will be received on the basis that they will be treated confidential until such time as it would be appropriate to make them public.

Mr. TARTAGLINO. Thank you, Mr. Chairman.

Reports of corruption began to surface as a major problem in the New York office of the Federal Bureau of Narcotics in 1959-60.

Infrequent acts of impropriety and criminal misconduct may have occurred as early as 1956-57, but it does not appear they were detected and brought to the attention of the Federal Bureau of Narcotics Headquarters in Washington, D.C., or the Treasury Department at that time.

The situation found in New York in 1967-69 was this: Corruption and questionable procedures were commonplace. Agents were engaged in illicit activities that included accepting bribes from all levels of traffickers, selling confiscated drugs and firearms, looting of searched apartments, providing tipoffs to suspects and defendants, and threatening the lives of fellow agents who dared to expose them.

There was a complete breakdown of discipline and administrative management in that office. We found, for instance, that the file cabinet containing the names and payments to all the informants in the New York region was normally unlocked and located in an area that made it readily accessible to anyone who cared to inspect the file. Not surprisingly, the office was experiencing an unusually large number of informant homicides.

Some management and supervisory officials were utilizing bars and restaurants to meet and discuss official matters. Some of these establishments were owned and operated by individuals with criminal connections and backgrounds.

Some of the Federal Bureau of Narcotic agents rarely paid a bill in these establishments. Unfortunately, some of them did not perceive any wrongdoing.

Our investigation revealed that between February 7, 1959, and early 1961, three separate incidents of Federal narcotic agents receiving overdoses of heroin went uninvestigated. One of the agents died in his home shortly after receiving an overdose.

The matter was investigated superficially some 2 years later, only after his wife brought pressure to bear by communicating with her Congressman in an effort to have the matter looked into.

Reliable information was developed that all three agents received orally administered overdoses because they attempted to extort moneys from traffickers who had "an arrangement" with corrupt agents in that office.

We also learned that earlier efforts to clean house by honest agents and supervisors were suppressed.

In April 1960, Edward T. Coyne, a narcotic agent in the New York office of the Federal Bureau of Narcotics, attempted to organize a small group of agents to bring to light a continuing series of thefts and criminal misconduct on the part of the agents in the New York region.

In good faith, Mr. Coyne related a number of instances to his colleagues which he felt were dishonest acts and was looking for "strength in numbers" to bring the matter to the attention of Federal Bureau of Narcotics headquarters.

Unknown to Mr. Coyne, one of the agents he approached was in fact a corrupt agent who altered the targets of the investigation, some of whom were in senior management positions in the New York office. Mr. Coyne then became the subject of a vicious and brutal psychological attack.

He and his wife received anonymous telephone calls. He was completely isolated in the office and subjected to intimidation and ridicule. He recognized the futility of it all and resigned. Mr. Coyne is now a much-respected supervising customs agent in New York City.

Of particular significance is the fact that some of the individuals mentioned by Mr. Coyne in 1960 were to become the targets in the 1968 investigation. Some eventually resigned while under investigation, and others were convicted.

The tragedy is the fact that 9 years elapsed before anything was accomplished; and drug enforcement lost a courageous and dedicated agent while the drug traffic, addiction, and abuse flourished to epidemic proportions.

One of the agents who actually supported Mr. Coyne was "interviewed" at length by senior management personnel at the New York office and was intimidated to the extent that he withdrew his support of Mr. Coyne.

Seven years later, in 1969, I interviewed this other agent in connection with some serious allegations and made an effort to gain his cooperation. He requested a week to think it over after tacitly acknowledging his complicity in corrupt activities with other suspect agents.

A week later he told me that he once tried to do the right thing but was pressured to withdraw his support of Mr. Coyne. He had little confidence that senior management of the Federal Bureau of Narcotics actually wanted to rid itself of corrupt elements.

He told me, for example, that a written copy of his 1960 "interview" by the very subjects of the investigation was purposely stored in the New York office's general file room accessible to the entire office. He chose to resign.

Another aborted investigation which first came to our attention in the late 1960's was the determined effort in June of 1961 of then Assistant Commissioner of Narcotics Wayland L. Speer to probe into allegations of criminal misconduct in the New York office.

We learned that he uncovered evidence of serious criminal misconduct on the part of the same agent suspects mentioned by Mr. Coyne, including evidence of the submission of vouchers falsely alleging payments to informants.

The agents under investigation then devised a strategy to thwart the inquiry by falsely charging that Mr. Speer made improper remarks about their religion and ethnic background. They were successful.

Mr. Speer was demoted and sent to the Southwest to establish an audit-type office in Texas as a roving inspector. He rarely, if ever, came to Washington and was continually on the road. He was the target of an obvious effort to get him to resign.

Seven years later, one of the agents who participated in discrediting Mr. Speer pled guilty to charges of selling heroin and explained the entire background of events to me.

According to this agent, Mr. Speer was on the right track in 1961, and those he was questioning were getting apprehensive because Mr. Speer was coming dangerously close to uncovering some of their corrupt activities.

Mr. Speer was the third ranking individual in the Federal Bureau of Narcotics but found he was powerless to do anything about corruption in his own agency.

Several weeks after Mr. Speer was relieved of his duties in Washington, the individuals who were subjects of his inquiry were adjudged to have committed mere "administrative violations" and received only reprimands. Two months later they were promoted in grade. The message was clear.

I was a junior group supervisor in New York in those days and recall the office ceremony in which the disciplined agents were promoted.

I also recall that within several months, about half dozen agents sought employment elsewhere because of their disgust.

Let me mention an extremely relevant statistic. Mr. Speer had uncovered evidence in 1961 that 14 agents were involved in various types of criminal misconduct.

At the completion of our investigation in 1968-69, 5 of the 14 had been convicted, 5 resigned while under investigation, 1 was dismissed through civil service action, 1 died, 1 transferred to local enforcement while under investigation, and 1 is still on the rolls of the Drug Enforcement Administration.

My lengthy memorandum dated November 21, 1968, describes the elements of these and other investigations in detail.

An important turning point in our investigation of the New York office was the arrest and subsequent conviction of a former Federal Bureau of Narcotics supervisor in New York for selling heroin to one of his informants.

The man, who was Deputy Director of the Bureau of Drug Abuse Control (BDAC) in Baltimore at the time of his arrest, was sent to prison.

Equally important, he furnished information about his and others' criminal misconduct during the late fifties and early sixties in the New York office of the Bureau of Narcotics.

Five other agents became cooperative after information was developed regarding their criminal activity, and thus the pieces of the puzzle began to fall together.

Before the overall inquiry was completed, criminal indictments had been obtained against 12 ex-agents or agents, and 45 others resigned during an investigation into their activities.

Before the investigation concluded, it resulted in action against agents not only in New York but also in Los Angeles, Baltimore, New Orleans, and St. Louis.

There were, of course, varied causes for the corruption we found. In addition to lack of discipline, inadequate controls, and deficient management, the pressure to produce results—arrest statistics—may itself have been a cause.

During the years in question, for example, increasing emphasis was placed on the necessity to make arrests. Among agents, this came to be known as the numbers game. Agents, both Federal and local, came to perceive the existence of a monthly quota whereby it was found essential to make a desired number of arrests.

Of paramount importance became the "body count" or the number of arrests and not the caliber of the trafficker. Many of the violators apprehended were of such low stature that district attorneys and U.S. attorneys frequently refused to prosecute.

Sometimes, with a Federal/local effort, double "body counts" often resulted; that is to say, both agencies reported their seizures and arrest statistics to their respective commands. Often, inflated statistics resulted that were a total misrepresentation of the impact enforcement was having on the traffic.

When seizures were relatively low, a street-level dollar figure was utilized, to create appearances of heavy impact.

This problem, "the numbers game," has plagued narcotics law enforcement for many years. It is a problem that persists because sometimes management fails to clearly articulate the objectives and goals of their programs, and field personnel misunderstand what is desired.

For instance, sometimes agents would be taken off long-range conspiracy investigations with great potential and assigned to low-level cases that would produce immediate statistics.

Seizures and arrests would follow, with attendant publicity to coincide with budget appearances before the Congress or Department, or to coincide with pressures from the press in certain areas.

I believe that the hypocrisy of these actions had an adverse effect upon the young street agent who did not need a great deal of experience to see through the plan and observe the enforcement system responding to outside pressures.

But, the paramount lesson of the New York experience must be the absolute necessity of investigating allegations of criminal misconduct against agents in the same manner and with the same degree of intensity and fairness that we treat allegations of criminal activity of other citizens.

The rendering of a thorough and impartial investigation, and applying the same standard of investigative procedure to our own employees is not only essential to resolve the investigation from a professional standpoint but is absolutely necessary to maintain integrity and high morale.

Too often "morale" or the risk of embarrassing the Agency is used to rationalize deviating from the norm.

The extent of the corruption found in this investigation left little doubt in our minds of the absolute necessity of maintaining strong and effective internal inspection machinery in any drug enforcement effort, particularly when agents are utilized in undercover situations or find themselves in other situations that may result in suspects making legitimate or baseless allegations.

Accordingly, when I was assigned to the Drug Enforcement Administration on July 1, 1973, I was naturally much concerned to see that the new agency began with a strong internal inspection program and not repeat the mistakes of the past.

It soon became painfully apparent to both myself and Mr. Brosan, however, that the inspection resources and manpower were woefully inadequate for this purpose.

As early as July 1973, immediately following the establishment of the Drug Enforcement Administration, we documented the need for more resources and manpower in memorandums to the Administrator. Repeatedly thereafter the issue was raised but to no avail. The Administrator did not appear to give either attention or priority to this issue.

My services as Acting Deputy Administrator of the Drug Enforcement Administration precluded me from assuming the responsibilities of Chief Inspector, but I was pleased with the selection of Mr. George B. Brosan as Acting Chief Inspector. He had excellent credentials from the U.S. Customs Service and indicated his intention to remain on as my deputy when I assumed the Chief Inspector post.

Both Mr. Brosan and I became troubled when the Administrator, Mr. Bartels, failed to authorize, or discouraged, investigations in connection with unresolved allegations against high ranking officers in spite of our repeated requests.

Certain of these officials had first allegedly been involved in questionable or corrupt conduct going back to their service in the New York office of the Federal Bureau of Narcotics and later the Federal Bureau of Narcotics and Dangerous Drugs.

While some allegations concerning DEA executives had never been satisfactorily investigated, these people were nevertheless in senior positions at DEA. It was a problem Mr. Brosan inherited and he was concerned because the allegations were not completely investigated.

A year went by and Mr. Brosan and I continued to urge Mr. Bartels to increase the manpower of Inspection to enable it to deal with past, present, and future alleged breaches of integrity in a professional manner.

Mr. Brosan was simply interested in completing investigations that were not terminated in a professional manner.

Mr. Bartels' reluctance to provide these resources evidenced a lesser commitment to the importance of maintaining the Agency's integrity than the situations clearly demanded.

On August 26, 1974, I sent to Mr. Bartels a memorandum requesting more personnel and resources for the Office of Inspection.

Mr. Chairman, I believe the subcommittee staff has obtained a copy of that memorandum.

Chairman JACKSON. Without objection, the memorandum will be marked exhibit 15 for reference.

[The document referred to was marked "Exhibit No. 15" for reference and will be retained in the confidential files of the subcommittee.]

Mr. TARTAGLINO. I might interject here that for 14 months I had on-and-off conversations with Mr. Bartels, informally, before writing the memorandum.

Chairman JACKSON. In other words, at this point you were concerned about the inadequacy of resources that were available to you to do a thorough, professional-like, ongoing investigation internally to see that it was a clean operation. You had gone through your experiences in New York, which you testified to earlier, and you didn't want to see that kind of situation continued and what you needed were the people to do the job. Is that right?

Mr. TARTAGLINO. That is correct, Mr. Chairman. I was concerned that they were falling behind in their current workload as well as not addressing themselves to their other functional responsibilities. I wanted to register a signal that someone should address themselves to it.

Chairman JACKSON. The question is to go after the big fish in the smuggling business who bring the hard drugs into the country, on the one hand.

Mr. TARTAGLINO. The evaluation program also concerned us a great deal. We just didn't have the manpower to address ourselves to it.

In fairness to Mr. Bartels, I wish to point out Mr. Bartels responded in a memorandum dated September 9, 1974, and said he was doing his best to increase the resources of the office, but that there were other DEA priorities that had to be taken into account. Accordingly, on September 9, he turned down the request for additional staffing of the Office of Inspection.

I will just summarize this letter from Mr. Bartels, which states in effect that he has other priorities to address himself to. He could not meet the needs of everyone, with their resources and also that he authorized the addition of seven or nine additional inspectors, but then does not authorize hiring them, but he does authorize the two support positions which were secretarial.

Chairman JACKSON. The Bartels memorandum will be marked for identification as exhibit No. 16.

[The document referred to was marked "Exhibit No. 16" for reference and will be retained in the confidential files of the subcommittee.]

Mr. TARTAGLINO. I wish to point out that up to and including September 9, 1974, the date of Mr. Bartels' response to my request for more personnel in the Office of Inspection, I viewed my situation at DEA as one in which two officials, Mr. Bartels, the Administrator, and myself, his deputy, had different opinions over an integrity policy issue. But I did not consider it a situation in which I felt my principles or ethics were being compromised.

Mr. Bartels possessed an attitude toward the workings of inspection which differed sharply from my own. Disagreements over policy and procedure always exist in government and industry. Resolution of these differences requires patience and persistence. That being said, I was fully prepared to work to promote improvements in the Office

of Inspection and continue as the Acting Deputy Administrator as long as Mr. Bartels desired. None of these discouragements caused me to lose hope that time would permit Mr. Bartels to recognize and absorb the lessons of the past.

[At this point Senator Javits entered the hearing room.]

Mr. TARTAGLINO. However, on September 10, 1974, events began to unfold which required a compromise of ethics which I found personally and professionally unacceptable. On August 19, 1974, the Organized Crime and Rackets Section of the Washington Metropolitan Police Department wrote a letter to the U.S. Attorney's office, District of Columbia.

The letter advised the U.S. Attorney's Office that a high ranking official of the Drug Enforcement Administration had been observed in a series of police surveillances with known convicted gamblers and suspected drug violators. The police further asserted that this official was identified as Vincent Promuto, then DEA Director of Public Affairs.

Mr. Chairman, I understand the subcommittee has a copy of the August 19, 1974, memorandum. You may wish to make it an exhibit.

Chairman JACKSON. That will be marked and received as exhibit No. 17.

[The document referred to was marked "Exhibit No. 17" for reference, and will be retained in the confidential files of the subcommittee.]

Mr. TARTAGLINO. On September 10, 1974, while Mr. Bartels was traveling out of the country with Mr. Promuto, Mr. Brosan received the information developed by the Washington Metropolitan Police. Mr. Brosan had a policy of keeping me informed and brought the matter to my attention. I agreed with his proposed action which was to begin an active investigation to learn as much as possible of the truth of these claims and the extent of the alleged association of Mr. Promuto with suspected violators. It should be noted that Mr. Bartels and Mr. Promuto are good friends. As Mr. Brosan and I saw it, this friendship became a significant factor as the investigation went forward.

I was, of course, concerned with a range of possibilities. The possibility existed that Mr. Promuto was entirely innocent of these allegations; or that he actually might be engaged in some criminal activity; or alternatively, that his associations might lead or have led to his compromise.

I was mindful of the fact that Mr. Promuto was a member of the executive staff privy to the highest information and decisions of DEA. He was a principal officer and close associate of the Administrator's, with the ability to obtain any files, records, and secret information. In such a case, the temptations of high-level criminals to attempt to influence or obtain advantages of friendship could be great and the damage resulting from their success incalculable. Because of his presumed innocence, it was all the more important that we at DEA move on the Washington Police Department information as quickly as possible.

From its inception, neither Mr. Brosan nor I had any idea what, if anything, the investigation would actually reveal. We, nevertheless, felt it to be of utmost importance to proceed in the same careful professional manner as would characterize any other investigation.

Mr. Bartels was informed of the investigation upon his return from Europe, some 7 days after our initial contact with the Washington

Metropolitan Police. In the days that followed, Mr. Bartels began to show increasing displeasure with Mr. Brosan's handling of the case, and to place unaccustomed restraints on the investigating staff. Mr. Promuto was furnished information about the elements and progress of the investigation which would normally have not been furnished to other subjects of investigation.

For example, Mr. Bartels directed that written interrogation be given to Mr. Promuto and that Mr. Promuto be permitted to respond to them at his convenience. Those conducting the investigation learned accidentally that Mr. Bartels and Thomas Durkin, an attorney and friend of Mr. Bartels, both had discussed the allegations with Mr. Promuto and that Mr. Durkin prepared a report for Mr. Bartels. Mr. Bartels refused to make the report available or brief the inspectors as to the substance of his interview with Mr. Promuto.

In an effort to resolve this matter, a meeting of the executive staff was held on October 1, 1974. Present at the meeting were Mr. Bartels, Mr. Daniel P. Casey, Dr. Mark Moore, Mr. John Lund, Mr. Robert Richardson, Mr. Brosan, and myself. At the meeting, Mr. Brosan gave the results of the investigation to that date. In discussing procedure, I took a strong exception to the extraordinary consideration shown to Mr. Promuto. Mr. Bartels was not pleased with my comments and requested that I submit a memorandum for the record explaining them. On October 2, 1974, I submitted the memorandum to his office.

Mr. Chairman, I believe the subcommittee staff has obtained a copy of that memorandum from DEA. If I may, I would like to read the memorandum:

To John R. Bartels, Jr., on October 2, pursuant to his request; from me, and the subject is Investigation of Vincent Promuto.

This is in response to your request for a memorandum regarding my comments concerning the above investigation during the course of our meeting on October 1, 1974.

The conduct of any investigation necessarily requires flexibility and wide exercise of discretion. For this reason I do not subscribe to the view that a single methodology or set of procedures must be adhered to in every circumstance. However, in integrity investigations and particularly in those which involve high-ranking officers having direct access to the agency head, it is of utmost importance that the investigation be pursued with at least the same degree of diligence characteristic of other similar inquiries. Failure to do so may frustrate the ultimate aim of the investigation which is to arrive at the truth, and any apparent departure from the norm in following procedures may lend the appearance of giving special advantages to those in positions of influence.

In the instant case, the circumstances were such as to suggest that surveillance of several weeks would have provided valuable information serving to confirm or refute certain suspicions. Moreover, advising Mr. Promuto of the fact that such an investigation was in progress might also be regarded by some as a departure from the norm which customarily governs such investigations.

Finally, it is difficult for the investigating officers to conduct any fruitful interrogation by means of the submission of written questions to which the subject of the investigation may respond at leisure after the advantage of reflection. Again, this is a method which would appear to depart from established investigational norms.

I recognize the validity of your desire to quickly get to the bottom of this matter for the protection of the agency's interest and reputation. The circumstances involved are such that we must maintain a delicate balance between the necessity of undertaking a thorough investigation and the equal necessity of retaining our objectivity and sense of fair play in matters affecting a fellow employee in whom we have seen fit in the past to place our trust.

However, we must be ever mindful of the appearance as well as the substance of what we do; and I would be derelict in my duty if I failed to call this con-

cern to your attention. This was the purpose of my remarks at our meeting of October 1, and I hope that this memorandum will further explain the context in which they were meant.

Presumably, Mr. Bartels read the memorandum—

Mr. FELDMAN. Mr. Chairman, may I have that memorandum placed in the record as an exhibit?

Chairman JACKSON. It will be received as exhibit No. 18.

[The document referred to was market "exhibit No. 18" for reference and will be retained in the files of the subcommittee.]

Chairman JACKSON. Mr. Bartels read that earlier memorandum. Did he read all the memorandums that we are referring to here?

Mr. TARTAGLINO. I don't know.

Chairman JACKSON. Was it brought to his attention?

Mr. TARTAGLINO. I delivered it to his executive officer.

Chairman JACKSON. The August 19 memorandum?

Mr. TARTAGLINO. The August 19? Yes, because we had a discussion on that.

Chairman JACKSON. Which clearly revealed associations on the part of Mr. Promuto?

Mr. TARTAGLINO. I beg your pardon. I thought you were referring to the memo on resources.

Chairman JACKSON. No, I am referring to the memorandum from the Metropolitan Police Department which relates to certain associations on the part of Mr. Promuto with individuals who had been involved in criminal activity.

Mr. TARTAGLINO. He showed knowledge of it in his conversations.

Chairman JACKSON. To you?

Mr. TARTAGLINO. Yes, sir.

Chairman JACKSON. He knew or should have known about it; is that right?

Mr. TARTAGLINO. Yes, I believe he did. I think I was told by Mr. Brosan and he will be a witness before this committee.

Chairman JACKSON. Do you have personal knowledge?

Mr. TARTAGLINO. I don't have personal knowledge that he read that memorandum. I have personal knowledge that he had knowledge of it at that time.

Chairman JACKSON. He talked about it, so he had to know.

Mr. TARTAGLINO. Yes.

Chairman JACKSON. Go right ahead.

Mr. TARTAGLINO. Presumably, Mr. Bartels read the memorandum; however, I received no written or verbal response from him. He continued to involve himself in Mr. Promuto's investigation in an operational way and he continued to complain about Mr. Brosan's handling of it. By November 1, 1974, I reached the inescapable conclusion that Mr. Bartels' actions were impeding the investigation of Mr. Promuto.

On November 13, 1974, Mr. Bartels, in referring to future investigations of employee misconduct, instructed Mr. Brosan to confront all senior officials with the allegations prior to commencing any investigation, a procedure that, in my judgment, would compromise the effectiveness of an investigation and would serve only to alert the individual under investigation of the allegations against him.

As the Promuto inquiry progressed, Mr. Bartels' attitude toward Mr. Brosan changed. Mr. Bartels would no longer see Mr. Brosan

and let it be known generally to those he did see that Mr. Brosan would no longer have access to him and was unacceptable in his present position. Mr. Bartels said he was unhappy with Mr. Brosan and intended to transfer him to a field position within DEA.

The Promuto matter was the only instance of which I ever heard Mr. Bartels voice any dissatisfaction with Mr. Brosan's work. It was also the only occasion during my 15 months as Acting Deputy Administrator that I observed Mr. Bartels become operationally involved in integrity matters.

Under the circumstances, I looked at his actions as improper executive influence and felt compelled to take some action of my own. A review of the "Code of Ethics for Government Service" confirmed that I had such a duty. Departmental regulations, expressed in section 45.735-2, of title 28, Code of Federal Regulations which adopts the Code of Ethics for Government Service, placed an affirmative duty upon me to expose possible corruption whenever discovered, article 9, and to put loyalty to moral principle and to country above loyalty to persons, party, or governmental department.

Mr. Chairman, I have a copy of this code. It was agreed to by the House of Representatives and the Senate as House Concurrent Resolution 175 in the second session of the 85th Congress. The code applies to all Government employees and officeholders. You may wish to make it an exhibit.

Chairman JACKSON. Without objection, we will get a copy of it and mark it for identification as exhibit No. 19.

[The document referred to was marked "exhibit No. 19" for reference and was made public July 15, 1975, and may be found in the files of the subcommittee.]

Mr. TARTAGLINO. If I may, I would like to read aloud a couple of the excerpts from that code:

Any person in government service should :

Put loyalty to the highest moral principles and to Country above loyalty to persons, party or Government department.

Uphold the Constitution, laws, and legal regulations of the United States and all Governments therein and never be a party to their evasion. . . .

Expose corruption wherever discovered.

Uphold these principles, ever conscious that public office is a public trust.

Thus, the code clearly set out that, under circumstances in which a wrongdoing seems to be taking place, the employee is obliged to report it to higher authority.

On November 14, 1974, I prepared for delivery to Deputy Attorney General Laurence H. Silberman a four-page, single-spaced memorandum in which I detailed the irregularities of the Promuto investigation and certain other matters that I felt were and should be of concern to the Department. It was delivered to the Department on the same day.

These other matters were unrelated to the Promuto case, but to my way of thinking, demonstrated a pattern of indifference on the part of Mr. Bartels in affairs dealing with the integrity of our agency. I proposed an immediate investigation into the Promuto matter and requested an appropriate reassignment outside DEA, but within the Justice Department.

Mr. Chairman, I believe the subcommittee staff has obtained from the Department of Justice a copy of my November 14, 1974, memoran-

dum. In the interests of fairness to certain individuals against whom allegations have been made, but which are unresolved or incomplete, certain names and information have been excised so the relevant portions can be made public.

You will note the memorandum was addressed to Assistant Attorney General Pommerening who, on November 13, 1974, advised me to document the allegations at Deputy Attorney General Silberman's request.

Chairman JACKSON. Without objection, that will be received, subject to the proper safeguards, and marked "Exhibit No. 20."

[The document referred to was marked "Exhibit No. 20" for reference and was made public July 15, 1975, and may be found in the files of the subcommittee.]

Mr. TARTAGLINO. It is addressed to Mr. Pommerening, as I mentioned. It just passed through his office. It is from me. The subject is request for an investigation. It is as follows:

The Honorable Glen E. Pommerening, Assistant Attorney General, Office of Management and Finance, From: Andrew C. Tartaglino, Acting Deputy Administrator, Subject: Request for an Investigation.

In accordance with our conversation of November 13, 1974, in which I sought your guidance, with regard to a series of problems which have arisen within DEA, I am providing the following brief summary as requested.

During the course of my service within DEA, I have sought to discharge the duties assigned me in a professional manner with loyalty to the agency and its Administrator, Mr. John R. Bartels, Jr. I have also striven to accept the organizational and personnel changes which he wished to institute, even when these required personal sacrifice and diminishment of status and level of responsibility of myself and other government careerists with whom I have worked.

Since July 1, 1973, I have acted as the Acting Deputy Administrator of DEA in all situations which Mr. Bartels desired, not out of my own choosing, but because he requested that I do so. Even though my service in this capacity was merely temporary and, therefore, all the more difficult, I sought to be of help to him and to ease the burdens of administrative responsibility in every action which I have undertaken.

Since early September of this year, the situation within DEA has grown increasingly intolerable for me because of differences which have arisen between myself and Mr. Bartels in certain areas of policy and procedure with regard to preserving the agency's integrity. For example, I have repeatedly urged the need for increased manpower within the Office of Inspection to enable it to deal with past, present and future alleged breaches of integrity in a professional manner.

Mr. Bartels reluctance to provide these additional resources, though perhaps entirely proper when balanced against other agency needs, nevertheless, evidence a lesser commitment to the importance of maintaining the agency's integrity than I had supposed.

One of the more serious matters which has troubled me is his failure to consult with the Office of Inspection in advance of sensitive, high-level appointments. Although I feel the Inspection service should have no voice in personnel selection generally, it should be given the opportunity to surface serious integrity problems which may exist prior to final selection for sensitive positions. There are several instances since the establishment of DEA in which information possessed by the Office of Inspection should have been considered prior to the appointment of such persons.

One of the most unfortunate of these cases was the recent nomination of a candidate for the position of (position deleted) which neither I nor the Acting Chief Inspector of DEA have ever been officially informed, though it has become common knowledge. This individual is also the subject of serious allegations documented within our files which have never been resolved.

Moreover, Mr. Bartels was informed of their existence many months prior to the nomination of this individual and never gave approval for measures designed to resolve them. Equally unintelligible is the fact that he failed to inform either the Justice Department or the FBI, particularly, of the existence of these allegations in our files. It will be both an embarrassment to the agency and a personal

tragedy for the individual concerned if this information previously ignored should now result in withdrawal of his nomination.

The failure of Mr. Bartels to consult the Office of Inspection in these matters is further evidence to me of the lack of importance with which he views the need for integrity within a law enforcement agency. This and other examples suggest that he simply fails to grasp the concept as it is understood within a sensitive government service.

For example, when Mr. (name deleted) was disqualified because the FBI investigation disclosed misuse of government travel vouchers bordering on criminal fraud, he then wished to appoint this individual as a consultant to the agency in spite of the obvious impropriety which this would suppose.

Chairman JACKSON. Was that nomination withdrawn?

Mr. TARTAGLINO. It was never submitted.

Chairman JACKSON. It was never submitted because of the information? You don't know why?

Mr. TARTAGLINO. I don't know why, but that nomination never went forward out of the Department.

Finally, my experience in dealing with the investigation of Mr. Promuto, the Director of Public Affairs, and a close confidant and companion of the Administrator, has created the most painful of ethical problems for myself and Mr. Brosan, the Acting Chief Inspector. The investigation was undertaken only after our own inspection services was approached by the Organized Crime Section of the Washington Metropolitan Police which had collected a quantity of evidence concerning Mr. Promuto's association with active suspects.

Even within a short time, we were able to adduce ample evidence of his recent association with known felons, prostitutes, and suspected drug peddlers, and there is yet a more serious allegation recently derived from an FBI informant which is under review. This clearly evidenced the need for a thorough and impartial investigation in order to derive the truth and assess its impact on the agency and Mr. Promuto's service within it.

This to me is not simply a question of seeking to establish guilt, which may or may not be the case, but one of maintaining our reputation for integrity within the law enforcement community and proving that we have both capacity and objectivity for investigating our own officers when need arises. Needless to say, this is a matter with serious potential for adversely affecting DEA's reputation within the several enforcement agencies in which it is known.

In spite of this need, the actions of Mr. Bartels have been such as to impede the investigation at each step and, therefore, to infer that Mr. Promuto was to receive considerations not usually afforded others in such cases. The investigation was undertaken immediately upon receipt of the information from the Washington Metropolitan Police, though Mr. Bartels was at that time out of the country and did not return for four days.

After he learned of it, he admonished Mr. Brosan, the Acting Chief Inspector, to under no circumstances commence an investigation against a major agency official in his absence. Thereafter, he prematurely, and in my opinion, unnecessarily informed Mr. Promuto of the fact of the investigation and its nature. He and a consultant associate discussed the matter with Mr. Promuto in the absence of either Mr. Brosan or the investigators involved, and never advised either of the substance of their discussion.

He next insisted both improperly and prematurely that written interrogatories be submitted to which he would respond in writing prior to any oral questioning or interview. He then established arbitrary deadlines in which Mr. Promuto must be questioned and for the submission of a written report prior to the conclusion of the investigation.

Until the last several days, both Mr. Brosan and I found it virtually impossible to meet or communicate with Mr. Bartels concerning the investigation. We have learned of his extreme displeasure with it and with Mr. Brosan through communications with third persons. At the same time, he has continued his close association with the subject of the investigation who also continues to have access to the highest levels of policy and information.

Senator NUNN. May I ask a question at this point, Mr. Chairman? Maybe it is in the previous testimony. What is Mr. Promuto doing now?

Mr. TARTAGLINO. My understanding is he is assigned to New York, in the Office of Public Information; that is, the New York office of the Drug Enforcement Administration, as a public information officer.

Senator NUNN. He is still with the agency?

Mr. TARTAGLINO. Yes.

Senator NUNN. Does he still have access to this information and material?

Mr. TARTAGLINO. I would say he has access in the New York area. He has access of the material to function as the public information officer.

Senator NUNN. Has his degree of access changed in moving from Washington to New York?

Mr. TARTAGLINO. I think you would have to say he has less access to information around the country by being in New York, whereas in headquarters he had much broader access.

Mr. Bartels' attitude, in addition to the actions described above, have naturally tended to retard the investigation, intimidate the Chief Inspector, and destroy the morale within the Office of Inspection and on the part of other agency officials who gained knowledge of the proceedings by virtue of their position.

On November 13, 1974, in a private meeting with Mr. Brosan, Mr. Bartels informed him that he could not remain within the Office of Inspection and issued new instructions to the effect that no ranking agency officer would be investigated until he had first been confronted with allegations which had been received. Obviously, no investigation could ever succeed under such guidelines and the instructions are entirely unacceptable to Mr. Brosan, myself, or any other professional investigator who might be charged with this responsibility.

Under these circumstances, I no longer feel that I can forthrightly serve the agency or its Administrator, as its Chief Inspector; and it was for this reason that I sought your guidance on October 23, 1974, for the purpose of seeking reassignment to another area within the Department.

But apart from my personal problems in accepting the situation with which I am confronted, I think it clear from a consideration of the totality of the circumstances, that an immediate independent investigation of this matter should be undertaken by the Department of Justice as soon as possible. This is made all the more urgent because it now appears that at least some of the details of the circumstances have become known to a reporter from the Washington Post, though neither Mr. Brosan or myself have any certain knowledge of how this may have occurred.

Please be assured that I shall be of such further assistance in resolution of this matter as may be desired of me.

On the afternoon of November 14, 1974, I had a conversation with Mr. Bartels, in the presence of Mr. Casey, about our policy differences regarding integrity procedures. It focused on the confrontation issue and particularly the value of confronting senior executives with allegations of criminal misconduct before commencing investigation of them.

Confronting a person who is subject to allegations of criminal misconduct is an acceptable technique when traditional procedures have been exhausted. To commence an investigation in this manner serves to alert the subject to the allegations and has little chance of success. It also differs greatly from the manner in which we pursue allegations of criminal activity involving private citizens.

I tried, through Executive Officer Daniel P. Casey, to arrange a meeting with Mr. Bartels to discuss these matters with him further and a tentative meeting was set; however, the proposed discussion was canceled at 5:30 p.m., on November 15, 1974, by Mr. Casey, after Mr. Bartels returned from Mr. Silberman's office.

I was in a travel status between November 18 to 21, 1974, and learned on return to my office that Associate Deputy Attorney General Michael Spector had called on November 21, 1974. Mr. Spector reported directly to Mr. Silberman.

On November 22, 1974, Mr. Spector wanted to know if I opposed their making Mr. Bartels aware of the material in my letter of November 14, 1974. I said I had no objection if that be their judgment. Mr. Spector told me the Criminal Division of the Department or the FBI would be assigned the investigation and would interview witnesses.

Phillip White, senior staff attorney of the Criminal Division, called for the Promuto file on November 22, 1974. He said he had the job of reviewing files and that probably Assistant Attorney General Henry Peterson would want to talk to me in due course. Mr. Brosan duplicated and delivered the Promuto file.

On November 22, 1974, after talking with Mr. Brosan, I called Mr. Spector and asked that they investigate as much as possible before alerting Mr. Bartels as to the actual substance of the allegations against him. I mentioned that Inspection would prefer the investigation conducted in the traditional manner and that a minimum of information regarding my allegations be provided Mr. Bartels until the investigation was near completion.

On November 22, 1974, Robert Albright, the Comptroller of DEA, delivered to me a staff paper recommending an increase of seven inspectors. There was no explanation as to why this apparent change in decision at this time.

On November 25, 1974, Mr. Spector told me the investigation was under the direction and supervision of Deputy Attorney General Silberman. I understood this to mean that Mr. Silberman had taken over direct investigation. On November 26, 1974, Mr. Phillip White of the Criminal Division called me to confirm with me that I was raising a procedural point with regard to the Promuto investigation and not discussing the guilt or innocence of Mr. Promuto. The procedures were primarily the barriers to a successful resolution of the Promuto case.

On November 27, 1974, DEA Associate Chief Counsel Robert Richardson confirmed to me that Mr. Bartels had asked Mr. Richardson in early September 1974, to call Geoffrey Shephard at the White House and suggest Mr. Promuto as a candidate for Deputy Administrator. Bruce Jensen who was executive officer to Mr. Bartels, corroborated the fact that Mr. Bartels was considering naming Mr. Promuto as Deputy Administrator.

On December 2, 1974, Mr. Casey told me that Mr. Bartels wanted me to be interviewed regarding my reasons for going to the Department and wanted to know why I did not go and see him. I explained to Mr. Casey that all the issues had been discussed thoroughly with Mr. Bartels and the Promuto matter was the principal issue. I also explained again to Mr. Casey the difficulty in not having access to the Administrator and the problem in dealing through third parties. The conversation was ended with my request to Mr. Casey that we meet and discuss them forthwith with Mr. Bartels.

On December 3, 1974, I was queried by Mr. Casey regarding the departmental investigation. Mr. Casey said the FBI was getting involved and would investigate the allegations. Mr. Casey said Mr. Bartels wanted to know the precise allegations and I told Mr. Casey

to arrange a meeting with Mr. Bartels and I would explain them to him. I again mentioned the difficulty of going through third parties.

On December 4, 1974, Inspector Bill D. Williams of the FBI telephoned me and said he wanted to interview me on behalf of Mr. Silberman with regard to my memorandum dated November 14, 1974, in my office. I confirmed the FBI authority and status with Associate Deputy Attorney General Michael Spector on December 4, 1974.

On December 4, 1974, I attempted to see Mr. Bartels with no success. I also informed Mr. Casey that I confirmed the right of FBI representatives to go into any and all areas of DEA. I so advised Inspection.

On December 5, 1974, FBI Inspectors Bill D. Williams and Edward Hegarty interviewed me in my office from 8:30 a.m. to 1:30 p.m. The Inspectors made it clear they were on assignment to Deputy Attorney General Silberman and they would function as representatives of his office, as opposed to being officials of the FBI. During this meeting, we covered a broad range of items in the integrity area.

Inspector Williams took extensive notes. The interview concerned the background of our integrity problems, as I viewed them, our relationship with some State and local police departments, violations of the Civil Service merit system in DEA, staffing of the Office of Inspection, utilization of consultants without clearances and other matters. Mr. Hegarty asked whether I would like to comment on Mr. Bartels' management competence or ability and I declined because I did not want to obscure the reasons that motivated me to write to the Department.

We discussed at length the Promuto matter, which to my mind was the principal issue and I did not want to dilute their inquiry by getting too far removed from what I viewed as improper procedure in the Promuto case. We also talked of other witnesses who would corroborate me with regard to Promuto. Specifically, I recommended they interview George Brosan, Inspectors Bruce Jensen, Thomas Cash, Allen Yarborough, Murle Whittington, Associate Chief Counsel Robert Richardson, and Deputy Assistant Administrator John Lund. Messrs. Williams and Hegarty departed and told me they would communicate with me the following day.

On December 6, 1974, Inspectors Williams and Hegarty came to my office at 9 a.m., and specifically requested me to document certain areas that had been covered in the interview the previous day. They requested I explain in writing my personal situation at the time of the merger, reductions of other individuals' status, and grade, in DEA at the time of the merger, some specific allegations against officials still on board, the Promuto matter and other integrity matters.

On December 11, 1974, I telephoned and informed Inspector Williams that the report he requested was ready. On the same date, he came to my office with Inspector Hegarty and picked up the report which is dated December 11, 1974. Inspector Williams expressed his appreciation for the report and said he doubted it would be necessary to see me again.

This memorandum includes the Promuto incident which to my mind was the principal issue and states in part: Mr. Brosan has set forth, in detail, the efforts of Mr. Bartels to frustrate, impede and obstruct the Promuto investigation. In essence it consisted of:

(1) The untimely and premature confrontation of Mr. Promuto by Mr. Bartels and Attorney Thomas Durkin, thus severely limiting

normal investigative procedures that may have enabled us to arrive at the truth.

(2) Refusing or failing to provide the inspectors with notes, summaries, or information concerning the nature of the interview of Mr. Promuto.

(3) On September 28 and 29, 1974, Mr. Bartels insisted that Mr. Promuto be given written questions in complete form covering all allegations and permit him to complete and return them the next day.

(4) Mr. Bartels insisted on a written summary before an investigation was completed. He insisted the reports be without allegations, inference or innuendo, and so forth. This was before the inspection staff had an opportunity to investigate the allegations completely.

(5) The summary was then used to obtain a premature opinion from the Civil Service Commission.

(6) The chief inspector was subjected to continual criticism, harassment, and intimidation without one item of written direction, guidance or criticism that would serve to explain Mr. Bartels' actions and attitude. This has left the inspection service completely confused and demoralized and I am not certain any of them know today the exact status of the Promuto investigation.

[At this point Senator Javits withdrew from the hearing room.]

Mr. TARTAGLINO. Mr. Chairman, I believe the subcommittee has obtained from the Department of Justice a copy of my memorandum dated December 11, 1974, addressed to Inspectors Bill D. Williams and Edward D. Hegarty. You may wish to make it a confidential exhibit. Much of the data within is sensitive or confidential, and its public release would be unfair to some of the individuals concerned.

Chairman JACKSON. It will be received as exhibit No. 21.

[The document referred to was marked "Exhibit No. 21" for reference and was made public July 15, 1975 and may be found in the files of the subcommittee.]

Chairman JACKSON. Your request is that it be received as a confidential exhibit at this time. Is that the one of December 11?

Mr. TARTAGLINO. Yes, Mr. Chairman.

Chairman JACKSON. That would be confidential. I think that is your request in your statement.

Mr. TARTAGLINO. Yes, Mr. Chairman.

On December 17, 1974, I noticed that routine mail to my office had reduced considerably and that a senior DEA policy group had been created and I was not included.

On December 18, 1974, Mr. Bartels held a staff meeting in which he discussed the Promuto investigation and other matters including the departmental investigation. I was not there but learned of it latter.

Also on December 18, 1974, I called Mr. Pommerening and requested he arrange a meeting for me to confer with Deputy Attorney General Silberman.

On December 20, 1974, Mr. Brosan and I were furnished with a copy of a teletype which was sent by Administrator Bartels to all DEA field installations both in the United States and overseas and for dissemination to all personnel.

It relieved Mr. Brosan and me of all duties and inferred we were being relieved because of bad management practices. It is as follows:

The following personnel assignments are effective immediately. I don't know whether it is necessary to read it in entirety. In effect, it relieves Mr. Brosan and me of our responsibility and details as to a special assignment.

Chairman JACKSON. It was your reward for doing your duty.

Mr. TARTAGLINO. It will be in the record.

Mr. FELDMAN. May we make as an exhibit the copy of the actual teletype, Mr. Chairman?

Chairman JACKSON. Yes; that will be received as exhibit No. 22.

[The document referred to was marked "Exhibit No. 22" for reference and follows:]

EXHIBIT No. 22

UZCZCND0854
RTTUZYUW RIIEARND0247 3541730-UUIUJ--RUESMO RIIMJOB RIIFNPS RUESRS
RIIMQGH RIIMVC RIIEHOT.
ZNR UUIUJUI
R 201717Z DEC 74
FM DEA HQS WASHDC
TO RUESMO/AMEMBASSY MEXICO
RIIMJOB/AMEMBASSY BANGKOK
RIIFNPS/AMEMBASSY PAPIS
RUESRS/AMEMBASSY CARACAS
RIIMQGH/AMEMBASSY ANKARA
RIIMVC/AMEMBASSY MANILA
RIIEHOT/AMEMBASSY OTTAWA
ZEN/ALL DEA DOMESTIC REGIONAL DIRECTORS
ZEN/ALL DEA LABORATORY DIRECTORS
ZEN/MYJTF
BT
UNCLAS DEA 10247/DOM0642

FOR DEA

THE FOLLOWING PERSONNEL ASSIGNMENTS ARE EFFECTIVE IMMEDIATELY:

ANDREW C. TARTAGLINO, ACTING DEPUTY ADMINISTRATOR-RELIEVED OF ALL OTHER RESPONSIBILITIES AND DETAILED TO ME FOR A SPECIAL ASSIGNMENT.

GEORGE B. BROSAN, ACTING CHIEF, INSPECTION & INTERNAL SECURITY - RELIEVED OF ALL OTHER RESPONSIBILITIES AND DETAILED TO ME FOR A SPECIAL ASSIGNMENT.

PHILLIP R. SMITH, CHIEF, DOMESTIC INTELLIGENCE DIVISION-DETAILED TO OFFICE OF INSPECTION & INTERNAL SECURITY AS MY PERSONAL REPRESENTATIVE AND WITH FULL AUTHORITY TO REORGANIZE AND RESHAPE THE TOTAL INSPECTION PROGRAM CONSISTENT WITH THE MAJOR FINDINGS OF OUR RECENT MANAGEMENT STUDY. MR. SMITH WILL ASSURE THAT INSPECTION PRACTICES IN THE FUTURE ARE CARRIED OUT WITHIN SPECIFIED PROCEDURES AND GOOD MANAGEMENT PRACTICES. INSPECTION IS AND REMAINS ONE OF THE CRITICAL LINKS IN THE ORGANIZATION AND HAS MY FULL SUPPORT. REGIONAL INPUT AND ASSISTANCE WILL BE REQUIRED BY MR. SMITH.

ABOVE PERSONNEL ARE INFORMED OF THIS ASSIGNMENT BY COPY HEREOF. REGIONS WILL PASS TO APPROPRIATE FIELD OFFICES OR INSPECTION & INTERNAL SECURITY.

RAPTELS, A

BT

#0247

A, AD, CC, IN, PA, IG, EN, MA, ST, TR,

Chairman JACKSON. That is the teletype that went out to all the regional offices throughout the country.

Mr. TARTAGLINO. That is correct, Mr. Chairman.

I might mention that in the chain of events, someone from the field received it and called in and told us about it. I think that will be developed in Mr. Brosan's testimony.

Senator NUNN. Would you explain for just a moment, what is the purpose of sending a teletype to all the offices around the country? Is it standard procedure, when anybody of high rank is relieved, that everybody is supposed to be notified? Is that standard operating procedure?

Mr. TARTAGLINO. I think it is normal procedure to teletype personnel transfers. I would say, this is probably the first teletype that I have seen go to the field with the implications that follow in paragraph 2 and paragraph 3 or paragraph 4 suggesting mismanagement.

Later that afternoon, Mr. Casey informed me verbally of a new temporary assignment. He apologized for not having told me in advance of the nature and content of the teletype. He told me it was drafted at the insistence of Assistant Administrator Nelson B. Coon, who was acting as a close adviser to Mr. Bartels in the Promuto matter.

Mr. Casey mentioned that my new assignment would relate to Law Enforcement Assistance Administration funding of our task forces and Mr. Coon was in process of preparing the memorandum which would detail the assignment.

On December 30, 1974, Mr. Casey informed me that Mr. Bartels was furious over comments I had given to the FBI inspectors regarding an FBI background investigation of a senior official who was being considered for high position in DEA.

I mentioned that the information was a matter of record in the inspection file and the furor was caused by Mr. Bartels' failure to inform or his attempt to withhold the information from the FBI during the FBI's routine background investigation of the nominee.

[At this point Senator Javits entered the hearing room.]

Mr. TARTAGLINO. I had asked the FBI inspectors whether Mr. Bartels would review the data given by me in confidence, but I never received a response. My particular concern was that inaccurate interpretations might be put on comments of mine.

While I had no problem with Mr. Bartels reviewing any memoranda of interview with me, I thought I should be given an opportunity to review and insure the accuracy of any statement attributed to me. Mr. Casey stated that Administrator Bartels was equally upset with former Director Ingersoll's comments regarding the background investigation the FBI was conducting on a senior official being considered for a senior position.

On December 30, 1974, Mr. Casey delivered to me a document dated December 20, 1974, signed by Administrator Bartels directing me to a special project regarding the funding by LEAA of DEA task forces.

Mr. Casey said he would inform me further the following week. Mr. Casey said the "FBI report" regarding my letter of complaint was on Mr. Bartels' desk and that he, Mr. Bartels, had not completed reading it. Mr. Casey said he would read it after the Administrator reviewed it.

On January 8, 1975, I received a telephone call from Assistant Attorney General Glen E. Pommerening advising me that Deputy Attorney General Silberman would see me on January 9, 1975, at 10:30 a.m.

On January 9, 1975, I met with Mr. Silberman in his office. Present at the meeting were Assistant Attorney General Glen E. Pommerening and Associate Deputy Attorney General James D. Hutchinson, Mr. Silberman, and myself. The meeting lasted almost 2 hours. Mr. Hutchinson took notes. After a short time, it was evident to me that Mr. Silberman had not been made familiar with the real issues and was not provided with sufficient details to discuss my memorandum dated November 14, 1974. In some cases he appeared to have the wrong connotation. For instance:

1. He focused on the guilt or innocence of Mr. Promuto as opposed to procedure in the Promuto investigation.

2. Mr. Silberman was of the opinion I had called the FBI with regard to an investigation regarding a DEA nominee with the intent of preventing his nomination when actually I called the FBI because information of a derogatory nature had been withheld by Mr. Bartels and I did not want the Department or DEA embarrassed.

3. Mr. Silberman mentioned he had never sent Mr. Promuto's name to the White House as a possible Deputy Administrator nominee. I said Mr. Richardson and Mr. Bruce Jensen both told me that Mr. Bartels had asked Mr. Richardson to call the White House and recommend Mr. Promuto. I did not say Mr. Silberman had submitted Mr. Promuto's name in nomination.

4. Mr. Silberman brought up the name of another person who was being investigated by the FBI for consideration as Deputy Administrator until possible voucher fraud was brought to the FBI's attention.

Mr. Silberman said he had not sent his name forward as a nominee and he never worked for DEA. I never alleged he was employed by DEA. Actually, the issue here was that Mr. Bartels wanted him hired as a consultant in DEA after the possible voucher fraud was detected while he was under investigation by the FBI.

5. Mr. Silberman indicated poor judgment was exercised by me in investigating Mr. Promuto while he was in Europe with Mr. Bartels. He used the analogy that he would never commence an investigation of an aide or close friend of the Attorney General's without first clearing the matter with the Attorney General, if they were both away together on a trip.

I disagreed but accepted this judgment. I might point out that Mr. Promuto was actually under my direct supervision and not Mr. Bartels'.

6. Mr. Silberman said that resource allocation in either the form of manpower or funds was the decision of Mr. Bartels. I agreed fully and my only intent was to render a clear signal that workload of a critical nature was falling behind.

7. Additionally, Mr. Silberman stated that Mr. Bartels was not required to consult me or the Office of Inspection with regard to personnel selections. Again, I agreed and only mentioned that I raised it as a sensible thing to do.

8. Mr. Silberman asked me what I would like to do and I suggested a temporary reassignment to Justice for myself and Mr. Brosan be-

cause tensions were becoming intense at DEA. At my request it was agreed that Mr. Brosan and I would report for duty on Monday, January 13, 1975, for temporary duty.

9. Mr. Silberman said he was prepared to fire Mr. Bartels if the charges were substantiated.

I am unaware of the results of Mr. Silberman's inquiry into these matters.

On January 10, 1975, Mr. Hutchinson telephoned me and expressed his appreciation for putting the nominee matter in the proper perspective. Mr. Hutchinson thanked me for taking the action I did and pointed out that it prevented possible embarrassment to the Administration, the Department, and DEA.

I reported this to Mr. Casey for transmittal to Mr. Bartels.

On January 16, 1975, possibly as a result of many inquiries from the media, the Department of Justice issued the following press release:

In November of 1974, Mr. Andrew C. Tartaglino, then Acting Deputy Administrator of the Drug Enforcement Administration (DEA), raised questions concerning the policies and procedures of DEA, including actions by the Director of DEA, Mr. John R. Bartels, Jr. After examining these questions, I directed that a special review be conducted under my direct supervision by the Inspection Division of the Federal Bureau of Investigation. The Bureau agents were asked to investigate the matters raised by Mr. Tartaglino, along with Mr. Bartels' concern about practices of DEA's Office of Inspection.

Following a thorough review, I concluded that Mr. Tartaglino's concerns, although raised in good faith, were without substantial foundation. After the investigation, which took several months, Mr. Bartels and Mr. Tartaglino agreed that it would be in the best interests of the DEA that Mr. Tartaglino and Mr. George Brosan, Chief of the Office of Inspection, be reassigned to other duties within the Department of Justice.

This press release was the first notification I received that the Bureau agents or anyone had conducted a review of inspection practices. No one has communicated with me in this regard.

Mr. FELDMAN. Mr. Chairman, could I interrupt and place this in the record as exhibit No. 23?

Chairman JACKSON. This is the press release of Mr. Silberman. It will be exhibit No. 23.

[The document referred to was marked "Exhibit No. 23" for reference and will be found in the files of the subcommittee.]

Mr. TARTAGLINO. I might add that my last responsibility in the Office of Inspection was toward the end of May 1969.

The Promuto case was merely a symptom of a pattern I observed developing that set out considerations in the investigative process much different than those normally employed by the professional investigator in the course of his regular duties. And while the Promuto investigation appeared to be subverted, the Office of Planning and Evaluation of DEA prepared an analysis of inspection that set out some policies that in some respects seek to justify the changed procedures which were imposed on the Promuto investigation.

As I mentioned earlier, it is my understanding that the FBI inspectors were functioning as representatives of Mr. Silberman's office. I cannot detail the extent of their charter, the results of their investigation, or any constraints or limitations imposed on their investigation. They said that the investigation was being handled under the supervision of Mr. Silberman, the then Deputy Attorney General.

In summary, I can only conclude that the manner in which the Promuto investigation was hobbled by DEA and the manner in which the DEA policies deviated from professional investigative procedures effectively establishes a system of privileged treatment for agency officials which would never be extended to investigations of private citizens.

Such a system can only encourage corruption and lead to the demoralization of dedicated agents. I have seen it happen before and for that reason could not stand in silence and watch it happen again.

I will be pleased to answer any questions you may have.

Chairman JACKSON. Thank you, Mr. Tartaglino.

In your testimony you have referred to the fact that in the New York area, dating back to 1958, 1957, 1961, there was substantial corruption in that area office: right?

Mr. TARTAGLINO. Yes, sir.

Chairman JACKSON. Would you say that that situation may have prevailed elsewhere in the country? Was it just the New York office?

Mr. TARTAGLINO. I don't think it was to the extent that was found in New York in other parts of the country, but there were incidents of corruption in other parts of the country.

Chairman JACKSON. Which were not being properly investigated?

Mr. TARTAGLINO. I can think of one in St. Louis, Mo., that had been buried in the files out there for a long period of time and was not uncovered until we went out to St. Louis.

I would say that there may have been two incidents in the California area that fall in the same category.

Chairman JACKSON. How long ago?

Mr. TARTAGLINO. I am talking about in 1967 and 1968.

Chairman JACKSON. It is very disturbing to find Mr. Silberman conducting an investigation and finds that there is no problem as far as Mr. Bartels is concerned, and then subsequently Mr. Bartels is fired.

You mentioned that the FBI inspectors were acting as representatives of Mr. Silberman's office. Were they given a free hand to go in all directions? How long were they involved in that inspection; do you know?

Mr. TARTAGLINO. I just can't detail the charter they had.

Chairman JACKSON. They were not operating under the direction of the FBI at that time?

Mr. TARTAGLINO. That is an assumption that I made at the time that they were working for Mr. Silberman.

Chairman JACKSON. I think Mr. Silberman refers to it in his January 16, 1975, press release. He is quoted as saying, "I directed that a special review be conducted under my direct supervision by the Inspection Division of the Federal Bureau of Investigation."

I understand that the agents were only on it a few days. Do you know about that?

Mr. TARTAGLINO. No, sir.

Chairman JACKSON. They were acting directly under Mr. Silberman's request. We will, of course, ask that the agents come up and testify on this because it is obvious that the January 16, 1975, press release indicates or leaves the inference that the FBI had gone into this; there was nothing there; and subsequently Mr. Bartels of course is fired.

I am concerned about this: You state that by November 1, 1974, you had reached the inescapable conclusion that Mr. Bartels' actions were impeding the investigation of Mr. Promuto.

That is a very serious allegation. It may raise a question of obstructing justice if he deliberately was attempting to prevent a proper investigation here.

Could you elaborate on this?

Mr. TARTAGLINO. Not any more than the points I have set out in my memorandums, the five or six points.

Chairman JACKSON. Why was he so protective? That is the only way I can read your statement here. Can you tell us why he was so protective of Mr. Promuto?

Mr. TARTAGLINO. I think you will have to address that to Mr. Bartels. I just don't know, Mr. Chairman. I am sorry; I can't respond to that.

Chairman JACKSON. I ask it because Mr. Bartels knew, or should have known, about these allegations relating to Mr. Promuto. Is that correct?

Mr. TARTAGLINO. Mr. Bartels was made aware as soon as he returned from Europe and was kept advised. It went back and forth. There was a period of time that it changed jurisdiction from the Office of Inspection to the Office of Chief Counsel, but he was directly involved in the investigation from the day he returned from Europe.

Chairman JACKSON. Did he ever indicate to you—

Mr. TARTAGLINO. He knew everything that we knew.

Chairman JACKSON. Did Mr. Bartels ever indicate to you that there was no basis for these allegations concerning Mr. Promuto?

Mr. TARTAGLINO. He expressed disappointment in another way. Let me respond: In my conversations with him, he expressed disappointment in some of the procedures that Mr. Brosan was taking.

Chairman JACKSON. Mr. Bartels' position was procedurally that the individual had to be notified in advance. Your position is that that would frustrate your ability to conduct a thorough indepth investigation. Isn't that the basic dispute?

Mr. TARTAGLINO. Mr. Chairman, in the October 1 meeting that we had, I think there were five or six present at the meeting; that is, the meeting that Mr. Bartels asked me to explain some conversation that I made at that meeting.

One of the things that I said at the meeting was that a couple of steps had been taken here that are very, very similar to Watergate, and I used that word, and he was upset about it.

I don't see how I can, to answer your question—I couldn't be clearer than that. After that, I continued to maintain a fairly good rapport with him, and made an effort through the month of October to see if we could get this thing back on track.

Chairman JACKSON. Mr. Promuto, as the Chief Public Affairs Officer, had access to everything in the Department: did he not? He had to have that right in order to fulfill the duties of his position; right?

Mr. TARTAGLINO. Yes, Mr. Chairman; that is correct.

Chairman JACKSON. Mr. Bartels was advised of serious allegations concerning Mr. Promuto, information that you called to his attention.

Did Mr. Bartels ever come back and say, well, now you justify this,

explain this? Did he ever come back and say there is no basis for this; you have bad information?

Mr. TARTAGLINO. I don't believe he did.

Chairman JACKSON. To you?

Mr. TARTAGLINO. To me, he didn't.

Chairman JACKSON. To you, I am talking about. Mr. Brosan was Chief Inspector and you were then Acting Deputy.

Mr. TARTAGLINO. That is correct.

Chairman JACKSON. You were No. 2 man in the operation.

Mr. TARTAGLINO. Correct.

Chairman JACKSON. Did he come back to you or Mr. Brosan and say there is no basis for this?

Mr. TARTAGLINO. He did not come back to me after that and say there is no basis. I could tell. I predicated a lot of my thoughts on actions that he was taking.

Chairman JACKSON. This is what you said, and I quote:

By November 1st, I reached the inescapable conclusion that Mr. Bartels' actions were impeding the investigation of Mr. Promuto.

That is a serious allegation obviously. What you don't know, I gather, is whether it was deliberate or not; is that a fair statement?

Mr. TARTAGLINO. I cannot address myself to the intent of his actions.

Chairman JACKSON. But the effect of it as to impede the effort and to frustrate it?

Mr. TARTAGLINO. That is my judgment.

Chairman JACKSON. Then on page 57 of your statement is reference to the memorandum which you had sent, which referred to the Promuto matter which, to my mind, was the principal issue. It states in part that Mr. Brosan had set forth in detail the efforts of Mr. Bartels to frustrate, impede, and obstruct the Promuto investigation. Then you set out the bill of particulars.

It seems to me that there is at the heart of this a situation that is very serious as it relates to Mr. Bartels, and I am at a complete loss to know how the Deputy Attorney General, Mr. Silberman, could have suddenly found there is no problem here in light of all of these allegations without coming back and saying we find that this allegation is not substantiated or this charge is not true, and so on.

This subcommittee was, of course, making inquiry into certain DEA operations as early as 1973 to seek to evaluate what was going on down there. Mr. Bartels was indicating that the subcommittee didn't know what it was doing and making personal allegations against me. But that is neither here nor there.

The point I want to make is that I don't understand why this information was not fully ventilated, reviewed, and explored in fairness to the individual. I want to see a person get a fair hearing.

Now the Department of Justice, under the very able leadership of Attorney General Levi, has set up a task force that is going into all of this. Is that your understanding?

Mr. TARTAGLINO. That is my understanding.

Chairman JACKSON. That has been a public announcement.

Mr. TARTAGLINO. Yes. They have a three-man group that was established on March 28.

Chairman JACKSON. The task force was set up after the subcommittee had demanded the pertinent information. Meanwhile, Mr. Bartels

was denying vehemently that there was anything to this. We were zeroing in on this issue, and then they got busy. They got rid of Mr. Bartels, and they set up a special task force.

Mr. TARTAGLINO. Let me explain some actions that I think will be responsive to your initial question rather than words. In a conversation that I had with Mr. Bartels, I had several conversations in mid-October with Mr. Bartels in which he expressed great disappointment with Mr. Brosan.

In these conversations, I very frankly told him I didn't think Mr. Brosan was doing anything wrong. At one point he wanted me to move in and take charge of this particular investigation because he was critical of some things, as Mr. Brosan sent a man all the way out to the Midwest to investigate or to interview a prisoner in connection with this.

It was a perfectly obvious thing to do in connection with the Promuto investigation.

He said he is interested in running around with people in the bar, Fran O'Brien's, because he is a celebrity. Gamblers have been hanging out there for years—Promuto, by virtue of being a celebrity, said he normally comes in contact with these people. So he sought to justify these actions.

On the report to the Civil Service Commission that I mentioned in my statement, it was premature to send a report to the Civil Service Commission. We tried to get Mr. Bartels to understand, but he asked the report to not include any allegations, any innuendo, or any inference.

This was at a point when the investigation was being stifled. So we may as well have submitted two blank sheets of paper as far as I was concerned.

Chairman JACKSON. But have you seen any refutation of the information that Mr. Brosan and you submitted, regarding the Promuto case? Was there ever any definitive response in terms of refutation of his associations with known criminals, prostitutes, obviously conduct that was not called for in connection with his duties as the Chief Public Affairs Officer?

It would be something else, one could argue, if he were an undercover agent, but he was hardly undercover. He was at the top. He was out there in the open. There are the allegations; I have read them here.

Did they give you any refutation to that, or to Mr. Brosan? You don't know whether he did to Mr. Brosan, but you were the No. 2 man.

Mr. TARTAGLINO. I have never received any refutation.

Mr. FELDMAN. In fairness to Mr. Promuto in the written questions that were submitted to him, he did deny all of the allegations. Is that correct?

Mr. TARTAGLINO. That is correct.

Mr. FELDMAN. I want to make the record clear on that.

Mr. TARTAGLINO. I just feel it more appropriate for Mr. Brosan to address himself to that rather than repeat something he may have told me, Mr. Chairman.

Chairman JACKSON. I only want you to testify as to what you know. We want to be fair here, but these allegations are very serious. The

facts are, or they are not, that he had these associations. I haven't seen his responses.

Mr. FELDMAN. Mr. Chairman, there were written responses submitted by Mr. Promuto in this rather unusual setup that we had talked about this morning. The written responses were not under oath. He made denials on some, and in later examinations and interviews there were some changes in some of the answers to those questions which we will be getting into as we proceed.

Chairman JACKSON. Senator Javits.

Senator JAVITS. Thank you, Mr. Chairman. Due to engagements out of Washington, I was unavoidably absent from yesterday's opening session of this subcommittee's comprehensive inquiry into the performance and operations of the Drug Enforcement Administration. I take this opportunity to endorse the initiative of the chairman and ranking minority member, Senator Percy.

Following the establishment of the Drug Enforcement Administration pursuant to Reorganization Plan No. 2 of 1973—which was reported out of the Executive Reorganization Subcommittee by Senator Ribicoff and myself—our record contained extensive testimony concerning interagency conflicts between the Customs Bureau and the Bureau of Narcotics and Dangerous Drugs, the agency from which DEA's authorities were derived. During the difficult and controversial 2 years since DEA was created, the agency has been caught in a continuing whirlwind of controversy in which an extraordinary number of serious allegations of internal conflict and dissensions, of mismanagement, corruption, and ill-advised policy decisions relating to Federal priorities in this field, have been made. During this period also, the Nation and the agency suffered through a series of incidents in which Federal narcotics agents used verbal and physical violence and unauthorized forced entry into premises mistakenly believed to be harboring suspects. The most widely publicized of these incidents took place in Collinsville, Ill., but there were several other serious incidents including one in Rochester, N.Y. Senator Percy took the lead in assuring that this course of conduct was thoroughly investigated and that the controversial "no-knock" authority authorized in 1970 in drug enforcement cases was repealed.

The allegations before this subcommittee are numerous and serious. In this fiscal year 1975, DEA has a \$135 million budget and over 2,000 special agents. Its responsibilities are indeed critically important. It is my hope that the matters which are discussed and developed in these hearings will not adversely reflect upon the overwhelming majority of Federal drug agents who are dedicated public servants faced with an extraordinarily difficult and dangerous public service. While we insist that a thorough investigation of this agency be made in these public hearings, it is my belief that every effort must likewise be made to protect the due process rights of those against whom allegations of misconduct have been made. I am confident that this will be the case in these hearings.

What was Promuto charged with? Was it a charge of association with known criminal elements or what? What was he charged with?

Mr. SACHS. Excuse me, Senator Javits.

Chairman JACKSON. Mr. Sachs is attorney for Mr. Tartaglino.

Mr. SACHS. The only reason for hesitancy here, and perhaps it is more appropriate for me to address myself to that, is that Mr. Tarta-

golino is under some constraints with respect to his present position in the Department of Justice, particularly one which instructs him perhaps understandably and naturally and properly not to make public release of information of unfounded allegations against DEA employees.

I hope the Senator will understand that Mr. Tartaglino cannot discuss in much further detail than his statement already does. We will be glad to bring that back to the Senator's attention, what could be called unfounded allegations.

It is not a self-defining term, I agree, but it is not easy for us to go beyond what he has already said.

Senator NUNN. There is a memorandum that has been made a part of the record that is confidential that Senator Javits might want to take a look at that goes into some of these charges. We had this in executive session, and we were informed specifically by counsel for Mr. Tartaglino the sensitivity of these charges, some of which, or most of which, I guess all of which, in this case, have not been established or proved. So we do have that as a matter of record.

Senator JAVITS. Let me understand the situation.

In your capacity at DEA you were investigating Promuto. Have you ever stated to this committee in any public session what was the charge you were investigating, or have you done it only in executive session?

Mr. TARTAGLINO. I have only done it in executive session.

Senator JAVITS. You have in the interest of the United States confined it to executive session.

Mr. TARTAGLINO. I can generalize the areas that are included in my statement. They were allegations dealing with associations with individuals. That was one of the allegations—gamblers, suspected drug violators, prostitutes.

Senator JAVITS. The end result which the investigation sought to achieve, is it correct that the end result would have been either removal from office or resignation, or was there any other possible result for Promuto?

Mr. TARTAGLINO. Actually, it could have gone further than that.

Senator JAVITS. Beyond that?

Mr. TARTAGLINO. Beyond that.

Senator JAVITS. But as far as the DEA is concerned, they are not the Justice Department or the courts; it means removal from office or resignation; is that correct?

Mr. TARTAGLINO. Removal from office or clearance.

Senator JAVITS. Or being cleared of the charges?

Mr. TARTAGLINO. Yes.

Senator JAVITS. So you were investigating a set of charges which you believe in the public interest and in the interest of the rights of the person charged—to wit, Mr. Promuto—should not be made public unless we choose to do it, based on your executive testimony, but you were investigating specific charges?

Mr. TARTAGLINO. That is correct, Senator.

Senator JAVITS. Mr. Promuto has been transferred. He is still in DEA; is that correct?

Mr. TARTAGLINO. Yes, Senator.

Senator JAVITS. This continues, notwithstanding the fact that Mr. Bartels is now gone and that there is a new Administrator?

Mr. TARTAGLINO. My understanding is he is still with DEA and he is in the New York office.

Senator JAVITS. And you have another job?

Mr. TARTAGLINO. I actually am the Chief Inspector of Drug Enforcement Administration on detail for 120 days to the Department of Justice.

Senator JAVITS. Why did you seek this other assignment? I heard you said there was tension. Why, having gotten your teeth in a kind of bulldog detective fashion in this situation, which is your duty as a public official, did you then walk away from it and ask for another assignment?

Mr. TARTAGLINO. Senator, I did a little bit of research overnight or two nights. I suppose on an important decision like this, I think your better public administration texts will tell you you have to make a reasonable effort to resolve something in-house.

You have to show a pattern of in-house activity, if that is the integrity activity and you also have another option, if you can't live it, then to seek resignation or to leave.

Unfortunately, I am not that economically stable where I can resign. So the next thing was, and I thought I did the best thing by reporting it to the Department, and which was perfectly proper, I sought a reassignment because I did not think that—well, it was ethically unacceptable for me to proceed.

Senator JAVITS. Would it be fair to say that you found yourself in such a confrontation with the head of the agency that you would prefer to move out of that agency or out of that work rather than to continue?

Mr. TARTAGLINO. Part of that decision, and I think it took place in my conversation with Mr. Silberman, is that my presence in DEA could result in many disgruntled people who had grievances and they would see I was in conflict with the Administrator and come to see me. My absence would permit the Administrator to better do his job.

Senator JAVITS. So you preferred to leave him free?

Mr. TARTAGLINO. I preferred to leave him free and also to fulfill my responsibility by doing what had to be done.

Senator JAVITS. Could we have some general survey from you as to the effectiveness of DEA inspection functions generally? All we have heard about essentially is the Promuto case. Do you have any appraisal you can give us of the general effectiveness of the work of the inspection side of the DEA and to what extent it served to keep the agency clean or whether it was unsuccessful? What is your conclusion?

Mr. TARTAGLINO. Before you came in, Senator, I had gone into a situation in New York and that estimate of the situation is that after repeated efforts to frustrate an investigation for a number of years, it finally resulted in some dozen agents being indicted, convicted of 45 or 50 resignations. I think that speaks for itself in all areas.

[At this point Senator Jackson withdrew from the hearing room.]

Mr. TARTAGLINO. I am afraid that today I am unable to give you an accurate estimate. I can tell you that I don't think the situation in New York or other offices even approach what it was in 1968.

But we have a backlog and if you don't get on something like this fast, then that cancer will just spread. Yes; there are problems today. When I left, and I don't know what has been done since January of 1975, there were many areas which I would have addressed myself on a priority area.

Senator JAVITS. As far as you know, how many individuals are on the DEA's rolls, either in New York or nationally, who are the subject of unresolved allegations or investigations?

Mr. TARTAGLINO. That would be an awfully difficult thing for me to say, but I think I could say that there are in excess of 20 individuals of supervisory or above in which there are incomplete or unresolved allegations. I think it goes much beyond that when you go—the reason I use the words “incomplete” and “unresolved”, I think we have to examine a file to see if it is professionally closed, just as we do in any other drug investigation.

Senator JAVITS. As I say, we have heard essentially about the Promuto case, but our job—that is fine and I thoroughly agree with the urgency for completely uncovering any wrongdoing or impeding of justice or anything like that—we must examine the agency's general practices also.

Do you have any recommendations for us as to how the particular function in which you were engaged should be discharged? Obviously, it is kind of a spotty record as far as you are concerned.

You have got the Promuto case in which you were frustrated and the New York cases in which you had a measure of success, but you, yourself, frustrated with these many unresolved cases and people, have gone on to other responsibilities. Under those circumstances, I say out of the spotty record, what is your recommendation to us as to how this function should be carried on?

In other words, is the form of organization that you were a part a proper one, or does your experience dictate that we ought to proceed along some other line?

Mr. TARTAGLINO. As far as the inspection service is concerned?

Senator JAVITS. Right.

Mr. TARTAGLINO. I feel it is a question—I happen to feel agencies can police themselves if you use the same rules and regulations that we use in pursuing allegations of criminal misconduct as we do against public citizens. That is basically my philosophy.

We all too often try to seek out reasons not to do it because of possible embarrassment to the agency. If a vigorous effort is shown and you play it fair and square that way, an agency can police themselves.

Senator JAVITS. That depends on the head man; doesn't it?

Mr. TARTAGLINO. I would say so; yes.

Senator JAVITS. In other words, it is he who really animates and inspires the policy?

Mr. TARTAGLINO. As one interrelates with the other, I don't suggest that you have to have 150 inspectors for a 4,000-man agency, otherwise we do have problems. But pieces have to fit in together. Management has to be able to do its job.

So there are a lot of jobs that perhaps inspection was doing that could be turned over to management that would free them to hard corruption issues.

Senator JAVITS. You feel it is capable of policing itself and that is the principle of organization which is here present, is in your judgment the right one?

Mr. TARTAGLINO. I have confidence that agencies can police themselves; yes.

Senator JAVITS. I don't know whether you have been asked about this before. If you have, please tell me whatever you wish on the subject. But I am referred to a rather sensational story of Jack Anderson's, indicating that an agent committed suicide when faced with the alternatives of resignation or making a complete disclosure of what he did or taking his own life and chose the last course.

That is cited as an example of excessive zeal in the inspection function. It is apparently a matter with which you are familiar. Do you wish to say anything to us about it?

Mr. TARTAGLINO. Yes, Senator. I will be happy to. I will start with that portion of it because there are many items which suggest excessive zeal in that particular article. One of the matters—well, first of all, the context in which I am quoted in the article is accurate, but it is out of context—the article suggests toward the end that a man is pleading his innocence and was not guilty of an offense when, in fact, the individual involved had bribed an undercover agent who was under our supervision twice.

He was not entrapped. The public record of his codefendant is the best evidence on the guilt or innocence of this individual.

So when I say it is out of context, I was perhaps a little bit disturbed that the article suggested that the man is not guilty.

The other fact, there was also a case for violation of civil rights. He had a wiretap in on the undercover agent that he had suspected. Is it true that I said those three words? I will have to develop that and, if you will permit, I will.

Senator JAVITS. I will permit you gladly. It is only right that you should.

Mr. TARTAGLINO. Let me develop it. It will just take a few minutes.

There were four of us in a motel room. This man had tacitly, that is, this police detective, had tacitly admitted his guilt. He was negotiating for his freedom with a member of the U.S. attorney's office, who was also present. We had talked about many areas in which he could cooperate. Every time that we would get him to a point where he would cooperate, he didn't want to do it because he feared for his life or that something would happen to him.

As we went on, I think that I had a 5- or 10-minute dissertation with him in which I reminded him of a background that he had had and a lot of information that we had and the responsibility that he had to bear for putting more heroin on the street than probably more of the dope peddlers that we arrested in New York City, and the lives that he had on his own hands.

[That was the context of it. He didn't really respond very much to it because he had been selling out cases and selling out cases, in which we speak of life and we speak of death.

So he said, "What do you want me to do?" I said, "I will put you through a test and if you go through and pass this test, then I will be assured that your cooperation will be forthcoming. If not, you can talk with the U.S. attorney. If not, it's your own choosing."

So I gave him a set of circumstances. I asked him to pick up a telephone, to telephone another detective, another detective who I am not going to mention in this public forum who we had been seeking for some time as one of the largest distributors of heroin in New York City, and a very close associate of his.

So I asked him to pick up the phone, call this man in the precinct and tell him to go out and get on the public phone, that he wanted to talk to him. He asked, "What will be the next step?" I said, "When he goes to the public phone, you ask him to call you and I am going to give you a sentence to read to him. You read that sentence to him and if he gives you the right answer, he is in the conspiracy." And he wouldn't do it.

So I threw up my hand in absolute frustration. I said, "As far as I am concerned, I don't care what you do. You can either go to jail or you could do your time or you can shoot yourself." That is what was much publicized.

Senator JAVITS. Mr. Tartaglino, let me tell you this. I am a New Yorker. It is my home; I lived there all my life. There is no question about the grimace of all you are doing. But I am deeply interested and the questions I have asked you are directed out of sense of concern and frustration for New York and the country as a whole.

We will get to Promuto's guilt or innocence, I am sure. But that is really missing the forest for the trees. That is why I asked you this question.

[At this point Senator Percy entered the hearing room.]

Senator JAVITS. It is a very old, but nevertheless terribly important question. How do we cut this traffic in New York at this level? There are a lot of other things to do. I would like to ask you this final question, if I may; that is, what do you think of this method which is used in the drug enforcement extensively the so-called buy-and-bust? In other words where the agents, themselves, go out and buy the narcotic in order to theoretically bust the seller or the group the seller is working with?

Mr. TARTAGLINO. Indiscriminate buy-and-bust, talking about extremely low-level traffickers, and I assume that, Mr. Senator, is that what you are talking about?

Senator JAVITS. Yes.

Mr. TARTAGLINO. I don't think that really has a place in Federal enforcement. I think the police authorities are much better equipped to do it; they are well trained. As far as undercover work which is a spinoff of the same thing, it is a good technique if used selectively on a certain level.

Senator JAVITS. In other words, to get at the people who really are the source of these terrible crimes which jeopardize and actually kill so many people and disrupt so many societies.

Do you feel that this technique has to be dealt with only on a much higher level than the street level and that the numbers game is, to wit, the number of arrests that are made, and so forth, which I gather you are very, very familiar with is also one of the real drawbacks of that very technique and it serves to gloss over a terribly corrupt and dangerous situation which really must not be glossed over?

Mr. TARTAGLINO. That is correct, Senator Javits. Prior to your coming in, I think I testified pretty much along those lines, that they develop the numbers game.

Senator JAVITS. Thank you very much.

Senator NUNN. Mr. Tartaglino, I share Senator Javits' concern with the Promuto case, but I think there are more important things in the overall scheme of it that I would like to get into very briefly.

Starting off, I think on page 14 of your testimony you made reference to informant homicides. Is this informant homicide problem one of the measuring devices to determine in sort of a rule-of-thumb manner the degree of possible corruption in drug enforcement agencies?

Mr. TARTAGLINO. It is one of mine, Senator.

Senator NUNN. Explain to us what an informant homicide means to you personally, and how you judge this?

Mr. TARTAGLINO. I think that, one, you have to distinguish between the informants. If you have had an informant or a cooperating individual who has testified in court, and he has been exposed and he is killed along the way some time by not following the advice or someone who doesn't do their job, that is one particular area.

But when we have individuals whose names are guarded very closely within our own agency and the information is handled on an extremely select basis and something happens to them, that to me is an indicator that something is wrong in that particular office. You have to develop an exposure list; an exposure list of how many individuals had knowledge that that man was an informant, and follow that investigative procedure.

So what I was referring to in my statement was that in 1967 and 1968 we had put together a list of the number of informants who had been killed and who had never been exposed and that concerned all of us.

Senator NUNN. Was that mainly the New York office?

Mr. TARTAGLINO. It was just the New York office. We were able to, in developing an exposure list—we didn't really do a real formal study on it. But we were able to tie in some informant deaths into certain groups of agents, and so applying the same analytical type view of that as we do in investigating regular activities on the street, it caused us concern.

I will say that they decreased considerably after that investigation.

Senator NUNN. Could you bring us up to date? I know it has been January since you left.

[At this point Senator Jackson entered the hearing room.]

Senator NUNN. When you left, had the problem of informant homicides gone down since 1968, or do you have any measure of that as it existed earlier this year?

Mr. TARTAGLINO. I don't really have a handle on that; on how many murdered informants today. As far as I am concerned, if you have one in any office and you don't know why he was killed, that is worth looking into.

Senator NUNN. Are we having any now? You have general knowledge of it, don't you?

Mr. TARTAGLINO. I think there are. There have been a few.

Senator NUNN. Nothing like the 1968 problem?

Mr. TARTAGLINO. I don't believe so.

Senator NUNN. Do you know anything about a trend in the last 2 years? Is there any trend at all?

Mr. TARTAGLINO. I just can't address myself to that.

Senator NUNN. One other major point I think is the question of your 1968 investigation. Did you ever have a conversation with Mr. Henry Petersen regarding the problem of corruption in the New York office?

Mr. TARTAGLINO. Yes, sir, I did.

Senator NUNN. When was that?

Mr. TARTAGLINO. That was approximately 1966.

Senator NUNN. That was before your 1968 investigation?

Mr. TARTAGLINO. I was assigned to the Treasury Department on a special assignment for a totally different reason other than corruption. The then Assistant Secretary was at that time, David Acheson, was having discussions with Justice Department and other Treasury officials about the corruption in our office.

There came a period of time when I was asked to go and talk to Mr. Petersen, who was then Chief of Organized Crime Racketeering of the Department of Justice. In that conversation, Mr. Petersen told me that there were very few law enforcement agencies—I don't really want to mention the particular one—that had any confidence in our New York office, and asked when we were going to do something about it.

He served as a catalyst here. I reported that conversation back and I think that led into eventually forming various forces to go into that office.

Senator NUNN. In other words, the other law enforcement agencies in the Federal Government were reluctant even to deal on an intelligent, confidential basis with the New York office?

Mr. TARTAGLINO. I have to qualify that. He just mentioned one agency at that time. He mentioned the FBI at the time.

Senator NUNN. He was saying that the FBI at that time was reluctant to deal with the New York office. Is that right? Was Mr. Petersen saying the FBI was reluctant to deal with the New York office?

Mr. TARTAGLINO. That is what he mentioned to me at that time.

Senator NUNN. Who was in charge of the office in 1968, the New York office? It is a matter of record.

Mr. TARTAGLINO. Mr. George Belk.

Senator NUNN. What other people associated with the New York office at that time are still with DEA?

Mr. TARTAGLINO. With that office that are still with DEA? I think many.

Senator NUNN. Many people who were with the New York office at that time are still with DEA?

Mr. TARTAGLINO. Yes.

Senator NUNN. Where is Mr. Belk now?

Mr. TARTAGLINO. Mr. Belk is in headquarters here in Washington.

Senator NUNN. What is his position at this time?

Mr. TARTAGLINO. He is the Assistant Administrator for Intelligence.

Senator NUNN. Do you know of any other high-ranking officials who are in DEA at this time who were in New York at that time? I am not trying to say that there is any guilt by association here at all, but I do think we need to have this on the record.

[At this point Senator Javits withdrew from the hearing room.]

Mr. TARTAGLINO. Are there any senior people that were in, is that it? Or anybody at all?

Senator NUNN. Any that come to mind that are high officials in DEA now who were in New York at that time? Let's put it this way: People who have been in charge of the New York office, or were at the top of the New York office at that time, are they now at the top of the DEA?

Mr. TARTAGLINO. Why don't I just, if I may, Senator, respond? I will refer to my testimony. In the early 1960's the individual who was in charge of the office when Mr. Speer and Mr. Coyne was there, was Mr. George Gaffney. He retired.

He is no longer with us. Then in 1962 or 1963, he was replaced by Mr. Belk, and Mr. Belk, as I mentioned, is here in Washington, D.C.

In 1969, Mr. Belk, or 1968, was replaced by Mr. Durkin. Mr. Durkin is now in Washington as the Assistant Administrator for Enforcement.

In approximately 1971 or 1972, Mr. Durkin was replaced by Mr. Casey, and Mr. Casey is now here in headquarters in Washington, D.C.

At the formation of the Drug Enforcement Administration, the individual who came in is Mr. John Fallon who, as you know, came at the merger of four agencies, and came from the Customs Service. He is there now.

Senator NUNN. Who was in charge of the New York office back when Mr. Coyne had his investigation that was later aborted at some point?

Mr. TARTAGLINO. Mr. George H. Gaffney.

Senator NUNN. Who was in charge of the New York office when Mr. Speer was making his investigation?

Mr. TARTAGLINO. Mr. George H. Gaffney.

Senator NUNN. Where is Mr. Gaffney now?

Mr. TARTAGLINO. He is retired.

Senator NUNN. Without mentioning any names, has anyone in command in DEA now been charged with misfeasance or malfeasance? I refer to the top echelon of DEA now, in addition to Mr. Promuto?

Mr. TARTAGLINO. Has anyone—do I know of any senior official? I don't know of anyone that is. I am under constraints not to mention open investigations, but let me just say that I don't know of anyone in the past that has been charged with misfeasance or malfeasance in office who were in command of these offices.

Mr. SACHS. Senator, if I may interject, Mr. Tartaglino, because of the restriction about so-called unfounded allegations, I think the record ought to show that he has not responded to what might be part of your question; namely, are there unresolved or do there exist any unresolved allegations relating to any persons presently in supervisory positions in DEA in Washington? He has not answered that question. I am afraid, sir, I must advise him.

Senator NUNN. Are there any unresolved allegations of corruption or mismanagement against any of the top officials who are still in DEA?

Mr. TARTAGLINO. Yes.

Senator NUNN. These have not been carried to termination? In other words, are they unresolved allegations?

Mr. TARTAGLINO. I would say yes. I am not sure what happened since I left.

Senator NUNN. I am well aware that we have gone into considerable detail, and I think for the record, Mr. Chairman, that it ought to be

made clear that Mr. Tartaglino is the first to say that there are all manner of inherent allegations made against anyone who is working in, almost everyone working in drug enforcement.

One of the major points here that should not be misinterpreted is that allegations do not mean guilt, but it has been stated over and over in executive session by Mr. Tartaglino and others that their point is that the allegations should be culminated in one way or the other.

Chairman JACKSON. Resolved.

Senator NUNN. They should be resolved in one way or the other and all of these allegations, certainly a lot of them, are expected.

It is inherent in any law enforcement agency. I think that point ought to be noted. Do you want to elaborate on that particular point?

Mr. TARTAGLINO. I would just reiterate what I have mentioned before. If possible in the same professional way that we utilize traditional investigative techniques. I don't feel we really resolve allegations by calling someone in the room and asking them did you do it, and then close the file.

Chairman JACKSON. Some of them were interrogatories.

Mr. TARTAGLINO. That is probably—the confrontation issue before investigation is the exact issue why I asked to be reassigned.

Chairman JACKSON. Senator Percy?

Senator PERCY. Mr. Tartaglino, I would like to say something personally to you on two different points.

On page 4 of your testimony, you indicated your concern that your remarks would be seized upon and distorted by those who are unfairly hostile to the Federal drug enforcement effort in order to discredit thousands of dedicated men and women who are devoting themselves to curbing the drug traffic.

I can assure you that at the outset of my comments that I have absolute faith that Federal drug agents are totally dedicated, uncorruptible, and take tremendous risks in performing their duties. I think it is really a responsibility in this type of investigation for committee members and the media to make this point clearly.

When we conducted hearings in this room on the abuse of the PX system, I had soldiers in Germany telling me their master sergeants were ashamed to put their uniforms on in the morning. We didn't have any intention of doing that. The malfeasance of seven or eight sergeants certainly did not discredit a great service.

In this case we simply want to put this matter in perspective.

Second, and perhaps more importantly as it relates to you personally, you stated in your testimony on page 5 that:

I took the steps of last November in the full knowledge that they seriously jeopardized rather than advanced any career goals of mine. Subsequent events have borne this out. I ask no sympathy; I seek no praise.

Though you have not sought it, I, as one member of the committee, and I believe this is shared by other members, and the staff, want to express deep appreciation to you for stepping out and speaking up about these matters even though you knew that your career would be hurt.

I want to assure you that having known Attorney General Levi for some 20 years and worked intimately with him, I know him to be a man of great fairness and tremendous justice. He would not want to see any injustice done to you as a result of what I consider to be a

great service to your country and certainly to the process of the investigation carried on by this subcommittee.

I think other members of the committee feel that same way. I would be happy, Mr. Chairman, at the end of these hearings to join in a letter with you to the Attorney General specifically enumerating the services of those who have performed, I think, a measure of duty beyond the call of duty in appearing here.

I know this is very painful to you and difficult, but you have performed a fine service.

I would like to ask you specifically how you would evaluate the arrest statistics system now utilized by DEA, the so-called G-DEP system. Does the system result in some of the deficiencies you have noted beginning on page 20 of your statement? Are arrest quotas still utilized? Is there still widespread double accounting of arrest and seizures?

Are street level dollar values used in the case of some seizures to give the appearance of heavy input?

Mr. TARTAGLINO. Senator Percy, thank you for your kind remarks regarding my personal situation.

The second part of it, I have to say that I don't know because I have not been involved or had exposure to that. As Acting Deputy, my duties did not bring me into the enforcement area. So I am just afraid that I can't be very much help to you.

Senator PERCY. In a recent Chicago Daily News series by William F. Mooney and William Clements they mention the "Congress, courts draw drug blame."

They quote Federal narcotics agents as saying that they really put the blame on the courts and on Congress. They said, "These agents said that their agency had to engage in a public relations numbers game with Congress."

What part of Congress do they mean—this committee certainly has not been engaged in a numbers game. We have an oversight responsibility. We couldn't care less about the number of street arrests being made. In fact, we have been highly critical of too much effort being put into the Federal effort at the street level.

Where in the Congress do you think that the pressure is being put on narcotics agents to engage in the numbers game?

Mr. TARTAGLINO. I think it is awfully difficult to differentiate between the cart and the horse here. Sometimes agencies, I suppose, want to impress the Congress, and particularly around appropriations time, and may just take it upon themselves to do it.

That was some of the cases that I used to see. I don't have any specifics of any pressure in my 23 years and some 4 or 5 probably dealing with Congress. I don't have any specifics of any at any time the Congress "pressuring" for statistics. What I have seen the Department do, is when I was in Drug Enforcement, is to evaluate our work.

Senator PERCY. It should be eminently clear for the record that this subcommittee is not at all interested in that, in fact is suspicious of it, and feels that the Federal effort should be aimed at the top violators. We look with suspicion on impressive arrest statistics designed simply to make an agency look good.

That is the kind of activity that should be engaged in by local and State authorities and certainly when Senator Nunn came out with me

very thoughtfully to Chicago and we investigated the break-ins in southern Illinois, I went to Atlanta.

We tried there to put emphasis on the Federal Government doing what its role should be.

Mr. Tartaglino, you have a long and varied background in Federal drug law enforcement and you are well situated to observe the progress of Drug Enforcement Administration after it was created under Reorganization Plan No. 2.

On page 6 of your testimony, you stated that you "disapproved some of DEA's policies and personnel decisions," some of which, you testified, "were contrary to the Civil Service System."

Could you tell us what policies and what personnel decisions you did oppose and on what grounds did you oppose them? What specific violations of civil service merit system actually occurred?

Mr. TARTAGLINO. First of all, I will back up to the month preceding Reorganization No. 2. There was very little time for planning or there really was no planning done. Whoever had that responsibility, I suppose, didn't allow enough time, whatever the circumstances were, I am not familiar. But the day before the merger occurred, a teletype went out throughout the field of this new agency, transferring individuals to nonexistent positions, transferring some individuals to positions in which were absolutely contrary to the merit principles of civil service.

I don't see how anybody could have made those judgments before the merger ever took place. Many individuals have suffered. They have been perhaps pushed back because they have been put into what has come to be created positions later on.

But just generally speaking, those policies reflect on the personnel policies; they dealt with human beings; they dealt with children; they dealt with uprooting of people. When that happens, you deal with morale. When you deal with morale, it certainly affects the organization.

Senator PERCY. Your description of the complete breakdown of discipline in administrative management in the New York City office does seem somewhat incredible. Would you explain what you mean by your statement that "The office was experiencing an unusually large number of informant homicides?" Did these informant homicides involve individuals who already testified in court or rather individuals whose identity was still supposed to be confidential?

Mr. TARTAGLINO. We were addressing ourselves to the informants who had not yet surfaced as cooperating individuals. As far as the breakdown of discipline in administrative management I introduced for the record as part of the testimony a document dated November 21, 1968, which I wrote.

I have had a paper clip on it, anticipating maybe a question in this area. I was asked to put this together for my boss, who asked what went wrong in FBN in New York? Why did we have all of those problems?

I list 11 areas. The first one on the sheet is we have to get out of the numbers game, pressure on them to make cases. This leads to illegal searches, et cetera.

No. 2, misuse of informants; No. 3, FBN, New York City Police Department cooperation. The little game that was going on is that we

had no right being along on some of the seizures that the police department made and in my judgment there were double statistics.

Or the only reason we went along was to claim double statistics. This is in 1968. I am not talking about now. Searches, we lacked set procedures for authority or supervision during searches. There were set procedures in the manual that were just never followed, receipts for evidence, the money receipts were kept in personal properties of agents, et cetera.

Official complaints, the fifth one, complaints were just not reported to headquarters. The sixth one, morale, I won't even—morale often used as don't come in and project yourself into the office and institute regulations because it will destroy morale when in my judgment you have got to have a tight organization, a well-disciplined one, and you improve morale.

Misuse of Government vehicles, security. I don't think the locks had been changed on the door in New York in 11 years, if my recollection serves me correct. At the time we discovered this, I don't know how many agents had been fired and incarcerated.

It was common practice for agents without any authority—and we have regulation against it—would make recommendations to U.S. attorneys and we found that we had young agents usurping the authority of the assistant U.S. attorneys and this leads to misuse of power, I think is the best word.

The 10th is familiarity and it is just a lot of heavy drinking, using barrooms as an office of operation. The 11th is personnel, past hiring practices, training supervision, et cetera.

You have, as I mentioned before, that in the record.

Senator PERCY. Mr. Tartaglino, I will not be asking you any more questions about Mr. Promuto. I understand that that has been thoroughly looked into. I think it might be well, however, to make a part of this record the last paragraph of the letter of August 19, 1974, that has been previously referred to on the subject of Vincent Promuto. It is a letter to Donald E. Campbell, and it is signed by Carl Shoffler, officer, Organized Crime Rackets Branch, Metropolitan Police Department, Intelligence Division.

Officer Shoffler wrote in this letter that there is evidence of an actual criminal act having been committed by Mr. Promuto. However, when viewed in their entirety, a number of seemingly small pieces of intelligence information and observation suggest that because of the past and present positions, his conduct should be brought to the attention of the proper authorities. I feel that this part of the letter should be perhaps included in the record at this point.

I would like to ask you about the role of Mr. Thomas Durkin. To your knowledge, did Mr. Durkin have any official status within either BNDD or DEA?

Mr. TARTAGLINO. I have learned that he is a special adviser or a consultant.

Senator PERCY. On the payroll?

Mr. TARTAGLINO. I don't know.

Senator PERCY. Would you assume he would be paid for such services then?

Mr. TARTAGLINO. I would assume if he performed services that he would be paid. I just don't have any knowledge, Senator Percy.

Senator PERCY. Did Mr. Durkin have any type of security clearance? If so, what type of security clearance?

Mr. TARTAGLINO. He did not have a security clearance, and it is one of the issues that I have raised when I wrote to the Department of Justice, not reflecting on the integrity in any manner of Mr. Durkin, but as a Chief Inspector, I was in charge of security for the agency, and this individual, I knew, did not have a security clearance and was given access to very delicate information.

Senator PERCY. You have used the term "adviser." Could you expand on that? What do you mean by an adviser? What was Mr. Durkin's role in BNDD and DEA? On what types of decisions and cases was he consulted?

Mr. TARTAGLINO. I am afraid I don't have the answer to that, sir.

Senator PERCY. What did you mean by adviser?

Mr. TARTAGLINO. I just know that that was a title he had.

Senator PERCY. Who did he give this advice to?

Mr. TARTAGLINO. Mr. Bartels.

Senator PERCY. Do you know how extensive the contact was, how much advice and how frequently he saw him?

Mr. TARTAGLINO. I know that his association goes back with a number of our senior officials who are now in headquarters in the New York office.

[At this point, Senator Javits entered the hearing room.]

Mr. TARTAGLINO. I know that he came down to see Mr. Bartels on a number of occasions. I think during the Vesco hearings, he came down and acted as an adviser. I am sure, if I think long enough, there were other occasions as well in which I participated.

Senator PERCY. Did Mr. Durkin have access to all of BNDD and DEA investigative and inspection files regardless of whether they were confidential?

Mr. TARTAGLINO. I don't know.

Senator PERCY. You have no knowledge of that?

Mr. TARTAGLINO. I have no knowledge of that. I had very little contact with Mr. Thomas Durkin.

Senator PERCY. Can you tell us finally what was Mr. Durkin's role in DEA's investigation into the Promuto allegations? To your knowledge, did he coordinate any of his activities with Mr. Brosan, who was then Acting Chief Inspector?

Mr. TARTAGLINO. My understanding is that he coordinated—no. I think he had a discussion on one occasion with Mr. Brosan. But the answer on coordinating is no. My understanding is there was no coordination, and he was an adviser on the Promuto matter.

Senator PERCY. Mr. Tartaglino, on page 55 of your statement, you discuss your interview with FBI inspectors Bill Williams and Edward Hegarty, which took place on December 5, 1974.

You state that the interview concerned, among other matters, violations of the civil service merit system in DEA and utilization of consultants without clearances. Did you discuss these matters with then Deputy Attorney General Silberman during your meeting with him on January 9, 1975?

Mr. TARTAGLINO. No, sir, I did not.

Senator PERCY. He rendered no opinion at all about those matters to you?

Mr. TARTAGLINO. I don't know whether—I do know that the Department of Justice is conducting an audit into civil service violations, personnel procedures type of investigation. But in answer to your question, Mr. Silberman did not bring that up in the meeting.

Senator PERCY. You were the Chief Inspector between April 1969 and May of 1969. Could you explain to this subcommittee whether there were any open inspection files at the time you left the Office of Inspection?

Mr. TARTAGLINO. I left, and when I departed the Office of Inspection in May of 1969, I left a status of investigations, broke it down into three parts with an alphabetical list. There were approximately, in the 1½ years I was there, 85 investigations opened.

Some 62 or 63 were closed; closed meaning cleared, resigned, et cetera. I broke the other 22 into 2 categories, and in each category I left a recommended course of action to be followed for each individual involved.

Senator PERCY. I am not sure I understood whether any of these open files involved high ranking BNDD officials or officials who now occupy supervisory positions within DEA.

Mr. TARTAGLINO. Some of the investigations that I left open at that period of time were of high ranking individuals.

Senator PERCY. Why have these cases not been resolved, in your judgment?

Mr. TARTAGLINO. I don't know.

Senator PERCY. Do you have any suspicions or concerns in this regard?

Mr. TARTAGLINO. No.

Senator PERCY. Did you at any time bring the problem of unresolved inspection cases regarding certain high level DEA personnel to the attention of BNDD Director John Ingersol, and then Administrator of DEA, John Bartels?

Mr. TARTAGLINO. The first part of the question, I did not have any discussions with Mr. Ingersol. I left that report that I just mentioned to you. I left as this is the status of everything as I leave. I felt it would be an intrusion.

If the inspector did not report to me on the inspection, he reported to the then Director. So I don't believe I had any discussions with Mr. Ingersol or had rare discussions. However, since Mr. Bartels was new to these matters, right up until the time I wrote the letter for more resources, I had several discussions with Mr. Bartels.

Senator PERCY. What was his reaction to those discussions and the reports that you filed?

Mr. TARTAGLINO. His reaction was one of great discouragement on my getting involved in them or being concerned about them, because on the one hand—his words were: "What do you want to get involved in all of that old stuff for?" I would try to explain the compromise issue to him, that an individual who participated in a very, very serious matter 20 years ago, and even though the statute of limitations has expired, he may have had coworkers with him who in effect owned him.

That is why it was important that we solve it. But he discouraged any inquiry.

Senator PERCY. As you pointed out, the statute of limitations could run on some of these matters if they weren't resolved quickly. At that point, these individuals would be beyond criminal investigation or prosecution, if it did involve prosecution.

Mr. TARTAGLINO. Many of the allegations were of criminal misconduct outside the statute, but there are two roads that you can take in something like that. You don't have the statutory limitation in the civil service.

The statute starts running when you become privy to the information, and what you did about it.

Senator PERCY. I have just two further questions. Do you know if any other officials within the Office of Inspection, or elsewhere, brought the matter of open inspection files against high level officials to the attention of Director Ingersol or Administrator Bartels?

Mr. TARTAGLINO. Mr. Fuller, who was the Chief Inspector at the time of the merger, and remained there for about 2 months, told me that he had brought the matter to Mr. Bartels' attention.

Senator PERCY. What kind of response did he get?

Mr. TARTAGLINO. I think one of his words would really parallel mine. He wondered whether they wanted to get involved in all of that old stuff.

Senator PERCY. So it was the same response, nothing beyond that, I suppose the same attitude existed on the whole Watergate matter, "Why look back? Let's look ahead."

Mr. TARTAGLINO. Mr. Brosan came in and I briefed him on some of these open files or incomplete files or unresolved allegations. He became concerned. I forgot one thing. When Mr. Fuller left, I went in and then had a conversation with Mr. Bartels.

He told me Mr. Fuller never told him about it. Mr. Fuller had assured me he had. So when Mr. Brosan came in, I said, well, he didn't remember Mr. Fuller telling him, but I went in and told him.

So Mr. Brosan went in and he had a discussion with Mr. Bartels, and Mr. Bartels says it is the first he had learned of it.

Senator PERCY. Mr. Bartels said what?

Mr. TARTAGLINO. It is the first he had learned of it. He didn't recall Tartaglino or Fuller ever telling him about it. So Mr. Brosan said he went right back to his office and put it in a lengthy memorandum so there would be no misunderstanding that he knew about it.

Senator PERCY. We will have both Mr. Fuller and Mr. Brosan as witnesses before this committee. We will certainly question them about it. But by your testimony and knowledge three high level officials advised the Administrator of this.

When you pressed forward, did you try to point out that the investigation of these matters might prevent problems in the future that it might establish that a pattern may exist that it would be important to detect and investigate so that future action would be unnecessary?

Did you make those kinds of points with him as to why it was pertinent that you carry those investigations on and why it would affect the future and not just the past of the Agency?

Mr. TARTAGLINO. We had many discussions on these issues that focused around statute, the statutory requirements, what Civil Service might do, the compromise issue and also in addition to what you

have brought up, Senator, that they might be completely innocent; how important it would be to clarify it once and for all.

But what was running through my mind is that a year before, or 13 months before, I wrote the letter and after making many requests and after Brosan talking to him and after Mr. Fuller talking to him, was that another function of inspection was evaluation, and we had a job to get out and evaluate a lot of these offices. That concerned me as well. It was all a manpower or resource problem.

Senator PERCY. Finally, are you aware of any attempts by Office of Inspection officials to analyze the unresolved inspection case files regarding certain high level DEA personnel in order to determine whether any type of conspiracy had been undertaken by these officials to engage in illegal acts, obstruct justice, or insure their own advancement within the Federal narcotics agencies?

Mr. TARTAGLINO. In 1968, 1969, I guess it was, just before I left, I asked one of the inspectors to put together in as brief form as he could, with a lot of supplemental data out of the files, all of the material that we had from cooperating agents.

We had some five or six cooperating agents, and to take it to the Justice Department, have them review it, and to see whether there is basis for potential conspiracy or a possible grand jury.

I think Mr. Fuller was the Chief Inspector—I left that with him, and it was taken to the Justice Department. I think the Justice Department looked it over, and their judgment was that there were more a bunch of isolated acts as opposed to a conspiracy.

In December of 1974, which is last December, the U.S. attorney for the Southern District of New York, was talking to me on another matter, and he brought up the same point as you have just brought up.

He wanted to know whether any attempt had been made to really delve into them, those on board, those not on board, and to see whether we could subpoena them before grand juries and even take some action today.

At his request, I retrieved a copy of that study and forwarded it to him.

Senator PERCY. Was there a preliminary study, and did you determine there was a need for further evaluation?

Mr. TARTAGLINO. I don't believe I ever saw the study. I think I assigned it to someone, and then I left the office.

Senator PERCY. Again, Mr. Tartaglino, I express deep appreciation to you for I think an invaluable service that you have rendered to this subcommittee, to your own service and department, and to the Congress and the American people.

Mr. TARTAGLINO. Thank you, Senator Percy.

Chairman JACKSON. I will turn the chair over to Senator Nunn. I want to associate myself with the remarks of Senator Percy. Even in the post-Watergate era, it is difficult sometimes for people to come forward and respond. You have, I think, met the provisions of the code that you read from that was passed, approved in the 85th Congress, which means that if an employee of the Federal service does have information, that, unpleasant as it may be, bears on the particular service that he is involved in, that he has an obligation to come forward.

[At this point Senator Percy withdrew from the hearing room.]

Chairman JACKSON. From everything I have read and listened to this morning, I want to commend you. At the appropriate time, when these hearings are over, the subcommittee will want to make known that you have fulfilled in the best tradition of the service the need for all public officials to speak out on when this kind of information is known. We want to commend you personally.

Senator NUNN, if you will ask your questions, and then Senator Javits.

Senator NUNN [presiding]. Mr. Tartaglino, I want to get the question of Thomas Durkin straight for the record. You were talking a minute ago about Mr. Thomas Durkin. Who is Mr. Thomas Durkin?

Mr. TARTAGLINO. Mr. Thomas Durkin is an attorney who resides in New Jersey.

Senator NUNN. What part of New Jersey?

Mr. TARTAGLINO. I don't know.

[At this point Senators Jackson and Javits withdrew from the hearing room.]

Mr. TARTAGLINO. I first met him some 2 years ago or 3 years ago at a time he was instrumental in setting up a tax-free fund for one of our agents who had been paralyzed in a shootout. He did the legal work on it. After that, I don't think I have ever seen him again until the occurrence of events in the past few months or in the past 6 or 8 months when Mr. Bartels asked him to come to Washington to act as an adviser.

Senator NUNN. When did you find out that he was an adviser? Is he an official adviser or an informal adviser?

Mr. TARTAGLINO. I don't know.

Senator NUNN. Is he on the payroll or do you know that from your knowledge?

Mr. TARTAGLINO. Nothing passed through my office regarding him.

Senator NUNN. This is not the same Mr. Durkin whom we referred to as being head of the New York office in 1969, Mr. William Durkin?

Mr. TARTAGLINO. No, sir.

Senator NUNN. Those are two different people?

Mr. TARTAGLINO. Totally unrelated.

Senator NUNN. Mr. William Durkin is still an employee here in DEA in Washington?

Mr. TARTAGLINO. Yes.

Senator NUNN. What is his position?

Mr. TARTAGLINO. Assistant administrator for enforcement.

Senator NUNN. What is the relationship of Mr. Thomas Durkin, the private attorney to the DEA? Do you know whether he has a personal relationship with Mr. Bartels or did he have a relationship with any other DEA official.

Mr. TARTAGLINO. I think he has a personal relationship with many people who have worked in our New York office.

Senator NUNN. The relationship comes through New York?

Mr. TARTAGLINO. Through New York. I am just not that familiar with the history.

Senator NUNN. Do you know of any other people he has a relationship with? Is it just Mr. Bartels or are there others?

Mr. TARTAGLINO. No. He precedes Mr. Bartels coming on board. He goes back to BNDD. He had a relationship with Mr. Jerry Jensen up

in New York. He had a relationship with Mr. William Durkin. I am not inferring anything describing this relationship.

Senator NUNN. I am not either.

Mr. TARTAGLINO. He had a relationship with Mr. Daniel Casey.

Senator NUNN. Any others?

Mr. TARTAGLINO. I think he went to college with one of our senior executives in New York by the name of Hunt; James Hunt.

Senator NUNN. But as far as you know, you don't know whether he was on the payroll or not? Let's put it that way.

Mr. TARTAGLINO. I don't know whether he was on the payroll. I know last August I drafted a letter that I sent into the Administrator's office for him to sign, to institute a security investigation. This was just a sensible thing to do.

Senator NUNN. On Mr. Thomas Durkin?

Mr. TARTAGLINO. On Mr. Thomas Durkin. I don't know what happened to the letter.

Senator NUNN. You did that because he was in the office quite a bit?

Mr. TARTAGLINO. I did that because I thought it was a good thing to do. He was becoming involved in many sensitive areas. He had knowledge of some of our informants that were operating in New York City.

So I just said we ought to have the same background investigation conducted that we all have.

Senator NUNN. Did he get a security clearance while you were there?

Mr. TARTAGLINO. Not while I was there.

Senator NUNN. Do you have any knowledge of whether he has one now?

Mr. TARTAGLINO. I have no knowledge.

Senator NUNN. You have no knowledge of that, but you did initiate that request?

Mr. TARTAGLINO. Initiated the request, but the letter never came back.

Senator NUNN. You don't know whether that request was pursued?

Mr. TARTAGLINO. I know it was not pursued. I drafted that letter in August of 1974, and as of when I left in January, that had not been pursued.

Senator NUNN. To whom did that letter go?

Mr. TARTAGLINO. I drafted it from Mr. Bartels for Mr. Bartels' signature to Mr. Brosan, who was head, Acting Chief of Inspection.

Senator NUNN. Mr. Brosan would know about that?

Mr. TARTAGLINO. He would know about it.

Senator NUNN. Did Mr. Bartels sign the letter?

Mr. TARTAGLINO. No.

Senator NUNN. He didn't sign the letter; it was never sent then?

Mr. TARTAGLINO. The procedure that I have in the office is that when I draft letters for his signature, it would go to his office and if he signed it, a copy would come back. For about 2 or 3 weeks after my secretary told me this letter never came back, and I don't know what happened to it.

Senator NUNN. Mr. Brosan never would have received the letter under those circumstances?

Mr. TARTAGLINO. I know Mr. Brosan never received it.

Senator NUNN. It was never forwarded or not ever sent?

Mr. TARTAGLINO. The letter did not just go to Mr. Durkin. I just thought it was the sensible thing to do to just write to Mr. Brosan and

say get a list of all the consultants, special advisers that we have that are working here and let's request Civil Service Commission to do a background.

Senator NUNN. Was this an unusual relationship or were there other private attorneys that had this kind of access?

Mr. TARTAGLINO. Was this unusual for a consultant, an unusual relationship he had with Mr. Bartels?

Senator NUNN. I don't think we ever identified him yet as being a consultant. We don't know whether he was on the payroll or not at this point from the testimony so far revealed.

Mr. TARTAGLINO. I would prefer not to use the word unusual, but I will say he was privy to many sensitive items that were going on in that office at that time.

Senator NUNN. Did Mr. Thomas Durkin, the private attorney we have been talking about, have an interview with Mr. Promuto?

Mr. TARTAGLINO. Yes.

Senator NUNN. Do you know that for a fact? You personally know that?

TARTAGLINO. No; I know that from someone else.

Senator NUNN. You have been told he did have an interview with Mr. Promuto?

Mr. TARTAGLINO. Yes.

Senator NUNN. Who gave you that information?

Mr. TARTAGLINO. I think on the October 1 meeting that I went to, I raised this point that someone had told me that Mr. Thomas Durkin had talked to Mr. Promuto.

Senator NUNN. Was this after you had launched an investigation of Mr. Promuto?

Mr. TARTAGLINO. Yes; that was some 3 weeks after we launched the investigation. I had heard Mr. Durkin was acting as sort of a consultant, or adviser in the Promuto matter and at that October 1 meeting I raised the question in which I asked whether Mr. Promuto, whether Mr. Durkin, Mr. Thomas Durkin, had talked to Promuto.

The answer I received was yes; I also determined that a report was written. I asked if we could have copies of that report.

Senator NUNN. Who was the report written by?

Mr. TARTAGLINO. Thomas Durkin.

Senator NUNN. Addressed to whom?

Mr. TARTAGLINO. I don't know. I have never seen the report. We have asked several times for it.

Senator NUNN. At that stage, regarding Mr. Durkin's interview with Mr. Promuto, had you interviewed Mr. Promuto?

Mr. TARTAGLINO. At that point, no.

Senator NUNN. Had you put him on notice officially that he was being investigated?

Mr. TARTAGLINO. Not on notice officially.

Senator NUNN. Unofficially?

Mr. TARTAGLINO. I think he learned—well, he learned I think about the 17th or 18th of September. I am not sure when he first became aware of that investigation.

Senator NUNN. When was the interview with Mr. Durkin? About what time frame?

Mr. TARTAGLINO. I think toward the 25th or 27th.

Senator NUNN. Of what?

Mr. TARTAGLINO. September.

Senator NUNN. Was it before you submitted written interrogatories?

Mr. TARTAGLINO. Yes.

Senator NUNN. This was before you had any personal interview with Mr. Promuto?

Mr. TARTAGLINO. Yes, sir; we thought we would need that report or the substance of that conversation to more intelligently formulate questions.

Senator NUNN. One other line of questioning, Mr. Tartaglino. In your statement you describe the handling of the *Waters* case. Are you familiar with the *Waters* case?

Mr. TARTAGLINO. Yes; I am.

Senator NUNN. This case was tried a few months ago. As I understand it, Mr. Waters, an ex-narcotics agent, was accused by Mr. Charles McDonnell, former assistant regional director of Baltimore.

This was the accusation, to be in league with him in narcotics traffic. Mr. Waters was tried and acquitted. There have been allegations that if Mr. Waters had been convicted he might have turned the tables on some of his colleagues from New York days, who presently hold high positions with DEA.

There have been further allegations and I emphasize only allegations that (a) a key witness for the trial was not produced; (b) that DEA made efforts to discredit the chief government witness, Mr. McDonald.

Could you from your information comment on these allegations?

Mr. SACHS. May I have a moment to consult with Mr. Tartaglino?

Senator NUNN. Certainly.

Mr. SACHS. Senator, with your permission, Mr. Tartaglino and I have consulted about your question and again trying to be mindful of the depth of Justice guidelines under which he operates, as the Senator knows, Mr. Tartaglino testified at some length on this matter in executive session.

I think, I know he is prepared to give an outline of that, the substance of that, but I hope the Senator will understand if he doesn't mention any names, especially the names of informants that might be involved.

Senator NUNN. We certainly understand that. We would ask you to proceed in the manner that you deem appropriate considering your restraints and considering the confidentiality of this information. I will leave that in your discretion and will not pursue it beyond what you think you should say.

Mr. TARTAGLIANO. Waters was a former supervisor of the Bureau of Narcotics and he was acquitted in trial this past February, 1975.

During the last, I think the last 2 years, or the last 18 months, we uncovered additional evidence which led, went to his indictment in the form of a person which I cannot identify or should not identify.

Senator NUNN. You are saying we.

Mr. TARTAGLINO. I think it was in BNDD at the time. Another person who would corroborate the principal witness against Waters. We took a long detailed statement from that person or in memorandum form and in addition there is, as I mentioned in executive session to

the staff, a video tape and there is a tape recording of this other witness' recollections of his association or participation is that particular case.

I would just have to let that speak for itself, if it is introduced. If I can answer your question, it goes a great deal towards corroborating. It goes a great deal toward corroborating the principal government witness.

Senator NUNN. Was that utilized in the trial? Do you know?

Mr. TARTAGLINO. The witness did not appear at the trial, that second witness.

Senator NUNN. Do you know why not?

Mr. TARTAGLINO. I don't know. No, sir, I don't.

Senator NUNN. This key witness did not appear?

Mr. TARTAGLINO. That key witness was not at the trial.

Senator NUNN. Do you have any comment about the allegation that DEA made efforts to discredit the chief Government witness, Mr. McDonald?

Mr. TARTAGLINO. I would only have to repeat something that somebody else recently told me who is going to give firsthand evidence on that.

Mr. FELDMAN. Mr. Chairman, we will be studying that case.

Senator NUNN. I think we will wait on that if you don't have firsthand information.

I think that is far enough on that line.

Mr. FELDMAN. Mr. Chairman, I would like to put into the record three documents. One dated October 21, 1961, a memo from Fred Dick, field supervisor, to Mr. Anslinger, on "Investigation of District 2 Relative to Special Employees."

Senator NUNN. Without objection.

[The document referred to was marked "Exhibit No. 24" for reference and will be retained in the confidential files of the subcommittee.]

Mr. FELDMAN. A memo dated December 26, 1961, from William Durkin, to Mr. Anslinger, supplemental report, "Investigation of District No. 2 Relative to Special Employees."

Senator NUNN. Without objection.

[The document referred to was marked "Exhibit No. 25" for reference and will be retained in the confidential files of the subcommittee.]

Mr. FELDMAN. A December 1961 memo from Mr. Durkin to Mr. Gaffney, "Investigation of District No. 2 Relative to Special Employees."

Senator NUNN. Without objection.

[The document referred to was marked "Exhibit No. 26" for reference and will be retained in the confidential files of the subcommittee.]

Mr. FELDMAN. Also tomorrow morning, Mr. Chairman, we are going to start out, if it pleases the Chair, with Mr. Brosan as our principal witness, who is the Acting Chief Inspector.

We would like to have Mr. Tartaglino available in the hearing room at all times during Mr. Brosan's testimony and as we proceed in the next couple of weeks.

In addition, I know that we have some more detailed questions as to some important matters we have not covered, and we can schedule Mr. Tartaglino in a separate session at a time which fits in with the subcommittee's schedule, so that we can complete the record.

But I don't want to break the sequence of testimony and I want to have Mr. Brosan to start out at 10 o'clock.

Senator NUNN. I will ask counsel to get with Mr. Tartaglino's counsel and go over this right after the hearings.

Mr. Tartaglino, I would like to again add my thanks, as I did in executive session, for your forthrightness and your appearance here and join with Senator Percy and Senator Jackson in what they have said.

At this point, the subcommittee will adjourn until 10 o'clock tomorrow morning.

[Whereupon, at 1:10 p.m., the subcommittee recessed, to reconvene at 10 a.m., on Wednesday, June 11, 1975.]

[Members present at time of recess: Senator Nunn.]

FEDERAL DRUG ENFORCEMENT

WEDNESDAY, JUNE 11, 1975

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met at 10 a.m., in room 3302, Dirksen Senate Office Building, Hon. Henry M. Jackson (chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Henry M. Jackson, Democrat, Washington; Senator Sam Nunn, Democrat, Georgia; Senator John Glenn, Democrat, Ohio; and Senator Charles H. Percy, Republican, Illinois.

Members of the professional staff present: Howard J. Feldman, chief counsel; Philip R. Manuel, investigator; Frederick Asselin, investigator; Stuart Statler, chief counsel to the minority; Robert Sloan, special counsel to the minority; and Ruth Y. Watt, chief clerk.

Chairman JACKSON. The committee will come to order.

[Members of the subcommittee present at time of convening: Senators Jackson and Nunn.]

Chairman JACKSON. We continue our hearings with the testimony of George B. Brosan, Deputy Chief Inspector, Drug Enforcement Administration.

Mr. Brosan, if you will come forward, please. Will you raise your right hand and be sworn?

Do you solemnly swear that the testimony you are about to give before this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Brosan. I do.

TESTIMONY OF GEORGE B. BROSAN, DEPUTY CHIEF INSPECTOR, DRUG ENFORCEMENT ADMINISTRATION

Chairman JACKSON. You may be seated.

Go right ahead.

Mr. Brosan. I am George B. Brosan, the Deputy Chief Inspector, Drug Enforcement Administration.

My educational background consists of a bachelor of science degree in business administration from Fordham University and a masters degree in public administration from City University of New York, where I majored in police science.

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After college, I served as a commissioned officer in the U.S. Army before joining the New York City Police Department in 1959 as a patrolman.

I became a special agent in the U.S. Customs Service, serving at the port of New York for 6½ years, conducting the full gamut of customs investigations, including frequent assignments to conduct employee misconduct investigations both in New York City and elsewhere in the United States.

In 1968, I was promoted and transferred to what is now the Internal Affairs Unit of the Customs Service in Washington, D.C., where I conducted various integrity investigations regarding Customs personnel in the United States and abroad.

In 1970, I was assigned to the Office of Investigations of the Customs Service, where I subsequently became special assistant to the Assistant Commissioner for Investigations, holding that position until September of 1973 when I left Customs to join the Drug Enforcement Administration.

During my career at Customs, I was recognized by the Treasury Department for outstanding service on three occasions and received citations from the Commissioners of Customs on two other occasions.

In March of 1973, 6 months before I joined DEA, I was recognized for my administrative ability in the field of law enforcement, by receiving the Arthur S. Flemming Award as 1 of the 10 outstanding young men and women in the Federal service for the year 1972.

I have also taught criminal investigation and police administration at the college level.

I came to the DEA on a voluntary basis. I point that out because on July 1, 1973—the date DEA was created—550 Customs agents, supervisors, and other personnel were transferred into the new agency as a result of Reorganization Plan No. 2.

The reason for this transfer was that most of the Customs personnel who had specialized in drug work no longer had a mission at Customs. According to the terms of Reorganization Plan No. 2 of 1973, these men and women were to be absorbed into the new DEA where their skills and expertise, primarily in the interdicting of smuggled narcotics, were to be utilized.

While at Customs, I gained experience in narcotics enforcement work, particularly in the period 1965 to 1968 when I conducted a number of successful narcotics smuggling investigations. This experience, together with the street level contact I had had with narcotics addicts as a police officer, led to my asking to be assigned to the Drug Enforcement Administration.

It was my understanding that I would be assigned to the No. 2 position in DEA's Office of Inspection and Internal Security. The Chief Inspector was to be Mr. Andrew C. Tartaglino. He was serving as Acting Deputy Administrator until that position could be filled by Presidential appointment.

Thus, with Mr. Tartaglino on temporary duty in the Administrator's office, I became the Acting Chief Inspector; and took charge of the Office of Inspection on September 27, 1973, 10 days after my arrival at DEA.

These temporary appointments of Mr. Tartaglino and myself continued for 15 months until we were removed from those positions by

the Administrator, Mr. John R. Bartels, Jr., under circumstances which I will relate in detail.

[At this point, Senator Glenn entered the hearing room.]

Mr. Brosan. The position of Chief Inspector in DEA was identical with that of the same position in the Bureau of Narcotics and Dangerous Drugs (BNDD). The responsibilities covered three programs: The investigation of misconduct allegations; the inspection of the offices and organizational units within DEA; and the review of the background investigations of new and potential employees.

Within the organizational structure, the Chief Inspector of the Drug Enforcement Administration reported only to the Administrator.

In my new assignment I tried to learn as much as possible about the Office of Inspection. I studied the administrative procedures and began an indepth review of the files which contained allegations of misconduct.

For the most part, DEA was patterned after the now-defunct Bureau of Narcotics and Dangerous Drugs, which it had replaced in the Justice Department. Most of the files in the DEA Office of Inspection were from BNDD.

[At this point, Senator Jackson withdrew from the hearing room.]

Mr. Brosan. These files could be categorized into two classes. The first class was resolved cases; that is, where the allegations had been thoroughly investigated and appropriate action taken either exonerating or disciplining those involved. The second class consisted of unresolved allegations; that is, those that had not been thoroughly investigated and brought to a conclusion one way or the other up till this time.

The most disturbing aspect of the unresolved allegations was that several of them had been lodged against former BNDD and FBN personnel who were now in high ranking positions in DEA.

My reaction to the existence of these unresolved allegations was simply that they had to be fully investigated. In fairness to the men involved, it was necessary that the Office of Inspection get to the bottom of the allegations once and for all—and with as much dispatch as possible in order to remove the cloud over the careers of those officers involved.

[At this point, Senator Jackson entered the hearing room.]

Mr. Brosan. The allegations were varied. But, in general, they revolved around charges that FBN and BNDD personnel, in the course of their investigative work, had accepted bribes, sold confiscated narcotics, or falsified receipts for payments to informants.

These are serious matters and no official at DEA could carry out his duties properly with such unresolved accusations over his head. I intended to take them up with Mr. Tartaglino, who was to be my supervisor, as soon as he took over as Chief Inspector.

But time passed by and Mr. Tartaglino remained on as Acting Deputy Administrator. It became apparent to me that my job as Acting Chief Inspector might be longer than I had expected.

In turn, I realized that these unresolved cases were my responsibility, and if I remained Acting Chief Inspector I would have to answer the question of why these unresolved cases were not settled.

I decided that if Mr. Tartaglino had not assumed the office of

Chief Inspector by December 31, 1973, I would direct renewed inquiry into the unresolved cases.

My intention was to pursue all possible investigative avenues to the point that we could conclusively establish the allegations as being either substantiated or unfounded.

Concurrent with reviewing the files and familiarizing myself with the office procedures, I set out to determine the capabilities of my staff. Several things concerned me. First, we were eight inspectors below our ceiling. Second, of the 26 inspectors onboard, 6 had been designated "inspector trainees."

Experience, in my own opinion, is an important qualification for those who are going to conduct integrity investigations. To make inquiry into the conduct of fellow workers is a sensitive endeavor. Careers and reputations are at stake. Such investigations should not be turned over to anyone but skilled, veteran investigators, who fully understand the working conditions of drug enforcement officers.

Adding to the problem in the office was that several of the inspectors—even among those who had sufficient experience in investigations—were actually working in this assignment against their will.

They did not like the work and they let me know quickly that they were doing it because they had been ordered to. Again, in my opinion, in this, more than any other type of law enforcement, you must desire the assignment. I did not wish to entrust sensitive integrity assignments to unhappy agents.

In addition, among the inspectors in the office were agents who, in earlier years, had conducted the original—but still incomplete—investigations regarding the unresolved allegations. I was reluctant to turn these cases back to the same men who had looked into them in the first place.

To repeat, I set December 31, 1973, as the date when, if I was still Acting Chief Inspector, I would begin to direct investigations into the unresolved allegations.

But before doing this I obviously had to restaff the office. I would also have to end the agency practice of using integrity investigations as a field for the training of younger agents. And I would have to enjoy the flexibility of choice to enable me to assign fresh personnel to the old cases.

I wanted men who were experienced, competent, enthusiastic professionals. According to the terms of Reorganization Plan No. 2 of 1973 and the subsequent personnel stipulations promulgated internally within DEA, the Office of Inspection was authorized a personnel strength of 34 inspector positions.

When I came to DEA in September there were approximately 26 inspectors. I was able to have several of these inspectors reassigned and at one point my personnel available for duty dipped below 20.

During this time, I was recruiting and hiring new investigators to build up the staff. It was not until April 26, 1974, that the Office of Inspection returned to its original complement of 26 inspectors available for assignment.

It was while conducting the file review that I mentioned earlier that I learned that the U.S. attorney, Southern district of New York, planned to bring to trial a former Federal drug agent on charges of violating the narcotics laws.

The former agent was Francis Waters of the now defunct Federal Bureau of Narcotics. Mr. Waters was charged with illegal sale of narcotics. A trial was held in early 1975 and he was acquitted.

The Waters case was being prepared in the fall of 1973 and was particularly troubling to me because there was indication that the former agent's trial might result in the public release of information relating to alleged misconduct by men the agent has worked with at FBN and who were now high ranking officials at DEA.

My concern was twofold:

First, I was concerned about the integrity of our own personnel and allegations which might reflect unfavorably on their honesty. If any of our people were alleged to be guilty of misconduct, it was my job to investigate the matter.

Second, allegations which might result in bad publicity to DEA were of great consequence to the Administrator, Mr. Bartels.

I realized early in my tour at DEA that Mr. Bartels had a strongly developed sense of public relations. I knew the Waters trial would be worrisome to him because of the public relations impact it might have. I felt, therefore, that I should know as much about the case as possible at the earliest date.

Mr. Rudolph Guiliani was the assistant U.S. attorney in the southern district of New York who was preparing the case. I, therefore, went to New York to confer with him. We met on October 29, 1973, in his office in the U.S. courthouse.

I informed Mr. Guiliani of my fear that allegations against senior officials might surface during the course of the trial. I told Mr. Guiliani that we would like to avoid this because in the public's mind, it might be associated with our new agency.

I explained to Mr. Guiliani that it was not DEA's intention to in any way hinder the prosecution of his case. To the contrary, I assured him that any new information on misconduct by DEA employees which he uncovered would be immediately and thoroughly investigated.

Mr. Guiliani replied that to the extent that the prosecution could take place according to proper procedures he would avoid bringing up the names of DEA officials. He said that any new information which he turned up relevant to the mission of the Office of Inspection would be turned over to us.

In November of 1973, I told Mr. Bartels of the allegations concerning current DEA officials which might arise out of the prosecution of the Waters case. Present when this conversation took place was Mr. Roger Jones, who was then executive assistant to the Administrator.

I also discussed other unresolved cases during this meeting, but only two were committed to paper and those were covered in my memorandum of November 6, 1973, to the Administrator. I will discuss other aspects of the circumstances leading me to write this memo later in my testimony.

Mr. Chairman, it is my understanding that the subcommittee has obtained a copy of the November 6, 1973, memorandum. You may wish to make it an exhibit. However, owing to the sensitive nature of the document, I suggest that you make it an exhibit to be released at the subcommittee's discretion.

Chairman JACKSON. Without objection, it will be marked for identification as exhibit No. 27, and will be so received.

[The document referred to was marked "Exhibit No. 27" for reference and will be retained in the confidential files of the subcommittee.]

Mr. Brosan. During my conversation with Mr. Bartels, he said that he was of the opinion that the allegations of misconduct by current DEA officials could not be introduced at the Waters trial.

In one case, he said that this was the first he ever heard of the accusations against the particular DEA officer. This statement surprised me because Mr. Tartaglino had told me that I would see files on several ranking officers and that Mr. Bartels was already aware of them. In fact, later, Mr. Tartaglino told me that he had specifically discussed with Mr. Bartels the case I am now referring to.

I would like to add that I subsequently learned from the Chief Inspector who had preceded me, Patrick W. Fuller, that he also had discussed the same case with Mr. Bartels just prior to the merger on July 1, 1973. Fuller himself told me this. Thus, both Tartaglino and Fuller told me they talked to Mr. Bartels about this case, but Mr. Bartels was now denying knowledge of it.

During the same discussion wherein Mr. Bartels, Mr. Jones, and I talked over these cases I also brought up allegations that had been made against another senior DEA official. I had discussed this case with Mr. Bartels at least once before.

While the allegations were not related to the Waters trial, I thought it appropriate to discuss them again with Mr. Bartels. Mr. Bartels asked me why I was "dragging up" an old case, thereby indicating to me that he had little interest in my pursuing investigative leads on unresolved cases. He pointed out that DEA's image would suffer even though the alleged misconduct had taken place prior to the creation of our new agency.

I believed that it was important to protect DEA's reputation, but not as important as getting to the truth. Further, because these allegations were unknown outside the agency at the moment, did not mean they would be unknown forever.

The best way to insure that reputation was to investigate each unresolved case to the extent possible, and record the results in writing. In the absence of specific instructions one way or the other from Mr. Bartels, I decided to go forward with the investigations in 1974.

Up to December 31, 1973, there were many responsibilities which the Office of Inspection under my stewardship was effectively carrying out, particularly with reference to setting up administrative procedures covering office inspections and the review of background investigations on new employees.

When January 1974 arrived, I had 3½ months of familiarization with the job and was still in charge in an "acting" capacity.

There were two newly assigned inspectors in the office with the experience and background that qualified them to handle integrity matters of high sensitivity. They were Inspectors Thomas V. Cash and Luke P. Benson.

I selected the two most important cases based on (a) the seriousness of the allegation and (b) the present position of the officer involved. These cases were assigned to Inspectors Cash and Benson. When either of the first two cases was resolved, I intended to select the next most important case and assign that for resolution.

It is demonstrative of both the shorthandedness and overall personnel condition of the DEA Office of Inspection that I had only two inspectors to whom I could entrust these sensitive investigations at that time.

Inspector Cash was assigned to investigate the allegation against the senior DEA official of which Mr. Bartels had previously denied knowledge.

These allegations were that the former FBN agent, now a high ranking DEA official, had falsified receipts for payments to informants; that he had participated in the theft of \$16,000 from a merchant seaman; and that he had been corrupted by a well-known husband and wife narcotics violator team.

All of the allegations were made in the late 1960's and related to acts that had occurred earlier. It appeared that the files containing them followed the officer through two reorganizations and were now in DEA. There was no indication that the man had ever been confronted on any of the accusations. I intended to do just that, but not until I had a complete report of the investigation in hand.

Mr. Chairman, I wish to note that in January of 1975, I discussed those allegations before this subcommittee in considerable detail in executive session.

Inspector Cash began with the falsified receipt allegation. An earlier investigation using handwriting exemplars analyzed by the FBI had shown that the person who signed certain receipts was not the informant to whom payment was supposed to have been made.

The discrepancy had been established definitely in one or two cases. In addition, there were a dozen or more questionable receipts which the FBI laboratory could not resolve.

I directed Inspector Cash to obtain additional handwriting exemplars for submission to the FBI analysts. It was possible that if they had more to work with, a definite conclusion could be reached.

When this was accomplished, I personally carried the request and new writings to my counterpart, the Chief Inspector of the Federal Bureau of Investigation, Mr. Odd Jacobson. After the examination, I personally picked the results up from the same man. I did this to insure complete confidentiality in this sensitive matter.

The additional material failed to assist the FBI laboratory, and they could not establish the issue on the questionable receipts one way or the other.

The next allegation was one I felt might surface during the Waters trial. It was that the Senior DEA official while working with other FBN agents had years before, stolen—and then divided among themselves—\$16,000 from a seaman who was found to have a small amount of drugs in his possession.

A former agent making this allegation was to testify in the upcoming Waters trial. I knew that the best test of his veracity as a witness would come at that time. But I wanted to evaluate the man for myself. At this late date, I wanted to check his memory by reviewing his story firsthand.

Accordingly, on January 16, 1974, I met the former agent in a local restaurant. He repeated the allegation in sufficient detail to convince me that we had to try to resolve this matter.

The third allegation was that the same DEA official, in his FBN days, had been corrupted by a husband-wife team of drug violators. I decided that of the three allegations, theirs was the least possible of proof. No investigation was made concerning this allegation, pending the results of the other two efforts.

Earlier in my testimony, I said the Office of Inspection was insufficiently staffed to handle integrity investigations. In regard to that assertion, I would like to go into more detail now. I will describe several major cases and responsibilities the Office was faced with.

The Office of Inspection was charged with responsibility for inspecting the field and regional offices. There are 13 domestic regions and 6 foreign regions. Altogether, DEA offices are staffed by approximately 2,500 agents and 1,500 support personnel.

I have already testified concerning two serious personnel investigations.

Another case was a carryover from the Office of Drug Abuse Law Enforcement—ODALE—an organization within the Justice Department which was also merged into the new Drug Enforcement Administration.

This case had to do with the murder of officer Emir Benitz, while he was on assignment in Florida. It covered several months and required hundreds of man-hours to solve.

There was also the inquiry regarding allegations made by Frank Peroff which arose just 3 or 4 weeks after I took office. This subcommittee has conducted its own inquiry which involved an alleged coverup of Robert Vesco's possible narcotics activities. This case also required hundreds of man-hours to investigate.

A second Vesco case had to do with an incident in which BNDD personnel conducted sweeps of the home and office of Vesco in New Jersey to detect any electronics surveillance equipment which might have been installed there.

That investigation was begun in July of 1974. This subcommittee also investigated that case, and it likewise required a considerable manpower input from my office.

The investigation by the Office of Inspection revealed that the sweeps had been conducted by BNDD agents at a time in 1972 when Vesco was under investigation by the Securities and Exchange Commission—SEC. The three agents involved were found to have since left Federal service.

A third major investigation we entered was also examined by this subcommittee. This case involved an allegation that a firm owned by Howard Hughes—namely, Summa Corp.—made \$20,000 available to BNDD to be gambled in a Las Vegas casino, in an undercover narcotics effort. This effort has come to be known as Operation Silver Dollar.

Thus, there were three cases in which this subcommittee had an active interest. Of the three, I was satisfied with the DEA final report concerning the investigation of the sweeps of Vesco's New Jersey home and office.

I was not satisfied with the results of the DEA investigations in the Peroff case, or in Operation Silver Dollar, both for the same reason. My dissatisfaction was with the absence of documentation in the files; thus, while we could not find any evidence to establish wrongdoing, I could not state with certainty that there had been none.

Approximately 200 cases were handled by my staff in this period. Several of the more serious resulted in indictments. I might add one of those was that of a former inspector who I had found in the Office of Inspection and Internal Security when I arrived in September of 1973 and had transferred.

Concurrent with these activities, it was my responsibility to conduct the office inspection program. We managed to inspect 6 of the 13 domestic and 4 of the 6 foreign regions. Such inspections usually require a half dozen to a dozen inspectors, and take anywhere from 1 to 3 weeks.

On September 10, 1974, I received a call from William Durkin, the Assistant Administrator for Enforcement for DEA. Mr. Durkin told me that the Washington Metropolitan Police Department, Organized Crime and Rackets Branch, had compiled data on Vincent Promuto, the Director of DEA's Public Affairs Office. It was my impression that this information had just been received by Mr. Durkin.

Police surveillance reports alleged that Mr. Promuto was keeping company with known gamblers and ex-convicts.

At the time I received the call from Mr. Durkin, Mr. Promuto was in Europe on Government business with the DEA Administrator, John R. Bartels, Jr.

Based on this information I had received from Mr. Durkin, I assigned an inspector, Thomas V. Cash, to make inquiry into the Promuto matter.

Information about the original surveillance data concerning Mr. Promuto was contained in a memorandum which was prepared August 19, 1974, by the Washington Metropolitan Police Department, Organized Crime and Rackets Branch, and submitted to the U.S. Attorney's Office, District of Columbia.

I directed an immediate investigation into the statements contained in the memorandum as I was authorized to do by the inspection manual. I decided against advising Mr. Bartels as he was traveling in Europe with the subject, Mr. Promuto.

I felt it would be next to impossible to explain the allegations by trans-Atlantic telephone when, for all I knew, Mr. Promuto might be standing right next to Mr. Bartels. Instead, I felt I should look into the allegations and be prepared to give the Administrator as much information as possible as soon as he returned. Possibly there was a mistake or the allegations were otherwise unfounded.

I did not know who had knowledge of that memorandum, or the information contained therein, from August 19, 1974, until September 10, 1974, when I received the call from Durkin. The first knowledge that I had of the memorandum was on Tuesday night, September 10, 1974, when Inspector Cash obtained a copy of it from the Washington Police and reported to me by telephone of its contents. I actually saw the memorandum for the first time on the morning of September 11, 1974.

The memorandum was from Carl M. Shoffler, officer, Organized Crime and Rackets Branch, Metropolitan Police Department, for the attention of Donald E. Campbell, Major Crimes Division, U.S. Attorney's Office, District of Columbia.

Mr. Chairman, it is my understanding that the subcommittee staff has obtained from DEA a copy of this memorandum and that it was made an exhibit in connection with the testimony of Mr. Tartaglino.

Preliminary investigation by Inspector Cash indicated that there was some substance to the allegations concerning Mr. Promuto. When I say "some substance," I mean that in my judgment the data contained in the surveillance reports and gathered by the Office of Inspection was too specific, too precise, and too potentially documentable to be dismissed.

Within the next several days, it became apparent to me that the Promuto investigation constituted a classic—a textbook—internal security case.

For example, it was alleged that Mr. Promuto was associating with persons of criminal reputation and with persons on parole for sentences given them for felonious acts. It was alleged that Mr. Promuto had given out information that resulted in the identification by criminals of a drug informant working for law enforcement agencies.

It was alleged that Mr. Promuto had two unlisted telephones which had been called by persons under investigation in gambling cases.

Moreover, making the case more serious was information that Mr. Promuto was not only engaged in associations with persons of disrepute, but that he knew perfectly well who these persons were and the nature of certain of the activities they were involved in. In fact, our preliminary investigation disclosed that he knew at least three of the convicted felons since 1967.

Let me add, however, in the strongest terms, that these were allegations. They had come to us from a large and reputable police department, and our own initial investigation had revealed that there was some substance to them. Therefore, we had no choice but to go forward.

If, at the end of the investigation it were found that Mr. Promuto was a victim of coincidence or of some other inadvertent combination of totally innocent circumstances, then the Office of Inspection would put the matter to rest, with a written report exonerating him.

We were proceeding in the Promuto matter cautiously, professionally, and responsibly in order to protect the individual's reputation and the integrity of DEA.

Mr. Bartels and Mr. Promuto returned from Europe the following week. I ask to see Mr. Bartels. I asked the DEA Associate Chief Counsel, Robert Richardson, to accompany me while I briefed Mr. Bartels on the Promuto matter. Mr. Richardson agreed.

I told Mr. Bartels of the D.C. Police report and the allegations contained therein and of the results of our ongoing preliminary investigation.

When we met with Mr. Bartels on September 17, 1974, he was not pleased with my report to him. But at that first briefing I began to note that Mr. Bartels seemed almost as displeased with me for bringing the information to his attention as he was concerned about the existence of the information itself. He poked holes in the material which we had little time to perfect and asked questions I could not answer after less than 5 working days to investigate the allegations.

For the moment, I gave little thought to Mr. Bartels' attitude toward me, reminding myself of the inherent dangers in being the bearer of bad news.

I went on to propose to Mr. Bartels three options which were available to him:

First, he could confront Mr. Promuto with the allegations and offer him the opportunity to resign.

Second, the Office of Inspection could conduct a full investigation.

Third, we could discontinue the investigation. I told Mr. Bartels that the third option was unacceptable to my way of thinking.

I explained to Mr. Bartels that it was my judgment that we should either go all out with an in-depth investigation; or we should guarantee against any possibility of scandal by persuading Mr. Promuto to resign.

But we could not leave Mr. Promuto in that job without finding out what he did in his off-hours and if included among his friends was a group of ex-convicts.

I also warned Mr. Bartels that if he chose the second option—that is, the full investigation—word of the allegations would spread and some embarrassment to DEA might result.

Mr. Bartels' earlier displeasure with my briefing now turned to anger.

He said he wanted the investigation to continue.

I left the office. Mr. Richardson remained. I do not know what Mr. Bartels and Mr. Richardson discussed. But I do know that shortly thereafter I was, for all practical purposes, relieved of primary responsibility for the Promuto case.

Mr. John Lund, Deputy Assistant Administrator for Enforcement, and Mr. Richardson were inserted into the chain of command between Mr. Bartels and me.

Mr. Lund and Mr. Richardson directed me as to how to proceed with the investigation. This was a most unusual and improper method of operation. Mr. Richardson and Mr. Lund were as unhappy and dissatisfied with it as I was.

Mr. Lund and Mr. Richardson told me what I knew anyway; that is, that Mr. Bartels was not pleased with my conduct on the Promuto issue. It was as if I, not Vince Promuto, had shown up in Washington Police Department surveillance reports.

Mr. Lund, Mr. Richardson, and I met at 8:30 a.m., on Thursday, September 26, 1974. Up to this time we had a tentative identification of a young lady alleged to be a friend of Mr. Promuto.

It was after this meeting that I believe Mr. Richardson returned and told me that the young lady was Diane De Vito. He had seen her in San Francisco with Mr. Promuto and Mr. Bartels earlier in the year.

On Saturday, September 28, 1974, Mr. Richardson called me and said that Mr. Bartels had called him at 11 p.m. and 1 a.m., the preceding night. He said Bartels was upset and ordered him to attend a meeting at 8 o'clock that morning.

Mr. Richardson told me that at that meeting, held at Mr. Bartels' home, he was lectured in strident terms that the Promuto investigation was being handled incorrectly.

Incidentally, present at this meeting was Mr. Thomas Durkin, a private attorney from Newark, N.J., and a consultant for DEA, who should not be confused with Mr. William Durkin, the Assistant Administrator at DEA for Enforcement.

Chairman JACKSON. Are they related in any way?

Mr. BROSNAN. No, sir.

Mr. Richardson told me that Mr. Bartels was particularly upset that word of the Promuto investigation was giving DEA a bad reputation. To my mind, he had the cart before the horse.

The agency's reputation was of less concern to me at that point than its integrity and effectiveness as law enforcement agency. When it comes to the integrity of law enforcement personnel, there can be no middle ground, no gray areas. Bad press may be unpleasant, but corrupt law enforcement is unacceptable in our political system.

Information reached me that Mr. Bartels was putting out the word that I was a "supermoralist," that I was unrealistic and naive about the way narcotics enforcement personnel conduct themselves.

Senator NUNN. Mr. Chairman, may I ask one question to connect with this point on Mr. Thomas Durkin?

Do you know, Mr. Brosan, whether Thomas Durkin is a paid consultant for DEA?

Mr. Brosan. The understanding that I had is that Mr. Durkin is a consultant for DEA. Paid or unpaid, I don't know.

Chairman JACKSON. Reporting to whom? He consults to the Administrator? At that time, Mr. Bartels?

Mr. Brosan. Yes; Mr. Bartels, Mr. Chairman.

Chairman JACKSON. He was the one he was conferring with or consulting with? It wasn't to the DEA in general, to your best knowledge?

Mr. Brosan. Most frequently he was consulting with Mr. Bartels. I believe on occasion he had conversations with other officers, Mr. William Durkin, Mr. Casey, and other members of the executive staff, but for the most part he was a consultant to Mr. Bartels. That is my understanding from my observations.

Chairman JACKSON. So he had substantial access to what was going on. Did he have security clearance?

Mr. Brosan. Not to my knowledge. I never saw him listed among those that had security clearances among the Drug Enforcement Administration during my tenure.

Senator NUNN. Did you get a letter from Mr. Bartels or anything from Mr. Bartels asking you to check on Mr. Thomas Durkin for a security clearance?

Mr. Brosan. I never got such a letter.

Senator NUNN. Did you ever have any conversation with anyone at DEA about the need for getting a security clearance for Mr. Thomas Durkin?

Mr. Brosan. Senator Nunn, I am aware that Mr. Tartaglino had forwarded a memorandum to Mr. Bartels on this matter and that there was a copy which, when the memorandum was signed, was to be delivered to me. I never have seen that memorandum.

Senator NUNN. In other words, you never got that memorandum from Mr. Bartels? Your information is it strictly came from conversations with Mr. Tartaglino?

Mr. Brosan. That is right. I have never seen that memorandum.

Senator NUNN. No one has ever asked you to check on security for Mr. Thomas Durkin?

Mr. Brosan. Never.

Senator NUNN. Do you have the authority to initiate such a security clearance check without orders from higher authority?

Mr. Brosan. That is a difficult question, Senator, because usually when a person is employed it is just a routine matter within DEA and in DEA all positions are classified critical sensitive positions so that when anyone is employed their applications and forms are sent to

the Office of Inspection in Internal Security for processing in the area of security clearance.

Mr. Durkin was already in this capacity, whatever it was, when I arrived. Therefore, it wasn't initiated during my tenure. I don't know how long he had been associated with DEA or BNDD before I arrived there. I did not go back at what you are asking me and check on the security clearances of all those who were there when I arrived. There were thousands of employees on board.

Chairman JACKSON. I would like to at this point, in connection with Mr. Thomas E. Durkin, offer as an Exhibit 28, a letter of June 2, 1975, that I had written to the Attorney General, inquiring specifically about the role of Thomas E. Durkin, Jr., of Newark, N.J., and a number of questions which I think are pertinent to this matter. That will be received as Exhibit 28.

[The document referred to was marked "Exhibit No. 28" for reference and follows:]

EXHIBIT No. 28

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE OF INVESTIGATIONS,
Washington, D.C., June 2, 1975.

HON. EDWARD H. LEVI,
The Attorney General.

MY DEAR MR. ATTORNEY GENERAL: In connection with this Subcommittee's investigation regarding federal drug enforcement operations, I would appreciate your providing us with information regarding Mr. Thomas E. Durkin, Jr., of Newark, New Jersey, who has identified himself as an unpaid "Special Adviser" to the Drug Enforcement Administration.

The Subcommittee would like to know the following specific points of information regarding Mr. Thomas E. Durkin, Jr., and his association with DEA:

1. What does the title, "Special Adviser" mean in terms of job description. Does a job description for Mr. Durkin exist? If so, please provide a copy to us. Is the term, "Special Adviser," the same as the more familiar term, "consultant?" Or does a "Special Adviser" have responsibilities differing from those of a consultant? In addition, does the job of "Special Adviser" relate specifically to providing advice to DEA as an institution of government; or does it have more to do with the giving of advice to a particular section of DEA or to a particular person? The Subcommittee staff's preliminary inquiry, for example, has found that in the instance of Mr. Durkin, he has influenced decisions made by the Administrator and the General Counsel on a number of occasions and apparently regarding very sensitive matters. Did other DEA officials have benefit of Mr. Durkin's recommendations? If so, which officials were they?

2. Mr. Durkin has displayed DEA credentials which identify him as a DEA "Special Adviser." When was Mr. Durkin designated "Special Adviser?" When was he given the credentials identifying him as a "Special Adviser" to either DEA or any predecessor agency?

3. Mr. Durkin has indicated to Subcommittee investigators that he received no payment for the services he provided and no reimbursement for expenses he incurred were made to him by the government. However, Mr. Durkin went on to say that he did have a DEA telephone credit card which he used when making long distance calls in connection with his work as DEA "Special Adviser." Mr. Durkin also said he was given books of blank Government Travel Requests (GTR's) which enabled him to travel to and from Washington at Government expense while doing work in connection with his "Special Adviser" responsibilities. Regarding both the DEA telephone credit card number and the blank GTR's, the Subcommittee would like to know the internal authorization under which these funds were expended. In addition, the Subcommittee would appreciate knowing if Mr. Durkin's use of blank GTR's constituted his having blanket travel orders. That is to say, was Mr. Durkin, in fact, given authority to cut his own travel orders? In this connection, was the credit card number issued him his alone or was it a number which he shared with another DEA representative or representatives? Finally, in this regard, are there other "Special

Advisers" or consultants at DEA who are entrusted with blank GTR's and, if it is established that Mr. Durkin had blanket travel orders, is it DEA policy to issue such orders to other "Special Advisers" or consultants?

4. Subcommittee investigators tried to elicit from Mr. Durkin the level of security clearance he enjoys at DEA. Mr. Durkin explained that he was not sure what his security clearance classification was. Please advise us as to Mr. Durkin's clearance status; the scope of the field investigations that preceded the designation of this clearance; and the restrictions, if any, placed on his accessibility to sensitive information and documents. Pursuing that question further, we would like to know what clearance procedures are followed at DEA regarding "Special Advisers" and consultants and if clearance procedures regarding "Special Advisers" and consultants differ from those procedures used to establish security clearances on fulltime DEA personnel.

5. Mr. Durkin told Subcommittee investigators he was "sworn in" upon assuming his "Special Adviser" designation. The Subcommittee would like to know whether "swearing in" exercises are held for all DEA "Special Advisers" and what is the substance of the oath administered and who would be authorized to administer it. In Mr. Durkin's instance, who administered the oath? Is this oath similar to those which fulltime DEA personnel submit to?

6. Independent inquiry by the Subcommittee staff has found information to indicate Mr. Durkin advised DEA officials in matters that included Congressional relations, including DEA's relations with this Subcommittee. Subcommittee investigators have also found information to indicate that Mr. Durkin advised DEA officials regarding the manner in which certain integrity investigations were handled regarding certain senior DEA officials, including Mr. Vincent Promuto and Mr. William Durkin. Did Mr. Durkin serve as "Special Adviser" in connection with Congressional relations, in particular with relations with this Subcommittee and in connection with the handling of integrity investigations concerning Mr. Promuto and Mr. William Durkin? If so, to whom was this advice given? And in what form? Was any of this advice written? If so, the Subcommittee will request copies of the written advice because such documents clearly fall into the jurisdiction of this Subcommittee as it examines the federal drug enforcement effort.

Any and all information you provide this Subcommittee in response to the above questions will be beneficial to the Subcommittee as it seeks to better understand government operations in the drug enforcement field.

As our hearings are to begin June 9, 1975, and inasmuch as Mr. Thomas Durkin will be a witness early in the series of hearings, your expeditious reply to this letter will be very much appreciated.

Sincerely,

HENRY M. JACKSON, *Chairman.*

Chairman JACKSON. Go ahead; excuse me, Senator Nunn.

Senator NUNN. One other brief question here. Did Mr. Thomas Durkin ever consult with you personally and give you advice personally in your capacity as investigator?

Mr. BROSNAN. Again, I wouldn't say that he gave me advice directly, but I was present. He did question me extensively on one occasion concerning a case and he did make suggestions which I don't believe were ever carried out.

Senator NUNN. What kind of case?

Mr. BROSNAN. The case involved—the issue involved this subcommittee and the cases involved were those previous *Vesco* cases which had been under investigation by this subcommittee.

Senator NUNN. What kind of advice, generally speaking?

Mr. BROSNAN. As I say, it wasn't really that he gave me advice. He questioned me in detail on the cases and then he came up with a suggestion that he was going to put forth to Mr. Bartels on the particular issue at that time.

Senator NUNN. If you were to be informed, speaking hypothetically, because we have not developed these facts that Mr. Thomas Durkin was not on any payroll and was not receiving any remuneration from DEA,

would you attach any significance to this relationship that exists or existed?

Mr. Brosan. Between who and who, Durkin and whom?

Senator NUNN. Durkin and DEA or Durkin and Bartels; either.

Mr. Brosan. The general impression that Mr. Durkin left with me was that he was a patriotically motivated citizen and that he was donating his efforts to the Government because of his interest in law enforcement and specifically the drug enforcement problems.

Senator NUNN. Thank you.

Mr. Chairman, I don't want to interrupt any further.

Mr. Brosan. I wish to note, on his complaint that too many people knew about the investigation and that we at DEA were not the first—this is Mr. Bartels' complaint—knew about the investigation, that we at DEA were not the first, nor were we the only ones to be advised of the information contained in the District of Columbia Police surveillance reports.

Partial or total knowledge of the data in those reports was also held by the District of Columbia Police, of course. The FBI had provided us with certain information in the case; the Bureau of Alcohol, Tobacco, and Firearms had made an arrest stemming from one of the incidents outlined in the original police memo; the IRS and the U.S. Attorney's Office Eastern District of Virginia had conducted an extensive investigation into gambling in the Washington, D.C., area in 1967 at which time Mr. Promuto's friendship with three men, who were convicted of violating the antiracketeering statutes, was publicized in the newspapers and finally the U.S. Attorney's Office, District of Columbia, was also aware of a good deal of the information.

By this time, Mr. Richardson was upset because he told me Mr. Bartels was not only blaming me for the direction of the *Promuto* case—but he was also blaming Richardson and Lund. Mr. Richardson said Mr. Bartels was especially annoyed with me and that I was in considerable trouble with the Administrator.

Then—this was still in our telephone conversation of September 28, 1974—Mr. Richardson gave me a check list of actions I was to take.

First, I was to prepare a list of written questions to be submitted to Mr. Promuto in connection with the investigation. This was to be done by Monday, September 30, 1974.

Second, I was to brief Mr. Bartels on the investigation to that point. The briefing was to occur Tuesday, October 1, 1974.

Third, I was to have a written report for Mr. Bartels to back up my briefing by Wednesday, October 2, 1974.

Mr. Richardson further stated that Mr. Bartels did not want any new avenues of investigation opened up. It was, therefore, my understanding that I was to write a report on the investigation of the original allegations. Furthermore, if we had developed any new suspicions we were not to look into them.

These instructions were irregular from an investigative point of view. To begin with, this was not the time to question Mr. Promuto. It was much too early to confront him.

Next, I had never heard of questioning the subject of an investigation in an unsworn written form.

Senator NUNN. The bottom of page 29 is pretty important, I would think, Mr. Chairman. You are stating that Mr. Richardson further

stated that Mr. Bartels did not want any new avenues of investigation opened up. Are we recalling specific words here, or is this your general impression? You go on to say, and I quote your statement: "It was, therefore, my understanding that I was to write a report on the investigation of the original allegations. Furthermore, if we had developed new suspicions we were not to look into them."

Is this as close as you can come to the words, or is this your impression of what Mr. Richardson told you?

Mr. BROSN. It is much stronger than an impression, Senator. It is my definite understanding that those were the instructions. I was not to open up any new avenues of investigation. I was to write a report on those matters that had already been presented to us in the original information, the original memorandum of information from the Police Department.

Senator NUNN. Have you ever received such instructions on any other cases or is this unusual instruction?

Mr. BROSN. I have never gotten this type of instruction from anyone before in the course of my Federal service.

Senator NUNN. Mr. Richardson was quoting Mr. Bartels, he was not speaking for himself?

Mr. BROSN. Mr. Richardson was telling me the instructions that he had received at 8 o'clock that same morning and this was about 8 o'clock at night when he called. He was giving me the instructions that Mr. Bartels wanted delivered to me. That was my understanding of it.

Senator NUNN. Was there anything in writing at all?

Mr. BROSN. There was nothing in writing and, furthermore, I might add that I, the next day, relayed these instructions to the investigator, Mr. Thomas Cash, and he objected strongly to me that he thought that this was interference in his investigation.

Chairman JACKSON. Did you have the feeling that it was at that point that a coverup was underway?

Mr. BROSN. Yes, sir.

Chairman JACKSON. A plain coverup?

Mr. BROSN. Yes, sir.

Chairman JACKSON. Which, of course, is in violation of Federal law, as we all know; right?

Mr. BROSN. Yes, sir.

Chairman JACKSON. Obstruction of justice. I think it is the charge here. It is so obvious on its face; that is, when you turn around and ask someone to make an investigation, make it appear like an investigation, but don't make it; isn't that about it?

Mr. BROSN. That is what it was, Senator.

Chairman JACKSON. That was the impression in your mind, you went away definitely feeling that here was an obviously planned coverup from higher authority coming down, Mr. Robert Richardson, allegedly speaking for Mr. Bartels?

We will have Mr. Richardson here under oath and we will have Mr. Bartels. It seems to me that this is a classic coverup, if it is true.

Mr. BROSN. When given the questions, Mr. Promuto was to be allowed to keep them for an unspecified period. In my opinion it was sort of a take home examination.

Investigative interviews, interrogations, conversations, discussions—call them what you will—must flow, one question to another.

There must be an exchange between the person asking the questions and the person answering them. One answer gives rise to a new question. There must be an opportunity to observe the reactions of the questioned person.

It requires no doctorate in investigative techniques to understand these fundamentals. Yet, incredibly, I was being given directions to seek to extract information from a subject of an investigation in written form. Such procedures are unheard of.

Finally, I felt it improper for me to have to write a report on the investigation at the very moment when Mr. Promuto was filling out the questionnaire.

At least I should have had the benefit of seeing the answers he had submitted to the written questions. If I had to write such a report—premature as it was—I should have had the opportunity to draw on information contained in Mr. Promuto's answers.

Senator NUNN. Who made the written interrogatories that were submitted to Mr. Promuto? Did you prepare them or did Mr. Cash prepare them?

Mr. BROSAN. That was a group effort. Mr. Richardson, Mr. Lund to a lesser extent, myself, and Mr. Cash, and I believe one or two of the other inspectors assigned. We all contributed to some degree to those questions.

Senator NUNN. Were those questions submitted to Mr. Promuto under oath?

Mr. BROSAN. No, sir.

Senator NUNN. What was the reason for that? Was there a reason?

Mr. BROSAN. There was no way of putting him under oath. It wasn't even left to me to deliver the questions to him. Either Mr. Lund or Mr. Richardson, who had been inserted over me, delivered the questions to Mr. Promuto, not I. So I had no opportunity to place the man under oath.

Senator NUNN. They were not taken before any kind of court official or notary public, or anybody that could administer oaths? These were actually given to him to take home with him and prepare; is that right?

Mr. BROSAN. Yes, sir.

Senator NUNN. Is this the normal form of investigative procedure?

Mr. BROSAN. I have never seen it before in my experience.

Senator NUNN. You have never seen unsworn statements or unsworn interrogatories submitted to a subject of investigation?

Mr. BROSAN. Never, sir.

Senator NUNN. Even for internal security purposes?

Mr. BROSAN. No, sir.

Senator NUNN. Thank you.

Mr. BROSAN. To summarize, the chain of events was:

Thursday, September 26. Identification of Diane De Vito as an acquaintance of Promuto and Bartels.

Friday, September 27. Call from Bartels to Richardson.

Saturday, September 28. Meeting between Bartels, Thomas Durkin, and Richardson from which emanated the instructions covering September 30; October 1, 2, 1974.

Monday morning, September 30, 1974, Mr. Richardson came to my office to begin drafting the written questions.

At this time, I objected strongly to this procedure. Mr. Richardson told me he agreed with my objections, indicating he did not approve of the written questions either. But, reluctant as we both were, we decided we had no choice but to do what we were told.

The questions were not completed and typed in final form until the next day, Tuesday, October 1, 1974. However, still objecting in principle to the procedure I was being directed to follow, I took the unusual step of writing on the reverse side of a copy of the Promuto questionnaire my comments on certain developments that took place that day.

Mr. Chairman, I have that document with me. I request that a copy of it be received as an exhibit. I would like to read aloud from that document at this time.

Chairman JACKSON. Without objection, it will be received as exhibit No. 29.

[The document referred to was marked "Exhibit No. 29" for reference and may be found in the files of the subcommittee.]

Chairman JACKSON. You may proceed.

Mr. BROSAN [reading]:

10/1/74 about 9:30 a.m., Bob Richardson came to my office and told me that Mr. Promuto had contacted both he and John Lund about these questions. I didn't know that Mr. Promuto knew about the questions and I was therefore surprised.

I gave Richardson the original of the questions and told him that in my opinion this was an irregular procedure and I wanted him to know this now, not later if it becomes an issue. (I had hoped to be able to talk to Mr. Bartels about this even though I had helped prepare the questions with Richardson and Lund yesterday (September 30). I thought he might change his mind.) G. B.

Senator NUNN. Let me get this straight right here now. The questions were actually prepared beginning Monday morning, September 30, 1974. You say on the bottom of page 31: "Mr. Richardson came to my office to begin drafting the written questions."

Mr. BROSAN. Yes.

Senator NUNN. Who participated in that drafting of the questions?

Mr. BROSAN. Mr. Richardson, Mr. Lund, myself, Mr. Cash, and to a lesser extent possibly Inspectors Whittington and Yarborough.

Senator NUNN. Then on October 1, which is 1 day later—is that right, September 30 to October 1?

Mr. BROSAN. Right.

Senator NUNN. At 9:30 a.m., Mr. Richardson came to your office and told you that Mr. Promuto had already contacted both him and John Lund about these questions. Did anybody say who gave Mr. Promuto knowledge that the questions existed and were being drafted?

Mr. BROSAN. Nobody said who gave him the knowledge. I was surprised. I expressed that surprise to Mr. Richardson. But how Promuto got that knowledge, I don't know.

Senator NUNN. Did Mr. Richardson also express surprise, or did he act like he had a conversation and possibly had told Mr. Promuto about the questions?

Mr. BROSAN. I really can't characterize. I don't recall just how Mr. Richardson reacted at that time, sir.

Later on that day, in a DEA conference room, I attended a meeting chaired by Mr. Bartels and attended by Messrs. Tartaglino; Richardson; Lund; Daniel Casey, Executive Assistant to Mr. Bartels; and Dr. Mark Moore, a DEA consultant.

This was the meeting which had been ordered by Mr. Bartels in his directions to Mr. Richardson on Saturday, September 28, 1974. The purpose of this meeting was for me to brief the Administrator on the Promuto investigation to date.

The actual briefing consisted of my reading from a paper prepared by Inspector Cash. This paper covered all aspects of the investigation known to this point. Under more ordinary circumstances, I would have given my briefing from notes.

But on this occasion, I selected this more formal method of presentation. I wished to be certain that nothing I said could possibly be misinterpreted or misunderstood.

Following my briefing, a group discussion occurred.

Among the topics discussed was the agent's manual regulation which permits the Chief Inspector to undertake any misconduct investigation prior to notification of the Administrator.

Mr. Chairman, I have a copy of the agent's manual. That is a copy of the BNDD not the DEA manual, which is what we were working with at the time. The portion I wish to call your attention to is chapter 81, "Employee Integrity," subchapter 8101, subparagraph 1.

I request that you make the copy an exhibit.

Chairman JACKSON. That will be received as exhibit No. 30.

[The document referred to was marked "Exhibit No. 30" for reference and follows:]

EXHIBIT No. 30

INSPECTION MANUAL (MAR. 31, 1970)

BUREAU OF NARCOTICS AND DANGEROUS DRUGS

Chapter 81—Employee Integrity

Subchapter 810—Introduction

Each employee of the Bureau must share the responsibility for promoting public confidence in the dependability and integrity of the Bureau by:

1. *Conducting himself in a manner which will reflect credit on him and the Bureau and which will not bring the Bureau into disrepute.*

2. Ensuring that Regional and Headquarters management officials are promptly notified of any situation which could indicate integrity breakdowns or misconduct.

BNDD employees will, by the very nature of their occupation, encounter information or situations which may reflect adversely on the character, reputation or suitability of one or more Bureau employees. The Bureau realizes that personnel of an organization in which public trust has been placed are subject to false or unfounded allegations. Those accused falsely have a right to have their name and reputation cleared. On the other hand, when there is evidence of wrongdoing, the individual is entitled to assurance that any action taken is based on all of the facts in the case.

8101 INSPECTION POLICY

It is a function of the Bureau Security Division of the Office of Inspection to thoroughly, impartially, and objectively investigate all allegations of wrongdoing on the part of Bureau personnel. The following sets forth the basic policies to be conformed to during such investigations:

1. Every allegation or complaint coming to the attention of the Office of Inspection shall be evaluated to determine if an investigation will be initiated. *The decision on whether to proceed with an investigation shall rest with the Chief Inspector or his designee, subject to post review by the Bureau Director.*

2. When a decision to conduct an investigation is made, the investigation will include all unresolved allegations against an employee, and will be conducted as rapidly as possible.

3. Inspectors will be guided by Departmental and Bureau regulations as set forth in Department of Justice and Bureau of Narcotics * * *.

Mr. BROGAN. The precise language cited reads as follows: The decision on whether to proceed with an investigation shall rest with the chief inspector or his designee, subject to post review by the Bureau Director.

Chairman JACKSON. That regulation was in effect then, at that point in time. There had been no change; right?

Mr. BROGAN. There had been no change at that time. We were operating under the BNDD manual at this time, Senator.

Chairman JACKSON. There had been no change, so that was the authority on which you were proceeding?

Mr. BROGAN. Yes, sir.

Other issues discussed at the meeting were the issuance of the administrative subpoena to obtain telephone toll records; the unorthodox method of questioning Mr. Promuto in written form; and the exposure of the case outside of DEA and outside of the Government to attorney Thomas Durkin, a DEA consultant who did not have a security clearance.

The meeting was noteworthy for other reasons as well. For example, the directive that Mr. Richardson had given me concerning the writing of the questions for Mr. Promuto was debated. It was generally agreed that this was not a professional manner of questioning the subject of an investigation.

Now, when I received the directive from Mr. Richardson to prepare such a questionnaire, Mr. Richardson made it absolutely clear that he was passing this instruction to me from Mr. Bartels.

But at the meeting Mr. Bartels, commenting on the questionnaire concept, expressed his objection to such a method and asked, "Who ordered the written questions anyway?"

I do not remember who spoke up next. But it was obviously Mr. Bartels' intent to convey to the others that he was as opposed as the rest of us were to written questions being submitted to Mr. Promuto.

I looked around the room. To my shock and dismay Messrs. Richardson and Lund sat mute.

They were not so reticent on another topic, however. They asked if they could be removed from any further direct involvement in the investigation.

Senator NUNN. At that point, did anybody speak up, including yourself, and give the chain of events as to how the written questions came about?

Mr. BROGAN. Senator, I have been questioned on that before and I just cannot recall. I am afraid—

Senator NUNN. You don't remember anybody in the room at that time challenging Mr. Bartels, the implications of Mr. Bartels' statement or question?

Mr. BROSAN. There was a discussion, but I don't recall what it was and who made whatever comments were made at the time. I have tried very hard, but I cannot recall what happened exactly.

Senator NUNN. Thank you.

Mr. BROSAN. Mr. Bartels agreed. I was then made to understand that I again had direct responsibility for the investigation.

At some point—I cannot remember precisely when—I learned that Mr. Promuto had been interviewed about the allegations by the consultant, Mr. Thomas Durkin. As the October 1 meeting broke up, Mr. Tartaglino and I approached Mr. Casey, Mr. Bartels' executive assistant, and asked if he would obtain the results of the Thomas Durkin-Promuto interview for me. Mr. Casey agreed to try.

[At this point Senator Percy entered the hearing room.]

Mr. BROSAN. To this day I have never received that interview. Apparently Thomas Durkin was being kept up to date on the results of our work. I had no way of knowing what he was divulging to Promuto or what he was learning from him. Exactly what Thomas Durkin's function was in this internal security case, I do not know.

Senator NUNN. When you say interview, would you clarify the word "interview"? Is that a written kind of interview?

Mr. BROSAN. No.

Senator NUNN. Is that a reported interview?

Mr. BROSAN. No. The knowledge that I received concerning this conversation or interview came to me from Mr. Tartaglino and he indicated that he had received it from Mr. Casey, the executive assistant to the Administrator.

Senator NUNN. Received it?

Mr. BROSAN. Received the information.

Senator NUNN. The information was oral information, though, and there were no written interrogatories between Mr. Durkin and Mr. Promuto, or any other kind of reported conversation that you know anything about?

Mr. BROSAN. I don't know anything about any—

Senator NUNN. In other words, to the best of your knowledge, there is no documentary in the form of written evidence or recorded evidence on any kind of interview between Mr. Thomas Durkin and Mr. Promuto?

Mr. BROSAN. At this time, I don't believe that there was any recorded interview or I don't know that there was. At that time it seemed to me that if Mr. Durkin were acting for the Administrator in this matter and interviewing Mr. Promuto that there would be some memorandum or some record of this.

That is what I asked Mr. Casey for, or I asked Mr. Tartaglino, and I asked Mr. Casey to get us the results. By the results, I meant whatever notation or memo that Mr. Durkin would have made after he talked with the subject of the investigation.

To my knowledge, if you are asking me did anything of that nature exist, I just assumed it would. I guess it doesn't.

Senator NUNN. May I ask one other question?

Chairman JACKSON. Yes.

Senator NUNN. Do you assume any kind of attorney-client relationship between Mr. Thomas Durkin and Mr. Promuto, or do you assume

contrary to that, that Mr. Thomas Durkin in his interview with Mr. Promuto was acting for the DEA?

In other words, did anybody ever allege or state to you that there was an attorney-client relationship between Mr. Thomas Durkin and Mr. Promuto at any time, when the interview took place or even up to the present time?

Mr. Brosan. Never. That was never my impression at all, Senator.

Mr. Bartels was leaving the city for the balance of the week. I asked Mr. Casey why it was necessary for me to submit a report on the next day, Wednesday, when the Administrator wouldn't be in to read it for 5 days.

Casey agreed that the report wasn't necessary until Monday. However, he called for the report on Friday, October 4, explaining he was afraid Mr. Bartels might call in before the weekend and question him about the document he was supposed to be holding since Wednesday. I submitted the report to Mr. Casey as requested on October 4, 1974.

Mr. Chairman, the subcommittee has obtained from DEA a copy of this report, you may wish to make it an exhibit.

Chairman JACKSON. We will include that.

Mr. Brosan. I believe it is dated October 2.

Chairman JACKSON. That will be admitted as exhibit 31.

[The document referred to was marked "Exhibit No. 31" for reference and will be retained in the confidential files of the subcommittee.]

Mr. Brosan. One final note of interest occurred at this meeting. Mr. Tartaglino made the observation that the Promuto matter was taking on the appearance of another Watergate.

Mr. Bartels was annoyed by this observation and directed Mr. Tartaglino to write a memorandum in support of his remarks. I have never seen this document but I believe the subcommittee obtained a copy of it and that it was made a part of the hearing record during Mr. Tartaglino's testimony.

During the next several days, according to information given to me by Mr. Tartaglino, he was frequently questioned by Mr. Bartels through Mr. Casey about when the Promuto case would be closed.

On October 8, 1974, Mr. Tartaglino and I interviewed Mr. Promuto. I felt it was still too early for such a session. But, because of pressure from Mr. Bartels and Mr. Casey, we decided we might be able to "buy time"; that is, we hoped that this interview, premature as it was, might allow us to say we needed additional investigative time.

The interview was conducted along the same lines as the questions put forward on the questionnaire which Mr. Promuto had answered and returned. I felt it would be best to limit our questions to the same material as was covered in the written inquiry so as not to expose any new data to Mr. Promuto.

Senator NUNN. Backing up a few pages in your testimony, you made it plain that you had received instructions through Mr. Richardson, allegedly from Mr. Bartels, that you were not to go into any new line of inquiry.

Now, on page 38, you make the statement "so as not to expose any new data to Mr. Promuto."

Does this mean that you are not following the instructions by Mr. Richardson; that is to say, you were not closing your mind and your file to any new information?

Mr. BROSAN. The situation, Senator, was that early in the investigation we had developed information which was not contained within the original memorandum from the Police Department.

We received that on September 10, 1974. By the time I got the call from Mr. Richardson, it was September 28, 1974, and we had developed information which was not in the memorandum. Therefore, in my opinion that was not new material. That was material we had developed up to that point.

New material to me was anything that I might develop in the course of investigating the older material from September 28, forward. Everything that we developed between the 14th and the 28th, I didn't think was known to Mr. Promuto.

Therefore, I limited my questions because certainly the person being interrogated always is capable of deducing a certain material from the questions asked and I didn't want to telegraph any of the material we might have.

Senator NUNN. So at that point your definition of new data would be data that was obtained after the District of Columbia police memorandum but before Mr. Richardson's conversations with you?

Mr. BROSAN. No. My interpretation—this might have been self-serving, I realize—of new avenues of investigation we were not to open any new avenues of investigation. That was anything that we would have developed after that weekend, September 28. Any information that we had developed that was not contained within the memorandum but we had obtained it before the 28th of September, I felt we were entitled to continue.

Senator NUNN. What I am trying to do is get a definition here. You use the word new data. I believe you said you did not consider new data to be the same thing as new avenues of investigation.

I am trying to differentiate what you consider new data to be something obtained after the District of Columbia memorandum but prior to that weekend conversation with Mr. Richardson.

Mr. BROSAN. Good, I will accept that. That is correct.

Senator NUNN. You identified new avenues of investigation to be anything that was received after your conversation with Mr. Richardson limiting the scope of your investigation allegedly under the orders of Mr. Bartels?

Mr. BROSAN. Yes; that would be correct, Senator.

Senator NUNN. Let me ask you one other question now. At any point using the words "new avenues of investigation," were there any new avenues of investigation that came to your attention that were not pursued because of this limiting order from Mr. Richardson?

Mr. BROSAN. No, sir, there was new material that came to my attention later on and I pursued it anyway.

Senator NUNN. Wait a minute. I am not sure I understood that. Was there any—

Mr. BROSAN. Yes; there was new material that we received after that weekend. There was a new allegation, a totally new allegation that we had heard nothing about until October, well into October. We put it well after that weekend.

Senator NUNN. After September 28?

Mr. BROSAN. Yes; well into October. We obtained a new allegation. We received a new allegation.

Senator NUNN. This would come under your definition of new avenue of investigation?

Mr. Brosan. It would have; yes.

Senator NUNN. That was received and it was pursued by you?

Mr. Brosan. Yes.

Senator NUNN. So you did not follow Mr. Richardson's order from Mr. Bartels?

Mr. Brosan. That is right.

Senator NUNN. Thank you.

Senator PERCY. Mr. Brosan, while we are pausing here for a moment, I would like to go back to your previous testimony where you stated you never heard of a procedure such as was used here where unsworn statements were accepted, questions were submitted in writing, and answers were given in writing and no opportunity was provided for followup questions.

Did you arrive at any conclusion as to why this unusual procedure, which you never heard of before or participated in was authorized in this kind of a case?

Mr. Brosan. Senator Percy, it really wasn't—I would change it from being permitted. It was ordered. Certainly I had a definite suspicion when it was so ordered and I was quite embarrassed in front of my staff to have to tell them that this was what was going on and they were not; they were quite adroit, they expressed certain reservations and we might even say suspicions themselves to me.

Senator PERCY. Even when you used this very unusual and, as you call it, unheard of procedure when you submitted the written questions were all of the questions answered?

Mr. Brosan. No, sir.

Senator PERCY. Which questions were not answered? What reasons were given as to why they weren't answered?

Mr. Brosan. Senator. I have not seen that document since November of 1974, and in none of my questioning have I been allowed to see that from either in the internal investigation in the Justice Department or here before the staff. So it is hard for me to recall. But there were unanswered questions in that document.

Senator PERCY. You don't recall what they were?

Mr. Brosan. There was one. It is really difficult. It is too foggy. I can't really recall what the unanswered questions were.

Senator PERCY. What about the area which it concerned?

Mr. Brosan. There was a question. I am not sure whether it was unanswered or whether we knew the information was incorrect concerning Mr. Promuto's knowledge of one of the people that was alleged to be of criminal reputation. He denied knowledge and we knew that he knew this.

He either denied knowledge or didn't answer it. That was on the first page of that document, as I can visualize it now. I know that stuck out like a sore thumb.

Senator PERCY. You felt that he did have knowledge?

Mr. Brosan. We knew that he did.

Senator PERCY. If you knew that he did, was a followup made to insist that he answer the question?

Mr. Brosan. No; we didn't follow up.

Senator PERCY. Was he at any time ordered to answer questions that were left unanswered?

Mr. BROGAN. Not to my knowledge. When I left DEA the investigation, as it was directed by myself, was not finished and the investigator, Mr. Cash, was withdrawn from that investigation and the methods that I had underway were terminated and new investigators were assigned and a new procedure was established.

I would think that from my experience usually the best time to question the subject of any investigation is after you have the maximum amount of material. That is usually at the end.

So I would oppose that.

We had lost the element of surprise, obviously, when we gave him the questionnaire. The next thing to do is maximize some other advantage was we had him nailed down now to certain written statements, and to continue the investigation to the extent possible and then see how his, how they conformed with the answers that he had, not to go back and continuously question him on that.

Senator PERCY. I would like to say that from what I have heard of your testimony and the procedures you have used, when you say you need the element of surprise, the purpose and function of your operation was to audit what was going on and be sure there was no internal corruption.

It is no different than the auditing committee of a bank. They must use surprise. They must come in when the departments are not expecting to be audited, and the awareness that they can be audited is the very thing that provides the integrity of the system, so that there is some check and balance on it.

When you use the phrase "coverup," would you want to expand on that then and what was being done to subvert your function and the duties that you had as prescribed by the office that you had assumed?

Mr. BROGAN. There were quite a number of things, Senator. The first thing that I felt was wrong was the insertion of Lund and Richardson over me on the organization chart. The intent, as I viewed it of placing the Chief Inspector, which is equivalent of the Inspector General in the military organization, higher on the organization chart, reporting only to the Administrator, was so that there would be no one that he had to go through and that we could insure integrity here and there would be no efforts put forth by anyone else to influence him.

The attitude toward me and the material when I briefed Mr. Bartels indicated to me that he was very unhappy. The ordering of the premature questioning, the form of questions, the premature reporting requirements when we weren't ready, the fact that an outside consultant had our reports and was discussing the case with Mr. Promuto, and we weren't being given benefit of the results of that, the fact that there was continued close association according to the word that I was receiving between Promuto, Bartels, and Durkin, on a social basis.

I suspected that there were meetings on the case outside of our presence, and in fact, on November 13, Mr. Bartels indicated in a conversation I had with him that he felt the Promuto case was resolved and that he had given permission to Mr. Promuto to go to the airport with the young lady, that we had seen him at the airport with, that further, that Mr. Bartels knew who the girl was all the time, even though we didn't early in the investigation.

Mr. Bartels in that conversation also said that he was present when Mr. Promuto had conversations with certain people at Fran O'Brien's

Restaurant. To my way of thinking, all of these things were quite clear as to what was going on here, very definitely.

Senator PERCY. I think this has been very helpful, indeed. Mr. Chairman, I will reserve my questions until the witness has had opportunity to finish his statement.

Thank you very much.

Mr. BROSN. Mr. Chairman, the subcommittee has a copy of the written questions and Mr. Promuto's handwritten replies. This document was obtained from DEA. You may wish to make it an exhibit.

Mr. MANUEL. It has already been made an exhibit, Mr. Chairman.

Chairman JACKSON. That request has already been included in the last exhibit.

Mr. BROSN. The decision as to whether or not to release this questionnaire for public view is yours, of course. But I think it fair to Mr. Promuto for me to say generally that in both the questionnaire and the interview, he denied any knowledge of wrongdoing; conceded to have known on a very casual basis certain of the gamblers and felons cited, and also acknowledged knowing socially Diane De Vito.

He advised that he had once provided her with transportation to Dulles International Airport but that such transportation had been with the concurrence of Mr. Bartels.

I did not meet personally with Mr. Bartels again until November 7, 1974. At that meeting, Mr. Bartels and I discussed several pending integrity investigations including those cases relating to the unresolved allegations against current senior DEA officials.

These were the two cases which came to my attention prior to the Promuto matter. I do not recall discussing the Promuto case in any detail with Mr. Bartels on this occasion, although I am sure some reference must have been made to it.

After the meeting, I went immediately to my office and dictated a memorandum of interview for myself concerning that discussion.

Later, I turned that memorandum over to the FBI. I believe the subcommittee has obtained from the Justice Department a copy of the memorandum.

I met personally with Mr. Bartels again on November 13, 1974. That meeting lasted more than an hour. Mr. Bartels stated, and I now quote from my typed notes dated November 13, 1974, prepared immediately after the conversation:

That he (Bartels) considered the Promuto case resolved on the basis of our last report, particularly because of the Civil Service Commission's informal opinion. He also indicated that he had admonished Mr. Promuto concerning his association with the individuals mentioned in the report.

He felt that I should not have begun the investigation prior to his return from Europe where he was traveling with Mr. Promuto.

He felt that Mr. Richardson was the worst choice I could have made when he (Mr. Bartels) was to be told about the Promuto case and that I should not mention his name again (Richardson's).

He feels that both the synopses (in the Promuto and Silver Dollar files) were poorly written and made Mr. Promuto look guilty and left innuendoes hanging in the Silver Dollar case.

Mr. Bartels indicated that he was frequently with Mr. Promuto, having dinner with him as many times as three nights a week. He also stated that he had given Mr. Promuto permission to take the girl to the airport and that he knew that we had the wrong name from the beginning.

He said he was present when some of the alleged meetings between Promuto and those mentioned in the report took place. In fact, he can state that he knows

what conversations took place and saw Promuto wave off the guy who owns "M & M Towing."

Mr. Bartels said this investigation could hurt Mr. Promuto's reputation and some day be dragged out to preclude him from getting a job, such as "United States Attorney."

When I told him that the girl who Promuto was associated with used drugs, according to a policewoman, he asked, "What kind?" Before I could answer, he said, "So what! I drink alcohol; that's a drug."

He stated that in future investigations of high-ranking officials that he wants to be advised and that they will be called into his office and braced with the allegations before any investigation is made.

I told him I did not agree with this procedure and that it contradicted his previous statement, which said we had to investigate the alleged Promuto leak. Mr. Bartels said in the Promuto case he would have confronted Promuto on all the allegations except the "leak," and at the same time ordered an investigation.

That he still felt that my narrow viewpoints and our differences in judgment would require my removal from the Office of Inspection. Concerning this point, he appeared to somewhat retract this toward the end of the meeting with an ambiguous statement, indicating that I might be acceptable.

Mr. Chairman, I have a copy of those notes which you may wish to make a part of the record.

Chairman JACKSON. That will be marked for identification as exhibit No. 32.

[The document referred to was marked "Exhibit No. 32" for reference, and follows:]

EXHIBIT No. 32

NOTES ON MY MEETING THIS MORNING WITH MR. BARTELS, NOVEMBER 13, 1974

My meeting this morning with Mr. Bartels was occasioned by the requests of Washington Post reporter Bob Kuttner to see me. Yesterday, the arrangements were made with Mr. Bartels that Kuttner would talk to him at 3:00 in the afternoon but that prior to that time Bartels would discuss the situation with me.

In this morning's rather lengthy conference, Mr. Bartels made a number of points (not necessarily in the following order and not necessarily all inclusive):

1. That he still felt that my narrow viewpoints and our differences in judgments would require my removal from the Office of Inspection.

2. That he considered the Promuto case resolved on the basis of our last report, particularly because of the Civil Service Commission's informal opinion. He also indicated that he had admonished Mr. Promuto concerning his association with the individuals mentioned in the report.

3. He felt that I should not have begun the investigation prior to his return from Europe where he was traveling with Mr. Promuto.

4. He felt that Mr. Richardson was the worst choice I could have made when he (Mr. Bartels) was to be told about the Promuto case and that I should not mention his name again (Richardson's).

5. He still feels the statement concerning Silver Dollar was wrong.

6. He feels that both of the synopses (in the Promuto and Silver Dollar files) were poorly written and made Mr. Promuto look guilty and left innuendoes hanging in the Silver Dollar case.

7. He stated that in future investigations of high-ranking officials that he wants to be advised and that they will be called into his office and braced with the allegations before any investigation is made. See No. 18.

8. Mr. Bartels indicated that he was frequently with Mr. Promuto, having dinner with him as much as three nights a week. He also stated that he had given Mr. Promuto permission to take the girl to the airport and that he knew that it was not Candy Kruse from the beginning.

9. Concerning the rumors (a) of a breach between the Administrator and myself and (b) a resurgence of the Customs-BNDD division within DEA, he asked me to do what I could to subdue them. I agreed to do that.

10. He talked about Commissioner of Customs Acree and that organization's attempt to get back into the narcotics business because DEA was allegedly failing in its responsibilities. I told him that I was not aware of this, and he re-

ferred me to publicity and Acree's appearance on the Hill and said that I should become familiar with these things because he expects some form of pulse feel to emanate from the Office of Inspection and Internal Security (which should be his right hand).

11. Concerning Point No. 1 above, he appeared to somewhat retract this toward the end of the meeting with an ambiguous statement, indicating that I might be acceptable.

12. He also stated that because of these rumors, I would be hurt more than he would because I could become the living image of the BNDD Inspection which was looked upon unfavorably by the rank and file in that organization. He does not know for sure, but does not think that Cuttner is interested in the Promuto case. He asked me my feelings, and I told him that I preferred not to discuss the matter with a reporter. Mr. Bartels said that rather than to state to Mr. Cuttner that "we do not comment on on-going investigations" I should just indicate that I would neither confirm nor deny this and adopt a no comment posture. If I stated that we did not comment on "on-going cases", Mr. Bartels felt that we would be admitting we did have an investigation.

13. I also discussed with Mr. Bartels the fact that I have frequently given in-depth briefings to PIO and then had to face the reporters instead of PIO, making use of the material I had provided and, in effect, shielding me from the reporters. On this point, he agreed with me.

14. We discussed Mr. Belk's upsetment with the statement to the press on Silver Dollar, and I told Mr. Bartels that the matter was none of Mr. Belk's business. He also agreed with me on this.

15. He said he was present when some of the alleged meetings between Promuto and those mentioned in the report took place. In fact, he can state that he knows what conversations took place and saw Promuto wave off the guy who owns "M & M Towing."

16. Mr. Bartels said this investigation could hurt Mr. Promuto's reputation and someday he dragged out to preclude him from getting a job, such as "United States Attorney."

17. When I told him that the girl who Promuto was associated with used drugs, according to a policewoman, he asked "What kind?" Before I could answer, he said, "So what! I drink alcohol; that's a drug."

18. Re No. 7 above, I told him I did not agree with this procedure and that it contradicted his previous statement, which said we had to investigate the alleged Promuto leak. Mr. Bartels said in the Promuto case he would have confronted Promuto (as outlined in No. 7) on all the allegations except the "leak," and at the same time ordered an investigation.

GEORGE BROSAN,
Acting Chief Inspector.

Mr. Brosan. I immediately dictated my memorandum of interview, and while it was being typed went to see Mr. Tartaglino. I told him what had transpired and that I intended to report the situation to the Department of Justice.

He counseled that this was a serious move, and he felt that I should sleep on it. He further said that because of his position, he might be the one who was responsible to take the matter to higher authority. I accepted his first suggestion that I wait a day.

On the morning of November 14, 1974, Mr. Tartaglino told me he had discussed the matter with a Justice Department official the previous evening. He had received instructions to report the matter in writing. I, therefore, prepared my memorandum to him of November 14, 1974, entitled "Attached Notes From My Files," which began:

The attached informal notes from my files reflect the conditions under which I am working. Mr. Bartels' attitude on integrity matters, particularly those cases close to him, is contrary to his public rhetoric.

Mr. Chairman, you may wish to make a copy of these notes an exhibit.

Chairman JACKSON. That will be received as exhibit No. 33.

[The document referred to was marked "Exhibit No. 33" for reference, and follows:]

EXHIBIT No. 33

NOVEMBER 14, 1974.

ANDREW C. TARTARLINO,
Acting Deputy Administrator.
ACTING CHIEF INSPECTOR,
Drug Enforcement Administration.

The attached informal notes from my files reflect the conditions under which I am working. Mr. Bartels' attitude on integrity matters, particularly those cases close to him, is contrary to his public rhetoric.

The immediate cause for my bringing this to your attention is that this is so well known that the press has the story and embarrassment to the Department of Justice and the Government in general is imminent.

Secondly, contradictory statements are being made on separate occasions to different people concerning me by Mr. Bartels, and my reputation is bound to suffer.

Finally, my staff is, to say the least, becoming restless. For example, some of them wished to talk with the reporter who was in yesterday. I also fear that they may suffer if I am removed as Mr. Bartels plans.

Any inquiry by the Department should include interviews of the three men who have held the position of Chief Inspector in the Federal narcotics program, i.e., myself, yourself and Patrick Fuller, presently stationed in Los Angeles.

In addition, executive staff members of DEA to include Bruce Jensen, Robert Richardson, John Lund, Daniel Casey and others should be interviewed.

The two rough documents covering my meeting with Mr. Kuttner of the Washington Post do not reflect my true feelings, as I was torn between being honest and allowing this matter to become public knowledge.

GEORGE BROSNAN.

Mr. BROSNAN. On December 6, 1974, Mr. Bill D. Williams and Mr. Edward D. Hegarty came to my office. They identified themselves as from the Inspection Division of the Federal Bureau of Investigation. They explained that at this time, however, they were not acting in their usual FBI capacity, but were representing Deputy Attorney General Laurence Silberman.

I was very pleased and offered to make a statement under oath. They said that that was not necessary. They asked me to relate the facts that led to my decision of November 13 and my memorandum of November 14, 1974.

During the course of my story, I began relating the details of the Promuto case. They said they were not interested in all the details of the case. They said they only wished to discuss the case to the extent that it pertained to the overall management of integrity matters within DEA.

Messrs. Hegarty and Williams listened to my story for several hours and then asked me to prepare a statement. Mr. Williams returned alone on the afternoon of December 11, 1974, to pick up the document. Mr. Chairman, I believe the subcommittee has a copy of my statement which you may wish to make an exhibit.

Chairman JACKSON. It will be received as exhibit No. 34.

[The document referred to was marked "Exhibit No. 34" for reference, and may be found in the files of the subcommittee.]

Mr. BROSNAN. It was 9 days from the time I supplied the representatives of the Deputy Attorney General my statement that on the afternoon of December 20, 1974, one of my inspectors, Terrence Burke, came to me and asked if it were true that Mr. Tartaglino and I had been removed from our positions.

I sent Security Specialist Thomas Mellinger to the Communications Center. He returned with a teletype containing innuendoes of mismanagement. I then had the task of telling Mr. Tartaglino he had been removed from office.

In my memorandum of November 14, 1974, I had stated:

Any inquiry by the Department should include interviews of the three men who have held the position of Chief Inspector in the Federal narcotics program; that is, myself, yourself (Tartaglino), and Patrick Fuller, presently stationed in Los Angeles.

In addition, executive staff members of DEA to include Bruce Jensen, Robert Richardson, John Lund, and others should be interviewed.

To my knowledge, the only person other than Mr. Tartaglino and I, to be interviewed during the Deputy Attorney General Silberman's inquiry, was Mr. Fuller.

I had expected to be closely questioned as to the details of the situation after Mr. Tartaglino forwarded our memorandums to the Department of Justice in November 1974. But other than the statement I gave to Mr. Williams in December, no further inquiry took place until April 1975. At that time, the new Attorney General established an Administrative Review Panel before which I appeared on three occasions and gave testimony under oath.

As a result of our requests for additional manpower during the summer of 1974, Mr. Bartels ordered a management review of the Office of Inspection and Internal Security. I do not wish to prolong this statement with a detailed discussion of that document entitled: "An Analysis of the Resources, Policies and Procedures of the Office of Internal Security."

At this time I would like to point out:

1. Though the study was begun while I was Acting Chief Inspector in the summer of 1974, it seems there wasn't time to finish it until 1975 when I was placed on temporary duty in the Justice Department.

2. It was referred to as Dr. Moore's study, that is, Mark Moore, Ph.D., Harvard University, an associate of Mr. Bartels.

3. I have already testified under oath in Executive session that: (a) Dr. Moore never set foot in the Office of Inspection while I was Acting Chief Inspector. (b) Dr. Moore never interviewed me except for a conversation in a Chinese restaurant across the street from the office. (c) Dr. Moore never interviewed an inspector during my tenure. (d) Dr. Moore never reviewed a case file to my knowledge.

4. The principal participant in the study was Special Agent Thomas Hurney with whom I had hours of discussion. Many of the ideas appearing in that report are mine, but in not a single instance has an iota of credit been given me.

The report covers the manpower issue on pages 6 and 7 and in table 3.

Mr. FELDMAN. Mr. Chairman, at this point could I introduce the report in the record as an exhibit?

Chairman JACKSON. Without objection, that will be received as exhibit No. 35.

[The document referred to was marked "Exhibit No. 35" for reference and will be retained in the confidential files of the subcommittee.]

Mr. BROSAN. It gives the following qualified endorsement of a minimal increase in staff:

If one assumes that DEA resembles the Alcohol, Tobacco and Firearms Division and Secret Service most closely, and assumes that these organizations have picked the right number of inspectors then DEA should boost its Inspection force by five positions to be comparable.

In his discussion prior to this statement, Dr. Moore indicated that comparing agencies in this area is difficult because:

First, the functions assigned to Offices of Inspection vary across agencies.

Second, the number of employees who should be considered vulnerable to corruption varies from agency to agency.

The second point is underdeveloped in Dr. Moore's paper. Without a clear understanding of the variable degrees of corruption that exist in the field of law enforcement the impact of his statement is lost.

Narcotics law enforcement is considered vice-type police work. It has all the characteristics of the other crimes of vice.

The victim, just as in gambling and prostitution, is a participant in the crime and unlikely to be the complainant. Therefore, the officer, in our case the DEA special agent, cannot conduct an investigation after the fact, as one would in a robbery, murder, or automobile theft, and so forth.

Instead, the officer must try to secure evidence while the crime is ongoing—he must observe the acts, and indeed he most often becomes part of them in his undercover role, whether it be placing a bet, or buying dope.

Another characteristic of crimes of vice is that they are usually run by an organization. The visible criminals, the prostitute, the drug seller, the dispenser of illicit alcohol or pornography, are insignificant, and when arrested, easily replaced.

These are important points because they combine to present very serious temptations to the narcotics enforcement officer.

Large criminal organization means big money is available. The absence of a complaining victim and the presence of a willing victim can obviously be frustrating to the officer.

Further frustration can set in when the officer makes an arrest which results in only temporary disruption of the operation because the arrested person is quickly replaced. He asks himself, "What's the use?"

Finally, the narcotics officer or agent is working alone for the most part. If he succumbs to temptation who will know?

Who will know if he pays only \$6,000 for the drugs, not \$8,000?

Who will know if he increases the amount of narcotics by adding a few kilos of milk sugar?

Who will know if he accepts an amount equal to a month's or even a year's salary, to make a "mistake" in his report or testimony?

To return to Dr. Moore's statement:

The number of employees who should be considered vulnerable to corruption varies from agency to agency.

That assertion is absolutely true. What has not been pointed out is that DEA is the only Federal Law Enforcement Agency dedicated solely to countering a vice-type crime. DEA's Special Agents are as strong and honest as those in any law enforcement agency in this country, but they have been assigned the job which presents the greatest risk to compromise.

Therefore, DEA needs to be aware of this and take all the necessary steps to prevent a serious breakdown in integrity. One way to do this is to insure that all such allegations are investigated thoroughly and expeditiously.

DEA's inspection manpower needs are unique in the Federal Government. Comparing DEA to other agencies was not the answer. Its needs, among other things, are more inspectors and more support from top management.

I would like to point out that between September 1973 and December 1974 over 200 investigations were conducted by the Office of Inspection and Internal Security. Six domestic and four foreign regional inspections were carried out.

More than 100 unannounced inspections took place and at least 4 DEA laboratories were inspected. The background investigations of approximately 1,000 perspective DEA employees were reviewed during this period. This was a team effort by the staff of the Office of Inspection. I am proud of the record, and proud of the men and women who were able to accomplish it under adverse conditions.

I will be happy to answer any question you may have.

Chairman JACKSON. Thank you, Mr. Brosan, for a very fine statement. I will say the same thing to you that I said to Mr. Tartaglino yesterday, that I think both of you gentlemen have rendered a service to the Nation in the best tradition of public service with honesty and integrity. I want to commend you for your participation in this matter, as unpleasant as it is, in so many respects.

Senator Glenn had a statement that I believe he wanted to put in.

Senator GLENN. Thank you, Mr. Chairman. I regret that other pressing committee business forced me to miss the subcommittee's first 2 days of public inquiry into the performance and operations of the Drug Enforcement Administration. I welcome this inquiry and compliment the chairman and the ranking minority member for taking the initiative in this vital area.

The drug problem is one of the most critical problems in our Nation. Illicit drug traffic has contributed to the decimation of the fabric of life in many of our major cities and small towns. It is absolutely vital that our mechanisms for coping with the drug problem function at peak efficiency.

Thus, I am extremely disturbed to find the Drug Enforcement Administration embroiled in a controversy in which allegations of inefficiency, corruption, misconduct, and criminality surround it. This agency is mandated to be one of our prime weapons in the fight against narcotics.

If there is mismanagement and corruption within our primary enforcement agency then there can be no effective Federal effort to fight the drug problem.

So, I am glad to join the subcommittee in this investigation. I want to examine (1) what the Drug Enforcement Administration's actual performance record is in the drug enforcement area and is there evidence of corruption and wrongdoing at high levels of the DEA; (2) the extent and scope of the drug traffic problem and what overall Federal policy has been in attempting to fight the problem; and finally (3) what we at the Federal level must do in the area of Federal narcotics law enforcement to strengthen and improve effectiveness in fighting narcotics traffic.

I hope that by this investigation, we might develop a record substantial enough to provide the Congress with facts upon which it can specifically act on to begin to win this battle against narcotics traffic.

Chairman JACKSON. I just have a couple of questions here.

Mr. Brosan, you mentioned the name Diane De Vito—I believe her real name is Dian Barger—as someone who had been with both Mr. Promuto and Mr. Bartels.

Could you indicate what was the intelligence you received on Dian Barger?

Mr. Brosan. Yes, sir. On, I believe—I am not absolutely certain—but I believe it was on September 26, 1974, we had obtained photographs of those mentioned in some of our reports in this matter and among them was this young lady. Mr. Richardson came to my office and saw the picture. This is Robert Richardson, Associate Chief Counsel. He indicated that he recognized that girl as someone that had been with Mr. Bartels and Mr. Promuto in San Francisco earlier that year, 1974.

As I recall the circumstances, he left the office and said that he would attempt to get her name for us. When he came back a short while later he advised me that phonetically the name was De Vito. That name then rang a bell with the investigators because it had appeared in some of the material.

Chairman JACKSON. But her true name was Barger?

Mr. Brosan. There were a number of aliases, Senator. I can't recall if Barger was one of them.

Chairman JACKSON. She has taken the fifth several times in executive session and she declines to—she didn't remember her name, did she?

Mr. Feldman. I don't know if she took the fifth on her name.

Mr. Sloan. No; she did not.

Chairman JACKSON. She did on her birth.

Mr. Brosan. We had a number of names, Lyons, Scruggs, Barger, De Vito, for that young lady.

Chairman JACKSON. What was her association with Gerald LeCompte, and who is Gerald LeCompte? Do you recall?

Mr. Brosan. Mr. LeCompte's name first came to our attention in the original memorandum that we received from the Police Department. In a file check conducted the next day, that would be the 11th of September, we uncovered an internal memorandum in the Drug Enforcement Administration covering Mr. LeCompte.

Within that memorandum there was a mention of Miss De Vito and others. Her relationship to him in the material that we reviewed from other law enforcement agencies indicated that they were associated closely.

Chairman JACKSON. In what way? What was LeCompte alleged to have been doing and what is he involved in?

Mr. Brosan. The memorandum did not, to my recollection, indicate that Mr. LeCompte was doing anything specifically with Miss De Vito. The memorandum indicated that Mr. LeCompte had utilized prostitutes as couriers in a suspected heroin or suspected narcotic trafficking operation. This was all alleged. I don't know that it was confirmed.

Chairman JACKSON. LeCompte is considered a class I violator, and what is a class I violator?

Mr. Brosan. That would be the most serious of violators.

Chairman JACKSON. Our information—is that your information, too—according to the files of DEA, our information is that he is a class I violator.

Mr. Brosan. I would think. I don't have definite knowledge of that, but I think that would be correct because anyone who facilitates the entry of hard drugs into the country usually falls in class I category, sir.

Chairman JACKSON. How many times and where did you place Mr. Bartels, Mr. Promuto, and Miss De Vito together, otherwise known as Dian Barger? Was it more than just in San Francisco.

Mr. Brosan. If you want the three of them together the only information that I had was in San Francisco. We had information that Mr. Promuto and the young lady might have been together at other times, but not specific information that Mr. Bartels had been with them.

Chairman JACKSON. To your knowledge, was Mr. Bartels with her at any other time than San Francisco? Do you have any information on that?

Mr. Brosan. No definite information; no, sir.

Chairman JACKSON. What about Mr. Promuto and Miss De Vito together? More than once?

Mr. Brosan. Yes, sir.

Chairman JACKSON. Several?

Mr. Brosan. Yes, sir, there was an indication that Mr. Promuto had been with her several times, a number of times.

Chairman JACKSON. Around the country or where?

Mr. Brosan. Our investigation disclosed that Mr. Promuto had visited Las Vegas during the course of his travels in furtherance of his position as director of public affairs and Miss De Vito was living in Las Vegas. It is purely an assumption on my part. It was an assumption on my part at that time that they might have gotten together.

In addition, we had evidence that there had been telephone calls from Mr. Promuto's telephone here in Washington to the place where the young lady was staying in Las Vegas and the reverse, of calls from her location to his place where he was staying.

Chairman JACKSON. On page 26 of your statement you say that Mr. Robert Richardson, Associate Chief Counsel, told you he had seen Diane De Vito in San Francisco with Mr. Promuto and Mr. Bartels earlier in the year.

Did he tell you that he had cautioned Mr. Bartels even before the Promuto allegation surfaced to avoid the company of Miss De Vito?

Mr. Brosan. Yes; Mr. Richardson on that date, September 26, indicated to me that when Mr. Bartels returned from the San Francisco trip he had mentioned to him that he thought he should be cautious in his associations. I don't recall his exact words, but that was the message.

Chairman JACKSON. In your meeting of November 13, 1974, did Mr. Bartels indicate that he knew Diane De Vito?

Mr. Brosan. No. He didn't specifically say that. He said that he knew that the original tentative identification that we had made in

the early weeks of the investigation was incorrect and that he knew it from the beginning.

Chairman JACKSON. When you informed him that Diane De Vito used drugs, didn't he indicate alarm at possible compromise of the Agency?

Mr. BROSAN. No, sir.

Chairman JACKSON. He didn't? One of the most damaging things in this case, of course, is the relationship with Diane De Vito who had a relationship with a suspected class I narcotics violator, Gerald LeCompte; yet I understand that after the Promuto allegations surfaced Mr. LeCompte was downgraded in importance.

Do you see any connection with the downgrading and the Promuto case?

Mr. BROSAN. Senator, after I left the Drug Enforcement Administration for my temporary assignment in the Department of Justice, the investigators that I had assigned to that case were withdrawn and new investigators were assigned. Exactly what happened after that time, I have no way of knowing.

Senator NUNN. Mr. Chairman, on that one point, according to counsel's advice, Mr. Gerald LeCompte is under indictment at the present time, but is not convicted.

Chairman JACKSON. Pardon me?

Senator NUNN. I understand Mr. LeCompte—I will ask Mr. Brosan. Do you know whether there is any narcotics conviction on Mr. LeCompte?

Mr. BROSAN. I don't believe there was a conviction. I don't recall Mr. LeCompte being convicted of the narcotics violation, if that is the question. Is that the question?

Senator NUNN. Right.

Mr. BROSAN. I don't think so.

Senator NUNN. I think we probably ought to clear the record on that point and use the word "alleged" as far as noting any narcotics violations for Mr. Gerald LeCompte.

Mr. BROSAN. Definitely.

Senator NUNN. We don't know of any conviction. There has been no testimony on that.

I just want to correct the record.

Chairman JACKSON. Yes. I think the correct answer according to the information that was in the files of DEA is that he was carried as a person known to be a possible or was a class I violator. Is that not correct?

Mr. BROSAN. I think possibly the best way to characterize that would be a class I suspect, suspected violator, I think would be the way to put it, that he was actually a violator? I don't know that that has ever been—

Chairman JACKSON. Been established by legal action.

Mr. BROSAN. No.

Chairman JACKSON. We want to keep the record straight.

Mr. FELDMAN. Mr. Chairman, Mr. Brosan referred to the investigation done after he left. I would like to have it put in the record for the closed file for now because of names in that investigation.

Chairman JACKSON. That will be marked for identification as "Exhibit No. 36," but the exhibit will be confidential until the subcommittee decides otherwise for the reasons indicated.

[The document referred to was marked "Exhibit No. 36" for reference and will be retained in the confidential files of the subcommittee.]

Chairman JACKSON. Senator Percy.

Senator PERCY. Thank you, Mr. Chairman.

I would like to emphasize that what is important to this subcommittee with respect to Promuto's relationship with Diane Barger only pertain to what was done by DEA to investigate the allegations made. We are not particularly interested in the relationships.

[At this point Senator Jackson withdrew from the hearing room.]

Senator PERCY. On page 41 you did indicate that:

When I told him that the girl who Promuto was associated with used drugs, according to the policewoman, he asked, "What kind?" Before I could answer he said, "So what? I drink alcohol, that is a drug."

If you had the time to answer the question, would you have been able to answer the question, "What types of drugs, was it known or suspected she did use"?

Mr. BROSAN. We had information or there were allegations that the young lady had used marihuana and a drug known as amyl nitrate which in common parlance is an upper that would be inhaled, sniffed.

Senator PERCY. Would that be classified as a hard drug?

Mr. BROSAN. No. It would be a synthetic drug, the amyl nitrate. We had information from another source or the source of information that we were talking to, the policewoman, indicated that the young lady spoke to her and spoke in her presence of using cocaine, but the policewoman had no knowledge, no firsthand knowledge of that.

Senator PERCY. Was there corroboration of this by police surveillance?

Mr. BROSAN. Of the cocaine issue?

Senator PERCY. Of the use of drugs?

Mr. BROSAN. Yes; there was corroboration, or there were further allegations, if you will, which tended to corroborate that which we received later on in the investigation; not concerning the cocaine, however.

Senator PERCY. Could you, Mr. Brosan, tell us a little more about how the use of Federal funds for the purpose of making purchases is controlled and whether you feel the controls are adequate?

On page 49, you indicated that who will know if an agent pays only \$6,000 for the drugs, not \$8,000? Who will know if an agent increases the amount of narcotics by adding a few kilos of milk sugar? How will he know if he accepts an amount equal to a month's or even a year's salary to make a mistake?

What procedures are used to prevent this? Can you tell this subcommittee whether or not you feel the procedures are adequate in themselves, are reasonable under the circumstances, and are diligently followed through to make certain that there is not fraud involved here?

We have large sums of money, up to \$10 million now, that is being used for this purpose.

Mr. BROSAN. That is a multifaceted question. The procedures, of course, bear strongly, or have two thrusts. The first would be recording the fact that the money has been taken by a certain agent and is going to be utilized, and the second would be the supervision that he should receive from his supervisor and so on up the chain of command.

As to whether these procedures are diligently followed, I have not been at DEA for some 7 months now. In the course of the inspections that were conducted during my period as Acting Chief Inspector, we always examined a representative sample of cases involving the expenditure of funds when we went out on an inspection.

I am pleased to say that in most instances—in fact, in almost all instances—we were able to fairly well document that the expenditures had been made in the proper fashion.

You must understand that these are difficult things to go back on. You must talk with informants, and certain informants are not always available. It is difficult to go back 6 months or a year later and try to determine if you can. It is something that you rely tremendously on: (a) Interviewing the agent and the person alleged to have received the money, and (b) the documentation.

There are various forms that are required to be filled out by the agents and the receipts by the person receiving the money. They would examine these things.

If we were suspicious, and in several cases we were suspicious, we would then take that out of the area of the inspection and open up an investigation and conduct a separate investigation in that matter.

Senator PERCY. If there are agents who handle large sums of money and cash, and who are in positions of trust, are there ordinary precautionary steps taken at least to have them certify as to their net worth periodically, to certify that they do not have unknown bank accounts? Is there any effort made to at least observe these agents' lifestyles, since the Internal Revenue Service can use that information if they suspect tax evasion to determine whether a person is living above his stated income? This would be understandable procedure, and could be part of any agent's terms of the employment?

If a person objected to that kind of procedure in due diligence by us in disposing of public funds, they wouldn't have to take the job.

Mr. BROSNAN. I know of no such requirement. The closest thing would be the requirement that annually we submit a list of any possible investments, and so forth, that we would have that might be in conflict with, let's say, the drug trade, the legitimate drug trade, pharmaceutical trade, and so forth, and to see whether those documents reveal any conflict of interest.

On that particular point, I did examine those documents in, I believe, January of 1974. I took a look at those documents. They are required particularly of the high-ranking officers, the executive officers, and my examination in that instance disclosed that there was one such form on file for all of the executive people. I was filing my own at that time, I might add. That man was Mr. Tartaglino. There were no other ones on file.

Senator PERCY. Would you feel it desirable to develop better and more effective procedures for attempting to prevent fraud in this regard?

Mr. BROSNAN. I think we would have to study that because, Senator, there is a very delicate line between putting these requirements on the agents and giving them a second-class citizen status. The agents have the same civil rights as you and I. I feel that we would have to examine it to make sure that they are not being treated any differently than anyone else.

I recall my own entrance into the Federal Government 15 years ago, at which time I had to fill out some form of a financial questionnaire which was sealed in an envelope and put away somewhere to be opened up only if there was a question in this area. Possibly, that would be the proper way to do it. If you are asking me whether they should be subjected to a periodic Internal Revenue Service audit, I don't think so myself, unless we have cause for suspicion. I think that would be unfair.

Senator PERCY. Would it be unfair to ask them to do at least what Members of Congress are required to do now? There was always the complaint before that we were going to be second-class citizens; but taking into account the implication that people were using public office for private enrichment, we finally legislated a requirement that we file certain financial statements. They can be sealed, but at least they exist. They can be opened in case of an excessive criminal investigation. They can be used to hang the person, if they have made false statements.

I think it is just due diligence to protect the public interest. I have no objection whatsoever to filing these statements. I strongly support filing such statements. Is there any reason people handling large amounts of cash where tremendous amount of trust is required should not be put in that position where due diligence is exercised by the Government and still not have them considered second-class citizens?

Mr. BROSAN. I don't think any special agent could object to being put in the same class with a U.S. Senator. So I think if they had to undergo the same requirements—

Senator PERCY. I wouldn't want to subject them to all of the abuse we get.

Mr. BROSAN. Secondly, I would like to point out that possibly that would be a good system. But I think, Senator, we have to be careful. That is, in my experience, doing internal security investigations it is sometimes an overrated avenue of investigation. It is not as simple as just opening the envelope and comparing what the man has today and comparing what he had yesterday, and there is a case. No?

Senator NUNN [presiding]. If he were going to be slipping money into his pocket or dealing in narcotics, he wouldn't show it on his financial statement, would he?

Mr. BROSAN. In my experience, when someone is in this area, he usually and for the most part—Government employees have wives that are very well aware of how much they earn—he has to spend this money before he gets home. That is where he gets jammed up.

Senator PERCY. I think the question is, "Are they going to spend it someday?"

Mr. BROSAN. That is right.

Senator PERCY. I intended to speak to Senator Church about how the CIA audited large amounts of cash used by agents, and whether or not CIA officials used due diligence in checking on this. Apparently, they have had few restraints on them.

I think it is time that we looked into this matter.

I would like to ask whether Mr. Bartels specifically forbade you from going forward with investigations into unresolved allegations involving senior DEA officials? What were his instructions in this regard?

Mr. BROSAN. He never specifically forbade me to go forward on any case, personally. In one instance, I received the instructions not to open up any new avenues of investigation from Mr. Richardson. The only

other thing that came close to that was in our conversation on the 13th of November, when he said to me that in the future, all allegations against senior officers would be brought to his office and that the officer would be brought in and that we would confront him with the information. I had to understand from that comment that I was not to do any investigation prior to the confrontation. That was totally unacceptable to me.

Senator PERCY. Mr. Chairman, I would suggest that we adopt, because we are approaching the noon hour, the 10-minute rule, if that would be all right. I would, under that rule, put one more brief question to our witness.

Had these files been closed or unresolved by BNDD Director John Ingersoll?

Mr. BROSN. The files that I found when I went to DEA were predominantly BNDD files. Some Customs files did come over later on. I would think that for the most part they were probably considered closed, Senator, but open and closed were really not the proper words, in my opinion. Resolved and unresolved were the questions. Anybody can stamp on a case and send it to the files and, Lord knows, what can be reposing in those files for any period of time. That is the best way to conduct a coverup.

Senator PERCY. Mr. Chairman, I would like to commend Mr. Brosan for the forthrightness that he has demonstrated before this subcommittee, his complete cooperation, and the considerable courage that I think he has shown. I would like to join with the chairman and other members of the committee in bringing this to the attention of Attorney General Levi.

We thank you, very much, indeed.

Senator NUNN. Thank you, Senator Percy.

Rather than impose the 10-minute rule, because I think Senator Glenn has not had any time to ask questions, I will ask one question, and I will give Senator Glenn as much time as he needs to ask all of his questions.

You received a telephone call from William Durkin, Assistant Administrator for Enforcement, on September 10, 1974, alerting you to the Promuto allegations. You then assigned an inspector, Thomas V. Cash, to make an inquiry into the Promuto matter. Did you pull Cash off of another investigation, and if so, what investigation was this?

Mr. BROSN. I didn't pull him off another investigation. Cash had ongoing duties within the office, a number of cases that he was assigned. This was a new case. I did require that he give this complete attention at the expense of the other matters. This was an extremely important case. So he was assigned a number of other investigations and inspections and things of that nature. I did not pull him specifically off any particular assignment that was ongoing.

Senator NUNN. Senator Glenn, why don't you go ahead and ask your questions? You have been very patient.

Senator GLENN. Thank you.

I will run through these as fast as possible. Mr. Chairman. There are a couple of points I would like to get at. What is the usual procedure with regard to metropolitan police? Is it customary that they would be contacting DEA with information of the type you have outlined?

Mr. BROSAN. Senator, that question would, I guess, best be responded to by the police themselves. It is customary, I would think, without stating specifically what their policies are, that most law enforcement agencies when they obtain information concerning another officer in another agency, would report it to the hierarchy of that particular agency. But in this instance, the police, as we know, prepared the memorandum to go to the U.S. Attorney's Office. Why that might be their policy, I don't know.

Senator GLENN. Specifically, on this particular information that was passed on to DEA, was this form from an official who was under investigation by your office at that time?

Mr. BROSAN. No. No, sir.

Senator GLENN. No connection there whatsoever?

Mr. BROSAN. No.

Senator GLENN. This was just a routine matter they thought should come to your attention?

Mr. BROSAN. Yes; in fact, they were not investigating Mr. Promuto. They were making other investigations, and he kept popping up in the course of the cases.

Senator GLENN. Is there any indication why it took 21 days for this information to be brought to DEA's attention if it were considered this important?

Mr. BROSAN. When I received the information, it was my impression that it had just been, by telephone from Mr. Durkin, I assumed the information had just been received by him a few minutes before or an hour before. However, when I went home that evening and Inspector Cash called me there, he called me and asked me if I had this memorandum. I told him I didn't. He was kind of skeptical toward me. I explained to him that I didn't. He said there was a memorandum written 3 or 4 weeks ago.

The next day when I went in, I called the man to whom the memorandum was addressed, Mr. Campbell. I asked him about this. Mr. Campbell said that the head of the Major Crime Unit, which is the unit that received the memorandum over the U.S. Attorney's Office, had been out sick and he had apparently left the memorandum laying around for a period of time and then had talked with the U.S. Attorney himself, Mr. Silbert, and that Mr. Silbert said the matter should be brought directly to Mr. Bartels' attention. Campbell told me that he hadn't been able to get hold of Bartels. This was on Tuesday. This was on Wednesday, the 11th. Bartels had only been out of the country about 48 hours at that point.

So the question arose in my mind as to where was this information all of the time. However, I didn't know Mr. Campbell except from this telephone conversation. I didn't want to ask the embarrassing question: I felt that we might develop that during the course of the investigation, and if we didn't, at the end of the case, I would have gone over and asked him why were they holding the memorandum. I never got to conclude the case, as you know.

Senator GLENN. Was Mr. Durkin under investigation by your office at this time; September of 1974?

Senator NUNN. We have two Mr. Durkins. I think you are referring to Mr. William Durkin?

Senator GLENN. William Durkin.

Mr. BROSN. That question, because of what I understand to be—I really can't answer the question due to what I understand to be departmental instructions, sir.

Senator NUNN. Senator Glenn, in executive sessions, we have been into that to some degree of detail as far as his limitations and his counsel, counsel for Mr. Tartaglino and Mr. Brosan, individually, have explained to the subcommittee what their restraints are as far as the Department goes.

Senator GLENN. I won't pursue that any further. To your knowledge, were other DEA personnel knowledgeable about the Promuto allegations before you. Were other people in the agency aware of this?

Mr. BROSN. When I received the information from Mr. Durkin, he indicated that he had received it from someone in our local Washington field office here, who had, in turn, received it from the police department. To my knowledge at that point, I was receiving confidential information from Mr. Durkin. I didn't know or think that anyone else was privy to it at that point other than the men that I told to conduct the investigation.

Senator GLENN. When you mentioned on page 24 that Mr. Bartels was anything but pleased when you told him about your integrity investigation concerning Mr. Promuto, did he indicate precisely what displeased him or was this just a general displeasure of things going on in the office, or was this something specific that you got the impression he might be more personally involved with?

Mr. BROSN. He became quite excited at that meeting and began asking me all sorts of questions. He was, in my opinion, more emotional than I had ever expected him to be in the course of just reporting that one of the employees had been involved in something of this nature or was alleged he was involved in something like this.

He asked his questions in a very antagonistic and vigorous manner. Then he belittled me for not having more information. It was impossible at that time to have any more information.

We had been working on it. I had one man assigned to it for the simple reason that I wanted, or three men at that point, that I wanted to keep it as close to the vest as possible and not let anybody know about it.

We didn't know it was true. It might be a smear on Mr. Promuto.

Senator GLENN. Was it your impression, from the manner in which he questioned or was antagonistic, to use your word, that he already knew something about this?

Mr. BROSN. No; I never got the impression that he knew. I thought in my own mind it appeared to me that it surprised him and therefore his anger was spontaneous.

Senator GLENN. What investigation was done by the FBI in this case? Was it your impression this was a thorough investigative job or could you give us a little information on that?

Mr. BROSN. I have no knowledge of exactly what investigation was done. I can speak only of the fact that I was interviewed in early December 1974, and Mr. Tartaglino was interviewed in December of 1974 by agents Williams and Hegarty. As far as anyone else, Mr. Fuller was interviewed in California by two other FBI agents.

I have no knowledge of the investigation as to its thoroughness, what instructions they received, or anything of that nature.

Senator GLENN. Just a couple of other questions, Mr. Chairman, and then I will be finished.

On page 41 you refer to Mr. Bartels' reference to the fact that Mr. Promuto had waved off the M. & M. Towing Co. What does that refer to? What drug connection does the M. & M. Towing Co. have and what is this waveoff?

Mr. BROSAN. The M. & M. Towing Co., Senator, is owned by two men named McGowan and McCaleb. What Mr. Bartels is indicating here in this statement—and I used his words—it is difficult for us to understand, I realize—is that Mr. Bartels, Mr. Promuto did not want to be seen or bothered by one of them. Which one it was, I don't know, but it was either Mr. McGowan or Mr. McCaleb that he indicated Promuto waved him off.

He didn't want to be seen with him. What does this have to do with drugs? It doesn't have anything to do with the drug issue. What it has to do with is that in the 1967-68 case in gambling, Messrs. McGowan and McCaleb were two of the people that were convicted in that case and at this time they had been sentenced to 10 and 8 years in prison and they were out at this time in some form of parole or probation or something, and were working; parole, and working in the area with this M. & M. Towing.

Mr. Promuto, as the original information indicated, was associated with these two people.

Senator GLENN. Was he part of the general association, then, more than any specific drug-connected charge?

Mr. BROSAN. That is right.

Senator GLENN. Following up on the Senator from Illinois question a little while ago, Mr. Bartels indication to you of who he should or you should investigate or not investigate, was it your impression that he just wasn't aware of the regulations applying to the Department, the agent's manual, or was this a deliberate attempt to circumvent those regulations?

Mr. BROSAN. On the occasion that we are talking about, when he made that statement, November 13, 1974, he definitely knew of that portion of the manual because it had become an issue as early as the last week in September of 1974.

In fact, I might add that it was told to me that it was an issue with him, that I would have conducted the investigation without having cleared it with him and I brought the manual with me to the October 1st meeting and I had it tucked under my arm in the event that he ever asked me under what, or on what basis I went forward with the case.

So he knew of it. In fact, back in September, he even asked for a copy of the manual to be sent in to his office. We got a copy sent to his office. I don't recall the date. He knew very well in September and he did know when he was talking to me in November.

Senator GLENN. This would be a direct circumvention of the usual regulations that would have applied to your investigations and it was deliberate and knowledgeable on his part?

Mr. BROSAN. Yes, sir.

Senator GLENN. Would it have to be?

Mr. BROSAN. I have written instructions in the manual on the one hand and oral on the other.

Senator GLENN. He was fully aware of this.

On page 42 you refer to the—quoting Mr. Bartels—Promuto leak. What specifically did he refer to in that? Was he under the impression there was specific information that had been leaked by Mr. Promuto? That would indicate to me that he felt this was also a security risk area, to say the least.

If those were his exact words, as I presume you meant, to quote him there?

Mr. BROSAN. Yes.

Senator GLENN. What would this refer to, "the Promuto leak?"

Mr. BROSAN. In the original information received from the police department, one of the allegations indicated that Mr. Promuto had identified an informant to persons in one of the taverns that he frequented.

We conducted an investigation of that particular allegation. That is what he was referring to there.

Senator GLENN. I have no further questions, Mr. Chairman. I do want to congratulate you on your statement, your forthrightness, and your willingness to answer the questions. I know this whole thing can't be particularly pleasant to you bringing all of this attention here.

I commend you on it and certainly hope we can feel, as we go over your very fine and detailed statement, to contact you if we have any additional questions in this regard.

Mr. BROSAN. Yes, sir, thank you very much.

Senator NUNN. Thank you, Senator Glenn. Senator Percy, I have one other question. I will be glad to yield to you.

Senator PERCY. Go right ahead. I have two or three here.

Senator NUNN. Mr. Brosan, you mentioned two cases of interest to the subcommittee, the *Frank Peroff* case and the so-called *Operation Silver Dollar* case. I believe in your testimony you indicated that neither of these cases were resolved to your satisfaction.

Do you think there was any deliberate coverup here or deliberate impeding of the investigation?

Mr. BROSAN. Of my investigation? What I am referring to there, Senator Nunn, is that when we began to conduct our internal security investigation we could not find all of the things that I would have expected when such an operation is conducted. We could not find the records.

Senator NUNN. Which case are you talking about, the Silver Dollar?

Mr. BROSAN. In both of these cases. This was a characteristic of both cases, both the first *Peroff* case, which was—the first *Vesco* case which was the one involved in Peroff and coverup and, secondly, in operation Silver Dollar.

When I sent the internal security investigators out on each of these cases there was an absence of what I considered to be proper documentation in each of those cases.

Therefore, the internal security investigation was somewhat frustrated. We could, for example, take the usual steps of 1, 2, 3 and maybe 4, the fourth item we expected to find along the avenue of our investigation would be missing or, better still, it didn't exist. There was no report written of what someone did at that time. Then we would find items 5, 6, 7 and 8 might be missing.

[At this point Senators Glenn and Percy withdrew from the hearing room.]

Mr. BROSN. So the operations conducted were somewhat like Swiss cheese. They were full of holes and there was no way of us nailing it down.

Senator NUNN. The investigation was not covered up or stopped as far as you were concerned, but it was just a frustrating investigation because there were holes that you could not plug. Is that correct?

Mr. BROSN. There were things we couldn't determine. We didn't have the investigation.

Senator NUNN. What conclusion do you draw from that?

Mr. BROSN. That there was improper documentation.

Senator NUNN. By whom?

Mr. BROSN. By that organization, BNDD, during the course of those operations. They were not properly documented in my opinion.

Senator NUNN. In other words, you are criticizing the position of BNDD in these cases?

Mr. BROSN. Absolutely.

Senator NUNN. Were there any leads that were not pursued or did you pursue all the leads to their ultimate?

Mr. BROSN. It is a difficult question, Senator. At that time, from my seat in the Office of Inspection with all of the surrounding elements, I did the best that I could. I realize that all of the leads were not followed in those cases. I could very well sit here and take credit in hindsight and they were not, but where I had suspicions, I instructed them to go further. In some instances, in one particular instance, I wasn't particularly happy with the overall spark and initiative, as you know, of the man that I had assigned.

It was a difficult thing for me. I was trying these agents out. I had never worked with them before. Unfortunately, I had to give new men very serious cases.

Senator NUNN. Mr. Brosan, back to the Thomas Durkin advice, you mentioned he gave advice on how to handle this subcommittee's inquiry to DEA. What was the nature of that advice?

Mr. BROSN. In late August of 1974, Mr. Richardson advised me that we were required—Mr. Richardson, myself, and John Lund—were required to go to Newark, N.J., to the offices of Mr. Durkin, Thomas Durkin, and to discuss with him the various investigations that were being conducted by this subcommittee, particularly those, the latest one that had taken place around that time; that is, the sweep and the knowledge that we had just received at that time about Silver Dollar, which was of interest to this subcommittee.

Senator NUNN. When you say the sweep, that is related to Vesco?

Mr. BROSN. Vesco two. We left here, the three of us on an early morning plane and we went to Newark, N.J., where we were picked up by the inspector in charge of the northeast field office and the four of us went to Mr. Durkin's offices in Newark.

We arrived there in mid-morning or so. The inspector of the northeast field office, Mr. Sherman, remained only for several hours. The rest of us remained throughout the day, until about 5 o'clock. I believe we got a 6 o'clock plane back.

The nature of this meeting was that we all went to a conference room in Mr. Durkin's office. Mr. Durkin closely questioned me particularly on the *Vesco* case, the second *Vesco* case, the one involving the sweep and other related matters there for several hours and then at-

tempted to set out some strategy by which he could defuse this subcommittee, if you will.

He finally indicated that what his plan was, was that there should be a briefing session over in the Drug Enforcement Administration to which a number of Congressmen and Senators should be invited.

At that meeting, which was to be pretty much brought about on a sham, that they were interested in the Turkish opium poppy ban, which was quite in the news during the summer of 1974, that during a break in that particular meeting, it would be—Mr. Bartels would be able to get with Senator Jackson on a sort of an informal basis to try to find out what was going on and how they could best—these are my words by the way, not his—defuse the committee.

[At this point, Senator Percy entered the hearing room.]

Mr. BROSN. We discussed possibly Mr. Bartels making a direct approach here to Senator Jackson. Mr. Durkin dismissed that, that he would lose, Mr. Bartels would lose face if in fact Senator Jackson had other embarrassing information.

Second, I suggested that either myself as the Chief Inspector, or the chief counsel, that I should as the Chief Inspector approach Mr. Manuel or the chief counsel should approach his counterpart, Mr. Feldman, and try to sort of, some sort of a peaceful arrangement.

At that time, the subcommittee was causing a great deal of concern to Mr. Bartels and the executive staff of DEA. It was during this conversation that Mr. Durkin decided on this strategy, the sham briefing with the Senators and people invited and attempt to get next to Mr. Bartels.

I told him that I thought it was ridiculous. We returned to Washington that night. This went on all day. To my knowledge, nothing ever came of it.

Senator NUNN. Who was at that meeting beside you and Mr. Thomas Durkin?

Mr. BROSN. Thomas Durkin for the first 2 hours; Chuck Sherman, who was the—Charles D. Sherman, inspector-in-charge of the northeast field office; Bob Richardson was there throughout; and John Lund, the Deputy Administrator in the enforcement area was there, but he was taking a lot of calls. He had to step out frequently.

Senator NUNN. Mr. Bartels was not there?

Mr. BROSN. No.

Senator NUNN. Let's back up a minute and just name those four people. What was the date of that meeting?

Mr. BROSN. I can give you the exact date of it, Senator. It was on August 28, 1974, that we went to Newark on Eastern Airlines flight No. 504 at 9:45 a.m., and we returned on the 7:40 flight at 6:55 p.m.

We had missed the earlier planes. The people involved, the people that went from here were Mr. John Lund, Robert Richardson, and myself. We were picked up at the airport by Mr. Sherman. He remained for the first 2 hours of the meeting, approximately.

Senator NUNN. Senator Percy.

Senator PERCY. I have just three questions of Mr. Brosnan.

You were the Acting Chief Inspector for a period of about a year and a quarter. At the end of that period, could you tell the subcommittee whether there were many open inspection files at the time you left the Office of Inspection?

Did any of these open files involve high-ranking DEA officials and if so, why had these cases not been resolved?

Mr. BROSN. Yes, Senator; I believe—and I think the press has sort of given the impression that there were hundreds and hundreds of open files there. That is not the case at all.

I don't know how many there were. I never took a count. I would estimate there were maybe a couple of dozen; 25 at the most unresolved cases of which I think probably maybe 10 could be resolved.

They all should be looked at and an effort made, but probably less than half could be resolved. As I saw my situation at that time, I had to give precedence to the ongoing cases. We had all sorts of things happening in DEA. I gave precedent to the active material and we worked the unresolved old cases as time permitted and as I restaffed the office with new inspectors.

I didn't want to assign them to the old inspectors who had done the original cases. Therefore, I assigned the first two and eventually I got down to the third one. To my knowledge, when I left, this took some doing. Everything that was unresolved when I got there was unresolved when I left.

Senator PERCY. Why?

Mr. BROSN. Because (a) I didn't have the manpower to accomplish it and (b) I don't think I had the support, the attitudinal problem that I worked within was certainly not one that encouraged me or that would have understood my taking people off of other functions.

Senator PERCY. On page 32 of your prepared testimony, you state concerning Mr. Bartels' complaint that too many people knew about the Promuto investigation: "We at DEA were not the first, nor were we the last ones to be advised of the information contained in the District of Columbia Police surveillance reports."

Who else had been advised of this information beside the U.S. Attorney's Office and how did Mr. Promuto first become aware of the fact that he was under investigation?

Mr. BROSN. Part 1 of that, who else was aware of it: The Police Department here in Washington was aware of it; the FBI was aware of it; Alcohol, Tobacco and Firearms had made an arrest as a result of one of the incidents mentioned in the memorandums, and so they were obviously aware of some of it; the IRS had conducted a 1967-1968 investigation into gambling, which involved the people; and, in fact, Mr. Promuto's name appeared in the newspapers during that time in that investigation; the U.S. Attorney's Office in the Eastern District of Virginia had conducted that prosecution, so they were aware of it; and the U.S. Attorney's Office here in the District of Columbia where the memorandum had been forwarded, they were certainly aware of it.

The second part of that question, could you restate that for me, sir?

Senator PERCY. Yes. The second part dealt with how did Mr. Promuto become aware of the fact that he was under investigation?

Mr. BROSN. I am not sure exactly how he became aware of the fact that he was under investigation, but I would like to point something out here.

On Friday of the first week of the investigation, there was a lot of file reviewing going on and one of the inspectors had made notes and in an effort to exchange the information they went to a reproduction

machine which is located on our floor, or is located on the 11th floor, which we shared with Mr. Promuto, because his office was right next to ours.

They were reproducing their notes to facilitate this exchange of information either through human carelessness or through mechanical malfunction, a copy of one page of that material remained in the machine.

He could have found out through that system. Apparently a secretary from his office was next to use the machine and picked the data up and saw his name on it and brought it to his office.

If that is the way he found out about it, I don't know, but I will say this: That material that was found in there. At that time I was in charge of that office. That is my responsibility and I accept it.

Senator PERCY. My last question is sort of a wrap-up question on this because the main purpose of our review of a number of Office of Inspection investigations to determine what sort of deficiencies actually exist and how they can best be corrected.

Mr. Brosan, in your opinion, how should the Office of Inspection at DEA be changed in order to be more successful in fulfilling its mandate of deterring corruption before it ever occurs? Thirdly, investigating allegations of corruption at all levels, once they have been made?

Mr. Brosan. The first part of the question as to how the Office of Inspection should be changed, I believe that I was trying to do too many things, but certainly would have required or did require the efforts of both Tartaglino and myself in that office.

It wasn't a job that one person could undertake. I think the first thing that should have been done is that the cases should have been divided, those cases that began with the agency on July 1, 1973, after Reorganization Plan No. 2, should have been handled by one unit—an active, ongoing unit.

Then I think that a temporary—a want to emphasize a temporary—organization should have been set up, which might have lasted several years, but would be self-expiring as they conducted these investigations to look into all of that old material and put our best foot forward to resolve that.

I think that gets to the first part of your question.

The second part, as I understand it, is, How we can insure the integrity of the entire operation? The most important thing in that area is that there is no substitute for a sound background investigation done prior to the time the employee is taken on.

That is the most important thing. Second, I think that there should have been a study and possibly someone like Dr. Mark Moore could embark on something like this. There should have been an effort to establish a profile of those who had been corrupted.

I think that there should have been enunciated and really enforced a policy that every agent in that organization is responsible to report and do what he can to overcome corruption.

Having the report in hand, the next step would be the fair and vigorous logging of all complaints so that we know what comes in, so there can't be any question that something comes in and is swept under the rug, no question at all.

On this matter, I think it is important particularly because of this case that there should be equal and fair treatment for everyone, regardless of his rank. The lowest agent down on the street would not have received the considerations that Mr. Promuto was receiving, in my opinion.

I think that another important thing is when we get a new agent on board there has to be a great deal of care in who we team him up to go out to work with, because that is where he is going to be put into a groove that will last forever.

Senator PERCY. Thank you very much, indeed.

Thank you, Mr. Chairman.

Senator NUNN. Thank you, Senator Percy.

Counsel has a couple of announcements.

Mr. FELDMAN. Mr. Chairman, I would like to request that Mr. Brosan, as well as Mr. Tartaglino, be in the hearing room next week when we resume on Tuesday, and throughout the week when we hear from other witnesses, particularly from the DEA, FBI, and Department of Justice.

Senator NUNN. We would ask you to do that, if you could.

Mr. FELDMAN. Second of all, Mr. Chairman, I would ask that we resume next Tuesday at 10 o'clock to hear during that week the following witnesses: Dennis Dale, of DEA; William Durkin, of DEA; Thomas V. Cash, who was the inspector on the Promuto case of DEA; Robert Richardson, of DEA; Thomas Durkin, who is the consultant mentioned to DEA; Bill D. Williams, FBI agent; William Haggerty, FBI agent; James Hutchinson, former Associate Deputy Attorney General; and Laurence Silberman, former Deputy Attorney General.

That is the witness schedule for next week.

Senator NUNN. That will be the witness list for next week.

Mr. Brosan, I thank you again. After the executive session, I won't repeat those words of praise, but I do appreciate your appearance here today and I thank you on behalf of the entire subcommittee.

[Whereupon, at 12:35 p.m., the subcommittee recessed, to reconvene at 10 a.m., on Tuesday, June 17, 1975.]

[Members present at time of recess: Senators Nunn and Percy.]

APPENDIX

[From the Congressional Record, Washington, Feb. 21, 1973]

By Mr. Ribicoff :

S. 942. A bill to transfer and reorganize all existing law-enforcement functions of the Federal Government related to trafficking in narcotics and dangerous drugs in a Division of Narcotics and Dangerous Drugs established in the Federal Bureau of Investigation. Referred to the Committee on Government Operations.

THE FBI SHOULD TAKE OVER ALL FEDERAL DRUG LAW ENFORCEMENT

Mr. RIBICOFF. Mr. President, I introduce a bill for appropriate reference to transfer and reorganize the widely scattered Federal law-enforcement programs related to trafficking in narcotics and dangerous drugs into a single new division of the Federal Bureau of Investigation.

Since 1969, Federal law-enforcement efforts aimed at curbing the supply of heroin and other narcotic and dangerous drugs have mushroomed at a rate rivaling the growth of the drug crisis itself. A sevenfold increase in Federal funding, from \$36 million in 1969 to \$257 million proposed in 1974, has served to perpetuate, proliferate, and magnify a disorganized Federal response to the Nation's No. 1 law-enforcement problem.

As difficult as it is to come to grips with the drug crisis, it is even more difficult to get an accurate count of the number of law-enforcement programs the Federal Government has established to meet the crisis. A special analysis of the fiscal 1974 budget related to drug abuse control, prepared by the Office of Management and Budget, places the number at nine. A recent study prepared by the Library of Congress describes 13 such drug law-enforcement programs.

The number of programs would not be an issue if the end result was an efficient, well-coordinated, highly effective enforcement effort which was succeeding in eradicating the scourge of heroin and other deadly and dangerous drugs. However, the very opposite is the case. No one has stated the problem more precisely than President Nixon himself when, in a related context, he declared :

"At present, there are nine federal agencies involved in one fashion or another with the problem of drug addiction. In this manner our efforts have been fragmented through competing priorities, lack of communication, multiple authority, and limited and dispersed resources. The magnitude and severity of the present threat will no longer permit this piecemeal and bureaucratically dispersed effort at drug control."

The most disturbing element in the entire Federal drug law enforcement picture is the sharp rivalry and often bitter feuding between the Nation's two major enforcement agencies—the Bureau of Narcotics and Dangerous Drugs in the Justice Department and the narcotics component of the Customs Bureau in the Treasury Department. A recent GAO report on the heroin-smuggling problem in New York City said the problems between BNDD and Customs "include failing to share intelligence or other information, untimely notice of arrest or seizure, lack of communications, misunderstandings, and personality conflicts."

The report concluded :

"Cooperation and coordination between law enforcement agencies are vital in the government's battle against heroin trafficking. To the extent that cooperation is not fully realized, the government's effort is impeded. The mere existence of overlapping jurisdiction is always a threat to cooperative efforts. Sometimes, as has been the case with these two agencies, the threat becomes actual."

The GAO findings are supported by a task force report sponsored by the criminal law section of the American Bar Association and the Drug Abuse Council. Reporting that "friction, confusion, and jealousies" have arisen between BNDD and Custom agents, the task force concluded :

"The long-standing jurisdictional dispute between BNDD and the Bureau of Customs has not been settled. Resolution of this problem is essential to the effective planning and execution of a joint narcotics investigation involving these two agencies. Because numerous proclamations and policy statements have failed to alleviate this problem, other actions are necessary."

My own investigation of the problem—which will be further developed and fully aired during the course of hearings I will hold as chairman of the Subcommittee on Reorganization, Research, and International Organizations—reveals a situation which amounts to nothing less than a national tragedy.

The rivalry between BNDD and Customs which, under controlled circumstances, might take the form of healthy competition and better detective work by each agency, instead has often degenerated into uncontrolled bitter feuding and the actual sabotaging of each other's investigations. Major cases, involving millions of dollars in smuggled heroin and some of the biggest traffickers, are rife with reports of BNDD and Customs agents spying on one another, prematurely seizing the other's evidence, arresting the other's informants, kidnapping the other's witnesses—all for the purpose of seeking credit for the "big bust."

One high BNDD official has estimated that about 2 dozen major cases a year—or about 20 percent of the major narcotics caseload—have been adversely affected by the BNDD-Customs rivalry, with some of these cases being blown altogether.

The problem is perhaps worst in New York City, the site of some of the largest heroin convoy cases.

A convoy involves allowing an illicit drug shipment to pass into the country—rather than seizing it at the border and arresting the low-level courier, or "mule"—in the hope of following the shipment and arresting the major trafficker for whom it is destined.

The situation has required the personal intervention of President Nixon, who, in July 1971, issued detailed guidelines to BNDD and Customs agents in the hope of resolving their jurisdictional dispute. Basically, the guidelines gave BNDD primary jurisdiction in both domestic and overseas investigations—even in convoy cases as they crossed Customs lines at ports and borders—and required that jurisdictional disputes be settled by the Attorney General. But Customs was still permitted to initiate smuggling investigations, and with additional Customs agents stationed abroad under guidelines issued in July 1972 the jurisdictional lines have remained blurred.

There is no better evidence of the depth and bitterness of the BNDD-Customs rivalry than in the incredible detail and intricacy of the guidelines themselves. The document is more reminiscent of a cease-fire agreement between combatants than a working agreement between supposedly cooperative agencies. I ask unanimous consent that the guidelines be printed in the Record at the conclusion of my remarks.

To make matters worse, the feuding between BNDD and Customs in New York has spread to the Southern and Eastern Districts of the U.S. Attorney's office. I have been informed that Assistant Attorney General Henry E. Peterson, chief of the criminal division, is currently investigating the consequences of an apparent alliance of the southern district with BNDD and of the eastern district with Customs. Among the incidents under investigation are arrests of each other's informants and a possible shootout involving rival undercover agents who were uninformed of each other's participation in the same case.

The bill I introduce today—the Federal Narcotics and Drug Abuse Law Enforcement Reorganization Act of 1973—seeks to put an end to this dangerous rivalry, as well as to penetrate the bureaucratic morass that generally plagues Federal narcotics law enforcement. It seeks to assure once and for all that Federal agents and other employees will not be pushing papers while criminals remain free to push drugs.

The bill places total responsibility for enforcement of the Federal drug laws in the one agency which, incredibly, has never exercised drug jurisdiction, but which surely has the potential to handle it; namely, the Federal Bureau of Investigation.

A new Division of Narcotics and Dangerous Drugs would be established in the FBI. The division would be preeminent among the FBI's other divisions by being placed under the supervision of an associate director and two assistant directors, rather than under the supervision of a single assistant director, as is the case for the other divisions.

The Associate Director for Narcotics and Dangerous Drugs, as his title implies, would be responsible for the full spectrum of the drug enforcement problem—dealing both with trafficking in narcotics, or such "hard drugs" as heroin

and cocaine, and in dangerous drugs, including such "soft drugs" as amphetamines and barbiturates which pose an increasing problem of abuse, especially among teenagers.

At present, most Federal enforcement efforts are aimed at hard drugs. To assure that soft drugs receive greater enforcement priority, the new division's operations would be geared to the jurisdictions assigned to each of the assistant directors—one with the title of Assistant Director for Narcotics, the other with the title of Assistant Director for Dangerous Drugs.

The new division would be built from the manpower and other resources of the narcotics component of the Office of Investigations of the Customs Bureau, which would be transferred from the Treasury Department to the Justice Department, and of the BNDD, jurisdiction over which would be delegated to the FBI within the Justice Department by the Attorney General. Customs would retain its investigations arm for all other forms of smuggling but drugs. The Attorney General, in consultation with the FBI Director, would establish standards and procedures for the selection of customs and BNDD agents, all of whom are civil service appointees, to be brought into the non-civil service FBI. Transferred agents would retain their present civil service status for at least 1 year, and those not selected for transfer would remain either in Treasury or Justice in the same civil service grade for at least 1 year.

The bill provides for other drug enforcement operations currently within Justice to be delegated wholly to the FBI by the Attorney General—namely, ONNI, the aforementioned intelligence unit, and DALE, the Office of Drug Abuse Law Enforcement, which has used BNDD and customs agents in a Federal assault against street-level heroin pushers. Also, the drug-related functions of LEAA, the Law Enforcement Assistance Administration—primarily in the form of block grants to State and local police for the establishment of narcotics units—would be coordinated in Justice by the Attorney General through the new drug division of the FBI.

The bill also provides for coordination by the President, after consultation with the Attorney General, of all other efforts related to drug law enforcement wherever they may be found in the Federal bureaucracy. These include such diverse efforts as the antismuggling operations of the Border Patrol—in the Immigration and Naturalization Service of Justice—and of the Coast Guard and the Federal Aviation Administration—each in the Transportation Department—the technical assistance for better narcotics enforcement provided to foreign governments by the Agency for International Development—in the State Department—the tax investigations of major suspected drug traffickers by the Internal Revenue Service—in the Treasury Department—and information gathering on the international narcotics traffic by military intelligence—in the Defense Department—and by the Central Intelligence Agency.

Thus, for the first time all Federal activities related to combating traffic in illicit drugs would be subject to basic policy coordination by a single law enforcement agency. To facilitate such coordination, the bill would establish a Policy Committee on Narcotics and Dangerous Drugs, comprised of the heads of all departments and agencies and their subdivisions which would be subject to the policy directives in the new integrated Federal Drug Enforcement System. The Attorney General would be Chairman of the Committee, and the Director of the FBI and the Associate Director for Narcotics and Dangerous Drugs would be vice chairman and executive director respectively. The committee would replace the Cabinet Committee on International Narcotics Control, chaired by the Secretary of State.

The chaos resulting from our present efforts to enforce the laws against trafficking in narcotics poses a major threat to our national well-being. The President has called the drug problem "public enemy No. 1." I agree. I hope that he agrees with me that now is the time to assign responsibility for it to the Nation's No. 1 law enforcement agency—the FBI.

It is an anachronism for the FBI—the Nation's most highly esteemed, generously funded, and most resourceful law enforcement agency—not to be engaged in combating the most widespread and dangerous crime problem of our day. Such a situation represents an imbalance in our law enforcement priorities and has resulted in the fragmented, fractious enforcement of drug laws by other Federal agencies.

I submit that infusion into the FBI of the best in manpower and expertise from BNDD and Customs will result in a more effective and relevant FBI.

Surely the FBI already has much to bring to narcotics enforcement. Its expertise in surveillance and wiretapping, its superb laboratory and identifica-

tion resources, and its vast experience in combating organized crime, well equip it to go after the major international traffickers. One prominent Federal law enforcement official has advised me that about 60 percent of the hard drugs moved in New York is controlled by organized crime. It is time that the FBI be brought into this battle.

It should be noted that FBI Director-Designate Patrick Gray III, appears to have made a first step in this direction. Last August he initiated a new procedure whereby FBI agents now specifically debrief their informants on drug matters and pass on such intelligence to BNDD, Customs, and ONNI agents. Previously, FBI agents did not actively seek narcotics intelligence from their informants. Although Mr. Gray has repeatedly asserted the FBI's lack of narcotics jurisdiction, he also has expressed a very definite interest in drug abuse. I hope now that he has been nominated Director, subject to Senate confirmation, he will advocate an active, primary role for the FBI in this field. Surely, his views on drug enforcement should be a matter of interest and concern to the Senate.

My remarks are not intended to demean the often heroic efforts of BNDD and Customs agents in their fight to bring major traffickers to justice. They have had some enormous successes, as the convictions in recent major cases attest. But their competitiveness and esprit de corps often prove counterproductive, even in these major cases, which could have been even more successful in terms of traffickers arrested and drugs seized, had the BNDD and Customs agents worked harmoniously. My bill would offer them the opportunity to make peace between themselves and to broaden the war effort against traffickers.

The hearings I plan on this bill will carefully explore the need to reorganize drug law enforcement, and I am confident that the subcommittee and the parent Committee on Government Operations will produce a reorganization bill that will not only serve the best interests of all agencies but of the American people as well.

I ask unanimous consent that the text of the bill be printed at this point in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 942

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Federal Narcotics and Drug Abuse Law Enforcement Reorganization Act of 1973."

DEFINITIONS

SEC. 2. (a) As used in this Act:

(1) The term "narcotics and dangerous drugs" means controlled substances as defined in Section 101, 201 and 202 of the Controlled Substances Act.

(2) The term "function" means power and duty; transfer of a function, under any provision of law, of an agency or the head of a department shall also be a transfer of all functions under such law which are exercised by any office or officer of such agency or department.

FINDINGS AND DECLARATION OF POLICY

SEC. 3. (a) The Congress hereby finds and declares—

(1) that the proliferation of narcotics and dangerous drugs is the Nation's number one law enforcement problem;

(2) that the enforcement of laws related to narcotics and drug abuse is scattered widely throughout several Federal departments and agencies;

(3) that overlapping jurisdictions, failure to share intelligence and other information, general lack of communication and cooperation, and counterproductive rivalries and competitiveness among law enforcement agencies have resulted from this diffusion of efforts within the Federal government against trafficking in narcotics and dangerous drugs;

(4) that many Americans are needlessly subjected to narcotics addiction, drug abuse and to drug-related crimes because of the breakdown in coordination among Federal law enforcement agencies;

(5) that the Federal Bureau of Investigation is the preeminent Federal law enforcement agency as a result of its extensive manpower, laboratory, intelligence and investigative resources, and because of the high esteem in which it is

held by many Americans for its efforts against organized crime, internal subversion and other criminal assaults against the Nation;

(6) that the Federal Bureau of Investigation has never exercised jurisdiction in the area of narcotics and drug abuse law enforcement;

(7) that effective narcotics and drug abuse law enforcement requires establishment of a new division of the Federal Bureau of Investigation with jurisdiction to integrate enforcement of all Federal narcotics and drug abuse laws which is now exercised by other agencies, and to issue policy directives governing the continued law enforcement functions of certain agencies as provided in this Reorganization Act, related to narcotics and dangerous drugs;

(8) that the Federal Bureau of Investigation, through the new division established in this Reorganization Act, integrate the best of the manpower and expertise that has been developed by other federal agencies in building its own capability to deal effectively with all aspects of the narcotics and drug enforcement problem, including combatting international and domestic trafficking, improving the quality of state and local enforcement of narcotics and dangerous drug laws, and eradicating narcotics and drug-related corruption at all enforcement levels.

TRANSFER OF FUNCTIONS FROM TREASURY DEPARTMENT

SEC. 4. (a) There are hereby transferred to the Attorney General—

(1) All functions of the Secretary of the Treasury which are administered through or with respect to the Bureau of Customs (also hereinafter referred to as the "Customs Service") and which involve investigations by its Office of Investigation (Reorganization Plan Number 1 of 1965: 30 Fed. Reg. 7035) leading to seizures and arrests for violations of any Federal law of the United States relating to trafficking in narcotics and dangerous drugs.

(2) all other functions of the Customs Service and the Commissioner of Customs determined by the Director of the Office of Management and Budget to be directly related to functions transferred by paragraph (1) of this section. Nothing in this section shall be construed (A) to preclude the Customs Service from conducting investigations, making seizures and arrests related to smuggling of contraband other than narcotics and dangerous drugs (B) to make seizures and arrests based on chance discovery of narcotics and dangerous drugs during actual passage as undeclared merchandise or contraband, through customs lines, or (C) to make seizures and arrests related to narcotics and dangerous drugs at the direction of the Attorney General as provided in section 5(b) of this Reorganization Act.

TRANSFER OF FUNCTIONS FROM STATE DEPARTMENT

SEC. 5. (a) There is hereby transferred to the Attorney General all functions of the Secretary of State which are administered through or with respect to the Cabinet Committee on International Narcotics Control.

(b) There are hereby transferred to the Department of Justice all of the positions, personnel, property, records and other funds, available or to be made available, of the Cabinet Committee on International Narcotics Control.

(c) the Attorney General shall make such provisions as he may deem necessary with respect to terminating the affairs of the Cabinet Committee on International Narcotics Control not otherwise provided for in this Reorganization Act.

(d) the Cabinet Committee on International Narcotics Control is hereby abolished and replaced by the Policy Committee on Narcotics and Dangerous Drugs, as provided in section 13 of this Reorganization Act.

DIVISION OF NARCOTICS AND DANGEROUS DRUGS

SEC. 6. (a) There is established in the Department of Justice a new division of the Federal Bureau of Investigation which shall be known as the Division of Narcotics and Dangerous Drugs (hereinafter referred to as the "Division").

(b) All functions transferred to the Attorney General pursuant to the Act shall be delegated to the Director of the Federal Bureau of Investigation. All functions delegated to the Director of the Federal Bureau of Investigation by the Attorney General pursuant to the Act shall be administered through the Division.

(c) The Division shall be headed by an Associate Director for Narcotics and Dangerous Drugs of the Federal Bureau of Investigation who shall be appointed

by the Attorney General. In addition to the functions authorized in this Reorganization Act the Associate Director of Narcotics and Dangerous Drugs shall perform such other duties as the Attorney General shall delegate.

(d) There are hereby established in the Division, in addition to the position established in subsection (c) of this section, two new positions of Assistant Director for Narcotics and Assistant Director for Dangerous Drugs of the Federal Bureau of Investigation, appointments to which shall be made by the Attorney General. Each Assistant Director shall perform such functions as the Attorney General shall delegate.

DELEGATION OF AUTHORITY WITHIN THE JUSTICE DEPARTMENT

SEC. 7. (a) The Attorney General shall delegate authority over functions performed by the Bureau of Narcotics and Dangerous Drugs under Reorganization Plan Number 1 of 1968 to the Director of the Federal Bureau of Investigation.

(b) The Attorney General shall delegate authority over functions performed by the Office of Drug Abuse Law Enforcement under Executive Order 11641 of 1972 (FR Doc. 72-1525) to the Director of the Federal Bureau of Investigation.

(c) The Attorney General shall delegate authority over functions performed by the Office of National Narcotics Intelligence under Executive Order 11676 of 1972 (FR Doc. 72-11930) to the Director of the Federal Bureau of Investigation.

(d) The Attorney General shall assign to the Director of the Federal Bureau of Investigation the positions, personnel, property, records, and unexpended balances of appropriations, allocations and other funds, available or be made available under terms and conditions that the Attorney General shall designate, (1) of the Bureau of Narcotics and Dangerous Drugs, (2) of the Office of Drug Abuse Law Enforcement and (3) of the Office for National Narcotics Intelligence.

(e) The Bureau of Narcotics and Dangerous Drugs, the Office of Drug Abuse Law Enforcement, and the Office of National Narcotics Intelligence, including the Offices of Directors of each of these agencies, are hereby abolished. The Attorney General shall make such provision as he may deem necessary with respect to terminating the affairs of these agencies not otherwise provided for in the Act.

(f) The Attorney General shall delegate to the Director of the Federal Bureau of Investigation authority over functions performed by the Immigration and Naturalization Service, including functions performed by the Border Patrol, related to trafficking in narcotics and dangerous drugs across the borders of the United States at places other than ports of entry. The Immigration and Naturalization Service, including the Border Patrol, shall perform functions related to enforcement of any law of the United States pertaining to narcotics and dangerous drugs consistent with policy directives that shall be issued from time to time by the Director of the Federal Bureau of Investigation.

(g) The Attorney General shall delegate to the Director of the Federal Bureau of Investigation authority over functions performed by the Law Enforcement Assistance Administration related to the awarding of block grants for the planning, establishment and operation of narcotics and dangerous drug enforcement units at the state and local levels, pursuant to Parts B and C of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (PL 92-351; 82 Stat. 197). The Law Enforcement Assistance Administration shall perform such functions consistent with policy directives that shall be issued from time to time by the Attorney General after consultation with the Director of the Federal Bureau of Investigation.

(h) The Attorney General shall promulgate regulations for the purpose of delegating authority not otherwise provided in this section but necessary for achieving the objectives of this Reorganization Act.

POLICY DIRECTIVES TO THE TRANSPORTATION DEPARTMENT

SEC. 8. The President, after consultation with the Attorney General, shall direct the Secretary of Transportation with respect to the following functions related to trafficking in narcotics and dangerous drugs.

(1) Operations of the Coast Guard in the enforcement of any law of the United States relating to trafficking in narcotics and dangerous drugs.

(2) Operations of the Federal Aviation Administration in the enforcement of any law of the United States relating to trafficking in narcotics and dangerous drugs.

POLICY DIRECTIVES TO THE STATE DEPARTMENT

SEC. 9. (a) The President, after consultation with the Attorney General, shall direct the Secretary of State with respect to the following functions related to trafficking in narcotics and dangerous drugs.

(1) Operations of the Agency for International Development in supplying economic and technical assistance to foreign governments for development of narcotics control programs.

(2) Relations generally with foreign governments for the purpose of coordinating control of international narcotics traffic.

POLICY DIRECTIVES TO THE CENTRAL INTELLIGENCE AGENCY

SEC. 10. (a) The President, after consultation with the Attorney General, shall direct the Director of the Central Intelligence Agency with respect to all of the Director's functions related to trafficking in narcotics and dangerous drugs.

POLICY DIRECTIVES TO THE SECRETARY OF DEFENSE

SEC. 11. (a) The President, after consultation with the Attorney General, shall direct the Secretary of Defense with respect to all of the Secretary's functions related to trafficking in narcotics and dangerous drugs.

POLICY DIRECTIVES TO THE TREASURY DEPARTMENT

SEC. 12. (a) The President, after consultation with the Attorney General, shall direct the Secretary of the Treasury with respect to functions administered through or with respect to the Internal Revenue Service that relate to the trafficking in narcotics and dangerous drugs.

POLICY COMMITTEE ON NARCOTICS AND DANGEROUS DRUGS

SEC. 13. (a) There is established a Policy Committee on Narcotics and Dangerous Drugs.

(b) The Attorney General shall be Chairman of the Committee. The Director of the Federal Bureau of Investigation shall be Vice Chairman of the Committee. The Associate Director for Narcotics and Drug Abuse of the Federal Bureau of Investigation shall be Executive Director of the Committee.

(c) Members of the Committee shall be appointed by the President from all departments and agencies and their subdivisions, which, under the provisions of this Reorganization Act, have functions related to trafficking in narcotics and dangerous drugs and of such other departments and agencies, and their subdivisions, as the President, after consultation with the Attorney General, may subsequently designate.

(d) The Committee shall meet from time to time to expedite and coordinate the policy directives issued by the President after consultation with the Attorney General.

TRANSFER MATTERS

SEC. 14. (a) The Attorney General, in consultation with the Director of the Federal Bureau of Investigation, shall establish standards and procedures for the selection of personnel of the Bureau of Customs in the Treasury Department and of the Bureau of Narcotics and Dangerous Drugs in the Justice Department to be transferred to the Federal Bureau of Investigation in accordance with the provisions of this section. Criteria for such standards and procedures shall reflect consideration of each employee's record in meeting the responsibilities of, and possessing the skills for, effective investigation related to trafficking of narcotics and dangerous drugs. All personnel selected for transfer shall be without reduction in classification or compensation for one year after such transfer, except that the Attorney General shall have full authority to assign personnel during such one year period in order to efficiently carry out functions transferred under this Reorganization Act. After such one-year period the Attorney General, in consultation with the Director, shall establish appropriate status for all transferred personnel within the Federal Bureau of Investigation.

(b) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are transferred under this Act by the Treasury Department and the State Department any functions of which are transferred by this Act; and (2) which are in effect at the time this Act takes effect, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Justice Department, by any court of competent jurisdiction, or by operation of law.

(c) The provisions of this Act shall not affect any proceedings pending at the time this Act takes effect before any department or agency, functions of which are transferred by this Act; except that such proceedings, to the extent that they relate to functions so transferred, shall be continued before the Justice Department. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or repealed by the Justice Department by a court of competent jurisdiction, or by operation of law.

(d) The provisions of this Act shall not affect suits commenced prior to the date this Act takes effect and in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this Act had not been enacted; except that if before the date on which this Act takes effect, any department or agency (or officer thereof in his official capacity) is a party to a suit involving functions transferred to the Justice Department, then such suit shall be continued by the Justice Department. No cause of action, and no suit, action, or other proceeding, by or against the Treasury Department and the State Department (or officer thereof in his official capacity) functions of which are transferred by this Act shall abate by reason of the enactment of this Act. Causes of actions, suits, actions, or other proceedings may be asserted by or against the United States or the Justice Department as may be appropriate and, in any litigation pending when this Act takes effect, the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this paragraph.

(e) Such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate the transfers provided in this section shall be carried out in such manner as he may direct and by such agencies as he shall designate.

EXHIBIT No. 11

THE RESURGENCE OF HEROIN ABUSE IN THE DISTRICT OF COLUMBIA

(By Mark H. Green, M.D., Bureau of Epidemiology, Center for Disease Control, U.S. Public Health Service¹)

ABSTRACT

Prospectively collected drug abuse trend surveillance data suggest that the rate of heroin use in Washington, D.C. is rising following a two year decline in the magnitude of this problem. Supportive data include increased potency of street level heroin, increased numbers of heroin-related deaths, increased detection of heroin positive urine specimens in the D.C. Superior Court arrestee population, increased demand for addiction treatment services and rising property crime rates. Increased prevalence of heroin use has not yet been associated with an increase in incidence, suggesting that former heroin users have begun to use once again following a period of abstinence.

Analysis of heroin specimens seized across the United States suggests that cities formerly dependent upon European (white) heroin have now developed a new heroin distribution system which supplies Mexican (brown) heroin. This has off-set the reduction in heroin use observed during 1972-1973 concomitant with the East Coast heroin shortage and widespread introduction of addiction treatment services.

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Introduction

Drug abuse authorities in Washington, D.C. have had a unique opportunity to study the dynamics of heroin addiction in this city. The systematic, prospective collection of heroin use trend data has permitted on-going analysis of the nature and extent of heroin addiction during a period when enormous resources (both treatment and law enforcement) were brought to bear on this problem. The status of heroin addiction in Washington at the time treatment intervention was undertaken has been previously described (1), as has the subsequent decline of heroin abuse in Washington (2, 3). The rationale underlying the application of epidemiologic techniques such as surveillance to the study of heroin addiction has also been discussed in detail (4).

The District of Columbia Drug Abuse Surveillance System has recently detected an increase in heroin abuse in this city. Data will be presented to support this assertion, and the implications of these observations with regard to the natural history of heroin addiction and the efficacy of various intervention strategies will be discussed.

Methods

Details regarding data collection methods and definitions for the Drug Abuse Surveillance System and its components have been previously reported (2, 3, 5, 6). The analysis of year of first heroin use data as an indicator of the relative incidence of new heroin use has also been described in detail (7). In brief, data are collected prospectively from the following sources:

1. Patients entering treatment with the Narcotics Treatment Administration (NTA) heroin addiction treatment program
2. Urine testing programs for heroin in three locations: NTA Central Medical Intake, the D.C. Superior Court Lockup, and the D.C. Jail
3. D.C. Medical Examiner's reports on deaths due to acute opiate overdoses
4. D.C. Metropolitan Police data on property crime, narcotics arrests, heroin seizures and undercover heroin "buys" at the street level.²

Both the treatment and law enforcement efforts with respect to heroin addiction began in 1969, grew rapidly through 1971, and remained constant at that level through the end of 1973. Since then, there has been a decline in the number of under-cover agents working on the narcotics squad. In addition, agents have been instructed to be more selective in making under-cover heroin "buys," focusing on purchases that are more likely to produce an arrest with a probability of conviction. There have been two major changes in the treatment program, the first being a reduction in both the number of clinics and treatment slots following the decline in demand for treatment observed in 1973 (2, 3), and the second being the elimination of all methadone take-home privileges in July 1974.

In addition, national data on laboratory analyses of heroin specimens have been provided by the Federal Drug Enforcement Administration (DEA). These data are obtained from DEA Regional Laboratories, which analyze heroin specimens seized or purchased by DEA field agents. Specimens undergo quantitative analysis with respect to heroin potency and qualitative analysis aimed at identifying non-opiate diluents used in the illicit manufacture of heroin.

Data were analyzed for statistical significance using the Student *t* test and the chi-square test. Trends were shown to occur with a linear regression line, fit by the method of least squares. Significance of trends was tested with Pearson's correlation coefficient.

Results

Figure No. 1 depicts the average purity of heroin purchased at the street level by narcotics squad under-cover agents on a quarterly basis from mid-1969 through the end of 1974. The downward trend in purity through the end of 1973 is highly significant ($r = -0.94$, $p < .001$). However, there now have been five consecutive points outside the 95% confidence band around this trend line, suggesting that the purity of street level heroin has increased significantly in the District of Columbia during 1974. This is corroborated by the observation that the average number of milligrams of pure heroin present in street level

² A "street level buy" is defined as one in which no more than \$50 has been spent by the police agent, no more than 500 milligrams of material (only a fraction of which is heroin) are present in each package, and for which the calculated cost of heroin per milligram of pure heroin is less than \$10.

heroin packages, which had fallen from a maximum of 13.4 milligrams (April 1972) to a minimum of 2.5 milligrams (in September 1973), has now risen to 6.0 milligrams (4th quarter, 1974).

The death rate from heroin-related overdoses is shown in Figure No. 2. All cases had morphine and quinine identified at post-mortem toxicologic analysis. Note that the heroin overdose death rate declined steadily from mid-1971 through mid-1973. There were 18 heroin related deaths in 1974, compared to 5 such deaths during the entire year of 1973. In 16 of these 1974 cases, heroin was the only opiate detected. In two, methadone was also present. It is of further note that 14 of these individuals were known, chronic narcotics users. The other 2 had the cutaneous stigmata of chronic parenteral drug abuse but were not known to NTA and were not reported to be drug users by family or friends interviewed during the death investigations. That most of the deaths occurred among long term heroin users, rather than among opiate-naïve experimenters, is supported by the high average age of these victims. During 1971-1973, the average age of heroin overdose death victims was 25.0. In 1974, it increased to 27.4 ($t=1.70, p<.05$).

The most reliable urine screening program for heroin in the city is that run in the D.C. Superior Court (see Figure #3). Once again, the downward trend in the detection of heroin (morphine and/or quinine) in this facility is highly significant through the 3rd quarter of 1973 ($r=-0.860, p<.01$). Since that time, there has been an increase in the number of heroin positive urine samples. There are now three consecutive points outside the 95% confidence band around the previous trend line, suggesting that this is a significant increase.

The demand for services at NTA peaked during the first quarter of 1972, during which an average of 33 heroin users were admitted for treatment each day. The nadir of demand for treatment services was reached in the last quarter of 1973, with an average daily admission rate of 9 patients. Treatment demand has begun to rise once again in 1974, with an average of 12 patients being admitted each day during the last quarter of 1974.

The proportion of heroin among all seizures of illicit drugs made by the D.C. Metropolitan Police is illustrated in Figure #4. Note once again the sharp decline in heroin seizures from 1971 through the end of 1973. During 1974 there has been a small but statistically insignificant increase in the proportion of heroin seizures.

The number of opiate charges^a made by the D.C. Police reached a peak of 3114 in 1971. This figure declined to 2108 in 1972, with a further decrease in 1973 to 958 (see Table #1). Based on data available through the first three quarters of 1974, there will be an estimated 900 opiate charges for the entire year.

TABLE 1.—*Annual charges made by the D.C. Metropolitan Police for possession and distribution of opiates*

Year:	Charges
1968	408
1969	958
1970	1,588
1971	3,114
1972	2,108
1973	958
1974	¹ 900

¹ Projected annual total based on data complete through the third quarter of 1974.

Although the relationship between property crime and heroin addiction remains poorly elucidated, it is clear that contemporary heroin users are deeply involved in criminal activity, the majority of which is property crime rather than violent crime (5,8,9). There has been a very close parallel between trends in heroin use and reported property crime in the District of Columbia (see Table 2). Property crime peaked in 1969 and declined steadily in the three years that followed, following the same pattern as heroin use incidence. In 1974, when heroin use began to increase again, property crime in Washington increased for the first time since 1969-1970. We have demonstrated previously a negative correlation between enrollment in NTA and property crime in Washington (2). As the number of addicts in treatment increased, the number of crimes associated with addiction decreased ($r=-0.79, p<.001$). Perhaps more striking is the relationship

^a These charges are simple possession of heroin, possession of heroin with intent to distribute, and sale of heroin.

between the purity of heroin purchased by under-cover agents and the number of reported burglaries in the city (see Figure #5). As the purity of heroin increases the number of burglaries reported increases. There is a highly significant positive correlation between these two variables ($r=+0.92$, $p<.01$). The potency of heroin at the street level is felt to be an indirect indicator of the number of heroin users present in the community (10, 11), since increased potency implies increased availability, and increased availability is probably associated with increased levels of use. To the extent that increased heroin potency is associated with increased prevalence of heroin use, one might expect to see an increase in the number of crimes (burglary, for example) normally committed by addicts, when heroin potency rises. And, in fact, this is what we have observed.

TABLE 2.—*Annual reported property crime in Washington, D.C. (includes robbery, burglary and all larceny)*

Year :	Total reported property crime
1960	15,564
1961	15,982
1962	16,449
1963	19,806
1964	22,109
1965	25,343
1966	29,920
1967	41,886
1968	48,741
1969	67,209
1970	66,802
1971	56,922
1972	41,938
1973	41,873
1974 ¹	46,662

¹ Annual estimate projected on the basis of data complete through November 1974.

The data presented thus far are indicators of the relative prevalence of heroin use (10). That is, they are thought to reflect increases or decreases in the total number of heroin users in the community. A critical question in the light of evidence which suggests increased heroin use relates to who the users are. That is to say, does the increased level of use reflect the return of former heroin users to habits they had either reduced or discontinued, or does the increased level of use reflect the creation of *new* heroin users? To assess this question, year of first heroin use as reported by addicts entering treatment with NTA for the first time can be used.

The distribution of year of first heroin use has been found to be a good indicator of relative heroin use incidence (7, 12), particularly if correction is made for the known lag between the onset of heroin use and subsequent entry into treatment. Figure #6 displays this distribution for all heroin users admitted to NTA from its inception through October 1974. The modal year of first heroin use is 1969, with a steady decline in the number of those who report onset of their heroin use in subsequent years. Even when this distribution is corrected for the lag between onset of use and entry into treatment (see dotted line), the number of individuals with recent onset of heroin use is very low. This suggests that the increased level of heroin use documented by the prevalence indicators is not associated currently with an increase in the incidence of heroin use.

Further corroboration of this apparent increase in the prevalence of heroin use without a concomitant increase in the incidence of new heroin use is provided in an analysis of the age trends among patients first admitted to NTA (see Table #3). Since heroin use in general has its onset in the mid to late teen years (modal age of first heroin use in Washington is 17), the mean age of heroin users first admitted to treatment tends to be low or declining if the incidence of new use is high. If incidence is low, and there has been an epidemic of new use in the past, the age of newly admitted users tends to increase as time passes, since there are very few new (i.e., *young*) heroin users being created. The age distribution among NTA first admissions substantiates our contention that, at the moment, incidence is low. The mean age, increased steadily since 1972, after the peak of new use had passed.

TABLE 3.—*Age at first admission for yearly NTA admission cohorts*

Year first admitted:	Mean age (years)
1970	26.0
1971	26.5
1972	25.1
1973	26.7
1974	27.7

Discussion

In our previous publications, we have documented the existence of what can properly be called an epidemic of heroin use in the District of Columbia. This epidemic reached its peak in 1969, since which time the incidence of heroin use in this city has declined steadily. Data obtained through the city's Drug Abuse Surveillance System also suggested that the prevalence of heroin use declined somewhat later, in 1972-1973 (2-4). Reasons offered for this observed decline in heroin abuse included the widespread availability of comprehensive, multi-modality addiction treatment services and the impact of local, national and international law enforcement efforts which resulted in a sharp decrease in the availability and quality of heroin, particularly on the East Coast of the United States (11). In addition, there has been some theoretical work to suggest that one might expect heroin epidemics to be self-limited (at least in terms of the creation of new users) as the number of susceptible individuals in the community is exhausted (13).

Data presented above suggest that there has been a recrudescence of heroin use in Washington, D.C. during 1974. This is supported by finding significant increases in the purity of heroin available at the street level, number of heroin-related overdose deaths, number of urine specimens found to contain morphine and/or quinine in the D.C. Superior Court, rising demand for addiction treatment services and an increase in the types of property crime traditionally assumed to be related to heroin addiction. These indicators of increased prevalence of heroin use are *not*, at least for the moment, associated with an increase in the number of *new* heroin users being created in the city. The low level of incidence is supported by the analysis of year of first heroin use distributions (with lag corrections) and the analysis of the age distributions of addicts first admitted to NTA's treatment program and addicts dying from heroin overdose. This finding emphasizes the chronic, relapsing nature of heroin addiction since the increase in heroin use is occurring among addicts who had either discontinued or substantially reduced their heroin use during the recent period of heroin scarcity.

Similar increases in the prevalence of heroin use have been reported recently in San Francisco and Boston (14, 15). However, in both of those cities, increased prevalence of heroin use has been associated also with an increase in incidence. This suggests that the District of Columbia may be in a transitional phase and that, if increased availability of heroin persists, incidence will begin to rise here as well.

What explanations can be offered for this increase in heroin availability? It would appear that the scarcity of heroin during the past two years was related to the impact of disrupting the French-Corsican heroin distribution system. It was this distribution system which supplied the bulk of heroin to most of the cities along the East Coast of the United States and Northern California. The heroin that was produced by this system was white in color, had a fine, powdery consistency and was most frequently diluted with lactose and quinine. According to chemists at the Drug Enforcement Administration, there also have existed for many years other heroin manufacture and distribution systems. One of these traditionally supplied heroin to the South-West, Southern California and, to a lesser extent, the Mid-West. The heroin produced by this system was brown, had a coarse, granular consistency, and was generally diluted with lactose and procaine. The major portion of this heroin is thought to be produced in Mexico. Prior to the East Coast heroin shortage of 1972-1973, brown heroin was found only rarely on the East Coast and, when it was, East Coast heroin users would not use it. Similarly, West Coast heroin users would not use white heroin. This situation appears to have changed significantly over the past several years. Figure #7 illustrates this change: note that brown heroin has come to comprise the majority of heroin samples obtained by DEA agents all over the country. One can literally watch this distribution system work its way across the United States. This change has been accompanied by an attitudinal change among East

Coast heroin users who, motivated by the scarcity of the white, European heroin, have come to view the brown, Mexican heroin as highly potent (which it certainly is) and highly desirable.

It would appear, then, that the increase in heroin availability documented in Washington is related to the replacement of one distribution system by another. A significant proportion of the heroin currently available in Washington is of the brown (Mexican) type. The fact that an increase in heroin availability was immediately followed by an increase in heroin use, sheds a great deal of light on the role of heroin availability in perpetuating addiction as a major social problem. The data suggest that the law enforcement efforts aimed at reducing heroin availability may have played a greater role in reducing the magnitude of the heroin problem along the East Coast than was previously appreciated. However, the profound changes which have subsequently occurred in the heroin distribution system raise serious questions regarding the feasibility of this strategy in the long run.

There has been a great deal of skepticism expressed regarding the purported national decline in heroin use during the past two years. The most compelling data supporting the existence of such a decline are local or regional in nature. Major cities like New York, Boston, Washington, San Francisco, Chicago and Atlanta all have reported a sharp decline in both the incidence and prevalence of heroin use during 1972-1973. Areas like these contain a sufficient proportion of the nation's heroin users that there may have been a net national decline in the number of heroin users during the same period. However, it is clear that there were areas of the country that did not experience such a decline during that time (12, 16, 17). Heroin abuse (and drug abuse in general) is such a heterogeneous phenomenon, with so much variability from city to city and region to region, that speaking in national aggregate terms may obscure more than it elucidates. The important observation is that in many cities the incidence and prevalence of heroin use declined in association with intensive intervention by both the treatment and law enforcement communities. The East Coast heroin shortage was real, and it persisted for a remarkably long time. It was accompanied by a significant decline in the magnitude of the heroin problem in those cities that were affected. The implication is that disruption of major heroin distribution systems did reduce the availability of heroin, making the heroin that was available less potent and more expensive. The reduction in heroin availability contributed substantially to reducing the size of the heroin using population.

Whether society is willing to support the size and quality of the law enforcement effort required to accomplish this end in the future is another question entirely. The facts do suggest that such an effort did have significant impact in the past. In general, those cities which had persistent, high heroin use prevalence during 1972-1973 had either continued high availability of potent, relatively inexpensive heroin or lacked a massive infusion of addiction treatment services, or both. However, the changes that have occurred in the heroin distribution system may make this strategy unworkable in the future.

A critical question raised by these observations is that if the whole problem hinges on heroin availability, with heroin use increasing as soon as availability increases, doesn't this imply that the whole effort directed at treatment of heroin addiction has been an enormously expensive failure? Unfortunately, the data to answer such charges are not available. The heroin use indicators employed in this discussion only speak to *relative* trends in heroin use. We do not have the techniques for accurately measuring the absolute number of heroin users at any given point in time. Thus, we can say only that the problem is increasing, but we really can't say by how much. We must learn how many former users have begun to use again now that heroin is more accessible. We would like to know how many of those who have not relapsed into heroin use would have relapsed if they had not been exposed to treatment during the heroin shortage. We can only speculate regarding the consequences of reduced availability if heroin users had not had some alternative to what could have become an increasingly frantic and desperate lifestyle during a severe heroin shortage with no treatment services available. Although the absolute magnitude of the current increase in heroin use cannot be precisely defined, it does appear to be considerably smaller than when the problem was at its worst in 1969-1971. Conceivably the relapse would have been more explosive had it not been for the existence of city-wide addiction treatment services during the past five years. These are researchable issues, however, and a number of follow-up studies currently under way offer an opportunity of resolv-

ing some of these as yet unanswered questions. Given the chronic relapsing nature of heroin addiction, one should not over-react to observations such as those presented here with a blanket condemnation of the heroin treatment effort. More data are required before a reasonable assessment of this issue can be made.

Finally, let us consider for a moment several important implications in these data with regard to the heroin intervention strategy here in the District of Columbia. First, note that in the face of evidence of rising heroin use, the number of heroin seizures and opiate charges made by the D.C. Metropolitan Police has not increased significantly. This may mean that the other indicators are misleading, but it more likely implies some changes within the local criminal justice system. There has been a decline in the number of under-cover agents during the last half of 1974, and a shift away from buying heroin whenever possible, toward buying only when a good case can be made. This reduction in man-power and modified "buy" policy could account for the low number of heroin buys and seizures. In addition, it is possible that the development of a new system for the distribution of heroin has brought new individuals into the heroin business locally, and that some time will be required before police agents can infiltrate this new underworld apparatus. It has been several years since a major heroin trafficking case has been made in this city. Further, the local drug scene has become much more complex during recent years, with the abuse of non-opiates becoming more prominent (18, 19). It is easier for police officers to make buys and arrests in cases which do not involve heroin, so officers unintentionally may be devoting a disproportionate share of their time and energy on these less important problems which are more likely to result in a good case. Police corruption is always a possibility in an area where the profits to be made are enormous, although there is no evidence to support such a possibility in this city. Finally, some police officials have claimed that the problem really lies with the courts, which have become increasingly lenient in recent years in handling drug cases, particularly small scale dealers who, themselves, may be heroin users. Such individuals are eligible for diversion from the criminal justice system into the treatment system, and thus may remain on the streets after their arrest. There is objective support for this argument in a recent study which revealed that only 16% of those arrested for drug law violations and drug related crimes in the District of Columbia were actually incarcerated (20). How one chooses to respond to these observations depends on the community's priorities in allocation of enforcement resources and its philosophy regarding the nature of heroin addiction.

Second, a most disturbing development is the observation that during a time of increased demand for heroin treatment services, the *census* within NTA programs has continued to decline. There are now less than 1,600 patients actively in treatment, compared to the 4,600 patients in treatment when the program was at its peak in mid-1972. Declining census during a period of rising admission rates means that patients' retention in treatment is very short. The patient turnover is quite high. This is of great concern since the available data would suggest that duration of treatment is probably the single most important variable in determining patient outcome (21). One possible explanation for this phenomenon may be the decision to eliminate methadone take-home privileges for stabilized patients in treatment. This means that even when an addict is drug-free, employed and in a stable family situation he is required to come to the clinic 7 days a week to receive his medication. This makes treatment much less attractive for patients and is counter to the treatment goal of re-integrating patients are more likely to seek treatment when they are in trouble, and then the patient into the mainstream of community life as soon as possible. Thus, leave as soon as they have reduced their level of dependence to a more readily managed level. Such a policy can only be a deterrent to both seeking and remaining in treatment, and should be reconsidered in light of the growing heroin problem documented here. In addition, there has been a major reduction in treatment capacity at NTA since 1973. The program, which at its peak was spending \$8.0 million annually with 18 clinics and 4200 treatment slots, currently (FY1975) is funded at \$5.3 million with 13 clinics and 2100 treatment slots.

This reduction in funding, staff and physical facilities paralleled the decline in heroin abuse in Washington. While elimination of excess capacity was appropriate from a management point of view, this decline in resources devoted to drug abuse treatment has been associated with an attitudinal change within the bureaucracy in which heroin is no longer seen as a problem. This institutional apathy could become critical if the current increase in prevalence of heroin use is followed by an increase in the incidence of heroin use, as it has been in Boston and San Francisco. It has been our experience that, contrary to what

one might expect intuitively, demand for treatment increases during times of increased heroin availability. This may result from increased potential for adverse personal and social consequences that accompany use of heroin in higher doses. Rising property crime and heroin overdose death rates may be manifestations of this increased risk. Thus, everything possible should be done to insure that treatment is available and attractive to all those who are in need of such services.

In conclusion, data collected through a prospective Drug Abuse Surveillance System have suggested that the rate of heroin abuse is currently rising in the District of Columbia. Rising heroin purity, increased numbers of heroin overdose deaths, increased detection of heroin positive urine specimens in the Superior Court arrestee population, increased demand for addiction treatment services and rising property crime rates all corroborate this assertion. Similar trends have been documented in at least two other major American cities (14, 15). This increase in the prevalence of heroin use in Washington has not been associated yet with an increase in new heroin use, although increased incidence of new heroin use has been described in both Boston and San Francisco. The increase in heroin use appears to be associated with the development of a new heroin distribution system, which is supplying brown heroin (largely of Mexican origin) to areas of the country that were previously dependent upon European white heroin. These data indicate the need for a re-assessment of both the treatment and law enforcement strategies currently advocated, particularly with respect to the philosophy which underlies these approaches. It is possible that new ways of conceptualizing the problems of drug abuse and new intervention strategies will be required if we are to reduce the heroin problems and its negative consequences to a minimum.

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FIGURE 1

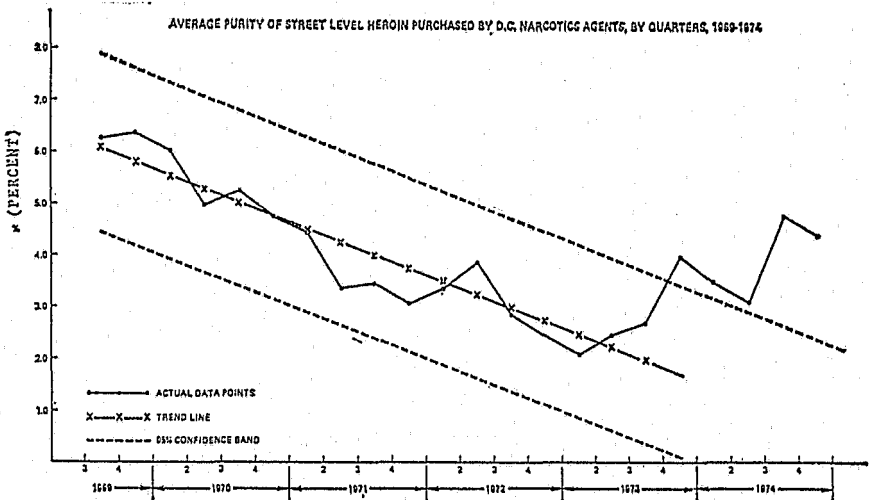


FIGURE 2

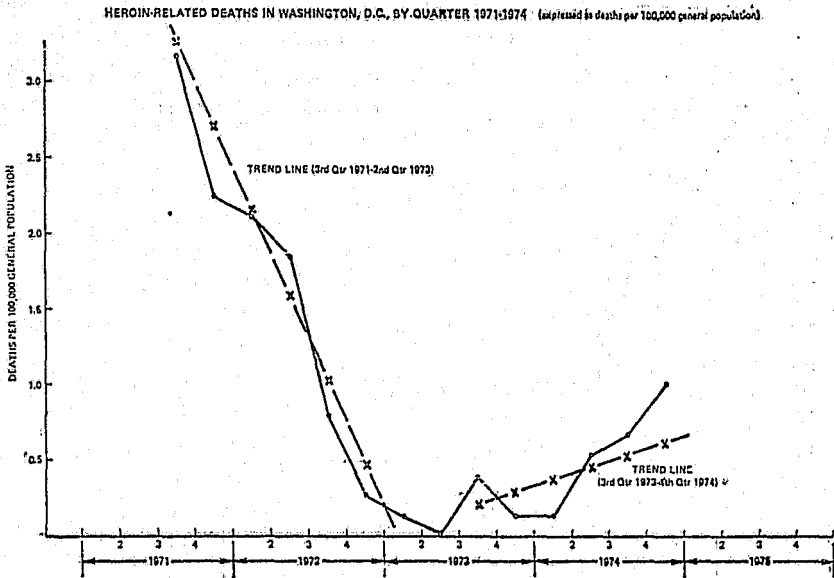


FIGURE 3

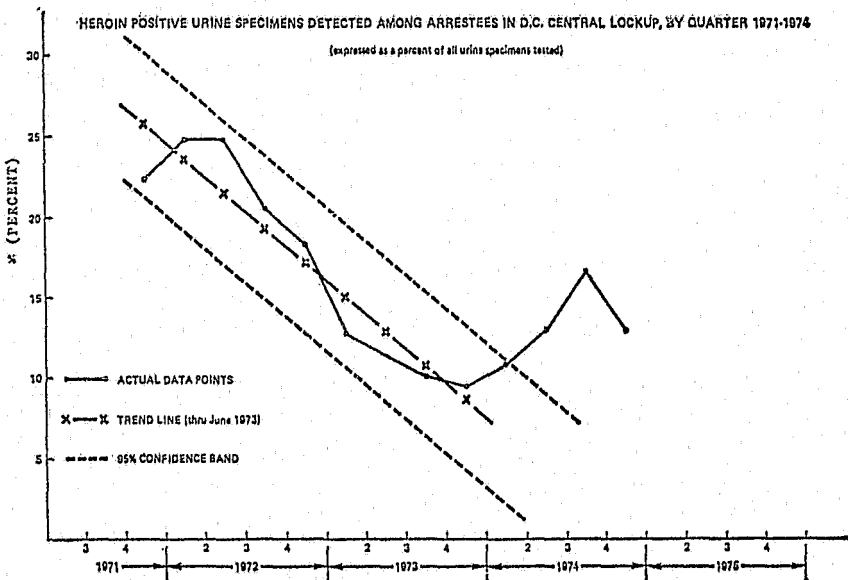


FIGURE 4

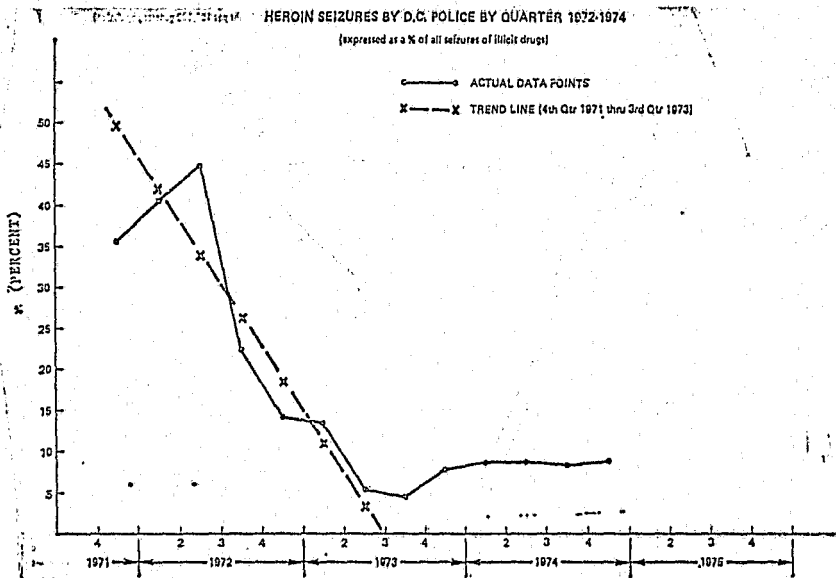


FIGURE 5

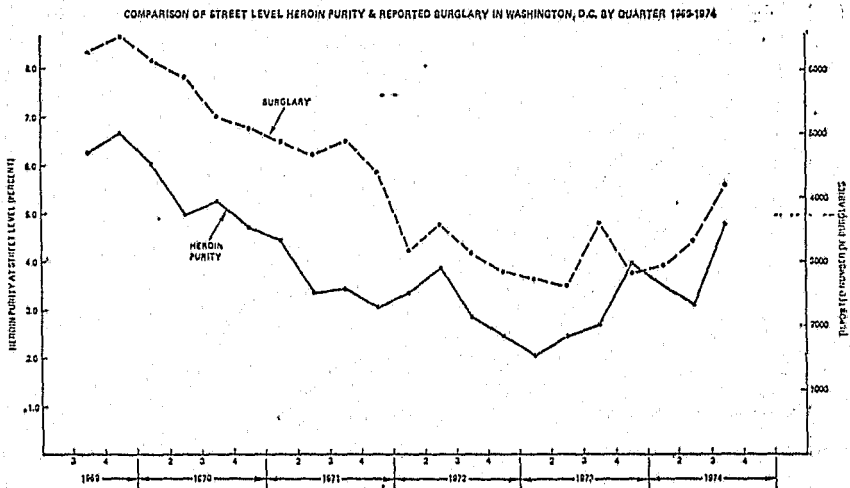


FIGURE 6

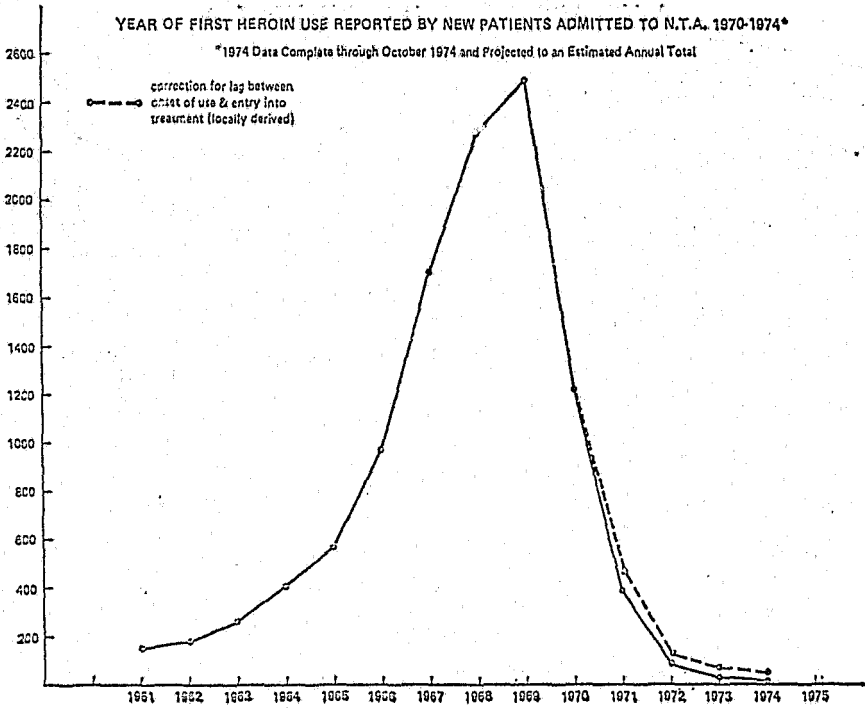


FIGURE 7A

AVAILABILITY OF BROWN HEROIN

April - June 1972

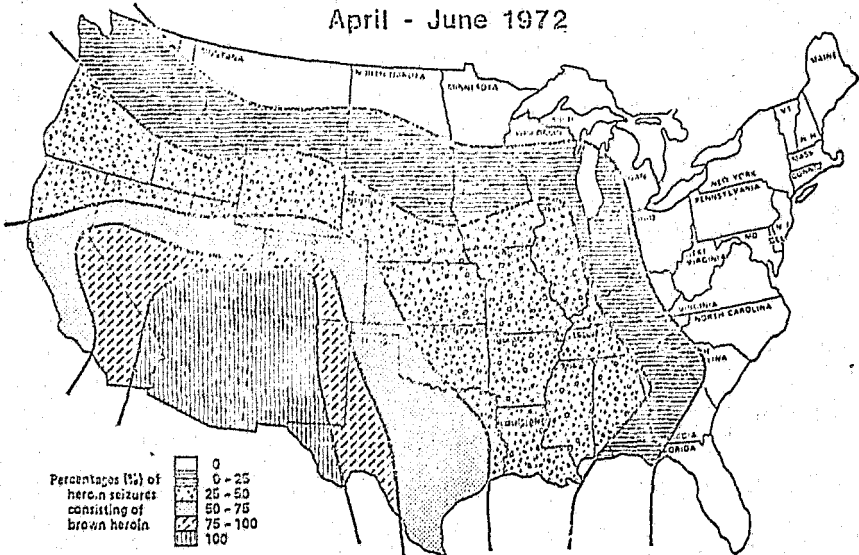


FIGURE 7B

AVAILABILITY OF BROWN HEROIN

April - June 1973

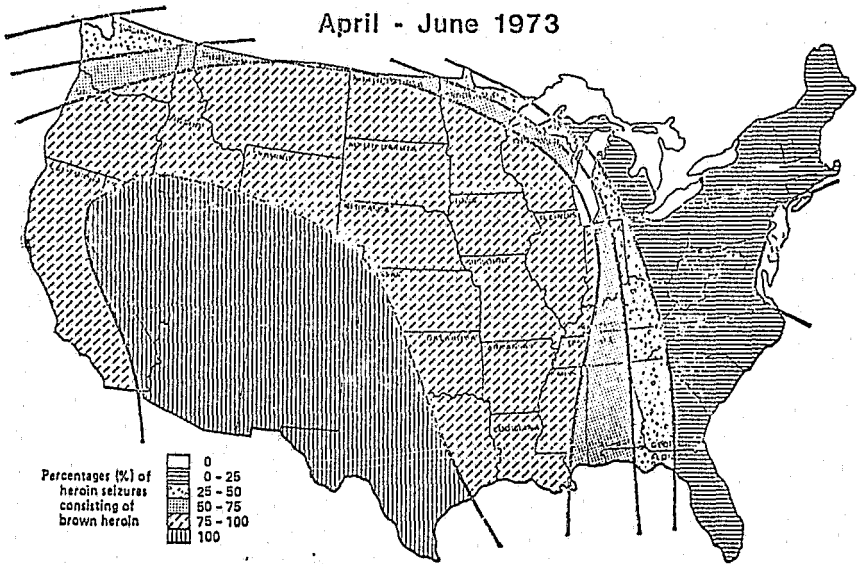


FIGURE 7C

AVAILABILITY OF BROWN HEROIN

March - June 1974

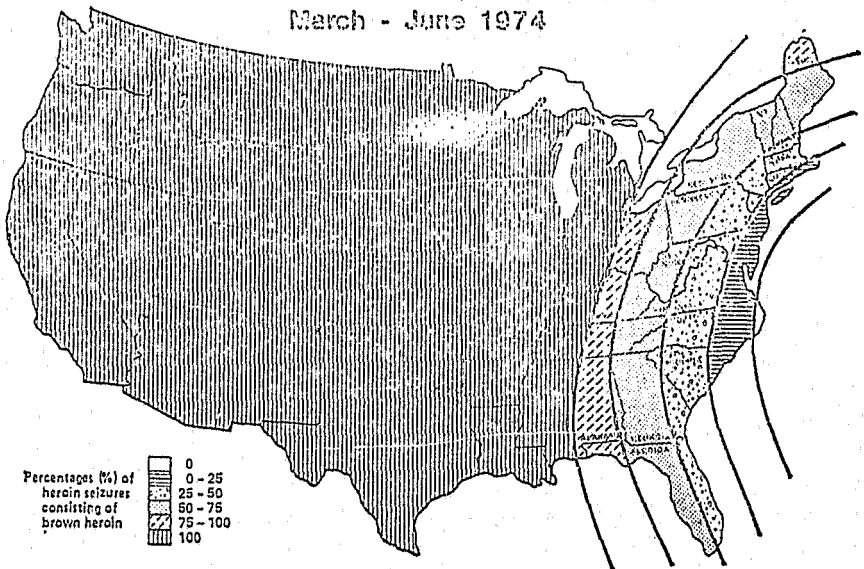


EXHIBIT No. 12

SOCIAL COST OF DRUG ABUSE

(By Robert L. Du Pont, M.D., Director, Special Action Office for Drug Abuse Prevention, Washington, D.C.)

PREFACE

During the past three years, taxpayers have made a significant investment in drug abuse prevention on the assumption that tremendous costs to the community-at-large are involved in its continuation and spread. For this reason, the Special Action Office for Drug Abuse Prevention thought it was important to take a closer look at drug abuse in terms of its costs and consequences for society.

With this goal in mind, the Special Action Office developed an estimate of the cost of drug abuse. Our preliminary findings indicate a current cost of \$10 billion annually. This is a conservative figure subject to change as we devise better methodologies for measuring the extent of the problem. For this reason, our current estimate is both flexible and dynamic: we expect to modify it as events occur which influence the factors used in its calculation.

Simply stated, social cost is a function of the number of people currently abusing drugs and the effects of their use of drugs. To help us understand the extent to which drug abuse exists in our society, we must look at supportive evidence which indicates the magnitude of the problem. Examples of phenomena suggestive of dramatic changes in the number of abusers can be found on both national and local levels. For example, there was a ten-fold increase in hepatitis related to intravenous drug use between 1966 and 1972; a fact which demonstrates the rapidity with which profound changes in drug abuse can occur. In addition, there are several other illustrations of the extent of the susceptibility of America's population to heroin addiction. The finding that 20 percent of the enlisted men in the Army released from Vietnam in September 1971 reported themselves addicted to heroin, and Washington, D.C.'s report that 20 percent of the young men born in 1952 were treated for heroin addiction between 1970 and 1973, both indicate a high potential vulnerability.

This social cost study is the first attempt to bring the human tragedy of drug abuse into perspective and to broaden the context for our concern about drug abuse. In the past, our estimate of these costs has been limited by the lack of information in important areas that impact on the total costs of drug abuse. Most estimates focused exclusively on the relationship of heroin addiction to property crime. Out of context, the crime factor has fostered negative stereotypes and unnecessary generalizations about heroin users which have further complicated our response. This new study still does not measure the indirect costs of individual, family and community impairment. In addition, welfare, insurance, and other public health costs still can not be measured. We do, however, begin the process of broadening the context for fully understanding the social costs of drug abuse by including the following social health categories in our estimate:

Health Costs

Under this category, the number of primarily drug-related emergency room visits, and inpatient general care and mental hospital days devoted to the treatment of drug disorders accounted for almost \$200 million.

Productivity Losses

For those drug abusers who are employed or looking for work, productivity losses of approximately \$1.5 billion can be assumed based on the number of drug-related deaths and consequent foregone earnings; number of drug-related inpatient hospital days resulting in foregone productivity costs; and estimated number of unemployed individuals whose unemployment is associated with drug use.

Criminal Justice System Costs

The proportion of state and local police salaries, estimated share of state and local legal, court and corrections costs and Federal correction costs devoted to drug-related crime and offenders totals \$620 million.

Property Loss

The drug-related social cost of income-producing crime committed to support heroin habits is estimated at \$6.3 billion. This figure is derived by multiplying the number of addicts times the days per year of heroin use times the average cost per day of habit times a fencing factor for stolen goods.

Direct Program Costs

Government and private efforts devoted to drug abuse education, treatment, rehabilitation and drug traffic prevention cost an estimated \$1.1 billion annually.

The categories described above represent the best current thinking available about the measurement of social cost. But, there are a number of other issues which merit consideration and, as we elicit reactions to this report, we hope to stimulate investigation into at least some of them. For example, one of the more interesting questions raised in the course of preparing his report concerns the effect of treatment availability and supply reduction on the economic dimensions of the problem. For the past three years, the United States has had a major supply reduction effort aimed at curbing the traffic in illicit drugs, as well as a large-scale treatment response. Without these combined efforts, it is possible that the social costs of drug abuse would be considerably higher. On the other hand, treatment and enforcement may not influence the costs significantly, but, regardless of the outcome, this issue deserves examination.

A second important area for consideration is that of improved assessments of the size of our drug abuse population. With the exception of the cost component for "Property Losses Attributable to Drug Abuse" which pertains to heroin addiction, only, both opiate and non-opiate social costs, as available, were estimated throughout the report. However, the combined drug abuse costs may not reflect the situation accurately in every instance. Until recently, the Federal Government focused on the prevention of heroin addiction as its top priority. Consequently, far more information is available on the heroin addict than on the non-opiate abuser and this is reflected in the heavy representation of heroin-related data in this study. Now, however, we are in the early stages of understanding and calculating the magnitude of our population who are primarily non-opiate abusers, exclusive of alcoholics. Exploratory studies suggest that this group of "polydrug" abusers may include between 2 and 2½ million citizens. As these numbers are scrutinized and refined, we should be able to account for the polydrug factor more completely in future social cost estimates.

This report represents our best effort to compile currently existing data into a comprehensible estimate. Understanding any social phenomena, however, involves a recognition that it is a process rather than an event which occurs at a given point in time. Three years ago the field of drug abuse was in its infancy, largely devoid of information about the nature, course or effects of drug abuse. Since then, we have developed viable systems to expand and quantify our knowledge and we expect that our skills in data analysis will continue to mature. This process will lead to improvement in our social cost estimates. Despite these limitations, though, our current figure is significant for several reasons. It helps us to view the drug abuser in a social context and to understand how his behavior affects our institutions, expenditures of government funds and the quality of life in our communities. Likewise, the social cost estimate serves as a barometer of this country's attempts to grapple with the drug abuse situation and provides a measure against which we can evaluate the effectiveness of our prevention efforts.

The study which follows is our first attempt to develop a reasonable methodology for estimating the social cost of drug abuse. It is our hope that it will have two effects: first, to remind us of the toll exacted from our citizens by the continued existence of the drug abuse problem; and second, to spur renewed efforts in the area of applied research.

SOCIAL COST OF DRUG ABUSE

I. INTRODUCTION

The cost to society of drug abuse is not fully measurable in quantitative terms, since it involves human consequences which we do not fully understand much less know how to measure. However, it is of little use either to say only that

drug abuse is a significant problem with immeasurable but profoundly serious consequences. We do know something of the costs of drug abuse, and thus it is appropriate to make an initial estimate of the social cost. This is useful both as a point of departure for more refined assessments and because however rough and preliminary it will provide some sense of the magnitude and nature of social cost, and who bears it.

Some of the human consequences of drug abuse cannot readily be assigned a value. Some, however, can and the result will aid the decision maker who must allocate program resources based on some reasonable criteria. Therefore, most of this preliminary estimate of the social cost of drug abuse is made in economic terms:

First, because dollar costs provide a common unit of measure for a set of widely varying consequences; and

Second, because decisions allocating resources in the public sector have specific dollar dimensions, and trade-offs are frequently examined in dollar terms.

In the analysis of quantifiable costs, we have clustered cost components into the areas of health, law enforcement, crime, productivity and direct program costs. Before examining these specifics, a brief overview of the social cost of drug abuse, allowing for intangibles, is appropriate.

II. INTANGIBLE COSTS

More than 15,000 people a year lose their lives in drug-implicated circumstances; more than 32,000 a year seek institutional psychiatric care for diagnosed drug disorders. Apart from the dollar value imputed, these are surely costs in human terms providing a context within which to view the economic consequences of drug abuse.

Drug abuse, as human behavior, blends so thoroughly into the complex system of the human condition as to be almost impossible to define as a discrete phenomenon. Yet our task is to do just that, to isolate behavior and its consequences so that they can be measured. Some facets of drug abuse behavior and its consequences are separable for costing purposes, and this is treated subsequently. Other facets are more difficult to define. These speak to the impacts of drug abuse upon an individual and his relationships with the people and institutions surrounding him, and upon his development into a mature adult capable of functioning in the world. Measuring such costs becomes quite difficult; values vary from one individual to another. Further there are offsetting social benefits of non-medical drug use to be considered.

(Two such categories of possible benefit come to mind. First is self-medication, with the use of drugs as a means of coping with physical ills or psychological problems. The other major category is creation. Use of a drug with relatively unimportant consequences to the individual and his society may be clearly preferable to the recreational use of a more harmful substance, whatever their legal status. However, while the possible benefits are part of the perspective, this is a concept requiring more and different analysis than is appropriate here. We will not incorporate it further into the discussion.)

One way to conceptualize the intangible impacts of drug abuse is to consider the individual and the qualitative consequences of his drug using behavior upon himself and upon the various social groups or systems of which he is a part.

Individual

Short of the risk of death or the defined health and productivity costs which an individual's drug use may incur, there are costs to the individual in terms of impaired functioning which may be a result of drug abuse. Diet, quality of rest, level of anxiety, general physical health, ability to establish and maintain normal social relationships, bouts of depression (affected by drug use), contribute to one's total well-being.

Persons regularly using tranquilizers may come to depend on them to cope with situations that produce anxiety or with states of depression. Since some anxiety and some depression is within the normal range of expected human experience, using the tranquilizer to block it may deny the individual the growth or stimulus to which these states may contribute. The use of amphetamines to overcome depression or to provide energy may induce a similar dependence on the drug in order to function normally. We are not suggesting that such drugs cannot be properly used to aid an individual, but only that use under responsible medical supervision usually incurs fewer risks than self-medication.

To the extent that drug use becomes a substitute for interactions with other people, or for the normal self-regulating functions of the body, or for the coping mechanisms which every individual exercises, then it has altered in significant ways an individual's way of relating to his environment. There must surely be consequences, some undesirable, which can be considered costs to the individual. The nature and dimensions of such costs are simply unknown. Should drug abuse become a significant element of an individual's behavior during a critical developmental phase such as adolescence, the consequences to him are even more difficult to assess. Here the individual may be particularly resilient and able to absorb but later dismiss behavior as experimental. On the other hand, however, substitution of drug-using behavior for other kinds of learning experience may, during this period, diminish future potential for maturity.

Modes of behavior are being tested, abilities are being evaluated, preferences are being assessed, and feedback on moods and trial encounters presumably play an important role in the maturational process. Thus youthful drug abuse, even if it does not bring one into the arms of the local sheriff or into the emergency room, may be harmful to health in subtle but lasting ways. Obviously any mood altering drug, used to excess during this critical period may have this kind of impact of short-circuiting learning or substituting drug induced satisfaction for satisfaction achieved in other ways.

Family

Experience with alcoholics and problem drinkers suggests that impacts upon the family can be profound for siblings, spouse and children. These "affected others" are estimated to number four for each problem drinker and alcoholic.

Excluding opiates and marijuana and the hallucinogens, and focusing on psychoactive and psychotherapeutic drugs such as the tranquilizers, the barbiturates, the anti-depressants, the amphetamines, such a number of affected others would seem reasonable in the case of the misuse of these drugs as well.

The range of impacts will depend on the person, his life situation, and the motivation and type of drug use. They may be primarily psychological in impact, producing an annoyance on the part of others with mood changes, or inappropriate behavior on the part of the drug user. Such drug related changes in behavior or mood may put strains on the marriage, may affect the parent-child relationship, may impact the lessons of responsibility and discipline learned within the family, and may convey lessons about the role of parents or men or women other than are intended. In view of the importance of the family in our culture as a setting for child-rearing, for learning of values and traditions, drug abuse behavior which changes the family setting is clearly of consequence. Again, the strains and lessons conveyed may not be entirely healthy absent the drug use, but the drug use may either exaggerate or mask appropriate behavior. As with alcohol used as a response to problems, rather than as accepted social behavior, drug use as a response to problems may also convey attitudes about when and what kind of drug use is appropriate.

Effect on Friends

The impact of excessive drug use may put strains on friendships due to mood or behavioral changes which are puzzling or perceived as inappropriate by friends. Even behavior that may occasionally be tolerated when induced by drinking may be less understood and less tolerated if it is drug related. Probably the greater consequence is that the ability and desire to communicate with others in a natural fashion may be affected by excessive drug use. Whether it is stupor, extreme loquaciousness, hyperactive energy, slurred speech, irritability, or changes in mood that leave friends uncertain what one may be today, drug abuse will be regarded by some undesirable.

Since friends or acquaintances are optional relationships, with less determined continuing obligations than families, the immediate consequence may be severed friendships, and a consequent reduction in the number of social relationships for the drug abuser. These are consequences to the individual certainly, as has been mentioned. To whatever extent these friendships were desirable and useful to others drug abuse becomes a cost to them as well.

Effect on Job

We will attempt to account for some misuse of absenteeism later in this paper in economic terms. But other effects, both positive and negative, may occur on the job or in the work environment for which specific productivity costs cannot be computed. Safety precautions may be ignored, reaction time slowed, or normal caution dulled such that accidents occur. Higher turnover

rates, increased employee theft, poor work performance, accidents and higher insurance rates may result. Drug-use as a mechanism for coping with unpalatable working conditions may mask situations which otherwise would create pressure for needed change within the work place. Such effects have been alleged but not systematically investigated and documented. The impact of on the job drug use (or of excessive use off the job) will depend on type of drug, dosage, frequency and duration of use, and the individual. Some may experience moderately impaired performance due to barbiturate hangover; other may in fact achieve higher productivity than their fellow employees because of amphetamine use. Even those who may seem to have some potential interference in optimal work habits and attention because of drug use may be better off than without such support. That is, the degree of self-medication here is as unknown as in any other environment.

While limited prevalence data on employed and applicant populations is available, such information does not answer the social cost questions. All we can conclude at this stage is that drug use undoubtedly has mixed impact on the job, but may well contribute to absenteeism, unsafe working practices, lower productivity, and some unemployment.

Effects on Society

Most of the accompanying analysis and the narrative treatment of social consequences has been an attempt to spell out social cost accruing to various elements of society. Still there may be impacts and costs for which we do not fully account, even if they are mentioned, and others which have sufficient importance even if they are not listed here as measurable. While we have mentioned deaths, we have not dealt with the question of suicide and its relationship to drug use. On one hand, it can be asserted that the drug suicide would have occurred by other means even were drugs not present. On the other hand, while other methods might be rejected, drugs seem a relatively painless and non-violent way to die. With respect to homicide and other crimes of violence, current research offers little correlation to use of drugs. Possible exceptions to this in some cases are barbiturates and amphetamines.

Speculation about the effect on society of drugs which produce "instant pleasure" is out of our scope. Yet the question of the interaction of drug use and society's values must be raised. One should at least ask if drug use is deviant behavior, irrational behavior, criminal behavior, or one means of coping with the pressures and contradictions of a fragmented and complex social structure. If excessive drug use occurs in the culture—should the drug use be examined, the culture, or perhaps both?

Finally, few answers can be given about the impact on society of drug use and abuse because our understanding of the problem is incomplete at best and because only poor data is available even about aspects of the problem which we do understand. The data gap is clearly the easier of the two deficiencies with which to deal. Time and resources applied in straightforward fashion can yield more useful estimates of what health resources are devoted to drug problems, what law enforcement costs are incurred, and so on. The more intractable problem of the actual nature and consequences of drug abuse will require thoughtful use of research capabilities to both define and answer the appropriate questions. Our straightforward and somewhat simplistic attempt to measure social cost is not offered in ignorance of the need for a more comprehensive approach. Indeed, it is hoped that the modest scheme of our approach will highlight by contrast, a need for further work.

III. QUANTIFIABLE COSTS

Of necessity, the following estimate is preliminary. It does not represent any original research, but rather relies upon existing data. Our data sources and assumptions are clearly articulated so that this work may provide a point of departure for debate and further investigation.

According to the *Federal Strategy for Drug Abuse and Drug Traffic Prevention, 1973*, drug abuse is "the illegal use of a controlled substance or use of a drug in a manner or to a degree that leads to adverse personal or social consequences." Indicators of such adverse consequences mentioned in the Strategy include "... impaired mental health, physical health, maturation, or inability to work effectively; involvement in socially disruptive or illegal actions which intentionally or inadvertently harm or increase the likelihood of harm to the

community." (p. 3) Beginning with this definition, the components of social cost for purposes of this estimate are defined as:

Health Costs

This includes:

- Costs of medical care, either emergency room or inpatient resulting from drug abuse;
- Costs of care as an inpatient in a psychiatric institution where cause of admission is diagnosed as a drug disorder.

Lost Productivity Costs

This includes:

- Foregone earnings resulting from drug-related deaths;
- Foregone earnings resulting from inpatient status for drug-related medical problems;
- Foregone earnings resulting from absenteeism and unemployment related to drug abuse.

Criminal Justice System Costs

This includes:

- Cost of police activity devoted to arrest and case handling of drug-law offenses;
- Cost of prosecution, public defense, and court resources consumed in the processing of drug-law offenses;
- Costs associated with maintaining prisoners incarcerated for drug-law offenses.

Direct Program Costs

This includes:

- Federal drug abuse prevention;
- Federal drug traffic prevention;
- State and local drug abuse prevention;
- Private support of drug abuse and drug traffic prevention.

Property Losses Attributable to Drug Abuse

This includes: Value of property stolen to purchase illicit drugs.

The discussion below will spell out in more detail the definitions of these cost components, their sub-parts, sources and limitations of data, as well as the assumptions which underlie each. This listing of cost components is clearly incomplete, not because other potential costs are either insignificant or unimportant, but because some are not susceptible to quantification at this time.

It should be emphasized that the intended usefulness of this exercise lies in the synthesis of currently available information and as a conceptualization and calculation of the economic impact of drug abuse. Public knowledge is sometimes best advanced by an initial estimate to serve as a point of departure (or attack), and subsequent estimates are usually improvements. We hope this will be true in this instance.

Health Costs

Total health costs are estimated at almost \$200 million.

The drug abuser can incur health consequences in a variety of ways, ranging from illness to accident to impaired effectiveness in his job or his family responsibilities. We have chosen to measure the economic costs of health-care consequences in terms of the consumption of health services directly related to drug abuse. The information sources which are specific with respect to drug-related medical care are:

The Drug Abuse Warning Network (DAWN) which collects information on drug-related episodes in hospital emergency rooms and hospital inpatient facilities;

Utilization of Mental Health Facilities, a publication of the NIMH which supplies data on mental health admissions resulting from the diagnosis of drug disorders.

The basic units of cost for health resources are defined as:

- Number of emergency room visits which are reported as being primarily drug-related;
- Number of inpatient days devoted to treatment of individuals admitted for primarily drug-related problems—short-term general hospitals;

Number of mental hospital inpatient days devoted to treatment of diagnosed drug disorders.

Several assumptions are made here, primarily that the DAWN data can be extended nationally and that the experience for inpatient stay in DAWN hospitals can be used in such an estimate. For the emergency room data, the existence of a randomly chosen panel of 200 ERs in the DAWN system, in addition to their coverage of 38 SMSAs, make this assumption sound.

In the case of inpatient facilities, we are on shakier ground, but have assumed that the ratio of bed capacity in DAWN hospitals to total short-term general hospital beds can be used to compute inpatient load due to drug use nationally. Further, we have used a computed number of inpatient days from DAWN data to represent an average stay.

In the case of psychiatric care, we lacked costs on private psychiatric facilities for drug cases and used the cost per day from state and local mental hospitals.

Additionally, any health consequences not requiring such contact with these components of the health delivery system are not included in the estimate. Real health consequences may exist short of a level of seriousness (or perception of seriousness) requiring medical assistance or hospitalization. Having no way to estimate these, we have briefly discussed them earlier.

Productivity Costs

Productivity costs are estimated at \$1.5 billion, using the minimum wage, or \$1.9 billion using \$5,000 a year as the wage.

For most adults, drug use which impairs ability to function normally in day-to-day activities will result in decremental productivity, either in the family setting, at work, or in school. One measure of productivity in the work setting is earnings, and productivity loss of employed individuals is so measured. Similar measures of analogous losses in the home and school are less clear. Therefore, we have chosen to calculate productivity losses only for those individuals who are employed or are looking for work. The basic units of cost are:

- Number of drug-related deaths and their consequent foregone earnings;
- Number of drug-related inpatient days (employed patients) and foregone productivity;
- Estimated number of absent days and productivity cost;
- Estimated number of unemployed individuals whose unemployment is associated with drug use.

In each case we have used the minimum wage of \$16 a day or \$4,000 per year, as well as \$20 a day or \$5,000 per year, to compute productivity costs.

We have estimated employment percentages of populations based on what limited data were available. The employment rates chosen operate in two directions; for persons who lose productivity due to death or absenteeism or hospitalization, a higher employment rate increases the social and economic cost, because a greater percentage of the population is counted. For the estimates of lost productivity because of unemployment associated with drug abuse, a high employment rate among drug abusers acts to decrease social cost. The employment rates we chose were selected from DAWN reports on hospitalized persons and deaths, and from an IDA study and analysis of household survey data for estimating incremental unemployment.

These choices represent assumptions that such rates are both accurate and generally applicable. We believe they are conservative and, in any event, have specified them in the appendix so that the sensitivity of the estimate to different assumptions can be tested. We assume that the average age of retirement is 65, and the individuals who died would have worked until that age. Average ages of death used were 40 for non-opiate deaths and 25 for opiate-related deaths (both estimated from DAWN data). We have chosen a discount factor of 10 per cent to reduce future earnings foregone to present value, which is in line with OMB guidance to federal agencies on this topic. The numbers of deaths, as well as their allocation to opiate and non-opiate causes, is based on DAWN data and projections. This allows the estimate to be updated by periodic substitution of current DAWN data. Further, if the employment status reports of subjects of DAWN reports are refined these figures could be refined as well.

Since the only data available on absenteeism related to drug abuse was drawn from a service sample, estimates of total work force absenteeism are restricted to that portion of the male work force which is under thirty. Implicit is the assumption that the civilian population is sufficiently similar to the service population to warrant the use of an observed rate of (.004).

Criminal Justice

Total criminal justice system costs are estimated at \$620 million.

One of the continuing major components of costs is the portion of the criminal justice system that is taken up responding to drug-related crime and offenders. Such costs, as estimated here, include the following elements related to drug abuse:

- Proportion of state and local police salaries;
- Estimated share of state and local legal and court costs;
- State and local correction costs;
- Federal corrections costs.

In order to estimate these, we have used the ratio of total drug arrests to total arrests in order to compute the police salary costs and, in turn, computed legal and court costs as a percentage of police costs. In the first case, we have assumed that there are no significant differences between the time and effort involved in drug law arrests and other arrests. In the second case, we are resting on a relationship of share of costs defined by the President's Crime Commission in 1967, and have simply updated the costs to reflect inflation.

A significant omission from the criminal justice system costs which particularly affect police costs is the impact on that system of drug-related crime not related to possession or trafficking, but to produce income to support a drug habit. Later in this report, we estimate the lost property cost of such crime, but nowhere do we assess the degree to which additional law enforcement costs (i.e., personnel and equipment) are incurred as a result. There simply is no data which establishes the amount of crime of various types which is drug-related. Further, much such crime may have minimal or no impact upon law enforcement operations because it goes unreported or is regarded as a cost-of-doing-business (such as shoplifting). We feel sure there are costs in terms of larger police forces than might otherwise be needed, for example, but have no way to deal adequately with the magnitude.

The corrections costs are derived, at the state and local level, from estimates made by the Marihuana Commission of marihuana arrests which resulted in incarceration, from the number of such arrests, and from the costs of maintaining a prisoner. The average length of sentence for marihuana offenses (in non-federal actions) was computed as 19 months, derived from the Marihuana Commission Report.¹ In an attempt to adjust for parole and probation, we applied a factor from the Federal Bureau of Prisons that shows, on the average, 40.6% of sentence time is actually served. No data could be found on average sentences for non-marihuana drug arrests, so the same average length of sentence was used, on the assumption that incarceration for non-marihuana drug arrests would be at least as severe as for marihuana arrests.

The federal corrections estimate was based on a census by the Bureau of Prisons of the number of inmates imprisoned for drug offenses and on their average sentence, modified for actual time served as above.

Direct Program Costs

Total direct program costs are estimated at \$1.1 billion.

These were taken from the Federal Drug Abuse Strategy at the federal level, from a survey by the Drug Abuse Council of local drug abuse activities, from the Universe data-gathering effort of NIDA, and from foundation data showing private funding.

Property Loss

Total costs attributable to property loss are estimated at \$6.3 billion.

One of the best known and most controversial areas of drug-related social cost is in the income-producing crime committed to support heroin habits. Here it is particularly important that our assumptions are explicit, because the total cost is so large a share of the sum of all social costs, and because a number of previous estimates have been made. Further, we will attempt to make relatively conservative assumptions because some previous estimates have proceeded on

¹ The actual sentence for which persons are incarcerated is not clear; that is, some sentences are suspended entirely (and thus before the .496 factor applies). The only other data available in usable form is from a study done for the California legislature (Senate Select Committee on Control of Marihuana, "Marihuana: Beyond Misunderstanding," May 1974) in which the median sentence served for male marihuana offenders serving time for possession and paroled for the first time in 1972 was 24 months. Eighty percent of the ranges for that group fell between 12 and 31 months served. Because such persons would have begun serving a sentence in 1970, and perhaps were arrested and tried in 1969, the situation may have changed. The comparison suggests that our estimate of 9.4 months time served is a reasonable figure.

carelessly considered premises. Finally, we shall present a range of estimates (all of them conservative in terms of some previous estimates) which demonstrate the sensitivity of this component of costs to different assumptions.

In order to assess the amount of property loss through income producing crime, certain assumptions must be made. Since the proportions of social cost of drug abuse attributable to property loss is substantial (ranging from 50%-65% of total cost) the assumptions to be used are important. The critical choices are:

Number of addicts?

Proportion of addicts' habits supported by income-producing crime?

Time at risk in terms of days per year the addict uses?

Average cost per day of habit?

Factor for fencing stolen goods?

a. Number of Addicts.—The number of heroin addicts is unknown; although a number of estimates are made. Current estimates range from about 250,000 to 600,000. Recent testimony by Dr. Robert DuPont (Director of SAODAP and of NIDA) estimates 250,000 active addicts, by subtracting from a previous estimate of 600,000 the number in treatment (estimated at 125,000) the number in jail (estimated at 85,000) and those who have died or quit (estimated at 120,000). The figure of 600,000 is based on techniques of estimating an addict population by observing how many reappear on the DEA register and applying statistical techniques similar to estimating the total population of fish in a pond by taking and tagging random samples at two different times. Both estimates are uncertain, but they seem to be reasonable border points to a range.

In support of the range, several observations are in order:

(1) In 1969, after considerable debate and analysis, the number of street addicts in New York City was estimated to be 70,000. New York City is one of the few cities with a local narcotics addict register.

(2) Reports of serum hepatitis, which might relate better to incidence of new addicts or heroin experimenters better than to a total number, show only about 4% of those cases from New York City.

(3) Reports of deaths caused by heroin in the DAWN system show New York City with about 26% of the share of large cities, although New York City also includes the overwhelming majority of methadone related deaths.

Thus it seems unlikely the addict population is less than 250,000. The national population would seem to be at least four times as large as New York City's.

(4) Surveys by the National Commission on Marihuana and Drug Abuse show that 1.3% of the adult population have "ever used" heroin. This means some 2,000,000 adults, as measured by household surveys, have tried heroin.

Thus it seems unlikely that the high estimate of 600,000 overstates the case; rather it seems to be a reasonable and conservative estimate of the high point of the range.

b. Proportion of Addicts Who Steal To Support a Habit.—Again, the number of addicts who steal to support their habit is unknown. DEA reports, based on studies in New York City and Baltimore, claim that 60% of addicts' habit cost is attributable to income producing crimes such as theft. Based on an employment rate of over one-third for opiate abusers in the DAWN system, plus the fact that some habits are supported by dealing drugs, pimping, or prostitution, an even lower percentage of total habit costs supported by theft would not be unreasonable. In sum, some heroin consumption is supported by legal income or by non-theft crime, and the estimates of heroin users and addicts based on a register have no way of distinguishing addicts from users. Thus, we have chosen to estimate that as little as 33% of heroin consumption costs may be supported by theft, an assumption that also tends to allow for "chippers" or experimenters to drop out of the calculations before costs of income producing crime are assessed.

c. Time at Risk.—Even addicts seldom have access to heroin 365 days a year. Sometimes a supply is unavailable; sometimes they are in jail; sometimes they have no money. For these and other reasons, we have chosen to estimate 255 days per year of use, or 70% of the available time, as the average time at risk.

d. Average Habit Cost.—A number of estimates, guesses, and surveys have established average habit cost per day. The Drug Enforcement Administration has estimated average habit cost per day at \$43 for 1972 and \$51.50 as of 3/31/74, and we use these two estimates to generate alternative costs. The estimates are based on the cost of buying 50 milligrams of pure heroin, and rest on the price and purity of DEA heroin buys. The implicit assumption is that the addict buys an amount (50 mg.) of heroin and the cost of his habit is a function of the price and purity of street bags.

-carelessly considered premises. Finally, we shall present a range of estimates (all of them conservative in terms of some previous estimates) which demonstrate the sensitivity of this component of costs to different assumptions.

In order to assess the amount of property loss through income producing crime, certain assumptions must be made. Since the proportions of social cost of drug abuse attributable to property loss is substantial (ranging from 50%-65% of total cost) the assumptions to be used are important. The critical choices are:

Number of addicts?

Proportion of addicts' habits supported by income-producing crime?

Time at risk in terms of days per year the addict uses?

Average cost per day of habit?

Factor for fencing stolen goods?

a. Number of Addicts.—The number of heroin addicts is unknown; although a number of estimates are made. Current estimates range from about 250,000 to 600,000. Recent testimony by Dr. Robert DuPont (Director of SAODAP and of NIDA) estimates 250,000 active addicts, by subtracting from a previous estimate of 600,000 the number in treatment (estimated at 125,000) the number in jail (estimated at 85,000) and those who have died or quit (estimated at 120,000). The figure of 600,000 is based on techniques of estimating an addict population by observing how many reappear on the DEA register and applying statistical techniques similar to estimating the total population of fish in a pond by taking and tagging random samples at two different times. Both estimates are uncertain, but they seem to be reasonable border points to a range.

In support of the range, several observations are in order:

(1) In 1969, after considerable debate and analysis, the number of street addicts in New York City was estimated to be 70,000. New York City is one of the few cities with a local narcotics addict register.

(2) Reports of serum hepatitis, which might relate better to incidence of new addicts or heroin experimenters better than to a total number, show only about 4% of those cases from New York City.

(3) Reports of deaths caused by heroin in the DAWN system show New York City with about 26% of the share of large cities, although New York City also includes the overwhelming majority of methadone related deaths.

Thus it seems unlikely the addict population is less than 250,000. The national population would seem to be at least four times as large as New York City's.

(4) Surveys by the National Commission on Marijuana and Drug Abuse show that 1.3% of the adult population have "ever used" heroin. This means some 2,000,000 adults, as measured by household surveys, have tried heroin.

Thus it seems unlikely that the high estimate of 600,000 overstates the case; rather it seems to be a reasonable and conservative estimate of the high point of the range.

b. Proportion of Addicts Who Steal To Support a Habit.—Again, the number of addicts who steal to support their habit is unknown. DEA reports, based on studies in New York City and Baltimore, claim that 60% of addicts' habit cost is attributable to income producing crimes such as theft. Based on an employment rate of over one-third for opiate abusers in the DAWN system, plus the fact that some habits are supported by dealing drugs, pimping, or prostitution, an even lower percentage of total habit costs supported by theft would not be unreasonable. In sum, some heroin consumption is supported by legal income or by non-theft crime, and the estimates of heroin users and addicts based on a register have no way of distinguishing addicts from users. Thus, we have chosen to estimate that as little as 33% of heroin consumption costs may be supported by theft, an assumption that also tends to allow for "chippers" or experimenters to drop out of the calculations before costs of income producing crime are assessed.

c. Time at Risk.—Even addicts seldom have access to heroin 365 days a year. Sometimes a supply is unavailable; sometimes they are in jail; sometimes they have no money. For these and other reasons, we have chosen to estimate 255 days per year of use, or 70% of the available time, as the average time at risk.

d. Average Habit Cost.—A number of estimates, guesses, and surveys have established average habit cost per day. The Drug Enforcement Administration has estimated average habit cost per day at \$43 for 1972 and \$51.50 as of 3/31/74, and we use these two estimates to generate alternative costs. The estimates are based on the cost of buying 50 milligrams of pure heroin, and rest on the price and purity of DEA heroin buys. The implicit assumption is that the addict buys an amount (50 mg.) of heroin and the cost of his habit is a function of the price and purity of street bags.

An alternative assumption is that the amount of pure heroin taken can vary, but the price paid tends to remain the same. That is, amount taken is a function of price, with the cost the addict is willing to pay relatively fixed. Data which reports average daily habit cost, without dealing with purity, suggests a \$40-45 per day range is reasonable.

e. Fence Factor.—The cost of theft to support a habit must take into account that goods stolen usually cannot be turned into cash at their full retail value. Rather they must be sold at a fraction (variously estimated at 1/5 to 1/3 of their retail value. We have chosen a relatively conservative factor, assuming that this "fence factor" is 3; thus, to get \$100, the addict must steal \$300 retail value.

Table 1 displays the results of eight alternative combinations of these critical assumptions.

TABLE 1.—ALTERNATIVE COSTS OF THEFT TO SUPPORT HEROIN (ASSUMPTIONS)

Number	Number of addicts	Percent of habit via income producing crime	Days per year at risk	Cost per day	Fence factor	Cost (billions)
1.....	250,000	33	255	\$43.00	3	\$2.7
2.....	250,000	33	255	51.50	3	3.3
3.....	250,000	60	255	43.00	3	4.9
4.....	250,000	60	255	51.50	3	5.9
5.....	600,000	33	255	43.00	3	6.6
6.....	600,000	33	255	51.50	3	7.8
7.....	600,000	60	255	43.00	3	11.8
8.....	600,000	60	255	51.50	3	14.2

These estimates represent a broad range of imputed social cost due to theft to support heroin use. Alternatives 1 and 2 are probably very conservative, since they proceed from a minimum addict population and then assume 33% of the habits cost for that population is either supported legally or by non-theft crime. Similarly, alternatives 8 and 9 are probably high, since they proceed from the upper end of our range of probable addict population and assume that 60% supported their use via theft. Thus alternatives 3 through 6, which assume *either* a low population and 60% habit support due to theft, *or* the higher population but a 33% habit support due to theft, are, in our judgment, more likely to be accurate. The average cost of these four alternatives is \$6.3 billion, which we shall use as an approximation of cost due to theft related to heroin use.

(The relationship of this to total property crime is discussed in Appendix A. The key difficulty is that the value of total property crime is also unknown.) Each of these four alternatives is conservative on at least three counts:

None assumes a habit of 365 days/year.

All recognize that addicts will be in jail or in treatment or otherwise unconnected at least 30% of the time.

None assumes that all addicts steal to support a habit. Based on cited estimates, these figures count one-third of estimated total addicts and users.

None combines both high population and high habit support by theft. They all rest on previously made population estimates of heroin addicts and users, and on an assumption that a factor of three is a reasonable adjustment for selling stolen goods.

SUMMARY

The total costs in summary are:

Health resources costs.....	\$199,053,000
Criminal justice system costs.....	619,561,300
Productivity costs:	
Assuming minimum wage.....	1,526,540,600
(Assuming \$5,000/yr.).....	(1,907,573,400)
Direct program costs.....	1,104,134,300
Property losses—crime.....	6,300,000,000
Subtotal.....	9,740,291,200
Total.....	(10,130,324,000)

Thus, the total estimated costs of drug abuse to U.S. society are \$10 billion. Details are presented in Appendix A, including assumptions, sources, and calculations.

Several observations are pertinent:

About two-thirds of the cost is property losses due to income-producing crime.

The productivity costs may, in fact, understate social costs, in that a relatively low annual wage is used, and no calculation was made for reduced efficiency on the job due to drug abuse. Further, only the male, under 30 portion of the work force was assessed with costs associated with absenteeism.

Health resources costs are certainly understated to the extent that the health delivery system does not report time taken up with drug-related problems because of the patient's standing in the community or status as a long-standing patient of the physician. Similarly, productivity costs related to deaths and subsequent foregone income may be understated. Nor does the estimate reflect the cost of treating diseases or illnesses which may be related to drug use.

Some deaths reported here and calculated as resulting in productivity losses are more likely the social and economic cost of suicide than of drug abuse, *per se*. No attempt was made to differentiate motivation related to deaths.

Significant proportions of these costs are directly policy-related. If the legal status of heroin were different, the amount of income-producing crime related to it would probably diminish dramatically along with its cost to society. Some two-thirds of the arrests for drug offenses are for marihuana offenses, and it estimated that well over half of the criminal justice system costs shown here are marihuana related. These would likely diminish were the legal status of marihuana different.

Other costs seem related more to the deleterious consequences of drug abuse than to the legal/policy status of the drugs.

Finally, largely excluded in the quantitative estimate are the hard-to-define and hard-to-measure costs of drug use.

APPENDIX A

Social cost of drug abuse calculations

Health—emergency room resources:

Number of emergency room episodes.¹----- 467, 594

Source: DAWN, Report 401, dated August 26, 1974.

Time period: July 1973–June 1974.

Discussion: Total for a national projection is given in this chart as 506,376. The data includes 13 months, so the number of episodes recorded in the last month (July 1974–38,782) is subtracted to get a yearly total of 467,594.

Cost per emergency room episode----- \$25

Source: Blue Cross, national organization, Washington office, telephone interview.

Time period: Current.

Discussion: Very soft, apparently hospitals find it difficult to assess this. Also, it probably does not fully reflect physician services, medication, or tests.

Total, 467,594 times \$25 equals----- \$11, 639, 850

¹ Hospital cost per day figures include a share of capital investment and construction costs. These calculations do include costs of amortization which would exist independent of the number or severity of drug abuse patients. But the price system charges patients for hospital connected services without differentiating type of cost. We see no reason why drug abuse patients' consumption of health services should not include full costs, representing an opportunity cost to whoever pays the bill.

Health—General hospital inpatient resources consumed

Number of inpatient episodes involving drug abuse per year in DAWN
system ----- 8, 743

Inpatient episodes in DAWN hospitals (October 1972–March 1973) --- 2, 929

Multiplied by ----- 2

Total ----- 5, 858

Since 42 hospitals represent approximately 67 percent of the total of 64 hospitals reporting inpatient data in DAWN, we assume that 5,858 is only 67 percent of the inpatient mentions, so: $5,858 \div .67 = 8,743.752$ days.

Average length of stay:

Based on weighted average of length of inpatient stay in DAWN system.

Total -----		2,920
Night stay:	Midpoint:	
1 to 2-----	31 1.5 -----	46.5
3 to 4-----	15 3.5 -----	52.5
5 to 7-----	15 6 -----	96.0
8 to 14-----	22 11 -----	242.0
15 to 21-----	7 18 -----	126.0
Over 21-----	9 21 -----	189.0
Total -----		752.00

752 divided by 100 equals 7.52. 8,743 times 7.52 equals 65,747.

Total number of bed-days used by in patients per year (U.S.)----- 1,603,585

Assumes bed-days used by drug patients in DAWN facilities are approximately the same proportion as bed-days used by drug patients nationally (short-term general hospitals).

Dawn inpatient bed capacity----- 34,849

Bed capacity of short-term general hospitals----- 848,232

Over 65,747 times 65,747 equals 0.041. times 65,747 equals 0.041 times 65,747 equals 10.04. 1,603,585 equals x.

Source: 1972 Reference Data on Socioeconomic Issues of Health, AMA, p. 51, table 18.

Cost per patient day—short-term general hospitals----- \$114.69

Source: Hospital Statistics, American Hospital Association,

Chicago, 1974, table 1, p. 20.

Time: 1973:

1,603,585 times \$114.69 equals----- \$183,931,190.00

Health—Psychiatric treatment resources consumed

Total mental health inpatient admissions for year----- 1,224,531

Source: Utilization of Mental Health Facilities, 1971, NIMH Mental Health Statistics, Series B, No. 5; Analytic and Special Study Reports, page 23, table 6.

Time period: 1971 calendar.

Percent of admissions (inpatient) in other than general hospitals, VA hospitals or CMHC's (these will be covered in DAWN inpatient costs or in direct-program costs)----- 52

Source: As above, p. 15.

Percent of admissions (inpatient for drug disorders)----- 5.1

Source: As above, p. 23, table 6.

Median days' stay per admission/drug disorders:

Public (days)----- 3.7

Nongovernmental (days)----- 8.5

Source: HEW, PHS, NIMH, O.P.P. & E. Biometry Branch, Survey and Reports Section. "Statistical Note 70, February 1973," p. 2.

Percent admissions:

Public ----- 69

Nongovernmental ----- 31

Source: As above, utilization . . . , p. 8.

Cost per day----- \$20.68

Source: HEW, PHS, etc., "Statistical Note 106, May 1974," table 8, p. 19, fiscal year 1972 costs used applied to patient days in calendar year 1971—low because this is for State and county mental hospitals while costs for private hospitals are unavailable and probably higher.

1,224,531 times .52----- 636,756

Cost per day—Continued

636,756 times .051-----	32,475
32,475 times .69 equals 22,408 times 3.7 days-----	82,900
32,475 times .31 equals 10,067 times 8.5 days-----	85,560
Total patient days-----	168,469
168,469 times \$20.68 equals \$3,483,939 per year.	

Criminal justice system, police—State and local

Number of drug arrests per year-----	628,900
Source: Crime in the U.S., 1973, UCR, p. 121, table 24.	
Time: 1973.	
Total arrests per year-----	9,027,700
Source: As above.	
Annual salary costs of local and state police:	
State-----	\$873,000,000
Local-----	4,488,000,000
Total-----	\$5,361,000,000
Source: Statistical Abstract of the U.S., 1973, p. 155, table 250.	
Time: 1971—most recent available.	
\$5,361,000,000 inflated to 1973 (because arrest data is for 1973) (1971).	
628,900 divided by 9,027,700 equals .07 equals 7% of arrests are drug arrests.	
\$5,361 million times 7 percent equals \$375,270,000 (This needs to be inflated) 1971-73:	
\$375,270,000 times 1.07-----	\$401,538,900
Inflation factor: 1971-73:	
Source: Statistical Abstract of the U.S., 1973, p. 354, table 577, Consumer Price Index.	
1971 equals 121.3.	
1973 equals 129.8.	
129.8 divided by 121.3 equals 1.07	
Note: Federal police costs are reflected in direct program costs.	

Criminal justice system—Prosecution and court costs

Total prosecution and court costs (including prosecution, public defense and court) expressed as a percent of police costs at the State and local level, 13 percent.

Source: Challenge of Crime in a Free Society, A Report of the President's Commission on Law Enforcement and the Administration of Justice, 1967, p. 34 (henceforth CCFS)—Time: fiscal year 1965.

Local and State Police, \$2,549,000,000.

Courts (Local and State), 224.

Prosecution and Defense Costs (State and Local), 110.

\$324,000,000 (Court and Legal Costs), .13 percent.

Police costs (state and local) associated with drug arrests (from above), \$375,270,000.

\$375,270,000 times .13 equals \$48,785,100; this needs to be inflated from 1971-73 inflation factor 1.07 as above: \$48,785,100.

Criminal justice system—Corrections

STATE AND LOCAL—MARIHUANA RELATED

Number of Marihuana Arrests per year, 420,700.

Source: UCR, as above.

Time: 1973—their national estimate.

Percent of total Marihuana Arrests which ultimately are sentenced to incarceration, 9 percent.

Source: Marihuana: A Signal of Misunderstanding; the Technical Papers of the First Report of the National Commission on Marihuana and Drug Abuse, March 1972, Vol. II, pp. 612-728, "Enforcement at the State Level." Surveyed marihuana offenders in 18 jurisdictions—3,071 arrests.

Approximately 9 percent of those originally arrested were incarcerated.

Derived from table, p. 682.

Average length of sentence (months), 19.

Source: Marihuana Commission Report, as above. Derived from table, p. 682, giving distribution of length of sentence. Using mid-points of the sentence ranges given and weighting for number of sentences given in each range, an average was derived.

Federal data indicates that for releases in fiscal year 1973 an average of 49.6 percent of sentence time was actually served for drug offenses. Although there may be variance between federal and other corresponding institutions, a cost based on .496 of sentence served was also calculated—.496 times 19 equals 9.4 months.

Source: Federal Bureau of Prisons, fiscal year 1973, Statistical Report, p. 97, table C-2.

Cost per month of maintaining a prisoner----- \$222

\$5.24 per day.

\$5.24 (1965) in 1973 cost terms equal \$7.17.

\$7.17 times 31 equals \$222.

Source: CCFS, A Report of the President's . . . Task Force Report: Crime and Its Impact—An Assessment, p. 43.

Inflation factor: U.S. Statistical Report, 1973, p. 354, Table No. 577.

1965 equals 94.5.

1973 equals 129.6.

129.6 divided by 94.5 equals 1.37 (inflation).

Shorter sentence 420,700 times .09 equals 37,863; 42,070 times

19 times 22 times .496----- \$79, 214, 240

STATE AND LOCAL—OTHER DRUG-RELATED

Total drug arrests (excluding marihuana)----- 208, 200

Source: UCR, as above.

Time: 1973—Their national estimate.

Percent of drug arrests (excluding marihuana) which result ultimately in incarceration----- 14

Source: *Drug Use in America: Problems in Perspective*, National Commission on Marihuana and Drug Abuse, Technical Papers, Vol III, "Selective Justice: Drug Law Enforcement in Six American Cities," pp. 498-650. It sampled 5,582 cases of drug arrests exclusive of marihuana in 6 jurisdictions, time period 1971, p. 578, "Fourteen percent of the persons arrested for drug offenses actually served time in jail."

Average length of sentence (months) or 49.6 percent of sentence----- 19

Source: Same as for marihuana. The data in the nonmarihuana arrest study does not allow one to calculate average length of sentence. We assume it to be *at least* as long as the marihuana average, so this will probably be conservative.

Cost per month:

Source: As above, inflated to 1973.

208,200 times .14 equals 29,148.

29,148 times 19 times \$222 equals \$122,916,260 times .496-- \$60, 981, 344

FEDERAL

Number of inmates in Federal institutions for drug offenses----- 4, 294

Source: Federal Bureau of Prisons Fiscal Year 1973, Statistical Report, U.S. Department of Justice, p. 55, table B-2.

Time: Fiscal year 1973.

Average sentence (months)-----	54. 2
Sources: Same as above, BOP.	
Percent of average sentence served-----	49. 6
Source: Same as above, BOP, p. 97, table C-2.	
Cost per month of maintaining prisoner: .	
Source: CCFs—as above inflated to 1973 costs:	
4,294 times 54.2 times .496 times \$222 divided by cost per month -----	\$25, 626, 894

Foregone productivity—foregone earnings associated with drug-related deaths

Nonopiate deaths:

Number of nonopiate related deaths-----	10, 131
Source: DAWN, Report 401, August 26, 1974, deaths are projected to a national figure here. Total 15,555 is reduced by 434 because the original total reflects 13 months of deaths. The last month (July 1974—434) is thus subtracted. Using death data from DAWN for the last quarter of 1974, it suggests that 67 percent of deaths are associated with nonopiates. Hence, .67 times 15,121 equals 6,804.	
Average yearly earnings-----	\$4, 000
Minimum wage (BLS) \$2 an hour equals \$80 per week. Working 50 weeks per year equals \$4,000.	
Estimated employment rate (nonopiate episodes) based on DAWN data runs for 8 cities for Ann Ramsey and on letter from Dr. Richard Hampton, IMS-America (percent)-----	52
Working years left-----	25
Median age at death for nonopiate related deaths (DAWN)—40. 65 minus 40 equals 25 years left.	
Present value factor-----	9. 077
(Value of \$1 received annually for 25 years at 10 percent discount rate).	
10 percent source: OMB Circular A-94, March 27, 1972.	
P.V. Source: Present Value Table: Heinrichs, Harley H. and Taylor, Greene M., Program Budgeting and Benefit Cost Analyses, Pacific Palisades, Calif., Goodyear Publishing Co., Inc., 1969, p. 378.	
4,000 times 9.077 equals \$36,308 (\$45,385 if you use 5,000 instead)	
10,131 times .52 equals 5,268.	
5,268 times \$36,308 equals \$191,270,500 (\$239,088,200 at \$5,000 per year).	

Opiate-related deaths:

Number of opiate-related deaths-----	4, 990
15,121—total from above.	
—10,131—non-opiate.	
4,990—total.	
Average yearly earnings-----	\$4, 000
Estimated employment rate (same basis as shown on p. A-11)-----	.39
Years left-----	40
Median age of opiate deaths, 25: 65 minus 25 equals 40.	
Present value factor 9.779—same as above-----	9. 779
4,990 times .39 equals 1,946.	
\$4,000 times 9.779 equals \$39,116 (\$48,895 @ \$5,000).	
1, 946 times \$39,116 equals \$76,119,700 (95,149,700 @ \$5,000/yr.).	

Foregone productivity due to inpatient status

Total inpatient days-----	1, 603, 585
Average daily wage based on minimum wage-----	\$16. 00
Percent inpatients employed (DAWN) IMS-America letter, Richard Hampton, DAWN II-----	.32
1,603,585 times .32 equals 513,147.	
513,147 times \$16 equal \$8,210,355 (\$10,262,940 @ \$20).	

Productivity—foregone earnings due to absenteeism related to drug abuse

Percent of work force absent from work because of drug use on a typical day .004 or-----	0.4
Source: DOD evaluation.	
Time: 1973.	
Working days per year-----	230
5-day week times 52 weeks equal 260 minus 30 equal 230.	
Vacation, 10.	
Holidays, 10.	
Sick, 10.	
Total, 30.	
Minimum wage per day-----	\$16.
Source: BLS \$2 per hr.	
Portion of labor force comparable to DOD population, i.e., male and between 16 and 30-----	18,989,000
Source: Statistical Abstract of U.S., 1973, p. 220, table no. 348	
Time: 1972.	
Male 16-19: 4,791,000.	
Male 20-24: 7,795,000.	
1/2 of 25-34 (12,806,000): 6,403,000.	
Total: 18,989,000.	
18,989,000 times .004 equal 75,956.	
75,956 times 230 times 16 equal \$280,000,000 (\$349,397,600 at \$20/day).	

Productivity—Foregone earnings due to incremental unemployment

Unemployment rate of drug abusing population (percent)-----	16.2
Source: IDA "A Quantitative Assessment of Non-Opiate Drug Abuse," Sept. 9, 1974, advance copy, pp. 4-24.	
Time: 1973.	
Discussion: This percentage is based upon comparable household surveys in 5 States which IDA has analyzed. Only 16.2 percent is illicit drug use and does not include unemployed not looking for work, students or unknown. It is only those recorded as unemployed and looking for work. Data in the IDA study were drawn from 1973 surveys in these 5 States, none of which varied significantly from the national unemployment data for that year.	
National unemployment rate (percent)-----	4.8
Source: Statistical Abstract of the U.S., 1973, p. 219, table 347 (for 1973).	
Therefore the incremental unemployment rate is (percent)-----	11.4
Average yearly earnings-----	\$4,000
Estimated rate of illicit users (percent)-----	1.4
Source: IDA as above, p. 40, tables 4-16.	
Population (United States) 14 years and older-----	152,090,000
1.4 percent of population 14 years and older are listed as illicit drug users,	
152,090,000 times .014 equals 2,129,260.	
2,129,260 times .114 equals 242,735.	
242,735 times \$4,000 equals \$970,940,000 (\$1,213,675,000 at \$5,000/yr.).	

Direct program costs

Federal:	
Abuse prevention-----	<u>\$409,000,000</u>
Source: Federal Strategy for Drug Abuse and Drug Abuse Traffic Prevention, p. 21. Presentation Program Crosscut directed program.	
Time: Fiscal year 1974.	
Traffic prevention-----	<u>\$254,700,000</u>
Source: As above.	

Direct program costs—local:

Source: Survey of City/County Drug Abuse Activities, 1972, the Drug Abuse Council, September 1973, p. 48.

Total for cities—\$287 million, less \$153 million from Federal sources, less 9 percent for law enforcement yields..... \$122, 000, 000

Total for counties \$152 million, less \$53 million from Federal sources, less 11 percent for law enforcement yields..... \$88, 000, 000

Total \$210, 100, 000

Direct program cost—State..... \$225, 876, 000

Source: Universe, Analytic Studies Section, NIDA, fiscal year 1975 for treatment service units only—data for 30 States.

Direct program cost—private:

Source: Foundation Center Information Quarterly, July 1973, pp. 289-294.

Grants over \$5,000 given mostly for 1971-72.

Total is \$8,916,689. Half (for 1 year) equals \$4,458,345.

PROPERTY LOSSES DUE TO CRIME

The calculations depend on assumptions in five areas, as covered in the report.

Area:	Values
Number of addicts.....	¹ 250, 000
	² 600, 000
Percent of habit cost.....	³ 33
Supported by theft (percent).....	⁴ 60
Days at risk per year.....	⁵ 255
Average daily habit cost.....	⁶ \$43
Fence factor.....	⁷ \$51.50
	⁸ 3

¹ DuPont testimony before Health and Environment Subcommittee, House Interstate and Foreign Commerce Committee, October 7, 1974.

² Greenwood, DEA, estimate; 626,000 for 1972, 579,000 for 1973.

³ Estimate, based on one-third employed (printouts from DAWN System for SAODAP); one-third illegal support through dealing, pimping, prostitution; one-third steal.

⁴ DEA statistical reports.

⁵ *Dealing with Drug Abuse*, "The Economics of Heroin," by John Holahan, Ford Foundation, New York, Praeger, 1972, p. 280—"The Hudson Institute Study."

⁶ DEA statistical reports, estimate, 1972.

⁷ DEA statistical report, estimate, March 31, 1974.

⁸ *Dealing With Drug Abuse*, p. 292.

The calculations are as follows:

(600,000) (.33) (255) (\$43) (3) = \$6.6 billion.

Alternative No. 5 from Table 1.

Because the value of property stolen by addicts to support the cost of illegal narcotics is a significant portion of our total estimate of social cost, some validation of that number seems necessary. Logically, drug-related property crime must be a subset of total property crime. The total value of stolen property in the U.S. is, itself, an unknown quantity. "Law enforcement does not purport to know the total volume of crime, because of the many criminal actions which are not reported to official sources."¹ The UCR reports \$1.6 billion worth of stolen property for 1973, but this represents reports from just over one-third of the law enforcement agencies contributing to the UCR covering about half the U.S. population. Were all agencies reporting, the UCR figure might well increase by a factor of two or three. Some kinds of property losses, especially in the retail sector, go virtually unreported. These include shoplifting, employee theft and other inventory shrinkage due to dishonesty. The President's Crime Commission in assessing the economic impact of crime estimated that the value of losses due to crimes of this type was as great as one or two percent of total retail sales. In 1972, this could have added almost \$9 billion to the value of stolen property. Even considering systematically unreported crimes such as inventory shrinkage, the Crime Commission also confirmed through a national

¹ Federal Bureau of Investigation, *Crime in the United States, 1973 Uniform Crime Reports*, p. 1.

household survey² that property losses due to theft and robbery were at least 137% as great as those known to police. Because of the survey methodology, the Crime Commission judged even these figures to be underestimates of the real value of stolen property.

A recent analysis by the U.S. News & World Report (December 16, 1974) suggested that the total crime bill was \$88.6 billion for 1974. Of that, they showed estimates of \$5.2 billion to organized crime for narcotics; \$5.0 billion worth of unreported business thefts; \$3.0 billion for robbery, burglary, theft, and shoplifting.

A report from the Department of Commerce, "The Cost of Crimes Against Business," November 1974, estimates the cost of ordinary crimes (burglary, robbery, vandalism, shoplifting, employee theft, bad checks, credit card fraud and arson) against business at \$20.6 billion for 1974, with retailers bearing \$5.8 billion of that total. Further, it reports an estimate by the National Retail Merchants Association that 1973 inventory shortages for department and apparel stores reached 3% of sales, as compared to the 1-2% of all retail sales suggested in 1967 by the President's Crime Commission.

SUMMARY—SOCIAL COSTS OF DRUG ABUSE

	Amount	At \$5,000 per year
Health:		
E. R.	\$11,639,850	
Inpatient.....	183,931,190	
Psychiatric.....	3,483,939	
Subtotal.....	199,055,000	
Criminal Justice:		
State and local police.....	401,538,900	
State and local prosecution, defense and courts.....	52,200,057	
State and local corrections:		
Marihuana.....	79,214,240	
Other drugs.....	60,981,344	
Federal corrections.....	25,626,894	
Subtotal.....	619,561,300	
Productivity:		
Nonopiate deaths.....	191,270,500	(\$239,088,200)
Opiate deaths.....	76,113,700	(95,149,700)
Inpatient.....	8,210,355	(10,262,940)
Absenteeism.....	280,000,000	(349,397,600)
Unemployment.....	970,940,000	(1,213,675,000)
Subtotal.....	1,526,540,600	(1,907,573,400)
Direct program costs:		
Federal:		
Abuse prevention.....	409,000,000	
Traffic prevention.....	254,700,000	
State.....	225,876,000	
Local.....	210,100,000	
Private.....	4,458,340	
Subtotal.....	1,104,134,300	
Property loss.....	6,300,000,000	
Total.....	9,749,291,200	(10,130,324,000)

COMPARISON OF DRUG ABUSE AND ALCOHOL ABUSE ESTIMATES

The NIAAA estimate of the economic costs of alcohol abuse and alcoholism is as follows:

	Billions
Lost Production.....	\$9.35
Health and Medical.....	8.29
Motor Vehicle Accidents.....	6.44
Alcohol Programs and Research.....	.64
Criminal Justice System.....	.51
Social Welfare System.....	.14
Total.....	\$25.37

² Philip H. Davis, "Criminal Victimization in the U.S.: A Report of a National Survey." (Field Surveys II, President's Commission on Law Enforcement and the Administration of Justice, Washington, D.C.: U.S. Government Printing Office, 1967.)

These are based on "The Economic Cost of Alcohol Abuse and Alcoholism, 1971," a study done for NIAAA by Policy Analysis, Inc., (Principal authors: Ralph Berry, James Boland, Joan Laxson, Donal Hayler and Margery Sillman).

Productivity Costs

Using a national probability sample of families in different age groups, and the Calahan-Room drinking typologies, the difference between family earning of male heads-of-households with drinking problems and family-earnings of those males without drinking problems was calculated (income was in the \$6,500 to \$11,000 range). Based on national prevalence estimates for alcoholism, this earning differential was extrapolated to a national figure and used as an estimate of the productivity costs of alcoholism. The analysis did not control in any way for the impact of socio-economic factors and the authors note that "... the characteristics of the high consequences group are similar to the characteristics which explain low income ... Thus, the \$9.35 billion estimate is probably an upper limit to the production loss in the market sector for 1971 even when one considers other sources of production loss." Productivity losses resulting from alcohol-related deaths (other than those resulting from automobile accidents) are not included because of the methodological difficulties in estimating excess mortality attributable to alcoholism.

Estimates of lost productivity associated with drug abuse are based on:

Foregone income of individuals whose deaths are attributed to drug abuse;

Lost time at work because of inpatient status for drug-related medical problems;

Unemployment due to drug abuse. This is estimated by comparing unemployment rates in the drug-abusing population with unemployment rates in the population at large.

Absenteeism related to drug use.

Income was assumed to be at minimum wage or slightly higher.

Health and Medical

The NIAAA estimate of health costs is based upon the observation that alcoholics use health services and, consequently, place demands upon medical construction and education resources at a comparatively higher rate than the non-alcohol-abusing population. A number of small-population surveys and a special survey of treatment center populations were used to calculate incremental health costs in different categories which are correlated with alcohol abuse. Cost estimates generated by analyzing these surveys were then extrapolated to national figures. It was estimated that 19.1% of hospital care costs and 7.6% of physician care costs were alcohol related. The single source of the physician services cost estimate was a special survey which solicited the opinions of 29 experts at seven alcoholism treatment centers and at two other treatment facilities.

National estimates are generated in this study by multiplying a prevalence figure of 9 million alcoholics by an incremental per-person cost in each health category. The NIAAA estimate states simply that there may be as many as 10 million Americans whose drinking has created some problem for themselves, families, friends, employers, or with the police within the last year. This study assumes, then, that 9 of the 10 million are alcoholics and/or have health-specific consequences severe enough to use health services at a higher rate than the general population.

The drug abuse estimate is based on the cost of inpatient care (by average per patient daily costs) and the number of inpatient days recorded in the DAWN system, generalized to the universe of hospital facilities in the nation. It includes costs of hospital emergency room services recorded in the DAWN system.

Motor Vehicle Accidents

The alcoholism estimate uses National Highway Traffic Safety Administration data which associates 40% of all highway fatalities with alcohol and assigns proportional costs to the use of alcohol. Since very little research into the relationship between highway accidents and drug use exists, no parallel of this portion of the alcohol estimate is presented.

Programs and Research

The alcoholism estimate offers figures on federal, state and local private funding. We use data from the Federal Drug Abuse strategies, from a survey of state

Source: *Alcohol and Health: New Knowledge*. Second Special Report to the U.S. Congress, Department of Health, Education and Welfare, Public Health Services, June 1974.

and local programs, from Universe, and foundation-related data for private expenditures.

Criminal Justice System Costs

The alcohol estimate takes a percentage of all criminal justice system costs as alcohol-related, based upon research which indicates a percentage of violent crimes to be alcohol-related. The drug abuse estimate presents the costs of arrests, prosecutions and incarcerations related to violations of the narcotics laws.

Because there is no conclusive research into the relationship between crime and drug use (except in the area of income-producing crime), it is not reasonable to cost out any crime associated with drug use other than narcotics law violations or income-producing crime. However, an element in the drug abuse cost estimate which has no analogue in the alcohol estimate is the value of property stolen by drug abusers to finance their own drug-taking.

SMOKING—ESTIMATES OF COST

Costs of smoking, as shown in work by Hedrick, in HSMHA Health Reports, October 1971, Vol. 86, No. 2, are:

Canadian estimate:

Mortality:	Millions
Lung cancer-----	\$56.0
Coronary disease-----	201.0
Chronic bronchitis and emphysema-----	21.0
Factor to adjust for other excess deaths due to smoking-----	139.0
Morbidity—all diseases-----	96.0
Fires (property losses)-----	13.5
Total -----	<u>\$526.5</u>

Total U.S. costs estimated at 10 times Canadian costs, based on ratio of U.S. GNP to Canadian GNP of 10:1----- \$5,265.0

Thus, total smoking costs were estimated at \$5,265 billion.

The costs of mortality and morbidity were based on costs of medical care, future income foregone because of death, and income lost because of illness.



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FEDERAL DRUG ENFORCEMENT

HEARINGS
BEFORE THE
PERMANENT
SUBCOMMITTEE ON INVESTIGATIONS
OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
UNITED STATES SENATE
NINETY-FOURTH CONGRESS
FIRST SESSION

JUNE 17, 18, 19, AND 20, 1975

PART 2

Printed for the use of the Committee on Government Operations

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¹ Retained in the confidential files of the subcommittee.

FEDERAL DRUG ENFORCEMENT

TUESDAY, JUNE 17, 1975

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met at 10 a.m., in room 3302, Dirksen Senate Office Building, under authority of Senate Resolution 111 agreed to March 17, 1975, as amended, Hon. Henry M. Jackson, chairman of the subcommittee, presiding.

Members of the subcommittee present: Senator Henry M. Jackson, Democrat, Washington; Senator Sam Nunn, Democrat, Georgia; and Senator Charles H. Percy, Republican, Illinois.

Members of the professional staff present: Howard J. Feldman, chief counsel; Dana Martin, assistant counsel; Philip R. Manuel, investigator; Frederick Asselin, investigator; Stuart M. Statler, chief counsel to the minority; Robert Sloan, special counsel to the minority; and Ruth Y. Watt, chief clerk.

Chairman JACKSON. The committee will come to order.

[Members of the subcommittee present at time of convening: Senator Jackson.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct hearings in public session, without a quorum of two members for administration of oaths and taking of testimony in connection with Drug Enforcement Administration on Tuesday, June 17, 1975.

HENRY M. JACKSON,
Chairman.
CHARLES H. PERCY,
Ranking Minority Member.

Chairman JACKSON. Today the Senate Permanent Subcommittee on Investigations begins its second week of public hearings into the manner in which the Federal Government enforces drug laws and seeks to control drug abuse.

Hearings were held June 9, 10 and 11, 1975.

One of the major aspects of the subcommittee's preliminary investigation was information the staff developed showing an indifference by top management in Federal drug enforcement regarding personnel integrity problems.

In connection with the issue of personnel integrity, the subcommittee looked into allegations that the Administrator of the Drug Enforcement Administration had impeded an integrity investigation regarding a senior DEA official.

The allegations were made by Andrew C. Tartaglino, the then Acting Deputy Administrator of DEA; and George B. Brosan, the then Acting Chief Inspector.

Mr. Tartaglino now has the title of Chief Inspector of DEA. Mr. Brosan has the title of Deputy Chief Inspector of DEA. Both men, however, now have assignments elsewhere within the Department of Justice.

These new assignments were given Mr. Tartaglino and Mr. Brosan after the Deputy Attorney General, Laurence H. Silberman, concluded his inquiry into their allegations that the Administrator, John R. Bartels, Jr., had impeded the integrity investigation of the senior DEA official, Vincent L. Promuto.

At the time of the integrity investigation, Mr. Promuto was the Director of Public Affairs for DEA headquarters in Washington. Mr. Promuto has since been transferred to the New York Regional Office of DEA.

Information developed by the Metropolitan Police Department, Organized Crime and Rackets Section, indicated that Mr. Promuto was associating with known felons and with persons suspected of being involved in organized gambling and other criminal activities.

Deputy Attorney General Silberman issued an announcement January 16, 1975, in which he said there was no basis to the assertions made by Mr. Tartaglino and Mr. Brosan that Mr. Bartels had improperly conducted himself during the Promuto integrity inquiry.

This subcommittee will have former Deputy Attorney General Silberman as a witness. Mr. Silberman has been recently posted to Yugoslavia as our Ambassador. He has sent word to us that because of his schedule he cannot appear before us this week. We will, accordingly, set a new date for his appearance.

The subcommittee will want to learn from Ambassador Silberman the nature and the scope of the investigation he directed into the allegations of Mr. Tartaglino and Mr. Brosan regarding the Bartels handling of the Promuto integrity investigation.

The subcommittee will want to learn from Ambassador Silberman why the day of January 16, 1975, was chosen as the occasion for the release of this announcement in connection with the allegations by Mr. Tartaglino and Mr. Brosan concerning Mr. Bartels' conduct in the Promuto integrity inquiry and other integrity problems within DEA.

The subcommittee notes that Ambassador Silberman, in his January 16, 1975, announcement, said he had directed Federal Bureau of Investigation agents to look into the Bartels matter on his, Silberman's, behalf.

Preliminary inquiry by the subcommittee staff has disclosed that two of the agents from the FBI who worked on this investigation directed by Deputy Attorney General Silberman were Bill D. Williams and Edward Hegarty.

Agents Williams and Hegarty also will be witnesses before this subcommittee.

The subcommittee will want to learn from FBI agents Williams and Hegarty the assignment they were given in the Bartels matter and who gave them the assignment.

The subcommittee will want to learn from agents Williams and Hegarty how they conducted the investigation which Deputy Attorney General Silberman referred to in his announcement of January 16, 1975.

The subcommittee will want to learn from agents Williams and Hegarty which persons they interviewed in connection with this investigation and what documents they obtained and examined.

The subcommittee will want to examine the report of investigation they filed and with which person within the Justice Department they filed their report of investigation.

The subcommittee will want to learn from agents Williams and Hegarty if their investigation was conducted according to the established procedures set down by FBI regulations.

The subcommittee will want to know if FBI agents Williams and Hegarty were satisfied that their investigation was complete as of January 16, 1975.

The subcommittee will want to know if agents Williams and Hegarty reported any of their findings to officials of the FBI.

The subcommittee will want to know if agents Williams and Hegarty worked on this investigation with other FBI agents or with any other agents either from the Department of Justice or from any other Federal agency.

In his announcement of January 16, 1975, Deputy Attorney General Silberman said the FBI's investigation had gone on for "several months." The subcommittee will want to learn from agents Williams and Hegarty the precise dates when they began their investigation and when their assignment in this matter ended.

Mr. Tartaglino testified that he briefed Deputy Attorney General Silberman on the Bartels matter and other issues related to integrity problems within DEA. Mr. Tartaglino said this briefing occurred January 9, 1975.

Mr. Tartaglino testified that Mr. James Hutchinson, an aide to Deputy Attorney General Silberman, took notes during the briefing.

The subcommittee will have Mr. Hutchinson as a witness.

Now an official of the Department of Labor, Mr. Hutchinson, will be asked what he did in connection with the meeting and if he did take notes and, if so, whether or not he used them as the basis for the writing of a report of the meeting.

Accordingly, the Department of Justice has been asked by this subcommittee for any and all documents reporting on any such meeting January 9, 1975.

The subcommittee will ask of Mr. Hutchinson his role in advising Deputy Attorney General Silberman as to how to proceed in connection with Mr. Tartaglino's and Mr. Brosan's allegations that Mr. Bartels had impeded the Promuto integrity investigation.

The subcommittee has an interest in the Silberman announcement of January 16, 1975—and the events leading up to it—for several reasons.

In issuing his statement clearing Mr. Bartels of any improper or irregular conduct, then Deputy Attorney General Silberman was, in

effect, asserting that no effort had been made to impede the Promuto integrity investigation. Subsequent events raise the possibility that Mr. Silberman's assertion of January 16, 1975, was wrong.

For example, since Mr. Silberman's January 16, 1975, announcement and well after the subcommittee commenced its investigation, the Department of Justice began a second investigation of Mr. Tartaglino's and Mr. Brosan's allegations concerning the Bartels matter and other integrity problems within DEA raised by Tartaglino and Brosan.

Toward the end of this second investigation, Mr. Bartels resigned his post as Administrator. To begin with, the subcommittee will ask the Justice Department for the report of this second investigation when it is completed.

Next, the subcommittee will inquire of the Department of Justice why a second investigation was initiated after an initial inquiry, conducted by FBI agents working under the direction of the Deputy Attorney General, concluded that there was no basis to the allegations made by Mr. Tartaglino and Mr. Brosan.

Then, the subcommittee will inquire of the Department of Justice as to the developments surrounding the decision by Mr. Bartels to resign. The subcommittee will inquire of the Department of Justice as to the possibility that information developed in the second investigation might have had a bearing on the events that contributed to the decision by Mr. Bartels to resign.

Finally, the subcommittee will inquire of the Department of Justice if Justice Department officials have any intention of going back to the original investigation in the Bartels matter and evaluating that original investigation as to charter, constraints, findings, conclusions and recommendations for further action.

The subcommittee will want to compare the procedures followed in the two investigations and evaluate the facts upon which the final conclusion was arrived at.

That is why, when viewed in the light of the two Justice Department investigations and this subcommittee's investigation, the testimony of Mr. Silberman and Mr. Hutchinson will be so very important as his subcommittee conducts its oversight function in regard to that aspect of Federal narcotics enforcement having to do with the integrity of drug enforcement personnel.

Equally important in this regard will be the testimony of FBI Agents Williams and Hegarty.

However, before going to that stage of the Williams-Hegarty investigation, the subcommittee will begin this section of its inquiry into Federal drug enforcement procedures by hearing from Mr. Dennis Dayle of the Washington, D.C., office of DEA. It was Mr. Dayle who learned of the surveillance reports regarding Mr. Promuto.

Preliminary staff inquiry has found that Mr. Dayle alerted William Durkin, assistant administrator for enforcement for DEA, to the Promuto matter and that Mr. William Durkin then notified Mr. Brosan.

Mr. Brosan testified that when Mr. William Durkin telephoned him in this matter—on September 10, 1974—he, Brosan, then set in motion the integrity investigation by assigning DEA Inspector

Thomas V. Cash to contact the Washington police and seek to obtain more data concerning the information that Mr. Promuto's name was appearing in organized crime and rackets section surveillance reports.

The subcommittee will have as witnesses Mr. William Durkin and Mr. Cash.

The subcommittee will seek to learn from Mr. William Durkin and from Mr. Dayle on precisely what day it was in 1974 that Mr. Dayle alerted Mr. William Durkin to the existence of information regarding Mr. Promuto's activities which had been reported by the Washington Metropolitan Police Department.

The subcommittee will want to learn from Mr. Dayle why he called Mr. William Durkin with this information.

The subcommittee will want to learn from Mr. Dayle if established procedures within DEA required him to notify Mr. William Durkin, the assistant administrator for enforcement, upon learning of the information relating to the Promuto matter.

The subcommittee will want to learn from Mr. William Durkin if, upon receiving this information from Mr. Dayle, he immediately notified Mr. Brosan.

The subcommittee will want to learn from Mr. William Durkin if any time elapsed between his receipt of this information from Mr. Dayle and, if there was a lapse in time, how long it was.

Mr. Brosan briefed Mr. Bartels on the Promuto integrity investigation for the first time in the presence of Robert Richardson, the Associate General Counsel of DEA. Later, according to Mr. Brosan's testimony, Mr. Richardson was given direction of the Promuto integrity investigation and Mr. Brosan was relieved of his duty.

The subcommittee will want to know Mr. Richardson's recollection of the events surrounding the opening of the Promuto integrity investigation and what role he, Richardson, played in the integrity investigation as it went forward.

Preliminary inquiry by the subcommittee staff has found that in the course of the integrity investigation Thomas E. Durkin, Jr., a Newark, N.J. lawyer, came to Washington to interview Mr. Promuto and to conduct other assignments for Mr. Bartels in connection with the Promuto integrity investigation.

Mr. Thomas Durkin's actions in the Promuto integrity investigation have been found to have been carried out independently of the inquiry being conducted by the DEA Office of Inspection, according to information gathered by the staff.

The subcommittee will have Mr. Thomas Durkin as a witness.

The subcommittee will want to learn from Mr. Thomas Durkin the nature of the work he has done for DEA and BNDD before that and the nature of the work he did in connection with the Promuto integrity investigation.

The subcommittee will want to learn from Mr. Thomas Durkin information concerning his role in the shaping of DEA policy as to how DEA should respond to this subcommittee's investigation into integrity problems at DEA and this subcommittee's investigations into drug enforcement operations in general.

Preliminary staff inquiry and the testimony of Mr. Brosan June 11, 1975, indicate, for example, that Mr. Thomas Durkin seemed not to have a conventional security clearance yet he had access to sensitive

information at DEA and his advice and guidance were sought in connection with a wide variety of issues, ranging from the Promuto integrity investigation to this subcommittee's investigation into the occasion when two BNDD agents conducted sweeps of Robert Vesco's New Jersey home and office to determine the possibility that electronic surveillance equipment were installed in the Vesco quarters.

Mr. Brosan testified June 11 that Mr. Thomas Durkin asked him, Robert Richardson and John Lund, another DEA official, many questions about the BNDD agents' sweeps of the Vesco quarters. These sweeps occurred in 1972 when Mr. Vesco was under investigation by the Securities and Exchange Commission in connection with allegations that Mr. Vesco was involved in stock swindles.

Thus, our witnesses in this section of the subcommittee's drug enforcement investigation will include Dennis Dayle, William Durkin, Robert Richardson, Thomas Durkin, Bill D. Williams, Edward Hegarty, James Hutchinson, Laurence Silberman, and John R. Bartels, with Ambassador Silberman to be heard from later.

I wish to emphasize that this subcommittee is primarily concerned with pursuing the allegations of Mr. Tartaglino and Mr. Brosan that the Promuto integrity investigation was obstructed and compromised by Mr. Bartels' actions.

It should be made clear that this subcommittee has received no evidence that Mr. Promuto was ever charged with criminal violations. The investigation which was initiated by the DEA Office of Inspection under Mr. Brosan was concerned with the pursuit of information which, if substantiated, would reflect adversely on the suitability of Mr. Promuto holding high position in the Federal Government.

But, because Mr. Promuto's name has been mentioned, he has been advised that we will grant a request made by him to testify before the subcommittee.

Again, I note that material concerning Mr. Promuto which triggered the investigation is not to be proved or disproved by this subcommittee. However, in conducting these hearings, this subcommittee of necessity will have to examine some of the information regarding Mr. Promuto's alleged associations with persons of criminal reputation to determine a possible motive for any obstructive action on the part of Mr. Bartels.

In that regard, the subcommittee staff has, in its preliminary investigation, developed information indicating that an individual whose name came up in the Promuto integrity investigation in an adverse way had an association not only with Mr. Promuto but also with Mr. Bartels. That person was Dian Barger, also known as Diane De Vito.

The information, originally developed by Mr. Brosan's inspectors, indicated that Ms. Barger was associated with a person listed in BNDD files as being a suspected class I narcotics violator. This person was also suspected of being involved in other criminal acts.

Subsequent information also developed in Mr. Brosan's investigation indicated that Ms. Barger was a user of drugs.

On June 2, 1975, after the staff had interviewed many persons and developed independent information concerning the allegation that Ms. Barger used drugs, an executive session of this subcommittee was held.

At the executive session of June 2, Ms. Barger was given an opportunity to respond to questions pertaining to her alleged use of drugs. She was given the opportunity to respond to questions pertaining to specific instances of drug use. Ms. Barger was given the opportunity to respond to questions in connection with her association with Mr. Promuto and Mr. Bartels.

On advice of counsel, Ms. Barger refused to answer on the grounds that her answers would tend to incriminate her.

At this time, after required subcommittee vote and prior to the start of these hearings, I am releasing the transcript of the June 2 executive session, with the understanding that the exhibits introduced at the hearing be sealed for the time being since information contained therein also involves the activities of other individuals. I think that is the only proper way to handle it.

In fairness to Ms. Barger, I wish to note that her attorney, Mr. Oscar Goodman of Las Vegas, Nev., advised her to invoke the fifth amendment and that his advice in this instance may have been caused, in part at least, by the fact that there is a pending criminal case against her in San Diego, Calif.

On May 3, 1975, Ms. Barger and another person were arrested and charged with possession of marihuana in San Diego by local authorities.

Ms. Barger has entered a plea of not guilty to this charge.

STATEMENT OF SENATOR CHARLES H. PERCY

Senator PERCY. The Senate Permanent Subcommittee on Investigations reconvenes today in order to continue its indepth oversight hearings concerning the effectiveness and efficiency of Federal drug law enforcement. Last week, testimony focused on a number of serious deficiencies in the Federal drug effort ranging from the huge concentration of Federal resources used in pursuing illicit narcotics users and small-time traffickers—the so-called class 3 and class 4 violators—to allegations that some of the supervisory echelon of the Drug Enforcement Administration (DEA) is dominated by individuals who are the subject of resolved integrity allegations.

This week the subcommittee will concentrate on the manner in which the Office of Inspection at DEA investigated certain allegations concerning Mr. Vincent L. Promuto, formerly the Director of Public Affairs at DEA. Mr. Promuto's association with known felons, some of whom were allegedly involved in gambling, prostitution, and the sale and use of illicit drugs, was brought to the attention of high-ranking DEA officials by the Washington, D.C. Police Department. On June 10 and 11, the subcommittee heard testimony regarding these allegations from Messrs. Andrew C. Tartaglino and George B. Brosan, the former Acting Deputy Administrator and former Acting Chief Inspector respectively. Both of these men, who were deeply involved in this case, have stated under oath that the Promuto investigation was impeded and obstructed by various actions taken by the then Administrator John R. Bartels, Jr. When questioned closely about this matter, Mr. Brosan asserted that these actions amounted to a "coverup" of the Promuto case. This is a most serious charge and one that the subcommittee fully intends to pursue.

At the outset, I should like to emphasize as strongly as possible the limited nature of this subcommittee's interest in this case. What is of primary concern here is the manner in which DEA and the Department of Justice reviewed and investigated the information they received and not necessarily the truth or falsity of the allegations themselves. Evidence will be received and witnesses will be heard concerning these and other allegations for the sole purpose of indicating the seriousness of the charges and to demonstrate that a thorough DEA inquiry was mandatory to determine whether Mr. Promuto had in any way been compromised and whether any administrative and/or legal action was advisable.

In addition to hearing testimony from DEA witnesses, the subcommittee will consider the testimony of two FBI agents, Bill Williams and Edward Hegarty, and former Associate Deputy Attorney General James Hutchinson, concerning a Department of Justice inquiry into the thoroughness of the investigation that had been undertaken by DEA's Office of Inspection as well as other specific charges of mismanagement made by Mr. Tartaglino. This Department of Justice investigation was under the direct supervision of former Deputy Attorney General Laurence H. Silberman who is now U.S. Ambassador to Yugoslavia. What the subcommittee will want to determine is how this "special review" was conducted, who was interviewed, what reports were issued, and how Mr. Silberman was able to determine that "Mr. Tartaglino's concerns, although raised in good faith, were without substantial foundation"—press release of then Deputy Attorney General Laurence H. Silberman, January 16, 1975.

As I noted in my statement at the opening of these hearings on June 9, 1975, the vast majority of all Federal drug agents, supervisors and administrators, are individuals of unquestioned honesty, fully dedicated to eliminating the plague of drug abuse. There can be no doubt that the temptations of corruption are greater in drug enforcement than any other field of law enforcement. But this is all the more reason for DEA and the Department of Justice to be constantly vigilant for any improprieties or signs of corrupt activity.

In the course of this series of hearings, some unpleasant but fundamental questions relating to the ability and willingness of DEA and its predecessor agencies to investigate their own internal security and integrity problems will be raised. Many of these questions have been considered before by congressional and executive branch probes but never have the broader integrity issues been addressed and effective legislative or administrative action taken. To gloss over these issues once again, to not pursue them vigorously and fairly, to limit the scope of our inquiry simply to specific improprieties while ignoring broader problems, would be to avoid our duty and to insure that patterns of corruption and malfeasance will persist and emerge elsewhere.

Chairman JACKSON. The subcommittee will now call Mr. Dennis Dayle to testify to establish the chronology of events leading up to the announcement by Mr. Silberman January 16, 1975 Mr. Feldman?

Mr. FELDMAN. Mr. Chairman, I would like to clear up one possible ambiguity. Mr. Promuto has not made a request under rule 14 to testify before the subcommittee at this time. I just wanted to point that out, since that paragraph in your statement might be misinterpreted.

Chairman JACKSON. Mr. Bartels.

Mr. FELDMAN. Mr. Bartels has made a request and he is scheduled to testify Friday at 10 o'clock.

[At this point Senator Nunn entered the hearing room.]

Chairman JACKSON. Thank you.

We will now call Mr. Dennis Dayle to testify to establish the chronology of events leading up to the announcement by Mr. Silberman on January 16, 1975.

Mr. Dayle, if you will raise your right hand and be sworn. Do you solemnly swear that the testimony you are about to give before this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DAYLE. I do.

TESTIMONY OF DENNIS DAYLE, ASSISTANT SPECIAL AGENT IN CHARGE OF THE WASHINGTON DISTRICT, DRUG ENFORCEMENT ADMINISTRATION

Chairman JACKSON. You may be seated. I am going to ask Senator Nunn to chair the hearing. We are getting out an energy bill in the Interior Committee. They need a quorum down there.

Senator NUNN [presiding]. Mr. Dayle, why don't you proceed with your statement? Do you have a statement?

Mr. DAYLE. No, sir, I do not.

Senator NUNN. Mr. Dayle, we have a series of questions we would like to ask you relating to the previous testimony that has been given to this committee.

Please, first of all, start off by giving a resume of your background and employment in the Federal Narcotics Enforcement.

Mr. DAYLE. I entered the Federal Enforcement Service with the Federal Bureau of Narcotics in Chicago, Ill., in 1958 and I have been employed continuously in the various succeeding agencies of FBN in the Federal Government which had primary responsibility for the enforcement of the Federal drug laws from that time to the present.

From the Federal Bureau of Narcotics, where I was assigned both domestically and overseas, I transferred to the Bureau of Drug Abuse Control and remained with that organization in various places in the United States until the creation of the Bureau of Narcotics and Dangerous Drugs.

I remained with that agency in various positions and at various locations until the creation of the Drug Enforcement Administration, where I am now employed as the assistant special agent in charge of the Washington District Office of DEA.

Senator NUNN. That is your current position?

Mr. DAYLE. Yes, sir, it is.

Senator NUNN. You are the assistant special agent in charge of?

Mr. DAYLE. Of the Washington District Office of the Drug Enforcement Administration.

Senator NUNN. Would you tell us what your responsibilities are in your current position?

Mr. DAYLE. My responsibilities are to act as the special agent in charge in the absence of that official, also, after monitoring the enforcement activities of the office, to make recommendations as to in-

vestigative techniques, procedures and directions to the SAIC as regards various investigations being conducted within the office.

I also supervise a group of enforcement agents that perform a variety of enforcement tasks.

Senator NUNN. What was your position in the month of August 1974?

Mr. DAYLE. During that period of time I was the ad interim special agent in charge, pending the selection of the special agent in charge, and that gentleman, Mr. Morino H. Milano, reported for duty on September 15 of last year, and it was at that time that I stepped back to my present position of the assistant special agent in charge.

Senator NUNN. How long were you in the position you occupied in August of 1974? When did you start in that position? I understand you terminated in that particular position on September 15?

Mr. DAYLE. Yes, sir, that is correct.

Senator NUNN. When did you take over that position?

Mr. DAYLE. During the month of June of that year.

Senator NUNN. June 1974 until September 15, 1974?

Mr. DAYLE. That is correct.

Senator NUNN. Will you repeat for the record exactly what that position was and give us in layman's language what the function of that position was?

Mr. DAYLE. That position, acting special agent in charge, had primary responsibility under the direction of regional management located in Baltimore, Md., for the administrative functioning and enforcement productivity of the office; that is to say, the full range of enforcement activities and the administrative necessities for the entire complement of both professional as well as support personnel.

Senator NUNN. In other words, it was related to personnel who worked for DEA?

Mr. DAYLE. Yes, sir; that is correct.

Senator NUNN. You did not have the responsibility to go out and investigate street narcotic sales and that kind of thing, but your work was related to internal personnel and administration. Is that right?

Mr. DAYLE. No; as I pointed out, sir, in addition to the administrative side of the responsibilities of the office the primary responsibility for the enforcement product of the office is also that of the special agent in charge. He accomplishes that through his professional staff; namely, the agents and supervisors assigned to the office.

Senator NUNN. Would you relate to the subcommittee how, and under what circumstances, you first learned of adverse information from the Metropolitan Police Department on Vincent Promuto?

Mr. DAYLE. During the middle of August, John Arntz—

Senator NUNN. August 1974?

Mr. DAYLE. Yes, sir—a group supervisor in the Washington District Office came to me and related that he had received information from an officer of the Metropolitan Police Department, who was assigned to the Organized Crime Intelligence Unit and whose name was Officer Shoffler.

Senator NUNN. How do you spell that?

Mr. DAYLE. I can only guess at the spelling. I believe it is S-c-h-a-f-f-l-e-r.

Mr. FELDMAN. Mr. Chairman, just for the record, it is Carl M. Shoffler, S-h-o-f-f-l-e-r.

Senator NUNN. That is the same person you are talking about?

Mr. DAYLE. Yes, sir, I believe it is. That unit of the Metropolitan Police Department was in possession of certain information and allegations concerning Mr. Vincent Promuto and that they involved his being observed at various places in the city of Washington in the company of persons alleged to be involved in gambling offenses within the city, and it had connotation of his being associated with organized crime figures.

Senator NUNN. Do you remember the date that you received this information?

Mr. DAYLE. No, sir, I do not remember the exact date.

Senator NUNN. Please give us the best estimate of the date, as you can recall it.

Mr. DAYLE. I am approximating the middle of August because I feel that it was approximately a month prior to the onsite arrival in the Washington District Office of Mr. Milano who reported there on September 15.

Senator NUNN. Your best estimate is that it was approximately August 15?

Mr. DAYLE. That is true.

Senator NUNN. Are you familiar with an August 19 letter from the Metropolitan Police Department?

Mr. DAYLE. I am only familiar with having been told of its existence.

Senator NUNN. When were you told of the existence of this letter? Was it prior to this conversation you had to which we just referred?

Mr. DAYLE. No; it was not.

Senator NUNN. It was after that?

Mr. DAYLE. It was after that. It was on May 20 of this year, sir.

Senator NUNN. Several months after that, you didn't know about the letter at that time?

Mr. DAYLE. That is right.

Senator NUNN. This was oral conversation you had?

Mr. DAYLE. Yes, it was.

Senator NUNN. Not by telephone; it was person to person?

Mr. DAYLE. No, it was person to person between Mr. Arntz and myself.

Senator NUNN. When did that conversation take place?

Mr. DAYLE. Approximately the middle of August.

Senator NUNN. Where was the location?

Mr. DAYLE. In my office, at that time my office, the Office of the Special Agent in Charge in the Washington District Office in Washington, D.C.

Senator NUNN. What action did you take upon receipt of the information and what was the result?

Mr. DAYLE. I called the Baltimore Regional Office and I spoke with the regional director there, Mr. Irvin Swank, and advised him of the information that I had just received from Mr. Arntz.

Senator NUNN. Was that on the same date that you received this information from Mr. Arntz?

Mr. DAYLE. Yes. It was just 2 or 3 minutes after I had completed the conversation with Mr. Arntz.

Senator NUNN. Was this in the morning or afternoon, or do you recall?

Mr. DAYLE. I believe it was afternoon.

Senator NUNN. You think it was after lunch?

Mr. DAYLE. Yes.

Senator NUNN. Both your meeting with Mr. Arntz and your telephone call to Baltimore?

Mr. DAYLE. Yes.

Senator NUNN. So you immediately made this information known to your supervisor in Baltimore?

Mr. DAYLE. That is correct.

Senator NUNN. What was his name again?

Mr. DAYLE. His name is Mr. Irvin C. Swank, S-w-a-n-k.

Senator NUNN. Is he your immediate supervisor, or rather was he, when you were in the position you held in August?

Mr. DAYLE. My immediate supervisor would be Mr. Swank's deputy. However, I transmitted the information to Mr. Swank, the regional director. I believe it was because the Deputy Regional Director was not there at that moment.

Senator NUNN. What happened after that? What was the result of that phone call, to the best of your knowledge?

Mr. DAYLE. I can only make an assumption that based on my conversation with Mr. Swank, and based even more on the information that I gave him that nothing was done at that time concerning the information by Mr. Swank or myself.

Senator NUNN. Would you relate for the subcommittee how and when you learned that the metropolitan police organized crime unit had relayed the Promuto information to the U.S. Attorney's Office?

Mr. DAYLE. I was told that in a subsequent meeting with Mr. Arntz, which took place a week or 10 days later.

Senator NUNN. A week or 10 days after approximately August 15?

Mr. DAYLE. Yes, that is an approximation. I am saying the middle of August and I think that there are several other governing factors which might properly place the incident in its proper place in time.

At that time Mr. Swank was a newly appointed regional director and he arrived for duty in Baltimore some time late in the month or during the second half of the month of August.

Of course, Mr. Swank would have to have been there for me to call him and therefore I am saying, I am suggesting, that the middle of August is an approximation.

In any event, I was told by Mr. Arntz, as he was told by Mr. Shoffler, that the information concerning Mr. Promuto was going to be relayed by the organized crime intelligence unit to the Metropolitan Police Department's internal security unit for transmittal to DEA's office of inspection.

That information, in addition to all of the other matters discussed between Mr. Arntz and myself, were the subject of the conversation which I had with Mr. Swank a few minutes after Mr. Arntz left my office.

Senator NUNN. Did you call Mr. Swank in Baltimore immediately upon receipt of this information?

Mr. DAYLE. Yes, I did.

Senator NUNN. This was the second phone call?

Mr. DAYLE. This was the first phone call. It was followed by a second phone call about a week or 10 days later again after Mr. Arntz came to my office and told me that he had been advised by officer Shoffler that the procedure of transmitting the information had been changed and that no longer would it be the case that the matter would be referred to DEA's office of inspection after the intelligence unit referred it to the metropolitan police department's internal security department, but it would be referred directly to the U.S. attorney's office.

Senator NUNN. Did Mr. Swank give you any advice in either of these phone calls?

Mr. DAYLE. He made—he gave me an instruction at the time that I had the second conversation with him.

Senator NUNN. The second was approximately 10 days after the first; is that right?

Mr. DAYLE. That is correct; yes, sir.

Senator NUNN. Both of those are approximations; the 10 days is not a precise time either; is that right?

Mr. DAYLE. It is definitely an approximation, sir.

Senator NUNN. What were the instructions he gave you after the second phone call?

Mr. DAYLE. After relaying the information told to me by Mr. Arntz on the second of our two meetings, Mr. Swank instructed me to contact Mr. Durkin at DEA headquarters and to transmit the information to him, telling him that Mr. Swank had asked me to do so.

Senator NUNN. Which Mr. Durkin is that; is that Mr. William Durkin?

Mr. DAYLE. It is Mr. William J. Durkin; yes, sir.

Senator NUNN. What was Mr. William J. Durkin's position at this time?

Mr. DAYLE. He was the assistant administrator for enforcement at that particular time.

Senator NUNN. This was on the second phone call? This was not after the first phone call?

Mr. DAYLE. That is correct.

Senator NUNN. Was there any advice after the first phone call or any instructions?

Mr. DAYLE. Only that the information was of such a nature that it should be treated as sensitive and that it should be discussed only on a need-to-know basis, and Mr. Swank also asked me to keep him updated on any new or additional occurrences in the matter.

Senator NUNN. After Mr. Swank advised you to get in touch with Mr. William Durkin, did you contact Mr. Durkin?

Mr. DAYLE. Yes, sir; I did.

Senator NUNN. What was the approximate date of this contact?

Mr. DAYLE. It was the same day as my second telephone conversation regarding the Promuto matter and just a few minutes after I terminated the conversation between Mr. Swank and myself.

Senator NUNN. So this would have been about approximately 10 days after approximately August 15?

Mr. DAYLE. That is correct.

Senator NUNN. Would you be pretty confident that this would have been before September 1?

Mr. DAYLE. I wouldn't be confident, sir; I would say that it was possible.

Senator NUNN. Would you say it was possible or probable?

Mr. DAYLE. Possible.

Senator NUNN. Let me ask you this in terms of these dates. Are you pretty confident that the August 15 date is within 2, 3, or 4 days one way or the other, or could it have been August 24?

Mr. DAYLE. Are you indicating that the first telephone conversation?

Senator NUNN. The first telephone call.

Mr. DAYLE. I don't think that it was the 25th, but it could have been.

Mr. FELDMAN. Mr. Chairman, may I state for the record that the Metropolitan Police Department letter to the U.S. attorney was August 19, 1974, and therefore I would presume that the information and the first telephone conversation had to be before that, August 19, 1974. Is that correct?

Mr. DAYLE. I don't think we can make that assumption, sir, because up until May 20, when I was told that there was in fact a letter transmitting this information to the U.S. Attorney's Office I was not told of such a referral letter by Mr. Arntz because he did not know, either at the time of the first or the second conversation that I had with him, that the Metropolitan Police Department was going to, was in the process of, or had already referred the information.

[At this point Senator Percy entered the hearing room.]

Senator NUNN. Let's get this sequence in order again. The first phone call would have been somewhere around August 15; the second phone call would have been approximately 10 days after August 15, which would have been August—around August 25.

You are saying you are not absolutely certain that the second phone call took place prior to September 1, although you think it is possible that it did?

Mr. DAYLE. It is possible that it could have; yes, sir.

Senator NUNN. That is the same day you talked to Mr. Durkin?

Mr. DAYLE. Yes, sir.

Senator NUNN. If you had to pick a date, August 25 would be your best guess; is that right?

Mr. DAYLE. No, sir; it would be a guess.

Senator NUNN. What would be your best guess? If you were going to say August 20 or September 1 or August 25, which one of those dates would you say would be most likely?

Mr. DAYLE. I really don't feel qualified within the bounds of accuracy to come up with such a thing as a best guess. I will say—

Senator NUNN. You felt qualified to say it was approximately the 15th; didn't you?

Mr. DAYLE. Yes.

Senator NUNN. It was approximately 10 days later. Why would you not be qualified to say it was approximately August 25?

Mr. DAYLE. As a best guess, I would say it was late August.

Senator NUNN. Late August?

Mr. DAYLE. Yes.

Senator NUNN. Do you have any outside date that it could have been? Do you have any parameters beyond which this couldn't have happened?

Mr. DAYLE. It could not have happened until Mr. Swank was physically located in the Baltimore office. I do not know when that occurred because Mr. Swank took some annual leave.

He was in the process of moving his family and there were many dates where he was there and other dates where he was not.

Senator NUNN. Let's get back to your conversation with Mr. Durkin. What did you tell Mr. Durkin and what did he say to you?

Mr. DAYLE. I told Mr. Durkin that Mr. Swank had instructed me to call him and I informed Mr. Durkin of the two conversations with John Arntz, the group supervisor, and updated him at that time on the text of each of those two meetings with Arntz.

He acknowledged receipt of the information; that is, Mr. Durkin did.

Senator NUNN. Were there any instructions one way or the other? Did you pass on any instructions to him or did he pass on any instructions to you, or was it just left that you had relayed the information?

Mr. DAYLE. The only thing in addition to his acknowledgment of receipt of the information was that, of course, it was a sensitive matter and should be treated as such, discussed only on a need-to-know basis and again asking that he be updated on any new or additional occurrences.

Senator NUNN. Did he appear to have already heard about this information or was this the first he had heard of it, according to your impression?

Mr. DAYLE. I drew no impression one way or the other, sir.

Senator NUNN. He didn't say or he didn't indicate that he had ever heard of this before? He didn't indicate surprise?

Mr. DAYLE. He indicated neither one nor the other.

Senator NUNN. Again on this date business, to the best of your memory, give us your best information about that date, to the best of your memory?

Mr. DAYLE. I would say that it would be the last week in August.

Senator NUNN. Your best recollection would be some time during the last week in August?

Mr. DAYLE. That is correct.

Senator NUNN. Some time between, say, September 1 and August 24 or 25?

Mr. DAYLE. Yes, sir; that is possible.

Senator NUNN. Did a new agent in charge assume command of the Washington field office on September 1?

Mr. DAYLE. He did.

Senator NUNN. What was his name?

Mr. DAYLE. His name was Marino H. Milano.

Senator NUNN. Do you recall specifically that your conversation with Durkin took place before this event?

Mr. DAYLE. I do.

Senator NUNN. So if we had to draw a parameter, September 1 would be the latest date the conversation with Durkin could have taken place?

Mr. DAYLE. That is correct, sir.

Senator NUNN. How do you relate those two things? Do you recall specifically when the new agent took charge?

Mr. DAYLE. I know the precise date that he did; yes, sir.

Senator NUNN. How do you determine that conversation with Mr. Durkin took place before that? In other words, what is the basis for that assertion?

Mr. DAYLE. The basis for that is if I had not been the acting special agent in charge it could not have happened that I would have received the information because Mr. Milano, acting in his present position, would have rightfully and realistically received the information.

Senator NUNN. In other words, if he had already taken over on September 1, then he would have been the recipient of the information and not you?

Mr. DAYLE. That is correct.

Senator NUNN. So that is the reason you are certain about the September 1 date and the fact that you received the information prior to September 1 and the second conversation at Baltimore was before September 1 and your conversation with Mr. William Durkin was before September 1?

Mr. DAYLE. My best guess would be that that is correct; yes, sir.

Senator NUNN. After this took place, what involvement, if any, did you have in the Promuto investigation after your conversation with Mr. William J. Durkin?

Mr. DAYLE. I had nothing to do with the Promuto investigation at all, sir.

Senator NUNN. That was the last you had any direct or indirect involvement in this investigation?

Mr. DAYLE. I am somewhat in question about what you mean when you say involvement. I have spoken with several people.

Senator NUNN. I can't hear. We have so much interference here.

Mr. DAYLE. I have spoken with several people about the Promuto investigation. However, I have not participated either directly or indirectly in the Promuto investigation. Some of the people that I have spoken with are members of this committee staff.

Senator NUNN. You have talked with the staff about it?

Mr. DAYLE. Yes, I have.

Senator NUNN. But you, as far as your official responsibilities have not had any other official connection with the Promuto case since your conversation with Mr. William J. Durkin which was at some point prior to September 1, 1974?

Mr. DAYLE. That is correct.

Senator NUNN. Do you have any direct knowledge of any other events that this subcommittee should know about relating to the Promuto investigation even though you weren't directly involved?

Mr. DAYLE. No, I do not.

Senator NUNN. Those are all my questions.

Senator PERCY. Mr. Chairman, I have no questions of Mr. Dayle. I think your line of questioning has been very good indeed. I would like to ask unanimous consent to insert in the record after Senator Jackson's statement an opening statement for our hearing today and

merely indicate that these hearings this week continue our efforts to have an in-depth oversight hearing concerning the effectiveness and efficiency of Federal drug law enforcement.

This week we will concentrate on the manner in which the Office of Inspection at DEA investigated certain allegations concerning Mr. Promuto, former Director of Public Affairs at DEA. I think the most serious charge made during the course of our hearings last week was by Mr. Brosan, who asserted that certain actions that he described amounted to what he determined a "coverup" of the Promuto case.

This is an extraordinarily serious charge and one that the subcommittee fully intends to pursue.

I would like to emphasize, Mr. Chairman, once again as strongly as possible the narrower scope of the subcommittee's interest in this case. What is of primary concern to us is the manner in which DEA and the Department of Justice reviewed and investigated the information they received and not necessarily the truth or falsity of the allegations themselves.

Evidence will be received and witnesses will be heard concerning these and other allegations for the sole purpose of indicating the seriousness of the charges and to demonstrate that a thorough DEA inquiry was mandatory to determine whether Mr. Promuto had in any way been compromised and whether any administrative and/or legal action was advisable.

I would just like to repeat also the statement that I made at the opening of these hearings on June 9, that the vast majority of all the Federal drug agents and supervisors and administrators are individuals of unquestioned honesty and fully dedicated to eliminating the plague of drug abuse.

There can be no doubt that the temptations of corruption are greater in drug enforcement than in any other field of law enforcement. This is all the more reason for the DEA and the Department of Justice to be constantly vigilant for any improprieties or signs of corrupt activities.

I certainly think it is our job as an oversight subcommittee to do everything we can to bring out the facts in this case without becoming too preoccupied with the details of them, to keep in mind our overall goal, which is to insure that the Agency itself corrects the abuses that have been brought to light.

Thank you, Mr. Chairman.

Senator NUNN. Thank you, Senator Percy.

Thank you, Mr. Dayle. Those are all the questions we have at the present time.

Our next witness is Mr. William Durkin who is the DEA Assistant Administrator for Enforcement. I don't believe you have been sworn. Would you please raise your right hand?

Do you swear that the testimony you are about to give before this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DURKIN. I do.

**TESTIMONY OF WILLIAM DURKIN, ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT, DRUG ENFORCEMENT ADMINISTRATION**

Senator NUNN. Take your seat. Do you have a statement you would like to make?

Mr. DURKIN. I have no prepared statement; no, sir. I would like to make one observation based on the testimony of Mr. Dayle.

Senator NUNN. Certainly. Go ahead.

Mr. DURKIN. At the conclusion of your questioning, Mr. Chairman, you were asking Mr. Dayle whether he would have reported the Promuto information to Mr. Milano and you were centering on September 1 as being Mr. Milano's reporting date to Washington, D.C. My recollection is that earlier Mr. Dayle stated Mr. Milano reported September 15. That may be a point the committee may want to explore.

Senator NUNN. Let's ask Mr. Dayle to come back and let's clarify that right at the present time. I think that is the best time to do it, while he is still here.

Mr. Dayle, would you tell the subcommittee, to the best of your recollection, when Mr. Malino reported physically for his new position?

Mr. DAYLE. Yes, sir. It was on September 15.

Senator NUNN. Where did the September 1 date come from that we were just talking about?

Mr. DAYLE. I think that came up in your attempt to come up with a more precise guess of the time during which the second call to Mr. Swank and my first call to Mr. Durkin took place.

Senator NUNN. I thought you agreed that September 1 was the date that he reported.

Mr. DAYLE. No, sir. My position during this particular proceeding has been that I recall the date very precisely as September 15 and it was because of that date, you may recall, that I estimated that the first contact from Mr. Arntz was about 1 month prior to that time and, therefore, we were in about the middle of August.

Senator NUNN. I am really puzzled now because just a moment ago I asked you if you were confident that this second conversation and your conversation subsequent to that with Mr. Durkin took place prior to September 1. You said you thought that was your position.

Mr. DAYLE. No. It was not my understanding that that is what you were asking me. If it was, I misunderstood and would like at this time to make the record accurate as to that point. Mr. Milano arrived on duty on September 15 and it was on that date that I assumed my current position of assistant special agent in charge and had Mr. Milano been on duty at the time that the Arntz material came into the Washington office, he would have received it, rather than I.

Mr. DURKIN. Mr. Chairman, if I may make one more observation, I believe it may also be relevant to the committee's inquiry if we had an actual date that Mr. Swank reported for duty in Baltimore. In discussions I had earlier today, I had the impression that Mr. Swank reported for duty on or about August 25. If Mr. Dayle had an initial discussion and then a subsequent discussion with Mr. Swank before

he talked to me, the whole matter as to whether there was a lapse of time or not may be resolved. I do believe that is important.

Senator NUNN. We will get those dates straight. We just want to make sure while Mr. Dayle is here. So your testimony now, Mr. Dayle, is that September 15 is the date that the new agent took charge. Is that right?

Mr. DAYLE. Yes, sir; that is correct.

Senator NUNN. September 1 is not the date that he either appeared physically or that the position changed or anything else? September 1 had no relevance whatsoever to the new agent's appearance?

Mr. DAYLE. No, sir. September 1, as I recall, first came up in the context of your trying to establish the date of the second phone call to Mr. Swank.

Senator NUNN. Does your recollection still hold, as you have testified a minute ago, the last week in August is your best recollection as to when you made this information known to Mr. William Durkin?

Mr. DAYLE. I would say that it is. However, as I have also stated during my testimony this morning, it is contingent, that date is contingent on several factors. One, when did Mr. Swank arrive on duty? Two, when the first conversation between Mr. Arntz and I actually took place, I am estimating that it took place about a month prior to Mr. Milano's arrival at the office on September 15, which placed us somewhere in the middle of August. But it could not have happened unless Mr. Swank was on duty in Baltimore, Md., because in fact after the first, as well as after the second conversation with Mr. Arntz, I called Mr. Swank in both of those instances.

Senator NUNN. Let's go ahead with Mr. Durkin.

Mr. Durkin, please state your full name and your present position in DEA.

Mr. DURKIN. My name is William J. Durkin, D-u-r-k-i-n. I am the Assistant Administrator for Enforcement of the Drug Enforcement Administration.

Senator NUNN. How long have you served as Assistant Administrator for Enforcement?

Mr. DURKIN. Since DEA's inception in July of 1973.

Senator NUNN. Who appointed you to this position and when was your appointment made?

Mr. DURKIN. I was put in an acting capacity, in July, by Mr. Bartels and then several months later, the papers were processed to effectuate the assignment.

Senator NUNN. Mr. Durkin, starting when you first joined the Federal Bureau of Narcotics, please indicate the positions you have held and the dates of your service in each position.

Mr. DURKIN. Yes, sir. I started with the Federal Bureau of Narcotics in 1951, in Chicago, Ill. I was subsequently transferred to Philadelphia; Philadelphia to New York City; New York City to Pittsburgh, Pa., as agent in charge. In 1959 I believe I was transferred, returned to Chicago as the Enforcement Assistant to the supervisor.

I was subsequently transferred to Washington, D.C., as a staff assistant to the Assistant Commissioner for Enforcement. In 1963, I transferred to Mexico City as a district supervisor of the Bureau of Narcotics in Latin America. In 1967, I returned to Washington and was appointed the Assistant Commissioner for Compliance which involves regulatory activities and in—that was 1967. In 1968, I transferred to New York City as the Regional Director of BNDD and in 1971, I was transferred to Washington, D.C., in the position of Chief of the Criminal Enforcement Division. In July, I assumed my new position.

Senator NUNN. Mr. Durkin, please describe for the subcommittee how you learned of the existence of adverse information regarding Vincent Promuto.

Mr. DURKIN. I received that information as a result of a telephone call from Mr. Dennis Dayle, assistant agent in charge of the Washington District Office.

Senator NUNN. Can you give us your best estimate of the date of this telephone call?

Mr. DURKIN. My best estimate, sir, is September 10, 1974.

Senator NUNN. How do you recollect that date?

Mr. DURKIN. I have examined all of my personal notes and records to determine whether I had written the information down. I had not, but I know what I did with the information and the recipient of the information did record it and advised they received the information from me on September 10. It is on that basis I said I received the information.

Senator NUNN. Who was the recipient of that information?

Mr. DURKIN. When I received the information from Mr. Dayle I referred it to Mr. Brosan, the Acting Chief Inspector.

Senator NUNN. So September 10 comes from Mr. Brosan's recollection, rather than your own. Is that right?

Mr. DURKIN. From the records in the Office of Inspection, yes, sir.

Senator NUNN. So independent of those records from Mr. Brosan, you don't have any independent recollection of the date?

Mr. DURKIN. My independent recollection, sir, would put it in the same timeframe because I recall when receiving the information, the administrator, John Bartels, was then in Europe or the Middle East with Mr. Promuto.

Senator NUNN. Do you recall that when you received that information from Mr. Dayle, that Mr. Promuto and Mr. Bartels were in Europe?

Mr. DURKIN. That is my recollection; yes, sir.

Senator NUNN. How do you arrive at that recollection? Do you connect any particular events to get to that conclusion?

Mr. DURKIN. I arrived at that impression, sir, because of Mr. Promuto's position and being with Mr. Bartels, I thought it was important that the office of inspection be aware of the information and determine the extent of the information so that appropriate advice could be given to the administrator.

Senator NUNN. What action did you take when you learned of the information from Mr. Dayle?

Mr. DURKIN. I immediately contacted Mr. Brosan by telephone.

Senator NUNN. The same date?

Mr. DURKIN. Yes, sir.

Senator NUNN. Do you have any idea what time of the day it was?

Mr. DURKIN. My recollection was in the morning.

Senator NUNN. Sometime in the morning?

Mr. DURKIN. Yes, sir.

Senator NUNN. So your recollection is that as soon as you got a telephone call from Mr. Dayle, that you, within that same date within a matter of minutes—is that right, or would it be hours—contacted Mr. Brosan by telephone?

Mr. DURKIN. My best recollection would be within minutes or if it were delayed any length of time, I just feel certain I would have made a note to myself. I would have recorded the information.

Senator NUNN. You didn't make any kind of written memorandum of that?

Mr. DURKIN. I have been unable to locate any and I have no recollection of making any, sir.

Senator NUNN. Is your secretary now the same secretary you had at that time?

Mr. DURKIN. No, I don't believe so. No, sir.

Senator NUNN. Who is the secretary you had at that point in time?

Mr. DURKIN. I believe her name was Mrs. Norma Stout.

Senator NUNN. Stout?

Mr. DURKIN. Stout, S-t-o-u-t.

Senator NUNN. Where is she now?

Mr. DURKIN. She has resigned from Government service. I believe she and her husband and family are in the Washington area.

Senator NUNN. Have you checked with her about whether there was any memorandum?

Mr. DURKIN. No. I did not ask her; no, sir.

Senator NUNN. Did you discuss the Promuto information with anyone else in DEA other than Mr. Brosan?

Mr. DURKIN. The Promuto information, sir? There was an allegation or Mr. Dayle told me that there was information they received regarding Mr. Promuto. I furnished that to Mr. Brosan. Discuss it? No, sir. I didn't discuss it. I would probably ask people how it was coming, are there problems involved or something like that; but I had no indepth discussion with anybody.

Senator NUNN. Did you relate this information to anyone else other than Mr. Brosan?

Mr. DURKIN. No, sir.

Senator NUNN. Did you discuss the Promuto information with attorney Thomas Durkin?

Mr. DURKIN. Discuss the Promuto investigation? No, sir. I didn't know the facts of the Promuto investigation or the allegations.

Senator NUNN. Let's say information. Did you discuss the information you had gotten from Mr. Dayle on the telephone with anyone else other than Mr. Brosan?

Mr. DURKIN. I don't recall, sir. I have not made a secret of the fact that I received the information from Dayle and referred it promptly to the office of inspection.

Senator NUNN. Who have you not made a secret of that to?

Mr. DURKIN. There were attorneys in the Department of Justice making inquiries in this matter. I testified before them.

Senator NUNN. Let's put it this way: In this timeframe, in the 2- or 3-day period after you got the information from Mr. Dayle, do you recall having any conversations about this Promuto information with anyone other than Mr. Brosan?

Mr. DURKIN. No, sir, I don't.

Senator NUNN. You don't recall any conversations with anyone about the Promuto information other than Mr. Brosan?

Mr. DURKIN. Within several days, within several days after the receipt of the information, I don't. No, sir.

Senator NUNN. You had later conversations with attorneys investigating this whole episode. I assume, several months later?

Mr. DURKIN. Yes. It was months afterwards, sir.

Senator NUNN. So the only conversations of any nature you had with anyone regarding the Promuto information that was relayed to you by Mr. Dayle would have been your conversation with Mr. Brosan?

Mr. DURKIN. Or just general reference to the matter with other DEA officials.

Senator NUNN. Who would they be?

Mr. DURKIN. It might be Mr. Bartels, Mr. Phil Smith.

Senator NUNN. How about Mr. Tom Durkin?

Mr. DURKIN. Only of the very general reference; just the Promuto matter and then it wouldn't be further discussed.

Senator NUNN. How would they have known about it? Did you assume Mr. Brosan had talked about it to Mr. Thomas Durkin or Mr. Bartels?

Mr. DURKIN. No, sir, I believe my recollection is that Mr. Bartels had appointed Mr. Bob Richardson, Mr. John Lund, I believe to oversee or advise in connection with the Promuto matter and Mr. Tom Durkin, they were discussing it with him or had conversations with Mr. Durkin in relation to that.

Senator NUNN. Counsel would like to ask a question.

Mr. FELDMAN. Let me just try to get it clear in my own mind on this question. You say you received this information on the 10th of September?

Mr. DURKIN. That is my best recollection.

Mr. FELDMAN. Because you received and transmitted the information on the same day that Mr. Brosan's records show it was reported to him, on the 10th of September?

Mr. DURKIN. Yes, sir.

Mr. FELDMAN. On the 17th of September, Mr. Brosan, according to his previous testimony, met with Mr. Bartels to discuss this matter?

[At this point Senator Percy withdrew from the hearing room.]

Mr. DURKIN. Yes.

Mr. FELDMAN. Did you talk to anyone between the 10th of September and the 17th of September about this matter?

Mr. DURKIN. I have no recollection of discussing it with anybody. No, sir, I believe I was out of town on that particular date, too. On September 16 and 17, I was out of town. Yes.

Senator NUNN. So your best recollection is that you received this information, according to your recollection of Mr. Brosan's testimony, and you conveyed it to Mr. Brosan on September 10. Between September 10 and September 17, you don't recall having any conversation with anyone in DEA about the Promuto information?

Mr. DURKIN. Other than Mr. Brosan? No, sir, I don't. I believe I did have conversation with Mr. Brosan about the importance of determining whether the information warranted getting in touch with Mr. Bartels.

Senator NUNN. You heard the testimony of Mr. Dennis Dayle this morning. Mr. Dayle stated that according to his best recollection, he conveyed this information to you prior to September 1, or at least during the last week in August. How do you explain the discrepancy between this date and the September 10 date that you feel you received this information?

Mr. DURKIN. I very seriously considered that, Mr. Chairman, to see if there was a logical explanation. Based on what I heard today, Mr. Dayle stated he first reported it to Mr. Swank and subsequently he had a second conversation with Mr. Swank. I believe he stated the time frame was about 10 days later. He could pinpoint Mr. Milano's reporting for duty on September 15 and then today, I was trying to determine whether there is some rationale, logical explanation for this.

I did receive some information. I have not yet had a chance to verify it, that Mr. Swank didn't report for duty until August 25. If that is accurate and there was a 10-day lapse from the time of the first conversation, I don't believe there is a time differential. There shouldn't be, sir, because I did report to Mr. Brosan upon receipt.

Senator NUNN. In other words, you would have no logical explanation for delaying approximately 10 days from the time you received this information from Mr. Dayle until you gave the information to Mr. Brosan? You could not account for any 10-day time lapse there?

Mr. DURKIN. No, sir. I could not account for that and I don't believe there was a 10-day time lapse.

Senator NUNN. If you had received the information on September 1, would it be normal, in your normal operating procedure for you to pass this information on rapidly to the person that was responsible for investigating it further?

Mr. DURKIN. Yes, sir. The procedures call for the immediate notification of the Office of Inspection, and I would have done so.

Senator NUNN. Do you have a written procedure on that?

Mr. DURKIN. Yes, sir, we do.

Senator NUNN. Do you recall the rule or regulation where that is stated?

Mr. DURKIN. I looked in the Inspection Manual today, as a matter of fact, and the requirement is we notify Inspection and follow it up with a written memorandum.

Senator NUNN. Did you follow it up?

Mr. DURKIN. No, sir. I am in error in that respect.

Senator NUNN. Do you know whether there was ever a written memorandum on that?

Mr. DURKIN. I don't know.

Senator NUNN. In other cases involving similar kinds of investigations, do you normally have a written memorandum?

Mr. DURKIN. No. I don't recall, sir. I know if I had been unable to communicate with Mr. Brosan, I just know in my own mind I would have reduced it to writing to insure that it gets to the Office of Inspection. The fact is that I know I personally discussed it with him. I am in error, I should have followed it up with a memo.

Senator NUNN. On this case, I understand that; but on normal cases, is it a matter of custom for you to follow up any kind of oral conversation on these kind of serious allegations with a written memorandum?

Mr. DURKIN. This is not the usual case, sir. There are not many instances that come to my attention of this nature involving high-level officials. When I receive information, I assure myself that the procedures are being followed—if it does not involve me notifying the chief inspector then I will insure that the original recipient of the information did put it in the channels to the Office of Inspection, when it involves integrity matters.

Senator NUNN. I will ask counsel at this point to find the particular regulations and let's make it a part of the record at this point in the record. Perhaps you can furnish that regulation?

Mr. DURKIN. Of the reporting requirement, I certainly will.

Senator NUNN. We will make it a part of the record at this point. [The document referred to was marked "exhibit No. 37" for reference and follows:]

EXHIBIT No. 37

INSPECTION MANUAL—BUREAU OF NARCOTICS AND DANGEROUS DRUGS, MARCH 31, 1970

CHAPTER 81—EMPLOYEE INTEGRITY

Subchapter 810—Introduction

Each employee of the Bureau must share the responsibility for promoting public confidence in the dependability and integrity of the Bureau by:

1. Conducting himself in a manner which will reflect credit on him and the Bureau and which will not bring the Bureau into disrepute.
2. Ensuring that Regional and Headquarters management officials are promptly notified of any situation which could indicate integrity breakdowns or misconduct.

BNDD employees will, by the very nature of their occupation, encounter information or situations which may reflect adversely on the character, reputation or suitability of one or more Bureau employees. The Bureau realizes that personnel of an organization in which public trust has been placed are subject to false or unfounded allegations. Those accused falsely have a right to have their name and reputation cleared. On the other hand, when there is evidence of wrongdoing, the individual is entitled to assurance that any action taken is based on all of the facts in the case.

8101 INSPECTION POLICY

It is a function of the Bureau Security Division of the Office of Inspection to thoroughly, impartially, and objectively investigate all allegations of wrongdoing on the part of Bureau personnel. The following sets forth the basic policies to be conformed to during such investigations:

1. Every allegation or complaint coming to the attention of the Office of Inspection shall be evaluated to determine if an investigation will be initiated. The decision on whether to proceed with an investigation shall rest with the Chief Inspector or his designee, subject to post review by the Bureau Director.

2. When a decision to conduct an investigation is made, the investigation will include all unresolved allegations against an employee, and will be conducted as rapidly as possible.

3. Inspectors will be guided by Departmental and Bureau regulations as set forth in Department of Justice and Bureau of Narcotics and Dangerous Drugs manuals and orders, particularly regarding searches, seizures and use of technical equipment.

4. Generally the Regional Director, Chief Chemist or Assistant Director will be advised by the Office of Inspection of an investigation initiated on any employee assigned to his office. However, with the approval of the Bureau Director, investigations may be conducted of employees assigned to a Region, Laboratory or Office without notification of the Regional Director, Chief Chemist or Headquarters Assistant Director.

5. The Office of Inspection will keep the Bureau Director fully informed of all allegations investigated and of the investigative results.

8102 TYPES OF INTEGRITY INVESTIGATIONS

Inspection services for various governmental agencies conduct a variety of investigations. The bulk of investigations conducted by the BNDD Office of Inspection, at this time, can be divided into two types: the investigation of situations or events and the investigation of individual conduct.

Inspection investigations will generally be initiated upon the receipt of an allegation of misconduct on the part of an employee, upon the receipt of information about a situation or condition which is potentially embarrassing or damaging to BNDD, or upon instructions of the Bureau Director or the Department of Justice.

Subchapter 811—Conduct Investigation Criteria

A "Conduct" investigation will be initiated by the Chief, Bureau Security Division, whenever Inspection receives (1) an allegation of misconduct, (2) on the part of an identified employee, (3) from a reliable source.

8111 MISCONDUCT

Misconduct is any act or pattern of behavior which is contrary to the law, Bureau orders or instructions, standards of conduct (as published by the Department of Justice or BNDD) or any conduct which, because it deviates from accepted standards, might embarrass BNDD.

8112 EMPLOYEE INVOLVEMENT

Inspection investigations usually involve at least one BNDD employee in a principal role. However, an employee may commit an act of misconduct and resign before an investigation is initiated. Under these circumstances, an investigation may be initiated or pursued even though the subject of the investigation is no longer an employee.

8113 RELIABLE SOURCE

A reliable source is an identified source who reports apparently accurate information. Information from anonymous sources will be the basis for a miscellaneous investigation, when appropriate.

Subchapter 812—Miscellaneous Investigations

All situations and behavior investigations which do not meet the three-element test of the Conduct Investigation will be categorized as Miscellaneous. Included will be investigations of situations reported to Inspection which appear to call for investigation and no identifiable employee or employees are involved. Also included are special inquiries requested by the Director or by the Department of Justice.

8121 CONVERSION OF "MISCELLANEOUS" INVESTIGATION TO "CONDUCT" INVESTIGATION

In those investigations involving possible misconduct where one of the essential elements for a Conduct Investigation is missing, the Miscellaneous Investigation should be regarded as a preliminary investigation. An investigation will

be conducted to determine if the missing element can be established. If this is not possible, then the Miscellaneous Investigation will be closed without action. If the missing element is established, then the Miscellaneous Investigation should be converted and completed as a Conduct Investigation. The mechanics of conversion are set forth in Chapter 84.

Subchapter 813—Conduct Case Investigative Guidelines

Investigation of conduct-type cases will follow general investigative guidelines contained in the Agents Manual. Inspectors will be especially careful to avoid creating an inference of guilt on the part of the employee during a Conduct Investigation. The inspector will question witnesses and make such other contacts as may be required in an objective, unbiased manner to minimize apprehension.

8131 NOTIFICATION OF INVESTIGATION

When a Conduct Investigation is initiated by the Bureau Security Division, the Regional Director, Chief Chemist, or Headquarters Assistant Director responsible for the employee under investigation will generally be informed of the allegation and that an investigation has been initiated. This notification may be waived in exceptional circumstances with the concurrence of the Bureau Director.

8132 PLANNING FOR INVESTIGATION

Systematic planning is considered essential to an objective investigation. All conduct investigations will be thoroughly planned in advance so as to insure this objectivity. All investigative planning will be directed toward the ultimate objective of exploring every possible facet of the allegation(s) and every possible explanation, and toward minimizing unnecessary apprehension and injury to the employee's reputation.

8133 INTERVIEW OF EMPLOYEE

In every Conduct Investigation the employee will be interviewed by inspectors in order that he may be afforded the opportunity to explain or refute the allegation(s). This interview will normally be conducted toward the conclusion of the investigation, after all the facts are known, so that only one interview is necessary; however, further investigation will be conducted if this interview develops previously unknown information or additional witnesses.

8133.1 Employees must respond to work-related questions

As set out in section 8005 of this manual, the Bureau Director has delegated to the Office of Inspection and inspectors assigned thereto the authority to require any employee of the Bureau of Narcotics and Dangerous Drugs to respond to work-related questions, under oath if requested, during the course of an official Inspection investigation. Previous Court and Civil Service Commission ruling have held that employers have the right to question employees about work-related matters of official interest to determine their fitness or the fitness of others to continue their employment. Failure to respond to work-related questions during the course of an Inspection investigation may be grounds for disciplinary action.

8133.2 Employee communications with inspection confidential

Employees of the Bureau will keep confidential any and all communications with the Office of Inspection, or inspectors assigned thereto, when directed to do so by any superior or inspector. This is intended to minimize injury to employees' reputations as well as to provide security for Inspection investigations.

8133.3 Conducting the employee interview

The purpose of the employee interview is to allow the employee the opportunity to explain or refute the allegation(s). Inspectors will conduct employee interviews in an objective manner, allowing the employee to present any facts or other information which might have a bearing on the allegation(s).

In every employee interview, the inspector will:

1. Identify himself and his official position.
2. Inform the employee of the purpose of the interview.
3. Set forth the allegation(s) against the employee.

4. Inform the employee that he must answer work-related questions (section 8133.1):

If, during the course of an investigation or interview, it becomes apparent that there is probable cause to believe a criminal violation has been committed by the employee, the warning provisions relative to 5th Amendment rights will be followed. (See Agent's Manual, subsection 5315.5.)

8133.4 *Time and location of interviews*

Interviews with employees will normally be conducted at Bureau offices during regular working hours.

8133.5 *Further investigation*

If the employee, during the course of the interview, furnishes information or describes circumstances not previously known or investigated, the investigation will be continued toward complete development of this information or circumstances. This will include interview of material witnesses identified by the employee and not previously interviewed during the investigation.

8134 REFERRAL OF CRIMINAL VIOLATIONS

Serious violations of Federal criminal statutes will normally be referred to the local U.S. Attorney or the Department of Justice for prosecutive opinion. The decision to refer an Inspection investigation for prosecutive opinion will rest with the Chief Inspector, subject to approval by the Bureau Director. This referral, and the opinion rendered, will be documented as part of the investigative report.

Subchapter 814—Conduct Investigation Reports

8141 GUIDELINES

The following are general guidelines for the preparation of Integrity reports. Integrity Investigations are not stereotyped and each presents individual problems. Reports should be organized to meaningfully present the facts of the particular case. The contents of a report should be brief, objective, accurate, and clearly presented.

8141.1 *Brevity*

Discussion of matters reported should be limited to that necessary to enable the reader to understand the facts or disclose information of interest to management officials.

8141.2 *Objectivity*

Reported factual data should be presented in an objective manner. Pertinent facts having a significant bearing on a problem should be presented in the report, including, as a matter of fairness and perspective, any pertinent material which may be inconsistent with other facts already developed.

8141.3 *Accuracy*

Complete accuracy is required for fair and impartial reporting. If there is doubt as to the accuracy of any part of the factual data which might reflect on the reliability of the source, the report should contain appropriate qualifying statements.

8141.4 *Clarity*

Clarity in reports is achieved by stating facts. Vague generalities and unnecessary repetition and duplication of comments serve no useful purpose in communication of facts. Reports should be organized so that all comments on a given subject are collected together and presented in as clear and as simple a manner as practicable.

8142 PRELIMINARY, FINAL AND SUPPLEMENTAL REPORTS

There are three types of conduct reports; preliminary, final, and supplemental.

8142.1 *Preliminary report*

This report will be prepared when a written report is needed but a portion of the investigation is yet to be completed.

8142.2 *Final report*

This report will be prepared when the investigation is complete. It may have a number of preliminary reports attached.

8142.3 *Supplemental report*

This report will be prepared when additional information, not covered during the principal investigation, but essential to the case, is received.

8143 REPORT FORMAT

Reports will be written in the third person and will contain the following sequence of headings, when applicable, centered and in capital letters:

TITLE PAGE.
TABLE OF CONTENTS.
SYNOPSIS.
BASIS FOR INVESTIGATION.
PERSONAL HISTORY.
DETAILS OF INVESTIGATION.
ADMINISTRATIVE PAGE.
EXHIBITS.

8143.1 *Title page*

The title page will show the case number in the upper left corner; the date of the report and the type of report in the upper right corner; the name(s), grade(s), position(s) and post(s) of duty of subjects(s) in the center; the period of investigation in the lower left corner; and the name and title of the person writing the report in the lower right corner. No other material will appear on the title page.

8143.2 *Table of contents*

A table of contents is not necessary for all reports. A table of contents will be prepared when dictated by the volume or complexity of the report. The table of contents will be on a separate page or pages. No other material will be typed on the same page(s) with the table of contents.

8143.3 *Synopsis*

The synopsis will be a brief outline of the significant points contained in the details of investigation. If preliminary reports are attached to a final report, the synopsis of the final report will also contain a synopsis of the preliminary reports. The synopsis will show the dates and writers of any preliminary reports attached; e.g., "Attached are preliminary reports of Inspector Tom Smith dated March 30, 1968, and Inspector John Piper, dated February 20, 1969." The points in the synopsis should follow the same sequence as the sequence in the body of the report. The initials of the typist will appear in the lower left corner of the last page of the synopsis (original and all copies).

8143.4 *Basis for investigation*

The basis for investigation will show the date and reason for initiation of the investigation; e.g., "Another Federal agency advised on March 17, 1970, that the employee," etc., etc. The basis for investigation can be typed on the same page as the synopsis.

8143.5 *Personal history*

This section of the report will be on a separate page and will contain the following items of information concerning the subject(s) of the investigation:

Name: First, middle initial, last.
Date of Birth: Month typed in full, day, full year.
Place of Birth: City and State.
Marital Status: Married, single, divorced, separated.
Children: Number of children.
Highest Education: One year college; BS degree, Physics.
Military Service: U.S. Army, 1952-1954.
Government Service: Department of Agriculture, 1945-1950; U.S. Post Office Department, 1950-1963; Bureau of Narcotics, 1963-1967.
Awards: \$1,000 Suggestion Award, 1956.
Adverse Actions: 20-day suspension for insubordination, 1950.

8143.6 *Details of investigation*

This section of the report will contain the results of investigative efforts in a logical sequence (such as chronological). With this system of reporting, each logical step follows the other in succeeding paragraphs.

The report may contain or be made up principally of a compilation of reports of interviews and affidavits attached in chronological sequence, provided these documents do not contain unrelated information and are not repetitious. No explanation or tie-in paragraph is needed between the reports of interviews or affidavits when one logically follows the other. If the reports of interviews and affidavits do not naturally lead one to the other, the two documents will be tied together by a lead-in paragraph or the significant portions of the documents will be reported in the body of the report and the documents attached as exhibits. Reports of interviews and affidavits must be identified as such on the top of the page.

Subheadings (marginal, capital first letter, and underlined) should be used whenever they will help the reader. The interview of the employee must be identified by a subheading. It is suggested that the report of interview format or affidavit be used for reporting the interview of the employee.

When a confidential informant participates or furnishes information, he will be identified in the report as a confidential informant. No name or number will be used. The informant will be identified by name or Inspection number on the administrative page. When more than one confidential informant is mentioned in a report, distinguish them as Confidential Informant No. 1, Confidential Informant No. 2, etc.

8143.7 *Administrative page*

The administrative page is to be used to report any material which must be restricted to Inspection employees.

Confidential informants will be identified on the administrative page; e.g., Confidential informant is 2-IS-2.

When more than one confidential informant is listed in a report, they will be identified as follows:

Confidential Informant No. 1 is 2-IS-2.

Confidential Informant No. 2 is 1-IS-4.

Confidential Informant No. 3 is John Brown.

8143.8 *Exhibits*

Exhibits will be tabbed and numbered in the same order that they appear in the report. If there are six or more exhibits, a list of exhibits will be included with the table of contents. If no table of contents is prepared, the list of exhibits will be in lieu of the table of contents.

8144 NOTIFICATION OF RESULTS OF INVESTIGATION

Normally, at the conclusion of a Conduct Investigation, the Regional Director, Chief Chemist or Headquarters Assistant Director responsible for the employee under investigation, will be informed of the investigative results.

Subchapter 815—Referral for Decision

When a Conduct Investigation Report is completed, it will be submitted through the Chief Inspector to the Bureau Director for information. A cover memorandum from the Chief Inspector will accompany the report and will include a recommended course of action.

8151 TYPES OF DECISIONS

After review of a Conduct Report, the Bureau Director will refer the report to the Assistant Director for Administration for decision as to what action will be taken. There are two possible courses of action available to the Assistant Director—clearance of the employee or adverse action against the employee. Termination of the case without further action is the prerogative of the Chief Inspector with the concurrence of the Bureau Director.

8151.1 *Notice of clearance*

When the investigation has disproved the allegations and cleared the employee, a letter of clearance will be furnished the employee, informing him the matter has been resolved in his favor. Inspection will prepare the letter for the signature of the Deputy Director.

8151.2 Adverse action

All adverse actions will originate with the Office of Administration, following the decision of the Assistant Director for Administration.

8151.3 Notice of termination of investigation

When the investigation has failed to clearly resolve the allegations, and further investigation is not possible, the Chief Inspector may terminate the case. In this instance, the employee will be furnished a letter informing him the investigation has been terminated. Inspection will prepare the letter for the signature of the Deputy Director.

8152 CASE FILE CLOSING

After all clearance letters, adverse actions or termination of investigation letters have been dispatched or completed, the case file will be closed by the Chief, Bureau Security Division. The Inspection case control clerk will appropriately mark the case jacket "closed," make a "closed" entry on the original index card and transfer it from the active to the general index file (See section 8432).

Subchapter 816—Miscellaneous Investigations—Reporting and Closing

Miscellaneous or situation investigations will be conducted and reported in the same general manner as Conduct Investigations, except that the employee(s) may or may not be interviewed or informed of the investigation. In such cases, the employee will not normally receive a closing letter.

Situations may be investigated which involve several employees in an office (such as accidents or shootings) where no improper actions are established. In such cases, a "conclusion" letter will be sent to the Regional Director with a request that he inform all parties involved that the investigation has been concluded. Inspection will prepare the "conclusion" letter for the signature of the Deputy Director.

8161 TITLE 18, INVESTIGATIVE JURISDICTION

If a crime as defined under Title 18, United States Code, is committed by an employee of the Bureau, the facts will be brought to the attention of the Chief Inspector. The Chief Inspector will then refer the matter to the local U.S. Attorney or the Department of Justice for jurisdictional decision when appropriate. The Office of Inspection of the Bureau of Narcotics and Dangerous Drugs will follow the decision of the Department of Justice as to whether:

1. It should yield jurisdiction to the F.B.I. (or another agency).
2. Assume jurisdiction.
3. Continue its investigation (initiated under conditions set out in the following paragraph).

In a case where a Bureau of Narcotics and Dangerous Drugs employee commits a crime in violation of Title 18 of the U.S.C., and circumstances require the immediate arrest of the violator, a Bureau of Narcotics and Dangerous Drugs agent may exercise his rights as a citizen to make an arrest for a felony committed in his presence. This action should be coordinated with the local U.S. Attorney and the Chief Inspector notified of the action taken.

8162 BRIBERY INVESTIGATIONS

Bribery or attempted bribery cases fall under the Title 18 jurisdiction of the F.B.I. However, through Departmental decision and agreement with the F.B.I., the Office of Inspection is assigned responsibility in the Bureau of Narcotics and Dangerous Drugs for all investigations of bribery and attempted bribery, except attempts to bribe Bureau field personnel during arrests or raids were immediate decision and action is necessary and is taken by Special Agents on the scene. In this event, responsibility for the case rests with the Regional Office. This type case should be reported to the Office of Inspection for information and/or advice.

8163 ACCIDENT INVESTIGATIONS

The Office of Inspection is charged with the investigation of accidents involving the operation of a Government-owned vehicle by Regional Directors and Deputy Regional Directors only. Guidelines for the investigation and reporting of accidents involving Government-owned vehicles are set out in the Agents Manual,

subchapter 4620. When an employee is involved in a vehicular accident, with misconduct a contributing cause, the Regional Director may request assistance from the Office of Inspection.

8164 FIELD REQUESTS FOR INSPECTION ASSISTANCE

Notwithstanding the instructions contained in this chapter, Headquarters Assistant Directors, Regional Directors or Chief Chemists may, from time to time, recognize situations which they believe may be of interest to the Office of Inspection. These officials are encouraged to discuss this type of problem or situation with the Office of Inspection and request assistance from the Office of Inspection.

Subchapter S17—Reporting Allegations to Inspection

Complaints or allegations are considered to be the receipt of any information from any source that any employee of the Bureau is or was directly or indirectly involved in one or more of the situations or circumstances defined in this subchapter.

Headquarters, Regional and Laboratory officials will be guided by these instructions in handling complaints, suspected situations or information which may amount to a violation of integrity or misconduct by any employee of the Bureau of Narcotics and Dangerous Drugs.

S171 IMMEDIATE REPORTING REQUIRED

The Headquarters Assistant Director, Regional Director, Chief Chemist, or anyone acting for the designated official in his absence, will immediately notify the Office of Inspection by telephone, after receipt of a complaint or allegation which indicates the possible involvement of Bureau employees in any of the acts or conditions set forth in sections S172 and S173.

S172 INTEGRITY MATTERS OF INSPECTION INTEREST

1. The sale or otherwise unauthorized disposition of any narcotic or dangerous drug by any employee of the Bureau.
2. The tampering with or unauthorized removal from official custody of any evidence purchased, seized or otherwise in the possession of any employee of the Bureau.
3. The disclosure of official Bureau information to any person known or suspected to be involved in the narcotic or drug traffic, to any person known or suspected to be involved in any sort of criminal activity or to any other unauthorized person. Examples of such information include, but are not limited to, the following:
 - a. Identification of sources of information.
 - b. Identification of investigative "targets" regardless of the stage of investigation.
 - c. Identification of defendants prior to arrest.
 - d. Identification of undercover agents regardless of their official affiliation.
 - e. Classified information to any unauthorized person.
 - f. Industrial trade secrets or confidential business information developed during official activities to unauthorized persons.
 - g. Any information which is not in the best interest of the Bureau.
4. Participation in unauthorized or illegal searches of premises, automobiles or persons.
5. Malfeasance or the failure to perform specific duties. Examples are: Willful failure to seize automobiles or other evidence incident to an arrest or failure to arrest defendants when it is obvious that the conditions of a lawful arrest or seizure are present.
6. Solicitation or acceptance of any bribe, fee, or gratuity in connection with any official matter, including an offer of a bribe or gratuity to any Bureau employee.
7. Extortion.
8. Embezzlement, misappropriation of money or property, or failure to properly account for money, personal property, or any other item for which officially responsible.
9. Misprision or the failure to report to supervisors or the Bureau a violation of any law enforced by this Bureau, or fraud committed by anyone against the government.

10. Perjury or false statements concerning official matters; false documents; alteration, forgery or unauthorized destruction of official reports or documents.

11. Use of narcotics or dangerous drugs except as prescribed by a physician in the treatment of a "bona fide" ailment.

12. Improper use of official position, commission, badge, and actual or implied authority.

13. Indictment, arrest or imminent arrest of Bureau employees (excluding arrests for minor traffic violations).

14. Association or financial transactions with defendants or persons known or suspected to be involved in the narcotics or dangerous drug traffic.

15. Receipt or taking into custody any monies or other item except as specifically authorized by law or Bureau order.

16. Misuse of official government automobiles.

In addition to the integrity matters specified in this section, Inspection will be notified immediately on receipt of information of an integrity breach, defined as intentional conduct on the part of an employee which the employee knows or should know may embarrass the Bureau directly or indirectly.

8173 MISCELLANEOUS MATTER OF INSPECTION INTEREST

In addition to matters identified in section 8172, Inspection will be notified immediately in the following situations:

1. Improper conduct of spouse or relative of employee.
2. Accidental deaths of employees.
3. Any shooting by a BNDD employee. (Agents Manual, section 4323.1)
4. Reported losses as a result of searches.
5. Friction between BNDD and other enforcement agencies.
6. Violations of the various political activities restrictions.

8174 MATTERS NOT OF INSPECTION INTEREST

Any other matters not specifically set forth in sections 8172 and 8173 will be handled by the appropriate Headquarters Assistant Director, Regional Director, or Chief Chemist after consultation with the Employee Relations Officer, without prompt notification of the Office of Inspection. If questions arise as to the area of responsibility, the Office of Inspection will be contacted for clarification. Examples of matters not to be referred to Inspection include tardiness, insubordination, isolated debt inquiries, and employee grievances and disputes.

8175 MANNER OF REPORTING INFORMATION TO INSPECTION

Each BNDD employee who receives or in any manner comes into possession of any information which indicates or amounts to an allegation that any BNDD employee, including himself, is engaged in improper or illegal activities as set forth in this chapter will immediately report this information to his supervisor or, if such notification is not appropriate, then to any person in the Regional or Headquarters chain of command. (See also section 8176.)

The supervisory official thus notified will promptly notify the Regional Director or Headquarters Division Chief. He will then prepare a written memorandum concerning the information received which must contain all pertinent facts. (See also section 8171.)

8176 ALTERNATIVE METHODS OF REPORTING INFORMATION TO INSPECTION

Any BNDD employee may, at his discretion, report any information concerning situations of the type specified in section 8172 directly to the Office of Inspection or to any inspector of the Office of Inspection either orally or in writing if:

1. The employee honestly believes that he is reporting in good faith, information of Inspection interest.
2. The employee honestly believes that he is reporting any information which is of the type specified in section 8172.
3. The employee is not simply reporting a grievance or personal complaint concerning his supervisor or co-worker.

All matters reported to Inspection will be treated as confidential except as distinguished in section 8178.

8177 DOCUMENTATION OF ORAL REPORT TO INSPECTION

When information is reported to Inspection telephonically, a written memorandum reporting the information and confirming the telephone call will be prepared and forwarded to the Chief Inspector. In those cases which require prompt reporting to Inspection, the distribution of copies of this memorandum will be limited to the Office of Inspection only, marked to the personal attention of the Chief Inspector. The Office of Inspection will be responsible for furnishing a copy of this memorandum to the Director, when appropriate.

8178 MALICIOUS REPORTING

The Office of Inspection, when requested to do so by the employee making such a report, will keep the identity of the reporting employee in absolute confidence unless it is subsequently determined that use of this type of reporting was intended to be malicious on the part of the reporting employee. A determination of malicious reporting will be made only by the Director following an Inspection investigation. Malicious reporting may render the employee subject to disciplinary action.

Mr. FELDMAN. Does the same regulation apply to you as it does to Mr. Dayle?

Mr. DURKIN. My recollection, sir, is Mr. Dayle's requirement is to insure that the information is put into the chain of command.

Mr. FELDMAN. Immediately upon receipt?

Mr. DURKIN. Yes, sir.

Mr. FELDMAN. That is all.

Senator NUNN. Is it a requirement that both of you put something in writing or is there one rule about writing a written memorandum which applies to you in your position and another to Mr. Dayle?

Mr. DURKIN. My recollection from reading the regulations is it doesn't specifically state who shall put it in writing. The allegations should have been reduced to writing.

Senator NUNN. Mr. Durkin, when did you first learn that John Bartels and Vincent Promuto would be traveling together in Europe in September of 1974?

Mr. DURKIN. I believe I knew that probably at the end of August, would be my recollection.

Senator NUNN. Mr. Bartels discussed this trip with you or did you just hear it through other persons?

Mr. DURKIN. Mr. Bartels very well could have mentioned it to me. I was aware of it because of communications traffic with our offices in Europe and the Middle East.

Senator NUNN. Did you know that Mr. Promuto would be accompanying Mr. Bartels on that trip?

Mr. DURKIN. Yes, sir.

Senator NUNN. Did you discuss it with Mr. Promuto or do you have any recollection of that, the trip?

Mr. DURKIN. No. I don't recall discussing it with Mr. Promuto, no, sir. I believe Mr. Jack Cusack was also traveling with Mr. Bartels and Mr. Promuto.

Senator NUNN. Do you remember when Mr. Bartels and Mr. Promuto left on that trip, what date that was?

Mr. DURKIN. The specific date, I don't know, sir.

Senator NUNN. Our information is—

Mr. DURKIN. It was in early September or late August.

Senator NUNN. Our information is September 7, 1974. Do you have any reason to dispute that?

Mr. DURKIN. I have no reason to dispute that, no, sir.

Senator NUNN. Do you relate the receipt of the Promuto information in any way to the departure of Mr. Bartels and Mr. Promuto for Europe?

Mr. DURKIN. I relate in my mind to the fact that Mr. Bartels and Mr. Promuto were overseas and for that reason, I felt it was essential that we determine, we, meaning the Office of Inspection, whether there was something of a nature involved in that allegation that should be brought to the Administrator's attention.

Senator NUNN. You mean when you received the information from Mr. Dayle, you recollect in your mind that Mr. Bartels and Mr. Promuto were in Europe when that information was received?

Mr. DURKIN. That is my recollection, yes, sir.

Senator NUNN. So according to your recollection, you deny that you knew about this Promuto information prior to the departure of Mr. Bartels and Mr. Promuto for Europe?

Mr. DURKIN. Yes, sir.

Senator NUNN. Mr. Durkin, are you aware of a Jack Anderson column of January 16, 1975, and the Washington Star article of January 16, both of which stated there were open integrity allegations against you? I don't want to go into these allegations in detail, but I would like to know if you were aware that there was an active investigation of you personally in the Office of Inspection in September of 1974?

Mr. DURKIN. No, sir, I wasn't aware of that.

Senator NUNN. When did you become aware of that?

Mr. DURKIN. I first became aware of an open investigation—

Senator NUNN. Would you get the mike a little bit closer?

Mr. DURKIN. Yes, sir. I first became aware of an open investigation or what I assumed to be an open investigation when I received a telephone call from Mr. Owens of Mr. Jack Anderson's office asking me my comments about the matter.

Senator NUNN. Do you recall the approximate date of that call from Mr. Owens of Mr. Anderson's staff?

Mr. DURKIN. I don't recall the date. I do recall that it was several days before the article appeared in the paper. So that would put it in the time frame of January.

Senator NUNN. It would have been sometime after the first of the year, but prior to the appearance of the article?

Mr. DURKIN. Yes.

Senator NUNN. You would say somewhere between January 1 and January 16?

Mr. DURKIN. Yes, sir.

Senator NUNN. That would have been your first knowledge of any investigation going on concerning you personally in DEA?

Mr. DURKIN. Of an active nature, yes, sir.

Senator NUNN. Of what?

Mr. DURKIN. Of an active nature, yes.

Senator NUNN. Maybe you had better qualify that. What do you mean of an active nature?

Mr. DURKIN. Yes, sir. Several years ago there was an allegation of some nature made with respect to me that had been furnished the New York State authorities. The New York State authorities brought it to my attention and asked what disposition should be made of it, and in accordance with our procedures, I notified the Office of Inspection and referred the matter to them, and so advised the State authorities that they would be hearing from the Office of Inspection. I was aware of that, yes, sir.

Senator NUNN. The approximate date on that, what year?

Mr. DURKIN. Approximately 1969 or 1970.

Senator NUNN. You hadn't heard anything further from that in, say, the time frame of 1974?

Mr. DURKIN. I have no recollection, no, sir.

Senator NUNN. That is the reason you felt that matter was not an open matter?

Mr. DURKIN. I thought there were no open matters.

Mr. FELDMAN. You have no information that Mr. Brosan was pursuing allegations concerning you in September 1974?

Mr. DURKIN. No, sir.

Senator NUNN. Did you ever receive any notification from DEA that there were open matters being investigated concerning you personally after Mr. Owens' phone call and the news articles and so forth which took place in January of 1975? Were you ever officially notified that these allegations were pending?

Mr. DURKIN. Yes, sir. Mr. Phil Smith advised me that there had been an allegation that was being investigated and he asked for my comments with respect to the allegation.

Senator NUNN. When was that?

Mr. DURKIN. That was earlier this year, the exact time frame, I am not sure.

Senator NUNN. That was after the news article?

Mr. DURKIN. It was after January.

Senator NUNN. You say it was in the February-March time frame area?

Mr. DURKIN. Yes. That is my best recollection.

Senator NUNN. Would it have taken place immediately after the articles? In other words, was it a notification because the articles had appeared or was it independent of that?

Mr. DURKIN. It might have been shortly after that, because I was very incensed about the article and did not hide my feelings to anybody.

Senator NUNN. With whom did you discuss it? Mr. Phil Smith, is the?

Mr. DURKIN. Acting Chief Inspector.

Senator NUNN. How does his office relate to Mr. Brosan's office?

Mr. DURKIN. Pardon me?

Senator NUNN. Did he take over from Mr. Brosan?

Mr. DURKIN. Yes, sir.

Senator NUNN. You discussed it with him. Did you approach Mr. Smith, or did he approach you?

Mr. DURKIN. I think I approached him.

Senator NUNN. After the article?

Mr. DURKIN. Yes, sir.

Senator NUNN. But until these newspaper articles came out, you had never been confronted with these allegations by anyone in DEA or BNDD, and I mean by that, these open allegations?

Mr. DURKIN. I have no recollection of ever being confronted; no, sir.

Senator NUNN. When and how did you meet Thomas Durkin?

Mr. DURKIN. I met Mr. Thomas Durkin in New York in 1968, through a mutual friend.

Senator NUNN. Who was that friend?

Mr. DURKIN. The friend is one of our officials in New York, Mr. James Hunt.

Senator NUNN. Mr. James?

Mr. DURKIN. Hunt.

Senator NUNN. Mr. James Hunt?

Mr. DURKIN. Yes, sir.

Senator NUNN. What was his relationship with Mr. Durkin, according to your information?

Mr. DURKIN. According to my information, they were friends as young men together and went through college together.

Senator NUNN. They had gone to college together?

Mr. DURKIN. Yes, sir.

Senator NUNN. Where did that meeting take place? Do you remember where you first met Mr. Thomas Durkin?

Mr. DURKIN. No, sir. I am not sure whether it was in New York or Newark, N.J.

Senator NUNN. Mr. James Hunt worked with you in, I guess at that time, BNDD?

Mr. DURKIN. Yes, sir.

Senator NUNN. In New York?

Mr. DURKIN. Yes, sir.

Senator NUNN. Was he your supervisor?

Mr. DURKIN. I was his supervisor.

Senator NUNN. What was your position then?

Mr. DURKIN. Regional Director of BNDD in New York.

Senator NUNN. What was Mr. James Hunt's position?

Mr. DURKIN. Initially, he was special agent in charge of our office in Newark, N.J., and was subsequently transferred to New York City.

Senator NUNN. Was the meeting with Mr. Thomas Durkin of a social nature or related to the official activities in your business or what was the relationship?

Mr. DURKIN. Social activity.

Senator NUNN. Social?

Mr. DURKIN. Yes.

Senator NUNN. Did you go to his home?

Mr. DURKIN. I have been in Mr. Durkin's home; yes, sir.

Senator NUNN. For dinner, receptions?

Mr. DURKIN. For dinner and for receptions.

Senator NUNN. Was this a general relationship with several different members of the DEA Office, or was it just a few?

Mr. DURKIN. No, Mr. Durkin had other friends in the DEA Office.

Senator NUNN. But Mr. James Hunt was the main friend?

Mr. DURKIN. The principal, Mr. Hunt is a very close friend of Mr. Durkin.

Senator NUNN. Did Mr. Durkin have any official connection with the office in New York? In other words, was he on the payroll and as a part-time employee or consultant?

Mr. DURKIN. No, sir.

Senator NUNN. To the best of your knowledge, as long as you were in charge there, he was never in a paid position?

Mr. DURKIN. No, sir; he never had a paid position to my knowledge.

Senator NUNN. What legal services or other favors did Mr. Thomas Durkin perform for you?

Mr. DURKIN. For me, sir?

Senator NUNN. Yes.

Mr. DURKIN. A legal favor, sir, when I sold my home in New Jersey, upon being transferred to Washington, D.C., Mr. Durkin had one attorney in his office look over the material to assure me of my, you know, give me legal advice.

Yes, sir, the selling of the home itself was handled by a real estate firm, for which I paid the usual commission.

Senator NUNN. Were there any other attorneys involved or did Mr. Durkin handle the sale for both the purchaser and the seller?

Mr. DURKIN. The sale? The sale of my home was in a real estate office in Paterson, N.J. They handled the paperwork.

Senator NUNN. Did Mr. Durkin do the whole paperwork or was he there just representing you as the seller?

Mr. DURKIN. A young attorney in his office was there, who looked over the papers and advised me that it would be permissible to sign them.

Senator NUNN. Strictly representing you?

Mr. DURKIN. Yes, sir.

Senator NUNN. Do you recall that attorney's name?

Mr. DURKIN. No, I do not.

Senator NUNN. How large a law firm does Mr. Durkin have? Do you know?

Mr. DURKIN. I believe three or four attorneys; I am not sure.

Senator NUNN. Have you ever paid Mr. Durkin for these services?

Mr. DURKIN. No, sir; I never did.

Senator NUNN. There never was any bill involved?

Mr. DURKIN. No, sir.

Senator NUNN. Were there any other legal services he rendered to you other than in connection with the sale of your home in New York?

Mr. DURKIN. No, sir. I don't recall any legal services provided.

Senator NUNN. Any other favors that were rendered to you by Mr. Durkin?

Mr. DURKIN. Favor? Yes, sir. Mr. Durkin, upon my original arrival in New York, and subsequent to meeting him, he referred me to a lending institution from which I obtained my mortgage for the home I bought in New Jersey.

Senator NUNN. Is this the same home you sold later and he advised you on the sale of it?

Mr. DURKIN. Yes.

Senator NUNN. So he referred you to a lending institution?

Mr. DURKIN. Yes.

Senator NUNN. What was the name of that institution? Do you know?

Mr. DURKIN. No, I don't know the name of it. No, sir.

Senator NUNN. Do you know anything about Mr. Durkin's connection with that institution? Was it a bank or savings and loan or insurance company, or do you recall what kind of institution it was?

Mr. DURKIN. I believe it was a savings and loan.

Senator NUNN. A savings and loan?

Mr. DURKIN. I believe it was; yes, sir.

Senator NUNN. Did Mr. Durkin have any direct connection with that institution?

Mr. DURKIN. I believe he did, but I am not sure what capacity.

Senator NUNN. Was this before you ever met Mr. Thomas Durkin?

Mr. DURKIN. No, sir.

Senator NUNN. Or had you met him?

Mr. DURKIN. I had met him.

Senator NUNN. You met him before you arrived in New York?

Mr. DURKIN. No. I believe before I arrived to buy my home with my wife and kids, I was up there while my family was still in Washington.

Senator NUNN. That is when you were introduced, but before you actually moved?

Mr. DURKIN. Yes.

Senator NUNN. Your family was in Washington and you were moving from Washington to New York?

Mr. DURKIN. That is correct.

Senator NUNN. You met Mr. Thomas Durkin socially and then subsequent to that he helped refer you to a lending institution?

Mr. DURKIN. He referred me to a lending institution; yes, sir.

Senator NUNN. You obtained your mortgage from that institution?

Mr. DURKIN. Yes.

Senator NUNN. Were any services charged by Mr. Thomas Durkin in this connection?

Mr. DURKIN. No, sir.

Senator NUNN. It was just a friendly favor by somebody you had met on a social basis? Is that right?

Mr. DURKIN. My recollection is that he asked, "Where are you going to get your mortgage?"

And I said "I haven't determined yet," and I was referred to this particular institution.

Senator NUNN. What was Mr. Thomas Durkin's relationship while you were in New York to—I suppose BNDD was your position then, wasn't it? What was his relationship to BNDD in New York?

Mr. DURKIN. He had no official relationship. Mr. Durkin was to my mind a concerned American and a decent human being who was a friend.

Senator NUNN. Did he come by and discuss cases in particular? I am trying to really establish the difference between social relationship of Mr. Durkin and his apparent connection officially in subsequent matters with DEA.

Did he come by and advise your office? Did he act as in-house legal counsel on a friendly basis in New York? What was it?

Mr. DURKIN. No, sir.

Senator NUNN. Did you ever discuss individual cases, narcotic cases, with Mr. Thomas Durkin while you were in New York?

Mr. DURKIN. I don't recall specific cases. I very well may have identified a matter without identifying principals looking to see what advice he might have or suggestions he might have.

Senator NUNN. Do you have in-house counsel there? Do you have lawyers on your staff as the director in New York?

Mr. DURKIN. In New York City we did not have counsel assigned to the office, but we were part of the Department of Justice and had the U.S. attorney and our own chief counsel in Washington; yes sir.

Senator NUNN. How frequently did you ask their legal advice?

Mr. DURKIN. Infrequently.

Senator NUNN. Very infrequently?

Mr. DURKIN. Yes, sir.

Senator NUNN. What I am trying to really establish, without casting any aspersions on anyone, is that the head of the New York office would be consulting a private attorney on a nonpaid basis when you have the whole Attorney General's office and the whole District Counsel's office to advise you.

Mr. DURKIN. I believe, Mr. Chairman, that the inference that I am discussing this with an attorney on a regular basis is your inference. It is not mine.

I have no recollection of discussing specific matters pertaining to the operations of the New York office with any one outside of the organization.

Senator NUNN. I thought you just said you might discuss cases with him, but without naming names. That wasn't my statement. That was yours.

Mr. DURKIN. That is correct. Yes, sir, that would be very infrequently, if there is a set of circumstances and we are looking for a solution, I may discuss this with a number of people without identifying the situation, looking for different ideas, looking for new thinking.

Senator NUNN. What was Mr. Durkin's expertise in this area? Why would he have any expertise in the area of narcotics enforcement? Was he a criminal lawyer?

Mr. DURKIN. I believe he had been at one time. Mr. Durkin comes from a police family. I believe his father was a police officer who rose to a high rank in the city of Newark, N.J., and Mr. Durkin is a particularly sharp individual.

Senator NUNN. A very sharp individual?

Mr. DURKIN. Yes.

Senator NUNN. Do you know the nature of his law practice?

Mr. DURKIN. I know of several corporate clients he has.

Senator NUNN. Do any of these corporate clients have any—does his relationship with them have anything at all to do with BNDD or the narcotics enforcement?

Mr. DURKIN. No, sir; they don't.

Senator NUNN. But according to your testimony you do recall having some conversations with Mr. Thomas Durkin while you were

in New York relating to narcotics cases? Is that true? Can you deny that?

Mr. DURKIN. I am not denying it, sir. I don't know of the specifics of any such conversation, but it very well could have. I am not denying it.

Senator NUNN. Has Mr. Thomas Durkin or any of his clients, to your knowledge, ever made arrangements at private clubs in New York for BNDD or DEA to entertain foreign dignitaries?

Mr. DURKIN. I knew of no such situation and recall no such situation when I was the Regional Director. However, I do recall on one occasion attending a luncheon in a Wall Street business club, where I believe arrangements were facilitated by Mr. Durkin.

Senator NUNN. At your request?

Mr. DURKIN. I am not sure whether it was my request or the then incumbent Regional Director or whose request.

Senator NUNN. Who were you entertaining? What kind of people?

Mr. DURKIN. Senator, on this particular occasion, I don't know who was there. It was a very small group. Maybe only two or three or four of us. I just don't—I can't remember the identity which makes me think maybe it wasn't even a foreign dignitary. I am just not sure.

Senator NUNN. I may have missed your first part. Is that while you were in New York or since you have been in Washington?

Mr. DURKIN. My recollection is I was in Washington and had gone back to New York on official business that day.

Senator NUNN. What kind of financial arrangements were made? Did you pay for the bill personally, or was this a business entertainment expense, or did Mr. Durkin pay the bill, or what was the nature of it?

Mr. DURKIN. You are asking about about lunch several years ago. I don't know. I very well could have paid part of the bill. I could have paid part of it or perhaps we were Mr. Durkin's guests. I just don't recall.

Senator NUNN. This was just on one occasion, this was not something that was a matter of pattern that happened frequently. Is that right?

Mr. DURKIN. As it involves me; yes, sir.

Senator NUNN. As it involves other people to your knowledge what kind of arrangements were made?

Mr. DURKIN. I don't know.

Senator NUNN. You don't know whether Mr. Durkin does this frequently for personnel located in New York associated with DEA?

Mr. DURKIN. I would have no compunction asking Mr. Durkin to arrange something if I were in New York. So it is possible; yes, sir, that he does do it.

Senator NUNN. Was Mr. Durkin present on these occasions? Did he have lunch with you, or do you recall?

Mr. DURKIN. The day that I recall, Mr. Durkin was present.

Senator NUNN. Do you have any knowledge as to whether Mr. Thomas Durkin has ever had access to information relating to allegations against you personally?

Mr. DURKIN. No, I don't have that information.

Senator NUNN. You don't know whether he had any information or not?

Mr. DURKIN. I don't know.

Senator NUNN. Have you ever discussed with Mr. Thomas Durkin any allegations against you personally?

Mr. DURKIN. Only to the extent that after the article appeared in Jack Anderson, I am certain I mentioned to Mr. Durkin as I did to many people how incensed I was about that particular situation.

Senator NUNN. Has Mr. Thomas Durkin ever advised you either in New York or in Washington in anyway with respect to any official narcotics case or other matter officially in the DEA Office?

Mr. DURKIN. In the conduct of a criminal investigation? In that sense, sir; no.

Senator NUNN. Let's not qualify it.

Mr. DURKIN. I am not trying to qualify it; I want to assure I am responsible to your question, sir. My particular responsibility concerns the criminal enforcement program and the criminal investigations, Mr. Durkin or anybody outside of DEA has never suggested or given advice how we should do things as it relates to a particular case.

Senator NUNN. How about in general terms then, by just how you run the office? I am just trying to ask you—

Mr. DURKIN. I am trying to be as responsive as I possibly can, Mr. Chairman.

If you mean such comments as there is an awful lot of cocaine coming in, you had better be aware of that. Sure, these kinds of comments come from outside of DEA and very well could have been mentioned by Mr. Durkin. But specifically, no sir.

Senator NUNN. In other words, you never discussed the Promuto matter with Mr. Thomas Durkin?

Mr. DURKIN. My knowledge of the Promuto matter is, to the best part, that which I have read in the newspapers.

Senator NUNN. That still doesn't answer my question.

Mr. DURKIN. No, sir.

Senator NUNN. If you are not certain, you can say you are not certain.

Mr. DURKIN. I have not discussed the Promuto matter or the Promuto investigation with Mr. Thomas Durkin.

Senator NUNN. You have not?

Mr. DURKIN. Other than the most vague recollection about how have events been going, or something like that. But discussing it, no, sir, I haven't.

Senator NUNN. Was Thomas Durkin a friend of Promuto or do you know that?

Mr. DURKIN. I believe—I know Mr. Durkin was acquainted with Mr. Promuto. I would say they were friendly; yes, sir.

Senator NUNN. Minority counsel has a question.

Mr. SLOAN. You were in fact aware of Mr. Thomas Durkin's involvement in the Promuto case, were you not?

Mr. DURKIN. I was made aware of it.

Mr. SLOAN. How were you made aware of it?

Mr. DURKIN. I knew that Mr. Lund and Mr. Richardson; they, on one occasion, met with Mr. Durkin in Newark, N.J. and Mr. Lund mentioned it was a matter concerning Vince; we didn't go into detail on it.

Mr. SLOAN. Were you aware that Mr. Durkin had interviewed Mr. Promuto prior to any meeting with Mr. Brosan?

Mr. DURKIN. I knew Mr. Durkin had met with Mr. Promuto. There were numerous meetings in DEA. I did not know he was interviewed as such regarding the allegations made against Promuto.

Mr. SLOAN. Were you or are you aware of any other office of inspection investigations that Mr. Durkin has been involved in within DEA aside from the Promuto case?

Mr. DURKIN. No, sir.

Mr. SLOAN. None whatsoever?

Mr. DURKIN. No, sir.

Mr. SLOAN. I would like to question you concerning your role as assistant administrator for enforcement.

The subcommittee was focusing quite a bit of attention last week on the allegations that DEA spends a lot of its resources time, and money in trying to immobilize low-level violators—the so-called class III and class IV violators.

I think it would be helpful for you to respond to those charges. I am sure you are aware of them from the testimony.

Mr. DURKIN. Yes, sir. I read the prepared statements. It is not our intent nor our program to devote significant, financial, or manpower resources at street level traffickers.

We devised a program that is probably unique in our category of law enforcement of seriously and honestly trying to qualitatively and quantitatively evaluate the effort, the enforcement effort we are making and where we direct our activities. We are doing everything we can to direct our activities at the major interstate, international drug traffickers and conspiracies and towards special situations that develop where our mobile capability can react.

I just believe that the accomplishments at DEA and the predecessor organizations are being unnecessarily maligned. I think the successes achieved have been tremendous. I do think the drug problem is increasing and I can only state that I think the country is fortunate that law enforcement, State, local, and Federal law enforcement has been able to accomplish that which they have accomplished or the problem would be much worse than it is today.

Mr. SLOAN. In light of that statement, why do you think the drug problem is increasing?

Mr. DURKIN. I think that is what we are all trying to find out, Mr. Sloan. The committee. The review by the domestic council is also to try to find out why these things are happening.

It is not due to inactivity on the part of law enforcement. I think law enforcement has successfully held back this avalanche, this swelling of drug abuse to the extent that it has been held back.

Mr. SLOAN. Mr. Durkin, could you explain to the subcommittee the nature and the extent of the cooperation you have had with the Customs Service since the formation of DEA? Has that been a problem or hasn't it?

Mr. DURKIN. I believe, Mr. Sloan, it would be best to state that DEA was formed as a result of the Reorganization Plan No. 2 in 1973. I don't believe the Bureau of Customs has ever accepted that plan in the spirit which is necessary to accept these things to make them effective or make them work.

So there has been cooperation. There probably have been many instances of cooperation and there have been many instances of lack of cooperation.

Mr. SLOAN. We have heard testimony during the first week of the hearing that Customs officials do not receive information, and intelligence from DEA in a timely fashion. The allegation is that Customs doesn't receive intelligence at all or that it doesn't receive it in a timely fashion and that Customs officials are therefore unable to make seizures at the border. Customs reports indicate that seizures are way down.

Mr. DURKIN. I contest that. I believe that will be something that will be further developed by the committee later with other witnesses.

I personally have seen letters that we have received in DEA from Commissioner Acree and from directors in the field commending DEA for the promptness with which we furnish information which resulted in arrests and seizures.

So I just don't know how to respond to it, Mr. Sloan, to merge a dissimilar group of organizations such as Customs, BNDD, ONNI, and ODALE into a single organization, which took place less than 2 years ago. I think that we have accomplished a tremendous amount towards completing the objectives of the reorganization plan.

It is unfortunate that some have resisted with vigor and lack of less than total dedication to accomplishing the will of Congress.

Mr. SLOAN. Mr. Chairman, I have just one final question. Could you give the subcommittee some examples of the lack of cooperation you speak of at Customs?

Senator NUNN. We are probably going to call Mr. Durkin back. The committee has a time limit of 12 o'clock. I want to get through Mr. Cash's testimony if we can this morning.

So, Mr. Durkin, we will be calling you back at some point. Thank you.

Mr. Thomas V. Cash.

Mr. FELDMAN. Mr. Chairman, could I put in the record in a sealed file the matters concerning William Durkin which were brought up?

Senator NUNN. That will be exhibit No. 38.

[The document referred to was marked "exhibit No. 38" for reference and will be retained in the confidential files of the subcommittee.]

Senator NUNN. Hold up your right hand. You haven't been sworn yet, have you?

Mr. CASH. No, sir.

Senator NUNN. Do you swear the testimony you are about to give this morning before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CASH. I do, sir.

TESTIMONY OF THOMAS V. CASH, DEA INSPECTOR

Senator NUNN. What were your duties in September 1974, at DEA?

Mr. CASH. At that time, sir, I was one of nine working inspectors assigned to the Headquarters Office of Inspection and Internal Security.

Senator NUNN. How long had you been assigned to Inspection?

Mr. CASH. I was assigned in September of 1973, sir.

Senator NUNN. What was your previous investigative experience?

Mr. CASH. I began my law enforcement career as a Criminal Investigator in 1965, with the Naval Investigative Service, Office of Naval Intelligence. I served with the Bureau of Customs as a special agent and was assigned from there to the position of assistant chief of Interpol at the Treasury Department.

From there, I came to DEA in September of 1973, and began the 2 years that I am now completing in the Office of Inspection and Internal Security.

Senator NUNN. Who was your supervisor?

Mr. CASH. Mr. George Brosan was my supervisor, sir.

Senator NUNN. What directions did you receive on September 10, 1974, from Mr. Brosan in connection with the Metropolitan Police surveillance information concerning Vincent L. Promuto, the DEA Director of Public Affairs?

First of all, I will ask you if September 10 is the correct date; that is the date we have.

Mr. CASH. That is the correct date, according to my records, sir.

Senator NUNN. What directions did you receive from Mr. Brosan on that date?

Mr. CASH. In the afternoon of September 10, I was called into Mr. Brosan's office inasmuch as I happened to be the only inspector assigned onboard in town at that time. He asked me to proceed to the Metropolitan Police Department with a group supervisor from the Washington District Office, in an effort to determine the extent or the existence of an alleged bit of information relative to Mr. Promuto which the Washington Metropolitan Police had in their possession.

Senator NUNN. What did you do then?

Mr. CASH. I called the group supervisor, Mr. Arntz, who I had been given to believe was the initial recipient of this information.

And I accompanied him to the organized crime and rackets branch of the Metropolitan Police Department to be introduced to one of the officers there identified as Mr. Carl Shoffler.

Senator NUNN. Did you obtain the memorandum that day?

Mr. CASH. Yes, sir. At the conclusion of our conversation—that is to say, Mr. Shoffler and I, in conversation—I did obtain a copy of that memorandum.

Senator NUNN. Who gave you that memorandum?

Mr. CASH. Mr. Shoffler provided me with a copy of it, sir.

Senator NUNN. Did he brief you orally on other information containing associations with Mr. Promuto not contained in the memorandum or letter?

Mr. CASH. Yes, he did, sir. It was my impression that he felt that I was there in answer to that memorandum.

Senator NUNN. Had the memorandum ever been seen by you before?

Mr. CASH. Not prior to that date; no, sir.

Senator NUNN. Had it ever been received to the best of your information by DEA or anyone before this date?

Mr. CASH. Not to my knowledge, sir. I, in fact, did call Mr. Brosan on the evening of September 10 and being in receipt of this document, I questioned him as to whether or not he had seen this before.

He said that he had not. I had never seen it before this date.

Senator NUNN. Do you have any information since then that would lead you to any contrary conclusion about anybody else having received this?

Mr. CASH. I have no information.

Senator NUNN. So to the best of your knowledge, that was the first time anybody in DEA received this information and that is when you received it?

Mr. CASH. To the best of my knowledge.

Senator NUNN. September 10th?

Mr. CASH. That is correct.

Senator NUNN. From officer Shoffler of the Metropolitan Police Department?

Mr. CASH. That is correct.

Senator NUNN. Was that at his office in the Metropolitan Police Department?

Mr. CASH. Yes, sir. It was in his office.

Senator NUNN. What did you do with the memorandum and other information you received?

Mr. CASH. The following morning, September 11, on a Wednesday, I met with Mr. Brosan when he came in and turned the document over to him.

Senator NUNN. What instructions did you then receive from Mr. Brosan?

Mr. CASH. Mr. Brosan reviewed the document and stated that Mr. Bartels was out of the country and that perhaps we should conduct discreet inquiries until his return. He asked me to keep him informed of the developments as I proceeded in the normal investigative course of events.

Senator NUNN. Did you in fact proceed with this integrity investigation?

Mr. CASH. I did at that time, sir; yes, sir.

Senator NUNN. Did you concur with Mr. Brosan that the information contained in the memorandum constituted sufficient unfavorable assertions about Mr. Promuto that it justified an integrity investigation by the office of inspection?

Mr. CASH. I did believe that, on the basis of that limited information, an investigation was justified, sir.

Senator NUNN. So you and Mr. Brosan were in agreement on that?

Mr. CASH. Yes, sir.

Senator NUNN. What was the nature of the information contained in the memorandum? Just generally, in very general terms?

Mr. CASH. The memorandum made clear that Mr. Promuto was not the subject of a specific investigation by the Metropolitan Police, but rather that during the course of several investigations being conducted by the Metropolitan Police, in the surveillances he had appeared with the principals who were under investigation and appeared to be friendly or in more than a passing acquaintance of these individuals.

Senator NUNN. If Mr. Promuto were not the subject of any specific criminal investigations, why did you feel the information contained in the memorandum justified an integrity investigation?

Mr. CASH. Due to Mr. Promuto's position as a high official, I thought that from an internal affairs standpoint, there was the pos-

sible suitability issue, and in addition to that, I felt that were these allegations of associations true, the internal security of the agency might be thought by some to be compromised.

Senator NUNN. Did you come upon information indicating that Mr. Promuto had associations with more persons of criminal background other than those indicated in the Metropolitan Police organized crime and rackets squad memorandum?

Mr. CASH. Yes, sir; I did. I was briefed in addition to those statements and in the memoranda furnished me by Mr. Shoffler to that effect, that there were others involved and then when we were doing our file reviews—that is, checking our internal records on those subjects mentioned by the Metropolitan Police Department—we came up with information that one of the subjects, in fact a couple of the subjects, did actually appear in our files connected in various ways with criminal enterprise.

Senator NUNN. This was still in an oral conversation there with the Metropolitan Police with Mr. Shoffler?

Mr. CASH. Yes, sir.

Senator NUNN. That was information in addition to the written memorandum but it still came from the Metropolitan Police?

Mr. CASH. Yes. In our own files and through the discreet inquiries that I undertook, there were other agencies who had knowledge of the existence of Mr. Promuto's meetings, if you will, or having dinner, and so forth, with these suspected members of the criminal community.

Senator NUNN. What was the extent of this new information?

Mr. CASH. The extent of the information was that there were other people who were mentioned in our files involved in suspected narcotic activity; specifically, there was one gentleman who was an arrested and convicted gambler who appeared in our files in connection with an attempted narcotics venture.

Senator NUNN. What class of narcotics venture was that?

Mr. CASH. The particular file that I am referring to, Senator, was a general file and general files do not carry a specific class of violator.

Senator NUNN. The general nature of the suspected offense of the particular people in your file, would that be in the general nature of the class I violation, class IV, class III?

Mr. CASH. In that particular file it would be of the general nature, in that the class I violator is usually engaged in smuggling and the international traffic between countries in narcotics.

Senator NUNN. So the general nature of the suspected allegations were class I?

Mr. CASH. They were not classified as class I. They could probably be interpreted as that. You would have to initiate such a classification. It would have to gain approval if an active investigation were undertaken relative to this specific subject, and since it was of the general file nature, as I say, there was no active investigation undertaken and, hence, no classification sought. But in the general nature, it would be.

Senator NUNN. But still, from the point of view of Mr. Promuto personally, it was a question of association and not a question of his own activity?

Mr. CASH. Absolutely, sir. There was never any findings of criminal activity.

Senator NUNN. Just association?

Mr. CASH. Just association with those known to be engaged in such enterprise.

Senator NUNN. Did you get any additional information from other governmental agencies?

Mr. CASH. Yes, sir, I did. During the course of my investigation, I, acting on information provided by the Metropolitan Police, interviewed agents and former agents of other Government agencies relative to Mr. Promuto.

Senator NUNN. Did you report this information to Mr. Brosan?

Mr. CASH. I reported all information to Mr. Brosan, sir.

Senator NUNN. Did you feel this new information warranted continued investigation into the integrity area?

Mr. CASH. I certainly felt it should have been continued; yes, sir.

Senator NUNN. Some time between September 16 and September 29, did Mr. Brosan inform you that Diane DeVito had been seen on the West Coast with Mr. Bartels?

Mr. CASH. Yes, sir; I received that information.

Senator NUNN. That was from Mr. Brosan?

Mr. CASH. Mr. Brosan did inform me of that; yes, sir.

Senator NUNN. Were you intending to go forward with this integrity investigation?

Mr. CASH. Yes, sir; I had every intention of going forward with it.

Senator NUNN. Were you able to go forward with an integrity investigation concerning Mr. Promuto?

Mr. CASH. No, sir. I was not completely allowed to continue in the normal fashion.

Senator NUNN. When were you stopped and who stopped you?

Mr. CASH. It was never actually stopped. However, I was instructed on September 29 that I would initiate no new inquiries, that the investigation would be confined, if you will, to those already received and I interpreted that to be those points received from the Metropolitan Police report.

Senator NUNN. That was on September 29?

Mr. CASH. Yes, sir. That was Sunday, September 29.

Senator NUNN. Sunday, September 29?

Mr. CASH. That is correct.

Senator NUNN. Where was that meeting; who was there; and who gave you that instruction?

Mr. CASH. I was telephoned at my residence by Mr. Brosan on the 29th of September, sir, and instructed that inquiries were to be confined to those already initiated, that written questions were to be submitted to Mr. Promuto, that there would be no live interview; the questions were to be written by September 30.

Senator NUNN. That was the next day?

Mr. CASH. Yes, sir. That was the initial information I had. They were going to be written on September 30.

Senator NUNN. Have you ever been told before not to develop any new information on a case?

Mr. CASH. Not in my 10 years of investigation work. No, sir.

Senator NUNN. It is the first time you have ever been told to stop right there and not to develop any new information?

Mr. CASH. Yes, sir; that is the first time I have been told that.

Senator NUNN. In any kind of narcotics investigation you have ever had, ~~that~~ would be your only recollection of having been told that?

Mr. CASH. Yes, sir; I don't recall ever being told that before.

Senator NUNN. Do you think it was unusual?

Mr. CASH. I thought it was unusual at the time, sir.

Senator NUNN. Did you express yourself on that point?

Mr. CASH. I informed Mr. Brosan at that time that I was unable to prepare written questions or to assist in that because my investigation wasn't complete. I told him that I objected and I wished that he would so note.

Senator NUNN. What was his response?

Mr. CASH. He acknowledged receiving my objection, sir.

Senator NUNN. Did he inform you he was going to press it on or did he give you any opinion himself?

Mr. CASH. I don't recall, Senator.

Senator NUNN. Were you called into talk to Mr. Richardson. Mr. Brosan, and others, relative to this written questionnaire for Mr. Promuto?

Mr. CASH. Yes, sir, I was.

Senator NUNN. Was this the first time you had ever been encountered with the procedure of submitting written questions?

Mr. CASH. Yes, sir, it was.

Senator NUNN. Were these questions under oath?

Mr. CASH. Not to my knowledge, sir.

Senator NUNN. Did you do any investigating after the written questionnaire?

Mr. CASH. Yes, sir. I continued on with attempting to complete the initial information or investigation received from the initial information, as I stated earlier.

Senator NUNN. Did you try to develop any new information after that phone call on September 29?

Mr. CASH. Not at that time; no, sir.

Senator NUNN. How about later?

Mr. CASH. Later on, on October 23, there was new information that came forth from another Federal agency and at that time I did initiate some information, some investigation, because this was concerning basically the same general personnel involved.

Senator NUNN. Did you feel like you had followed your orders of September 29 not to pursue any new investigation?

Mr. CASH. Yes, sir; I did.

Senator NUNN. So you did stop your investigation then, as far as new information is concerned until October 23?

Mr. CASH. Yes. I didn't pursue any investigative leads other than those initial ones that had been brought to our attention by the Metropolitan Police.

The information that I developed during the investigation of the Metropolitan Police information had led me to think that I probably could pursue other avenues outside, which I did not pursue—as I was instructed not to pursue any new investigative leads.

Senator NUNN. So you really did stop your investigation as far as new leads were concerned?

Mr. CASH. Yes, sir; I did.

Senator NUNN. When Mr. Brosan gave you this information on the telephone, was he giving you orders on his own or did he make it clear where those orders had come from?

Mr. CASH. He didn't make it clear, as I can recall, where the orders came from, but I certainly was not of the impression that this was on his own initiative.

Senator NUNN. Why not?

Mr. CASH. Because at the outset when I had informed him of the existence of this memorandum and the information contained therein, it was his instruction to me that we should gather all pertinent facts to confirm or refute Mr. Promuto's involvement and now this conversation I am speaking of on the 29th was directly contrary to his initial attitude.

Senator NUNN. So the September 29 conversation with Mr. Brosan definitely, in your mind, limited the scope of your investigation?

Mr. CASH. Limited the scope of my investigation; yes, sir.

Senator NUNN. It narrowed the scope from your previous orders?

Mr. CASH. I thought it did; yes, sir.

Senator NUNN. Mr. Brosan did not tell you who gave these orders? He did not make it clear that these orders had come from someone else?

Mr. CASH. I can't say that he did not make it clear, Senator. I don't recall the total conversation. It was rather brief, that by virtue of telling me that I was to be in the office on Monday, September 30, that we were going to have to write written questions and there would be no live questions.

I was writing those things down and I don't necessarily recall clearly if he said whether or not he had received the instruction from whomever.

Senator NUNN. Did you subsequently submit questions to Mr. Promuto directly or did you submit your ideas on the questions through some other party?

Mr. CASH. The questions on Monday, September 30, were drafted. I was present during the drafting of those questions. I didn't physically write the questions out, but I did mention some of the items that we might want to cover at this time.

Senator NUNN. Were you satisfied with this procedure?

Mr. CASH. No, sir, I was not.

Senator NUNN. Did you state that you were not in the presence of anybody?

Mr. CASH. I am certain I made statements to the inspectors who were working the case with me, as well as Mr. Brosan.

Senator NUNN. Who were those inspectors?

Mr. CASH. That was Inspector Whittington and Inspector Yarbrough.

Senator NUNN. Do you remember the date that these questions were submitted to Mr. Promuto?

Mr. CASH. Yes, sir, they were submitted on October 1 at 9:30 a.m. and I received from Mr. Brosan a copy of the answered questions on October 2, at 4:15 p.m.

Senator NUNN. You received the copy of the answers on October 2?

Mr. CASH. Yes, sir.

Senator NUNN. The questions were submitted on October 2?

Mr. CASH. According to my record, yes, sir.

Senator NUNN. Who submitted those questions to Mr. Promuto?

Mr. CASH. I don't know, sir.

Senator NUNN. You didn't know?

Mr. CASH. I did not.

Senator NUNN. You got a copy of the answers on the following afternoon, October 2?

Mr. CASH. I did, sir.

Senator NUNN. Were all the questions answered to your satisfaction?

Mr. CASH. No, sir.

Senator NUNN. Were some of the questions unanswered?

Mr. CASH. Yes, sir.

Senator NUNN. Do you remember how many questions there were?

Mr. CASH. They were double spaced, four or five pages, and an accurate number of how many were not answered, I am not sure. I do recall that there were some that were not answered and others that I didn't think were properly fully answered.

Senator NUNN. You were not satisfied with the answers then; is that right; generally speaking?

Mr. CASH. That is right.

Senator NUNN. Did you tell anybody that?

Mr. CASH. Yes, sir.

Senator NUNN. Who?

Mr. CASH. The inspectors I was working with, as well as Mr. Brosan.

Senator NUNN. What was Mr. Brosan's response?

Mr. CASH. I always felt that during the conduct of the investigation we would have a chance to question Mr. Promuto at a later time and that on personal, face-to-face questioning we would bring up some of these points and clarify the issues. So we noted it for future clarification.

Senator NUNN. You say we noted it. Did Mr. Brosan concur in that?

Mr. CASH. I think he did, sir, that we would talk to Mr. Promuto at a later time and at that point we would bring up the unanswered questions as one of our topics.

Senator NUNN. Did you ever have a chance to do that?

Mr. CASH. Not concerning those questions; no, sir.

Senator NUNN. Did you ever have a chance to question Mr. Promuto on any questions personally?

Mr. CASH. Yes, sir. I questioned Mr. Promuto on the 29th of January of this year.

Senator NUNN. You questioned him on the 29th of January of this year?

Mr. CASH. That is right, sir.

Senator NUNN. Who ordered or allowed that questioning?

Mr. CASH. I received my instruction from Mr. Jensen, who was my supervisor, Mr. Bruce Jensen, who was in the chain of command at that time.

He instructed me on the night of the 28th that the following day, the 29th, we would talk to Mr. Promuto and ask him certain questions

Senator NUNN. At the time you submitted the report, did you have other allegations that were excluded from the report?

Mr. CASH. I had information that probably could have been expanded. It was not. Yes, sir.

Senator NUNN. That you would consider new information?

Mr. CASH. That would be in addition to that initially received; yes, sir.

Senator NUNN. So everything that you knew was not included in that report?

Mr. CASH. No, sir.

Senator NUNN. So you did follow orders pursuant to the September 29th phone call and you did exclude certain information, include information that you considered was beyond the scope of your mandate or your inquiry?

Mr. CASH. I believe I followed my instructions on that matter.

Senator NUNN. Did any new information develop between the time you submitted that report and the time you questioned Mr. Promuto on January—what was the date of the questioning?

Mr. CASH. The 29th of January; yes, sir.

Senator NUNN. There was new information developed then?

Mr. CASH. Yes, sir.

Senator NUNN. Did you feel that you were superseding your order or had you had new orders, or were you still under the same orders to limit your inquiry to the so-called Metropolitan Police information?

Mr. CASH. I think these were new orders to be classified as new orders, Senator.

Senator NUNN. When did you receive what you considered to be new orders?

Mr. CASH. On the 23rd of October 1974.

Senator NUNN. When was your report submitted?

Mr. CASH. On the 21st of October.

Senator NUNN. Who gave you new orders?

Mr. CASH. Mr. Brosan gave me new orders, sir.

Senator NUNN. Mr. Brosan gave you new orders?

Mr. CASH. That is correct.

Senator NUNN. Did he broaden the September 29 orders?

Mr. CASH. No, sir. This relates to additional new information that came to our attention concerning Mr. Promuto and did not relate to the initial information, although some of the people involved here were the same. But it was two separate issues here.

Senator NUNN. It would not have been information originating from the D.C. Police Department then?

Mr. CASH. This information we are speaking of now, did not originate in the D.C. Police Department.

Senator NUNN. So on October 23 you feel your scope was broadened again. Would you say it was broadened back to your original scope of inquiry from Mr. Brosan?

Mr. CASH. I would say that is probably a fair statement inasmuch as the principals, many of the people involved were the same in both instances.

Senator NUNN. So if we were trying to summarize the period during which you had a limited scope of inquiry under orders from Mr.

relative to some new information that came up subsequent to the original receipt of information from the police department.

Senator NUNN. Before that January 29 questioning—is that the right date?

Mr. CASH. Yes, sir.

Senator NUNN. Before that January 29 questioning, had you already submitted a final report on the Promuto investigation?

Mr. CASH. I submitted a report on the 21st of October, but it was not a final report because there were other things outstanding.

In other words, the report related to a completion and a summation, if you will, of all the activities that I had completed up to that date.

Senator NUNN. At that date when you submitted what you considered to be a report, but not what you considered to be a final report that it was not final, that there were still outstanding questions? Or did you say it was an interim report?

Mr. CASH. No, sir, the report was written in such a way that I took each statement that had been presented by the Metropolitan Police Department and analyzed after the statement, what my investigative inquiry had shown.

A reading of that report will show that there were some unanswered questions.

Senator NUNN. Based on the original information contained in the Metropolitan Police Department report that you received?

Mr. CASH. That is correct, sir.

Senator NUNN. Did you address yourself both to the oral information obtained from the Metropolitan Police Department, as well as the written memorandum, or did you direct that report only to the written information?

Mr. CASH. No, sir. It was also addressed to some of the oral information that had been given to me by the police department.

Senator NUNN. Did you not consider this to be addressing issues beyond the scope of your orders from Mr. Brosan on the September 29th phone call?

Mr. CASH. No, sir, because those were all the issues that I had been given from the police department. I categorized that as the basis of the inquiry.

Senator NUNN. Did you have any information at that time when you submitted that report, any other allegations that did not originate from the Metropolitan Police Department that were contained in that report?

Mr. CASH. I am sorry, sir. Will you repeat that question?

Senator NUNN. Did the report that you submitted simply relate to the oral and written allegations you have received from the Metropolitan Police Department?

Mr. CASH. Yes, it did.

Senator NUNN. Did it contain any information other than those allegations?

Mr. CASH. No, sir.

Senator NUNN. That you received from the Metropolitan Police Department?

Mr. CASH. No, sir.

Brosan it would be between the date of September 29 and the date of October 23. Is that a fair conclusion?

Mr. CASH. I think that is a fair conclusion, Senator.

Senator NUNN. After October 23, you did not feel any restraints in the Promuto investigation?

Mr. CASH. I couldn't make that statement, sir.

Senator NUNN. Let's ask it the other way. What restraints did you feel, if any?

Mr. CASH. There was the same subject of the investigative inquiry in both instances. And with the limitations placed initially or my interpretation that there were limitations we still had the same subject and I should think those limitations still did exist but there was a matter of professionalism here and I just felt that the investigation should go forward. So perhaps I did violate somewhat of my previous restraints.

Senator NUNN. Perhaps you did violate your previous restraints during September 29 to October—

Mr. CASH. Negative. After the October—

Senator NUNN. After October 23?

Mr. CASH. Yes, we are talking about two separate instances here, I hope.

Senator NUNN. But involving the same?

Mr. CASH. But we have the same type of people. It is almost impossible to completely separate them.

Senator NUNN. I am just trying to pin down if there were restraints on October 23, if the restraints that you felt were imposed on September 29 were completely removed on October 23, or whether they were partially removed or whether it was just a vague area as to what your authority was.

Mr. CASH. I think a vague area is a better statement on that issue.

Senator NUNN. But between September 29 and October 23 it was not vague. Is that a fair conclusion?

Mr. CASH. No, sir. I didn't conceive it to be vague.

Senator NUNN. It was specific that during that period of time you would not go beyond the allegations contained in the written and oral report from the D.C. Police Department?

Mr. CASH. That is as I understood it; yes.

Senator NUNN. From October 23 on, it got back into the vague area and therefore you felt some of the constraints or restraints were lifted?

Mr. CASH. That is what I felt.

Senator NUNN. But you did not have a clear mandate even after October 23 to proceed with a full investigation?

Mr. CASH. No, sir.

Senator NUNN. So you never got back to that clear mandate that you thought you had from Mr. Brosan at the very beginning of the investigation which I believe was on September 10?

Mr. CASH. That is correct.

Senator NUNN. Would it be fair to say even on January 29 you still felt you were in a vague area concerning your questioning?

Mr. CASH. Yes, sir.

Senator NUNN. You did not at that time feel you had a clear mandate to pursue it to its ultimate?

Mr. CASH. That is correct, sir.

Senator NUNN. You still felt some restraint on January 29, 1975?

Mr. CASH. On the 29th of January, I was instructed that there were specific things we would question Mr. Promuto on. So in that case, yes.

Senator NUNN. You were instructed there were things you were not to question Mr. Promuto on, or was it all in the affirmative?

Mr. CASH. I think it was all in the affirmative, sir, what we were going to question him on.

Senator NUNN. Who gave you that order?

Mr. CASH. Those instructions came from Mr. Jensen.

Senator NUNN. After January 29, had you received any subsequent mandates for continued investigations or any kind of negative constraints?

Mr. CASH. No, sir, I was not involved in the investigation after the 29th of January.

Senator NUNN. Since that time you have not been involved?

Mr. CASH. No, sir, I have not.

Senator NUNN. Have you been specifically pulled off the case after the 29th?

Mr. CASH. Yes, sir, I specifically was pulled off.

Senator NUNN. By whom?

Mr. CASH. By Mr. Smith, Acting Chief Inspector. He reassigned me.

Senator NUNN. To other matters?

Mr. CASH. To other matters that needed to be done.

Senator NUNN. Was anybody else given charge of the Promuto investigation or has it affected the—

Mr. CASH. There were other people given charge of it.

[At this point Senator Percy entered the hearing room.]

Senator NUNN. Senator Percy?

Senator PERCY. Mr. Chairman, a few questions of clarification. During that period of September 29 to October 23, do you feel there was a deliberate attempt to prevent a full-blown investigation of all allegations concerning Mr. Promuto?

Mr. CASH. Senator, I don't know what deliberate effort was made. It was my impression that with the instructions I had been given a full-blown investigation would not be consummated.

Senator PERCY. Would that in your judgment constitute a cover-up?

Mr. CASH. I would have to say it limited our investigation.

Senator PERCY. Wouldn't that be in a sense a coverup, then?

Mr. CASH. It might be interpreted as a coverup, sir.

Senator PERCY. If so, on whose orders were constraints imposed?

Mr. CASH. All of my instructions in this regard, Senator, came from Mr. Brosan. So I would say that his instructions would have come further up in the chain of command.

Senator PERCY. Do you happen to know whether the instructions from Mr. Brosan originated with him or whether he was carrying out someone else's directions?

Mr. CASH. In my conversations with Mr. Brosan I believe he was carrying out his instructions in that regard.

Senator PERCY. Does it make any sense to you to have been pulled off of the case when you were the most knowledgeable inspector on this subject?

Mr. CASH. I have thought about that quite a bit, Senator.

Senator PERCY. I imagine you have. What are your thoughts? Why do you think you were pulled off the case and did it make any sense to you?

Mr. CASH. I felt that perhaps my supervisor—that is to say, Mr. Smith, Acting Chief Inspector—felt that the case might better be handled by someone who could get a new look at it and perhaps this was the justification.

Senator PERCY. Do you honestly feel that is adequate justification? Is that a normal, routine procedure in investigations?

Mr. CASH. I have never been taken off an investigation before, sir.

Senator PERCY. So this is a most unusual practice and in all your knowledge of investigative procedures, wouldn't you say it is a rather unusual process to take someone off of a case unless there was a cause? If there is a cause, please feel free to explain it. Is there some reason why you might not have objectivity in this matter? Is there any conflict of interest you would have as a cause for being taken off of it?

Mr. CASH. No, sir. I don't think that existed. I never knew anything about the subject of this inquiry and don't believe that would have been a factor.

Senator PERCY. There is no reason why in your background you wouldn't be considered fully qualified, fully competent to carry out and complete a thorough investigation of the matter?

Mr. CASH. Only as I have stated earlier, Senator, that perhaps they felt—that is to say, my supervisor—felt it was in the best interest of the agency that others could get a fresher look and perhaps be less involved in it.

Senator PERCY. Did they explain to you what that best interest of the agency was? Did you come to any conclusion in this regard? Did you feel that it would be in the best interest of the agency for you to be removed from the case?

[At this point Senator Nunn withdrew from the hearing room.]

Mr. CASH. I don't believe there was any lengthy explanation given me.

Senator PERCY [presiding]. Did you have a liaison, overlap, period with the new investigator? Did you fully brief him and were you instructed to brief him on everything that you knew?

Mr. CASH. Yes, sir. I received those instructions and complied with them fully.

Senator PERCY. Thank you very much, indeed.

Mr. FELDMAN. Mr. Chairman, can I put in the record the affidavit of Detective Carl Shoffler, which dealt with the Promuto allegations? I would like it in the sealed record again, Mr. Chairman, because it goes to some of the allegations in the police report.

I would just like to make one statement which goes to a date that we talked about this morning.

Mr. Shoffler relates that he had a conversation with John Arntz, Group Supervisor of DEA in the Washington, D.C. office on August

9, 1974, with regard to the Promuto matter. So could I have that as an exhibit?

Senator PERCY. That will be entered as exhibit No. 39.

[The document referred to was marked "Exhibit No. 39" for reference and will be retained in the confidential files of the subcommittee.]

Mr. FELDMAN. Mr. Chairman, tomorrow we are going to meet in room 1202, since this room is being used. We will start out with Mr. Robert Richardson, DEA Associate Chief Counsel, followed by Mr. Thomas Durkin, former special advisor to DEA.

Senator PERCY. These hearings are recessed until 10 o'clock tomorrow morning in room 1202.

Mr. FELDMAN. Mr. Chairman, just an addendum, we would like to have Mr. Dayle available for recall, if necessary; and Mr. John Arntz, who was mentioned today.

Senator PERCY. All right.

[Whereupon, at 12:20 p.m., the subcommittee recessed, to reconvene at 10 a.m., Wednesday, June 18, 1975, in room 1202.]

[Members present at time of recess: Senator Percy.]

FEDERAL DRUG ENFORCEMENT

WEDNESDAY, JUNE 18, 1975

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met at 10 a.m., in room 1202, Dirksen Senate Office Building, under authority of Senate Resolution 111, agreed to March 17, 1975, as amended, Hon. Henry M. Jackson, chairman of the subcommittee presiding.

Members of the subcommittee present: Senator Henry M. Jackson, Democrat, Washington, and Senator Sam Nunn, Democrat, Georgia.

Members of the professional staff present: Howard J. Feldman, chief counsel; Dana Martin, assistant counsel; Philip R. Manuel, investigator; Frederick Asselin, investigator; Stuart M. Statler, chief counsel to the minority; Robert Sloan, special counsel to the minority; and Ruth Y. Watt, chief clerk.

Chairman JACKSON. The committee will come to order.

[Members of the subcommittee present at time of reconvening: Senators Jackson and Nunn.]

Chairman JACKSON. Before going ahead with this morning's proceedings, I have several announcements to make.

First, I wish to insert into the record of these hearings a June 11, 1975, Western Union mailgram sent to me as chairman by Mr. John R. Bartels, Jr. The mailgram was received by the subcommittee June 12.

In the communication Mr. Bartels referred to rule 14 of the subcommittee's rules of procedure and requested that he be given the opportunity to testify before the subcommittee "as soon as possible."

Without objection, I am inserting the mailgram into the record.
[The mailgram follows:]

[Mailgram]

June 12, 1975.

Hon. HENRY M. JACKSON,
*Chairman, Permanent Subcommittee on Investigations,
Russell Senate Office Building,
Washington D.C.*

Pursuant to Subcommittee Rule 14, I respectfully request the opportunity to appear before your subcommittee as soon as possible and give testimony as well as respond to your questions concerning my professional activities and decisions while I was administrator of the Drug Enforcement Administration.

JOHN R. BARTELS, Jr.

The CHAIRMAN. Rule 14 of the subcommittee's rules of procedure states that persons who feel their actions or reputations have been

reflected unfavorably upon may request the opportunity to appear before the subcommittee.

We wish to be fair to Mr. Bartels in this regard and also responsive to our own rules of procedure. Accordingly, after consultation between subcommittee staff and minority counsel, the subcommittee agreed that the earliest appropriate point in the hearing schedule for Mr. Bartels to appear would be Friday, June 20, 1975. This date was scheduled for Mr. Bartels to appear in public session.

Without objection, I am inserting in the hearing record a copy of my letter of June 12, 1975, to Mr. Bartels, confirming his appearance on June 20.

[The letter follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C., June 12, 1975.

Mr. JOHN R. BARTELS, Jr.,
Washington, D.C.

DEAR MR. BARTELS: This is to acknowledge receipt of your wire of June 11, 1975 in which you request the opportunity to appear "as soon as possible" before the Senate Permanent Subcommittee on Investigations.

As Chairman of the Subcommittee, I hereby grant this request. The Subcommittee has scheduled your appearance for Friday, June 20, 1975 at 10:00 a.m. in Room 6202 of the Dirksen Senate Office Building. Subcommittee staff will notify you if there is any change in this schedule.

As you know, the Subcommittee is examining the manner in which the federal government enforces drug laws. Many areas of the federal effort, particularly operations of the Drug Enforcement Administration, will be studied as the hearings go forward.

In that regard, the Subcommittee is scheduling you as a witness June 20, 1975 with the stipulation that you may be recalled to testify in connection with a variety of subjects having to do with the operations and procedures of the DEA and other federal drug enforcement activities.

Enclosed is a copy of the Subcommittee's Rules of Procedure. Please note Rule No. 9 which requires that any prepared statement a witness wishes to give before the Subcommittee be submitted to the Subcommittee 24 hours in advance.

Sincerely,

HENRY M. JACKSON, *Chairman*.

Chairman JACKSON. Mr. Feldman, the chief counsel, received a telephone call from Mr. Bartels yesterday afternoon. Mr. Bartels asked if his June 20, 1975 appearance could be postponed. Mr. Bartels said the reason he was asking for this postponement is to enable him to be in attendance at his son's graduation ceremonies June 20.

Mr. Bartels informed Mr. Feldman that he would send a letter formally requesting a postponement.

Mr. Bartels was advised by telephone by Mr. Feldman that his request for postponement would be honored. I so directed Mr. Feldman to do so.

My next announcement has to do with the order of witnesses the subcommittee had scheduled for today, tomorrow and possibly Friday, including Mr. Bartels.

On May 22, 1975, as Chairman and after consultation with Senator Percy, I sent a letter to Attorney General Edward H. Levi, in which the subcommittee requested the cooperation of the Department of Justice as we sought to examine the manner in which the then Deputy Attorney General Laurence H. Silberman exonerated Mr. Bartels of the charges leveled against him by Mr. Tartaglino and Mr. Brosan.

in connection with Mr. Bartels' alleged impeding and obstructing the Promuto integrity investigation and other integrity matters.

Without objection I will insert into the hearing record at this time a copy of the May 22, 1975 letter.

[The letter follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C., May 22, 1975.

Hon. EDWARD H. LEVI,
The Attorney General.

MY DEAR MR. ATTORNEY GENERAL: To facilitate our continuing investigation into the Drug Enforcement Administration, it would be appreciated if you would make available the letterhead memorandum to Deputy Attorney General Laurence H. Silberman, from the Federal Bureau of Investigation Inspection Service, reflecting the results of their administrative inquiry on questions concerning the policies and problems of DEA including actions by the Administrator of the Drug Enforcement Administration, Mr. John R. Bartels, Jr.

In addition, the Subcommittee would like the two agents who conducted interviews for the FBI. Mr. Edward D. Hegarty and Mr. Bill D. Williams, made available for pre-hearing interview.

Sincerely,

HENRY M. JACKSON, *Chairman.*

Chairman JACKSON. In the letter, I asked for a copy of the report filed with Mr. Silberman by FBI agents Bill D. Williams and Edward Hegarty following their investigation of the allegations made by Mr. Tartaglino and Mr. Brosan concerning conduct of Mr. Bartels in the Promuto integrity inquiry and other matters raised by Mr. Tartaglino and Mr. Brosan.

This report filed with Mr. Silberman is important to this subcommittee's investigation into allegations that the Drug Enforcement Administration did not, and does not, adhere to proper procedures regarding integrity investigations.

In addition, on January 16, 1975, when Deputy Attorney General Silberman announced that Mr. Bartels had conducted himself properly in personnel integrity investigations, Mr. Silberman said he had based his conclusion on the FBI agents' investigation of "several months" duration.

In the May 22, 1975, letter to Attorney General Levi, I also requested that FBI agents Hegarty and Williams be made available for prehearing interviews with the subcommittee staff. The subcommittee would then make the judgment as to whether agents Hegarty and Williams would be called as witnesses in public session.

The Department of Justice chose not to cooperate with the subcommittee because the report filed by FBI agents Hegarty and Williams regarding the Tartaglino-Brosan allegations was never made available to the subcommittee. Additionally, agents Hegarty and Williams were not made available to the subcommittee for prehearing interviews.

Then, on June 2, 1975, again after consultation with Senator Percy, I wrote to Attorney General Levi and advised him of the Justice Department personnel the subcommittee wished to have testify in public session concerning this subcommittee's investigation into Federal drug enforcement efforts.

Without objection, I will insert into the hearing record at this time a copy of the June 2, 1975, letter.

[The letter follows:]

U.S. SENATE,
 COMMITTEE ON GOVERNMENT OPERATIONS,
 SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
 Washington, D.C., June 2, 1975.

Hon. EDWARD H. LEVI,
The Attorney General.

My DEAR MR. ATTORNEY GENERAL: We have previously orally informed your representatives that public hearings on the Drug Enforcement Administration, scheduled to begin on June 3, 1975, have been postponed until Monday, June 9, 1975.

By letter of May 27, 1975, we set forth a list of individuals associated with the Department or DEA who we desired to have testify before the Subcommittee during the early stages of these hearings. This letter supersedes that request.

For the week of June 9, 1975, it is requested that Mr. Andrew C. Tartaglino and Mr. George Brosan be made available to testify before the Subcommittee to be followed by the individuals listed below:

Dennis Dayle
 William Durkin
 Thomas V. Cash
 Robert Richardson
 Thomas Durkin, DEA Consultant
 Vincent Promuto
 Bill D. Williams, FBI Agent
 William Hegarty, FBI Agent

In addition to those witnesses we are unable to hear from the previous week, it is requested that the following witnesses be made available for the week commencing June 16, 1975:

Robert Goe
 Thomas Tripodi
 Paul Curran
 Rudolph Gulliani
 Jeffery Harris
 Thomas Puccio
 Edward Tetterton
 Martin Pera
 Barbara Vicevitch

For the week of June 23, 1975, it is requested that the following individuals be made available to the Subcommittee to testify:

Frank Pappas
 Howard Safir
 Donald Ferrarone
 Sante A. Bario
 Lucien Conein
 George Belk
 Philip Smith

Because it is difficult to gauge with precision the time that each witness will take, we will coordinate with your representatives on their appearance before the Subcommittee.

There may be additional Department witnesses we wish to call and as soon as such determinations are made we will contact you.

With regard to Messrs. Tartaglino and Brosan, it is requested that they be available in the hearing room during the duration of the hearings.

Finally, you will note that two individuals we have requested—Edward Tetterton and Barbara Vicevitch—have been denied to us for pre-hearing interviews. We renew that request but in any event expect that they will be present to give sworn testimony before the Subcommittee when called.

A copy of this letter is being made available to Mr. Henry S. Dogin, Acting Administrator of the Drug Enforcement Administration.

Your continuing cooperation in this matter is appreciated.

Sincerely,

HENRY M. JACKSON, *Chairman.*

Chairman JACKSON. Included among the names of those Justice Department personnel the subcommittee wishes to appear and testify were FBI agents Hegarty and Williams and others, including An-

drew C. Tartaglino, George B. Brosan, Dennis Dayle, William Durkin, Thomas V. Cash, Robert Richardson and the consultant, Thomas E. Durkin.

It is noteworthy that all of the above, except agents Hegarty and Williams, not only were made available to the subcommittee to testify by the Department of Justice but were also made available to this subcommittee previously for prehearing interviews.

However, FBI agents Hegarty and Williams were not made available to this subcommittee for prehearing interviews with the staff.

It was our intention to go ahead and have agents Hegarty and Williams testify anyway, with or without the prehearing interview. It was our intention to have them testify Thursday, June 19, 1975, in public session.

It is the judgment of the Chairman that the testimony of FBI agents Hegarty and Williams would be essential if we were ever to arrive at a clear understanding of what events led to Deputy Attorney Silberman's announcement of January 16, 1975, that there was no basis to the allegations of Mr. Tartaglino and Mr. Brosan that Mr. Bartels had conducted himself improperly in the Promuto integrity inquiry and other matters related to personnel integrity.

At 5 p.m. yesterday, Mr. Feldman received a telephone call from Mr. Togo D. West, Jr., the Associate Deputy Attorney General at the Department of Justice.

Mr. Feldman advises me that Mr. West declared that FBI agents Hegarty and Williams would not be made available to this subcommittee this week or any other time, nor will their report be made available to this subcommittee.

Mr. Feldman advises me that Mr. West said the reason that FBI agents Hegarty and Williams would not be made available to this subcommittee to submit to questions under oath was because the department's own inquiry into certain operations of the Drug Enforcement Administration is a so-called "open case" and agents Hegarty and Williams are part of that "open case."

Mr. West advised Mr. Feldman that, although the phone call constituted official notification, a letter from the Justice Department to this subcommittee would be forthcoming shortly in which the subcommittee would be formally advised of the department's refusal to make available agents Hegarty and Williams to testify.

This morning I was unable to reach the Attorney General but I did reach the Deputy Attorney General, Harold Tyler. He has agreed to make Hegarty and Williams available here at 10 o'clock tomorrow.

They must be made available for the simple reason that we have a right to know whether the FBI agents in question were operating and conducting an investigation under certain restrictions, what those restrictions were and why, if they were limited, was such a practice permitted by the Deputy Attorney General at that time, Mr. Silberman.

So the agents will be here tomorrow to testify in public, although the Department had previously denied to the staff the prehearing interview. A prehearing interview is, of course, an effort to elicit information in private so that we will have it available for the open

session and not bring out information that might reflect unfairly on someone.

That, we don't want to do, but we don't have the benefit of that normal procedure in this case as it relates to FBI agents Hegarty and Williams.

May I say that this is the Department of Justice decision. We have not been in touch with Mr. Kelly, of the FBI, regarding their appearance because the two agents operated directly under the Department of Justice and whatever they did or whatever they were required to do, we will find out tomorrow and what limitations, if any, were placed on them.

Without that information, we cannot properly conduct the hearing because out of the so-called Silberman investigation much was made of the fact that the FBI agents were involved in the investigation which would appear to give it that kind of credibility of thoroughness that has long been associated with the high degree of professionalism that exists within the FBI.

I think the facts, as they will be brought out, will show that they were not operating under the normal open rules that they are permitted to follow to seek out relevant facts bearing on a case.

That is highly relevant to the question of whether or not there was a pattern of conduct here to cover up the misconduct of other people.

Therefore, I am pleased that Mr. Tyler has reversed the position of the Department and that the two agents will be here tomorrow at 10 o'clock.

I have asked Senator Nunn to take over while I conduct a hearing on the third floor.

[At this point Senator Jackson withdrew from the hearing room.]
[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct hearings in public session, without a quorum of two members for administration of oaths and taking of testimony in connection with Drug Enforcement Administration on Wednesday, June 18, 1975.

HENRY M. JACKSON,
Chairman.

CHARLES H. PERCY,
Ranking Minority Member.

Senator NUNN [presiding]. Our first witness this morning is Mr. John Arntz, group supervisor of DEA, Washington, D.C., Office. Mr. Arntz?

At this time I will ask Mr. Dennis Dayle to come up also. Mr. Dayle testified yesterday.

Mr. Arntz, let me swear you in before you take the seat. Do you swear the testimony you are about to give to this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ARNTZ. I do.

Senator NUNN. Do you swear that the testimony you are about to give to this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DAYLE. I do.

TESTIMONY OF JOHN ARNTZ, GROUP SUPERVISOR, DRUG ENFORCEMENT ADMINISTRATION, WASHINGTON, D.C., AND DENNIS DAYLE, DRUG ENFORCEMENT ADMINISTRATION, WASHINGTON, D.C.

Senator NUNN. Both of you please be seated.

Mr. Arntz, please identify yourself for the record, the full name and give your current position.

Mr. ARNTZ. My name is John Frederick Arntz, A-r-n-t-z. I am a group supervisor at the Washington District Office of the Drug Enforcement Administration.

Senator NUNN. What was your assignment in DEA in the month of August 1974.

Mr. ARNTZ. The same as I just stated.

Senator NUNN. You are in the same position now that you were in August 1974?

Mr. ARNTZ. That is correct.

Senator NUNN. Yesterday a sworn affidavit of Carl Shoffler, Metropolitan Police Department, dated March 24, 1975, was given by Mr. Shoffler to this subcommittee and was made part of our hearing record.

In his affidavit, Officer Shoffler made certain statements regarding his conversations with you as follows. I quote:

Prior to the meeting being set up with the Department of Justice officials, I had a conversation with John Arntz, group supervisor, DEA, Washington, D.C. Office on August 9, 1974.

My original purpose of going to see Mr. Arntz was on another matter. During the course of my conversation with Mr. Arntz, Promuto's name surfaced in the conversation. I recall telling Mr. Arntz that I was going to initiate an investigation through the Government concerning the activities of Mr. Promuto.

I subsequently found out that Mr. Arntz notified his immediate supervisor concerning Promuto after I left his office on that date.

Mr. Arntz, did you have a conversation with Officer Shoffler regarding Vincent Promuto on August 9, 1974?

Mr. ARNTZ. I had a conversation with Officer Shoffler. To the best of my recollection since I made no written notes, this conversation with Shoffler took place during the middle of August; I would say during the week of August 12 or during that week.

Senator NUNN. So you are saying it did not take place on August 9?

Mr. ARNTZ. I am saying I don't have any written record it took place on August 9.

Senator NUNN. Are you saying it didn't take place on August 9, or are you saying you don't know?

Mr. ARNTZ. I am saying I don't know.

Senator NUNN. It could have taken place—

Mr. ARNTZ. To the best of my recollection, it took place during the week of August 12.

Senator NUNN. You are saying to the best of your recollection it did not take place prior to August 12?

Mr. ARNTZ. I don't recall.

Senator NUNN. Do you recall in the negative that it didn't? You seem to be insinuating it couldn't have taken place before August 12. I am asking you, could it have taken place on August 9 or is that precluded?

Mr. ARNTZ. To the best of my recollection it took place during the week of August 12.

Senator NUNN. The direct question. Could it have taken place on August 9, in accordance with the affidavit given by Officer Shoffler?

Mr. ARNTZ. Not to the best of my recollection.

Senator NUNN. You don't think this affidavit is correct as to the date?

Mr. ARNTZ. To the best of my recollection the conversation referred to in that memorandum took place during the week of August 12.

Senator NUNN. Would it be overstating the case to say you assert the conversation did not take place on August 9? Is that an overstatement, or is that accurate?

Mr. ARNTZ. That is correct.

Senator NUNN. You are certain it did not take place on August 9?

Mr. ARNTZ. I have advised you on several instances that to the best of my recollection this conversation took place during the week of August 12.

Senator NUNN. The week of August 12 is on Thursday. That includes August 9. Does that have any bearing?

Mr. ARNTZ. No, it has no bearing.

Senator NUNN. You succeeded in confusing me. August 9 begins on Monday. You are saying the week of August 12. That would include August 9. Does this mean the conversation could have taken place on August 9?

Mr. ARNTZ. It took place during the middle of August and that week I was under the impression began with the 12th. I may have been mistaken.

Senator NUNN. If we informed you, based on the calendar, that August 9 was a Monday, August 10 was a Tuesday, August 11 was a Wednesday, and August 12 was a Thursday, does this have any bearing on your recollection?

Mr. ARNTZ. It would have taken place during that week.

Senator NUNN. So it could have been on August 9?

Mr. ARNTZ. That is a possibility, if that is correct; that Monday is the 9th, yes.

Senator NUNN. You do recall the conversation with Officer Shoffler regarding Vincent Promuto during the week of August 9, 1974?

Mr. ARNTZ. That is correct.

Senator NUNN. What did Mr. Shoffler tell you regarding Mr. Promuto that day?

Mr. ARNTZ. To the best of my recollection, Officer Shoffler advised me that Mr. Promuto had been associating with known gamblers in the Washington, D.C., area.

Senator NUNN. Did you report your conversation with Shoffler to your superior on that same day; that is, on the day that you received that information?

Mr. ARNTZ. On the day that I received the information the exact date I don't recall. I did report the information to my immediate supervisor, who, at that time, was Mr. Dayle.

Senator NUNN. Mr. Dennis Dayle?

Mr. ARNTZ. That is correct.

Senator NUNN. Mr. Dayle is sitting here by you?

Mr. ARNTZ. That is correct.

Senator NUNN. You don't recall the precise date? That is clear from the record. But you do recall that on the date you received the information from Officer Shoffler you did convey it to Mr. Dayle?

Mr. ARNTZ. I believe that is correct; yes.

Senator NUNN. Did you put anything in writing regarding this conversation either with Officer Shoffler or with Mr. Dayle?

Mr. ARNTZ. Not at that time.

Senator NUNN. Did you at any other time?

Mr. ARNTZ. Yes, I did.

Senator NUNN. At what date and what kind of writing did you make on that?

Mr. ARNTZ. I believe during the middle of September, I was interviewed regarding this information by an inspector of the Drug Enforcement Administration, named Tom Cash.

At that time I made out, shortly after that conversation with Mr. Cash, as directed by him, I made out a memorandum to the Office of Inspection relative to my conversation with Carl Shoffler.

Senator NUNN. What was the approximate date of that memo?

Mr. ARNTZ. Again, I did not keep a copy of it, but I believe it was during the middle of September.

Senator NUNN. During the middle of September, which would have been approximately 30 days after your conversation with Officer Shoffler?

Mr. ARNTZ. That is correct.

Senator NUNN. Do you know where that memo is at the present time? Have you seen it?

Mr. ARNTZ. The last time I saw it, it was with an investigator of the committee, Mr. Manuel.

Senator NUNN. You do not have a copy of that?

Mr. ARNTZ. No.

Senator NUNN. Do you normally just make one, when you make a memo, you don't make a copy?

Mr. ARNTZ. In this situation I did not keep a copy. Normally, I would keep a copy.

Senator NUNN. Let me ask you this as a general matter. Are you familiar with any regulations concerning integrity matters within the Department concerning whether you make any kind of written record of it?

Mr. ARNTZ. I am not familiar with making a written record of reporting integrity matters through the normal channels; no.

Senator NUNN. Are you aware of the regulations that says you should report it immediately?

Mr. ARNTZ. Yes, sir. I am aware of that guideline.

Senator NUNN. You followed those guidelines in this case?

Mr. ARNTZ. Yes, sir, to the best of my ability.

Senator NUNN. After you reported this conversation with officer Shoffler to Mr. Dayle and Mr. Dayle was your supervisor at that time—is that right?

Mr. ARNTZ. That is correct.

Senator NUNN. Is he still your supervisor?

Mr. ARNTZ. No, sir.

Senator NUNN. He is not at this time?

Mr. ARNTZ. No.

Senator NUNN. What did Mr. Dayle do with the information and who did you contact? Do you know?

Mr. ARNTZ. Mr. Dayle advised me and he observed him start a telephone call, he advised me that he had passed this information on to the regional manager.

Senator NUNN. Do you know who the regional manager would have been?

Mr. ARNTZ. No; you will have to ask Mr. Dayle that question.

Senator NUNN. Did you receive any instructions from Mr. Dayle after he spoke with the regional manager?

Mr. ARNTZ. Only to keep him advised if there were any further developments.

Senator NUNN. Could a Mr. Swank have been the regional manager? Is that right?

Mr. ARNTZ. If Mr. Dayle talked to Mr. Swank, he was the regional director at that time?

Senator NUNN. We have already had testimony on this, but keep to the record continuous, Mr. Dayle, would you take the microphone, please?

Would you answer a question about who you reported to after you talked to Mr. Arntz?

Mr. DAYLE. Yes, Senator, I recall telephoning Mr. Swank, who was the regional director at that time.

Senator NUNN. This is consistent with your testimony yesterday regarding Mr. Swank?

Mr. DAYLE. Yes, sir.

Senator NUNN. Mr. Arntz, would you take it back? So Mr. Swank is the regional adviser to Mr. Dayle. Is that right?

Mr. ARNTZ. That is correct.

Senator NUNN. When was the next time you had a conversation with an officer Shoffler, or anyone else, in the Metropolitan Police Department, concerning Vincent Promuto?

I am directing this question to you, Mr. Arntz.

Mr. ARNTZ. To the best of my recollection, I had an additional conversation with officer Shoffler and this would have taken place 5 to 7 days after the initial conversation with him.

Senator NUNN. Five or seven days after the initial conversation, whatever the date of that was?

Mr. ARNTZ. Right.

Senator NUNN. Let me back up just a minute. Did Mr. Dayle give you any information or give you any orders after he talked to Mr. Swank?

Mr. ARNTZ. Not that I recall.

Senator NUNN. You don't recall any conversation beyond conveying this information to Mr. Dayle and you know that he conveyed it on to the regional office?

Mr. ARNTZ. He advised me that he had conveyed it to the regional manager.

Senator NUNN. Five to seven days later you had a conversation again with officer Shoffler. Did he approach you, or did you approach him, or how did the conversation take place?

Mr. ARNTZ. To the best of my recollection, Mr. Shoffler approached me, advised me that the matter of the Promuto allegations was not proceeding as he had told me it would.

Senator NUNN. Would you elaborate on that a little bit? You are saying that he said—repeat that for me.

Mr. ARNTZ. Mr. Shoffler had advised me that he would report these allegations to his internal affairs division and that the allegations would be forwarded by that division to our office of inspection.

On the second conversation, he advised me that he had been instructed by his superior to write these allegations in the form of a letter and to forward that letter to the U.S. Attorney's Office for the District of Columbia.

Senator NUNN. Do you know why? Did he have any reason for taking this step?

Mr. ARNTZ. Yes. He was advised to do so by his superior.

Senator NUNN. Did his superior say why?

Mr. ARNTZ. I don't know if he did or not. You will have to ask Mr. Shoffler.

Senator NUNN. Did Mr. Shoffler tell you any reason for it?

Mr. ARNTZ. None other than he had been instructed to do this by his superior.

Senator NUNN. You mentioned a minute ago that the investigation was not proceeding in accordance with what they thought should happen. That is what I am getting to. Would you restate that or elaborate on that statement?

Mr. ARNTZ. Yes, sir. As I have just said in the original conversation, I advised Mr. Shoffler that the allegations had no basis, in fact, that he should send them to his internal affairs division and that the internal affairs division should then send them to our office of inspection.

I understand that that is the way the allegations were going to be made known through the direct channels. During the second conversation he advised me that that was not going to be the course of action, that the allegations were going to be submitted in a letter form to the U.S. attorney's office.

Senator NUNN. He didn't say why except his superior told him that is the way it would proceed?

Mr. ARNTZ. That is correct.

Senator NUNN. Who was his superior? Do you happen to know?

Mr. ARNTZ. No, I don't recall the individual's name.

Senator NUNN. When did you learn the Metropolitan Police Department had turned the Promuto information over to the U.S. Attorney's Office instead of directly to the DEA?

Mr. ARNTZ. This would have been in the vicinity of the week, during the week of August 12 or 9.

Senator NUNN. This is the same conversation we have just been talking about. This is your second conversation with officer Shoffler?

Mr. ARNTZ. That is correct.

Senator NUNN. This would have been approximately a week after your initial conversation with officer Shoffler?

Mr. ARNTZ. That is also correct.

Senator NUNN. At that time you learned that that was what they were planning to do but had they already done this when you talked to him the second time?

Mr. ARNTZ. I don't know if that had already happened or not.

Senator NUNN. He just informed you that was the procedure by which they were going to proceed?

Mr. ARNTZ. That is correct.

Senator NUNN. When did you advise your supervisor of that information?

Mr. ARNTZ. At my earliest opportunity, which I believe was the next day.

Senator NUNN. So that would have been about a week, about 7 days after the first conversation with Officer Shoffler, which took place during the week of August 9, August 12?

Mr. ARNTZ. That is correct.

Senator NUNN. This would have occurred during the week if we count Monday, the 9th, as being the week of August 9, this would have occurred during the week of Monday, the 16th, through Monday, the 20th?

Mr. ARNTZ. To the best of my recollection that is correct.

Senator NUNN. The letter from the Metropolitan Police Department to the U.S. Attorney's Office is dated August 19. That would be 10 days after your conversation with Officer Shoffler, assuming the conversation took place on August 9.

Mr. ARNTZ. If that is the date on there, that is correct.

Senator NUNN. In relation to that date, when did you tell Mr. Dayle that the information was going to the U.S. Attorney's Office?

Mr. ARNTZ. At my earliest opportunity after hearing the information, which would have probably been the day after I talked with Shoffler the second time.

Senator NUNN. What did Mr. Dayle do with this information?

Mr. ARNTZ. I was present when he called regional management. I do not recall who he spoke with. I believe it was Mr. Swank.

Senator NUNN. That was the second, or after the second conversation with Officer Shoffler and the second conversation with Mr. Dayle on this subject?

Mr. ARNTZ. That is correct.

Senator NUNN. You were present? He called Mr. Swank while you were there in the office?

Mr. ARNTZ. That is correct.

Senator NUNN. So there was no delay whatsoever in conveying that information to regional headquarters?

Mr. ARNTZ. No, sir.

Senator NUNN. What was the date Mr. Dayle contacted Mr. William Durkin?

Mr. ARNTZ. I don't know that. You will have to ask Mr. Dayle.

Senator NUNN. He did not do that in your presence?

Mr. ARNTZ. I did not hear him speak with Mr. Durkin.

Senator NUNN. Did you learn that later by conversations with either Mr. Dayle or Mr. Durkin?

Mr. ARNTZ. Yes, I did. Mr. Dayle advised me that he had been instructed by Mr. Swank to call Mr. Durkin. After his conversation with Mr. Swank I observed Mr. Dayle make another call I assumed he was calling Mr. Durkin.

Senator NUNN. So that would have been on the same day, then?

Mr. ARNTZ. Yes, sir.

Senator NUNN. That would have been during the week of August 16?

Mr. ARNTZ. To the best of my recollection that is correct.

Senator NUNN. If we looked at the Friday rather than the Monday, then probably the latest that could have occurred would have been August 20; isn't that correct?

Mr. ARNTZ. It could have been the 23rd, 4th, 5th; I don't know. I don't know the date exactly.

Senator NUNN. You weren't in the office on Saturday, were you?

Mr. ARNTZ. No.

Senator NUNN. You weren't in the office on Sunday, were you?

Mr. ARNTZ. No.

Senator NUNN. So if it occurred during the week of the 16th it would have to have occurred by August 20, which was Friday; is that correct?

Mr. ARNTZ. To the best of my recollection it occurred during the week.

Senator NUNN. Did you write any memorandum or reports on your conversations with Officer Shoffler? You mentioned one. Did you write any others?

Mr. ARNTZ. No, sir, I did not.

Senator NUNN. So the only memorandum you ever reduced to writing on your conversation with Officer Shoffler took place during the middle of the month of September?

Mr. ARNTZ. That report that I gave to the Office of Inspection that you just referred to was one. I prepared a memorandum after my interview with Mr. Manuel of the subcommittee staff.

Senator NUNN. This subcommittee staff?

Mr. ARNTZ. That is correct.

Senator NUNN. When was that conversation and when was that memorandum, approximately?

Mr. ARNTZ. I would guess around the 20th of May.

Senator NUNN. Of this year?

Mr. ARNTZ. That is correct.

Senator NUNN. 1975?

Mr. ARNTZ. That is correct.

Senator NUNN. So in your whole involvement with this investigation beginning with your initial conversation with Officer Shoffler, there are really two memos reduced to writing; one would have been in the middle of September that would have been furnished to the Office of Inspection, I believe Officer Dick; is that right?

Mr. ARNTZ. I believe that memorandum was prepared as a result of my conversation with Thomas Cash.

Senator NUNN. Thomas Cash. I am sorry; I had the name wrong.

All right. That would have been in the middle of September. There was another memorandum that you gave to this subcommittee.

Mr. ARNTZ. That is correct.

Senator NUNN. In about May of 1975?

Mr. ARNTZ. That is correct.

Senator NUNN. As far as you know those are the only two written records of any conversations you had during this course of this investigation?

Mr. ARNTZ. Yes, sir.

Senator NUNN. Have you seen any written memorandums that anyone else in the office of DEA or anyone else in general has prepared on this whole subject? Did you see any memorandums that Mr. Dayle prepared, for instance?

Mr. ARNTZ. I have not seen any.

Senator NUNN. Are you aware of any other memorandums concerning this other than the August 19 memorandum from the Metropolitan Police Department?

Mr. ARNTZ. No, sir.

Senator NUNN. How do you normally handle integrity matters? Do you normally reduce these conversations to writing, or do you normally handle it orally?

Mr. ARNTZ. I believe my guidelines are only that I am to advise my immediate supervisor at my earliest opportunity and I don't know of any guidelines to reduce these types of allegations to writing.

Senator NUNN. If there are such guidelines you are not familiar with them?

Mr. ARNTZ. That is correct.

Senator NUNN. Mr. Dayle, would you take the microphone, please? We have established August 9, according to the affidavit of Mr. Arntz, and nothing that has been given here this morning has been inconsistent with that, as the date that Mr. Arntz had his initial conversation with Officer Shoffler regarding Promuto.

Do you have any evidence that will show that August 9 was not the date of this initial conversation?

Mr. DAYLE. None, sir, with the exception that it is not totally consistent with my recollection of the time frame.

Senator NUNN. I know it is not totally consistent with your recollection. But do you have any evidence that would make this in any way incorrect information that we received from Mr. Arntz in the form of the affidavit, which I believe you heard? You heard that read, did you not?

Mr. DAYLE. Yes, sir.

Senator NUNN. Regarding the testimony we have heard this morning, do you have any information that would contradict that?

Mr. DAYLE. Not with the exception just noted, sir.

Senator NUNN. With the exception of?

Mr. DAYLE. Of my independent recollection.

Senator NUNN. You testified yesterday that you contacted Mr. Swank on the same day that you received the information from Mr. Arntz. Is this correct?

Mr. DAYLE. Yes, sir. That is my recollection.

Senator NUNN. Again what was that date, to your recollection?

Mr. DAYLE. I fixed the first meeting with Mr. Arntz some time about the middle of August and the second one approximately a week or 10 days following that.

Senator NUNN. Could this date have been August 9, 1974?

Mr. DAYLE. Not in terms of my recollection of the issue, Senator.

Senator NUNN. Do you have any specific—I know you have a recollection and we are not trying to disturb that recollection, but do you have anything to peg that recollection so that makes you virtually certain that it was not on August 9?

Mr. DAYLE. No, sir. I am not virtually certain that it is not August 9. However, my best recollection is that it was not, and as indicated in my testimony of yesterday, there were two factors governing the time frame which I fixed.

One of those was my approximation of about one month prior to the on-site arrival of Mr. Milano for duty at the Washington District Office.

Senator NUNN. So what you are saying is although your recollection does not put the date on August 9, you could not, you do not intend to say it could not have been on August 9?

Mr. DAYLE. No, sir. I only wish to say that while it could have happened on August the 9th, it is not my recollection that it did.

Senator NUNN. Would you repeat that last statement?

Mr. DAYLE. Yes, sir. While it could have happened on August 9th, within the context of possibility, it is not my recollection that it did happen on August 9.

Senator NUNN. I think that is clear.

You heard the testimony yesterday that approximately 10 days after your initial conversation with Arntz concerning Promuto, you had another conversation with Mr. Arntz. Is that correct?

Mr. DAYLE. Yes, sir.

Senator NUNN. That would place the date of the second conversation on or about August 19, 1974, assuming that this August 9th date is correct. Again, I know that is not your recollection, but assuming August 9 was the first date and the second date would have been somewhere around August 19?

Mr. DAYLE. Yes. Mathematically, that would be correct.

Senator NUNN. You further testified that after your second conversation with Mr. Arntz you called Mr. Swank again and Mr. Swank instructed you to call Mr. Durkin. Is that correct?

Mr. DAYLE. That is correct.

Senator NUNN. Again, based on the assumption regarding August 9 and August 19, you would have called Mr. Swank and Mr. Durkin on the same date, whatever that date was?

Mr. DAYLE. Yes, sir.

Senator NUNN. You further testified that you called Mr. Durkin immediately after talking to Mr. Swank on the same day. Is this correct?

Mr. DAYLE. This is correct.

Senator NUNN. That would mean that you had your conversation with Mr. William Durkin, regarding Promuto, around August 19, if this information we got this morning about August 9 is correct?

Mr. DAYLE. Only based on that assumption; yes, sir.

Senator NUNN. Mr. Dayle, Mr. Durkin testified that his recollection was that he did not receive the Promuto information from you until September the 10th. Even given a few days from August, and August 19, in other words, even if we are a week off there, according to your recollection, could Mr. Durkin be correct on the September 10 date; is that possible?

Mr. DAYLE. May I have your question again, please?

Senator NUNN. Let's just say, even assuming some error in this August 9th, we have information which pretty well pegs down August 9th, we have information from all sources that says it was about 10 days later when you got this information from Mr. Swank and Mr. Swank said for you to call Mr. William Durkin.

Is it possible under these kinds of conditions that Mr. Durkin could have received his first word of this on September 10?

Mr. DAYLE. Not as to my recollection of the time frame involved; that is, that neither of those issues is within the realm of my recollection of it; that is, neither the 9th nor the week to 10-day time frame following that, nor the 10th of September.

My recollection is again, Senator, in response to your line of questioning yesterday, asking me for my best guess. I believe that I fixed my best guess, although I was reluctant to do so because of the possibility of inaccuracy, at the last week in August as to my second conversation with Mr. Arntz, and my telephone conversation with Mr. Durkin.

Senator NUNN. So your best recollection would have been that it was somewhere during the week beginning on Monday, the 26th, and ending on Friday, the 30th,—that would have been your best recollection and that is what you testified yesterday—when you conveyed this information to Mr. Durkin?

Mr. DAYLE. Yes, sir.

Senator NUNN. I want to go back to Mr. Arntz and correct the record because you were correct and we were incorrect on the date of August 12. August 12 is on a Monday. This was not any attempt to mislead you. We had the wrong calendar and the wrong month.

August 12 was on Monday and the record should reflect that and so that means that the 12th to the 16th would have been the week that you pegged. Is that now correct?

Mr. ARNTZ. Yes, sir, as originally stated.

Senator NUNN. So August 12 to the 16 would have been your best recollection, and so that would say that 10 days after that would have been somewhere between the week of August 19 and August 26 and 27.

So your testimony and Mr. Dayle's really places the week, as I would see it, somewhere between the 23rd and the 30th as the best estimate both of you have. It seems to me you are pretty consistent at this point.

Mr. ARNTZ. Yes, sir.

Senator NUNN. Do you agree with that, Mr. Dayle?

Mr. DAYLE. Yes, sir.

Senator NUNN. Thank you very much, both of you, for appearing. If you could wait a few minutes, I don't know how long we will take this morning, but I would appreciate it if you would wait in case we have to clarify anything else.

Our next witness is Mr. Robert Richardson, Associate Chief Counsel of DEA.

Mr. Richardson, hold up your right hand, please.

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RICHARDSON. I do.

**TESTIMONY OF ROBERT RICHARDSON, ASSOCIATE CHIEF
COUNSEL, DRUG ENFORCEMENT ADMINISTRATION**

Senator NUNN. Mr. Richardson, would you state your name and present position?

Mr. RICHARDSON. Robert T. Richardson; Associate Chief Counsel, Drug Enforcement Administration.

Senator NUNN. That is your present position?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. Mr. Richardson, what was your position in this time frame we have been talking about this morning; that is, August-September 1974?

Mr. RICHARDSON. The same.

Senator NUNN. The same position?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. From about 1969 until Mr. Bartels resignation, did you work for Mr. Bartels in the New York strike force, ODALE, and in DEA?

Mr. RICHARDSON. It was the Newark, N.J. strike force.

Senator NUNN. It was the Newark, N.J. strike force?

Mr. RICHARDSON. Yes.

Senator NUNN. Is there a separate strike force in New York?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. So you worked in Newark, N.J. strike force?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. That was also Mr. Bartels?

Mr. RICHARDSON. For a period of time; yes, sir. Not solely. I was there before he arrived and after he arrived.

Senator NUNN. Did you ever work in the New York office?

Mr. RICHARDSON. No.

Senator NUNN. Did Mr. Bartels, to the best of your knowledge, work in the New York office?

Mr. RICHARDSON. No; he was an assistant U.S. attorney for a period of time in the 1960's.

Senator NUNN. What was your position from September 1974 through January 1975?

Mr. RICHARDSON. I was the Associate Chief Counsel of the Drug Enforcement Administration.

Senator NUNN. Prior to that, what was your position in DEA?

Mr. RICHARDSON. Sir, from the time that DEA was formed on July 1, 1973, I was assigned to the Narcotics and Dangerous Drugs Section of the Criminal Division of the Department of Justice. However, my duties were over in the Drug Enforcement Administration as assistant to Mr. Bartels from July 1973 until December of 1973.

In December of 1973, I returned to the Department and stayed there until approximately July 1, or thereabouts, of 1974 when I came over to DEA.

Senator NUNN. When did you first learn of the information received on associations of Vincent Promuto?

Mr. RICHARDSON. It was on Friday, September 13, 1974.

Senator NUNN. Did Mr. Brosan ask you to accompany him to brief Mr. Bartels on the Promuto case?

Mr. RICHARDSON. No, sir, he did not.

Senator NUNN. Do you recall how you first learned about Mr. Vincent Promuto, any information on him and his associations?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. Give us that for the record, please.

Mr. RICHARDSON. I was in New York City at my mother-in-law's home on Friday, the 13th. I received a telephone call from Mr. Bruce Jensen, who was the Executive Assistant to Mr. Bartels.

He asked me if I had relayed Mr. Promuto's name to anyone in the White House concerning the position in the Drug Enforcement Administration.

I told him no; asked him what was the matter. He said there is a problem. I was going to see Mr. Jensen the following night at a retirement dinner in New Jersey and we decided that we would discuss it a little further, following that.

Following the night of September 14, and at the dinner, I met with Mr. Jensen and I believe Mr. Durkin also, Mr. William Durkin.

At that time the three of us had a very general discussion that there was a problem within the agency concerning Mr. Promuto.

After the dinner, I had a somewhat more indepth conversation with Mr. Jensen. Durkin was not present at that conversation.

Senator NUNN. The first conversation was the dinner?

Mr. RICHARDSON. It wasn't at dinner, sir. I don't want to leave that impression because there were a number of other people present at the table. It might have been as soon as we left the table and went to the cocktail lounge for a cocktail. Mr. Durkin was present only for a very short period of time.

Senator NUNN. Mr. William Durkin?

Mr. RICHARDSON. Yes.

Senator NUNN. Mr. William Durkin being in DEA?

Mr. RICHARDSON. Yes, he was present for a very short period of time. Then he went off to have conversations with other persons. I remained with Mr. Jensen and we discussed the problem as Mr. Jensen then knew it.

He briefed me rather generally on the potential problem and he discussed how the information should best be brought to Mr. Bartels' attention when he returned from Europe the following week.

Senator NUNN. When did you first talk to Mr. Brosan about the Promuto case?

Mr. RICHARDSON. That was on Monday morning, September 16.

Senator NUNN. That would have been after your conversation with Mr. Jensen and Mr. Durkin in New York?

Mr. RICHARDSON. Yes, sir. Mr. Brosan came to my office.

Senator NUNN. Mr. Brosan came to your office?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. Did Mr. Brosan ask you to brief, to accompany him to brief Mr. Bartels on the Promuto case?

Mr. RICHARDSON. No, sir. He did not. I asked him.

Senator NUNN. You asked him?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. That was that same day?

Mr. RICHARDSON. It was that morning at 9:30.

Senator NUNN. Why did you ask him?

Mr. RICHARDSON. Saturday night Mr. Jensen and I had a discussion in which we recognized that there had been a breakdown in the relationship between Mr. Brosan and Mr. Bartels.

We realized that this was the potential inspection matter and that Mr. Brosan was responsible for informing the administrator when he returned from Europe. We did not know how the extent of that breakdown in relationship would affect their meeting.

It was agreed between Mr. Jensen and myself, subject to Mr. Brosan's approval, that someone, another official of DEA, who was relatively a close friend with Mr. Bartels, would accompany Mr. Brosan to that meeting.

We agreed that that person should best be Mr. Durkin, Mr. William Durkin, since Mr. Durkin had originally heard of the information and passed it onto inspection. It was, of course, important to us that any information along these lines be kept to a minimum number of people.

I contacted Mr. William Durkin at approximately 8:30 Monday morning, the 16th. I advised him of my conversation with Mr. Jensen on the previous Saturday night.

Senator NUNN. That was the same Saturday night you would have been with Mr. Durkin but you and Mr. Jensen conferred after Mr. Durkin left: is that right?

Mr. RICHARDSON. That is correct.

Senator NUNN. So this conversation with Mr. Jensen you are alluding to now did not take place with Mr. Durkin? He was not there?

Mr. RICHARDSON. No, sir.

Senator NUNN. Go ahead.

Mr. RICHARDSON. I advised Mr. Durkin of my conversation with Mr. Jensen and of our suggestion. He agreed that it was a good idea. However, he had one problem.

Later that day, or that evening, he was leaving to go down South. If we did not brief Mr. Bartels on that Monday, which was a very real possibility, he would not be available the following day at any possible briefing.

I suggested, that would be fine, and in that event someone else would accompany Mr. Brosan. Mr. Brosan came to my office approximately 9:30 in the morning and asked me exactly what I knew about the Promuto matter and with whom I had discussed it.

I related it to him, my conversation with Mr. Jensen and Mr. Durkin, the previous Saturday night, and my conversation with Mr. Durkin, William Durkin, earlier that morning.

I offered him the suggestion that someone accompany him and he welcomed the suggestion. That was the sum and substance, I guess, of our conversation.

Senator NUNN. Did you tell Mr. Brosan why you thought it was good for you to accompany him?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. You were frank with him about it?

Mr. RICHARDSON. He recognized the breakdown in relationship, sir.

Senator NUNN. That meeting would have taken place approximately September 17?

Mr. RICHARDSON. Sixteen.

Senator NUNN. Sixteen?

Mr. RICHARDSON. Yes, sir; Monday morning.

Senator NUNN. That was Monday, September 16?

Mr. RICHARDSON. That is correct, sir.

Senator NUNN. You were in the office with Mr. Bartels and Mr. Brosan?

Mr. RICHARDSON. No, sir.

Senator NUNN. Tuesday?

Mr. RICHARDSON. Pardon me, sir?

Senator NUNN. When did you go to see Mr. Bartels with Mr. Brosan?

Mr. RICHARDSON. The following afternoon, Tuesday afternoon, September 17, approximately 2 o'clock.

Senator NUNN. So the meeting with Mr. Brosan, discussing the meeting with Mr. Bartels was on Monday, but the actual meeting with Mr. Bartels was on Tuesday?

Mr. RICHARDSON. That is correct.

Senator NUNN. It was Tuesday afternoon, September 17?

Mr. RICHARDSON. That Brosan and I went into Mr. Bartels' office.

Senator NUNN. Was anybody else there that day?

Mr. RICHARDSON. No.

Senator NUNN. Tell us what took place there?

Mr. RICHARDSON. We went into Mr. Bartels' office and Mr. Brosan had with him a 4- or 5-page briefing memorandum for himself which set forth the allegations which had been received from Officer Shoffler.

It also set forth a brief synopsis of what investigation had been conducted and what the results of that investigation had been up until September 17. Mr. Brosan stated that one allegation had been disproven.

Senator NUNN. One allegation had been disproven?

Mr. RICHARDSON. That is correct, sir. But there were still four or five remaining. Mr. Bartels had then asked us after this briefing what our suggestions were on how to handle that matter.

Mr. Brosan then offered three possible alternatives: (1) Mr. Bartels should call Mr. Promuto in the office, confront him with the allegations and summarily ask for his resignation; (2) we could conduct a full-blown investigation of the allegations that remained outstanding; and (3) we could do nothing.

Mr. Brosan stated that the option of doing nothing did not fit, he did not agree with.

Senator NUNN. Mr. Brosan stated that?

Mr. RICHARDSON. Yes, sir.

Mr. Bartels was—I think I should interject also that there was one allegation that was not given to us by Officer Shoffler, but also relayed to him and that was an allegation that Mr. Promuto had been observed earlier in the year in about July the same year at the airport with a female whom he identified as a particular individual.

Subsequent investigation proved that identification to be wrong.

Senator NUNN. Who identified?

Mr. RICHARDSON. Mr. Thomas Cash stated to Mr. Brosan that he had observed Mr. Promuto at the Dulles Airport with the female

whom he identified as a particular woman who was related to a person who was mentioned in the original allegations as we had received them from Officer Shoffler, and that the person mentioned in the memorandum that we received from the Metropolitan Police Department was a suspected class I trafficker.

Mr. Brosan stated that Mr. Cash had observed a photograph of the particular girl whom he identified and made a positive identification of this particular girl as having been at the airport with Mr. Promuto some time in July of that year.

It was that subsequent—it was that identification which was subsequently proven wrong later on in the investigation. Mr. Bartels was rather concerned.

Senator NUNN. Was this person Diane DeVito?

Mr. RICHARDSON. No, sir. It was not. Mr. Thomas Cash was absolutely certain at that time that the person whom he had observed at the airport was someone other than Diane DeVito.

Senator NUNN. Who did it turn out to be?

Mr. RICHARDSON. The person at the airport, to the best of my information, turned out to be Diane DeVito.

Mr. Bartels was very concerned that Mr. Brosan would suggest that we summarily ask for the resignation of Mr. Promuto.

Senator NUNN. Who said this?

Mr. RICHARDSON. Mr. Bartels stated to Mr. Brosan and myself that he was rather concerned that we would ask for the resignation of Mr. Promuto.

Senator NUNN. That this was one of the options you mean?

Mr. RICHARDSON. That is correct, sir, based upon information which was still allegation and had not been proven at all.

Mr. Brosan at that time stated that he did not think that Mr. Promuto could offer anything which would add to the investigation or add to the allegations. He did not think that Mr. Promuto could in any way explain away any of the allegations and that any interrogation of him or any explanation which he would offer would be, or any attempt to get an explanation from him would be fruitless.

Senator NUNN. Mr. Brosan said this?

Mr. RICHARDSON. Yes, sir, he did. This concerned—this attitude of a lack of confrontation and a lack of offering a suspect, if you will, the opportunity to offer an explanation for allegations that had been put forth against him seriously concerned Mr. Bartels and it went against his training as an attorney.

Senator NUNN. You are saying Mr. Brosan was dogmatic in his feeling that the allegations were true? Is that what you are saying?

Mr. RICHARDSON. No, sir. What I am saying is Mr. Brosan felt that Mr. Promuto could not offer any explanation whatsoever which could explicate himself or explain away those allegations and therefore any attempt to interrogate him to get any explanation would be fruitless.

Senator NUNN. So Mr. Brosan did not think there would be any need to interrogate Mr. Promuto; is that right?

Mr. RICHARDSON. That is correct.

Senator NUNN. What was Mr. Bartels reaction to that?

Mr. RICHARDSON. He objected to that.

Senator NUNN. What was his reason?

Mr. RICHARDSON. He said any man against whom charges have been lodged has a right under the laws of this country to be confronted with those charges and to offer an explanation. It is quite possible that the charges would be wrong.

Senator NUNN. So there was a serious disagreement there between Mr. Brosan and Mr. Bartels?

Mr. RICHARDSON. That is correct, sir.

Senator NUNN. Was Mr. Brosan's position that he wanted to investigate further before Promuto was confronted or was he saying he didn't want to confront him at all?

Mr. RICHARDSON. Mr. Brosan was of the opinion that an investigation would, if he pursued the option to conduct an investigation, all that he would be able to come up with in all probability would be an additional 5 or 10 allegations, none of which, like the original 5 that he then had, would be subject to substantiation, corroboration or refutation.

Senator NUNN. Are you saying Mr. Brosan felt a further investigation was fruitless and did not want to pursue that option, but rather wanted to pursue the option of having Mr. Promuto resign; is that correct?

Mr. RICHARDSON. That is effectively correct.

Senator NUNN. So you came down hard on the resignation option?

Mr. RICHARDSON. Yes.

Senator NUNN. He came down soft on the further investigation option?

Mr. RICHARDSON. Yes.

Senator NUNN. Mr. Bartels didn't agree with that?

Mr. RICHARDSON. Mr. Bartels made no decision on September 17.

Senator NUNN. Did he at that time give any indication that he wanted to call off the investigation?

Mr. RICHARDSON. No.

Senator NUNN. Did he in any way limit the scope of the investigation during that meeting?

Mr. RICHARDSON. No.

Senator NUNN. After Mr. Brosan departed from the meeting, what did you and Mr. Bartels discuss?

Mr. RICHARDSON. I left the room with Mr. Brosan.

Senator NUNN. You didn't have any individual discussion with Mr. Bartels at that meeting?

Mr. RICHARDSON. Not at that meeting; no, sir.

Senator NUNN. Did you later?

Mr. RICHARDSON. Shortly thereafter.

Senator NUNN. Did you later in the day?

Mr. RICHARDSON. Yes.

Senator NUNN. What was the essence of that conversation?

Mr. RICHARDSON. I returned to Mr. Bartels' office. We discussed—

Senator NUNN. At his request?

Mr. RICHARDSON. Yes, he had called me at my office and I received the message. I called him back. He started to discuss it. I asked him if he wanted me to come into his office and discuss it. He said yes. I went in.

Senator NUNN. How long was this after the first meeting?

Mr. RICHARDSON. This was approximately 4 p.m. I went into his office. Mr. Bartels was upset at Mr. Brosan for insisting on the resignation option. He was also upset with me since I had concurred in that option.

Senator NUNN. You concurred with Mr. Brosan in saying Promuto should resign?

Mr. RICHARDSON. Yes. There was a meeting approximately 5 p.m. the night before, September 16, at which Mr. Tartaglino, Mr. Bruce Jensen, and I discussed the matter.

I discussed it earlier in the day with Mr. Brosan. I am not sure whether Mr. Brosan was with Mr. Tartaglino and Mr. Jensen and myself.

Senator NUNN. So you didn't think further investigation could be warranted either then? You felt the resignation should take place?

Mr. RICHARDSON. I agreed at that time that that would have been the best course of action; yes.

Senator NUNN. Go ahead.

Mr. RICHARDSON. Mr. Bartels was upset at myself and at Mr. Brosan for suggesting this course of action. He again relied upon his training and lectured me that my training as an attorney should have at least allowed someone who was charged with what amounts to rather serious allegations to be offered the opportunity to explain those allegations away since they may not be true.

At that time in that conversation he asked the secretary to call Mr. Thomas Durkin in New Jersey. As he was doing that, he told me that the following day, on Wednesday, I should go to New Jersey and discuss the matter with Mr. Durkin, Thomas Durkin.

Senator NUNN. Had you ever discussed anything with Mr. Thomas Durkin before?

Mr. RICHARDSON. Yes.

Senator NUNN. At this point I am going to have to recess for about 5 minutes. Senator Jackson will be here. I am being called for another committee, where I have a bill that is being marked up.

I regret having to interrupt at this point. Would you please remain here and we will be back and either Senator Jackson or I will be back in about 5 minutes.

Mr. RICHARDSON. Yes, sir.

[Brief recess.]

[Member present after the taking of a brief recess: Senator Nunn.]

Senator NUNN. The subcommittee will come to order.

Mr. Richardson, I believe we left off as you were going into Mr. Bartels' office on this same day, I believe Tuesday, September 17, and you had a meeting about 2:30 with Mr. Brosan and Mr. Bartels?

Mr. RICHARDSON. Yes.

Senator NUNN. You were called back into Mr. Bartels' office at about 4 o'clock?

Mr. RICHARDSON. That is correct.

Senator NUNN. 4:15, 4:30? Which was it?

Mr. RICHARDSON. Approximately 4 o'clock.

Senator NUNN. Would you take up from there for the purpose of continuity and tell us what happened when you went back into Mr. Bartels' office?

Mr. RICHARDSON. Mr. Bartels directed me to go the following day, on Wednesday, to New Jersey to meet with Mr. Thomas Durkin to discuss this matter with him. At the same time, he was calling Mr. Durkin on the telephone. We got Mr. Durkin on the phone. Mr. Durkin, he had a conversation with Mr. Durkin.

Senator NUNN. While you were there?

Mr. RICHARDSON. While I was there, yes, sir, discussing this matter and in very brief, general terms. He hung up the phone. He told me Mr. Durkin would be down the following day, on Wednesday, and that I was to meet with Mr. Durkin in Washington as opposed to New Jersey the following day.

Senator NUNN. That would have been Wednesday, September 18?

Mr. RICHARDSON. That is right, sir.

That was basically the sum and substance of that conversation.

Senator NUNN. In other words, you didn't talk about much in depth, he just wanted you to be with Mr. Thomas Durkin. Is that right?

Mr. RICHARDSON. I am certain we discussed the allegations. Mr. Bartels had the four-page report. The principal thing that we discussed, Senator, was, number one, the option which went against Mr. Bartels' principles of asking a man to resign without giving him a fair opportunity to explain away the charges and also at that time, he—I am not certain of the other things that we discussed. Later on—

Senator NUNN. What did Mr. Bartels tell Mr. Thomas Durkin on the telephone? Did he give him a briefing on the matter?

Mr. RICHARDSON. He gave him a general briefing on the matter.

Senator NUNN. As if he had never heard of it?

Mr. RICHARDSON. Absolutely.

Senator NUNN. In other words, your impression was from the conversation you heard from your end, Mr. Bartels, it appeared Mr. Thomas Durkin have never been acquainted with this before, at least as far as Mr. Bartels was concerned?

Mr. RICHARDSON. There is no doubt in my mind, sir, that both Mr. Bartels and Mr. Thomas Durkin knew nothing about this until they were advised on the 17th. Later on that evening, I went to dinner with Mr. Bartels and his administrative assistant, Mrs. Kerr.

Senator NUNN. Mr. who?

Mr. RICHARDSON. Mrs. Kerr, K-e-r-r, the administrative assistant to Mr. Bartels. We went to dinner at which time, Mr. Bartels and I again discussed the matter. We discussed possible options. The conversation centered around the lack of confrontation issue.

At that time, Mr. Bartels told me in no uncertain terms that Mr. Promuto will be given a fair opportunity to respond to this and he assured me in no uncertain terms that if Mr. Promuto had done anything wrong, he would be fired; if he had not done anything wrong he would stay.

Mr. Bartels was satisfied with the way Mr. Promuto was handling the Office of Public Affairs and he saw no need to dismiss Mr. Promuto based upon allegations which may or may not be true.

Senator NUNN. Let's back up just a minute to the early afternoon meeting on Tuesday the 17th, which was about 2:30, with Mr. Brosan, Mr. Bartels, and yourself. There was a written, prepared kind of

briefing that you stated Mr. Brosan had presented to Mr. Bartels at that meeting?

Mr. RICHARDSON. That is correct.

Senator NUNN. Did he present that memo for Mr. Bartels to read or did he present it orally? Do you recall?

Mr. RICHARDSON. He presented it orally and then he left the document with Mr. Bartels when he left the room.

Senator NUNN. Was there a copy of that document?

Mr. RICHARDSON. There was only an original of that document at that time, to the best of my recollection, sir.

Senator NUNN. Did you have a copy at that time, or later?

Mr. RICHARDSON. Yes, sir. Later on in the afternoon, at the 4 o'clock meeting, while I was there, Mr. Bartels called Mrs. Kerr in and told her that he was giving her a very sensitive document; she was not to read it, but she was to make one copy of it and bring both the original and a single copy back into his office, which she did.

Senator NUNN. That was at the 4 o'clock meeting?

Mr. RICHARDSON. That was at the 4 o'clock meeting.

Senator NUNN. While you were there?

Mr. RICHARDSON. Yes. Mr. Bartels then took a copy and placed it in a sealed envelope and gave it to Mrs. Kerr and told her to lock it in his personal safe. I then took the original and I returned it at a later date—I don't believe it was the same day, probably the next day—to Mr. Brosan.

Senator NUNN. Probably the next day, which would have been on the 18th?

Mr. RICHARDSON. Yes.

Senator NUNN. Did you show it to anyone else?

Mr. RICHARDSON. No.

Senator NUNN. Did you make any copies of it?

Mr. RICHARDSON. No, sir.

Senator NUNN. So when you delivered the original to Mr. Brosan, as far as you know there were just the original and one copy?

Mr. RICHARDSON. That is correct.

Senator NUNN. The copy would have been according to Mr. Bartels' instructions, assuming they were carried out by his administrative assistant—is that right?

Mr. RICHARDSON. Yes.

Senator NUNN. Mrs. Kerr?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. If those instructions were carried out, that would have been placed in a safe?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. Then Mr. Brosan would have had the original?

Mr. RICHARDSON. That is correct.

Senator NUNN. Did you ever receive any information that any other copies were made?

Mr. RICHARDSON. No.

Senator NUNN. So as far as you know, that was the status of the situation as of now?

Mr. RICHARDSON. As far as I know, yes.

Senator NUNN. You don't know what happened to the original that Mr. Brosan had?

Mr. RICHARDSON. No, sir. I don't recall ever seeing it again.

Senator NUNN. Let's go back to the Bartels-Thomas Durkin conversation on the telephone. What did Mr. Bartels tell Mr. Durkin?

Mr. RICHARDSON. I don't recall the specifics of it. I know he briefed him on the allegations in fairly general terms and he told him, Mr. Durkin, that he was sending me to New Jersey to discuss the matter with him. At that time, or after the conversation, he told me that I would meet with Mr. Durkin the following day in the District of Columbia, since Mr. Durkin would be coming to Washington on Wednesday.

Senator NUNN. Do you know anything about what happened to the copy of the original memo that Mr. Brosan had? Did Mr. Brosan prepare the memo and give it to Mr. Bartels? Do you know what happened to the copy that they supposedly put into the safe?

Mr. RICHARDSON. I subsequently found out the next day that it was given to Mr. Durkin.

Senator NUNN. Which Mr. Durkin?

Mr. RICHARDSON. Mr. Thomas Durkin.

Senator NUNN. By whom?

Mr. RICHARDSON. I presume by Mr. Bartels.

Senator NUNN. Do you know whether that memo was given to Mr. Durkin the night before, September 17, or was it given to him that morning, or do you know when he got it?

Mr. RICHARDSON. I don't specifically know when he got it. I met with Mr. Durkin on the afternoon of the 18th. I know he had it at that time.

Senator NUNN. Somewhere between approximately 4 to 4:30 on September 17 and the next afternoon, September 18, when you met with Mr. Durkin, Mr. Durkin had received that copy of the Brosan memo?

Mr. RICHARDSON. That is correct.

Senator NUNN. When Mr. Bartels called Mr. Thomas Durkin, did you know who he was calling? Had you already met Mr. Durkin?

Mr. RICHARDSON. Yes.

Senator NUNN. Where had you first met him?

Mr. RICHARDSON. I first met Mr. Durkin in July of 1974, sir.

Senator NUNN. Where were you then?

Mr. RICHARDSON. I was in DEA.

Senator NUNN. In Washington?

Mr. RICHARDSON. Yes, associate chief counsel.

Senator NUNN. What was the occasion of that meeting?

Mr. RICHARDSON. We were discussing this subcommittee's investigation, I believe, into the matters involving, into allegations involving DEA and Mr. Vesco.

Senator NUNN. Were you instructed to meet with Mr. Durkin, then, at that time, by anybody?

Mr. RICHARDSON. No, sir.

Senator NUNN. Was it a chance meeting?

Mr. RICHARDSON. No, sir. I was brought in. The allegations concerning Mr. Vesco at that time involved three former agents who allegedly had traveled from Los Angeles, California, to New Jersey to conduct some electronics work at Mr. Vesco's home and office. At that time, I was brought into that matter, as I say, sometime in July—

I don't recall the specific date—and I believe it was a Thursday of the week. Mr. Durkin was already, I believe, involved in the matter. If not, he certainly came into it the following day, on Friday.

There was a group of us. There was Mr. Mel Moore, who was then Acting Chief Inspector, myself, Mr. Bartels, Mr. Durkin, Mr. Promuto, I believe Mr. Haislip. There were a number of people in DEA who were at that time involved in the matter and it was on that occasion, I believe, the first time that I ever met Mr. Thomas Durkin.

Senator NUNN. So this would have been about two months later, two months after your first meeting with Mr. Thomas Durkin?

Mr. RICHARDSON. That is correct.

Senator NUNN. In the same year?

Mr. RICHARDSON. Yes.

Senator NUNN. Did you have any clear understanding of what Mr. Thomas Durkin's role was both at the time of the original meeting and later when you were asked to meet with him by Mr. Bartels?

Mr. RICHARDSON. Yes, sir. I believe he was a consultant.

Senator NUNN. You were told he was a consultant for DEA?

Mr. RICHARDSON. I don't know whether I was specifically told that or whether that was the definite impression I had, sir. I observed him going into the building and flash DEA credentials. So I knew he had some official connection with the organization. He was not a full-time employee. I presumed he was a consultant.

Senator NUNN. Did you feel he was a legal consultant? Was that his capacity, as you understood it, or public relations? What was the nature of his consultation in terms of what you expected?

Mr. RICHARDSON. He was a consultant to the organization, to the best of my understanding.

Senator NUNN. On any kind of problems?

Mr. RICHARDSON. He was a consultant on this particular problem; yes, sir.

Senator NUNN. What I am getting at, was he supposedly a legal consultant, looking at the legal end of it or looking at the public relations end of it, or what was his role?

Mr. RICHARDSON. No. To the best of my knowledge, he was a consultant whose advice was sought on particular problems, whatever problems they might be.

Senator NUNN. On the meeting with Mr. Bartels later that afternoon, at the 4 o'clock meeting, did he ask you to assume command of the investigation?

Mr. RICHARDSON. No, sir.

Senator NUNN. Did he make it clear as to who was to assume command, whether Mr. Brosan was to continue the investigation or what your official capacity was?

Mr. RICHARDSON. No, sir, he did not. Up until that point, I do not believe that a firm decision was in his mind.

Senator NUNN. So it was vague at that point as to who was in charge of the investigation?

Mr. RICHARDSON. No, sir. The matter was still in the hands of George Brosan. It was just a matter of what decision Mr. Bartels was going to make and I don't believe he had come to a decision as of 4 o'clock that afternoon.

Senator NUNN. Did Mr. Bartels ask Mr. Brosan to meet with you and Mr. Thomas Durkin the next day?

Mr. RICHARDSON. No, sir, he did not.

Senator NUNN. What was your impression regarding that? If Mr. Brosan were in charge, why would he not be called into that meeting?

Mr. RICHARDSON. I don't know, sir. I do know that there was a breakdown in relationship between Mr. Bartels and Mr. Brosan and Mr. Bartels did not have confidence in Mr. Brosan.

Senator NUNN. Did you discuss the Thomas Durkin meeting before meeting with Mr. Brosan?

Mr. RICHARDSON. I believe I did, sir. If I may, at dinner time, when we were at dinner that night, the night of the 17th, Mr. Bartels told me that I was to get in touch with Mr. John Lund.

Senator NUNN. Mr. John Lund?

Mr. RICHARDSON. Lund.

Senator NUNN. L-u-n-d?

Mr. RICHARDSON. Yes, sir. At that time, Mr. Lund was the deputy assistant administrator for enforcement. He was Mr. William Durkin's immediate subordinate.

Senator NUNN. Mr. William Durkin's immediate supporter?

Mr. RICHARDSON. Subordinate. Mr. Lund was suggested, number one, because Mr. Bartels had a great deal of confidence in Mr. Lund's judgment. Mr. Durkin was out of town. Mr. Lund was very well respected within the agency and Mr. Lund had prior experience in the Internal Security Division of the Bureau of Customs from which he came at the time of the reorganization.

I was to consult with Mr. Lund and we were then to contact Brosan and while I do not recall the exact terminology that was used, I received the clear impression that we were to work with and advise Mr. Brosan on the conduct of this investigation. At no time was I ever given control of the investigation or directions that I was or Mr. Lund was in charge of the investigation.

Senator NUNN. At no time?

Mr. RICHARDSON. No.

Senator NUNN. Either at that point or other time later?

Mr. RICHARDSON. No, sir. I never received any instructions as to what to do with this investigation until September 28.

Senator NUNN. Until when?

Mr. RICHARDSON. September 28.

Senator NUNN. September 28?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. We will get to that in a minute. Did you and Mr. Lund meet with Mr. Thomas Durkin the next day?

Mr. RICHARDSON. Yes.

Senator NUNN. Wednesday, September 18, 1974?

Mr. RICHARDSON. Yes.

Senator NUNN. Approximately what time of day?

Mr. RICHARDSON. Approximately, it was in the afternoon. I would suspect about 3:30 or 4 o'clock.

Senator NUNN. Where did that meeting take place?

Mr. RICHARDSON. The Statler Hilton on K Street.

Senator NUNN. Mr. Brosan was not at the meeting?

Mr. RICHARDSON. No.

Senator NUNN. He was not invited?

Mr. RICHARDSON. I don't believe so.

Senator NUNN. But you think you probably had mentioned the meeting to him?

Mr. RICHARDSON. I am reasonably certain we did. Mr. Lund and I had a meeting with the administrator earlier in the day at which time—I am referring to some notes that I made. At approximately 8:40 in the morning, on the 18th, John Lund and I met in Mr. Lund's office. At approximately 10 o'clock in the morning, Mr. Lund and I went to Mr. Brosan's office to discuss the matter with him. It was at that time that Mr. Brosan told me that Mr. Promuto knew about the investigation.

Senator NUNN. At that time what?

Mr. RICHARDSON. At that time, Mr. Brosan told myself and Lund that Mr. Promuto had found out about the investigation through an accident in the Xerox machine. At approximately noon, Mr. Lund and I went in to see Mr. Bartels, at which time Mr. Bartels told Mr. Lund and myself we would meet with Mr. Durkin that afternoon and he told us to get the investigation going.

Senator NUNN. He told you the day before he wanted to meet with Mr. Durkin, but he hadn't given the time or place. Is that right?

Mr. RICHARDSON. That is correct.

Senator NUNN. The next day, Wednesday, the 18th?

Mr. RICHARDSON. The 18th.

Senator NUNN. Then he told you about noon that day that you were to meet with Mr. Thomas Durkin that afternoon?

Mr. RICHARDSON. He told us to meet with Mr. Durkin that afternoon and told us Mr. Durkin was in town, probably. I don't recall specifically.

Senator NUNN. Do you recall whether in that meeting with Mr. Brosan that morning you specifically told him that you were going to meet with Mr. Thomas Durkin at some point?

Mr. RICHARDSON. It was either at that meeting or at the meeting immediately after Mr. Lund and I came out of the Administrator's office when we went to see Mr. Brosan that we advised him that we were going to meet.

Senator NUNN. So Mr. Bartels knew about the meeting, but he was not invited?

Mr. RICHARDSON. That is correct.

Senator NUNN. Where was the meeting held?

Mr. RICHARDSON. At the Statler Hotel on K Street, in the cocktail lounge.

Senator NUNN. You have some notes there. To keep in order, why don't you relate the events up to the Thomas Durkin meeting that day?

Mr. RICHARDSON. My notes are relatively incomplete, but I pieced these together as best I could.

Senator NUNN. This all took place on Wednesday, the 18th?

Mr. RICHARDSON. Yes. Approximately 12:30, Mr. Lund and I went into the Administrator's office and we were at that time told to see to it that the investigation got underway.

Senator NUNN. Who is the administrator?

Mr. RICHARDSON. Mr. Bartels; that we were to meet with Mr. Thomas Durkin later on that afternoon. At approximately 12:45 p.m., Mr. Lund and I as well as Mr. Bruce Jensen were in Mr. Brosan's office where the four of us discussed the Promuto matter and we advised Mr. Brosan that the Administrator wanted the investigation to go ahead. At that time, as I recall it, Mr. Brosan thought it was the wrong decision because he had a mandate to go ahead with the investigation, to continue the investigation that he started previously.

Senator NUNN. So Mr. Brosan did not impede the investigation or limit the scope of the investigation. He told you to proceed with it?

Mr. RICHARDSON. Mr. Bartels, at that time.

Senator NUNN. Mr. Bartels told you that?

Mr. RICHARDSON. Yes.

Senator NUNN. Mr. Brosan did not agree with that decision, but he did not in any way impede the investigation at that point. Is that right?

Mr. RICHARDSON. That is correct.

Senator NUNN. So you had the green light, so to speak, from both Mr. Bartels and Mr. Brosan to proceed with the investigation?

Mr. RICHARDSON. We conveyed the green light from Mr. Bartels to Mr. Brosan.

Senator NUNN. You told Mr. Brosan that Mr. Bartels said to go ahead with the investigation?

Mr. RICHARDSON. That is correct.

Senator NUNN. Mr. Brosan did not agree with that decision. Is that right?

Mr. RICHARDSON. That is right.

Senator NUNN. What did he think should be done?

Mr. RICHARDSON. He thought Mr. Promuto should be asked to resign.

Senator NUNN. Asked to resign without any investigation?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. At that point you said you agreed with that decision, that line of thought, the day before, but at that point what was your opinion?

Mr. RICHARDSON. At that point, after a conversation with Mr. Bartels at which time we discussed the ethical manner in which a man should be confronted with allegations, I changed my opinion and I agreed that the proper way would be to go ahead and investigate.

Senator NUNN. Does that bring us up to the point of the meeting with Mr. Durkin?

Mr. RICHARDSON. Yes.

Senator NUNN. Where was that meeting?

Mr. RICHARDSON. At the Statler Hotel.

Senator NUNN. Where?

Mr. RICHARDSON. In the cocktail lounge.

Senator NUNN. Is that the Statler Hilton?

Mr. RICHARDSON. I believe it is the Statler Hilton, on K Street.

Senator NUNN. Is this a normal place for you to have meetings?

Mr. RICHARDSON. I have never held a meeting there before, but that is where Mr. Durkin was.

Senator NUNN. That is what Mr. Durkin wanted?

Mr. RICHARDSON. That is where he was.

Senator NUNN. He was staying in the Statler Hilton?

Mr. RICHARDSON. I don't know where he was staying; but I know when we got there, he was carrying on a conversation with a business associate.

Senator NUNN. Who set up the meeting; in other words, who told you to go to the Statler Hilton?

Mr. RICHARDSON. I was in Mr. Lund's office, I believe, when the final communication was made between Mr. Durkin and Mr. Lund, if I am not mistaken, and Mr. Durkin suggested that we go over there.

Senator NUNN. It was Mr. Durkin's suggestion to Mr. Lund that you meet at the Statler Hilton?

Mr. RICHARDSON. That is correct.

Senator NUNN. In the cocktail lounge?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. Do you know why your meeting would be held there when you were discussing a sensitive matter of this nature? Did you have any opinion about that? Did you think it was the normal operating procedure?

Mr. RICHARDSON. I would prefer it to have taken place in my office, as would Mr. Lund. However, sir, when we got there we found out that Mr. Durkin was discussing business with a business associate. I presume that it would be more convenient and quicker for us to go over there, rather than for him to come over to meet us.

[At this point, Senator Jackson entered the hearing room.]

Senator NUNN. So you would prefer it to be in your office, but you didn't think there was anything improper about meeting in the bar of the Statler Hilton to discuss this kind of information?

Mr. RICHARDSON. No, sir. I discuss business information in places outside of my office. I didn't see anything surreptitious.

Senator NUNN. Instead of my asking you questions on this Durkin meeting, will you please tell us what happened at the meeting in the Statler Hilton from the time you arrived, who you observed Mr. Durkin with and go on from there. Then we will come back and fill in with questions.

Mr. RICHARDSON. I forget exactly with whom Mr. Durkin was meeting; but his conversation with that gentleman lasted for approximately a half hour before that gentleman got up and left.

Senator NUNN. Were you at the table with them?

Mr. RICHARDSON. Yes.

Senator NUNN. You were all sitting at the table?

Mr. RICHARDSON. Yes. As I recall, they were discussing a maritime case, if I am not mistaken. So let me think. We then started to brief Mr. Durkin on the allegations as we then knew them and our conversations with Mr. Brosan earlier in the day and my conversation with Mr. Bartels the day before and the night before.

Mr. Durkin stated that he was concerned with only one allegation in the list of allegations that we had received from the Metropolitan Police Department and that allegation was one which had been disproven by Mr. Brosan; that is, the allegation we had received that Mr. Promuto had compromised an informant in the Drug Enforcement Administration.

Senator NUNN. That allegation you say had been what?

Mr. RICHARDSON. Disproven by Mr. Brosan.

Senator NUNN. That was the allegation you referred to a little while ago that had been disproven?

Mr. RICHARDSON. That is correct.

Senator NUNN. When Mr. Brosan presented the information to Mr. Bartels, he told him in that first presentation that that allegation had been disproven?

Mr. RICHARDSON. That is correct. Mr. Durkin stated that he wasn't genuinely interested—if that is the right way to phrase it—in the truth or falsity of the allegations, of the remaining allegations that we had received from the Metropolitan Police Department. What he was interested in was the reputation of the agency and that since the Metropolitan Police Department and, I believe the Federal Bureau of Investigation had information that a senior official, right or wrong had information that a senior official of DEA was associating with known or suspected criminals, that it was the reputation of the organization that was paramount. Therefore, he suggested that we proceed with the resignation option with the condition that we do it, try to do it as quietly as possible and with all concern for Mr. Promuto's reputation.

I am trying to think of all the details, if I can, sir. That is why I am pausing.

Senator NUNN. Go ahead and fill in. I will ask you some questions on points, if you feel like you have given as much as you remember.

Mr. RICHARDSON. That was essentially it.

Senator NUNN. To summarize the meeting, Mr. Durkin told you that he felt that for the agency's sake, Mr. Promuto should resign?

Mr. RICHARDSON. Yes, sir. His reasoning was this: When you have an allegation or charge against a senior official that is known, that then it was important that we recognize that generally the defense of any allegation never catches up to the charge. So we would always be trying to catch up with the Metropolitan Police Department since they were the ones who brought us the initial information.

Senator NUNN. Was this the standard operating procedure? Didn't you have a lot of other integrity investigations going on?

Mr. RICHARDSON. This is the one and only integrity investigation I have ever been involved in my life. I might also add that Mr. Lund stated at this meeting that Mr. Promuto had come to him several weeks before and mentioned to him that he was tired of commuting and that he was going to terminate his association in Washington or he wanted to terminate his association in Washington, and go back to New York where his family was.

I might point out that Mr. Promuto's family was in New York. He would come down and work until Friday and then go back home. He said he was tired of doing it and wanted to go back home. So it did not seem to us at that time that it would be a difficult thing since it would be consistent with Mr. Promuto's wishes to attempt to secure Mr. Promuto's transfer to New York for a period of time, at which time—

Senator NUNN. Let's back up just a minute. When Mr. Durkin suggested his resignation, he wasn't talking about resignation? You were talking about really transfer? Is that right?

Mr. RICHARDSON. No, sir. We were talking about a resignation at some time in the future, not an immediate resignation, to handle

it properly, and one option would have been to transfer Mr. Promuto to New York so he could be close to his family, 3, 4, 5 months, an appropriate period of time. Mr. Promuto could find other employment and then he would resign. But in any event, he would be out of the sensitive position he was in in Washington.

Senator NUNN. So the conversation was basically that he should transfer immediately to New York and then 4 or 5 months later, work out a resignation? Is that right?

Mr. RICHARDSON. Within a reasonable period of time; yes, sir.

Senator NUNN. Did Mr. Durkin, Thomas Durkin, have any documents with him during the meeting at the Statler Hilton?

Mr. RICHARDSON. While I did not see them, sir, he said he did; yes.

Senator NUNN. He said he had documents?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. What documents?

Mr. RICHARDSON. He told me he had a memorandum that had been left with Mr. Bartels earlier that day.

Senator NUNN. Where did he get the document? Did he tell you that?

Mr. RICHARDSON. He didn't tell me where he got it.

Senator NUNN. Did he mention anything about a meeting with Mr. Bartels prior to your meeting?

Mr. RICHARDSON. He told me he had met with Mr. Bartels, but he didn't tell me Mr. Bartels had given him documents. I presume from that meeting, he had gotten documents from Mr. Bartels.

Senator NUNN. Do you make that presumption because Mr. Bartels had the copy in his possession?

Mr. RICHARDSON. Yes.

Senator NUNN. When did Mr. Durkin tell you he met with Mr. Bartels, or did he?

Mr. RICHARDSON. I don't know whether he told me he had met with Mr. Bartels the previous night or the next morning. He told me he had met with him, sir. I have a thought in my mind that possibly he met with him the previous night.

Senator NUNN. So he didn't tell you he got the document from Mr. Bartels. You just presume that because he met with him and Mr. Bartels had been the one that had the copy?

Mr. RICHARDSON. Yes.

Senator NUNN. Did he tell you whether he had a copy or whether he had the original? Do you remember?

Mr. RICHARDSON. He had to have a copy because Mr. Brosan had the original. I know he didn't tell me he met with Mr. Brosan.

Senator NUNN. He didn't mention a meeting with Mr. Brosan?

Mr. RICHARDSON. No.

Senator NUNN. You did not see the document?

Mr. RICHARDSON. No.

Senator NUNN. Did he refer to the information that was in it or was it just apparent he was very familiar with it?

Mr. RICHARDSON. He told me he had seen it and read it.

Senator NUNN. Do you know whether Mr. Durkin had any security clearance to deal with this information?

Mr. RICHARDSON. I have no idea.

Senator NUNN. You still don't

Mr. RICHARDSON. No.

Senator NUNN. At that time, you clearly did not know that?

Mr. RICHARDSON. That is correct.

Senator NUNN. Did Mr. Thomas Durkin advise Mr. Bartels, to your knowledge, to have you and Mr. Lund get involved in the Promuto case?

Mr. RICHARDSON. Could I have the question again, sir?

Senator NUNN. Did Mr. Durkin advise Mr. Bartels that you and Mr. Lund should be involved in the Promuto case?

Mr. RICHARDSON. He didn't tell me that, sir.

Senator NUNN. Did Mr. Bartels tell you that or did anyone tell you that?

Mr. RICHARDSON. Mr. Bartels had instructed me the night before to get with Mr. Lund and work with him, whatever the term he used.

Senator NUNN. So you don't know where that Mr. Bartels' order came from? You don't know whether Mr. Durkin advised him to do that or not?

Mr. RICHARDSON. No, sir. I know I got it prior to the time that, I believe that Mr. Bartels could have possibly met with Mr. Durkin.

Senator NUNN. Was that after he talked with Mr. Thomas Durkin on the telephone?

Mr. RICHARDSON. Yes, sir. He spoke, I know of one conversation he had with Mr. Durkin on the telephone. That was the one at 4 o'clock in the afternoon.

Senator NUNN. You don't know whether Mr. Durkin told him to get involved in the case?

Mr. RICHARDSON. No. I know the suggestion that I get involved in the case and that Mr. Lund get involved in the case came that evening.

Senator NUNN. Let's back up just a minute. Why was Mr. Brosan excluded from this meeting with Mr. Thomas Durkin? Do you have any opinion on that? We have alluded to it already, but this is just for the record.

Mr. RICHARDSON. No, sir. I know that Mr. Bartels did not, there was a breakdown in the relationship and Mr. Bartels did not trust Mr. Brosan's judgment.

Senator NUNN. Mr. Bartels did not trust Mr. Brosan's judgment?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. Anything else that comes to mind that we have left about the meeting with Mr. Thomas Durkin?

Mr. RICHARDSON. Not that I can recall.

Senator NUNN. How long did the meeting take place?

Mr. RICHARDSON. Excluding the half-hour waiting time, probably a half hour.

Senator NUNN. Do you know who the particular client was that Mr. Durkin was meeting?

Mr. RICHARDSON. I don't recall. I know it was a male.

Senator NUNN. It was not a Government agent of any kind?

Mr. RICHARDSON. It could have been, sir. I don't know. It certainly was no one associated with DEA.

Senator NUNN. It was nobody associated with DEA?

Mr. RICHARDSON. No. I had a thought in mind it might have been someone associated with the Maritime Commission.

Senator NUNN. You couldn't tell from the conversation whether it was a private company official or possibly a Government official?

Mr. RICHARDSON. I believe it could have been someone associated with the Maritime Commission. I am not 100 percent certain of that.

Senator JACKSON. Did you, Mr. Richardson, assume that Mr. Thomas Durkin had clearance?

Mr. RICHARDSON. Yes, sir.

Chairman JACKSON. You had no reason to believe otherwise by reason of the role that he was playing?

Mr. RICHARDSON. I had no reason to believe otherwise.

Chairman JACKSON. But he had access, obviously, to sensitive material?

Mr. RICHARDSON. I don't know what information he had access to.

Chairman JACKSON. He was aware of information that you knew to be sensitive, was he not?

Mr. RICHARDSON. Yes, sir, with respect to two items, I know. One was the incident the previous July involving this subcommittee's investigation into the Vesco matter and the other one was the Promuto matter.

Chairman JACKSON. That information you would treat as being sensitive and certainly anyone in the Government having access to it would have to have proper security clearance, right, or to know about it? I mean, this wasn't just routine correspondence.

Mr. RICHARDSON. No, sir, it wasn't routine correspondence. I don't know whether or not it would be necessary for someone to have security clearance to learn this type of sensitive information. This information was not classified, sir. It was sensitive, but it was not classified. It was confidential information, at best, but it was not classified as being secret, top secret or whatever other classification exists.

Chairman JACKSON. I understand that part of it; but what are the rules in DEA when you handle a document, for instance, confidential? Your secretary does have clearance or doesn't have clearance? Isn't it necessary?

Mr. RICHARDSON. My secretary has clearance, sir. I have a clerk in my office who does not have clearance.

Chairman JACKSON. Does not have clearance?

Mr. RICHARDSON. Does not have clearance, that is correct.

Chairman JACKSON. What about Office of Inspection documents?

Mr. RICHARDSON. I don't know what you mean, sir.

Chairman JACKSON. I mean Office of Inspection documents, documents that in the course of an investigation contain sensitive information about the conduct of people, what they are involved with, their possible association with others?

Mr. RICHARDSON. Sensitive information to me, sir, means that it should be disseminated solely on a need-to-know basis.

Chairman JACKSON. Solely on a what?

Mr. RICHARDSON. A need-to-know basis.

Chairman JACKSON. I would say that would be an area that would come within the requirement for a security clearance.

Mr. RICHARDSON. I don't know what the requirements are for security clearance, sir. I am not trying to evade your question, sir. I just don't know.

Chairman JACKSON. I am a little baffled because you are dealing with these things in your capacity as associate chief counsel. Someone comes in and asks "What about this, is this information that can be disseminated generally?"

Mr. RICHARDSON. No, sir. I disseminate information on a need-to-know basis.

Chairman JACKSON. Need to know can be either way. Need to know can be more than top secret because you have general top secret information. In that category, obviously people will have access to it generally speaking, regardless of a need to know. Then you go beyond that. I am just trying to find out what kind of guidelines are followed.

Mr. RICHARDSON. Senator, as far as personal guidelines that I might have, when the Administrator of the organization orders me to discuss matters with someone, I presume that the Administrator of that organization, sir, who is responsible for the total conduct of the organization, is satisfied that the person with whom he has directed me to discuss the matter with is a secure person.

Chairman JACKSON. I am not questioning. You had a right to believe when Mr. Bartels sent Thomas Durkin in on this matter. I am saying you have a right to believe that he had clearance. Were you surprised or shocked when you found out that he didn't?

Mr. RICHARDSON. Yes, sir, I was.

Chairman JACKSON. That is what I am getting at. Thomas Durkin did read Mr. Brosan's report, didn't he, concerning Mr. Bartels and concerning Mr. Promuto?

Mr. RICHARDSON. He told me that he did; yes, sir.

Chairman JACKSON. Would you say that would be sensitive information?

Mr. RICHARDSON. Yes, sir.

Chairman JACKSON. If you had anything to say about it, anyone handling that should have a security clearance?

Mr. RICHARDSON. I am not prepared to go that far, sir. No, sir.

Chairman JACKSON. You are not?

Mr. RICHARDSON. No, sir. I have never been in that position, sir.

Chairman JACKSON. You are associate chief counsel.

Mr. RICHARDSON. I have never been in the position where I discussed these matters outside the agency. So you are asking a hypothetical question that I haven't given any thought to.

Chairman JACKSON. I don't know why you would be discussing it outside the agency?

Mr. RICHARDSON. I was doing it because the Administrator told me to, sir.

Chairman JACKSON. What did you think of that?

Mr. RICHARDSON. I didn't see anything wrong with that. I discussed another matter with Mr. Durkin the previous July that was relatively sensitive. I know that Mr. Durkin had met with and had the confidence of the Administrators. I didn't see anything wrong with it at all.

Chairman JACKSON. Why were these documents outside of the Office of Inspection?

Mr. RICHARDSON. I can't answer that. Mr. Bartels, obviously, gave the document to Mr. Durkin.

Chairman JACKSON. That is all.

Senator NUNN [presiding]. Let's wrap this all up. After your meeting with Thomas Durkin at the Statler Hilton, you and Mr. Lund, what were your instructions? Were you given instructions or was there an understanding about what course of action you were going to follow from that point on in the Promuto investigation?

Mr. RICHARDSON. No, sir. I presume that Mr. Durkin would contact Mr. Bartels. He might have even told me that he was going to do that.

Senator NUNN. So there weren't any definite conclusions there except all of you concurred that a transfer to New York, followed by resignation at an appropriate time, would be advisable?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. You agreed with that at that point?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. Had you changed your mind again about the necessity for an investigation?

Mr. RICHARDSON. No, sir. Since Mr. Promuto wanted to go back to New York, I believed, and since he knew about the investigation, I didn't think there would be a problem, sir.

Senator NUNN. You didn't think there would be a what?

Mr. RICHARDSON. I didn't think there would be a problem. This was all contingent on Mr. Promuto's concurrence.

Senator NUNN. You didn't think what would be proper?

Mr. RICHARDSON. I didn't think there would be a problem with talking to Mr. Promuto.

Senator NUNN. Problem? I see.

On another point, did you tell Mr. Brosan that you had seen Mr. Bartels in San Francisco with one of the persons mentioned in the police report as associating with Mr. Promuto?

Mr. RICHARDSON. No, sir.

Senator NUNN. You don't ever recall telling Mr. Brosan that?

Mr. RICHARDSON. No, sir.

Senator NUNN. Did you ever see Mr. Bartels in San Francisco with Diane DeVito?

Mr. RICHARDSON. No, sir.

Senator NUNN. You never? Have you been in San Francisco with Mr. Bartels?

Mr. RICHARDSON. Yes.

Senator NUNN. When was that?

Mr. RICHARDSON. December 1973.

Senator NUNN. What was the occasion of that meeting?

Mr. RICHARDSON. DEA was holding a press briefing for the news media in San Francisco concerning what DEA was and what our functions were. I was there in connection with that news briefing.

Senator NUNN. Did you accompany Mr. Bartels there?

Mr. RICHARDSON. I arrived before he arrived on the scene and I left before he left.

Senator NUNN. Who else was there from DEA besides you and Mr. Bartels?

Mr. RICHARDSON. There were a number of officials there, probably 10 or 12.

Senator NUNN. Was Mr. Promuto there?

Mr. RICHARDSON. Yes.

Senator NUNN. This was in December 1973?

Mr. RICHARDSON. Yes.

Senator NUNN. Did you go to meetings with Mr. Bartels and Mr. Promuto?

Mr. RICHARDSON. Yes, sir, on Wednesday and Thursday of that week, I believe. Yes.

Senator NUNN. Wednesday and Thursday of that week?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. Did you go out with them at night?

Mr. RICHARDSON. I went out with Mr. Bartels on two nights.

Senator NUNN. To dinner?

Mr. RICHARDSON. Yes.

Senator NUNN. Who else was with you when you went to dinner?

Mr. RICHARDSON. When we went out to dinner, there was John Gibbons, assistant U.S. attorney in San Francisco, J. Michael Fitzsimmons, who at that time was the regional counsel in Chicago to DEA, the DEA task force, and Mrs. Kerr, myself, Mr. Gibbons' date. I believe that was it.

[At this point, Senator Jackson withdrew from the hearing room.]

Senator NUNN. Were there any females present?

Mr. RICHARDSON. Any other females?

Senator NUNN. Give me the ones that were there.

Mr. RICHARDSON. To the best of my recollection, Mr. Gibbons had a date on both nights, two separate females, and Mrs. Kerr was present.

Senator NUNN. She was with the agency?

Senator NUNN. But Diane De Vito was not at any of these dinners?

Mr. RICHARDSON. No, sir.

Senator NUNN. Do you know Diane De Vito?

Mr. RICHARDSON. I have never seen her in my life.

Senator NUNN. Have you seen pictures of her?

Mr. RICHARDSON. No.

Senator NUNN. Do you know who she is?

Mr. RICHARDSON. From the basic investigation, yes.

Senator NUNN. You have never seen Mr. Bartels or Mr. Promuto with Diane De Vito?

Mr. RICHARDSON. No.

Senator NUNN. Have you ever warned Mr. Bartels about association with either Diane De Vito or any female that you can recall?

Mr. RICHARDSON. I had a conversation, I have had numerous conversations with Mr. Bartels over the past 5 years concerning the conduct of government officials. Specifically, with respect to Diane De Vito, after I returned and Mr. Bartels returned from the San Francisco trip in December of 1973, probably 1 or 2 weeks later, Mr. Bartels and I discussed the success of the trip. We considered it very successful.

Mr. Promuto and his staff had done an excellent job and we were discussing the benefits that we had received and that we should pursue this type of briefing in other areas of the country. In the course of that conversation, and it was a very informal conversation—

Senator NUNN. A very informal conversation?

Mr. RICHARDSON. Yes, sir. In the course of that conversation, we discussed going to dinner in San Francisco, some of the humorous things that had occurred and in the course of that conversation, Mr. Bartels advised me that Mr. Promuto had introduced him to a young lady, and he did not identify her, to the best of my recollection. He described her; Mr. Bartels described her.

You have to understand, Senator, that what we are talking about here in a very informal conversation is one, two, or three sentences. We laughed at it. We joked about it. We joked about a lot that occurred in San Francisco because we had a good time.

During that conversation, I again stated to Mr. Bartels and it was the context—the exact words, I don't recall. This conversation occurred a year and a half ago. But I did remind Mr. Bartels that it was important for him especially, and for all of us, to be careful of whom we might be seen with, sir.

If I recall correctly, one of the newspapers that was represented at this seminar, sir, was the Berkely Barb and if I recall correctly, we laughed that either that newspaper or one of the other newspapers which had not been very friendly to Drug Enforcement would have loved to have seen us going into one of the shows out there or catch a senior official in what would be an innocent, but a compromising situation, sir.

That is the general context of it. It wasn't as much as an admonishment as it was a reminder of previous conversations. Again, sir, I am going back to a conversation that occurred a year and a half ago.

Senator NUNN. We don't expect you to remember the exact words. That is for certain.

Mr. RICHARDSON. But that is the general context of the conversation. Whether it occurred in the course of that conversation right around the time that we were discussing Miss De Vito, I am not certain. It may well have been.

Senator NUNN. Mr. Bartels did not identify the particular female he was talking about with you as being Diane De Vito or any other alias of Diane De Vito?

Mr. RICHARDSON. No.

Senator NUNN. Did you have any idea who he was talking about?

Mr. RICHARDSON. No, that she was a friend of Mr. Promuto.

Senator NUNN. You say he described her. Do you recall how he described her?

Mr. RICHARDSON. Yes, sir. He described her as a large, a tall, fairly tall, buxom girl and that was—he might have said a bouffant style hairdo or something, but created a picture in my mind, sir.

Senator NUNN. You picture a tall, buxom girl. That was the general description?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. Did he say that is the first time he had ever met her?

Mr. RICHARDSON. I don't recall, sir. That was my impression; but I don't recall.

Senator NUNN. He met her through Vincent Promuto?

Mr. RICHARDSON. Yes.

Senator NUNN. He met her in San Francisco?

Mr. RICHARDSON. Yes.

Senator NUNN. What was the context of this conversation? "Gee, that was a pretty girl?" Do you recall that girl? I think you are doing pretty well.

Mr. RICHARDSON. I am trying to be as complete as possible, sir, but the reference which made her stand out—

Senator NUNN. I think we already had that.

Mr. RICHARDSON. [continuing] Was her size.

Senator NUNN. Her what?

Mr. RICHARDSON. Her size. That was probably what we were discussing.

Senator NUNN. You mean her height?

Mr. RICHARDSON. No, sir, that was probably what we were discussing. He didn't mention any other person that he had been introduced to.

Senator NUNN. But you had not met her. He didn't mention her in the context of do you remember so and so?

Mr. RICHARDSON. No.

Senator NUNN. Did he say when he met her? Did he make reference to whether it was specifically at one of the occasions where you had not been present?

Mr. RICHARDSON. No. I believe it was on the weekend.

Senator NUNN. It was on the weekend?

Mr. RICHARDSON. Yes.

Senator NUNN. Did he say it was at the airport or dinner?

Mr. RICHARDSON. No, sir, it was in a social context. There were several other people around, if I recall correctly; but he didn't identify them.

Senator NUNN. Did he say he met her before?

Mr. RICHARDSON. No. He was introduced to her and I was led to believe this was the first time he met her.

Senator NUNN. When was this conversation? When did this take place?

Mr. RICHARDSON. It was within a week or two.

Senator NUNN. After you—

Mr. RICHARDSON. After I got back from San Francisco.

Senator NUNN. You were in San Francisco in December of—

Mr. RICHARDSON. December of 1973.

Senator NUNN. Would this have been before 1974?

Mr. RICHARDSON. Yes.

Senator NUNN. Sometime during December of 1973?

Mr. RICHARDSON. Sometime during the first 2 weeks of December 1973.

Senator NUNN. After that conversation, is that when you repeated your general warning about the necessity of DEA agents, particularly Mr. Bartels, being very careful about being seen in certain company?

Mr. RICHARDSON. Yes, sir. I hesitate to use the word warning; but it was a reference to prior conversations that we had had about associations. Yes, sir. It was in the context of being observed.

Mr. FELDMAN. Mr. Richardson, if there was this lack of identification of the girl in the conversation you had with Mr. Bartels in January of 1974, why were you immediately able to identify her in September during this investigation when she showed up in the Promuto associations?

Mr. RICHARDSON. I was not able to immediately identify her.

Mr. FELDMAN. You were able to identify her after there was an identification at the airport. Correct?

Mr. RICHARDSON. No, sir.

Mr. FELDMAN. When were you able to identify her?

Mr. RICHARDSON. By name, it was probably on September 25. The situation had arisen that the airport allegation had assumed great proportions in investigation. Mr. Cash and Mr. Brosan were adamant that the girl at the airport was a girl that Mr. Cash had identified from a photograph. This was someone other than Diane De Vito. He was adamant about that.

I had received information either somewhere between the 19th of September and the 25th of September that Mr. Promuto did not know this particular girl that Mr. Cash had identified. He was adamant on that. I have conveyed that—

Mr. FELDMAN. Where did you get that information from, Thomas Durkin?

Mr. RICHARDSON. It was either Mr. Durkin or Mr. Bartels, sir. I don't know. But there was an apparent conflict in the identification at the airport. Since the girl at the airport that Mr. Cash had identified was a girl who was documented as an associate of a man who was suspected of being a narcotics trafficker in our files, that identification to me assumed great significance.

Mr. FELDMAN. Wasn't Diane De Vito mentioned in exactly the same way in that document?

Mr. RICHARDSON. I found out after I identified Diane De Vito, yes, sir; she was.

Mr. FELDMAN. So it doesn't make any difference—but you didn't answer my question. Why, when you found out the identification, did you immediately think in your mind that this was the girl that Mr. Bartels and Mr. Promuto were with in San Francisco?

Mr. RICHARDSON. No, sir, I didn't. The girl that Mr. Cash described to me, he described in the same physical description that Mr. Bartels had described Diane De Vito in San Francisco. At that time, something clicked in the back of my mind, sir.

Mr. FELDMAN. Something clicked?

Mr. RICHARDSON. Yes, sir, that I had the allegation that it was one particular female from Mr. Cash and Mr. Brosan. On the other hand, I had received information that Mr. Promuto was stating he did not know who this girl was. The physical descriptions were the same. I then went to Mr. Bartels and said we are hung up on an identity problem. Could it be the same girl?

Mr. FELDMAN. So this is 19 months after you talked—

Mr. RICHARDSON. No, sir.

Mr. FELDMAN. The three sentences?

Mr. RICHARDSON. It was not 19 months.

Mr. FELDMAN. How long is it, 9 months?

Mr. RICHARDSON. It was from December to September. That would be 9 months; yes, sir.

Mr. FELDMAN. That it clicked in your mind and you brought it to the attention of Mr. Bartels and Mr. Bartels told you that that sounded like Diane De Vito?

Mr. RICHARDSON. No, sir, he did not. Whether he told me on that date or whether he told me at a subsequent conversation which would have been shortly thereafter, the same day or the next day, Mr. Bartels, if I recall correctly, gave me the name of Diane. He then told me to contact Mr. Durkin to get the full name of the girl at the airport. I then contacted Mr. Durkin and I believe it was on September 27 that Mr. Durkin told me that we should try the name Diane De Vito.

Senator NUNN. That was Thomas Durkin?

Mr. RICHARDSON. Yes.

Mr. FELDMAN. Thomas Durkin?

Mr. RICHARDSON. Yes.

Senator NUNN. Where did he get that information?

Mr. RICHARDSON. I can only presume.

Mr. FELDMAN. We will ask him that, Mr. Chairman.

Mr. RICHARDSON. One thing I want to make clear, sir, is that the standout characteristic of the girl that Mr. Promuto—strike that—Mr. Cash identified as being one particular female was the same characteristic that exemplified Diane De Vito.

Mr. FELDMAN. I think I know the characteristic you are talking about.

Mr. RICHARDSON. Pardon?

Mr. FELDMAN. I believe I know the characteristic you are talking about.

Mr. RICHARDSON. Mr. Cash's comment was once you see this girl, you don't forget her. That is how I can make a positive identification 3 months after I saw her at the airport, that it was her.

Senator NUNN. That is what Cash said?

Mr. RICHARDSON. Yes.

Senator NUNN. Cash had been the one that had seen her at the airport?

Mr. RICHARDSON. Yes, sir, and a couple of the other inspectors.

Mr. FELDMAN. In the report, Diane De Vito and the other girl were named as associates of the same class I violator, right? So it doesn't make any difference?

Mr. RICHARDSON. It did at the time because at the time that I got the name Diane De Vito, I did not know Diane De Vito was listed as an associate of the same trafficker, sir. I received that information after I passed it along to Mr. Brosan and Mr. Cash.

Mr. FELDMAN. Did it come as a shock to Mr. Bartels to find that out that Diane De Vito whom he had met in San Francisco was the same one mentioned in that report?

Mr. RICHARDSON. I don't specifically recall. It probably did.

Mr. FELDMAN. You don't recall that, but you recall three sentences in January of 1974, when you were just talking casually about the girl? You don't recall his reaction to this?

Mr. RICHARDSON. No, sir, I don't.

Mr. FELDMAN. Mr. Chairman, I would like to put the transcript of Mr. Richardson's prehearing interview in a sealed file, in the subcommittee records of this case so that we can go back and have it part of our record but not made public at this time.

We have an extensive prehearing interview with him, 131 pages long, which goes to some of these matters. If that could be Exhibit 40.

Senator NUNN. Without objection.

[The document referred to was marked "Exhibit No. 40" for reference and will be retained in the confidential files of the subcommittee.]

Senator NUNN. Let's go back to the follow-up after the meeting with Mr. Thomas Durkin. That was the meeting again on what date? The first meeting with Mr. Durkin? Was that Wednesday, the 19th?

Mr. RICHARDSON. Wednesday, the 18th.

Senator NUNN. Did you discuss after Wednesday, the 18th, the sequence of events that followed after, regarding the Promuto investigation.

Mr. RICHARDSON. On the 19th, Mr. Lund, Brosan and myself met with the Administrator in the Administrator's office. At that time Mr. Bartels told us of the various options that he thought he might pursue.

One was, the first one was he was going to contact the United States Attorney to secure any possible assistance in this investigation from the U.S. attorney's office.

Senator NUNN. Who told you that?

Mr. RICHARDSON. Mr. Bartels. He directed that the investigation continue and he furthermore directed that we discuss the possible transfer of Mr. Promuto.

Mr. Lund and myself and Mr. Brosan discussed that later on in Mr. Brosan's office and Brosan at that time was very satisfied with the Administrator's attitude.

Senator NUNN. At that time everybody was pursuing the investigation and there had been no and there had been no narrowing of the scope of the investigation at that point?

Mr. RICHARDSON. No.

Senator NUNN. By Mr. Bartels, Mr. Brosan or anyone?

Mr. RICHARDSON. No, sir.

Senator NUNN. During this time did Thomas Durkin interview Mr. Promuto?

Mr. RICHARDSON. I don't know, sir. I don't know up to this time whether he had or not.

Senator NUNN. You still don't know that answer?

Mr. RICHARDSON. No.

Senator NUNN. You don't know whether he did or not?

Mr. RICHARDSON. Up to the 19th, no, I don't know.

Senator NUNN. What about after the 19th?

Mr. RICHARDSON. At some point and as best I can pinpoint that time Mr. Durkin told me that he had interviewed Mr. Promuto. To the best of my recollection, it might have been Friday, the 27th. It might have been a day or two before that, and to the best of my recollection, sir, that interview occurred sometime between the 23d of September and the time I was told.

Senator NUNN. When were you told?

Mr. RICHARDSON. I don't recall exactly. It might well have been the 27th when I was with Mr. Durkin in Mr. Bartels' office.

Senator NUNN. You heard Mr. Durkin and Mr. Bartels talking?

Mr. RICHARDSON. I was with Mr. Durkin in Mr. Bartels' office.

Senator NUNN. That is when somebody told you that—

Mr. RICHARDSON. I am not 100 percent positive of that.

Senator NUNN. Do you recall who told you?

Mr. RICHARDSON. It was Mr. Durkin.

Senator NUNN. Mr. Durkin told you he had interviewed Mr. Promuto at some point but you think it was that meeting and you are not precisely sure?

Mr. RICHARDSON. Yes.

Senator NUNN. Under what authority did he interview Mr. Promuto? Do you know?

Mr. RICHARDSON. No.

Senator NUNN. Were you invited to be present?

Mr. RICHARDSON. No.

Senator NUNN. Was anyone else invited to be present at the interview?

Mr. RICHARDSON. Not to my knowledge.

Senator NUNN. Was Mr. Bartels present during the interview?

Mr. RICHARDSON. I don't know. I was never led to believe he was.

Senator NUNN. All you know is there was an interview between Mr. Thomas Durkin and Mr. Promuto and you don't know who else was present, if anyone?

Mr. RICHARDSON. That is correct.

Senator NUNN. Did Mr. Bartels call you on Friday, September 27 at 11 o'clock and at 1 a.m., the next morning on the Promuto case?

Mr. RICHARDSON. He called me 9 o'clock on Friday night and 11 o'clock on Friday night.

Senator NUNN. What did he say? Let's take the first 9 o'clock conversation and talk about that. What happened during that conversation?

Mr. RICHARDSON. In that conversation, he told me that he was very disappointed in the way that Mr. Lund and myself had conducted ourselves in the investigation. He was very disappointed in Mr. Brosan and he at that time thought the investigation had been going on too long and that there were far too many leaks.

He was very concerned because he had received information from our Dallas office, from our Chicago office, and from our New York office that those, at least those three regions knew that Mr. Promuto was under investigation and that the rumors were going around as to what that investigation encompassed and many of those rumors were wrong.

In sum and substance, it was basically a one-sided conversation in which Mr. Bartels was rather upset.

Senator NUNN. He was pretty upset during that conversation?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. Did he give you any instructions? Did he tell you to do anything that you weren't doing or to cease doing what you were doing?

Mr. RICHARDSON. No, sir. Mr. Bartels didn't give me any instructions in this investigation with the exception of September 24 until September 28.

Senator NUNN. Let's back up to September 24. What were the instructions then?

Mr. RICHARDSON. On September 24 he told me he had spoken with the U.S. attorney in the District and I was to contact Mr. Don Campbell and discuss the matter with him and secure any possible assistance.

Senator NUNN. From the U.S. attorney?

Mr. RICHARDSON. From the U.S. attorney's office.

Senator NUNN. So that was not a narrowing of the scope of the investigation?

Mr. RICHARDSON. No.

Senator NUNN. It was really getting you additional assistance?

Mr. RICHARDSON. Yes.

Senator NUNN. Did you meet with Mr. Campbell?

Mr. RICHARDSON. Yes, I met with Mr. Campbell and another assistant.

Senator NUNN. When did you meet with them?

Mr. RICHARDSON. Twenty-fourth, approximately 4 o'clock.

Senator NUNN. Was that meeting general in nature or did anything significant happen during the meeting?

Mr. RICHARDSON. No. I believe Mr. Campbell at that time as to what I knew about the investigation. He told me that he had received very little information about it from the U.S. attorney and I asked him what he wanted to do with it.

He said he would go back and talk about it with the U.S. attorney, that he would be back to me the following morning. He did call me the following morning and told me that his office did not want to get involved in what was essentially an internal affairs matter, but that after the investigation he would be happy to review the matter for any possible action.

Senator NUNN. I want to get back into this telephone conversation with Mr. Bartels. Have we left out any significant events in this time span? I want to keep it in order?

Mr. RICHARDSON. No, sir. Mr. Lund, Mr. Brosan and I had numerous conversations. Mr. Lund and I were of the opinion that since there were numerous leaks about the investigation and there were some apparent loose ends, specifically the information we received about the airport identification—

Senator NUNN. About what?

Mr. RICHARDSON. The airport identification, the one—that it was important that Mr. Promuto be confronted early in the investigation. We are now in the second week.

What we are talking about here is a period of 5 days, sir, and that Mr. Promuto be confronted, try to get his story and any possible facts he could shed, any light he could shed on this investigation which would enable us to document or clarify items such as the airport identification.

Mr. Brosan was adamant that (1) Mr. Promuto could not add anything to the investigation if interviewed and he wasn't ready to interview him.

Senator NUNN. Would you back up on that, repeat that last statement?

Mr. RICHARDSON. Mr. Brosan was adamant that Mr. Promuto, if interviewed, could not add anything to the investigation, and, number two, he didn't want to interview him at that time in any event.

Mr. FELDMAN. Just in the chronology, Mr. Chairman, we are at the 27th of September. You have been questioning the phone calls at night.

I want to cite you Mr. Brosan's testimony. We will place that in the context here. He said, "Mr. Lund, Mr. Richardson and I met at 8:30 a.m. on Thursday, September 26."

This is the day before he got the calls from Mr. Bartels?

Mr. RICHARDSON. That is correct.

Mr. FELDMAN. [reading].

Up to this time we had a tentative identification of the young lady alleged to be involved with Mr. Promuto. It was after this meeting that I believe Mr. Richardson returned and told me that the young lady was Diane De Vito. He had seen her in San Francisco with Mr. Promuto and Mr. Bartels earlier in the year.

You deny that?

Mr. RICHARDSON. I think he is mistaken as to the date. I am almost 100 percent certain that the issue, we knew the name Diane at that meeting, but we did not know until I received the telephone call from Mr. Durkin. I am almost positive, not 100 percent, that I received that telephone call the following day.

I know the minute I received the telephone call I called Mr. Brosan.

Mr. FELDMAN. When Mr. Bartels called you that night, the next night, on Friday night, did he know about the identification of Diane De Vito?

Mr. RICHARDSON. Yes, sir.

Mr. FELDMAN. He did?

Mr. RICHARDSON. Yes, sir.

Mr. FELDMAN. Is that one of the reasons he was rather agitated when he called that night? Did he mention Diane De Vito in that phone conversation?

Mr. RICHARDSON. I don't recall it.

Mr. FELDMAN. Think very carefully.

Mr. RICHARDSON. I am. I don't recall him—she may well have come up in the conversation, sir. We were not specifically zeroing in; he was not specifically zeroing in on Diane De Vito, as such.

What he was specifically zeroing in on was the fact that this was, there was a mistake made by Mr. Cash and what, the point he was making, sir, in that conversation was it appeared to him, and I tried to dissuade him of this, but it appeared to him was that Brosan had reached a problem in that he had a series of five allegations that he could not prove and he felt that Mr. Brosan was going out now and in order to justify himself, justify the investigation, correct the situation, he was going to get Promuto on something. That was the thrust of the—

Mr. FELDMAN. Wait a minute, Mr. Richardson. You have got a girl who has now been identified as an associate of a suspected class I narcotics violator that Mr. Bartels, you just told me, knew about.

Mr. RICHARDSON. No.

Mr. FELDMAN. You are telling me—

Mr. RICHARDSON. He knew who she was, sir. To the best of my recollection I did not find out. Brosan did not tell me about the allegation concerning Diane De Vito in our files until either Saturday, when I spoke to him on the phone, or the following day, when we were drafting the questions.

Mr. FELDMAN. That is not what Brosan testified to.

Mr. RICHARDSON. I know this.

Mr. FELDMAN. There is a conflict in testimony. We will certainly review that very carefully.

Mr. RICHARDSON. Yes, sir. Could I make one point here? I was going to make it at the end. At no point—strike that. Except for September 16, before Mr. Lund got into the investigation, and October 1, when I went to Mr. Brosan's office and took the questions from him, I did not have a meeting, nor do I recall any meeting with Mr. Brosan at which time Mr. Lund was not present.

On February 4, at the prehearing briefing with your staff, as I was leaving, I recommended to your staff, sir, that if there are any conflicts between Mr. Brosan and myself that they contact Mr. Lund because possibly since we had those meetings he could shed some light on it.

I do not know whether that was done. I do know Mr. Lund was not listed as a witness before this hearing, sir. I would suggest that if there are any conflicts possibly Mr. Lund could clarify them.

Mr. FELDMAN. Mr. Richardson, there are no conflicts until people testify under oath and give sworn testimony. Now we have a conflict and we will take it to Mr. Lund.

Mr. RICHARDSON. There might have been a conflict in February 4, when I was before your staff, sir. That is only a suggestion. I make it as a suggestion.

Mr. FELDMAN. I have one final question. Was there a recognition on the part of Mr. Bartels as of September 26 or 27 that Diane De Vito was the same girl he had met in San Francisco and that also Diane De Vito was the girl identified in DEA files as an associate of a suspected class I violator?

Mr. RICHARDSON. There may have been an acknowledgment that it was the same girl he had met in San Francisco. But I do not recall there was an acknowledgment that he knew. As I stated to the best of my recollection—

Mr. FELDMAN. When, to your best recollection, did he link the two together?

Mr. RICHARDSON. I found out about it, to the best of my recollection, on the 30th, when we were drafting the questions.

Mr. FELDMAN. The 30th of September?

Mr. RICHARDSON. Yes.

Mr. FELDMAN. You don't know whether Mr. Bartels found out about it?

Mr. RICHARDSON. No, sir. I know it was brought up at the October 1st meeting we had. Whether he found out before, I don't know.

Mr. Feldman. Thank you, Mr. Chairman.

Senator NUNN. Are we through with the 9 o'clock conversation? You said he was upset about leaks, and so forth. He called you back at 11 o'clock that same night, September 27, Mr. Bartels?

Mr. RICHARDSON. Yes, sir, he did.

Senator NUNN. Have we covered everything in the 9 o'clock conversation?

Mr. RICHARDSON. As best I can recall.

Senator NUNN. What happened in the 11 o'clock conversation?

Mr. RICHARDSON. It was a very short conversation. He called up, phoned, he was very excited and he told me that I was to be in his home, I believe, at 7:45 the following morning, and I was to pick

up Mr. Durkin at the hotel at 7:30 and take Mr. Durkin with me to Mr. Bartels' residence to discuss this matter.

Mr. Bartels was going to catch a plane, I believe at 10 or 10:30, to go back to New York.

Senator NUNN. Was he still upset?

Mr. RICHARDSON. Yes, sir, he was very upset.

Senator NUNN. Did he add any new element to why he was upset or just simply talk about having the meeting?

Mr. RICHARDSON. No, sir. It was a direct order. It was about a 30-second conversation.

Senator NUNN. He told you to come to his home the next morning?

Mr. RICHARDSON. Yes.

Senator NUNN. To pick Mr. Thomas Durkin up?

Mr. RICHARDSON. Yes.

Senator NUNN. Where?

Mr. RICHARDSON. At Mr. Durkin's hotel.

Senator NUNN. Where?

Mr. RICHARDSON. Somewhere in Southwest. I dropped Mr. Durkin off the night before, so I knew where it was. I don't know the name of it.

Senator NUNN. You had had another meeting with Mr. Durkin the night before?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. Was that also on the Promuto case?

Mr. RICHARDSON. Yes.

Senator NUNN. What came out of that meeting?

Mr. RICHARDSON. I was called down to the administrator's office by Mr. Bartels, because when I arrived there Mr. Durkin was there, Mr. Bartels was there.

Mr. Bartels told me that Mr. Durkin had had a conversation with Mr. Promuto in which Mr. Promuto told him of a conversation that I had had with Mr. Promuto earlier in the week. The way it was related to me, by Mr. Bartels, was that at that time in the Promuto conversation I had told Mr. Promuto that I didn't care for Mr. Bartels in this investigation, I didn't care for Mr. Promuto in this investigation, I didn't care for anybody, I was just out to protect my license.

Senator NUNN. Who was saying that?

Mr. RICHARDSON. Mr. Bartels was relating the conversation that Mr.—again, I am paraphrasing, sir——

Senator NUNN. We don't expect you to have the precise words on this. I don't think we will hold you to that kind of memory.

Let's just back up and see who was saying what. You were in the meeting.

Mr. RICHARDSON. I went into Mr. Bartel's office. Mr. Durkin was there.

Senator NUNN. Friday, September 27?

Mr. RICHARDSON. That is correct.

Senator NUNN. This was the day of those two phone calls which occurred at 9 p.m. and 11 p.m.?

Mr. RICHARDSON. That is correct. This meeting occurred probably at 6 o'clock.

Senator NUNN. Six o'clock in the afternoon on Friday, September 27?

Mr. RICHARDSON. That is right.

Senator NUNN. You went into Mr. Bartel's office?

Mr. RICHARDSON. Yes.

Senator NUNN. Were you called in?

Mr. RICHARDSON. I was called.

Senator NUNN. Mr. Thomas Durkin was in the office?

Mr. RICHARDSON. Yes.

Senator NUNN. Let's take it from there and go from that point.

Mr. RICHARDSON. Mr. Bartels was asked, related a conversation that Mr. Durkin had apparently related to him. Mr. Durkin stated that he had been, he had had a conversation with Mr. Promuto in which Promuto had told him words to the effect that I was not, I didn't, I was not out to protect Mr. Bartels, and protect is probably a bad word, I didn't care for Mr. Bartels in this investigation, I didn't care for Mr. Promuto in this investigation, nor Mr. Durkin, but what I was trying to do was simply protect myself and my license.

Senator NUNN. That was Mr. Bartels talking?

Mr. RICHARDSON. That is right. He was relating a conversation that he had been told about.

Senator NUNN. Mr. Bartels was relating a conversation that Mr. Thomas Durkin had related to him and they were both quoting what Mr. Promuto had told Mr. Thomas Durkin?

Mr. RICHARDSON. That is correct. I told him that the conversation was taken out of context, that I did in fact have a conversation with Mr. Promuto earlier in the week in which Mr. Promuto had stated to me he was very disappointed in myself and Mr. Lund because he thought we had joined the conspiracy of Mr. Brosan who were out to get him.

He thought that there was a hatchet job being done on himself. I told him no, that I was there to try to see that the investigation was being conducted fairly, and that was the only way that I thought the investigation should be conducted so that Mr. Promuto's reputation would be protected, that if it were conducted in any other way, because of the relationship between himself, myself and Mr. Bartels, it would not be proper. That was essentially what I told Mr. Bartels.

Senator NUNN. You told him essentially the same thing that day?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. What was the result of that meeting? Did anything else occur?

Mr. RICHARDSON. I recall Mr. Bartels left the office for a period of time. I don't know why. And I was alone in the office with Mr. Durkin. That is—

Senator NUNN. Thomas Durkin?

Mr. RICHARDSON. Yes. That is why I believe it might have been at that point in time that he advised me that he interview Mr. Promuto.

Senator NUNN. It would have already been apparent he interviewed Mr. Promuto when Bartels was quoting Promuto—

Mr. RICHARDSON. No. What was relayed to me was a conversation. I differentiate the conversation—

Senator NUNN. Between conversation and interview.

Mr. RICHARDSON. As opposed to the interview. The interview was described to me as a very emotional affair in that Mr. Promuto protested his innocence vehemently and pounded on the desk and said he had never done anything wrong.

Senator NUNN. That was Mr. Durkin telling you that?

Mr. RICHARDSON. Yes.

Senator NUNN. That was after Mr. Bartels left the office?

Mr. RICHARDSON. It may have been. That is when Durkin relayed the information to me he had interviewed Promuto. I think it was that night. It might have been before. It certainly didn't occur after that day. I know that.

Senator NUNN. It was either during that meeting when Mr. Bartels left the office or it was when you took Mr. Durkin to his hotel on the way home?

Mr. RICHARDSON. No, sir. It was either that night or on a day or two prior to that. It could not have occurred, the conversation between Mr. Durkin and myself, about the interview, could not have occurred on September 26 or thereafter.

Senator NUNN. So we know Mr. Durkin had an interview, Mr. Thomas Durkin had an interview with Mr. Promuto at some point on or before September 27?

Mr. RICHARDSON. That is correct, sir.

Senator NUNN. At least you were notified before September 27. The interview would have to have occurred before that at some point?

Mr. RICHARDSON. Yes.

Senator NUNN. That would be the last point in time when that could have taken place?

Mr. RICHARDSON. Yes.

Senator NUNN. Anything else significant happen at that meeting that day?

Mr. RICHARDSON. Not that I recall, sir: no.

Senator NUNN. Did the name Diane De Vito come up that day?

Mr. RICHARDSON. It might have; I don't know.

Senator NUNN. You are not sure?

Mr. RICHARDSON. No, sir.

Senator NUNN. That is all? We have gone through everything that happened in the 9 o'clock telephone conversation, the 11 o'clock telephone conversation, and the meeting between you and Mr. Bartels and Mr. Durkin?

Mr. RICHARDSON. To the best of my knowledge.

Senator NUNN. Everything significant that you can recall?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. The next morning you were to pick up Mr. Durkin at his hotel and then go to Mr. Bartels' house and be there at quarter of 8: is that right?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. Did you do that?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. Who was there at that time?

Mr. RICHARDSON. Just the three of us.

Senator NUNN. What took place there?

Mr. RICHARDSON. It was basically a continuation of the 9 o'clock conversation the night before except it was more emotional. The con-

versation was between Mr. Bartels and myself essentially, and Mr. Durkin didn't say very much until the end of the conversation.

Mr. Bartels essentially berated me for what he thought, he didn't think I had conducted myself properly in the investigation and he also spoke harshly of Mr. Brosan. Items were brought up, such as Brosan was not fit to be Chief Inspector or Acting Chief Inspector.

He thought the investigation was going too deeply into Mr. Promuto's personal life. Essentially, that was it. It was a rather emotional——

Senator NUNN. What was the conclusion of that meeting? Were there any new instructions then?

Mr. RICHARDSON. Yes, sir. At the time, at the conclusion of the meeting, I told Mr. Bartels, if I recall correctly, we shouted at each other at this point, I told Mr. Bartels that he had done a lot of complaining to me about the way the investigation was being conducted and yet for the 10 days that I was involved in it, never once had he ever given me an instruction what he wanted done.

On that date, I wanted to know exactly what he wanted me to do in that investigation.

Senator NUNN. Did he tell you?

Mr. RICHARDSON. Yes, sir, he did.

Senator NUNN. What did he say?

Mr. RICHARDSON. One other thing, sir, did come up in the conversation the night before and in the morning conversation. That was the conversation that I had had at 8 o'clock or 8:45 the previous day, the Thursday, with Mr. Brosan. At that time Mr. Brosan told me that the investigation was essentially completed.

There were outstanding leads which were of criminal record check nature, as well as one interview which was to be conducted on Friday, the 27, of an inmate in a Midwest prison.

All that remained to be completed essentially was the writing of the report and that Mr. Brosan thought that he would have it completed by October 10, which would have given him 30 days from the date he first received the information until——

Senator NUNN. This was Mr. Brosan telling you this?

Mr. RICHARDSON. Yes. He told me this Thursday morning.

Senator NUNN. Does that mean he told you to limit your investigation on Thursday morning, September 26?

Mr. RICHARDSON. No sir; he told me that his investigation was winding down.

Senator NUNN. His investigation?

Mr. RICHARDSON. Yes.

Senator NUNN. Let's go to that meeting. I will have to go to a rolloall and adjourn until tomorrow morning.

Let's go back to Mr. Bartels and his house and the conclusion of that meeting. What did he instruct you to do or not to do after that meeting was over?

Mr. RICHARDSON. Based upon what I told him about the investigation with Mr. Brosan the previous Thursday morning, he told me that he wanted a final report basically on all aspects of the investigation which were concluded at that point by the following Wednesday, if I am not mistaken, sir, that he wanted Mr. Promuto confronted on the issue of how we were going to do that arose.

Mr. Lund, Mr. Durkin and I had discussed this previously in one of our meetings. It was decided that written questions would be propounded to Mr. Promuto.

Senator NUNN. That was decided that morning?

Mr. RICHARDSON. The ultimate decision was decided that morning. Yes, sir, the suggestion of the use of written questions came up earlier in the week.

Senator NUNN. Earlier in the week with Mr. Lund and Mr. Durkin?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. Let's close at this time. We will come back tomorrow morning.

Mr. FELDMAN. Tomorrow morning, Mr. Chairman, room 3302 at 10 a.m., we will finish up with Mr. Richardson and have the two FBI agents, and go on to Thomas Durkin.

Senator NUNN. Mr. Richardson, will you be here at that time?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. Thank you very much, Mr. Richardson. We appreciate your cooperation.

[Whereupon, at 12:55 p.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, June 19, 1975, in room 3302.]

[Member present at time of recess: Senator Nunn.]

FEDERAL DRUG ENFORCEMENT

THURSDAY, JUNE 19, 1975

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington D.C.

The subcommittee met at 10 a.m., in room 3302, Dirksen Senate Office Building, under authority of Senate Resolution 111, agreed to March 17, 1975, as amended. Hon. Henry M. Jackson (chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Henry M. Jackson, Democrat, Washington; Senator Sam Nunn, Democrat, Georgia; and Senator Charles H. Percy, Republican, Illinois.

Members of the professional staff present: Howard J. Feldman, chief counsel; Dana Martin, assistant counsel; Philip R. Manuel, investigator; Frederick Asselin, investigator; Stuart M. Statler, chief counsel to the minority; Robert Sloan, special counsel to the minority; and Ruth Y. Watt, chief clerk.

Senator PERCY [presiding]. The subcommittee will come to order.

[Member of the subcommittee present at time of reconvening: Senator Percy.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct hearings in public session, without a quorum of two members for administration of oaths and taking of testimony in connection with Drug Enforcement Administration on Thursday, June 19, 1975.

HENRY M. JACKSON,
Chairman.
CHARLES H. PERCY,
Ranking Minority Member.

Senator PERCY. Senator Nunn is on his way over. I have a brief opening statement that I will make.

Before the subcommittee's hearings yesterday, it appeared that the Department of Justice and the subcommittee were on a collision course over the appearance of certain key witnesses.

Such a confrontation would have been completely unnecessary and I hope they will be avoided in the future. Fortunately, the Department of Justice, represented by Deputy Attorney General Harold Tyler, reversed earlier Government policy yesterday.

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As a result, following completion of the questioning of Mr. Richardson, the subcommittee will question FBI Agents Bill Williams and Edward Hegarty, regarding the thoroughness of the Promuto integrity inquiry, as well as other integrity matters raised by Mr. Andrew C. Tartaglino, former Acting Deputy Administrator and a witness before this subcommittee on June 10, 1975.

The Williams-Hegarty investigation was conducted under the direct supervision of former Deputy Attorney General Laurence Silberman, currently Ambassador to Yugoslavia.

The subcommittee will want to learn the nature and the scope of the investigation conducted by the FBI agents. We will need to know who was interviewed, which allegations were addressed, and whether a final report was issued.

Finally, we will want to determine how Deputy Attorney General Silberman established that Mr. Tartaglino's concerns were "without substantial foundation," as he stated in his January 16, 1975, press release on this subject.

Following the testimony of FBI Agents Williams and Hegarty, the subcommittee will question Mr. James D. Hutchinson Associate Deputy Attorney General during the time of this investigation.

Mr. Silberman will appear before the subcommittee at a later stage of these hearings.

The Chair calls Robert Richardson, Associate Chief Counsel, DEA, to continue questioning.

Mr. Richardson, I understand you have already been sworn in. Have you actually completed your statement?

TESTIMONY OF ROBERT RICHARDSON, ASSOCIATE CHIEF COUNSEL, DRUG ENFORCEMENT ADMINISTRATION—Resumed

Mr. RICHARDSON. I did not have a formal statement.

Senator PERCY. Yesterday you were being questioned by your meeting of September 28. Can you tell us what transpired at that meeting?

Mr. RICHARDSON. Yes, sir. I arrived with Mr. Thomas Durkin at Mr. Bartels' apartment at approximately 8 a.m. in the morning. We met there because Mr. Bartels was leaving at approximately 10 a.m., I believe, to go back to New York.

At that meeting, Mr. Bartels reiterated the statements he had made to me the night before, concerning what he thought was, let's say, wrong with the way the manner—with the way the investigation was being conducted.

He thought that Mr. Brosan had, if I recall his exact words, painted himself into a corner in that he had original allegations which he could not prove and he was now out to try to come up with some other allegations which he could prove against Mr. Promuto.

He thought that the investigation had gone on too long. He thought it had gone into too great a depth into Mr. Promuto's personal life. I can't recall specifically everything that was said, Senator. It was a highly emotional meeting with he doing most of the talking. There was a good deal of shouting and at the end, I recall we were shouting at each other.

Senator PERCY. Was this a rather unusual experience for you to have such an emotional response and reaction during the course of the conversation about a perfectly straightforward, part of your duties?

Mr. RICHARDSON. Yes, sir. I have had numerous conversations and, shall we say, lively discussions with Mr. Bartels over the previous 5 years, but this was the most emotional and most personal that we had ever gotten into, Senator.

I recall vividly that after that, after approximately 8 months of not smoking, I immediately went out and bought a pack of cigarettes.

Senator PERCY. Did you have any explanation or were you concerned about why he was so emotional about this particular investigation?

Mr. RICHARDSON. Yes, sir. In my opinion, the entire matter had become one of emotions, involving personalities. Mr. Bartels by this stage had become very emotional about it. Mr. Brosan was very emotional about it.

[At this point Senator Nunn entered the hearing room.]

Mr. RICHARDSON. Needless to say, Senator, because I was in the middle of them, I was highly emotional about it also.

Senator PERCY. Did he at any time ask you to narrow the scope of the investigation?

Mr. RICHARDSON. At the conclusion of the meeting, Senator, I told him that he had done an awful lot of complaining to me about the conduct of this investigation and that he disagreed with this methodology, et cetera, and yet with the exception of telling me to go and contact the U.S. Attorney's Office earlier in the week, he had never once given me a direct order as to exactly what he wanted me to do.

On this particular date, before I left his apartment, I specifically requested of him that he give me specific orders as to exactly what he wanted me to do in this investigation so I would have some guidance.

As I stated yesterday, the previous 10 days the role of Mr. Lund and myself was at best cloudy as to what position and function we were to serve in this investigation. We viewed ourselves as advisers and we were now being recipients of a great deal of criticism about things that we never believed we had the authority to do.

At that time, he did give me specific instructions. These instructions were predicated upon a conversation that I had with Mr. Brosan on September 26, which was the previous Thursday, at which time Mr. Brosan had stated to me that the investigation was beginning to wind down, that he had outstanding one interview to conduct that was of an inmate of a Midwestern prison, which would be conducted on Friday, September 27 and that absent that he had a number of criminal records checks.

He thought he could conclude his investigation with his report by October 10, which would have given him 30 days from the date he received the initial information, having received it on September 10, to conclude the entire investigation.

In sum and substance, the investigation, according to Mr. Brosan at that time was winding down with a major function left to be performed being the report writing.

With that as a background, Mr. Bartels directed me to contact Mr. Brosan and to do several things—direct him to do several things.

One: Mr. Promuto was to be confronted on Monday through the use of written interrogatories. This had been a procedure that had been suggested and agreed upon by Mr. Durkin, Thomas Durkin, myself and Mr. Lund.

Two: Mr. Brosan was to have a final report in on the investigation by Wednesday. By a final report what was meant was it was to be finalized in all aspects of the investigation which had been concluded up to that point.

If anything hadn't come in such as criminal record checks, and so forth, obviously they could not be included in the report. There was to be a briefing of Mr. Bartels early in the week since it occurred on Tuesday, I presume that was the date he gave me, and while I do not specifically recall the statement that no new avenues of investigations were to be opened up, it is quite possible, after reading Mr. Brosan's testimony that that instruction was given.

However, sir, that instruction was given with the idea that at this briefing, which was to occur the following Tuesday, the entire matter was to be aired. Mr. Brosan was to brief Mr. Bartels as to the exact status of the investigation. But at that time any other problems would also be taken up.

Senator PERCY. Whose idea was it to use written questions?

Mr. RICHARDSON. That idea was originally suggested, sir, by either Mr. Lund or Mr. Durkin, Mr. Thomas Durkin, at a meeting we had had.

I had never heard of the procedure before. Mr. Lund had. Mr. Lund stated at one of our meetings during the previous week or so that he had either utilized or had seen this technique utilized, when he was assigned to the Internal Security Division in the Bureau of Customs.

Senator PERCY. That he had seen this technique utilized?

Mr. RICHARDSON. Either seen or heard of it being utilized.

Senator PERCY. Had you ever experienced this technique before?

Mr. RICHARDSON. I had never experienced this technique before.

Senator PERCY. As you look at it now, as you talk to others, isn't this an unusual practice in an investigation?

Mr. RICHARDSON. It is, sir. I don't think, looking in retrospect, sir, that it was the best technique to be used not because it was wrong, but because of the criticism and the unusualness of its use.

Senator PERCY. What justification was given for deviating from standard procedures and practice?

Mr. RICHARDSON. Senator, at no point in time were these written interrogatories to be utilized as the only method of interrogating Mr. Promuto. It was always understood that at a given point in time the investigators would go, if they desired, would go to Mr. Promuto and at that time they would interrogate him as to whatever avenues they wanted to.

Early in the investigation, Mr. Promuto found out that he was under investigation. He knew, generally, what he was under investigation for. Indeed, this investigation, after about the first 4 days

was known not only to various people who had no relation with it in our headquarters, but it was known in our Dallas regional office, it was known in our Chicago regional office, and it was known in our New York regional office.

Some of the rumors going around were relatively accurate and some were not. It was very important to me and to Mr. Lund, that since Mr. Promuto knew that he was under investigation and knew what he was under investigation for, that we try and get to him and find out whatever factual information he could give us, which would clear up any of the so-called loose ends in the investigation and try and get the investigation concluded, not shortened, but concluded as soon as possible in order to eliminate the effect that this was having on the morale of our personnel.

I was told, I don't know whether it was Mr. Bartels—I know it was by Mr. Bartels that the Dallas inspection was called off because manpower was placed on this investigation and the inspectors could not go into the normal office inspection of the Dallas regional office.

Senator PERCY. How do you suppose Mr. Brosan could write his final report if he didn't have the benefit of Mr. Promuto's answers to the written questionnaire?

Mr. RICHARDSON. Senator, the final report was to be final as to those aspects which they had at that time. The questions were to be propounded to Mr. Promuto on Monday. He was not in town on Monday and he didn't get them until Tuesday.

I know that because I personally delivered them. Mr. Brosan's report was due Wednesday evening. He didn't get that report in, sir, until I believe Friday evening, although I don't believe I ever saw that report. I have seen a subsequent report dated October 19.

He would have the benefit of at least Tuesday to go over those answers, sir, and if there were incompletions, which did not really clarify any issues that he had, they wouldn't have been included in his report, sir.

As I stated, it was not the best technique to be used in retrospect, sir. There were other techniques that could have been used and if I had to do it all over again, I certainly would have used them.

Senator PERCY. Did you help Mr. Brosan draft the questions?

Mr. RICHARDSON. Yes, sir, Mr. Lund, Mr. Brosan, myself, Mr. Whittington, Mr. Yarborough, Mr. Cash and Mr. Logay I believe.

Senator PERCY. Did Mr. Brosan object to the written question technique?

Mr. RICHARDSON. Yes, sir, he did.

Senator PERCY. What objections were raised?

Mr. RICHARDSON. It was a very unusual technique. He did not feel he wanted to interview Mr. Promuto at this time. He had never seen or heard of this technique being utilized before and he strenuously objected to it.

Senator PERCY. Were the questions supposed to be sworn to?

Mr. RICHARDSON. Yes, sir.

Senator PERCY. Were they sworn to?

Mr. RICHARDSON. No, sir.

Senator PERCY. Why weren't they?

Mr. RICHARDSON. I picked up the questions from Mr. Brosan on Tuesday morning. We had a discussion that they would be sworn. I took them to Mr. Promuto that morning at probably about 9:30.

At that time, I do not recall telling him that the questions should have been sworn to. I did tell him to return the questions to Mr. Brosan and he was to return them, I believe, that night.

The only instructions I gave him was to answer them as honestly and truthfully as possible and that we would accept a handwritten answer as opposed to typewritten, because there was no need to get a secretary involved, sir.

However, I do not think that the issue of whether they were sworn or unsworn is of a material fact in this particular scene, sir.

Had he sworn to that testimony, and had he, Mr. Promuto, misstated a material fact, he would have been guilty of perjury, which carries a penalty of 5 years and \$2,000 fine.

Had he not sworn to those as he did not swear to those answers, sir, he would have been guilty of giving a false statement under 18 U.S.C. 1001, which carries a penalty of 5 years and a \$10,000 fine.

So ironically, sir, he was guilty of a greater penalty by not swearing to them than had he sworn to them.

Senator PERCY. Did he answer all the questions?

Mr. RICHARDSON. No, sir; he did not.

Senator PERCY. When it was obvious he hadn't answered all of the questions, was he then told he would have to answer those that he did not answer?

Mr. RICHARDSON. I did not have a conversation with Mr. Promuto after that. He delivered the answers to Mr. Lund, who, in turn, gave them to Mr. Brosan. I didn't have any conversation with Mr. Promuto about it afterwards.

Senator PERCY. Were there any followup questions because obviously the answers to the questions will sometimes lead to another question in a logical sequence just as ours do today?

Mr. RICHARDSON. Yes, sir.

Senator PERCY. Were there any followup questions provided to him?

Mr. RICHARDSON. From reading the testimony I understand Mr. Brosan and Mr. Tartaglino interviewed Mr. Promuto on October 8. As of October 2, as of October 1, sir, I had no further connection with this investigation with the exception of securing Civil Service opinion concerning any possible administrative action which could be taken against Mr. Promuto.

When I walked out of that room on October 1, sir, I felt as though a millstone had been taken off my neck.

Senator PERCY. Did Mr. Promuto find out about the written questions even before they were submitted to him?

Mr. RICHARDSON. He must have, sir; yes, sir.

Senator PERCY. Did Mr. Promuto actually learn the details of the investigation after Mr. Bartels gave Tom Durkin Mr. Brosan's progress report and after Mr. Durkin interviewed Promuto in a motel at a time when no one from the Office of Inspection was present?

Mr. RICHARDSON. When the Office of Inspection was present, sir?

Senator PERCY. When there was no one from the Office of Inspection actually present.

Mr. RICHARDSON. I do not know that the exact date and location of an interview between Mr. Thomas Durkin and Mr. Promuto, I know it occurred and I suspect it occurred some time during the week of the 23d. I am not certain of that, but that is my best recollection, sir.

I know that I did not know that it was going to be done beforehand. Mr. Lund did not know, nor did Mr. Brosan know that it was going to be done beforehand, sir. I do know that on October 19, at approximately 12:45, after a meeting in Mr. Bartels' office between Mr. Brosan, Mr. Lund and myself, with Mr. Bartels, the three of us were in Mr. Brosan's office when Mr. Bartels came in.

He stated that he had run into Mr. Promuto, he had discussed the matter with Mr. Promuto, although he didn't say to what extent, as best I can recall, and he stated that Mr. Promuto wanted to be confronted and make a statement at the earliest possible moment.

Senator PERCY. Did one of the questions on the questionnaire involve Diane De Vito?

Mr. RICHARDSON. Yes, sir.

Senator PERCY. Did he answer that particular question about Diane De Vito, or is that one of the questions that Promuto did not answer?

Mr. RICHARDSON. He did not—it could well have been, sir. I haven't looked at those questions in several days. That is very possible that he didn't answer. He did answer one question about Diane De Vito, but whether or not he answered all the questions, I am not certain, sir.

Senator PERCY. In reviewing your own testimony of yesterday, there is fuzziness or a vagueness about Diane De Vito. I would like you to clarify why and how you first warned Mr. Bartels about Diane De Vito?

Mr. RICHARDSON. Senator, after the session, the press seminar that we held in the first or second week, I believe the first week of December of 1973, I returned to Washington the following week.

Mr. Bartels was back there some time within about the next 2 weeks or so.

Mr. Bartels and I, in a rather informal discussion were discussing the success of that particular venture in San Francisco. We felt that it was an excellent program. We felt Mr. Promuto and his staff had done an excellent job in setting up this program so that we could brief the press on what this new organization, the Drug Administration, Drug Enforcement Administration, was all about.

As I stated, we thought it was very, very successful. In the course of that conversation, sir, Mr. Bartels and I, and I believe it was only the two of us present at the time, had a conversation concerning generally the good times that we had after working hours.

We had gone out to dinner and it was a fairly enjoyable trip. We worked hard when we had to work and we enjoyed ourselves after hours. We had a lot of laughs.

We were discussing that. Mr. Bartels told me that Mr. Promuto had introduced him to a girl. He didn't go into depth into it, sir.

[At this point Senator Nunn withdrew from the hearing room.]

Mr. RICHARDSON. I don't even recall that he gave me her name. He described her in physical characteristics to me.

Senator PERCY. Do you remember that description?

Mr. RICHARDSON. I remember it fairly vividly, sir. At least the area, the thing about her that he described the most. She was the largest girl that he had probably ever seen in his life. I try to tell this as delicately as possible.

In all honesty, we didn't use those words. In the course of that, it could have come up while we were discussing that. It could have come up at another time. I am not certain exactly when it came up, but I told Mr. Bartels that in so many words that he had to be careful with whom he was seen because of the impression it would give.

There were numerous newspapers out there. The one that comes to mind was the Berkeley Barb, which has not been very kind to drug enforcement activities in San Francisco or anyplace else.

It is quite possible that they would love to get a senior government official in what is an innocent but apparently appearing, the appearances of a compromising situation.

[At this point Senator Nunn entered the hearing room.]

Mr. RICHARDSON. That was the general context of the conversation, sir. He agreed and that was how it came to pass.

Senator PERCY. Did he resent your gratuitous advice?

Mr. RICHARDSON. No, sir. Mr. Bartels and I were very good friends at the time.

Senator PERCY. He accepted it?

Mr. RICHARDSON. Yes, sir, he agreed with it. There wasn't any problem.

Senator PERCY. Did you have a feeling he was going to abide by it?

Mr. RICHARDSON. I never had any feeling that he hadn't abided by it, sir.

Senator PERCY. Did he abide by it?

Mr. RICHARDSON. I have never seen him not abide by it, sir. I have never seen him in a situation which would have been embarrassing.

Senator PERCY. Was Promuto interviewed by Tom Durkin even before this submission of written questions so as to give him the substance of the allegations and information?

Mr. RICHARDSON. He was interviewed by—he interviewed Mr. Promuto prior to the drafting and issuance of those questions and I have every reason to believe that he went into the substance of the allegations; yes, sir.

Senator PERCY. Did you attend a meeting on October 1, 1974, with Bartels, Tartaglino, Richardson, Lund, Daniel Casey, Mark Moore, and Brosan to discuss this case?

Mr. RICHARDSON. Yes, sir.

Senator PERCY. Did the question of the use of written questions come up?

Mr. RICHARDSON. Yes, sir.

Senator PERCY. What was the consensus of the group as to whether such a technique was professional?

Mr. RICHARDSON. I don't know whether there was a consensus of the group as such. I don't recall Mr. Casey, certainly Mr. Moore didn't comment on it.

I don't recall whether or not Mr. Casey commented on it. Mr. Brosan and Mr. Tartaglino certainly objected to it and they stated it was a very unusual and irregular practice and it shouldn't be done. They made that absolutely clear.

Senator PERCY. Did Mr. Bartels register his objection to the questionnaire concept and ask who ordered the questions at that time?

Mr. RICHARDSON. He certainly asked who ordered the questions at the time, sir. He asked that question directly of me since, if I recall correctly, Mr. Tartaglino stated I had relayed the message, and brought the questions in the morning.

Senator PERCY. But hadn't Bartels directed you to tell Brosan to submit written questions to Promuto?

Mr. RICHARDSON. Yes, sir.

Senator PERCY. When Bartels made his statement, why didn't you at that time speak up?

Mr. RICHARDSON. I regret that I didn't. I did answer the question to this extent, sir: I told him that Mr. Lund and Mr. Thomas Durkin and I had agreed that this would be an appropriate method of initially interrogating Mr. Promuto. I did not at that time state that you ordered it.

If I may, sir, go into my reason why, as best I can, piece it together. It might have been out of fear, but I don't think that was the sole reason. This was a rather tense meeting.

Senator PERCY. What was Lund and Casey's reaction? Do you remember?

Mr. RICHARDSON. Lund said nothing. No one said anything except me.

Senator PERCY. Did they evidence surprise or startle you?

Mr. RICHARDSON. Casey stated I had a very startled look on my face. He told me after the meeting, sir.

Senator PERCY. What did he say after the meeting?

Mr. RICHARDSON. He said, "I thought you were going to fall off the chair when he asked you the question." Lund came up to me and the first words out of his mouth were "Did you hear the question he asked you?"

I said yes. If I may go back to my answers to Mr. Bartels and the circumstances of that meeting, Mr. Bartels was in and out of that meeting. He was not there for the entire meeting. He was obviously taking and making some apparently very important phone calls.

I subsequently found out that it was during that meeting that he had made telephone calls to Deputy Attorney General Silberman and to the White House, finalizing the arrangements for the nomination of his Deputy, Mr. Jerry Jensen.

So he was obviously very interested in the meeting, but he was also preoccupied with this nomination.

Senator PERCY. At that meeting, did you and Mr. Lund ask to be removed from any further direct involvement in the investigation?

Mr. RICHARDSON. At the conclusion of the meeting, sir, before I left, Mr. Bartels was not in the room. He had gone in to make a phone call and I believe Dan Casey had said that the meeting was over, or words to that effect.

Before anyone walked out of the room, I asked Mr. Casey, I wanted to know right now, right then and there, what function Mr. Lund and I were to have in this investigation because our roles were clouded.

Did we have authority over it? Were we advisers? Since we were apparently being held responsible for something we didn't even know we had the authority to do. At that time, Mr. Casey told me that Mr. Lund and I would no longer be involved in the investigation. I had one further function, task, which had been given to me by Mr. Bartels the day before and that was to secure an opinion concerning possible administrative action against Mr. Promuto.

Senator PERCY. What were your directions from Bartels with regard to the final report of Brosan to be completed by Wednesday, October 2?

Mr. RICHARDSON. I was to take that report and go to an attorney in my office, who basically handles all of our civil service adverse action proceedings.

I know very little of that, sir. I am not an expert in that.

I was to secure from this gentleman—William Link—and I was to secure from Mr. Link an opinion based upon that report as to whether or not any adverse action could be taken against Mr. Promuto based upon what was contained in that report.

Those were my instructions. I might say, sir, that after the meeting, I immediately went to Mr. Casey and advised him of my Saturday conversation with Mr. Bartels and Mr. Durkin, at which time Mr. Durkin, Mr. Bartels authorized the use of written questions.

I also told Mark Moore that, and, if I am not mistaken, I told Andy Tartaglino that. I didn't have to tell Brosan or Lund because they already knew. But after the meeting, everyone knew exactly who had ordered those questions.

Senator PERCY. Did you get advice on possible civil service violation and, if so, what was it?

Mr. RICHARDSON. I got advice—I did not receive the written report by October 2, from Mr. Brosan. However, my deadline was Friday, October 4, to turn in my report. Having been involved in the investigation, I went to Mr. Link on Thursday morning, I believe.

At that time, I had Mr. Promuto's questions and answers. I gave Mr. Link the questions and answers and I briefed him as best I could, based upon my knowledge of the investigation up to that point and asked him for an opinion.

He gave me that opinion on Friday in a draft form since we did not have the report, based upon two criteria, given two factors he thought Mr. Promuto could be fired. Those two factors were that; (1) we were able to get competent witnesses to testify at an adverse action hearing; (2), that these witnesses would be able to testify in relative depth concerning the activities and conversation and associations between Mr. Promuto and the various persons involved, sir.

I subsequently got the report dated, from Mr. Brosan's office, dated October 19. I took that to the Civil Service Commission, sir. I had with me a copy of the memorandum that I wrote to Mr. Bartels, based upon my conversation with the senior attorney at the Civil Service Commission, in which the bottom line of it was based upon

that report no Civil Service action could be taken against Mr. Promuto at all.

Senator PERCY. Who directed or advised you to take the Promuto matter to the Civil Service Commission for unofficial review or opinion?

Mr. RICHARDSON. This was a carryover, sir, of my instructions from Mr. Bartels during the first week in October.

Senator PERCY. Did Mr. Durkin give you the same kind of advice in the Vincent Oliver case?

Mr. RICHARDSON. To go to the Civil Service Commission, sir? No, sir. Mr. Durkin's advice in the Vincent Oliver case was for me to go to the U.S. attorney's office.

Senator, I brought with me a copy of my memorandum to Mr. Bartels, concerning my conversation with the Civil Service Commission. If you do not already have it, I will offer it as an exhibit, sir.

[At this point Senator Nunn withdrew from the hearing room.]

Mr. FELDMAN. Mr. Chairman, could we put that in the record as exhibit No. 41?

Senator PERCY. It will be entered as exhibit 41.

[The document referred to was marked "exhibit No. 41" for reference and will be retained in the confidential files of the subcommittee.]

Mr. RICHARDSON. It is undated, but I believe it was the date I had the conversation, which was October 30.

Senator PERCY. Would you review for me the reaction Mr. Bartels had to the meeting we have been discussing?

Mr. RICHARDSON. The October 1 meeting, sir?

Senator PERCY. Yes. It was the October 1 meeting.

Mr. RICHARDSON. He was unemotional.

Mr. FELDMAN. Mr. Chairman, I think there is some question as to the meeting. Are you referring to the meeting—

Senator PERCY. There is the October 2, Wednesday, meeting. I am sorry.

Mr. FELDMAN. October 2, when you brought in your recommendations from Mr. Link on the Civil Service.

Mr. RICHARDSON. That meeting occurred on October 4, Friday evening. I was called down—I don't know whether I was called down or went down to Mr. Bartels' office at about 6 o'clock at night.

I stated that "You wanted the report" and I gave him the facts as to how I arrived at this report because I did not have Mr. Brosan's report.

Mr. Brosan had not submitted any report up until the time I went into Mr. Bartels' office. He was rather upset at that. He berated me for Mr. Brosan not submitting the report, until finally, I shouted back at him that "Stop asking me these questions which Mr. Brosan hasn't gotten the report and ask Mr. Brosan. I can't account for why he didn't get the report in. You will have to confront him with that."

Mr. Bartels left the office and Dan Casey then came into the office and inquired of me, why was Mr. Bartels angry at me? I told him I didn't know.

There just seemed to be a continuation of the previous Friday night and Saturday morning. He then came back in and I said, "I had the tentative report of Mr. Link," and this is the bottom line of

it; namely, that Mr. Promuto could be fired, given these two factors, at which he became very excited.

He told me that he didn't want Link's report; he wanted my report. I told him it was a draft and we had a general go-around as to why I had a draft. It was almost a catch-22 argument, in that I had a draft because I don't have the report. Why don't you have the report? I don't know, because it is not in.

He did not want that report. Mr. Durkin, Thomas Durkin, who was also present then, stated that I never should have drafted that report, since I didn't have George Brosan's final report. I shouldn't have even gone out and drafted the tentative report.

I then went to Mr. Bartels after the meeting and he had told me that I had to have it in Saturday morning, my final written report, in on Saturday morning. I recall that because it was difficult getting a secretary.

After that, I told him I still don't have George's report. So all you are going to get is a polishing up of this tentative report. Can I at least wait until I get George's report? By that time he had calmed down and he said okay.

It wasn't until October 29 that I secured George Brosan's report.

Senator PERCY. Do I understand correctly that you took the final report of October 21 to the Civil Service?

Mr. RICHARDSON. That is correct. I thought the date was October 19.

Senator PERCY. What was their reaction?

Mr. RICHARDSON. I went through the report in what I refer to as anonymous detail, sir, because at that point in time no names were known in the press or anything else and Mr. Promuto was a fairly well-known person in some sectors in this town in any event, having played football in Washington.

That was exactly what Mr. Gastley, the attorney I was speaking with, wanted. He did not want to know the name.

I went through the report basically page by page, filling in any possible areas that I knew that may not have been contained in verbatim within that report.

Mr. Gastley was influenced—it is in the memorandum which I don't think I have with me.

Senator PERCY. Is the use of hypotheticals an ordinary procedure?

Mr. RICHARDSON. You mean with the Civil Service Commission? This is the first time I had ever done this, sir. This wasn't posed as a hypothetical. It was posed as an anonymous case. I didn't pose it as a hypothetical case.

Senator PERCY. No names used?

Mr. RICHARDSON. Just no names used. I said these facts actually exist. I didn't pose it as a hypothetical to them.

Senator PERCY. But the individual was identified as a senior employee?

Mr. RICHARDSON. Yes, sir, with very high visibility, keeping in mind, sir, that at no point, although I presume that every witness will be able to testify before a hearings officer concerning any facts contained in the report, I knew and I so conveyed to Mr. Gastley, that we would not be able to secure any witness who was competent to testify as to any fact in this investigation beyond personal knowledge,

beyond 1968, since I was informed that the Metropolitan Police Department would not allow any police officer to get on the stand and testify.

That was the last contact I had with that case until I had conversations with Mr. Bartels in November 1974, and on January 22, 1974.

Senator PERCY. Did you tell Mr. Tartaglino that Mr. Bartels had asked you in early September 1974 to call Mr. Geoffrey Sheppard, at the White House, to suggest Mr. Promuto be nominated as Deputy Administrator of DEA?

Mr. RICHARDSON. I don't recall telling Mr. Tartaglino that, sir; no, sir. I do recall the incident in which Mr. Bartels told me to call the White House. I was not to call Sheppard, but I do recall the incident.

Mr. Bruce Jensen was present during that conversation. I don't recall that conversation with Mr. Tartaglino.

Senator PERCY. Do you recall ever mentioning Promuto's name to the White House for the position?

Mr. RICHARDSON. No, sir. Mr. Bartels gave me those instructions on Friday, September 6, at noon and I then went to my office and called Colonel Walker. He was not in.

At 5 o'clock that afternoon, Mr. Bartels called me and told me to cancel the telephone call; he would take care of it when he returned from Europe. I told him fine. Colonel Walker called me back the following week.

I told him Mr. Bartels wanted to get with him about a deputy. I did talk to Mr. Bartels at 5 o'clock, in that 5 o'clock conversation about whether or not he was serious about Mr. Promuto's nomination. He told me no, he wasn't. It was a name that came to mind, but he was not serious about it.

Senator PERCY. Would you describe as best you can the relationship between Bartels and Promuto?

Mr. RICHARDSON. They were good friends.

Senator PERCY. They were what?

Mr. RICHARDSON. They were good friends.

Senator PERCY. Good friends?

Mr. RICHARDSON. Yes.

Senator PERCY. Would you want to expand on that at all? How close were they as friends?

Mr. RICHARDSON. I would say Mr. Promuto was as close a friend to Mr. Bartels as I was. Since both of them had their families in New York and were down here Monday through Friday alone, I know for a fact they had dinner several times a week together. Indeed, I went to dinner with them, with the two of them on possibly one or two occasions. That was the extent of it. They were close friends and Mr. Bartels thought that Mr. Promuto was a good public affairs director.

Senator PERCY. Would you tell us what your judgment is of George Brosan's reputation, his professional reputation?

Mr. RICHARDSON. At the time I was involved in this investigation, sir, Mr. Brosan had the highest reputation.

Senator PERCY. And Andrew Tartaglino's reputation?

Mr. RICHARDSON. In September, he had the same reputation, sir.

Senator PERCY. Do you think Mr. Bartels' personal relationship with Promuto in any way colored his reactions in this case?

Mr. RICHARDSON. I don't know, sir. I don't know. I know it became a very emotional issue, sir. I think the emotions clouded the judgment of a number of people who were involved in this thing. Whether or not Mr. Bartels' friendship entered into this, I am sure it did, but to what extent, I don't know. Mr. Bartels had told me on several occasions, sir, if Mr. Promuto had done anything wrong, he was going to fire him.

There was no doubt about that at all, but he was not going to allow him to be blackballed, which is what he felt was happening here. He did not trust Mr. Brosan's judgment.

Senator PERCY. I have just a few questions remaining on Diane De Vito.

How well did Mr. Bartels know Diane De Vito in December, 1973?

Mr. RICHARDSON. It was my impression, sir, that this was the first time that he met her.

Senator PERCY. He did not know her and had not met her prior to December 1973 in your opinion?

Mr. RICHARDSON. It was my impression that he had been introduced to her in San Francisco in December.

Senator PERCY. Was Mr. Bartels in Diane De Vito's company after December 1973 in Las Vegas, for instance, or in Washington?

Mr. RICHARDSON. I would have no way of knowing that, sir.

Senator PERCY. Did he give Vincent Promuto permission to take Ms. De Vito to the Dulles Airport in July 1974?

Mr. RICHARDSON. I would have no way of knowing that, sir. He never told me about it.

Senator PERCY. Mr. Richardson, a few moments ago you said that if Mr. Promuto made a false or misleading statement in his unsworn answers to written questions, and later if the answers could be shown to be false, that he would be guilty of some crime. Have you compared his answers to written questionnaires with his sworn statement to DEA inspectors in February 1975?

Mr. RICHARDSON. I have not seen those.

Senator PERCY. If so, are there any differences?

Mr. RICHARDSON. I have not seen that, sir. The report of February of 1975, sir, was reviewed by Mr. Donald Miller. As I stated after October 29, my association with this investigation was severed and the only conversation that I had with anyone about any portion of this was with Mr. Bartels in November of 1974 and in January of 1975 when he called me on the telephone.

Senator PERCY. Mr. Richardson, I want to thank you very much, indeed.

Mr. FELDMAN. I don't want to belabor the point, but I want to pin down a couple of matters. First, on Diane De Vito, what was it about Diane De Vito that made you give Mr. Bartels a warning about her?

Mr. RICHARDSON. The manner in which she was described as being dressed.

Mr. FELDMAN. The manner in which she was described as being dressed?

Mr. RICHARDSON. Yes.

Mr. FELDMAN. That resulted in certain inferences in your mind?

Mr. RICHARDSON. Yes, sir. She was described, I think, as wearing a dress which showed a great amount of cleavage.

Mr. FELDMAN. Did Mr. Bartels mention anything else besides that about her that made you feel that she was not to be associated with Mr. Bartels?

Mr. RICHARDSON. Not that I recall, sir; no. The description of her brought to mind a certain caricature in my mind the way he described her and it was for that reason that I presume.

Mr. FELDMAN. What was that caricature?

Mr. RICHARDSON. He described her as being dressed and appearing in the—in what in my mind is the class of caricature of a prostitute.

Mr. FELDMAN. You don't know if Mr. Bartels ever met her again after you gave that warning?

Mr. RICHARDSON. No, sir.

Mr. FELDMAN. What would you say if Mr. Bartels did meet her again after that warning in Las Vegas, that he was not following instructions?

Mr. RICHARDSON. Those weren't instructions. I had no right to instruct him.

Mr. FELDMAN. Would you say he was exercising poor judgment?

Mr. RICHARDSON. I wouldn't know the circumstances under which he met her.

Mr. FELDMAN. The same circumstances that he met her in San Francisco, which caused you to offer a warning?

Mr. RICHARDSON. It was my understanding that he was introduced to her in San Francisco by Mr. Promuto.

Mr. FELDMAN. Yes, I understand that.

Mr. RICHARDSON. He didn't seek her out at that time.

Mr. FELDMAN. You still issued a warning or a caveat—

Mr. RICHARDSON. If he sought her out, if I can answer it this way, if he sought her out or knew he would be with her in Las Vegas, Nev., I would be surprised.

Mr. FELDMAN. What if it was the same circumstances again?

Mr. RICHARDSON. If it were the same circumstances the way he described to me, he would not have any control over it.

Mr. FELDMAN. Would he leave?

Mr. RICHARDSON. Assuming he met her, he might well have left. I don't know the circumstances.

Mr. FELDMAN. Would that be your advice again if he met her, to leave?

Mr. RICHARDSON. Yes.

Mr. FELDMAN. Did he warn Mr. Promuto not to be seen with her after he talked to you?

Mr. RICHARDSON. I have no idea.

Mr. FELDMAN. Did you warn Mr. Promuto?

Mr. RICHARDSON. No, sir.

Mr. FELDMAN. Why didn't you warn Mr. Promuto?

Mr. RICHARDSON. I really don't know.

Mr. FELDMAN. As a high-ranking official, wasn't there the same kind of liability from a public relations standpoint, of DEA for Mr. Promuto to be seen with such a woman?

Mr. RICHARDSON. In my opinion, yes, sir.

Mr. FELDMAN. But you didn't warn him?

Mr. RICHARDSON. No, sir. I have no recollection of ever warning him.

Mr. FELDMAN. I want to pin down one thing.

Mr. RICHARDSON. If I may, Mr. Feldman.

Mr. FELDMAN. Yes, please.

Mr. RICHARDSON. Up until late September, I had no way of knowing what the relationship between Diane De Vito and Mr. Promuto was.

Mr. FELDMAN. What did you find out about the relationship of Mr. Promuto and Miss Diane De Vito in September?

Mr. RICHARDSON. From the investigation, apparently there was a fairly close relationship.

Mr. FELDMAN. A what?

Mr. RICHARDSON. It was a fairly close relationship. He had seen her in Las Vegas apparently. Apparently he had called her in Las Vegas on several occasions. That is all I know about it.

Mr. FELDMAN. This is the same Diane De Vito who was mentioned as an associate of a suspected class I violator in the BND 6 report?

Mr. RICHARDSON. I have no way of disputing that, sir. I presume it is. I have never seen Diane De Vito in my life. I presume it is.

Mr. FELDMAN. Is it a fact that it is or you just presume that it is? Have you seen the report?

Mr. RICHARDSON. No, sir. The aliases are apparently all so.

Mr. FELDMAN. Did you ever discuss that report with Mr. Bartels?

Mr. RICHARDSON. I don't recall, sir. I don't believe I did.

Mr. FELDMAN. On the 26th of September, you met with Mr. Bartels and Thomas Durkin at his home. It was a highly emotional, agitated meeting, the worst 1½ hours in your life, I believe you related to us?

Mr. RICHARDSON. That is exactly the way I described it.

Mr. FELDMAN. The night before Mr. Bartels had called you twice also in a rather agitated fashion?

Mr. RICHARDSON. Yes.

Mr. FELDMAN. Did he know Diane De Vito had been identified as the girl at the airport also as the girl who had been seen with him in San Francisco at that time? Was that the reason for his highly agitated state?

Mr. RICHARDSON. No, sir.

Mr. FELDMAN. Did he mention Diane De Vito on September 28 at the meeting with Thomas Durkin?

Mr. RICHARDSON. I don't recall specifically. She probably did come up at that. As I told you yesterday, sir, to the best of my recollection, I found out about Diane De Vito being in the files on September 30, when we drafted the questions.

Mr. FELDMAN. You have got a gap in time here from September 18, when you met with Thomas Durkin, to September 28—27 when he called you at night, about 10 days. Right?

Why was he agitated on the 27th when on the 26th Mr. Brosan testified that you had told him that, yes, the identification was Diane De Vito on the 26th?

It would seem to me that there is something here that might have triggered Mr. Bartels to take these moves and to set the meeting. Why did he do it before on the 20th, 22d, or 24th?

Mr. RICHARDSON. First of all, I disagree with the 26th date. To the best of my recollection, I found out and passed on the name Diane De Vito on the 27th. If I recall correctly—

Mr. FELDMAN. That is still before his calls that night and the subsequent meeting on Saturday.

Mr. RICHARDSON. Absolutely.

Mr. FELDMAN. Twenty-seventh makes that even stronger, doesn't it?

Mr. RICHARDSON. I have no idea why Mr. Bartels was aggravated and agitated as he was on the night of September 27 or what caused that agitation, especially on the night of the 27th and the 28th.

Mr. FELDMAN. On what date did you have your initial conversation with Thomas Durkin regarding Diane De Vito?

Mr. RICHARDSON. As I recall, I called Mr. Durkin either Thursday afternoon or Friday morning. I believe it was Thursday. He said he would get back to me. I am certain in my mind, as best I can be, that he called me on Friday, the 27th.

Mr. FELDMAN. So this is before Mr. Bartels' phone calls to you?

Mr. RICHARDSON. Absolutely.

Mr. FELDMAN. Did Thomas Durkin talk to Mr. Bartels about Diane De Vito? Her name seemed to be in the air here on the 27th.

Mr. RICHARDSON. I don't know. The conversation on the night of the 27th and on the morning of the 28th did not center on Diane De Vito. It centered on what Mr. Bartels perceived to be a hatchet job on the—in the overall investigation being done by Mr. Brosan. I objected to that characterization.

Mr. FELDMAN. We are just trying to find the sequence of events that led to this highly agitated meeting. You are pinning down now, the 27th, the time that you talked to Mr. Brosan, that you talked to Thomas Durkin about Diane De Vito?

Mr. RICHARDSON. I don't know with whom Mr. Bartels spoke on the 27th that caused him to call me in the evening at 9 o'clock on the 27th.

Mr. FELDMAN. But on that same night that Thomas Durkin and you talked about Diane De Vito and you and Brosan talked about Diane De Vito, Mr. Bartels called you twice in a highly agitated state and there followed a highly agitated meeting the next morning, the worst 1½ hours of your life?

Mr. RICHARDSON. Yes, sir. That is the sequence of events. What caused it, I don't know. If you are inferring that the identification of Diane De Vito brought about that meeting, sir, in my opinion I doubt that.

Mr. FELDMAN. I am not inferring anything. I am trying to get the sequence of events. You can draw inferences. You are under oath. I am not. I am just trying to ask questions and set the sequence of events.

What conversations did Thomas Durkin have with Mr. Bartels regarding Diane De Vito?

Mr. RICHARDSON. You would have to ask Mr. Durkin and Mr. Bartels that, sir.

Mr. FELDMAN. Do you know?

Mr. RICHARDSON. Specifically, no. I know they discussed the investigation.

Mr. FELDMAN. Generally?

Mr. RICHARDSON. Generally. I know they discussed the investigation.

Mr. FELDMAN. One other line of questioning, Mr. Chairman. Who directed Mr. Promuto to answer written questions?

Mr. RICHARDSON. I brought the questions to Mr. Promuto and directed that he answer them.

Mr. FELDMAN. Where did you get the direction from?

Mr. RICHARDSON. I got the direction from Mr. Bartels the previous Saturday morning on the 28th.

Mr. FELDMAN. So he directed that; he gave you the order to have Mr. Promuto answer questions in writing?

Mr. RICHARDSON. That is a fair statement.

Mr. FELDMAN. Did Mr. Promuto know the written questions were coming?

Mr. RICHARDSON. Yes, sir; he must have.

Mr. FELDMAN. How did he know? Who told him?

Mr. RICHARDSON. I don't know, but I know I didn't tell him. I know he called me looking for them on Tuesday morning and I believe he also called John Lund.

Mr. FELDMAN. Did Mr. Bartels say that no new avenues of investigation were to be opened in this case?

Mr. RICHARDSON. As I stated earlier, sir, I don't recall that specific authorization. I don't doubt that it was given, but it was given in the context of a clarification of the entire issue at the meeting on October 1 with Mr. Bartels. I might add, sir, that at that meeting, I don't recall that issue being brought up.

Mr. Brosan never raised that issue, nor did he ever ask for clarification of that issue at all.

Mr. FELDMAN. You mentioned that written questions didn't preclude an oral interview later and this might have just been a step. Isn't that correct?

Mr. RICHARDSON. It was a step to get—yes. It was a step; yes, sir.

Mr. FELDMAN. If you were going to interview him orally later, don't you give away your case if you submit written questions?

Mr. RICHARDSON. No, not in this case.

Mr. FELDMAN. Not in this case?

Mr. RICHARDSON. No, sir. He knew about this investigation on October 18. He knew he was under investigation for it.

Mr. FELDMAN. On September 18?

Mr. RICHARDSON. By September 18 and by September 19, Mr. Bartels had told me he had discussed the matter with him. He came into Mr. Brosan's office and he told us that.

[At this point Senator Jackson entered the hearing room.]

Mr. FELDMAN. Is this from the Thomas Durkin interview?

Mr. RICHARDSON. He had to learn of the details of the investigation from the Thomas Durkin interview, sir. Yes, sir, but he learned about that—he learned he was under investigation as a result of a piece of paper being left in the Xerox machine.

Mr. FELDMAN. He didn't know the specifics of the investigation. Did that piece of paper contain everything in the investigation or did Thomas Durkin fill him in on more than what was on that piece of paper?

Mr. RICHARDSON. I was not present at that interview, sir. I am led to believe from Mr. Durkin that he went over the issues in the investigation.

Mr. FELDMAN. But Mr. Bartels gave Thomas Durkin copies of the Brosan memo?

Mr. RICHARDSON. That is right. I have been telling Thomas Durkin what was going on——

Mr. FELDMAN. Given to Mr. Promuto before the written questions?

Mr. RICHARDSON. That is right; he did.

Mr. FELDMAN. So before the written questions Thomas Durkin under his interview would have covered the area that would have been covered in the written questions?

Mr. RICHARDSON. Generally, yes. I have already testified to that; yes.

Mr. FELDMAN. Fine, but didn't that compromise the investigation then if he knew the answers before he got the questions? He knew what he was going to answer?

Mr. RICHARDSON. I don't know that Mr. Durkin gave him the answers. He asked him questions to the best of my information.

Mr. FELDMAN. Just gave him all the areas; right?

Mr. RICHARDSON. He questioned him about the investigation.

Mr. FELDMAN. Did he tell him written questions were coming?

Mr. RICHARDSON. I don't know what he told him. I wasn't there.

Mr. FELDMAN. Okay. We will ask him.

One last question. You mentioned many times during your testimony that there had developed a bad relationship between Mr. Brosan and Mr. Bartels. Was this because Mr. Brosan was performing his duties in an aggressive manner, investigating unresolved allegations against high level DEA personnel, or was it due to some other factor?

Mr. RICHARDSON. No, sir. To the best of my knowledge, it was due to some other factor. That factor had to do with the Vesco investigation that was being conducted by this subcommittee.

Mr. FELDMAN. It had to do with the Vesco investigation?

Mr. RICHARDSON. Yes.

Mr. FELDMAN. What was wrong?

Mr. RICHARDSON. To the best of my information, in July of 1974, an incident arose in Los Angeles, Calif., at a time when Mr. Brosan was scheduled to go to Europe and conduct an inspection of our European offices. Mr. Bartels wanted Mr. Brosan to stay in Washington and conduct that investigation.

Mr. Brosan went to Europe instead and left his assistant to conduct the investigation. That, sir, was, whether or not there was anything else, I don't know, but I know that was a major factor in the breakdown of their relation.

Mr. FELDMAN. That factor or something resulting from that set of circumstances?

Mr. RICHARDSON. That factor, Mr. Bartels wanted Mr. Brosan to stay and he didn't stay. He went to Europe.

Mr. FELDMAN. Isn't it because Mr. Brosan departed for Europe that his inspectors happened, this is just my chance, one of the ironies of the case perhaps, that the inspectors happened to see Mr. Promuto taking Diane De Vito to the airport?

Mr. RICHARDSON. I don't know. I never knew what case they were going on at the airport. I never inquired about that. It was a fact that they saw them.

Mr. FELDMAN. From your knowledge, do you know if that was the reason?

Mr. RICHARDSON. No, sir. I don't know what case they were going out on.

Mr. FELDMAN. Thank you, Mr. Chairman.

Chairman JACKSON. Any other questions?

Thank you Mr. Richardson.

Our next witnesses will be Bill D. Williams and Mr. Edward Hegarty, FBI agents, Federal Bureau of Investigation.

If you gentlemen, both of you, will come up, I think we can save a lot of time by testifying together.

Will each of you raise your right hand and be sworn?

Do you solemnly swear the testimony you are about to give before this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WILLIAMS. Yes.

Mr. HEGARTY. Yes, I do.

TESTIMONY OF BILL D. WILLIAMS AND EDWARD HEGARTY, FEDERAL BUREAU OF INVESTIGATION SPECIAL AGENTS

Chairman JACKSON. Would each of you first identify yourselves?

Mr. WILLIAMS. My name is Bill D. Williams, special agent of the FBI.

Mr. HEGARTY. Edward D. Hegarty, special agent, Federal Bureau of Investigation.

Mr. FELDMAN. Mr. Chairman, if I may interject here—under the circumstances, the agents were just made available to us at 8:30 this morning for a prehearing interview with myself, majority staff and minority counsel. I would like to state, for the record, that, although we have had a chance to talk with them briefly, we have not been able to do the kind of indepth prehearing interview that we always feel is necessary in this subcommittee.

With that caveat, we would like to proceed, with the understanding that we may call them back at a future date, in the event we don't cover all the areas, if that is acceptable.

Senator PERCY. Mr. Chairman, I would like to say that at the outset of the hearing this morning, I made a statement on the appearance of our two witnesses. I should like to commend Deputy Attorney General Harold Tyler for reversing the policy which might have put us on a collision course when the operation of the Bureau with this subcommittee through the years has always been very good, indeed, in the Justice Department.

I trust it will continue to do so and we are very pleased that we did not have a confrontation because I think the committee would have been very firm indeed in insisting upon these two agents being present to be with us because I think their testimony is extremely important to us.

Chairman JACKSON. I agree with your statement. The Chair would just like to state that the Chair appreciates the cooperation of the ranking minority member, Mr. Percy, on this matter.

I called Mr. Tyler and just explained to him what the situation was and that decision was reversed.

We ought to make one thing clear, that the previous decision was not by the Federal Bureau of Investigation but by the Department of Justice, and that the FBI is subject, of course, to the control of the Department.

At no time have we asked the FBI to make the two gentlemen available, as did Mr. Kelly, because they operate under the Department of Justice. There has never been any problem as far as the Bureau is concerned on this.

The witnesses here, of course, operate under the rules of the Department of Justice and they are here now to testify.

Let me go through some of these questions, gentlemen. First, may I ask each of you what your position is at the present time in the Bureau?

Mr. WILLIAMS. I am special agent in charge of the Kansas City, Mo. office of the FBI, sir.

Chairman JACKSON. You are out in Kansas City?

Mr. WILLIAMS. Yes.

Mr. HEGARTY. Supervisory special agent, Special Investigative Division, FBI Headquarters.

Chairman JACKSON. Mr. Williams, you are the senior agent, as I understand it. I will address the bulk of the questions directly to you and, Mr. Hegarty, if you will not hesitate to comment, and we will also ask questions, but we will do it that way if that is all right because you work together as a team.

I will ask each of you, how long have you, Mr. Williams, been associated with the FBI?

Mr. WILLIAMS. Since February 4, 1952.

Mr. HEGARTY. Eighteen years, Senator.

Chairman JACKSON. Did you have, each of you, law enforcement experience prior to going with the FBI?

Mr. WILLIAMS. No, sir.

Mr. HEGARTY. Not I, Senator.

Chairman JACKSON. What was your position in November of 1974?

Mr. WILLIAMS. I was an inspector assigned to the Inspection Division at headquarters.

Mr. HEGARTY. Supervisory special agent assigned to the FBI Inspection Division.

Chairman JACKSON. Who was your immediate supervisor in the FBI at that time?

Mr. WILLIAMS. For both of us, sir, it would have been Mr. Harold Bassett, Assistant Director in Charge of the Inspection Division.

Chairman JACKSON. To whom did your immediate supervisor report?

Mr. WILLIAMS. To Mr. Nick Callahan, the Associate Director.

Chairman JACKSON. Were you at some point, in late 1974, given an assignment that related to issues concerning Drug Enforcement Administration?

Mr. WILLIAMS. Yes, sir.

Chairman JACKSON. That applied likewise to you?

Mr. HEGARTY. Yes, sir; on December 2.

Chairman JACKSON. Who gave you this assignment?

Mr. WILLIAMS. The assignment was made by Mr. Larry Silberman, then the Assistant Attorney General. I beg your pardon, the Deputy Attorney General, sir.

Chairman JACKSON. Do you recall the date?

Mr. WILLIAMS. Yes, sir; on December 2.

Chairman JACKSON. December 2, 1974?

Mr. WILLIAMS. 1974.

Chairman JACKSON. What precise instructions were given to you in connection with this assignment by your FBI superiors?

Mr. WILLIAMS. Nothing, sir.

Chairman JACKSON. Nothing from them?

Mr. WILLIAMS. No, sir.

Chairman JACKSON. Have either of you been given such an assignment before?

Mr. WILLIAMS. No, sir.

Mr. HEGARTY. No, sir.

Chairman JACKSON. Is it customary for FBI agents to be assigned to a case outside of the chain of command of the Bureau?

Mr. WILLIAMS. Not to my knowledge, sir.

Mr. HEGARTY. Not in my experience, Senator.

Chairman JACKSON. To whom were you to report under the terms of this assignment?

Mr. WILLIAMS. Directly to Mr. Silberman, sir.

Chairman JACKSON. Directly to him?

Mr. WILLIAMS. Yes, sir.

Chairman JACKSON. That is for both of you and you were the senior agent, Mr. Williams?

Mr. WILLIAMS. That is right.

Chairman JACKSON. Did you understand that this assignment called for you to proceed in a manner stipulated by traditional, conventional, and routine FBI investigative procedures?

Mr. WILLIAMS. I am not sure I understand.

Chairman JACKSON. In other words, when you were given this assignment, were you given to understand that you would follow the traditional, conventional, professional approach in handling this case as you have had over these many years in regular, routine FBI investigative matters?

Mr. WILLIAMS. I certainly understood that we should approach it from a professional standpoint, sir. But we did not—I did not—receive any specific instructions from Mr. Silberman or anyone else as to how to conduct the inquiry.

Chairman JACKSON. You were limited, however, were you not, in what you could do and were there parameters set on what you could do?

Mr. WILLIAMS. Yes, sir. Mr. Silberman's instructions on December 2 were that I was to conduct an administrative inquiry and he said that in doing so I should focus on the allegations which were set out in Mr. Tartaglino's memorandum of November 14, a memorandum that he had submitted, I believe, to Mr. Pommerening, Assistant Attorney General.

Chairman JACKSON. Let me ask one preliminary question before that. Did you proceed in this assignment in the role of an FBI agent,

reporting to your established superiors in the FBI, or were you to bypass the FBI and report directly to another official; namely, in this case, Mr. Silberman; or what other person?

Mr. WILLIAMS. In this instance, sir. I considered myself on loan to the Department and to report directly to Mr. Silberman.

Chairman JACKSON. So you were really out of the chain of command for this purpose?

Mr. WILLIAMS. Yes, sir.

Chairman JACKSON. Within the FBI?

Mr. WILLIAMS. Yes, sir.

Chairman JACKSON. Mr. Williams, did your original instructions on this assignment place any limitation on you on how far you could expand your inquiry?

Mr. WILLIAMS. No limitations, sir.

Chairman JACKSON. Was it limited in scope in anyway?

Mr. WILLIAMS. No, sir, but the instructions were, and Mr. Silberman used the word focus, focus on the allegations set out in that memorandum. Limited to that extent, sir.

Chairman JACKSON. Suppose that you followed the memorandum and you ran into other leads. Were you free then to follow down any lead and to go to whatever extent was necessary to get the information as you do in a regular FBI investigation? You run down every angle, you get to one point and that leads you to something else, but there were no limitations placed on you?

Mr. WILLIAMS. No limitations. I felt that I had that authority as long as it was pertinent to the memorandum.

Chairman JACKSON. Why was this called an administrative inquiry, something I gather you never have been involved in before? I am a little confused.

Mr. WILLIAMS. That was Mr. Silberman's terminology, sir.

Mr. FELDMAN. What was your definition of that?

Mr. WILLIAMS. We wrestled with that this morning. I considered it to be looking into the administration in DEA, of this Promuto matter, and to be out of the scope of the allegation of criminal violation.

Chairman JACKSON. You were not looking for any criminal violations?

Mr. WILLIAMS. No, sir.

Chairman JACKSON. It was limited, then, wasn't it? Were you instructed to look for possible criminal violations?

Mr. WILLIAMS. No, sir.

Chairman JACKSON. Didn't that limit the scope of your—

Mr. WILLIAMS. Certainly if I had uncovered anything that I would have considered to be a criminal violation I would have immediately gone to Mr. Silberman.

Mr. FELDMAN. Mr. Chairman, could I just read for you in this line of questioning, Mr. Williams referred to Mr. Tartaglino's memorandum of November 14, and he was to run down these allegations and Mr. Tartaglino says, and I quote:

In spite of this need, the actions of Mr. Bartels have been such as to impede the investigation at every step and, therefore, to infer that Mr. Promuto was to receive consideration not usually afforded to others in such cases.

You have commented, Mr. Chairman, that there is a potential here at least of conduct, which might come in the criminal sphere, and I was wondering, could then Mr. Williams, under his instructions, run down that?

Chairman JACKSON. The question very bluntly is whether there was evidence here of a course of conduct and action that would bear on the issue of obstruction of justice, and the testimony here certainly raises serious questions in this area. I gather that is why the Department of Justice now has an ongoing investigation. That is why we asked the question here about possible criminal violations.

Mr. WILLIAMS. Yes, sir, I understand. What I am saying is in using Mr. Silberman's terminology I was to conduct an administrative inquiry. I couldn't tell you what he meant specifically by that, sir. My interpretation was that it is administrative in nature.

Chairman JACKSON. In your own mind, were you just looking at procedures of whether it was a mismanagement thing, or were you thinking in terms that there may well have been a course of conduct here that might raise some problems that could be in violation of law, Federal law?

I mean the memorandum and the information that had come to light through the D.C. Police Department raised some serious questions on the course of conduct which related to whether or not Mr. Promuto was being placed in a position where he might be subject to compromise, and so on.

Mr. WILLIAMS. After reading this memorandum, after receiving the instructions of Mr. Silberman, it was my intent to the best of my ability to take these allegations one by one and interview people at DEA to see what basis there was for the specific allegations, not considering in my own mind at that time whether there might be a criminal violation or not.

Chairman JACKSON. You are not trying to prejudge it, obviously?

Mr. WILLIAMS. No, sir.

Chairman JACKSON. You were just trying to get the facts of what happened and what was going on?

Mr. WILLIAMS. That was my intent, sir.

Senator PERCY. Mr. Chairman, could I get right down—I am troubled as you are on this matter. Do you consider a coverup an obstruction of justice as a criminal activity?

Mr. WILLIAMS. Certainly, sir.

Senator PERCY. Did you have available for your study and analysis, Mr. Tartaglino's allegations and when you looked at that, how do you interpret that as just an administrative, whatever that might be, investigation, looking at the procedures and how the Department operated? That is what I would say an administrative investigation would be.

Is it well managed; is it organized properly; are proper procedures being followed? Here is a clear case of an allegation of an obstruction of justice.

That, to me, looks like a full criminal investigation should be made. I think that is what the subcommittee is trying to determine. Did you go in to look at that to determine whether there was verification for these allegations? Because that is the—the press release seems to

relieve the public's mind, that was released to the press and to the Congress.

Therefore, that there wasn't anything wrong—that there wasn't obstruction of justice; that there wasn't a coverup, and that the allegations though made in good faith were groundless.

Excuse my intrusion, but I think we are both grasping for the same thing.

Chairman JACKSON. Later it turns out, you know, of course Mr. Bartels is dismissed. What we are trying to find out, if I may add to it, Senator Percy, I think you stated it very well, what we are trying to find out is whether or not you were given a complete free hand to run this thing down to the bottom and get the facts right across the board, or were you reporting into Mr. Silberman what you found in connection with the questions he asked, or were you able to conduct the kind of full-field investigation you conduct if you were acting under the normal and traditional procedures of the FBI?

Senator PERCY. I can't imagine anything more serious than these allegations and charges made right at the top management of a whole program, behind which the President of the United States and the Congress has put the highest priority on the gravest, gravest danger this Nation faces.

Here is the enforcement end of it and an allegation of coverup and wrongdoing at that level. That to me looks like a very serious matter. Excuse me.

[At this point Senator Percy withdrew from the hearing room.]

Chairman JACKSON. So I take it that you had complete freedom to run down every aspect of this and you didn't find anything?

Mr. WILLIAMS. I had the complete freedom to address myself to the allegations in Mr. Tartaglino's memorandum. I did not feel that I had freedom to go beyond that without consulting with Mr. Silberman.

Chairman JACKSON. One of the allegations in that Tartaglino memorandum was that Mr. Bartels had impeded the investigation?

Mr. WILLIAMS. Yes, sir.

Chairman JACKSON. You found no basis for that?

Mr. WILLIAMS. Sir, I think under the agreement——

Chairman JACKSON. Do you have that memorandum?

Mr. FELDMAN. Would you identify that as the memorandum you were working from?

Chairman JACKSON. That has been marked for identification. It has an exhibit number on it. It is exhibit No. 20, sealed.

Is that the memorandum?

Mr. WILLIAMS. That is the memorandum.

Mr. FELDMAN. That is the memorandum you got from Mr. Silberman which was drafted by Mr. Tartaglino, to Mr. Pommerening; is that right?

Mr. WILLIAMS. That is right, Mr. Feldman.

Chairman JACKSON. On the third page, paragraph in the middle of the page:

In spite of this need, the actions of Mr. Bartels have been such as to impede the investigation at every step and, therefore, to infer that Mr. Promuto was to receive considerations not usually afforded others in such cases. The

investigation was undertaken immediately upon receipt of the information of the Washington Metropolitan Police, though Mr. Bartels was at that time out of the country and did not return for 4 days.

After he learned of it he admonished Mr. Brosan, the acting chief inspector, to under no circumstances commence an investigation against a major agency official in his absence.

Thereafter he prematurely, in my opinion, unnecessarily informed Mr. Promuto of the fact of the investigation's nature. He and a consultant associate, Mr. Tom Durkin, an attorney practicing in New Jersey, discussed the matter with Mr. Promuto in the absence of either Mr. Brosan or the investigators involved and never advised either of the substance of their discussion.

He next insisted both improperly and prematurely that written interrogatories be submitted to Mr. Promuto to which he would respond in writing prior to any or all questioning or interview. He then established arbitrary deadlines in which Mr. Promuto must be questioned and for the submission of a written report to the conclusion of the investigation.

That is pretty serious.

Mr. HEGARTY. Senator, within the framework of the paragraph there is an absence of specific documentation to back up the charges which Mr. Tartaglino has made. Fundamentally our responsibility and our purpose in conducting the limited inquiry at the Drug Enforcement Administration was to determine what specific documentation there existed, what proof there existed to back up the content of Mr. Tartaglino's memorandum.

Subsequently we had an extensive interview with Mr. Tartaglino, with Mr. George Brosan, the then Acting Inspector of the Drug Enforcement Administration, other persons associated with DEA.

We took those findings, what those people said, what direct knowledge they had, what other information they had regarding the content, the allegations in this memorandum, and we provide them to Attorney Silberman of the Justice Department.

Chairman JACKSON. Did you go into the information from the Washington Metropolitan Police?

Mr. HEGARTY. We made no inquiry into the substantive allegations which were raised against Mr. Vincent Promuto, other senior officials at the Drug Enforcement Administration, with respect to alleged bribery activity, impropriety activity, we made no direct investigation into those specific allegations.

Chairman JACKSON. Why not, if you had the complete free hand here? In your own mind, now, I ask you under oath, both of you, did you have a complete, free hand?

Mr. WILLIAMS. To conduct the limited investigation we were instructed to.

Chairman JACKSON. What do you mean by a limited investigation? You didn't go behind and follow up—

Mr. HEGARTY. Senator, if I may, our function here was exclusively to determine what facts are available to support Mr. Tartaglino's allegations in his memorandum. What facts Mr. Tartaglino had to support these allegations, what facts other key people in DEA had to support the allegations in this memorandum.

It was clearly understood between special agent in Charge Williams and I that it was within our sphere of authority to independently conduct any investigation into the allegations of substantive violations that appear to be in Mr. Tartaglino's memorandum.

[At this point Senator Percy entered the hearing room.]

Chairman JACKSON. What did you base that conclusion on?

Mr. HEGARTY. On the instructions that I was given by Mr. Williams on December 2, we were to focus the inquiry at the Drug Enforcement Administration in a narrow way to determine what documentation there was to support the context of Mr. Tartaglino's memorandum.

Chairman JACKSON. Gentlemen, I think before we proceed further you should, each of you, starting with Mr. Williams, just tell us specifically, categorically what your instructions were and what you understood your limitations to be.

I want to be fair with you. Were they in writing?

Mr. WILLIAMS. No, sir.

Chairman JACKSON. Nothing in writing?

Mr. WILLIAMS. No, sir.

Chairman JACKSON. Mr. Williams, can you give us a bill of particulars now, specifically what you were instructed to do and as you understood it and whether, Mr. Hegarty, you were instructed the same thing?

I gather the instructions went to you, Mr. Williams, and then Mr. Hegarty worked with you. Is that right?

Mr. HEGARTY. Yes, sir.

Chairman JACKSON. You did not, Mr. Hegarty, receive specific instructions from anyone in Mr. Silberman's office or from Mr. Silberman?

Mr. HEGARTY. No; I did not. My instructions came directly from Mr. Williams. However, at a later date I participated in a conversation with Mr. Silberman and on the 13th of December where we discussed the results of our inquiries and it was crystal-clear to me that time that we had done exactly what was expected of us to do.

Chairman JACKSON. You did what?

Mr. HEGARTY. That we had performed——

Chairman JACKSON. Exactly what?

Mr. HEGARTY. What the Justice Department expected from us.

Chairman JACKSON. That was 10 days after you got the original bill of particulars here, Mr. Tartaglino's memorandum. Is that right? Did you know from the outset what you were supposed to do?

Mr. HEGARTY. As I understood the assignment, consistent with the record of what we did during the course of the assignment, was to determine what factual information, what direct evidence Mr. Tartaglino had, Mr. Brosan had to support the allegations, essentially mismanagement allegations, the allegations of impropriety that are contained in Mr. Tartaglino's memorandum.

We conducted logical inquiries at the Drug Enforcement Administration and we reached a point where we briefed Mr. Silberman on what we had done and there was no further instructions that came forward from Mr. Silberman with respect to any additional inquiries that he wished us to make.

Chairman JACKSON. Mr. Williams, could you reconstruct as best you remember the instructions that you were operating under?

Mr. WILLIAMS. Right, sir, during the afternoon of December 2 in Mr. Silberman's office——

Chairman JACKSON. What date?

Mr. WILLIAMS. December 2, 1974, in Mr. Silberman's office he had the original, I believe, of Mr. Tartaglino's memorandum of November 14, 1974.

He referred to that memorandum and instructed me to conduct an administrative inquiry and in doing so he instructed that the inquiry focus on Mr. Tartaglino's memorandum to determine whether there were facts to support the allegations that he had set out in his memorandum.

Chairman JACKSON. As you read the memorandum did you see any allegations here that were beyond the administrative process, but might bear on possible criminal violations?

Mr. WILLIAMS. Certainly it supported, sir, the allegations of coverup, impeding investigations.

Chairman JACKSON. In order to really follow up the serious allegation of impeding the investigation at every step, what did you do to carry out that aspect of the allegation?

Mr. WILLIAMS. On December 5 we interviewed—Mr. Hegarty and I—interviewed Mr. Tartaglino at length in his office. We interviewed Mr. George Brosan on December 6. We interviewed Mr. Bartels on December 9 and 10. We interviewed Mr. Robert Richardson on the 10th of December, Mr. Tom Durkin on the 12th of December. On December 11, Mr. Patrick Fuller, a former Chief Inspector of DEA, was interviewed by agents assigned to our Los Angeles office, at my request.

Chairman JACKSON. Did you look into the allegations contained in the report from the Washington Metropolitan Police?

Mr. WILLIAMS. No, sir. I did not.

Chairman JACKSON. Why not?

Mr. WILLIAMS. Because we were instructed that—I was instructed that I was not to investigate Mr. Promuto from the standpoint of his fitness to be in office.

Chairman JACKSON. Then you were limited? You were stopped right there. Is that right?

Mr. WILLIAMS. No doubt I was limited in many ways when I tell you.

Chairman JACKSON. I want to be fair to you because this testimony is important. You represent a great profession. I just want to be sure what the ground rules were at the time.

Mr. WILLIAMS. I was instructed not to address myself to that, sir.

Chairman JACKSON. You were instructed not to address yourself to that, the question of looking into Mr. Promuto's activities?

Mr. WILLIAMS. His qualifications.

Chairman JACKSON. Pardon me?

Mr. WILLIAMS. His qualifications.

Chairman JACKSON. His qualifications and so on?

Mr. WILLIAMS. Right, sir.

Chairman JACKSON. Let me ask you now as a professional. In light of the allegations here, if you were acting independently, wouldn't you have gone into that if you were over in the Bureau and you got a lead here? Would you go over and talk to the people in the Metropolitan Police Department, you or you direct someone, I don't mean you individually, to find out what it was all about?

Mr. WILLIAMS. Yes, sir, but this is a new departure for us. I have never functioned in the last 23 years in an investigation other than as a special agent of the FBI up to this time and I considered myself on loan to the Deputy Attorney General functioning as an officer of the Office of the Deputy Attorney General.

Chairman JACKSON. That is what I had understood. That is why I am trying to get this record straight. For the first time in your career and I believe, Mr. Hegarty, you have also so indicated, you were given this unusual assignment which is kind of hard to define, an administrative investigation, and you have been accustomed once you are on a case to go right to the source. Right? Is that correct?

Mr. WILLIAMS. That is correct, sir.

Chairman JACKSON. Here you were instructed not to follow through on Mr. Promuto's activities and background.

Mr. WILLIAMS. That is right, sir.

Chairman JACKSON. That is the heart of the whole issue here. Now we are getting at what I understood to be the problem.

Was that your understanding too, Mr. Hegarty?

Mr. HEGARTY. Yes, Senator. Our whole purpose in this matter was to determine what facts Mr. Tartaglino has—Mr. Brosan has—and other people up at DEA had, and that higher echelon of DEA to support the allegations in this memorandum here to back up Mr. Tartaglino's statements. What facts were known over there to support these statements of Mr. Tartaglino.

[At this point Senator Percy withdrew from the hearing room.]

Mr. HEGARTY. It was clearly understood that we were not to address ourselves to the allegations of improper and unlawful conduct on the part of Mr. Promuto, other DEA officials that arose as a result of our inquiries at DEA.

Chairman JACKSON. You didn't expect DEA to plead guilty to these allegations, did you?

Mr. HEGARTY. It was not my judgment, Senator, as to whether or not they were guilty or innocent of the allegations. My function solely was to determine what factual information the people we talked to had to support the substantial problems that were present within DEA as alleged by Mr. Tartaglino.

Chairman JACKSON. Let me get to this main point. Were all the allegations addressed and if not, why not?

Mr. WILLIAMS. I think all the allegations were addressed. Yes, sir.

Chairman JACKSON. Were they followed through in the way you would undertake an investigative effort as a professional within the Federal Bureau of Investigation using all the techniques?

Mr. WILLIAMS. They were followed through, sir, until December 12, when after having these six interviews conducted we felt at that time we should report to Mr. Silberman to determine whether he desired to take any further investigation.

Chairman JACKSON. Did you feel there was a need to look into this matter further? I am asking you individually and professionally. Did you suspect some things that ought to be checked out?

Mr. HEGARTY. Our findings, Senator, our factual findings—and we are prohibited under title 28, section 16.22, of the Federal Code of Regulations, from responding to that question without the expressed authorization of an official at the Department. Your question,

Senator, calls for a conclusion based on the findings of our inquiries. I think that would be, we would be prohibited from doing that under our existing instructions.

Chairman JACKSON. That is a matter we will reserve for discussion possibly in executive session first.

Mr. WILLIAMS. We have been told by Judge Tyler's office—it is my understanding we are to respond to questions concerning the scope and conduct of the inquiry.

Chairman JACKSON. That is correct. That is my conversation with him. But what I am getting at here is an allegation relating to Mr. Promuto from the Washington Metropolitan Police Department. I will ask you this: If you were handling this in the normal FBI manner, would you not send someone, if you didn't go over, to talk to the officer making the report and run that down? The charges in that report were not exactly minimal. They are rather serious.

Mr. WILLIAMS. Yes, sir. If we were addressing ourselves to Mr. Promuto.

Chairman JACKSON. Yes, but you have to address yourselves to Mr. Promuto in order to relate the activities of Mr. Bartels to what he was doing regarding Mr. Promuto, didn't you?

Mr. WILLIAMS. I don't think so, sir.

Chairman JACKSON. You don't think so?

Mr. WILLIAMS. No, sir.

Chairman JACKSON. Why, because of the instructions you received?

Mr. WILLIAMS. Yes, sir.

Chairman JACKSON. That is it. You were limited in what you could do as you interpreted your instructions from Mr. Silberman?

Mr. WILLIAMS. Limited to this memorandum. Yes, sir.

Chairman JACKSON. Pardon me?

Mr. WILLIAMS. Limited to the allegations set out in this memorandum.

Chairman JACKSON. But in the memorandum there is this statement. In spite of this need the actions of Mr. Bartels has been such as to impede the investigation at every step and therefore to infer that Mr. Promuto was to receive considerations not usually accorded others in such case.

[At this point Senator Percy entered the hearing room.]

Mr. WILLIAMS. In undertaking that allegation, sir we interviewed Mr. Tartaglino, Brosan, Bartels, Richardson, Durkin, along those lines.

Chairman JACKSON. But Mr. Promuto was central here. I am looking now at the memorandum you were to follow, and to run down every lead.

It appears that you were not to run down every lead under the instructions, because if you were running down every lead you would have done to the Metropolitan Police Department to find out what they had to report and then to interrogate Mr. Promuto and so on.

Mr. WILLIAMS. True, if we were going into it to that extent. As Mr. Hegarty has said, we went to these people to determine what facts they had, in an effort to determine what facts they had to support each allegation.

Mr. FELDMAN. There is another memorandum that was given to you from Mr. Tartaglino as a result of your request.

Mr. WILLIAMS. Right, sir.

Mr. FELDMAN. It is dated December 11, 1974, in which Mr. Taglino goes into even greater detail. He lists six points in which he says, Mr. Brosan has set forth in detail the efforts of Mr. Bartels to frustrate, impede, or obstruct the Promuto investigation.

He lists six items and Mr. Brosan's memo is dated December 10. He does the same thing. Those are exhibits 21 and 34. The investigation that you were in as you stated, started December 2, ended December 12. The 7th and 8th were weekend days.

I have got my calendar right this time. That left you 9 days to run the investigation. I believe you told us that you ran about 5 or 6 days of interviews. But you received the memo of December 10 and December 11 just as you were closing the investigation. So you didn't pursue these—

Mr. WILLIAMS. You said I was closing the investigation, sir. I didn't.

Mr. FELDMAN. December 12, I believe—

Mr. WILLIAMS. I told you we had reached the point where we felt we should go to Mr. Silberman for a determination as to what investigation, additional investigation, if any, he required. We were working for Mr. Silberman in this.

Mr. FELDMAN. Did you do any investigation after that?

Mr. WILLIAMS. No, sir, I did not.

Mr. FELDMAN. Who directed you to do no investigation after that?

Mr. WILLIAMS. After a conference with—I furnished Mr. Silberman a copy of my report, or I furnished it to Mr. McDermott in his office on December 18.

On January 3, I had an additional meeting with Mr. Silberman at which time he told me he did not desire any further inquiry into this matter at that time.

Mr. FELDMAN. The last date of investigation was December what? 11th or 12th?

Mr. WILLIAMS. December 12.

Mr. FELDMAN. One day after you received the memorandum explicitly setting forth at your request—

Mr. WILLIAMS. Which memorandum I furnished to Mr. Silberman for his review and consideration, sir.

Mr. FELDMAN. After Mr. Silberman reviewed this, he didn't ask for any further investigation?

Mr. WILLIAMS. I can't say whether he reviewed it or not. We furnished it to him. He told me he did not desire any further investigation.

Chairman JACKSON. Were you given authority to determine whether or not the allegations were true or false?

Mr. WILLIAMS. No, sir.

Chairman JACKSON. What kind of an investigation was this? This administrative—

Mr. WILLIAMS. To determine what facts these people had to support them or refute them. We could have probably spent months up there, Senator.

Chairman JACKSON. You were really just looking at a review or an administrative inquiry into whether the personnel at DEA had the

facts to substantiate the allegations? Is that what you are looking at?

Mr. WILLIAMS. That is right, sir.

Chairman JACKSON. How in the world could you take, at face value, simply the allegations without inquiring into the truth or falsity of these allegations?

Mr. HEGARTY. The decision to pursue that, Senator, would have rested with the Justice Department which has effective control over the Drug Enforcement Administration and not Mr. Williams and I.

We furnished him with the thorough results of the interviews we conducted and the documents we obtained. What decision process went into play after that with respect to the content of the information neither Mr. Williams nor I are privy to.

Chairman JACKSON. Mr. Williams, you mentioned you could have spent months there. That must have given—meaning at DEA—that must have given you some cause for concern about the entire operation.

Mr. WILLIAMS. It did, sir, and comments that Mr. Tartaglino, Mr. Brosan made concerning conditions in the inspection service at DEA. There is no question about it, sir.

Chairman JACKSON. You see, in Mr. Silberman's press release or statement dated January 16, 1975, here is what he says:

After the investigation which took several months, Mr. Bartels and Mr. Tartaglino agreed that it would be in the best interests of DEA that Mr. Tartaglino and Mr. George Brosan, Chief of Inspection, be reassigned to other duties within the Department of Justice.

It sounds as if, with the Bureau involved here, this was a big in-depth inquiry which we know that it wasn't.

Mr. WILLIAMS. It was not, no, sir.

Chairman JACKSON. You agree it was not?

Mr. WILLIAMS. Certainly not, sir.

Chairman JACKSON. If you had the opportunity to get into the truth or falsity of these allegations you would have found out about or did you know about Mr. Promuto's association with people of a known criminal background? That was in the report from the Metropolitan Police Department. But you would have pursued that in the normal way in which you run down things within the FBI, wouldn't you?

Mr. WILLIAMS. Certainly I assume that that is what Mr. Brosan was attempting to do as the Acting Chief Inspector of DEA, sir.

Chairman JACKSON. Yes; but you were aware of these allegations?

Mr. WILLIAMS. Yes, sir.

Chairman JACKSON. But you did not have authority to determine whether they were true or false?

Mr. WILLIAMS. No, sir; we did not.

Chairman JACKSON. I don't know what they had you over there for, if they wanted to hire some auditors—

Mr. WILLIAMS. I was wondering that myself many times, sir.

Chairman JACKSON. You were wondering yourself what you were over there for?

Mr. WILLIAMS. Yes, sir.

Chairman JACKSON. Because it gave the color and cloak of an FBI investigation and in fairness to a great organization that has an incorruptible record, I just think the public is entitled to know

that you did not have the authority and that is the key here. You did not have the authority to determine the truth or falsity of the allegations.

Mr. WILLIAMS. No, sir, only to determine what information the people up there had to support these allegations; but not to actually delve into the substantive allegations.

Chairman JACKSON. That, of course, you would agree now would be the key to making a judgment in this matter, speaking now as a professional and as an independent citizen?

Mr. WILLIAMS. Yes, sir, I would say I am convinced that is what Mr. Brosan was attempting to do.

Chairman JACKSON. You are convinced that is what Mr. Brosan was attempting to do but you are also convinced, too, I take it, that he was running into problems?

Mr. WILLIAMS. He indicated to me he was running into problems. Yes, sir.

Chairman JACKSON. Did you feel that he was trying to do a good professional job?

Mr. WILLIAMS. I don't think I should answer that, sir. I don't think I spent that much time with Mr. Brosan.

Chairman JACKSON. You wouldn't be in a position.

Mr. WILLIAMS. No; I don't think so.

Chairman JACKSON. Senator Percy.

Senator PERCY. Thank you.

Mr. Chairman, I would like to go back to the press release because there are some factual statements made here by Mr. Silberman. He said in the press release, "After the investigation which took several months"—In fairness to him, were there other FBI investigations of this matter other than the investigation that the two of you carried on that you know of?

Mr. WILLIAMS. Not to my knowledge. I do not believe that there was any other investigation, Senator.

Senator PERCY. To the best of your knowledge, there was no other investigation. So this statement that the investigation took several months is a false statement. Is that correct?

Mr. WILLIAMS. As far as our participation in the investigation.

Senator PERCY. You know of no other investigation?

Mr. WILLIAMS. No, sir, I do not.

Senator PERCY. The press release stated that it took several months. That seemingly could not be true. Would it also appear to be misleading because it indicates that the investigation began in November when Mr. Tartaglino, then Acting Deputy Administrator of the Drug Enforcement Administration, raised questions concerning the policies and procedures, of the Office of Inspections and the actions of the Administrator of DEA, Mr. John Bartels?

The press release reads: "After examining these questions"—the implication here is the examination began some time after the questions were raised in November—"I directed that a special review be conducted under my direct supervision by the Inspection Division of the Federal Bureau of Investigation. The Bureau agents were asked to investigate the matters raised by Mr. Tartaglino."

Were you specifically then asked or directed—I presume that is more apt, appropriate term—directed to investigate all of the matters raised by Mr. Tartaglino?

Mr. WILLIAMS. I did not understand my mission as that, sir. No.

Senator PERCY. Then this is a misstatement of fact in this press release. Is that correct? The press release said the Bureau agents were asked to investigate the matters raised by Mr. Tartaglino. You were not permitted to do that because the allegations made by Mr. Tartaglino were very clear, very specific and as I understand your instructions you were not asked to investigate those matters because those allegations led right to criminal questions.

Chairman JACKSON. Let Mr. Williams see a copy of that.

Mr. WILLIAMS. I saw it this morning.

Senator PERCY. Then the press release adds further that you were asked to investigate matters raised by Mr. Bartels concerning practices of DEA Office of Inspection. So there is the notification to the press and to the Congress of the United States as to what the Justice Department had directed. So the time frame appears to be wrong and the instructions appear to be wrong and misleading.

Chairman JACKSON. Senator Percy, would you yield right there? It looked to me after reading this press release, I am glad Senator Percy brought this up, it leaves the clear impression that the FBI was involved for several months. If you read the second paragraph, that is the point I think Senator Percy is making, the second paragraph:

After examining these questions, I directed a special review be conducted under my direct supervision by the Inspection Division of the Federal Bureau of Investigation. The Bureau agents were asked to investigate the matters raised by Mr. Tartaglino along with Mr. Bartels' concern about practices of DEA Office of Inspection.

Following a thorough review, I concluded that Mr. Tartaglino's concerns, although raised in good faith, were without substantial foundation after the investigation, which took several months.

As a layman looking at this, it leaves the clear impression that the FBI was involved several months. The facts are that you were involved a total of how many days?

Mr. WILLIAMS. The first interview conducted on December 5, Senator, and my written report furnished to the Deputy Attorney General's office, is on December 18.

Senator PERCY. Could you tell us how many working days that was, Mr. Williams? I presume you worked full time?

Mr. WILLIAMS. Full time, nothing else.

Senator PERCY. How many full-time working days were put in?

Mr. WILLIAMS. December 2 was a Monday. I would have to check the calendar, through December 18. It was 4 p.m. when we turned over this report to the office, to Mr. McDermott. We did not work weekends.

Senator PERCY. So how many days would that be, then? Maybe we could have staff check the dates.

Mr. FELDMAN. I have a calendar. The 2nd was a Monday. The 2nd through the 6th would be the working days that week, and the 9th through the 12th. I think you said you talked to Mr. Silberman. Correct?

Mr. HEGARTY. 13th.

Mr. FELDMAN. You did your last interview on the 12th?

Mr. WILLIAMS. Right.

Mr. FELDMAN. So you had 5 days, the 2nd through the 6th, and 4 days, including the 9th through the 12th. That would be 9 days.

Mr. WILLIAMS. All right, sir. I accept that.

Senator PERCY. You have already stated that the implication here or rather the statement that the investigation of the FBI took several months is wrong. You now indicate that it took approximately 9 working days. The statement is made that a thorough review was made of Mr. Tartaglino's concerns and by implication Mr. Bartels' concern were also reviewed.

Would you consider that the investigation that you conducted was a thorough review of all of those concerns?

Mr. WILLIAMS. I think we are getting into the results of the investigation there, sir, and I don't know whether I am at liberty to answer those questions.

Chairman JACKSON. My understanding with Mr. Tyler, in my telephone conversation, was that we wouldn't get into the substantive matters. I think we will reserve, Senator Percy. We are getting into a gray area here. In fairness to the agents—

Senator PERCY. It is a judgment that the agents themselves and only they are really able to determine—whether or not the investigation was thorough—because I am only referring to what was said to the public by Mr. Silberman. All I am asking is whether or not you considered your investigation to have been a thorough investigation of all of the allegations that had been made?

Mr. WILLIAMS. Yes, sir. Considering the people that we had interviewed, I think the interviews were thorough. As I explained earlier, Senator, I thought that we had reached a point where we needed to report to Mr. Silberman.

Senator PERCY. Did you interview everyone that was necessary in order to carry out this investigation? Are you implying that the investigation was thorough in accordance with your instructions, but not in accordance with the statements given by this press release?

The Chairman would the question asked of you, and then I will ask another one following that. Was the investigation thorough in accordance with your instructions?

Mr. WILLIAMS. Yes, sir.

Senator PERCY. Was the investigation as thorough as indicated in this Justice Department press release? Did you investigate, over a period of several months, all the matters raised by Mr. Tartaglino along with Mr. Bartels' concern about the practices of DEA Office of Inspection? Could it be considered as thorough an investigation as inferred in the press release?

Mr. WILLIAMS. I would not consider it a thorough investigation of the allegations. I would consider it a thorough investigation up to that point of the facts that were available to these gentlemen to support the allegations.

Senator PERCY. I would like to then turn to the investigation. Who was the first person that you interviewed?

Mr. WILLIAMS. Mr. Tartaglino.

Senator PERCY. Where did that interview take place?

Mr. WILLIAMS. In his office, sir.

Senator PERCY. What documents did you review or receive prior to interviewing Mr. Tartaglino?

Mr. WILLIAMS. Mr. Silberman gave us quite a folder. I recall specifically Mr. Tartaglino's memorandum of November 14; Mr. Promuto's personnel file, whatever documents had been furnished to him. I don't know whether he got them from Mr. Pommerening or from DEA.

Senator PERCY. But he had written several memorandums on this matter. Were these memorandums available to you?

Mr. WILLIAMS. I could find out what I had available. I recall specifically a memorandum prepared by Mr. Brosan, but a number of documents, I would say up to, perhaps seven or eight separate documents.

Senator PERCY. As I understand the time frame of your investigation, the date of your interview with him was December 16, 1974. Is that correct?

Mr. WILLIAMS. Thursday, December 5, we interviewed Mr. Tartaglino at length and then we went back briefly on the morning of the 16th. Yes, sir.

Senator PERCY. How long was your first interview?

Mr. WILLIAMS. I think when I called Mr. Tartaglino we agreed to be in his office at 8 o'clock in the morning. The interview lasted through the lunch hour, the early afternoon. I would say probably after 1 o'clock.

Senator PERCY. In general terms, can you describe what information you did elicit from Mr. Tartaglino during the course of that investigation?

Mr. WILLIAMS. Yes, sir. We took a copy of this memo, November 14, and made notes from that and went through it step by step and allowing Mr. Tartaglino to bring up any additional matters that he would want to bring up.

Senator PERCY. Did Mr. Tartaglino and you talk over the possibility of other persons being interviewed in connection with the allegations which he was making?

Mr. WILLIAMS. I seem to recall Mr. Tartaglino recommending that we interview certain individuals. I believe he recommended, certainly, Mr. Brosan and Mr. Richardson. At one point, Mr. Tartaglino stated something to the effect that there were a number of people assigned to the Inspection Division who might want to be interviewed.

I think he indicated the word was around that they were there, that we were coming up, but that some of these individuals were very much concerned as to what degree of confidentiality the interview would be conducted in. I told Mr. Tartaglino at that point I would talk to anyone, certainly, who specifically requested to be interviewed, but here again, I was reporting to the Deputy Attorney General and could not comment on what might happen to the report.

Senator PERCY. Your first interview was about 5 hours, and how many hours did you spend with Mr. Tartaglino subsequently?

Mr. WILLIAMS. Not long. We went back after reviewing our notes on Thursday afternoon, after the interview. I thought it would be

good to have Mr. Tartaglino prepare a memo to me, his impression of the interview, what he recalled the matters that we discussed.

Senator PERCY. Mr. Manuel, I wonder if you could tell us how long the staff of this subcommittee spent with Mr. Tartaglino and felt it was wise to spend with him in order to get the necessary information?

Mr. MANUEL. Senator Percy, we would just take an educated guess about that. We started interviewing Mr. Tartaglino in January of this year. I know we have interviewed him on and off, I can't give you the exact dates or the number of days, but I would say it was at least, we talked to him on at least 20 occasions, hours at a time, and the same would be true of Mr. Brosan. That would be in addition to the time spent with Mr. Tartaglino.

Senator PERCY. Mr. Williams, could you give us the names of the people that Mr. Tartaglino recommended that you have subsequent interviews with?

Mr. WILLIAMS. The only three I can recall specifically was Mr. Richardson, Mr. Brosan, and Mr. Patrick Fuller, former Chief Inspector.

Senator PERCY. Did you interview every person that he suggested that you interview?

Mr. WILLIAMS. I don't recall specifically who else he might have requested that we interview.

Senator PERCY. If he made the principal allegation, would there be any reason that you wouldn't have interviewed every person that he suggested that you interview?

Mr. WILLIAMS. No, sir, there would have been no reason if he had given us, no reason why we would not, if he had given us or he had requested or given us good reason to go to these people. I recall those three specifically.

Senator PERCY. Did he suggest Thomas Cash, an inspector?

Mr. WILLIAMS. I don't recall him—the name Cash came up several times there. I don't recall specifically that he recommended that.

Senator PERCY. Did you take notes? Is it your customary procedure to take notes during the course of such an interview?

Mr. WILLIAMS. Yes, sir.

Senator PERCY. Would you be able to refresh your memory by looking at those notes in order to give the subcommittee the names of all the people that he recommended that you interview?

Mr. WILLIAMS. I don't have the notes. The interview was reduced to writing immediately, sir. I would be happy to go through our interview report on that. Do you recall any names specifically?

Mr. HEGARTY. I recall Mr.—

Senator PERCY. You were together at this interview?

Mr. HEGARTY. Yes, sir.

Senator PERCY. Do you happen to recall whether he recommended Thomas Cash?

Mr. HEGARTY. Yes, he did.

Senator PERCY. He did recommend?

Mr. HEGARTY. And Bruce Jensen.

Senator PERCY. Did you interview Tom Cash?

Mr. HEGARTY. No, we did not.

Senator PERCY. You did what?

Mr. HEGARTY. We did not.

Senator PERCY. You did not interview him and he was one of the investigators. Could you tell the subcommittee why you did not interview a man recommended to be interviewed by Mr. Tartaglino and a man who obviously had a great deal of information on this case?

Mr. HEGARTY. Mr. Cash, as I understand it, to the best of my recollection, had specific information relating to the nitty-gritty aspects of the Promuto inquiry. The Promuto inquiry with respect to the guilt or innocence of Mr. Promuto was not our responsibility.

Our responsibility was to determine, to form a fact pattern which would indicate what steps the Drug Enforcement Administration had taken to resolve the Promuto inquiry and what evidence was on board at DEA, from Mr. Tartaglino and Mr. Brosan primarily, to support the allegations that are contained in his memorandum, that the investigation was impeded.

Senator PERCY. Did Mr. Tartaglino give specific information as to alleged improper conduct on the part of certain DEA officials and did that information suggest the possibility of criminal violation?

Mr. HEGARTY. Yes, again, the results of our interview, Senator, and I respectfully feel that I can't really truly respond to that question as much as I personally might like to and have a complete and open and candid question and answer session with you. I think that would call for me to draw upon the finding of the investigation and I would be prohibited in effect by the departmental regulations from responding to your questions.

Senator PERCY. The staff points out that the investigation was effectively closed on December 12, 1974, after the meeting with Mr. Silberman, 1 day after Tartaglino submitted a memorandum to the FBI agents. Is that adequate time to properly evaluate this information?

Mr. WILLIAMS. We felt the evaluation was up to Mr. Silberman, sir. We thought we had reached a point where Mr. Silberman should review the investigation to date to determine, for a determination as to any other persons to be interviewed, any other investigation. We gave him that opportunity.

Senator PERCY. What did Mr. Tartaglino tell you about the Promuto integrity investigation—if you will hold, I will be happy to yield.

Chairman JACKSON. Yes; just to follow up where Senator Percy left off, why didn't you interview Mr. Promuto. He is the central figure in this whole business and for administrative reasons or any other reasons, were you told not to interview him?

Mr. WILLIAMS. No, sir. I saw no purpose in interviewing Mr. Promuto.

Chairman JACKSON. Mr. Promuto, if you looked at the report from the Metropolitan Police Department, was the central figure there and that would have led, of course, to the associations that have come out with Diane De Vito and appearances elsewhere around the country. I don't know how you conduct even an administrative inquiry without asking Mr. Promuto.

Senator PERCY. Mr. Chairman. I am sorry. Senator McClellan has asked me to come to the floor. So I will skip out there.

Chairman JACKSON. Go ahead and finish the same line. I will hold up.

It seems to me that no matter how you look at it, the organization of the office, administratively, to function properly, forget about any possible criminal violation, the relationship between Mr. Promuto and Mr. Bartels is the matter that would be relevant to the kind of inquiry that Mr. Silberman limited you to.

[At this point, Senator Percy withdrew from the hearing room.]

Chairman JACKSON. Wouldn't you go and ask him? I am not talking truth or falsity because you have already answered that very concisely and properly. You didn't look into the truth or falsity of the charges?

Mr. WILLIAMS. No, sir.

Chairman JACKSON. Wouldn't you want to inquire of Mr. Promuto about all of these goings on?

Mr. WILLIAMS. His activities, sir?

Chairman JACKSON. His activities in relation to Mr. Bartels and anyone else in the office. Here is a man, Thomas Durkin, who was brought in—did you talk to Mr. Durkin?

Mr. WILLIAMS. Yes, sir.

Chairman JACKSON. We understand he didn't even have a security clearance. That is an administrative matter, isn't it? It could be a criminal matter, too. But wouldn't that go to how well is this office being run when you have a top consultant to the DEA who didn't even have a security clearance?

Mr. WILLIAMS. I did not consider that as any part of my inquiry, sir. There are a lot of areas that could have been gone into there.

Chairman JACKSON. I gather you said you could be there for months. But even under the Silberman directive as to the administrative competence of this operation, you could look at it purely from an ongoing day-to-day functioning organization. I know you don't go around asking, "Do you have a security clearance? Let's check that one out and so on." But Thomas Durkin's role was rather unusual, wasn't it?

Mr. WILLIAMS. I understand Mr. Durkin was a consultant for the Bureau of Narcotics and Dangerous Drugs before. I don't know what their regulations called for us to what a consultant is, what his mission is or anything at all. I didn't consider that issue.

Mr. HEGARTY. The statements that people made concerning what Mr. Durkin's role was, we reported to Mr. Silberman. Everyone we talked to that had a specific statement with respect to his capacity in DEA, what they told us, we told Mr. Silberman in our report.

Chairman JACKSON. State that again. You did what?

Mr. HEGARTY. Every statement that was made to us regarding what Mr. Durkin's capacity was or suspected capacity was with DEA, those statements were taken by us and were furnished to Mr. Silberman in our written report.

Chairman JACKSON. You didn't interview Mr. Durkin?

Mr. HEGARTY. Yes, we did.

Chairman JACKSON. You gave that information?

Mr. HEGARTY. Yes, we did.

Chairman JACKSON. To Mr. Silberman?

Mr. HEGARTY. Yes, we did, sir.

Chairman JACKSON. What investigation did you conduct regarding Mr. Tartaglino and Mr. Brosan's allegations that Mr. Bartels had been promoted to a very sensitive position within DEA, had promoted officials to very sensitive positions within DEA, officials who had unresolved integrity problems that go back quite a ways.

Mr. HEGARTY. We asked Mr. Tartaglino the factual situation again with respect to who did he have in mind, who are the people that had made these allegations. The information that Mr. Tartaglino furnished to us, we in turn, furnished to Mr. Silberman.

Chairman JACKSON. You gave that to him?

Mr. HEGARTY. Yes, we did, Senator.

Chairman JACKSON. But you didn't investigate? You didn't investigate those cases?

Mr. HEGARTY. No, we did not. Whether or not the individuals who are accused are in fact guilty, we did not look into. No, sir.

Chairman JACKSON. This certainly wasn't a normal FBI investigation, was it?

Mr. WILLIAMS. No, sir.

Chairman JACKSON. Do you agree?

Mr. HEGARTY. Absolutely.

Chairman JACKSON. Is was not?

Mr. HEGARTY. Is was not, sir.

Chairman JACKSON. This is the key here because I must say that the public had the idea—and you read this press release—that the FBI conducted a thorough inquiry. I have had people come up to me and say, "Senator, you are way off base looking into this thing. Didn't you know that the FBI had made a thorough investigation of this whole thing? What is it that your committee has got that the FBI wouldn't have?"

You see why I am asking this question, in fairness to the FBI, a great organization. And I want to commend each of you for being responsive in a professional way, following the rules under which you operated and at the same time, helping this subcommittee get the facts out on the table so that no one is deceived.

That is something we need to do. This press release of January 16, 1975, says that the investigation had gone on for several months and mentions the FBI. Obviously that fact would be a real basis to conclude that a thorough investigation was made.

Let's just read this again:

In November of 1974, Mr. Andrew C. Tartaglino, then Acting Deputy Director of the Drug Enforcement Administration, DEA, raised questions concerning the policies and procedures of DEA, including the actions by the Director of DEA, Mr. John R. Bartels, Jr.

It is very vague in the first paragraph.

I will read further from the January 16 announcement.

After examining these questions, I directed a special review be conducted under my direct supervision by the Inspection Division of the Federal Bureau of Investigation. Bureau agents were asked to investigate the matters raised by Mr. Tartaglino—it doesn't say what they were—"along with Mr. Bartels' concern about practices of DEA's Office of Inspection. Following a thorough—review—I concluded that Mr. Tartaglino's concerns, although raised in good faith, were without substantial foundation.

After the investigation, which took several months, Mr. Bartels and Mr. Tartaglino agreed that it would be in the best interests of the DEA that Mr. Tartaglino and George Brosan, Chief of the Office of Inspection, be reassigned to other duties within the Department of Justice.

You don't need to comment on it. But if I were a spokesman for the FBI, I would say this is a gross misuse of the agency, leading the public to the impression that— they don't mention anyone else investigating it, just the FBI—the FBI made a thorough, several months investigation, and they get a clean bill of health.

You don't need to comment on it. But I wanted to say that I just think that it was a unfortunate kind of release to put out. If they had said that you were called in to do the specific things, there is nothing classified about that, that is public information, that would have been something else. That these other people have done so and so, that would be something else. But I think it is regrettable the way it was handled.

Mr. FELDMAN. Mr. Chairman, after we started this investigation, Senator Lowell Weicker had a communication with Mr. Bartels in which Senator Weicker also asked about the circumstances of the FBI investigation. Mr. Bartels wrote to Senator Weicker, I would like to put the letter in the record. Mr. Bartels' reply was supplied to us by DEA, Mr. Chairman. The letter stated:

At the direction of Mr. Silberman, the FBI thoroughly investigated those allegations. Mr. Silberman has informed me and I also made a public statement that the FBI report finds no basis for the allegations made by Mr. Tartaglino. He subsequently reassigned Mr. Tartaglino to other duties in the Department.

Should you require more information on the FBI investigation, I suggest you contact Mr. Silberman who has retained custody of the FBI report.

Chairman JACKSON. Have you seen this letter?

Mr. WILLIAMS. No, sir, I have not.

Chairman JACKSON. Give him the part marked "signed by Mr. Bartels." I ask you if that is an accurate reflection of what you and Mr. Hegarty did?

Mr. FELDMAN. Can we make that an exhibit, Mr. Chairman?

Chairman JACKSON. That will be marked as exhibit No. 42.

[The document referred to was marked "exhibit No. 42" for reference and follows:]

EXHIBIT No. 42

U.S. DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION,
Washington, D.C., February 3, 1975.

Hon. LOWELL WEICKER, Jr.,
U.S. Senate,
Washington D.C.

DEAR SENATOR WEICKER: This responds to your letter of January 21, 1975, forwarding certain allegations made by Mr. Andrew Tartaglino concerning activities of the former BNDD and DEA. You will find attached my concise and factual responses to the allegations against specific individuals and other matters brought up by Mr. Tartaglino.

Clearly the facts and official records of this agency and the former BNDD do not corroborate Mr. Tartaglino's allegations and innuendo. Mr. Tartaglino had previously presented similar false allegations to Deputy Attorney General Laurence H. Silberman. At the direction of Mr. Silberman the FBI thoroughly investigated those allegations. Mr. Silberman has informed me and also made a public statement that the FBI report finds no basis for the allegations made by Mr. Tartaglino. He subsequently reassigned Mr. Tartaglino to other duties in the Department. Should you require more information on the FBI investigation I suggest you contact Mr. Silberman who has retained custody of the FBI report.

I appreciate the opportunity to furnish you the other and factual side of the story. My candid response should answer to your satisfaction any questions you may have had because of Mr. Tartaglino's false and totally misleading allega-

tions. I share with you a firm commitment to the presumption of innocence. Unfortunately there will always be others who for their own reasons continue to malign the innocent even after innocence has been clearly established.

Finally, Mr. Tartaglino repeatedly told you that his main concern is form not fact. Such misplaced values challenge credibility and indeed fitness for official position. I assure you that fact and substance together with effective investigative form remain my concern in managing the DEA and in dealing fairly and forcibly with all internal security matters that may arise.

Sincerely,

JOHN R. BARTELS, Jr.,
Administrator.

Chairman JACKSON. The first sentence, is that true in the middle of the paragraph, "At the direction of Mr. Silberman the FBI thoroughly investigated"?

Mr. WILLIAMS. I consider it a pretty thorough investigation as far as we went; that is, the people we talked to. I am not quite sure what we are trying to get at, Senator.

Chairman JACKSON. The point I am trying to make is this: You read this letter that Mr. Bartels sent to Senator Weicker, and just looking at this letter, it doesn't say what allegations were made by Mr. Tartaglino.

It says "At the direction of Mr. Silberman, the FBI thoroughly investigated those allegations." You didn't thoroughly investigate those allegations. I am not trying to put words in your mouth; you have testified here that you had no authority to ascertain the truth or falsity.

How could you make a thorough investigation of allegations if you were not directed to look into truth or falsity of the charges?

Mr. WILLIAMS. In that respect, it was not a thorough investigation; no, sir.

Mr. FELDMAN. Mr. Chairman, could I just for the record have Agents Williams and Hegarty identify exhibit 20, the November 14 memo from Mr. Tartaglino to Mr. Pommerening; exhibit 21, a memo from Mr. Tartaglino to Mr. Williams and Mr. Hegarty, and exhibit 34, a December 10 memo from Mr. Brosan to Williams and Hegarty as the working documents in this investigation?

Chairman JACKSON. They are already marked, sealed exhibits. Could you refer to the exhibit number on that little tab when you identify them?

Mr. FELDMAN. Those are all the allegations that were raised by Mr. Tartaglino.

Mr. WILLIAMS. Exhibit 34 is a memorandum submitted to myself and Hegarty by George Brosan, dated December 10, 1974; exhibit No. 21 a memorandum dated December 11, 1974, submitted to myself and Agent Hegarty by Mr. Tartaglino; exhibit No. 20 is a copy of Mr. Tartaglino's memorandum dated November 14, 1974, to Mr. Glen Pommerening, Assistant Attorney General.

Mr. FELDMAN. Those were your working documents?

Mr. WILLIAMS. Yes, sir.

Mr. FELDMAN. You were supposed to pursue all of the allegations in those working documents?

Mr. WILLIAMS. No. The only working document, sir, was the November 14, 1974, memorandum from Mr. Tartaglino. The other two memoranda, the memorandum from Mr. Tartaglino to myself and to

Mr. Brosan and myself, were at our specific request just to back up the interview.

Mr. FELDMAN. They might contain other allegations that you didn't pursue or other information you didn't pursue?

Mr. WILLIAMS. We reviewed those before furnishing them to Mr. Silberman. I did not find anything that we had not covered in the interview.

Mr. FELDMAN. Why were you limited to November 14 allegations? That was your instruction?

Mr. WILLIAMS. Those were my instructions from Mr. Silberman, to focus on the November 14 memorandum.

Mr. FELDMAN. Thank you, Mr. Chairman.

Mr. SLOAN. Mr. Chairman, if I may ask several questions.

Chairman JACKSON. Yes.

Mr. SLOAN. I would like to clear up a few matters. First, the January 16 press release states that the allegations of Mr. Tartaglino were "without substantial foundation," and the letter from Mr. Bartels, that you were just discussing, states that the FBI report finds "no basis" for the allegations.

Do you think there is any difference between those two statements?

Mr. WILLIAMS. I don't think I could comment on that, sir.

Mr. SLOAN. Why?

Mr. WILLIAMS. Because this gets to the results of the investigation and I think that my interpretation—I am restricted from commenting on that by Judge Tyler.

Mr. SLOAN. You would not want to comment on the characterization those phrases give to the results of your investigation?

Mr. WILLIAMS. Repeat the question, if you would.

Mr. SLOAN. What I am really asking is, Mr. Williams, do you think there is a difference between those two phrases "without substantial foundation" or in the letter "no basis"?

Mr. WILLIAMS. You are going to have to talk with the people who made those comments, sir, for that. I wouldn't try to interpret what we might have done. I don't mean to be disrespectful. I don't know what they meant.

Mr. SLOAN. I would like to clear up one other point for the record. I believe Mr. Tartaglino suggested that Bruce Jensen be interviewed.

Mr. WILLIAMS. Mr. Hegarty indicated that he did suggest it. I didn't recall it.

Mr. SLOAN. He, in fact, was not interviewed. Is that accurate?

Mr. HEGARTY. That is correct, sir.

Mr. SLOAN. I have a final series of questions. Did you also interview during the investigation Mr. Paul Curran, U.S. attorney for the southern district of New York?

Mr. WILLIAMS. We had occasion to talk to Mr. Curran very briefly during the investigation; yes, sir.

Mr. SLOAN. At whose instruction did you meet with Mr. Curran?

Mr. WILLIAMS. In going over that this morning, I am very hazy on that. To the best of my recollection, those instructions came from Mr. Silberman's office. I believe Mr. Curran had contacted somebody in Mr. Silberman's office and made a comment which would have appeared to be pertinent to this investigation.

This comment was relayed to somebody in our Department down to Mr. Bassett to me. By the time we got to talk to Mr. Curran, he indicated that that was not correct, the information as relayed to us was not correct. It turned out that the whole thing was completely not pertinent to our inquiry.

The reason I don't recall it is because it was completely washed out, sir.

Mr. SLOAN. What was the content of your discussion with Mr. Curran?

Mr. WILLIAMS. What was the——

Mr. SLOAN. The content of your discussion with Mr. Curran?

Mr. WILLIAMS. I explained that Mr. Bassett had indicated to me that he had made a comment to someone in Mr. Silberman's office and it turned out to be that there had been a misinterpretation of the comment.

Mr. SLOAN. How long was your conversation?

Mr. WILLIAMS. Five minutes.

Mr. SLOAN. Did you at any time conduct any investigation or receive any information regarding Mr. Jerry Jensen's nomination to be Deputy Administrator?

Mr. WILLIAMS. No, sir, that name was brought up from time to time. Here again, the investigation was being conducted, I presume at the request of the White House. This is the nomination for the position. We did not address ourselves to that. There was a second investigation for the White House.

Mr. SLOAN. You had no part in that?

Mr. WILLIAMS. No, sir.

Mr. SLOAN. Thank you.

Thank you, Mr. Chairman.

Chairman JACKSON. Thank you Mr. Sloan.

Gentlemen, I could wrap this up, I think, in one sentence. It looks to me that it was a limited investigation for a limited objective.

Mr. WILLIAMS. I concur, sir.

Chairman JACKSON. You concur in that?

Mr. WILLIAMS. Yes, sir.

Chairman JACKSON. The public, however, got the impression that it was a thorough investigation based on that January 16, 1975 press release issued by Mr. Silberman. This is why I think it is so important that this subcommittee exercise its investigative and oversight functions to go into these matters. Mr. Silberman's announcement left the FBI in a position where it appeared they had conducted this investigation and then later it turns out that there were things that were not discovered and which you had no possible authority or direction to look into.

Events speak for themselves. Mr. Bartels has been fired. There is an ongoing investigation now—after this subcommittee became involved. I will put this in the record. Order No. 600-75, dated March 31, 1975, consists of Attorney General Levi's having issued an order assigning employees to investigate allegations of fraud, irregularity, misconduct of the Drug Enforcement Administration.

That will be marked for identification as exhibit No. 43.

[The document referred to was marked "exhibit No. 43" for reference and follows:]

EXHIBIT No. 43

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C.

ASSIGNING EMPLOYEES TO INVESTIGATE ALLEGATIONS OF FRAUD, IRREGULARITY
AND MISCONDUCT IN THE DRUG ENFORCEMENT ADMINISTRATION

ORDER NO. 600-75

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, and notwithstanding any existing delegation of authority, Michael DeFeo, Thomas Henderson, and Arthur Norton, employees of the Department of Justice, are hereby assigned to investigate allegations of fraud, irregularity, or misconduct of officers, employees and agents of the Drug Enforcement Administration and, in the course thereof, to administer oaths or affirmations to witnesses (5 U.S.C. 303).

Date: March 31, 1975.

EDWARD H. LEVI, *Attorney General.*

Chairman JACKSON. Mr. Williams, Mr. Hegarty, I want to thank you. I think you have been very forthright.

Mr. WILLIAMS. Thank you, sir.

Chairman JACKSON. You have been cooperative, I fully understand, and the public should understand, that you are under certain restrictions here as to substantive matters, that you are not permitted under Department of Justice regulations from bringing out at this time. Is that correct?

Mr. WILLIAMS. That is my understanding, sir.

Chairman JACKSON. I want to say that this does not reveal the whole story because of those inhibitions. We will discuss with the Attorney General those aspects that remain to be completed. But I want to thank you, Mr. Williams; and you, Mr. Hegarty, on behalf of the subcommittee for your cooperation and for your testimony here in helping us try to do our job. Thank you.

Mr. WILLIAMS. Thank you, Senator.

Mr. HEGARTY. Thank you, Senator.

Mr. FELDMAN. We will resume tomorrow, at room 6202, with Thomas Durkin as a witness and James D. Hutchinson, who was supposed to testify today.

Chairman JACKSON. Gentlemen, we will be in touch with you in advance through the proper channels when and if you need to be recalled at another time.

[Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 10 a.m., Friday, June 20, 1975, in room 6202.]

[Members present at time of recess: Senator Jackson.]

FEDERAL DRUG ENFORCEMENT

FRIDAY, JUNE 20, 1975

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met at 10 a.m., in room 6202, Dirksen Senate Office Building, under authority of Senate Resolution 111, agreed to March 17, 1975, as amended, Hon. Henry M. Jackson, chairman of the subcommittee, presiding.

Members of the subcommittee present: Senator Henry M. Jackson, Democrat, Washington; and Senator Charles H. Percy, Republican, Illinois.

Members of the professional staff present: Howard J. Feldman, chief counsel; Dana Martin, assistant counsel; Philip R. Manuel, investigator; Frederick Asselin, investigator; Stuart M. Statler, chief counsel to the minority; Robert Sloan, special counsel to the minority; and Ruth Y. Watt, chief clerk.

Chairman JACKSON. The committee will come to order.

[Members of the subcommittee present at time of reconvening: Senator Jackson.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct hearings in public session, without a quorum of two members for administration of oaths and taking of testimony in connection with Drug Enforcement Administration on Friday, June 20, 1975.

HENRY M. JACKSON,
Chairman.
CHARLES H. PERCY,
Ranking Minority Member.

Chairman JACKSON. I wish to make this announcement before we begin proceedings this morning. On June 2, 1975, as chairman of the subcommittee, with the concurrence of Senator Percy, I wrote to the Attorney General and asked him to provide this subcommittee with certain information regarding the role in DEA affairs of Thomas E. Durkin, Jr., a Newark, N.J., attorney who described himself to the subcommittee staff as being an unpaid "special adviser" whose advice and counsel were sought by many officials within the Drug Enforcement Administration.

Our letter was quite precise, as we expressed our interest in knowing of Mr. Thomas Durkin's security clearance or lack thereof, his authorization to travel at government expense, his access to sensitive documents, the precise nature of the advice and guidance he gave to DEA officials, and a clear definition of what the work of the special adviser was.

On June 17, this subcommittee received a letter from Mr. Togo D. West, Jr., Associate Deputy Attorney General. Mr. West's letter was in response to our letter to the Attorney General, regarding our request to the Department of Justice for information concerning Mr. Thomas Durkin's activities within DEA.

Mr. West's letter, addressed to Mr. Feldman, made clear that Mr. Thomas Durkin was no longer a special adviser to DEA. But other than that information, Mr. West provided no information to the many questions raised in the June 2 letter from this subcommittee to the Attorney General.

Instead, Mr. West, in his letter, announced that the questions this subcommittee asked concerning Mr. Thomas Durkin had been answered by the Drug Enforcement Administration. No employee of DEA was credited with having prepared these answers. The information is merely contained in a 5-page document entitled "Memorandum." There is no date and no indication as to which section of DEA the document originated from.

It is my finding that the answers provided in the DEA memorandum are unsatisfactory, to begin with. Second, I find it equally unsatisfactory that Mr. West, in his letter of transmittal, separates himself and the Department of Justice from the information included in the DEA memorandum.

With no objection, I will make Mr. West's letter and the DEA memorandum exhibits. They will be marked for identification. They will be treated together as exhibit No. 44.

[The document referred to was marked "exhibit No. 44" for reference and follows:]

EXHIBIT No. 44

ASSOCIATE DEPUTY ATTORNEY GENERAL,
Washington, D.C., June 17, 1975.

HOWARD J. FELDMAN, Esq.,
Chief Counsel,
Senate Permanent Subcommittee on Investigations,
Russell Office Bldg.,
Washington, D.C.

DEAR MR. FELDMAN: In response to Senator Jackson's letter of June 2, 1975 to the Attorney General, I have requested certain information from the Drug Enforcement Administration regarding Mr. Thomas E. Durkin, Jr., and his association with DEA. Attached is a memorandum prepared by DEA in response to that request.

By another letter of June 2, 1975 to the Attorney General, Senator Jackson requested that Mr. Thomas Durkin be made available to testify before the Subcommittee. Although Mr. Durkin is no longer a Special Adviser to DEA, I understand that arrangements have been made for his appearance.

Sincerely yours,

Togo D. West, Jr.,
Associate Deputy Attorney General.

Attachment.

MEMORANDUM

What does the term "Special Adviser" mean in terms of a job description? Does a job description for Mr. Durkin exist?

DEA has no formal job description for a special adviser, nor does there exist a job description for Mr. Durkin. The term "special adviser" describes an individual who is not an employee, but who provides independent advice, ideas and suggestions to Administration officials on a requested basis.

Is the term "Special Adviser" the same as the more familiar term, "Consultant"?

While there are obvious parallels between the terms, DEA and its predecessor agencies have reserved the title of special adviser for a few private citizens who have voluntarily provided their time and personal expertise. Consultants are paid employees who normally contribute to the agency on a contractual basis and are usually restricted to areas of a highly technical nature.

Does a special adviser have responsibilities differing from those of a consultant?

An adviser provides his ideas and thoughts in the general field of policy and strategy while a consultant normally deals within a more limited and technical scope.

Does the job special adviser relate specifically to providing advice to DEA as an institution of Government; or does it have more to do with the giving of advice to a particular section of DEA or to a particular person?

Mr. Durkin's role with both BNDD and DEA was principally as an independent sounding board for the senior managers, including former BNDD Director John Ingersoll and former DEA Administrator John Bartels, Jr. Mr. Durkin was also active in arranging for community assistance to families of agents killed or badly injured in the line of duty. Mr. Durkin launched a drive which resulted in the establishment of a fund to aid these individuals. This fund recently provided a specially equipped home and automobile for an agent who was shot and paralyzed for life in a shootout which left another agent dead.

Did other DEA officials have benefit of Mr. Durkin's recommendations?

Most of the Senior DEA Headquarters managers had exposure from time to time, generally at Ad Hoc meetings, to Mr. Durkin's ideas. Mr. Durkin did not generally seek out nor was he sought out by individuals.

If so, which officials were they?

The officials who did discuss topics affecting their particular areas of interest in these sessions are listed as follows: Mr. John R. Bartels, Jr., Mr. Robert Richardson, Mr. Nelson Coon, Mr. Walter Weiss, Mr. Phillip R. Smith, and Mr. Daniel P. Casey.

When was Mr. Durkin designated "Special Adviser"?

Mr. Durkin was so designated by DEA on November 29, 1973.

When was he given the credentials identifying him as a "Special Adviser" to either DEA or any predecessor agency?

Mr. Durkin received his DEA credentials on November 29, 1973. He had formerly held similar credentials as a special adviser for BNDD.

What was the internal authorization under which travel funds were expended?

Mr. Durkin's travel costs were an expense of the immediate Office of the Administrator. Accountability responsibility rested with the Office of the Administrator and the costs were funded under the operating budget of that Office.

If Mr. Durkin's use of blank GTRs constituted his having blanket travel orders . . . was Mr. Durkin, in fact, given authority to cut his own travel orders?

Mr. Durkin did not have authority to cut his own travel orders and he did not do so. The accountable GTRs were provided solely for the purpose of facilitating his frequent travel between Newark, New Jersey and Washington, D.C. at the request of Mr. Bartels and it was understood that he would use the GTRs for that purpose. For a considerable period of time Mr. Durkin had absorbed these travel costs himself; DEA began to pay for his air fare in July of 1974.

Was the credit card number issued him his alone or was it a number which he shared with another DEA representative or representatives?

Mr. Durkin utilized a telephone credit card number which is assigned to the Office of the Administrator. His use of that number was a part of the support rendered to Mr. Durkin for official purposes. Charges billed to that number are reviewed and validated by the Office of the Administrator.

Are there other special advisers or consultants at DEA who are entrusted with blank GTRs, and, if it is established that Mr. Durkin had blanket travel orders, is it DEA policy to issue such orders to other special advisers or consultants?

Travel expenses of consultants and advisers are paid as a matter of policy. Some of these individuals pay all expenses, including air or train fares, and are then reimbursed. In certain cases the individual is provided with invitational travel orders and accountable GTRs. Mr. Durkin and others are provided the GTRs under the second set of conditions.

Please advise us as to Mr. Durkin's clearance status: the scope of the field investigations that preceded the designation of this clearance: and the restrictions, if any, placed on his accessibility to sensitive information and documents?

In February 1973, a background check on Mr. Durkin was conducted by the Office of Internal Security and the Chief of Inspection advised Mr. John Ingersoll, Director of BNDD, of the results of the inquiries. Based upon that report and Mr. Durkin's known public stature, Director Ingersoll appointed him as an adviser. Mr. Durkin did not have a secret clearance and thus did not have access to classified information.

What clearance procedures are followed at DEA regarding special advisers and consultants?

All consultants are required to have a full field clearance. If the individual has been the subject of a full investigation within the past two years and has had continuous government service, a new investigation is not required. The Office of Personnel requests the clearance through the Office of Internal Security. The request is then transmitted to the Civil Service Commission which conducts the investigation and advises the results. Clearance of advisers is handled on a case to case basis. Advisers are not required to have a full field clearance.

Do clearance procedures regarding special advisers and consultants differ from those procedures used to establish security clearances on full time DEA personnel?

Clearance procedures for consultants do not differ from procedures used for full time DEA personnel. Clearance procedures for advisers differs from the procedures used for full time DEA personnel, in that advisers are not given full field investigations.

Are swearing in exercises held for all DEA special advisers?

Each special adviser to DEA and BNDD has taken the standard employee oath of allegiance, although they are not employees.

What is the substance of the oath administered, and who would be authorized to administer it?

A copy of the oath is attached herewith. The Administrator, his Deputy and the Chief of Personnel are authorized to administer the oath. In the field, the Regional Director, his Deputy and his Regional Personnel or Administrative Officer are delegated this authority.

In Mr. Durkin's instance, who administered the oath?

Mr. Ingersoll administered the oath when Mr. Durkin became an adviser for BNDD. Mr. Bartels administered the oath when Mr. Durkin became an adviser for DEA.

Is this oath similar to those which full-time DEA personnel submit to?

It is the same oath.

*Did Mr. Durkin serve as special adviser in connection with congressional relations? * * * In particular with relations with this subcommittee?*

Advice to DEA Management relative to Congressional relations and relative to the Jackson Subcommittee was provided by Mr. Durkin, but as part of a broad base of planning advice on a variety of topics. Mr. Durkin, on one occasion, spoke to the Committee at his own volition, not as a representative of DEA. Mr. Durkin did not perform any advisory function in day-to-day operations of Congressional liaison. He did participate in discussions involving the Committee investigation of DEA, providing advice and offering various options for the consideration of Mr. Bartels.

Did Mr. Durkin serve as a special adviser in connection with the handling of integrity investigations concerning Mr. Promuto and Mr. William Durkin?

Mr. Durkin provided advice relative to the investigation of Mr. Promuto as part of the broad base of activities to which he devoted attention. Mr. Durkin interviewed Mr. Promuto on behalf of Mr. Bartels and participated in discussions relative to the case. Mr. Durkin knew of the William Durkin investigation, but did not become involved in the case per se.

To whom was this advice given, in what form, and was any of it in writing?
 The advice relative to the Promuto investigation was principally provided to Mr. Bartels, although participating officials were exposed to some of his thought and comments on the issues. Mr. Robert Richardson and Mr. Phillip Smith received some such exposure and considered it along with guidance and advice tendered from other areas. Mr. Durkin provided Mr. Bartels with two memoranda, one concerning his interview with Mr. Promuto and one analyzing the Promuto situation. All other advice was oral.

STANDARD FORM 61
 REVISED SEPTEMBER 1970
 U.S. CIVIL SERVICE COMMISSION
 F.P.M. CHAPTER 295
 61-107

OMB APPROVAL NO. 50-R0118

APPOINTMENT AFFIDAVITS

(Position to which appointed)	(Date of appointment)
(Department or agency)	(Bureau or division)
	(Place of employment)

I, _____, do solemnly swear (or affirm) that—

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO PURCHASE AND SALE OF OFFICE

I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.

 (Signature of appointee)

Subscribed and sworn (or affirmed) before me this _____ day of _____ A.D. 19____,

at _____
 (City) (State)

[SEAL]

 (Signature of officer)

Commission expires _____
 (If by a Notary Public, the date of expiration
 of his Commission should be shown)

 (Title)

NOTE.—The oath of office must be administered by a person specified in 5 U.S.C. 2003. The words "So help me God" in the oath and the word "swear" wherever it appears above should be stricken out when the appointee elects to affirm rather than swear to the affidavits; only these words may be stricken and only when the appointee elects to affirm the affidavits.

Chairman JACKSON. However, I wish to announce that the subcommittee is now seeking from the Department of Justice, through the Attorney General's Office, new and more precise information about the nature of Mr. Thomas Durkin's work with DEA. This information must be accompanied by pertinent documentation which corroborates assertions made.

In addition, we will request of Mr. Edward H. Levi, through Mr. West, that the next response to our request for information regarding Mr. Thomas Durkin be prepared by, or in coordination with, representatives of Mr. Levi, and that persons responsible for providing that information be identified by name and position within the Department of Justice.

I find it disappointing that Mr. West, a representative of the Attorney General of the United States, would transmit to this subcommittee an unsigned, undated memorandum regarding matters as sensitive as the nature of a DEA official's work and his security clearance or lack thereof.

I find it equally disappointing that the Office of the Attorney General would submit to this subcommittee an unsigned, undated memorandum prepared by DEA, regarding matters which go to the very heart of the subcommittee's investigation; that is to say, matters relating to the manner in which DEA mapped out a strategy to respond to this subcommittee's rightful and proper oversight inquiry into the Federal drug enforcement matters.

Our witness this morning is Mr. Thomas Durkin. Mr. Durkin, if you will come forward and raise your right hand and be sworn.

Do you solemnly swear that the testimony you are about to give before this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DURKIN. I certainly do, sir.

TESTIMONY OF THOMAS E. DURKIN, JR., ATTORNEY

Chairman JACKSON. Mr. Durkin, state your full name for the record and your place of residence and business, please.

Mr. DURKIN. Thomas E. Durkin, Jr. I am an attorney that maintains a practice at 50 Park Place, Newark, N.J.

Chairman JACKSON. What is your relationship with DEA?

Mr. DURKIN. At the present time, sir, or previously?

Chairman JACKSON. What is it now and what was it previously?

Mr. DURKIN. I have no association at the present time, sir.

Chairman JACKSON. What happened? Did you have a previous association?

Mr. DURKIN. I did, sir; yes. I decided that I wanted to terminate it.

Chairman JACKSON. You did what to terminate it?

Mr. DURKIN. I returned all of—

Chairman JACKSON. You what?

Mr. DURKIN. I returned my credentials and other paraphernalia that I thought would properly be the property of DEA.

Chairman JACKSON. What was that? You say you returned paraphernalia.

Mr. DURKIN. It was either one or two travel vouchers that had not been used; that was it.

Chairman JACKSON. When did your association start with DEA?

Mr. DURKIN. 1972, sir.

Chairman JACKSON. 1972?

Mr. DURKIN. Yes, sir.

Chairman JACKSON. How did it start?

Mr. DURKIN. I would say, sir, approximately a month, maybe 2 months before at a conversation with Mr. Ingersoll, who was then the Director of BNDD. Mr. Ingersoll, in his conversation, said that he thought it would be helpful to the agency if I would consider becoming an adviser to then BNDD.

He asked me to think it over. He explained to me what it would be that would be expected of me. The conversation was very general in terms. There were assurances inserted in the conversation that it wouldn't be that time consuming and asked me, after I reflected upon it, to advise him of my decision, which I did.

I did reflect on it, and I did think it through and I thought it through very carefully and I thought, because of my own personal circumstances, that I would agree, and did agree, and did advise him.

It was, I would say, roughly, maybe 2 to 3 weeks thereafter I received a phone call or notice in some format, asking if I would come to Washington, which I did, at which time I met again Mr. Ingersoll, and most of the high-ranking officials of that agency.

I had a conference personally with Mr. Ingersoll, during which time he again generally outlined what it would be. He also made mention in some way that my background, or whatever, checks and so forth, were made and he, in a very succinct manner explained the necessity for it.

Chairman JACKSON. He told you that a what—a background check, a security check? What was as nearly as you can remember?

Mr. DURKIN. I can't remember. The word "background" sticks in my mind, but please don't hold me to it. I don't know specifically what it was but the text of the conversation was as I indicated.

Chairman JACKSON. A background check is the way you remember it?

Mr. DURKIN. That is right; yes. He then went on and had general conversation. There were then others invited into the office. An oath was administered. I was requested to sign a document, acknowledging that I took an oath or took the oath. That document was placed in a file that was on a desk in front of me with my name on the file.

I then was administered the oath. There were pictures taken. There were credentials given to me at that particular time. That circumstance continued until the transformation into the new agency, at which time credentials of that new agency—

Chairman JACKSON. You took a verbal oath and signed a written one: you did both?

Mr. DURKIN. Yes, sir.

Chairman JACKSON. What did it do; what did it designate?

Mr. DURKIN. It was the same oath as administered to anyone.

Chairman JACKSON. I understand that. You take an oath; all Federal employees, but what were you appointed to; what were you to do?

Mr. DURKIN. The position was, that they indicated to me, was special adviser.

Chairman JACKSON. Consultant, or did you read the paper?

Mr. DURKIN. There wasn't anything on the paper. The paper was just the oath itself, which had the space for the title, for the position. I am not too sure whether or not that had been filled in at that particular time.

Mr. FELDMAN. Mr. Chairman, it is the standard appointment affidavit, I believe, which DEA transmitted, attached to the memorandum which was included in Mr. Togo West's letter.

Chairman JACKSON. Your recollection is the position to which you were appointed was special adviser?

Mr. DURKIN. Yes, sir.

Chairman JACKSON. What was your background? You are a lawyer.

Mr. DURKIN. Yes, sir.

Chairman JACKSON. What was your background in connection with the broad area of drug enforcement, drug problems, and so on?

Mr. DURKIN. What degree of specificity do you want me to go into?

Chairman JACKSON. Just in general. We don't need any long detail. Have you been involved in any official or private capacity dealing with drug enforcement problems; drug problems in general; administration of an agency such as we are talking about?

Mr. DURKIN. No, sir. I had no formal association with any type of organization, foundation, or otherwise prior to that time.

Chairman JACKSON. And no Government service?

Mr. DURKIN. None whatsoever.

Chairman JACKSON. What were you to be a special adviser about?

Mr. DURKIN. It was a general circumstance where Director Ingersoll was of the opinion that because of opinions that he had been given about extensive trial work that I had that I could be of an assist to them in areas that were going to be selected by them for discussion.

I had no intent, nor was it at any time that I initiated any particular circumstance and only indulged in conversation when it was requested of me.

Chairman JACKSON. Wouldn't you be kind of surprised if you were invited down to Mr. Ingersoll's office without any experience in this area of drug enforcement, administration of the program with no background in that area, as I gather you stated here, that you would be called in as a special adviser? Didn't you want to find out what you were going to advise about?

Mr. DURKIN. As I think I indicated before, in the conversations that I had with Mr. Ingersoll that was generally understood between Mr. Ingersoll, certainly him and myself.

Chairman JACKSON. What was generally understood?

Mr. DURKIN. That the areas that I was going to be of an assist had to do generally with the presentation of the enforcement aspect of it, treatments and things like that—

Chairman JACKSON. No, but even in the enforcement aspect of it you made clear to them you had no experience in this area?

Mr. DURKIN. No, sir.

Chairman JACKSON. Have you ever been involved in the trials?

Mr. DURKIN. Hundreds.

Chairman JACKSON. Pardon me?

Mr. DURKIN. Hundreds.

Chairman JACKSON. I know. The question related, have you defended people charged with drug violations?

Mr. DURKIN. No, sir.

Chairman JACKSON. Have you been involved—

Mr. DURKIN. But I would like to complete that answer.

Chairman JACKSON. Yes.

Mr. DURKIN. Unless there is a fine distinction, frankly, which I am not acquainted with between the defense of one type of, for instance, a conspiratorial prosecution, the substance of which is non-narcotic violation, and a narcotic violation type of prosecution, frankly, I just don't understand the distinction.

A prosecution of a conspiracy, using that illustration, is a prosecution involving a conspiracy, whether or not it is because of a violation of a drug act or because if it is a violation of another act. I really don't see the distinction.

Chairman JACKSON. What is your background? We want to be fair here. What is your background in the prosecution side? Have you been a district attorney; have you been an assistant district—

Mr. DURKIN. No.

Chairman JACKSON. Have you handled prosecution cases?

Mr. DURKIN. Yes, but minimally, compared to the—

Chairman JACKSON. Let's be specific. Just answer the question.

Mr. DURKIN. I did.

Chairman JACKSON. I will now ask it again. Have you been involved as an attorney prosecuting persons charged with crime and, if so, in what capacity and when and how long?

Mr. DURKIN. Minimally; very, very short period of time. I would say maybe three, maybe four prosecutions.

Chairman JACKSON. No. You are still not answering my question. Were you then appointed, elected as a prosecutor?

Mr. DURKIN. Appointed.

Chairman JACKSON. Appointed?

Mr. DURKIN. Yes.

Chairman JACKSON. What office?

Mr. DURKIN. Municipal, office of the municipality then represented.

Chairman JACKSON. What was the—

Mr. DURKIN. Roseland, R-o-s-e-l-a-n-d.

Chairman JACKSON. What is the population of it?

Mr. DURKIN. 5,000, 6,000; 7,000.

Chairman JACKSON. For violation of what laws?

Mr. DURKIN. Any law.

Chairman JACKSON. You were assistant?

Mr. DURKIN. Pardon?

Chairman JACKSON. You were an assistant what? City attorney?

Mr. DURKIN. I was the city attorney, town attorney, actually.

Chairman JACKSON. You had the responsibility of prosecuting crimes from misdemeanors to murder in the first degree, you said any crime?

Mr. DURKIN. Any crime that was in the jurisdiction of that particular municipal court.

Chairman JACKSON. Violation of city ordinances?

Mr. DURKIN. We don't refer to them as city ordinances. We refer to them as nonindictables.

Chairman JACKSON. What I am trying to get at, having been a prosecutor myself and having to have to try cases from speeding to murder in the first degree, I am just curious to learn about your experience. Were you merely handling local petty offenses, misdemeanors?

Mr. DURKIN. Yes, sir.

Chairman JACKSON. You have never handled a felony case?

Mr. DURKIN. As a prosecutor?

Chairman JACKSON. I am talking about first, in your capacity in the city, and any other capacity?

Mr. DURKIN. When you say handle—

Chairman JACKSON. Did you prosecute anyone charged with a felony?

Mr. DURKIN. No, sir.

Chairman JACKSON. What was the nature of your experience in the prosecution of crimes? Would you just state what area it covered?

Mr. DURKIN. I just got finished saying sir, but my experience is not in the prosecution. My experience is in the defense.

Chairman JACKSON. Let me come to that. First of all, we are dealing with the area of law enforcement. I want to get your experience in law enforcement as the prosecutor.

The only prosecutorial position you ever held was in the city of Roseland—

Mr. DURKIN. The one I indicated, exclusively and nothing else at any time.

Chairman JACKSON. Were you elected or appointed?

Mr. DURKIN. I was appointed.

Chairman JACKSON. How long did you serve?

Mr. DURKIN. Maybe 2 years.

Chairman JACKSON. What was the most serious offense that you handled?

Mr. DURKIN. I don't have any idea. I don't even remember what they were, frankly.

Chairman JACKSON. I can remember, and that goes back a long time, all my key cases.

Mr. DURKIN. These weren't key cases. You could be assured of that; far from it.

Chairman JACKSON. Let's get a picture here. You are called down, you have a summit meeting; a meeting with the top drug enforcement officials. Your special expertise, and what kind of cases; were they speeding; were they just ordinary misdemeanors; what kind of cases?

Mr. DURKIN. Senator, I think I have answered that. But I will try to answer it again. They were nonindictables, which were entertainable under the Jersey law at a municipal court level.

Chairman JACKSON. You were there 2 years. What was the toughest case you had? What did it involve; you did nothing else but prosecute? Surely you remember.

Mr. DURKIN. Excuse me; I didn't hear that. I did nothing else, what?

Chairman JACKSON. You were a full-time——

Mr. DURKIN. No, that is your statement. I never said that. I was not a full time. It was a part time, as are all municipal attorney positions in the county that I resided.

Chairman JACKSON. All right. How much time did you spend then?

Mr. DURKIN. Very little.

Chairman JACKSON. Can't you remember the most important case you tried; what did it involve; or you don't remember any of them; what is it?

Mr. DURKIN. Senator, I remember most of the cases that I tried as representing defendants. They were important cases. They were sensitive cases. The cases that you were referring to, which I think I tried to make clear, were by far the smallest part of my practice over the years. There were no serious cases of any nature whatsoever involved; none.

Chairman JACKSON. None of them were serious cases?

Mr. DURKIN. None of the trials were serious. There may have been serious charges involved but if there were serious charges involved there were only preliminary hearings at that particular level and were referred then——

Chairman JACKSON. They were bound over to the grand jury?

Mr. DURKIN. That is exactly right; yes.

Chairman JACKSON. So you didn't handle a case beyond the misdemeanor?

Mr. DURKIN. No, sir.

Chairman JACKSON. As the defense attorney, what kind of cases did you handle in the criminal area?

Mr. DURKIN. Just about every kind except the narcotic case and if I handled a narcotic case, it must have been 15 or 20 years ago, and it may have been an assigned case.

Chairman JACKSON. I mean appointed by the court, and assigned——

Mr. DURKIN. Yes; that is right.

Chairman JACKSON. Appointed by the court?

Mr. DURKIN. Yes.

Chairman JACKSON. But as a defense counsel you handle cases ranging from what to what, just broadly speaking?

Mr. DURKIN. Make it as broad as you want, and my answer would include murders; many, many murders.

Chairman JACKSON. Murder in the first degree?

Mr. DURKIN. First degree, second degree, manslaughter, felony murder.

Chairman JACKSON. You had extensive criminal practice?

Mr. DURKIN. I did at one time, yes.

Chairman JACKSON. What years?

Mr. DURKIN. I would say for a 10-year period.

Chairman JACKSON. You were primarily involved as a criminal defense attorney?

Mr. DURKIN. Yes, I think it may be more accurate to say trial work with an accentuation on that.

Chairman JACKSON. You did other trial work but a majority of it was criminal defense?

Mr. DURKIN. That is correct.

Chairman JACKSON. What year is that?

Mr. DURKIN. I think I started to taper off on it, I would say, Senator, somewhere around maybe 1968, 1968, somewhere around in that—maybe even a little earlier.

Chairman JACKSON. Did you do any—I gather your association with Mr. Ingersoll was very limited because DEA was created very shortly thereafter. Did you do work for him?

Mr. DURKIN. I did work for him; surely, the same way as I did work here. In conversation, he would ask a particular—for instance, may I give you one illustration?

Chairman JACKSON. Yes.

Mr. DURKIN. He would say, for instance, in the trial of a case we are discussing new formats, and so forth, for our training school.

What is it from your experience you find lacking in law enforcement officers when they are testifying in a particular type of case? I would try to explain to him the various aspects, and so forth, where he thought a weakness may occur. He would take notes on it and I would gather from a subsequent conversation that he suggested to the people in training that that area be additionally reviewed, and if necessary, or found necessary, buttressed.

That is illustrative of the type of things I am talking about.

He also would enter various questions about opinions why judges were setting lower bails and was it a circumstance that a court found itself in, because of the malpreparation of the agents who are the law enforcement people, or was it something that was just a philosophy or a thought of a judge.

Chairman JACKSON. Let me ask you who was the person who asked you to come to Washintgon as the special adviser? Who called you?

Mr. DURKIN. I think it was Mr. Ingersoll but I am not sure now.

Chairman JACKSON. You just got a call on the phone?

Mr. DURKIN. I either did or—

Chairman JACKSON. Did you get a letter?

Mr. DURKIN. No. I didn't get a letter. I don't know if the call was on the phone or whether or not I received the information in person. I did not receive a letter, no, positively not.

Chairman JACKSON. You mean they sent someone to you?

Mr. DURKIN. No, I don't necessarily—they sent someone to me. My best recollection is that I was in conversation with subordinates of Mr. Ingersoll, and that is the way I received the information. I am not sure.

Chairman JACKSON. Did John Bartels call you and ask you to come to Washington on September 16 or 17, 1974?

Mr. DURKIN. Yes, sir; he did.

Chairman JACKSON. Did you come to Washington at that time?

Mr. DURKIN. I came the following day, sir.

Chairman JACKSON. Mr. Durkin, why did Mr. Bartels say that he wanted you to be in Washington?

Mr. DURKIN. He asked, or he told me that there was a circumstance then outstanding which he would like me to look at.

Chairman JACKSON. He didn't say what it was?

Mr. DURKIN. He said what it was, yes.

Chairman JACKSON. What was it?

Mr. DURKIN. It had something to do with a letter being received referable to a Mr. Promuto.

Chairman JACKSON. Did you meet with Mr. Bartels at that time, on the 17th or the 16th or the 18th?

Mr. DURKIN. The following day, after the phone call was the date of the meeting.

Chairman JACKSON. Where was that meeting?

Mr. DURKIN. The meeting was at lunch at the Statler Hilton Hotel.

Chairman JACKSON. What did you discuss?

Mr. DURKIN. We discussed in greater depth, if not total depth, the subject matter of the conversation on the previous evening.

Chairman JACKSON. The previous evening?

Mr. DURKIN. Yes, sir.

Chairman JACKSON. Where was that meeting?

Mr. DURKIN. Which meeting?

Chairman JACKSON. The previous meeting?

Mr. DURKIN. That was the phone call you made reference to.

Chairman JACKSON. No, it was a phone call first, but you said the previous evening. You are referring to a phone call?

Mr. DURKIN. Yes.

Chairman JACKSON. The next day was lunch?

Mr. DURKIN. That is correct.

Chairman JACKSON. You discussed, among other things, the Promuto case?

Mr. DURKIN. Yes, sir.

Chairman JACKSON. Did Mr. Bartels give you any documentation in connection with the Promuto matter?

Mr. DURKIN. No. My recollection is, Senator, that he did not. I know that I received a very in-depth briefing from him. I cannot honestly recall whether or not he had documents with him. I just don't remember.

My best recollection is, is that documents were first seen by me later that day in a meeting with Mr. Lund and Richardson.

Chairman JACKSON. What were your instructions then, to meet with Mr. Richardson and Mr. Lund?

Mr. DURKIN. Yes, sir.

Chairman JACKSON. Did the name of Diane De Vito, or any other woman come up during this meeting?

Mr. DURKIN. No, sir. You are talking now about the meeting between Mr. Bartels and myself?

Chairman JACKSON. Yes, at the luncheon.

Mr. DURKIN. No, sir.

Chairman JACKSON. Did it come up later?

Mr. DURKIN. It came up—now specifically referring to the name De Vito?

Chairman JACKSON. It came up—now specifically referring to the name also known as Diane De Vito, whichever way you want to.

Mr. DURKIN. I never heard the name Barger until long after I heard the name De Vito, which was long after the date of this conversation which you are talking about.

Chairman JACKSON. When did the name Diane De Vito come up for the first time with you? And who brought it up?

Mr. DURKIN. Senator, I think it came up approximately a week or 2 weeks after that particular meeting and my best recollection is

that the name came up in a meeting that was in progress with Mr. Lund and Mr. Richardson.

Chairman JACKSON. What was the purpose in having you meet with Richardson and Lund?

Mr. DURKIN. To review the overall circumstances as it was understood to be outstanding against Mr. Promuto.

Chairman JACKSON. Did you offer Mr. Bartels any advice at this meeting?

Mr. DURKIN. No; no advice other than they would participate in an overall discussion in an attempt to ascertain what the actual circumstances were. You are talking about the first meeting?

Chairman JACKSON. Yes.

Mr. DURKIN. That is what happened.

Chairman JACKSON. Did you then meet with Mr. Richardson and Mr. Lund?

Mr. DURKIN. I did, sir; yes.

Chairman JACKSON. When?

Mr. DURKIN. I would say 4:30, 5 o'clock that day.

Chairman JACKSON. That same day after you had the luncheon?

Mr. DURKIN. Yes, sir, at the same place.

Chairman JACKSON. Where did you meet?

Mr. DURKIN. In the restaurant at the Statler Hotel.

Chairman JACKSON. The Statler Hilton. What occurred at that meeting?

Mr. DURKIN. There was an overall general discussion between and amongst the three of us, concerning the letter which had been received and which was authorized by a policeman by the name of Shoffler for the Metropolitan Police Department.

Chairman JACKSON. What was the discussion about, the report?

Mr. DURKIN. The discussion—

Chairman JACKSON. Did you have the report?

Mr. DURKIN. Yes; I can't tell you which of the two happened. I am almost positive it was Mr. Lund, but I am not absolutely sure. I had a file, a folder.

Chairman JACKSON. They let you see it?

Mr. DURKIN. Indeed; yes.

Chairman JACKSON. You read it?

Mr. DURKIN. Indeed, I did; yes; quite thoroughly, too.

Chairman JACKSON. Pardon me?

Mr. DURKIN. Very thoroughly, the report.

Chairman JACKSON. The report?

Mr. DURKIN. Excuse me; the letter. The letter I read very, very carefully. The report I read but not—I didn't spend that much time on it.

Chairman JACKSON. They had the report?

Mr. DURKIN. Positively; yes.

Chairman JACKSON. I want to say so that I understand Mr. Richardson has stated that this meeting with you, that you had a copy of Brosan's preliminary report.

Mr. DURKIN. I think what he said, Senator, was that his recollection was—I happened to be here the day he testified—his statement was that he recalled me saying that I did, not that I did have nor did he see such a report.

Chairman JACKSON. Where is the transcript? We will come back to that, Mr. Durkin.

Mr. DURKIN. But I have, Senator, absolutely no recollection of Mr. Bartels giving me any documents at that particular time and I simply state that—

Chairman JACKSON. No; but, did you say at any time that you had the report, a copy of Brosan's preliminary report?

Mr. DURKIN. No, sir, I never said that I had it because I didn't have it. I certainly more than likely did say that I had discussed the report and discussed the letter in detail.

Chairman JACKSON. But you did not say at that meeting at 4:30 in the afternoon with Mr. Richardson and Mr. Lund that you had the report?

Mr. DURKIN. No, sir.

Chairman JACKSON. The answer is no?

Mr. DURKIN. That is correct.

Chairman JACKSON. After you read the documentation, what did you do with it?

Mr. DURKIN. Whoever it was that brought the documentation with them took all the documentation when we concluded the meeting; whatever time thereafter.

Chairman JACKSON. You returned it; whoever had it?

Mr. DURKIN. Senator, there are three of us sitting at the table. I would have it at one time; Mr. Lund would have it at another time; Mr. Richardson. We all referred to it continuously and whoever it was that brought it with them, everything was put back in that file and given back.

Chairman JACKSON. Did you give him any advice after reading this documentation?

Mr. DURKIN. My advice was that there had to be an immediate determination as to whether or not some type of intermediate action should be taken by Mr. Bartels as the same was referred to Mr. Promuto.

Chairman JACKSON. Did you at any time discuss the Promuto information with Mr. Brosan or other officials in the Office of Inspection?

Mr. DURKIN. Approximate to the time you are talking about now?

Chairman JACKSON. I am referring at that time and also subsequently.

Mr. DURKIN. The answer to the first part of your question is no. The answer to the second part of your question is yes. I did not discuss any phase of the Promuto investigation at any time, either on this day or any time thereafter, as best I can recall, with George Brosan.

I did discuss certain phases of this investigation at times subsequently with others in Inspection.

Chairman JACKSON. Brosan was the chief inspector. Why didn't you talk with him about it? He was the man who had the overall responsibilities. He is the man, I should say, who had the overall responsibility and this is a special assignment that you had.

I would think you would be talking with the top dog. You are down there as a special adviser and the Promuto case was the key subject matter and it was being handled directly by Mr. Brosan. Did Mr. Bartels tell you not to talk to him?

Mr. DURKIN. Mr. Bartels at no time told me who to talk to or who not to talk to, and so your prior question doesn't go unanswered. I would feel much better if you would ask me that after the break after you have had a chance to talk with your counsel.

I just don't think it proper for me to answer that question at this time.

Chairman JACKSON. You don't think it is proper to answer which question.

Mr. DURKIN. The question as to why I have not discussed this matter with Mr. Brosan.

Chairman JACKSON. I am kind of lost. Mr. Brosan was the Chief Inspector, and I don't know of any classified information or any reason why. I think you ought to say what reason. There is nothing that I can get from staff that would justify your not answering it.

Mr. FELDMAN. Mr. Chairman, Mr. Brosan is in the hearing room today and I don't think that this question should be left hanging in that manner.

Mr. DURKIN. I will be very glad to answer it then. I had a personal opinion that Mr. Brosan at that particular time was not in the best of health. I thought Mr. Brosan was experiencing great strain and I thought from a certain of his actions that it would be most difficult to discuss certain things with him. That was my personal opinion.

Chairman JACKSON. That is an amazing statement. I know you are special adviser, but are you a doctor too?

Mr. DURKIN. No; but Senator——

Chairman JACKSON. You had a job to do. He was on active duty. I would think you would go directly to him. Was he in such a state that you felt he was about to collapse that you would not discuss this case with him?

This is a case that he was on. I mean here is the man who is in charge. He is on active duty. Did anyone tell you that you shouldn't talk to him? I want to ask you that question?

Mr. DURKIN. You asked me that and I told you the answer to that was no.

Chairman JACKSON. Did you try to discuss this matter with Mr. Brosan?

Mr. DURKIN. Made no effort whatsoever at any time.

Chairman JACKSON. Yet he was the man who was Chief of Inspection. You were there to look into the case, brought in from out of town, and as a lawyer and as a man who has obviously, as a lawyer with all your trial experience, case experience, gives you a good background for investigative know-how. Wouldn't you do the logical thing, going to the man who is in charge of the investigation and say, "What goes here?"

Mr. DURKIN. This is the same man that you are talking about who made pronouncements, at this particular time on this particular subject matter that no investigation of any nature was necessary because the subject of this investigation could, under no circumstances, explain any of the facts involved. This is the same subject Mr. Brosan who, according to Mr. Richardson, to me in many conversations reiterated that, and this is the same gentleman who told the Administrator at time of his first meeting with the Administrator this exact same fact.

Chairman JACKSON. That is hearsay. Why didn't you go to the source? As a lawyer, you know that is hearsay. Why didn't you go directly to the man in charge? That is what you were down there for.

Mr. DURKIN. No; I wasn't down there for that, sir.

Chairman JACKSON. Weren't you working on the Promuto case?

Mr. DURKIN. Yes; but you see, if you want to ask me specifically what it was that I was intending to do, I will be very glad to answer that.

I was there at the request of Mr. Bartels to try to assist Mr. Bartels to make one particular determination and that particular determination was predicted upon the fact, knowledge then in existence, should Mr. Bartels make an intermediate move as far as Mr. Promuto is concerned.

Chairman JACKSON. How could you make an intermediate move regarding Mr. Promuto without talking to the man who had been in charge of Mr. Promuto's investigation?

Mr. DURKIN. I had his report.

Chairman JACKSON. What?

Mr. DURKIN. I had his report.

Chairman JACKSON. As a lawyer, I never take a written report alone. I always believe newspaper reporters do the same thing, you cross-examine the author of it and find out whether the report will stand up. Just a written report by itself doesn't mean anything until it is subjected to cross-examination.

You can't cross-examine the report without getting the author.

Wasn't it your advice that Promuto resign?

Mr. DURKIN. No; it was not.

Chairman JACKSON. Without investigation?

Mr. DURKIN. I didn't hear the last part of that.

Chairman JACKSON. After the September 18 meeting, wasn't it your advice that Promuto resign without investigation?

Mr. DURKIN. Positively not.

Chairman JACKSON. Positively not?

Mr. DURKIN. Yes.

Chairman JACKSON. Mr. Richardson has testified to the contrary.

Mr. DURKIN. And is there a question, sir?

Chairman JACKSON. I just wanted you to know that in the open hearing, Mr. Richardson has testified to the contrary. Let me read the transcript so we know. Page 618 of the stenographic transcript:

Senator NUNN. To summarize the meeting, Mr. Durkin told you that he felt that for the agency's sake, Mr. Promuto should resign?

Mr. RICHARDSON. Yes, sir, his reasoning was this: When you have an allegation or charge against a senior official that is known, that then it was important that we recognize that generally the defense of any allegation never catches up to the charge. So we would always be trying to catch up with the Metropolitan Police Department since they were the ones who brought us the initial information.

Mr. DURKIN. This is of course, I guess, the colloquy that occurred subsequent to the discussion with Senator Nunn when Mr. Richardson made mention of the fact it was my recommendation that he be transferred. Is that the part you are referring to?

Chairman JACKSON. What is the previous one? We will have to go back.

Mr. FELDMAN. You were just criticizing, as I recall, Mr. Brosan as being not in the best of health because he was making exactly that kind of recommendation.

Mr. DURKIN. Making what?

Mr. FELDMAN. Exactly that kind of recommendation. You pointed that out as one of the reasons why you thought Mr. Brosan was not in the best of health.

Mr. DURKIN. What kind of a recommendation?

Mr. FELDMAN. The recommendation that Mr. Promuto resign?

Mr. DURKIN. I thought my answer to that question was that at no time did I ever so do. You are talking about transfer or resign?

Mr. FELDMAN. I am talking about what you said about Mr. Brosan and why you felt that he was not equipped to handle this investigation and you pointed out one of the reasons was that he wanted to have Mr. Promuto out or resign at that particular time.

Mr. DURKIN. That promise is in error.

Mr. FELDMAN. We will have to have the reporter read that back.

Mr. DURKIN. Excuse me just a second. Let me see if I can assist you on it. First of all, I didn't make that recommendation.

Mr. FELDMAN. I am not asking you that, Mr. Durkin. You are fuzzing the issue.

Mr. DURKIN. Wait a minute. I am not fuzzing any issue. You are quoting from the testimony of Mr. Richardson.

Mr. FELDMAN. No, I am not. I am talking about your testimony this morning on why Senator Jackson asked you why you didn't approach Mr. Brosan.

Mr. DURKIN. Yes. I heard that part. Then you said that the basis of my observation as it relates to Mr. Brosan was totally inconsistent with my recommendation concerning Mr. Promuto.

Mr. FELDMAN. With Mr. Richardson's recollection of your recommendation concerning Promuto?

Mr. DURKIN. Would you want to pose a question based on that now and see if I can answer that?

Mr. FELDMAN. I think the record speaks for itself. You said you didn't tell him to resign, that was not your recommendation. Mr. Richardson said you did. I think we can compare that very closely. No problem.

Chairman JACKSON. Did you recommend he be transferred? Was that the difference; what did you recommend?

Mr. DURKIN. My recommendation to the Administrator, which I said at that particular time, is that the Administrator should entertain very seriously a transfer at that particular time; yes, sir, I did.

Chairman JACKSON. Then resign later?

Mr. DURKIN. No. There was discussion later on as to whether or not there should be a succeeding resignation after a period of time. That was definitely discussed at that time. I wasn't inclined towards that. I was very definitely inclined towards making a recommendation concerning a transfer, only because at that particular time.

Understand, Senator, if you will, that in this particular letter that was received from this Metropolitan Police Department, as I would understand it, there was one charge that could be considered criminal

in nature which particular charge at the time of my first meeting was reported to me and included in that report as having been disproven.

Chairman JACKSON. What?

Mr. DURKIN. As having been already disproven. Do I make myself clear so far?

Chairman JACKSON. No. What charge had been disproven?

Mr. DURKIN. There was one of the so-called five charges, five statements, allegations, one of which had to do with a person by the name of Smitty. Are you familiar with that phase of it?

Chairman JACKSON. Go ahead.

Mr. DURKIN. If that charge was substantiated, that charge of course was criminally in nature. It was reported to me that first meeting that inspection had already disproven any association between Promuto and this particular person, Smitty. So that left outstanding, as far as that letter is concerned, four episodes, the basis of which at very best could be manual violations.

Nothing criminal in nature, to wit: Going to an airport or being known to five or six people, something about a meeting at a car in a parking lot, an association back in 1968 with someone who, thereafter, was convicted of a gambling charge or an organized crime charge, the totality of which prima facie established that there may be an association with people he shouldn't be associating with.

I don't know what crime that is. I never knew that to be a crime.

Chairman JACKSON. No one from this committee has said that is a crime but the association issue is an issue in the integrity area, is it not?

Mr. DURKIN. Sure.

Chairman JACKSON. Of a high official having access to highly sensitive information.

Mr. DURKIN. Right.

Chairman JACKSON. Associating with people with questionable background, some with criminal backgrounds. That is the problem that we are looking into and an attempt to cover that up, that investigation.

Mr. DURKIN. Let's take the first one.

Chairman JACKSON. And of course if there is a coverup, as you know, obstruction of justice is a Federal offense.

Mr. DURKIN. May I continue on that, please?

Chairman JACKSON. Yes.

Mr. DURKIN. So at the time I met with Bartels after that so-called; not so-called, the first meeting with Mr. Lund and Richardson, if you have a copy of that MPD correspondence there, you will see each of these various topics as outlined in that particular letter and the most grievous of all of them, if there was any substance to it whatsoever that had to do with this person Smitty, that was the person that had criminal nature addressed to it.

All of the others, as set forth therein, either indicated a fact circumstance or a fact circumstance that may be violative of a manual.

Mr. FELDMAN. Mr. Chairman, can I just interject one thing here? We have received an affidavit from Mr. so-called Smitty, Augustus J. Smith, and in his affidavit he says that he was first interviewed by the two DEA agents concerning this matter on February 27, 1975, which was 5 months after the meeting we are talking about in September.

So how could it have been dropped, disposed of if he wasn't interviewed by DEA people until that time?

Mr. DURKIN. Would you also look to that—to Mr. Brosan's report which had a predate, the date of my meeting of September 18, and in that particular report, and I will tell you unequivocally that Mr. Lund and Mr. Richardson advised me at that meeting that they, in turn, were advised by Mr. Brosan. It is quite possible that it is contained within that memorandum exactly what I just got finished telling you.

The interview that you are talking about was after Mr. Philip Smith took over in charge of inspection and had everything reinterview—redocumented, and reinterview. That is the interview that you are talking about.

Mr. FELDMAN. In Mr. Brosan's report, aren't we just talking about a file copy with Mr. Smith? What kind of investigation was made on this Smith case?

Mr. DURKIN. You will have to ask Mr. Brosan that, Mr. Feldman. All I am giving you is the conclusion reached by Mr. Brosan communicated to these other gentlemen and then to me. I didn't review information other than that particular allegation which was disproven.

Mr. FELDMAN. How can you accept Mr. Brosan's report on one part of the allegation and not on the other part of the association?

Mr. FELDMAN. The other one?

Mr. DURKIN. Report as to what?

Mr. FELDMAN. With known criminals, organized crime people.

Mr. DURKIN. That wasn't Mr. Brosan; that was a fact.

Mr. FELDMAN. But he wrote a report on it.

Chairman JACKSON. The committee will stand in recess for 10 minutes. We have a live quorum.

[Brief recess.]

[A brief recess was taken with the following member present: Senator Jackson.]

[Member present after the taking of a brief recess: Senator Percy.]

Senator PERCY [presiding]. Mr. Durkin, I am sorry that our governor's testimony before the Joint Economic Committee did not permit my being here when we started off. But I would be most interested in knowing, in your own words, what your motivation is in associating yourself in a voluntary capacity in this way? Are you a man of independent financial means that you can contribute your time this way?

I am not in any way impugning your motives because we have had dollar-a-year men in our government for many, many years. I might say I took a salary cut to come down here. There are all kinds of motivations that cause us to want to turn to Government service. But I would like to hear from you as to what motivated you, how long you have been associated in drug abuse prevention programs, what was the first Federal agency that you were associated with and how has it been that you have continued these services with DEA.

Mr. DURKIN. Senator, at the time that I—

Senator PERCY. Could you speak right into the microphone?

Mr. DURKIN. Back at the time that I made reference to, and I had the original conversation with Mr. Ingersoll, as best I recall in 1972,

I think it was a very simple thing, very frankly, without going into embellishments.

My father was a police officer and I was raised on a cop's salary. I went through law school on the GI bill. I never gave much public service. When the opportunity presented itself, I very frankly didn't think that I had an arbitrary right to say no. I am not too sure if the circumstance presented itself again that I wouldn't do the same thing even though things happen which I certainly don't look forward to.

I did what it was that they asked. I did the very best that I could. If it didn't satisfy certain people, I am sorry. I am not even so sure I am sorry. But I did the very best I could. I didn't ask for the position and I didn't avoid it.

As far as the service is concerned, God gave me a mind and I could make a living. If there was any money attached to this, I wouldn't have taken it in the first place.

Senator PERCY. Why not?

Mr. DURKIN. Because it wouldn't then be a service, it would just be another means of income. I wouldn't thrust this upon my own particular practice by doing that.

Senator PERCY. Have you already testified as to what your source of income is?

Mr. DURKIN. I practice law.

Senator PERCY. You practice law?

Mr. DURKIN. Yes.

Senator PERCY. Do you practice by yourself? Do you have a firm?

Mr. DURKIN. I have a firm. I have four attorneys associated with me who are salaried.

Senator PERCY. What type of clients do you have?

Mr. DURKIN. Senator, depending upon what particular time in my practice you make reference to, it varied.

Senator PERCY. Corporate practice?

Mr. DURKIN. Presently?

Senator PERCY. Mainly corporate?

Mr. DURKIN. Commercial, basically.

Senator PERCY. About how much time have you devoted would you say in the last year to voluntary services with the drug agency?

Mr. DURKIN. Up to around July of 1974, I would have to say that—I don't want to say minimal, but it certainly wasn't anything tremendous. Sometime in July 1974, I was in the Administrator's office discussing with him in depth a matter that concerned itself generally with a charge being considered as being levied against an employee and whether or not such a charge would be sustainable if even in fact entertained by the Civil Service Commission.

At that particular time, the Administrator was advised that either this committee or a mediator or a combination of both had become interested in the activities of two former agents of BNDD which generally has been referred to as the sweep of Mr. Vesco's home by these two particular agents.

The Administrator attempted to find where the Chief Inspector was and he was told that the Chief Inspector was in New York. The Administrator and the Chief Inspector then spoke on the phone and from the parts that I could hear, it was a rather acrimonious type of

conversation, the net effect of which was that the Administrator was announcing the potential seriousness of the pending investigation and the Chief Inspector was advising that he, the Chief Inspector, he scheduled an inspection of the Paris office and was leaving that particular night.

Mr. Bartels ordered Mr. Brosan back to Washington that day. I met Mr. Brosan and in the course of that conversation, Mr. Brosan advised me that this was a terrible thing occurring, that he had scheduled this inspection in Paris and that his family or his wife was going with him, and could I give him a hand—I almost paraphrased that in its entirety—and I did. I told him that I would advise the Administrator that I may have a few expert days that I would devote to Mr. Brosan, and his family or whoever it was he was going with, was permitted to leave.

Mr. Brosan thanked me and Mr. Brosan had a conversation with the Administrator and Mr. Brosan left that particular night for Europe. For the next 2 weeks, 2½ weeks, Mr. Richardson, Mr. Lund, and myself—

Senator PERCY. May I interrupt you? Have you previously testified that you never spoke to Mr. Brosan during the investigation?

Mr. DURKIN. Which investigation, sir?

Senator PERCY. The Promuto investigation.

Mr. DURKIN. I did, indeed, yes.

Senator PERCY. You testified that you had never spoken to him during that period?

Mr. DURKIN. About the Promuto investigation?

Senator PERCY. Yes.

Mr. DURKIN. Yes, and I say it that way so there can be no misunderstanding. I may have passed a salutation—

Senator PERCY. In other words, you didn't testify that you had never spoken to him during that period of time, but you never discussed the Promuto investigation with him?

Mr. DURKIN. That is correct; but at the time I am talking about now is long before the Promuto investigation.

Senator PERCY. What I want to be sure that we focused on, the question I asked you—

Mr. DURKIN. Which one?

Senator PERCY. About your own time that you contribute, what portion of your time do you contribute and have you contributed in the past 12 months in a voluntary capacity to this activity, approximately?

Mr. DURKIN. The last 12 months, I would say that from the first week in July of 1974, until sometime in August 1974, I contributed substantial time. I have no diary. I have no logs.

Senator PERCY. You know whether it is 10 percent or 50 percent or 80 percent. Give me an approximation. You have a better idea than I have.

Mr. DURKIN. I would say during that particular time, 30, 35 hours, over a 2-week period, reducing then to maybe 10 hours over the next 2-week period.

Senator PERCY. Have any of your corporate clients or any of your clients or any officers thereof ever performed any services for either BNDD or DEA personnel?

Mr. DURKIN. For instance, giving a mortgage on a house or something like that?

Senator PERCY. No; just have any of the clients that you have ever performed services for been associated with Federal drug abuse agencies in any way?

Mr. DURKIN. Senator, the only thing I can possibly imagine that would be embraced in that question is if I represented a bank and an agent newly assigned to the area needs a mortgage, the mortgage is obtained from that particular bank. Aside from that, I can't think of anything else.

Senator PERCY. What I am looking for is whether there is any possible conflict of interest?

Mr. DURKIN. Positively not.

Senator PERCY. That is a statement we put to every person, as you know, coming up in confirmation hearings or whatever. I want you to have an opportunity to clarify the record, if there are any possibilities of any conflict of interest. For instance, have you or any members of your law firm ever had clients with any kind of drug problems?

Mr. DURKIN. The only thing that makes me hesitate, we may have gotten a call at the office where a family we represented had a son that had a little bit of a drug problem or something like that. But aside from that, positively not. I don't even suggest that occurred. It is always possible.

Senator PERCY. In other words, have you or any member of your law firm ever intervened on behalf of any client that had any drug problem of any kind and have you intervened for them with Federal drug agencies?

Mr. DURKIN. Positively not.

Senator PERCY. Positively not?

Mr. DURKIN. Positively not.

Senator PERCY. At this stage, I would like to have our majority counsel read a section of testimony that was given yesterday, for clarification by you.

Mr. FELDMAN. I thank you, Mr. Chairman.

There was a question as to whether or not you had the so-called Brosan report on September 18 when you met with Mr. Richardson at the Statler-Hilton Hotel. Do you recall that, Mr. Durkin, this morning?

Mr. DURKIN. Yes.

Mr. FELDMAN. This is what Mr. Richardson said. I want to be fair and state it to you because you did ask us to retrieve it and be precise. Senator Nunn said as follows:

Senator NUNN. Did Mr. Durkin, Thomas Durkin, have any documents with him during the meeting at the Statler-Hilton?

Mr. RICHARDSON. While I did not see them, sir, he said he did; yes.

Senator NUNN. He said he had documents?

Mr. RICHARDSON. Yes, sir.

Senator NUNN. What documents?

Mr. RICHARDSON. He told me he had a memorandum that had been left with Mr. Bartels earlier that day.

Senator NUNN. Where did he get the document? Did he tell you that?

Mr. RICHARDSON. He didn't tell me where he got it.

Senator NUNN. Did he mention anything about a meeting with Mr. Bartels prior to your meeting?

Mr. RICHARDSON. He told me he had met with Mr. Bartels, but he didn't tell me Mr. Bartels had given him documents. I presume from that meeting, he had gotten documents from Mr. Bartels.

Senator NUNN. Do you make that presumption because Mr. Bartels had the copy in his possession?

Mr. RICHARDSON. Yes.

Senator NUNN. When did Mr. Durkin tell you he met with Mr. Bartels, or did he?

Mr. RICHARDSON. I don't know whether he told me he had met with Mr. Bartels the previous night or the next morning. He told me he had met with him, sir. I have a thought in my mind that possibly he met with him the previous night.

Senator NUNN. So he didn't tell you he got the document from Mr. Bartels. You just presume that because he met with him and Mr. Bartels had been the one that had the copy?

Mr. RICHARDSON. Yes.

Senator NUNN. Did he tell you whether he had a copy or whether he had the original? Do you remember?

Mr. RICHARDSON. He had to have a copy because Mr. Brosan had the original. I know he didn't tell me he met with Mr. Brosan.

Senator NUNN. He didn't mention a meeting with Mr. Brosan?

Mr. RICHARDSON. No.

Senator NUNN. You did not see the document?

Mr. RICHARDSON. No.

Senator NUNN. Did he refer to the information that was in it or was it just apparent he was very familiar with it?

Mr. RICHARDSON. He told me he had seen it and read it.

I just wanted to say—

Mr. DURKIN. That is what you said he said.

Mr. FELDMAN. In other words, Mr. Durkin, your statement is—let me frame it this way—you did not have that document at the meeting?

Mr. DURKIN. I did not have the document so as to bring it to the meeting. I did have the document at the meeting, yes. There was a document that was brought in a file which file was either brought by Mr. Richardson or Mr. Lund in a file.

Mr. FELDMAN. You didn't bring the document to the meeting?

Mr. DURKIN. That is what I said. Positively not.

Mr. FELDMAN. The second question is, did you tell Mr. Richardson that you had the document?

Mr. DURKIN. I think I have answered that two or three times. I will again. I did not say. What I did say is I had gone over and did, in fact, review the contents of both of those documents extensively with Mr. Bartels. Absolutely, yes.

Mr. FELDMAN. So you did see the document with Mr. Bartels before you came to the meeting?

Mr. DURKIN. I just got finished telling you, I don't know, I can't recall that clearly, whether Mr. Bartels had the documents with him at that meeting. What I am saying is that the contents of those documents was reviewed, positively was reviewed by Mr. Bartels and myself at that luncheon meeting which was on the same day and which was a matter of 4 or 5 hours prior to the meeting with Mr.——

Mr. FELDMAN. Did you read the document at the meeting? If you don't recall, just say you don't recall. I am just trying——

Mr. DURKIN. That is what I said, I don't recall. My best recollection is, however, it was not there. But I am not swearing to that.

[At this point, Senator Jackson entered the hearing room.]

Mr. FELDMAN. You say, Mr. Bartels gave you all the information in the document?

Mr. DURKIN. Absolutely. Sure.

Mr. FELDMAN. You did discuss it completely with Mr. Richardson the next day or that day?

Mr. DURKIN. Yes, because we had the document there again. I shouldn't say again. The document was there with Richardson and Lund.

Mr. FELDMAN. Thank you, Mr. Chairman.

Chairman JACKSON. Senator Percy?

Senator PERCY. Mr. Durkin, will you explain the nature of the legal services that you may have rendered to officials of BNDD or DEA regarding house closings and arranging mortgages? Do you have relationships with banks where these mortgages were obtained?

Mr. DURKIN. Senator, I guess the best way to answer that is when an agent would be transferred into the particular area where I lived who had no previous service, who knew no one, I made arrangements for him to go to a bank to make an application. If he qualified for the mortgage, the mortgage was obtained. There were additional circumstances where agents were charged because of their official functions criminally and I represented them. Aside from that, Senator, I just don't remember. There very well could have been. If somebody walked in the office, for instance, and asked for a will to be drawn, 10- or 15-minute job, it would have been done.

Senator PERCY. Could you name any high-ranking officials for whom you performed such services?

Mr. DURKIN. Mr. Jensen, Mr. Durkin, Mr. Casey, Mr. Nikeloff, Mr. Bradley, Mr. DeVine—do you want me to go down them all, Senator? Is that enough? I really can't remember them all.

Senator PERCY. Were these services performed gratuitously or were they charged fees for them?

Mr. DURKIN. There was no charge.

Senator PERCY. Gratuitously?

Mr. DURKIN. Yes, because they wouldn't have had to pay. It would have been the Government that would have paid. That is a service, for instance, they would incur that expense, that would be a reimbursable expense. In any event, they wouldn't pay.

Senator PERCY. When you are in the private of law, though, and you perform legal services for someone, is it your custom to perform this without charge? As I understand it, you did not charge these officials for those legal services.

Mr. DURKIN. I didn't get the first part of your question.

Senator PERCY. Pardon?

Mr. DURKIN. I didn't get the first part of your question.

Senator PERCY. My question is, "Is it customary for you to not charge for legal services for people with whom you do business this way or do you perform services for friends and not charge them for it?"

Mr. DURKIN. It happens quite often, Senator.

Senator PERCY. I wonder how these Federal drug officials happen to be in that category?

Mr. DURKIN. What is it you want me to say? When they are in that category, I didn't get that part before.

Senator PERCY. Let me try to make it clear. You are in the business of practicing law. You are volunteering your services to drug abuse agencies as a volunteer, patriotic duty.

Mr. DURKIN. Yes, sir.

Senator PERCY. During the course of that activity in a voluntary capacity, you met officials, Federal officials of the drug abuse agency. You have performed certain legal services for them. My question is did you charge them anything for that?

Mr. DURKIN. The answer was no.

Senator PERCY. My question then is, Why? What motivated you to perform legal services, which is your business, for drug officials when the services are perfectly valid services that you performed and are subject to fees? Is this just a way of your helping your fellow man?

Mr. DURKIN. It is not helping the fellow man, Senator. As I pointed out to you before, the particular agent wouldn't be the one that would be paying me the money. The one that would be paying me the money would be the U.S. Government and the U.S. Government wasn't going to pay me anything for any of the services that I rendered here under any circumstances. It was either going to be a service or it wasn't; and it was a service.

Senator PERCY. Were the mortgages from banks whom you acted as an attorney?

Mr. DURKIN. In certain cases, yes. Not all cases, in some cases. Yes.

Senator PERCY. Have you ever given DEA or BNDD officials any investment counseling, advised on joint investment deals, and so forth?

Mr. DURKIN. I think about the only one I can remember actually was Director Ingersoll, and fortunately, he didn't follow it.

Senator PERCY. But you did give investment counseling to him?

Mr. DURKIN. I answered that question, Senator. I have a vague recollection. He called me one day about one particular circumstance that he was going to—he was thinking of entertaining—in fairness to your question, I am not even sure whether or not he was still at BNDD at this time or subsequent. I don't know. My recollection is it was after he left office.

Senator PERCY. Was there anyone else?

Mr. DURKIN. The other one was the agent that was paralyzed. I don't know whether you want to go into that or not.

Senator PERCY. I would like to know the name of anyone else for whom you performed services gratuitously.

Mr. DURKIN. The name, Senator, is Agent Thomas DeVine. As you undoubtedly know, he was the one who was shot and paralyzed for life.

Senator PERCY. If you consulted your records, would you be able to be more exacting in your answers to this question?

Mr. DURKIN. I keep no records except this particular case that I am referring to now and there are articulate records on that.

Senator PERCY. There are established fees for providing legal services and providing investment counseling. You have provided both to certain individuals. Would you give an estimate as to what the value of those services would have been to the individual who received the highest value, let's say?

Mr. DURKIN. In the latter category, I would think that the—as far as the so-called, to use your term—investment counseling, there certainly wouldn't have been any fee involved there. As far as the other

services, and so forth, are concerned, it would be \$350, \$400 for a closing.

Senator PERCY. You performed a \$400 legal service in a closing gratuitously?

Mr. DURKIN. Sure. In fact, the only way that this is coming up is your people—never made mention of this to anybody.

Senator PERCY. You are a lawyer?

Mr. DURKIN. Yes, sir.

Senator PERCY. Are you familiar with the Federal statute prohibiting gifts to Federal employees in excess of \$50?

Mr. DURKIN. It is not a gift to the Federal employee, Senator. I tried to make that clear.

Senator PERCY. It is a service, isn't it?

Mr. DURKIN. It is a what? It is a service that the U.S. Government pays for, not the individual. In other words, if I charged \$450 fee to that agent, that agent sends a bill to the United States Government and the U.S. Government pays me directly; not the agent.

Senator PERCY. Would you expand on that as to how the U.S. Government gets involved in these closings?

Mr. DURKIN. Yes, sir. When Agent A moves from the State of Washington to the State of New Jersey, he is given a number of dollars for moving, closing, real estate brokers commissions, et al. They came into New Jersey. I handled the closing for them. I didn't charge them. If I had charged them—

Senator PERCY. Hasn't he already received an allowance for that?

Mr. DURKIN. No, sir. He can only put that as part of his request for reimbursement if I were to charge him. In other words, if I billed him, he would include that in the bill that would be submitted to the Government.

Senator PERCY. Why were you so adverse to accepting money from the Federal Government for services rendered? I would question whether these are allowable expenses that could be passed on to the Federal Government, but even let's assume they could be, if it is a legitimate expense and reimburseable, why would you be adverse to accepting that fee when you performed a \$400 legal service? Are you in an independent position where you can be so philanthropic?

Mr. DURKIN. Senator, I don't know how to answer that question, frankly. I thought, I tried to explain before, when you asked me what my motivation was of getting involved in this, I told you that I was educated under a GI bill.

If there was a chance for me to do a service, I did it, Senator; it is that simple. There was no other motivation. There was nothing surreptitious. There wasn't anything other than that simple fact.

Senator PERCY. Did you ever arrange lunches for DEA or BNDD officials at the Wall Street Club?

Mr. DURKIN. Yes, sir.

Senator PERCY. The Bankers Club?

Mr. DURKIN. And others.

Senator PERCY. What other clubs?

Mr. DURKIN. I think Pan Am was involved, the Pan Am Club and possibly a fourth one. I can't think of it offhand.

Senator PERCY. Were there foreign officials present at those lunches?

Mr. DURKIN. All of the times, that I recall.

Senator PERCY. They were foreign officials from what countries?

Mr. DURKIN. Numerous countries, Senator. I have a recollection.

Senator PERCY. Do you remember if you were with foreign officials?

Mr. DURKIN. Sometimes.

Senator PERCY. You can certainly remember the countries that some of them represented?

Mr. DURKIN. I can remember Turkey, Italy, Germany, numerous South American countries.

Senator PERCY. Was your interest in the drug-related problems of those countries? Turkey obviously being a big grower and Latin American countries being transit points for a large percentage of the drugs that come into this country. Who paid the bills at these lunches?

Mr. DURKIN. DEA.

Senator PERCY. Pardon?

Mr. DURKIN. DEA. My whole function was very simple. If there was an indication—

Senator PERCY. DEA paid all of the bills?

Mr. DURKIN. Absolutely. My only function was to make the arrangement for the accommodations to be utilized by these foreign dignitaries.

Senator PERCY. You were present at these lunches?

Mr. DURKIN. Some of them.

Senator PERCY. Were there any other nongovernmental personnel present?

Mr. DURKIN. If there were, I don't remember any.

Senator PERCY. Do you remember whether Joseph Kahn, of Sea Train, was ever present?

Mr. DURKIN. If he was, Senator, it was a circumstance where he may have dropped by to say hello but certainly was not—I have no recollection of ever being part of any luncheon, if that is what you are asking.

Senator PERCY. You do know Sea Train is involved in international trade? Is that not so?

Mr. DURKIN. Very definitely.

Senator PERCY. Can you tell the subcommittee about some of the conversations that occurred when he would drop by; the nature of those conversations?

Mr. DURKIN. How are you? Are you enjoying New York? Have you looked at the view out of a certain window? That was about it.

Senator PERCY. DEA officials were introducing the head of Sea Train, which is involved in international commerce, to foreign officials. Is this, the luncheons or drop-bys or get-togethers, a way of having Sea Train become more involved, better acquainted with these foreign officials?

Mr. DURKIN. I think the answer not only—I think—the answer to your question is no, and I think the more substantial support of it would be to inquire whether or not at any time subsequent to this one or possible two occasions when this gentleman dropped by, was anything further done to perfect that particular meeting.

The answer is unequivocally no, because most of the so-called dignitaries that you are talking about, Sea Train does no business with them whatsoever.

Senator PERCY. Did Mr. Kahn ever contact these officials on any of his foreign trips?

Mr. DURKIN. Not to my knowledge. Positively not.

Senator PERCY. One last question, Mr. Chairman, just for purposes of clarifying our record. What legal or investment advice did you perform for the following BNDD or DEA officials? William Durkin?

Mr. DURKIN. As I indicated before, sir—

Senator PERCY. Pardon? Could you speak up?

Mr. DURKIN. The house closing.

Senator PERCY. Could you speak up and just repeat what services you performed in summary for William Durkin?

Mr. DURKIN. It was a house closing, as I best recall.

Senator PERCY. Estimate the value of those services. What would you say they would be?

Mr. DURKIN. If I am not mistaken, at the time you are talking about, it was when he sold the house, \$150, \$100; something like that.

Senator PERCY. Would you say \$400 or \$500?

Mr. DURKIN. Not at the time he sold, as you understand. The amount of work is entirely different.

Senator PERCY. What legal or investment advice did you perform for Daniel Casey?

Mr. DURKIN. Same thing, sir.

Senator PERCY. Pardon?

Mr. DURKIN. House closing.

Senator PERCY. Ben Theisen?

Mr. DURKIN. Same thing. House closing. I never even thought of him before.

Senator PERCY. But it was a house closing?

Mr. DURKIN. Yes.

Senator PERCY. No investment counseling?

Mr. DURKIN. No.

Senator PERCY. James Hunt?

Mr. DURKIN. Same thing.

Senator PERCY. Your answer on James Hunt was what?

Mr. DURKIN. Same thing, sir, house closing.

Senator PERCY. George Belk?

Mr. DURKIN. Who.

Senator PERCY. George Belk, B-e-l-k? Does the name mean anything to you?

Mr. DURKIN. I know George Belk well.

Senator PERCY. Did you perform any services for him, legal services or investment counseling?

Mr. DURKIN. No, sir.

Senator PERCY. John Bartels?

Mr. DURKIN. There were some questions that he asked me at one time concerning certain investments and certain potential and actual litigation that he had on certain stock, but that was it.

Senator PERCY. That was on one occasion?

Mr. DURKIN. No, it wasn't on one occasion. It was on one subject that was discussed on other occasions, yes.

Senator PERCY. On several occasions?

Mr. DURKIN. Yes, sir.

Senator PERCY. The chairman would be interested in knowing why you would be advising Mr. Bartels? He is a lawyer himself.

Mr. DURKIN. Well, sir, the simplicity of it is, I think, Mr. Bartels' experience is solely in the criminal field and this had to do with civil litigation which I had.

Senator PERCY. What services did you perform for Vincent Promuto?

Mr. DURKIN. None.

Senator PERCY. None? Thomas Maher?

Mr. DURKIN. Wait a minute. Promuto?

Senator PERCY. Your answer is none?

Mr. DURKIN. None.

Senator PERCY. Jerry Jensen?

Mr. DURKIN. Who is the next to the last one?

Senator PERCY. Jerry Jensen?

Mr. DURKIN. No. The next to the last one.

Senator PERCY. Thomas Maher.

Mr. DURKIN. I don't think so, Senator, but I just can't recall. I don't think I did.

Senator PERCY. Would you want to check? You say you keep no records. Do you keep any kind of a notation that could refresh your memory as to what services, if any, you might have performed for him?

Mr. DURKIN. Senator, my answer that you made reference to had to do with your question on "investment counseling." I have no records. As far as these other things, I have extensive records. I have a complete file on anything that was ever represented in our office.

Senator PERCY. What kind of litigation would John Bartels have been engaged in?

Mr. DURKIN. It had to do with certain investments that he made.

Senator PERCY. Did those investments that he made have anything to do with you at all? Any counsel or advice that you had given to him?

Was it investments he had made previously made and he was involved in litigation involving those investments?

Mr. DURKIN. Right.

Senator PERCY. How extensively were the services to him in connection with that litigation?

Mr. DURKIN. I will try to give it to you in terms of hours, Senator: maybe 2½, three hours, something like that; maybe 4 hours over a total period of time.

Senator PERCY. My last question pertains to John Ingersoll. Did you perform any services for John Ingersoll of any kind?

Mr. DURKIN. Just the one I referred to previously.

Senator PERCY. All of the services that you performed for all of the individuals that I named, as I understand it, were all gratuitous; is that correct?

Mr. DURKIN. Yes, sir.

Senator PERCY. Did you perform gratuitous services for any other type of officials or any other individuals other than drug officials?

Mr. DURKIN. Senator, after I was first admitted, my father was a retired cop, whatever year it was, 27 years ago, and anyone retired from the city of Newark that needed any legal service was in my

office free. It was that simple. Everyone who would be talking to my father with any type of problem, they would be in the office.

Senator PERCY. Thank you, Mr. Chairman.

Chairman JACKSON. Just to complete the questions that Senator Percy asked and in fairness to you so the record will be adequate, you have testified that you performed these services, legal services, gratuitously to various individuals.

[At this point Senator Percy withdrew from the hearing room.]

Chairman JACKSON. Did you at any time ask those individuals to do anything for you or for any of your clients?

Mr. DURKIN. I don't get the question. Do anything for me?

Chairman JACKSON. Yes. You performed various legal services without charge. Did you at any time ask any of those individuals to do anything for you or any of your clients?

Mr. DURKIN. I will try to answer in two phases. As far as the clients—positively, unequivocally no. Frankly, as far as myself, I can't imagine anything that I ever asked them to do for me.

Chairman JACKSON. I just want to make the record—

Mr. DURKIN. You are not talking about asking them to pick me up in a car?

Chairman JACKSON. I am not talking about minor matters; I am talking about the client having a problem, a substantial problem that might relate to the duties and responsibilities of the individuals you helped. I am not talking about any minor matters.

Mr. DURKIN. No, but to take your admonition, to make sure the record is complete—

Chairman JACKSON. People are going to ask why. A long list of individuals—

Mr. DURKIN. On that particular point—

Chairman JACKSON. I am trying to be fair to you.

Mr. DURKIN. I would like to adopt that same aspiration and, frankly, anybody who wants to second-guess my motives, and so forth, that is a luxury they can indulge in, and I don't frankly care. I did it for a specific purpose. That purpose was well intended. If somebody thinks there was any—and so forth, that doesn't concern me nor bother me in the least.

To answer the last question that you asked of me, the only possible thing that I can remember was asking an agent to give me the name of a doctor in New Orleans who could assist the son of a close friend of mine. That agent had been assigned to New Orleans years before, period.

Chairman JACKSON. That is totally understandable. You understand why I am asking the question?

Mr. DURKIN. I hope so.

Chairman JACKSON. I am trying to be fair. I don't want to leave the record—

Mr. DURKIN. Senator, when I read some of these things in the newspaper, this is an experience that I have never been through. I guess the aspiration in fairness, I hope I have a client left when this is all over.

Chairman JACKSON. What is that?

Mr. DURKIN. I said I hope I have a client when this is all over.

Chairman JACKSON. So to complete the questions that were asked by Senator Percy regarding the various DEA officers, officials that you had helped on various legal matters, there was no quid pro quo of any kind, nature or description. Am I correct in that?

Mr. DURKIN. You are absolutely correct.

Chairman JACKSON. Mr. Sloan wanted to clarify a question.

Mr. SLOAN. Mr. Chairman, I just have one question to complete the record. With regard to the DEA employees that you helped with house closings, did you also help all of them get mortgages?

Mr. DURKIN. They asked me that.

Mr. SLOAN. I didn't hear you indicate that you had helped all of them get mortgages.

Mr. DURKIN. Yes; sure. We went all through that. Even they asked me whether or not the mortgage was obtained, whether or not I represented any banks or mortgages, and I said yes; sure.

Some of them I represented; some of them I didn't. I guess somebody should ask me whether or not I got a commission for placing a mortgage or something like that. I didn't make a dime, not a thing.

Mr. SLOAN. Thank you, Mr. Chairman.

Chairman JACKSON. What was your role, if any, in selecting or confirming the Deputy Administrator of DEA since July 1, 1973?

Mr. DURKIN. I guess it was in two phases, Senator. Mr. Bartels—and do you mind if I object at this time, because I don't think it is in the record here. I would get the impression that John Bartels and I are longstanding, close personal friends and, of course, as you well know that that is an absolute mistake. In fact, I met John Bartels twice in my life prior to the time that the President nominated him for this job. I can't even remember the second time.

Mr. SLOAN. When was the first time?

Mr. DURKIN. Sometime maybe 6 or 7 or 8 years ago. It was a chance happening. I was having dinner and the person with whom I was going to have dinner called and said there was a confusion as to dates, did I have any objection if a third person came along. I didn't.

That was just Bartels. I hadn't seen him then for a period of 4 or 5 or 6 years until the second time. Then when he was appointed to this job, I hadn't seen him up until that particular time. He asked me at a time after he was nominated if I would talk to a person who was the superintendent of the State police who had been rumored was intending to retire.

Chairman JACKSON. Superintendent of the State police in?

Mr. DURKIN. New Jersey.

Chairman JACKSON. What was his name?

Mr. DURKIN. Kelly.

Chairman JACKSON. Kelly.

Mr. DURKIN. David.

Chairman JACKSON. David Kelly?

Mr. DURKIN. I did, and he suggested I thank Mr. Bartels for considering him for that particular job, but that the circumstances were such that he could not entertain accepting that?

Chairman JACKSON. I am trying to get that straight. Mr. Kelly was being considered. He was retiring as head of the State Police in New Jersey. Mr. Kelly was being considered possibly as a Deputy to Mr. Bartels?

Mr. DURKIN. That is correct.

Chairman JACKSON. Your role in that was what?

Mr. DURKIN. To find out if he was interested in the job.

Chairman JACKSON. To contact him and see if he would be interested.

Mr. DURKIN. Fine.

Chairman JACKSON. Was Mr. Bartels from New Jersey?

Mr. DURKIN. He is not from New Jersey.

Chairman JACKSON. New York. He wanted you to find out whether the superintendent would be interested?

Mr. DURKIN. That is correct, sir; yes.

Chairman JACKSON. And you did that?

Mr. DURKIN. I did indeed.

Chairman JACKSON. And the colonel or the superintendent said he was not?

Mr. DURKIN. He said thank Mr. Bartels for considering me, but my circumstances are such that I cannot entertain it.

Senator, there is one other area, I think if you don't have any objection to, I think the record should be clear on one other point, too.

I think that it may be fair to believe from what I heard that the so-called activity of Lund, Richardson, and myself came into being at the time of this Promuto and, as you well know from your record, that of course is not so; that Richardson, Lund, and myself had been working closely for a long period of time prior to that on these various particular things.

The other area that you haven't gone into yet was this thing I read in the newspaper about my doing something concerning this committee or this Congressional relationship or somebody testified that I tried to do something about this committee. I wouldn't certainly want that left hanging.

Mr. FELDMAN. We will get to that on the Vesco matter, Mr. Chairman. We left on the Promuto matter and you had a meeting with Mr. Lund and Mr. Richardson.

Mr. DURKIN. Are you finished with the Promuto matter?

Mr. FELDMAN. No. We left off where you had a meeting on September 18. If we could go through and complete the record on that, and then we could cover your advice on the Vesco matter.

I think we could address ourselves to all those major points in the quickest possible time.

Chairman JACKSON. Let's go back to the meeting at the Statler.

Mr. DURKIN. With whom?

Chairman JACKSON. This was with Mr. Lund, wasn't it, and Mr. Richardson?

Mr. DURKIN. That is the second one. I had Bartels meeting earlier the same day.

Chairman JACKSON. This is at 4:30. You had lunch with Mr. Bartels?

Mr. DURKIN. Right.

Chairman JACKSON. I asked you, I believe, what advice did you give him?

Mr. DURKIN. I told you my advice was at that particular time after we ascribed what we all considered to be the priorities involved, we all agreed that the highest of the priority was the maintenance of the integrity of the agent, that a recommendation be made, if there was

any basis at all to the so-called investigation that Mr. Promuto be transferred or reassigned, I should say, whether a physical transfer were or not, my recommendation was New York.

Chairman JACKSON. Your recommendation was he be transferred to New York?

Mr. DURKIN. Yes, but that recommendation came about after John Lund had told me that he, John Lund, had had conversations with Mr. Promuto previously whereby Mr. Promuto, in fact, wanted to transfer to New York to be more proximate to his family.

Chairman JACKSON. Did you write written reports concerning your meetings with Promuto?

Mr. DURKIN. That was some time later now. You see, the continuity—

Chairman JACKSON. They were not contemporaneous?

Mr. DURKIN. To what?

Chairman JACKSON. To the meetings.

Mr. DURKIN. Which meetings?

Chairman JACKSON. And discussions. Did you write written reports concerning your meeting with Promuto?

Mr. DURKIN. My answer to that is yes, but you see, after the time you are talking about, there were two meetings on this particular day, first with Bartels, then with Lund and Richardson.

Chairman JACKSON. I understand that.

Mr. DURKIN. The following day I had a discussion with Mr. Bartels concerning what it was that was discussed with the two of us, meaning Mr. Lund and Mr. Richardson the previous day. That which was discussed with Mr. Bartels on that subsequent day, which would be the 17, 18, the 19th had to do with Mr. Bartels physically alerting the U.S. Attorney in Washington, concerning this matter and for Mr. Bartels to give serious consideration to a reassignment of Mr. Promuto, pertaining to the disposition.

Chairman JACKSON. What did you do following your meeting with Mr. Richardson and Mr. Lund?

Mr. DURKIN. What I just got finished saying. You mean where did I physically go?

Chairman JACKSON. Yes. Following your meeting with Mr. Richardson and Mr. Lund.

Mr. DURKIN. I can't recall specifically where I went, but I do know later that night I met Colonel Kelly, Mr. Bartels and Bruce Jensen.

Mr. FELDMAN. Then did you go back to Newark?

Mr. DURKIN. No, I didn't go back to Newark until the following day because the reason I tried to get hold of Mr. Bartels that evening was to discuss with him that evening what it was that was discussed with Mr. Richardson and Mr. Lund.

There had been some convention, an IAC convention, or State Police convention, and there were too many people around for me to discuss it. So the following morning was when I had the meeting that I just referred to.

Chairman JACKSON. When was your next assignment in the Promuto matter?

Mr. DURKIN. It was some time the early part of the following week. It was either the Monday—I would suggest—

Chairman JACKSON. Approximately.

Mr. DURKIN. Tuesday or Wednesday the following week.

Chairman JACKSON. Who asked you to return to Washington to meet with Promuto?

Mr. DURKIN. Mr. Bartels.

Chairman JACKSON. Did you meet with Bartels?

Mr. DURKIN. Senator, I can't honestly tell you that. I don't know whether it was solely with conversation or whether or not in fact I had a face-to-face meeting. If I had to guess, I would say there wasn't a face-to-face meeting, but I am not sure of it.

Chairman JACKSON. Who told Mr. Promuto to meet you?

Mr. DURKIN. I don't know about telling him. I was the one that made the phone call to Mr.——

Chairman JACKSON. You called Mr. Promuto?

Mr. DURKIN. Yes, sir.

Chairman JACKSON. You called him and that is how you met him?

Mr. DURKIN. Yes.

Chairman JACKSON. What authority did you invoke in requesting that Mr. Promuto meet you?

Mr. DURKIN. What authority? I just asked him to come on over.

Chairman JACKSON. Did he know you were involved in this matter?

Mr. DURKIN. Sure.

Chairman JACKSON. He understood that when you called you spoke with some authority. Is that what you are saying?

Mr. DURKIN. Senator, you see, Promuto knew for a long time previously, for 2 or 3 months prior to this particular circumstance, Promuto knew exactly what I was doing as far as this agency was concerned.

It wouldn't be a circumstance where I would have to call up and say my name is so-and-so; I have been asked so-and-so. Promuto knew exactly what it was and what my function was.

Chairman JACKSON. Where was the meeting held?

Mr. DURKIN. It was in my hotel room.

Chairman JACKSON. Ramada Inn?

Mr. DURKIN. Right; yes.

Chairman JACKSON. About how long did the meeting last?

Mr. DURKIN. I would say on the light side of 2 hours.

Chairman JACKSON. How long?

Mr. DURKIN. Well, the light side of 2 hours, maybe an hour and a half; between an hour and 2 hours.

Chairman JACKSON. Why did you meet in a hotel room instead of the DEA?

Mr. DURKIN. This was about 9 o'clock at night.

Chairman JACKSON. Why meet after hours?

Mr. DURKIN. I had just gotten in.

Chairman JACKSON. You had just gotten in?

Mr. DURKIN. Yes.

Chairman JACKSON. Just arrived?

Mr. DURKIN. Yes. You understand when I say just; shortly within a short period of time.

Chairman JACKSON. I am not talking about that, but I am trying to look at this in an official way that you normally do these things within the regular business hours, I would assume.

Did you reveal to Mr. Promuto everything you knew about the Promuto integrity inquiry, including information you had obtained from Bartels, Richardson, and Lund?

Mr. DURKIN. I didn't tell them anything.

Chairman JACKSON. You didn't tell them anything about the information you had acquired?

Mr. DURKIN. Positively not.

Chairman JACKSON. Did you show Mr. Promuto any documents that had been given you in connection with the Promuto integrity investigation?

Mr. DURKIN. I didn't have any documents.

Chairman JACKSON. You didn't have any documents. So, therefore, you didn't show him any?

Mr. DURKIN. I had, Senator, almost what I have here, yellow sheets of paper with my key notes on them and then wrote the course of the conversation which was utilized at the time I dictated it.

Chairman JACKSON. At this time who, in DEA, knew that you were meeting with Mr. Promuto?

Mr. DURKIN. I can't answer that. I can tell you who I know knew it.

Chairman JACKSON. Whom did you inform?

Mr. DURKIN. I knew of my own knowledge that Mr. Bartels knew. I don't know who else it was, if anyone, that he in turn told that to; I don't know.

Chairman JACKSON. But Mr. Bartels knew they were meeting; you were meeting with him?

Mr. DURKIN. Absolutely; positively.

Chairman JACKSON. Did the Director bring it up first, Mr. Bartels, that you were meeting with him, or did you tell Mr. Bartels?

Mr. DURKIN. Senator, the Director was the one that made the so-called arrangement or order for it to be done.

Chairman JACKSON. To meet with Mr. Promuto?

Mr. DURKIN. Sure.

Chairman JACKSON. That night? That is what we were talking about.

Mr. DURKIN. You are talking about the meeting now?

Chairman JACKSON. At the Ramada Inn.

Mr. DURKIN. Let's assume we are talking about a Tuesday. I don't think the phone call with Mr. Bartels occurred that Tuesday. I don't know whether it did or whether it didn't. I am saying that I did have a conversation with Mr. Bartels when that did occur. Subsequent to that conversation, whether it is the same day or the following day, this meeting occurred.

Chairman JACKSON. Was Mr. Brosan, who was Chief Inspector, informed?

Mr. DURKIN. He wasn't told about it by me.

Chairman JACKSON. Did you question Mr. Promuto about his relationship with Diane De Vito?

Mr. DURKIN. No.

Chairman JACKSON. Also known as Diane Barger?

Mr. DURKIN. I didn't even—I never heard that name up to this time.

Chairman JACKSON. At that time you had never heard it?

Mr. DURKIN. Positively not. I asked him about the other woman.

Chairman JACKSON. When did you first hear the name Diane De Vito?

Mr. DURKIN. It was some time thereafter, Senator.

Chairman JACKSON. How long thereafter, to the best of your recollection?

Mr. DURKIN. I would have to say weeks, if not months.

Chairman JACKSON. Weeks or months?

Mr. DURKIN. Wait a minute. Weeks; a week or so, I would say. Let's see.

Chairman JACKSON. About a week or so?

Mr. DURKIN. Maybe even less; let me think.

Chairman JACKSON. So you did not question Mr. Promuto about Mr. Bartels' association with Diane De Vito?

Mr. DURKIN. Senator, your staff has a copy of my entire report. I gave them a complete copy of everything that I put down. It sets forth, item for item, what was gone over with Promuto, item for item. It also has the recommendations that I gave the Administrator at that time.

Mr. FELDMAN. We will put that in the record, Mr. Chairman.

Chairman JACKSON. That will be marked for identification and will be placed in the sealed file as exhibit Nos. 45 and 46.

[The documents referred to were marked "Exhibit Nos. 45 and 46" for reference and will be retained in the confidential files of the subcommittee.]

Chairman JACKSON. If you will, Mr. Durkin, identify them.

Mr. DURKIN. For the record, sir, these are the two documents.

Chairman JACKSON. Two copies?

Mr. DURKIN. They are not two copies; they are two separate documents.

Chairman JACKSON. I understand that, but they are Xerox copies?

Mr. DURKIN. Yes, sir.

Chairman JACKSON. How long after the meeting did you write those two documents? Your best recollection.

Mr. DURKIN. Three days; four days.

Chairman JACKSON. Three or four days later?

Mr. DURKIN. I dictated it, Senator, on the following Saturday. Depending upon what night this occurred, that is the interview.

Chairman JACKSON. Did you question Mr. Promuto about Mr. Bartels' associations with Diane De Vito?

Mr. DURKIN. Senator, I never mentioned Mr. Bartels. I never mentioned Miss De Vito. I never heard that name De Vito at this particular time. The allegation at that time was that Promuto was seen at an airport with a woman by the name of Cruz, Candice Cruz.

Chairman JACKSON. Candice Cruz?

Mr. DURKIN. When I asked Promuto about that particular circumstance, he told me he not only was not at the airport with her but that he didn't even know who it was that I was talking about; that he knew nobody by the name of Cruz and he asked me whether or not this was a stage name, or whether it was the right name, and so forth.

The reason that that was gone into was because DEA Inspection had reports that he, Promuto, was seen by inspectors at this airport with this woman.

Mr. FELDMAN. Mr. Chairman, could I interject one thing?
Chairman JACKSON. Yes.

Mr. FELDMAN. It later turned out that Candice Cruz was in fact Diane De Vito. There was a mistaken identity. Where did you find out that this woman at the airport was Diane De Vito?

Mr. DURKIN. That is what the Senator asked me before when I first heard the name. I think, as I told you previously, I think that I heard that name for the first time when he had the succeeding meeting with John Lund and Richardson prior to the Saturday meeting with Mr. Bartels.

Mr. FELDMAN. Prior to the Saturday meeting with Mr. Bartels?

Mr. DURKIN. Yes, that is my recollection.

Mr. FELDMAN. Saturday meeting with Mr. Bartels was the 28th of September, and the 27th of September was the night Mr. Bartels called Mr. Richardson, so you might have learned that on the 26th, in other words?

Mr. DURKIN. I think it was the 27th.

Mr. FELDMAN. In any event, it was prior to that Saturday highly emotional meeting with Mr. Bartels.

Mr. DURKIN. That is your phrase.

Mr. FELDMAN. I am sorry; that is unfair; that is Mr. Richardson's phrase.

Chairman JACKSON. Did you advise Mr. Promuto on how to answer certain questions which might be asked of him by the Office of Inspection inspectors in connection with his association with Diane De Vito?

Mr. DURKIN. The answer to your question is no, Senator, but is your question still addressable to this meeting or are we talking about at any time?

Chairman JACKSON. We are talking about this particular meeting.

Mr. DURKIN. No, because at the time this particular meeting occurred, understand, if you will please, that it was my understanding that Mr. Brosan's position was that he wasn't going to have Mr. Promuto interviewed under any circumstances because Promuto couldn't give any type of a plausible explanation exculpatory in nature.

Chairman JACKSON. What did you do following your meeting with Mr. Promuto in connection with your work on the Promuto integrity matter?

Mr. DURKIN. Would you say that again, please?

Chairman JACKSON. After the meeting that night—

Mr. DURKIN. Still the same night?

Chairman JACKSON. The same night at the Ramada Inn, what did you do after that meeting in connection with your work on this integrity matter involving Mr. Promuto?

Mr. DURKIN. I called Mr. Bartels.

Chairman JACKSON. You called Mr. Bartels that night or the next morning?

Mr. DURKIN. No; that night. After Promuto left, I was downstairs and I had a sandwich or something and I remember I called Bartels from the phone that is right outside of that restaurant.

Again, somebody thought that extremely novel, that I would use that phone rather than go up, back up to the room. I did use that

phone and I did speak to him. I told him what had occurred. I went down each of the four or five items, whatever it was, that I discussed with Promuto.

(1) He did not know this person by the name of Cruz and he was never at any airport with Cruz; (2) He was at that—what was it, O'Brien's restaurant, and did, with other patrons, go out to a parking lot and look at some clothes or something in the trunk of a car; and

(3) He did remember Mr. McCaleb, and others, being at Promuto's home back in 1968; he did not know anybody by the name of Smitty.

Can I get a chance to look at that memorandum? Can I look at that a minute?

Chairman JACKSON. Certainly; to refresh your recollection.

Is this what you are referring to now, was this what you are referring to now, was this on the telephone or was this a meeting—

Mr. DURKIN. No. It was the telephone.

Chairman JACKSON. On the telephone telling Mr. Bartels?

Mr. DURKIN. Telling him what it was that had occurred that evening. (1) Whether or not Promuto knew McCaleb, McGowan, Corsi; whether or not McCaleb was ever at Promuto's house; (2) Whether or not he, Promuto, knew a person by the name of Smitty; (3) A certain episode which supposedly occurred at Fran O'Brien's restaurant in the parking lot; (4) Whether or not Promuto knew Candice Cruz; and (5) Whether or not he, Promuto, frequents a restaurant by the name of Fran O'Brien's.

Chairman JACKSON. What you did is to go through the allegations and the list of allegations with Mr. Promuto?

Mr. DURKIN. Senator, when we talk about allegations, I never really fully understood, aside from that Smitty, that these were you are talking with Mr. Promuto at the hotel. You went through allegations. These were statements of a supposedly fact circumstances which occurred.

The one concerning Candice Cruz was not in the MPD letter if that is the list of accusations that you are talking about.

Chairman JACKSON. After your telephone conversation, did you have a meeting with Mr. Bartels—to be exact, Saturday, September 28?

Mr. DURKIN. Yes, sure. I was trying to think whether or not I had a meeting with him prior to that time, but I can't really remember one, but I positively did; sure.

Chairman JACKSON. You had a meeting in Mr. Bartels' apartment?

Mr. DURKIN. Yes, but there was a meeting the day before with Mr. Richardson and Mr. Lund, which precipitated the meeting of the Saturday at Mr. Bartels' apartment.

Chairman JACKSON. Who was present at the meeting on Saturday in Mr. Bartels' apartment besides yourself and Mr. Bartels?

Mr. DURKIN. Mr. Richardson.

Chairman JACKSON. What happened as a result of that meeting?

Mr. DURKIN. What happened? I can tell you what happened at the meeting and then I can tell you what I am led to believe occurred to substantiate what was supposed to be done.

At the meeting at Bartels' apartment, Bobby Richardson told John Bartels that he, Richardson, Lund, and myself had met the previous day and had discussed having written interrogatories submitted to Promuto which were referable to these particular circum-

stances. Richardson wanted Bartels' permission to go ahead and do that which Bartels gave him.

In total fairness to Richardson, I thought Richardson was taking a lot of blame from John Bartels at that meeting which he, Richardson, in my opinion, was not proper for Richardson to be receiving.

I understand that thereafter the questions were prepared and up until the other day when I heard testimony here to the contrary, I always thought Richardson prepared those questions. The testimony here is that he only participated in it and that Brosan, and possibly somebody else, did the physical preparation of the questions. I thought he never saw the questions.

Chairman JACKSON. Who determined that written interrogatories would be used and that they could be answered in an unsworn form? Who made that determination?

Mr. DURKIN. First of all, as far as the written interrogatories are concerned, it was the recommendation of Lund, Richardson and myself, that that be done. The approval of it was received actually by Richardson from Bartels the following day.

Chairman JACKSON. You agreed; the three of you—Mr. Lund, Mr. Richardson and yourself—that there would be written interrogatories and that they would be in unsworn form?

Mr. DURKIN. To the contrary. They were to be in sworn form. My report that you marked—

Chairman JACKSON. That is all I am asking you.

Mr. DURKIN. What?

Chairman JACKSON. You recommended that the interrogatories that would be used would be under oath?

Mr. DURKIN. Sure, not only those, I recommend that all of the statements of this matter be put under oath to minimize any possible risk of misidentification, because there were two mistaken identities so far.

Chairman JACKSON. They ended up, however, not being in sworn form.

Mr. DURKIN. That is my understanding.

Chairman JACKSON. Who made that decision, if you know?

Mr. DURKIN. The decision that they weren't to be in written form or sworn?

Chairman JACKSON. Yes.

Mr. DURKIN. I can't tell you, Senator. I don't know.

Chairman JACKSON. You took a very strong position that it should be under oath?

Mr. DURKIN. Absolutely, but not only as to him, but as to all of the others that were making these statements, too.

Chairman JACKSON. I understand. That is why I am asking. You took a very strong position that they should be under oath. What was your reaction when you found out that they were just simple interrogatories not to be sworn to?

Mr. DURKIN. Senator, I didn't find that out until months and months after. I never saw these answers until the very considerable period of time after. I didn't have any participation in it at that time.

Mr. FELDMAN. Mr. Durkin, when was your meeting with Mr. Promuto? Can you give us the day? I have a calendar.

Mr. DURKIN. I can't give you the date.

Mr. FELDMAN. It was during the week of September—

Mr. DURKIN. Go back to the Saturday. Saturday was the 28th. On the 28th, we had the meeting with Mr. Bartels, Mr. Richardson, and myself. The afternoon of the 28th is when Mr. Richardson and myself dictated those memoranda which were marked.

Mr. FELDMAN. After the meeting?

Mr. DURKIN. After the meeting; the previous day was the meeting I had with John Lund, Bobby Richardson, in Mr. Lund's office.

Mr. FELDMAN. The 27th?

Mr. DURKIN. That is the 27th. Within those next 2 to 3 days in there, whatever specific day it was the day that they had the interview with Promuto.

Mr. FELDMAN. Prior to that, so early in the week?

Mr. DURKIN. Yes.

Mr. FELDMAN. Let's say sometime between the 23rd and the 26th or the 23rd and the 25th, you had an interview with Mr. Promuto. Is that correct?

Mr. DURKIN. Yes.

Mr. FELDMAN. On September 26, there exists the possibility that you learned that the woman identified at the airport was Diane De Vito and you say that might have been the 27th?

Mr. DURKIN. Yes. Let me tell you why, I think it was the Friday.

Mr. FELDMAN. Why?

Mr. DURKIN. On the Friday, he was reviewing in detail with Messrs. Lund and Richardson from my notes of the interview with Promuto and I remember distinctly saying that when I started that meeting with Promuto, I was personally convinced, based on what had been represented to me, that there would be no question that he, Mr. Promuto, knew and was in fact with this person Candice Cruz at this airport.

I told them at that time that Promuto swore vehemently that he not only wasn't there with her, but that he didn't even know who she was. My recollection is at that time, that Mr. Richardson left—this is a guess—that he then advised Brosan concerning all of this report because it was only a short period of time thereafter that these positive identifications that were made of Promuto and Candice Cruz at the airport were changed and they were not only changed, that it wasn't this person, but that it was this other person.

Mr. FELDMAN. Diane De Vito?

Mr. DURKIN. Yes.

Mr. FELDMAN. On the 27th of September?

Mr. DURKIN. I can't tell you whether it was that day or not.

Mr. FELDMAN. You knew about it before the Saturday meeting, the 28th?

Mr. DURKIN. Yes.

Mr. FELDMAN. It had to be the 27th, or earlier?

Mr. DURKIN. That is right.

Mr. FELDMAN. The 27th is the day that you say Mr. Richardson, you, and Mr. Lund decided on written questions?

Mr. DURKIN. Is that the Friday?

Mr. FELDMAN. Yes, 27th.

Mr. DURKIN. The answer is yes.

Mr. FELDMAN. Before you wrote your report, correct?

Mr. DURKIN. It is the day before.

Mr. FELDMAN. The day before?

Mr. DURKIN. Yes.

Mr. FELDMAN. Then when did Bartels summon you for the meeting on the 28th, Saturday?

Mr. DURKIN. On the 27th.

Mr. FELDMAN. Did he call you? Did he see you personally?

Mr. DURKIN. No. What happened was after Mr. Lund and Richardson and myself were finished with our meeting, we tried to contact Mr. Bartels to get his approval concerning the suggested course of conduct. We couldn't locate him. He had already left for, I think a meeting over at the Department of Justice or something. We couldn't get him. I called at home later on, told him tentatively what had been discussed. He said that he was going to get hold of Richardson and was I available for a meeting the following morning.

Mr. FELDMAN. You called him at what time?

Mr. DURKIN. I don't have any idea.

Mr. FELDMAN. Early evening?

Mr. DURKIN. I really don't know. I will tell you this, it had to be after 8 o'clock.

Mr. FELDMAN. Why do you pick on 8 o'clock?

Mr. DURKIN. Because I think we worked until pretty close to 7 o'clock or 7:30.

Mr. FELDMAN. Did you call him before Richardson, before he called Richardson at 8 o'clock that night.

Mr. DURKIN. I would have to guess that. I wasn't there.

Mr. FELDMAN. Did you tell him that the girl at the airport had been identified as Diane De Vito on that telephone conversation?

Mr. DURKIN. That name wasn't discussed in that conversation under any circumstances.

Mr. FELDMAN. Mr. Richardson testified that he learned the name Diane De Vito from you.

Mr. DURKIN. I don't think he is correct, Mr. Feldman.

Chairman JACKSON. You didn't tell him about Diane De Vito?

Mr. DURKIN. No, I didn't tell him. I would have to say no.

Mr. FELDMAN. You didn't talk to Mr. Bartels that night about Diane De Vito, the 27th?

Mr. DURKIN. No. Positively not, nor the 28th.

Mr. FELDMAN. On the 28th, did the name Diane De Vito come up?

Mr. DURKIN. No, sir, not that I recall.

Mr. FELDMAN. When did it come up?

Mr. DURKIN. You are talking about the conversation with Bartels.

Mr. FELDMAN. Yes.

Chairman JACKSON. When did you first learn about Diane De Vito?

Mr. DURKIN. The name?

Chairman JACKSON. Yes.

Mr. DURKIN. I think it was on the meeting with Mr. Lund and Mr. Richardson on the 26th, but I am being asked now whether or not that name up in the—

Chairman JACKSON. I understand that. You first learned of the name, misidentity here—

Mr. DURKIN. That is the important thing, that it was a misidentity. Then the name business came in subsequent to that.

Chairman JACKSON. You first learned who that party was that had been misidentified on the 26th and then Miss De Vito's—

Mr. DURKIN. That is my recollection.

Chairman JACKSON. That name did not come up again during the balance of that week that you were here? You were here through the 28th, right, before going back to Newark?

Mr. DURKIN. I can't remember any other time that it came up. No.

Mr. FELDMAN. Who did you learn that name from?

Mr. DURKIN. As I told you before, Mr. Feldman, my recollection is that when I advised that the person was not Cruz or to state it exactly, that Promuto was contending that it positively was not Cruz, it was after that somebody came in. I never had that name.

Chairman JACKSON. The Saturday meeting, Mr. Brosan testified that he was told that out of that meeting written questions were agreed upon. Did Mr. Bartels direct that or approve it?

Mr. DURKIN. Richardson says to Bartels, "We, Durkin, Lund, and myself had a meeting yesterday. This is what we would recommend." He tells him the recommendation. Bartels says, "All right, approve it, go ahead," whatever the exact words.

Mr. FELDMAN. He approved?

Mr. DURKIN. Yes.

Mr. FELDMAN. Mr. Brosan said he was told no new avenues of investigation were to be pursued. Did that come out of that meeting? Was that discussed at the meeting?

Mr. DURKIN. Positively not.

Mr. FELDMAN. Stick to the allegations, that wasn't discussed?

Mr. DURKIN. I don't know what you mean.

Mr. FELDMAN. Not pursue any new areas of investigation?

Mr. DURKIN. I never heard anybody say that. It wasn't a problem of stopping anybody going into new areas. The problem was getting somebody to do something on the areas that were already outstanding.

Chairman JACKSON. Mr. Durkin, did you have a security clearance?

Mr. DURKIN. Senator, I don't know what security clearance I had. The only conversation I ever had with anybody on this subject matter was the conversation that I testified to previously as having had with the Director Ingersoll. Nobody ever approached me aside from that conversation.

Chairman JACKSON. Were you ever advised that you had been given a security clearance, now you can do such and such?

Mr. DURKIN. Senator, I don't want this to sound abrupt, I had no conversation with anybody at anytime on the subject matter, nobody.

Chairman JACKSON. They didn't tell you? All you know is that you were designated, signed the oath and you understood it to be special adviser?

Mr. DURKIN. I think you can go a step further than that. I think you can go a step further and say that I was of the opinion that anytime I was asked to give an opinion on something and submitted something to me in document form, that there was a propriety in what was being done.

Chairman JACKSON. You just assumed there was no problem in that area?

Mr. DURKIN. Positively.

Chairman JACKSON. Did you see sensitive information while you were there that you would call as a lawyer and based on your broad experience?

Mr. DURKIN. I don't think we can resort to broad experience with that broad word. When you say sensitive, everything we are talking about here today I would consider extremely sensitive.

Chairman JACKSON. What?

Mr. DURKIN. Everything we have been talking about here today I consider to be extremely sensitive.

Chairman JACKSON. The documents that you saw, you would treat as extremely sensitive?

Mr. DURKIN. Sure. The person's reputation I would consider extremely sensitive, too.

Chairman JACKSON. Certainly.

Mr. DURKIN. All of that stuff I consider sensitive.

Chairman JACKSON. Sensitive information, was it, any of it marked confidential, that you saw?

Mr. DURKIN. Senator, if there was ever any such marking on it, I could not tell you that I recall it.

Chairman JACKSON. But in any event, you know that the substance of what you saw was highly sensitive?

Mr. DURKIN. Yes; I am just resorting now to memory, but I thought there was a provision in the manual on that. Doesn't the Inspection Manual make specific provision for that?

Chairman JACKSON. Pardon me?

Mr. DURKIN. On this subject, I have been reading in the paper and so forth about what it is that I have and what I didn't have as far as this clearance business and so forth is concerned. I remember checking something out in that manual, that Inspection Manual, this is going back a few years, but I thought that there wasn't any clearance required for this specific subject matter. I think it states that expressly in that manual.

Chairman JACKSON. God help the United States, if what DEA has in various files is not sensitive and classified, lists of informants, information that could cause the death of people and Lord knows what, the whole issue of integrity is all sensitive. The DEA has agents. It is like saying CIA agents, who they are, are not matters that are sensitive—

Mr. DURKIN [interrupting]. Senator, are you talking about—

Chairman JACKSON [continuing]. And classified, if they are not, we had better overhaul.

Mr. DURKIN. You understand when I made my statement, I thought we were still talking about the things that I saw.

Chairman JACKSON. I am just talking about what you saw.

Mr. DURKIN. That was my answer. Now I gather the thing that you just got finished talking about had nothing to do with the things that I saw.

Chairman JACKSON. I don't know what you saw, of course.

Mr. DURKIN. I do, and I am telling you—

Chairman JACKSON. You saw things relating to integrity information?

Mr. DURKIN. Yes; that is right.

Chairman JACKSON. You treat that as being——

Mr. DURKIN. As what?

Chairman JACKSON. You would treat that kind of information and documents as being what? Sensitive? Unsensitive?

Mr. DURKIN. I would say sensitive, very definitely.

Chairman JACKSON. So it is a matter that should be classified, not available to just anyone?

Mr. DURKIN. I wouldn't make that statement because I don't understand it that well.

Chairman JACKSON. Is it information that you would feel free to tell a newspaper reporter or make public?

Mr. DURKIN. You would be fully assured that any information that I had, no matter what the propriety or impropriety thereof may be was never discussed with anybody under any circumstances other than those that were privy to that particular conversation.

The second point that I would like to make, is I think that somebody should just take out 10 or 15 minutes and check that particular manual because I am of the opinion, and I haven't had a chance because I don't have access to it, that around 1969 or 1970, there was an amendment in that manual. I think that that was occasioned by Mr. Tartaglino, as best I can recall at a time when he was Chief of Operations, which specifically states exactly what it is that I am talking about.

Chairman JACKSON. What integrity files did you have knowledge of specifically? William Durkin? Jerry Jensen?

Mr. DURKIN. I can't answer it that way. I will answer it for you the way it occurred. I think in order to answer your question when you say knowledge of an integrity file, I had knowledge as far as Durkin's file to determine one simple thing, to look at the first two sheets and a card, to determine what it was, if at all. That file was closed because there was a great amount of time being spent with that agency trying to make one simple determination, was that investigation closed.

Chairman JACKSON. Were you given unlimited access to look for just one limited item in that file and other files?

Mr. DURKIN. The answer to that is yes.

Chairman JACKSON. The answer is yes to what?

Mr. DURKIN. To what you just got finished asking me.

Chairman JACKSON. That it was limited?

Mr. DURKIN. That is right.

Chairman JACKSON. Not to go through the whole file?

Mr. DURKIN. That is right. There wasn't any affirmative restraint put on me. Certainly, it was none at the time that I was doing what I was doing, that it would only require looking at one, two, and three things and the same thing as far as Jensen is concerned.

Chairman JACKSON. Mr. Durkin, did you once advise George Brosan, Robert Richardson, and John Lund on how the DEA should respond to this subcommittee's investigation into DEA?

Mr. DURKIN. Yes, sir. I shouldn't say that I advised them. The four of us were having a discussion concerning that particular subject matter. Yes, indeed.

Chairman JACKSON. Did you advise them?

Mr. DURKIN. I gave my position on it.

Chairman JACKSON. Did you give this advice in your law offices in Newark?

Mr. DURKIN. I did, indeed.

Chairman JACKSON. What was the nature of this advice?

Mr. DURKIN. The nature of the advice, Senator, was in two or three general areas. The first area had to do with, let's say, the committee's actions as far as these Vesco, one, two, and three, and so forth, was concerned.

Chairman JACKSON. Say that again.

Mr. DURKIN. The first part of the discussion concerning investigation "advice" had to do with the committee and Vesco, one, two, and three, as it referred to over there.

Chairman JACKSON. The Vesco matter?

Mr. DURKIN. Yes, Peroff, Vesco.

Chairman JACKSON. Peroff's disclosures?

Mr. DURKIN. Vesco 1 and Vesco 2. I took a very, very strong position that somebody had to set up some type of a liaison or some type of rapport with this committee to cut down on the amount of time and the amount of man effort, hours and so forth, that were being expended. It was common in interest, both as far as the committee was concerned and as far as DEA was concerned in its present posture, its then present posture, that the facts which were the subject of these overall investigations be obtained.

DEA was dispatching people to do it, the committee was dispatching people to do it, and I personally was of the opinion that there was some type of an adversary relationship coming into existence. I suggested very, very strongly that that should never be, that somebody should do something to try to get this to be a common goal, rather than at odd ends.

The other part of it had to do with whether or not there was any particular benefit in having the senior DEA officials set up some type of a seminar for the involved ranking Senators on the Turkey circumstances and the commencement of the ban.

Then I come down the other day and I am told that Mr. Brosan testified here about something that I said, and I think the word was "diffuse" or "torpedo" this committee. It couldn't have been further from the truth. But I am also told that he said that that was his paraphrasing and his words, not mine.

Chairman JACKSON. I understand that, in effect, Mr. Brosan asserted that you suggested that an excuse such as the Turkey opium trade be stated as the basis for a function during which time Bartels could meet with Chairman Jackson in an attempt to diffuse the inquiry.

Mr. DURKIN. He goes on a little further there and says that those words are his and this is his particular—

Chairman JACKSON. His judgment?

Mr. DURKIN. Yes. I can tell you that he couldn't be, as is the circumstance many times, more mistaken, intentionally or otherwise.

Chairman JACKSON. Our committee, both minority and majority, have a normal liaison with DEA at this time. What type of relationship did you have in mind here? All they had to do was come up and contact the staff. The relationship was in being.

Mr. FELDMAN. We met quite frequently with them.

Chairman JACKSON. Both minority and majority, wasn't that the proper way and the sensible way to approach this problem?

Mr. DURKIN. Senator——

Chairman JACKSON. Or are we trying to find some other way?

Mr. DURKIN. I wasn't trying to find some other way.

Chairman JACKSON. I don't mean you. I am talking about the advice you were giving.

Mr. DURKIN. While this liaison, whatever the exact phrase was that you were using, was in being, there is person A out in California who had information on this matter. Person A was subjected to interrogations by DEA agents, staff agents. It just seemed to me that there had to be some way to minimize the amount of time, effort, and so forth that was being expended.

I do think that at the present time, starting sometime in 1973, the amount of investigations and so forth that have been going on involving DEA is almost outstanding. I just couldn't believe that there could be that many outstanding investigations, reviews and everything else at a time when the total sustenance of the merger was the very serious issue.

Chairman JACKSON. What has come out here is that maybe there should be more investigations. We sort of bumped onto this whole thing with the Peroff case and you know the rest.

Mr. DURKIN. I think I do know, Senator. I think I know it quite well. I can tell you this: On that particular point, I have not one reservation of any nature whatsoever of my association with that agency during that time involved. I think that most of those agents are as dedicated to that purpose and are functioning as any agency of this Government. There may be an exception.

Chairman JACKSON. We have got outstanding men in it. That is what we are trying to protect, the good name of good people. But on the other hand, what do you think of someone sweeping the office of Mr. Vesco and also his home——

Mr. DURKIN. May I answer that before you go on? What do I think about it? I was the one that made the recommendation that Mr. Bartels contact the U.S. Attorney out in California to convene a grand jury and put him in jail.

Mr. FELDMAN. That was after we investigated and started that investigation.

Mr. DURKIN. I don't know whether it was or whether it wasn't.

Mr. FELDMAN. But you should put that in the context.

Mr. DURKIN. You are telling me it is context. I don't know it is in context.

Chairman JACKSON. When did you find out about what the agents had done with reference to Mr. Vesco?

Mr. DURKIN. The day that Mr. Brosan was leaving to go to Europe with his wife on that inspection.

Chairman JACKSON. That was sometime after the actual debugging or sweeping, wasn't it?

Mr. DURKIN. Yes.

Mr. FELDMAN. Mr. Chairman, may I interject?

Did you recommend there be a grand jury after we investigated and subpoenaed these agents?

Mr. DURKIN. I didn't know who was subpoenaed.

Mr. FELDMAN. Mr. Chairman, for the record, I would like to state we had already subpoenaed these agents and it was a question of whether or not a grand jury was going to be convened which would in effect hamper our—

Chairman JACKSON. Which would have blocked our inquiry.

Mr. DURKIN. I don't know how it would.

Chairman JACKSON. You know it would. You know that as a lawyer.

Mr. DURKIN. I know as a lawyer it would not. If you tell me it would, I will accept your statement.

Chairman JACKSON. As a lawyer, I can tell you they can raise their constitutional rights and properly so, and as a lawyer, if I were representing them, I would so advise them. In this case, they took a few amendments on that, refused to, declined to testify on those grounds.

Mr. DURKIN. Some did.

Chairman JACKSON. I wouldn't advise a client to be testifying here on the same subject matter or similar subject matter before a grand jury and that is exactly what they did.

Mr. DURKIN. Some of them did. Some of them didn't. Some testified here, if you remember.

Chairman JACKSON. Yes, but I am talking about the key ones. The meeting which occurred in your Newark office with Brosan, Richardson, Lund, and yourself was arranged by someone. Who arranged that?

Mr. DURKIN. I don't know. I don't recall. I didn't.

Chairman JACKSON. You didn't arrange it?

Mr. DURKIN. No.

Chairman JACKSON. Did they just walk in?

Mr. DURKIN. No. I was advised ahead of time that the meeting was set up.

Chairman JACKSON. The meeting was set up?

Mr. DURKIN. Yes.

Chairman JACKSON. Did Mr. Bartels set it up?

Mr. DURKIN. I can't tell you whether he did or not. It was setup.

Chairman JACKSON. Would your office diary show that?

Mr. DURKIN. My diary shows the meeting.

Chairman JACKSON. Shows the meeting, but it wouldn't show who had called? You wouldn't have any entry on that?

Mr. DURKIN. No, not at all. You see, the purpose of that particular meeting that you are talking about, also in that testimony of Mr. Brosan that you made reference to before, pretty close to that same general area as I remember him testifying, he told the committee about his satisfaction with the investigation that was done on the Vesco sweep that you are referring to. Do you remember that part of his testimony?

Chairman JACKSON. No, I don't.

Mr. DURKIN. He said he was satisfied with. That was the investigation that was done when he was in Europe, that he had little if

anything to do with, and this was the same investigation that he told you that I questioned him closely on at the time he was in the office, which is sheer unadulterated nonsense.

Chairman JACKSON. Mr. Durkin, when did you find out that Mr. Bartels knew Diane De Vito? How did he find that out?

Mr. DURKIN. How did who find it out?

Chairman JACKSON. How did Bartels find it out?

Mr. DURKIN. How did Bartels find out that he knew Diane De Vito?

Chairman JACKSON. I mean that he knew about Diane De Vito?

Mr. DURKIN. I think the first time that I was told about the name, I am inclined to think, but I am not going to tell you unequivocally, I am inclined to think when I was told that name for the first time was when I was told that Mr. Bartels knew that person.

Mr. FELDMAN. That was on the 26th or 27th of September?

Mr. DURKIN. That is my recollection, Mr. Feldman. It is my recollection. Yes.

Mr. FELDMAN. Who told you?

Mr. DURKIN. I think it was Richardson.

Chairman JACKSON. That Mr. Bartels knew?

Mr. DURKIN. That is my recollection, Senator.

Chairman JACKSON. Your recollection is that Mr. Richardson told you that Mr. Bartels knew about it?

Mr. DURKIN. Knew about what?

Chairman JACKSON. The Diane De Vito matter?

Mr. DURKIN. That Diane De Vito matter? That wasn't a question. The question was when was it for the first time that I was told that Bartels knew Diane De Vito. Isn't that what your question was?

Chairman JACKSON. Yes.

Mr. DURKIN. That is what I answered as distinguished from(?) when Bartels first knew of the De Vito matter, whatever that refers to.

Mr. FELDMAN. That was the 26th or 27th?

Mr. DURKIN. That is my recollection.

Mr. FELDMAN. Did you confront Mr. Bartels with this?

Mr. DURKIN. Later on.

Mr. FELDMAN. When later on?

Mr. DURKIN. I would say it was sometime the following week.

Mr. FELDMAN. On Saturday, the 28th?

Mr. DURKIN. No.

Mr. FELDMAN. Why did you wait until that time?

Mr. DURKIN. What is the significance of Diane De Vito to me?

Mr. FELDMAN. It was the exactly same significance as Candice Cruz? You saw the Metropolitan Police report?

Mr. DURKIN. Wait a second. Let's get that clear on this record. I heard this in this record three or four times. That Metropolitan Police report makes no mention of either Diane De Vito or Candice Cruz. Point two—

Mr. FELDMAN. Correct. That is my mistake.

Mr. DURKIN. Point two, the preliminary report of Mr. Brosan to Mr. Bartels does not mention the name Diane De Vito. Point three, when somebody pulled some type of a report from the LeCompte file, which report I did not see until 2, 3 maybe 4 months after, did I know of the so-called claim between the two.

Mr. FELDMAN. So you didn't talk to Mr. Brosan who had the BNDD information which mentioned Candice Cruz and Diane De Vito?

Mr. DURKIN. We went through that three or four times.

Mr. FELDMAN. Just yes or no.

Mr. DURKIN. It has been known throughout.

Mr. FELDMAN. You didn't know about this BNDD information that mentioned Candice Cruz and Diane De Vito at the time of your meeting on the 28th?

Mr. DURKIN. I knew about Candice Cruz—I just got through telling you that—because Mr. Brosan saw fit to put that name in his report; but for whatever reason, he didn't put the name Diane De Vito in his report. Do you have the report there?

Mr. FELDMAN. Yes.

Mr. DURKIN. Would you please look at it. Doesn't he have the name Candice Cruz in there?

Mr. FELDMAN. What report are talking about now?

Mr. DURKIN. The first report that you people have been talking about that I saw back on the 17th of September.

Mr. FELDMAN. I am talking now about the 28th, Diane De Vito's name has been raised. Did you see the BND 6 report?

Mr. DURKIN. I told you I had not. That is why I am telling you that when I brought up the name Candice Cruz, that is the only name that was applicable to that airport visit. This name De Vito didn't come into being until after it.

Mr. FELDMAN. That is correct. The name De Vito is just as significant as the name of Cruz, isn't that correct?

Mr. DURKIN. To whom?

Mr. FELDMAN. To Mr. Promuto, to the Promuto case. I didn't ask Mr. Brosan about the information which he had which would have identified her.

Mr. DURKIN. We have already gone through that. This is the fourth time. I had two things, Brosan's report and the letter from the MPD. Brosan's report refers to this man and this woman and Candice Cruz. It makes no mention whatsoever of Diane De Vito.

Mr. FELDMAN. But you found out about Diane De Vito before the September 28th meeting?

Mr. DURKIN. There was no significance to the name Diane De Vito. What you are saying is that there is a report in a file that has Diane De Vito in some way inculpated with somebody by the name of LeCompte of which I never heard of until long thereafter.

Mr. FELDMAN. Along with Candice Cruz?

Mr. DURKIN. Which came out long after.

Mr. FELDMAN. My question is this: Why didn't you attempt to find out the facts from Mr. Brosan who had this information since you were interviewing Mr. Promuto and advising Mr. Bartels?

Mr. DURKIN. That is the same thing as asking me why I didn't ask George Brosan when he prepared his report that he gave to Mr. Bartels that he included the name Cruz and didn't include the name De Vito. I don't know why he didn't, but this is Brosan's report to Bartels, and it has LeCompte's name and it has this woman Cruz's name. He didn't put De Vito's name in it.

Chairman JACKSON. Mr. Sloan?

Mr. SLOAN. I believe that Mr. Feldman's last question wasn't fully answered. He asked why didn't you speak to Mr. Brosan. We have already gone through some of that.

Mr. DURKIN. Not some of it, sir. I think we have gone through it four or five times.

Mr. SLOAN. I think not. Would you please explain—

Mr. DURKIN. You don't think I have testified four or five times?

Chairman JACKSON. Let's be responsive to the question so we can move this along.

Mr. SLOAN. You read Mr. Brosan's report. Why didn't you speak to Mr. Brosan? He apparently didn't include everything in his report. That was the question Mr. Feldman asked.

Mr. DURKIN. That wasn't the question he asked.

Mr. SLOAN. Would you answer that question?

Mr. DURKIN. The question is, you are asking me why I didn't ask Mr. Brosan why he didn't include everything in his report?

Mr. SLOAN. No, not exactly. I am asking you why didn't you speak to Mr. Brosan after you had read his report to get some background information and find out about other information he may not have included. The report didn't contain all the information that Mr. Brosan had at that time.

Mr. DURKIN. I don't know how to answer the question, Mr. Sloan. I answered it. I gave you the reasons why I had no contact with Mr. Brosan. I really wouldn't want to embellish it any further.

Mr. SLOAN. It strikes me as strange, Mr. Durkin, that you would be interviewing Mr. Promuto about these matters and giving advice to Mr. Bartels when you were not in full command of all the facts.

Mr. DURKIN. Mr. Sloan, I think I have answered that a few times, too. Let me again try to answer it for you. The purpose of my doing what I did at that time was to attempt to give Mr. Bartels an assist as to whether or not he, Mr. Bartels, should act intermediately in this particular matter or not.

Mr. SLOAN. I understand that, Mr. Durkin. But would you not want to have access to all of the facts before making such a judgment?

Mr. DURKIN. Your question presupposes that the totality of the subsequent action is going to be engulfed in the report that I gave. This is only one or maybe three or four inputs before the decision is to be made. If somebody else had some additional facts at their disposition, I certainly would think that you would be of the opinion that it would be incumbent upon them to tell the Administrator. I didn't know it.

Based upon what I did know, I submitted a report. That is the same thing as asking me why didn't Brosan tell Bartels about De Vito. I don't know why he didn't.

Mr. SLOAN. So your explanation is that you thought you were capable of writing a report to Mr. Bartels about the status of the Promuto investigation without having access to all the information available or even discussing the matter with the Chief Inspector. Is that correct?

Mr. DURKIN. Mr. Sloan. I am just going to adhere to what I have said to the Senator previously.

Mr. SLOAN. Fine. Thank you, Mr. Chairman.

Chairman JACKSON. Mr. Durkin, this will complete our inquiry today.

We may recall you later. We will hold our next hearings on Thursday when Mr. Bartels will be the witness.

Thank you, very much.

Mr. DURKIN. I won't be recalled before Thursday?

Chairman JACKSON. No.

Mr. FELDMAN. We have a problem in holding hearings due to Senate debate regarding the New Hampshire election. We might possibly have one hearing before. But I don't know if we will have permission to do so. We will have to advise the public on that.

Chairman JACKSON. We will have a statement out in the press gallery to cover that.

Thank you, very much.

[Whereupon, at 12:45 p.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, June 26, 1975, in room 1202, Dirksen Senate Office Building.]

[Member present at time of recess: Senator Jackson.]



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FEDERAL DRUG ENFORCEMENT

HEARINGS
BEFORE THE
PERMANENT
SUBCOMMITTEE ON INVESTIGATIONS
OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
UNITED STATES SENATE
NINETY-FOURTH CONGRESS
FIRST SESSION

JULY 8, 10, 11, 14, AND 15, 1975

PART 3

Printed for the use of the Committee on Government Operations

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FEDERAL DRUG ENFORCEMENT

TUESDAY, JULY 8, 1975

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met at 9 a.m., in room 457, Russell Senate Office Building, under authority of Senate Resolution 111, agreed to March 17, 1975, as amended, Hon. Sam Nunn, presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia.

Members of the professional staff present: Howard J. Feldman, chief counsel; Dana Martin, assistant counsel; Philip R. Manuel, investigator; Frederick Asselin, investigator; Stuart M. Statler, chief counsel to the minority; Robert Sloan, special counsel to the minority; and Ruth Y. Watt, chief clerk.

Senator NUNN [presiding]. The subcommittee will come to order.

[Members of the subcommittee present at time of reconvening: Senator Nunn.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATION,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct hearings in public session, without a quorum of two members for administration of oaths and taking of testimony in connection with Drug Enforcement Administration on Tuesday, July 8, 1975.

HENRY M. JACKSON,
Chairman.
CHARLES H. PERCY,
Ranking Minority Member.

Senator NUNN. Before our proceedings begin this morning, I wish to make the following remarks about some of the background of the particular witness we have today, and some of the factors that have been developed so far.

In the subcommittee staff's opening presentation of June 9, 1975, it was asserted by the staff that one of the staff's preliminary findings was that there has developed over the last 30 years an indifference among senior Federal drug officials toward the importance of personnel integrity investigations.

It was the staff's preliminary finding that this alleged pattern of

indifference to personnel integrity investigations has resulted in less effective enforcement procedures, weakened morale among dedicated agents and the creation of an environment conducive to corrupt and irregular practices and inadequate management.

It was the staff's preliminary finding that the pattern of indifference to personnel integrity investigations had its origins in the old Federal Bureau of Narcotics, was carried on at its successor agency, the Bureau of Narcotics and Dangerous Drugs, and today is similarly present in the 2-year-old Drug Enforcement Administration.

In seeking to evaluate the staff's preliminary findings, this subcommittee has received testimony from persons who are experienced in personnel integrity investigations.

Among the witnesses who testified in this regard were Andrew C. Tartaglino, the chief inspector of the Drug Enforcement Administration and its former Acting Deputy Administrator; and George B. Brosan, the deputy chief inspector of DEA and its former acting chief inspector.

Both these men in long testimony before this subcommittee have been critical of the manner in which personnel integrity and mismanagement investigations were carried on at DEA, asserting that the very indifference to such matters cited by the subcommittee staff did, in fact, exist.

Both Mr. Tartaglino and Mr. Brosan cited one instance in which a senior drug enforcement official—a man with access to all manner of sensitive information at DEA—was alleged to be associating on a social basis with felons and other persons of criminal reputation.

Mr. Tartaglino and Mr. Brosan said they felt the issue of integrity was of great consequence in this situation. It was, they said a textbook illustration of how a senior drug enforcement official, by his social associations, could find himself in a potentially compromising situation.

Mr. Tartaglino and Mr. Brosan testified that when they tried to go forward with this personnel integrity inquiry they were impeded by the Administrator of the Drug Enforcement Administration, John R. Bartels, Jr., who has since left DEA.

When they concluded Mr. Bartels would not allow them to proceed according to established procedures in their investigation, Mr. Tartaglino and Mr. Brosan took most extraordinary steps for career civil service employees. They went to higher authority; that is, they went outside DEA and over Mr. Bartels and reported their allegations of personnel integrity matters to the then Deputy Attorney General, Laurence H. Silberman.

Mr. Silberman entertained their allegations and then assigned agents from the Federal Bureau of Investigation to conduct an inquiry.

Thursday, June 19, 1975, the two FBI agents who worked for Mr. Silberman—Bill D. Williams and Edward Hegarty—testified that Mr. Silberman restricted their investigation.

Agents Williams and Hegarty said Mr. Silberman did not allow them to conduct the kind of comprehensive investigation they would have conducted had they been performing their duties under established procedures followed by the FBI.

They said their actual investigation lasted less than 10 days and that information which could have shed light on the integrity issue was never sought from persons who had firsthand knowledge that might have enabled them to more accurately evaluate the allegations being made by Mr. Tartaglino and Mr. Brosan.

Then, on January 16, 1975, this is going back during the investigation or right after, the Deputy Attorney General Laurence H. Silberman, issued an announcement in which he said that after an FBI inquiry of several months, he had concluded that the allegations of Mr. Tartaglino were without substantial foundation and that Mr. Tartaglino and Mr. Brosan were being given new assignments within the Justice Department.

As Senator Jackson, the chairman of this subcommittee, has noted, when Mr. Silberman issued that announcement January 16, 1975, the original personnel integrity issue involving Vincent L. Promuto and other individuals within DEA was no longer a DEA affair but had been elevated to the highest levels of the Department of Justice itself.

Preliminary inquiry by the staff of the subcommittee has come to the finding that the January 16, 1975 announcement by Mr. Silberman was written by Mr. Silberman and his aide, the then Associate Deputy Attorney General James D. Hutchinson.

In turn, Mr. Tartaglino testified that on January 9, 1975, at the meeting at which Mr. Tartaglino briefed Mr. Silberman on a variety of problems within DEA, including the alleged coverup of the Promuto integrity inquiry, Mr. Hutchinson also participated in that meeting and took notes.

It is our hope this morning that Mr. Hutchinson will help this subcommittee as we seek to determine just how it was that Mr. Silberman could come to the conclusion he did, on January 16 1975, that the FBI investigation had cleared Mr. Bartels of all questionable conduct and that Mr. Tartaglino's assertions were without substantial foundation.

I wish also to announce that this subcommittee is still working with the Department of State in seeking to arrive at a convenient date for Mr. Silberman, now ambassador to Yugoslavia, to come to the United States and testify before this subcommittee.

We don't think the record will be complete until Mr. Silberman has had the opportunity to testify. At this point, we will call our first witness, Mr. James D. Hutchinson.

Will you hold up your right hand?

Do you swear that the testimony you are about to give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HUTCHINSON. I do.

TESTIMONY OF JAMES D. HUTCHINSON, ADMINISTRATOR OF PENSION AND WELFARE BENEFIT PROGRAMS, U.S. DEPARTMENT OF LABOR

Senator NUNN. Do you have a prepared statement you would like to give this morning?

Mr. HUTCHINSON. Senator, I have no prepared statement, but

there are a few opening remarks I would like to make which may put in context the experience that I had at the Department of Justice which will focus on the matter presently being considered by this subcommittee.

I am presently the Administrator of Pension and Welfare Benefit Programs at the United States Department of Labor, a position I have occupied since April 21, 1975.

I arrived at the United States Department of Justice on January 2, 1975, to serve in the capacity of Associate Deputy Attorney General. I served in that capacity from January 2, 1975, to April 21, 1975.

That will put in context the time period within which I was at the Department.

Senator NUNN. Do you have any other remarks at this point?

Mr. HUTCHINSON. I have not.

Senator NUNN. You covered some of the initial questions I have, but let's go over them for the record to make sure we have them in the regular order.

What is your present position?

Mr. HUTCHINSON. I am the Administrator of Pension and Welfare Benefit Programs at the United States Department of Labor.

Senator NUNN. You were employed here at what point in your present position?

Mr. HUTCHINSON. April 21, 1975, was my official first date of duty.

Senator NUNN. When were you first with the Department of Justice?

Mr. HUTCHINSON. January 2, 1975.

Senator NUNN. You were with the Department of Justice January 2, 1975, until—

Mr. HUTCHINSON. April 20, 1975.

Senator NUNN. A period of about 4 months?

Mr. HUTCHINSON. Yes.

Senator NUNN. Who were you with before you were with the Department of Justice?

Mr. HUTCHINSON. I was in private law practice in Washington, D.C., with the firm of Steptoe & Johnson.

Senator NUNN. January was the first point you had worked for the Federal Government in any capacity?

Mr. HUTCHINSON. Other than my service as a law clerk to Chief Justice Warren E. Burger, and a tour of duty in the United States Army, that is my only Government experience.

Senator NUNN. When did you agree to join the Department of Justice as Associate Deputy Attorney General?

Mr. HUTCHINSON. Some time during early or mid-December 1974. Mr. Silberman and I had conversations about my joining the Department.

Senator NUNN. In December, 1974, was the first time you were approached about joining the Department?

Mr. HUTCHINSON. I would think so; yes, that is my recollection. We had conversations on and off for a few weeks before my arrival to determine whether I was interested in leaving private practice and joining the Government.

Senator NUNN. After you agreed to assume the position before you actually took office, did you have meetings at Justice where you were briefed and otherwise made current or brought up-to-date on what was going on within the Office of the Deputy Attorney General?

Mr. HUTCHINSON. I attended, I would imagine, between four and five meetings of a general briefing nature at the Department wherein various functions of the Department were explained or staff meetings were held in my presence so that I could better understand the organization of the Department and meet the people who were heads of agencies.

Senator NUNN. During this period of time before you actually officially took office in January 1975, were you briefed on the allegations which have been put forward by Andrew C. Tartaglino, concerning the personnel integrity matters within the Drug Enforcement Administration?

Mr. HUTCHINSON. I was made aware that there had been such allegations and a general description of them, but I was not aware of any of the specific facts that were involved at that time.

Senator NUNN. Who gave you these briefings?

Mr. HUTCHINSON. In discussions with Mr. Silberman. I should add to that, I believe, Mr. Michael Spector, my predecessor at the Department, may also have mentioned that issue. He and I sat down on occasion and he essentially reviewed all of the offices and the bureaus in the Department with which I would have to deal. DEA was one of them, and as he went through describing the offices and the bureaus, he would often make a comment about any current matters that were pending. I am sure he did the same for the present investigation.

Senator NUNN. You were Associate Deputy Attorney General under the Deputy Attorney General, Mr. Laurence Silberman; is that right?

Mr. HUTCHINSON. That is correct.

Senator NUNN. Does that mean you were essentially his assistant or did you have much broader duties than that?

Mr. HUTCHINSON. It would have to be considered almost a hybrid position. In other words, I assisted Mr. Silberman on a daily basis but nonetheless I had direct operating responsibility for many issues within the Department and indeed had responsibility for liaison with the Civil Division and the Civil Rights Division, U.S. Marshal's Service, and various other agencies in the Department.

Senator NUNN. Were all of your functions really his functions that you were helping him carry out, or did you go not beyond his scope of authority, but beyond his scope of responsibility into other areas?

Mr. HUTCHINSON. I would think, generally, that the duties of an Associate Deputy Attorney General are such that they attempt to support and to assist the Deputy Attorney General in carrying out his general duties. I think that is a fair description.

Senator NUNN. When did you first become aware of the existence of the Promuto integrity investigation conducted by the DEA's Office of Inspection, the Promuto case itself?

Mr. HUTCHINSON. I would have to say, initially, and in very generic terms, during those last few weeks in December, when I had conversations with Mr. Silberman, but specifically on the day I arrived I was given the FBI report to read, to take a look at it, because Mr. Silberman indicated that he was going to be sitting down and meeting with the agents who had conducted it. He wanted me to sit in on that meeting.

Senator NUNN. They already had the report when you came on board officially?

Mr. HUTCHINSON. That is right; it had been completed.

Senator NUNN. Did your duties have to do with the allegations raised by Mr. Tartaglino and Mr. Brosan that Mr. Bartels, as DEA Administrator, had sought to impede and obstruct the Promuto integrity investigation?

Mr. HUTCHINSON. Essentially, any issue that had to deal with DEA was part of my responsibility at the Department. I was not assigned supervisory responsibility over the investigation of the DEA review, but it was an issue that I was constantly aware of.

Senator NUNN. Did you read the Tartaglino memorandum of December 11, 1974 to the FBI regarding the allegations against Mr. Bartels?

Mr. HUTCHINSON. I believe I have read it. I am not sure whether I read it on January 2 or subsequent thereto.

Senator NUNN. You do recall reading the initial FBI report on January 2?

Mr. HUTCHINSON. I certainly do; yes.

Senator NUNN. Did your duties have to do with the allegations raised by Mr. Tartaglino and Mr. Brosan that Mr. Bartels, Administrator of DEA, was indifferent to personnel integrity investigations in general?

Was this part of the scope of the FBI investigation and your general connection with it?

Mr. HUTCHINSON. Yes, it was.

Senator NUNN. How knowledgeable were you regarding the allegations raised by Mr. Tartaglino and Mr. Brosan; that is to say, did you get into considerable detail in this particular matter?

Mr. HUTCHINSON. By January 2, I obviously had almost no detail. I was in the process at that time of trying essentially to catch up, learn the facts, read the FBI report, sit in on meetings with Mr. Silberman as he met with Mr. Bartels and Mr. Tartaglino, Mr. Pommerening, and the two agents involved, and essentially learn my way into the problem.

Senator NUNN. But during the course of your employment, during this 4-month period at the Department of Justice you did get to be very familiar with the details of the case?

Mr. HUTCHINSON. I most certainly did.

Senator NUNN. You were aware of the fact that Mr. Tartaglino and Mr. Brosan alleged that Mr. Bartels had obstructed an integrity investigation regarding Mr. Promuto?

Mr. HUTCHINSON. I was aware of that fact; yes.

Senator NUNN. Be their a correct understanding of what you perceived to be their charges, that Mr. Bartels had actually obstructed the investigation?

Mr. HUTCHINSON. I think that is a fair description. I believe the word Mr. Tartaglino used was impede, but that was the general thrust of it. He felt Mr. Bartels had involved himself in the investigation, whether the word was impeded or obstructed, he obviously disagreed with that conduct and challenged it.

Senator NUNN. Were the allegations by Mr. Tartaglino at that stage in your opinion against Mr. Bartels as far as impeding the investigation; were they of a criminal nature or were they of an administrative nature?

Mr. HUTCHINSON. I don't think that they rose to the level of a criminal charge at all. Essentially, many of the issues, as I reviewed them and as I learned my way into the problem, indicated to me that there were various policy differences between the two individuals as to allocation of resources and what the priorities of the agency ought to be. That included the Office of Inspection and how much resources it got, whether the Administrator ought to be involved in investigations or not.

Senator NUNN. You are a lawyer?

Mr. HUTCHINSON. Yes; I am.

Senator NUNN. You are pretty well versed in criminal law?

Mr. HUTCHINSON. I have to confess I don't have a firm background in criminal law.

Senator NUNN. Was there anybody up in the Justice Department, you or Mr. Silberman or anyone else who had considerable criminal law experience?

Was anybody involved in this investigation by the Department of Justice knowledgeable in the area of criminal law?

Mr. HUTCHINSON. Mr. Silberman had discussions with then Assistant Attorney General Henry Peterson and with Deputy Assistant Attorney General Jack Keeney, and another senior official by the name of Phil White, whose position I don't recall, at the initial stages of the investigation, but I wasn't present at that time.

Senator NUNN. Was this before you came on board?

Mr. HUTCHINSON. That is correct.

Senator NUNN. Did you ever discuss with any other officials of the Department of Justice whether these charges which you have at this point described as administrative could be criminal in nature?

Mr. HUTCHINSON. I had no such discussion with any members of the Criminal Division or any other senior members of the Department concerning the possible criminal nature of these charges. I did not.

Senator NUNN. Did it occur to you that "impeding the investigation" could also under certain conditions be considered obstruction of justice?

Mr. HUTCHINSON. Absolutely. I have to confess that I am not highly sophisticated in criminal law, but I would think that if facts adduced during an investigation of impeding or interfering rose to a certain level, there may well be criminal charges involved or potential criminal charges. I just have no way to evaluate that.

Senator NUNN. To your knowledge, did anybody try to make a decision at the outset of this FBI investigation and Justice Department investigation whether these charges were indeed criminal

and therefore whether the investigation should have proceeded along the criminal lines? It seems to me that was the essential judgment somebody would have to make at some point.

Mr. HUTCHINSON. Senator, I am at a bit of a disadvantage as to the specifics of any conversations that occurred before I arrived there. I can only note that the general format in this area is to initially do what is called an administrative investigation and if facts are produced during that which indicate there may well be criminal violations involved it is then referred to the Criminal Division for review and further investigation, if necessary. That is the general format these things take.

Senator NUNN. Did you understand the allegations Mr. Tartaglino and Mr. Brosan were making were of great consequence, or did you think it was more of a personality contest?

Mr. HUTCHINSON. I think that the nature of such charges are of high consequence; anyone who alleges there may be impropriety in an agency or that it isn't functioning properly when it has a mission as important as DEA, is something I think that is always of high and prime interest to the Department.

Mr. FELDMAN. Mr. Chairman, just for the record, Mr. Tartaglino's memorandum of December 11, 1974, to the FBI inspectors has the statement that "Mr. Brosan has set forth in detail the efforts of Mr. Bartels to frustrate, impede or obstruct the Promuto investigation," and then he lists six different points. So that language that you referred to was very specifically set forth.

Mr. HUTCHINSON. I have no reason to disagree. I just could recall the word impede myself.

Mr. FELDMAN. Have you seen a copy of this December 11 memorandum?

Mr. HUTCHINSON. I have. I believe it was an attachment to the FBI investigation. I haven't seen it in months. I believe I reviewed that document at one time.

Mr. FELDMAN. Have you seen Mr. Brosan's, of December 10? Was that also an attachment?

Mr. HUTCHINSON. I can't recall that. I would have to look at the document to find out.

Mr. FELDMAN. They have already been placed in the record, Mr. Chairman.

Senator NUNN. If you would take a look at them.

Mr. HUTCHINSON. Quite frankly, not having seen the FBI report or its attachments in the last several months, nonetheless I believe that this document was part of that and I have seen it; yes.

Senator NUNN. Which document is that you are referring to?

Mr. HUTCHINSON. I am referring to the December 10, 1974, document which is committee exhibit 34.

Senator NUNN. Thank you. If you would look at the other document.

Mr. HUTCHINSON. Yes; I have seen that document. I do recall that this was an attachment to the report, as I recall.

Senator NUNN. Did you perceive at the beginning of your official duties after you looked at the FBI report that inherent in these allegations of Mr. Tartaglino and Mr. Brosan there was the potential

of a possible criminal charge against Mr. Bartels for obstruction of justice?

Mr. HUTCHINSON. I would think that in the early stages of my review I didn't feel sophisticated enough on the facts to draw that conclusion, but I would imagine and indeed I always considered any sort of administrative investigation like this that had serious charges as having potential.

Senator NUNN. Having the potential?

Mr. HUTCHINSON. Surely.

Senator NUNN. Was it your opinion that the allegations against Mr. Bartels and made by Mr. Tartaglino and Mr. Brosan were of the dimension that would require close attention by officials at the highest levels of the Justice Department?

Mr. HUTCHINSON. I think that the nature of the charges, when one alleges that a senior official has obstructed or impeded an investigation is something that ought to warrant the attention of highest officials; yes, I do.

Senator NUNN. Did Mr. Silberman tell you that he had talked to Mr. Petersen and Mr. Keeney before he called the FBI into investigation?

Mr. HUTCHINSON. I don't recall whether Mr. Silberman stated that to me prior to my arrival. Having read Mr. Tartaglino's testimony wherein he refers to a conversation with Mr. Phil White, I recall that set of facts having been brought to my attention at some time during my duties at the Department.

I have to confess that when I talked to the staff initially, I had not read Mr. Tartaglino's testimony. That fact hadn't refreshed my recollection.

Senator NUNN. Was this the only kind of investigation of this nature that came to your attention at the Justice Department, or were there any other cases of this nature, or did any other cases of this nature come to your attention?

I am not speaking of just DEA. In other words, is this a routine kind of matter that Justice is called into?

Mr. HUTCHINSON. Yes, it is in the sense that the Deputy Attorney General serves as the IG, or the Inspector General, for the Department and as such supplies the review mechanism for charges against senior members of the Department.

It is frequently his role to become involved in or review any allegations or questions of this nature and I have seen other issues that were administratively reviewed while I was there; issues that did not involve obstruction of investigations but other sensitive questions. They traditionally come to the Deputy Attorney General's office and they are then reviewed.

If there are any facts in them which would warrant potential for criminal review, they are often sent to the Criminal Division for further review.

Senator NUNN. Was one of your duties also to work in liaison with this subcommittee in conducting its inquiry into the activities of the DEA?

Mr. HUTCHINSON. It certainly was. Some time after mid-January, and the date escapes me, but my recollection is somewhere early in

February, the committee asked for certain information and because I had primary responsibility within the Department as the liaison between DEA and the Deputy's office, I was just routinely assigned the responsibility to handle the matter.

Senator NUNN. Did you ever give any advice or come to any final conclusions which you passed on as advice to the Deputy Attorney General, Mr. Laurence Silberman, regarding the Tartaglino and Brosan allegations?

Mr. HUTCHINSON. I think that I had on many occasions offered him my opinion as to specific parts of that investigation, or indeed other issues that had been raised by this committee during its continuing investigation.

Senator NUNN. Did you feel it was part of your responsibility to form conclusions and opinions and then pass them on to him for his information?

Mr. HUTCHINSON. I would think in the general nature of my duties that most decisions rest with the Deputy Attorney General, but I most certainly would apprise him of my opinions and ideas.

Senator NUNN. In other words, you had more direct involvement with the details of the case than Mr. Silberman did; is that right?

Mr. HUTCHINSON. I would say from February on, yes, I did, in terms of my relationships with the committee. I became very specifically, on a day-to-day basis, involved.

Senator NUNN. I am not speaking of the relationship with the subcommittee, but the relationship with this particular case.

Mr. HUTCHINSON. Yes. As I said, from mid-January on, I became more and more knowledgeable, and therefore more involved in the issue. I would have to state that I could no way indicate that I was as well informed as Mr. Silberman on events that occurred prior to my arrival other than as I could learn of them.

Mr. FELDMAN. Mr. Chairman, for the record, the first communication from the subcommittee to the Department of Justice was January 17, in which we asked the Attorney General to make Mr. Brosan and Mr. Tartaglino available for executive session.

Mr. HUTCHINSON. That was consistent with my mid-January or early February recollection.

Mr. FELDMAN. It was 1 day after the issuance of this press release. In fact, I don't think we had seen the press release when this letter was sent. This is the January release of the Deputy Attorney General which we will get into later on in the testimony.

Senator NUNN. You and Mr. Silberman did discuss this case on many different occasions then?

Mr. HUTCHINSON. We certainly did; yes.

Senator NUNN. Do you have the feeling that when you discussed these matters with Mr. Silberman he understood the nature and substance of the allegations which Mr. Tartaglino and Mr. Brosan were making against Mr. Bartels?

Mr. HUTCHINSON. It was my impression that he totally understood them.

Senator NUNN. Did Mr. Silberman express to you the idea that the allegations made by Mr. Tartaglino and Mr. Brosan against Mr. Bartels were of a serious nature?

Mr. HUTCHINSON. I think he was very much apprised of their serious nature and appreciated that fact.

Senator NUNN. Did Deputy Attorney General Silberman ever meet with you and Mr. Bartels to discuss the allegations made by Mr. Tartaglino and Mr. Brosan?

Mr. HUTCHINSON. We met with Mr. Bartels on, I believe it was January 8—the date, I can't be precise—but I believe it was the day before the meeting with Mr. Tartaglino and Mr. Pommerening, and at that time—

Senator NUNN. Mr. Tartaglino and Mr.?

Mr. HUTCHINSON. Pommerening, who was Assistant Attorney General for Administration, and he had been the individual to whom Mr. Tartaglino originally sent his November memorandum.

Senator NUNN. Let's back up a minute. Who was at that particular meeting?

Mr. HUTCHINSON. Which one, Senator?

Senator NUNN. The question I asked you was whether you ever met with Mr. Silberman and Mr. Bartels?

Mr. HUTCHINSON. My response was yes. My best recollection is that we met on January 8. Mr. Silberman, myself, and Mr. Bartels.

Senator NUNN. Mr. Silberman, yourself, and Mr. Bartels, and who was the fourth party?

Mr. HUTCHINSON. There was no fourth party. I was referring to that meeting and merely characterizing its date of January 8, because I could recall there was a January 9 meeting the next day.

Senator NUNN. So January 8, was that the first time you had ever met with Mr. Bartels and Mr. Silberman?

Mr. HUTCHINSON. That was the first time that I ever met with them on this issue. It is my recollection that there had been a general DEA type of staff briefing during December when I was present, but it was the traditional statistics on heroin flow.

I kind of refer to them as a dog and pony show, but a traditional staff briefing.

Senator NUNN. Was that with Mr. Bartels?

Mr. HUTCHINSON. He was present as were other members of his staff.

Senator NUNN. At that meeting this particular case didn't come up?

Mr. HUTCHINSON. No, it did not.

Senator NUNN. What transpired at that first meeting on January 8?

Mr. HUTCHINSON. Essentially, Mr. Silberman reviewed with Mr. Bartels the issues that had been raised by Mr. Tartaglino's allegations, discussed them with Mr. Bartels, asked him questions on certain issues concerning those that are enumerated in the November 14 memorandum.

If I can take an aside here, it is my understanding, that is the Department has informed me that the FBI report, the document itself has not been provided. Therefore, I am reluctant to characterize it, but I can certainly discuss how meetings transpired. That is just my personal understanding of what my responsibilities are.

I have that understanding of my responsibilities as a former De-

partment of Justice official, given the nondisclosure of that document at this time. Nonetheless, I can say that the issues which were addressed in the November 14 Tartaglino memorandum and the issues which were investigated by the Bureau were discussed with Mr. Bartels and in a very specific manner.

Senator NUNN. You mean by that the FBI report? When you say the Bureau you mean by the FBI?

Mr. HUTCHINSON. Yes.

Senator NUNN. There was no independent investigation other than the FBI investigation?

Mr. HUTCHINSON. There was no investigation solely for the purpose of reaching the charges in that memorandum. There had obviously been other types of reviews such as a background nominee investigation on an individual that had been mentioned in the memorandum of Mr. Tartaglino, which was totally separate from the agents' responsibilities, but was nonetheless information that Mr. Silberman was aware of and had access to.

Senator NUNN. Did Mr. Bartels deny the Tartaglino charges and insinuations in his meeting you had with him on January 8?

Mr. HUTCHINSON. He certainly did.

Senator NUNN. On this particular report, did you consider that this was a normal FBI report or was this just two agents assigned ad hoc to Mr. Silberman?

Mr. HUTCHINSON. I think I can characterize that in two time frames to be as realistic as I can. When I read that report it was the first FBI report I had ever read. But in subsequent duties at the Department, that report did not seem unusual in any way in terms of its content or the manner in which it had been handled.

Senator NUNN. We have a statement in the press release made by Mr. Silberman on January 16, 1975, and I will quote it. "After examining these questions, I directed a special review be conducted under my direct supervision by the Inspection Division of the Federal Bureau of Investigation."

In your brief period at the Justice Department, is this the normal manner between the liaison, between Justice and FBI? Does some official in Justice have agents assigned to them under its direct supervision to make a particular inquiry on a case?

Mr. HUTCHINSON. The agents in this particular case—let me answer your latter question first. I don't believe that this is a normal process in the sense that it is the traditional and only way that these matters are handled. Let me suggest to you, though, that as I referred to earlier concerning conversations between Mr. Silberman and the Criminal Division of the Department—and indeed these are issues that I have tracked back to try to discuss with individuals who were there when I was not to better understand them and to review my own records and logs—Mr. Silberman asked the Criminal Division to handle this investigation at the outset which would have been a traditional course to follow.

However, after starting into the investigation, Mr. Petersen came to the conclusion that because Mr. Bartels was an official who had essentially come out of the Criminal Division and was an individual with whom he was very personally well acquainted that it would be appropriate for him to recuse himself.

Senator NUNN. Appropriate for him to what?

Mr. HUTCHINSON. Recuse himself from the case so that there would be no appearance that Mr. Petersen was investigating a close personal friend and therefore cast no doubt on any judgments he would reach.

Senator NUNN. When was that?

Mr. HUTCHINSON. Those conversations had to be some time in November, but the dates I am not aware of because I was not present.

Senator NUNN. November 1974, before you came?

Mr. HUTCHINSON. That is exactly right.

Senator NUNN. This is really before you had any direct knowledge of this case at all?

Mr. HUTCHINSON. That is absolutely correct. This is information that has come to me and that I have sought out essentially through individuals who are now at the Department, and who were at the Department at that time, to better understand what happened, because I felt that I really had no basis to assist the committee.

Senator NUNN. Let me back up just a minute. I understand that you don't have any direct knowledge prior to December of 1974, except from what you have heard from the subcommittee counsel, Mr. Feldman.

When did the Tartaglino memorandum first go to the Department of Justice?

Mr. FELDMAN. Senator, the first one was November 14, 1974, from Mr. Tartaglino to Mr. Pommerening. That is exhibit 20.

Senator NUNN. That was the first direct contact that Mr. Tartaglino had with the Department of Justice in this case?

Mr. MANUEL. No, Mr. Chairman. He had a meeting, as I understand it, on November 13, with Mr. Pommerening, which was followed up by this November 14 meeting.

Senator NUNN. When did Mr. Petersen make any decision, according to the best information you have, direct or otherwise, when did he make his decision not to be personally involved in this matter?

Mr. HUTCHINSON. I believe that it was shortly after the memorandum had been referred to Mr. Petersen and Mr. Keeney, who was the Deputy Assistant Attorney General for the Criminal Division, and therefore my assumption would be some time within the middle 2 weeks of November.

Senator NUNN. According to our information the first contact was made at Justice about November 15. It would have been some time shortly after that?

Mr. HUTCHINSON. I would think so. I am not sure I agree with that characterization. Quite frankly, I am only relying on Mr. Tartaglino's testimony, which is the only testimony I have read. I think he indicated he discussed these issues with Mr. Pommerening prior to November 13. The date escapes me.

Senator NUNN. Who is Mr. Pommerening?

Mr. HUTCHINSON. He is the Assistant Attorney General for Administration at the Department.

Senator NUNN. Was he involved in the Criminal Division with Mr. Petersen or was he with Mr. Silberman?

Mr. HUTCHINSON. Not at all. It was my understanding that Mr.

Pommerening was the Assistant Attorney General for Administration but also was a personal acquaintance with Mr. Tartaglino, and essentially when Mr. Tartaglino had these issues, he wanted to talk to someone to raise them and he went to Mr. Pommerening.

Senator NUNN. Then Mr. Pommerening went to Mr. Petersen?

Mr. HUTCHINSON. Mr. Pommerening discussed it with Mr. Silberman, who then requested the criminal division, Mr. Petersen, to handle it.

Senator NUNN. It went to Mr. Silberman's attention before it went to Mr. Petersen's attention?

Mr. HUTCHINSON. Yes, to the best of my recollection and knowledge.

Senator NUNN. Then Mr. Petersen made a determination that he should not personally be involved in the investigation of this case because of his association and acquaintance with Mr. Bartels, who had formerly been a member of the criminal division of the Department of Justice?

Mr. HUTCHINSON. That is my understanding.

Senator NUNN. Do you know whether Mr. Petersen conducted any investigation before he made this referral or was it immediately referred to Mr. Silberman?

Mr. HUTCHINSON. I believe that individuals within his division had begun to review the files in the case, but I do not know whether Mr. Petersen had personally become acquainted with the facts.

Senator NUNN. Do you know the names of any of these people who with Mr. Petersen were reviewing the case?

Mr. HUTCHINSON. I certainly do, Mr. Jack—I believe it is K-e-e-n-e-y, who is the Deputy Assistant Attorney General for the criminal division, and Mr. Philip White, whose title I just don't recall, but I believe he is a principal assistant within the division.

Senator NUNN. Once it was referred from Mr. Petersen back to Mr. Silberman, from that point on did the criminal division not take any part in the case?

Mr. HUTCHINSON. They recommended that they not do so and indeed they recommended to him——

Senator NUNN. To Petersen?

Mr. HUTCHINSON. They, Mr. Petersen, Mr. Keeney, recommended to Mr. Silberman that Mr. Silberman use the resources of the FBI because they did not wish to participate, so it would not look as though they were investigating close friends.

Mr. FELDMAN. Mr. Chairman, could I ask a question here? In other words, they did not want it investigated not because there might not be a criminal charge, but because they didn't want to investigate close friends?

Mr. HUTCHINSON. It was my impression that it did not go to the nature of the charges or what their ultimate merit would be but only that they did not wish it to appear that they had been investigating a close friend, an individual who had come out of the Department for purposes of investigation.

Senator NUNN. So at that point nobody had made any kind of a decision that it was not a criminal matter or a potential criminal matter.

Mr. HUTCHINSON. I am not aware that anybody had reached that conclusion.

Senator NUNN. But this decision on whether Mr. Petersen or Mr. Silberman should handle it was one based on Mr. Bartels previous association both with the criminal division and with Mr. Petersen personally?

Mr. HUTCHINSON. That is my recollection. It was a question of really appearances and propriety.

Senator NUNN. It is not a criminal-civil kind of split or designation?

Mr. HUTCHINSON. Not at all.

Mr. FELDMAN. In other words, it was shifted back to Mr. Silberman with the recommendation that the FBI agents be attached to Mr. Silberman and work under him?

Mr. HUTCHINSON. That is correct.

Mr. FELDMAN. That Mr. Silberman make a determination on the merits, including, I presume, any possible criminal allegations or he determined the proper disposition of the case?

Mr. HUTCHINSON. I think that is the fairer characterization.

Mr. FELDMAN. But you also testified that neither you nor Mr. Silberman had any criminal background at all—

Mr. HUTCHINSON. No. I testified I didn't. I am not aware of whether he does or does not.

Mr. FELDMAN. My knowledge of his background is that he was a labor lawyer in Hawaii for several years, came to the National Labor Relations Board for a year, was solicitor of the Department of Labor for a period of time and then moved up as Under Secretary of Labor, and then over to Steptoe and Johnson, and then up to Deputy Attorney General. I don't think there is any criminal experience.

Mr. HUTCHINSON. That is a pretty accurate recollection of my understanding of his career. As I say, I just can't state that he has none. I don't know.

Mr. FELDMAN. How long a period of time went by between November 14 and the time the FBI agents came in to investigate?

Mr. HUTCHINSON. I just am not aware. I am not sure. It was my understanding that they started some time early in December.

Mr. FELDMAN. December 2d?

Mr. HUTCHINSON. That could be. I don't know the precise date.

Mr. FELDMAN. They testified December 2d. I am trying to get it in sequence.

Senator NUNN. Were you the prime official in Mr. Silberman's division, if it is a division? Would you call his jurisdiction a division?

Mr. HUTCHINSON. No, it is the Office of the Deputy Attorney General.

Senator NUNN. Were you the prime official in that office responsible for maintaining liaison with this investigation once you arrived formally on board?

Mr. HUTCHINSON. I would think quite frankly that my responsibilities became primary at the time that the committee contacted the Department and indicated that they would be needing informa-

tion and someone had to do that, had to act as a vehicle to obtain it from DEA and transfer it to the committee.

It is at that time that the workload responsibilities were such that Mr. Silberman decided that somebody had to track this on a day-to-day basis. I was given that responsibility.

Senator NUNN. Do you remember the date of that approximately?

Mr. HUTCHINSON. My recollection was mid-January. I think counsel indicated the date earlier.

Senator NUNN. When was the contact made by this subcommittee?

Mr. FELDMAN. January 17 was the date of the letter. I believe we talked to them a day or so prior to that time.

Senator NUNN. According to our records this was after the contact with the subcommittee, and according to your testimony it was when you assumed direct supervision over this case? Was that the press release on January 16, 1975?

Mr. HUTCHINSON. Yes. That is more on the basis of circumstances and fact. In other words, as I arrived at the Department the investigation, the groundwork, the FBI investigation, was essentially completed. It was a question of analyzing that, meeting with the principals and deciding what the disposition ought to be.

Therefore, there was no active ongoing investigation, transfer of information during the period up to January 16. When the committee indicated an interest in this matter, just as a functional matter, there was a great deal of work to be done, collecting the information.

That is when I was assigned the responsibility to act as the liaison with the committee to provide that. It is that point that I started spending more and more of my time on the case although, quite frankly, it was not a principal part of my duties.

Senator NUNN. Up to that point in time, would you say Mr. Silberman himself was the principal and direct responsible person?

Mr. HUTCHINSON. Yes, I believe so. That is a fair characterization.

Senator NUNN. That would include the time up to January 16 when the press release was issued?

Mr. HUTCHINSON. That is right.

Senator NUNN. There was nobody between Mr. Silberman and the FBI report reviewing, making recommendations within his office or department?

Mr. HUTCHINSON. Not that I am aware of.

Senator NUNN. He was making that determination himself?

Mr. HUTCHINSON. It was my understanding that he had had discussions and meetings directly with the agents involved and I was present at one such meeting.

Senator NUNN. After that point in time, did you say it was fair to characterize you as being the person who made preliminary recommendations, decisions, and so forth, concerning this matter, concerning the subcommittee inquiry, and so forth, and passed them on to Mr. Silberman after January 16?

Mr. HUTCHINSON. Certainly; yes. I think that is a fair characterization.

Mr. FELDMAN. Mr. Chairman, for the record, I have an article from The Washington Star-News, January 16 evening edition. The

headline is "Drug Agency Shifts Two in Power Fight," and the Jack Anderson column, I believe, came out the morning of the press release, January 16.

Mr. HUTCHINSON. That is my recollection.

Mr. FELDMAN. Was that Silberman press release a reaction to that column in any way?

Mr. HUTCHINSON. As I recall, Bob Havel, our Public Information Officer at the Department—I am not precisely sure if that is the correct title—had received inquiries on the basis of the Anderson article which appeared in the Post that morning and talked with Mr. Silberman about it and said, "We should put out a statement as to what the conclusions were, the allegations or the issues raised. I received some phone calls. What are we going to say?"

It seems to me that that, as much as anything, was the impetus for trying to put down on paper what Mr. Silberman's conclusions had been. That was the substance of the January 16 press release.

Mr. FELDMAN. Could I have the Jack Anderson column and the Washington Star-News article placed in the record as exhibits?

Senator NUNN. Without objection these two articles will be exhibit Nos. 47 and 48.

[Documents referred to were marked "Exhibit Nos. 47 and 48" for reference and follow:]

EXHIBIT No. 47

[From the Washington Star-News, January 16, 1975]

DRUG AGENCY SHIFTS TWO IN POWER FIGHT

By Orr Kelly, Star-News Staff Writer

Two top officials of the Drug Enforcement Administration have been bounced from their jobs and reassigned to other positions in the Justice Department as the result of a bitter struggle for power in the agency.

Deputy Atty. Gen. Laurence H. Silberman said today that the two officials had agreed it would be in the best interests of the agency if they were reassigned, and that action was taken earlier this week.

The officials involved are Andrew C. Tartaglino, who was deputy to DEA administrator John R. Bartels Jr., and George B. Brosan, a former customs agent who became chief of the office of inspection and internal security when the DEA was formed in mid-1973, taking over the drug enforcement responsibilities of the Bureau of Customs.

Silberman said he ordered an FBI investigation last November after Tartaglino had raised questions about the operations of the agency.

Some of the allegations investigated, according to a column published today by Jack Anderson, were corruption, excessive drinking, consorting with underworld figures, and even one alleged case of murder. Justice Department sources said however, that those accused had been cleared by the FBI.

"After a thorough review," Silberman said, "I concluded that Mr. Tartaglino's concerns, although raised in good faith, were without foundation."

The reassignment of Tartaglino and Brosan leaves three men who had been targets of some of the accusations in key DEA positions. They are Jerry Jensen, now deputy to Bartels, William Durkin, the No. 3 man in the agency, and Vincent Promuto, who retains his position as head of public affairs. Promuto was a guard for the Washington Redskins in the 1960s.

Sources familiar with the situation said the power struggle began in the days when the agency was called the Bureau of Narcotics and Dangerous Drugs. In the summer of 1973, all of the federal government's drug enforcement activities were grouped in the new agency.

Although the bulk of its manpower was drawn from the old BNDD, a number of agents were switched from customs and it also took over a small drug registration responsibility from the Department of Health, Education and

Welfare. The switch from customs was bitterly resented and unsuccessfully resisted by Treasury Department officials.

The inspection division, under Brosan, was reportedly used to check out a variety of allegations about corruption—motivated partially by zeal to protect the agency from corruption and, apparently, as a weapon in the internal struggle for power.

Bartels, for example, reportedly learned about some of the investigations only by accident.

Before becoming head of the drug agency, the 39-year-old Bartels was chief of the organized crime strike force in New Jersey and general counsel of a New York State study commission studying governmental operations in New York City.

EXHIBIT No. 48

[From The Washington Post, Thursday, Jan. 16, 1975]

INTERNECINE WAR AT DEA COMMAND

By Jack Anderson and Les Whitten

The nation's top narcotics officials have been so busy investigating one another lately that they haven't had much time to cope with the dope peddlers.

Charges are hanging over the heads of the top executives at the Drug Enforcement Administration.

The practice has been to turn over the slightest allegations to the inspectors to check out. Those who enforce the drug laws, the reasoning goes, should be so clean they can never become vulnerable to blackmail.

Now narcotics chief John Bartels has complained privately that his underlings have used investigations to blackmail one another. Cases have been held open, he has charged, as a "management tool" to keep officials in line.

Here are some of the charges that are flying around DEA headquarters:

One official was accused of corruption, excessive drinking and loose morals. An FBI investigation cleared him. But he has not been told that he was also exonerated by DEA. The charges continued to be held over his head.

Another official was accused of consorting with a New York prostitute. The alleged incident dated back to 1956, yet the case still remains open. He has heard rumors about the accusations, but he was never confronted openly until we questioned him. He flatly denied the incident.

An exhaustive investigation was launched into charges that public affairs chief Vincent Promuto associated intimately with convicted gamblers, romanced a "\$100-a-throw prostitute" and revealed the identity of a DEA informant to a night club operator with underworld connections. We have read through the thick investigative file, which simply does not substantiate the charges.

It was whispered that two former high officials, acting Deputy Director Andrew Tartaglino and acting Chief Inspector George Brosan, were relieved of their duties and reassigned to "make work" projects because they refused to call off the Promuto investigation. Tartaglino complained to the Justice Department, which sent the FBI to investigate the investigation.

A confidential DEA study describes a shocking yet unresolved case against a supervisor. He has been implicated, according to the study, in the "murder of CI (confidential informant)" and the "sale of narcotics to CI." Yet after years of investigation, it hasn't been determined whether or not he is guilty.

The confidential study tells of another unidentified supervisor who was accused in 1972 of selling information from the DEA's investigative files to some drug defendants. This case, too, is still hanging fire.

Still another top official, according to the DEA study, wrecked an official government vehicle in 1971. He was accused of drunken driving with a "woman companion," but no disposition has been made of the case.

We have spent more than two months digging out the story of the dissension that has virtually paralyzed the DEA's top command. Our associate Bob Owens has interviewed DEA employees at every level. We have also had access to the agency's investigative reports, management studies and other secret files.

The trouble began 18 months ago when the Drug Enforcement Administration was first created. Four rival narcotics agencies, which had been feuding with each other, were merged into a single unit.

Instead of stopping the feuds, the reorganization simply brought them under the same roof. The continuing power struggle reached a climax before Christmas with the three-month old investigation of Promuto, which was launched while Administrator Bartels was out of the country.

A Dec. 20 message went out to DEA posts throughout the world, declaring tersely: "Andrew C. Tartaglino . . . George B. Brosan . . . relieved of all other responsibilities and detailed to me for special assignment."

The Promuto case, Bartels told us, was the last straw. He ordered the reassignments, he said, because of a history of sloppy and unethical investigations.

Sources in the inspection unit charged, however, that Bartels was protecting Promuto because of personal friendship. According to statements taken by the two senior FBI agents assigned to check on DEA's handling of the case, Bartels has demanded constant progress reports on the case and withheld information from his own investigators.

Now Sen. Henry M. Jackson's Permanent Subcommittee on Investigations is preparing a probe of the DEA inspection unit.

Senator NUNN. I think I have this sequence pretty clear as to when you really assumed direct responsibility for this matter.

Did you have any discussion at any point in time with the FBI agents who made that report?

Mr. HUTCHINSON. On January 3, 1975, Mr. Silberman asked me to sit in a meeting wherein he talked with agents, I believe it was agents Williams and Connally.

Senator NUNN. We have Mr. Hegarty as one of the agents and Mr. Williams was another agent. Do we have Mr. Connally?

Mr. HUTCHINSON. Quite frankly, to the best of my recollection, Mr. Hegarty either had been transferred to another location or was unavailable. In any event, my log—I asked for my office to send a copy of that log. My notes reflect a meeting with Mr. Silberman, Mr. Williams, and a Mr. Connally.

Senator NUNN. That was on January 3?

Mr. HUTCHINSON. January 3, 1975.

Senator NUNN. One day after you arrived?

Mr. HUTCHINSON. That is right.

Senator NUNN. One day after you had read the report written by, I believe, Mr. Williams and Mr. Hegarty?

Mr. HUTCHINSON. Yes.

Senator NUNN. What was the nature of the meeting between you, Mr. Connally, Mr. Williams and Mr. Silberman?

Mr. HUTCHINSON. Essentially Mr. Silberman tracked through the written report that they had prepared, asked them questions about particular issues, asked them whether they had talked with so-and-so, whether they had made any evaluations on X set of facts that were raised in the Tartaglino memorandum.

I have to be quite candid. I think I was a little naive as to the Bureau's tradition in this area which I have since learned; that is, that they by and large don't attempt to draw a great number of conclusions in their written reports. They merely attempt to set out a factual statement of the witnesses they have interviewed, what the testimony has been, and what documents they have reviewed, and so on.

I think that meeting more than anything else was an attempt by Mr. Silberman to sit down with them and try to flesh it out. You told me this, you met with this witness. What is here. Is there any-

thing there? What do you think about it? It was that sort of meeting.

Senator NUNN. Did you know when the FBI agents had completed their investigation?

Mr. HUTCHINSON. At that time I was unaware.

Senator NUNN. What is the date of the FBI written report you examined on January 2?

Mr. HUTCHINSON. My recollection is that it was some time in mid- or end-December 1974. The specific day, I don't recall.

Senator NUNN. Did you get the impression that the investigation continued after the written report, or was that the cutoff? Was that the end of the FBI inquiry?

Mr. HUTCHINSON. It was my impression that the FBI's activity in terms of going out and specifically interviewing witnesses had concluded at the time that the report was prepared.

It was also my impression that the conversations and the interchange that Mr. Silberman had with the agents, which was of such a nature that in his mind he was continuing to learn information and gain insight into it.

Senator NUNN. Can you describe the information contained in the Williams-Hegarty FBI report for the subcommittee?

Mr. HUTCHINSON. May I have that question read back? As I said, I have been apprised that the report itself has not been made available.

Senator NUNN. The question is can you describe the information contained in the Williams-Hegarty FBI report for the subcommittee?

Mr. HUTCHINSON. I can describe it for you consistent with my best understanding what my responsibilities as a former Department official are. I can describe for you the nature of this report. I doubt that either my memory or by responsibility that I could describe each unique part of it or the facts.

Senator NUNN. Why don't you go ahead and describe the nature of it within the extent of what you can both remember and for which you feel you are responsible?

Mr. HUTCHINSON. Certainly. It was my impression when I reviewed the report that it essentially attempted to take Mr. Tartaglino's allegations and track them and deal with them on a 1-for-1 basis.

They dealt with issues that were administrative. They dealt with issues that included the Promuto investigation and essentially tried to address each point that he had raised. It was my recollection that the subject areas that Mr. Tartaglino had identified as matters of concern, each subject area was discussed and reviewed in the Bureau report.

Senator NUNN. Did the FBI agents ever tell you that they felt they had not done a complete job?

Mr. HUTCHINSON. Not at all.

Senator NUNN. Did they ever imply that in any way?

Mr. HUTCHINSON. No, they did not.

Senator NUNN. Did they ever imply that they may have been restricted in any way?

Mr. HUTCHINSON. No, they did not. I think there may be a mis-

understanding as to what is complete and what is not. It was my understanding that Mr. Silberman was interested in a review of the allegations in the Tartaglino memorandum as they applied to the question whether John Bartels had obstructed the investigation, and whether other facts that Mr. Tartaglino raised as to high appointees, allocation of resources were substantiated.

There was no attempt and no desire at that point for these particular agents to investigate the underlying charges made against Mr. Promuto. That would be a separate issue.

Senator NUNN. In other words, you didn't know whether Mr. Silberman, to the best of your knowledge, had intentions of going beyond the Tartaglino allegations against Mr. Bartels in terms of impeding the investigation?

Mr. HUTCHINSON. That is right. The attempt was to take the allegations that had been brought by Mr. Tartaglino to the Department, find out if we thought that they had substantial foundation or were warranted.

Senator NUNN. You were not trying to determine whether or not DEA had done a good job in investigating the Promuto case?

Mr. HUTCHINSON. Not at that time; no, we were not.

Senator NUNN. You were trying to determine whether Mr. Bartels had impeded that investigation?

Mr. HUTCHINSON. Essentially, yes. In other words, we were trying to track the types of allegations that Mr. Tartaglino had raised. I think that the question as to whether DEA as a totality or DEA within its Office of Inspection was doing everything in a manner that was of the highest caliber, was not the issue at that point.

The issue at that point was to address the allegations in the memorandum and determine whether they had a basis.

Mr. SLOAN. Mr. Chairman, if I may raise one question. At our June 19, 1975, hearing with Agents Williams and Hegarty, Senator Percy asked at page 741 of the stenographic transcript:

Were you specifically then asked or directed—I presume that is a more accurate, appropriate term—directed to investigate all the matters raised by Mr. Tartaglino?

Mr. Williams responded:

I did not understand my mission as that, sir. No.

So that the record is clear as to how the agents understood their role, Senator Percy asked:

Was the investigation as thorough as indicated in this Justice Department press release? That is the January 16th press release.

That is the January 16th press release.

Did you investigate over a period of several months, all the matters raised by Mr. Tartaglino, along with Mr. Bartels' concern about the practices of DEA's Office of Investigation? Could it be considered as thorough an investigation as inferred in the press release?

Mr. Williams responded:

I would not consider it a thorough investigation up to that point of the facts that were available to these gentlemen to support the allegations.

So I think the statements that were made by Mr. Williams indicate that he did not feel he was supposed to go beyond a certain

point and he wasn't supposed to investigate some of the allegations that were raised by Mr. Tartaglino.

This went beyond the question of avoiding the specifics in the Promuto case. I think that was one of the concerns expressed by the Senators at our June 19 hearing concerning that press release.

Mr. HUTCHINSON. Quite frankly, it is my belief, my impression, that we may well have little ships passing in the night here. The assignment that the agents had was not to fully investigate DEA and John Bartels on any issue that they can discover.

The assignment was that Mr. Tartaglino has raised, whatever the number is, five or six specific allegations. Review those for me. Come back and tell me whether they are founded or not. How one translates that, I don't know.

But to me, there could well be a misunderstanding. Clearly, they weren't asked to investigate DEA operations or inspections as a gross issue.

Senator NUNN. I understand that. Do you think the report covered all the Tartaglino allegations? In your reading of the allegations, the FBI report, was it your judgment that the FBI report that you read covered all the Tartaglino allegations?

Mr. HUTCHINSON. It was my impression that the report addressed each issue that Mr. Tartaglino has raised; yes.

Senator NUNN. What was your evaluation of the information contained in the FBI report?

Mr. HUTCHINSON. My evaluation was, harking back to the comment I made before, it seems to me they didn't draw many conclusions, but evidently that was a misapprehension I had about how those reports ought to be prepared.

They were merely factual statements. I thought they had attempted to reach all of the issues and had indeed reached those issues. I believed that there were issues there that broke down to a point where two individuals perceived a meeting or a conversation differently.

There was nothing that they had discovered, which would indicate that one individual had clearly perceived it correctly and the other incorrectly.

Senator NUNN. Did you come to the conclusion that the allegations raised by Mr. Tartaglino after reading the factual report of the FBI were without substantial foundation?

Mr. HUTCHINSON. I think that is a fair characterization; yes, I do.

Senator NUNN. But you also said at the time you read the report you were looking for conclusions and there was nothing but facts there; is that right?

Mr. HUTCHINSON. That is correct.

Senator NUNN. The FBI didn't come to that conclusion?

Mr. HUTCHINSON. They did not in the written report.

Senator NUNN. But you concluded that these Tartaglino charges were without substantial foundation based on your reading of the FBI factual information?

Mr. HUTCHINSON. I think the most precise way to state it is I concluded that Mr. Silberman's analysis that they were without substantial foundation was the correct conclusion; yes.

Senator NUNN. But that was a retroactive conclusion; was that conclusion after January 16 when he issued the press release or was it before then?

Mr. HUTCHINSON. I don't think that I quite frankly either purported to or suggested to anyone that I was analyzing the joint final conclusions and making recommendations on the 2d or 3d of January.

Senator NUNN. You didn't make any recommendation to Mr. Silberman about your analysis of this report prior to January 16?

Mr. HUTCHINSON. I would have to say I discussed some of the issues with him and may well have offered an opinion on some of those, but I didn't feel either by expertise on the facts or real sensitivity to the issues that had been developing over the months that I could offer him a conclusive opinion.

Senator NUNN. I was trying to determine whether his January 16 press release was based on your recommendation?

Mr. HUTCHINSON. The press release was Mr. Silberman's thought process and his conclusion.

Senator NUNN. You didn't sign off on it, so to speak? He didn't give it to you and say, do you agree with this and, if not, give me your reasons, and so forth?

Mr. HUTCHINSON. It was my recollection that that document was drafted in the conference room with the Deputy Attorney General present, with Mr. Silberman present; I was present, Mr. Bob Havel, the press officer, was present, because he had raised the issue we had received comments on the morning article, and essentially Mr. Silberman attempted to state his conclusions, and it was put on paper.

Everybody sits down and plays with words. But it was his conclusion, his decision, and precisely how he wanted it characterized.

Senator NUNN. Would it be fair to say this was his conclusion and these were his words and you were sitting there; it was dictated, but that you agreed with it, basically?

Mr. HUTCHINSON. Yes, I think that is fair.

Senator NUNN. And that you didn't offer any kind of rebuttal, suggestion to change a word or anything of that nature as it was being done?

Mr. HUTCHINSON. Not particularly to the conclusion that you are concerned with, the "without substantial foundation" issue. I thought that was a fair characterization.

Senator NUNN. Did you take exception to anything else in the press release?

Mr. HUTCHINSON. No, I didn't.

Senator NUNN. What about the provision down at the bottom where the wording says "The investigation which took several months."

Mr. HUTCHINSON. It was my understanding that what Mr. Silberman was referring to was his review and investigation of the whole issue and not his characterization of the precise days of the FBI report that was prepared by Agents Williams and Hegarty.

Senator NUNN. He was talking about the whole process of the Promuto investigation rather than just the FBI and Justice Department?

Mr. HUTCHINSON. The whole process by which he became apprised of the issue, reviewed it, discussed it with people, reviewed information, asked for an FBI investigation, reviewed other documents and came to a conclusion. It was my impression that he perceived that to run from November through January.

Senator NUNN. Did anyone question the FBI agents about the number of witnesses interviewed, whether they interviewed all of the witnesses that Mr. Tartaglino suggested?

Mr. HUTCHINSON. I don't recall that issue having been broached. As I indicated, I was present at one session. That was on January 3. There were other sessions between the agents and Mr. Silberman, but I was not present. I don't know whether those issues were addressed.

Senator NUNN. I can recognize your disadvantage coming in here in January and not having had previous criminal experience and not having worked with the FBI report. But even with that background, let me ask you one other question.

Do you think, even with your limited background, that this is a typical FBI report; and looking back on it now, do you think it was handled in the normal manner that the FBI would conduct an investigation?

Mr. HUTCHINSON. Yes, I do. I think it is typical of the type of administrative inquiry that is done, either by the Bureau or other resources in the Department.

Senator NUNN. You said the word administrative inquiry here. This is pretty important, I would think, because no one had ever determined it was administrative. We have already established, everybody, and you said it had the potential for a criminal charge.

Mr. HUTCHINSON. Absolutely, but as a matter of normal practice, the Department when receiving an allegation, unless it is clear on its face that it is obviously a criminal violation, if the facts are true as stated, deals with it as an administrative inquiry.

The analysis is done. When that is completed if the facts that are adduced indicate that it should be referred for criminal review or prosecution, then it is treated as a criminal matter. That is consistent with my understanding of how other issues have been handled.

Senator NUNN. Let me ask you this as a matter of general policy, not on this case. When an allegation comes to the attention of the Department of Justice, is there any kind of division made or at the time it is referred, that is to say, does anybody say this is an administrative matter, or this is a criminal matter?

In other words, how does Henry Petersen's division have matters referred to it? Are there certain matters that are administrative that don't go to the Petersen division or Criminal Division?

Mr. HUTCHINSON. No, often the Criminal Division will serve as a resource to do an administrative inquiry as well.

Senator NUNN. Who makes that judgment?

Mr. HUTCHINSON. Quite frankly, I think it is a judgment reached either by an individual assigning it, in this case Mr. Silberman referred it to them, or by the Criminal Division. They may say: "It looks to me it may." Then the assigning individual will say: "Advise me and continue to investigate."

Senator NUNN. Do you have an administrative investigative division in addition to the Criminal Investigative Division?

Mr. HUTCHINSON. Not that I am aware of; no. There is no formal Inspector General Office in the Department.

Senator NUNN. Is there anybody else other than the Criminal Division that can do investigations, that can handle investigations in the Department of Justice?

Mr. HUTCHINSON. The Criminal Division and the Bureau, I think, are the chief investigating resources of the Department.

Senator NUNN. Do they handle all investigations. Are they criminal lawyer investigations?

Mr. HUTCHINSON. It is my impression, based on the experience I had over the 4 to 4½ months in the Department that clearly administrative investigations which at that point had not risen to the level of the criminal matter were handled within the Criminal Division. It was a resource. It was a group of individuals who knew how to investigate, whatever the issue may be.

Mr. FELDMAN. Mr. Chairman, there was a referral to the Criminal Division early on in this case in November.

Mr. HUTCHINSON. That is correct.

Mr. FELDMAN. The Criminal Division did not want to handle it because of possible conflicts or at least appearance of impropriety. Then they sent it back to Mr. Silberman, who engaged two FBI agents, who then turned it into a so-called administrative inquiry, or it turned into a so-called administrative inquiry?

Mr. HUTCHINSON. I think I followed your whole analysis to the point whereby your last sentence indicated it must have been referred initially to the Criminal Division as a criminal matter. I don't make that assumption.

Mr. FELDMAN. It was referred to the Criminal Division for review. I am not saying how they say this is a criminal matter, but it was referred to the Criminal Division for review.

Mr. HUTCHINSON. That is correct. They do indeed review and investigate administrative matters that are not criminal.

Senator NUNN. You say they are the only investigating body in the Department of Justice.

Mr. HUTCHINSON. It is my impression that they are, based on experiences that I had had.

Senator NUNN. Based on your experience you wouldn't know who else to refer it for investigation?

Mr. HUTCHINSON. Let's back up just a minute to January 8, to the meeting you and Mr. Bartels and Mr. Silberman had. At that time did you discuss with Mr. Bartels the information contained in the FBI report?

Mr. HUTCHINSON. It is my recollection that Mr. Silberman discussed with him many of the issues that had been raised within the FBI report but it is also my specific recollection that Mr. Bartels requested an opportunity to review that report and was denied that opportunity.

Mr. Silberman indicated that he wanted it done for his review and he did not want the parties involved to be squabbling over the issue or to give any appearance that they had an effect on the investigation or his conclusions.

Senator NUNN. Did Mr. Bartels at that time, referring to previous testimony—I am not sure whether we developed this or not—did Mr. Bartels have the original allegations Mr. Tartaglino made?

Mr. HUTCHINSON. I don't recall whether he did or not.

Senator NUNN. You don't know whether he did or not, but, he was denied by Mr. Silberman any access to the FBI report?

Mr. HUTCHINSON. He was.

Senator NUNN. Was that a continuing policy up to this point?

Mr. HUTCHINSON. Yes, it was.

Senator NUNN. Who has access to the FBI report outside of the FBI and the Department of Justice?

Mr. HUTCHINSON. It would be my impression that document reposes either in the Deputy Attorney General's office or some other office he has directed. I don't know the answer to that.

Senator NUNN. Based on your own personal knowledge, you don't know whether anyone outside of the FBI or the Department of Justice has had access to that report?

Mr. HUTCHINSON. I am unaware that they have. I know of no one that has.

Senator NUNN. But Mr. Bartels was made aware of some of the contents of the FBI report by reason of the discussions you had with Mr. Silberman and Mr. Bartels?

Mr. HUTCHINSON. He was made aware of all of the issues that had been both raised in the report and in the original memorandum. In other words, it was a session where the Deputy Attorney General called in a principal officer and sat down and said there had been some serious charges; these are the kind of charges involved: What is your position on this issue? What is your position on that issue?

Senator NUNN. Were there any FBI facts that were in the FBI report that Mr. Bartels was confronted with and asked to comment on?

Mr. HUTCHINSON. I am sure there were; yes.

Senator NUNN. Was he asked to clear up anything in the FBI report, any facts?

Mr. HUTCHINSON. He was asked for his recitation of the facts on the specific incident. As I said, I feel kind of restrained here because you can describe an issue. As an example, without going into the facts, there was a meeting where different persons left the meeting with an impression as to whom had directed what be done and essentially he asked Mr. Bartels what happened at that meeting. What is your position on that? Issues like that were dealt with.

Senator NUNN. What I am really getting at was there anything in the FBI report that you and Mr. Silberman concluded, or either of you concluded, needed further answer by Mr. Bartels?

Mr. HUTCHINSON. I think not, other than those answers which he provided pursuant to questions; yes.

Senator NUNN. So he cleared up anything in the FBI report that there was a serious question on in those oral discussions with you and Mr. Silberman?

Mr. HUTCHINSON. Senator, I am not sure cleared up is the right word. In other words, he stated his position on each of those issues.

Senator NUNN. Was there any conflict between Mr. Bartels' oral statements and the FBI report?

Mr. HUTCHINSON. Not that I recall, nothing that appeared to us to be of surprise or unusual nature.

Senator NUNN. Mr. Silberman obviously had read the FBI report, had he not?

Mr. HUTCHINSON. I am certain he had.

Senator NUNN. After your discussion on January 8 with Mr. Silberman and Mr. Bartels, did you personally feel that the matter, the investigation had been completed and that all matters had been cleared up either by the FBI report or by Mr. Bartels in his oral conversation?

Mr. HUTCHINSON. It was my impression, and as I say, I don't know how to characterize this, I was a veteran of about 6 days at the time and it was my impression that Mr. Silberman was satisfied that the issues had been raised and that his discussions with all the principals resolved them in his mind.

I had nothing that I had seen during those days to disagree with that conclusion.

Senator NUNN. Was the FBI report itself enough to lead you to the conclusion that the Tartaglino charges were without substantial foundation? Was the FBI report, per se, enough to lead you to that conclusion, or did you come to that conclusion by gathering other information from Mr. Bartels?

Mr. HUTCHINSON. I think that my personal impression is that the report probably in itself would have disposed of the allegations, but it was also my knowledge that Mr. Silberman through interview and/or review of other materials had other knowledge that was not contained in that document which dealt with specific issues that Mr. Tartaglino raised and led him to believe that those issues or allegations were not founded.

Senator NUNN. Were you aware of all of that other material, too; or were you just aware that there existed certain material?

Mr. HUTCHINSON. I became more aware of it more in the subsequent stages, as I became more involved in dealing with the committee and trying to discern what all of the relative material might be.

Senator NUNN. Was this oral material or in the form of reports?

Mr. HUTCHINSON. There is at least one additional FBI investigation which was in the nature of a background investigation for a nominee. It dealt with one of the issues raised in the Tartaglino memorandum that I am apprised and subsequently became fully aware that Mr. Silberman had reviewed.

Senator NUNN. Did you review it yourself?

Mr. HUTCHINSON. Subsequent to that time, I did because it was also one of the functions of my office to review a background investigation on a presidential appointee.

Senator NUNN. Let's assume the committee wanted to try to reach a definitive conclusion of whether Mr. Tartaglino's concerns and allegations were without substantial foundation and that was the question.

What written information other than the one FBI report, and

the one you just referred to, concerns an investigation based on a nominee? Is there any other written information that this subcommittee would need to have to make that kind of judgment?

Mr. HUTCHINSON. If there were any memoranda or interim reports prepared by the agents for Mr. Silberman, I am unaware of whether or not there are any. I haven't seen any, if there were any internal memoranda between Mr. Petersen or Mr. Kenney and Mr. Silberman discussing the issue. It seems to me that is relevant. I have not reviewed or seen those documents.

Senator NUNN. You say those documents as if there are such documents.

Mr. HUTCHINSON. I am hypothesizing, I have to confess. It seems to me if I were trying to definitively know every piece of written information, I would ask that question, "Are there any such documents?"

Senator NUNN. If you were trying to put on the table before you everything that you know about the case that has been in writing, what documents would you gather?

Mr. HUTCHINSON. I think I would review the FBI report prepared by Agents Hegarty and Williams.

Senator NUNN. You would start with the Tartaglino allegations?

Mr. HUTCHINSON. Absolutely. Quite frankly, I treat that as a piece of the report.

Senator NUNN. Let's document everything and lay it out on the table, starting with the Tartaglino allegations and see whether we are aware of all the documents.

Mr. HUTCHINSON. It seems to me that the November 13 or 14 memorandum from Tartaglino to Pommerening, the date escapes me, the one we talked about previously, that document, the documents that were then included as an appendix to the FBI report done by Agents Williams and Hegarty, which included the other document that we spoke of this morning, a memorandum from Mr. Tartaglino to the agents, pieces of paper that Mr. Tartaglino provided to the agents by way of background, all of these were appended to the report.

Senator NUNN. They were all a part of that report?

Mr. HUTCHINSON. Yes. I would also consider the nominee investigation file, because it addressed some of the questions, the factual questions that Mr. Tartaglino had presented, was a subject of proper review.

Senator NUNN. You are saying that there was one such report—

Mr. HUTCHINSON. That I am personally aware of; yes.

Senator NUNN. You are saying there may have been others?

Mr. HUTCHINSON. I wouldn't characterize whether I do or don't think there are any. I am saying there is one I personally reviewed and I know he was aware of it. I would think the document that had been prepared within DEA which analyzed some of the operations of the Office of Inspection which was an initial draft study done by Dr. Moore, which had also been presented to Mr. Silberman, which was an initial draft study done by Dr. Moore, which had also been presented to Mr. Silberman, which told him certain things about how Dr. Moore perceived the Office of Inspection was working.

That was one of the issues raised in Mr. Tartaglino's memorandum. I think that would be relevant. In terms of writing, I am not sure that there is anything that I—I know there is nothing else I have seen. Whether there are other documents, I am just not aware.

Senator NUNN. Regarding that particular report you referred to—the so-called nominee report, investigative report of a particular nominee, I assume you don't want to get into the particular nominee. You don't feel you can do that?

Mr. HUTCHINSON. For many reasons: One, it is an FBI document that has not been released, to the best of my knowledge. Second, quite frankly, it raises allegations as to an individual and those allegations were unsubstantiated. I think it would be unfair to him.

Senator NUNN. Without identifying a nominee, would you give us the time span that that investigation was made?

Mr. HUTCHINSON. During the fall of 1974 and continuing into December 1974.

Senator NUNN. Continuing into the summer of 1974?

Mr. HUTCHINSON. Continuing into December of 1974.

Senator NUNN. Into December of 1974?

Mr. HUTCHINSON. Yes.

Senator NUNN. So it was within the same time span that the FBI was investigating the Tartaglino allegations?

Mr. HUTCHINSON. That is correct.

Senator NUNN. Were the same agents doing the investigation or were there other agents?

Mr. HUTCHINSON. They were not the same agents.

Senator NUNN. Was there any coordination between these two or did it just happen that this information fell together and concerned some of the same subject matter?

Mr. HUTCHINSON. I am totally unaware that there was any coordination or interchange. My expectation of normal Bureau practices would be that they operate in the separate divisions of the FBI and indeed would have no reason to discuss the issue.

Senator NUNN. With respect to the nominee investigation, was Frank Waters interviewed by the FBI?

Mr. HUTCHINSON. He was.

Senator NUNN. Would you tell us who Frank Waters is?

Mr. HUTCHINSON. To the best of my recollection, he was an individual involved in a criminal proceeding. I believe he was the subject matter of that proceeding; but quite frankly, my recollection is a little fuzzy on that issue.

Senator NUNN. He was a defendant in the southern district of New York. Did Mr. Waters interview and play a large part in clearing the particular nominee?

Mr. HUTCHINSON. That may be overstating it. I think his interview was just one issue we felt ought to be addressed in terms of doing the nominee's background investigation.

Senator NUNN. Were these interviews sworn statements?

Mr. HUTCHINSON. They were statements taken by FBI agents in the normal course of their duties.

Senator NUNN. Do you know very much about the background of

this particular nominee investigation? Do you know who decided to interview Mr. Waters?

Mr. HUTCHINSON. I really don't. I have no idea how that was decided.

Mr. FELDMAN. The FBI agents testified that their investigation began on December 2 and ended on December 12. How could they have possibly investigated all of these matters raised in the Tartaglino and Brosan memo in 10 days?

Mr. HUTCHINSON. Quite frankly, it is my understanding that the interview process of December 2 to December 10 sounds about right, just trying to recall the dates of the interviews in the file. But they also were provided with a wealth of written materials which they reviewed subsequent to the 10th as they were preparing the report. I don't know what the time frame was, quite frankly. From whatever date they stopped interviewing and whatever date they presented the written report, I don't know what those dates are.

Mr. FELDMAN. They presented their report on December 18. We have testimony to that.

Mr. HUTCHINSON. I have no reason to question that.

Mr. FELDMAN. You think it was thoroughly done in that 10-day period?

Mr. HUTCHINSON. Yes.

Senator NUNN. Shifting to another point, we have covered, I think, the January 9 meeting in pretty good detail. Was there anything else at that January 9 meeting that took place that you think this subcommittee should know? I refer to the meeting between you, Mr. Bartels, and Mr. Silberman.

Mr. HUTCHINSON. Nothing, Senator, that I can recall that was either out of the ordinary or raised an issue.

Senator NUNN. The meeting was conducted, in your opinion, with proper procedure and you don't have any criticism of the way the meeting was conducted by Mr. Silberman or anything that Mr. Bartels may or may not—

Mr. HUTCHINSON. No, not at all. I think it was an attempt by Mr. Silberman to track down and get as much information as he could on the allegations.

Senator NUNN. The January 9 meeting was attended by Mr. Silberman, Mr. Tartaglino, Mr. Pommerening, and yourself?

Mr. HUTCHINSON. That is correct.

Senator NUNN. Was anybody else there?

Mr. HUTCHINSON. No.

Senator NUNN. What was discussed at that meeting?

Mr. HUTCHINSON. It was quite frankly, in nature very similar to the meeting that was held with Mr. Bartels on the day before. Mr. Silberman used that meeting as an opportunity to review the issues that had been raised by Mr. Tartaglino, to ask him questions about certain things, to permit Mr. Tartaglino to add to, subtract, modify, comment on his previous allegations. Indeed, it was just another attempt to try to get as much information on the allegations as possible.

Senator NUNN. Was Mr. Tartaglino informed by either you or Mr. Silberman at that stage that he did not think these allegations were substantial?

Mr. HUTCHINSON. I know for a fact that by the conclusion of the meeting, he was informed by Mr. Silberman.

Senator NUNN. Did you take any notes or was there any written record of that meeting?

Mr. HUTCHINSON. I read Mr. Tartaglino's testimony, prepared statement about note taking and because I did not recall taking any notes, quite frankly, I called back to the Department and asked for the file to be pulled. There was one. Other than a pretty unsophisticated doodling, I had about one-half page. It was not a note-taking or reporting-type session, in my opinion. I was just scratching to help myself think. There were no formal notes nor was there a memorandum ever prepared of that meeting that I am aware of.

Senator NUNN. You say with the exception of about one-half page. Is that in the file?

Mr. HUTCHINSON. Yes. It would be.

Senator NUNN. Do you have it with you today?

Mr. HUTCHINSON. I do not.

Senator NUNN. Have you reviewed it?

Mr. HUTCHINSON. I have looked at that piece of paper and returned it. I was just curious as to whether I took notes.

Senator NUNN. What basically were the kind of notes on there?

Mr. HUTCHINSON. Essentially, it listed the people who were present at the meeting. As I recall, it raised or stated one of the issues that Mr. Tartaglino had raised. I attempted to frame it for myself so I could clarify my thinking. Quite frankly, after that, it was downhill in terms of just scratching and doodling. I am almost embarrassed about the nature of it. There was nothing of substance in the notes.

Senator NUNN. Nothing of substance in the notes?

Mr. HUTCHINSON. No. I would be perfectly willing for you to review them.

Senator NUNN. Can you get those notes and furnish them?

Mr. HUTCHINSON. The Department of Justice has the notes. I just assumed they were a part of a file that is a Department file.

Senator NUNN. Were any of these meetings recorded by any kind of recording?

Mr. HUTCHINSON. They were not, to the best of my knowledge.

Senator NUNN. Mr. Tartaglino has testified that Mr. Silberman was not familiar with the real issues. I think the word "familiar with the real issues," is a direct quote. Do you agree with this assessment by Mr. Tartaglino?

Mr. HUTCHINSON. I do not, no. Mr. Silberman evidenced during the week before that meeting and during that session, in my opinion, a very sound grasp of what the problems were and the underlying facts.

Senator NUNN. Did Mr. Silberman and you discuss with Mr. Tartaglino the other integrity problems that Mr. Tartaglino had raised in his interview with the FBI Inspectors Mr. Williams and Mr. Hegarty?

Mr. HUTCHINSON. We reviewed—I want to be sure I understand your question.

Senator NUNN. Did Mr. Silberman and you discuss with Mr.

Tartaglino the other integrity problems that Mr. Tartaglino had raised in interviews with the FBI Inspectors Mr. Williams and Mr. Hegarty?

Mr. HUTCHINSON. It was my recollection, quite frankly, that the FBI report dealt with issues in addition to the Promuto investigation and what activity Mr. Bartels had engaged in and ranged over many other types of integrity issues and those issues were indeed discussed in that meeting.

Senator NUNN. These problems, according to your understanding, concluded (1) DEA relationships with the State and local police departments; (2) violation of the Civil Service merit system by DEA; (3) staffing of the office of inspection; and (4) utilization of consultants without proper security clearance.

So really the question is did you and Mr. Silberman, or did you individually or did Mr. Silberman individually, to your knowledge, discuss these four issues or any of these issues with the FBI?

Mr. HUTCHINSON. Yes, we did. As a matter of fact, I recall the question being asked by Mr. Silberman as to the techniques used in the original investigation, relationships with outside law enforcement agencies, just manner of conducting the investigation.

Senator NUNN. Did you get the impression the FBI had actually conducted the investigation on these four items?

Mr. HUTCHINSON. They most certainly had addressed in their memorandum, in the report, issues that I would characterize as allocation of resources, disagreement on inspection, policy issues. They were addressed in the report as well.

Mr. SLOAN. Mr. Chairman, if I could ask one question: Was Thomas Durkin interviewed, to your recollection? For example, on the question of outside consultants?

Mr. HUTCHINSON. I don't recall that he was, but I know that his name—we are talking about 5 or 6 months now—his name and the issue of his involvement was within the FBI report that had been prepared.

Mr. SLOAN. I believe that the FBI agents testified that it was not, which would make it difficult to really come to an adequate conclusion about that matter.

One other point, I am looking at Mr. Tartaglino's memo of December 11. He has a large section on violation of Civil Service regulations. He goes into considerable detail. Was that question addressed by the FBI?

Mr. HUTCHINSON. Yes, it was. As I recall, that issue also was discussed in their report to Mr. Silberman.

Mr. SLOAN. On the question of the Promuto investigation itself, Mr. Tartaglino in his memorandum to the FBI agents Mr. Tartaglino makes six specific points concerning the nature of the office of inspection investigation, the premature and untimely confrontation of Mr. Promuto, the use of written questions and unsworn replies, and others—you are familiar with those. There are six of them.

In fact, it turns out that many of the things that Mr. Tartaglino stated are true. The question I wish to ask is whether it was the position of the Department and of Mr. Silberman that although

these allegations were true, that did not mean that what had been done was improper?

Mr. HUTCHINSON. I think that the fairest way—

Mr. SLOAN. Do you see what I mean?

Mr. HUTCHINSON. Yes. My best recollection of Mr. Silberman's reasoning process and the way he drew his conclusion and, quite frankly, that is the way—as I recall the drafting of the press release—it was said “without substantial foundation.”

It was clear that Mr. Tartaglino had raised issues such as the assignment of personnel to the office of inspection and certain work loads. They were not factually erroneous. There was an evaluation on Mr. Silberman's part, a judgment that those issues, even if true, that there may have been a disagreement over assignment of resources, did not rise, in his opinion, to misconduct. It was a policy disagreement between two officials.

Indeed, that issue was discussed in the January 9 meeting with Mr. Tartaglino. As I recall, the way Mr. Silberman framed it is, what you are saying is you two would have done it differently if you had been boss instead of Mr. Bartels. The answer is, of course, he would.

Mr. SLOAN. Finally, was there specific discussion concerning certain appointments to high DEA positions? Again, Mr. Tartaglino discussed the appointment of several people to the key positions as well as the nomination of one individual to a high post.

Mr. HUTCHINSON. It is my recollection, again without discussing the names, that at least two that I can recall and maybe more, by name, were referred to and discussed within the FBI report.

Mr. SLOAN. They were discussed in the meetings with Mr. Silberman and the FBI agents?

Mr. HUTCHINSON. That would be my assumption, yes.

Mr. SLOAN. Thank you, Mr. Chairman.

Senator NUNN. On that point about Mr. Thomas Durkin, one of the allegations was the utilization of consultants without proper security clearance. That was either true or false, wasn't it?

Mr. HUTCHINSON. I would assume so, yes.

Senator NUNN. You either used consultants without proper security clearance, assuming consultants had to have security clearance to get into classified matters which I think everyone assumes regarding anyone who has access to classified matter, I say classified, sensitive matters, matters concerning criminal investigations.

Was that allegation investigated and addressed by the FBI?

Mr. HUTCHINSON. It seems as I recall the nature of the allegations, I thought its primary thrust was that Mr. Durkin in addition to the fact that he may have been a consultant and may have been without a security clearance was used as a mechanism to impede the investigation. When we were addressing the issue of impeding an investigation, that was the prime thrust of our focus.

Quite frankly, I am unaware, was unaware at that time and still at this point unaware of whether or not Mr. Durkin has a clearance or that he ever saw any classified type of information.

Senator NUNN. That was not addressed by the FBI, then?

Mr. HUTCHINSON. I don't recall that it was, no; but it was more a question of whether that was the thrust of the allegation.

Senator NUNN. So what you are saying is that the thrust of the FBI investigation directed by Mr. Silberman, was basically one question and that was whether Mr. Bartels had impeded the investigation of the Promuto case.

Mr. HUTCHINSON. I think that that was the basic thrust as to the issue of the Promuto case. It did address other issues, civil service issues, nominees, allocation of resources. It was not a one issue assignment.

Senator NUNN. There were a lot of allegations, but I think what you just established, at least as far as I am concerned, on the question of proper security clearances was that you weren't concerned that the FBI—you didn't think that was the thrust of the investigation—was not concerned about whether Mr. Thomas Durkin had a security clearance. But what you were concerned about was whether the FBI addressed the fact of whether Mr. Thomas Durkin was a consultant and did not have a security clearance was not relevant and did not have any bearing on whether there was any impeding of the investigation by Mr. Bartels? Is that a fair conclusion?

Mr. HUTCHINSON. I think that our primary inquiry, as I analyzed what the thrust of it was, was to determine whether Mr. Durkin, whatever his status, was used as a mechanism to inform Mr. Promuto early on or inappropriately of the nature of the investigation and thereby impede it. I think that was the thrust of that issue.

Senator NUNN. How do you arrive at that without interviewing Mr. Durkin?

Mr. FELDMAN. Mr. Chairman, I want to correct an error here. Mr. Williams and Mr. Hegarty did testify that Mr. Thomas Durkin was interviewed.

Senator NUNN. I think your recollection was he was not?

Mr. HUTCHINSON. What I said was that it wasn't my recollection. I knew his name appeared in the report. I didn't know if it was subject to the interview or by reference from another individual.

Senator NUNN. Let's assume hypothetically a couple of things. Let's assume that the FBI report showed there had been: (1) A violation of the civil service merit system at DEA; (2) that the staffing of the Office of Inspection was inadequate; (3) the utilization of consultants without proper security clearance was the standard practice of DEA.

Hypothetically, assuming all of those things just stuck out in the record and assuming down at the bottom they concluded, though, none of these matters, none of these briefings about DEA, none of this mismanagement resulted in impeding the investigation of Mr. Promuto. If that, hypothetically, had been the case, would you have concluded that Mr. Tartaglino's concern was without substantial foundation?

Mr. HUTCHINSON. Probably not. In other words, if each of the parts of your hypothetical had been true and had been established by the investigation to be, in fact, true, that there were civil service violations and so on and so forth, that there had been inadequate staffing of the Office of Inspection for a purpose because there was no interest in or desire to impede integrity investigations, I think in that case then there would have been a basis to those allegations

and that they would have been founded in part whether or not he had impeded the investigation.

Senator NUNN. Aren't you saying the FBI should have gone into these issues and investigated them because they were material allegations?

Mr. HUTCHINSON. They did review each of the issues that you just mentioned.

Senator NUNN. Was it your impression that they investigated? This press release says—let me find the exact wording—"Following a thorough review, I concluded that Mr. Tartaglino's concerns, although raised in good faith, were without substantial foundation."

Is it your opinion that they did do a thorough review on these issues?

Mr. HUTCHINSON. I think their review was adequate enough with the surrounding information that Mr. Silberman had to determine that the issues of impropriety raised by Mr. Tartaglino were without substantiation, yes. I think that is a fair statement.

Mr. FELDMAN. Mr. Chairman, if I could just read these items off. This is Mr. Tartaglino's memorandum to Mr. Williams dated December 11, 1974, and we should elicit from the witness what the FBI found or what his impression was of these six points. Mr. Brosnan sets forth in detail the efforts of Mr. Bartels to frustrate, impede, or obstruct the Promuto investigation. In essence, it consisted of: (1) The untimely and premature confrontation of Mr. Promuto by Messrs. Bartels and an attorney, Thomas Durkin, thus severely limiting normal investigative procedures that may have enabled you to arrive at the truth.

Mr. HUTCHINSON. That issue was addressed in the FBI investigation.

Mr. FELDMAN. What was the finding?

Mr. HUTCHINSON. I stated at the outset that they did not draw a conclusion. They stated the facts that they had gleaned from interviewing and discussing it with Mr. Tartaglino.

Mr. FELDMAN. Mr. Silberman must have drawn a conclusion. Did he say that this untimely and premature confrontation of Mr. Promuto by Bartels and Durkin did not affect this case at all?

Mr. HUTCHINSON. He felt it did not rise to the level of any impeding or impropriety.

Mr. FELDMAN. Two: Refusing or failing to provide inspectors with notes, summaries, or information concerning the interview with Mr. Promuto. What did Mr. Silberman feel about that allegation?

Senator NUNN. I think we had better ask what the witness felt.

Mr. FELDMAN. I am sorry. What did you feel about it since you helped draft the press release?

Mr. HUTCHINSON. Quite frankly, Mr. Feldman, I don't recall that issue in the FBI memorandum. I am not saying I don't think it was in there.

Mr. FELDMAN. It was in the attachment to the FBI memorandum of Mr. Tartaglino. This is a pretty serious one, refusing or failing to provide the inspectors with the information to conduct the investigation.

What was your impression of that allegation and how did you

meet that and dispose of this case through the press release by saying there was no substantial foundation to the charges?

Mr. HUTCHINSON. It was my impression that allegation was a subject of relatively significant disagreement of opinion and fact between the individuals involved. I must say candidly that I think Mr. Bartels took certain actions, indeed on occasion may have lost his temper and made statements that I considered poor judgment, but I don't think rise to the level of impediment or obstruction.

Quite frankly, I don't think that this issue is yes, he did indeed obstruct; no, he never made a comment along these lines. Mr. Bartels was dissatisfied with the way the investigation was being handled. Quite frankly, although I may not agree with all of his opinions, I think there was some basis for that; yes.

Senator NUNN. What puzzles me about this, and I want to get back on this course, is it seems to me that with the charge given by Mr. Silberman and the FBI, you were really dealing with this subject as an administrative matter. I think that is your impression, too, up to the point of determining whether there was any kind of criminal activity, but you didn't conduct the investigation on the administrative allegations.

It seems to me that you conducted an administrative investigation basically without going into the full criminal allegations, but using criminal standards in trying to determine whether there was an substantial foundation and then you covered all the matters in the press release as if you had covered both the administrative allegations and the criminal and you concluded after thorough review that these according to anybody reading this, were without substantial foundation.

Anyone that read Tartaglino's allegations, and read your press release, the Department's, would conclude basically that all of these allegations were without substantial foundation. That is just contrary to your own frank testimony this morning.

Mr. HUTCHINSON. I think that would be a possible characterization, but not either the intended nor the only necessary one.

Senator NUNN. We haven't concluded it. There was either a very poor investigation or it was a very poor press release, one or the other because the two don't go together.

Mr. HUTCHINSON. I am not so sure. I think, quite frankly, the press release was an attempt to generically describe the conclusion reached.

Senator NUNN. Of course, two men were transferred out of the Office of DEA after they had made allegations, some of which everybody admits were true and you have already stated your opinion this morning that Mr. Bartels obviously committed some administrative errors, if nothing else. Yet two men were transferred out who had been agents for a long time with no seemingly substantial allegations against them on the basis that the allegations were not substantial and were without foundation, when in effect, your whole investigation narrowed that scope right down to the question of whether there was an impeding of the *Promuto* case, investigation.

I think you are using an administrative investigation to reach a very narrow criminal conclusion. I might not in the final analysis

disagree with you on the criminal conclusions as to whether there was actually an impeding or obstruction of justice. So I would certainly hope this is not the standard procedure in the FBI and Justice Department.

Mr. HUTCHINSON. Senator, I don't think that there is anything about the conclusions that were reached by Mr. Silberman as stated in this press release that would not have also supported an opinion on his part. Mr. Bartels may not have been the most effective manager of that agency. I think he could well have drawn the latter conclusion, but at the same time not agreed that he had—

Senator NUNN. Right, I agree with you. Technically, you could not exclude that, but anybody looking at this press release would think that the Department of Justice had exonerated Mr. Bartels completely and had felt that Mr. Tartaglino and Mr. Brosan were a couple of troublemakers that were being really administratively demoted. I think anybody would think that who had the normal reaction. That just really is not the case.

Mr. HUTCHINSON. I think it is not the case quite frankly. I think for that reason there was an attempt to indicate Mr. Tartaglino's agreement in the reassignment which it was my impression he totally agreed to. At the end of the meeting, Mr. Silberman said, "It is my conclusion that I don't think that your allegations are substantially well founded." He said, "But, nevertheless—"

Senator NUNN. Impeding the investigation?

Mr. HUTCHINSON. Right; but he said:

Nevertheless, it is clear to me that you and Mr. Bartels have clear disagreements of philosophy, how an organization ought to be run, how it ought to be managed and I question whether that is in the best interest of each of you and the Department to have you continually working together.

Senator NUNN. I don't think I would have any quarrel with the Department of Justice's handling of this matter based on the facts that I know right now, if he had simply said that in the press release. You just said it, that there is a difference of opinion in how to handle an investigation, conflict of personalities, procedures. To conclude that all of these allegations, some of which were very, very poorly investigated, if at all, were without substantial foundation, that is, I think, misleading, particularly in regards to carcens of two seemingly honest men of integrity, whatever their personality conflicts might have been with Mr. Bartels.

Let me ask you this from an administrative point of view: Having gone into this in considerable detail, do you endorse the way Mr. Bartels conducted the Promuto investigation, forgetting the question of impeding or obstructing justice in the criminal sense? Do you approve of the way this investigation was handled in the administrative sense?

Mr. HUTCHINSON. Quite frankly, I haven't attempted any conclusions because of the admission that I probably have less expertise than he in investigating. So I offer that as an initial statement. Second, I think it is fair to say that I would not have done each thing that he did or agreed with each decision that he made.

Senator NUNN. Which ones do you disagree with and why?

Mr. HUTCHINSON. Quite frankly, I think I disagree with his in-

ability to remain even tempered and not to be distraught when something seems not to be handled properly. I think that is the technique of a good manager. You have to step back a bit and say I don't like this, but what does it mean, are they doing it properly, should it be corrected? I think as much as anything else, I second guess Mr. Bartels volatile reaction on a personal basis. It is my impression of his management techniques as much as anything else.

Senator NUNN. Let's get back to these six items.

Mr. FELDMAN. My standard is that Mr. Silberman—and I quote—"Concluded that Mr. Tartaglino's concerns, although raised in good faith, were without substantial foundation." So that is our test. The first one was the untimely and premature confrontation of Mr. Promuto by Messers. Bartels and Attorney Thomas Durkin, thus severely limiting normal investigative procedures that may have enabled us to arrive at the truth. Mr. Silberman thought that that was without substantial foundation?

Mr. HUTCHINSON. Yes, he did.

Mr. FELDMAN. You feel it was without substantial foundation?

Mr. HUTCHINSON. Yes. I agree with that.

Mr. FELDMAN. Have you had a chance to read our testimony of Mr. Thomas Durkin and the fact that Mr. Brosan was taken out of the chain of command in this case?

Mr. HUTCHINSON. I have not read the testimony.

Mr. FELDMAN. No. 2, again the test being whether or not it was without substantial foundation, this allegation, refusing or failing to provide the inspectors with notes, summaries or information concerning the nature of the interview of Mr. Promuto. Is that without substantial foundation?

Mr. HUTCHINSON. Quite frankly, I don't recall whether I had the specific factual basis to answer that question or not at the time this was prepared. I really don't.

Mr. FELDMAN. Mr. Tartaglino and Mr. Brosan said they were bypassed, that they did not get the reports of interview with Mr. Promuto and clearly, the FBI report must have stated that they were bypassed and did not get this information. It seems to me if we had a check list of yes or no of whether or not they were without substantial foundation, this one certainly had foundation or merit in the allegation.

Mr. HUTCHINSON. I think the classic difference here is that, indeed, I think that there were facts that were substantiated within the FBI report that would indicate that Mr. Tartaglino and Mr. Brosan were no longer continuously in the chain of command. Quite frankly, I think that the evidence that was presented by Mr. Bartels was that that was done because he thought that they had messed up the investigation, not because he was mad at them for investigating Mr. Promuto.

Mr. FELDMAN. So you tied the words "without substantial foundation" to "impede the investigation?"

Mr. HUTCHINSON. Exactly.

Mr. FELDMAN. No. 3, on September 29, Mr. Bartels insisted Mr. Promuto be given written questions in complete form covering all allegations and permitting him to take them home and return them

the next day. This was premature and improper. It not only compromised portions of the investigation, but served to advise Mr. Promuto of sensitive data that may have comprised sources of another agency. That was without substantial foundation?

Mr. HUTCHINSON. Quite frankly, yes. The interviews that the agents conducted left the impression and left them with the impression that there was just a misunderstanding on the issue as to who directed what and what the good reason for it was.

Mr. FELDMAN. Whom did they interview on that?

Mr. HUTCHINSON. As I recall in addition to Mr. Tartaglino, they also interviewed an individual who was either associate deputy counsel, Mr. Richardson, I believe. I think so.

Mr. FELDMAN. No. 4, Mr. Bartels insisted on written summary before an adequate investigation was completed. He insisted the reports be without allegations, innuendo, and so forth. This was before the inspection staff had an opportunity to investigate the allegations completely.

Mr. HUTCHINSON. Quite frankly, I feel that is a disagreement of opinion as to whether they had an opportunity to investigate completely and what the nature of those instructions were.

Mr. FELDMAN. No. 5, the summary was then used to obtain a premature opinion from the Civil Service Commission.

Mr. HUTCHINSON. It is my understanding that an individual in DEA, quite frankly, I don't recall whom, used the preliminary investigation as the basis for a hypothetical and just essentially talked with those who knew more about personnel matters than he to get some sort of reading on that. I question seriously whether that is the sort of thing that impedes or obstructs investigation.

Mr. FELDMAN. The last one, the chief inspector was subjected to continued criticism, harassment, intimidation without one item of written direction or guidance that would serve to explain Mr. Bartels' action and attitude. This has left the inspection section completely confused and demoralized and I am not certain any of them know today the exact status of the Promuto investigation.

Mr. HUTCHINSON. That is kind of a personal perception. That could be perceived easily by Mr. Tartaglino and Mr. Brosan and be perceived differently by others.

Mr. FELDMAN. Would you have allowed Tom Durkin to interview outside of the Office of Inspection and outside of the DEA?

Mr. HUTCHINSON. That is really a hypothetical. I have no way to know how I would react in that situation.

Mr. FELDMAN. If you were Mr. Bartels, Administrator, is that proper procedure?

Mr. HUTCHINSON. I would check on the procedures. I am not a criminal or administrative investigator. I don't know what normal procedures are in that respect. I would have to review it. I don't know what my conclusion would be.

Mr. FELDMAN. I presume you have the same answer, allowing Mr. Promuto to have written questions before the completion of the investigation?

Mr. HUTCHINSON. What I would do if I were in that situation would be to seek the advice of people who could probably tell me

more about how to investigate properly. It was my impression, it was the impression that I got sitting in the meetings with Mr. Bartels, Mr. Tartaglino, with Mr. Silberman and the two agents, that there were some classic differences of opinion as to how to investigate.

Mr. FELDMAN. My problem is that you have to review this and make recommendations as to whether or not these are proper procedures. When I ask you the question of whether you would have done this, it would seem to me that you and Mr. Silberman have to use that standard in judging whether or not a proper investigation was carried out. That is why I am trying to pin you down on it.

Mr. HUTCHINSON. I think that is a fair assumption. I think you should also realize that quite frankly, I do not feel able on the facts or expertise, nor did I feel that it was my duty prior to the conclusion of the FBI investigation or Mr. Silberman's resolution to have to make those kinds of judgments. I just don't know enough about it.

Senator NUNN. Let me ask you one more time, if you agree that this FBI report and the Silberman investigation, Mr. Tartaglino's allegation was basically one that had the central focus and the central point of determining whether Mr. Bartels' actions had in fact impeded the Promuto investigation or obstructed the Promuto investigation?

Mr. HUTCHINSON. Senator, I think that that is a fair statement. That was the principal objective.

Senator NUNN. You did not try to go into the way the DEA office operated, the policies and procedures, the relationship between Bartels and the Chief Inspector, those kinds of things, all the FBI report addressed from a tangent point of view, you did not try to determine whether there was substantial foundation to the administrative type of criticism?

Mr. HUTCHINSON. Quite frankly, at the same time the Office of Inspection under a new head was doing that same sort of analysis. Although we did ask the Bureau—I use that generously. Mr. Silberman evidently asked the Bureau to review the allegations in the November 14 memorandum. That was one of them. That issue was addressed. I think that there was nothing in the initial investigation by the Bureau that indicated that there was anything there that rose to a level of any impropriety or even really gross mismanagement, but that the continuing processes of DEA, its ability to analyze itself under a new head of inspection was the proper channel for that.

Senator NUNN. I am trying not to duplicate. I think we have covered most of the items we have. I am checking here.

In the first sentence of the announcement it is asserted that Mr. Silberman's statement is in response to the inquiries concerning the recent investigation of drug enforcement personnel and investigatory practices. What inquiries were being referred to in the above language?

Mr. HUTCHINSON. I think that was an attempt to include within it, not only the Promuto issue, but all issues raised by Mr. Tartaglino. It was to make it clear that there were more than obstruction allegations. There were also policies and practices disagreements involved.

Senator NUNN. But you examined the policies and practices allegations in connection with the impeding of justice to determine if the policies and practices in effect had caused the impeding of justice.

Mr. HUTCHINSON. I think that is a fair assessment, yes.

Senator NUNN. Not the question of whether the policies and procedures themselves were the best way to run the DEA?

Mr. HUTCHINSON. Absolutely not. We were not attempting to reach that conclusion by the initial FBI investigation.

Senator NUNN. I just think this, you could have put about three more paragraphs in here and people would have known what you did and did not investigate. I don't think anybody can tell by reading this.

Let me read you again the first paragraph:

In November 1974, Mr. Andrew Tartaglino, then Acting Deputy Administrator for the Drug Enforcement Administration, raised questions concerning the policies and procedures of DEA, including actions by the Director of DEA, Mr. John R. Bartels, Jr.

You never mentioned impeding investigation in here. You do mention policies and procedures.

You have come down and said here, "Following a thorough review, I concluded Mr. Tartaglino's concern"—concern being a broad word—"although raised in good faith, were without substantial foundation." Anybody would have concluded by that that the policies and procedures had been pretty thoroughly looked into and had not been looked into just in the limited context of whether they in effect impeded the investigation. Would you disagree with that?

Mr. HUTCHINSON. I am not sure that is the conclusion. Obviously, but I will withdraw from it. It may well be that individuals who are closer to the facts and understand all of the issues that they have had to deal with, occasionally have to settle on pretty generic terms and general terms so that they don't write a 50-page release.

Senator NUNN. Subsequent to the January 16, 1975, statement by Mr. Silberman, did you consider the issues raised by Mr. Tartaglino and Mr. Brosan to be resolved?

Mr. HUTCHINSON. I considered that they were resolved insofar as they addressed any issues of impediment or mismanagement, gross mismanagement. I don't think that they were all resolved and indeed I personally, and with Mr. Silberman's recommendation and approval, suggested to the new Attorney General that it might be wise to just take a hard look at the DEA; everything, not only are they honest or dishonest, but are they operating as efficiently as they ought to, are they using the best practices possible? I don't think that there is anything that Mr. Silberman purported to do by this phase that concluded that sort of analysis.

Senator NUNN. You made that recommendation?

Mr. HUTCHINSON. Yes; I made that to the Attorney General with Mr. Silberman's concurrence.

Senator NUNN. Which Attorney General?

Mr. HUTCHINSON. Attorney General Levi.

Senator NUNN. Approximately what was the date of that?

Mr. HUTCHINSON. I believe it was the second week of March 1975. I will say I think I wrote a memorandum about a page or two to him dated March 11.

Senator NUNN. The subcommittee has gotten pretty well involved in the whole thing.

Mr. HUTCHINSON. Certainly.

Senator NUNN. Subsequent to the January 16, 1975, statement, did you have further discussions with Mr. Silberman about the Tartaglino and Brosan allegations?

Mr. HUTCHINSON. I am sure I did because they were quite frankly, of continuing interest to the committee. I also discussed generally what the issues were and what was going on, but I don't think that in any way it was a reassessment or a critique or anything of prior conclusions.

Senator NUNN. Subsequent to January 16, 1975, did you discuss the Tartaglino and Brosan allegations with Mr. Bartels?

Mr. HUTCHINSON. I believe so. Yes; I did. Again, though, in the context of these issues have been reviewed, but quite frankly, what are you doing about your inspection office? Is it improving? What is Mr. Phil Smith, the new chief of inspection, doing? Is he revising practices?

I had a genuine concern as to how DEA was operating, whether it was operating as effectively as it could. Quite frankly, in discussions I had all along with the committee staff, my bottom line was I didn't much care who got credit in the gross sense of that word for any improvements that might be made in DEA. I think they ought to be made and we ought to take a look at them to see if they could be done better.

Senator NUNN. Did you have any discussions with Mr. Brosan concerning the allegations subsequent to January 16, 1975?

Mr. HUTCHINSON. I believe that I only met Mr. Brosan one time and that was after January 16. I believe it was before he appeared before the committee and that meeting was in the context of his asking the Department's position and advice on whether he should testify. It didn't attempt to deal at all with the merits of the prior matter.

Senator NUNN. Did the Department of Justice reopen the inquiry into the Tartaglino and Brosan allegations in March of 1975? At that time, I believe you were still Associate Deputy Attorney General. Did you play any role in the decision to reopen the investigation?

Mr. HUTCHINSON. I most certainly played a role in the recommendation to the Attorney General, that DEA practices in general, including Office of Inspection practices, including whether they were managed properly and including issues of integrity, to include this, but much, much broader than that should be undertaken.

Senator NUNN. Was Mr. Silberman there? Was that the conversation you alluded to a minute ago?

Mr. HUTCHINSON. Yes.

Senator NUNN. He was still on board?

Mr. HUTCHINSON. Surely.

Senator NUNN. When did Mr. Silberman leave the Department of Justice?

Mr. HUTCHINSON. Sometime in about the first or second week of April, I believe.

Mr. FELDMAN. You talked about Mr. Petersen and Mr. Keeney reviewing this matter in the criminal division. I am not characterizing how they were reviewing it. Did they discuss this with Mr. Bartels at all, to your knowledge?

Mr. HUTCHINSON. I am not sure whether they did or didn't. I just don't know the answer.

Mr. FELDMAN. You have no knowledge?

Mr. HUTCHINSON. I don't know whether—I just don't know. No; I just don't know the answer to that, whether they did or did not.

Mr. FELDMAN. On that nominee question, the Frank Waters case, was Mr. Keeney's approval necessary to have Mr. Waters interviewed?

Mr. HUTCHINSON. I believe so.

Mr. FELDMAN. Did Agents Williams and Hegarty get Mr. Keeney's approval for the Waters interview at the direction of Mr. Silberman?

Mr. HUTCHINSON. I don't know; but I would assume so because it is also my recollection that approval was obtained from defense counsel in the case to the interview as well.

Mr. FELDMAN. In the reopening of the DEA case in March of 1975 you wrote a one-page memo and said let's look at the whole thing, the overview. Consider Mr. Tartaglino's memorandums of November 14, 1974, and December 11, 1974. Did not the Tartaglino memorandums cover the same areas that were to be covered in the review in March of 1975?

Mr. HUTCHINSON. Not really. I think that the recommendation that I made was much broader than that; and indeed involved issues quite candidly, by name, Silver Dollar, other questions that came up pursuant to the committee's work.

Mr. FELDMAN. Would your broad report have included the specific matters raised by Mr. Tartaglino in his December 11 memorandum?

Mr. HUTCHINSON. The direction given to the review team was that they were to review the broad issues of integrity, performance, improvement in technique, and if that included any issues, as well as the Promuto-Tartaglino issue, fine, do it.

Mr. FELDMAN. Would you characterize the reopening or the review of DEA in March of 1975 and subsequent events as leading to partial vindication of Mr. Tartaglino and Mr. Brosan in connection with the charges they raised in November and December of 1974?

Mr. HUTCHINSON. I think that vindication is the wrong word, if you mean does it substantiate factually some of those issues that we felt hadn't been substantiated earlier. I think it very much is a vindication of an attitude and a desire that they had to see to it that the agency operated properly and if that was their motivation, I think we fully concur in that. If our action vindicates or enforces that, that is fine.

Mr. FELDMAN. So at least partially they have been proven correct?

Mr. HUTCHINSON. I wouldn't use that term. Correct seems to relocate itself in the facts that we have just reviewed. I would say that it certainly substantiates, enforces their desire to see to it that DEA, its Office of Inspection operates effectively and properly. If that was their motivation, then their motivation was coincident with my recommendation.

Mr. FELDMAN. Put another way, does it reflect adversely on efficiency and operations of Mr. Bartels and his attitude to the Office of Inspection?

Mr. HUTCHINSON. The mere fact of a department deciding to review an issue that is within an area of a manager's responsibility, I think has to have——

Mr. FELDMAN. Let me restate it. The mere fact, very much an unusual fact, that a task force is created, drawn from different parts of the Department of Justice, to pursue in-depth and under oath the Promuto case and other matters, that reflects, I would say, some degree of the operational ability of the administrator. Is that correct?

Mr. HUTCHINSON. I concur.

Senator NUNN. We appreciate, very much, your appearing. I personally appreciate your candid, frank answers. I would hate to receive very detailed questioning about any job I took for 4 months. I certainly understand your limitations in that regard, coming on board in January and leaving in April, and I do appreciate, very much, your appearing here.

Mr. FELDMAN. Mr. Bartels will be appearing at 9:15 on Thursday. We will have to announce the room number, Mr. Chairman. There is some question on that.

[Whereupon, at 11:25 a.m., the subcommittee recessed, to reconvene at 9:15 a.m., Thursday, July 10, 1975, in room 5302, Dirksen Senate Office Building.]

[Members present at time of recess: Senator Nunn.]

FEDERAL DRUG ENFORCEMENT

THURSDAY, JULY 10, 1975

U. S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met at 9:15 a.m., in room 5302, Dirksen Senate Office Building, under authority of Senate Resolution 111, agreed to March 17, 1975, as amended. Hon. Henry M. Jackson (chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Henry M. Jackson, Democrat, Washington; Senator Sam Nunn, Democrat, Georgia; Senator Charles H. Percy, Republican, Illinois; and Senator Jacob K. Javits, Republican, New York.

Members of the professional staff present: Howard J. Feldman, chief counsel; Dana Martin, assistant counsel; Philip R. Manuel, investigator; Frederick Asselin, investigator; Stuart M. Statler, chief counsel to the minority; Robert Sloan, special counsel to the minority; and Ruth Y. Watt, chief clerk.

Chairman JACKSON. The committee will come to order.

[Members of the subcommittee present at time of reconvening: Senator Jackson.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct hearings in public session, without a quorum of two members for administration of oaths and taking of testimony in connection with Drug Enforcement Administration on Thursday, July 10, 1975.

HENRY M. JACKSON,
Chairman.
CHARLES H. PERCY,
Ranking Minority Member.

Chairman JACKSON. I wish to make the following remarks before our proceedings begin today.

The witness, John R. Bartels, Jr., former Administrator of the Drug Enforcement Administration, is here today under the terms of rule 14 of the subcommittee's rules of procedure.

Rule 14 stipulates that any person who feels his actions or repu-

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tation has been unfavorably reflected upon in subcommittee proceedings may petition the subcommittee to appear.

Mr. Bartels first made the request to testify June 11, 1975. His Western Union mailgram was received at the subcommittee office June 12. June 12 was a Thursday.

The mailgram will be an exhibit in the hearings.

[The document referred to was marked "Exhibit No. 49" for reference and follows:]

EXHIBIT No. 49

[Mailgram]

WASHINGTON, D.C.
HENRY M. JACKSON, *Chairman,*
Permanent Subcommittee on Investigations,
Russell Senate Office Bldg.,
Washington, D.C.

Pursuant to subcommittee rule 14, I respectfully request the opportunity to appear before your subcommittee as soon as possible and give testimony as well as respond to your question concerning my professional activities and decisions while I was administrator of the Drug Enforcement Administration.

JOHN R. BARTELS, Jr.

Chairman JACKSON. The subcommittee made every effort to enable Mr. Bartels to appear at the first possible occasion, Friday, June 20. However, Mr. Bartels then requested of the subcommittee that his appearance be postponed due to his desire to attend graduation ceremonies of his son.

The subcommittee then scheduled his appearance for the next possible date, June 26. However, owing to the debate in the Senate concerning the New Hampshire election, that hearing had to be postponed until today. The Chair wishes to make that statement, Mr. Bartels, so that the record is clear that we have endeavored to move expeditiously in connection with your request.

STATEMENT BY SENATOR JOHN GLENN FROM THE STATE OF OHIO

Senator GLENN. This morning, the Senate Permanent Subcommittee on Investigations reconvenes so that it might continue its indepth oversight hearings concerning the effectiveness and efficiency of Federal drug law enforcement.

Once again, I would like to commend the chairman, Senator Jackson, and the ranking minority member, Senator Percy, for their efforts in initiating these extremely important hearings.

The immediate issues before us are serious and critical. There is hard evidence that drug abuse is on the increase throughout the country. In Ohio, as in the rest of the Nation, drug abuse is no longer exclusively a big city problem, it is a problem that extends to the small towns and rural areas and that tears at the societal fabric of those areas in as devastating a way as it does in the large cities. The yearly social cost of drug abuse in the United States is between \$10-17 billion and 15,000 people per year die due to drug abuse. The Federal Government spends \$806 million on drug enforcement and \$347 million for drug treatment. Between 10-12 tons of heroin enters the United States illegally every year. Thus, it is absolutely im-

perative that Federal efforts aimed at the interdiction of drug traffic at all levels be effective, efficient, and beyond reproach. Congress has placed the primary responsibility for Federal drug law enforcement in the Drug Enforcement Administration within the Department of Justice.

Yet we have before this subcommittee allegations of mismanagement and of failure to maintain integrity standards at the highest levels of the DEA. This portion of our hearings is focused primarily upon the allegation that today's witness, Mr. John R. Bartels, Jr., former Administrator of the Drug Enforcement Administration, compromised and obstructed an integrity investigation that grew from charges that former Director of Public Affairs for DEA headquarters in Washington, Vincent L. Promuto, had kept company with persons of criminal background.

The question immediately before us thus involves integrity investigations that relate to the suitability of a DEA official to hold the job. This type of internal investigation does not necessarily relate to criminal conduct but it does relate to the standards of behavior that we require of our top law enforcement officials. I want to know what these standards are at DEA and how effectively and efficiently these standards were maintained.

Mr. Chairman, in my questioning of Mr. Bartels, I would like to focus on three of my primary concerns. First I want to know if the DEA actually has an effective, efficient internal policing system that assures an impeccable, untainted staff while safeguarding employees rights. Second, I want to find out how the policing system operated with respect to the Promuto case. Were there irregularities in this and other cases and if so, who was responsible for the irregularities and why?

Finally, Mr. Chairman, the broad question that is perhaps the most important of all—did this internecine warfare within DEA, with the chaos of investigations, charges and countercharges serve to abort congressional intent in setting up an efficient drug fighting mechanism? How was street-level esprit and morale among agents affected by this? How much time and effort was lost at the policymaking level by preoccupation with this?

Our answers to these questions, Mr. Chairman, will help us evaluate whether the DEA and its policies represent the proper, most effective and efficient vehicle capable of disrupting drug traffic at high levels and preventing drugs from reaching the street.

Chairman JACKSON. If you will raise your right hand and be sworn, sir.

Do you solemnly swear that the testimony you are about to give before this subcommittee shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. BARTELS. I do, indeed.

TESTIMONY OF JOHN R. BARTELS, JR.

Chairman JACKSON. State your name for the record.

Mr. BARTELS. John Ries, R-i-e-s, Bartels, Jr.

Chairman JACKSON. And your current position?

Mr. BARTELS. My current position is that I am unemployed, Mr. Chairman.

Chairman JACKSON. Were you formerly the head of the Drug Enforcement Administration?

Mr. BARTELS. That is right.

Chairman JACKSON. Which was terminated on what date?

Mr. BARTELS. That was terminated on May 30 of this year.

Chairman JACKSON. By order of?

Mr. BARTELS. The Attorney General asked for my resignation through the Deputy Attorney General. I submitted it to the President.

Chairman JACKSON. You have a prepared statement. It is rather lengthy. I wonder if we could place the whole document in the record at this point, and if you can summarize it. It is available to the press, too.

Mr. BARTELS. Here is what I plan to do with your permission, is to summarize the first part of that statement and read perhaps with some deletions the last 10 to 15; 12 pages or so.

Chairman JACKSON. All right.

Mr. BARTELS. I think that will move it along and place it in context. I would ask that it be accepted in the record along with certain other exhibits, as I go along.

Chairman JACKSON. Certainly.

[The statement follows:]

STATEMENT OF JOHN R. BARTELS, JR.

Mr. Chairman and members of the subcommittee: I have requested the opportunity to appear before your Subcommittee today in order to place in proper perspective certain decisions I made as Administrator of the Drug Enforcement Administration (DEA).

I was appointed DEA's first Administrator in July, 1973 and served until May 30, 1975. My tenure at DEA will always be the source of certain lasting memories occasioned by the professionalism, dedication and loyalty to service of the overwhelming majority of the enforcement agents and support staff. I was privileged to view first-hand their untiring efforts against the illicit drug traffic in this country and abroad.

Mr. Chairman, I am also concerned about alleviating the drug abuse problem in the United States. I believe that a dispassionate, disinterested and factually oriented evaluation of the role played by the Drug Enforcement Administration in that fight will be of great benefit to the Congress and the American people, and I look forward to addressing those issues with you on a later occasion.

I do not regret the decisions made by me which are being reviewed by this Subcommittee. I am not altogether surprised that my decisions concerning the proper procedures to be followed by the Office of Inspection, or my disagreement on the issue of the resumption of poppy cultivation by the Turkish government, or other enforcement policies would become the subject of discussion at this level of government and elsewhere. However, if I were presented with the same circumstances, I would again face them squarely regardless of personal consequences, rather than remain silent solely to protect my position within the bureaucracy.

I have spent most of my professional life as a career official in the Department of Justice. I have served under ten different Attorneys General from 1964 until 1975. My tenure with the Department of Justice commenced with my appointment by Attorney General Robert F. Kennedy as an Assistant United States Attorney in the Office of the then U.S. Attorney Robert M. Morgenthau in the Southern District of New York.

Prior to that I graduated from Harvard College in 1956, Magna Cum Laude. Thereafter, I studied in Germany as a Fulbright and Konrad Adenauer scholar.

at the University of Munich, Germany. In 1957 I entered the Harvard Law School and graduated in 1960. After 3½ years as an associate in a Wall Street law firm, I was asked to join the United States Attorney's Office by the U.S. Attorney, Robert M. Morgenthau, in 1964. During the next 4½ years, I gained considerable trial experience as a prosecutor in narcotics and organized crime cases.

From 1969 through 1971 I served as the Director of the Department of Justice's Newark, New Jersey organized crime Strike Force. In that capacity I was in charge of a group of prosecutors and federal agents whose efforts resulted in the convictions of many New Jersey organized crime racketeers, mayors, and state and federal politicians. In 1972, I was appointed Deputy Director of the newly created Office of Drug Abuse Law Enforcement within the Department of Justice (ODALE). At the end of June, 1973 Attorney General, Elliot Richardson, asked me to become Acting Administrator of DEA. In September 1973 Mr. Richardson submitted my name to the President. I was confirmed by the Senate on October 4, 1973. I served as Administrator from that date until May 30 of this year.

In 1971 I was named by the Federal Criminal Investigators Association as the "Man of the Year". In 1972, I received the Department of Justice Distinguished Service Award.

When I was requested by Attorney General Richardson to become Acting Administrator, I was aware that I would have to deal with a variety of long-standing problems between conflicting law enforcement agencies, philosophies and in some cases, agents. For example, in every city where there were two offices prior to the merger and two agents in charge, one would have to yield. We were requested to effect an equitable merger although BNDD had eighteen supergrades and Customs had none. In addition, there was very little time for planning as I was first asked to serve in an interim capacity on June 28—two days before the merger took effect.

However, like any manager at a large complex organization, I knew that I would have to rely on the professionalism, loyalty and good judgment of my key staff.

One of the areas in which I felt relatively secure, early in my administration, was in the Inspection program. I had asked Mr. Andrew Tartaglino to be my Acting Deputy Administrator and had encouraged him to take some significant responsibility for the conduct of the Inspection program. His reputation in the area was as an experienced and zealous inspector, and I gave him my full confidence. In addition, I granted his wish to have George Brosan replace the existing Chief Inspector. He also had a fine reputation. They impressed me very quickly as having the ability to run the strong inspection program I desired.

Throughout the fall of 1973 and the summer of 1974, I gave them free reign. Mr. Brosan asked to replace the existing staff. I encouraged him to do so.

The manpower ceiling was increased from 24 on June 30, 1973 to 40 by the end of the summer of 1974. A proportionate increase was also made in the officers' budget allocation.

Shortly after assuming the responsibilities of Administrator, I discovered that DEA had 13 undercover agents working in a covert and unchecked inspection capacity under the guise of field agents throughout the country. Although Mr. Tartaglino had been one of the architects of this program, he did not object to my disbanding this endeavor. My reasons were multiple. My primary concern was that these anonymous field inspectors, known only to the Chief Inspector, not only proved ineffective as sources of leads but were not subjected to the same restraints as other inspectors whose decisions would be memorialized in writing and closely scrutinized by persons outside the Office of Inspection in the event of an adverse action or criminal reference.

In short, the philosophy of using this type of covert program seemed to me to be potentially damaging to the morale of agents in the field and also at variance with my philosophy of according the same type of Constitutional protections to agents as one accords to defendants in drug related cases.

It is interesting to note that throughout this period the regular monthly and annual reports emanating from the Office of Inspection were reassuring. I assumed, based on these reports, that the major problems were identified. There was nothing in the reports to alert me to the problem areas which later became the focal points of interest of Messrs. Brosan and Tartaglino. Since I have never been interviewed by your staff, I don't know whether you have seen these reports but I am sure they can be made available.

Gradually, I became less and less satisfied with the performance of the Office of Inspection and increasingly suspicious of the judgment of Mr. Brosan. The major causes of my concern were the following:

They relied on tactics which I and others judged at times to be unethical as well as ineffective. For example, crimes were fictitiously created to entice subjects into integrity violations. Subpoenas entitled, "In the matter of a narcotics conspiracy" were served on subjects' bank accounts without any basis or consideration for the effect on his reputation.

Cases were not being completed in a timely manner so they could be successfully prosecuted before the Civil Service Commission. I was informed by the Commission that our predecessor agency had a losing record because we were not aware of the Commission's requirements. One important case was thrown out as "stale and untimely" because the charge was over three years old. "It was investigated mid-1969 and no action was taken. If the allegations warranted an investigation, they also warranted some conclusion as to their truth or falsity. The Bureau failed to conclude three years ago what is now considered a serious charge. It would be an entirely different matter if three year old offenses had only recently come to light.

Field inspections were done infrequently and there was an apparent lack of emphasis on preventive programs. These problems led to nagging doubts about the quality of the leadership in the Office of Inspection. Problems were revealed begrudgingly.

Suddenly in August of 1974, I was confronted by a request for additional positions from Mr. Tartaglino and dark warnings about large numbers of incomplete investigations and a deteriorating integrity situation. These reports came after I had been assured that things were going well. No objective evidence was offered to support their views.

In this situation, I granted seven of the positions requested by Mr. Tartaglino immediately. I commissioned an analysis of the Office of Inspection. Similar analyses had previously been conducted on other offices within DEA. The objective was to determine what resources were needed to mount an effective inspection program. On September 9, 1974, I instructed Dr. Mark H. Moore to assemble a committee of experienced personnel including Mr. Tartaglino, Mr. Tartaglino's special assistant, and my executive officer, Bruce Jensen, as well as members of his staff, to conduct the analysis. The findings of the study confirmed some of my worst fears about the policies and procedures of the Office of Inspection. The report indicated the following results:

"Inspection has notified the Administrator of their problems and requested additional resources. The Administrator commissioned this analysis to determine what was required to restore the Office of Inspection to effective performance.

"THE PURPOSE AND LIMITATIONS OF THIS ANALYSIS

"Originally, this analysis was conceived as a fairly narrow analysis of manpower requirements in the Office of Inspection. We assumed that the workload of Inspection was well defined by existing policies and procedures and that Inspection's use of resources would be well documented by administrative records.

"If these assumptions were true, this analysis could have been completed simply by observing trends in workload and calculating new resources required from past experience. However, it turned out that neither assumption was correct.

"First, there were several unresolved policy issues whose resolution would have a large impact on Inspection's resource requirements. Significant examples of outstanding policy issues are the following:

"(1) The kinds of cases that should be considered high priority in the Office of Inspection;

"(2) Whether the Office of Inspection should rely exclusively on complaints to signal integrity problems, or should invest resources of its own to 'patrol' for unnoticed or unreported integrity problems;

"(3) Whether the Office of Inspection or the Office of Enforcement would have the responsibility for evaluating regional operations;

"(4) Whether the Office of Inspection or the Office of Administration and Management would have the responsibility for the security of the H.Q. Building.

"Second, almost no data existed in the Office of Inspection on their utilization of resources. Specific gaps included the following:

"(1) No records existed on the resources expended for regional inspections, 'special projects' or 'blitz inspections.'

"(2) No records existed on the resources expended on individual cases.

"(3) It was difficult to determine the status and outcome of cases in Inspection: disposition of cases were often not indicated; the categories for describing the status of cases were not sufficient to describe all the important characteristics of the case; the administrative records themselves were disorderly and difficult to read.

"In short, *there was no historical data base on resource utilization and results.*

"Given the outstanding policy decisions and the lack of information on resource utilization, it was not possible to make a simple, compelling calculation of the resources required by the Office of Inspection. As a result, the focus and orientation of this report has changed. We will report what we have been able to piece together about resource requirements. However, the most important pieces of this report are the identification of outstanding policy issues, and the recommendations for a new program in the Office of Inspection. We must be concerned more with the future of Inspection than its past.

"It is worth noting that we cannot claim unusual expertise in deciding the policy issues that are identified. Consequently, the analysis and recommendations should be taken as the *beginning* of a discussion rather than the end. This report should be followed up by a series of meetings during which a program for the Office of Inspection is designed."

In discussing the current performance of Inspection, the study reported that: "Currently, the Office of Inspection is not performing these functions [of guaranteeing integrity and evaluating regional operations] effectively. Problems are apparent in the following areas:

"(1) *Uncertain Disposition of 'Closed' Cases*

"According to the current Inspection manual, a case may be closed only with one of three decisions: a notice of clearance to the employee informing him that the matter has been resolved in his favor; an adverse action by the Office of Personnel; or a notice of termination of investigation. Only when one of these official actions has been taken is a case closed.

"(2) *Incomplete Investigations Among 'Closed Cases'*

"An estimated 25 percent of the cases that are marked 'closed' were closed on the basis of investigation that were judged to be 'incomplete.' This estimate is based on the review of 63 case files by experienced investigators who were asked to make a judgment about the completeness of the investigations.

"(3) *Increasing Backlog of 'Open' Investigations*

"The number of 'open' investigations in the Office of Inspection has increased from 52 at the end of FY 73; to 61 at the end of FY 74; to 81 currently. The total backlog reflects the fact that 27 percent of the cases opened in FY 73 remained open at the end of FY 73, and that 28 percent of the cases opened in FY 74 remained open at the end of FY 74.

"The fact that at any given moment there are 'open' cases in the Office of Inspection is not particularly significant. After all, one always expects to find that recently opened cases are still open. What is more significant is that the backlog of cases has grown 60 percent in two years. This growing backlog may indicate that the Office of Inspection is failing to keep pace with their current workload. (Alternatively, the current backlog could be the result of unusual, short-run fluctuations in either the rate of case openings or the average period of time required to close a case.) While one cannot be sure that the Office of Inspection is failing to keep pace with new cases, there is a reasonable chance that this is true.

"(4) *Reduced Frequency of Regional Inspections*

"In FY 74 only eight regional offices were inspected (6 domestic; 2 foreign). This implies that 11 regional offices have not been inspected in over a year (7 domestic; 4 foreign). Furthermore, the offices that have not been recently inspected include the largest regional offices.

"Taken together, these observations indicate a modest breakdown in the performance of the Office of Inspection."

The Moore study also addressed the manpower needs of Inspection and their proper utilization:

"THE EFFICIENCY OF INSPECTION'S UTILIZATION OF RESOURCES

"As in all other analyses, it is hard to know whether resources are being used efficiently or not. However, there are three issues worth considering even in the absence of compelling evidence to resolve them.

"(1) ALLOCATION OF RESOURCES AMONG MAJOR FUNCTIONS

"The first issue is whether the resources available to the Office of Inspection have been properly allocated among its major functions (e.g., investigating allegations of corruption; evaluating regions; patrolling for un-reported integrity problems; handling special investigations; etc.) In our judgment, the investigation of allegations of corruption and misconduct should be the highest priority; the evaluation of regional performance the next highest priority; patrols for integrity problems the third highest priority, and special investigations the lowest priority. If the judgment about priorities is accepted, and if we have a fairly accurate view of the overall activities of the Office of Inspection, then their resource utilization is generally not out of line with these priorities.

"The only activity that may be out of line is special investigations. To a great extent the resources devoted to special projects in FY 74 can be considered necessary responses to unusual events. However, when these unexpected demands become so large relative to the resources of an important organizational unit that important functions cease to be performed, it is absolutely essential that a clear signal be transmitted about the work that is not being done as a result of responding to these external demands. If one keeps clearly in mind the work that is not being done, the apparent urgency of some of the special investigations may be diminished and resources either not allocated to the special investigations or taken from some less essential program.

"In the case of the Office of Inspection, if there had been a clear, definitive list of the investigations that were allowed to lapse as a result of the special investigations, the appropriateness of responding to the external events with resources from the Office of Inspection would have been less certain. Of course, Inspection offered general warnings. But, they were never in a position to say exactly what was not being done in order to make room for the special investigations. Their general warnings were simply overwhelmed by the apparent urgency of the special investigations. Thus, the organization may have ended up spending more resources from the Office of Inspection on these special investigations than was warranted."

In discussing whether resources devoted to investigations of allegations of corruption are appropriately allocated among cases the study concluded:

"Currently, in DEA there exists no system for assigning priorities to investigations in the Office of Inspection. There is nothing comparable to the G-DEP system in Enforcement. In addition, the records in the Office of Inspection do not provide a convenient summary of the status and importance of cases within the Office of Inspection. As a result, it is not possible to determine whether resources have been properly allocated among cases. (emphasis added)"

"For all the reasons set out above, we think it would be difficult to establish a system of priorities and to hold the Chief Inspector strictly accountable for the allocation of resources among the different cases. We think it is hard to define what kinds of cases are most serious, hard to estimate the actual outcome of uncertain leads, and hard to decide when not to investigate a case that will be lost forever if one fails to investigate now. Still, two observations lead us to conclude that it is worth setting up such a system despite the obvious problems.

"First, it seems impossible to us that a manager with 40 men and 200 to 300 outstanding cases can make reasonable allocation decisions without a crude system for assembling priorities and monitoring the status of his cases. It is simply beyond the mental capabilities of human beings to keep the full set of possibilities in mind and make appropriate judgments without an information system to support the calculations. Second, without such a system of priorities, it is hard to hold the Office of Inspection accountable for the use of its resources, and hard to guarantee that the Office of Inspection behaves consistently with the Administrator's policies. Without explicit policy direction about the kinds of cases that are to be given high priority, and without written records of activity, it is theoretically possible for the Office of Inspection to

misuse the resources of the organization. Thus, to permit more *effective* allocation decisions, and to guarantee confidence of the Administrator in the Office of Inspection, *it is essential that there be established a system for assigning priorities to investigations.* (emphasis added)

"Having decided that it is essential to establish priorities for individual cases, we tried to define a priority system. We did not get far. However, we did develop some analytic categories for describing kinds of cases referred to the Office of Inspection and some *tentative* views of what things *should be given high priority.* (emphasis added)

"It seems to us that situations referred to the Office of Inspection fall into five general categories:

"(1) Situations where the civil rights of private citizens were violated by DEA agents in the course of investigations (e.g., shootings, brutality; failure to read rights; stealing personal property; etc.);

"(2) Situations where DEA operations were subverted by DEA agents (e.g., DEA agents selling narcotics; DEA agents selling information, etc.);

"(3) Situations involving other criminal acts, related to their position, by DEA agents (e.g., theft of government funds; fraudulent records; use of narcotics; etc.);

"(4) Situations where DEA agents have violated existing regulations but have not committed criminal acts; and

"(5) Situations where DEA agents have behaved immorally or illegally in their private lives."

During the summer of 1974, I learned that there were more than just a few cases involving allegations which had lain dormant for many years, were beyond the statute of limitations, and were either unresolved or had been "closed" contrary to the Inspection Manual which controls the policies and procedures of inspection investigators.

The management study addressed this subject as follows:

"'CLOSING' CASES IN THE OFFICE OF INSPECTION"

"Ideally, all cases initiated by the Office of Inspection should end in the resolution of allegations. If the resolution is in favor of the employee, he should be publicly exonerated. If the resolution is against the employee, an appropriate adverse action should be initiated. If the investigation by the Office of Inspection is well done, the adverse action should be sustained by the Civil Service Commission against any challenges.

"However, some cases investigated by the Office of Inspection will not be resolved. For such cases, there is still some urgency about reaching some culmination. In effect, it should be possible to close cases that are not resolved.

"The reason for urgency in closing cases even when they are not resolved is that serious costs are incurred both by DEA and the subject of an investigation if a case is left open for a long period of time. There are at least four different costs associated with open cases.

"First, the subject of an 'open' investigation in DEA is extremely vulnerable to extortion. He is apt to feel that additional bits of suggestive evidence are likely to be unusually damaging—even if those bits of evidence are fabrications or unrelated to an original set of allegations. Consequently, he is extremely vulnerable to threats to disclose relatively trivial incidents.

"Second, the existence of an open investigation often inflicts a penalty on the subject of an investigation, regardless of its outcome. The fact that an open case exists is almost certainly prejudicial to decisions both within and outside DEA. Moreover, an open investigation in DEA may create open investigations in other agencies if DEA seeks information about a case from other agencies or if other agencies inquire at DEA. Because we cannot observe or control the prejudicial effect of open investigations, we cannot guarantee that the amount of prejudice is consistent with the importance and credibility of the charges. In effect, open investigations may inflict penalties on peoples' lives that are large compared to the penalties that would be possible if the charges were well supported by evidence. Moreover, the chance that such penalties are inflicted increases with the length of time that a case is held open. Thus, to guarantee that actual penalties fit the crimes, we must not keep investigations open too long because the simple existence of the open case often inflicts a large, uncertain penalty on the subject.

"Third, 'open' investigations in the Office of Inspection might be taken as evidence of a less than zealous and effective Inspection program. Under some conditions, this would be an accurate inference. However, when one has investigated a case fully and it still remains unresolved, there can be no legitimate criticism. Thus, to prevent public misunderstanding, it is important to have a category for cases that have been fully investigated, but remain unresolved. They should not be described or considered as 'open' investigations.

"Fourth, to the extent that an 'open' investigation is considered an outstanding claim on the resources of the Office of Inspection, our internal allocation of resources might be distorted if there existed many cases that were considered "open" despite the fact that they had received a full investigation. In effect, 'open' cases would signal a resource requirement that did not exist: resources allocated against the open cases would not yield a significant return to the organization.

"For all these reasons it is important to move cases in the Office of Inspection to some status other than 'open' as often as possible, and as quickly as possible. However, there are also costs associated with 'closing' investigations that are incomplete. Two costs are particularly apparent.

"First, if we close an investigation prematurely, we risk leaving a corrupt agent in the field.

"Second, if we close an investigation prematurely, we risk the charge of 'covering-up' the investigation.

"Thus, there is the need for a standard for closing investigations. What the standard should do is fairly clear: it should guarantee a complete investigation, but allow us to close investigations when the allegations remain unresolved, and when the chances of gaining additional information are either remote or prohibitively expensive. The problem, of course, is deciding when one has reached this point of the investigation.

"It is possible to take the position that an investigation is incomplete until all possible leads involving all possible charges have been investigated using all possible means. If such a standard were agreed to, then all the resources of the Office of Inspection, indeed all the resources of DEA, might be consumed in the investigation of a single individual. Consequently, we must be interested in a more limited view of what constitutes a complete investigation.

"There are basically three things which allow us to limit our definition of what constitutes a complete investigation without doing violence to our strong commitment to the complete investigation of allegations of corruption.

"First, there is the presumption of innocence. This basic right afforded all individuals in a free society allows us to ignore all the theoretically possible charges against a subject and concentrate only on those charges which exercise a strong claim on our credibility. In effect, we can concentrate on specific, credible allegations rather than probing for all possible offenses. This is by far the most important way of limiting investigations. If we were to relax this presumption of innocence and maintain a strong commitment to complete investigations, we would have no choice but to make 50% of our agency Inspectors.

"Second, there could be a priority system which told us to take some allegations more seriously than others. This exists to some extent in the distinction between criminal offenses and violations of administrative regulations, but we think this system could be much more refined. Such a system would allow us to tolerate less strenuous efforts directed at less serious allegations: not all allegations would have to receive the same level of investigative effort.

"Third, we could emphasize the importance of careful planning of investigations to make sure that we gathered information in an efficient way and knew when we had come to the end of the investigation. Of course, it would be important to maintain flexibility so that new leads picked up in the investigation could be exploited. But it is very important to explicitly describe what would be a complete investigation at an early stage of the investigation. Without such planning, investigations impelled by a desire to be complete might become endless "fishing expeditions."

"It is worth noting that none of the observations in this section are either new or inconsistent with the existing written policies of the Office of Inspection. The existing Inspection manual recognizes the importance of presuming innocence. Subchapter 813 states:

"Inspectors will be especially careful to avoid creating an inference of guilt on the part of the employee during a conduct investigation."

"The manual also recognizes the important role of planning investigations. Section 8132 states:

"All conduct investigations will be thoroughly planned in advance so as to insure this objectivity. All investigative planning will be directed towards the ultimate objective of exploring every possible facet of the allegation and every possible explanation, and toward minimizing unnecessary apprehension and injury to the employee's reputation."

"Finally, the manual recognizes that not all allegations can be resolved and specifies a procedure for closing investigations. Section 8151.3 states:

"When the investigation has failed to clearly resolve the allegation and further investigation is not possible, the Chief Inspector may terminate the case. In this instance, the employee will be furnished a letter informing him the investigation has been terminated."

"Section 8152 indicates that cases may be closed only:

"After all clearance letters, adverse actions, or termination of investigation letters have been dispatched or completed."

"Thus, the existing written procedures of the Office of Inspection deal adequately with all of the issues except for a priority system. If such a system was designed and included in the manual, and if the prescribed procedures were routinely followed, we think that DEA's Office of Inspection could steer a reliable course between the enormous costs associated with premature closing of investigations and the enormous costs associated with allowing cases to remain open even when no reasonable level of investigative effort is likely to change the outcome of the case."

The problem was, of course, that the Office of Inspection was not following its own manual.

The study also recommended an increased emphasis on preventive "patrol" functions to complement the investigation of past allegations.

"PATROLLING" FOR INTEGRITY PROBLEMS

"Inspection's program to reduce corruption and misconduct depends primarily on the investigation of complaints or allegations. However, it is apparent that this system is only as effective as the system for soliciting complaints or allegations. If only a small fraction of integrity problems trigger a complaint or an allegation, then the system will not be effective. If a large fraction of the situations trigger a complaint, then the program will be effective.

"If one distrusts the adequacy of the complaint system, then he can invest in a more aggressive program to seek out integrity problems that would otherwise be unnoticed or unreported. The specific ways in which the Office of Inspection can aggressively seek out situations are the following:

"1. Superficial, but unexpected audits of the financial records of Regional Offices (Blitz Inspections);

"2. Intensive, routine audits of Regional Offices (Field Inspections);

"3. Intensive, *unexpected* audits of Regional Offices; and

"4. Locating covert inspectors in Regional Offices.

"Such probes have several important general characteristics. First, they are basically inefficient in the sense that they are targeted randomly. Most often, they will turn up nothing. In this they are like all prevention programs. Second, they may have a significant deterrent effect. Indeed, the deterrence is strongly associated with the randomness of the probes. It is precisely because they are unpredictable that they are threatening. Third, they complement the complaint system not only by providing an alternative source of leads, but also by giving non-corrupt agents strong incentives to report corrupt situations. Thus, these probes are beneficial in that they complement a complaint system and provide some deterrence, and costly in that one cannot guarantee effective targeting.

"Of these techniques for probing for unnoticed or unreported integrity problems, probably intensive unexpected audits of Regional Offices are the most effective. Blitz inspections suffer because they are superficial. Routine audits suffer because they are predictable. The placement of covert inspectors is enormously expensive—partly because they spend only a tiny fraction of their time performing inspection functions and partly because such a system has a dramatic adverse effect on the morale of agents. As results, this tactic is appropriate only when one is fairly confident that he faces a serious problem in a particular known location. Compared with these other tactics, then,

intensive unexpected audits of regional offices is a relatively effective way to probe for integrity problems. *It is unfortunate that this is the only tactic we have not yet seriously tried.*" (emphasis added)

As I have noted previously, I discussed my thinking on what appeared to be Inspection's problems with Deputy Attorney General Silberman in early September, 1974. Thereafter, with his complete support, Dr. Moore and his group commenced the management analysis, to determine *inter alia*, whether all of those addition positions requested by Mr. Tartaglino were needed and what, if any, results had been achieved to date in that office.

Dr. Moore's summary and recommendations of the performance of the Office of Inspection ought to be before this Committee so that you can determine that we did in fact have a proposal for an effective, fair and intelligent inspection program which was preventive as well as retrospective.

"SUMMARY: CONCLUSIONS: RECOMMENDATIONS: A PROGRAM FOR THE OFFICE OF INSPECTION"

"This analysis has suggested the following conclusions about the Office of Inspection: First, the Office of Inspection is currently not adequately performing its basic functions: 40% of the cases that are closed are closed without any final disposition for the record; 25% of the cases that are closed are closed with incomplete investigations; and 58% of the DEA's regional offices have not been inspected in more than a year.

"Second, it is not clear whether these performance problems are the result of inadequate resources to meet basic responsibilities, enlarged responsibilities, or inefficient use of resources. In an effort to gauge the adequacy of resources, we noted that the resources currently devoted to Inspection in DEA are comparable to other federal enforcement agencies and to DEA or its predecessors in previous years. Moreover, a crude analysis of Inspection's performance in years when resources were plentiful compared with years in which resources were scarce indicated that marginal changes in the resources available to Inspection are not likely to change the fraction of cases that are resolved.

"An analysis of the total workload of the Office of Inspection indicates that 'Special Projections' may have put a great deal of pressure on the Office of Inspection and that the Office of Inspection may have assumed a greater share of the total cases involving misconduct in DEA.

"An analysis of the efficiency of Inspection's use of resources revealed nothing other than a suspicion that too many resources were allocated to Special Projects, a conclusion that the Office needed a priority and monitoring system to determine the outstanding claims on its resources, and a general observation that surveillance was likely to be an inefficient tactic in investigating many integrity situations.

"Third, there are significant outstanding policy decisions which will affect the resources required by the Office of Inspection, and which will have an independent effect on DEA's ability to reduce corruption and evaluate regional performance. The most important of these policy decisions are the following:

- "1. Procedures for closing cases in the Office of Inspection;
- "2. Policies and procedures to probe for unreported or unnoticed integrity problems;
- "3. Alternative procedures for evaluating regional performance; and
- "4. Procedures for using information developed by the Office of Inspection in internal DEA personnel decisions, and disclosing the information to outside agencies.

"These issues are outstanding the sense that there exists no analysis of these issues, nor written policies and procedures which reliably guide the activities and allocation decision of the Office of Inspection.

"Our recommendations for a program to restore the Office of Inspection to effective performance are the following:

"(1) *Inspection should be provided with additional manpower.*—Increased resources are necessary to achieve three objectives simultaneously: keeping ahead of the current caseload; reviewing past cases to determine their current status; and designing improved reporting systems and procedures for the future.

"(2) *Inspection should be required to develop a system for reporting on the current status of all cases for which they are responsible.*—In the next year, this system should distinguish between cases that are resolved; those that

have been fully investigated but remain unresolved; and those that are open and receiving investigation.

"(3) *Inspection should be required to develop a system for indicating the priority of cases within their jurisdiction.*—Probably Inspection should distinguish among kinds of cases; and within each kind of case, they should identify the degree of seriousness. Such a system will not only aid the Chief Inspector in allocating resources to cases, it will also signal to the Administrator the agency's aggregate pattern of misconduct and integrity problems over time.

"(4) *Inspection should report on resources devoted to different activities and specific cases.*—Such information can be collected on a sample of activities and cases within Inspection. It need not be reported for every case or activity. They should distinguish between the resources of the Office of Inspection devoted to specific cases, and the resources committed by Regional Offices.

"(5) *Inspection should seek to close cases as quickly as possible, but should only close a case when a formal disposition is made.*—To provide incentives in this area, Inspection should report each month on the number of cases that have been open for more than three months, cases that have been open for six months, and cases that have been open for more than a year. Cases open for more than a year would require written explanations.

"(6) *Inspection should obtain from the Office of Personnel information about the disposition of cases referred to them for adverse actions and should report these dispositions on a routine basis to the Administrator.*—This is essential to motivate the Office of Inspection to bring cases to a stage where they are actionable, and to allow management to guarantee that cases are not being lost in the transaction between Inspection and Personnel.

"(7) *Inspection should continue to do blitz inspections and should begin unannounced, in-depth field inspections to serve as probes for unreported or unnoticed integrity problems.*—The purpose of these activities is to complement the existing system of reporting on complaints.

"(8) *DEA should experiment with a system for evaluating regional performance that depends on teams composed of representatives from different Headquarters units and led by a representative from the Office of Inspection.*—The purpose of this innovation would be to guarantee a broader evaluation of regional performance than is now possible, and to conserve Inspection manpower for the investigation of allegations of misconduct.

"(9) With respect to using information developed by Inspection in personnel decisions within DEA, the following guidelines should apply:

"a. *"Open cases" should not be considered in making personnel decisions.*

"b. *Closed cases resolved in the employee's favor should be mentioned only if there is knowledge of the case within the Career Board.*

"c. *Closed cases that are unresolved should not be used in personnel decisions; but the information developed in the case should be made available to the subject's new supervisor.*

"(10) With respect to disclosing information developed by the Office of Inspection to other agencies, the following guideline should apply:

"a. *Interim findings in open investigations should not be reported to outside agencies.*

"b. *Closed investigations resolved in an employee's favor should be reported only if the outside agencies know of the existence of a case opened on the particular subject.*

"c. *Closed investigations that are unresolved should not be reported except in a few rare instances when the charges are very serious and credible, and when the employee is being considered for a very sensitive position outside the agency.*

"(11) *All investigations conducted by the Office of Inspection should be conducted in a way that minimizes the number of people who know that an investigation has begun.*—The purpose of this policy is to control the prejudicial impact of simply knowing that a case in the Office of Inspection has been opened."

We look forward to a discussion of these proposals.

Although Dr. Moore and his management group anticipated that their study would precipitate a meaningful dialogue between them and Messrs. Tartaglino and Brosan, none was forthcoming. Mr. Tartaglino chose alternatively to voice his objections to the Department of Justice rather than to specifically respond to the fact finding analysis of the Moore study. His disinclination to focus

attention on the performance of that office is entirely understandable—since that Office under the joint leadership of Messrs. Brosan and Tartaglino failed to perform in a professional and managerial responsible manner. These men preferred the luxury of “ad hococracy” to the discipline and forced planning of the very Inspection Manual which Mr. Tartaglino authored.

The Moore study compels the conclusion that DEA’s Inspection program, under Mr. Brosan’s guidance and control, had very little policy direction and accountability. Furthermore, the program was failing to perform some of its simplest functions.

Mr. Brosan’s and Mr. Tartaglino’s responses to Dr. Moore’s study are a continuing source of puzzlement and concern to me. They seemed to think that the very initiation of this study was a threat to their professionalism and a clear sign that I was not interested in an effective inspection program. Indeed, long before the study was finally concluded, and long before we had a chance to discuss the policy issues and resource requirements, they had decided that these proposed policies were inappropriate to an effective Inspection program and they requested reassignment.

More puzzling and alarming still is the fact that the Promuto investigation began shortly after I commissioned the Moore study. Indeed, the Promuto allegations were presented to me in my first meeting with Mr. Brosan after the study was initiated. But I sometimes wonder how different the public record would look now if the Promuto investigation had not sprung up right at that moment. Instead of focusing on an alleged “cover-up”, we would be focusing on an inspection program that:

1. Lacked policy direction and accountability,
2. Violated the civil liberties of agents and indicted large personnel costs,
3. Destroyed agent morale but failed to produce sufficiently professional investigations to remove the agents from sensitive positions, or clear them even after decades.

It is especially ironic because, as I will show in the next section, the conduct of the Promuto investigation was typical of the biased procedures and pre-ordained conclusions of the Office of Inspection under their stewardship.

It is worth noting that I was not unaware of the dangers of the Promuto investigation. However, it seemed unconscionable to me to allow the Office of Inspection to continue conducting investigations without affording the subject any opportunity to respond. I was confident that we could find a way to make the program strong *and* decent, and that such a program would be a credit rather than a disgrace to DEA. The Moore study was an invitation to such a program. It was not a dogmatic ultimatum, but an invitation to a dialogue. It was met by the charge of insensitivity.

I was and remain a strong advocate of integrity in law enforcement agencies. However, I also believe deeply in the concept of due process. I believe that it is possible to have aggressive but fair prosecution—not only in cases against accused private citizens, but also in cases against accused enforcement officials.

By February 10, 1975, at my request, the Office of Administration and Management had prepared a proposed management reporting system for the Office of Inspection which identified the following requirements:

- “a. A formal case status record for each case file.
- “b. A codification of the large number of classes of investigations into several types for management purposes.
- “c. A system for reporting inspector man-hours.
- “d. A limited number of routine periodic summary management reports with a capability to prepare a series of special management reports upon request in these areas: (1) Case Status, (2) Case Load, (3) Man-Hours, (4) Disposition of Allegations, (5) Source of Allegations, and (6) Allegations by Category of Personnel.”

At this juncture I would request that a copy of this proposed system be included in the record as an Exhibit to my testimony.

In order to monitor the progress which the Acting Chief Inspector was making in remedying some of the past deficiencies of that Office, I requested that Inspection prepare a schematic time-table of proposed future actions. The following status report is being included in its entirety so that this Committee may factually compare the testimony already received concerning these alleged non-deficiencies with the actual facts. This document was received by me on April 29, 1975.

THE PROMUTO INVESTIGATION

It was one week after that analysis by Dr. Moore commenced that I learned of the Promuto investigation (September 17, 1974). Messrs. Tartaglino and Brosan have claimed that I impeded that case by:

1. giving a premature warning to Mr. Promuto;
2. insisting he be confronted with written questions;
3. limiting the scope of the investigation; and
4. seeking the assistance of Messrs. Richardson, Lund and Thomas Durkin.

I never impeded or limited this investigation. However, I did insist that Mr. Promuto be afforded the basic right to confront his accusers.

First, Mr. Promuto learned of the investigation not from me but from his secretary as a result of investigative reports being left by Inspectors in the xerox room during the preceding week. On that day, Mr. Brosan came to me saying he had just been confronted by Mr. Promuto who demanded to know why he was being investigated. When Mr. Promuto then came to me, I refused to discuss the investigation, telling him to stay away from Inspection and remain calm. However, the nature of the investigation quickly became a cause celebre within DEA and was rumored around the field. On the day before, when I was first informed of the investigation by Mr. Brosan with Mr. Richardson, he recommended that Mr. Promuto should be, in his words, "amputated immediately", or I should talk him into quitting. Mr. Brosan was adamant. He stated that there was no possible explanation Mr. Promuto could give to justify his associations or actions and that he should be immediately fired. In the alternative, Mr. Brosan said we could continue the investigation, or do nothing. I ordered the investigation to continue. I was, in fact, upset at this harsh and precipitous judgment before the facts were known.

It was the initial advice of Messrs. Richardson, Lund and Thomas Durkin that I talk to Mr. Promuto during the next several days to see if he would return to New York and then eventually resign. Mr. Brosan, during those days, that it is possible to have aggressive but fair prosecution—not only in cases repeated his conclusion that Mr. Promuto be immediately fired, but I felt I couldn't just fire Mr. Promuto or anybody else without affording them an opportunity to explain. Additionally, during this week, Mr. Thomas Durkin recommended that I seek advice from the United States Attorney for the District of Columbia, Earl Silbert.

On Friday, September 20, I spoke to Mr. Silbert who had been previously briefed on the matter. His advice was to admonish Mr. Promuto immediately to stay out of O'Brien's. In addition, we discussed the contents of the Shoffler report, and I requested he use a Grand Jury to investigate the nature and depth of these alleged associations. When I returned, I did not tell Mr. Promuto the nature of the investigation, but I did admonish him to stay out of O'Brien's.

During the next week, word of the Promuto investigation continued to spread throughout Headquarters and the entire Agency. Rumors concerning the investigation had leaked to the field and these rumors were making it impossible for him to do his job. At this time, I was faced with the immediate problem of what to do with Mr. Promuto while the investigation was being conducted, irrespective of the results. It was the advice of Messrs. Richardson, Lund and Thomas Durkin that, pursuant to Mr. Brosan's original request, we should attempt to persuade Mr. Promuto to resign voluntarily or accept reassignment to New York pending the outcome of the investigation.

The major outstanding allegation was the nature and extent of Mr. Promuto's associations with some half dozen alleged gamblers and felons. That is, whether these persons just came up to shake Mr. Promuto's hand in O'Brien's because he was a celebrity whose picture was on the wall, or whether he was knowingly meeting with them and, if so, what the nature of these contacts were. In short, I was concerned about the sufficiency of the allegations and whether such allegations, standing alone, were sufficient to initiate an adverse action. I sought the independent advice of Mr. Thomas Durkin to brace Mr. Promuto as to whether he was willing to be reassigned or whether he wanted to resign. Mr. Durkin tried to provoke Mr. Promuto into admissions but he insisted he had done nothing wrong and wanted to be confronted and/or investigated further.

Earlier in the week, the U.S. Attorney's office informed Mr. Richardson that

despite our request they determined that there was no basis to use a Grand Jury to explore these relationships. Thereafter, at the end of September, I told Mr. Richardson that Mr. Promuto should be confronted by Inspection as soon as possible.

Second, it is alleged that by insisting on written questions, and confrontation with Mr. Promuto, I impeded the investigation because surveillance could not be undertaken. This is nonsense. Mr. Promuto had learned of the investigation some two weeks earlier. Rumors of it were widespread. Surveillance at that late date would have been impossible. He had already been under periodic surveillance by the Metropolitan Police for almost one year. Further, there was never any suggestion of surveillance at that time and a review of the Promuto file will corroborate this fact. Written questions or reports are a perfectly normal method of investigating historical facts, such as the exact nature of past relationships which cannot then be changed. Although a contrary conclusion has been suggested to this Committee, it should be noted that the Inspection Manual does not discourage or prohibit written questions, in any way. § 8133.3 provides that the purpose of the employee interview is to allow the employee the opportunity to explain or refute the allegation in an objective manner so he can present any relevant facts. This objective can be equally well achieved either orally or in writing.

The time and method of interview had been agreed upon by Messrs. Richardson and Lund who, together with Mr. Brosan and others, drew up the questions. My recollection differs from Mr. Richardson in that I don't remember ordering written questions, as opposed to the interview itself, but at no time prior to October 1 was any objection raised to me by Mr. Brosan. The objection raised by Mr. Brosan prior to October 1 was not the manner of confrontation, but to confrontation at all. Mr. Brosan believed that there was no possible explanation; ergo, confrontation was a useless act. Assume that Mr. Promuto was to resign or be fired at the end of September of 1974 without any chance to give his story as demanded by Mr. Brosan. The inferences which would follow such resignation or firing are inescapable. What possible inference could be drawn but that he was guilty of some criminal involvement with gamblers and/or dope dealers. Suppose he had fought the firing. DEA had at that time no credible evidence of any violation to present to Civil Service. At the time of the Promuto confrontation, Mr. Brosan had told Mr. Richardson the investigation was almost completed with the exception of the receipt of a few earlier file checks. Yet neither Mr. Promuto or any of his supposed associates at O'Brien's had been interviewed. The basic philosophy of our entire investigatory system and the Inspection Manual was being ignored. § 8132 reads:

"Systematic planning is considered essential to an objective investigation. All conduct investigations will be thoroughly planned in advance to insure this objectivity. All investigative planning will be directed toward the ultimate objective of exploring every possible facet of the allegation(s) and every possible explanation, and toward minimizing unnecessary apprehension and injury to the employee's reputation."

Here the Chief Inspector states that *no explanation was possible*. It was in this setting that I ordered the interview required in every Conduct Investigation to finally shed light on the allegations of guilt by association and whether we could take any action under the Civil Service system. The investigation continued for months thereafter into new avenues and he was subsequently reinterviewed several times.

Third, it is alleged that somehow I limited the scope of the investigation. This is totally false. I never told Inspection what they could not do. On one occasion I insisted that they interview Mr. Promuto. A look at the file reveals that the investigation went off in all directions, except into the nature and depth, if any, of Mr. Promuto's relations with these suspects in O'Brien's Restaurant, and whether he was telephoning gamblers. My concern was not to stop these avenues of investigation; but rather I wanted the primary charge investigated first so that if an adverse action were to be taken against the subject, it could be successful.

Let's look at the investigation now in light of the requirement that it explore every possible facet of the allegations and every possible explanation with a view to minimizing unnecessary apprehension or injury to the employee's reputation. By October 10, 1974, one month after the investigation started, Inspection had inquired of the following 19 outside agencies concerning their

knowledge, if any, on Mr. Promuto's connections with organized crime, narcotics or gambling:

FBI, Washington District Office
 U.S. Attorney, Virginia
 New York Telephone Company
 New Jersey Telephone Company
 New York City Police Department
 Hudson Valley National Bank
 National Football League
 IRS
 Suffolk County District Attorney's Office
 Suffolk County Police Department
 Organized Crime and Racketeering Section of the Department of Justice
 Dunn and Bradstreet
 Alcohol, Tobacco and Firearms
 Dade County Sheriff's Office
 FBI, Headquarters
 Connecticut State Police Department
 Newark, New Jersey Strike Force on Organized Crime
 New Jersey State Police Department

At least 15 different Inspectors all across the country had been assigned to the case at various times during this month. All five Inspection Field Offices had been requested to conduct collateral investigations with Mr. Promuto's name listed as the subject, although most such requests could have omitted reference to his name. Three Administrative Subpoenas had been served identifying Mr. Promuto with an investigation into a narcotics conspiracy. At least one subpoena was served on his bank for his mortgage records. The U.S. Attorney's Office in D.C. was requested to provide Grand Jury assistance. All of Mr. Promuto's personal financial records were examined, both his mortgages and all his bank records were subpoenaed, his credit rating was checked, all his telephone tolls for six months were subpoenaed and every call he made was examined with the callers' name submitted to the FBI. All of his travel vouchers were checked and verified with the hotels at which he stayed, his FBI background investigation was re-examined, the tax records of his summer home were checked, the mailman there and a neighbor were interviewed, his deceased father's background, business and finances were investigated. All this within one month, yet at no time did Inspection ever question or interview any of the six suspects with whom the subject was allegedly associating to determine if there was a relationship, and if so, the nature thereof.

From the very first day, Mr. Brosan stated there was no possible explanation the subject could give to justify his actions. Therefore, Mr. Brosan said he had to be fired. Accordingly, he resisted interviewing or asking the subject about his activities or associations with these suspects. It was only when he was ordered to do so that he ever confronted the subject. It is impossible to state how many man-hours were spent on this case, either in the first month or during the succeeding six months the inspection continued. Yet Mr. Brosan insists that he was "impeded" and that there was a "cover-up".

In the following months succeeding October 10, the investigation continued at the same pace as before. Additional checks were made with the Clark County Sheriff's Office in Nevada, the Montgomery County Police Department, the D.C. Superior Court, as well as more than a dozen other agencies concerning Mr. Promuto's relationship with Ms. DiVito. At no time did I or anybody else in DEA tell Inspection they could not investigate into an area, or question a witness. By the end of October, Mr. Brosan again informed Mr. Richardson that the investigation was completed and that he then obtained an advisory opinion from the Civil Service Commission that even if the action were successful, it would, at most, result in an oral admonition to stay away from O'Brien's. Yet, even then, when the new information came in from an FBI informant, Inspection started the investigation again and continued it while Messrs. Brosan and Tartaglino were complaining to the Department of Justice that they were impeded by me.

Lastly, there is an insinuation that Messrs. Richardson, Lund and Thomas Durkin were called in specially for the Promuto case as some untoward form of oversight. Messrs. Lund and Richardson had been assigned to assist Inspection on projects ever since Mr. Brosan departed early in July on a one-month

vacation/inspection tour of Paris. It was at his request that these two men, with Mr. Thomas Durkin's periodic analytical and legal advice, were assigned almost full time to these special projects during July and August.

When Mr. Brosan returned from Europe, he expressed his appreciation for their assistance and this task force continued with his full participation. When Mr. Brosan insisted Mr. Promuto be "amputated" immediately because there was no possible explanation, I was shocked at his judgment. I then assigned Messrs. Richardson and Lund, not as fact finders, nor to participate in the investigation itself, but to give advice to me as to what action, if any, I either criminally, administratively or practically as a manager should take based on the facts Mr. Brosan and his staff would collect. I insisted the investigation go on; I insisted the U. S. Attorney be contacted; I asked Mr. Durkin to see if Mr. Promuto would resign voluntarily; and I insisted that the facts be developed fully to see whether there was guilt in this association or whether it could be explained. At no time did I or did Messrs. Richardson or Lund restrict or limit Inspection in their fact finding.

Compare the investigation after December 20 with that of the preceding three months. The outstanding allegations from the Metropolitan Police memorandum were investigated by locating and interviewing those whom Mr. Promuto was alleged to be consorting with; and they identified and interviewed witnesses who would know the extent to which Mr. Promuto knew these people. In three weeks they conducted 20 formal interviews.

The results were startling and painted an entirely new picture. They proved that an alleged conversation concerning an automobile accident between Mr. Promuto and Mr. LaCompte never took place. When they demonstrated their proof to Detective Shoffler, he admitted it has been a case of mistaken identity and that McCaleb had had the accident. In fact, they proved that what Mr. Promuto had been saying all along was correct—he didn't even know Mr. LaCompte.

The Inspectors also removed the sinister cloud that had been placed over Mr. Promuto's visits to Fran O'Brien's Restaurant. Interviews showed a personal relationship between Mr. Promuto and Mr. O'Brien which spanned the years of their football careers and included Mr. O'Brien as best man at the Promuto's wedding and the Promuto's as godparents to Mr. O'Brien's child. When Mr. Promuto was assigned to Washington without his family, it was only natural he would lodge at O'Brien's and take many of his meals there. The restaurant is crowded daily with notables of the business, government, sports and legislative world of Washington. Sportscaster Shelby Whitfield reported that he had interviewed no less than 180 national notables on his radio show which emanates from Fran O'Brien's Restaurant. These gentlemen had no more control than Mr. Promuto or any restaurant owner over the reputations or backgrounds of those who visited the restaurant.

Gentlemen, I have related some of these findings to show that Inspectors can conduct the type of thorough and impartial investigations that are necessary to maintain a high level of integrity. A well planned investigation can be conducted which results in rapid assembling of the facts, followed by an early confrontation with the employee. This both protects the morale and reputation of the employee if he is not guilty of wrong doing and provides management with the ability to act swiftly to take corrective action if the employee is guilty.

PROMOTIONS OF SENIOR OFFICIALS WHO ALLEGEDLY HAD OUTSTANDING INSPECTION CHARGES PENDING AGAINST THEM

Ironically, Mr. Tartaglino also claims that I promoted certain senior officials who had unresolved Inspection charges outstanding against them. One of the revelations of the Moore Study was that it showed there were a number of senior officials with unresolved or closed cases which were initially opened during Mr. Tartaglino's tenure as Chief Inspector from 1968 to 1969. These cases had been allowed to languish over the years without complete investigation, and those that were closed were closed contrary to the Manual, without confrontation or termination letters.

During the first year of DEA, the number of these cases was never brought to my attention. In November of 1973, Mr. Brosan had discussed old allegations concerning the Assistant Administrator for Enforcement and we agreed he should attempt to resolve them. Neither the monthly Inspection Reports nor

the Annual Report of the Office of Inspection, however, mentioned that there were any more of these "unresolved" cases that he had mentioned.

Let us first take the allegations that I promoted the Assistant Administrator for Enforcement over Mr. Tartaglino's objections in the face of open charges. First of all, that decision was made on June 28, 1973 with the approval of Mr. Tartaglino himself and Mr. Lund, and further, with the concurrence of Attorney General Elliott Richardson. At no time did Mr. Tartaglino advise any of us that this man had an open file. Indeed, the allegations were originally raised against this man in the fall of 1968 by Mr. Tartaglino when he was the BNDD Chief Inspector. Shortly thereafter, he was promoted from a GS-15 to a GS-16 and then to a GS-17 while there was an open charge and Mr. Tartaglino was Deputy Director of Operations.

These allegations raised in 1968 concerned events in 1956. The investigation, commenced under Mr. Tartaglino's personal authority, continued up until January 23, 1970, when the Chief Inspector wrote, "The investigation is closed in the Office of Inspection. Further investigation would not clarify the question of truth of the allegations." Three days later, on January 26, Director Ingersoll indicated the investigation should be considered closed. Thus, this investigation had been closed in 1970 without notification or affording the subject the chance to be interviewed or subjecting the complainant to a polygraph examination. Mr. Tartaglino promoted the subject in 1969 while he was under investigation. The investigation was closed, albeit contrary to the manual, 3½ years before I took office.

In November of 1973, Mr. Brosan told me this charge might come up again in a future trial and asked permission to reopen it as to whether the subject had forged informant signatures in 1956. I agreed but suggested we confront the subject and the complainant. In February 1974, Mr. Brosan submitted new handwriting exemplars to the FBI even though they were to be compared with samples from some 17 years earlier. He also reinterviewed the complainant. But when the FBI sent back a negative report, Mr. Brosan allowed the case to languish and nothing was done from that day on.

It is of some significance to note in connection with the February 6, 1974 submission to the FBI laboratory that the handwriting comparison requested was of the purported signatures of some Chicago informants with the subject's signature. While in Chicago, the subject was the Enforcement Assistant. According to the file, the system for paying informants in the early 1960's was for the payment to be made by an agent to an informant who supposedly signed a receipt. The receipt was then turned over to the Enforcement Assistant who was reimbursed on his own travel voucher. This investigation of apparently forged informant signatures appears incomplete because the letter to the FBI laboratory in March, 1969 did not request signature comparisons of the agents who were responsible for directly paying the informant. The February 6, 1974 letter repeated this oversight by only requesting comparison of the subject's signature, not those of the intervening agents.

Again Mr. Tartaglino alleges that I was so negligent and indifferent towards integrity matters that in August 1974, I submitted the name of a candidate for Deputy Administrator without advising the then Deputy Attorney General Silberman that there were unresolved allegations against him. This is absolutely false. Again this investigation was initiated by Mr. Tartaglino in April, 1973 and had he checked the files, he would have seen that the official was exonerated and the file closed in May, 1973, 15 months before I submitted his name. I would be pleased to provide the Committee with a xerox copy of that closing memo.

During this investigation, Inspection made two surreptitious attempts to engage a recently arrested former agent in conversation concerning his knowledge of this official and, more particularly, any improper conduct on his part. The first taping was inaudible. In the second taping the defendant stated he hardly knew the official. Thereafter, a surreptitious call was placed to the official at Inspection's request concerning this former agent. The official immediately called Inspection and advised them of the call. Thereafter, the file was reviewed and on May 26, 1973, before DEA was ever created, that file was marked "closed" at the instructions of the Chief Inspector, albeit contrary to the Manual and without confrontation or a termination letter. This closed file was, of course, made available to the FBI agents who did the background of the official prior to his appointment and subsequent confirmation as Deputy Administration.

In short, there were old investigations involving allegations as to the early 1960's and before, barred by the statute of limitations, lying unattended from 1970 and before. These operated as a threat over the reputation of career professionals without any effort being made to effect a resolution. My dispute with Messrs. Tartaglino and Brosan concerned not only the method of resolution of these charges but the need for speedy resolution to prevent the Inspection Office from operating as a surreptitious despot. If these cases required the instant attention and support that Mr. Tartaglino referred to, why had he not acted before? Prior to 1974, when he was in charge of Inspection and then Deputy Director for Operations, these orphaned allegations had lain uninvestigated and unresolved counter to the Manual serving as a form of character assassination. It was only when the extent of this problem was revealed by the management study in October of 1974 that Messrs. Tartaglino and Brosan immediately charged to the Department for self-protection.

The problem between us did not revolve around the question of manpower, rather our disagreement focused upon methodology. I clearly disagreed with the concept of using Inspection in Mr. Tartaglino's words, as a "Management Tool." Was Inspection to be allowed to operate as the uncontrolled fiefdom of the Chief Inspector or was it, like the agents it regulated, to be subject to its own rules and regulations? We were in this posture, suggesting discussion of the proposed Moore policies and rules when Messrs. Tartaglino and Brosan, rather than respond, requested an investigation of me charging me with a variety of allegations which I have already discussed. The FBI asked them to submit a written report documenting these charges. They did so, and many of their allegations were demonstrably false. The Department of Justice and the Deputy Attorney General found these allegations were in fact without foundation. Now they are raised again with the additional inference that DEA is suffering a crisis of wholesale corruption. This is simply not true and I firmly believe that the Programmatic actions taken to strengthen the Office of Inspection have made it both more efficient and fairer.

I would be pleased to respond to any of your questions.

Deficiency	Status	Target date	New target date
1. Lack of management information system:			
a. Open and closed case control.....	Proposed management reporting system for the Office of Internal Security has been developed in conjunction with the Management Analysis Division. Revision of manual to incorporate reporting features. System to be totally implemented on Apr. 1.	Feb. 15, 1975.....	Completed for all 3 parts.
b. Investigation designators.....		Immediate.....	
c. Man-hours and fiscal resources.		Feb. 15, 1975.....	
2. Inspection manual violation:			
a. Failure to issue clearance reports.	Case closing form developed and being incorporated in manual revision. In addition, all internal security files opened since July 1, 1973, have been audited and appropriate clearance letters will be furnished to DEA employees where action is indicated.	Feb. 15, 1975.....	Action completed.
b. Failure to issue termination of investigation reports.	do.....	
c. Failure to conform to case closing instructions.	do.....	
d. Lack of conclusion letters in situation-type investigations.	do.....	
3. Inspection manual violation: Adverse-type publicity released to press during investigation.	Completed.....	Immediate.....	Not applicable.
4. Improper administrative supervision: 1-year backlog in indexing and filing.	We have completed 75 percent of the backlog in indexing and filing.	Feb. 15, 1975.....	Mar. 15, 1975.
5. Illegal use of administrative subpoenas.	Position approved for attorney-adverse action expert. Inspectors-in-charge will retain authority to issue administrative subpoenas but only after approval of chief inspector. Instructions to be contained in internal security manual.	Feb. 15, 1975.....	Completed.
6. Inspection manual violation: Lack of confrontation of employees regarding investigations.	All internal security files opened since July 1, 1973, have been audited and the lack of prior confrontations has been noted. Arrangements will be made to confront employees and terminate investigations with appropriate clearance letters.	Immediate.....	Apr. 1, 1975.

Deficiency	Status	Target date	New target date
7. Lack of proper training program for inspectors in adverse action elements, homicide investigations, and physical security.	Director of training has advised that 1 week training course in all 3 areas scheduled for the month of April.	Apr. 1, 1975.....	May 1, 1975.
8. Obsolete inspection manual.....	We estimate that 85 percent of the manual revision has been completed. Final drafts are being prepared.	Mar. 1, 1975.....	Mar. 15, 1975.
9. DEA manual violation: Improper handling of tape recording evidence.	Inventory of tape recording evidence completed. Files to be researched to determine the number of tapes that can be destroyed.	Feb. 15, 1975.....	Mar. 15, 1975.
10. Incomplete inspection investigations as reported in a recent management survey (random sampling of 63 cases).	Completed.....	Immediate.....	Not applicable.
11. Lack of file accountability: Approximately 50 files missing from office of inspection and internal security.	Accountability inventory continuing to determine missing file titles. It appears that the missing files pertain to background investigations that were forwarded to the Department of Justice. Chron files are being researched to establish the disposition of files missing from inventory.	Feb. 1, 1975.....	Mar. 15, 1975.
12. Lack of file accessibility procedures..	Mid-Atlantic field office is being established and will be located at 1325 K St. This will compartmentalize the headquarters files and allow for exposure accountability. Exposure form will be attached to each file in headquarters.	Feb. 15, 1975.....	Apr. 15, 1975.
13. Lack of preventative integrity programs.	Monthly STRIDE programs (System To Retrieve Information and Drug Evidence) will be utilized in the field offices to develop appropriate programs on the handling of drug evidence. Personnel office is forwarding copies of all resignation forms of special agents. Format of the interview program is being developed.	Mar. 1, 1975.....	Not applicable.
14. Lack of timely reporting on adverse action situations	The internal security manual is being revised to indicate that copies of internal security investigations will be forwarded directly to regional directors for appropriate action. Copies of the report will be forwarded to the headquarters personnel office. This will allow a saving of from 7 to 10 days in reporting time.	Feb. 15, 1975.....	Mar. 15, 1975.
15. Lack of uniformity on investigative reports.	We are adopting the same reporting system as special agents in drug investigations. Format included in manual revision.	Mar. 1, 1975.....	No new target date.
16. Failure to establish priorities on inspection investigations.	Not applicable.....	Immediate.....	Not applicable.

Mr. BARTELS. Mr. Chairman, I requested the opportunity to appear before you today to place in proper perspective certain decisions that I made as Administrator of DEA.

This is my first time to address this committee, present the facts as they exist and as I see it, there are two essential charges that have been made against me.

The first is that while Administrator, I was indifferent toward integrity problems and refused to provide manpower, moral support, et cetera, to the detriment of Messrs. Tartaglino and Brosan.

Second, that I interfered with those gentlemen's efforts to conduct an investigation of one Vincent Promuto.

Rather than read the entire statement, which I believe refutes those charges completely in very factual detail, I would like to summarize, extemporize on the first part of that charge, to wit: the indifference, by describing to you the circumstances of my relation-

ship with the Office of Inspection during my approximate 2 years' service as Administrator of DEA.

Prior to doing that, if I may, I would like to take this opportunity to give you some idea of my professional background, which has been professionally as a career official in the Department of Justice.

Mr. Chairman, I served under 10 different Attorney Generals from 1964 until 1975. My tenure with the Department of Justice commenced with my appointment by Attorney General Robert Kennedy as an assistant U.S. attorney in the office of Bob Morgenthau, when he was the U.S. attorney for the southern district of New York.

That occurred in 1964. Prior to that time, Mr. Chairman, I graduated from Harvard College in 1956, magna cum laude. I studied in Germany the next year as a Fulbright scholar and a Konrad Adenauer scholar at the University of Munich, Germany.

In 1957, I entered the Harvard Law School, graduated from Harvard in 1960. After 3½ years as an associate in a Wall Street law firm, Webster, Sheffield and Christy, I was asked to join the U.S. Attorney's Office in 1964. During the next 4 and some odd years, I gained considerable trial experience as a prosecutor in narcotics and in organized crime cases.

In 1969, at the request of Henry Petersen, I served as the Director of the Department of Justice's Newark, N.J., organized crime strike force. I served there from March of 1969, Mr. Chairman, through October 15, 1971.

In that capacity, I was in charge of a group of prosecutors and Federal agents whose efforts resulted in the convictions of many New Jersey organized crime racketeers, mayors, and State and Federal politicians.

In 1972, I was appointed Deputy Director of the Office of Drug Abuse Law Enforcement within the Department of Justice. At the end of June 1973, Attorney General Elliot Richardson asked me to become Acting Administrator of DEA.

In September of 1973, Mr. Richardson submitted my name to the President and I was confirmed by the Senate, I believe on October 4, 1973. I served as an Administrator from that date until May 30 of this year.

In 1971, I was named by the New Jersey Federal Criminal Investigators Association as the "Man of the Year." In 1972, I received the Department of Justice Distinguished Service Award, and there were several other awards that I received from the Department.

When I was requested by Attorney General Richardson to become Acting Administrator, I was aware that we were merging four different agencies, Mr. Chairman. We did so with very little planning and under relatively difficult circumstances.

Mr. Tartaglino at that time was the ranking officer in the Bureau of Narcotics and Dangerous Drugs. He was its former Chief Inspector. In discussing with him and with Mr. John Lund who was the senior man from Customs, Mr. William Durkin, who had been in charge of Domestic Enforcement at the Bureau of Narcotics, we agreed that Mr. Tartaglino would take the position as Acting Deputy Administrator, pending the appointment of a permanent Deputy Administrator by the White House and the Department, that being a

Presidential appointee, and that Mr. Tartaglino would then become chief inspector.

During the first year, I granted Mr. Tartaglino's request to have Mr. George Brosan take over the acting chief inspector's post in October of 1973, with the view to becoming Mr. Tartaglino's deputy upon the selection of the Deputy Administrator.

I granted Mr. Brosan's request for a turnover in the personnel of the Office of Inspection and I granted their request for an increase in manpower in the Office of Inspection. Indeed, we opened a new office, field office, in Miami.

During the first year, in short, Mr. Chairman, with the various problems involved in the merging of the organization, the adjusting of the enforcement effort away from the European-French connection to the Mexican Southwest Border, the various other problems, the one area that I had relatively secure confidence in was in the Office of Inspection.

During that time, Mr. Chairman, I received monthly reports from Mr. Brosan which described the areas of his investigations, his problems, what his various accomplishments and investigations indicated, and at no time did any of those reports indicate any of the problems which were subsequently revealed in their allegations made before this committee.

I don't have those monthly reports. They are available at the Drug Enforcement Administration and I would suggest them to you.

I do have a copy of the first annual report of the Office of Inspection, dated July 2, 1974, which made mention of the fact that 11 inspectors were reassigned, that a new office had been created, that the office had during its first year initiated some 219 investigations of alleged misconduct, that it had closed some 164, and had taken disciplinary action in some 24.

Again, I would ask that this memorandum be placed in the record.

Chairman JACKSON. Without objection it will be so ordered.

[The document referred to was marked "Exhibit No. 50" for reference and follows:]

EXHIBIT No. 50

MEMORANDUM

DEPARTMENT OF JUSTICE,
July 2, 1974.

To: Mr. John R. Bartels, Jr., Administrator.

From: Acting Chief Inspector, Office of Inspection and Internal Security.

Subject: First Anniversary Report on DEA Activities (Inspection and Internal Security).

STAFFING

A reorganization of the Office of Inspection and Internal Security has been proposed and will be implemented in the near future. The new Miami Field Office (Southeast) was opened in April 1974, and staffed with three Inspectors. A Security Specialist and one additional Security Assistant were added to the staff to handle the increased workload in the processing of full-field background investigations.

A systematic rotation plan was instituted for all Special Agent Inspectors and as of June 30, 1974, eleven Inspectors were reassigned to enforcement and/or intelligence functions. A thorough mix of former BNDD and Customs Agents has been accomplished and now we truly have a DEA organization. In the next few months the on-board staff will be increased slightly to bring our headquarters and some field offices up to authorized ceiling.

INSPECTION

Field

During the past fiscal year the Office conducted two foreign and six domestic Regional Office Inspections. It should be noted that the Regional Office Inspection Program did not become operation until January 1, 1974, due to uncertainty as to which office, Enforcement or Inspection, would have primary responsibility. The Regional Office inspected were: Baltimore, Chicago, Denver, Detroit, Mexico City (restricted to administrative support areas only), Manila, Philadelphia and Seattle. No major deficiencies were noted in any of the inspected Regions and minor deficiencies were corrected by Regional management.

The projected inspection workplan calls for the Office to conduct two foreign and ten domestic Regional Inspections.

Laboratory

During the past fiscal year, three laboratory inspections were completed, Special Testing and Research; Mid-Atlantic Regional Laboratory; and South Central Regional Laboratory. The Office workplan calls for seven laboratory inspections to be completed in FY-75.

Unscheduled

During the first month of DEA unscheduled inspection of the imprest funds in all domestic offices were completed with the exception of Honolulu, Anchorage and isolated small border offices. An additional 50 unscheduled inspections were completed during the balance of the fiscal year. This program will be continued on a time-permitted basis during FY-75.

Internal Security (Investigations)

During the first year of DEA this office initiated 219 investigations of alleged misconduct by DEA personnel and related miscellaneous matters. During the same period 164 investigations were closed resulting in some form of disciplinary action in 24 instances with 17 others awaiting managerial decision.

As always the integrity of DEA is foremost in the priorities of this office and continued efforts will be expended in FY-75 to insure that the high integrity of DEA is maintained.

Full-Field Investigations

During DEA's first year, 954 full-field investigations were initiated. These investigations were further broken down as follows:

Special agents.....	329
Compliance investigators.....	29
Clerical.....	459
Professional.....	137
Total.....	954

Of this total, about 40 were discontinued for one reason or another. A total of 524 were completely reviewed and processed by the staff and of that total 231 were forwarded to Personnel or the appropriate Regional Office for suitability determinations. In addition, another 150 investigations were reviewed, but are not fully processed by this office. The remainder are still in the hands of the U.S. Civil Service Commission for investigation. This office contemplated a continued heavy workload in this area and has taken steps to effectively deal with it.

GEORGE BROSN.

Mr. BARTELS. In short, during my first year, I put my trust and gave free rein to Messrs. Tartaglino and Brosan in connection with their conduct of the Office of Inspection. My first knowledge of any breakdown in the Office of Inspection came in August of 1974, when I received from Mr. Tartaglino a memorandum in which he requested a substantial increase in personnel in that office and stated that as a

result of managerial decisions, he thought it was up to, should be brought to my attention that there had been no increase in that office.

I believe that memorandum has already been entered as an exhibit. I read it, spoke with the Office of the Comptroller, was informed that there were errors in that memorandum, that there had been increases. I then spoke with Mr. Tartaglino who told me he needed substantial increases in personnel and as a result of that memorandum, I asked the Office of the Comptroller to prepare a response for Mr. Tartaglino and I also commissioned at that time a study by Dr. Moore of the Office of Planning and Evaluation which was indeed the first management study of the Office of Inspection, I believe, ever. Certainly, it was the first in the last 7 years, Mr. Chairman.

This was taking place during August of 1974. DEA's budget requests had been cut substantially by both the Department of Justice and by the Office of Management and Budget. We had had a tragedy in Miami whereby an office had collapsed and seven agents had been killed. We had to absorb the costs of that, which were some \$3 million, and in addition there were cutbacks being imposed on all Federal agencies throughout that time as a result of the inflation and recession problem.

Dr. Moore, I may mention to you and to the committee, had done studies of all of the offices within DEA. One of the problems of the merger was that as a result of the merger, four agencies together, there was some duplication within the headquarter's staff. We brought Dr. Moore in. During the first year, he had done similar management studies of the Office of Training, the Office of Science within the Office of Management, Administration, the automatic data program and was engaged at that time in a study of enforcement and intelligence.

The management study group was commenced in September, I believe on September 7, 2 weeks prior to the Promuto case ever being brought to my attention, was commissioned by me. It included Mr. Tartaglino, his special assistant, my Executive Officer, Mr. Bruce Jensen, as well as other professionals who were assigned to the Office of Planning and Evaluation.

This study started, as I say, during the beginning of September. During that time, I advised the Office of the Comptroller as well as the other senior staff members that notwithstanding the decrease in budget, I considered that there were two sacred cows that would have to be taken care of in this budget year no matter what. One was the Office of Inspection and the other was the El Paso Intelligence Center. Both, I said, would get additional positions and in September, prior to that study, I increased the ceiling of Inspection another seven positions.

As I said, up until that time, I had assumed, based on the monthly and the annual inspection reports, that there were no serious problems in the Office of Inspection.

The Moore study, in short, it is spelled out in great detail here, Mr. Chairman, in this first 25 pages or so of my statement, showed early in the game that it was impossible for these professionals to determine the manpower requirements of the Office of Inspection simply because there was no management system there; that on,

prior to the final report ever being written, the Moore study revealed that the Office of Inspection lacked policy direction in any form of management ability; that it was regularly violating its own manual which contained the rules and policies which are to guide it and thereby was violating the civil liberties of agents and inflicting personnel costs on the agency. Furthermore, that it failed to produce sufficiently professional investigations to remove or clear agents even after decades, decades after the allegations were raised.

That study was conducted during the months of September, October, and November. The study showed early on that there were no priorities within the Office of Inspection as to areas of investigation—that is, the investigation of prior allegations versus patrolling for new allegations or unreported allegations versus evaluating regional offices, versus special projects, versus headquarters security.

It showed that there was no data on manpower allocations or resource allocations between either these various areas or between the types of cases that they were conducting. In other words, in brief, Mr. Chairman, the study revealed that they could not tell how many hours were being spent on a particular case. You couldn't tell whether 1,000 hours were spent on an investigation into a technical manual violation or whether 10 hours were spent on an allegation of substantial serious violation of civil rights.

Furthermore, the report showed that there was no standard for closing cases and accordingly, cases had been in the past routinely closed in violation of Inspection's own manual.

The report, as I said, was conducted with the participation of Mr. Tartaglino and with the specific participation of one Tom Huerney who had been a deputy regional director, had been in the FBI, was a long-time senior agent from the Bureau of Narcotics and who had been assigned, after going to management school for 1 year, to the Office of Planning.

This report that Mr. Huerney and Dr. Moore found as to the closing of cases, which is peculiarly appropriate to your investigation here, was:

Ideally, all cases initiated in the Office of Inspection should end in the resolution of allegations. If the resolution is in favor of the employee, he should be publicly exonerated. If the resolution is against the employee, an appropriate adverse action should be initiated. If the investigation by the Office of Inspection is well done, the adverse action should be sustained by the Civil Service Commission against any challenges.

I am reading from page 15 of my statement.

[At this point Senator Percy entered the hearing room.]

Mr. BARTELS. I will try not to read substantial portions of it. However, some cases investigated by the Office of Inspection will not be resolved. For such cases, there is still some urgency about reaching some culmination. In effect, it should be possible to close cases that are not resolved. The reason for the urgency in closing cases, even when they were not resolved, is that serious costs are incurred both by the DEA and by the subject of an investigation, if a case is left open for a long period of time.

The report then discussed the various costs, to wit: That an open investigation is prejudice to the subject, that it may actually increase

the risk of extortion, and it discusses the costs of closing a case too early. It comes to the conclusion that there is a need to define what the standard is for a complete investigation in order that investigations would not be left open beyond reasonable time.

In short, it discusses the various policy issues, Mr. Chairman, which are appropriate to this charge which has been made against me and which has been made against, frankly, the integrity of a great number of senior officers within DEA.

I refer you now to page 16, that after discussing the pros and cons of closing a case and the necessity for defining a standard of when to close cases that are simply unresolvable, Dr. Moore states, "It is worth noting that none of the observations in this section are either new or inconsistent with the existing written policies of the Office of Inspection." That is, its manual.

The existing inspection manual recognizes the importance of presuming innocence. Subchapter 813 states: Inspectors will be especially careful to avoid creating an inference of guilt on the part of the employee during a conduct investigation.

Senator PERCY. I wonder if I could interrupt you here, Mr. Bartels, to ask the chairman a question. I am sorry I was not here at the outset, because of a meeting on HUD this morning. I understand Mr. Bartels was to summarize his statement. Members of the committee, of course, have read the statement. They have been available for everyone and I just wondered, in the interest of time so we could sort of plan this—I am sure Mr. Bartels is anxious to get it over with—what it is the Chair plans.

Chairman JACKSON. Yes; I would hope that we could move along a little faster because it is going to be very difficult, Mr. Bartels. We have questions we want to ask. I am due at a conference at 10 o'clock. We are also operating under the rule that we have to cease the moment we go back at 11 o'clock. So if you could more quickly summarize, because I think we ought to clarify some of the real issues.

Mr. BARTELS. That is what I am trying to do.

Senator PERCY. The questions will try to clarify what we do not feel is fully clarified by the statement. I think really it will be in your interest more to have us pose questions for clarification.

Mr. BARTELS. I don't plan to read long segments of this, Mr. Chairman.

[At this point Senator Nunn entered the hearing room.]

Chairman JACKSON. Could you finish in about 5 or 6 minutes?

Mr. BARTELS. I don't believe I can finish my 40-page statement in 6 minutes. This is the first time that I have been up here.

Chairman JACKSON. You are coming back. There will be several days. Go ahead.

Mr. BARTELS. Let me not belabor the reading of the manual. But what it states in short is that these policy issues are covered in the manual, that there is nothing new in this Moore study that is not in that manual and that there is nothing in there as to how to conduct an investigation that is either novel, new, or the work of some leftist, Communist, pinko fag, but rather these are policies that have been the policies of this agency for a long period of time.

It states the policies as to closing cases, Senator. I think that is really a key issue in the disagreement that we had with Messrs. Tartaglino and Brosan.

That manual states that there is a specific procedure for closing cases. And in every instance where cases are to be closed either with an adverse action, with an unresolved result, or with an exoneration, the employee is to be confronted and that is to be done within a reasonable time, indeed, the manual specifies as quickly as possible.

And then a letter is to be sent to that employee. The point that I wanted to make to you and to this committee—I will do it without reading segments of the manual, is that these studies and these discussions of policies were contained in this manual and were in fact ignored in the prior conduct of the Office of Inspection.

So that as you go through the various problems that this study found during the weeks in September, during October, you found that in large part the problems came from the manual itself being ignored on a wholesale basis.

That to an Office of Inspection whose responsibility it is to ensure that the rest of the agency operate within the policies of the Constitution and its own manual is a grave sign, sir.

You can't have the Office of Inspection operating outside its manual when it is to judge the people according to their manual.

That study came up with 11 conclusions and 11 recommendations which it stated should be the basis for further discussion between the Office of Planning and Evaluation and the Office of Inspection.

One of the recommendations was that the Office of Inspection should be provided with additional manpower in order that they could make up their backlog which they brought up during the past year.

Senator PERCY. Mr. Bartels, I would like to point out to you that your time is valuable and ours is. We are thoroughly familiar with the procedures. We don't need an elementary lesson in what these procedures are.

Our question is how did you apply these procedures? That is what I think you should address yourself to in your own defense.

Mr. BARTELS. I will be happy to. But I think we have to go through—

Chairman JACKSON. Mr. Bartels, you started attacking me and the subcommittee early. I have the newsclips here. You ought to say why you were fired.

Mr. BARTELS. Senator, I can't tell you why I was fired because just as I have never had the opportunity to come before this committee, I never had the opportunity—

Chairman JACKSON. When did you ask to come before this subcommittee?

Mr. BARTELS. I was told I was going to be invited before this committee before any public hearings. That appeared in the newspaper.

Chairman JACKSON. Who? No one authorized it.

Mr. BARTELS. It appeared in the New York Times in January. Mr. Feldman said we are going to call Mr. Bartels before this committee.

I then inquired and was told through our Office of Congressional Relations that I would be invited up for executive session before any public testimony.

I then inquired through Congressman Morgan for the permission to come up and testify.

Chairman JACKSON. You are a lawyer with a good background. All you had to do was to write us a letter. Did you ever write a letter to the committee and say—

Mr. BARTELS. Senator, I was told before, both publicly in the papers, that I would be called.

Chairman JACKSON. Who told you?

Mr. BARTELS. For one thing, you got on television and said we are going to hear their side of the story.

Chairman JACKSON. We are.

Mr. BARTELS. Yes; but I expected that you would hear my side of the story before the headlines came out.

Chairman JACKSON. Mr. Bartels—

Mr. BARTELS. That is just basic common decency.

Chairman JACKSON. We laid the foundation in the hearings. We decide the order in which witnesses are called.

Mr. BARTELS. I know that.

Chairman JACKSON. You have been around.

Mr. BARTELS. In executive session they are attacked on a man's integrity, it seems to me—

Chairman JACKSON. You were attacking me in the press.

Mr. BARTELS. I attacked Mr. Peroff in the press.

Chairman JACKSON. Wait a minute.

Mr. BARTELS. I said Mr. Peroff mentioned the name of Vesco because it was a buzz word. If you take a look at my press release that is what I said.

Chairman JACKSON. We have got all of the clippings here in which you attacked the sub-committee and you attacked me—that it was all Presidential politics.

Mr. BARTELS. No; I never said that. I never said that.

Chairman JACKSON. You didn't?

Mr. BARTELS. Presidential politics.

Chairman JACKSON. You said March 15 in the Washington Post that our Peroff report was a vehicle for Jackson to get headlines for himself and—

Mr. BARTELS. Is that a quote from me, Senator?

Chairman JACKSON. No; Baltimore Sun:

John R. Bartels, May 2, 1975, asserted in a recent interview that much of the criticism of DEA was politically motivated. Senator Jackson is the contender in the 1976 Presidential race. He added that the bad publicity is handicapping the operation of the narcotics team—from John R. Bartels.

You just got through saying that you didn't mention politics.

Mr. BARTELS. I said there was no secret that you are a Presidential candidate.

Chairman JACKSON. Is the quote accurate?

Mr. BARTELS. Yes.

Chairman JACKSON. Let me read another one.

Mr. BARTELS. It is handicapping the effort. I think nobody has come up yet—

Chairman JACKSON. I didn't fire you. The subcommittee didn't fire you. Who fired you?

Mr. BARTELS. Attorney General Levi fired me.

Chairman JACKSON. He is an able and competent man. He went over this thing very carefully.

Mr. BARTELS. He wouldn't see me, Senator. He never heard my story.

Chairman JACKSON. That doesn't speak well for you, Mr. Bartels.

Mr. BARTELS. I asked to see him. I don't know who it speaks well for, Senator, but I asked to see that gentleman.

Chairman JACKSON. You were trying to say that all your troubles were stemming from this subcommittee.

Mr. BARTELS. Not at all.

Senator PERCY. Mr. Bartels, let me give you a piece of advice. I am not your attorney. But we want to hear your story. I can assure you, you are just going down a line that will get you no returns by charging that politics had anything to do with this.

We all know Senator Jackson is a candidate for higher office. We all know also that I almost was. But I am not now. It is not my fault.

Senator NUNN. Let me add I am definitely not.

Senator PERCY. I can assure you that the decisions made concerning the way in which these hearings have been conducted were bipartisan decisions of the entire subcommittee and by counsel on both sides. There were no politics.

I can assure you that anyone charging that politics motivates this Senate committee is going down a blind alley. It just won't do any good because it won't wash. I shared in every decision that has been made as to how these hearings would be conducted.

We are here to find the truth now. Let's get rid of the politics and get down to it as quickly as we can. For your sake we want to help clarify the questions that have been raised all through these hearings about you.

We couldn't have you first because the allegations were being made against you by others. You are here now to defend yourself against allegations made by witnesses in sworn testimony, not by us, but by witnesses who worked for you; people who were in your agency. That is what we want to get down to questioning you about these matters.

I urge you now inasmuch as we all read completely every word of your testimony to bring that part of it to a close as quickly as possible so we can clarify certain questions in our minds that are unanswered by your statement.

Mr. BARTELS. Senator, my only point was not to attack Senator Jackson. If you take a look at that statement, I agree with your point. I am happy to get away from this issue.

Chairman JACKSON. Let me finish before you take a look at that statement. I will give you the other statement. You can have an opportunity to deny it. Then we will finish this.

I quote from the May 14, 1975, New York Daily News, in an interview with Mr. Bartels:

He, Bartels, also implied what his top aides told reporters that they see next month's Permanent Investigations Subcommittee headed by Senator Henry M. Jackson as a politically motivated witch hunt that will produce extremely damaging headlines, worsen already sagging morale of agents of the field and probably provide, in Bartels' words, "no constructive recommendations for improvement."

Mr. BARTELS. Yes. I will totally deny that.

Chairman JACKSON. You deny that?

Mr. BARTELS. Yes.

Chairman JACKSON. Reporters usually are accurate. But I am delighted to hear that you have denied that. All of these quotes here seem to lead to the conclusion that this is a politically motivated operation.

Mr. BARTELS. Here is the point that I made. I had anticipated having the opportunity to get up in executive session to present this in advance. I think we could have saved a lot of time and a lot of headlines by doing it.

My point is that in this Moore report, which was not brought to your attention, it showed in substance that the Office of Inspection, as conducted by Messrs. Tartaglino and Brosan, was a can of worms. It was not doing its job in a professional manner.

The question then came up as to what should be done to restore that to a professional job, what should be done to make that office operate in the way that a professional office should.

As you will see on pages 20 through 25, there were 11 recommendations made, some of which are so basic that shock me; some of which involve the fact that cases over a year old should be reported, cases involving unresolved allegations should be limited in their access. They should not be allowed to form the basis of personnel decisions or given out to the Career Board prior to any resolution of unsubstantiated allegations; that there should be a management system so that the Office of Inspection can tell how many hours it is spending on cases, simply that the manual should be followed so the cases are closed with confrontation at some time and that letters are sent simply that there should be planning made in order that the cases will be able to present evidence admissible in a civil service hearing.

Those recommendations were made. They were made during the month of October and they were made with the view of inviting a dialog with the Office of Inspection. They were made with the purpose not of being the final dogmatic word, but with being an invitation to discussion.

That invitation was not responded to, but was ignored with charges made to the Department of Justice.

Sir, I remain a strong advocate of integrity in law enforcement agencies. I increased that office during my tenure from 24 men to 40 men. I believe, however, deeply in the concept of due process, both with agents as I do with civilian personnel and I believe it is possible to have aggressive and fair prosecutions, not only in narcotics

cases against private citizens, but in cases against law enforcement officials.

On February 10, 1975, we came up at my request, the Office of Administration and Management, prepared a basic proposed management reporting system for the Office of Inspection. Such a system had never existed before.

Senator PERCY. Mr. Bartels, could I ask why when you just said you increased the number of inspectors to 40 you testified before Chairman Holifield in the House when he asked the question :

It seems to me if you had one or two persons that tried to scrutinize this particular phase it would be helpful in preventing interruption.

Mr. BARTELS. I believe we had more than 100.

How could you be that far off?

Mr. BARTELS. Including auditors within the Office of Comptroller, we had more than 100.

Senator PERCY. Would you clarify, then, what you just said?

Mr. BARTELS. Yes. There are two different functions. There is the inspection function and we have auditors on travel vouchers within headquarters doing an audit function.

On the Holifield group, that included not just the inspection group, but the entire audit function.

In other words, the audit of impress iands, the audit of travel vouchers, the audit of the various papers controlling money.

Senator PERCY. They are not really inspectors, though?

Mr. BARTELS. No.

Senator PERCY. Is it misleading to imply they are inspectors?

Mr. BARTELS. I don't believe so because we were talking earlier in comparison with the inspections function that Commissioner Acree had been on early that day.

Senator PERCY. He is talking about, I use his word, people who travel and scrutinized this particular phase?

Mr. BARTELS. The auditors travel, Senator.

We had approximately 50 to 60 auditors who both traveled and investigated paperwork.

Senator PERCY. You wrote to Senator Weicker that you had 55.

Mr. BARTELS. We had 55 on the staff. We had 40 inspectors and 15 paraprofessionals and secretarial people.

In addition, we had some 60 in audit.

The proposed management reporting system, Senator, came up with some basic improvements. A formal case status report for each case file, a codification of the large number of cases, a system for reporting inspector man-hours, so, for the first time you would know how many hours were being spent on a case and when there was long number of hours spent on a manual violation case and a short number of hours spent on a case involving a serious integrity problem and a limited number of routine, periodic summary management reports.

I would ask that that be admitted in evidence.

Chairman JACKSON. Without objection, it is so ordered.

[The document referred to was marked "Exhibit No. 51" for reference and follows:]

EXHIBIT No. 51

PROPOSED MANAGEMENT REPORTING SYSTEM FOR THE OFFICE OF INSPECTION AND INTERNAL SECURITY

INTRODUCTION

The Management Analysis Division was requested to assist the new Acting Chief Inspector in the development of management data and reports with the objective of achieving improved direction and control over the activities and functions of the Office of Inspection and Internal Security.

The proposed management reporting system outlined in this brochure is based upon a review of case files, the index card system, and existing reports within the Office of Inspection and Internal Security. In addition a sampling of present and former key personnel of the Office of Inspection and Internal Security were interviewed, and the report "An Analysis of the Resources, Policies, and Procedures of the Office of Inspection and Internal Security," prepared by the Office of Planning and Evaluation was reviewed.

Based upon these reviews and interviews the following requirements for a management reporting system were identified:

- a. A formal case status record for each case file.
- b. A codification of the large number of classes of investigation into several types for management purposes.
- c. A system for reporting inspector man-hours.
- d. A limited number of routine periodic summary management reports with a capability to prepare a series of special management reports upon request in these areas: (1) Case Status, (2) Case Load, (3) Man-Hours, (4) Disposition of Allegations, (5) Source of Allegations, and (6) Allegations by Category of Personnel.

MANAGEMENT REPORTS

This Section contains sample reports to be prepared by the Headquarters staff of the Office of Inspection and Internal Security for the Chief Inspector.

The Case Status Sheet and Monthly Man-Hour Report outlined in Section II and inspector staffing data from the Summary of Ceilings and On Board Report will provide all necessary data for these management reports.

The proposed reports have been designed and indexed with the intention to provide the Chief Inspector and other management personnel with a limited number of routine management reports while at the same time providing an ability to request a considerable number and variation of other summary and detail reports with a minimum amount of time and effort. For example, if after reviewing the Total DEA Case Status Summary (Report No. 1.0), one of the three routine monthly reports, the Chief Inspector could request a Case Status Summary for an individual Inspection Field Office or for an individual Enforcement Region or District by requesting Report No. 1.1 or 1.2 for the desired office, region, or district. The Chief Inspector could, using the above example, also request by individual region or district Detail Case Status, Disposition of Allegations, Source of Allegations, or Allegations by Category of Personnel.

OFFICE OF INSPECTION AND INTERNAL SECURITY—INDEX OF REPORTS

Report No.	Frequency	Title
1.0	Monthly	Case Status Summary (total DEA).
1.1	Special	Case Status Summary (individual inspection field office or headquarters).
1.2	do	Summary of Case Status (individual region or district).
2.0	Monthly	Case Load Per Inspector.
3.0	Quarterly	Manhours Per Case.
4.0	Monthly	Disposition of Allegations (total DEA).
4.1	Special	Disposition of Allegations (individual region).
5.0	do	Source of Allegations (total DEA).
5.1	do	Source of Allegations (individual region or district).
6.0	do	Allegations by Category of Personnel (total DEA).
6.1	do	Allegations by Category of Personnel (individual region or district).
7.0	do	Detail Case Status (total DEA).
7.1	do	Detail Case Status (individual region or district).

OFFICE OF INSPECTION AND INTERNAL SECURITY—CASE STATUS SUMMARY (FOR TOTAL DEA), MONTH OF
JANUARY 1975

Report No. 1.0	Type M	Type C	Type I	Type O	Total
In process beginning of month:					
a. Under investigation.....	(1) 14	(2) 9	4	1	(3) 28
b. Pending resolution.....	((2)) 11	16	2	0	29
c. Total.....	25	25	6	1	57
d. New cases initiated.....	12	6	3	1	22
e. Investigations completed.....	10	(1) 8	5	1	(1) 24
f. Cases closed.....	((1)) 12	13	2	0	((1)) 27
In process end of month:					
g. Under investigation (g=a+d-e).....	(3) 16	(1) 7	2	1	(4) 26
h. Pending resolution (h=b+e-f).....	((2)) 9	11	5	1	((2)) 26
i. Total (i=c+d-f).....	25	18	7	2	52

NOTES

() = Number of cases under investigation over 60 days.

(()) = Number of cases in process over 180 days. Attach detail data on each case.

Variations of Report No. 1.0: Report 1.0 Routine Monthly—DEA total (as above). Report 1.1 Special—Individual Inspection field office. Report 1.2 Special—Individual region or district.

OFFICE OF INSPECTION AND INTERNAL SECURITY—CASE LOAD PER INSPECTOR (CASES UNDER ACTIVE
INVESTIGATION), JAN. 31, 1975—REPORT NO. 2.0

Office	Number of inspectors	Number of cases	Average
Headquarters.....	5	5	1.0
New York.....	6	8	1.3
Chicago.....	3	3	1.0
Dallas.....	3	2	.6
Los Angeles.....	4	8	2.0
Total.....	21	26	1.2

OFFICE OF INSPECTION AND INTERNAL SECURITY—MAN-HOURS PER CASE (TOTAL DEA INVESTIGATIONS COM-
PLETED CALENDAR YEAR TO DATE) MAR. 31, 1975—REPORT NO. 3.0

Office	Average man-hours per case				Total
	Type M	Type C	Type I	Type O	
Headquarters					
Inspectors.....	(9) 139	(6) 72		(3) 221	(18) 130
Special agents.....					
Total.....	(9) 139	(6) 72		(3) 221	(18) 130
New York					
Inspectors.....	(6) 156	(6) 134	(3) 97		(15) 135
Special agents.....		(1) 82			(1) 82
Total.....	(6) 156	(6) 148	(3) 97		(15) 142
Chicago					
Inspectors.....	(10) 193	(3) 84	(3) 126		(16) 160
Special agents.....	(2) 122				(2) 122
Total.....	(12) 181	(3) 84	(3) 126		(18) 155
Dallas					
Inspectors.....		(3) 109	(6) 189		(9) 162
Special agents.....					
Total.....		(3) 109	(6) 189		(9) 162
Los Angeles					
Inspectors.....	(3) 208	(6) 106	(3) 68		(12) 122
Special agents.....					
Total.....	(3) 208	(6) 106	(3) 68		(12) 122
Total.....	(30) 166	(24) 105	(15) 133	(3) 221	(72) 141

Note.—() = Number of cases.

OFFICE OF INSPECTION AND INTERNAL SECURITY—DISPOSITION OF ALLEGATIONS (TOTAL DEA CASES CLOSED
CALENDAR YEAR TO DATE) JAN. 31, 1975—REPORT NO. 4.0

Disposition	Number of cases	Disposition	Number of cases
Founded:		Founded—Continued	
No disciplinary action.....	2	Arrest.....	0
Oral admonishment.....	1	Total.....	15
Written admonishment.....	4	Unfounded.....	8
Suspension.....	6	Unresolved.....	4
Termination.....	1	Total all dispositions.....	27
Resignation.....	1		

Note.—Variations of Report No. 4.0: Report 4.0 Routine Monthly—DEA total (as above). Report 4.1 Special—Individual region.

OFFICE OF INSPECTION AND INTERNAL SECURITY—SOURCE OF ALLEGATIONS (TOTAL DEA CASES INITIATED
CALENDAR YEAR TO DATE), JAN. 31, 1975—REPORT NO. 5.0

Source	Number of allegations	Source	Number of allegations
DEA employee.....	4	Other.....	4
Informant.....	3	Total.....	22
Defendant.....	8		
Inspection.....	3		

Note: Variations of Report No. 5.0: Report 5.0 Special—DEA total (as above). Report 5.1 Special—Individual region or district.

OFFICE OF INSPECTION AND INTERNAL SECURITY—ALLEGATIONS BY CATEGORY OF PERSONNEL (TOTAL DEA
CASES INITIATED CALENDAR YEAR TO DATE), JAN. 31, 1975—REPORT NO. 6.0

Category of personnel	Number of allegations			
	Type M	Type C	Type O	Total
Agents.....	8	5	1	14
Compliance investigators.....	1			1
Chemists.....		1		1
Professional/Technical.....	1			1
Clerical.....	2			2
Total.....	12	6	1	19

Note: Variations of Report No. 6.0: Report 6.0 Special—DEA total (as above). Report 6.1 Special—Individual region or district.

OFFICE OF INSPECTION AND INTERNAL SECURITY—DETAIL CASE STATUS (TOTAL DEA CALENDAR YEAR TO DATE),
JAN. 31, 1975—REPORT NO. 7.0

Type and category	Status		
	Under investigation	Pending resolution	Closed
M—misconduct:			
Use of drugs.....	(1) 2	0	0
Abuse of authority—excessive force.....	1	1	0
Misuse of Government vehicle.....	0	1	3
Loss of evidence—narcotic.....	1	0	0
Improper relationship with defendants.....	2	((1)) 1	2
Filing false reports.....	(1) 1	1	0
Failure to pay debts.....	0	((1)) 1	1
Automobile accidents—FTCA.....	4	2	((1)) 5
Discharge of firearms—accidental.....	2	1	0
Insubordination.....	2	1	0
Code of ethics violations.....	(1) 1	0	1
Total.....	(3) 16	((2)) 9	((1)) 12
C—corruption:			
Sale of drugs.....	1	0	2
Possession of drugs.....	1	2	1
Theft of Government property.....	2	2	1
Theft of defendants—money.....	(1) 3	4	5
Theft of defendants—property.....	0	2	4
Fraud against the Government.....	0	1	0
Total.....	(1) 7	11	13
I—inspections:			
Unannounced inspections.....	0	4	1
Scheduled inspections.....	2	1	1
Total.....	2	5	2
O—Other:			
Discharge of firearm—line of duty.....	0	1	0
Special projects.....	1	0	0
Total.....	1	1	0
Grand total.....	(4) 26	((2)) 26	((1)) 27

NOTES

()=Number of cases under investigation over 60 days.
 (())=Number of cases in process over 180 days.
 Variations of Report No. 7.0: Report No. 7.0 Special—DEA total (as above). Report No. 7.1 Special—Individual region or district.

CASE STATUS AND MAN-HOUR DATA

This Section Contains a Case Status Sheet and a sample Monthly Man-Hour Report.

A Case Status Sheet would be maintained in each investigation folder. When a Field Office telephones Headquarters to obtain a centrally controlled file number for a new investigation, information required to complete the top part of this status sheet would be obtained (with the exception of the date investigation completed) and an investigation folder would be established. The file number would contain a designator to indicate the region or district. The date the investigation is completed would be entered when the Report of Investigation is received in Headquarters. The disposition data will be entered when the case is closed.

In categorizing disposition of cases as "founded" or "unfounded," the term founded (or the term substantiated if preferred) should always be used to connote a negative finding from the employee point of view. Conversely, unfounded should always be used to connote a positive finding. If for example the investigation concerns the "discharge of firearm—line of duty" and the investigation concludes that the employee's action was proper and warranted, then the disposition should be marked unfounded.

A Monthly Man-Hour Report will be submitted by each Inspection Field Office and for the Inspectors within the Headquarters who conduct investigations. The Man-Hour Report would cover only Inspector's hours (and the hours Regional Special Agents expended on Office of Inspection cases) and should be based upon a weekly activity report similar to the Special Agents Weekly Activity Report (DEA Form 351).

CASE STATUS SHEET (Inspection)		Field Office		File Number	
		Date Opened		Date Investigation Completed	

Allegations		Inspector Assigned	
Code No.	Description		
		Remarks	

Employee(s)			
Name (Last, First, Middle)	Title	Grade	Duty Station
1.			
2.			
3.			

Disposition			
Employee No. 1	<input type="checkbox"/> Founded	Date	Action Taken
	<input type="checkbox"/> Unfounded	Date Employee Notified	
	<input type="checkbox"/> Unresolved	Remarks	
Employee No. 2	<input type="checkbox"/> Founded	Date	Action Taken
	<input type="checkbox"/> Unfounded	Date Employee Notified	
	<input type="checkbox"/> Unresolved	Remarks	
Employee No. 3	<input type="checkbox"/> Founded	Date	Action Taken
	<input type="checkbox"/> Unfounded	Date Employee Notified	
	<input type="checkbox"/> Unresolved	Remarks	

MEMORANDUM

DEPARTMENT OF JUSTICE,
February 6, 1975.

To: Chief inspector.
 From: Chief, Dallas Inspection Field Office.
 Subject: Monthly Man-Hour Report.

Inspector man-hours expended during the month ending January 31, 1975, was as follows:

A. By case: Case No.—	Man-hours
I-J1-74-0089-----	68
I-M5-74-0129-----	249
I-J6-74-0161-----	314
I-M1-75-0008-----	108
I-J8-75-0029-----	116
Total case hours-----	855
B. Other man-hours:	
1. Training-----	12
2. Administration-----	141
3. Other-----	8
C. Leave:	
1. Annual-----	28
2. Sick-----	12
D. Total inspector man-hours-----	1,056
E. Overtime:	
1. Scheduled-----	0
2. AVO-----	176

Special Agent (regional personnel) man-hours expended on Office of Inspection cases during month ending January 31, 1975, was as follows:

Case No.—	Man-hours
I-M1-75-0008-----	81

CODING OF INVESTIGATIONS

This Section contains a listing of the fifty-two classes of allegations or investigations prepared by the Office of Inspection and Internal Security broken down into two alternative groups of five and eight types of investigations for managerial purposes. A third alternative would be the five general categories outlined in the report "An Analysis of the Resources, Policies, and Procedures of the Office of Inspection and Internal Security" prepared by the Office of Planning and Evaluation.

It is recognized that an individual case may include more than one allegation or even more than one of the alternative groupings (types), but for managerial reporting purposes, each case would be coded in accordance with the most serious allegation.

POSSIBLE GROUPING OF ALLEGATIONS AND INVESTIGATIONS—FIVE TYPES

M. Misconduct

Use of Drugs
 Accepting gratuities
 Abuse of Authority—excessive force
 Abuse of Authority—illegal detention
 Abuse of Authority—illegal search
 Acting outside scope of authority
 Misuse of Government vehicle
 Misuse of Government equipment
 Improper safeguard of Government equipment
 Improper safeguard of firearm
 Loss of evidence—narcotic
 Loss of evidence—non-narcotic
 Intoxication on duty

Improper relationship with informants
 Improper relationship with defendants
 Perjury
 Subordination of perjury
 Making false statements
 Filing false reports
 Impersonation of DEA employee
 Conflict of Interest
 Unauthorized disclosure of agency information
 Failure to pay debts
 Automobile accidents—FTCA
 Discharge of firearms—accidental
 EEO Complaint
 Breach of Physical Security
 Breach of document security
 Insubordination
 Failure to report violations
 Arrest of DEA employee
 Failure to report arrest
 Loss of official funds
 Code of Ethics violations

C. Corruption

Sale of drugs
 Possession of drugs
 Bribery
 Extortion
 Theft of Government property
 Theft of evidence—narcotic
 Theft of evidence—non-narcotics
 Theft from defendants—money
 Theft from defendants—property
 Forgery of informants signatures
 Fraud against the Government
 Embezzlement
 Suspected criminal activity by employee (other than coded above)

I. Inspections

Unannounced inspections
 Scheduled inspections

O. Other

Discharge of firearm—line of duty
 Special projects
 Miscellaneous

POSSIBLE GROUPING OF ALLEGATIONS AND INVESTIGATIONS—EIGHT TYPES

A. Misappropriation of property

Theft of Government Property
 Theft from defendants—property
 Misuse of Government vehicle
 Misuse of other Government equipment
 Improper safeguard of Government equipment
 Improper safeguard of firearm
 Theft of evidence—non-narcotic
 Loss of evidence—non-narcotic
 Breach of Physical Security
 Breach of Document Security

B. Drug violations

Sale of drugs
 Possession of drugs
 Use of drugs
 Theft of evidence—narcotic
 Loss of evidence—narcotic

C. Misappropriation of money

Bribery
 Extortion
 Accepting gratuities
 Theft from defendants—money
 Fraud against the Government
 Embezzlement
 Loss of official funds

D. Abuse of authority

Abuse of authority—excessive force
 Abuse of authority—illegal detention
 Abuse of authority—illegal search
 Acting outside scope of authority

E. Conduct abuses

Intoxication on duty
 Improper relationship with informants
 Improper relationship with defendants
 Perjury
 Subordination of Perjury
 Making false statements
 Filing false reports
 Impersonation of DEA employee
 Conflict of interest
 Unauthorized Disclosure of Agency Information
 Failure to pay debts
 Automobile accidents—FTCA
 Discharge of firearms—accidental
 Discharge of firearms—line of duty
 EEO Complaint
 Insubordination
 Failure to Report Violations
 Arrest of DEA employee by other agency
 Failure to report arrest
 Suspected criminal activity by employee (other than coded above)
 Code of ethics violations.

F. Inspections

Unannounced Inspections
 Scheduled Inspections
 Special Projects

G. Miscellaneous Improprieties

Miscellaneous

Chairman JACKSON. Mr. Bartels, I would like to ask some questions here. We are going to give you every opportunity to complete the statement, but we are trying to get at the heart of this inquiry.

You have not addressed yourself, frankly, to the basic questions that have been raised by the witnesses and you will, I assume, before you are through. But I wanted to ask here, if I might, some questions.

Senator PERCY. I think it would be desirable, Mr. Chairman.

Chairman JACKSON. We can go on and on here. Let's start 1, 2, 3. We can go into details, manuals and so on.

Mr. BARTELS. The manual and details are important. They are facts. I will be happy to answer your questions. Let's go.

Senator PERCY. We need some clarification.

Mr. BARTELS. Good.

Chairman JACKSON. I will be brief.

You have stated that the Attorney General asked for your resignation.

Mr. BARTELS. I have that from the Deputy Attorney General. I never spoke with him.

Chairman JACKSON. You were so advised through the Deputy Attorney General. Who is he?

Mr. BARTELS. Judge Tyler.

Chairman JACKSON. You were never told why?

Mr. BARTELS. No. I was told I was too defensive of this Agency.

Chairman JACKSON. Didn't you ask for a statement from Mr.——

Mr. BARTELS. I asked to see the Attorney General.

Chairman JACKSON. When you didn't get that, did you ask for a bill of particulars?

Mr. BARTELS. Yes. I asked why.

Chairman JACKSON. Did you put it in writing?

Mr. BARTELS. No. I didn't put it in writing.

Chairman JACKSON. I wonder why?

Mr. BARTELS. Senator, you can talk to people. I have been in the Department for 11 years. He told me, the Attorney General has the right to appoint any man. I objected.

Chairman JACKSON. Mr. Bartels,——

Mr. BARTEL. I wasn't finished.

Chairman JACKSON. I would have put it in writing.

Mr. BARTELS. That is our difference.

Chairman JACKSON. I am just suggesting. You have no record of it. It is just oral. Did you testify before the Attorney General's task force?

Mr. BARTELS. Yes, sir.

Chairman JACKSON. How long did your testimony take?

Mr. BARTELS. A day and a half.

Chairman JACKSON. Were you under oath?

Mr. BARTELS. Yes.

Chairman JACKSON. Did you refuse to answer any questions asked by the group?

Mr. BARTELS. No, sir; although that appeared in the newspapers.

Chairman JACKSON. That is why I am asking the question. I want to be fair.

Mr. BARTELS. Absolutely not.

Chairman JACKSON. Why was the task force formed?

Mr. BARTELS. The task force was formed in order to take a look at whether or not there was any substance to the allegations of mismanagement or endemic corruption within DEA.

Chairman JACKSON. If I may turn to the Promuto case. During the period of the Promuto investigation, September 17 to October 2, 1974, all of your actions appeared designed to keep the investigation from expanding into matters other than those specified in the allegations contained in the August 19 letter from the Metropolitan Police Department. Is that correct?

Mr. BARTELS. No, sir. Why do you limit it to October 2? I understand that investigation continued right through March or April of 1975 and, furthermore, I don't know what action I took that limited it. Mr. Brosan——

Chairman JACKSON. We will go into those. Why did you say you didn't limit the investigation?

Mr. BARTELS. No, sir.

Chairman JACKSON. You did not? Why did you not want the Office of Inspection investigation to pursue leads which may have developed similar Promuto associations with other alleged felons?

Mr. BARTELS. I didn't ever stop them from pursuing leads. Indeed, if you take a look at that investigation—

Chairman JACKSON. You are saying that you never took any steps to prohibit them from pursuing other leads?

Mr. BARTELS. That is correct.

Chairman JACKSON. Did your own knowledge of the activities of Diane De Vito have anything to do with your decisions—

Mr. BARTELS. Let's get into that, Senator.

Chairman JACKSON. I am surprised you didn't do it in the beginning.

Mr. BARTELS. Because it is not relevant to what is going on. I met Miss De Vito on two occasions in my life. At no time was it at my request or under my control. I was introduced to her at a meeting at a dinner in San Francisco, December of 1973, by Mr. Promuto, who stated she was a friend of the family, that he had known her father.

I don't believe I said two words to her at that time. I had dinner, I believe with her and a group of a dozen people, or 10 people, 8 people, I don't know how many people, on one occasion.

Later on that weekend, I went out to the airport with her, with Mr. Promuto, and with an assistant U.S. attorney. I was told that she had been a friend of the family and that her father had been a friend to the Promutos for a long period of time.

On another occasion, some 6 months later, I again met her, not under my control, not with any premeditation, again had a dinner with her, with Mr. Promuto, and others, and had social conversation.

That was the total extent of my knowledge of this woman.

Chairman JACKSON. Did Robert Richardson, Associate Chief Counsel of DEA, shortly after you returned from San Francisco—that is December of 1973—warn you to stay away from Diane De Vito?

Mr. BARTELS. No, sir.

Chairman JACKSON. He did not?

Mr. BARTELS. He had no idea who Diane De Vito was. I didn't set up any meetings with Diane De Vito.

Chairman JACKSON. He has testified under oath—

Mr. BARTELS. That is not my recollection of his testimony, I have read it.

Chairman JACKSON. Will you get the testimony? The staff will get the testimony. We are talking about Mr. Richardson. He testified on page 632. Mr. Richardson testified, as we understood it, that he was talking with you 2 weeks after the San Francisco trip. After you described her, he, Richardson, told you to stay away from her.

Mr. BARTELS. No. My recollection of his testimony—

Chairman JACKSON. Let's get the testimony.

Were you ever in the company of—you testified that you met her—Diane De Vito, after the Richardson warning? What did Mr. Richardson say to you?

Mr. BARTELS. I described her, described the weekend out there. I

have no specific recollection other than I am refreshed that he made some comment about the Berkeley Barb being a newspaper out there and the various problems with narcotics law enforcement in the bay area because of those newspapers, and said that if the Berkeley Barb were to see my description of Diane De Vito it would be embarrassing.

Chairman JACKSON. When did you first find out about the information concerning Diane De Vito which alleged that she was a drug user, associate of criminals, and a prostitute?

Mr. BARTELS. I don't believe that I ever heard she was a prostitute. But I heard that she was mentioned in the files of BNDD sometime in November of 1974.

Chairman JACKSON. I will ask counsel to read now the testimony.

Mr. FELDMAN. Page 632 of June 18, 1975:

Senator NUNN. Have you ever warned Mr. Bartels about association with either Diane De Vito or any other female, that you can recall?

Mr. RICHARDSON. I had a conversation, I have had numerous conversations with Mr. Bartels over the past 5 years concerning the conduct of government officials. Specifically with respect to Diane De Vito, after I returned and Mr. Bartels returned from the San Francisco trip in December of 1973, probably 1 or 2 weeks later. Mr. Bartels and I discussed the success of the trip. * * *

In the course of that conversation * * * we discussed going to dinner in San Francisco, some of the humorous things that had occurred and in the course of that conversation, Mr. Bartels advised me that Mr. Promuto had introduced him to a young lady and he did not identify her, to the best of my recollection. He described her. Mr. Bartels described her * * *.

During that conversation, I again stated to Mr. Bartels and it was in the context, the exact words, I don't recall, this conversation occurred a year and a half ago, but I did remind Mr. Bartels that it was important for him especially, and for all of us to be careful of whom we might be seen with.

Sir, that is the general context of it. Then Senator Nunn draws out other facts about Diane De Vito in his questioning after that. The general question then is after you had this discussion with Mr. Richardson and he issued this warning—

Mr. BARTELS. Wait a second. I didn't hear the word warning in there. Let me put it in context so we are not playing games with words.

I didn't solicit that meeting with De Vito. I had no intention of ever seeing De Vito. I had no idea that I would ever see De Vito again, nor the second time in my life did I have any warning of seeing De Vito in advance. So that I have no recollection of his ever warning me, saying don't see De Vito and it strikes me as being totally improbable that he ever would warn me, saying don't see De Vito.

I recall his discussion with the newspapers out there and the potential for criticism for anything you did with the Berkeley Barb or anything in San Francisco.

Chairman JACKSON. Are you saying that you did not want to limit the investigation to the August 19 letter from the Metropolitan Police Department? Is that correct?

Mr. BARTELS. That is correct.

Chairman JACKSON. Is it true then that you did not want the Office of Inspection to pursue leads which may have developed similar Promuto associations with other alleged felons?

Mr. BARTELS. No. Indeed, they did; they went on all through October, November, and December.

Chairman JACKSON. But at no time did you indicate to the Office of Inspection that you did not want them to pursue leads beyond the questions raised by the August 19 letter from the Metropolitan Police Department?

Mr. BARTELS. That is 100 percent correct; yes, sir.

Chairman JACKSON. You had no knowledge, as I understand it, of any of the activities of Diane De Vito during this period?

Mr. BARTELS. That is correct.

Chairman JACKSON. When did you first learn about her?

Mr. BARTELS. Sometime in either the end of October or the beginning of November that I learned——

Chairman JACKSON. Of 19——

Mr. BARTELS. 1974, Mr. Chairman, that I learned she had been mentioned in a DEA or BNDD report.

Chairman JACKSON. Then what did you do about it?

Mr. BARTELS. Continued the investigation. I didn't do anything about it. There was nothing to be done.

Chairman JACKSON. You knew of the associations with Mr. Promuto?

Mr. BARTELS. So did everybody else.

Chairman JACKSON. What did you do about Mr. Promuto in light of that?

Mr. BARTELS. We continued the investigation. In other words, the mere fact, we asked that Brosan continue that investigation, which he did.

Chairman JACKSON. Didn't you have enough information by that time to take some action?

Mr. BARTELS. No indeed.

Chairman JACKSON. You didn't?

Mr. BARTELS. Indeed, there hasn't been any action taken since I left office some 6 weeks ago. One of the ironies——

Chairman JACKSON. That may be one of the problems of the operation down there.

Mr. BARTELS. You know, two counsels have gotten two different opinions, both of which show that if a man, assuming he was having some sort of a meretricious relationship——

Chairman JACKSON. To get a full investigation, you have got to determine who is to run down all leads. I understand your testimony is that you placed no restrictions of any kind of the Office of Investigations to run down all possible leads. That is your testimony?

Mr. BARTELS. Yes, sir.

Chairman JACKSON. You did not order written questions to be given to Promuto before the investigation was completed?

Mr. BARTELS. I ordered——before the investigation? I ordered he be confronted at sometime in that investigation. The initial reaction of Mr. Brosan was that based on the August 19 letter of Officer Shoffler, that Mr. Promuto be fired immediately, without explanation, without any confrontation, and at that time, he said no explanation was possible.

After consulting with Mr. Richardson and others, the next day I ordered that investigation go forward. It did go forward. It went into every aspect except the two remaining charges of the Shoffler letter; that is, the nature of the alleged associations of Mr. Promuto with the 6-some odd people in Fran O'Brien's and the nature of the alleged telephone calls that had come from telephone numbers which were under surveillance by the Metropolitan Police Department.

Chairman JACKSON. You did not order Mr. Brosan, through Mr. Richardson, not to open new avenues of investigation?

Mr. BARTELS. That is correct. I think that is Mr. Richardson's testimony.

Chairman JACKSON. You did not order Mr. Brosan, through Mr. Richardson, to submit a report of investigation without giving the Office of Inspection the opportunity to conduct the inquiry as they saw fit to do so?

Mr. BARTELS. Wait a second. That question, Senator, involves certain facts that are—let me answer it this way: I ordered Mr. Richardson to tell Mr. Brosan in October to submit a report on the basis of Mr. Richardson's statement to me on Friday or Saturday in the end of September, either the 28th or 27th, that Mr. Brosan had told him the investigation was basically complete, but it would take him a month to write the report.

I told Mr. Richardson, "Get him to write that report more quickly. See if you can get it by Wednesday, October 2d or October 3d." He did so. Mr. Brosan came back and said he couldn't do it that quickly. He got an extension.

When new evidence came in after that, that investigation went forward. That report was not a final report that he read and submitted in the first week of October. That was an interim report. That investigation continued on with full speed during the month of October, during the month of November, during the month of December, during the month of January, February, and March.

Chairman JACKSON. Let's look at the very broad part of this problem during the time you were the Administrator. Why was there such a large increase in the amount of heroin, cocaine, and other narcotics flowing into this country?

Mr. BARTELS. There was an increase in the amount of cocaine and heroin coming into this country because there was an increase in the gross foreign sources of supply; that is, there was an increase in the sources from Mexico that had been coming in, there was an increase in the sources from Southeast Asia as a result of the degeneration of our policy in Southeast Asia and the wholesale immigration of ethnic Chinese, both into Europe, Canada and into the United States and, in short, there was an increase because of the gross increase in supply.

Chairman JACKSON. Mr. Bartels, why was it that during your Administration, under your Administration that DEA decided to concentrate on the little guys rather than after the big fish?

Mr. BARTELS. I am glad you asked that because DEA did not.

Chairman JACKSON. The statistics that have been given to us show lots of arrests of low level pushers, but very few of the big level operators.

Mr. BARTELS. That is not true, Senator. The statistics show, as you know, we divide defendants into four classes, class 1 being the highest, being the international violator; class 2 being a major or interstate violator; class 3 being a wholesale local distributor; class 4 being anything that is left over.

If you take a look, you will see that while arrests went up in toto over this period, that the class 1 and class 2 violations and arrests went up as follows: In fiscal year 1973, the first year of DEA, there were 608 Federal arrests of class 1 and class 2 violators; in fiscal year 1974, there were 1,050 arrests of class 1 and class 2 violators; in three quarters, or slightly more than three quarters of fiscal year 1975, there were 1,630 arrests of class 1 and class 2 violators.

The statistics that are misleading, the facts that 82 percent or so of the money that goes into purchasing evidence does go into people who are initially identified as class 3 and class 4 violators.

[At this point, Senator Nunn withdrew from the hearing room.]

Mr. BARTELS. The question comes, the extent to which these agents can then take those cases and develop them so that they lead to conspiracies involving class 1 and class 2 violators. You would be 100 percent correct if those agents stopped merely at buying evidence from class 3 and class 4 violators and dropped it right then and there.

That was the basis of the report that was submitted to you from region 14 in Los Angeles, that said back in March of 1974, that we were dissatisfied with the performance of that region because they were not carrying that forward. If you will check, I don't have a copy of it, but DEA has a report as of April or May of 1975, that shows that that situation was rectified in Los Angeles, in the southern California region, and that by putting pressure on, the policy of increasing the number of arrests into class 1 and class 2 was met.

I think there has been a serious mistake in several forms of our policy; one, that we are a single methodology agency engaged solely on the percentage, that 82 percent figure, we are concerned only with buying from the local areas. That is not true. You can take a look at the ratio of funds spent for buying evidence as opposed to the ratio of funds spent for buying information and you can see the results from it.

Chairman JACKSON. Mr. Bartels—

Mr. BARTELS. I wasn't finished, sir. I have one short point. I won't carry it beyond to boredom, but I do think it is important to show that these agents are out there doing a job and the job that they are doing is breaking up major conspiracies. They are doing it by efficiently buying into small groups and then carrying it forward.

You will see, if you take a look at the record, that the numbers of conspiracy arrests have increased tremendously as a result of both the purchases into that low level and as a result of the shift into buying information. For example, of the 1,825 defendants indicted by DEA in the first 18 months of its existence who were class 1 and class 2; that is, the top two classes, almost 50 percent of them were the result of conspiracy cases which were the result of testimony brought by low level people who had been arrested by DEA.

In other words, buying low, turning them into witnesses and leading to a high level conspiracy.

Chairman JACKSON. Mr. Bartels, we have had experts in here saying we are in a heroin epidemic. Someone is right, someone is wrong. Listening to you, everything is going great.

Mr. BARTELS. No, it is not going great. We are in a heroin problem.

Chairman JACKSON. Are we in a heroin epidemic?

Mr. BARTELS. I don't know if it is an epidemic; it is certainly going up.

Chairman JACKSON. It is going up?

Mr. BARTELS. Yes, sir, it is spreading out of the inner city out of the ghetto into the smaller towns.

Chairman JACKSON. It is going from the city out into the suburb?

Mr. BARTELS. Right.

Chairman JACKSON. But the point is that the big increase has occurred since this consolidation took place.

Mr. BARTELS. Yes, sir, there is no post hoc ergo propter hoc. There is no cause and effect of necessity. What has happened is, the Government of Turkey has decided to resume growth.

Chairman JACKSON. Eighty-five percent of it is Mexico.

Mr. BARTELS. That is right, but let me finish. The Government of Turkey has decided to go back and we have seen increased Turkish supply.

We have seen increased flow in from Mexico. We have seen increased flow in from Southeast Asia. So I don't think the mere fact that you have an agency which has 2,200 agents, Senator, that is two-thirds of size of New York City Transit Authority, that has fewer criminal investigators than the Environmental Protection Agency, that whenever additional countries go into the growth and supply of heroin that that can be laid on 2,200 agents.

Chairman JACKSON. Mr. Bartels, I am going to conclude now. You have had a long and distinguished career in public service and you were an Assistant U.S. attorney in New York you said under Robert Morgenthau. You have had a lot of experience in this area. Do you think during your time you served there, there was corruption within the agency?

Mr. BARTELS. During the time that I served in DEA?

Chairman JACKSON. Yes.

Mr. BARTELS. Yes, I think there is corruption in any agency.

Chairman JACKSON. Is there corruption in the FBI?

Mr. BARTELS. Yes, I think there is corruption any time you have a group—

Chairman JACKSON. Has any FBI agent ever been prosecuted that you know of while on active duty involving corruption?

Mr. BARTELS. I know agents who have been released because—

Chairman JACKSON. I didn't ask you that.

Mr. BARTELS. I know agents who have been released. I don't know of any who have been prosecuted.

Chairman JACKSON. Do you think your record is equal and comparable to the FBI?

Mr. BARTELS. I don't know, Senator, but I know whenever you get a group of people, 4,000 people, you are going to have some

who are bad just like in this Senate. You are going to have some Senators who get in trouble, but you don't indict the whole Senate because one Senator gets in trouble.

Chairman JACKSON. Of course not. Is the corruption minimal; is it just minor and rare?

Mr. BARTELS. It is not endemic. There is no wholesale corruption.

Chairman JACKSON. What is it like? What do you think? Can you give us a description?

Mr. BARTELS. Yes, certainly; we have had over the past—let me get the statistics. Bear with me, Senator.

Chairman JACKSON. I mean about action you have taken.

Mr. BARTELS. I am not talking about action I have taken. I sat there for 23 months.

Chairman JACKSON. Twenty-three months. With the long experience in law enforcement, what did you think was really going on in that agency?

Mr. BARTELS. I think in that agency you have got a group of the most dedicated hard working young men who are overtaxed, under-supported of any law enforcement agency in the world.

I think they are out there doing a job that the public doesn't understand.

Chairman JACKSON. I think they have a lot of fine outstanding men. Don't misunderstand.

Mr. BARTELS. I don't think there is any widespread integrity—we indicted two people during my time. I think the program that we set up for preventive patrolling—

Chairman JACKSON. We are trying to get a feel here.

Mr. BARTELS. We indicted a man for possession of a gun that he had taken from a raid. We indicted a man for possession of marijuana.

Chairman JACKSON. You don't think there is large scale payoffs?

Mr. BARTELS. No, sir, I don't. I have no evidence of it. We have checked for it. I am familiar with the situation that existed in New York in the sixties. I worked on it. I was familiar with the Knapp Commission work.

I worked very closely with Mr. Armstrong. You knew then, you had telltale signs. What we have done as a result of this reorganization, Senator, is set up preventive patrol systems that monitor both informants, computerize that, monitor the business, computerize that, so you have a pattern and can set up prospective patterns which should show any deviation from the normal.

In addition, we have moved men around so you don't have the situation that you had in New York in the mid-1960's when a man and his partner were partners for many years. As a result the two of them went off, they had a case quota system, three a month, and they came up with those cases three times a month.

Excuse me; let me just—I apologize. I think it is important that this be brought out because the American people have what I believe is the mistaken impression that this agency is sort of the bubonic plague of Federal law enforcement.

Chairman JACKSON. I think there are a lot of fine outstanding men. The question is whether there is corruption in it. I would

think you would want to get a bill of particulars why you were fired.

Mr. BARTELS. I asked for a bill of particulars. Let's get back to the corruption issue.

Chairman JACKSON. You didn't put it in writing. Do you think you ran a good agency?

Mr. BARTELS. I think I ran a good agency. You are darned right.

Chairman JACKSON. Why do you think you were fired?

Mr. BARTELS. I can't tell you why I was fired. I asked to see the Attorney General. Let's get back to the corruption thing because that is more important even than me. My reputation has been pilloried, but more important is the concept of what narcotics law enforcement should be doing, the concept of how do we stop this problem which admittedly is getting worse and the concept of the job that these men are doing.

Senator, these men are doing a job that is entirely different from the job that was being done by 300 agents in New York City in the early sixties. In those times they had a quota system. They had two partners who were always together who had the prospect of getting so that one owned the other.

Now we have a situation where we don't have that, where we have prospective systems of reporting, reporting systems which are preventive and should detect any pattern of corruption. We don't have the same signals from informants that we had back in the sixties. We don't have the same signals from the defendants. There is no way I can prove that there is not corruption.

Chairman JACKSON. Mr. Bartels, how would you rate your organization? You have been in law enforcement as an assistant U.S. attorney, you dealt with all the law enforcement agencies. The southern district of New York has some of the toughest cases. It is an honor to be in that office. You have had that broad experience. You said you had been in the Department of Justice how many years?

Mr. BARTELS. Eleven years.

Chairman JACKSON. How would you rate the Drug Enforcement Agency among the law enforcement agencies?

Mr. BARTELS. I think it is the most dangerous; I think it is the most difficult.

Chairman JACKSON. I am talking about integrity, efficiency, overall law enforcement, professionalism, competence, and so on, as an organization as you left it.

Mr. BARTELS. I think it is right up at the top. I think you can get corroboration on that by talking to people such as chiefs of police, the U.S. attorneys.

Chairman JACKSON. How would you rate it with the Secret Service?

Mr. BARTELS. It is an entirely different type of investigation. Let me tell you why it is difficult.

Chairman JACKSON. They deal with counterfeiters and in a lot of other areas.

Mr. BARTELS. They investigate retroactively. They investigate a crime that happened some time in the past. They go to a witness who is a complainant. Our agents have to go out there and be part of the crime. It is all real time.

Chairman JACKSON. How does it rate with the FBI?

Mr. BARTELS. It is entirely different. I think a small group of dedicated men produce results and if you speak to the FBI, I think they will tell you that.

Chairman JACKSON. So to finalize, when you left you felt you left a very fine professional organization, an outstanding law enforcement organization at the time you were fired.

Mr. BARTELS. That is right.

Chairman JACKSON. Thank you.

Senator Percy.

Senator PERCY. Thank you, Senator Jackson.

[At this point Senator Jackson withdrew from the hearing room.]

Senator PERCY. I would like to take a minute to try to put these hearings into perspective.

Mr. BARTELS. Good.

Senator PERCY. And then carry our questioning in light of that perspective.

This committee has the responsibility for the organization of the Federal Government. We have not only the responsibility to structure every new organizational effort, but also to then, once an agency is set up to oversee it and make certain that the executive branch fulfills the legislative function that we have outlined in law.

The drug abuse problem was one of the most pervasive, difficult problems faced by the Federal Government. President Nixon called it enemy number one here at home. There isn't any question but what its insidious tentacles have gone into particularly the ghettos, but now into the suburbs, and undermined the American people.

It has caused crime which costs the American people roughly \$10 billion a year. In every urban area, 50 percent of street crime is drug related and we happen to think the crime committed in our own home was drug related. All the evidence is that the only motivation was money for drugs.

These types of crimes have brought tragedy to families across this country. The ascendancy was very high. The Vietnam war added to it. An 80 cent habit in Vietnam was an \$80 habit here.

So we approach that problem in this committee from two standpoints, law enforcement on one side and rehabilitation and treatment on the other side. We set up the special Office of Drug Abuse right in the White House itself for 3 years terminating June 30 of this year; a few days ago.

We have extended it for another couple of months. We will have to find some way to solve the treatment problem. We also felt we ought to cut off the supply, so we have poured hundreds of millions of dollars into beefing up the enforcement process.

Mr. Bartels, the responsibility put on your shoulders was immense. There are only two people superior to you in the whole Federal Government: the President of the United States, who is responsible for the executive branch, and the Attorney General of the United States.

You are the chief law enforcement officer responsible for controlling drugs from the standpoint of cutting off the supply and prosecuting those people who permit drugs to flow into this country.

Allegations have been made that the Administration spent too much

time with local law enforcement problems and neglected violations at the highest level.

State and local officials should be handling street crime. They cannot get at the international networks. They cannot stop the flow at the borders. Nothing can stop it in foreign countries other than Federal programs.

I think that the men and women working for DEA in this extremely risky business are, for the most part, loyal, dedicated, and hard-working; they have kept their integrity despite enormous temptations.

The whole essence of this oversight hearing is to determine whether at the top there was good administration and good organization. I agree with your statement on page 3 when you said:

However, like any manager of a large complex organization, I knew I would have to rely on the professionalism, loyalty and good judgment of my key staff.

I spent most of my life as a chief executive officer, dependent entirely for supervision of thousands of people all over the world on a handful of people at the top. My job was to evaluate them. Their job was to evaluate the people below.

I relied upon the supervision and the tight control of those at the top. If they didn't perform, they had to go out. The problem here is that we have allegations not only of inadequate people, but allegations that when evidence of wrongdoing or malfeasance was brought to your attention there was almost a cover-up of it, as in the Nixon White House, questionable activities appear to have begun at the top and inevitably permeated the Government structure. What our problem is in these hearings is to determine whether or not the tone at the top was right.

George Brosan, Acting Chief Inspector, whose very important job it was to insure the integrity of the whole organization, is making allegations and testifying under oath against you. We have Andrew Tagliano, the Acting Deputy Administrator, former chief inspector, a top man in your organization, testifying under oath against you.

This is an organization that is hardly clear of problems not to mention the problems of the Director of Public Information, Mr. Promuto, against whom allegations have been made all over the lot.

One wonders how you can have so many dedicated, loyal people if you have this kind of a pattern. We have testimony that you were warned about outstanding integrity allegations against Mr. William Durkin, the Assistant Administrator for Enforcement. What did you do about those allegations?

I would like to take a few of those allegations and insinuations that have been made as to something wrong at the top of your organization and give you a chance to comment on them.

I would like to start with a man who doesn't appear on organization charts of DEA, but a man who testified here a day that I was chairing the hearings. I have been appraising him and trying to analyze him as a former chief executive officer. I wonder what motivates anyone to bring on board this man in the unusual way in which he was actually brought on.

I wonder if you could tell us about Tom Durkin, how did you first meet him?

Mr. BARTELS. I first met Mr. Durkin sometime in 1970 or 1971 or

1972. Then after that, I met him, after I became Administrator. He had been a consultant to the Bureau of Narcotics and Dangerous Drugs, had been an adviser to Mr. Ingersoll and we went over a list of the various people who would be continued advisers to me and as well as Mr. Ingersoll, it was recommended that I bring, continue Mr. Durkin's tenure. I did that—

Senator PERCY. You called him an adviser. How many advisers like this did you have?

Mr. BARTELS. I thought he was a consultant.

Senator PERCY. He was a consultant. All right. I think he referred to himself as an adviser.

Mr. BARTELS. This difference didn't matter to me. I didn't pick it up. There is a difference. Let me tell you about Mr. Durkin as it related to me.

Senator PERCY. Let's, for the record, make it clear that—was he a paid employee?

Mr. BARTELS. Unpaid.

Senator PERCY. Unpaid employee but he was given what privileges that officially identified him with your agency and the Department?

Mr. BARTELS. He was given a new credential so that his old Bureau of Narcotics credential was turned in.

Senator PERCY. So that if he has that credential and shows it he is being represented as a—

Mr. BARTELS. Consultant.

Senator PERCY [continuing]. An arm of the agency and of you.

Mr. BARTELS. I suppose so. I don't know.

Senator PERCY. In other words, if he flashes it—

Mr. BARTELS. This is to identify Thomas Durkin with his picture as a special consultant or special adviser, whatever it said, to the Drug Enforcement Administration.

Senator PERCY. To the Administration or to the Administrator?

Mr. BARTELS. No; to the Drug Enforcement Administration. That would be my guess. I must say I have never looked.

Senator PERCY. Adviser or consultant?

Mr. BARTELS. I must say I have never looked at the specific wording of his credentials.

Senator PERCY. Then he had this credential and what other privileges did he have to identify him with the agency?

Mr. BARTELS. To my knowledge, that is the only privilege he had. We had about 30—

Senator PERCY. Credit card for toll calls?

Mr. BARTELS. He may have. I don't know.

Senator PERCY. He testified under oath that he did.

Mr. BARTELS. Then I take his word.

Senator PERCY. Was he able to write travel vouchers and travel freely to New York, Washington, and so forth, and write Government vouchers?

Mr. BARTELS. No, he would be paid for his travel. I don't know whether he wrote them. But any special consultant—

Senator PERCY. I think he testified under oath that he wrote his own travel vouchers.

Mr. BARTELS. Then he wrote his own travel vouchers.

Senator PERCY. Which certainly gives him the semblance of a person who is associated officially with the agency.

Could you tell us what access he had to materials?

Mr. BARTELS. Yes; he had access to materials such as I supplied him. To my knowledge, I first used him in connection with an equal employment allegation by a man named Oliver, who was the Deputy Director of Personnel, and again this was sometime in the spring of 1974 when this man had made a number of charges and I had been advised by a number of people, including Mr. Brosan, to fire Mr. Oliver. I gave that file of charges to Mr. Durkin.

Senator PERCY. You gave a charge to him. Did he have access to whatever files he needed, whatever material he needed to follow up on that?

Mr. BARTELS. No.

Senator PERCY. How could he follow up on the project?

Mr. BARTELS. He would have to ask me.

Senator PERCY. So he dealt directly with you?

Mr. BARTELS. Either with me or with my executive assistant. Yes.

Senator PERCY. So he is right at the top?

Mr. BARTELS. Yes, sir. Certainly.

Senator PERCY. Did he have a security clearance?

Mr. BARTELS. No, he didn't. It turned out he didn't.

Senator PERCY. Why not?

Mr. BARTELS. He didn't have security clearance because when he was brought in, it was assumed he had been given a security clearance by BNDD.

Senator PERCY. Now, Mr. Bartels, how could you assume that?

Mr. BARTELS. I relied on my top people, Senator, just as you did.

Senator PERCY. This was a new responsibility working right out of your office directly for you. Wouldn't you want to recheck on him?

Mr. BARTELS. No, indeed. I was advised that he had been doing the exact same thing for Mr. Ingersoll, that during that time, whatever necessary prerequisites were needed.

Senator PERCY. We know he saw the Promuto file?

Mr. BARTELS. Certainly.

Senator PERCY. We know he saw the Promuto file. Did he see the William Durkin file?

Mr. BARTELS. I don't believe so.

Senator PERCY. Would you want to check on that?

Mr. BARTELS. I would be happy to. We could ask him.

Senator PERCY. What background did he have? What was his particular specialty in the narcotics field?

Mr. BARTELS. He had no particular specialty in the narcotics field. Mr. Ingersoll had used him. He was a highly successful private attorney who had been very helpful to agents, who had been shot. He had built a home for an agent who was named Tom Devine, who was paralyzed from the armpits down.

He had taken care of all of his legal matters, built a special home with ramps. He had done that all at his own expense. He was highly successful.

He had also been a consultant to the head of the New Jersey State Police and had essentially served as a sounding board. He is a man of great analytical and practical common sense.

I used him as a mental midwife in short. He had the practical courage and sense to tell me when I was wrong when, frankly, others didn't, and he would also tell me to look into other areas when I didn't.

So, his background was that initially, and I wondered why he had been brought in, why he did so much for these agents, what his motives were.

His motives were that, frankly, he was a millionaire whose father had been a policeman in the Newark Police Department and who felt he owed something to this country and to society. He did it with anonymity.

Senator PERCY. Do you know how he became a millionaire?

Mr. BARTELS. Yes. He practiced law in New Jersey and he had real estate back from his early days in the suburbs of Newark and I believe Morris County, which appreciated.

Senator PERCY. Was this real estate purchased or inherited?

Mr. Bartels. It was purchased. I believe his father had retired relatively—he was a self-made man.

Senator PERCY. At what age did he become a millionaire?

Mr. BARTELS. I have no idea, Senator.

Senator PERCY. At what age was he when you took him on as a consultant?

Mr. BARTELS. I don't know. I would guess he is about 50. I would have to take a look at the records.

Senator PERCY. But he dealt in real estate and made money there? He had a law practice and made money there?

Mr. BARTELS. Yes.

Senator PERCY. And accumulated after taxes, when you say a millionaire——

Mr. BARTELS. He was independently——

Senator PERCY. How many times?

Mr. BARTELS. I certainly don't know. I have never looked at his tax returns. I know that when I was in New Jersey, he wasn't practicing defense law in front of the criminal courts there, the Federal courts, so I never knew him there. I learned subsequently, however, that he had been a consultant to governors, to Governor Cahill, that he had been a partner with Governor Byrne, or had been an associate with Governor Byrne in a law firm, and that he was a man of character represented to me both by the head of the New Jersey State Police and by local FBI agents at the time.

I still believe he is a man of the highest character.

Senator PERCY. Did he have access to informants' names?

Mr. BARTELS. No, sir. He did not.

Senator PERCY. Did he have access to class 1 violators?

Mr. Bartels. No, sir.

Senator PERCY. Did he have access to sensitive operations, operational techniques of the agency?

Mr. BARTELS. I think he had access to certain sensitive documents. Yes, sir. Certain confidential documents, not in the sense of a national security situation, he never had access to any national security documentation. But I think the mere access to the Promuto information is confidential, the sort of material that a lawyer would be expected to hold in a confidential nature.

Senator PERCY. When you say that he did not have access to informants names, if he had access to the file, all he would have to do is to leaf through the file and wouldn't he find informants names in those files?

Mr. BARTELS. Operational files, he certainly would. He never had access to those, to my knowledge.

Senator PERCY. You testified he did not have access to informants names?

Mr. BARTELS. That is correct; I don't believe he did.

Senator PERCY. I will assume you have a file listed as informants and all their names are in there. I assume they are sprinkled all the way through other files.

Mr. BARTELS. No, they are not.

Senator PERCY. I just wanted to see whether or not in the file, in a particular case, he would have the ability to determine who the informants were in that case.

Mr. BARTELS. The answer is no. He never did. I don't believe, Senator, that he ever looked at an operational case. In other words, the United States of America against John Bartels for violation of sale of heroin, we never used him in that connection. We used him in the connection of various management problems to determine what steps we could take specifically in making shifts within the Civil Service system.

That is how I used him mostly. He gave me advice, steps to take to adapt our investigative inspection procedures toward civil service, successful civil service results. We had been known as the "Washington Capitals" of the civil service league. We had brought a great number of cases before the Civil Service Commission with a losing record. We did so simply because we were not attuned to the changes of that body.

I used him in that, I used him also in various practical investigations. We never used him in an operations sense, nor did he get involved in the investigations of even major narcotics cases.

Senator PERCY. You said you never used him in operations?

Mr. BARTELS. Enforcement operations.

Senator PERCY. Here is a man who is listed, who is an advisor, or consultant, unpaid, does not have access to files, has no particular knowledge of narcotics, and yet he is a mentor. I am wondering first of all, why he is a member and then, second, when you have a very important investigation underway, of Mr. Promuto, why was Mr. Promuto interviewed by Mr. Thomas Durkin before Mr. Brosan and other inspectors did that? Why was he interviewed separately from the inspection office when an investigation is being made?

Mr. BARTELS. Inspection never wanted to interview him. The first statement that Mr. Brosan ever made to me that was corroborated by Mr. Richardson and Mr. Lund, was that there is no possible explanation this man can give. It was prejudgment by Mr. Brosan, which I found an affront to my concept of the basic rights of citizens.

I think we should have an inspection that fervently digs out corruption, but does not do so based on mere smears, allegations, or innuendo, without affording the right to confrontation before some adverse action. I believe very deeply in that and I know you do, too.

We had used Mr. Durkin, starting in July, on a number of these inspections, special inspections projects. We did it when Mr. Brosan went on a month's trip to Europe, an inspection-vacation trip with his wife, and during the time that this committee had raised allegations concerning the sweeps of the Vesco home by former BNDD employees.

At that time, in Mr. Brosan's absence, with his approval, with the approval of Mel Moore, who was the acting deputy in this matter, Mr. Lund, who had come over from Customs, had been in inspection in Customs, Mr. Richardson, who was an investigative prosecutor, and to some extent, Mr. Durkin, were brought in to handle that and other investigations. That was done with Mr. Brosan's knowledge and with his approval.

Senator PERCY. You have gone into a rather lengthy dissertation on the procedures as taken from the inspection manual. You have indicated that you adhere to those procedures—what I am having trouble understanding is why, when there is an investigation being made of Mr. Promuto, first of all, why was he interviewed by Thomas Durkin before Mr. Brosan and then once the interview was had early in the game and before Mr. Brosan ever talked to him, why didn't he share that information with the chief inspector who has the responsibility for the investigation?

Was he making a special inquiry just on your behalf or was Mr. Durkin a part of the overall investigation that was being made and if so, why didn't he share the information?

Mr. BARTELS. He was making it on my behalf. He wrote a report. That report was not done until sometime the middle of October. By that time, they had conducted two interviews of Mr. Promuto. They had done so at my orders. They had not intended to conduct any interview. I asked—remember, when Brosan first brought this matter to my attention, Senator, showed me the letter, showed me a basic report which I have here—

Senator PERCY. The report was made. Why wasn't that report given to Brosan, the chief inspector?

Mr. BARTELS. No, this is a different report. This was back on September 17. He showed me the letter of officer Shoffler and in the back of that letter there is a brief report of the investigation that they had conducted up until that time. At that time, Mr. Brosan told me to fire him immediately; he has to be amputated; talk to him, see if there is any basis, see if he will quit. You talk him into quitting. Otherwise, your options are, do an investigation or do nothing.

At sometime subsequent to that, Promuto found out about the investigation. I am trying to put it in context for you as to why I took the action I did of having Durkin confront Promuto to see if there was any basis to reassign this man, pending an investigation, or whether he would in fact quit.

I did so because I thought Durkin was the most persuasive, most argumentative, most, the toughest inquisitor that I could find that would go after Promuto and see if there were any—

Senator PERCY. The three choices were to fire him, to do nothing, or to investigate?

Mr. BARTELS. Yes; he did. He offered with the adamant recom-

mendation that we amputate him immediately because there was no possible explanation Promuto could give.

Senator PERCY. Didn't Brosan want to interview Promuto at the conclusion of the investigation?

Mr. BARTELS. Not at all. The argument between me and Brosan was that he wanted that man out and he said that there is no possible explanation he can give under any circumstances.

Senator PERCY. But it was your decision to investigate?

Mr. BARTELS. It was my decision to investigate.

Senator PERCY. But immediately an interview was held by your advisor-consultant, your personal consultant with Promuto?

Mr. BARTELS. No, sir. No, sir.

Senator PERCY. You mentioned the manual and the inspection procedures. Here is the section 7133, dealing with interview of employee. In every conduct investigation, the employee will be interviewed by inspectors in order that he may be afforded the opportunity to explain or refute the allegations. This interview will normally be conducted toward the conclusion of the investigation after all the facts are known.

Why was this interview held at the outset of the investigation then, which seems to—

Mr. BARTELS. It wasn't held at the outset.

Senator PERCY. To be completely contrary to the manual and contrary to what I understand Mr. Brosan felt should be done?

Mr. BARTELS. Yes, sir. There are several errors. It wasn't held at the outset. It was held sometime toward the end of September, the 26th or 27th, it was held. That was some 17 days after the investigation commenced when the only issue left—

Senator PERCY. The investigation ended when?

Mr. BARTELS. The investigation ended in March of 1975, I think, or April of 1975.

Senator PERCY. This interview was held how much prior to the end of the investigation, then?

Mr. BARTELS. It was held, that was because new charges came up.

Senator PERCY. Pardon?

Mr. BARTELS. That is because there were new charges came up. There were several interviews held. What that manual says—

Senator PERCY. The manual says that they should interview at the conclusion of the investigation after all the facts are known so that only one interview is necessary.

Mr. BARTELS. Then it continues and I read, "However, further investigation will be conducted if this interview develops previously unknown information or additional witnesses and additional interviews can be conducted."

Senator PERCY. Did it contain any such information, unknown information or additional witnesses?

Mr. BARTELS. Yes, it did. New witnesses were developed. Certainly, this investigation continued right through October. An allegation was raised by a man named Kotz, an allegation was raised by—there were three or four new allegations raised which led to further interviews.

But at the time, in the end of September, the only issue left in the original six so-called allegations of officer Shoffler was what are the

nature of these associations? Is this man hanging around O'Brien's Restaurant with various felons? If so, is he doing anything on the outside?

I went immediately to see Earl Silbert, the U.S. Attorney who was in charge of that investigation. It was his advice that we admonish Promuto to stay out of that restaurant immediately, that there were no criminal charges, that there was no need and he would not institute a grand jury investigation and that we conduct an internal investigation to find out what the nature of those associations were.

In other words, is Promuto sitting in a restaurant of his best man, shaking hands with people who he does not know coming in the door, totally innocent, or is it much worse, where he knows these people, he knows their histories, he is engaging in various actions? There is only one way to find that out, Senator.

Furthermore, during the course of this investigation, right from the very beginning, it became a cause celebre all through this Agency. Mr. Brosan had canceled a regional inspection of the Dallas field office in order to put agents on this. Within a law enforcement agency, a regional inspection is a big event.

Senator PERCY. In your testimony, you have said that O'Brien's Restaurant is a fine place.

Mr. BARTELS. No. I don't know. I didn't say it was a fine place. I just say it is not a den of iniquity. I don't know if it is a fine place or a bad place, but the two possible—I am not defending brother Promuto. I don't know if he is good, bad or indifferent; but O'Brien's Restaurant was painted as some sort of a house of ill repute.

In truth, in fact, there is another side to it. That is that O'Brien and Promuto have a connection, that it is a huge place. I have been in there. I don't know if it is good, bad or indifferent, but there is only one way to find out and that is to ask the people who are in there.

Senator PERCY. But the man in charge of public information and putting the best foot forward for the Agency hardly should step into associations with people who might well—

Mr. BARTELS. I couldn't agree with you more. That is 100 percent right. What do you do about it then? You assume, you amputate him immediately without giving the opportunity to explain, or do you admonish him to stay out of there, that people will, that it is a bad place, and that depends on his own internal state of mind and the nature of these associations.

That is what we were trying to find out. During this time it was all over that Agency because Inspection had left Xerox copies of the files, which he had found out about because I had heard from the Dallas office—

Senator PERCY. As I recall the testimony it is one piece of paper.

Mr. BARTELS. Yes, sir; but it was one piece of paper as to his father's background. That notified him and others that he was under inspection. Two days after the inspection started, Mr. Brosan served an administrative subpoena entitled, "In the Matter of a Narcotics Conspiracy, re Vincent Promuto," on his bank for his mortgage records.

As an attorney, I find that offensive. I also find it not particularly

efficient because the manual states that you can call an employee in and you can demand that he give you all his records and if he fails to, you can fire him. The legislative history of your grant of that administrative subpoena power is that this Agency, DEA, has that power, unlike the FBI or anybody else, solely to investigate narcotics conspiracies.

And on September 13 or 14, there was absolutely no evidence that Mr. Promuto was engaged in a narcotics conspiracy; but what must his banker have thought when he received notification that the holder of the mortgage was under investigation for a narcotics conspiracy?

Senator PERCY. Do you want to comment on Mary McGrory's article of June 27 in which she states, "Bartels said in the course of an interview, the day he was supposed to be explaining where he ate dinner and why to the Jackson committee, that he wishes Promuto had resigned last fall when the whole brouhaha began?"

Mr. BARTELS. I wish he had resigned. However, if I didn't wish he resigned, Senator, I wouldn't be human. I must say one of the great ironies of this is Mr. Tartaglino and Mr. Brosan have clothed themselves in sole mantle of integrity—Promuto has apparently been clothed by others in the sole mantle of corruption—are all still employed. I am the one who is unemployed. I find that an unusual irony. If I didn't wish he had resigned, I would be less than human.

Senator PERCY. Didn't Durkin recommend that he resign?

Mr. BARTELS. Yes. We wanted to talk him out of it; but, remember Mr. Promuto had an attorney, an attorney well-known in this city. What would the possible conclusion have been if we had brought charges against brother Promuto and couldn't prove them?

The other thing that hasn't been brought to this committee was the initial information was that the witnesses of the Metropolitan Police Department were not willing to testify in a civil service hearing. These men were in there on a long-term intelligence surveillance. They were not about to testify in a civil service hearing on an administrative matter which would result in a written admonition.

Senator PERCY. Isn't it incongruous for you to criticize Brosan now, when Durkin recommended in the first instance that Promuto be fired, also?

Mr. BARTELS. No. Here is why it is not incongruous. First of all, the manual says, and I hate to be a manual man, but let me do it one more time and I will promise to drop it. The manual says the inspector is a fact finder. Mr. Brosan wasn't finding facts. He was avoiding facts. He was making personnel decisions.

I refer you to that section of the manual—and I hope you have it all in there—that says inspection is specifically limited to finding facts. I criticized Mr. Brosan because he wasn't finding facts. I wanted the facts found.

Senator PERCY. If you wanted the facts, why did you resort to the unusual, abnormal procedure of using written questions and answers, rather than a verbal interrogatory which permits explanation and followup? Is that a real, genuine investigation?

Mr. BARTELS. Of course, it is. It is used—

Senator PERCY. File interrogatories?

Mr. BARTELS. Of course. There is nothing he could change. This is all historical. How did the FBI conduct the investigation into Mr. Tartaglino's charges? They interviewed him and said, "You write it up." The "Federal Rules of Criminal Procedure" provide for written answers. If you give him written questions and let him write it out, there is no way he can say he was tricked; I didn't understand the question, I misunderstood. The reason is—I don't remember that Saturday morning ordering written questions. Mr. Richardson testified that I did. I will accept his word.

Senator PERCY. Then you accept the fact that you did order that there should be written questions and answers?

Mr. BARTELS. Yes, sir.

Senator PERCY. Why did you?

Mr. BARTELS. Because I wanted a confrontation. The issue was not written questions or oral questions then.

Senator PERCY. Isn't the normal procedure oral questioning now?

Mr. BARTELS. That is one procedure. It is not necessarily the normal. Taking a look at the FBI——

Senator PERCY. How many times before have you ever ordered written questions and answers?

Mr. BARTELS. I have never ordered a confrontation before in my life because I have never been faced with a situation where a supposed professional said fire the man and don't give him the right to give an explanation. The question and the problem that occurred in the end of September was that Mr. Richardson told me and the reason that I yelled at Mr. Richardson——

Senator PERCY. If you never ordered an investigation before and this is your first time——

Mr. BARTELS. Not investigation, questions.

Senator PERCY [continuing]. Why would the Chief Inspector strongly object to this procedure as being an abnormal, unusual procedure; didn't you immediately then say, "Do it your way. You are the Inspector. I am not going to take the ball away from you. I have never done this before?"

Mr. BARTELS. As soon as he objected to me about written questions, I did say go interview him orally. They interviewed him orally and I believe they interviewed him orally three or four times. But the point was what possible harm came from giving him written questions and making him answer?

The questions went into the nature of his associations, what he did with those six people who he was seen shaking hands with in Fran O'Brien's. Some of those people had gambling convictions; one was supposed to be a narcotics dealer. I may say that when he went back, we found out that that was a total misidentification and that Promuto was never talking to Mr. LeCompte, then when he was given the written questions, I understand that he answered that he didn't know LeCompte.

But the point of the matter is there was nothing that could have been prejudiced by those written questions. Second, that written questions was suggested by Mr. Lund who had been head of inspection in Customs. It was agreed to by Mr. Richardson. I understand Mr. Richardson's testimony is that Mr. Brosan objected to it to him, but he never objected to me.

Senator PERCY. I am still not sure I understand why you ordered written questions; if he subsequently is orally questioned, doesn't he then have full knowledge of all the allegations and doesn't that detract from, as Mr. Brosan clearly pointed out, his ability to properly interrogate and again—

Mr. BARTELS. How?

Senator PERCY. You said you wanted to get the truth. Is this procedure and technique which was strongly objected to by the chief inspector the best way to obtain the truth?

Mr. BARTELS. How does it detract? I don't see how it detracts.

[At this point, Senator Javits entered the hearing room.]

Senator PERCY. Because you don't follow up. If we submit to you written questions and say take them home and bring them back tomorrow, I don't think we would quite be able to get as much of the facts out as we can by followup questions. I am not a trained prosecutor. I am not even a lawyer; a law school dropout, I might say.

Mr. BARTELS. You were lucky.

Senator PERCY. We just had a lawyer come in, a prosecutor come in. I am trying to get commonsense out of this. It makes no sense to me. First of all, you talk about the procedures and techniques used by the head of the agency. I can't ever conceive in running an organization if a chief inspector came into me and said the procedures we were using were wrong—

Mr. BARTELS. He didn't. Mr. Lund and Mr. Richardson came into me. Mr. Lund had been the chief inspector.

Senator PERCY. The beans have been spilled.

Mr. BARTELS. The beans were spilled before. It didn't matter if he knew the allegations. He can't change historical facts. If he gets up and says, "I don't know McCaleb; I don't know Corsi; I have never been in there," you can prove he is wrong. It is not something that is going to happen in the future. It is nothing he can change.

It is like saying to me, what difference does it make if you ask Bartels that you testified in front of Senator Percy on this date, whether you ask me in writing or ask me orally. Indeed, the writing prevents any allegations that I didn't understand or I misunderstood or any chance that I could say mistake. The written questions were requested.

Senator PERCY. Why didn't you see Mr. Brosan?

Mr. BARTELS. I apologize. Let me answer this. The written questions were suggested by Lund and Richardson. My recollection is I wanted a confrontation. On that Friday of September 27, Bob Richardson came to me and said, "Look, they are finished." I said, "Are they going to confront Promuto? Have they spoken to any of these six people he was allegedly associating with?" "No."

"How can they be finished?" He said, "I don't know." We went through then a very unsatisfactory discussion and I said confront him. He and Lund, and it is their testimony, suggested the written questions. I have no recollection of written questions. I will adopt Mr. Richardson's testimony that he understood me to order written questions. I wanted a confrontation. I wanted to find out what happened. But there is nothing unusual about written questions. It is in the Federal Rules of Criminal Procedure.

Senator PERCY. That is not true according to the sworn testimony of the chief inspectors that we had here. They say it is a most unusual case. Would you answer this question for me?

Mr. BARTELS. Certainly.

Senator PERCY. In the written interrogatory, did he answer all the questions?

Mr. BARTELS. I don't believe he did.

Senator PERCY. He didn't even answer the questions put to him?

Mr. BARTELS. I don't believe he did.

Senator PERCY. Were they sworn to?

Mr. BARTELS. I don't believe they were.

Senator PERCY. Of what value would they be?

Mr. BARTELS. They would still be admissions.

Senator PERCY. They weren't sworn to? Isn't this a pretty slipshod investigation?

Mr. BARTELS. If it is slipshod, they went back to him three more times. They had 15 men working. They went to 19 outside agencies. You know, you can correct all of that. They put more time into this investigation than I believe they put into any investigation during my tenure.

I did not order written questions. That recommendation, according to the testimony of Lund and Richardson, came from them. However, when you take a look at the method that Mr. Hegarty and Mr. Williams of the FBI used to investigate the charges that Mr. Tartaglino brought against me, he spoke to them and then he said, "You sit down and right everything you have got," which is no different than written questions, to me. Take it home, take your time, write it up, give me your explanation. What you try to do is find out the truth.

Senator PERCY. There is one question I asked that you did not answer.

Mr. BARTELS. Excuse me.

Senator PERCY. Why was it you didn't see Brosan?

Mr. BARTELS. I did see Brosan. I saw Brosan.

Senator PERCY. He wanted to see you?

Mr. BARTELS. Mr. Brosan had a telephone with a direct connection as Mr. Tartaglino did. All he had to do was push the button and it rang in my office without going through a secretary.

I saw Mr. Brosan on September 17 and September 18 several times during the next week, on October 1, October 2.

In the month of October, during 2½ weeks, I was not in town. I did not see Mr. Brosan.

Senator PERCY. Did you ask for a report the day after the written questions were submitted and before the answers could be used in the report?

Mr. BARTELS. I asked for a written report of Mr. Richardson. Two days after the interview, Mr. Brosan said he couldn't do it that quickly and the delay was granted.

Senator PERCY. I would like to finish up the questions on Thomas Durkin and then yield to Senator Javits.

Senator JAVITS. I came this morning only to get the tone, the feel of what was going on. I don't intend to ask any questions today. Thank you.

Senator PERCY. Any time any occur to you, Senator Javits, I would be very appreciative of your breaking right in.

Senator JAVITS. Thank you.

Senator PERCY. I would like to go back to clarify for the record why did not Mr. Thomas Durkin, placed in an unusual position as your mentor and adviser and consultant, why was he not given a security clearance?

Mr. BARTELS. I don't know why he wasn't given a security clearance.

Senator PERCY. Why didn't you ask for it?

Mr. BARTELS. Because I assumed he had one, sir. But he wasn't solely my mentor and consultant. To put it in perspective—

Senator PERCY. Did you use the word mentor yourself? I think I picked it up out of your testimony.

Mr. BARTELS. I may have.

Senator PERCY. Are you now saying he wasn't your mentor?

Mr. BARTELS. I am saying he was not solely my mentor. There were 20 or 30 consultants in that agency. No. I don't believe he was my mentor. If I used it, I will retract it. He was a consultant. He was a good adviser. He gave information.

Senator PERCY. Is my memory faulty?

Mr. BARTELS. I may have used it.

Mr. MANUEL. Mr. Bartels, I believe, used the word.

Mr. BARTELS. I said he operated as a mental midwife.

Senator PERCY. I don't have my hearing aid on this morning.

Mr. BARTELS. But he certainly was no more the sole source of advice that I sought. He wasn't a sole source contact. Let's put it that way.

Senator PERCY. Was he ever documented in DEA files as a consultant or special adviser in the same manner as other consultants then?

Mr. BARTELS. I believe so. I have to rely on my staff. I did not go through the files. I know that he was a consultant prior to Mr. Ingersoll. I did not know him, apart from, I believe, one meeting, prior to that time. I assumed he had a full field.

Senator PERCY. Who was it that authorized Mr. Durkin to have blank government travel checks for his trips?

Mr. BARTELS. I believe they were not blank. I believe Mr. Coon authorized that or the Office of the Comptroller, in order that he wouldn't have to write down, get it and sign and come back; but when he came down he would submit his travel voucher and if it was ever disallowed, it would be done at that time.

Senator PERCY. Out of what funds were these travel requests made?

Mr. BARTELS. I don't know.

Senator PERCY. Who authorized Mr. Durkin to have a Government telephone?

Mr. BARTELS. All that was handled by the Office of the Comptroller, and to my knowledge it was handled in the normal way of any other adviser or consultant.

Senator PERCY. You have no details of what funds his expenses were paid out of?

Mr. BARTELS. No. I have no details other than I believe that the agency has the right to hire advisers and consultants and that they are paid. He declined the per diem, but accepted the travel status.

Senator PERCY. Can you tell the subcommittee what you know about the relationship between Mr. Durkin and the following Federal drug enforcement officials: John Ingersoll?

Mr. BARTELS. Yes. I know that he gave advice to Mr. Ingersoll. I believe he was a friend of Mr. Ingersoll and was a consultant to him.

Senator PERCY. Gave what kind of advice?

Mr. BARTELS. I believe it is the same sort of advice that he gave me.

Senator PERCY. All in the field of narcotics?

Mr. BARTELS. Not in narcotics, in various management decisions, sir. In other words, none in narcotics enforcement.

Mr. Durkin never got involved in narcotics enforcement as opposed to management decisions.

Senator PERCY. He was a management consultant, management expert?

Mr. BARTELS. Management, personnel, he had a socratic mental capability and good judgment. I believe Mr. Ingersoll used him as I did.

Senator PERCY. What was his relationship with William Durkin?

Mr. BARTELS. I don't know that he had any relationship with William Durkin. I don't know what it was other than I know that for various officials he had done free closings. I know that when Mr. Durkin, I believe it was Mr. Durkin, it may have been Mr. Casey, was in charge of the New York regional office, he had assisted in the settlement of these two agents, one of whom was killed and the other who was paralyzed, in doing various legal services for their families.

Senator PERCY. He performed legal services for them?

Mr. BARTELS. I believe he did. I think he helped with the estate of the Tomellos and I believe he helped with whatever legal advice Tom Devine had.

I know he got Tom Devine in that rehabilitation center, which is very difficult to get into, in Orange, N.J., the Kreiger Center.

When there is a long waiting list, he called up the president of Seton Hall University. Devine, as I said, was paralyzed from the armpits down. He couldn't move. It was a bad situation. Mr. Durkin used his influence to get Tom Devine into this very famous rehabilitation center, and I believe they also, after he moved—he had a special car that he used with a hand-driven accessory for a paraplegic, and I think Mr. Durkin had that arranged.

I think he did those various services. I know in my case we had an agent—

Senator PERCY. Are the services that he performed valuable because they were legal services?

Mr. BARTELS. I think they are invaluable services. I can't think of any monetary value you can put on assisting a man like Tom Devine.

Senator PERCY. Another Federal drug enforcement official in his

relationship with Mr. Durkin, Daniel Casey, what do you know about that?

Mr. BARTELS. Not a thing.

Senator PERCY. Jerry Jensen?

Mr. BARTELS. Not a thing. Again, it is possible that he helped them with closing on housing. I don't know. I don't know.

Senator PERCY. Performed legal services on a housing closing?

Mr. BARTELS. I say I don't know.

Senator PERCY. Under testimony, I believe Mr. Durkin indicated that those services might be of the value of \$400 or \$500. If you had knowledge of necessary legal services being performed and the knowledge of the Federal regulation prohibiting gifts to Federal employees in excess of \$50 in value, why didn't you do something about this?

Mr. BARTELS. Why was the gift to the Federal employee? The Federal employee gets paid—

Senator PERCY. A Federal employee cannot accept a gift—

Mr. BARTELS. But the gift wouldn't be to the employee, Senator. The employee would charge the Government. The employee, when he gets transferred, puts in a travel voucher where all his closing costs are picked up. So that the gift would be not to the employee, if there was a gift—the answer is I don't know, but if there was a gift of legal services, it would be a gift of services to the U.S. Government.

Senator PERCY. All costs of house closings that were performed by Mr. Durkin were costs that were chargeable to the Federal Government by drug enforcement officials. Is that correct?

Mr. BARTELS. I don't know. There is no point. I have no idea.

Senator PERCY. Your implication was that—

Mr. BARTELS. No.

Senator PERCY. If he performed a service for an individual, was that a gift to the Federal Government because that house closing cost is chargeable to the Federal Government? I am just trying to assume that because it will eliminate a lot of questions.

Mr. BARTELS. Yes, sir.

Senator PERCY. You will testify that to your knowledge, all of the services performed by Mr. Durkin were services not to the individual or costs incurred by the individual but were costs that were chargeable to the Federal Government and could be assumed?

Mr. BARTELS. I think I can answer your question in another way. I know of no instance where he gave money to any Federal employee or any services in excess of \$50.

Senator PERCY. Money was never involved?

Mr. BARTELS. Yes, or services. I know of no instance. The reason I am saying that is I just simply don't know whether he did closings for Mr. Jensen or Mr. Casey.

But if he did, I think what he did was he, what I heard he did, I am giving you this on hearsay, is that if a new agent came in and needed help, Mr. Durkin was there to do that legal service. But that legal service would have been chargeable to the Government.

[At this point Senator Javits withdrew from the hearing room.]

Senator PERCY. You mentioned the word "motivation", obviously,

the nature of our inquiry is to study the people at the top, who they were, what their influences were.

Mr. BARTELS. I tell you, it is hard to believe.

Senator PERCY. What their motivation was. We can't impune their motivation, what we are trying to figure out is their human nature.

Here is a man who made a great deal of money, now associating himself with the top official, law enforcement official in drug abuse, performing services for agents that are fully chargeable to the Government, and yet, it takes time, it takes energy, it takes effort, why?

Mr. BARTELS. I guess it is just hard to believe that a man is dedicated and loves his country at this time. That may sound like "Pollyanna." But that is the reason.

Senator PERCY. You were asking for his judgment and you had responsibility for the services of this man; in his presence and his identification card; is that what you assume, it is loyalty to country and loyalty—

Mr. BARTELS. I saw him over the year spending time with Tom Devine. Ask Tom Devine, who is paralyzed, spending time with him, day in, day out, visiting him, talking to him, attending Mass for the Tomellos.

I sound a little bit like "Pollyanna." But I am convinced that this is a fine man of the highest character whose dedication was the respect for an agent who was gunned down and a respect for the service that these people did.

Senator PERCY. Do you know of any relationship that he has had with the following people other than testimony that has already been given: Ben Thiesen, Philip Smith, James Hunt and Vincent Promuto?

Mr. BARTELS. No, sir, except that I know that he went to school, he went to either the college or law school, or he had some relationship as an early childhood or teenage friend, with Mr. Hunt.

Senator PERCY. Do you feel that the free services offered by and performed by Mr. Durkin in any way involved the conflict of interest for either Mr. Durkin or any of the officials that were involved?

Mr. BARTELS. No, sir. None whatsoever. I don't even know that he closed houses. I haven't read his testimony. I talked to him after he testified.

Senator PERCY. Mr. Durkin testified that he provided some investment counsel services to you on matters pertaining to certain securities owned by you which were involved in some type of litigation.

Mr. BARTELS. No. Not investment counseling. I have a lawsuit against a broker in which I have a lawyer here in Washington, a firm, and I discussed that on several occasions with Mr. Durkin. But it wasn't buy this or buy that.

Senator PERCY. Could you identify the securities involved?

Mr. BARTELS. No. I can't. But I can tell you what it is about if you are interested. I had an account of money that was left to me when my mother died, that I left with a substantial firm in New York.

During the past year when I was traveling, that account was assigned to a broker who bought and sold out of some stocks, including Bell & Howell, into some over-the-counter stocks which he then

traded back and forth, resulting in his getting, all without my knowledge or authority, resulting in his getting some tremendous commissions.

I found out about it when I came back. So we have got a suit on unauthorized——

Senator PERCY. Can you explain why the securities were involved in litigation?

Mr. BARTELS. The securities weren't. I sued the broker. I went to Mahlon Frankhauser, who is associated with a large firm here and had been with the SEC, and told him what had happened. He said, you know, I never spoke to these brokers. These were all in high classed securities and he has put me into a lot of very speculative things, held it for a week.

I never heard of any of these companies. He never sent me confirmations here. I never saw these things.

Mahlon said fine, we will go up and see the people and we sued them.

Senator PERCY. Did the litigation have anything to do with the Securities and Exchange Commission?

Mr. BARTELS. Absolutely nothing.

Senator PERCY. What advice did Mr. Durkin give you regarding these securities?

Mr. BARTELS. Essentially, go get a good lawyer, go to somebody like Frankhauser. I told him what Frankhauser recommended. He agreed.

Senator PERCY. He said go to a good lawyer?

Mr. BARTELS. We talked about it. I said I have known Frankhauser. He is a man of the highest integrity. We talked back and forth about it.

What do you know about it? Does this amount to a case to you? He said he thought so. He thought we ought to discuss it. I did, with Frankhauser, and he gave me that advice.

Senator PERCY. Were you aware that clients of Mr. Durkin, such as Sea Train International, were making arrangements for luncheons and dinners for DEA personnel in New York when they entertained foreign dignitaries.

Mr. BARTELS. I don't believe they were. I believe Mr. Durkin, on one occasion, offered the services of either the Metropolitan Club or one of the Wall Street clubs, his membership in them for the head of the Guardo de Firenze when they were up visiting New York. That was the extent of that.

Senator PERCY. Were you aware that Durkin and other company officials were present, though, at one or more occasions?

Mr. BARTELS. I have been told that Mr. Durkin stopped in that luncheon, yes, sir.

Senator PERCY. Did you approve of such arrangements or did it seem to you a possible conflict of interest to have an unpaid consultant highly motivated by service to country have a client of his from whom he is accepting legal fees entertaining people from abroad, and introducing them to drug enforcement agents?

Mr. BARTELS. Of course, if that were true, that would be a different story. I understand the client stopped in to see Mr. Durkin, that the client was not entertained; no.

Senator PERCY. Would you explain to the subcommittee what role Thomas Durkin played for DEA in connection with the following: This subcommittee's investigation of the Peroff-Vesco case?

Mr. BARTELS. Mr. Durkin was brought into that by me, Mr. Lund, and Mr. Richardson, and Mr. Brosan left for this vacation in connection with the Vesco situation.

Mr. Durkin's advice concerned what steps we, as management in DEA, had taken to insure that there could not be a repeat if it was a fact of agents taking government equipment out of the Los Angeles Office to use for private work. What we did was we discussed the facts and what types of regulations we had and whether they were enforced.

Senator PERCY. Did you say that Brosan was on vacation?

Mr. BARTELS. He was on a work vacation in Paris with his wife.

Senator PERCY. As I understood it, he was on an inspection tour?

Mr. BARTELS. No. It was a combination. The inspection tour was a short one. Then he had a vacation with his wife afterward. It was a combination which he had signed up for either a charter trip or something, or something done in advance.

We discussed the types of reporting systems similar to this management study that was done by Mr. Transo that would insure that there was a record of every entrance into the sweeping equipment, et cetera, whether that was followed up and what actions we should take to prevent any sort of repeat of that.

Senator PERCY. Would you tell us what role Tom Durkin played for DEA regarding this subcommittee's investigation into the debugging of Vesco's home and office by Federal narcotics agents?

Mr. BARTELS. That was it. That is what I was discussing.

Senator PERCY. Is there any further activity that he carried on in connection with that case?

Mr. BARTELS. We discussed it. We told him what we had heard in the paper. He raised questions, do you have a procedure for this; do you have a procedure for that; check this out.

We asked questions. Again, he played that Socratic role of the devil's advocate role of inquiring what our management systems were, whether we were adhering to them, and what information we should seek out to find out if they were accurate or not.

Senator PERCY. Then the last part of that would be what role he had in connection with this subcommittee's investigation of Operation Silver Dollar, in which \$20,000 was obtained from Howard Hughes?

Mr. BARTELS. The Silver Dollar investigation, I don't know what he had to do with that because I didn't have anything to do with that. As I understand, \$20,000 was obtained from Intertel, through Intertel for use in an undercover capacity.

In other words, I don't think it is fair to leave the implication hanging that it was simply obtained from Howard Hughes and left. He had something to do with it. But I don't know what because I didn't have anything to do with it.

Senator PERCY. Could you expand on Durkin's role with respect to political advice as to ways in which you should deal with this subcommittee?

Mr. BARTELS. Yes, he didn't want this to be a hostile adversary proceeding. He wanted—said that I should try to get in there to speak before this committee.

Senator PERCY. Did he suggest convening a grand jury in any case?

Mr. BARTELS. I don't know if he did or I did. I think I did discuss the possibility of using the grand jury out in Los Angeles to inquire as to crimes alleged by both the three people involved in the Vesco situation and who then went forward and put out an article in the Rolling Stone magazine, in which they said that during their tenure in BNDD there were all sorts of other crimes that took place.

Senator PERCY. Mr. Bartels, I will ask the staff to provide you with a copy of the press release. Here is the UPI story right here.

The wording of this press release conflicts with your own sworn testimony in executive session before this subcommittee.

Mr. BARTELS. I have never been in executive session before this subcommittee. This is the first time I have ever appeared before this subcommittee.

Mr. FELDMAN. You were in executive session on the *Peroff* case, Mr. Bartels.

Mr. BARTELS. No; I was in public session.

Mr. FELDMAN. You were in executive session then.

Mr. BARTELS. On the *Peroff* case?

Mr. FELDMAN. Yes. You were a witness in the *Peroff* case. You testified before the subcommittee.

Mr. BARTELS. I thought that was a public session.

Mr. FELDMAN. No, it was a closed session.

Senator PERCY. In that testimony, you, in addition to every other DEA official who testified, stated in essence that *Peroff* was accurately reporting what was told to him by Conrad Bouchard. Is that not a fact?

Mr. BARTELS. Bouchard? I don't know whether he was accurately reporting. I believe it was.

Senator PERCY. Then I wonder why you put out such an erroneous release in the light of your testimony in this case?

Mr. BARTELS. What was erroneous about the release?

Senator PERCY. Read the section. We will just have you take a look at this.

Mr. BARTELS. I didn't put this release out. This isn't my release. This is a UPI story. This was a release that was handed out and there is a quote in here that says:

I realize that any attempt to connect the name of financier Robert Vesco to an international drug investigation could make news, said John Bartels, but he said the subcommittee had investigated for 18 months and had found no connection.

Senator PERCY. The section that is in conflict, says, as you will note in the last paragraph.

Bartels told UPI that DEA did not follow through with *Peroff's* plans because it had sufficient evidence to prove *Peroff* had made up the story and that Vesco did not have any underworld drug connections. Bartels said *Peroff* cooked up the scheme in an effort to increase his pay as an informant.

Mr. BARTELS. That is accurate. The story that *Peroff* first told this committee was that former Attorney General Mitchell and Stans,

and others, had, through White House interference, stopped BNDD and then DEA from investigating this case.

That was the initial story that Mr. Peroff told. The report of this subcommittee said that that was not accurate, that that story was not true and had been made up. It did say, however, it criticized the agency for not reporting back in the first 3 weeks of the merger that Agents O'Neill and Dos Santos, or others, had not put in a report the fact that they had put Peroff off the payroll and why.

Senator PERCY. I would like to complete our session this morning with some questions on the Promuto investigation. On page 27—

Mr. BARTELS. Could we get back, before we leave, to one subject that you raised earlier? I will be very brief about it; where you questioned me as to why I allowed this atmosphere right at the top to continue on as far as high level investigators, specifically Mr. William Durkin.

That is the only question that I would like to answer.

Senator PERCY. Yes, please go right ahead.

Mr. BARTELS. I can do it either now or later.

Senator PERCY. How long an answer would it take?

Mr. BARTELS. I will promise you a short one.

Senator PERCY. O.K., go ahead.

Mr. BARTELS. Let me do it and see if I can do it. The allegation is raised that Mr. William Durkin was allowed to hold office during my tenure with open investigations against him. I find that an incredible charge, factually erroneous and demonstrably erroneous and I believe it shows the motives behind some of the charges that have been made against me.

The charges against Mr. Durkin were raised in 1968 by a Mr. McDonald, when Mr. Tartaglino was chief inspector. They were closed in 1970. They were not resolved. They were closed counter to the manual.

During the time that those charges were open, Mr. William Durkin was promoted twice by Mr. Tartaglino. I allowed Mr. Brosan to continue that investigation which he did by submitting handwriting samples from 1974 to the FBI, comparing Mr. Durkin's handwriting samples of 1956 or 1957 or 1958. The case then languished from February of 1974 up until December of 1975. It was handled totally contrary to the manual.

I just find it shocking that allegations are brought involving events of some 20 years ago and allowed to languish for 7 years against a man and then Mr. Tartaglino has the unmitigated gall to accuse this man of being corrupt and then saying that I was indifferent toward him. I find that shocking.

I agree with you, Senator, that we have to use all diligence and fervor to ferret out corruption. On the other hand, it must strike somebody in this audience as absurd that in 1975 we are still investigating allegations made by Mr. McDonald in 1968 as to an incident in 1956.

Mr. McDonald was never put on a lie detector test, although a look at the file will reflect that in 1969 and 1970 that was recommended. Mr. Durkin was never put on a lie detector test.

What has happened is the allowing of this file, this unsubstan-

tiated allegation to lay unattended in these records casts a smear and an innuendo and an awful shadow on an otherwise dedicated public servant. It was that can of worms, Senator, that was discovered by the Moore study that I believe caused these charges to be brought.

Mr. Tartaglino mentioned to you that in bringing the charges he consulted the code of ethics. What he didn't do was read the second paragraph of that very code of ethics which says that if you find yourself caught in one of these ethical situations, you are to go to your immediate supervisor or the person you believe to have caused it and discuss it with him and then go to higher authorities with that complaint go together.

Instead, Mr. Tartaglino went to the Department on three occasions, when I was out of the country.

Senator PERCY. Were you warned about Mr. Durkin, however, by Pat Fuller, also former chief inspector?

Mr. BARTELS. No, I was warned about Mr. Durkin by Mr. Brosan. We discussed it. Of course, Mr. Fuller had closed the case.

I have here, and I ask it be admitted in evidence, the closing file, dated closed by Pat Fuller, January 29, 1970, because he said there is no further investigation that can be done in this case.

I would like that this darned thing be put in evidence. It also has the one on my candidate for the deputy which Mr. Tartaglino announced that I submitted to the Department of Justice, knowing him to be under some sort of cloud or allegation and that case was marked closed on May 31, 1973, before I ever got in.

Senator PERCY. This is already in evidence. We will not have to. We will give you the exhibit reference if you would like it.

I would like to check with the staff, however, as to whether Fuller did not say that he did warn Mr. Bartels in an interview with the staff; is that correct?

Mr. MANUEL. That is correct, Senator Percy, and in addition we plan to have Mr. Fuller testify. He was interviewed in April of this year by Mr. Sloan and myself, at which time he said he had a conversation with Mr. Bartels in which he warned Mr. Bartels about Mr. Durkin and Mr. Fuller said that he was concerned about the fact that Durkin was being considered for promotion within the agency.

Mr. BARTELS. If he said that, Senator, the only thing I can tell you is take a look at the file. Mr. Fuller closed that matter counter to the manual back in January of 1970, and he has a record in that file that says no further investigation is possible. I have that in my testimony.

I have no recollection of his saying that, but for him to say it in 1973 seems a little anomalous to me when he closed it in 1970, and said there is nothing further that can be done.

Senator PERCY. We can insert in the record at this point the testimony that he gave to the committee staff in California on this particular point and make it a part of this record.

Mr. MANUEL. I would rather have Mr. Fuller testify to that for himself, Senator Percy.

Senator PERCY. That is an unsworn statement. We had better have that on record.

What I would like to do, Mr. Bartels, before we leave, we will try to find this very quickly now, on page 27, you do list four assertions made by Mr. Tartaglino, and Mr. Brosan, as being the basis for their charge that you impeded the Promuto integrity investigation.

Mr. BARTELS. Yes, sir.

Senator PERCY. Actually, Mr. Tartaglino lodged six allegations against you and he did not phrase them as you have.

I think, therefore, in fairness to you, I had better go back to the six allegations and even though we have duplicated somewhat already this morning and answered them in part, I want to be absolutely certain you are accorded an opportunity to respond to all the charges before the recess this morning.

Take those six charges and respond to them. They were the six allegations which were submitted to Deputy Attorney General Laurence Silberman by Mr. Tartaglino and the same allegations which the FBI agents, Williams and Hegarty, were called on by Mr. Silberman to investigate.

The first allegation was simply this. The untimely and premature confrontation of Mr. Promuto by Mr. Bartels and attorney Thomas Durkin thus severely limiting normal investigative procedures that may have enabled us to arrive at the truth.

Would you want to expand on your answers to that allegation?

Mr. BARTELS. Yes. That statement is false, according to the testimony of a number of witnesses. I never confronted Promuto. I had Durkin confront him to see if there was any basis to get him to resign or to be transferred as this case.

Senator PERCY. Did that allegation have to do with knowledge which Mr. Tartaglino and Mr. Brosan had of an interview conducted by Tom Durkin of Mr. Promuto?

Mr. BARTELS. I didn't understand.

Senator PERCY. Were they referring in that allegation to the fact that they had knowledge of an interview conducted by Thomas Durkin of Mr. Promuto, an interview that we discussed?

Mr. BARTELS. I think that is what they are referring to.

Senator PERCY. Did you instruct Mr. Thomas Durkin to interview Mr. Promuto?

Mr. BARTELS. Yes.

Senator PERCY. If so, why?

Mr. BARTELS. I did so because this case had become a cause celebre, both within the agency and without the agency. Already at that time, outside agencies had been contacted. The only issues left were whether or not he could be charged, based on his associations in O'Brien's or for gambling.

I did go to see if there was any basis to get him transferred while that investigation was going on. In other words, pursuant to Brosan's original recommendation, get him to quit or take a transfer.

Senator PERCY. Had Mr. Durkin spoken to you first to learn all the facts?

Mr. BARTELS. Yes.

Senator PERCY. That is, to Brosan?

Mr. BARTELS. Had he spoken to Brosan?

Senator PERCY. To get all the facts before he conducted the interview?

Mr. BARTELS. No. He spoke to me and he spoke to Richardson and Lund.

Senator PERCY. Wouldn't it have been well for him to have seen Mr. Brosan first to get all the facts before he conducted the interview?

Mr. BARTELS. I don't know. That was his decision. Maybe it would have been. I don't know that it made any difference. He was questioning Promuto to see if there was any basis for me to take the adverse interim action of transferring.

Senator PERCY. But Brosan was really managing the case. Wouldn't it have been well to have gone to him first?

Mr. BARTELS. I don't know; it could have been; yes.

Senator PERCY. Could you put on the record once again when the interview was conducted and whether Durkin reported to you on this interview and, if so, in what manner?

Mr. BARTELS. Yes. The interview was conducted toward the end of September, on either the 25th, 26th; or 27th. I think it was on a Thursday or Friday, toward the very end.

He told me about it afterward, that he had apprised Promuto with these charges, asked him, tried to get him to admit that he had business dealings with gamblers, that he was hanging around with felons or had some association with them and that Promuto denied it and denied it very vehemently, that he had tried to provoke Promuto into taking some sort—making some sort of admission.

Senator PERCY. Did FBI agents Williams and Hegarty ask you about allegation No. 1?

Mr. BARTELS. I would think so. I have no specific recollection at this time.

Senator PERCY. You have no recollection as to whether they confronted you with this?

Mr. BARTELS. They must have.

Senator PERCY. Do you remember what your response was?

Mr. BARTELS. No.

Senator PERCY. Did you acknowledge that Thomas Durkin did conduct such an interview and that notes and/or written reports on the interview did in fact exist?

Mr. BARTELS. Yes. That is the exact—I don't know whether I said it. I assume I said it to Hegarty and Williams.

Senator PERCY. The second Tartaglino allegation is as follows: Refusing or failing to provide inspectors with notes, summaries, or information concerning the nature of the interview of Promuto, did you refuse or fail to provide inspectors with notes, summaries, or information about Tom Durkin's interview with Mr. Promuto?

Mr. BARTELS. I did so until there was a confrontation.

Senator PERCY. What was your intention in not providing the Office of Inspection information concerning Mr. Durkin's interview of Vincent Promuto?

Mr. BARTELS. It wasn't just the interview. It was the whole critique of the methodology that was being used by inspection. So what that interview contained and that memorandum contained was about a 40-page critique of Brosan, the tactics used as well as Promuto's denials.

Mr. Casey told me that Mr. Tartaglino wanted it. I told—my recollection is, I told them to come back after they had confronted him.

Senator PERCY. Did the FBI agents ask you about this allegation? If so, what was your response?

Mr. BARTELS. I don't recall.

Senator PERCY. You don't recall whether they asked you about the second—

Mr. BARTELS. I don't recall what my response is.

Senator PERCY. But you do recall they asked you?

Mr. BARTELS. Not specifically, but I am willing to assume they did. I have never seen my statement before the FBI.

Senator PERCY. This occurred how long ago?

Mr. BARTELS. The statement?

Senator PERCY. The interview, yes; the interview with the FBI?

Mr. BARTELS. In December; it would have been December.

Senator PERCY. You don't recall the serious allegations made against you?

Mr. BARTELS. No, I don't recall my specific response. I have never seen it, but I am willing to adopt what is in there. If you are asking me if I remember specifically what I told the FBI, no, I have no specific, independent recollection of that.

Senator PERCY. I would just tend to think if a serious charge were made to me against my performance in the Senate of the United States I would recall a charge made as recently as December.

Mr. BARTELS. I know what the facts are, but I don't remember what I said to the FBI. I don't remember the verbatim things.

Senator PERCY. I won't ask for it verbatim. I think you can paraphrase it. You are not a man lost for words. You can even make it in the Senate.

Mr. BARTELS. I think I will just stick with the answer I gave you.

Senator PERCY. The third allegation of Mr. Tartaglino on September 28, 29, 1974, Mr. Bartels insisted that Mr. Promuto be given written questions in complete form covering all allegations and permitting him to complete and return them the next day.

Did you give the direction to submit Mr. Promuto to the written investigation and the questionnaire?

Mr. BARTELS. That is repetitive; yes. I have a disagreement in recollection of the written nature of it. I accept Mr. Richardson's recollection that he understood my order to be written. I wanted a confrontation. At that time, Mr. Richardson had told me the investigation was substantially complete and that they had no intention of confronting Promuto or giving him any opportunity to explain.

Senator PERCY. Do you think the procedure was proper under the circumstances, looking back on it now?

Mr. BARTELS. Yes.

Senator PERCY. You wouldn't do it in any other way when so many charges and allegations of impropriety have been made?

Mr. BARTELS. Any way I did that, there would be charges and allegations raised. I think the key to it is—

Senator PERCY. I don't think there could be a basis for charge if

your orders were crystal clear, total, complete: a thorough investigation in accordance with every procedure for getting at the truth.

Mr. BARTELS. Take a look at that investigation. You tell me what else could be investigated. They went into his father's background; they subpoenaed all his mortgage records; they took all his telephone tolls; they went to 19 outside agencies to see what connection he had with organized crime.

Senator PERCY. Can you cite—

Mr. BARTELS. I can't think of anything that was more complete in any life, nor frankly more outrageous.

Senator PERCY. Can you cite any other instance in your law enforcement career in which persons suspected of misconduct were submitted to written questionnaires.

Mr. BARTELS. Yes, sir.

Senator PERCY. Would you cite them, please?

Mr. BARTELS. Certainly. The concept of written depositions is used, or written interrogatories are used, in criminal cases, in international matters or in any sort of situation where you want open questions. It was also used in the methodology of the FBI by Williams and Hegarty.

In other words, if that was the limitation, I don't see that any harm is done. When that was raised by Mr. Tartaglino on October 1, his objection for written questions was not it was unusual. His objection was to the timing of the confrontation. It prevented surveillance. If you take a look at his October 1 or October 2 memorandum, Senator—

Senator PERCY. My question was to cite a specific instance in your law enforcement career in which people suspected of misconduct were permitted to submit to written questionnaires.

Can you cite specific cases?

Mr. BARTELS. It was done in the desist case where, under Federal criminal procedure, I think section 15, I may be wrong in my cite, the use of written questions is permitted rather than bringing a man in before the grand jury. It was done there.

Also, it has been done in other areas. In other words, the normal situation when you have a problem is have a report on my desk by tomorrow morning at 9 o'clock; explain this situation.

Mr. FELDMAN. Mr. Chairman, I think we should make a distinction here between the judicial process and the investigative process, which I believe you are trying to pinpoint.

Senator PERCY. Absolutely. This is an investigative process.

Mr. BARTELS. In the investigative process I have gone to people on many occasions and said you have got a problem; there is an allegation here; have a report on my desk about it tomorrow morning.

Senator PERCY. Did you personally review Promuto's responses to those questionnaires?

Mr. BARTELS. No, sir. I never reviewed that file until sometime in January. I never saw the file.

Senator PERCY. Why do you suppose it was necessary for Mr. Promuto to give a sworn statement in the end of February 1975, if the answers were satisfactory to the original questions?

Mr. BARTELS. I have no idea. I am not defending Promuto.

Senator PERCY. Did you ever compare the written sworn statement of Mr. Promuto of February 28, 1975, with the responses he gave to the written questions in October of 1974?

Mr. BARTELS. No, sir.

Senator PERCY. You never did?

Mr. BARTELS. No, sir. I didn't get involved operationally in that case or any other case.

Senator PERCY. I would like to ask counsel to cite from the record again and repeat to you the allegations that have been made that would be contrary to that statement.

Mr. FELDMAN. I believe you are going through the six points now when you said, Mr. Bartels, that you didn't get involved operationally.

There are questions here as to, yes, you ordered or approved of written questions; there is an allegation that you ordered that no new avenues of investigation—

Mr. BARTELS. Yes, but I denied all new avenues. I told you—

Mr. FELDMAN. You made the statement that you didn't get involved operationally.

Mr. BARTELS. Yes. I denied that I said never get into any new avenues. If you take a look at the record, you will see they went into all new avenues.

Mr. FELDMAN. Forget about that. We have just studied the fact that Senator Percy was going into, the submission of written questions. Isn't that operational?

Mr. BARTELS. No, sir. I never wrote those questions out nor did I limit them to what areas.

Mr. FELDMAN. Isn't the direction going to operations of that particular investigation?

Mr. BARTELS. No.

Mr. FELDMAN. Then it is a matter of semantics.

Mr. BARTELS. If you don't agree that a man has to be confronted before you take adverse action, then we have a disagreement in philosophy, and the recommendation was that this man be fired immediately.

Senator PERCY. When was that?

Mr. BARTELS. That was made the very first time that I was informed of this on September 17. It was made on September 18 by Mr. Brosan, and Mr. Richardson confirmed to me that both he and Mr. Lund were informed that Mr. Brosan still believed on September 27 that the man had to be fired, that the report be substantially completed, and they had not intended to confront him.

Senator PERCY. When should a confrontation be held?

Mr. BARTELS. That depends.

Senator PERCY. Before the investigation or after the investigation?

Mr. BARTELS. That depends on the issue.

Senator PERCY. It doesn't seem to imply that in the record.

Mr. BARTELS. In the manual?

Senator PERCY. Manual.

Mr. BARTELS. Certainly. It depends on what you can gain from the confrontation. One of the experiences that you learn from prose-

cutting organized crime cases is that you can use a confrontation, that is calling a man in either before a grand jury or here, calling him in by inspection where he is forced to answer work-related questions, to get all sorts of new leads.

You lose nothing by asking him. Here the situation involved historical facts which were not subject to change. If he lied as to his relationship to McCaleb, to Corsi, to any of these other people, you can go back and check it out.

If he lied as to his telephone calls, you could check it out. If he lied or refused to give you his mortgage records, you could check it out and take adverse action against him and the manual provided it. I think it depends on whether or not surveillance or future investigative action is necessary or would be productive.

Those are the very things that the Moore report and the manual discuss.

There is not just one methodology. You are not limited by confronting a man to a sole confrontation.

Senator PERCY. Was Mr. Promuto allowed to change his sworn statement in connection with his sworn answers to questions relating to his relationship with Diane De Vito?

Mr. BARTELS. I have no idea; I have never seen it.

Senator PERCY. You have no knowledge of anything direct or indirect?

Mr. BARTELS. No, sir, as to changing a statement?

Senator PERCY. Pardon?

Mr. BARTELS. As to changing a sworn statement?

Senator PERCY. Allowed to change his sworn statement in connection with the sworn answers to questions regarding his relationship with Diane De Vito?

Mr. BARTELS. I have no knowledge of that.

Senator PERCY. Did FBI agents Williams and Hegarty ask you about the written questionnaire Mr. Promuto was asked to fill out?

Mr. BARTELS. I think so. I would like to see that statement.

Senator PERCY. This is an interview that occurred last December.

Mr. BARTELS. Yes, sir.

Senator PERCY. Involving your career and the allegations made against you.

Mr. BARTELS. We discussed that for several hours.

Senator PERCY. This is now the third allegation. I ask you once again. Did these agents ask you about the written questionnaires Mr. Promuto was asked to fill out?

Mr. BARTELS. I think they did.

Senator PERCY. Mr. Bartels, the fourth allegation lodged by Mr. Tartaglino was as follows, and I quote:

Mr. Bartels insisted on a written summary before an investigation was completed. He insisted the reports be without allegation, inference or innuendo. That was before the inspection staff had an opportunity to investigate the allegations completely.

Did you in fact direct Mr. Brosan either directly or through Mr. Richardson to submit a written summary before the Promuto case investigation was completed by the Office of Inspections?

Mr. BARTELS. No, sir. I asked Mr. Richardson to tell Mr. Brosan on that Saturday, September 28, after Mr. Richardson had informed

me that the investigation was substantially complete, to get the report in as soon as possible.

That report was submitted. After that, new allegations came in and that investigation continued. I disagree on the synopsis of those reports which contained adjectives and innuendo and smears which were not supported by facts.

Senator PERCY. Did the FBI agents ask you about this allegation number four?

Mr. BARTELS. My answer to that will have to be the same as it was before. I assume that they asked me about all questions. I just don't specifically recollect every single question and answer that the FBI asked.

Senator PERCY. Assuming they did ask this question about this allegation, what was your answer?

Mr. BARTELS. I assume I gave the same answer.

Senator PERCY. The same answer you have just gone into?

Mr. BARTELS. Yes, sir.

Senator PERCY. The fifth allegation by Mr. Tartaglino was as follows: "The summary was then used to obtain a premature opinion from the Civil Service Commission." Did FBI Agents Williams and Hegarty ask you about the allegations that the premature opinion had been obtained from the Civil Service Commission?

Mr. BARTELS. I assume so. I assume I gave the answer to it that we went and got an opinion in the end of October. Mr. Richardson did. He went over to Civil Service and got an opinion based on his information at that time.

Subsequently, new information came in. I didn't stop that. They continued to investigate.

Senator PERCY. When was the Promuto matter referred to the Civil Service Commission?

Mr. BARTELS. It was never formally referred. They got an informal opinion. It was never submitted to Civil Service.

Senator PERCY. At what point was it sent over or taken over?

Mr. BARTELS. Mr. Richardson went over and said to the Civil Service Trial Examiner, in the end of October, I believe it was October 29. Look, I have a hypothetical case. I have the memorandum that he submitted. Let's assume all the witnesses will testify, which was not true; let's assume that they will testify as follows. And he gave the set of facts that he put in that memorandum which was based on Mr. Brosan's investigation.

To wit: that in substance, Mr. Promuto had been hanging around a restaurant and had been associating in that restaurant with some bad people, some felons and gamblers.

The advice that if that were successfully prosecuted in Civil Service Commission, was that he would be given either a written or an oral admonition and that if he went and did it again he would then be in the posture where you could take some further action.

But in substance, that opinion was gotten in the end of October and I understand the chief counsel, Mr. Miller, got another opinion in March or April or some time in 1975, what is that, 5 months later, based on the continuation of that investigation.

Senator PERCY. Was the investigation completed at that time?

Mr. BARTELS. Was it completed at that time?

Senator PERCY. Yes.

Mr. BARTELS. I was informed it was complete. It was complete, based on the allegations that this had. They had new allegations. We are back now to the word complete. I don't mean to play games with you, but it was complete, based on those allegations.

New allegations came in subsequently, which were then opened and investigated, reopened.

Senator PERCY. Did you or any member of your staff receive suggestions from or any direction or guidance or advice from Thomas Durkin regarding the desirability of having the Civil Service render an opinion?

Mr. BARTELS. I believe so, yes.

Senator PERCY. What was his advice to you on that, and what reasons did he state for giving that advice?

Mr. BARTELS. He put in his report, I believe, which has been submitted to the committee, that that would be a desirable technique, to see if the allegations were proven what action could be taken.

Senator PERCY. As I understand it, the opinion was an unofficial opinion?

Mr. BARTELS. That is right.

Senator PERCY. As I understand it, it was not based on anything other than a hypothetical set of circumstances; they were not given facts, names, places, dates, actions. They were given a hypothetical situation.

Mr. BARTELS. That is correct. It was hypothetically assumed that the witnesses would testify and that if they testified, to what they saw.

Senator PERCY. What was this opinion of the Civil Service Commission?

Mr. BARTELS. He said the opinion, the hypothetical opinion, and you are 100 percent right, it was nothing more than that, was that Promuto had demonstrated poor judgment and could get an oral admonition. I have a copy of it here. Rather than read it, I will be happy to give it to you. I think it may be in the record.

Senator PERCY. Has this been put into the record?

Mr. BARTELS. It is not an opinion, Mr. Feldman. It is Richardson's memorandum.

Mr. MANUEL. Is that a memorandum from Mr. Richardson to you?

Mr. BARTELS. Yes.

Mr. MANUEL. I believe it was made an exhibit in Mr. Richardson's testimony. It wouldn't harm if you take a copy of it, Mr. Chairman, just in case it is a different document.

[The document referred to was marked "Exhibit No. 52" for reference and follows:]

EXHIBIT No. 52

MEMORANDUM

DEPARTMENT OF JUSTICE,
November 6, 1974.

To: Mr. John R. Bartels, Jr., Administrator
From: Robert T. Richardson, Associate Chief Counsel
Subject: Vincent Promuto.

On Tuesday, October 29, 1974, I asked for and received from George Brosan a copy of the report of the investigation concerning Mr. Promuto. Mr. Brosan told me that although he had outstanding one or two leads, for all intents and

purposes this report was a final one. Although he did not tell me what the additional leads consisted of, he stated that they were not encompassed by the original allegations set forth in the September 10 memorandum from Officer Shoffler to the United States Attorney.

After reading the report I contacted the office of Joseph Scott, Deputy General Counsel, Civil Service Commission, to secure his advice concerning any possible disciplinary proceedings to which Mr. Promuto might be subject. Mr. Scott was unavailable, however, and referred me to a senior attorney on his staff, Mr. Harry Gastly. Mr. Gastly has been with the Commission for more than five years and was well versed in adverse action proceedings.

On Wednesday, October 30, I met Mr. Gastly and briefed him concerning the facts as set forth in the Inspection report. No names were mentioned nor were any specific locations identified. I described Mr. Promuto as a relatively senior employee within our organization with some public visibility. I described Franny O'Brien's bar as a popular restaurant and night spot within the D.C. area, which is frequented by some highly respected residents of the D.C. area, as well as some persons suspected of being involved in criminal activity, primarily gambling.

I reviewed with Mr. Gastly each allegation set forth in Mr. Shoffler's memorandum, as well as the results of Mr. Brosan's investigation. I also covered in anonymous detail the 1967-68 gambling investigation including the detailed security investigation submitted by the FBI on Mr. Promuto when Mr. Promuto applied to O'DALE in early 1972. I attempted to present to Mr. Gastly both sides of the investigation, that is Mr. Brosan's strong feelings concerning Mr. Promuto's associations as well as Mr. Promuto's eagerness to cooperate with the investigation. Although in my opinion we could not muster any witnesses to present at any adverse action hearing, except the two IRS agents (whose testimony does not go beyond 1968), for the purposes of my discussion with Mr. Gastly I assumed that each undercover police officer and each FBI informant could be called and would testify on behalf of DEA at any such hearing.

In short, Mr. Gastly stated there were no facts which would support any disciplinary action against Mr. Promuto. His opinion was that all that has been demonstrated is that Mr. Promuto exercised some poor judgment, probably unwittingly, and certainly not intentionally, by continuing to frequent a place which he knew was also frequented by known or convicted gamblers, notwithstanding his innocent intentions. He stated that more can be expected from the private life of a senior Administration official than from an employee of lesser rank; however, nothing has been demonstrated which would prove that Mr. Promuto has compromised the integrity of either himself or DEA. He was impressed by three factors: First, Mr. Promuto's obvious willingness to cooperate in any way with the investigation; second, Mr. Promuto's severance of his relationship with Franny O'Brien's restaurant once he found out that an investigation was underway; third, the obvious casual nature of the conversations in the bars between Mr. Promuto and the known or suspected gamblers.

He did strongly recommend that Mr. Promuto's superior discuss the investigation with Mr. Promuto and strongly advise that Mr. Promuto sever his relationship with Franny O'Brien's restaurant. This conversation should be memorialized and, should Mr. Promuto not heed this advice, then it might be possible to bring some disciplinary action against him. However, Mr. Gastly was of the opinion that even after this warning, if a subsequent investigation showed that Mr. Promuto continued to frequent Franny O'Brien's only in the manner as set forth in the report, the strongest disciplinary action which could be supported would be a thirty-day suspension.

If any further information should develop which would supplement the report submitted by Mr. Brosan, I shall again review those facts with Mr. Gastly for an additional opinion.

I have returned my copy of the report to Mr. Brosan and advised him of the results of my conversation with Mr. Gastly.

Senator PERCY. Was the opinion signed and if so, by whom?

Mr. MANUEL. No. It was an unofficial and unusual opinion. It was giving Civil Service a hypothetical case; look assuming we can prove this, what is your opinion of what would happen?

Senator PERCY. Prior to the Promuto case, Mr. Bartels, had you used this technique of submitting a set of hypothetical circumstances to the Civil Service Commission to obtain from the Commission an unofficial opinion?

Mr. BARTELS. Yes, sir. We have done it because we have spoken to members of the Civil Service Commission who, as I said, had been dissatisfied. We had had some bad personnel decisions, both in BNDD and DEA. We had taken action against people that were subsequently reversed. You may be familiar with the Collinsville situation as one specific instance where I suspended, I believe, four of those people for 30 days, and was reversed on two.

In another one, we transferred a man out of a deputy regional director's slot and that was overruled.

One of the recommendations of that Moore committee was that we have somebody, a lawyer, in the Office of Inspection, who would be familiar with what would be sustainable in civil service.

Senator PERCY. Can you cite a specific case where you have ever done this before?

Mr. BARTELS. Yes. We had done it in the Oliver case.

Senator PERCY. This is the Vincent Oliver case?

Mr. BARTELS. Yes, sir. We had checked out what the results of any adverse action would be in that situation. I can furnish a list. We have done it on several occasions.

Senator PERCY. Was it Tom Durkin who recommended that you use this hypothetical approach in obtaining a civil service opinion?

Mr. BARTELS. It was a hypothetical approach than finding out the cases that the Civil Service Commission was sustaining.

In other words, we had a lady who was working, I believe, in our file room, smoking marihuana. We caught her smoking marihuana. We interviewed her. She said yes, she smoked marihuana and she was going to continue smoking marihuana, and she didn't much care what we thought about it.

I believe we fired her and that got reversed.

So when you are in that situation, the Civil Service Commission was changing drastically in the type of cases it would sustain.

Yes, we were in that situation where I believe the Civil Service Commission was wrong on a number of those things.

Senator PERCY. Once they had rendered an unofficial opinion, did you consider this case closed?

Mr. BARTELS. No, sir. I didn't consider it closed.

Senator PERCY. If not, why not?

Mr. BARTELS. Because there were new allegations.

Senator PERCY. If the investigation was not completed and there were serious allegations still unresolved, why did you order George Brosan to submit a final report in mid-October of 1974?

Mr. BARTELS. At that time, I believe it was the end of October; October 20, or something like that. He told me that through Mr. Richardson, and you can check with Mr. Richardson, that the case was—the original allegations were investigated.

Senator PERCY. The Office of Inspections recommended investigation of original allegations on February 3, 1975. Why was this done?

Mr. BARTELS. That was done simply because Mr. Brosan had

never interviewed any of the people who Mr. Promuto was alleged to be associating with. One of the things that I found out that shocked me——

Senator PERCY. Couldn't this really mean that Inspections felt that the case had not been fully investigated and there hadn't been enough time?

Mr. BARTELS. You are darned right. Not enough time? There had been a great deal of time. The problem was they never went to Mr. Corsi, they never went to Mr. Gianaris, they never went to Mr. McCaleb, they never went to Mr. McGowan, they never went to Mr. LeCompte, they never went to a number of these people who he was allegedly associating with.

Senator PERCY. Did you order the Promuto investigation resumed?

Mr. BARTELS. It was never closed, sir. When did I order it resumed? In other words, I considered that investigation open and going right through.

Senator PERCY. At any point did you interject and direct that the Promuto case be therefor carried ahead, full force?

Mr. BARTELS. Yes, sir.

Senator PERCY. Until it could be concluded?

Mr. BARTELS. Yes, sir. I did in December 20, when I told Mr. Smith.

Senator PERCY. Why didn't you order people to be interviewed that were involved, that had made allegations?

Mr. BARTELS. At that time, I don't know that I knew that any of these people had not been consulted. I thought that thing was still going on. The removal of Mr. Brosan and Mr. Tartaglino came not solely as a result of the Moore investigation, not solely as a result of the Promuto investigation. It came because without contacting me they raised these allegations to the Deputy Attorney General.

I got off the plane from Jamaica where we had been down on a special project, and was informed by the agent at the airport at Kennedy to call the Deputy Attorney General.

When I did so, his assistant informed me: "You are now the subject of charges of a possible criminal nature which have been brought against you by Mr. Tartaglino. You have your Miranda rights." That was the first time that I ever knew that Mr. Tartaglino had brought charges.

At that time, when the inspector told me, I was shocked.

Senator PERCY. Yes. But they have testified that the investigation had been impeded by you.

Mr. BARTELS. They can testify to it. But the facts don't support it, Senator. If you take a look at their testimony, they testified to a lot of things. The facts don't support it.

Senator PERCY. Let me give you the 6th and last allegation, which is as follows:

The Chief Inspector was subjected to continual criticism, harassment and intimidation without one item of written direction, guidance or criticism that would serve to explain Mr. Bartels' actions and attitudes. This has left the Inspection Service completely confused and demoralized, and I am not certain any of them know today the exact status of the Promuto investigation.

Did you subject Chief Inspector Brosan to continual criticism, harassment, and intimidation without one item of written direction, guidance, or criticism?

Mr. BARTELS. That is partially true. I gave him not one written item of guidance and whatever the other adjectives are. I criticized his judgment on a number of matters, yes, sir, not continual harassment.

I told him he was a factfinder and it was not his judgment to say whether people should be fired or amputated immediately.

I told him, however, he could go right ahead and investigate that case. Yes, I criticized his judgment. I thought it was atrocious.

Senator PERCY. Did you at the time of Mr. Tartaglino's memo to the FBI agents of December 11, 1974, have in your mind an exact status of the Promuto investigation? Was the case opened or closed at that point?

Mr. BARTELS. I don't recall. It was formally opened because it had never been formally closed.

The extent to which there were things still to be done in it to make it a complete investigation, I don't believe I knew at that time.

Senator PERCY. Were you questioned by FBI agents Williams and Hegarty about the charge that you harassed and intimidated Mr. Brosan?

Mr. BARTELS. I am sure I was.

Senator PERCY. Could you tell us what your response was?

Mr. BARTELS. Not specifically, because I have never seen it. But I gather it was essentially the same as I have given you, sir.

Senator PERCY. Did you give any written direction or guidance to Mr. Brosan prior to October 1, 1974?

Mr. BARTELS. On what? I am sure I wrote memos on something. You mean specifically concerning this?

Senator PERCY. Yes.

Mr. BARTELS. I don't believe so.

Senator PERCY. Did you give any written directions or guidance to anyone in connection with the Promuto matter?

Mr. BARTELS. Not in writing. I told Mr. Richardson to have that investigating forward and if Promuto has done anything wrong, get rid of him, and if he hasn't done anything wrong, exonerate him.

Senator PERCY. Finally, Mr. Bartels, did you ask Robert Richardson to call the White House in September of 1974 to urge that Vince Promuto be considered for the position of Deputy Director of DEA?

Mr. BARTELS. No, sir. That happened this way: We had been trying to get a deputy for over a year and a half. The problem was that it was a political appointment so that a man who would be a competent law enforcement official hadn't yet been found who could meet the requirements for a political appointment.

Mr. Silberman told me he wanted me to put pressure on the White House and we were going to get a deputy pretty darned quickly. I agreed with him.

I told Richardson, call up the White House and tell them if they can't come up with anybody, we are going to put Promuto in there.

Senator PERCY. Were you just threatening to put him in?

Mr. BARTELS. That is right.

Senator PERCY. Things had gotten so bad that you could put him in?

Mr. BARTELS. Exactly.

Senator PERCY. You are testifying now under oath that you made no serious recommendation to that regard, that it was in a sense a satire on the whole situation?

Mr. BARTELS. That is right.

Senator PERCY. Without objection, a statement by Senator Glenn, an opening statement, will be incorporated in the record at the appropriate point.

Mr. BARTELS. By the way, the call was never made. We got other names. I told that to Richardson, get hold of those people, get some names. Richardson told me when I was in Europe that he couldn't get hold of anybody over there and when I came back, we did get some more names.

Senator PERCY. I wonder if you could paraphrase or state as closely as you could the exact words that you said to Richardson and the way in which you said them?

Mr. BARTELS. I think the way I just said, that it is cynicism, look, Bob, we are getting pressure. We had had some pretty unbelievable characters sent over from the White House to be the Deputy. One man came in, he was a Baptist preacher. He needed Fridays off to write his sermons. He asked me to pray with him on the way out.

On the other hand, I had submitted some professional law enforcement people who were unsatisfactory to the White House. We were at loggerheads.

Senator PERCY. Could you do this in such a way that we could see whether or not Mr. Richardson, a reasonable man, could have misinterpreted your directions and actually felt you were seriously making Mr. Promuto the Deputy Director?

Mr. BARTELS. Mr. Richardson knew what the history of that was. There was no way Mr. Promuto could be the Deputy Director. He was neither, I don't know what his political affiliation was, but he didn't have the background or the political clout.

The problem was we needed both initially in this job and we were getting whipsawed. He knew that. I told him that I was under pressure from the Deputy Attorney General to come up with some more management people, somebody who would be satisfactory to the White House so that we could get a deputy in there.

In defense of Mr. Tartaglino, he had been in an acting position for a long time. I had been operating without a deputy. I told him call up either Shepard or Colonel Walker and tell them to get up names of people or we are going to put in Promuto.

Senator PERCY. Did Tom Durkin make any recommendations as to who should be deputy administrator?

Mr. BARTELS. No, sir.

Senator PERCY. These hearings are recessed until 9 a.m. tomorrow in room 3302.

[Whereupon, at 12:45 p.m., the subcommittee recessed, to reconvene at 9 a.m., Friday, July 11, 1975, in room 3302.]

[Members of the subcommittee present at time of recess: Senator Percy.]

FEDERAL DRUG ENFORCEMENT

FRIDAY, JULY 11, 1975

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met at 9 a.m., in room 3302, Dirksen Senate Office Building under authority of Senate Resolution 111, agreed to March 17, 1975, as amended, Hon. Henry M. Jackson (chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Henry M. Jackson, Democrat, Washington; Senator Charles H. Percy, Republican, Illinois; Senator William E. Brock III, Republican, Tennessee; and Senator Jacob K. Javits, Republican, New York.

Members of the professional staff present: Howard J. Feldman, chief counsel; Dana Martin, assistant counsel; Philip R. Manuel, investigator; Frederick Asselin, investigator; Stuart M. Statler, chief counsel to the minority; Robert Sloan, special counsel to the minority; and Ruth Y. Watt, chief clerk.

Chairman JACKSON. The committee will resume its sitting.

[Members of the subcommittee present at time of reconvening: Senators Jackson and Brock.]

TESTIMONY OF JOHN R. BARTELS, JR.—Resumed

Chairman JACKSON. First, Mr. Bartels, do you have anything that you would like to state that you feel you might not have had a chance to get over yesterday with regard to any question?

Mr. BARTELS. No, indeed. Eventually, I understand we can discuss some of the issues to what recommendations perhaps should be made or should be considered in a legislative form to help this country address this problem, the whole question.

In other words, the management question. We have some disagreements on DEA's management. I would like to discuss those with you at some time.

Chairman JACKSON. Mr. Bartels, what position did you hold in the interim between the time you left the Newark Strike Force and your appointment to ODALE?

Mr. BARTELS. For 4 months I was general counsel to the New York State Study Committee or Commission to Study New York City.

Chairman JACKSON. In that connection with ODALE, did ODALE have an office of inspection?

Mr. BARTELS. No, sir. ODALE was a coordinating unit that used the office of inspection of the Bureau of Narcotics and Dangerous Drugs and had agents assigned to it on temporary duty from various enforcement agencies.

Chairman JACKSON. Is that the way they handled the Civil Rights violations, such as the Collinsville incident?

Mr. BARTELS. Yes, sir.

Chairman JACKSON. But they didn't have a regular entity set up for that purpose?

Mr. BARTELS. No, sir. They used the entities of the inherent agencies.

Chairman JACKSON. I will turn to the question of professionalism. Which officials made up your key staff?

Mr. BARTELS. In the Drug Enforcement Administration?

Chairman JACKSON. Yes.

Mr. BARTELS. At the time of the merger we inherited officials from our agencies. The great majority of them came from the Bureau of Narcotics and Dangerous Drugs. Indeed, all the supergrades came from that organization.

The second entity was the Bureau of Customs. To a far lesser extent, we had some officials from the Office of National Narcotics Intelligence and from the Office of Drug Abuse Law Enforcement.

In reality, the company staff was almost entirely the officials of the Bureau of Narcotics and Dangerous Drugs because they have Civil Service status and, as I said, we had the unhappy situation of attempting to effect a merger, Senator, when all the 18 supergrades were in one organization and Customs had none.

So the great majority of them came from the Bureau of Narcotics and Dangerous Drugs.

Chairman JACKSON. Was William Durkin one of your key staff?

Mr. BARTELS. Yes, sir.

Chairman JACKSON. In that capacity was Mr. Durkin the number three official in DEA?

Mr. BARTELS. I don't know how you can say he was number three. I was the first one.

Chairman JACKSON. He was the highest one?

Mr. BARTELS. He was one of the highest. He was head of Enforcement.

Chairman JACKSON. Were you aware that William Durkin had been removed from the New York regional directorship on the order of BNDD Director John Ingersoll?

Mr. BARTELS. I was aware that he had been transferred from the regional director of New York to the head of domestic enforcement; yes, sir.

Chairman JACKSON. Do you know why Director Ingersoll moved Mr. William Durkin out of New York?

Mr. BARTELS. Yes, sir.

Chairman JACKSON. What was the reason?

Mr. BARTELS. The reason was that during the late sixties, early seventies, the Bureau of Narcotics and Dangerous Drugs attempted a systems concept whereby they identified the highest echelons, the 13 so-called organized families of narcotics drug distributors and

they attempted to work solely on that group to the exclusion of other entities.

The problem was that that was too rigid a system. It didn't work. You had a drop-off within the field of both cases, seizures, et cetera, and Mr. Durkin was removed because of the failure of that system. That system was changed to Mr. Casey, who came into the New York office.

Chairman JACKSON. Basically, it related to allegations of mismanagement, did it not?

Mr. BARTELS. Yes, sir. I don't know that they were solely mismanagement against Mr. Durkin, but the entire enforcement system was then changed to the predecessor, the present system we have which the GEODET or classification of traffickers in four groups.

Chairman JACKSON. Did you read the inspection report which established the mismanagement procedures for which Mr. William Durkin was demoted in grade by Director Ingersoll?

Mr. BARTELS. He was not demoted. He accepted voluntarily a grade reduction. There was no adverse action against Mr. Durkin.

He voluntarily agreed to take a grade reduction but he went to an equally important, perhaps more important position; that was, he was moved from the regional director of the New York region to the headquarters chief of the entire domestic enforcement, which covered all 13 regions.

I did read the report which criticized the New York region and which criticized the entire systems concept. Yes, sir.

Chairman JACKSON. Were you aware that Mr. William Durkin was also the subject of unresolved integrity allegations which were under active investigation as recently as September 10, 1974?

Mr. BARTELS. I was not aware that there was any open integrity case against Mr. William Durkin on June 28, 1973. Subsequent to that time, I was advised by Mr. Brosan that at the oncoming Waters trial he thought the defendant, Waters, would make allegations of selective prosecution against him and that during that trial, part of the defendant Waters' defense would be, "Look, this government witness, Mr. McDonald, has testified against me, you indicted me but he also testified against Mr. Durkin and others, and you didn't investigate that."

Mr. Brosan raised that with me and he continued that investigation. That was in November of 1973.

Chairman JACKSON. Inasmuch as Mr. Durkin was on your staff, did you followup to get it resolved? Did you have someone on this?

Mr. BARTELS. Yes, I did.

Chairman JACKSON. It was serious.

Mr. BARTELS. Yes, I did. We had a discussion to which Mr. Brosan has testified to in the office of my executive officer in November or December of 1973, in which he raised these charges, that look, this may happen. These allegations brought by Mr. McDonald in 1968 involved allegations against Mr. Durkin in 1956.

There were allegations that he had engaged in improper conduct with an informant and there were allegations as to voucher improprieties back some 17 years ago. Yes, I did followup on it. The discussion that we had was what the heck do you do about it?

Chairman JACKSON. You made a point yesterday about fairness and I agree. I happen to have been through the McCarthy period in this very room, the late Joseph McCarthy, and all sorts of unfounded allegations, and I did my part to try to put an end to that kind of operation.

Here is a case where integrity allegations are still unresolved.

Mr. BARTELS. Yes, sir. I don't believe they are unresolved now. I am not sure, but it is my impression that those cases have been closed. I was informed that, essentially, the McDonald cases are in the process of being closed right now by the Department of Justice.

Chairman JACKSON. You are the administrator. I would think you would have said, Look, men, this thing has been hanging around here. I insist that we come to a conclusion in the next 30 days and get it resolved.

Mr. BARTELS. I did.

Chairman JACKSON. You found out about it, what was the date on that?

Mr. BARTELS. That was in November or December of 1973, Senator.

Chairman JACKSON. And our information that he was under active investigation as late as September 10, 1974.

Mr. BARTELS. Not under active service. What happened was that handwriting samples were sent into the FBI by Mr. Brosan to the FBI comparing his handwriting samples from 1975 with prior exemplars, I believe from 1956.

[At this point Senator Percy entered the hearing room.]

Mr. BARTELS. That happened. I believe in December or January of 1974—1973 and 1974. The FBI got the answer back and gave the answer back that they were unable to furnish an opinion relatively quickly. I was informed in December of that year, almost a year later, that nothing further had been done on it.

Chairman JACKSON. In fairness to you, Mr. Brosan has testified that, as recently as September 10, 1974, that the integrity allegations were still unresolved.

Mr. BARTELS. They may be unresolved in his mind, but the file was closed, sir.

Chairman JACKSON. Did you make findings and say that it is our judgment that these allegations are without foundation and fact and we close it.

Mr. BARTELS. It was closed on January 23, 1970, contrary to manual, without confrontation, without a note, a letter saying either you are exonerated, you are guilty or we can't tell as the manual requires, and it was closed with the notation and with the suggestion, I found this out later—I didn't know it at the time—that the complainant, the former agent McDonald, should have been given a lie detector test.

He was not. And on January 23, 1970, there is a memo, from the then chief inspector, that—and I believe I am quoting accurately, although I don't have the exact memo in front of me, "The investigation is closed in the office of inspection. Further investigation would not clarify the question of the truth of the allegation."

Chairman JACKSON. When was it reopened?

Mr. BARTELS. It was never formally reopened by Mr. Brosan to my knowledge.

Mr. FELDMAN. Who closed the file?

Mr. BARTELS. That was one of the problems. You can't tell who closed it. All you see on the file card is the word "closed" and the date on it.

Mr. FELDMAN. It obviously wasn't Mr. Brosan.

Mr. BARTELS. No, it was closed much earlier. But these were things that were not discovered until the Moore study.

Chairman JACKSON. What do we believe? Mr. Brosan comes up here and testifies.

Mr. BARTELS. I think you ought to take a look at the record for DEA.

Chairman JACKSON. I just want to make clear—he testifies that as recently as September 10, 1974, there is an active investigation.

Mr. BARTELS. Here is what I have, if I may give it to you, a chronology of what the file in that case shows.

Chairman JACKSON. Why don't we submit it for the record?

Mr. BARTELS. I don't have it. I will be happy to give it to you. They are my notes of it.

Chairman JACKSON. It has been put in the record.

Mr. BARTELS. Then the record ought to reflect that on March 10, 1969, Mr. Tartaglino wrote to Inspector Greenfield, "This file should be kept open. Durkin is under active investigation."

Subsequently, the director of BNDD, on April 8, 1969, said, let's continue this pursuant to our discussion of April 7. There is a memo then on January 26, 1970, from Inspector Creamer, "Mr. Ingersoll indicated the investigation should be considered closed."

Mr. FELDMAN. Mr. Bartels, there is a difference between resolving allegations and closing cases. I think that is what we are talking about. You might have something that says closed, but the allegation is not resolved and the chairman says in fairness to that individual they should be resolved one way or the other.

Mr. Brosan wrote a memorandum to the Director, Drug Enforcement Administration, February 25, 1974, on the Durkin case.

Mr. BARTELS. To the Director of the FBI?

Mr. FELDMAN. Director of DEA. You have got a copy of this?

Mr. BARTELS. I have seen it. I didn't get a copy at the time.

Mr. FELDMAN. Trying to resolve these allegations. Is that not correct?

Mr. BARTELS. Sending in handwriting samples.

Mr. FELDMAN. That is an attempt?

Mr. BARTELS. Only part of it. The rest of the allegation, there were two separate allegations. The first allegation was that 1968 in a case which was conducted by Mr. Tartaglino, a former employee, a senior man was arrested selling narcotics.

He then agreed to cooperate, I believe, and gave evidence or testimony against a number of officials. Some of those were investigated; others, including this one, was not investigated.

At the time of 1973, I knew nothing about this. Subsequently, I have been able to put it together.

Chairman JACKSON. Let me come to the guts of this thing. Has

the guilt or innocence ever been established investigatively, regarding William Durkin, in your judgment?

Mr. BARTELS. Yes, sir. I think it should have been—it could have been—established more firmly. It could have been investigated at the time, but here is why I would say yes, sir, if I may.

First of all, Mr. Durkin has no other allegations. Here is a man with 20 years' background. The allegation is raised for the first time in 1968 that in 1956 he had a meretricious relationship with a prostitute, and relieved that prostitute's, a client of that prostitute, a German seaman, of some \$16,000 in cash.

Some time later, in the late sixties or so, they interviewed the prostitute. They finally find a woman by the nickname—

Chairman JACKSON. Without going into all of those details.

Mr. BARTELS. The answer, then, is yes, I think it has been resolved.

Chairman JACKSON. He was found innocent?

Mr. BARTELS. No, he wasn't.

Chairman JACKSON. From an investigative point?

Mr. BARTELS. No, sir. It wasn't fully investigated. There is no formal finding as required by the manual of either innocence, unresolved, or guilt. The manual required in those days, sir, that an investigation be conducted and at the conclusion of it, whatever that means, you do one of three things. You either find him innocent. You say I can't tell, but there is nothing further that we can do.

Chairman JACKSON. Was there a final adjudication investigatively?

Mr. BARTELS. Not according to the manual. I would gather, according to these memoranda, that the then Chief Inspector in 1970 said there is nothing further we can do to follow this up.

Chairman JACKSON. Why didn't you move to have the manual amended so that you would have regulations?

Mr. BARTELS. As soon as I found out about it, I did.

Chairman JACKSON. When did you do that?

Mr. BARTELS. When we started the Moore study. During the first 14 months of this agency, we had a million problems. I put confidence in Mr. Tartaglino and Mr. Brosan. I got back monthly reports which made no mention of the fact that the manual had been violated in a wholesale fashion, that a great number of the cases were closed, that there was no manpower or resource or data system.

Chairman JACKSON. We will go into that later.

Mr. BARTELS. As soon as we found out that there was a problem, we commissioned that Moore study. That Moore study discovered that in fact the Office of Inspection was a can of worms.

Chairman JACKSON. Were you aware of unresolved allegations of integrity questions concerning other members of your key staff; namely, George Belk, Clarence Cook, Jerry Jensen?

Mr. BARTELS. The answer to that is no, and to some extent I am still not. Let's go into that. Every time an informant makes an allegation, it doesn't mean that it is unresolved. I don't know to this day of any allegations that are unresolved as to Mr. Belk.

Chairman JACKSON. What about Cook?

Mr. BARTELS. As to Mr. Cook, the allegations were brought against Mr. Cook in the Civil Service Commission, again, after they were allowed to languish for some several years, and the Civil Service Commission threw them out.

If I may, they threw them out with the opinion in September of 1972, reading from the Civil Service opinion:

It is recommended that this charge be thrown out as stale and untimely. The charge is over three years old. It was investigated in mid-1969 and no action is taken. If the allegations warranted an investigation, they also warranted some conclusion as to their truth or falsity. The Bureau failed to conclude three years ago what is now considered a serious charge. It would be an entirely different matter if three-year old offenses had only recently come to light. It would be appropriate to pursue such offenses against good order and discipline in combination with other more recent or timely offenses.

The fact that Mr. Cook was promoted to a more responsible and highly sensitive position less than a year after the 1969 allegations strongly suggest that the matter was considered closed.

In the judgment of the Examiner, Mr. Cook's promotion with the facts in the 1969 case known fully to responsible authorities in the Bureau at that time, warrants my conclusion that the charges be thrown out.

Sir, I was in an impossible management situation. If I may, I can explain it very briefly. Here you have got a man, charges are allowed to lie against him, they fail, and if he is corrupt, he has now been made a martyr. If he is a problem, you can't take him out of a sensitive position because charges have been brought against him and failed.

Chairman JACKSON. Did your first Chief of Inspection, Patrick Fuller, warn you about the unresolved integrity allegations against senior DEA officials?

Mr. BARTELS. No, sir. I testified to that yesterday.

Chairman JACKSON. He did not?

Mr. BARTELS. That is my recollection. I have no recollection of his telling me about unresolved.

Chairman JACKSON. As you know, Mr. Fuller has a different recollection.

Mr. BARTELS. Yes, I know.

Chairman JACKSON. I understand.

Mr. BARTELS. He was interviewed.

Chairman JACKSON. Specifically, did Mr. Fuller warn you about the unresolved allegations concerning Mr. Durkin and Mr. Cook?

Mr. BARTELS. I was asked that yesterday in your absence and answered it no. I would find it incredible that he would have warned me about that in June of 1973, since he closed the case in 1970 with the recommendation that no further investigation is possible.

Chairman JACKSON. Did Mr. Andrew C. Tartaglino, your Acting Deputy Administrator, warn you about the unresolved integrity allegations concerning senior DEA officials?

Mr. BARTELS. No. Mr. Tartaglino, Mr. Lund, Mr. Durkin, and I were present on June 28, 1973, prior to being named even Acting Administrator, when Mr. Tartaglino agreed in Mr. Lund's presence and my presence to the promotion of Mr. Durkin from head of Domestic Enforcement to head of Total Enforcement. I think if you ask Mr. Lund, who was present then, he will tell you that

at no time did Mr. Tartaglino say, "Look, you can't do that. Mr. Durkin still has an open case," nor indeed could Mr. Tartaglino because the case had been closed.

Chairman JACKSON. Let's see if we can run a little true-false examination here. We are getting conflicting testimony. So I am going to run through a few. True or false, did you direct Mr. Richardson to have Mr. Brosan confront Mr. Promuto with written questions?

Mr. BARTELS. I can't answer that true and false. I directed Mr. Richardson to confront, have Mr. Brosan confront Mr. Promuto. It is Mr. Richardson's recollection that I ordered written—

Chairman JACKSON. Can you tell me whether you did or didn't?

Mr. BARTELS. I have a different recollection as to whether the questions be written. I certainly directed the confrontation. Yes, sir.

Chairman JACKSON. But you don't recall with written questions?

Mr. BARTELS. That is correct. We have a different recollection.

Chairman JACKSON. You have a different recollection in that regard. True or false, did you tell Mr. Richardson to direct Mr. Brosan that no new avenues of investigation were to be opened up?

Mr. BARTELS. No, sir. Furthermore, that can be corroborated by Mr. Richardson's testimony under oath before this committee and by taking a simple look at the file which allowed that investigation to continue on for some 6 months into every possible avenue. That answer is false. I did not.

Chairman JACKSON. Your answer is false. You are aware, of course, Mr. Richardson says that he does not remember; Durkin says no; Brosan said he was so told by Mr. Richardson.

Mr. BARTELS. Yes. Mr. Brosan said that. It is my recollection that Mr. Richardson said he did not.

Chairman JACKSON. He said he did not remember.

Mr. BARTELS. It is my recollection he said it was not so ordered.

Chairman JACKSON. The record speaks for itself. True or false, when Mr. Brosan told you that the girl Promuto associated with used drugs, according to a policeman, did you ask what kind?

Mr. BARTELS. Mr. Brosan never told me that the girl used drugs. That is false.

Chairman JACKSON. Before Brosan could answer, did you say, as follows: "So what? I drink alcohol. That is a drug?"

Mr. BARTELS. I am offended by that testimony. I totally deny it.

Chairman JACKSON. You say it is false?

Mr. BARTELS. I say it is totally false and I am offended by it.

Chairman JACKSON. You know that Mr. Brosan said that you did?

Mr. BARTELS. Yes, he said; and I say I didn't.

Chairman JACKSON. I am trying to be fair with you.

Mr. BARTELS. Let's go, Senator.

Chairman JACKSON. You agree that this is a fair way to do it?

Mr. BARTELS. I don't agree it is a fair way to do it. Let's get to the facts. Keep going.

Chairman JACKSON. True or false, did you know on Saturday, September 28, 1974, at the time you issued the instructions to

Mr. Richardson to have Brosan give Mr. Promuto written questions and allegedly avoid new avenues of investigation, that Diane De Vito who had been identified as being associated with Promuto and as an associate of a class I narcotics violator was the same girl you had met on two different occasions with Promuto?

Mr. BARTELS. To the extent I understand that question, it has four false facts in it. One: I have already told you I don't recall, my recollection differs from Mr. Richardson as to the nature of the questioning. The problem at that time, on that Saturday, was whether or not Mr. Promuto was ever going to be confronted.

Second: I did not tell Mr. Richardson don't go into any new avenue. Third: The woman with whom Promuto was allegedly associating was not known to me at that time. Fourth: LeCompte, it turned out subsequently, never knew Promuto; Promuto didn't know him and he is not a class I violator.

Chairman JACKSON. Did Mr. Richardson, after you returned from San Francisco, advise you to stay away from a girl you described to him who was Diane De Vito, true or false?

Mr. BARTELS. I can't answer. I already answered that question yesterday. I will stick by the answer of yesterday. We didn't describe Diane De Vito. He didn't warn me. The concept of warning implies that there was some intentional, meaning to come up in the meeting, to come up in the future. My meeting with that woman at that time, I am not sure I knew her name in December of 1973, was unpremeditated, out of my control.

It was at a meeting or a dinner where a number of other people came. I had no idea then that I would ever see her again in my life. I did not solicit that meeting. I have never solicited seeing her again. I have seen her on these two separate occasions, both of which were unpremeditated and beyond by personal control. So he did not warn me.

Chairman JACKSON. He did not warn you to stay away—

Mr. BARTELS. From Diane De Vito because of those reasons.

Chairman JACKSON. He testified to the contrary.

Mr. BARTELS. No, he didn't, sir. We went through that again yesterday.

Chairman JACKSON. Mr. Richardson stated, as I understand the record—

Mr. BARTELS. Page 362; I think we went over it yesterday. There was no warning. The word warning, Richardson testified, I described that meeting—

Mr. FELDMAN. Can I ask you something? Is that Mr. Perito, for the record?

Mr. BARTELS. Yes.

Mr. FELDMAN. Is he acting as your counsel?

Mr. BARTELS. No.

Mr. FELDMAN. I have to have this for the record if he does come up here.

Mr. BARTELS. Since I am unemployed, I have taken the liberty of using his secretarial staff to type up my statement. He was an assistant U.S. attorney with me in 1965 and we have been friends. He is not my attorney.

Mr. FELDMAN. There have been questions raised. We want to know if it is official or unofficial?

Mr. BARTELS. The answer is it is neither.

Mr. FELDMAN. It is a matter of what Mr. Richardson did tell you with respect to that woman in San Francisco, how you interpret that language?

Mr. BARTELS. It is a matter of what the record says.

Mr. FELDMAN. You have stated your side of the questions.

Mr. BARTELS. Yes.

Chairman JACKSON. Did you tell Mr. Brosan on November 13, 1973, that you had given Promuto permission to take the girl, Diane De Vito, to the airport on one occasion and that you knew that Brosan had the wrong name of the girl from the beginning?

Mr. BARTELS. No, sir.

Chairman JACKSON. True or false?

Mr. BARTELS. That is totally false because in November of 1973, I hadn't even been out to San Francisco. I hadn't met this woman whom I subsequently learned is De Vito. If you mean 1974, you may have the wrong year.

Chairman JACKSON. I am sorry. That should be November 13, 1974. I will repeat the question.

Mr. BARTELS. You don't have to. The answer is false.

Chairman JACKSON. There are some direct conflicts here.

Mr. BARTELS. Yes, sir; there are quite a few of them.

Chairman JACKSON. Did you insert Mr. Richardson and Mr. Lund between you and Mr. Brosan in the Promuto investigation, true or false?

Mr. BARTELS. No. Let me answer and put that into context. The Office of Inspection is a factfinding unit. It specifically is a factfinding unit. It does not have specific personnel responsibilities. When Mr. Brosan told me on September 17 about the allegations against Mr. Promuto, the recommendation was most adamantly stated, the man had to be fired immediately.

Mr. Lund and Mr. Richardson had worked on inspection matters, on a number of inspection matters since July of that year. I called them in with Mr. Brosan's knowledge and with his approval to Mr. Lund to give me the personnel advice based on Mr. Brosan's factfinding mission. I subsequently told Mr. Brosan to continue the investigation. I ordered the investigation to go forward. I disagree with your recommendation that the man must be fired immediately, with confrontation and I wanted Mr. Lund and Mr. Richardson to then give me personal advice based on Mr. Brosan's fact finding.

Chairman JACKSON. Did you give Mr. Durkin a copy of the Brosan memorandum on the Promuto allegations on September 17 or 18, true or false?

Mr. BARTELS. I believe that is false, to the best of my recollection. I discussed it with him and I don't believe I gave him the memo.

Chairman JACKSON. Did you inform Mr. Promuto that he would receive written questions prior to the questions being served on him?

Mr. BARTELS. No, sir.

Chairman JACKSON. True or false?

Mr. BARTELS. False.

Chairman JACKSON. Senator Percy?

Senator PERCY. I would like to indicate at the outset that I understand that Senator Jackson has agreed that you be given time before this subcommittee before we recess to explain certain aspects of your side of the story. In the interest of fairness, I concur with the chairman's judgment that that should be done.

The President will be in Chicago today and I am going to be out there with him; but Senator Brock has very thoughtfully agreed to stay on and the minority will chair the hearing if the chairman has to leave. I wanted to be sure we did keep this hearing bipartisan and I think this is so important that I would have cancelled my trip if Senator Brock had not been able to stay on this morning.

I would also like to indicate to you that I have done as much research as I could, taking into account that I think your whole reputation is at stake here. I think it only fair before the weekend starts to at least summarize what I have found in talking with House members that have worked with you through the years.

I have talked this morning with Secretary Simon. He suggested I call Gene Rossides, who is Assistant Secretary of the Treasury, who knows of you and I have talked with various others. I think I can summarize without attributing any one thing, to any one person and assuming that I will take responsibility, on a short acquaintanceship, to summarize my conclusions, that on the favorable side, you are considered a man of intelligence, a man of honesty and described many times as a good man and devoted and dedicated to your work.

I think on the other side, there are obviously, like the rest of us, you have made mistakes, you have made mistakes in judgment of people on occasion and I have certainly done that myself; but I think in this case, this is the essence of what we are really after. I think in handling the Promuto case, some grave mistakes have been made, as is evidenced, and I have concluded that you should have handled that case differently and it is too bad that it wasn't. In retrospect, you might have; but I think on balance that is about where I come out at this time.

I am anxious to have you put on the record everything that you want. I do think that we have an obligation now to determine as a result of these oversight hearings where we go from here on DEA. We have a sense of direction as to where we are going on the treatment side. A program has been established and set up now in NIH. The Domestic Council is still working on this and Vice President Rockefeller has taken personal responsibility for determining how we should try to link the treatment effort with our law enforcement programs.

But I would appreciate your judgment now with the advantage of your long years of service in this field. How would you restructure the law enforcement end of drug abuse programs if you were able to make recommendations and redo things in the light of all the experience that we have had?

Mr. BARTELS. I am delighted to finally get into an issue that I think affects the American people because I think narcotics control is too important to be ignored. I think one of the basic problems

with America's attitude towards narcotics control is there is a real dichotomy as to whether we want to or not. It tends to be ignored until periodic problems come up. It tends to be regarded as a war to be won and then forgotten about, rather than as a garden that requires continual tending.

I think the Reorganization Plan No. 2 in concept makes sense. It was the result not of a Nixon political push or some sort of off-the-cuff attempt to come up with a superpower, but it was the result of studies going back to the 1949 Hoover Commission report which required in accordance with our treaty allegations that this country have one central Federal law enforcement agency with total control for narcotics enforcement.

That conclusion was reinforced in 1963 by President Kennedy's study group. It was subsequently reinforced in 1967 by President Johnson's Committee on the Causes of Crime. The Shaeffer report in 1972 made mention of it. When it finally came up in 1973, it could not have come up practically under more adverse circumstances, to wit: In the midst of a Watergate investigation and the degenerating priority of this country's efforts towards narcotics control.

What happened in effect was that with very little planning, one-half of the previously arranged plan fell through and that is that no inspectors from Immigration and Nationalization Service were ever transferred over to Customs. Rather than coming up on an agreed plan which was amenable both to the Bureau of Customs and to the Treasury and to the Bureau of Narcotics in Justice, it was put forth in the last 2 weeks of June with 2 weeks of planning, with one party to it, to wit:

The Bureau of Customs totally opposed to its implementation.

[At this point Senator Jackson withdrew from the hearing room.]

Mr. BARTELS. I think what this committee can do is to study what are the priorities and goals of the Federal effort, what should they be in narcotics enforcement. I think they should be in rather conclusionary terms to reduce the availability of narcotics coming into this country.

That is something that is very difficult to do because almost all the drugs that come into this country come from overseas, almost all the illicit drugs are smuggled in. Therefore, to get control over that, you need the cooperation of the foreign sources and trans-shipment countries. We have made progress in that only in the last 5 years. The first progress came with the decision of the government of France to take this seriously.

Tremendous progress is now being made in Mexico under a much more difficult enforcement situation. But one of the reasons we are now facing a worsening situation, despite what I would submit to you, is a more efficient, better internal enforcement operation, is because of the decline of our influence in a number of countries, to wit, in Turkey, to wit, in Southeast Asia where the migration of ethnic Chinese has led to tremendous increase in flow of drugs, both in Europe, into Canada, and into the United States.

So what I think we need is the total determination and support and influence of the Federal Government, both as an enforcement

effort and as a diplomatic effort, to secure the assistance of those countries to stop that flow.

One of the facts that has not been mentioned heretofore is that the increase that we are suffering here, Senator Percy, it has been attributed to some extent to DEA's creation that the increase has gotten worse since 1973, that increase in availability of drugs is growing on a much greater scale in other countries.

For example, for the first time there is a heroin epidemic of some significance in Paris, in Munich, in Amsterdam, in Copenhagen. That is not because of the creation of DEA. That is because of the increased migration of ethnic Chinese bringing in No. 3 and No. 4 heroin from Indonesia, from Malaysia, from Thailand, from Vietnam into Europe and with its increased availability, there are more people using it.

There is a tremendous epidemic that sprung up among youngsters in Thailand which now has 300,000 heroin users. In Mexico City, the attorney general of Mexico told me that over the past year they have had an increase of heroin use, with an estimated 10,000 heroin users in Mexico City. So that the problem is not peculiarly a United States problem caused by any character defect on our part.

The consequences of this increased problem have some positive side benefits. More countries are willing to take an effort. More countries are willing to address themselves to this problem than ever were before. More countries are now regarding this as a potential problem for themselves, rather than something that should be done simply as a quid-pro-quo in return for some concession from the United States, such as the Turkish decision to get out of the opium group.

Senator PERCY. Do you feel that in the light of your experience that there are changes that we should now make in the organizational structure with respect to the enforcement of laws against drug abuse?

Mr. BARTELS. No, I think there are legislative changes that this country should make. I think that we have to ratify the Psychotropic Treaty which would impose the same international standards on amphetamines, barbiturates as have been imposed on opiates and our failure to do that is taken by other countries, including Turkey, as an indication of our lack of desire to address this problem.

I think we have to come up with some sort of system whereby we have a certainty of some deterrent for international smugglers. We are the only country in the world where a person can come into this country, smuggle a substantial sum of drugs and about half of them get deported without any sort of jail sentence.

Senator PERCY. In my own overseas trips this year, as I come back into the country, I talked with customs officials and others and there is a strong feeling in some quarters that we should return the antidrug smuggling responsibilities, including related intelligence collection, to the U.S. Customs Service. What would be your position on that?

Mr. BARTELS. I would oppose that tremendously. This was created solely because of the competition that existed between the Bureau

of Customs and between BNDD, the old Bureau of Narcotics, between 1969 and 1972, and that led to cases being lost, shootings, people lying to one another; this tremendous competition between two competing agencies, each trying to solicit credit for a substantial narcotics case.

Senator PERCY. Doesn't competition still exist, though?

Mr. BARTELS. Yes, certainly, because there has not been a strong statement from this Government that this plan is going to make sense and is going to be carried out. What has happened is that you had a problem that was mentioned as number one on the priority list back in 1972 and as a result of other problems, Watergate, the economy—I served under five attorney generals in my 20 months; I had sort of a compacted career—as a result of all of that, Senator, this problem slid from number one right off the top 40.

I know of two statements that came out of the White House during my tenure. One was that we turned the corner and the other that—I best not say it.

Senator PERCY. Go ahead.

Mr. BARTELS. The other was just an aside that perhaps the children of the President smoked marijuana. Those were the two statements that I got in support of this program in some 23 months as I was trying to get a deputy, as I was trying to make a merger.

To some extent, Senator, when you talk about mistakes of judgment, you talk about picking people, there were a number of these senior officials I would not have picked. When you were at Bell and Howell, you could fire people if you didn't like them. I couldn't. It is amazing to me to some extent that I was able to preserve the posture of some potency during this 23 months and people respond to the extent that they think you are capable of affecting a policy.

Senator PERCY. I was told by Customs people that they were not getting intelligence information from DEA in order to enable them to make seizures. Is this true or false?

Mr. BARTELS. That is partially true; but let's take a look at whether that is deliberate or whether that is a tactical decision. Customs can only make seizures at the border. That is their jurisdiction. The information that Customs previously had when it was an investigative agency in narcotics was used to ensure that a seizure was made at the border. A tactical decision was made to make sure that those seizures are made in Mexico by the Mexicans.

What does that do? It does several things. It results in the Mexicans getting a greater incentive. It results in quicker attempts and quicker efforts to get to the height of the group in Mexico and to get to the source. If our goal is to get to the source to destroy the financiers, the couriers, and the planners in the local country, it is much better to make arrests in the local country and to motivate the local service to make that arrest than it is to get the intelligence, try and trail it all the way till it gets to the United States border and then make the seizure then.

Senator PERCY. The suggestion has been made that we return to Food and Drug Administration those responsibilities DEA presently

has for the control of pills and similar dangerous drugs. What would be your position on that?

Mr. BARTELS. My position would be that, again, I think that makes no sense. Again, I would cite you not solely my opinion. This isn't a deposed bureaucrat giving you a defensive answer. I would cite you the studies of the Hoover Commission, the Kennedy Commission, the Johnson Commission and to some extent the Shaeffer Commission which addressed that.

[At this point, Senator Javits entered the hearing room.]

Mr. BARTELS. The pill story has been one of success for DEA. This statute, the Controlled Substance Act, provides that DEA and its predecessor, BNDD, can refuse the quotas of production of pills, Senator. Under Mr. Ingersoll's leadership, tremendous progress was made. I followed that leadership and we have reduced the amount of amphetamines by 70 percent; indeed, more than 70 percent. I believe it is up to 90 percent.

Back in 1969, I will be happy to supply the figures for you, I am giving them with the valor of some ignorance, there were approximately 2.2 billion amphetamines produced as fat pills and various other prescription pills. A great number of those leaked out into the illicit trade. Mr. Ingersoll started the process which we continued of reducing the quotas that these drug companies could put on them. That statute works until now, I believe there are approximately less than, I think it has been reduced by some 70 to 90 percent. With very few exceptions, I think the registrant program and the compliance program are working. I think it is working tremendously successful. You don't see that very much. You see some diversion of barbiturates, legitimately.

Senator PERCY. The suggestion has been made that we assign the function of investigating major interstate narcotics conspiracies to the FBI. The proposal is made for the purpose of trying to create a stronger drug enforcement effort because the position has been taken that there is no way that DEA can duplicate Customs' antismuggling expertise and capabilities. DEA could then more effectively control traffic in pills and similar dangerous drugs, and that this change would get the FBI fully involved.

Would you comment now on the degree of involvement of the FBI in drug enforcement and what your feelings would be about assigning the investigation of major domestic interstate narcotics conspiracies to the FBI?

Mr. BARTELS. Their involvement now has increased. It has increased tremendously since 1973. One of the goals of the reorganization plan has increased FBI involvement. I worked with Director Kelley and with his associate director, a man by the name of William Cleveland, so that we set up a program in the 16 major cities where there are also organized crime strike forces, where their offices are routinely briefed on narcotics matters. As a result, we had a tremendous increase in information and substantial intelligence material coming from the FBI.

Senator, the FBI doesn't want to get involved in narcotics. It is just that simple. They have taken polls repeatedly and they don't want to get involved because it is dirty, unpleasant work that the American people don't understand.

Everybody knows what an IRS agent does; everybody knows what a Customs man does; everybody knows what an FBI agent does, I suppose, even if you only see Efram Zimbalist; but nobody knows what a narcotics agent does. Even the local policeman gets thanked by the people on the street; but a narcotics agent works in anonymity and the only time his actions are ever brought to attention is when there is an allegation of corruption or a "Collinsville" incident.

The problem with the constant attacking of these agents is that their success depends on their morale, on keeping them motivated to be willing to respond to a purported or prospective seller or trafficker in narcotics. If you have an agent who is concerned about his bureaucratic rights, is carpooled at 5:15, has no statutory overtime, he is not going to be responding when a seller says: "Fine, I will have a quarter of a kilo at 2:15 in the morning at such-and-such a bar at 138th Street and 8th Avenue." That is one of the problems.

One of the other problems was simply; and it was touched on a little bit yesterday, one of the reasons that there are consistent allegations of corruption or misbehavior against a narcotics agent is that he is always involved in the crime, Senator. An FBI agent investigates a crime where there is a victim who comes and complains. He then goes back and according to a manualized system, investigates it. At the time of the trial, the witness gets on the stand, points to the defendant and says that was the man and the facts happened this way. The defendant gets on the stand and says that the witness is a liar, it didn't happen that way. You have a credibility issue which is determined by a jury.

In a narcotics trial, a narcotics agent gets on the stand and the entire situation has to be setup so that there is as much corroboration as possible. Nonetheless, you are going to have allegations repeatedly that the agent is lying. Naturally, that defendant has a motive and he is going to allege: (1) he is lying; (2) he violated my civil rights; (3) he is corrupt; and anything else he can say to get out from a jail sentence. As a result, you have far more allegations, both of corruption, misbehavior, and any other allegations of impropriety or improper behavior to get out of it.

I think to get back to your initial question, that we have made improvement in intelligence with the FBI. I think that there is more that can be done. I think one of the problems with DEA or with this agency, Senator, is that you have an agency that now consists of 2,200 agents. In 1968 there were 300 of them. It has grown fantastically, a sevenfold increase in some 7 years. It is still two-thirds the size of the New York City Transit Authority. If DEA were given the responsibility of policing the New York City Transit, subways, we could cover the IRTA and the BMT, but we couldn't cover the IND.

Yet we are in some 44 countries. We have people who speak Urdu, Farsi. We are in every place that we are. We have people in Kabul, up in Chaingmai, all speaking these languages, highly trained, highly motivated, and they are awfully upset by what is happening.

Senator PERCY. This speaks directly to the charges that have been made that DEA has really been basically involved in the wrong thing. I can't help but feel we are misdirecting our efforts. I can't conceive of it being the job of the Federal Government to be on the street, trying to make purchases.

Mr. BARTELS. I can't agree with you more. You are 100 percent right.

Senator PERCY. Let me finish my statement and then I will give you time for yours.

Mr. BARTELS. Excuse me.

Senator PERCY. As I see it, there are about 400,000 State and local police in this country. They are the ones who are closer to the neighborhoods and the problems and so they are the ones that should be doing the work at the street level. You have got about 2,000 agents in DEA. Is that correct?

Mr. BARTELS. 2,200.

Senator PERCY. As I see it, with that small force, they ought to be concentrating on major interstate conspiracies that can't be handled by an individual State or certainly not by the local police. They should be furnishing assistance and coordination for local and State forces. They should not be replacing it or supplementing it or assuming that they are taking the problem over because they have got all of this money and they have got the authority and the power of the Federal Government.

I don't see why they should be involved in local street-level work, making buys from or arrests of smalltime operators. What good does it do us to make purchases at that level? This is not the Federal role.

Mr. BARTELS. I can't agree with you more.

Senator PERCY. They ought to be operating at the interstate and international level.

Mr. BARTELS. Let me give you some facts. The thing that bothered me was when I read—

Senator PERCY. But you directed that agency.

Mr. BARTELS. What I am telling you is I directed it in the level to which you are speaking and I was very disturbed to read the initial report on June 9, that indicated that it was going in the direction that you described just now so accurately, because it is not. The problem is, it is not a monolithic agency.

This initial investigative report said DEA has one methodology, buy and bust. That is nonsense. DEA has a great number of methodologies. It spends a great deal of time training both the domestic and foreign enforcer. I will be happy—I have here a summary that shows briefly what that does. It has a tremendous effort overseas on international suppression, specifically the destruction and eradication of harvest of opium, marijuana, cocaine. It does that by using the leverage of overseas forces. Specifically, the most important one is Mexico, to a lesser extent that was true, for instance, in Jamaica; it was true in South America and in Turkey.

It has a tremendous program of overseas foreign cooperation. What I believe this committee has been misled by are the statistics that 82 percent of the buy money was addressed towards class III

and class IV violators. As you know, we have divided and pre-selected in large part the violators we go after according to class.

We grade them to ensure these regions will be addressing their resources to the highest level; class I being an international financier who is able to import multikilos; class II being a major interstate violator; class III being a local wholesaler; and class IV being the leftovers, which you say we shouldn't be addressing ourselves to and to which I agree.

Senator PERCY. I think you clarified that point.

Mr. BARTELS. Let me give you the facts.

Senator PERCY. I have one other question.

Mr. BARTELS. May I answer? I will do it within a minute.

Senator PERCY. Please make it short as I have another question and very little time.

Mr. BARTELS. It is just awfully important. You can't buy heroin or get a case on class I violators. You can't go up to Mr. Catrone and say: "My name is Bartels. I would like to have you sell me a little narcotics." The only way you can get them is to break in at the class III and class IV levels.

The problem comes not whether you are spending 82 percent at buying from class III and class IV. The problems comes, is this agency exploiting that so that they are making class I and class II violators? If you take a look at the record, we have almost tripled the number of class I and class II violators from fiscal year 1973. We have gone up from \$600 to \$1,500, to \$1,630 of class I and class II preselected violators.

In other words, the implications from spending 82 percent of your funds on class III and class IV are not that you are stopping. That is only the beginning. The question to judge this agency on, Senator, is, are they following through, are they making conspiracy cases, are they making class II and class I violators?

Senator PERCY. My last point gets into an area that really Senator Javits would be better qualified to follow through on. I hope he will pursue it. In establishing Reorganization Plan No. I, the charge in retrospect has now been made—

Mr. BARTELS. No. I or No. II?

Senator PERCY. No. II. In retrospect, what we really did was violate the fundamental concept of American justice that the investigative function and the prosecuting function should be separated. In doing so, we really violated, for no proven purpose and end objective, a principle that should not have been violated, and we ought to go back to the basic principle and separate these functions once again as they certainly are at the State, county levels.

Would you care to comment on that?

Mr. BARTELS. Yes, sir. It is false. Initially there was some talk in Reorganization Plan No. II that there would be a narcotics division merged into an agency. You would have prosecutors and investigators under one roof. That was quickly—that argument that you have stated was made—the program was quickly abandoned. Our investigations are handled by the U.S. Attorney just as the FBI, Secret Service, and so forth, so that there is no merging of prosecutors with investigators.

Senator PERCY. I want to thank you, very much indeed, for your responses to these questions.

Senator JAVITS, Senator Brock has agreed to stay on and chair the balance of the morning's hearings. So long as he is going to be in the Chair anyway, possibly if you have some time pressure, he would want to yield to you at this stage.

Senator JAVITS. I want to make a brief statement, Mr. Chairman.

Senator PERCY. Is that all right, Senator Brock?

Senator JAVITS. One, I would like to express my gratitude to Senator Percy and to Senator Brock for going through the lengthy record in this case exhaustively. It has raised serious civil liberties questions as well as questions of mismanagement and of professionalism. You are an able lawyer who has served in my own jurisdiction in the southern district of New York under U.S. Attorney Morgenthau. You and your family are very well-known in my State. Your father was a distinguished Federal Judge. I knew him. I know you.

I have been deeply troubled by these charges and allegations, not so much those allegations concerning mistaken judgments or whether you picked the right associates, but rather those which constitute a challenge to your own good faith and your own honesty as a human being and as a lawyer. I am grateful to my colleagues, particularly Senator Percy who has given so much time to this matter at a time when I have been unable to give the time and attention it deserved to bring out every facet of the subject. Whatever other authorities may do about your case, our job is to bring out what you know about these specific allegations, and about DEA operations generally and what we ought to do about it, because that is our fundamental purpose. We are not prosecutors.

So I am grateful to you, notwithstanding the pressures on you, the charges which you felt were so onerous to you and you have expressed that, that you have lent yourself to the process of inquiring, of investigation. I shall examine the record with the greatest care, Mr. Chairman. If I feel, though I believe it has been thoroughly done, that anything else is necessary, in which I can contribute, I will apply to the Chair for leave to recall Mr. Bartels.

I want to thank Senator Brock who is undertaking the responsibility in the absence of the chairman.

Senator PERCY. I would like to express appreciation to Senator Javits on this. I think Senator Javits made every effort to make absolutely certain that the statement was made available to the Justice Department. I don't know whether it has been distributed or not.

Senator JAVITS. It is going to be distributed because it is in this record and we are getting a list of everybody to which the statements, accusations were distributed and the same people will get the transcript of what Mr. Bartels has testified to.

Senator PERCY. We had a problem in that the statement of an employee automatically goes out. But here is a former executive who would not qualify. Certainly I join with Senator Javits and I know Senator Brock will and I trust the Chair in seeing that we do request of Justice that your testimony be sent to those people that you have worked professionally with all your life.

Mr. BARTELS. That is right, for over a decade. I have nothing but my integrity to sell. That is the only thing that is important to me, Senator.

Senator JAVITS. We will see that it gets out even if it has to go out under our own frank. It will go out to the same people as the other.

Senator PERCY. The same government will pay the cost of postage.

We have gotten into this numbers business. I am always concerned about it. Is it possible that original class III and class IV violators are reclassified as class I or class II after they have been arrested?

Mr. BARTELS. There is a system which Mr. Belk or some of the other men can describe to you in greater detail than I can which is set up to prevent that. I don't believe it is.

There is approximately X persons who were knocked out, Senator, but there are fairly rigid standards. That system has been adopted both by the Department and by OMB as being a working and viable system. So it has been the same system that has been in practice since 1973. So if there is any error in it, I suppose there is possibility of some error in it, that error should statistically remain the same right through.

Senator PERCY. Thank you, very much, Mr. Bartels. We appreciate it.

[At this point Senators Percy and Javits withdrew from the hearing room.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct hearings in public session, without a quorum of two members for administration of oaths and taking of testimony in connection with Drug Enforcement Administration on Friday, July 11, 1975.

HENRY M. JACKSON,
Chairman.

CHARLES H. PERCY,
Ranking Minority Member.

Senator BROCK [presiding.] Mr. Bartels, if I may, we will adopt a little different format. I would like to give our counsel an opportunity to ask specific questions, alternating, if they want to for 30 or 40 minutes. I am going to reserve plenty of time for you. I have some questions of mine that I will ask towards the end; but we will start off with Mr. Feldman. You feel free to express yourself as fully as you see fit.

Mr. BARTELS. Thank you, Senator.

Mr. FELDMAN. Mr. Bartels, what we will do is follow the format of your prepared statement. I will key my questions to your prepared statement. Mr. Sloan will do the same thing. We will go right down the line and resolve some of these unresolved questions and we will have a chance to review your statement before the subcommittee for the record.

Please turn to page 3. You say that one of the areas in which you felt relatively secure early in your administration was the inspection program and you talked with Mr. Tartaglino and that his reputation in the area was as an experienced and zealous inspector and you gave him your full confidence.

Mr. Bartels, why did you have a high regard for Mr. Tartaglino?

Mr. BARTELS. Because he had the reputation as an experienced and zealous inspector, that he had been inspector in BNDD, that even as Deputy Director of BNDD, he had had a constant attention and interest in it.

Mr. FELDMAN. Did you place Mr. Tartaglino in the Deputy Administrator position solely on the basis of his background in inspection or did you also take into account his other experience in senior drug enforcement positions?

Mr. BARTELS. Mr. Tartaglino was the senior—for neither reason—was the senior enforcement man. As I said, we had 16 super-grades. BNDD had 18, Customs had none. We were trying to make an equitable merger. Mr. Tartaglino had led some of the fights quite properly between BNDD and Customs, but was regarded by some people in Customs, whether rightly or wrongly, as being parochial in the defense of BNDD.

In discussing it with Mr. Lund and with Mr. Tartaglino, it was felt that if he were the chief enforcement officer to which he had a civil service right, a number of Customs men would regard it as a BNDD takeover and would leave and go back to Customs. We agreed then that, and he agreed, too, to be acting deputy with a view to going back to being Chief of Inspection shortly after that.

Mr. FELDMAN. He was your choice, though, wasn't he?

Mr. BARTELS. To be acting deputy? No.

Mr. FELDMAN. Whose choice was he?

Mr. BARTELS. The choice to be deputy, I first wanted Fred Rody. In other words, he was never my choice to be permanent deputy.

Mr. FELDMAN. But acting deputy?

Mr. BARTELS. Yes.

Mr. FELDMAN. Then you state you granted his wish to have George Brosan replace the existing Chief Inspector. For the record, who was that?

Mr. BARTELS. That was Pat Fuller.

Mr. FELDMAN. Is it correct to say, therefore, that it was at Mr. Tartaglino's request that Mr. Fuller be replaced? Mr. Fuller had asked to be reassigned, hadn't he?

Mr. BARTELS. Mr. Fuller was about to retire. He spoke to Mr. Tartaglino. Mr. Tartaglino told me he was interested in retiring out in Los Angeles and was willing to go out to be the regional inspector in charge of Los Angeles.

Mr. FELDMAN. You also say that they had a fine reputation. This seems to permeate your statement: "They impressed me very quickly as having the ability to run the strongest inspection programs I desired." You felt that was true at that time?

Mr. BARTELS. I certainly did.

Mr. FELDMAN. Mr. Bartels, Mr. Tartaglino had a lot of duties besides inspection actually. How much of his time did he devote to inspection?

Mr. BARTELS. When?

Mr. FELDMAN. At the beginning of his tenure at DEA, July 1, 1973?

Mr. BARTELS. I don't think he devoted much time. I don't know. You will have to ask him.

Mr. FELDMAN. We have and we will again. It seems to me, though, that you always have Mr. Brosan and Mr. Tartaglino together in these inspection matters.

Mr. BARTELS. By 1974, they were together; yes, sir.

Mr. FELDMAN. Going on to page 4, you talked about 15 undercover agents working in covert and unchecked inspection capacity under the guise of Federal agents throughout the country. You remember that part of your statement? You say:

Although Mr. Tartaglino had been one of the architects of this program, he did not object to my disbanding this endeavor.

Then you go on to your reasons. This is on page 4.

My primary concern was that these anonymous field inspectors known only to the Chief Inspector, not only proved ineffective as sources of leads but were not subjected to the same restraints as other inspectors whose decisions would be memorialized in writing and closely scrutinized by persons outside of the Office of Inspection in the event of an adverse action or criminal reference.

Mr. Bartels, on what information do you base your assertion that Mr. Tartaglino was one of the architects of the program?

Mr. BARTELS. Mr. Fuller and he told me about it.

Mr. FELDMAN. Mr. Tartaglino told you about it?

Mr. BARTELS. They told me about it together and discussed it early in the game and it was their joint recommendation.

Mr. FELDMAN. Early July 1973?

Mr. BARTELS. I would think it was in July. I don't remember the date; but I think it was in July. I think it was right when we came on and started it and they said this had been going on for a period of time, that originally, there had been more, that a number had dropped out and said they didn't want to do it. They didn't want to make these unattributable allegations and that of the 13 or so still remaining, a number weren't reporting any others, it was not only an inefficient program, but it was causing us problems.

Mr. FELDMAN. Did Mr. Brosan have anything to do with this program?

Mr. BARTELS. No, sir. Mr. Brosan was not in DEA until October of 1973.

Mr. FELDMAN. You assert that you disbanded the program. I call your attention to the report to the President, by the Commission on CIA Activities within the United States, by the Rockefeller Commission. You are familiar with that. With no objection, I would like to make that as an exhibit, Mr. Chairman.

[The document referred to was marked "Exhibit No. 53" for reference and may be found in the files of the subcommittee.]

Mr. FELDMAN. I am going to cite to you page 233 and 234 in the report which cites a cooperative effort between CIA and BNDD, one of the predecessors, during the period of December 1970, to July 1973, during which time the CIA recruited and trained 19 agents who were to pose as regular narcotics agents assigned to various field offices, but who were in reality undercover agents for the Chief Inspector to report on problems or symptoms of corruption.

Is this the same CIA-BNDD joint effort you refer to in your testimony?

Mr. BARTELS. I would gather it is, yes.

Mr. FELDMAN. You then go on and say, on page 4 again, the philosophy, this bothered you, the philosophy of using this type of covert programs seemed to be potentially damaging to the morale of the agents and also at variance with your philosophy of constitutional protection to agents as, one, giving them the same protection that one would accord defendants.

Let me summarize. Is that correct?

Mr. BARTELS. Yes, sir.

Mr. FELDMAN. You refer to covert and undercover operations such as these being at variance with your philosophy. Are you saying then that the undercover techniques of law enforcement agents—

Mr. BARTELS. Of course not.

Mr. FELDMAN. [continuing] Is unconstitutional when directed toward agents as well as drug suspects?

Mr. BARTELS. Of course not, because in a trial, the undercover agent has to come forward and testify against the defendant. There is a trial. The problem here was that one of these 13 men could simply get on the phone to Mr. Fuller and say, "This is Jones. Smith is no good. He is up to no good."

That would ruin Smith's career. Agent Smith, would never be confronted by the source of why he was not promoted, which it would remain anonymous, whereas in an undercover situation, the undercover agent goes in, makes his buy, but then in order for an action to be taken, he has to testify in court. It was exactly that refusal to surface the undercover inspector that was objectionable.

Mr. FELDMAN. So you saw no contradiction between the technique of using undercover agents to make buys and what was happening here?

Mr. BARTELS. For the reasons that I stated.

In the one case the defendant is allowed to confront his accuser and in the other there is a covert-like action taken without that right to know who your accuser is, let alone what he said.

Mr. FELDMAN. At the bottom of page 4, you say it is interesting to note that throughout this period the regular monthly and annual reports emanating from the Office of Inspection were reassuring.

You said that from these reports you assumed that the major problems were identified.

What was the period that we are talking about now throughout this period? This puts in context when you were satisfied and when you stopped being satisfied.

Mr. BARTELS. Right up through the summer of 1974. The reports continued not to identify the problems right up until December. But I started to lose confidence in the judgment of Mr. Brosan some time early.

Mr. FELDMAN. What were the major problems?

Mr. BARTELS. To take a look at the Moore study, which was conducted in September or October and November, he identified several major problems; that is, that there was wholesale violations of the

inspection manual, that the inspectors had no historical data upon which to base the allocation of their resources; that is, they couldn't tell you whether they had spent 10 hours on a case or 1,000 hours on the case, that there was no priority system as to the importance of cases.

In other words, whether one should allocate a priority an allegation of a violation of civil rights or on the lesser side of personnel, immoral behavior. So that decisions as to how to investigate cases and which cases took priority were being made without any priority system or without any management system.

Mr. FELDMAN. Mr. Bartels, you said that this problem arose in mid-1974. Everything was all right.

Mr. BARTELS. I said I started to lose confidence in Mr. Brosan's judgment.

Mr. FELDMAN. Now you cite the Moore study. We are going to get into this in detail because you make the inference about the Promuto investigation being a result of the Moore study.

Mr. BARTELS. No. I didn't make that inference.

Mr. FELDMAN. We will get into that. This is how I read your statement. I think we should cover it, but you quote the Moore study, citing some of the problems. The Moore study wasn't commenced until September 9, according to your testimony and the conclusions weren't reached until sometime in November.

Mr. BARTELS. There were interim conclusions reached very early in the game.

Mr. FELDMAN. After September 9?

Mr. BARTELS. Certainly.

Mr. FELDMAN. In midsummer—

Mr. BARTELS. Why did I lose confidence in Mr. Brosan's judgment? For a number of other reasons. I lost confidence in Mr. Brosan's judgment not for any of these problems that were subsequently identified in the Moore study, but because in discussing matters with Mr. Brosan we always had a difference as to the recommendation that should be made.

For example, in discussing the Oliver matter, there was one recommendation made that I thought was improper. In discussing the actions of one of the RD's, Mr. Brosan thought he should be removed immediately.

We discussed it with Mr. Lund. We conducted further investigation and came to the conclusion he should be left in there and the problem lay less with that regional director than with some of his subordinates.

There were a series of events and incidents, including the trip to Europe, which led me prior to the Moore study, and totally independent of it, to lose some confidence in Mr. Brosan's judgment.

Mr. FELDMAN. Is that why you introduced the word "gradually?" You say "gradually" you become less and less satisfied with the Office of Inspection.

Mr. BARTELS. Yes.

Mr. FELDMAN. Why didn't you ask that Mr. Brosan be replaced if you were dissatisfied with him in midsummer of 1974? Why did you wait? Why did you let him go up to the point of the Promuto

investigation and then, through September and October, on this case, if you were not satisfied with him? You were the boss.

Mr. BARTELS. Of course I was the boss. We were doing a number of things. Let's put this in context. Periodically, there were people whose judgment in that agency occurred, made judgments with which I disagreed.

It takes a series of time before you come to the conclusions that your disagreements with a man are so severe that he has to be replaced. I can disagree with somebody without replacing. I disagree with you, yet I am sure you disagree with me.

Mr. FELDMAN. You can ask for my replacement. I will go back to practice law.

Mr. BARTELS. Right. In other words, it was a matter that was gradual. It took a period of time. You can disagree with a person.

Mr. FELDMAN. On page 5 you say you go into the major causes of the concern. If I could just finish this up, Mr. Chairman, then I will yield to minority counsel.

The major causes of your concerns were as follows. Here you get into some of the guts of the problem that are concerning us: that they relied on tactics that you and others judged at times to be unethical, as well as to be ineffective. That is a hard charge. Let's go through that.

You say "they" relied on tactics which "I and others" judged at times—Who are "they?"

Mr. BARTELS. Messrs. Brosan and Tartaglino.

Mr. FELDMAN. I thought Mr. Tartaglino wasn't giving too much time with regard to Inspection matters?

Mr. BARTELS. Not in July of 1973, but by 1974 we were discussing Inspection more and more and Mr. Tartaglino was legitimately more involved in it. In defense of Mr. Tartaglino, he took that Acting Deputy's position, assuming, as I did, that that would be a very temporary slot.

He ended up sitting in that slot for much longer than either he or I wanted. So that during that time, after a year or so went by, we kept anticipating that we would get the Deputy and he became more and more involved.

Mr. FELDMAN. So Mr. Tartaglino and Brosan are the "they" for the record?

Mr. BARTELS. Yes.

Mr. FELDMAN. You note that "I and others" objected to their tactics. I know who you are. Who are the others?

Mr. BARTELS. One was Judge Friendly of the second circuit, who wrote an opinion as to the tactics of the special corruption unit which was specifically under Mr. Tartaglino's control.

Mr. FELDMAN. When was this?

Mr. BARTELS. Let me get it.

Mr. FELDMAN. What case did it cover?

Mr. BARTELS. The *Archer* case, *U.S. v. Archer*, 486, Fed. 2d, 670, 1973.

Mr. FELDMAN. What time period did the questionable tactics occur?

Mr. BARTELS. I found out about it, as I say, during this time period.

Mr. FELDMAN. You are always talking about old allegations resurfacing, et cetera.

Mr. BARTELS. The tactics were the creating of crimes by the Government in order to entice other people to commit crimes.

Mr. FELDMAN. Were they creating these crimes while you were Director?

Mr. BARTELS. No, but I found out about it. We were discussing—

Mr. FELDMAN. That is the point we are talking about.

Mr. BARTELS. Let me finish my answer. I will tell you why I was discouraged by the tactics. They had relied on tactics which I felt, when I learned about, weren't proper.

One of those tactics was taking an agent, giving him a stolen gun and having him go in, be arrested on a false arrest, testify falsely before a grand jury, in order to investigate corruption by an assistant district attorney—

Mr. FELDMAN. What case?

Mr. BARTELS. *U.S. v. Archer*.

Mr. FELDMAN. When did these incidents occur?

Mr. BARTELS. You will have to look it up.

Mr. FELDMAN. You raised the case. Did it happen after July 1, 1973?

Mr. BARTELS. No, it happened before then, but I found out about it afterwards. The opinion was written—

Mr. FELDMAN. Mr. Brosan wasn't the inspector?

Mr. BARTELS. I didn't say Brosan was the inspector. I said Tartaglino was in charge of a special corruption unit up in New York, which I believe conducted about 10 of these types of investigations with the creation of a crime and what Judge Friendly said was that when the Government becomes a lawbreaker, it breeds contempt for the law and invites every man to become a law unto themselves. He threw out the case.

Mr. FELDMAN. Mr. Bartels, you say, "Gradually, I become less satisfied with the performance of the Office of Inspection."

Mr. BARTELS. I gave my reasons.

Mr. FELDMAN. Then you say, "The major causes of my concern were the following." You said "they" are Mr. Brosan and Mr. Tartaglino. The first thing you say is that crimes were created to entice subjects into integrity violation.

Give me one instance after July 1, 1973, when this was done?

Mr. BARTELS. I will give it to you. I don't have the cases right here. Yes, that continued.

Mr. FELDMAN. This is a pretty heavy charge. You accuse people of making heavy charges against you.

Mr. BARTELS. No, it is not a heavy charge. It is reported in Federal 2d.

Mr. FELDMAN. After July 1, 1973, when Mr. Brosan took over as inspector.

Mr. BARTELS. Of course he didn't do it after the opinion said it is unlawful.

Mr. FELDMAN. Read your statement. That statement made in the context of the Inspection Division.

Mr. BARTELS. Yes; it said they relied—it didn't say they were relying—they relied on tactics which I and others judged to be ineffective.

Mr. FELDMAN. Do you have a case after July 1?

Mr. BARTELS. I can get you the report that came in on that whole corruption unit up in New York.

Mr. FELDMAN. Brosan was not inspector at that time; correct?

Mr. BARTELS. No, he wasn't. That was Mr. Tartaglino. In the subpoena's matter, he was an inspector.

Mr. FELDMAN. Setting up an agent, isn't that the sale undercover technique used in the buy-bust system?

Mr. BARTELS. Not creating a false crime; not going in and having an agent be falsely arrested. The other unhappy unprofessional thing about that was that Mr. Bario, who was an agent, ordered by Mr. Tartaglino to go in and commit perjury, here are Federal agents committing perjury before a State grand jury, his arrest record was never cleared.

Mr. FELDMAN. Give me one fictitiously created crime since DEA was started by Mr. Tartaglino and Mr. Brosan.

Mr. BARTELS. No; you misunderstood. He was part of this. Mr. Tartaglino thought these tactics were proper. I disagreed. I don't think they were proper then; I don't think they are proper now.

Those are the types of tactics that I think are improper for inspection. That is a philosophical difference. I don't say he created it. Of course, he couldn't have created it after 1973, since the second circuit said we are going to throw all of these cases out.

Mr. FELDMAN. Maybe I would like to run around with married women but until I run around with married women, I don't exercise that option.

Mr. BARTELS. There is a big difference. This case in 1973 said he had.

Mr. FELDMAN. Mr. Brosan?

Mr. BARTELS. Mr. Tartaglino.

Mr. FELDMAN. Not Mr. Brosan?

Mr. BARTELS. Let's go through it. One of the tactics was this Archer situation. That was Mr. Tartaglino. The other tactic was Mr. Brosan with the subpoena.

Mr. FELDMAN. In the matter of narcotics conspiracies, what situation was that?

Mr. BARTELS. One of them was the Promuto situation.

Mr. FELDMAN. It wasn't a class I violator named in there? Doesn't that justify issuing a subpoena?

Mr. BARTELS. No.

Mr. FELDMAN. I have the BND6, which was introduced in evidence, and they named him as a class I violator. I must have read it wrong.

Mr. BARTELS. You did because he is not a class I violator.

Mr. FELDMAN. He was at that time. Maybe he was reclassified afterward. Did that happen to your knowledge?

Mr. BARTELS. I know he is not a class I violator.

Mr. FELDMAN. Was he ever listed as a class I.

Mr. BARTELS. I don't believe he was. There was no evidence that Mr. Promuto was engaged in a narcotics conspiracy and there is furthermore no evidence that Mr. Promuto ever knew Mr. LeCompte went back to the Metropolitan Police Department which had never been done during the entire time Mr. Brosan conducted that investigation, they said, "How do you know it was LeCompte?"

The officer said he talked about an automobile accident in August of 1973, or whenever it was. They went back and checked and Mr. McCaleb had an automobile accident in 1973, and Mr. LeCompte didn't.

Mr. LeCompte denied knowing Mr. Promuto, Mr. Promuto denied knowing Mr. LeCompte and the officer said it was McCaleb.

Mr. FELDMAN. We have witnesses who will testify to the contrary.

Let me go to the second one. Field inspections were done infrequently and there was an apparent lack of emphasis on preventive programs. That is your statement.

Mr. BARTELS. Yes, sir.

Mr. FELDMAN. You have stated your objection that undercover operations in integrity investigations, you prefer preventive programs.

Mr. BARTELS. I prefer both. I prefer, as the Moore study, the only tactic that we hadn't taken was patrolling and preventive.

I don't say put all the emphasis on patrolling. I say have a multi-inspector program.

Mr. FELDMAN. What preventive programs did you seek to institute in the Office of Inspection since July 1, 1973?

Mr. BARTELS. There are a number. I am glad you asked that. What we did was, if you will take a look at the end of the statement, you will see that we increased item 13, the preventive integrity programs by monthly stride programs.

What that is, is a computerized system to retrieve information and drug evidence which is to be used in the field office to develop patterns as to the purity of evidence, the price paid for it, and whether there is any pattern of agents paying too much money for too little evidence.

What we did also was to increase the number of indepth, unannounced inspections which would then go in not just into impressed funds, but into interviews with informants and the methodologies by which that regional office was being conducted.

We also set up a national informant registry to make sure that informants, all the informants were listed in one place, and that you didn't have a situation where informants were using agents from one district office and playing them against the other or where agents from one district office in turn were engaged in any sort of a conspiracy back and forth, using the same informant.

Mr. FELDMAN. This leads to page 6.

Mr. BARTELS. Also we set up the entire management system, which allows some allocation of resources.

Mr. FELDMAN. You say these problems led to nagging doubts about the quality of the leadership in the Office of Inspection. These problems, as we see now, include unethical activities, none of which you have been able to cite since July 1, 1973. No. 2—

Mr. BARTELS. It couldn't have been.

Mr. Feldman. Let me just finish. Can I just finish? Then you can respond.

Mr. BARTELS. Sure.

Mr. FELDMAN. Number two, cases were not being completed in a timely manner so they could be successfully prosecuted before the Civil Service Commission.

Number three, field inspections were done infrequently and there was a lack of emphasis on preventive programs. Is this what turned you sour on Mr. Tartaglino and Mr. Brosan?

Mr. BARTELS. It was a gradual situation; yes.

Mr. FELDMAN. Thank you.

Mr. SLOAN. Mr. Bartels, we are going to continue on page 6 of your statement where you say suddenly in August of 1974 I was confronted with the request for additional positions.

In what form did Mr. Tartaglino present his request for additional positions?

Mr. BARTELS. He sent me a memorandum, Mr. Sloan. The exact date, I don't have.

Mr. SLOAN. Was that August 26?

Mr. BARTELS. Yes, I think that is right.

Mr. SLOAN. I believe that has been made a part of the record.

Mr. BARTELS. In which he said there were managerial defects which were severe enough that they ought to be brought to my attention. He said that he had asked for manpower in the past and it hadn't been granted. I am paraphrasing it.

Mr. SLOAN. After looking at that, would you like to take a look at the memo?

Mr. BARTELS. I don't believe I need it.

Mr. SLOAN. You state on page 6 no objective evidence was offered to support their views. Do you still feel that way?

Mr. BARTELS. Yes, I went back to the comptroller's office. I said, "look, I have got this memorandum that we haven't given any manpower." They came back to me and said, "yes, we have given them manpower." Some of the statements in that memorandum were false.

Mr. SLOAN. Sufficient manpower to accomplish the task?

Mr. BARTELS. I don't know if it was sufficient. I then spoke to him and said, "what do you want the manpower for?" He discussed it. I said fine. We will do the study. We will give you an increase in your ceiling.

Mr. SLOAN. Did you reply to this memorandum?

Mr. BARTELS. Excuse me? Yes, I did. I had the Office of Comptroller to reply to it, which I signed. It is dated September 9.

Mr. SLOAN. September 9, 1974?

Mr. BARTELS. Yes, sir.

Mr. SLOAN. Written by you to Mr. Tartaglino?

Mr. BARTELS. Written by—

Mr. SLOAN. Signed by you?

Mr. BARTELS. Signed by me. I didn't draft it.

Mr. SLOAN. This memorandum has been made an exhibit earlier in the hearings. In the memo you indicate an intention to assign 11 additional inspectors to the Office of Inspection.

Mr. BARTELS. Eleven or seven?

Mr. SLOAN. I believe it was 11. Do you have a copy of that?

Mr. BARTELS. Let me find it; I think I do.

Mr. SLOAN. The basic question I wanted to ask, Mr. Bartels, is if you were dissatisfied with the performance of the Office of Inspection, why didn't you advise Mr. Tartaglino at that time?

Mr. BARTELS. I did. I said, "we are going to have a study to see whether you need more manpower and how much you need and

what your justification for it is. In the meantime, however, I will give you this additional manpower."

Mr. SLOAN. I don't think that you say in that memorandum—I don't have it right here—

Mr. BARTELS. What I said was that he was wrong in the memorandum, that there hadn't been any positions granted in the past, that Mr. Coon had agreed to authorize 11 positions and that I would, I think I approved; I said at the beginning of the fiscal year 1974 the Office of Inspection made a request for 20 new positions, based upon the availability of resources and overall competing needs within DEA. I approved 11 new positions. I hardly consider that no action. That is what Mr. Coon drafted for me. We then had a discussion and I told him, fine, if you need more people, we will have a study to do it.

Mr. SLOAN. Mr. Bartels, the real question I want to ask is if you were dissatisfied with the basic performance of the Office of Inspection, why didn't you take that opportunity to discuss the matter in the memorandum to Mr. Tartaglino?

Mr. BARTELS. I did. I didn't do it in the memorandum. I told him we were going to have the study.

Mr. SLOAN. Orally?

Mr. BARTELS. No.

Mr. SLOAN. It is not mentioned in this memorandum.

Mr. BARTELS. No, although in the memorandum that Mr. Coon wrote we did say your facts are wrong.

Mr. SLOAN. When did you tell Mr. Tartaglino that?

Mr. BARTELS. Prior to this.

Mr. SLOAN. Prior to that date?

Mr. BARTELS. September 9. I was in Europe.

Mr. SLOAN. I would like to now discuss the Moore study that you refer to extensively in your testimony. Could you please identify for the record who Dr. Moore is and what was his position at DEA?

Mr. BARTELS. Yes, sir. Dr. Moore is, I believe, an associate professor—I may be wrong in the exact title—at the Harvard Graduate School of Government. He had done analytical work in criminal investigations for Professor Jim Wilson and with Professor Wilson had done work on the National Advisory Council of Drug Abuse and had been a consultant to Clarence Kelley when he was the director of police in Kansas City.

He had done a great deal of work on management analysis and the analysis of the heroin business. I brought him down after discussing with Jim Wilson, and he was my head of the Office of Planning.

Mr. SLOAN. What experience did he have to make an evaluation of Office of Inspection at DEA?

Mr. BARTELS. He had the experience I told you. He had been a consultant.

Mr. SLOAN. He had no practical experience?

Mr. BARTELS. Yes, he had practical experience. He had practical experience at that time of about a year of analytical ability, analytical efforts in DEA and prior to that time, he had analytical efforts at the National Advisory Council, and prior to that time, with the

Kansas City police force. He had never bought narcotics. He had never been an agent.

Mr. SLOAN. Was any of this experience concerned with inspection problems in particular?

Mr. BARTELS. Not specifically. There had never been an analysis of inspection, which was one of the problems.

Mr. RYTER. Mr. Bartels, one of the interesting things that Howard is pursuing, in trying to identify exactly when you became aware or became dissatisfied to the extent that you really want to invoke this study and bring it about.

One of the fascinating things I find is that in the review of your regional offices, if we could do that, skip around for a second, this is page 9 of your testimony, and I find the statement here that says:

Furthermore, the offices that have not been recently inspected include the large regional offices.

How were you apprised of that other than when the initial Moore study came in? Did you know about that earlier in 1974? Did you know the regional offices were the largest regional offices—hadn't been investigated in over a year?

Mr. BARTELS. I think I must have; yes.

Mr. RYTER. Can you think about how you might have come upon that information?

Mr. BARTELS. That would have been in the monthly reports: who they were investigating. What I had not done was go over those monthly reports and said they have investigated these small ones, but they haven't investigated these big ones.

Mr. RYTER. What would that mean to you in terms of just a management comment? Why would an Office of Investigations investigate small offices, rather than large ones?

Mr. BARTELS. That may be justified. I don't know. Maybe there were problems in those smaller offices. In other words, I am not sure that is necessarily any management defect on the Office of Inspections.

Mr. RYTER. But what you have been seeing was a flow of reports coming through your office in the last year, saying to you that there were substantial—indicating there were a substantial number of your own regional offices which did not receive investigation.

Mr. BARTELS. What it indicated to me in each monthly one was we are conducting investigations; we have found so many we have closed, so many we have opened, and we also did a field inspection on this office.

We did a field inspection in that office. What I did not do, frankly, is put them all together at that time and say they have done the McLean Lab; they have done the Dallas Lab; but they didn't do New York; they didn't do Chicago; they didn't do Los Angeles.

Mr. RYTER. But this was evidently a source of continual information flowing into you that indicated that the possibility of some absence of managerial oversight?

Mr. BARTELS. Yes.

Mr. SLOAN. Mr. Bartels, to continue the line of questioning we were on before, did you receive information between mid-August of 1974

and September 9, 1974, to indicate that Mr. Promuto was alleged to be associating with felons and other persons of criminal background?

Mr. BARTELS. No, sir.

Mr. SLOAN. When did you receive that information?

Mr. BARTELS. When Mr. Brosan and Mr. Richardson told me on September 17.

Mr. SLOAN. After you returned from Europe?

Mr. BARTELS. Yes.

Mr. SLOAN. Did you know that such information, regarding Mr. Promuto, was assembled as early as August 19, 1974, by the Washington Metropolitan Police?

Mr. BARTELS. Yes, apparently even earlier, but the letter was dated August 19.

Mr. SLOAN. Let me continue with that. Moreover, do you know that this information was known by two group supervisors in the Washington DEA office at that time? I am referring to August 19, 1974?

Mr. BARTELS. I don't know when they knew it; no, sir.

Mr. SLOAN. The previous testimony has established that fact.

Mr. BARTELS. I thought they learned it September 10. The answer is I don't know. The first time I found out about it was September 17. I don't know when I heard.

Mr. SLOAN. So the record is clear on that point. What has been in some doubt is when the information was transferred to headquarters. How do you explain that this information was known by DEA personnel on or about August 19, and you apparently were not made aware of it until September 17?

Mr. BARTELS. I can't.

Mr. SLOAN. Would you agree that is a serious matter. The inspection manual I think makes it clear——

Mr. BARTELS. That they are to report immediately.

Mr. SLOAN. Immediately into the chain of command?

Mr. BARTELS. Yes.

Mr. SLOAN. Do you know who is responsible for that delay?

Mr. BARTELS. No. As I said, I found out about it September 17. Mr. Brosan told me that it had been reported to him on, I believe, the 10th.

Mr. SLOAN. Did you attempt to determine why——

Mr. BARTELS. At that time, and to this day, I don't know when it was first found out by the people. He never came in and said, by the way, two people in the Washington district office sat on it for a month. That was never brought out.

Mr. SLOAN. There is a possibility they were sent to some officials in the Washington office.

Mr. BARTELS. He never said what the possibility—he told me I found out about it a week ago.

Mr. SLOAN. Finally, where were you on September 9, 1974?

Mr. BARTELS. September 9, I was in Paris, France; either in Paris or Marseille.

Mr. SLOAN. If you were in Europe that explains why the memorandum of September 9 was not written by you? It was written by someone in your office?

Mr. BARTELS. No. The Comptroller wrote that letter.

Mr. SLOAN. The memo is dated September 9, 1974. That is what has me confused.

Mr. BARTELS. The date is put on that when it is sent out by the office. As you see, it is a stamped date.

Mr. SLOAN. How was it sent out if you were in Europe?

Mr. BARTELS. I signed it in advance. It was sent out. I see it is drafted by Mr. Keniston on August 29, 1974, rewritten by Mr. Coon on September 3, 1974, and it was sent out, and it has one of those rubber stamps September 9.

Mr. SLOAN. I believe that you state in your testimony that you directed Dr. Moore to begin his study on September 9.

Mr. BARTELS. Seventh.

Mr. SLOAN. Were you also in Europe at that time?

Mr. BARTELS. No, I left September 7. That was Saturday. On Saturday morning, I was on the phone with Dr. Moore for about 3 hours on the various offices that he was analyzing and on a number of problems. At that time I asked him to do the study.

Mr. SLOAN. This was prior to your departure?

Mr. BARTELS. Yes, sir.

Mr. SLOAN. You quote extensively from Dr. Moore's study up to page 12, I believe. Citing this study, you refer to five general categories of personal conduct which should receive attention by the Office of Inspection. Points No. 4 and 5 refer to situations where DEA agents have behaved immorally or illegally in their private lives.

Based on these two points, is it correct to interpret Dr. Moore's study as saying that there need not be criminal charges for an integrity investigation to be necessary?

Mr. BARTELS. Certainly, you can be the subject of a conduct investigation for any one of a number of things that need not be criminal. A conduct investigation can be a violation of the manual.

It can be a violation of the manual as to your private or public life. What number four refers to is situations where DEA agents have violated existing regulations but have not committed criminal acts.

Five is just where they have behaved immorally or illegally in their private lives.

Mr. SLOAN. This would involve an official's suitability to fill a position?

Mr. BARTELS. Yes, or to continue a position or whether he shouldn't be orally admonished or lose a couple of days' pay, or whatever the appropriate penalty is for the act.

Mr. SLOAN. In your mind, what would constitute immoral or improper conduct in the sense that it would affect an official's suitability to continue in office?

Mr. BARTELS. It is not what it is in my mind. It is what is in the mind of the Civil Service Commission. In other words, I may think that playing the lottery in Maryland is an atrocious, immoral act. I happen to think smoking marijuana on the job at a law enforcement agency is an atrocious act. The Civil Service Commission didn't think that that was so bad that the woman could be fired.

Mr. SLOAN. That is the woman you referred to yesterday?

Mr. BARTELS. Yes, sir. That shocked me. I disagree with the Civil Service Commission. I understand she also disagreed.

Senator BROCK. So do some of the rest of us disagree. I would like to fire some civil service people.

Mr. SLOAN. In San Francisco, Las Vegas and/or Washington, D.C., did you see or know of any behavior by Mr. Promuto that would indicate immoral behavior which would go to his suitability to continue in office?

Mr. BARTELS. No, sir, nor anywhere else from my own personal knowledge you mean?

Mr. SLOAN. You would not?

Mr. BARTELS. Not to my own personal knowledge. That is what you meant by the question.

Mr. SLOAN. That is right, your own personal knowledge or any information you got from Mr. Richardson, for example?

Mr. BARTELS. No, I never heard from anybody. The first that I heard that was derogatory of Mr. Promuto was in that letter. Of course, if he were associating with those people, that is derogatory.

Mr. SLOAN. We are referring specifically to Diane DeVito. Did any information you had about his association or meetings with her indicate any lack of suitability on his part?

Mr. BARTELS. I knew at that time. I got introduced to that woman that her father was a friend of the family, had been a florist, that they had close relationships with the father and that was the extent of my knowledge of her.

Mr. SLOAN. Also on page 12 on a different subject, Mr. Bartels, when and how, in the summer of 1974, did you learn of the number of unresolved integrity allegations in the office of inspections? This would be the time when you began to lose confidence in the leadership of the inspections office. Is that correct?

Mr. BARTELS. Yes. We discussed, for instance, this Cook case which we turned after this Civil Service Commission opinion to the U.S. Attorney's Office.

That was still unresolved. We learned of a case involving former Regional Director out in Thailand, who had a number of unresolved allegations, going back for a period of time.

I can't tell you when I learned as to each one, but slowly over that period of time it came to light there was more than one.

Mr. SLOAN. Were there any other individuals that you can think of in high positions?

Mr. BARTELS. Not at the time, but I think there were others.

Mr. SLOAN. Was William Durkin one?

Mr. BARTELS. William Durkin, of course, I knew about in advance. I knew about William Durkin back in November.

Mr. SLOAN. He would be part of that group?

Mr. BARTELS. Yes, I was directing my attention once in addition to that.

Mr. SLOAN. But there were others; you just can't think of them right now?

Mr. BARTELS. Yes. I think there were some others. There were problems as to why it hadn't been resolved or what could be done.

Mr. SLOAN. This is a broader kind of question. What relationship exists between the issue of the statute of limitations and investigations having to do with the suitability of persons to hold positions?

Mr. BARTELS. That is a difficult question. It is a good question because the statute of limitations, of course, is prescribed by criminal law in criminal cases. When you bring a civil service case you have the doctrine of laches, which means undue negligence on your part.

That is not defined in black and white, but it is the feeling that the agency has to be prompt and can't be negligent or slow or dilatory in bringing an administrative charge against an employee.

The opinion in that Cook case was the type of situation that we had. So that in the Durkin situation, the Cook case was thrown out because Cook had been promoted after the allegation was first known and the allegation had not been litigated in civil service until some 3 years.

It seemed pretty clear that at least 3 years. So you had the situation, this didn't occur to me at that time, but it occurred to me later in the fall of 1974, where all of these old cases were barred, both by the statute of limitations, if you had a criminal matter, they were barred by laches in civil service and I, as a manager, was left in the intolerable position of not being able to do anything.

In other words, I had a man in a sensitive position. There were old charges. If he had movies of Mr. Durkin back in 1956, you couldn't have done anything. So that is why I wanted him confronted. The only thing that I could see to bring that current was if you brought the man in—let me finish. I think I can answer it—if you brought him in, from the manual several things can happen. The manual specified he had to answer work-related questions. He had to give you his bank records. He had to give you financial records.

Failure to do that was grounds for taking an adverse action currently. So we discussed this and it seemed to me if you brought those people in, you could bring it back within the statute of limitations, within the laches doctrine.

So that one of several things can happen. One, Durkin would say it is not true. I hereby deny it. It is all a lot of lie. You could ask him other questions about it which perhaps would lead to new leads.

You could ask him about his bank records. If conceivably he was stupid enough to put \$16,000 in his bank account in 1956, that might give you grounds to bring it up currently.

If he refused to give you his bank account, that might give you grounds, but I saw that as the way to bring it, as the only way to bring some of these things that were now going on 20 years old up to date.

Mr. SLOAN. When you say the doctrine of laches would be applied by the Civil Service Commission, are you talking about a formal rule or are you using that in common parlance?

Mr. BARTELS. I am using that in commonsense doctrine.

Mr. SLOAN. They would not be prevented by law from considering such a case simply because it occurred many years ago?

Mr. BARTELS. I think certainly by their own precedence they were prohibited, yes. If they threw one out in 1971 because it was 3 years

old, what would they do in 1975 going back to 1956 that excoriates you?

It is incredible charging somebody with a 1956 violation.

Mr. SLOAN. What directions did you give with regard to these open cases which you gradually became aware of?

Mr. BARTELS. We discussed it.

Mr. SLOAN. Who is "we?"

Mr. BARTELS. Mr. Brosan and I discussed it back in November of 1973. I don't recall what directions I gave as the two additional ones; four, however many, came up in the summer. I don't believe I gave any directions.

Mr. SLOAN. At your direction, did Thomas Durkin, the attorney from Newark, N.J., we discussed yesterday, review the inspection files containing the unresolved allegations?

Mr. BARTELS. No, sir.

Mr. SLOAN. He did not?

Mr. BARTELS. I have never reviewed them; I don't know.

Mr. SLOAN. But I didn't ask that. I am asking, did you direct him to do that or did anyone else direct him to do that to your knowledge?

Mr. BARTELS. No. The answer is no to either. I didn't believe he has ever gone through those inspection files.

Mr. SLOAN. You do not?

Mr. BARTELS. I do not believe he has ever gone through those inspection files.

Mr. SLOAN. I believe he has stated that he has gone through some of them.

Mr. BARTELS. He has seen some. I don't believe he ever went back—

Mr. SLOAN. Which ones did he see?

Mr. BARTELS. He saw the Promuto one; I am sure he saw parts of the Oliver allegations. I am sure he saw parts of certain of the others. But what I am saying is I did not send him back, nor do I believe he ever went back into the file room of inspection to go and see how many of these cases involved in 1974 allegations more than 6 months old, more than 1 year old, more than 20 years old, and that sort of thing.

Mr. SLOAN. So you are testifying the only files that you know he saw would be the Oliver file and the Promuto file?

Mr. BARTELS. The ones that we showed him when he came up.

Mr. SLOAN. Then those are the only two?

Mr. BARTELS. You would have to ask him. Those are the only two that I remember now. He may have seen parts of the Durkin—I know he has seen the substance of the Durkin situation. I don't know if he actually saw the old raw file report.

Mr. SLOAN. Mr. Bartels, the next questions are a bit repetitive of a few of the questions asked yesterday. I would like to make the record clear. Did you know that Thomas Durkin had provided free legal advice to and helped obtain mortgages for high ranking DEA officials including William Durkin, Jerry Jensen, Daniel Casey, James Lund, and Ben Thiesen?

Mr. BARTELS. No. I don't know as to all of those people.

Mr. SLOAN. House closings and mortgages would be more accurate.

Mr. BARTELS. I don't know anything about the mortgages, whether he helped.

Mr. SLOAN. Facilitated, the getting of mortgages, is the word I believe he used.

Mr. BARTELS. Facilitated, said go over. For example, when these people were transferred, such as Theisen, for example, when he came in I know that these people would be referred to Tom Durkin who would then say, go over to the Montclair Bank or whatever bank and apply for a mortgage.

Mr. SLOAN. I apologize for repeating a part of the question we just went over; but to your recollection, did Mr. Durkin review any of the files of the officials I mentioned in cases where unresolved allegations existed against them?

Mr. BARTELS. What is the inference? If he helped them, he would be disqualified?

Mr. SLOAN. There is no inference. I am trying to establish a fact.

Mr. BARTELS. The answer is I don't know.

Mr. SLOAN. The answer is you don't know?

Mr. BARTELS. I don't know.

Mr. SLOAN. Mr. Feldman?

Mr. FELDMAN. Please move to page 19 of your statement. You state you discussed your thinking on what appeared to be Inspection problems with Attorney General Silberman in early September 1974, a significant month.

Where have you noted that previously in your statement? But you had talked to him in September 1974?

Mr. BARTELS. Yes, sir.

Mr. FELDMAN. What was the date? Was that before the European trip?

Mr. BARTELS. I don't recall.

Mr. FELDMAN. What did you discuss with him specifically?

Mr. BARTELS. We met over 2 weeks at least and sometimes we met more frequently. We discussed the efforts that Dr. Moore and I were making to analyze and to make more efficient the various headquarters units within DEA.

As I said, during the course of the merger, problems out in the field were relatively simple, but initially, we had, I believe, 104 various operating entities within headquarters. Some of them were duplicative as the bureaucracy works. Some of them justified their own existence and like topsy, they were growing by levying more demands on the field, paperwork was growing, and in essence, this was a result of the merger initially, some overlap and confusion.

We discussed that with Mr. Silberman and Mr. Moore as to what that group was going to do to change what we were finding and some of the problems with it and to seek his support for it. There was also a certain amount of grumbling going on because everyone legitimately feels threatened when they get studied, and nobody ever survives an analysis by Dr. Moore too well.

Mr. FELDMAN. In your prepared statement, on page 6, you say that Dr. Moore's management group included Mr. Tartaglino. How

was it that you were having Mr. Tartaglino serve on the group that was assigned to evaluate requests for additional personnel requested by Mr. Tartaglino?

Mr. BARTELS. Dr. Moore asked him to because Mr. Tartaglino said we need more and he thought he would be the most practical man to have in there as to why he needed more.

Mr. FELDMAN. This was after you had lost confidence in Mr. Tartaglino?

Mr. BARTELS. I had lost some confidence in Brosan.

Mr. FELDMAN. Not in Mr. Tartaglino at this time?

Mr. BARTELS. Less so.

Mr. FELDMAN. Less so than Mr. Brosan?

Mr. BARTELS. Yes.

Mr. FELDMAN. You refer to Dr. Moore's mission of including "evaluations" which had been achieved "to date" in the Office of Inspection. What date are you referring to?

Mr. BARTELS. Where are you reading from? Page 19? I see; yes. Whether all of those additional positions requested by Mr. Tartaglino were need and what, if any, results had been achieved to date by that office.

Mr. FELDMAN. What "to date"? Do you mean September 1974?

Mr. BARTELS. Yes.

Mr. FELDMAN. By September 1974, you were unhappy with the performance of the Office of Inspection?

Mr. BARTELS. I was concerned. Mr. Tartaglino had come in and said we have got a management problem; we have got the possibility of a deteriorating situation; I want to help, talking about it. He wanted to have a study as to whether they needed help.

Mr. FELDMAN. Then you go and set forth, and rely heavily on the Moore study. But I think we have to understand the timing of this. Can you tell us when these findings were reached and when they were submitted to you? Were they before the Promuto case, after the Promuto case, during the Promuto case?

Mr. BARTELS. During—these findings—it started out as a simple study. Dr. Moore's office is a few feet from mine. Mr. Tartaglino's is down the hall. Mr. Brosan's is down the hall the other way. During September and October, I believe I was told about this several times a week as to what they found out. Pretty early in the game we found out that they couldn't tell what was going on in Inspection because it was something of a can of worms.

Mr. FELDMAN. Were the final conclusions submitted before or after Mr. Tartaglino's memo of November 14 to Assistant Attorney General Pommerening?

Mr. BARTELS. The report—I don't know. You will have to ask Dr. Moore. The report was typed up in draft form and circulated on several occasions. The substance of that report was known as early as October.

Mr. FELDMAN. On page 22 of your prepared testimony, you quote the following recommendations from the Moore study and I quote: "Open cases should not be considered in making personnel decisions."

Mr. BARTELS. Yes, sir.

Mr. FELDMAN. What is the definition of "open cases"?

Mr. BARTELS. As he is using it there, since he distinguishes between closed cases, cases that are unresolved and that are open. In other words, an allegation is in and it hasn't been resolved and the man is under some suspicion. What he was saying was the mere fact that he is under some suspicion, that he is under investigation, cannot be and should not be given to the Career Board for consideration in its judgment until sometime that it is resolved.

Mr. FELDMAN. Would you state then that under the guidelines of the Moore study, there should or should not be a promotion of an official to a sensitive position when that official has serious integrity allegations outstanding against him?

Mr. BARTELS. I would say according to that you cannot consider that when the mere fact of allegations are against him. Yes.

Mr. FELDMAN. That should not be considered?

Mr. BARTELS. That is exactly what he says. That is what he proposes.

Mr. FELDMAN. You are relying heavily on the Moore study.

Mr. BARTELS. I also believe that is the rule under Civil Service, that a mere charge is not equivalent to guilt.

Mr. FELDMAN. Should they be resolved before the individual is promoted?

Mr. BARTELS. If possible, they should be. If it turns out he is promoted and then they are adverse, of course, one takes action to undo and demote him.

Mr. FELDMAN. That is a curious situation.

Mr. BARTELS. I don't think it is curious. It is the presumption of innocence. I think we have lived with that for quite awhile, Mr. Feldman.

Mr. FELDMAN. What about the presumption of demotion until you have resolved the allegations?

Mr. BARTELS. Sometimes you can't resolve the allegations. Here you have the situation where this whole table is under consideration for promotion from a GS-13, or GS-9 to a GS-10. If you tell that entire Career Board that Bartels shouldn't be considered for that GS-10 because there is allegations against him and then they give it to Mr. Feldman and 2 weeks later, Bartels is exonerated of all allegations, Bartels has been irrevocably harmed and he has been harmed because we have done away with the presumption of innocence.

It is also counter to the Civil Service requirements. If on the other hand, one considers Bartels, he is promoted to a GS-10, the charges turn out to be true, then naturally, we unpromote Mr. Bartels and charge him with the crime.

Mr. FELDMAN. Let's go to page 23. You say although Dr. Moore and his management group anticipated that their study would precipitate a meaningful dialog between them and Messrs. Tartaglino and Brosan, none was forthcoming.

Mr. BARTELS. Don't you see what was happening? With this great number of unresolved cases, you had an atmosphere of tyranny within that organization, because the Career Board and senior people constantly heard, Cook is under allegations, Bartels is under, everyone was under allegations for long periods of time. What happened was

that was raising the danger of extortion, that was causing one faction to turn against another faction and it was destroying both the personnel who were under those allegations without any resolutions.

Mr. FELDMAN. Doesn't that dictate the conclusion of resolving the allegations?

Mr. BARTELS. Yes indeed.

Mr. FELDMAN. Ten years or 15 years or 20 years old.

Mr. BARTELS. That is right. How does one do it?

Mr. FELDMAN. You just keep saying you don't do it?

Mr. BARTELS. No. I keep saying they didn't do it on December 20 when they were reassigned, Mr. Smith came in and you will see that these cases have been largely resolved. I was notified by the Department of Justice yesterday, I believe, resolved the last of these allegations into 1961 as to false voucher violations.

Mr. FELDMAN. We will get into that in Mr. Smith's work and various inspection cases as well. We will let the record speak for itself as far as how Mr. Brosan and Mr. Tartaglino attempted to resolve these questions.

Going to 23, you say Mr. Tartaglino chose alternatively to voice his objections to the Department of Justice, rather than to specifically respond to the fact finding analysis of the Moore study. Now you had become disenchanted with Mr. Tartaglino to the same extent that you were disenchanted with Mr. Brosan. Is that correct? You said less so before.

Mr. BARTELS. Wait a second. When he went to the Department of Justice—that was in November. It was first October 23. Then it was November 13. Then it was November 14. I will say at no time did he tell me that he was going to go, although he was making charges against me and although the code of ethics to which he made reference specifically says that you are to take up and both of you or your superior against whom you have a grievance as well as yourself are to go over. But that was several months later.

Mr. FELDMAN. Let's go to specific questions on 23. Why do you refer to the need for a meaningful dialog between Tartaglino and Brosan and the Moore management group when Tartaglino was a member of the Moore group?

Mr. BARTELS. This is what we were discussing. Dr. Moore, Mr. Huerney who was on that group, Mr. Tartaglino and others did the study that found the facts. Mr. Huerney then, with Moore, wrote these proposals to change the manual or to change the procedures to adapt itself to the manual. Some of the procedures that they were following were counter to the manual.

Moore said in that report, look, these are tentative conclusions. I am not wedded to these things for all eternity. If you have some policy objections to them, let's discuss them. He said that his last phrase was we look forward to a discussion of these proposals.

Mr. FELDMAN. Was the Moore study given to Mr. Tartaglino and Mr. Brosan?

Mr. BARTELS. The facts were.

Mr. FELDMAN. Was the study given to them?

Mr. BARTELS. You will have to ask Moore. I think it was.

Mr. FELDMAN. You are relying heavily on this and saying Mr. Tartaglino and Mr. Brosan did not follow certain procedures set

out in the Moore study. Did you direct Dr. Moore to give Mr. Tartaglino and Mr. Brosan this study and keep them apprised of what was happening?

Mr. BARTELS. No; but I know they were apprised of it because I was talking to Mr. Tartaglino about it and Dr. Moore told me he was seeing Tartaglino on two or three occasions every week.

Mr. FELDMAN. Mr. Brosan said the only time he was interviewed by Dr. Moore was in a Chinese restaurant.

Mr. BARTELS. Yes; but he was working daily with Mr. Huerney, which was on the record.

Mr. FELDMAN. You don't know if they got copies of this report or when?

Mr. BARTELS. I don't know when they got copies of the final report; no, sir. I do know that they knew all about what the facts, to wit: There was no management ability; there was no way you could tell how many hours were being spent on a case; there was no priority system; that the manual was being violated and that these 11 recommendations were going to be made. I did know that.

Senator BROCK. I thought you said earlier that Mr. Tartaglino was on the Moore study himself?

Mr. BARTELS. Yes.

Senator BROCK. So there shouldn't be any problem in getting a copy of the report?

Mr. BARTELS. That is right, and the fact of being part of it.

Mr. FELDMAN. I think that would imply that he was an active participant in the study.

Mr. BARTELS. Yes, sir. That is what Dr. Moore told me.

Mr. FELDMAN. Do you know that to be a fact?

Mr. BARTELS. I know he told me that. I know he was invited in it. I know I spoke to Mr. Huerney and he told me the same thing, that he and Mr. Tartaglino actually went through that sampling of files and discussed the issues.

Mr. FELDMAN. Are there any recommendations from Mr. Tartaglino and Mr. Brosan in the Moore study?

Mr. BARTELS. From them?

Mr. FELDMAN. Yes.

Mr. BARTELS. I assume so. I don't know.

Mr. FELDMAN. Did they get a chance to file minority views?

Mr. BARTELS. I think they chose to file them elsewhere.

Mr. FELDMAN. At the Department of Justice?

Mr. BARTELS. Yes, sir. I think they chose instead to scream fraud. When I was in law school, they said if the facts are against you, argue the law. If the law is against you, argue the facts. If both are, scream fraud.

Mr. FELDMAN. I have read the memorandum to the Department of Justice very carefully. They talk about specific integrity cases that should be resolved. They talk about the Promuto case, and so forth. Why do you say they shouldn't have done that and instead concentrate on the Moore case? Those are two separate and distinct things.

Mr. BARTELS. No. The Moore study covers the very policy issue—

Mr. FELDMAN. It is a general study.

Mr. BARTELS. Not at all. It is a very specific case.

Mr. FELDMAN. Does it mention the Durkin case? Does it mention the Promuto case? Does it mention the Jensen case? It doesn't.

Mr. BARTELS. It doesn't mention a single case by name, but it mentioned the procedures and the appearance of a manual or the lack thereof which was embodied in all of these cases that Mr. Tartaglino mentioned in his memo to the Justice Department which he initiated and which were handled counter to the manual, counter to the principles that were enumerated and specified in this Moore situation, this Moore report.

Mr. FELDMAN. Is it your assertion that Mr. Tartaglino reported to Mr. Pommerening and Mr. Silberman because of the commencement of the Moore Study?

Mr. BARTELS. I can't read his mind why he did what he did.

Mr. FELDMAN. Is it your assertion?

Mr. BARTELS. I just answered that. I don't know why he went to the Department. I am not going to speculate on his motives. I don't know whether he was disappointed at Mr. Jensen being nominated as deputy. I am not sure whether he was disappointed at the results of this Moore study.

I just know that the facts and the allegations he made to Mr. Silberman were in large part demonstrably false, or that those allegations were investigated and found to be false. I know he was in charge for those 7 years that those cases lay open, either as Chief Inspector of as Deputy Director of BNDD. To the extent that that study claimed that the Office of Inspection lacked professionalism, it reflected adversely on his reputation.

Mr. FELDMAN. You talk about joint leadership of Mr. Tartaglino and Mr. Brosan. Are you saying they were cochiefs of the Office of Inspection?

Mr. BARTELS. One was the chief of the office; the other was the deputy.

Mr. FELDMAN. But one was acting deputy administrator and one was acting chief?

Mr. BARTELS. Yes.

Mr. FELDMAN. You are saying they worked together?

Mr. BARTELS. Yes.

Mr. FELDMAN. Was there a conspiracy between Mr. Tartaglino and Mr. Brosan with regard to the Promuto case? I know it is a legal term.

Mr. BARTELS. It is more than a legal term. I don't know what it was. The facts speak for themselves.

Mr. FELDMAN. Again, if you had come to the conclusion that Mr. Tartaglino and Mr. Brosan were behaving unprofessionally and irresponsibly before November 14, should you not have admonished them?

Mr. BARTELS. I was willing to talk to them about these situations.

Mr. FELDMAN. Why did Mr. Lund and Mr. Richardson get into the act on the Promuto case if you were willing to talk to them about the Promuto case?

Mr. BARTELS. Because it was an entirely different situation. Mr. Brosan was telling me what I had to do, fire the man, don't confront him, don't conduct the investigation, fire him. Inspectors are fact-

finders. What I want on personnel recommendations is the advice and judgment of somebody, a senior man such as Mr. Lund and an attorney in whom I had confidence such as Mr. Richardson. Those two had been on a special team, assisting inspection during the summer, and I had confidence in their views and their judgment.

Mr. FELDMAN. Was the commencement of the Moore study in any way a reaction to the Promuto investigation?

Mr. BARTELS. No, sir; it was prior to it. The commencement of the Moore study, as the Moore study states, was in response to his memorandum in August saying I need a lot more men; I haven't any men—and there are managerial deficiencies here which I think require your personal attention.

I got that letter. I gave it, instead of counter to his allegations that I ignored warnings and was given, I went down to the comptroller and said what is the manpower situation and tell me what is going on. They came back and said we have increased their manpower. I responded with a letter of September 9 and started the study.

Mr. FELDMAN. On page 24 of your statement, you state that Mr. Brosan and Mr. Tartaglino's responses to the Moore study were a continuing source of puzzlement and concern to you. Those are your own words. However, on page 23, you make the statement that Mr. Tartaglino chose alternatively to voice his objections to the Department of Justice rather than specifically respond to the Moore study.

How can Mr. Tartaglino respond and not respond at the same time?

Mr. BARTELS. Excuse me?

Mr. FELDMAN. You say first of all that their responses to the Moore study were a continuing source of puzzlement and concern.

Mr. BARTELS. Their response of going to the Department and screaming fraud without telling me was their response. I got off a plane at Kennedy Airport and was given my rights, essentially, by a Deputy Assistant Attorney General, and says Tartaglino says you are corrupt. That is what puzzled me. I don't know why he didn't come back and say look, I agree with item 4; I disagree with 10, I think 11 is something we ought to look at a little bit more and I want 15 more men and we will start this new system.

Mr. FELDMAN. Mr. Bartels, when was that date that you got off the plane and given your rights?

Mr. BARTELS. Bear with me a second. I will find it. November 21.

Mr. FELDMAN. November what?

Mr. BARTELS. November 21, 1974.

Mr. FELDMAN. Does that mean when you were given your rights that you were under active criminal investigation?

Mr. BARTELS. No. He told me that these charges had been raised, that he couldn't tell me what the charges were, that Mr. Silberman was going to investigate it, that Mr. Tartaglino had raised charges of fraud and, of course, I was a lawyer and knew what my rights were. They thought I ought to go along with it and just remain calm.

Mr. FELDMAN. Wasn't he doing exactly what you said should be done in the Promuto case, immediately confronting you with the allegations?

Mr. BARTELS. He didn't confront me. Indeed, he told Mr. Spector he didn't want Mr. Spector to tell me.

Mr. FELDMAN. Mr. Spector did?

Mr. BARTELS. He never told me what the allegations were.

Mr. FELDMAN. Do you know what happened? Was it criminally referred to the Justice Department Criminal Division?

Mr. BARTELS. It was at sometime referred over to Mr. Petersen who was then in his last several months prior to retirement for several weeks in charge of the Criminal Division. He said I don't want to handle this because I know Bartels so many years. He called me up and told me he had sent it back to Mr. Silberman and sometime I was informed that two FBI investigators would take a look at the changes.

Mr. FELDMAN. In other words, it went over to the Criminal Division. Mr. Hutchinson testified to this. I am sure you read it.

Mr. BARTELS. I haven't read the testimony.

Mr. FELDMAN. Prior to the FBI being involved in December 2, it went to the Criminal Division to Mr. Henry Petersen, and to his deputy, John Keeney. I believe Mr. Hutchinson testified to that. It went over, according to Mr. Hutchinson, for an examination by the Criminal Division. Did you ever discuss this case with Mr. Petersen?

Mr. BARTELS. Yes; there came a time in the middle or the end of December, I discussed it with him initially when—discussed it with him once in the very beginning when it happened and he said to me, "Look, I am not going to discuss the facts of the case with you, but I am not going to keep it." I then discussed it with him after the investigation, sometime around, toward the end of December, just prior to the holidays. He had turned it over to Mr. Silberman because of his friendship with me.

Mr. FELDMAN. Did he call you at home? Did you meet in his office?

Mr. BARTELS. No; I met with him in his office in the beginning and told him that I was available for interview. He said, "I am not going to have you interviewed because I am not going to investigate it." That was the extent of that conversation. Sometime later, I think it was at his retirement party, he was presented an award by Attorney General Saxbe, he told me that he had sent it back because of the friendship.

Mr. FELDMAN. You are a law enforcement officer and you have served under several attorneys general in various capacities. Is this an unusual situation where the Assistant Attorney General of the Criminal Division tells someone who is the subject of allegations, made a referral to him, that no, I am not going to handle this case; I am going to send it back up to the Attorney General? Is there a double standard here?

Mr. BARTELS. Why don't you ask Mr. Petersen?

Mr. FELDMAN. Do you know? Did he tell you that he was going to have FBI agents examine it?

Mr. BARTELS. Mr. Petersen?

Mr. FELDMAN. Yes.

Mr. BARTELS. No; he just told me initially, I am not going to get involved in this because I know you. He disqualified himself.

Mr. FELDMAN. How many other people are there in the Criminal Division? I don't understand. He is your friend. I can understand why someone has to be disqualified. Why can't the Criminal Division run it down with their other—

Mr. BARTELS. I don't know. You have to ask Mr. Silberman why he decided to have these charges investigated the way he did. I don't know why he did it. It was a request for an investigation and Mr. Silberman chose to investigate it.

Mr. FELDMAN. Do you know of any other situations in which allegations were raised against any official in the Department of Justice that Mr. Petersen declined to move on?

Mr. BARTELS. No; I don't know Mr. Petersen, what he declined on. I suspect there must be many.

Mr. FELDMAN. If you were in Petersen's case, would you do the same thing?

Mr. BARTELS. Would I sit in judgment of Mr. Petersen?

Mr. FELDMAN. Yes.

Mr. BARTELS. No; I wouldn't. I have too much respect for him plus the fact of the image.

Mr. FELDMAN. I mean if you were Assistant Attorney General for the Criminal Division and a case came to you, a friend, would you refer it out of the Criminal Division or reassign it?

Mr. BARTELS. I had worked with Mr. Petersen for many years. This is going to sound self serving, but he has a preconceived idea of my integrity based on those many years of working together. I think he felt that knowing me that well, having an opinion of my integrity, that any judgment he made would be subject to attack. I suspect that was the reason he referred it back.

Mr. FELDMAN. Mr. Bartels, I was in the Department of Justice for 4 years. I was a tax lawyer. If there came a case in which my mother was on the other side of the case, I would disqualify myself. That doesn't mean that the Tax Division would drop the case. It means that someone else would pursue it.

Mr. BARTELS. Mr. Feldman, I was the third, one of the third highest ranking employees in the Department of Justice. There was the Attorney General, the Deputy Attorney General, then there was the Solicitor General, the head of the FBI and myself were level III employees. You don't give that to GS-12's to investigate a level III employee.

Mr. FELDMAN. Who gets it then? There is no special prosecutor? What you are saying is if there are allegations against any high officials—

Mr. BARTELS. The Deputy Attorney General made the decision.

Mr. FELDMAN. He does an administrative examination on it?

Mr. BARTELS. I don't know how else he conducts an investigation. Would you have him empanel a grand jury? There is no allegation—I can't believe the questions you are asking me. I don't know why he did it the way he did.

Mr. FELDMAN. It is a perfectly valid question as to why the head of a criminal division declines to examine a case that has been referred to him.

Mr. BARTELS. Here is a man I have worked with for a decade. We have conducted investigations together. He has recommended me. There are letters in my file where he says I am a man of the highest integrity. He is going to do a judgment and make a judgment decision on my integrity?

Mr. FELDMAN. Disqualifies himself.

Mr. BARTELS. Yes.

Mr. FELDMAN. He has a lot of other people over there.

Mr. BARTEL. You are again failing to distinguish between two functions, one the factfinding function and the judgment function. What he did was go back to Mr. Silberman, I gather, and tell him I am going to disqualify myself. Mr. Silberman then decided, and you will have to ask him these questions why he did and what the basis was, since this man is a level III employee, I will make the judgment decision and I will have somebody collect the facts upon which I can base that judgment.

Senator BROCK. It is fairly obvious that we are not going to complete the line-by-line examination of your testimony. If you will permit me, I would like to ask you some more general questions for the nonlawyers, as myself. If you want to elaborate, feel free to do so.

Mr. BARTELS. Thank you, sir.

Senator BROCK. Let's go to the Promuto case first. It has been insinuated in the testimony by Mr. Brosan, the Acting Chief Inspector, that you endured such a close relationship with Mr. Promuto that Mr. Brosan was prevented from pursuing the case in as active a fashion as he would have liked.

I wonder if you could describe the history of your association with Mr. Promuto and describe for us, if you can, any actions or indications of attitudes which you may have exhibited to Mr. Brosan which might have inhibited his exercising the kind of judgment in the pursuit of the investigatory material?

Mr. BARTEL. Yes, sir. I knew Mr. Promuto, met Mr. Promuto first when he was employed in the Department of Justice in the Office of Drug Abuse Law Enforcement as a lawyer. He was assigned to New York while I was here in Washington. During that 18 months, I saw him perhaps a half dozen times. It was all professional.

Senator BROCK. You were in what capacity?

Mr. BARTELS. I was the Deputy Director here in Washington in the Office of Drug Abuse Law Enforcement and Assistant Deputy to Attorney General.

Senator BROCK. Under which Attorney General was this?

Mr. BARTELS. That was under, I think under several, sir. It was under Mr. Kliendienst and then Mr. Richardson. I didn't know him at that time other than by his reputation. This would be during the period from perhaps February of 1972, up until July of 1973. As I say, I had seen him on numerous occasions but in a professional capacity.

In 1973, he, as well as others, came down at the time of the merger and discussed their future. In that merger he was inherited into DEA and became a Deputy in the Public Affairs Office here.

He had job offers to go into that field of work from the National Football League and decided to stay on.

During the summer and fall of 1973, he and I, as well as others were down here without our families and we had dinner together in the evening on several occasions a week. That went on for about a 4-month period. I had a continuing business associationship with him that went on through the summer of 1974. That was the extent of my relationship with him.

Senator BROCK. At what point between the first statement that there were charges made against Mr. Promuto and the recommendation that he be fired, was there any occasion in which you acted in any fashion to limit the scope of the new investigation?

Mr. BARTELS. There was none. I never limited the investigation; but I was quite critical of Mr. Brosan's judgment and told him that to his face.

Senator BROCK. In what way?

Mr. BARTELS. I told him at the time that he said—this was September 17 and I believe the 18th, and I believe during the next week of the 20th, on several occasions that I disagreed with his judgment that this man must be fired immediately; that there was no possible explanation and that I wanted him to go on and find out what the facts were and if there was anything that the man had done that was wrong, that could sustain the charge, we would fire him.

Subsequently, I was also critical of his issuing administrative subpoenas, on September 10, or 11, or 13, into Mr. Promuto's bank account which were entitled "A Matter of Narcotics Conspiracy." I told him I thought that was improper and bad judgment on the other hand. I told him that I was going to rely on Lund and Richardson for advice and judgment, that he could go ahead and conduct that investigation and at no time did I ever limit him.

Senator BROCK. So the investigation did proceed under your direction or at your direction by Mr. Brosan?

Mr. BARTELS. Yes, sir.

Senator BROCK. When you were talking to Attorney General Silberman, were you discussing with him the procedures here or were you asking him for help or advice?

Mr. BARTELS. No, sir. I don't believe I discussed with Attorney General Silberman the Promuto case until some time in November. It was brought to my attention on September 17. I was in town most of the time between September 17 and about October 3 or perhaps a little later.

During the 2 weeks of October, the 2½ weeks, I was essentially out of town and out of the country, both in Mexico and Canada and the Southwest. But when I came back in November, that investigation was still continuing and I discussed it with Mr. Silberman because it had become by that time something of a cause celebre.

Senator BROCK. The entire investigation of the Promuto matter took what, about a year?

Mr. BARTELS. Almost, sir.

Senator BROCK. Who was involved in the sum total, Justice?

Mr. BARTELS. Yes, sir.

Senator BROCK. As well as DEA officials?

Mr. BARTELS. There were, during the first months, some 18 or 19 outside agencies contacted. Telephone tolls were subpoenaed; all five regional offices of inspection were contacted. According to Inspection records, some 15 different inspectors worked on the case, a regional inspection of the Dallas office had been canceled in order that this case could go forward. Subpenas were served on his bank for his mortgage records.

I asked the U.S. attorney in the District of Columbia whether a grand jury investigation should be conducted. He told me no. He didn't think so, but we had to go to them. All Mr. Promuto's personal, financial records were examined, his mortgages, all his vouchers were examined, his credit rating was checked with Dunn and Bradstreet, all his telephone tolls from all his phones were checked and every call he made was examined and the caller's name submitted to the FBI to see if there was any criminal record.

As I say, all his travel vouchers were checked and verified with the hotels at which he stayed. His FBI background was reexamined. The tax records of his summer home were checked and the mailman who delivered mail to his summer home was interviewed. The neighbors were interviewed. His deceased father's background was investigated. That was the Xerox paper that was left by Inspection in the Xerox machine. His deceased father's business and finances were investigated.

So I was frankly stunned when I was informed that I had covered that up. I don't know who could go through an investigation like that. When in the end of October I was informed that the investigation was completed—

Senator BROCK. Of what year?

Mr. BARTELS. 1974. Mr. Richardson told me in the end of October that it is essentially finished. That was when I asked him to get the Civil Service hypothetical opinion to see what could be done, whether to bring charges. At that time a new allegation came in from an FBI informant who was in jail, who said that Mr. Promuto had engaged in corruption while he was clerking for Judge Burka and that for a case of liquor, he had arranged for a suspended sentence or a probation for a gambling or lottery violator.

We started right back into that, worked with the FBI. Kotz was finally put under the polygraph. He failed the polygraph, the lie detector test as to that. Judge Burka was interviewed as to whether or not Promuto had used any undue influence on making his decision and while I hadn't seen the report, I had been told that Judge Burka said, "no," he always gave probation to lottery defendants.

So that this continued right through November or some of December 1974. After that period of time when as a result of Mr. Silberman's analysis of these charges made by Messrs. Tartaglino and Brosan of me, that I had been indifferent to corruption and interfered with Promuto and was guilty of various fraudulent acts, after that and after we reassigned Messrs. Brosan and Tartaglino, we continued the investigation.

As of that time, it is my understanding that the people in O'Brien's, these felons, suspects with whom Promuto had allegedly been associated still hadn't been interviewed. They were interviewed for the first time, I believe—some 20 followup interviews were con-

ducted during January and February 1973, which resulted, as I state, in an entirely different picture, that inspection had been wrong when they said LeCompte and Promuto had been seen, they had been wrong when they identified Promuto with some woman named Cruz at the airport, they had been wrong when they found that Kotz' allegations of corruption, so that the picture that was presented against Promuto changed substantially.

Senator BROCK. What was the final Justice Department recommendation, was any charge brought?

Mr. BARTELS. No, sir. To my knowledge, Mr. Promuto still has not been charged.

Mr. SLOAN. Mr. Bartels, I wanted to clear up one point. You said Mr. Kotz failed the polygraph?

Mr. BARTELS. Yes, sir.

Mr. SLOAN. Did he fail the polygraph on all questions?

Mr. BARTELS. He failed the polygraph exam on the question as to whether he lied about Mr. Promuto going out to assist that gambler. The other three answers were indeterminate. So he failed on one and he did not pass on the other three. We then went out and interviewed the lady whom Mr. Kotz said ran the liquor store where Mr. Promuto allegedly got a case of liquor for arranging this corrupt act and she said that wasn't true.

The inspectors then went out and interviewed Judge Burka of the Superior Court here in the District and he said that it wasn't true and that he gave probation, it was his regular policy to give probation in lottery gambling cases.

Mr. SLOAN. Thank you.

Senator BROCK. The end result, going back to what we were talking about much earlier in the day, would you say that the case was closed or open?

Mr. BARTELS. That case is closed. He has been sent a letter stating that it is closed.

Senator BROCK. From DEA?

Mr. BARTELS. It was sent from DEA and based on the opinion of the Chief Counsel. I signed it, based on the recommendation of the personnel officer, Chief Inspector and Chief Counsel. Yes, sir. I had already orally admonished him to stay out of O'Brien's. I suppose in a sense Mr. Promuto, through this publicity, has paid a price far greater than Civil Service penalty.

Senator BROCK. I was fascinated by the suggestion in this conversation which was solicited from your advisors, Mr. Thomas Durkin, Mr. Richardson and Brosan on how to deal with this particular investigation and the subject of these activities. I wonder if you would detail for us that particular discussion and what individual suggested, what kind of ramrodding you had?

Mr. BARTELS. That went on as to several areas of this committee's investigation. One was the so-called Vesco situation which involved allegations that were true, that former agents had been fired or retired, had taken wiretapping, sweeping equipment and swept out the offices of Mr. Vesco.

We discussed that and it was Mr. Durkin's advice and substance that we should go out and make sure that this could never happen again. There was some disagreement on how to handle that. There

was some disagreement by Mr. Brosan and Mr. Durkin on how to handle this committee.

Senator BROCK. In what specific way did Mr. Brosan comment on this committee?

Mr. BARTELS. There were several ways. It was Mr. Durkin's advice that we should go forward on this thing that one particular investigation was being handled by a member of this committee that Mr. Brosan knew who applied for a job at Customs and who Mr. Brosan had rejected. There was disagreement on what strategy should be taken as to that particular member of this committee.

Senator BROCK. Did Mr. Brosan urge that you work with the committee?

Mr. BARTELS. He urged to attack that individual, although we didn't do that. There was then a series of meetings between Mr. Brosan, Mr. Lund, Mr. Richardson, Mr. Durkin, and others as to this Vesco 2 allegation which took place over the summer and to which I was not always privy. I was informed by Mr. Durkin that he had serious problems with Mr. Brosan's judgment and disagreed with him.

Senator BROCK. Mr. Brosan indicating some concern with the investigation by this committee, that there was some challenge to his competency or professional judgment?

Mr. BARTELS. No, less that, and at one time there was the recommendation to attack an investigator on this committee.

Senator BROCK. For what purpose?

Mr. BARTELS. Because that investigator applied for a job at Customs and had been investigated by Mr. Brosan.

Senator BROCK. Why would you attack him, to discredit him?

Mr. BARTELS. Yes.

Senator BROCK. For what purpose would you discredit him?

Mr. BARTELS. I think there was the feeling that unfortunately permeated in one of my management mistakes was allowing it to permeate, perhaps, that was raised earlier in this hearing, that only one side of the story was being brought out by this committee. That was an attack on one of the men, the motivation for bringing that out.

Senator BROCK. Mr. Brosan felt that he was personally—

Mr. BARTELS. Mr. Brosan knew personally and disapproved of the background of one of the investigators of this committee, yes.

Senator BROCK. Did he indicate that he felt that that investigator was conducting a vendetta against him or against the agency because he was there?

Mr. BARTELS. He thought the man could be discredited and it was discussed as to whether action should be taken to discredit that investigator.

Mr. FELDMAN. Mr. Chairman, could we have that investigator's name?

Mr. BARTELS. Yes, sir, William Gallinaro.

Mr. FELDMAN. Could I interject one thing? I am sorry, Mr. Chairman. You are saying then that the investigation was potentially a vendetta against DEA because Mr. Gallinaro was rejected by Customs?

Mr. BARTELS. No, sir. One of the areas that was discussed was how to handle it. One of the investigators was a man named Gallinaro. The question was raised whether or not to attack Mr. Gallinaro.

Mr. FELDMAN. After Mr. Brosan and Mr. Tartaglino left and this subcommittee became seriously involved in a review of integrity, management and corruption problems of DEA in December and January of 1974 up to the present time, do you have any knowledge of accumulation of material, reports or information by DEA, Customs or other Government officials on any subcommittee members, Senators, or any subcommittee staff?

Mr. BARTELS. No, sir.

Mr. FELDMAN. None whatsoever?

Mr. BARTELS. None whatsoever.

Mr. FELDMAN. Thank you.

Senator BROCK. The committee has taken a great deal of time to investigate Thomas Durkin and his relationship with you, especially attempting to determine his access to confidential information.

Within DEA, who would normally be involved in determining the clearance of an individual such as Mr. Durkin?

Mr. BARTELS. Clearances are routinely handled by the Office of Inspection. That is the manual requirement.

Senator BROCK. Mr. Brosan or Mr. Tartaglino?

Mr. BARTELS. Yes, sir.

Senator BROCK. Did they in fact clear Mr. Durkin?

Mr. BARTELS. No, sir.

Senator BROCK. Why?

Mr. BARTELS. I think because they assumed, as I did, that he had been cleared earlier when he came on as an advisor to Mr. Ingersoll and BNDD.

Senator BROCK. He was not then cleared either?

Mr. BARTELS. There was no full field investigation of him. A name check was done, a background, an informal background check was done, but no full field was done.

Senator BROCK. Is there a personnel file or anything?

Mr. BARTELS. Yes, sir.

Senator BROCK. Let me go to just a couple of broader questions. We will have to stop very shortly.

There has been a charge of endemic corruption and you have obviously disagreed with that charge. Maybe you would want to, just in your own words, elaborate on the objections you have to the charge of the substance.

Mr. BARTELS. Yes, sir. I think it is very important because it involves the most important factor that an agency has, that is the public confidence in it. If there is endemic corruption in an agency, it is not being handled, the public should not give it that confidence.

I have heard, it was stated in the initial statement, I believe, that this committee had evidence that much like the Knapp Commission there was corruption in DEA. I have not seen that evidence. I don't believe that it exists. I believe that the actions that we have taken in DEA to revise Inspections to increase its effectiveness and to make it more able to handle allegations within the limitations of

the civil service system have made it more effective in preventing corruption in the future.

So far the evidence that I heard of corruption involves allegations back in the sixties. I think it is dreadfully unfair to a group of agents who are asked to risk their lives, who are asked to do a type of work that is both personally dangerous, totally demanding and really results in very little reward, to suffer under that allegation.

Senator Brock. Not only in the defense of you but the agency itself, as Mr. Feldman just pointed out, I think it is important to note that the committee has not charged endemic corruption, however, inferences have been drawn which would lead to that conclusion. It is not a conclusion of the committee or, in my opinion, of the staff.

Mr. BARTELS. I am glad to hear it.

Senator Brock. I think that is a fair statement to make. I think the record ought to be abundantly clear on that particular point.

Senator Jackson asked you yesterday whether the problems of drug abuse had become worse since you assumed the role of Administrator in July of 1973, the implication being that you brought it.

I know you responded in some fashion to a similar question to Senator Percy. But I think maybe I should offer you an opportunity to elaborate, if you would like to, on that particular reflection.

Mr. BARTELS. There are a number of social causes. I am not a sociologist and I wouldn't presume to give the social causes for what causes drug use.

One of them, obviously, is the breakdown of society and the various traditional restraints on society. I think the key to maintaining a lid on the extent of drug use is to continue to make it a national priority. It takes the efforts of treatment people, as the Senator said. It takes the efforts of our diplomatic corps and it takes the efforts of our enforcement people, both Federal, State, and local.

I think that has to be continued. Unhappily, there is a limited leverage that 2,000 people can do. There is a limited leverage that even a great number of enforcement people can do.

I think one of the happy factors is that other countries besides the United States are recognizing now that this is a problem.

I have found all sorts of bureaucratic opposition to attacking Turkey for going back into the growth of opium not the scale and extent that they did. I think they owe an obligation, that country owes an obligation to the international world under the treaty of 1961 to show that it can control the growth.

In 1971, they admitted that their history of 40 years demonstrated that they cannot control it. Here, 4 years later, they are going back on a scale twice as large as they were in 1971, 103,000 farms have been licensed to grow opium there.

There has been an amnesty which has freed all the narcotic traffickers. That occurred in 1974. There still is a caretaker government which does not really exercise any control over the various law enforcement agencies which are squabbling among themselves.

I am terribly concerned that that harvest is going to hit these shores.

Senator BROCK. I think it is only fair to you to let you know that I am almost a radical on this subject. There is very little, if anything, that is of greater concern to me. To say that I was disappointed with Turkey or disgusted or furious is a classic understatement. I am equally, if not more disgusted and disappointed and furious, with our own Government for lacking the political will to deal with a fundamental problem of this magnitude that affects so many of our children in this country; not just children, but adults as well.

That is something we will have to deal with in other hearings.

I wanted to take one last tack with you, and that is when you were talking with Senator Percy much earlier this morning, you were discussing this, what is the descriptive terminology, the buy-bust technique, and you responded that 83 percent of the buy money went to class III and IV because you had to get into the systems to get to the I and II. That I can understand.

I wish you would provide either here or for the record a little clearer statement as to the allocation of the resources of DEA in the field of education, of police agencies, not only domestically but internationally, in the field of international cooperation, and in the area which you discussed as being the area of probably stopping the flow before it comes to the shore.

Mr. BARTELS. Yes, sir. I would be happy to.

Senator BROCK. If you would give us some specific detail on that, I think it would respond to the buy-bust charge which is a serious charge, but one which I think we can lay to rest. At least I hope so, because if it is valid—

Mr. BARTELS. Then this agency doesn't deserve to exist. Yes, sir.

Senator BROCK. I think we will let you rest for the balance of the day. I think the chairman will probably ask you to come back on Monday.

Mr. FELDMAN. First of all, could I put two exhibits in the record, the supplemental report on the so-called Kotz allegations as Mr. Bartels mentioned. I will put that in the record as exhibit 54.

Senator BROCK. Without objection.

[The document referred to was marked "Exhibit No. 54" for reference and is retained in the confidential files of the subcommittee.]

Mr. FELDMAN. We will question you on that later. Let's put it in the field now. You mentioned some of the names. We have refrained from doing that, Mr. Bartels.

Then as exhibit 55, the agent's manual.

[The document referred to was marked "Exhibit No. 55" for reference and may be found in the files of the subcommittee.]

Mr. FELDMAN. For next week, Mr. Chairman, Monday we would like to recall and finish with Mr. Bartels. I know it has been an arduous time.

Mr. BARTELS. At 10 o'clock, Mr. Feldman?

Mr. FELDMAN. Yes, 10 o'clock in this room. On Tuesday, we are going to have a former Deputy Attorney General, Laurence H. Silberman, now Ambassador to Yugoslavia, also in room 3302; then Wednesday, Thursday, and Friday, we will be in oil hearings.

Then we will reconvene the drug hearings after that time and at a later time, Mr. Bartels, we will want you to come back and expand upon other areas such as the foreign problems associated with Mexico.

Mr. BARTELS. Fine. Good.

Senator BROCK. I am sorry. I would like to come back for one question. I am reminded I had missed it somehow in my quick summary there.

Assistant or Deputy Attorney General Silberman and you met several times during the course of these proceedings in 1974.

Did he make a recommendation and if so, what, to you, with regard to Brosan, Mr. Tartaglino in December?

Mr. BARTELS. Yes, sir. He made a recommendation that on the basis of the findings and his judgment that these men be reassigned and then subsequently in January he reassigned them out of DEA over to the Department of Justice.

Senator BROCK. On the basis that the——

Mr. BARTELS. The allegations were without substantial foundation. I only know what his public statement was.

Senator BROCK. I just thought it would be fair to him to let him know that I hope to ask some more questions about that. So I thought it ought to be a matter of public record today so he has some advance notice of Tuesday.

I think you for your patience. It has been a difficult time. We will have some more questions. We appreciate it.

[Whereupon, at 12:20 p.m., the subcommittee recessed, to reconvene Monday, July 14, 1975.]

[Members of the subcommittee present at time of recess: Senator Brock.]

FEDERAL DRUG ENFORCEMENT

MONDAY, JULY 14, 1975

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met at 10 a.m., in room 3302, Dirksen Senate Office Building, under authority of Senate Resolution 111, agreed to March 17, 1975, as amended, Senator Charles H. Percy, presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; and Senator Charles H. Percy, Republican, Illinois.

Members of the professional staff present: Howard J. Feldman, chief counsel; Dana Martin, assistant counsel; Philip R. Manuel, investigator; Frederick Asselin, investigator; Stuart M. Statler, chief counsel to the minority; Robert Sloan, special counsel to the minority; and Ruth Y. Watt, chief clerk.

Senator PERCY [presiding]. The hearings will come to order.

[Members of the subcommittee present at time of reconvening: Senator Percy.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, permission is hereby granted for the Chairman, or any other member of the Subcommittee as designated by the Chairman, to conduct hearings in public session, without a quorum of two members for administration of oaths and taking of testimony in connection with Drug Enforcement Administration on Monday, July 14, 1975.

HENRY M. JACKSON,
Chairman.
CHARLES H. PERCY,
Ranking Minority Member.

TESTIMONY OF JOHN R. BARTELS, JR.—Resumed

Senator PERCY. Mr. Bartels, if you would resume the stand, please.

You have already been sworn. We don't have to do that again.

You, I understand, have had an opportunity to make a statement on Friday. The purpose of the hearing this morning is to simply clarify for the record the unanswered questions.

I am just going to ask our Majority and Minority Counsel to put those questions to you. I might interject from time to time a thought, but I think it would be better to expedite matters to move along as quickly as we possibly can and wind this up.

Mr. BARTELS. Fine.

Mr. FELDMAN. Mr. Bartels, what we are going to do is continue through the statement, clarifying some of the points, to give you a chance to respond to questions we have with regard to your statement.

We were talking last Friday about the Moore study. On page 24, you said Mr. Brosan's and Mr. Tartaglino's responses to Dr. Moore's study were a continuing source of puzzlement and concern to you. That is where we left off.

You say they seemed to think that the very initiation of this study was a threat to their professionalism and a clear sign that you were not interested in an effective inspection program.

The last question we had was how can Mr. Tartaglino both respond and not respond at the same time to the Moore study. You are saying that he chose alternatively to voice his objections to the Department of Justice rather than specifically respond to the Moore study and at the same time you say before that he was responding in a very negative way to the Moore study.

Could you just clarify that statement?

Mr. BARTELS. Yes. He didn't respond to any of these proposals that the Moore study made, any of these 11 proposals; rather, he went and made charges to the Department of Justice.

So that my answer is that I would have hoped that they would have responded to these 11 suggestions; that he agree with some; disagree with others.

Instead, their active response was one of making charges unrelated to those proposals.

Mr. FELDMAN. On March 4, 1975, the staff of the subcommittee conducted a prehearing interview with Dr. Moore in the subcommittee offices. The interview was taped and transcribed, and with no objection, Mr. Chairman, I would like to make the transcription a sealed exhibit. Mr. Bartels, you and your counsel can have access to this.

Mr. BARTELS. I don't have counsel, but I would like access to it.

Mr. FELDMAN. You can have access to it later. Can we make that Exhibit No. 56?

Senator PERCY. Without objection, it shall be entered.

[The Document referred to was marked "Exhibit No. 56" for reference and will be retained in the confidential files of the subcommittee.]

Mr. FELDMAN. It goes to the circumstances under which the Moore study was started, many of which you have discussed in your statement, but because it might contain some information which goes to methodology of the Department, we will keep it sealed for the present time.

In the interview, Dr. Moore said he had a high praise for Mr. Tartaglino and that Mr. Tartaglino had great experience in law enforcement. He characterized his own experience in law enforcement as being virtually nonexistent.

Dr. Moore said that he was appreciative, therefore, of Mr. Tartaglino for the advice and encouragement Mr. Tartaglino gave him. Dr. Moore then wrote up a management study which, according to your testimony on page 24 so upset Mr. Tartaglino that he went outside DEA into the Department of Justice.

Question: Do you now assert that it is your belief that the Mark Moore management study was the cause of Mr. Tartaglino reporting to the Department of Justice November 13 and November 14, 1974?

Mr. BARTELS. I can't go into a man's mind or analyze his motives. I can tell you that those recommendations and the study found that the Office of Inspection under Mr. Tartaglino and Mr. Brosan was pretty much of a shambles, that the Moore study said we propose these changes.

The Moore study was based on facts gathered by Mr. Hurney, Mr. Tartaglino, and others, and was under the general direction of Dr. Moore and rather than respond to those, he did go to the Department.

Mr. FELDMAN. Do you think that the Moore study was a plausible reason for Mr. Tartaglino, a long-term veteran of Government service, to go outside channels as he did?

Mr. BARTELS. I suspect if he thought his reputation was going to be hurt by the Moore study, he may have. Again, I don't know what was going through his mind. He never told me. During this entire time period he was discussing with Mr. Casey and with me and with Dr. Moore some of these policy issues.

At no time did he ever come to me and say, I disagree with you, I have got a crisis of conscience, I think the two of us should go on over to the Department.

Mr. FELDMAN. You seem to infer that timing was a factor here?

Mr. BARTELS. The timing is there. I can infer that. I can infer several other things, but I can't be sure what went through a man's mind.

Mr. FELDMAN. On page 24 of your statement you state that Tartaglino and Brosan requested reassignment because they were bitterly opposed to the findings of the Moore study. The hearing record at this point indicates that it was not the Moore study at all which led Mr. Tartaglino and Mr. Brosan to ask for a reassignment.

Mr. BARTELS. Where does it say they were bitterly opposed to the Moore study?

Mr. FELDMAN. Page 24. Do you have that citation?

Mr. BARTELS. I said they were affronted by the mere conduct of it.

Mr. FELDMAN. Let's use your language; do you have that language?

Mr. BARTELS. That was the initiation of it. I don't believe I ever said or they ever expressed that they were bitterly opposed to the recommendations of it. The reason I raised that is I think that is dreadfully important. I think the recommendations in that Moore study made sense and are the mark of a professional and effective Office of Inspection.

Mr. FELDMAN. You say that long before the study was finally concluded and long before you had a chance to discuss the policy

issues and resource requirements, they had decided that these proposed policies weren't appropriate to an effective inspection program and they requested reassignment.

Mr. BARTELS. That is exactly right.

Mr. FELDMAN. How do you know they decided that?

Mr. BARTELS. You can just take a look at Mr. Tartaglino's memorandum. On October 23, he said he went over to see Mr. Pommerening. After that time, he went over on November 13, and after that time, he went over on November 14.

During this entire time period, he was discussing with Mr. Casey, Dr. Moore and me, these policies and yet he never told any of the three of us that he had been to the Department, requesting either reassignment or an investigation.

Mr. FELDMAN. When were the conclusions of the Moore study released? After November 14; after they went to Justice or before?

Mr. BARTELS. No. The conclusions or the proposals, because they are not conclusions; there are discussions of these—we look forward to a discussion of these proposals. This was discussed, according to Dr. Moore and according to Mr. Hurney, with both Mr. Tartaglino and Mr. Brosan on almost a daily basis through September and October.

This report was typed in draft form sometime in November. The report was subsequently typed in final form sometime later.

Mr. SLOAN. Mr. Chairman, could I interrupt for just a second? Mr. Bartels, for our record in this case, did Dr. Moore consult with anyone in the preparation of this study?

Mr. BARTELS. Prior to the study? During the course of it?

Mr. SLOAN. While it was being prepared.

Mr. BARTELS. Dr. Moore told me and Mr. Tartaglino told me, and I saw them, that they met several times a week about it, that Mr. Tartaglino was working on the analysis of these cases and going through the files with Mr. Hurney, that Mr. Hurney in turn was discussing it with Mr. Brosan on a daily basis.

So that some of the early findings in this study, as the study itself says, namely, that there is no management system, you can't tell the resources, that the manual wasn't being followed, and that the cases weren't being closed, according to the manual were discovered very early in that study and were discussed among Mr. Tartaglino, Mr. Brosan, Mr. Hurney, Dr. Moore, to a lesser extent with me, but very early in the game as Dr. Moore writes in here.

He said we started out doing this study to see what the manpower requirements were but we found out we couldn't even tell because there are no priorities, for all the reasons.

Mr. SLOAN. To get back to my question, apparently there was very little direct contact between Dr. Moore and Mr. Brosan?

Mr. BARTELS. Almost no contact between Dr. Moore and Mr. Brosan because Dr. Moore wasn't doing the day-to-day work. Mr. Hurney was, and there was day-to-day contact between those two.

Mr. SLOAN. Since the Office of Inspection was not being operated to Dr. Moore's satisfaction after his preliminary inquiry, did he consult any officials in other agencies that have well-run inspection divisions?

Mr. BARTELS. He didn't; Mr. Hurney did.

Mr. SLOAN. Which agencies?

Mr. BARTELS. It is in the report. I think he contacted FBI, all the major ones.

Mr. SLOAN. No, I beg to differ. I think what he did was to compare some statistics from different agencies.

Mr. BARTELS. He called up and found out how many men you have, what is the plan. He called them.

Mr. SLOAN. Did he go to the FBI and speak to the chief inspector?

Mr. BARTELS. I don't know whether he went over there, but he spoke to people in the various agencies. He told me to find out what their manpower requirements were, how many men they had, what their job was.

For instance, the FBI has fewer, it is a lot fewer because their type of inspection is such that most of it is done out in the field by the agent in charge of the various offices. The inspector with the inspector aide, has a different function than the inspector in DEA.

Mr. SLOAN. Thank you.

Mr. FELDMAN. Mr. Bartels, in Dr. Moore's prehearing interview of March 4, he said he was pressured to complete his management study in mid-November of 1974.

Did you ask him to speed it up or pressure him in any way or for any particular reason? First of all, did you pressure him or ask him to speed up the conclusion of the study?

Mr. BARTELS. No. I told him—in mid-November. Does he say I pressured him, Mr. Feldman?

Mr. FELDMAN. He said that he was pressured to complete his management study of the Office of Inspection.

Mr. BARTELS. You had better ask him what he means by that. I recall talking to him about it. No, there was no timetable. I have spoken to him both before and afterwards. I have spoken to him within the last several weeks.

Mr. FELDMAN. What was the status of the Promuto case in mid-November, Mr. Bartels?

Mr. BARTELS. It was open, right from September 17 to April.

Mr. FELDMAN. Is it not a fact that you ordered the Office of Inspection to produce a final report in the Promuto case by October 19, 1974?

Mr. BARTELS. No. I asked that the final report be produced even earlier than that. So that I asked that it be finished on September 28 on that Saturday.

I asked Mr. Richardson to tell Mr. Brosan to finish it earlier than that because Mr. Richardson had told me that he in turn had been informed the report was essentially complete. It went on for some period of time and a report was submitted on October 19.

Mr. Brosan asked for additional time. That was not a final report. Subsequent to that time, new allegations came in. They were investigated and no final report on the Promuto case was written until sometime in spring of 1975.

Mr. FELDMAN. You keep talking about the Promuto case having a duration from September up through April or May, the time you left. Is that correct?

Mr. BARTELS. I think it is. I think it was April or May. It may have been March, but it was up through the spring; yes.

Mr. FELDMAN. Isn't it correct that there was no investigation at all for December, January, and up to February 2, when there was a supplemental investigation initiated after this subcommittee became involved in it?

Mr. BARTELS. No, that is not correct. I think if you ask Mr. Smith and Mr. Burke and Mr. Logay, you will find that they conducted the investigation sometime after December 20 and into the first of the year.

Mr. FELDMAN. I have the investigation entitled, "Vincent Promuto"—

Mr. BARTELS. That is more than I had. I would have liked to have seen it.

Mr. FELDMAN. Period of investigation, February 3 through March 3, 1975, and it is exhibit No. 36 which is sealed. I will be happy to show it to you; 28 exhibits and this is the period of investigation. There seems to have been a hiatus between November and February when it picked up again.

Mr. BARTELS. No; I understand. Of course, there couldn't have been a hiatus in November because the case was still undergoing investigation into the Kotz allegations in November.

Mr. FELDMAN. That was a separate allegation, the Kotz allegation. I am talking about the original allegations.

Mr. BARTELS. The original allegations, that case was kept open, was never closed and indeed wasn't until sometime in February that any of the people were interviewed in the original allegations.

Mr. FELDMAN. What investigation went on? We know that there are a lot of cases that are kept open in DEA. We found that out in this hearing. Between October 23 and February 2, what investigation went on?

Mr. BARTELS. Between October 23?

Mr. FELDMAN. Right.

Mr. BARTELS. Kotz was interviewed—

Mr. FELDMAN. Besides the Kotz allegation.

Mr. BARTELS. Up until December 20, it was under the control of Mr. Brosan and Mr. Tartaglino, to a lesser extent. You will have to ask them what they did on it. After December 20, I gave it to Mr. Smith, told him again to take a look at that investigation and to continue it. He did so. The exact dates of what he did and when he did it, I don't have in front of me because that was the first time I have seen that file.

Mr. FELDMAN. The record shows that no investigation was done between—

Mr. BARTELS. I don't believe it does. I am basing this on my conversation with Mr. Smith, that he assigned it to two inspectors, that they reviewed it, that they took a look at the file, that they went and spoke to officers of the Metropolitan Police Department, that subsequently they conducted interviews.

Mr. FELDMAN. That is the report I showed to you.

Mr. BARTELS. I saw it for about 8 seconds while I was testifying, Mr. Feldman. You are asking me things that I don't have personal knowledge of.

Mr. FELDMAN. Fine; if you don't then you don't.

Mr. BARTELS. But I do know that Mr. Smith picked that investigation up again on December 20, that as to the original six allegations, if you call them that, in the Shoffler letter of August 19, he told me later that the major two had never been resolved and that he did resolve them.

Mr. FELDMAN. Mr. Bartels, you have testified in a general sense that there was a continuous investigation going on regarding the Promuto case. I am trying to pinpoint what investigation did go on between October 23 and the report we have to try to pinpoint your own knowledge on it.

Mr. BARTELS. But the point is you have charged there is a coverup.

Mr. FELDMAN. I have not charged there is a coverup.

Mr. BARTELS. Mr. Tartaglino charged there was a coverup.

Mr. FELDMAN. That is a different story. I don't think subcommittee staff or any Senators have charged that.

Mr. BARTELS. I am glad to hear that. During that time period after October 19, when new allegations came in, they were investigated. Indeed, new allegations were sought. They were fully investigated. My answer to you is that to the best of my knowledge, that investigation was open during this entire time period, was conducted thoroughly and was conducted diligently.

Mr. FELDMAN. Still on page 24 of your statement, we want to pinpoint and get this for the record. You state on page 24 that long before the study was finally concluded and long before we had a chance to discuss the policy issues and resource requirements they—meaning Tartaglino and Brosan—had decided that these proposed policies were inappropriate to an effective inspection program and they requested reassignment. That is the language I want to examine.

How long before the actual issuance of the study did Mr. Tartaglino and Mr. Brosan decide the conclusions of the Dr. Moore study were inappropriate and, therefore, they had no choice but to ask for new assignments?

Mr. BARTELS. Mr. Tartaglino went first to the Department, according to his own memorandum, on October 23. He then went on the 13th and the 14th of November. During that time period, he was discussing those policy recommendations with Dr. Moore and yet never stated that he had gone to the Department. So I would say it was at least during that time period from October 23 to November 14.

Mr. FELDMAN. Did Mr. Tartaglino and Mr. Brosan have access to preliminary findings by Dr. Moore?

Mr. BARTELS. Yes, sir, they weren't findings as much as proposals. Mr. Tartaglino was part of the work team that did that sampling in study and went through the files and found the place was a problem.

Mr. FELDMAN. So before Mr. Tartaglino went to Mr. Silberman through Mr. Pommerening, he knew of Dr. Moore's findings?

Mr. BARTELS. That is what I am informed by Dr. Moore, yes.

Mr. FELDMAN. Did you ever discuss Dr. Moore's management study with Mr. Tartaglino or Mr. Brosan?

Mr. BARTELS. Discussed the findings of it, yes, and the policies.

Mr. FELDMAN. When did you do that?

Mr. BARTELS. We discussed it on several occasions, the last being in Mr. Casey's office shortly before Mr. Casey and I went to Jamaica on the marihuana program down there. That would have been either the 13th or 14th of November, I believe.

Mr. FELDMAN. Did they express their objections to the study to you?

Mr. BARTELS. Yes, they expressed objections. It was Mr. Tartaglino, stated that there were certain things, certain proposals that he didn't agree with. We discussed them and agreed to keep the matter open. He stated in substance in front of me and Mr. Casey at one time, I am not sure I want to work as chief inspector with these policies.

Mr. FELDMAN. Who said that?

Mr. BARTELS. Mr. Tartaglino.

Mr. FELDMAN. Did you make a memorandum for the record?

Mr. BARTELS. I didn't make memorandums of that; but ask Mr. Casey and I think he will corroborate it. We discussed it and he said yes, that he would look over the proposals, discuss them, and we discussed them further afterward.

Mr. SLOAN. Mr. Chairman, I would like to ask one final question on this issue. With what policy did he not agree? Did he say specifically?

Mr. BARTELS. We had discussed hypothetically how to handle certain types of cases. We discussed the concept of surveillance, the concept of using confrontation; we discussed closing cases, the reporting of closing cases. We discussed them in general along those terms.

Mr. SLOAN. You discussed the cases. What did he object to?

Mr. BARTELS. There was sometime in that discussion that took place in Mr. Casey's office that he stated I don't like any of this, to which I said, take a look at it.

Mr. SLOAN. He didn't like all of what? The whole study?

Mr. BARTELS. Yes. In other words, he didn't say I don't like point X or point X. There was sometime that he said I don't like this. We said, fine, take a look at it and come up with counter-proposals. These aren't locked in concrete.

Mr. SLOAN. Did he?

Mr. BARTELS. No.

Mr. SLOAN. He never did; he just dropped it?

Mr. BARTELS. Yes, because he went to the Department when I came back from Jamaica. I was informed that he had raised charges of fraud against me.

Mr. SLOAN. Mr. Bartels, I am going to quote some from pages 24 and 25 to put my next question in perspective. You said the following, on pages 24 and 25:

More puzzling and alarming still is the fact that the Promuto investigation began shortly after I commissioned the Moore Study. Indeed, the Promuto allegations were presented to me in my first meeting with Mr. Brosan after the study was initiated. But I sometimes wonder how different the public record would look now if the Promuto investigation had not sprung up right at that moment. Instead of focusing on an alleged "cover-up," we would be focusing on an inspection program that:

One: Lacked policy direction and accountability.

Two: Violated the civil liberties of agents and inflicted large personnel costs.

Three: Destroyed agent morale, but failed to produce sufficiently professional investigations to remove the agents from sensitive positions or clear them even after decades.

Mr. Bartels, is it your intent to have us understand by the above-quoted remarks that there is a connection in your mind between the initiation of the Moore study and the initiation of the Promuto personnel integrity investigation?

Mr. BARTELS. It is a connection in the public mind. I was just distressed during this entire time period to read articles in Jack Anderson and in a number of the public papers that discussed the Promuto case as though it was a coverup without discussing what I considered to be the real issue.

I have no personal interest in Mr. Promuto. I do express some concern about the concept of the way this inspection service was run, the concept of confrontation and the concept of having an effective inspection policy that was both fair and still effective. I was discouraged and still am that the American public faced 6 months of reading about Mr. Promuto and his personal life to the detriment of this entire agency. I think it is misrepresentation.

Mr. FELDMAN. Did you make available the Promuto file to any members of the press, the sensitive, so-called Promuto file?

Mr. BARTELS. I made available to Mr. Owens of the Jack Anderson column parts of the Promuto case after he had parts of that file. He had one-half of that file. I then discussed it with Mr. Silberman that there was going to be a case that somebody had leaked to Mr. Owens, part of that file, and that it was going to come out in the paper. Mr. Silberman said to me, after checking with Mr. Promuto, to use my judgment and he gave me permission.

Mr. FELDMAN. To open that file, to make that file available?

Mr. BARTELS. No. I spoke to Mr. Promuto—that was in January of 1975—asked him pursuant to my discussion with Mr. Silberman, if there is going to be an adverse story, do you want me to give them part of the file? Do I have your permission? He said yes.

Senator PERCY. What was your motivation, Mr. Bartels?

Mr. BARTELS. To get a fair story.

Senator PERCY. In making those files available?

Mr. BARTELS. To get a fair story out. Both Mr. Anderson and Mr. Owens told me that I had their word that they would write a fair story. They lived up to their word.

Senator PERCY. Were these files available to this subcommittee at that time?

Mr. BARTELS. Yes, I believe they were.

Mr. FELDMAN. That is incorrect, Mr. Bartels.

Senator PERCY. We were told we couldn't have them because they were open files involving criminal investigations which might prejudice the case. Therefore, we couldn't have them.

Mr. BARTELS. To my knowledge, there was no criminal investigation.

Senator PERCY. Involving an investigation—

Mr. BARTELS. To my knowledge, that file was turned over. I don't know when you got it because I wasn't—

Senator PERCY. It was not available at that time. What date did you turn the material over to Jack Anderson?

Mr. BARTELS. Mr. Anderson came over and saw me sometime in the first or second week of January 1975. He had been given parts and represented, and was able to prove it.

Senator PERCY. Where had he gotten that other material?

Mr. BARTELS. Mr. Anderson didn't tell me.

Senator PERCY. This is a very common technique used by reporters. They give you some material and use that to induce you to give them more.

Mr. BARTELS. That is right. What would have happened had I not responded would have been that a very distorted and false story would have come out. It involved in part that Kotz allegation and it involved, I believe, actual copies of the file being given to the Anderson office, but at least the details of those allegations and one-half of them, both of them came to me and said we represent if there is any truth to this fact, that we will take a look at it and write a fair story and not violate that man's rights.

I spoke to Mr. Silberman. I then spoke to Mr. Promuto who gave permission for me to turn over that file and also we agreed to talk to Mr. Anderson. Mr. Anderson had Mr. Owens spend a great deal of time on that file in Mr. Casey's office and as a result of that, wrote a balanced story.

Senator PERCY. How is this related to Silberman's inquiry and the subsequent press release saying the allegations were without substantial foundation?

Mr. BARTELS. That is a different set of allegations. Those were the Tartaglino allegations that I interfered with the Promuto case, that I was generally pretty much of a bad fellow and should be removed. That happened on January 16.

The point that you are making is a good one; that is, that during this time period, there were all sorts of leaks coming out of DEA as to Promuto and Inspection in general. While we were trying to conduct this investigation in a professional manner, there were all sorts of rumors and stories coming out. We were being questioned by people who were prepared to write very erroneous stories.

Senator PERCY. I would like to have the majority counsel, if he could, advise me as to approximately when this subcommittee asked for access to those files and to confirm to the Chair whether or not we were advised at the time we made the request that we could not have those files because they were open files involving an open investigation.

Mr. FELDMAN. We asked for the files in late January. We did not receive the first part of the files until early March and I will get the exact dates for the record. We were advised that it was an open case by Mr. Hutchinson and it is a curious set of circumstances, if I could relate it to you.

Mr. Hutchinson told me that this was an open case. I said if it was an open case, why was the file made available to Mr. Anderson? It seems inconsistent to make the file available to Mr. Anderson and/or his people and not to the subcommittee—

Mr. BARTELS. Wait a second. That implies we made it available first. Somebody else made a——

Mr. FELDMAN. I am going to explain this to the chairman. I am just telling you what I told Mr. Hutchinson. I said that if in fact the file has been made available to the media, then I would insist that the file be made available to the subcommittee, whether or not he considered it an open or closed case.

Thereafter, I was called back and told it would be made available to the subcommittee. Mr. Chairman, I know that you and Senator Jackson have an excellent relationship with the Attorney General. He has been most helpful in expediting things.

In the trenches, it has been slightly different. Every document we asked for is carefully scrutinized as to whether it refers to an open or closed case. The Department of Justice line personnel would have us run oversight hearings on allegations that are 4 years old and completely closed.

That has been one of the real problems here, open and closed cases. The Department of Justice definition is that any case, criminal or administrative, which is being looked at should not be made available to the subcommittee. That has been a fundamental problem in our hearings. But to go back and answer your question, that is the scenario of events and we were denied this file until I brought this to their attention.

Senator PERCY. Mr. Bartels, could you tell the subcommittee what your instructions were with respect to cooperation with this subcommittee? We have always handled sensitive matters with discretion. We always take into account requests for executive sessions. We have never breached confidence in those sessions. But we cannot exercise our oversight responsibilities without full cooperation. As the majority counsel has indicated, every Attorney General, right straight through, has offered us that degree of cooperation. We expect a policy to be established at the top and carried out.

What instructions were you given? Were you given any instructions other than to cooperate fully with this subcommittee?

Mr. BARTELS. Of course not, and we did cooperate fully. We gave you—I would like to ask that the Department supply for the record a list of every agent and the number of hours that they have been called in and the number of sessions and the records that we have sent over and the files that we have brought over which are, to my knowledge, raw files with the exception of an informant's name being taken out. I don't believe we have ever submitted to you a synopsis and denied you our file, nor do I believe we failed in any request that you have asked.

Mr. FELDMAN. That is not true.

Mr. BARTELS. I said I don't believe.

Mr. FELDMAN. Yes; the Caramian case, the Guzman case, the Salazar case.

Mr. BARTELS. Those were open investigations.

Mr. FELDMAN. You just said raw file. You said any file.

Mr. BARTELS. Any file. I believe you have had raw files of all closed cases as opposed to synopses. But when the Department is conducting an investigation, I suspect they are taking the posture,

and this is the posture of Mr. Levi, and I think it is the posture of all the Attorneys General.

Mr. FELDMAN. I could point out how ludicrous this circle could go. The Promuto case was closed. We decided to look at it. Then they decided to review it. Therefore, it became an open case.

Mr. BARTELS. It was never closed and that statement is inaccurate. It is totally inaccurate. It is not true. It simply isn't. There is a closing situation, a manual requirement as to how one closes a case. In every closed case, I believe you got the file. I believe you got the raw file, not a summary. I don't believe we ever had that situation.

If the amount of pages that were submitted over to you, the number of witnesses that you had total access to them, I believe speaks well for the cooperation. I don't know of any investigation that has gone on where there has been as much turned over.

Senator PERCY. Did we receive in the Promuto case the interviews of the FBI agents?

Mr. FELDMAN. No, Mr. Chairman. The Promuto case is a curious case. They now say they gave it to us by mistake because it was really an open case; that the task force is examining the FBI examination which, therefore, makes that part of an open case; but they could give us the rest of the file.

It has been curious trying to sort out what we could or could not have in the Promuto case. But we were denied the FBI report.

Mr. BARTELS. The FBI was not involved in the Promuto case, just as Mr. Hutchinson has testified and as I gather, others have, and Mr. Silberman will, I would assume, that the FBI was called in to investigate Mr. Tartaglino's charges against me, not whether or not Mr. Promuto had been involved in any manual violation.

Mr. FELDMAN. That is true.

Mr. BARTELS. In all fairness, I have never seen the FBI records either, nor do I believe anyone has. So it is not as though I am holding something away from you.

Mr. FELDMAN. Did you submit a written statement to the FBI?

Mr. BARTELS. No. I was interviewed. I have never seen the report that they made of it; nor any other.

Mr. FELDMAN. Could I ask one other question?

Senator PERCY. Go right ahead, please.

Mr. FELDMAN. Have you ever authorized or directed any of your field offices in Mexico and South America to make open case files available to the press?

Mr. BARTELS. No.

Senator PERCY. I would like to ask again counsel on both sides whether or not this subcommittee has been denied access to any documents that would have been helpful in expediting the work of this subcommittee. Has the subcommittee been subjected to what I might term—let's put it in the harshest term—undue delay. Is that a fact?

Mr. SLOAN. Mr. Chairman, regrettably, I have to agree that unnecessary delays have occurred. There are certain documents we haven't gotten at all; even more often than that, there are many documents we have gotten only after a very, very long delay.

For example, there is a file that we received last week which was requested approximately 6 weeks earlier. Such delays make it very difficult for us to carry on the investigation since we do not know who is reviewing the files and what, if any action is being taken after such a review.

Mr. BARTELS. I think that would be addressed to the Attorney General. I think you ought to be specific rather than talking generalities.

Mr. FELDMAN. We have been specific in letters.

Mr. BARTELS. One of my discussions with the people in the Department of Justice was that this committee had been given everything and had been done so promptly. I was assured of that and I still believe that is true; still believe that is true.

There may be cases that are open investigations that were, where the Department refuses to turn them over until they are closed. But I believe a fair reading of the record will show that there has been total cooperation by DEA. I believe, also, by the Attorney General. This investigation started essentially during the transition between Mr. Saxbe's tenure and then the incoming of Attorney General Levi.

I believe that the policy of both those Attorneys General has been to turn over everything to this committee. I, indeed, was surprised and shocked that, unlike the FBI investigation, this agency was turning over raw files.

Senator PERCY. I think one of the lessons we are going to learn from this case and many others now being considered, is that if there is anything fundamentally wrong with our Government, it has been the lack of oversight by the Congress. We have not exercised that duty in a responsible manner now in a way that the American public should expect us to exercise it.

This Government is not just the executive branch. It is a tripartite government. The judiciary exercises its responsibility only when cases are brought before it. We have to be the initiators. Certainly, I have always expected that we would get cooperation.

We were neglectful in the CIA case because wrongfully the Congress of the United States just assumed there were certain things they shouldn't know about, there were certain things they shouldn't do anything about. But that is no longer true. There is a new day now. We recognize it is our business. There isn't anyone in this country, including the President of the United States, that can simply say this Government is only his business.

We intend to exercise that duty and responsibility. So I think this subcommittee is going to be much more insistent in the future than we have been in the past and probe much deeper than we ever have before, and ask for and, if necessary, demand the cooperation of the executive branch of Government. We never fail to get it at the top levels. It is our job to see that it is carried right straight through.

The staff of this subcommittee is backed up and supported with all the authority we can give them so that they will not be subjected to undue delay.

I think this colloquy is helpful to us and in principle, I think it reinforces what I am sure Senator Jackson, myself and every

member of this subcommittee will look upon as our renewed effort in the oversight responsibilities.

Mr. BARTELS. Good. I think it would be fair just to put in; I don't have access to it now, but hopefully, DEA will put in the number of man-hours they submitted, the number of people who were interviewed, the number of files that were turned over and the extent of the cooperation.

Mr. FELDMAN. You asked for cases. I will give you a couple of very simple cases.

Mr. BARTELS. They are open?

Mr. FELDMAN. It all depends how you define open. Caramian case—

Mr. BARTELS. Is open.

Mr. FELDMAN. But there are two inspections closed. Another inspection made is closed. Why when we asked for information—

Mr. BARTELS. You will have to ask the Attorney General.

Mr. FELDMAN. Weren't you the DEA Administrator at that time? Why was the Caramian case closed?

Mr. BARTELS. I don't know that it was closed. I will take a look at it. To my knowledge, there were no open cases, no closed cases that you were never denied.

Mr. SLOAN. Mr. Bartels, I would like to continue with a few more questions following the quotation I read. We had just established that in your mind the Promuto investigation—

Mr. BARTELS. Bob, which quote? You mean the destroyed agent morale?

Mr. SLOAN. The one with the three points. Established that the Promuto investigation in your mind, the Promuto investigation and the Moore study were not related. Is that right?

Mr. BARTELS. No. I think you asked me to comment on why I was alarmed that the Promuto investigation began right after it. They were related.

Mr. SLOAN. Was there a connection?

Mr. BARTELS. It depends on whom. Go ahead.

Mr. SLOAN. Connection in your mind between the initiation of one and the initiation of the other?

Mr. BARTELS. Do I think they initiated the Promuto case as a response to the Moore investigation simply because they knew they had all sorts of problems and to cover it up?

Mr. SLOAN. That is one possible way to put it?

Mr. BARTELS. Is that what you mean? No.

Mr. SLOAN. Do you think there was any connection?

Mr. BARTELS. I don't know what went through their minds.

Mr. SLOAN. I would like to ask a few followup questions. For the record, what day did you commission Dr. Moore to begin his management study?

Mr. BARTELS. September 7. That was the Saturday. I believe that was the Saturday.

Mr. SLOAN. Before your departure to Europe?

Mr. BARTELS. Yes; that was the 7th.

Mr. SLOAN. September 7?

Mr. BARTELS. Yes.

Mr. SLOAN. On what date did Mr. Brosan start his investigation?

Mr. BARTELS. I am informed that he started his on Tuesday, September 10.

Mr. SLOAN. While you were in Europe?

Mr. BARTELS. Yes.

Mr. SLOAN. On what date did Mr. William Durkin, Assistant Administrator for Enforcement at DEA, alert Mr. Brosan that Mr. Promuto was showing up in surveillance reports of the organized crime and rackets section of the Metropolitan Police Department?

Mr. BARTELS. I haven't got the faintest idea.

Mr. SLOAN. Can you give us—

Mr. BARTELS. I can't give you any help. You will have to ask either Mr. Durkin or Mr. Brosan.

Mr. SLOAN. Did he inform you after he got back from Europe?

Mr. BARTELS. No, Mr. Brosan did. Mr. Brosan informed me on September 17.

Mr. SLOAN. You have no idea as to when he notified Mr. Brosan?

Mr. BARTELS. When Mr. Durkin did?

Mr. SLOAN. Right.

Mr. BARTELS. No, nor have I ever spoken to either of them about that.

Mr. SLOAN. What day did Mr. William Durkin learn—

Mr. BARTELS. I thought that is who we were talking about.

Mr. SLOAN. I am going to ask a different question. What day did Mr. William Durkin learn of the information in the Washington police surveillance report?

Mr. BARTELS. I don't know.

Mr. SLOAN. You don't know?

Mr. BARTELS. No. It wasn't until these hearings started or shortly before that I ever learned he was involved. I thought it came from some group supervisor over in the Washington district offices.

Mr. SLOAN. So you wouldn't know from whom Mr. Durkin got the information?

Mr. BARTELS. I learned later. I read your testimony that apparently it came in on a discussion, either to Mr. Arntz, Mr. Dayle, and then from Mr. Arntz, to Mr. Dayle, to Mr. Durkin and Mr. Brosan. But I can't help you on your inquiry as to whether there was a time delay, who is right between Mr. Durkin and Mr. Arntz, Mr. Dayle, and Mr. Brosan as to when that happened.

Mr. SLOAN. Let me ask you this question: When and how did you first learn that the Metropolitan Police Department had developed information regarding the activities of Mr. Promuto?

Mr. BARTELS. On September 17, from Mr. Brosan and Mr. Richardson.

Mr. SLOAN. By the way, Mr. Bartels, to clear up our record on the timing of the September 7 date, did you commission that study in writing? I believe you said the other day that this was done on the telephone.

Mr. BARTELS. That was on the telephone.

Mr. SLOAN. On Saturday?

Mr. BARTELS. Yes, then on Monday, Dr. Moore tells me he had a meeting with Mr. Tartaglino and others about the study.

Mr. FELDMAN. On page 6, Mr. Bartels, you say on September 9. You instructed Dr. Moore to assemble a committee of experienced personnel. The reason I am trying to pinpoint the dates——

Mr. BARTELS. The committee—I did. I instructed him to assemble the committee on September 9, but I gave him the instructions on September 7.

Mr. SLOAN. Mr. Bartels, you have read the testimony of Messrs. Dayle and Arntz?

Mr. BARTELS. No. I have been told about it.

Mr. SLOAN. Are you aware of the fact that those two DEA officials have testified before this subcommittee that they were advised of the information relating to Mr. Promuto as early as the week of August 12, 1974?

Mr. BARTELS. The letter wasn't even written until the 19th.

Mr. SLOAN. That is right, but they were aware earlier.

Mr. BARTELS. No.

Mr. SLOAN. They found out before?

Mr. BARTELS. They found out even before the letter? Why didn't they call up Inspection? They have a manual obligation to call Inspection immediately.

Mr. SLOAN. I think the manual requires that it be put into the chain of command.

Mr. BARTELS. I think it requires that this information notify Inspection, but I may be wrong. At any rate——

Mr. SLOAN. Are you aware that both agents, Arntz and Dayle, testified that Mr. William Durkin was advised of the Promuto allegations prior to September 1, 1974? We had some differences about the exact date.

Mr. BARTELS. I know there is a difference on the date.

Mr. SLOAN. But it was before September 1, 1974?

Mr. BARTELS. According to their testimony?

Mr. SLOAN. Right.

Mr. BARTELS. No.

Mr. SLOAN. We had them back a second time to establish that.

Mr. BARTELS. What does Mr. Durkin say? Why don't you call him about it?

Mr. SLOAN. We did call Mr. Durkin. His testimony was somewhat unclear on this point. Let me say this, Mr. Bartels: Mr. Durkin says the information was passed along as soon as he got it and he passed it on, according to testimony, on the 10th of September. Therefore, he couldn't have gotten it before the 10th. However, Arntz and Dayle have established that Mr. Dayle informed Mr. Durkin of this information by September 1. So we are left with a 10-day hiatus.

Mr. BARTELS. You are left with a difference in testimony. The answer is I don't know anything about it. When I found out about that was when this testimony started. But I thought agents had the obligation to keep Inspection informed immediately. I may be wrong in that.

Mr. SLOAN. Mr. Bartels, I believe that they had an obligation to get it into the chain of command, which they did.

Mr. BARTELS. No. I thought the chain of command was in through Inspection. I may be wrong on that.

Mr. SLOAN. I think that they did not violate the manual in getting it to the Assistant Administrator for Enforcement. Assuming that agents Arntz and Dayle found out about the Promuto allegations during the week of August 12, how do you explain the lapse of 30 days before the Office of Inspection was advised of this information?

Mr. BARTELS. Because I don't assume they found out on the 12th. I have no reason to assume that.

They didn't tell me that. Mr. Durkin's testimony is counter to it.

Mr. SLOAN. Mr. Bartels, you should understand that Mr. Durkin's testimony doesn't go to whether the August 12 date is accurate. It goes to when he learned about the information concerning Mr. Promuto.

Mr. BARTELS. Yes. He says he learned—

Mr. SLOAN. But they say that they learned on August 12 or thereabouts. That leaves a month.

Mr. BARTELS. Mr. Sloan, you have said there is a conflict in testimony. Mr. Arntz and Mr. Dayle said they got it earlier. Mr. Durkin says he got it later. You said assuming, I believe Mr. Arntz and Mr. Dayle, how do I explain it? One, I can't tell you. I don't even play games with you. But I have never heard any of this.

I am listening to you. I don't know if there is an honest mistake. I can't imagine. Did Mr. Arntz, Mr. Dayle tell you that Mr. Durkin sat on it for a month? I don't know.

Mr. SLOAN. Possibly this is a debater's point, but I want to reiterate that there is no conflict between Mr. Durkin and Messrs. Arntz and Dayle on the August 12 date.

Mr. BARTELS. Mr. Dayle said he got it on August?

Mr. SLOAN. No. There is a conflict as to when it was passed on to Mr. Durkin. As to the August 12 date, there is no conflict. You are just saying you don't know?

Mr. BARTELS. I haven't gotten the faintest idea.

[At this point, Senator Percy withdrew from the hearing room.]

Mr. SLOAN. To your direct knowledge, who within DEA had knowledge of the Promuto information prior to September 10, 1974?

Mr. BARTELS. I have no idea.

Mr. SLOAN. You have no direct knowledge on that?

Mr. BARTELS. I have no direct or indirect knowledge, no, sir.

Mr. SLOAN. Mr. Bartels, at the bottom of page 24 in your prepared statement, you state that instead of "focusing on an alleged cover-up, we would be focusing on an inspection program"—this is relating to the Moore study—"that (1) lacked policy direction and ability; (2) violated the civil liberties of agents and inflicted large personnel costs; (3) destroyed agent morale, but failed to produce sufficiently professional investigations to remove the agents from sensitive positions or clear them even after decades."

Are we to understand that these three conclusions are contained in the management study of Dr. Moore?

Mr. BARTELS. No. Well, yes. Not verbatim; that is not a quite, but yes. It is in there. It is also my conclusion. I adopt it. Certainly, the Moore study says there was no policy direction. That is one of the basic things it discussed. It said there was no accountability because there was no management system.

Mr. SLOAN. Could you cite any specific parts of that study that would support directly those three conclusions? Those are very strong statements.

Mr. BARTELS. Yes.

Mr. SLOAN. Do you have a copy of the Moore study with you?

Mr. BARTELS. Yes; but I think it is even in my testimony. First it is on page 12 of my statement:

The Moore study having decided it is essential to establish priorities for individual cases, we tried to define a priority system.

That is a quote. Then it goes on and discusses the policy issues—I am referring to pages 13, 14, 15, and 16 of my study in which it says finally on page 16—not of my study, my statement:

It is worth noting that none of the observations in this section are either new or inconsistent with the existing written policies of the Office of Inspection. The existing Inspection manual recognizes the importance of presuming innocence and then planning for investigations, and then closing cases according to the manual.

So that, yes, I can go through it with you if you want all of those points. In other words, do I think my conclusions, one, two, three are supported within the statement?

Mr. SLOAN. Destroyed agent morale?

Mr. BARTELS. Yes, sir. If you talk to any of those agents who subsequently found out that they have been under a cloud that there were allegations made in 1968 involving alleged improprieties in 1956, you can imagine what that does to their morale.

I spoke to a regional director earlier this week who said his kids came in and said the neighbors had been asking whether his daddy was one of the corrupt ones. That destroys morale. Yes, sir, when these charges of endemic corruption that get printed in the paper, yes.

Mr. SLOAN. The word "endemic" was used the other day. This subcommittee has made no charges of endemic corruption.

Mr. BARTELS. Widespread by Mr. Tartaglino. It has been in the paper. Sometimes they get misprinted, but that is the point I was trying to make, that rather than have the public concept of what this agency is about, go off on the basis of Mr. Promuto's, solely on the basis of Mr. Promuto's personal life or this so-called widespread corruption, I was shocked because I thought, had it not been for the Promuto case, that debate would have gone off on the more rational issue of the nature, how to come up with an effective and yet fair inspection program, which I think is more important to the agency and to the public concept of that agency.

Senator NUNN [presiding]. Mr. Bartels, excuse me just a minute on this point. I think that is the heart of what we are talking about here in these whole hearings, rather than just the Promuto case. I think that is just one matter.

The underlying questions of this committee are really the underlying question of the Federal Government is how do we develop within whatever agency is going to be handling narcotics, knowing all the dangers of big money associated, knowing that there is no victim, there are victims, but they are not complaining victims usually.

How do we get creative and effective mechanisms to deal with internal security and yet at the same time respect the—of course civil liberties of the agents?

Mr. BARTELS. Yes, sir. I think that is exactly it. I don't think they are inconsistent. This agency is governed by Civil Service. So when you make charges you have to make charges that are within the Civil Service system and allow prosecution in them.

When you allow these cases to lie dormant for many years, it violates the Civil Service. The Civil Service simply won't go after them. I think the system that has evolved as a result of the Moore study is far more productive and does offer the American people some guarantee that corruption and integrity problems will be revealed.

For example, a management system has been developed, a different type of investigative technique has been developed. So we are not solely investigating allegations of past corruption. There is now a patrol system. That patrol system involves for the first time the use of computerized program which takes the chemical analysis of buys, the purchases made, and compares them so that if it turns out that an agent has bought narcotics and there is any pattern that can be developed where everybody else pays \$10 for a pure milligram and that agent is constantly paying \$50, you see the possibility of some money going away.

There is now a single narcotic informant system for the entire agency which, again, is computerized to show that the informants are working, not working one agent against another or vice versa.

Now there is a management system which I submitted to the committee, subcommittee, which provides both for changes in the basic casemaking report as well as showing it in the inspection investigations in order to show that there is a methodology that can detect patterns of corruption.

I think, in short, that the recommendations of that Moore study followed by these 16-some items which I have put at the very end of my testimony, Senator. It showed the deficiencies in the earlier inspection program and the continuation or the timetable for their being remedied, set forth a program that I believe is a responsible and if not a perfect one is much better than we had before.

Mr. FELDMAN. Could I just interrupt? You made a statement that Mr. Tartaglino had stated in this forum that there was widespread corruption within DEA. I would like you to cite the record reference to that.

Mr. BARTELS. Let me take a look at it and get back to you.

Mr. FELDMAN. We will continue on questioning.

Mr. BARTELS. If you are willing to state that you have no evidence of widespread corruption, as I guess we did before on Friday, that is the main purpose. It is my recollection that Mr. Tartaglino did state that.

Mr. FELDMAN. You are characterizing someone else's testimony. I want to be fair to him.

Mr. BARTELS. That is right. It is my recollection that he did. I may be wrong, but it is my recollection. Rather than hold it up, I

am concerned about the public image of this agency. It is more important than my recollection or Mr. Tartaglino's allegations.

I think for the American people to have confidence in an agency, it ought to be brought out that there hasn't been any testimony of widespread corruption in DEA.

Mr. FELDMAN. That is why we are trying to have the record be very clear on that.

Mr. BARTELS. Great.

Mr. SLOAN. Mr. Bartels, using your own language on those three points, what policy direction and accountability did you give during the 17 months that passed by—

Mr. BARTELS. I am glad you asked that.

Mr. SLOAN. Let me finish so we have it on the record. The period I refer to is from July 1, 1973, when you became Administrator, until November 1974, when you concluded that the Office of Inspection was deficient.

Mr. BARTELS. What policy direction?

Mr. SLOAN. I believe policy direction and accountability is the term you used.

Mr. BARTELS. The first thing I did was get rid of that 13-man covert inspection program which allowed anonymous allegations to be acted upon without any confrontation.

Mr. SLOAN. Who prepared that plan?

Mr. BARTELS. That was prepared in BNDD.

Mr. SLOAN. Who was its author?

Mr. BARTELS. I can tell you several. I can't tell you who the original was. It was done with Mr. Tartaglino and Mr. Fuller and in fairness to them they didn't object to it being disbanded in July of 1973.

It was started in April of 1971. It was done orally, so I don't know. I believe it was done orally. I never saw any papers on it. I was informed about it. In fairness to them, they said this is not a good plan. It hasn't been working, and it does allow this sort of anonymous action and cause problems.

There were rumors out in the field that such people existed and that caused all sorts of further morale problems.

Mr. SLOAN. That was point number one. You eliminated that program.

Mr. BARTELS. Second, I followed their monthly reports which stated what they thought the problems were. I increased their manpower and I allowed them to continue in an operational manner as they had in the past.

Mr. SLOAN. Do you recall how much the manpower was increased?

Mr. BARTELS. Yes, sir, I do.

Mr. SLOAN. In July?

Mr. BARTELS. In July of 1973 there were 24 inspectors. There was an initial increase of 9, up to 33. We opened a new regional inspection office in Miami. We increased the civil service grade of the Office of Inspection from a 15 to an 18 to preserve Mr. Tartaglino's grade. We increased the budget of the Office of Inspection from approximately an increment of almost 100 persons during that time period.

When Mr. Tartaglino in August of 1974 wrote me the memorandum, Mr. Sloan, that was the basis for the initiation of the Moore

study, I then increased the office another seven, the ceiling of the office, another seven positions.

So it went up before we started the Moore study. If you are saying in the first year or so I did not know of any of these problems within inspection or the nature of them or the widespread source of them, that is right.

Although Mr. Brosan did tell me about Mr. Durkin, that he may be mentioned in a trial and Mr. Jensen might be mentioned in a trial.

After that, once the Moore study came out, and once Dr. Moore found that the manual was being violated, we did make substantial changes and I think they make sense. I haven't seen anybody change them. I think it is good both for the agency and for the public's confidence.

Mr. SLOAN. Let me go to the next point. What about large personnel costs?

Mr. BARTELS. There were tremendous personnel costs because what happened was that the office was being run as—these cases were being held over people and it was being run in an inefficient manner. For example, the allegations that were made in the Civil Service cases that we mentioned on Friday involving allegations brought in of corruption before Civil Service that were thrown out because they were more than 3 years old, put that man in the posture of being totally—in other words, what happened was in 1972 a case is brought in Civil Service.

It charges Mr. X with being corrupt. Civil Service then throws the case out and says, look, this case is 3 years old. In the meantime you have promoted him, you never did anything about it when you first heard about it. Therefore, we are going to throw the case out.

What that does is it puts Mr. X in the position of being something of a martyr. He is antimanagement because he has been dragged through this, it has failed and it is very difficult to bring another integrity case against him.

Senator NUNN. May I ask a question here? I understand the FBI is not subject to Civil Service.

Mr. BARTELS. Yes, sir; it is not; that is right.

Senator NUNN. What is the distinction of the FBI and why are they not subject to the Civil Service, or is DEA?

Mr. BARTELS. It is historical. I believe the FBI is the only agency that is not subject to the Civil Service.

Senator NUNN. Do you recommend that for DEA?

Mr. BARTELS. I recommend it certainly for the upper echelons. Yes, sir. When I came in, Senator, I had no choice in my management team. It was a merger of several agencies. Each officer in that agency, especially in the upper echelon, had a Civil Service right not only to his grade but to his job.

So that one couldn't pick or choose. You had to bring an adverse action against a man, which is difficult to sustain on a mere management situation, or you kept him even though you didn't like him.

I think it makes a lot of sense especially with the comparison in salaries between a GS-15 and a GS-18 that the man, that the

next administrator, of this agency be allowed to pick his own management team.

I would think on the upper echelons from GS-15 to GS-18, super-grades, it makes sense to do away with Civil Service.

Senator NUNN. How about down at the investigative level?

Mr. BARTELS. I don't think so. Our allegations at the investigator level, it is a young agency, those allegations are more susceptible to prove.

I think there is an advantage, for Civil Service has an advantage there, that to do away with it would involve the possibility of a great deal of personnel actions being made on the basis of failure to go along with the superior's actions, failure to apple-polish a superior.

Senator NUNN. Has that happened in the FBI?

Mr. BARTELS. No, sir. I don't think it has on a wholesale basis, but there have been--no, sir. It has not. I think the Civil Service system has some strengths and weaknesses and as a man moves up from a GS-7 to a GS-9 to GS-11 to GS-13, I think the Civil Service attracts people of competence to come into this very demanding job and allows, perhaps gives them the independence.

It is a judgment matter. I am not 100 percent sure I am right, but I would make, I suppose, the argument that it would be better to leave it at the lower levels because it would attract a higher caliber of man, it would prevent personnel actions being made in an arbitrary or discriminatory way, whereas perhaps the administrator of an agency should be allowed to pick his top level man even if he is not technically right.

Senator NUNN. How many people could you pick? How much flexibility did you have when you came in?

Mr. BARTELS. I couldn't pick anybody. I inherited every one of them. That is one of the reasons why I sought some outside counsel periodically.

Mr. SLOAN. To finish up on those conclusions, Mr. Bartels, regarding your conclusion number 3 on page 25, is it a function of the Office of Inspection either to remove agents from sensitive positions or clear them of allegations of misconduct?

Mr. BARTELS. It is a function of the Office of Inspection to find the facts which would allow a personnel action to be made.

Mr. SLOAN. Who makes the decision to clear or to remove an employee?

Mr. BARTELS. To remove, it is made by the Office of Personnel. The clearing may be done from the recommendation, I believe, of the Office of the Chief Inspector. Bear with me, because I am reading the manual, but the adverse action has to be done by the Chief of Personnel.

Mr. SLOAN. Mr. Bartels, in a related matter, we have received reports of individuals, not just from DEA, but in various Federal law enforcement agencies who have either resigned under pressure because they were being investigated, or it is a very difficult problem, or have been removed and then have gone on to gain employment in State investigation offices, in State police forces, and we know of specific cases. How does DEA handle that?

Mr. BARTELS. The way it handled it in the past was that when allegations were unresolved, the agency, if inquired, did not I believe have sufficient limitations or restrictions on the access of public promulgation of those allegations even though they were unresolved.

In other words, as you said, a man resigns with unresolved allegations. But the Moore study said those allegations should stay in-house more, that the dissemination of those unresolved allegations should only be given out to other law enforcement agencies when they are extremely serious.

I think that is debatable.

Mr. SLOAN. What allegations would be extremely serious?

Mr. BARTELS. That is one of the things Dr. Moore said we hoped we could discuss with Mr. Tartaglino and Mr. Brosan. I don't know. It is a judgment issue, but I think one of the abuses, on the one hand you have the abuse that inspection comes in and starts investigating Mr. Bartels for X, Y, and Z. Mr. Bartels resigns. There is no allegation that has been resolved.

So that you have the presumption of innocence. On the other hand, when Mr. Bartels goes and applies as a patrolman in the Baltimore Police Department and they come and say what do you know about Bartels, what do you turn over? I think that is a close judgment question.

The problem was that in previous times, everything was turned over indiscriminately. If there was an allegation from a previously unreliable informant who would say anything, that would be turned over as though it were true.

Mr. SLOAN. Can't the other agency evaluate that as being an allegation?

Mr. BARTELS. What usually happens, it is a rare agency that will hire a man for a law enforcement position when there is any allegation against him because to do so invites subsequent criticism that you knew this thing was bad.

What Dr. Moore suggested was, look, let's limit this. One of the things he suggested, for example, is let's limit access to the files. One of the personnel costs was that the files were open and there was no charge-out card.

You never knew who had access, who had seen those files. There were rumors throughout that agency involving supposed investigations into all sorts of personal allegations and sensitive and embarrassing situations that people alleged they saw in the files of inspection.

There have been no limitations at all on seeing those files.

Mr. SLOAN. Mr. Bartels, one final question before we finish on that point. You mentioned monthly reports, inspection reports that you reviewed. The subcommittee staff has seen some of these reports and I think it is important to make it clear on the record that these reports only list names and allegations.

They really wouldn't enable you to make any sort of decision as to there being underlying problems within the Office of Inspection.

Mr. BARTELS. Sure there would. The whole idea of the monthly report, that came not just from Inspection, it came from Enforcement, Science and Technology, Training, every division in DEA, was obligated to submit to me a monthly report.

What are your problems? What should I know within your division? If one reads those monthly reports, one will see as well as the annual report what are you accomplishing, and it makes no mention of any of this. It makes no mention of the fact that we can't tell how many hours we put in on investigation.

We can't tell or didn't have any system between setting a priority to investigating an allegation from a known and a totally discreditable source, that Mr. Bartels has some personal indiscretions, versus allegations from a previously reliable source that Mr. Bartels is a crook and is stealing money and knocking in doors, Collinsville and all of this stuff.

So all of these issues that were revealed in the Moore study are totally ignored in that series of reports.

Mr. SLOAN. Thank you, Mr. Bartels. I think Mr. Feldman will continue.

Mr. FELDMAN. On page 25 of your statement, you say: "It is worth noting I was not unaware of the dangers of the Promuto investigation."

Mr. BARTELS. I was not unaware.

Mr. FELDMAN. Unaware. What were the dangers?

Mr. BARTELS. The dangers of the Promuto investigation were that if you fired him or amputated him, as Mr. Brosan said on September 17—

Mr. FELDMAN. How can you fire someone under Civil Service?

Mr. BARTELS. That is the point. How could you? You say you are fired. Get your desk cleared up and get out of this place and stop and he has to take legal action.

Mr. FELDMAN. You can't fire anyone. When he said, you characterized his term as fired. I don't believe he used that.

Mr. BARTELS. I characterized it as amputated.

Mr. FELDMAN. That still has to go through Civil Service proceedings.

Mr. BARTELS. No. Mr. Promuto, get your desk cleared up in 2 hours and be out on the street and I don't want to ever see your face again.

Mr. FELDMAN. Was that what he was recommending?

Mr. BARTELS. Yes; he wanted him out.

Mr. FELDMAN. Did he say fire or resign?

Mr. BARTELS. He said amputate.

Mr. FELDMAN. Continue.

Mr. BARTELS. You cut off his pay and you tell him you are out of here. He then has the protection of Civil Service, but it is not something that happens automatically. There is no magic that starts it and prevents you from doing it.

He has to say I object, you are not going to do this to me and I will fight you every step of the way. So I knew if we fired him immediately, there were dangers to that, because he could fight it and questionable whether we would win and if we took Civil Serv-

ice action and lost, that would blow up in our face and if we failed to do anything about it, that would blow up.

So that I was in a situation which I think was a no-win management situation, especially as time progressed and the rumors about that investigation went, not only throughout DEA, but throughout a number of other law enforcement agencies in this community.

Mr. FELDMAN. On page 25 you say:

The Moore study was an invitation to such a program. It was not a dogmatic ultimatum, but an invitation to a dialogue. It was met by the charge of insensitivity.

I was and remain a strong advocate of integrity in law enforcement agencies. However, I also believe deeply in the concept of due process. I believe that it is possible to have aggressive but fair prosecutions—not only in cases against accused private citizens, but also in cases against accused enforcement officials.

Mr. BARTELS. Is that where I said:

As I will show in the next section, the conduct of the Promuto investigation was typical of the biased procedures and pre-ordained conclusions of the Office of Inspection under their stewardship.

Mr. FELDMAN. What I want to know is did the conclusions come in November?

Mr. BARTELS. No. The Moore study didn't address itself to Promuto. What the Moore study addressed itself to was the methodology and procedures that would insure fairness in the investigative mechanism.

What I found, I didn't need the Moore study to tell me. When the chief inspector comes in, gives you the allegations, said don't investigate it, fire him first. I didn't need the Moore study to tell me.

Mr. FELDMAN. You said on page 25:

I was and remain a strong advocate of integrity in law enforcement agencies. However, I also believe deeply in the concept of due process. I believe that it is possible to have aggressive but fair prosecutions—not only in cases against accused private citizens, but also in cases against accused enforcement officials.

Is that the hub of your testimony in regard to the Promuto case?

Mr. BARTELS. That is correct.

Mr. FELDMAN. Is it correct for us to conclude that you believe private citizens under investigation should be confronted early in an investigation, as you say Promuto should have been?

Mr. BARTELS. Certainly before their adverse action is taken. Certainly.

Mr. FELDMAN. Do you believe that private citizens under investigation should be interrogated in the form of a written questionnaire which they can take home with them, fill out at their leisure and return the next day unsworn?

Mr. BARTELS. Many times, they are.

Mr. FELDMAN. Private citizens?

Mr. BARTELS. That is one way of doing it; it doesn't bother me.

Mr. FELDMAN. Does that happen with drug pushers?

Mr. BARTELS. Historic facts, when there is nothing they can change; yes.

Mr. FELDMAN. Has it happened in your administration when someone is accused of trafficking in narcotics—

Mr. BARTELS. Narcotics questions are normally prospective. It is very seldom that we go in to a reputed potential narcotics dealer

and say we would like you to fill out a questionnaire. We normally try to make an undercover approach and buy them.

If you take a look into investigations, into historical facts, into the past, you will find a number of agencies submit questions. This isn't a cram exam where you are trying to, remember historical, who was the King of England.

This is the come back and tell me what the facts were. Tell me what you did. Did you have a relationship with Mr. Corsi; did you have a relationship with Mr. McCaleb; did you have a relationship with these people?

Mr. FELDMAN. You are talking about the Promuto case. Are there any instances in DEA in the Bartels administration where suspected drug violators were confronted before a case was completed and when that confrontation was in the form of written questions in order to give them due process?

Mr. BARTELS. No. I think if any enforcement officer had gone up to a suspected drug dealer and said, I want you to submit a written, fill out a written questionnaire, we would have had him committed.

The point is that the investigations that DEA conducts are prospective; that is, we are trying to go forward. Those agents in their enforcement activities are not investigating historical facts usually.

The FBI has a victim, a complainant who comes in and says my car was stolen, I was hit over the head and they are going back retrospectively. In those types of investigations which are similar to inspection investigations, the use of questions and written questionnaires is common. I think one of the problems was that Mr. Tartaglino relied solely on the type of prospective investigative technique that enforcement uses; that is, we are pretargeting our man, I have been told Bartels is a dope dealer, now my problem is how do I prove it, and I try to get the informant.

I try to use surveillance, something to show, something happens in the future; whereas inspection investigations are frequently retrospective.

Mr. FELDMAN. So there is a difference in philosophy between you and Mr. Tartaglino on how to approach an inspection case?

Mr. BARTELS. Not just philosophy.

Mr. FELDMAN. On page 27 of your statement—

Mr. BARTELS. That is discussed in the Moore study, too.

Mr. FELDMAN. We have that. On page 27 of your statement you assert that Mr. Promuto learned of the investigation not from you but from his secretary, as a result of investigative reports being left by inspectors in the Xerox room during the preceding week. Would you tell me the nature of the investigative report you are talking about?

Mr. BARTELS. I think it was into his deceased father's background. But I never saw it; I have been told.

Mr. FELDMAN. The report or one piece of paper?

Mr. BARTELS. I don't know. I have been told it was a report on his dead father's background.

Mr. FELDMAN. Told by whom?

Mr. BARTELS. Told by a number of people. I was told by the secretary. I may have even been told by George Brosan.

Mr. FELDMAN. Was there anything from the police surveillance reports that was left in that Xerox machine?

Mr. BARTELS. I don't believe so. I believe it was just as to the finances of his father who had died in 1971 or 1970, and his father's background.

Mr. FELDMAN. On page 27 you refer to rumors of the Promuto investigation spreading throughout the agency. When and how did you learn of the existence of these rumors?

Mr. BARTELS. I learned because I received a call. Mr. Richardson told me about the rumors. I received a call from someone in New York who said he, in turn, had heard from the Dallas office that once the inspection, the field inspection, is canceled, it was because of the Promuto case.

Then on the Saturday, I learned first from Mr. Brosan on September 17 about this case. On Saturday, the 20th or 21st, whenever that was, I was over at the International Associations of Chiefs of Police at the Washington Hilton and at their annual meeting, and some time during that morning an officer came up to me and introduced himself and took me aside and said he had been asked to check into Mr. Brosan's connections with organized, Mr. Promuto's connections with organized crime, and while he hadn't found out anything, he would keep looking and keep asking around. It was that sort of rumors that were going around both on the telephone system within the agency and outside the agency.

Mr. FELDMAN. On page 28 of your testimony, you say that:

It was the initial advice of Messrs. Richardson, Lund and Thomas Durkin that Mr. Promuto be assigned to New York and eventually resign.

Was there a difference in Mr. Brosan's recommendation—

Mr. BARTELS. That isn't what I said. I said it was the initial advice of those three that I talk to Promuto during the next several days to see if he would return to New York and resign.

Mr. FELDMAN. Is there any difference between their recommendation and Mr. Brosan's recommendation?

Mr. BARTELS. Yes, there was. Mr. Brosan said fire him, amputate him, and those three said, talk to him and see if he wants to take an intermediate transfer, resignation when this goes on or if he is willing to resign.

Mr. FELDMAN. Did Brosan use the word fire?

Mr. BARTELS. He used amputate, is my recollection.

Mr. FELDMAN. What does that mean?

Mr. BARTELS. I don't know; but I was shocked by it at the time.

Mr. FELDMAN. If you don't know what it means, how can you be shocked by it?

Mr. BARTELS. I know what it means. It means cut him off. It means fire him quickly to me.

Mr. FELDMAN. Could it mean confront him and further possibility—

Mr. BARTELS. Not in that context. It sure couldn't have; I can guarantee you it couldn't have meant confront him.

Mr. FELDMAN. On page 27 of your statement, you note that you wanted—

Mr. BARTELS. Mr. Richardson was there, too. He said one of the problems that Brosan had was he didn't want the man confronted, that there was no possible explanation. That is why I laughed. There was no possible explanation this man could give. I found that shocking at the time and I find it equally shocking now.

Mr. FELDMAN. Mr. Richardson endorsed Mr. Brosan's feelings?

Mr. BARTELS. Yes. At first he did, then he changed.

Mr. FELDMAN. On page 27, you say that you wanted to make sure that Mr. Promuto be afforded the basic right to confront his accuser. Is that correct?

Mr. BARTELS. Yes, sir.

Mr. FELDMAN. Who were Mr. Promuto's accusers? Are the inspectors his accusers, Mr. Brosan, Mr. Tartaglino, the Metropolitan Police Department?

Mr. BARTELS. Yes. I think he ought to be given a chance to explain.

Mr. FELDMAN. Who are his accusers? I don't understand.

Mr. BARTELS. I don't understand, either. That was really one of the questions because this was not a criminal reference report that Mr. Shoffler sent over. What it was, was the report of six incidents that they had observed or found about during another investigation which they said should be brought to the attention of the people in authority.

I knew one of the problems was I never knew what the charges were. What I meant by the word accusers, Inspection, Mr. Brosan, yes. Have Inspection confront him so that we can find out if he has done anything wrong and what.

Mr. FELDMAN. What other cases have there been, personal integrity investigations in which an individual has been afforded the basic right to confront his accusers, whoever they might be, in your tenure?

Mr. BARTELS. I think the great majority, even under Mr. Brosan. The manual calls for it. Do you want me to list all the inspection cases? The manual says before an inspection case is closed—

Mr. FELDMAN. Before it is closed?

Mr. BARTELS. That subject has to be confronted.

Mr. FELDMAN. I mean early in the investigation.

Mr. BARTELS. It wasn't early in the investigation.

Mr. FELDMAN. I think that goes to April, you say, or May, and that started in September.

Mr. BARTELS. Yes. I didn't order him confronted until after Mr. Richardson told me that he had been informed by Mr. Brosan that this case was basically completed. It turned out new allegations came up; it turned out it kept going on. But back in the end of September, Mr. Promuto's case, according to Mr. Richardson, was basically completed, that they planned to close the case and they didn't plan to confront him.

Mr. FELDMAN. In Mr. Durkin's case, the handwriting exemplars in September?

Mr. BARTELS. No.

Mr. FELDMAN. They were examining that in August and September of 1974?

Mr. BARTELS. No.

Mr. FELDMAN. What were they doing?

Mr. BARTELS. In Mr. Durkin's case?

Mr. FELDMAN. Yes.

Mr. BARTELS. The case was closed albeit counter to the manual in September of 1974; but in November of 1973, Mr. Brosan spoke to me about it. He then did two things, I believe. He went and spoke to Mr. MacDonald who made the original complaint again and he submitted the handwriting exemplars in December or January, December of 1973 or January of 1974, to the FBI, comparing Mr. Durkin's handwriting in 1973 with the handwriting sample of 1956 or 1961, or something like that.

That came back from the FBI within a matter of weeks, saying that we can't make an opinion. After that, I believe the case just laid there.

Mr. FELDMAN. Is that an extension of the investigation? Is it an unauthorized investigation? What is your problem with that?

Mr. BARTELS. You mean you don't have any problem with keeping an investigation open in 1974 as to events in 1956?

Mr. FELDMAN. No, I don't, Mr. Bartels. Anything that goes to the integrity of a high DEA official that is not resolved one way or the other should be resolved before that person is promoted or before he stays in office.

We talked about statute of limitations. There is no statute of limitations on morality. We want to have the most effective and competent and professional people in office. You also talked about the fact that these people could be blackmailed or that this could be used against them. So I would think that, yes, any allegations unresolved and incompleated should be completed.

Mr. BARTELS. First of all, let's take a look at that specific allegation.

Mr. FELDMAN. We have done that. We have gone through that over and over.

Mr. BARTELS. I want to take a look at it to answer your question because I said I had all sorts of problems with it. You said you didn't. My problems with it are as follows: First, that allegation was raised by Mr. MacDonald in 1968. Mr. MacDonald was never put under a polygraph test. Mr. MacDonald's allegations laid dormant from 1968 to 1970.

Mr. Tartaglino was the Chief Inspector in 1968 when those allegations were made. During that time, he promoted Mr. Durkin on two occasions. It is my feeling that if he had believed those allegations going back to 1956 were true, he would not have promoted the man at that time.

The allegations were in substance that they were hearsay, by the way. Mr. MacDonald said, look, Mr. William Durkin, back in 1956, some 12 years ago, slept with a Puerto Rican prostitute by the name of "Chicken." So that the inspectors went out and they found some woman by the name of "Chicken" who was indeed an addict and who was shown pictures and did not identify Mr. Durkin. The allegation still laid there.

In 1970, Mr. Fuller wrote there is no further investigation which can be done in this case. Mr. Ingersoll closed the case. Mr. MacDonald who was a witness was never put under a lie detector test.

Mr. FELDMAN. But he was a participant in the crime, supposedly, wasn't he, of the \$16,000 theft?

Mr. BARTELS. Then he was never given a lie detector test.

Mr. FELDMAN. Did he state he was a participant?

Mr. BARTELS. If he stated it, nobody believed him because nobody took any action against him.

Mr. FELDMAN. You say no one believed him. The Waters case was tried earlier this year. Correct?

Mr. BARTELS. January of 1975. It ended in an acquittal. Mr. MacDonald was caught selling narcotics in 1968 when he was a relatively high official in the Bureau of Narcotics and Dangerous Drugs. He was allowed to cooperate. He gave evidence which led to two indictments. The investigation was conducted under the guidance of Mr. Tartaglino. Of those two indictments, there was one contender with a prearranged, agreed suspended sentence to be handed out by both judges in the district court in Baltimore and the other case resulted in an acquittal.

Mr. FELDMAN. Mr. MacDonald was the chief Government witness in the Waters case. Certainly, they were relying on his veracity in that situation where they brought him up to New York and Mr. Curran personally tried that case.

Mr. BARTELS. Yes, they were relying on his veracity in that case. Why didn't Mr. Tartaglino rely on his veracity in the allegations as to Mr. Durkin?

Mr. FELDMAN. Why didn't he?

Mr. BARTELS. Yes. Why did he promote Mr. William Durkin on two occasions after that—

Mr. FELDMAN. Wasn't the Durkin case lying dormant pending the completion of the Waters—

Mr. BARTELS. Mr. Feldman, there is a manual.

Mr. FELDMAN. We are talking about—

Mr. BARTELS. That manual was in effect at that time. What happened in the Durkin case was that in 1970, the then Chief Inspector wrote:

The investigation is closed in the Office of Inspection. Further Investigation would not clarify the question of truth of the allegations.

On January 26, the Director closed that case.

Mr. FELDMAN. What about the Waters case? Did DEA bring a memorandum and compile evidence and information on Mr. MacDonald in order to discredit him as a witness?

Mr. BARTELS. No, sir.

Mr. FELDMAN. Testifying in that case?

Mr. BARTELS. That is absolutely false.

Mr. FELDMAN. Fine. That is all we want, yes or no.

Mr. BARTELS. You can check with Mr. Curran.

Mr. FELDMAN. Did DEA do everything within its power to find the so-called missing corroborating witness?

Mr. BARTELS. Yes, sir. I am unhappy about that inference. Again, you can check with Mr. Curran.

Mr. FELDMAN. We will check with Mr. Curran. We are going to have that case later on.

Mr. BARTELS. I hope you call him.

Mr. FELDMAN. On page 28, you refer to receiving advice from Thomas Durkin. Why did you seek the advice of Thomas Durkin and what expertise did he have concerning personnel integrity matters?

Mr. BARTELS. It was the initial advice of Richardson, Lund, and Durkin that I have this man confronted. I spoke to Durkin, Richardson, and Lund because they, all three of them, had worked on inspection matters starting in the beginning of July.

On this matter, once Mr. Brosan made his judgment not as a factfinder, but as a personnel officer, as it were, that this man had to be fired, I allowed Mr. Brosan to go ahead with the investigation, ordered him to go ahead with the investigation, and asked Richardson and Lund, with the assistance of Durkin, to give me personnel advice as to what action could be taken based on their facts.

Mr. FELDMAN. You talked about discussions with Earl Silbert who is now acting U.S. attorney. On page 28, you state that during the week Thomas Durkin advised you to seek advice from Earl Silbert. Is that correct?

Mr. BARTELS. That is right.

Mr. FELDMAN. You say Mr. Silbert told you to tell Mr. Promuto to stay away from Fran O'Brien's Restaurant. Was that his only advice?

Mr. BARTELS. No. We discussed it. He said tell him, admonish him to stay out of there and he also said—I asked Mr. Silbert if he would take a look to see whether or not a grand jury would be an appropriate vehicle to investigate this thing. He had previously read the files and talked to Mr. Campbell and he subsequently told me through Mr. Richardson that they didn't think it was appropriate for a grand jury.

Mr. FELDMAN. You have made the point here that all we were talking about is associations and not criminal allegations. I think it is a valid point. We have tried to make it very clear here. Why would you even talk to Mr. Silbert about convening a grand jury about someone's associations?

Mr. BARTELS. I didn't talk to him about convening a grand jury. I took a look at that report. That report was sent by the Metropolitan Police Department here in the District of Columbia, to the U.S. attorney in the District of Columbia. What I wanted to make sure was that Earl Silbert had no other information that would indicate—one, I wanted to make sure he knew about it; two, to see whether or not he had any information that would justify his taking over and going further.

Mr. FELDMAN. Your statement covers a time period from September 17, 1974, when you learned of the Promuto inquiry, through September 20, when you met with Mr. Silbert. Then you subsequently talked about other events. Let's go through the chronology very fast because we have had Mr. Brosan, Mr. Tartaglino, Mr. Richardson, Mr. Durkin testify of that chronology.

Let me just put you through it very fast so we can have a complete record. You first learned of the information on Promuto on September 17, 1974?

Mr. BARTELS. Yes.

Mr. FELDMAN. Your reaction was one of displeasure when Brosan said, "We should amputate him immediately"?

Mr. BARTELS. Not that it was displeasure, but I disagreed with it. He said you have three choices. He recommended immediate amputation. When I asked what other choices, he said we could do the investigation or you could do nothing. I don't know that I expressed displeasure.

Mr. FELDMAN. Did the name Diane De Vito come up at this meeting?

Mr. BARTELS. Who?

Mr. FELDMAN. Diane De Vito?

Mr. BARTELS. No.

Mr. FELDMAN. Did Mr. Brosan then present the three options which were get Mr. Promuto to resign or make a full investigation or discontinue him? You characterize resign as amputate. Is that correct?

Mr. BARTELS. I didn't. He did.

Mr. FELDMAN. Your response was what?

Mr. BARTELS. I don't remember whether I ordered the investigation—my responsibility was I didn't think we could amputate him at that time, that we weren't going to fire him. I think I left it open and either later that afternoon or the next day, I ordered the investigation.

Mr. FELDMAN. Did you make a copy of Mr. Brosan's four- or five-page briefing paper that he gave to you?

Mr. BARTELS. Yes.

Mr. FELDMAN. What did you do with that copy?

Mr. BARTELS. I don't remember, I think I filed it.

Mr. FELDMAN. Did you ever give it to Thomas Durkin?

Mr. BARTELS. No.

Mr. FELDMAN. Were you aware that when Mr. Brosan recommended that Promuto be made to resign immediately that the same recommendation was agreed to by Mr. Richardson, Mr. Bruce Jensen, Mr. William Durkin, Mr. Tartaglino, and possibly others?

Mr. BARTELS. I don't care who agreed to it. The concept of firing somebody—

Mr. FELDMAN. I just asked you if you were aware?

Mr. BARTELS. No, I am not; but I was aware that Bob Richardson initially said I think you should fire him immediately and then changed his mind.

Mr. FELDMAN. After Brosan left the meeting, did you have another meeting with Mr. Richardson later that day to further discuss this matter?

Mr. BARTELS. Yes.

Mr. FELDMAN. What was discussed and what directions were given to Mr. Richardson?

Mr. BARTELS. In general, we discussed the firing of him, the firing situation.

Mr. FELDMAN. Did you tell him to meet Tom Durkin?

Mr. BARTELS. Yes, and Mr. Lund. I asked that he, Mr. Lund, give me that personnel advice, oversee this so that as soon as there is information or facts that we could take some action, that we do so.

Mr. FELDMAN. Did you call Thomas Durkin on the 17th of September and ask him to come to Washington?

Mr. BARTELS. Yes.

Mr. FELDMAN. Did you brief him on the Promuto investigation?

Mr. BARTELS. Yes.

Mr. FELDMAN. This was the 17th, in the evening?

Mr. BARTELS. I think it was late afternoon.

Mr. FELDMAN. By phone?

Mr. BARTELS. Yes.

Mr. FELDMAN. Did you tell Mr. Brosan that you were going to bring Thomas Durkin down?

Mr. BARTELS. Either I did, or Mr. Richardson did.

Mr. FELDMAN. When, that day or later?

Mr. BARTELS. I don't recall. I think it was that day.

Mr. FELDMAN. When did you first discuss this investigation—

Mr. BARTELS. I wasn't going to bring Mr. Durkin down. Mr. Durkin said he was going to be in Washington the next day on other business and would talk to us then.

Mr. FELDMAN. When did you first discuss the investigation with Mr. Promuto? That, day, the 17th?

Mr. BARTELS. No. I think it was the next day. Mr. Promuto came in to me first. Mr. Brosman came in and said that Mr. Promuto had found the Xerox and knew he was under investigation. When George was in my office, I got a call saying Promuto was storming around outside waiting to see me. I told him at that time to cooperate fully.

Mr. FELDMAN. After the meeting with Mr. Richardson, did you insert Mr. Richardson in this case between you and Brosan or have him monitor the case in any way?

Mr. BARTELS. I don't know how to answer "insert." But I asked him to give me advice along with Mr. Lund as to what to do with Mr. Promuto.

Mr. FELDMAN. Did Mr. Thomas Durkin come to Washington?

Mr. BARTELS. Yes.

Mr. FELDMAN. When did he come?

Mr. BARTELS. The next day.

Mr. FELDMAN. Did you discuss the matter in detail with him?

Mr. BARTELS. Yes.

Mr. FELDMAN. Did you either show him or give him a copy of the preliminary report that Brosan had submitted?

Mr. BARTELS. I don't think so. I had lunch with him and we discussed it.

Mr. FELDMAN. How long did that luncheon meeting last?

Mr. BARTELS. I don't remember. A normal luncheon hour would be my guess.

Mr. FELDMAN. Did you instruct Lund and Richardson to meet with Thomas Durkin later that day on September 18?

Mr. BARTELS. Yes.

Mr. FELDMAN. Did you instruct them to tell Mr. Brosan and Mr. Tartaglino about the meeting?

Mr. BARTELS. Did I instruct Lund and Richardson?

Mr. FELDMAN. Right. He was the Chief Inspector.

Mr. BARTELS. I don't know if I instructed him before the meeting, but I know he told him about the meeting.

Mr. FELDMAN. Did you have them invite Brosan to the meeting?

Mr. BARTELS. No.

Mr. FELDMAN. Did you give Thomas Durkin any instructions during your meeting with him on September 18 or your conversation on September 17 as to how to resolve the problem?

Mr. BARTELS. No. You mean specific instructions?

Mr. FELDMAN. Yes.

Mr. BARTELS. No.

Mr. FELDMAN. Just told him to find out what there was, come back and make recommendations to you?

Mr. BARTELS. Yes.

Mr. FELDMAN. What did Thomas Durkin advise you to do regarding the Promuto case before he met with Lund and Richardson on September 17 and 18?

Mr. BARTELS. I don't think he met with Lund and Richardson on September 17. I think he only met with them on September 18.

Mr. FELDMAN. On September 18, correct?

Mr. BARTELS. I don't think he advised me anything. I think he sat there and listened to the questions.

Mr. FELDMAN. Did the name Diane De Vito come up in any of those discussions?

Mr. BARTELS. No. I first learned about De Vito being involved in this case sometime the end of October or early November.

Mr. FELDMAN. You didn't give him a copy of the memo?

Mr. BARTELS. Give Durkin a copy?

Mr. FELDMAN. Yes.

Mr. BARTELS. No.

Mr. FELDMAN. He met with Lund and Richardson on September 18. Correct?

Mr. BARTELS. Yes.

Mr. FELDMAN. Were you given the results of that meeting?

Mr. BARTELS. I don't think there were any results. Yes, we discussed it at sometime; but shortly after that, we discussed it and they gave me advice. Yes.

Mr. FELDMAN. What was the advice?

Mr. BARTELS. The advice was to take it to Silberman and at sometime to see whether or not we shouldn't for the intermediate time, while this investigation was going on, reassign Mr. Promuto.

Mr. FELDMAN. Did you direct Thomas Durkin to meet with Promuto sometime between September 23 and 25?

Mr. BARTELS. Yes. I don't know whether it was September 25, but sometime the end of October.

Mr. FELDMAN. Did you inform Mr. Brosan that he was going to do that?

Mr. BARTELS. Mr. Richardson did, I believe.

Mr. FELDMAN. When, after the interview or before?

Mr. BARTELS. After the interview, I think.

Mr. FELDMAN. After the interview?

Mr. BARTELS. Yes.

Mr. FELDMAN. Why wasn't he invited to the interview?

Mr. BARTELS. Because he didn't think there was any possible explanation the man could give anyway.

Mr. FELDMAN. He was still acting as Chief Inspector at this time?

Mr. BARTELS. Yes.

Mr. FELDMAN. Did Thomas Durkin given you the results of that interview?

Mr. BARTELS. Yes, that Promuto said he hadn't done anything wrong and he wasn't about to take a temporary assignment while this investigation went on, no matter what the publicity was.

Mr. FELDMAN. When did he give you the results?

Mr. BARTELS. I don't remember what the day of the interview was; right shortly after the interview, either the next day or that day.

Mr. FELDMAN. Did you turn that over to Mr. Brosan?

Mr. BARTELS. Turn what over?

Mr. FELDMAN. The information that Mr. Durkin had given you on the interview?

Mr. BARTELS. I told Mr. Richardson, that he had denied he had ever been with this woman.

Mr. FELDMAN. Mr. Richardson wasn't acting Chief Inspector. Was Mr. Richardson in charge of the investigation?

Mr. BARTELS. No, but I told Mr. Richardson—you asked me who I told. Mr. Richardson told Mr. Brosan.

Mr. FELDMAN. The next day?

Mr. BARTELS. Whenever it happened; the same day or the next day. Yes.

Mr. FELDMAN. What were Thomas Durkin's recommendations after that meeting?

Mr. BARTELS. Mr. Durkin's recommendations came after that meeting in the form of a memorandum as to the nature of the inspection process which was critical of it and the fact that outside agencies were being contacted while nobody was contacting whether or not Promuto knew the six people.

By that time, it was the Friday and the Saturday of September 27 and September 28, and my recommendations to Mr. Richardson were to have Promuto confronted and have these other people confronted.

Mr. FELDMAN. Did you have any direct communication with Mr. Brosan regarding the Promuto investigation between September 18 and September 26?

Mr. BARTELS. Yes, sir.

Mr. FELDMAN. What dates and what had you talked about?

Mr. BARTELS. I spoke to him actually on September 17; I spoke to him on September 18: I spoke to him several times during the first week and on one occasion during the second week.

Mr. FELDMAN. Did you meet with Richardson, Lund, and Brosan on Thursday, September 26, to further discuss the Promuto investigation?

Mr. BARTELS. I don't think so, but I may have; I don't believe I did.

Mr. FELDMAN. We have had testimony that you met with Mr. Richardson and Tom Durkin at around 6 o'clock Friday, September 27, on the Promuto matter?

Mr. BARTELS. I don't believe I did.

Mr. FELDMAN. Mr. Richardson testified, and I cite page 855 of the stenographic transcript, that he met with Durkin and Bartels Friday night at 6 o'clock. This might refresh your recollection.

Bartels related a conversation that Durkin had with Promuto in which Promuto said Richardson didn't care for Promuto or Bartels, all he cared about was saving his law license.

Mr. BARTELS. The conversation along that line took place. I don't believe it was Friday night. I may be wrong. I don't believe it was. I think that was earlier.

Mr. FELDMAN. Late that night, on Friday night, did you not call Mr. Richardson twice on the Promuto matter?

Mr. BARTELS. Yes.

Mr. FELDMAN. What was the purpose of this call or these calls?

Mr. BARTELS. The purpose of these calls, was one, find out the status of the investigation; two, his opinion as to whether or not Promuto should be confronted, where it was going; three, what we should do in the meantime, this investigation now being 17 days old and being a cause celebre.

What do we do with the Chief of Public Affairs who is rumored throughout the Agency to be under investigation for very severe problems?

What do we do with them? We agreed to meet—that may be an improper characterization. I asked Mr. Richardson to come in and meet me that Saturday morning.

Mr. FELDMAN. Mr. Richardson testified that you were in a highly agitated state. Is that a proper characterization?

Mr. BARTELS. I was madder than hell.

Mr. FELDMAN. That is a better characterization. Did the name Diane De Vito come up in those conversations?

Mr. BARTELS. I have already answered that. The answer is no, the name De Vito didn't come up.

Mr. FELDMAN. Did you know the girl at the airport that had been identified or misidentified at this time was Diane De Vito?

Mr. BARTELS. No. I knew that inspection had originally come up and was prepared to put in an affidavit saying Mr. Promuto had been at Dulles Airport in July 1974 with a woman named Cruse, who was allegedly a narcotics trafficker and that Promuto denied that, and denied it vehemently. That was something that had to be resolved quickly.

Mr. FELDMAN. Who attended the meeting on Saturday, September 28?

Mr. BARTELS. Durkin, Thomas Durkin, myself, and Bob Richardson. The point of that meeting was that Durkin had told Richardson, look, this Cruse matter, he denies. He says he doesn't know Cruse. They at some time, they being Inspection, had interviewed Scruggs and said she doesn't; she never went to the airport, and the question was, was there a misidentification or was Promuto lying?

Mr. FELDMAN. The record will show we have had testimony from Richardson and Durkin that Diane De Vito had been identified already, that the misidentification had been corrected.

Mr. BARTELS. She had been identified by somebody else.

Mr. FELDMAN. They had knowledge, Richardson and Durkin—

Mr. BARTELS. I don't believe Durkin had knowledge. I will challenge your—I don't see how he could have.

Richardson may have gone back and found out, I read that testimony, Richardson said some time he went back and found out that Cruse was De Vito.

Mr. FELDMAN. We will let the testimony speak for itself. You say there was still a question of the identification of Miss Cruse or the woman identified as Miss Cruse.

Mr. BARTELS. It was an allegation by one of the inspectors that a person by the name of Cruse had been seen with Promuto out at Dulles Airport and that this Cruse was a bad person.

Mr. FELDMAN. Why? Was she cited in any BNDD report?

Mr. BARTELS. Yes; she was in a report.

Mr. FELDMAN. Wasn't Diane De Vito in the same report?

Mr. BARTELS. I never saw the report. I gathered she was. At that time I never heard of De Vito.

Mr. FELDMAN. At that meeting, did you tell Mr. Richardson, tell Brosan to do the following things in the Promuto investigation? Prepare a list, written questions, to be submitted to Mr. Promuto by Monday?

Mr. BARTELS. I asked that he be confronted as soon as possible. Mr. Richardson said he and Lund had discussed written questions. I don't remember ordering written questions.

I ordered a confrontation. The point was still that Richardson said the case was essentially closed. Mr. Brosan had it wound up, that it was going to take a period of time for the report to be written and they didn't intend to confront Promuto.

Mr. FELDMAN. I have one last question, Mr. Chairman, then I would like to put some exhibits in the record.

Mr. Brosan says that he met with you on November 13, 1974, to discuss the Promuto case. Is that correct?

Mr. BARTELS. Not the Promuto case, to discuss a number of things.

Mr. FELDMAN. At the meeting, did you make the following statements, yes or no: that you considered the Promuto case resolved on the basis of the last report, particularly because of the Civil Service Commission's informal opinion?

Mr. BARTELS. I think I did say the substance of it.

Mr. FELDMAN. That you had admonished Promuto for his associations?

Mr. BARTELS. No. I had admonished him to stay out of O'Brien's on September 20.

Mr. FELDMAN. That Brosan should not have commenced the investigation prior to your returning from Europe?

Mr. BARTELS. No, sir.

Mr. FELDMAN. That Richardson was the worst possible choice to bring along to disclose to him the Promuto information?

Mr. BARTELS. Richardson was what?

Mr. FELDMAN. That Richardson was the worst possible choice as an individual to bring along to disclose to him—that means to you—the Promuto information?

Mr. BARTELS. No, sir. I have a lot of respect for Mr. Richardson.

Mr. FELDMAN. We are just going through these because he has made the point. Did you tell Brosan that Brosan should not mention Richardson's name to you again.

Mr. BARTELS. That he should never mention the name——

Mr. FELDMAN. Mention his name to you again?

Mr. BARTELS. No.

Mr. FELDMAN. That the synopsis of the Promuto case was poorly written and made Promuto look guilty.

Mr. BARTELS. No. I said the synopsis in the Promuto case was poorly written, inaccurate and didn't reflect accurately the fact in the file.

Mr. FELDMAN. You were a frequent companion of Promuto's and had dinner with him three times a week?

Mr. BARTELS. I notice Mr. Manuel grimaced when you made the last statement. I think it is only fair to say the synopsis written of the Promuto case was, one, unsigned and you couldn't tell who wrote it.

Second, what it said in October was that six charges had been made and that they couldn't prove one charge. However, probable cause was found as to the other charges; that is nonsense.

Inspection doesn't find probable cause and they should know that. We discussed that. What was found in that file was that you could not corroborate what Promuto's associations with those six people were and the reason you couldn't, Mr. Feldman, is they had never been interviewed, although it was now October 20 and, instead, they put out a report that said probable cause was found as to the other conclusions.

That is just totally inaccurate and false and not professional.

Mr. FELDMAN. You were a frequent companion of Promuto's and had dinner with him as often as three nights a week?

Mr. BARTELS. I didn't tell him that.

Mr. FELDMAN. Did you tell Mr. Brosan that you gave Promuto permission to take the girl to the airport on one occasion and that he knew that Brosan had the wrong name for the girl from the beginning?

Mr. BARTELS. No. I can tell you what the facts are. I don't recall what I said in that situation, but I know that Promuto did check with me about taking leave on that day to go to the airport. I didn't know who he was taking.

Mr. FELDMAN. Did you tell Mr. Brosan that you were present when some of the alleged meetings between Mr. Promuto and those mentioned in the report took place?

Mr. BARTELS. No.

Mr. FELDMAN. That this investigation could hurt Promuto and some day preclude him from getting a job, such as U.S. attorney?

Mr. BARTELS. No. What I said in that connection was that that form of a synopsis was very unfair because it would be read as though it were the factual finding and, yet there had never been any investigation, would lie in his record within the Department of Justice, even though they had never interviewed either McCaleb, LeCompte, any of those six people, and that it would go against his record.

Mr. FELDMAN. That when Brosan told you that the girl Promuto associated with used drugs according to a policewoman, you asked, "What kind?" But before Brosan could answer, you said, "So what, I drink alcohol; that is a drug."

Mr. BARTELS. In other words, he would have, I believe——

Mr. FELDMAN. Yes or no.

Mr. BARTELS. I am not going to answer it yes or no. I haven't had the chance.

Mr. FELDMAN. We talked about this. I am trying to make the record.

Mr. BARTELS. Wait a second. That memorandum was never sent to me. He went out of that room on November 13 or 14, typed up a memo and put it in his own file. That was after he had already decided to go to the Department and make charges. That memo is a self-serving statement of his and misstatements. I deny it.

Mr. FELDMAN. That in the future all high ranking officials charged with integrity matters would be called in and faced with such matters before an investigation is made?

Mr. BARTELS. In other words, come in and tell him before you investigate?

Mr. FELDMAN. That is right. Yes or no?

Mr. BARTELS. Absolutely false.

Mr. FELDMAN. That is false; that the differing viewpoints would indicate Brosan's removal from the Office of Inspection was appropriate?

Mr. BARTELS. Give it to me again.

Mr. FELDMAN. That the differing viewpoints would indicate Brosan's removal from the Office of Inspection was appropriate?

Mr. BARTELS. I have no recollection whether I told him it was appropriate, but it was appropriate.

Senator NUNN. What exhibit is that?

Mr. BARTELS. By the way, those charges were made to Mr. Silberman subsequently.

Mr. FELDMAN. I want to put this exhibit in, Mr. Chairman.

Do the names Nick Gianaris, Minor K. Hossfeldt, Richard McCaleb, and Buster Riggins mean anything to you?

Mr. BARTELS. I have never heard of Buster Riggins and/or Hossfeldt, but I have heard of Gianaris and McCaleb, because they were in the original; the others don't refresh my recollection.

Mr. FELDMAN. Have they all been convicted of felonies?

Mr. BARTELS. I don't know; not having heard of the two, it is very difficult to answer the question.

Mr. FELDMAN. For the record, each has been convicted of a felony. Do you deny that Mr. Promuto had any associations with them?

Mr. BARTELS. Mr. Feldman, I don't know. How do I know whether he had associations with them? My question to you would be the same to Mr. Brosan. Ask him.

Mr. FELDMAN. Mr. Chairman, I would like to put in the sealed record at this time a photograph.

Senator NUNN. Without objection.

[The document referred to was marked "Exhibit No. 57" for reference and will be retained in the confidential files of the subcommittee.]

Senator NUNN. We are going to have to conclude. We have a live quorum. We have an order not to have hearings after the live quorum.

Mr. FELDMAN. Mr. Chairman, Mr. Bartels will be recalled at a later date to talk about some of the other issues that we have discussed and tomorrow we meet at 9:30 with Ambassador Silberman in this hearing room.

Senator NUNN. Thank you, Mr. Bartels.

[Whereupon, at 12:10 p.m., the subcommittee recessed, to reconvene at 9:30 a.m., Tuesday, July 15, 1975, in room 3302.]

[Members present at time of recess: Senator Nunn.]

FEDERAL DRUG ENFORCEMENT

TUESDAY, JULY 15, 1975

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met at 12:10 p.m., in room 3302, Dirksen Senate Office Building, under authority of Senate Resolution 111, agreed to March 17, 1975, as amended, Senator Jacob K. Javits presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; Senator Jacob K. Javits, Republican, New York; and Senator Bill Brock, Republican, Tennessee.

Members of the professional staff present: Howard J. Feldman, Chief Counsel; Dana Martin, Assistant Counsel; Philip R. Manuel, Investigator; Frederick Asselin, Investigator; Stuart M. Statler, Chief Counsel to the Minority; Robert Sloan, Special Counsel to the Minority; and Ruth Y. Watt, Chief Clerk.

Senator JAVITS [presiding]. The subcommittee hearings will come to order.

[Members of the subcommittee present at time of reconvening: Senator Javits.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, permission is hereby granted for the Chairman, or any member of the Committee as designated by the Chairman, to conduct hearings in public session, without a quorum of two members for administration of oaths and taking of testimony in connection with Drug Enforcement Administration on Tuesday, July 15, 1975.

HENRY M. JACKSON,
Chairman.

CHARLES H. PERCY,
Ranking Minority Member.

Senator JAVITS. The subcommittee has called as its first witness the Ambassador to Yugoslavia, Mr. Silberman.

Mr. Ambassador, are you willing to be sworn in this hearing?

Ambassador SILBERMAN. But, of course.

Senator JAVITS. Would you raise your right hand?

Do you swear that the testimony you are about to give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ambassador SILBERMAN. I do.

**TESTIMONY OF HON. LAURENCE H. SILBERMAN, U.S. AMBASSADOR
TO YUGOSLAVIA**

Senator JAVITS. Mr. Ambassador, the committee has prepared a series of questions which you are called upon to answer with respect to certain actions, occurrences in your role as an official of the Department of Justice which relate to the operations of the Drug Enforcement Administration; particularly to the activities of the head of that office, Mr. John R. Bartels, in respect to matters arising toward the end of 1974 and before 1974 relating to activities of the Drug Enforcement Administration's Office of Inspection.

I shall begin the questioning which will be taken over by another Senator as soon as he arrives.

Mr. Ambassador, what was the period of time when you were Deputy Attorney General?

Ambassador SILBERMAN. I believe I was sworn in on February 28, 1974, and I served until April 7, 1975. If you forgive me, Senator, for the purpose of whoever is here for UPI, that is April 7, 1975, because there has been some misstatements from UPI on that.

Senator JAVITS. What had been your service in the Federal Government prior to that incumbency?

Ambassador SILBERMAN. Prior to that period from—to 1970, to June 1970, or actually September when I was confirmed, September 1970 to January 20, 1973, I was the Under Secretary of Labor.

From March 1969 to June when I became Acting Under Secretary, or September when I was confirmed, I was the Solicitor General Counsel of the Labor Department.

Prior to that time I was Appellate Attorney of the National Labor Relations Board. Prior to that time I was in private practice, a partner in a law firm in Honolulu for some 8 years and in between the time I resigned as Under Secretary of Labor and the time I became Deputy Attorney General I was a partner in the Washington law firm of Steptoe & Johnson.

Senator JAVITS. How long were you with the NLRB?

Ambassador SILBERMAN. About a year.

Senator JAVITS. Did you begin having discussions with John R. Bartels, Jr., the Administrator of the Drug Enforcement Administration, in September of 1974 in connection with the operations of the Office of Inspection at that agency, DEA?

Ambassador SILBERMAN. Yes. John Bartels and his aide, Mark Moore, and sometimes some of his other people, used to meet with me biweekly as did all of the heads of the operating units of the Justice Department where we would go over whatever management or policy issues ought to be brought to my attention and that I ought to bring to the attention of Attorney General Saxbe.

My recollection is sometime in the summer or early fall of 1974, Bartels and Mark Moore indicated to me that they were concerned about the Inspection Division of DEA and they wanted to conduct a study.

Mark Moore was going to conduct with others a study of the Inspection Division. I heartily approved. Mark Moore was an enormously able Ph. D. from Harvard, one of James Q. Wilson's pro-

teges and one of the ablest young men in the Department, and with a very keen analytical and management mind.

Senator JAVITS. At that time, in the late spring—

Ambassador SILBERMAN. No. Summer or fall, August–September.

Senator JAVITS. In September, were there any problems raised by Mr. Bartels or Mr. Moore respecting that office as the reason for seeking the study?

Ambassador SILBERMAN. First of all, they were doing a study of all of the offices in DEA and Moore had done others of those, but I do recall either one of the others indicated that they thought that the Inspection operation was not well run.

Senator JAVITS. No names were named as to individual officials or anything else?

Ambassador SILBERMAN. I don't recall that. They may have mentioned the names of the individuals involved. But I don't recall that. I think they were just concerned at that point about the operation of the Inspection office.

Senator JAVITS. Was any question raised as to how the operations might be improved and did you give them any advice on the subject?

Ambassador SILBERMAN. Not until the study was complete. I wanted to see the study before there would be views, I would give views as to what ought to be done.

Senator JAVITS. So the other only thing you did then was concur in the fact that a study should be made?

Ambassador SILBERMAN. Yes. Not only concur, but encourage.

Senator JAVITS. By whom was the study to be made?

Ambassador SILBERMAN. My recollection is Moore was to play a major role in it and others were to be involved. But I don't recall who else was involved.

Senator JAVITS. Was it an in-house study that was being discussed?

Ambassador SILBERMAN. Yes.

Senator JAVITS. Were any individuals in either the Drug Enforcement Administration or more specifically, the Office of Inspection, discussed with reference to the performance of their duties?

Ambassador SILBERMAN. I don't recall. All I recall is that Bartels and Moore were dissatisfied with the operation of the Inspection Office.

[At this point Senator Brock entered the hearing room.]

Senator JAVITS. When, if you recall, was that study complete?

Ambassador SILBERMAN. I recall that at least a preliminary draft of that study was completed in November of 1974. The reason I recall that is because I got that with my FBI report which I directed.

Senator JAVITS. Your FBI report, how does that tie into this situation?

Ambassador SILBERMAN. I think you will get to that as you go along in your questions.

Senator JAVITS. You tell us. It is the first time you have mentioned the FBI report. You said you called for a study.

Ambassador SILBERMAN. No. Subsequently in December, there was an FBI report that I asked for concerning allegations a Mr. Tartaglino raised against Mr. Bartels.

When the FBI report came to me it included the Moore study which was completed in November. I do not recall whether Moore continued with other aspects of that study through March. That I am a little hazy on. But I do remember, if not a final study, a preliminary draft that I saw in November.

Senator JAVITS. In that succession of events, when did you first learn of Tartaglino's charges?

Ambassador SILBERMAN. Glen Pommerening, who was the Assistant Attorney General for Administration, in November; and although I reviewed the testimony, Senator Javits, I cannot recall, although I can see the dates that were testified to, I do not have an independent recollection of the dates.

But sometime, as I recall, in the middle of November Glen Pommerening came to me and said we have got a problem in DEA and Tartaglino, who was the acting deputy, formerly Chief Inspector, wanted to get out, he wanted to be transferred.

I remember either at that time or shortly before that, Glen told me Tartaglino wanted to have the job of Chief Inspector for the Department of Justice, Inspector General, which was the concept that I was developing in the fall of 1974 and which we put out in an order in early 1975.

Tartaglino wanted that job. As a matter of fact, I had an ex-partner of mine in town called and told me that Tartaglino wanted the job.

So I am not absolutely sure whether Glen mentioned it at that time or if he mentioned it earlier. But in any event, he came to me and said "We have a problem in DEA. Tartaglino is very upset with what is going on in there and he has a number of complaints about Bartels and he has come to me, Glen Pommerening, to get me to do something. I don't think I ought to do something. I think this is something that ought to come to you," and I agreed.

I said, "Glen, go back and have him put that in writing." And he did. Then Glen came up a day or so later with a letter or a memorandum which Tartaglino had written to Pommerening, the Assistant Attorney General for Administration, outlining his complaints against Bartels.

Senator JAVITS. As far as you can recall, though, that memorandum is obviously the best evidence; did that memorandum—or did you have other knowledge outside the memorandum that these charges involved one Vincent L. Promuto, the Director of Public Affairs of DEA?

Ambassador SILBERMAN. I think that was the first time I saw anything about Promuto.

Senator JAVITS. It was the first time in the memorandum?

Ambassador SILBERMAN. Yes; I think so. I think so. It may be Pommerening mentioned Promuto to me as part of the problems in DEA. But I cannot recall that independently.

Senator JAVITS. Would you like to look at a memorandum dated November 14, 1974, which is already in evidence, Committee Exhibit No. 20, to identify as the memorandum to which you refer?

Ambassador SILBERMAN. I may have a copy of it myself.

Yes. It says at the bottom attachments. Are the attachments in evidence?

Senator JAVITS. We do not have attachments.

Ambassador SILBERMAN. Whatever happened to them?

Mr. FELDMAN. They weren't delivered to us by the Department of Justice.

Senator JAVITS. Do you know the nature of those attachments?

Ambassador SILBERMAN. No, I don't recall, but I see at the bottom attachments.

Senator JAVITS. We will find out, but is that the memorandum other than the attachments?

Ambassador SILBERMAN. Yes, it is.

Senator JAVITS. Thank you. Could you keep it before you. Is that the first time that you learned that Vincent L. Promuto had been seen allegedly in the company of felons and other persons of criminal reputation by the Washington Metropolitan Police Force Organized Crime and Rackets Section?

Ambassador SILBERMAN. Yes, as far as I know. I never heard of that before as far as I can recall.

Senator JAVITS. That was the first time that you had read this memorandum which is before you?

Ambassador SILBERMAN. The day that Glen Pommerening brought it to me on November 14 or November 15, but the day he brought it to me was the day I read it.

Senator JAVITS. Did you say you had only 5 minutes, Mr. Ambassador?

Senator BROCK. Do you have more time?

Ambassador SILBERMAN. Absolutely. I should like to get through today so I can get back to Belgrade, but I have all day.

Senator JAVITS. I yield to Senator Brock.

Ambassador SILBERMAN. I hate to see you leave, Senator. I always thought you were the best lawyer in the Senate.

Senator JAVITS. You are very kind. I will come back.

Ambassador SILBERMAN. No invidious comparison suggested, but I recall Senator Brock was not a lawyer.

Senator BROCK. I agree only because I am not a lawyer.

[At this point Senator Javits withdrew from the hearing room.]

Senator BROCK [presiding]. I will just pursue this line of questioning. I don't know if you have had a copy of these before or not, but in sequence, did you discuss the Tartaglino memorandum with anyone, and, if so, whom?

Ambassador SILBERMAN. I didn't understand the first part of your question.

Senator BROCK. Did you discuss the memorandum you have in front of you—

Ambassador SILBERMAN. Before that you said you didn't know I had a copy of it.

Senator BROCK. Of the questions.

Ambassador SILBERMAN. No, I don't have a copy of your questions. No. Did I discuss the Tartaglino memorandum with anyone? The answer is "yes." Shortly after I read the Tartaglino memorandum—I am not certain about this—I may well have showed it and discussed it with Mike Spector, A Deputy Associate Attorney General, one of my assistants, and we may have discussed what to do

about it. It is more likely than not that I would have done that, since it was his responsibility *inter alia* to deal with DEA.

I decided to call Henry Petersen, who was the head of the Criminal Division, Assistant Attorney General, up to my office. I did. I cannot recall the exact date, but it was shortly after I read, thought about the memo, probably discussed it with Spector.

Henry Petersen came to my office. I showed him the memo and either he read it then or not. I cannot recall, or we summarized it. In any event, I asked Henry if he would conduct an investigation of the allegations in this memo.

Senator BROCK. The next day you had a meeting with Mr. Bartels in your office?

Ambassador SILBERMAN. The next day between what and what?

Senator BROCK. You received this memorandum on November 14.

Ambassador SILBERMAN. I am not sure of that. It is dated November 14. I could have gotten it November 14 or 15. I don't know which date I received it.

Senator BROCK. What I am really reaching for, I wondered if you had discussed this particular memorandum with Mr. Bartels or what was the purpose of the meeting?

Ambassador SILBERMAN. I can't tell you. I know I did not discuss the substance of the memorandum with Mr. Bartels at that stage or, indeed, did I ever discuss the substance of the memorandum until he was in my office in January, I think, when I questioned him about it.

But Bartels, as I said, was often in my office on internal matters biweekly. I cannot tell you why he was there then. Did you ask him the question?

Mr. FELDMAN. Yes. That was put to him; his discussions with you?

Ambassador SILBERMAN. Whether on November 15 or 16 he had discussed this memorandum?

Senator BROCK. On Friday, I asked him if he had discussed the Promuto matter which is in his memorandum with you. He said, I think, that he had not discussed that until December.

Ambassador SILBERMAN. December or January.

Senator BROCK. But he was talking to you during this time about the Moore study.

Ambassador SILBERMAN. Before that, that goes back into September is my recollection.

Senator BROCK. That is correct. That was an ongoing matter during this time.

Mr. SLOAN. Mr. Chairman, if I could clear up one previous question, what was Mr. Petersen's answer to your request that investigation be conducted?

Ambassador SILBERMAN. You mean my request that he conduct an investigation?

Mr. SLOAN. That is right.

Ambassador SILBERMAN. He said he would.

Mr. SLOAN. He said he would?

Ambassador SILBERMAN. Yes.

Mr. SLOAN. Did he?

Ambassador SILBERMAN. No, he did not. A week later, Henry Petersen, Jack Keeney, and Phil White, who was a senior ranking lawyer in Henry's shop, and I believe acted as his special assistant, came to me.

I mean when I say a week, it was approximately a week during which period I thought an investigation was ongoing. Henry, Jack, and Phil came to me and sat down and Henry said to me that he did not want to conduct this investigation. He explained himself, I recall it vividly, on two grounds, the first of which was John Bartels had come out of the Criminal Division, the Organized Crime Section of the Criminal Division, which was in many respects the Criminal Division's pride and joy, and that he had an excellent record in the Criminal Division, and that Henry thought very highly of him.

He felt, under the circumstances, he thought he might be subsequently accused of being biased in favor of Bartels.

Then he also said to me, "and besides, Larry, I have resigned; I am leaving at the end of the year," or "I have announced my resignation. I am leaving at the end of the year and, frankly, this is a mess and I don't want to get into another one," and I knew he meant Henry's troubles with matters that Congress is quite familiar with.

I, incidentally, have the highest regard for Henry Petersen and thought in many respects had taken unfair criticism. In any event, I understood full well what he meant. Then I turned and said, "OK, Jack, Deputy Assistant Attorney General, Jack Keeney, you conduct."

Jack said, "Well, I have the same problems. Bartels has come out of the Criminal Division and I really don't want to take this on here."

Mr. SLOAN. To interject a second, were these gentlemen personal friends, or was it just that they had worked together closely?

Ambassador SILBERMAN. I don't know whether they were personal friends of Bartels. I think it was just that they had worked together. In any event, they made the point Bartels was one of their most prized products out of the Organized Crime Section of the Criminal Division, with an enormously impressive record as head of the Strike Force up in New Jersey, which was one of their most important Strike Forces.

When Elliot Richardson had picked him to be Administrator of DEA, the Criminal Division had recommended him highly.

But I also got to the point that the Criminal Division had been dragged through the mud in the Congress and they didn't want to take this on because it looked like a mess.

Senator BROCK. What do you mean mess?

Ambassador SILBERMAN. You had charges flying between the two long-time career employees of the Justice Department, John Bartels and his Acting Deputy, Tartaglino; back, back and forth. They may have said, at least I came out with the recollection, there was no win proposition, no matter what kind of investigation was conducted, somebody would be criticized.

When Jack disqualified himself, I said, "who in the Criminal Division?" They said, "well, we think we ought to recuse the entire

Criminal Division." So I said, "what do I do?" Henry said, "look, this is a responsibility you have as Deputy Attorney General."

"This is," I think he may have said, "this is an administrative inquiry, the kind of thing normally done by the Deputy Attorney General. It is your responsibility. Larry, you are going to have to make the judgment on this one."

I recall responding, "Henry, I am not in the least afraid of making a judgment, but I am not a trained investigator. I have made the judgment on many criminal cases that have come up to me, but I am not a trained investigator. I need somebody to do the investigation on this one."

His response was, "Jack Keeney, just get some top people in the FBI attached directly to you and have them conduct the investigation." It seemed like a good solution to me for a number of reasons, which I will describe if you ask me. So I subsequently went along on that line.

Mr. SLOAN. Ambassador Silberman, did you feel that there were possible criminal charges and that is why you originally discussed it with Mr. Petersen?

Ambassador SILBERMAN. That is a fair question. Let me just answer that one. Yes, I have read the transcript of this. There is some confusion on this. The charges were not made in a criminal way. I think this is a point the committee should understand.

Tartaglino, who was a long-time criminal investigator, did not charge obstruction of justice. If you look at his memo, he charged a number of management matters, which he disagreed with Bartels on, and then he claimed, with respect to the Promuto matter, that Bartels had impeded the investigation.

It is quite common in the Justice Department to get allegations which, on its face, suggested impropriety, but which may subsequently develop into a criminal case. In fact, it is so common that the Department has established a procedure to deal with it; that is, to conduct administrative inquiries or you might say administrative investigations, which are designed to look into these charges and if at some point the charges suggest criminal conduct, then you shift into a criminal investigation.

The reason I went to Henry was—of course, I recognized that impeding an investigation could under certain circumstances develop into a charge of obstruction of justice. But that wasn't the charge.

Now, the reason I went to Henry Petersen is that the Criminal Division normally supervises in a sense, I say in a sense because they don't have direct line supervision, but they supervise in terms of investigation of cases, both the FBI and DEA, which are two criminal investigating arms, and it seemed to me were the ones to have the best possible expertise in evaluating the kind of charges which Tartaglino made against Bartels, which ran the gamut from management disputes to the allegations that with respect to Promuto there was an impeding of the internal investigation of Promuto.

Mr. SLOAN. You would say with the allegation of impeding of the investigation that that was the potential criminal violation?

Ambassador SILBERMAN. Let me give you an example.

Mr. SLOAN. Is that a fair interpretation?

Ambassador SILBERMAN. It is possible it could develop. It wasn't on its face. Let me give you an example. I don't mean to be facetious about this. It is an excellent example.

On June 23 of this year, at the time the committee, and particularly the chairman of the committee, Senator Jackson, was threatening to call me before the committee and also making some statements reflecting unfavorably upon my investigation, he sent me a letter which I received, Senator Jackson, asking for funds for his Presidential campaign.

On its face, that could be one of three things. It could be extortion, depending on what his motive was. It could be just an impropriety for a Senator to ask for campaign funds at a time when he was having disputes with somebody that he wanted to call before as a witness, before his committee, or it could be a mistake.

I must say I was puzzled since I never contributed to a Democrat in my life and I couldn't imagine what list I could be on that would suggest to the Senator that he should send me a request for funds.

Mr. FELDMAN. Perhaps National Geographic or something like that, Mr. Ambassador?

Senator BROCK. I got one, too.

Ambassador SILBERMAN. You got one, too?

Senator BROCK. I think he got an equal response from both of us.

Mr. FELDMAN. I think you answered the question for Senator Jackson, Senator. Thank you very much.

Ambassador SILBERMAN. I haven't gotten a chance to respond to it. I thought I would have a chance here. I guess to the Senator's staff, I would say I am very sorry, but I do not feel obliged nor inclined to contribute to his Presidential campaign.

In any event, the point I make on this is that allegations can come in which can develop into criminal cases, but the normal procedure in the Justice Department is to conduct an administrative inquiry.

Then, if at some point it comes to the decisionmaker with a recommendation, this matter looks criminal to us, that is to say, it could turn into a criminal matter, then you switch it into a criminal investigation.

Mr. SLOAN. On the question of potential criminality, I think it is pertinent to point out here that Mr. Bartels has testified that shortly after the 14th of November 1974, he was told by Michael Spector, who was then Associate Deputy Attorney General, that Mr. Tagliano had accused him of fraud.

At that time, did Mr. Spector advise Mr. Bartels of his Miranda rights?

Ambassador SILBERMAN. That is right. Any administrative inquiry that can develop into a criminal investigation, it is standard to give people Miranda warnings. There is no question that I recognized that Mike Spector recognized the charge of impeding an investigation could develop into an obstruction of justice.

You would, under 1505 of 18 United States Code, have to develop something along the lines of a corrupt motive on the part of Bartels, some pecuniary interest in the matter or some significant benefit he could get, it is sort of questionable under 1505. It is very unusual

to have an obstruction of justice charge, based on an underlying investigation, which is not criminal.

I will remind you, gentlemen, that the investigation of Promuto was not a criminal investigation, although one of the things that troubled me, and I will get to this, that it was treated in some respects as a criminal investigation; that is to say, the charge against Promuto was that he was associating with known gamblers.

That resolved itself, as I understood it from the FBI report in the proposition that he spent a lot of time in Fran O'Brien's, and the question was did he spend a lot of time with gamblers.

The other charge was he may have been sleeping with prostitutes which is, you know, the kind of thing that is sort of a marginal issue as to the propriety of the Justice Department employee; that is to say, it is not the kind of thing we want or would like.

But it is not a criminal charge and, indeed, as Bartels has testified before this committee, and I think wisely, there is a question of how the Civil Service treats these kinds of things these days.

In other words, what you have got here is something which this committee is familiar with. Senator Jackson mentioned it the other day. You have got a charge of an associational impropriety. In some respects, it is similar to the charges that used to occupy the Congress back in the fifties of association with fellow travelers and known Communists, et cetera.

You have to be very careful with these associational charges because people can be defamed unfairly if in fact the association is casual and does not affect their job.

On the other hand, you have to be worried about the appearance of the impropriety. It is a tricky kind of area.

Mr. FELDMAN. Mr. Ambassador, what if the associate is in turn an associate of an identified narcotics violator?

Ambassador SILBERMAN. I think you are talking about a prostitute in that situation. Let me tell you my judgment, and I have some experience in this because during this same period of time in January of 1975, I personally was doing the investigation of those FBI files on Congressmen and Senators. And most prostitutes by definition are engaged in illegal activity and it is not unlikely at all that a prostitute will have an association with other people who are engaged in illegal activity.

So I am cautious about that because the mere fact that a man in Government in any level, whether he be in the Congress, in the Senate or in the executive branch, sleeps with a prostitute who in turn sleeps with others who are illegal or engaged in hard, illegal conduct, does not by itself constitute matters that would necessarily trouble me.

I would want to know what the relation is beyond that, is there a direct 1-to-1 relationship of some significance between the executive branch employee and, as you put it, the class I violator?

Mr. FELDMAN. Would you consider it up a step if that prostitute was a drug user?

Ambassador SILBERMAN. I think most prostitutes are drug users; no.

Mr. FELDMAN. You wouldn't?

Ambassador SILBERMAN. I think most prostitutes are drug users. If everybody who sleeps with prostitutes is disqualified as a Federal employee, we will have to empty out Washington.

Senator BROCK. That might be a pretty good objective.

Ambassador SILBERMAN. I haven't done so, incidentally, if the question is raised.

Mr. FELDMAN. I want to clarify a question. It doesn't disturb you, I am sure it disturbs you. But it doesn't raise a red flag if an official is consorting with a prostitute who is a drug user, an official of DEA, the drug enforcement agency?

Ambassador SILBERMAN. It is interesting you would use the expression "red flag," Mr. Feldman.

I am concerned what else it implies. The mere fact that an official sleeps with a prostitute who engages in other illegal activity is not by itself a disqualification. Indeed, during the period of time I was Deputy Attorney General, the new Attorney General, Ed Levi, had an agonizing problem with respect to an appointment of a U.S. attorney. It is public because the U.S. attorney made it public, who was charged by some as being disqualified to be a U.S. attorney because he had over a number of years slept with prostitutes at a particular house of ill repute and the madam of that house was heavily involved separately with organized crime people.

[At this point Senator Javits entered the hearing room.]

Ambassador SILBERMAN. My recollection is the U.S. attorney or the reputed U.S. attorney made that all public. He was appointed by the administration and he was confirmed by the Senate. That is really a direct analogy. That was only a couple of months ago, sir.

Senator BROCK. Let me ask you, you said that you went the route of an administrative investigation. What does that mean? What did you do? How many people did you get involved? Who were they?

Ambassador SILBERMAN. A fair question. I hadn't gotten to that. I will follow you up on it. What I did was call Nick Callahan, Deputy Director of the FBI, having been out of town. I said, "Nick, I have this kind of charge at DEA." I think I summarized the charges in some way and "I want the very best men you have in internal inspection, the kind of guys you would use for your own internal investigations of improprieties of FBI agents and I want them to work directly for me to conduct this investigation."

Nick said, "OK, they will be there." And within a very short time, a Mr. Williams, Special Agent of the FBI, plus Mr. Bassett, who was, as I recall, the Director, an Assistant Director of the Bureau in charge of the Inspection Division, came to my office.

I told them, "Gentlemen, I want you to conduct an investigation into the allegations of inquiry." I don't recall which are the two words I used; I think it is more likely I said investigation, "into the allegations Mr. Tartaglino made against Mr. Bartels." I want you to understand that I thought these allegations Tartaglino made against Bartels were serious.

I was troubled about them and I told them particularly to focus on those allegations, to go out and investigate it, to come back and give me the results of the investigation. They did.

I saw where Mr. Williams and Mr. Hegarty in their testimony indicated that others in the Bureau were not involved.

I, frankly, for the life of me, can't understand that. I talked with Hal Bassett yesterday and he was in the regional meeting and he was in the conclusionary meeting. Connally, his deputy, was in the meeting in January.

The question has been raised by this committee, why did I not just give this entire investigation to Clarence Kelley, because although the entire Inspection Division was involved, one can argue that it was somewhat unusual because it didn't go from the Assistant Director or to Nick Callahan to Clarence Kelley.

I shall give you my reasons, the first of which is—it was originally put in my head by either Petersen or Keeney, but I thought they were right—the reason for that is I didn't think it was appropriate or simply for the entire FBI to be investigating the entire DEA. They were sister investigating agencies. The supervisor of both was the Deputy Attorney General and the Attorney General.

I didn't want to pass the buck to Clarence or to the FBI in any way. I remember feeling keenly when Henry said to me this is one you have got to decide. So although I wanted their resources for investigation, I wanted to be the one to make the decision. I, of course, told Attorney General Saxbe about this, reported this to him and he agreed to the procedure.

So that is why I went to the Inspection Division or to Bassett, Williams, Hegarty, and Connally, who were all involved.

Second: I had in mind a new procedure which I wanted to develop for the Justice Department and which I put in an order which was issued under Bill Saxbe in January of 1975.

This was in a sense the first step to that procedure. I wanted to set up an Inspector General for the Department. You see, the order sets up a special review staff, because I felt we needed one central organ in the Department that would do all the internal investigations of an administrative inquiry type.

My reason for that grew out of my experience with Operation Clean Sweep where the FBI had been investigating matters, but they naturally focused on criminal issues and certain management questions about INS had fallen through the crack in my judgment.

So I wanted to centralize the internal investigation with an Inspector General which I called director of special review staff.

I also wanted to have that director of special review staff to be able to lend, to assign inspectors from the Bureau, from DEA, from INS and from the Criminal Division, investigators, all in a group depending on what allegations came to it.

I thought that was very important for the Department. I say that because part of my problems during this period of time were—I don't mean to be misunderstood—were the FBI itself. That was the time I was finding out about the files on the Congressmen and the OC files in the FBI.

I was a lot more upset about that than anything else I had seen in the Justice Department. In other words, the Bureau itself had to be investigated from outside, or I thought a structure should be set up so the Bureau itself could be investigated from outside.

This Inspector General idea was the appropriate way to go. The Inspector General would be reporting to the Deputy Attorney General and the Attorney General. That is why I used this procedure. I was moving toward that new structure which you put in the Attorney General's order in January.

Senator BROCK. I think it might be well—I apologize for all of us, Mr. Silberman. We have a number of conflicting opportunities going on. Senator Javits and I both have to leave. Senator Nunn is supposed to be on his way.

Mr. FELDMAN. He is on his way over. We could recess for a couple of minutes. Then we could resume.

Senator JAVITS. I would suggest that the Chair take an affirmative recess so the witness can have a few minutes. Why not recess and reassemble at 1:10?

Ambassador SILBERMAN. Thank you.

Mr. FELDMAN. Mr. Ambassador, if Senator Nunn is coming over and he is going to be here in a couple of minutes, would you prefer to go on? I know you want to get this over with.

Ambassador SILBERMAN. Yes. As I indicated to you, I am perfectly willing to come back if I was assured I would be able to testify today.

Mr. FELDMAN. Why don't we just take a relaxed recess in place.

Senator JAVITS. Recess until 1:10?

[Brief recess.]

[A brief recess was taken with the following members present: Senators Javits and Brock.]

[Members present at time of reconvening: Senator Nunn.]

Senator NUNN [presiding]. The subcommittee will come to order.

Mr. Ambassador, I apologize for all of these interruptions and delays. We had votes all morning. We have the New Hampshire matter going on. It is unpredictable when we can meet.

I will proceed with these questions as long as I can. I have two other meetings beginning in a few minutes. I hope I will be able to stay long enough to at least get to the point where we can conclude. If not, I hope somebody will relieve me. But we will go as far as we can.

Ambassador SILBERMAN. I appreciate it, Senator.

Senator NUNN. In the transmittal of the Tartaglino memo to the Criminal Division, did you or one of your aides attach to it a memorandum or any other written communications in which opinions, observations or instructions pertaining to the Tartaglino memo were made?

Ambassador SILBERMAN. I will be darned if I know. Maybe Mr. Spector added something, but if he did, he did it on his own. I don't recall.

Is there such a document? I think I remember just handing that document to Henry Petersen and saying investigate it. I think there is a misstatement in the way. You say transmitted to the Criminal Division. You recall I was asking Henry to make an inquiry.

But this was not a matter which formally was submitted to the Criminal Division as a criminal investigation at that stage. Obviously, as I have explained earlier, if a criminal charge developed

out of it, it would be handled in the normal manner in which criminal charges are handled. But I handed it to Henry Petersen to personally investigate it, with whatever resources in the Criminal Division he had as an administrative inquiry.

Senator NUNN. Is it your normal practice to refer any matter of this nature to the Criminal Division, whether or not at this stage you refer that you have personally concluded it as a criminal charge? In other words, are the matters of this nature always referred to the Criminal Division or any other branch of Justice that could properly handle such a matter?

Ambassador SILBERMAN. I don't recall a matter of this nature coming up when I was Deputy Attorney General, so I suppose in some respects, it appeared unique to me. Let me think about that. There was one other matter that came up which was, in a sense, similar.

There was an allegation raised against the U.S. attorney that he had engaged in improper conduct with respect to the investigation of a criminal matter that he had indeed—I don't want to mention his name, but that he had indeed in that case diverted the investigation away from people who were family members.

My recollection is that, how I handled that was to have both the Criminal Division and the FBI involved in it. The FBI did the investigation and the Criminal Division was evaluating and, indeed, part of the investigating team. I must have had four or five people in it.

Then at the conclusion, there was an impropriety and I asked the U.S. attorney to resign. But although there was impropriety, it was not criminal conduct. It didn't rise to an obstruction of justice case.

Senator NUNN. Did Henry Petersen tell you that he—that is, Petersen—discussed the Tartaglino memo with John R. Bartels, Jr.?

Ambassador SILBERMAN. I don't recall that.

Senator NUNN. Do you consider it proper for Mr. Petersen to make a judgment on whether or not the Criminal Division should investigate the Tartaglino memorandum, based on the consideration of friendship between Mr. Petersen and Mr. Bartels?

Ambassador SILBERMAN. Yes. You are again talking about the Criminal Division; but you are right in a way because Henry not only disqualified himself, but then disqualified the whole division. They saw this, they were concerned that their investigation—I don't think it was that they felt John was guilty.

I think they were concerned that if they cleared John, it wouldn't be believed because he had come out of the Criminal Division and that he had been one of their fair-haired boys, one of the best of the strike force attorneys. I understood this and it was also the other aspect of the Criminal Division had been torn about a little bit during that last couple of years.

I, of course, think, although it was not discussed—I don't recall whether it was discussed—implicit in the whole conversation is if anybody developed a criminal case, then it would have to go back down to the Criminal Division. The Criminal Division couldn't disqualify itself. Nobody else can handle criminal cases.

Senator NUNN. Under those circumstances, couldn't Mr. Petersen simply refer the whole matter to another person in the Criminal Division and disqualify himself, rather than the entire division?

Ambassador SILBERMAN. You weren't here, Senator Nunn, when I think I answered that question earlier, because what happened was after Henry disqualified himself and I turned to Jack Keeney and Jack said he disqualified himself for the same reasons generally. Then I said who else? They said we don't think it ought to be done in the Criminal Division. We think the Criminal Division ought to be recused.

I understood it. I understood it. Henry said, look, you are Deputy Attorney General. You ought to make this decision. That is when I said, I will repeat my testimony earlier for your benefit. I said I am perfectly prepared to make the judgment, the decision. I just need, because I am not a trained investigator, I need investigators to do the investigation for me. That is when they suggested that I get FBI agents directly reporting to me to do the investigation.

Senator NUNN. Did the Criminal Division return the Tartaglino memorandum to you on or about December 2, 1974?

Ambassador SILBERMAN. It might have been earlier. But look, Senator, I am not going to recall the exact dates. I have read through the transcript of this and I can use dates because other people have used dates. I cannot recall exact dates and I have no independent recollection. Either they returned it to me or they returned it to Mike Spector. In any event, I had it when I gave it to Williams and Bassett.

Senator NUNN. Was any kind of letter transmittal attached to the memorandum?

Ambassador SILBERMAN. Not that I recall. I have a feeling that the Criminal Division felt somebody wants to use the expression that this particular investigation looked like a drawer full of cancer and I think that was not inappropriate in this case. They didn't want any part of it. I don't mean to say that there wasn't a criminal charge, they would have had to be a part of it, because they would have.

Senator NUNN. Did Mr. Petersen or Mr. Keeney or any other person in the Criminal Division recommend that the FBI be called in to conduct an administrative review of the allegations contained in the Tartaglino memorandum?

Ambassador SILBERMAN. I think I testified on that, too, Senator. I just testified that they specifically recommended that I get FBI agents assigned to me to conduct the administrative inquiry. In the Department of Justice, we use that term administrative investigation, administrative inquiry a little interchangeably. The formal term is administrative inquiry.

In that respect, if I may divert for a second, I was mystified as to why the two FBI agents who appeared before you told you they never heard of an administrative investigation. I tried to track that down yesterday in the FBI because I signed, God knows, how many of them, directions for administrative inquiries, in which the FBI was involved.

It was explained to me yesterday by the FBI people that normally the administrative inquiry went to a different group than the Internal Inspection of the FBI. In this case, I specifically asked for the very best men they had in Internal Inspection because these charges related to DEA's Internal Inspection and I wanted somebody who could compare the FBI's technique of internal inspection with DEA's.

Senator NUNN. Did the FBI, when they got in the case, assign agents to report directly to you?

Ambassador SILBERMAN. Yes. I called Nick Callahan and told him I wanted agents reporting directly to me and as I previously testified, there were four involved in the discussions, Hal Bassett, Assistant Director of the FBI, Connally, his deputy, and Williams and Hegarty. Williams and Hegarty actually did, as I can recall, the actual interviewing.

Senator NUNN. You met with these agents. What general instructions did you give them? Which ones did you instruct?

Ambassador SILBERMAN. I didn't hear you, Senator.

Senator NUNN. You met with these agents. Which ones of them did you instruct, and what were your general instructions?

Ambassador SILBERMAN. Bassett, Assistant Director, and Williams. My general instructions were, as they have testified in their initial questioning and answers before this committee, to focus on the allegations of the Tartaglino memorandum and investigate them.

I may say in this respect, although, as you know, I can't go into the internal report of the FBI for all sorts of reasons which the Justice Department has given you in the past, I think I can give you this which will help. This is the first paragraph of their response to me when they gave it to me in their report:

On December 2, 1974, Deputy Attorney General Silberman requested that the Inspection Division, Federal Bureau of Investigation, conduct an administrative inquiry at the Drug Enforcement Administration. Mr. Silberman instructed that the inquiry focus on the allegations contained in a memorandum from Andrew C. Tartaglino, Acting Deputy Administrator of DEA, to Assistant Attorney General Glen E. Pommerening, dated November 14, 1974.

The allegations along with the attachment No. 1—which is the Tartaglino—the allegations along with the results of the investigation conducted into each allegation are summarized as follows.

That is what I received. I think that makes very clear what I told them. I told them also that I regarded the allegations of impeding the Promuto investigation as the most serious, that I wanted that looked into as thoroughly as they could.

At some point in the conversation, I indicated it was not their responsibility to take over the ongoing DEA investigation of Promuto and there has been an awful lot of discussion, but it frankly mystifies me because that was an ongoing investigation at that point, conducted by Tartaglino and Brosan, and after they were removed by Phil Smith and others.

But I certainly meant the FBI, and they understood it, they were to go as far as they, it was necessary to deal with the allegations Tartaglino made against Bartels, but for them to take over a 2- or 3-month investigation of Mr. Promuto was not necessary. In fact, if I had directed them to do that, what I really would have been doing is accepting the Tartaglino allegations as true.

Senator NUNN. Were these FBI agents on loan to you or were they still jurisdictionally under the FBI, or both?

Ambassador SILBERMAN. Both. You are exactly right, both. They did discuss the case and what they were going to do with Bassett, and probably Connally, and I surely didn't want them to cut off any discussion they had in the Bureau about it. But I wanted DEA to understand, and I told them when they interview witnesses, they were to say they were working for the Deputy Attorney General.

I explained that earlier. I didn't want it to be appearance of FBI investigating DEA, but rather the Deputy Attorney General who was the supervisor of both, using FBI resources investigating DEA. A number of charges made went into management and that was clearly only my responsibility.

Mr. FELDMAN. Just a followup question, was this an investigation of the Inspection Division of FBI or of two agents assigned to it?

Ambassador SILBERMAN. They certainly regarded it as the Inspection Division. I think I started out with a request for agents and they came in with their Assistant Director of the Inspection Division, the guy in charge of the Inspection Division, as well as Williams, and when they came back and reported, Bassett was there.

I don't think Bassett supervised line-by-line the actions of the agents during the investigation, but I certainly had every reason to believe he was providing them with whatever guidance was necessary and did as he indicated to me yesterday, provide certain guidance.

But these were trained investigators. These were the best men the FBI had in this area and they didn't need, in my judgment, an awful lot of direction.

Senator NUNN. Were they supposed to report to you and no one else or were they supposed to report back up the line to the FBI and you? What was the chain of command?

Ambassador SILBERMAN. Obviously, they were keeping their director involved, but it was not necessary for them to go to Nick Callahan and Clarence Kelley. I wanted the responsibility on this one. It was clear it was going to be my responsibility. I wanted them to have all of the resources, but it was my decision, not Clarence's, not anybody else's; my judgment.

Senator NUNN. Do you know of any other examples of this kind of assignment of FBI agents to you during your period of tenure to the Justice Department?

Ambassador SILBERMAN. No; but as I explained earlier before you came in, I was moving towards a structure which I published in an order in January, to develop this kind of concept. You see, the Deputy Attorney General is in effect today the Inspector General of the Department. It is impossible for him to do that job and also run operationally the Department.

My view was we ought to have another man, the Director of the Special Review Staff, or Inspector General, who would coordinate the inspection operations of the various units of the Department and also bring together people to work under him to investigate various units. I will confess to you, the FBI was not happy about that idea particularly because what I had in mind was the investigation of the Bureau itself when there was an allegation.

As I indicated earlier, in January of that year that was by far my most serious job. That is to say, the files of Congressmen which I had to go and read all myself because there was no Inspector General. It took an awful long time.

Senator NUNN. Big files?

Ambassador SILBERMAN. No, lots of Congressmen.

Senator NUNN. Which of your associates was maintaining liaison with the FBI, DEA, and others concerning the Tartaglino allegations?

Ambassador SILBERMAN. There was a gap there. Mike Spector started out; Mike Spector was Associate Deputy Attorney General. He left the Department against my wishes. I tried to hold him on. He was a fine guy. But he left around the middle of December. His last day was January 1; but he had a little leave time.

Jim Hutchinson was coming in from my old law firm of Steptoe and Johnson formally on January 1, but he was phasing in, getting briefed by Mike in late December. So the baton was passed between Spector and Hutchinson.

Senator NUNN. During the course of the FBI agents' administrative review—have we established it was an administrative review at this point?

Ambassador SILBERMAN. I read they called it an administrative inquiry, if you want the exact technical term which is traditional in the Justice Department.

Senator NUNN. When does it convert to a criminal investigation and how do you go about separating those two?

Ambassador SILBERMAN. When you believe that you have a criminal case.

Senator NUNN. Who makes that decision?

Ambassador SILBERMAN. Normally, it would be the Deputy Attorney General.

Senator NUNN. Who would in this case?

Ambassador SILBERMAN. I beg your pardon?

Senator NUNN. Would you have been the one to make the decision turning it from an administrative review to a criminal review?

Ambassador SILBERMAN. Yes; if I had believed that we had a criminal case against John Bartels or even close to a criminal case against John Bartels after they reported to me, I would have sent it down to the Criminal Division, even though they excused themselves originally.

Senator NUNN. If you have ever been convinced during the course of this investigation that indeed it became a criminal investigation or should have become a criminal investigation, then you would have abolished the procedure of the FBI agents being assigned to you and immediately referred it to Petersen in the Criminal Division?

Ambassador SILBERMAN. Absolutely.

Senator NUNN. You never did do that?

Ambassador SILBERMAN. Because I never made that judgment. In fact, I made a contrary judgment based on the views of the FBI agents who reported to me plus my own independent inquiry.

Senator NUNN. This was always in the nature of an administrative type review and never was a criminal review as far as you were concerned?

Ambassador SILBERMAN. Never became a criminal investigation.

Senator NUNN. Criminal investigation. During the course of the FBI agents' administrative review, did you discuss the Tartaglino allegations against Mr. Bartels with Henry Petersen? I will ask you separately, did you discuss them with Henry Petersen?

Ambassador SILBERMAN. I think I have already testified that I discussed the allegations with him when he first came up to my office and I assigned him the job of making this inquiry. Then he came back a week later and said he wanted to recuse himself.

Senator NUNN. Any other time, did you discuss it with him?

Ambassador SILBERMAN. Not that I recall.

Senator NUNN. How about Mr. Jack Keeney?

Ambassador SILBERMAN. Not that I recall.

Senator NUNN. Anyone else in the Criminal Division?

Ambassador SILBERMAN. No. You remember, the Criminal Division recused itself as the Division.

Senator NUNN. I don't remember that. I wondered if you did discuss it with him during the course of the investigation, or were they completely removed from it?

Ambassador SILBERMAN. They were completely removed from it; although as I recall from the testimony, Bartels talked to Earl Silbert, the U.S. attorney here. I recall that from the FBI review, too, Bartels talked to Earl Silbert, U.S. attorney here.

Senator NUNN. Did Mr. Petersen or anyone else in the Criminal Division advise you in any way to limit the scope of the FBI agents' inquiry?

Ambassador SILBERMAN. Limit it in what way?

Senator NUNN. In any way.

Ambassador SILBERMAN. I don't believe it was limited.

Senator NUNN. I am asking you, did they advise you to limit it?

Ambassador SILBERMAN. No.

Senator NUNN. You don't believe it was limited in any way?

Ambassador SILBERMAN. No. There is a confusion that came out of the testimony of the FBI agents here because it is a question of semantics. They were told and they testified initially before they were, I must say, if you will forgive me, bullied, but they initially testified that they were open to investigate anything that related to that Tartaglino memo.

Then the question was wasn't it limited because you didn't go into the underlying investigation of Promuto? Well, if that is your definition of limited, they agreed. But it wasn't necessary for them to go into the underlying Promuto investigation. They didn't think it was necessary and I didn't think it was necessary.

As I said earlier, if what I had assigned that to them, I would in effect have been concluding that the allegations that Tartaglino made were correct, without investigating because that was being investigated simultaneously by the DEA Inspection Service.

I might say on this to make it quite clear, after the FBI reported to me and after I took the action with Bartels of removing Tartaglino and Brosan, I will testify to that later, I told Jim Hutchinson, my Associate Deputy, to pay very careful attention and watch the continuing investigation of Promuto by Phil Smith in the DEA Inspection operation. So I had a strike on that.

Senator NUNN. Let me ask you a question hypothetically, not related to this case, but a curious legal point. You will probably be able to answer it. Is it possible to be guilty of obstructing justice in investigation of a crime, a so-called crime, if there were, in fact, no crime?

Ambassador SILBERMAN. That is very interesting. I am impressed that you asked it because it really is.

Senator NUNN. It is to me, too. I have wondered about this throughout this whole proceeding.

Ambassador SILBERMAN. I am surprised nobody had asked it before, because it was a question that occurred to me at the time this whole thing was going on. I did look at the statute and reviewed it.

There is a section of the statute, 1505, which talks about obstruction of justice of an administrative proceeding, but it is not clear under that situation whether internal investigation of the Promuto type could ever rise to a crime. It is not absolutely clear.

My reasoning on that process was, for instance, if Bartels had been bribed by Promuto to stop the investigation of Promuto, then I think you might have an obstruction of justice besides bribery. But it is not absolutely clear. It is very, very rare that you would ever get an obstruction of justice of an underlying noncriminal investigation. I never heard of it before.

Mr. FELDMAN. Is it possible?

Ambassador SILBERMAN. I think possibly it is possible. I will confess to you I did not research the matter. I recognize that it was a very marginal question. If the report that the FBI had brought to me had suggested that Bartels had in fact improperly impeded that investigation, then I would have had it researched.

Senator NUNN. If the FBI, hypothetically again, if the FBI report to you in investigating the Tartaglino allegations had indicated to you, No. 1, that Mr. Bartels did impede the investigation, No. 2—

Ambassador SILBERMAN. Improperly impede.

Senator NUNN [continuing]. No. 2, hypothetically again, that they had gone into the charges against Promuto and in effect there were no criminal acts by Promuto. If you had had those two assumptions, then you are saying you would have gone to the books? You don't know the answer?

Ambassador SILBERMAN. I don't know the answer. It is a tough question. I knew it was a tough question then. I know it now. The only thing you go under is section 1505, as I recall, of 18 United States Code.

Senator NUNN. You are saying with your bribe example, hypothetically it might go to the motive of Mr. Bartels?

Ambassador SILBERMAN. Yes. Under 1505, you have obstruction of justice, you have to have a corrupt motive as I recall, on the part of the individual allegedly impeding the investigation.

Senator NUNN. So if Mr. Bartels had in fact felt that Mr. Promuto was guilty when he was not guilty of any crime and if under those conditions Mr. Bartels had impeded the investigation, you would feel that was pretty clearly a criminal act?

Ambassador SILBERMAN. No. I doubt whether you would get a conviction on that case.

Senator NUNN. Even though he was mistaken in his belief?

Ambassador SILBERMAN. I doubt whether you would get a conviction. I would like to be defense lawyer in that case.

Senator NUNN. I would, too, if we had a jury.

Ambassador SILBERMAN. But in any event, the point was—

Senator NUNN. If we could go back 5 years or go forward 5 years, I might want to be the lawyer. I don't know whether I would today or not.

Ambassador SILBERMAN. You are right. It is an interesting climate to try to defend anybody these days. But your point, I think you have gone to what was one of the interesting legal questions in this thing from the very beginning and I don't think the committee, all of the committee has fully understood the underlying investigation of Promuto was not a criminal investigation at that stage.

It hadn't developed to be a criminal investigation. Indeed in some respects, it was diaphanous. It was this business of his associating with known felons. I have associated with known felons, too. I have prosecuted them. What does that mean?

Senator NUNN. What you are saying is that you felt that the only thing you needed to discover was really the question, question No. 1, whether there had been in fact an impeding of the Tartaglino allegations?

Ambassador SILBERMAN. No, impeding of the Promuto investigation.

Senator NUNN. Right.

Ambassador SILBERMAN. This gets confusing because at this point, we have a Senate investigation of my investigation of the Bartels investigation of the Promuto investigation, and we sort of pyramid the thing.

Senator NUNN. Was question No. 1 in the questions you really directed to the FBI agents whether there had been any action on the part of Mr. Bartels to impede the Promuto investigation?

Ambassador SILBERMAN. No. I said go into all the allegations of the Tartaglino memo. I have for this committee, and I would like to read it to you, something that will help because although I can't make the Justice Department, properly can't make the FBI report available to this committee, and I think that is something that the Justice Department has stood on ever since, I gather, you were a U.S. attorney or assistant U.S. attorney, Senator; I understood you were.

Senator NUNN. That is a false allegation. I have always been a defense attorney.

Ambassador SILBERMAN. I thought you were. Maybe it was I thought your questions were good. In any event, let me read through. As the FBI report was given to me, I can't give you the results. I can show you how they broke down the allegations in the Tartaglino letter. I thought they did a good job.

One, there have been organizational and personnel changes which DEA Administrator John Bartels wished to institute even when these required personal sacrifice and diminishment in status and level of responsibility of Tartaglino and other Government careerists.

I must say, if I may divert for a moment, that I thought it was sort of interesting that when Tartaglino was coming in, blowing

the whistle on all of this terrible thing, the first allegation he made is he wasn't promoted or he didn't have a high enough job. If you mean to suggest, if I mean to suggest, that that tended to impugn his motives, I agree.

Mr. FELDMAN. I don't remember that in the record, Mr. Ambassador. We will check it.

Ambassador SILBERMAN. Look at the Tartaglino memo. He says there had been organizational and personnel changes which DEA Administrator John Bartels wished to institute even when these required personal sacrifice and diminishment of status and level of responsibility of Tartaglino and other Government careerists. It is in his letter.

Mr. FELDMAN. Is he talking about himself?

Ambassador SILBERMAN. He says Tartaglino.

Senator NUNN. To which memorandum are you referring?

Ambassador SILBERMAN. The Tartaglino memo, to Pommerening.

Senator NUNN. We have a memorandum here.

Ambassador SILBERMAN. Let me read it to you. This is in evidence.

Senator NUNN. We have a memo here to Mr. Bill D. Williams and Mr. Edward Hegarty, from Mr. Tartaglino. Which memorandum?

Ambassador SILBERMAN. Let me try to clarify that confusion, too. This committee for its last few sessions has been focusing on the December 11 memo which Tartaglino gave Williams and Hegarty at the end of their investigation, as if that was the allegations that were brought to me.

They were brought to me at the end of the investigation. The allegations which Tartaglino made against Bartels, which I directed the FBI to investigate, were in his November 14 memo, of 1974, and they were the following allegations.

Senator NUNN. You are saying that the allegations in the memorandum dated December 11, 1974, to the FBI agents, were not the initial subject of your investigation because you didn't have those?

Ambassador SILBERMAN. I didn't have them when I started the investigation. In fact, what they are is an elaboration of the last allegations Tartaglino made in his November 14 document which was that Bartels impeded the investigation of Promuto.

At the end of the FBI inquiry, he threw in a memo which divided that allegation into six parts. I can't understand. The questioning of witnesses of this committee: they have been referring to the December 11 memo as if it was the November 14 memo. I think there has been a great deal of confusion on that.

Senator NUNN. Why don't you detail for us what the allegations were in the November 14 memo?

Ambassador SILBERMAN. Certainly. I will detail them as the FBI broke them down because I think that doesn't bridge any interest in the Justice Department.

The first one, as I just said, was there had been organizational and personnel changes which DEA Administrator John Bartels wished to institute even when these required personal sacrifice and diminishment of status and level of responsibility of myself, Tar-

taglino, and other Government careerists. That was No. 1, Tartaglino wasn't treated right.

Senator NUNN. He didn't say that in the form of an allegation, as I read it.

Ambassador SILBERMAN. Sure.

Senator NUNN. He also strove to separate the organizational and personnel changes which he wished to institute even when these required "personal sacrifices and diminishment of status and level of responsibility of myself and other Government careerists with whom I have worked."

Ambassador SILBERMAN. I don't want to go into the details of the FBI thing.

Senator NUNN. They felt that this was an allegation?

Ambassador SILBERMAN. Yes, properly so because this is where he got into the Civil Service business. He thought he had been improperly dealt with. He should have ended up in a higher spot.

Senator NUNN. Allegation No. 1?

Ambassador SILBERMAN. Right.

Mr. FELDMAN. You are a lawyer. This is Mr. Tartaglino's own memorandum to Mr. Pommerening that Senator Nunn has read from. These are his own words, the best evidence. Correct?

Ambassador SILBERMAN. Yes.

Mr. FELDMAN. You are reading from the FBI summary of the allegations?

Ambassador SILBERMAN. No, no. What I am trying to show you—

Mr. FELDMAN. I want to know what you are reading from.

Ambassador SILBERMAN. As the FBI report came in to me—let me explain. Give me a chance to explain, Mr. Feldman. As the FBI report came in, they broke down each allegation Tartaglino made. In order to do that, they had to go through his letter and try to figure out what were allegations. They broke each one down and investigated them separately and sent their results forward to me in their report.

I wanted to show you what the FBI regarded and indeed I regarded as the allegations he made. I just want to read them through.

Mr. FELDMAN. I understand. I just wanted to state for the record that Mr. Tartaglino has characterized in his own words what he feels about the allegations in this memorandum and that is his own words found in this memorandum and that is the FBI characterization—

Ambassador SILBERMAN. No, these aren't characterizations. These are exact quotes. I am just showing you how they broke them down.

Mr. FELDMAN. Those are exact quotes?

Ambassador SILBERMAN. Exact quotes.

Mr. FELDMAN. Were they taken under oath?

Ambassador SILBERMAN. No. Mr. Feldman, Tartaglino writes a letter, which is sort of in a sense a confusing letter because it involves allegations of mismanagement, insufficient concern with integrity problems, the Jensen issue, other issues, the Promuto issue. I am trying to show you that the FBI did a good job because they

took that letter which was sort of confusing and broke it down into individual allegations and they quoted directly from the letter.

I am just showing you how they broke it down. The second was the Administrator had failed to consult with the Office of Inspection in advance of sensitive, high-level appointments—incidentally, of course, these are the allegations I responded to in my press release which you all have inquired into so heavily, of January 16.

An individual was recently nominated for the position of Deputy Administrator. This individual is the subject of serious allegations documented in DEA files, which allegations have never been resolved. As you can see, they just took parts of the letter.

Four, Thomas Peters who Bartels previously nominated for the position of Deputy Administrator was disqualified because the FBI investigation disclosed misuse of Government travel vouchers. Bartels wished to appoint this individual as a consultant to DEA.

Five, Tartaglino has repeatedly urged the need for increased manpower within the Office of Inspection. Bartels' reluctance to provide these additional resources evidence a lesser commitment to the importance of maintaining the agency's integrity; and Tartaglino has proposed, six, Bartels' actions have been such as to impede the Vincent Promuto investigation. His actions have tended to retard the investigation, intimidate the Chief Inspector and destroy the morale within the Office of Inspection.

Bartels insisted both improperly and prematurely that written interrogatories be submitted to Promuto. Bartels has instructed the Chief Inspector not to commence an investigation of any major DEA official in his, Bartels, absence and that no ranking agency officer would be investigated until he has first been confronted with these allegations.

In other words, that shows you the six allegations which the FBI broke out of the November memo to Pommerening which was given to me, which I directed them to investigate and which I responded to in my January 16 press release.

Senator NUNN. When did they start this investigation based on the November 14 allegations: not the precise date?

Ambassador SILBERMAN. I have no independent recollection. I see there has been testimony, it was December 1 or 2. I can't remember when I met with them. I think it was probably late November or December 1, but my recollection, I impressed upon them the importance of this.

I particularly impressed upon them the importance of the Promuto, impeding Promuto matter, as a matter of fact, gentlemen, I tell you quite honestly, when I got this letter I thought Bartels' goose was cooked, because when I read it, I really felt anybody who had made these allegations with as much experience as Tartaglino probably had to have something and Bartels was going to have to be asked to resign if I concluded that he engaged in improper conduct and if he engaged in criminal conduct, he was going to be prosecuted.

In any event, I impressed upon them how grave these were and sent them out to investigators.

Senator NUNN. Of course he has been asked to resign.

Ambassador SILBERMAN. Yes. Let me explain something about that. I am glad you raised that point because I read in the press that the Deputy Attorney General who succeeded me said, in asking him to resign, there was no reflection on his honesty or decency, but rather on his management qualities.

Quite candidly, gentlemen, after I went through this and other matters with John, I knew that there were weaknesses in his management and I recommended to the new Attorney General, or I explained to him that John was weak in management, but I did not think that he was dishonest.

Senator NUNN. I want to get to that point on your, I believe, January 16 press release in a few minutes.

Ambassador SILBERMAN. Let me say in all fairness to John, he had a hell of a tough time. He had no Deputy for that whole year. He was dealing with a Committee of Congress on much of that time.

I am not sure he dealt with them in the best way. I am not sure I would have dealt with them the same way. He was a first-class prosecutor, come up through the Justice Department but he was for the first time in charge of a large operation.

Many lawyers do not end up to be good managers. As a matter of fact, I happen to believe that most lawyers make lousy managers. Therefore, I had reached the conclusion, which I gave to the new Attorney General when he came in, that probably because John was so busy fighting this committee and was, did have some weaknesses in management, he ought to be replaced.

I did not think he was dishonest, and do not think he is dishonest. Incidentally, he had first-class conceptual ability.

Senator NUNN. I didn't hear that?

Ambassador SILBERMAN. He had first-class conceptual ability.

Senator NUNN. This memorandum of December 11, 1974, to Mr. Bill Williams and Mr. Edward R. Hegarty from Mr. Andrew Tartaglino, per your request, December 6, 1974, that is what it says here, per your request, here, December 6, 1974—integrity issues—did anyone ever go into these allegations?

Ambassador SILBERMAN. I am glad you asked that question, too, because they were, all of those allegations were really made by Tartaglino when the FBI first talked to them without running the risk of getting into the FBI report.

So they were part and parcel of item No. 6, Bartels action had been such as to impede the Vincent Promuto investigation. His actions have tended to retard an investigation and intimidate the Chief Inspector, destroy the morale in the Office of Inspection, et cetera.

In other words, the original statement was a summary of what came out on the 6th. The only thing that I remember offhand that came out that we never really fully ran down was the question of Durkin not having a security clearance.

I can tell you why that wasn't run down. Because Tartaglino in his letter of December 11, I hope this is public, because the letter is public. I hope the committee has made it public, specifically said Durkin is a man of the highest integrity.

Whether he had a security clearance, just didn't rise to the kind of issue that I got into. Obviously, he should have a security clearance, but I didn't know whether he did or not. Is this a part of the record?

Mr. FELDMAN. Mr. Chairman, these letters, November 14, December 11, have been sealed. They haven't been made a part of the public record.

Ambassador SILBERMAN. You mean you did not make public the fact that Tartaglino had specifically said Durkin was a man of the highest integrity?

Mr. FELDMAN. We have gone through the question and answer. We will release these. I see no reason not to.

Senator NUNN. I am glad you asked that question.

Mr. FELDMAN. Shall we release all three?

Senator NUNN. It is fine with me.

[Exhibit Nos. 34, 21 and 20 were released from the sealed file and may be found in the files of the subcommittee.]

Mr. SLOAN. Ambassador, you stated earlier Mr. Tartaglino was unhappy with the Civil Service system?

Ambassador SILBERMAN. To him.

Mr. SLOAN. That is the question? Did he state that?

Ambassador SILBERMAN. Yes.

Mr. SLOAN. Let me finish the question.

Ambassador SILBERMAN. Yes, he did. Look, I don't like to get into the FBI investigation. But with Tartaglino, it is not—after all, he testified before everybody by now; he did complain about his own treatment, felt it was improper. He should have got a higher job.

Mr. SLOAN. You have answered part of that.

Ambassador SILBERMAN. I think he mentioned one other person, a Mr. Pappas and the FBI investigated that.

Mr. SLOAN. Only those two cases?

Ambassador SILBERMAN. That is all I saw in the FBI investigation; and Tartaglino's interview with the FBI.

Senator NUNN. Let me clarify this. You are saying both of these memoranda were investigated, the earlier memorandum of November 14, from Mr. Tartaglino had specific allegations; the later memorandum of December 11 had other specific—

Ambassador SILBERMAN. Let me try again.

Senator NUNN. I know they are all related—

Ambassador SILBERMAN. Let me try again. Item 6, which I have described, which we describe as Item 6, or the FBI described as Item 6, in the Tartaglino November 14 letter to Pommerening, was as follows:

Bartels' actions have been such as to impede the Vincent Promuto investigation. His actions have tended to retard the investigation, intimidate the Chief Inspector, destroy the morale within the Office of Inspection, so on and so forth.

In other words, he made a general allegation in his November 14 letter. The December 11 letter just breaks down that general allegation into specifics.

Senator NUNN. So you were saying that the FBI from the very beginning then, since he had given them this orally, I believe when they first stated they had looked really at the total—

Ambassador SILBERMAN. The first thing the FBI did was go to talk to Tartaglino and get his story.

Senator NUNN. They really looked at the substance of all of these allegations?

Ambassador SILBERMAN. My recollection is yes, it was all part of one overall allegation.

Mr. FELDMAN. This was in a 10-day investigation, Mr. Ambassador?

Ambassador SILBERMAN. I understand through careful reckoning the committee has determined there were only 10 working days. I will confess to you, Mr. Chairman, I never, since I work on Saturday and Sunday, never did carefully figure out how many working days they had. But they did, according to your findings—

Mr. FELDMAN. It is their testimony.

Ambassador SILBERMAN. What happened is Senator Jackson said, isn't it a fact it is only 10 working days, because you didn't work on Saturday and Sunday? They said yes; that is right.

Mr. FELDMAN. In any event, they said they stopped on December 12, whether they worked weekends or not.

Ambassador SILBERMAN. Right. Let me respond because I haven't had a chance to respond to all of these allegations I have been reading in the paper over in Yugoslavia—

Mr. FELDMAN. Big story in Yugoslavia, too?

Ambassador SILBERMAN. Yes; Yugoslavs don't like Senator Jackson.

Where was I at that point?

Mr. FELDMAN. I didn't know they had an emigration problem.

Ambassador SILBERMAN. I beg your pardon?

Mr. FELDMAN. I didn't know they had an emigration problem.

Ambassador SILBERMAN. No, they think he is irresponsible in foreign policy issues. It is not emigration. I don't think we ought to get into that. Where was I, please, Mr. Chairman?

Senator NUNN. You were talking about Senator Jackson in Yugoslavia.

Ambassador SILBERMAN. No; before that.

Mr. FELDMAN. You were talking about the length of the FBI investigation and you worked on Saturdays and Sundays and you didn't count the days and the 10 days of investigation. That is where you were.

Ambassador SILBERMAN. I guess I have forgotten. I will get to it somewhere along the line.

Senator NUNN. Let me ask you a general question.

Ambassador SILBERMAN. There is one thing I wanted to say. The AP report I saw had in it that I halted the investigation. I think that is a question that you should ask me. Did I halt the investigation?

Senator NUNN. Did you halt the investigation?

Ambassador SILBERMAN. Thank you, Senator. I did not halt the investigation. They came and reported to me the results of their investigation. They thought they had decided the issue. I thought they had decided the issue. There was no need to go any further.

They gave me an oral conclusion that Bartels did not impede the Promuto investigation. The word impede is a tricky word. You

know, in a sense, every administrator impedes the investigation when he directs people what to do.

I am sure Senator Jackson gives Counsel Feldman certain directions as to how the investigation goes. That is not an impedance. There was no improper—there is no indication in their view that Bartels, or that is too strong a statement—there was not substantive, probative evidence that Bartels had impeded improperly the investigation.

They were sure clear that Bartels rapidly lost confidence in Tartaglino and Brosan. Frankly, I don't blame him one bit for that because my judgment was, as well as the FBI's judgment, was that that investigation conducted by Brosan and Tartaglino was improper.

They went after Promuto in an allegation of association with known felons as if there was a charge of a serious crime. They spread it to 19 different investigating agencies and blackened his reputation from now to doomsday; without the slightest concern for the man's civil rights, Brosan came in and said he ought to be fired and there was no way the Civil Service would have substantiated that.

It repelled me as an attorney that he would take that position.

So John Bartels lost confidence in Tartaglino and Brosan. It was perfectly clear to me that he had. That is why he was using all of these other people like Durkin and Richardson and Lund.

I think he made a mistake. But it was not a mistake of culpability. If I had been John, I would have taken Tartaglino and Brosan and got them off that case right away, because I thought they mishandled themselves.

I will say there is another point that came up before this committee. Tartaglino testified in my interview with him that I thought it was improper for him to have conducted that investigation without clearing it with Bartels. That was the important thing.

I went into this with Tartaglino at some length because I wanted some feel of the man myself. Both Bartels and Tartaglino, I didn't know either of them that well.

I thought it was in a sense unconscionable and improper, certainly unwise, perhaps even vicious for Tartaglino to have started that investigation of Promuto without telling Bartels, his boss.

I didn't say he had to clear it with him. As a matter of fact, I asked him, did you have any feeling that if you went to John Bartels he would tell you not to investigate Promuto?

He said no, I had no such feeling. I said why didn't you wait 2 days until he came back from Europe? He said, well, I didn't think it was necessary. I thought that reflected enormously bad judgment; left Tartaglino open to the charge that he was using this investigation for his own internal purposes.

I don't know whether he was or was not, but there was no question that Tartaglino and Brosan on the one hand, and Bartels on the other, were in a personality conflict before this Promuto matter came up.

For him to have treated this matter that way, struck me as enormously bad judgment.

Senator NUNN. You are saying he should not have started any investigation whatsoever on any internal security matters whatsoever while Mr. Bartels was out of town?

Ambassador SILBERMAN. Did I say that?

Senator NUNN. No; that is the logical conclusion?

Ambassador SILBERMAN. I don't believe it.

Senator NUNN. Why should he wait until Mr. Bartels gets back from Europe on this case and not on any other internal security case?

Ambassador SILBERMAN. Because Promuto was one of the senior officials in the operation. I thought to myself, would I have conducted an internal investigation of Assistant Attorney General in the Justice Department without telling the Attorney General? The answer is no.

Senator NUNN. Even when another agency like the D.C. Metropolitan Police had written memoranda? All of this didn't originate from Mr. Tartaglino.

Ambassador SILBERMAN. That is right. There were written memoranda, but the memoranda were association with known gamblers, which is not exactly, not an allegation of crime. It is not the kind of thing that couldn't wait 2 days until Bartels came back from Europe.

Tartaglino knew that Bartels was a friend of Promuto, was all the more reason to go to Bartels first, to warn him that there was an investigation of Promuto because Bartels could have been compromised.

Promuto could have come to Bartels without Bartels knowing about it. So it struck me as enormously bad judgment. Surely Tartaglino should not have——

Senator NUNN. Wait a minute. How would Mr. Bartels be compromised?

Ambassador SILBERMAN. Suppose Promuto found out there was an investigation. Bartels doesn't know there is an investigation and he comes to Bartels and says something to him; says, John, do you think there is anything wrong with my going to Fran O'Brien's? John says, no; I don't think there is anything wrong with your going to O'Brien's.

Then he reasons out Promuto, knowing he is being investigated, Bartels not knowing it, makes a statement saying the administration has approved what I am doing. You see what I am driving at?

Senator NUNN. Mr. Promuto was in Europe, too. How was he going to find out?

Ambassador SILBERMAN. That is a good point. Brosan testified that he couldn't call Bartels and tell him about it because he was afraid Promuto would be hanging on his shoulder.

It seems to me that is on its face absurd. All he had to do was call Bartels and leave a message, I want to talk to you alone without Promuto around.

Senator NUNN. What if Promuto had——

Ambassador SILBERMAN. You put "eyes only" on it. It is done all the time in Government.

Senator NUNN. That is what usually gets in the paper.

Ambassador SILBERMAN. That is true. Seriously, I have had messages come to me when I was in the Justice Department, as ambassador, where an "eyes only" message comes to me, that it is not to go to my deputy or anybody else.

They didn't have to call him in Europe. All he had to do is wait 2 days until he came back.

Mr. FELDMAN. I think we should make clear for the record your exhibiting of venom for Mr. Tartaglino and that is your judgment.

Ambassador SILBERMAN. Venom? I don't exhibit any venom.

Mr. FELDMAN. But you have made the statement.

Ambassador SILBERMAN. My judgment as to who was right and who was wrong.

Mr. FELDMAN. Let's go to the facts. You say Mr. Tartaglino instituted this investigation. According to our record, it was Mr. Brosan who received these allegations. You considered the two working together?

Ambassador SILBERMAN. Absolutely; don't you?

Mr. FELDMAN. No; it was Mr. Brosan who got—it was Mr. Durkin who got the allegations transmitted to Mr. Brosan.

Ambassador SILBERMAN. Who went to Tartaglino to get approval. The record makes very clear that Tartaglino and Brosan were working au courant that Tartaglino was dropped back as chief inspector and Brosan was to be his deputy.

I don't have any venom for Tartaglino. As a matter of fact, I think this thing is a tragedy. You have two men with long service in the Government who got into this battle and as a result of which both are seriously harmed.

What I am saying to you, it is an important aspect of my evaluation of this thing and it should be of yours. John made some mistakes in his investigation. He cut off Tartaglino and Brosan.

I don't think that was a mistake. I would have cut them off completely. I would have moved them out because it seems to me he could legitimately draw the conclusion that Brosan and Tartaglino were out to get Promuto, could legitimately draw that conclusion by the way in which they had conducted their investigation because you just don't take those kinds of charges and go to 19 different investigative agencies and blacken Promuto for all time.

You try to do it with a scalpel. You try to conduct an investigation so you preserve the civil rights of somebody particularly when there is not even a criminal charge.

The fact that John didn't trust, lost confidence in Brosan and Tartaglino, explains the peculiar way he conducted that investigation. Bringing in Durkin, and bringing in other people. There was no question that you wouldn't normally do that if you had an inspector and deputy you trusted.

My point is he had reason, it seemed to me, objectively not to trust them because they used bad judgment. Brosan came in after the first go-round on the investigation and said fire him. That was incredible.

Senator NUNN. I think the word was amputate.

Mr. FELDMAN. So did Mr. Bartels closest associate, Mr. Richardson, and we have some evidence that Mr. Durkin did, too, although he denies it.

Ambassador SILBERMAN. You know, I think Bartels should be given credit for that. The fact that he was worried about the civil rights of Promuto is to his credit unless there is any evidence that he has some corrupt motive. I haven't seen it.

Senator NUNN. Let me pursue these questions so we can get through. I am going to have to go to two other hearings starting at 2 o'clock, or close to it.

I want to ask you one question in general about your January 16 press release. One thing worries me. It seems to me you had charges of two different natures here, if you consider both memoranda, both the November memorandum and the December memorandum, some of them were administrative kind of charges that no one on the face of them would in any way interpret as being criminal at all.

Ambassador SILBERMAN. That is true.

Senator NUNN. The one that you think quite correctly pointed out as being most serious was the allegation about obstructing justice or impeding the Promuto investigation.

Ambassador SILBERMAN. There was no allegation of obstructing justice. Tartaglino was a long-time criminal investigator in the Federal Government. If he wanted to make an allegation of obstruction of justice, which triggers a criminal investigation, he knew how to write it. He didn't.

Senator NUNN. Impeding the inquiry.

Ambassador SILBERMAN. Impeding the investigation.

Senator NUNN. As the matter evolved on January 16, you concluded, I assumed—why don't you give us your conclusion. Then we will go to your press release.

Ambassador SILBERMAN. My conclusion was that there was not substantial foundation for the allegations.

Senator NUNN. The way I would read this press release that means there was no substantial foundation for any of the allegations. You used plural.

Ambassador SILBERMAN. I used them altogether. Let me put it this way: You had a mixed group of allegations in the November memo. I would be perfectly prepared to admit that John did not handle that investigation the way I would. But the thrust of the allegation was that he had acted corruptly or in some improper fashion going beyond the question of bad management to a question of bad motive and improper conduct.

I did not think there was substantial foundation of that. Some of the allegations I thought were ridiculous, particularly some of which I had personal knowledge of. The allegation about Peters. I knew the facts on that, and Tartaglino was way off base on that. If you want the facts, I will give them to you, but in any event, I am just giving you the summary.

I thought the allegation on Jensen was peculiar. Tartaglino had told the FBI, the other FBI group which was investigating Jensen for presidential appointment, that he knew nothing unfavorable

about Jensen. Then he makes a claim to me and investigated by this FBI group—

Senator NUNN. You are referring to documents we don't have. That is all right. You obviously had access to a lot more documents in making this judgment than we had access to.

Ambassador SILBERMAN. Of course I did. I had the FBI investigation of Jensen. There was confusion on that, too, because the committee asked Williams and Hegarty whether there was any other FBI investigation.

They answered it both ways. They said no at first, although at the end of their testimony there was the White House investigation for Jensen. Actually, that was directed by me.

Senator NUNN. Why don't you for the record name the various written documents that you examined in making your final judgment prior to issuing this press release to the best of your recollection?

Ambassador SILBERMAN. It is both written and oral. I will tell you all the things I relied on, the FBI written report, the FBI oral report given to me on two different occasions—one in December and one in January. I would like to go into that, that oral report, because that is a very important point.

Senator NUNN. Let's come back to that. Let's name these and get them in order.

Ambassador SILBERMAN. The FBI investigation of Jensen, which was a separate investigation, normally conducted, for a man to be appointed a high level, a confirmable spot; my interview with Tagliano; my interview with Bartels personally several times.

I remember once asking him whether he had in fact slept with Diane De Vito.

Senator NUNN. You asked him that?

Ambassador SILBERMAN. Yes, I did.

Senator NUNN. What was the answer?

Ambassador SILBERMAN. The answer was no, and I believed him.

Senator NUNN. Let's go ahead. I want to go down the list here.

Ambassador SILBERMAN. He had dinner with her once. Let me see. What else? The Moore study which was part of the FBI investigation. I guess that covers it as best I can recall.

Senator NUNN. Then what were your conclusions? Why don't you give us your conclusions?

Ambassador SILBERMAN. Let me tell you about what the FBI told me. They came in and gave me a written report.

Senator NUNN. The oral report?

Ambassador SILBERMAN. Yes. They also gave me a written report. Bassett and Williams were there. They said you have got a bad situation. They said we don't think it is an improper impedance.

Senator NUNN. What is the date of this written report?

Ambassador SILBERMAN. December 12. You have got that date.

Senator NUNN. I want to be sure we are talking about the same one: December 12?

Ambassador SILBERMAN. Yes. They came in with it. I am not absolutely certain of the date. I would be less than honest if I told I was certain. When they came in with the written report, they first

came in to give me an oral report even before they gave me the written report.

In the oral report they gave me a general description of what they found. They relied very heavily, I may say, on Richardson, who did not like Bartels on a personal matter, but whose statements to them indicated there was not impedance and Bartels really wanted to run that Promuto thing down, but he was disturbed about violation of Promuto's civil rights.

They told me you have got a problem; you can't continue to have Bartels and Tartaglino in that agency. You will recall that in the November memo, which I am sure you have made public now, Tartaglino asked to be transferred. He really wanted to be Inspector General, but he wanted to be transferred. The FBI said you have got to move Tartaglino.

I said where am I going to put him? They said why don't you make him a regional director of DEA? They didn't indicate to me they had a particularly high regard for the Inspection Division of DEA.

In other words, they thought whatever responsibility Tartaglino had over that he had not exercised in what they would regard as a professional FBI standard way.

I said how am I going to put this guy in charge of a regional law enforcement region if you have this view? They said, well, they are Civil Service. You can't really get rid of him. I said wait a minute. Would you let this man be a regional director of an FBI office?

The response was something to the effect, God, no. I said that is it. I will transfer him somewhere. I will try to save his face, but I will not put him in charge of a law enforcement office.

That is what I did. Brosan, if anything, I felt even less confident about.

Let's go to my press release because the committee has spent a great deal of time on the press release. I will admit, as the committee noted, there is an ambiguity in the press release. You said in your initial statement, or Senator Jackson said there is an implication, as I recall the third paragraph of the press release, that the FBI investigation took 2 months.

Well, as I look back on that, that was not intended. What I mean was my review took 2 months. You see, I talk about the FBI investigation in the second paragraph.

The third paragraph, I talk about following a thorough review and I did make a thorough review because I read that bloody FBI investigative report which was that thick.

I gave it to Jim Hutchinson to read. We talked about it. I thought about it. I had them in, in two sessions, to discuss it. I had a feeling that I understood it. Then I also talked to Bartels and I also talked to Tartaglino to get some feeling for credibility because this was just paper.

That was the review that I talked--referred to as 2 months. I grant you it is possible to read that third paragraph as referring to the second paragraph rather than--it is possible to read the fourth paragraph as referring to the second paragraph, rather than the third, but I meant it to refer to the third.

My whole review took 2 months. I can tell you how that happened. Bob Havel, Jim Hutchinson, and I were in the office and Bob had come down saying there are a number of press inquiries as to what the results of this investigation are. We got to put out some kind of statement.

So I can't recall whether Bob wrote the statement or I wrote it, but I put in the phrase "without substantial foundation." That was my phrase.

Bob said how long did this take? I said 2 months. So that is how it got into the last paragraph that way.

Now, gentlemen, I will tell you that I will take my press release against the press statements of this committee any time. If I may show you something——

Senator NUNN. How do we get that criteria imposed on us? That is not what we are investigating.

Ambassador SILBERMAN. I think it is unfair to put so much emphasis on this press statement. I looked at your opening statement, Senator. I know how careful you are in your questioning. I saw your opening statement on July 8.

Let me show you something. No. 1, it is the staff's preliminary finding that this alleged pattern of indifference to personal integrity investigations have resulted in less effective enforcement procedures, how do you have a preliminary finding of alleged allegations?

Senator NUNN. I think it has been pretty clear here whether you are a John Bartels man or an Andrew Tartaglino man or a George Brosan man, that the whole DEA inspection, Internal Inspection, was a pretty bad mess.

Ambassador SILBERMAN. Let me tell you in that respect.

Senator NUNN. I think we can lump them all together and put them in one basket, as somebody used to say, and shake them up; something was badly wrong in DEA.

Ambassador SILBERMAN. In Inspection Division; you are dead right about that. I would have associated myself with those remarks; I don't mean to put myself as either a Bartels man or Tartaglino man.

Senator NUNN. I don't either. I don't believe that is the purpose of our committee.

Ambassador SILBERMAN. I was shocked the committee did not interview Bartels before it came out with the preliminary finding. I don't think that is fair. They never interviewed me either, and I was here for 5 months.

On page 2 of that statement, or page 3, you say Agent Williams and Hegarty said Mr. Silberman did not allow them——

Senator NUNN. Let's get back to yours.

Ambassador SILBERMAN. Wait a minute. This is a fair point.

Senator NUNN. I have a vote on right now. We are trying to complete this. I will be glad to discuss it with you at length.

Ambassador SILBERMAN. Would you think your press statement of the 8th could stand the kind of scrutiny you gave——

Senator NUNN. Let me take a look at that press statement?

Ambassador SILBERMAN. I certainly will.

Senator NUNN. Let's go ahead on these questions. I really have to vote. I will be glad to discuss that with you at length at some

point. I want to ask you one other question about this press statement.

It seems to me that the major fault I have with it is not the question of several months. That doesn't bother me, the length of time of the investigation. What bothers me is that I think you have imposed here a narrow, criminal standard, although you were conducting an administrative investigation.

Ambassador SILBERMAN. What is the criminal standard?

Senator NUNN. I think the criminal standard, according to Mr. Hutchinson, in his testimony, indicated that the major question there was centered on the impeding of the inquiry. It seems to me you have taken all of these matters and just swept them in together when you, yourself, have concluded that there was an awful lot wrong with the administrative setup.

Anyone reading this press release would say there is nothing wrong in DEA, period. I think that is very misleading. That is my fault with it.

Ambassador SILBERMAN. I saw you state that in Jim Hutchinson's—I think it is a fair question. Let me respond. The phrase "without substantial foundation" is not a criminal phrase. I picked it carefully. What it means was there is some stuff to what Tartaglino and Brosan say. It was without substantial foundation.

I did not exonerate Bartels as this committee said; indeed, as you said in your statement.

Senator NUNN. I think any normal person reading it would come to that conclusion.

Ambassador SILBERMAN. I don't know about that because somebody on this committee very astutely, I think it might have been Mr. Sloan or somebody, said with respect to a witness, is there a significance in the statement which Bartels put out and the statement which Mr. Silberman put out because Bartels did say something to the effect that I exonerated him.

I didn't exonerate him. I said the charges Tartaglino raised were without substantial foundation. Some of my problems were with Bartels' management and had nothing to do with what Tartaglino was alleging.

As a matter of fact, my view was that Tartaglino was part of his problem and one of the reasons I thought he was a bad manager is he should not have had Tartaglino there for a year.

Let me make one more point before you leave. I did not refer to the Promuto matter as the only matter. That was the most significant, but the Jensen issue bothered me terribly. I sent the FBI, the other FBI people, back several times to try to clarify that issue, that the other allegations he made troubled me.

I just didn't think all of those allegations put together had substantial foundation.

I then said something which, if anything, I should be criticized for. I said Tartaglino and Brosan acted in good faith. I wasn't so sure of that. I said it to try to cover them because they were being transferred. I didn't want their careers destroyed. But I had some doubts as to whether they acted in good faith. I wasn't able to resolve it but I had real doubts.

I made that statement so I could preserve what they could of their reputation. But I knew they had to be transferred.

Senator NUNN. Mr. Bartels testified that he asked your permission to give these files, the Promuto files, to Jack Anderson. Is that correct?

Ambassador SILBERMAN. I don't recall whether he asked my permission to give the files. I remember he asked me whether he should talk—I don't think it was Jack Anderson, it was one of Jack Anderson's people.

Senator NUNN. What was your reply?

Ambassador SILBERMAN. I think a fellow by the name of Owens. I told him to talk to Owens. My best recollection is I told him not to look at the files, but to give him as much information—the problem was this: John called me and said Owens has this whole story or almost all of it. But he has got—he is missing part of it. They want to talk to me. Can I talk to him?

I said yes. I have learned in government after long experience, although I don't agree with Jack Anderson most of the time, that his capacity to dig out information is unbelievable. So when Owens told Bartels that he had most of the information, I was inclined to believe him. I thought Bartels should try to talk to him and put it in perspective.

Senator NUNN. Mr. Bartels testified he gave these files to Jack Anderson in mid-January of 1975. This subcommittee requested these same files in January 1975 but were refused.

Ambassador SILBERMAN. He gave them the actual files or talked to him about the investigation?

Mr. FELDMAN. He said I let them review the files.

Senator NUNN. He let them review the files. Do you think it is proper to furnish this material to the press and not to the subcommittee?

Ambassador SILBERMAN. No. That would trouble me. But I must say I thought it was improper for the committee not to produce the material to the Justice Department which you claimed you had and which I kept or my people kept asking for, and you wouldn't give us. As a matter of fact, one of the reasons why—

Senator NUNN. What is that material to? I am not familiar to that at all.

Mr. FELDMAN. I think there is a distinct difference here. We are investigating DEA and the Justice Department is not investigating us. Mr. Ambassador, you know there are criteria at Justice on open and closed cases. We had accumulated raw data which you had classified as a so-called open case which we could not turn over until we put our witnesses under oath.

Ambassador SILBERMAN. I never heard of anything like that. I have had raw material transmitted from congressional committees all the time to the Justice Department. I think it is an obligation of a congressional committee to transmit material to the Justice Department if they think there is even a hint of criminal conduct.

Mr. FELDMAN. We did meet with your people many times.

Ambassador SILBERMAN. You wouldn't give them the material.

Senator NUNN. I have to conclude on this point. You can carry on without me as far as the private discussion. We will go off the record now. The subcommittee will adjourn. I assume you have a plane to catch.

Ambassador SILBERMAN. I haven't answered all of my questions.

Senator NUNN. I know it. What is your time situation?

Ambassador SILBERMAN. I can stay here for a while.

Senator NUNN. How much?

Ambassador SILBERMAN. A couple of hours.

Senator NUNN. I will see if I can't get somebody on the subcommittee to come back.

Ambassador SILBERMAN. I would appreciate it, Senator. There is also the whole subject of the new investigation of the DEA which started. There has been some implication in the press, again in UPI, and I guess the committee that that started after I left as Deputy Attorney General, which is not true.

Senator NUNN. I agree that you ought to have complete time. We ought to give you that courtesy, to give you complete time to answer anything that has been said. I could not agree with you more. This is not my subcommittee. I am not chairman of it. I am a member of it.

I have got to go to a conference between the House and Senate on the Armed Services. I am going to do my best to tell the chairman the situation and give him your concerns that you want to complete your testimony.

I certainly think that is of interest to the subcommittee and to you. So I will do the best I can. We will recess until some other Senator gets here.

[Whereupon, at 2:15 p.m., the subcommittee recessed, to reconvene at 3 p.m., the same day.]

[Members present at time of recess: Senator Nunn.]

AFTERNOON SESSION

[Whereupon at 3:20 p.m., the subcommittee reconvened, Hon. Bill Brock presiding.]

Senator Brock. Mr. Silberman, we will bring the committee to order and give you another apology.

[Members of the subcommittee present at time of reconvening: Senator Brock.]

Senator Brock. Again I apologize for stretching your day.

Ambassador SILBERMAN. I understand, Senator. I appreciate your being here.

Senator Brock. We will let counsel proceed for just a few minutes. Then we will wrap it up.

Mr. FELDMAN. Mr. Ambassador, I would like to make a full record from the time of the press release of this year going back to the time you engaged the FBI agents. Then we will go into some of the general questions.

During the course of the FBI administrative review, did you discuss the Tartaglino allegations with Mr. Bartels?

TESTIMONY OF HON. LAURENCE H. SILBERMAN—Resumed

Ambassador SILBERMAN. I don't think I discussed it with him until after their review was completed. I remember calling John before they started to tell them that I was instructing the FBI to conduct the investigation and that he would be expected to cooperate with them. He was obviously anguished about the situation, but indicated he would cooperate.

Mr. FELDMAN. Did you discuss this matter with Thomas E. Durkin, Jr.?

Ambassador SILBERMAN. Who is Thomas E. Durkin?

Mr. FELDMAN. The consultant.

Ambassador SILBERMAN. I am confused. There are two Durkins, aren't there?

Mr. FELDMAN. William E. Durkin was the DEA employee and Thomas Durkin was the gentleman we were talking about during the recess.

Ambassador SILBERMAN. I have never met Tom Durkin and I don't think I have ever met William Durkin.

Mr. FELDMAN. Did you receive interim or preliminary reports from the FBI agents as they conducted their administrative review or just the final report?

Ambassador SILBERMAN. Just the final report. They came in and made it orally sometime in the middle of December and I asked them to put it in writing.

At that point they asked me whether there was anything else I wanted to do. I asked them was there anything else they thought they should do. Both of us thought no. They did point out to me the memorandum which Tartaglino had given them the day before they came in.

They were of the view that they had covered all of the material that was in that memo, in their initial investigation; they didn't believe it was necessary to go back and do any more. I agreed with them. But I made the decision. It was my responsibility.

Mr. FELDMAN. The next point we had was January 9. You met with Mr. Tartaglino and I believe this meeting was also attended by your associate, Jim Hutchinson. What was the purpose of this meeting? Could you describe this?

Ambassador SILBERMAN. Tartaglino had asked to see me. I thought he ought to have an opportunity to see me as I was in the process of digesting all of this material.

Besides, I wanted to see him. I wanted to talk to him about certain matters.

My recollection is he testified that at that meeting I was not really familiar with the underlying substance of the investigation. I guess that is a question of judgment. Jim Hutchinson has testified that I was. I certainly think I was. I had gone through all of that material which the FBI had given me.

Mr. FELDMAN. Had you read the FBI report?

Ambassador SILBERMAN. I most certainly had, and attachments. I remembered he also testified that I seemed to have too much emphasis on the underlying Promuto investigation. I think I got the

impression Tartaglino in his discussion with me at that point didn't really think very much of the Promuto investigation and wanted to steer clear of that and wanted to emphasize the impedance which he alleged.

He also didn't want to talk about anything else but Promuto. All of the other allegations he had made, he sort of wanted to stay away from those because I brought them up. I brought up the Jensen matter; I brought up the Petersen matter.

It was I who knew the information which personally made his allegation false or unfounded. He didn't want to discuss that. He just wanted to discuss Promuto. I had the impression that he had decided somewhere along the line to boil down his position to just Promuto and jettison the other claims that he had made.

I had heard he had gotten counsel somewhere along that line, somebody, I think a Mr. Sachs.

Senator BROCK. Did you read his December 11 memo?

Ambassador SILBERMAN. Yes. I said, the December 11 memo made six subsidiary points which were really part of the last allegation he made in the original letter. It all fit within his general concept that the Promuto investigation had been impeded.

I want to bring this point to the committee because when Senator Jackson was questioning the FBI agents he made a point; he seemed to be of the view that the fact that they were directed to investigate the allegations Tartaglino made against Bartels, but not necessarily to go into the underlying investigation of DEA of Promuto, meant that somehow their investigation was crippled.

The interesting thing about that is Tartaglino himself, in his statement before this committee, emphasized that he wasn't so much interested with the underlying Promuto investigation, but rather the alleged impedance and in that meeting he accuses me in his testimony of being too interested in the underlying Promuto investigation.

In a sense I was interested in the underlying Promuto investigation because the nature of the allegations against Promuto had some bearing, in my mind, as to the propriety of the kind of investigation Tartaglino and Brosan had conducted into Promuto's actions and, therefore, had some bearing on the actions Bartels had taken which were designed to moot what he thought was the extremism of Tartaglino and Brosan. So in that sense they were connected.

But I think, frankly, there is no merit to the proposition that it was necessary to give the FBI the underlying Promuto investigation in order for them to determine whether Bartels had impeded them. I think Tartaglino thought so.

Mr. FELDMAN. On the December 11 memo that Mr. Tartaglino did write to the inspectors, he sets forth the detail of the efforts of Mr. Bartels, to frustrate, impede or obstruct the Promuto investigation.

Ambassador SILBERMAN. True. That was the first time he used the word "obstruct", but he didn't make the charge obstruction of justice.

Interestingly enough, he comes up with that 10 days after the investigation, just at the time the investigation is about to be completed.

As I said, somewhere along the line he got a lawyer in this thing. Mr. FELDMAN. He was interviewed by the FBI December 6th, my staff tells me.

Ambassador SILBERMAN. That is right. The point is the original memo he sent to me was back in the middle of November or actually he didn't send it to me. He sent it to Pommerening.

Mr. FELDMAN. But that memorandum was the basis, they went down that memorandum one point after another.

Ambassador SILBERMAN. Which memo?

Mr. FELDMAN. The November 14 memo.

Ambassador SILBERMAN. Yes.

Mr. FELDMAN. Before the investigation.

Ambassador SILBERMAN. Yes. The last point in the November 14 memo incorporated really all of the points in the December 11 memo because what happened is when the FBI went to talk to Tartaglino, they asked him for his side, they interviewed him, as I recall, for some X number of hours. I can't recall exactly the number.

They asked him to put anything else he had in writing. He subsequently gave them that thing on December 11. When they came to me, they were of the view they had thoroughly investigated the charges, the subcharges in the December 11 memo in their initial investigation because it was all part of his claim that Promuto impeded, I mean that Bartels impeded.

Mr. FELDMAN. Mr. Ambassador—

Ambassador SILBERMAN. Forgive me sometimes from trying to keep the various investigations straight. As I told you earlier we have got four investigations on top of another here.

Mr. FELDMAN. On top of that we have the Department of Justice investigation we will get back into in a minute. But to button this up—

Ambassador SILBERMAN. I don't know why you say Department of Justice. I was part of the Department of Justice. I hope you are not distinguishing me from the Department of Justice.

Mr. FELDMAN. No. I said the Department of Justice investigation that is now going on. The Department of Justice task force that was appointed by the Attorney General.

Ambassador SILBERMAN. Right. I will be glad to deal with that. You said Department of Justice investigation as if I wasn't part of the Department of Justice.

Mr. FELDMAN. No. We talked about one investigation on top of another. You mentioned all of them except this last one which is the current Department of Justice investigation.

Ambassador SILBERMAN. I don't know if it is current.

Mr. FELDMAN. We will talk about that.

But what did you do with the FBI report once you got it and before you met Mr. Tartaglino? You didn't refer to the Criminal Division for their interpretation or examination for any criminal violations. Did you review it in-house in the Deputy Attorney General's office?

Ambassador SILBERMAN. Yes. I reviewed it, gave it to Jim Hutchinson to review it and we discussed it. Of course, I discussed it twice with the FBI people themselves, including the Assistant Director of the FBI in charge of the Inspection Division.

Mr. FELDMAN. Did you discuss the issuance of your press release at all with Mr. Petersen before it was released?

Ambassador SILBERMAN. No. Why?

Mr. FELDMAN. I am just asking the question.

Ambassador SILBERMAN. Incidentally, as I thought I made, I don't know if I made clear, but there has been some question as to whether that press release was designed to affect this committee's work. I didn't even know anything about the committee's investigation at that time.

Mr. FELDMAN. At the time the press release was issued on the 16th?

Ambassador SILBERMAN. Yes. I didn't know anything about that. If I did, it didn't connect. What I was concerned about was the press reports and the press inquiries that Bob Havel was getting on that day.

Mr. FELDMAN. On the date of your announcement, the Star-News carried an article in which some unnamed sources at the Department of Justice was reported to have said that a power struggle had been resolved, just been resolved at DEA, and Mr. Tartaglino and Mr. Brosan had in effect lost that struggle, that they had been bounced from the jobs.

I am not saying you were the unnamed source. I am just using that—

Ambassador SILBERMAN. Why don't you ask me?

Mr. FELDMAN. Were you the unnamed source?

Ambassador SILBERMAN. No. I was not the unnamed source.

Mr. FELDMAN. Was it the view that the Department of Justice that this was in fact a power struggle? That is what we are talking about here?

Ambassador SILBERMAN. It is more complicated than that. I am not sure in my own mind of Tartaglino and Brosan's motivation. I can't help but feel part of it stemmed from their feelings of insecurity which arose from Bartels directing Mark Moore, who was quite a formidable, intelligent guy, to look into their Inspection shop.

Tartaglino also wanted to be Inspector General. How that this whole thing—I don't know. I have a feeling, instinct, a judgment more than an instinct, I got a judgment that they had a vested interest in almost getting Promuto. I have in some respects been critical of Bartels. The way I would have handled it is to take both of them entirely off the case and bring in somebody new with an acknowledged reputation to conduct that investigation because it is clear John lost confidence in them. I think he was justified losing confidence in them.

But he tried to sort of do it both ways. I think that was probably awkward. By both ways, making sure other people gave him advice and then he prevented the investigation from unduly injuring Promuto, but at the same time not getting rid of Tartaglino and Brosan.

If I fault him in that area, that is where I would fault him, a manager sometimes has to make a sharp, tough decision, and one of my decisions, had I been him, would get Tartaglino and Brosan off that case.

Mr. FELDMAN. Why was the Attorney General's task force established? What are their guidelines? What is their charge?

Ambassador SILBERMAN. You would have to—I can tell you what I know about that. You recall. I kept a string on this thing with Jim Hutchinson watching the internal DEA investigation. I kept a string on this thing with Jim Hutchinson continuing to watch the internal DEA investigation.

I emphasized to both Jim and Bartels that I wanted this Promuto investigation followed through vigorously, but prudently.

Jim came to report to me a number of times, I think in January—various complications of course, at this point. The Attorney General Saxbe had resigned. I was trying to get Attorney General Levi confirmed through the Senate. I was investigating the FBI at that point myself, and the CIA at that exact time.

So I didn't have time to follow this internal DEA business which compared to the other two matters was not as important. I don't mean to say it was unimportant, just compared to the other matters, and Jim was following it.

Jim came to me a couple of times expressing some concerns about the DEA matter; that is to say, the Promuto investigation, there were some other new things coming up which had not been part of the original Tartaglino charge, had not been part of the initial FBI report, and which bore on some other aspects of it.

Beyond that they were in consultation with you at that time or your committee; that is to say, Jim Hutchinson and Mark Wolf of my office, who is now in the Attorney General's office, and your committee was telling the Department that there were some real horrors here that we hadn't discovered, and there was some real bad stuff that we hadn't discovered.

As I recall, I may well have directed Jim Hutchinson and/or Mark Wolf to go back to you and give us that material so that we could evaluate it, treat it if there was any potential criminal stuff. And as I indicated in my testimony this morning, the committee refused, which I think was a mistake. But everybody makes their own judgment.

There was this apprehension, this concern that you must have something because you wouldn't have told us that otherwise and that all led to the view that maybe we had better conduct some further investigations and Hutchinson was of an idea that we should start another group involved and came to me and he brought up some other matters which I do not want to go into because some of them are live, some of them don't involve any of the individuals that have even been mentioned, some of them do involve perhaps all of the individuals who have been mentioned, perhaps not Bartels. I don't know that.

And I agreed we will set something up to go after it. Then he talked with the Attorney General and the Attorney General and Jim Hutchinson agreed that they would set up another group with my approval, agreement, to go after these new matters, and particularly any matters that the committee had come up with which they were claiming we hadn't discovered.

Mr. FELDMAN. You are not saying the task force was set up because of the apprehension that we might have something?

Ambassador SILBERMAN. The apprehension that we had missed something.

Mr. FELDMAN. Isn't it a fact—

Ambassador SILBERMAN. Not apprehension that you would have something. It was set up because you were claiming there was evidence that was probative that we didn't have.

Mr. FELDMAN. The task force, as I understand it, has taken hundreds of hours of sworn testimony on a variety of subjects. I am sure they wouldn't go into that depth based on mere apprehension at this particular point.

Ambassador SILBERMAN. This mere apprehension is a phrase. The committee was telling us, my people, that there was material we had missed which was of awesome significance and the apprehension was that we may have missed something.

Mr. FELDMAN. Were we right or wrong?

Ambassador SILBERMAN. You will have to ask the Department. I haven't seen the report.

Mr. SLOAN. If I could interject one question here, Mr. Chairman, you mentioned before that if you could fault Mr. Bartels at all it would be on his judgment in not removing Messrs. Tartaglino and Brosan.

Ambassador SILBERMAN. Once he lost confidence in Tartaglino and Brosan, he should have removed them.

Mr. SLOAN. A problem that has come up over and over in the hearings is the issue of the propriety of using written questions. I would like to get your thoughts on that—whether using written questions as well as unsworn replies was a serious mistake.

Ambassador SILBERMAN. I don't think that was a serious mistake. There are all sorts of techniques used in investigation. Keep in mind this committee has always gone through this thing as if the underlying allegations against Promuto were criminal, but they weren't. Not only were they not criminal, but they were in some respects the most dangerous kind of allegations that can be brought against any Government employee, dangerous in the sense that they are hard to get hold of and even if you get hold of them, you are not sure what you can do with them.

Let me go on. So I was not troubled at all at John ordering written or what he did, I think he ordered a confrontation. There is some confusion as to whether it was Richardson or Lund who suggested written interrogatories or whether it was him.

In any event, it is not an unknown concept particularly for facts which are set.

The point was that John wanted a confrontation. And it seemed to me quite legitimate. Brosan had come to him and said Promuto should be amputated. There is nothing he can say that justifies what he did.

Mr. SLOAN. In fairness, Ambassador, I think Mr. Brosan offered three possibilities. He favored one as was pointed out this morning as did Mr. Richardson and Mr. Durkin.

Ambassador SILBERMAN. The amputation?

Mr. SLOAN. Yes.

Ambassador SILBERMAN. He didn't like that at all.

Mr. SLOAN. That is not my point here. I am just saying—

Ambassador SILBERMAN. But that was his recommendation. But he did say it is my recollection and either from the testimony or

somewhere that there was nothing he could do to defend himself. He was dead. All they had was that he had frequented this Fran O'Brien's bar and that he may or may not have slept with a prostitute who may or may not have had contacts with others. That was not the kind of thing that it seemed to me a sensitive, intelligent, good investigator would run off with.

So the point is, John's actions, this is the point that I raised, and seems to me I would submit to the committee, his actions have to be judged in terms of what he perceived to be extremism on the part of Tartaglino and Promuto—Tartaglino and Brosan.

He tried to develop an antidote to that. Promuto was blackened all over the community. People were coming up to Bartels saying we hear that Promuto is really in trouble, they subpoenaed his records under an authority that can only be used in a narcotics conspiracy, and although Richardson thought that was legal, I am very dubious. I don't think it is; nor did Bartels, and I think he is right.

So that they had behaved, in my judgment, badly, unwisely. So John was trying to redress the balance, give Promuto a fair chance.

He wanted a confrontation. I don't think that is wrong.

Mr. SLOAN. I don't think anyone argues with that. But that wasn't the question. The question was, should it have been a written confrontation. I would also add another factor that when the questions were submitted, not all were answered.

Ambassador SILBERMAN. That is right. My recollection is they were followed up by Tartaglino and Brosan in oral questioning.

In some respects written questions to a witness can be quite a difficult thing to deal with for the witness. In some respects they are more difficult than the oral questions.

Mr. SLOAN. Even when they can be returned the next day?

Ambassador SILBERMAN. Yes. I heard something about the take-home exam business. That is ridiculous. In fact, when you give a witness—remember, this is not a man charged with a criminal offense; you give him an opportunity to come up with a written answer; he can't claim subsequently he misunderstood. He has got that written question before him and he has got to put it all down. Besides, this is not an uncommon thing to do for any employee of any organization, charged with improper conduct, give me a written report.

Mr. SLOAN. Wouldn't the answers to a questionnaire ordinarily be sworn to under those circumstances, however?

Ambassador SILBERMAN. For instance, when the President asked Colby for a written report on the allegations in the CIA, he didn't ask him to swear to it. He subsequently set up a hearing in which there was sworn testimony. But it isn't necessary to ask for sworn testimony.

But in any event, Tartaglino and Brosan interviewed him afterward and sought sworn testimony, and Bartels, to my recollection, didn't object to that.

Mr. SLOAN. Are you aware of the fact that there are material differences between some responses that Mr. Promuto gave in his sworn statement and his written unsworn answers to the written questions?

Ambassador SILBERMAN. How do you know that?

Mr. SLOAN. Because I have seen both responses as has the staff and members of the subcommittee. They have been submitted by your office, or Mr. Hutchinson's office, to the subcommittee.

Ambassador SILBERMAN. I don't know. I am not aware of that. I am not aware of material. They were not reflected in the FBI report. That goes to Promuto anyway. That doesn't go to Bartels.

I am not here to defend Promuto. I am here to defend his rights, but Bartels never indicated to be anything, but he wanted DEA to get to the bottom of the Promuto investigation.

But the fact that he ordered a confrontation, with or without written questions, is not, in my judgment, improper. Indeed, if as a result of those written responses, plus oral interviews, Promuto was tripped up, that would show the value of that process.

Mr. SLOAN. I don't want to belabor the point, but wouldn't it be more likely you would trip somebody up by following up with questions as you might in a trial?

Ambassador SILBERMAN. Not necessarily. You can do both. I think the committee has made much too much of this, in an investigation of an impropriety and, indeed, an impropriety that is hard to get hold of, but one that worries us all; I do not regard it as serious.

In any event, I understand what motivated Bartels. You have to keep the whole thing in perspective; there is no question, I am sure this committee would agree, that Brosan and Tartaglino's investigation was excessive and there is nothing more dangerous in law enforcement than an excessive investigation.

I think we all saw that in the last 2 years when we saw the problems with enemy lists and so forth. When a law enforcement investigator goes after a target with excessive means, that is the worse thing in our society, the very worse.

Mr. FELDMAN. Do you think Mr. Bartels should have removed himself from the Promuto investigation in the same manner and for the same reasons that Mr. Petersen removed himself in the Bartels investigation? Would that have solved our problem?

Ambassador SILBERMAN. Well, I have two responses. That is always a tough question. Mr. Feldman, you and I have discussed that this morning.

Mr. FELDMAN. I understand. I am not trying to bring that out, although we can. It did go to this question.

Ambassador SILBERMAN. Let me explain it because I will bring it out and then come out on your side. I mentioned to you this morning that I was astonished that you—I had only found out yesterday—that you were married to a woman who has attacked me publicly and privately for the last 6 years, and who has a personal animosity toward me. When I found that out yesterday, I thought you should disqualify yourself in an investigation in which I was involved.

Let me go back. After talking to you this morning I have concluded that you weren't biased, although one suggestion has the appearance of bias. It is a tough question.

The problem with Bartels, and you had the same problem Bartels had: If he had disqualified himself in the Promuto investigation, who was he going to put in if he didn't have confidence in Tartaglino and Brosan? I think he was in an awkward position.

I happen to be a stickler on that business. If I were either you or Mr. Bartels in that situation, I would have disqualified myself as I disqualified myself on the matter related to Colson when I was in the Justice Department, since it was well known that I had a personal animosity and it was reciprocated.

Mr. FELDMAN. I would like to put this on the record, Mr. Chairman, and I say this after having discussed it with the Ambassador prior to the hearing; my wife has been on the other side of litigation involving Mr. Silberman; she has testified against various positions he has been nominated for.

Ambassador SILBERMAN. My confirmation.

Mr. FELDMAN. It has been a long and tough battle stemming out of various cases which I don't think we have to go into.

Ambassador SILBERMAN. And personal conflicts that go back to 1967.

Mr. FELDMAN. They worked together at NLRB. It is a long and interesting story, none of which has motivated, I would like to state for the record, my feelings in this case, as I explained to Mr. Silberman when he brought up the question of my disqualifying myself.

I asked him in what context should I disqualify myself. From the hearing? From today's session? From the investigation? In its entirety? Or shall I just not ask him questions? I gave him the option. Didn't I give you the option of—

Ambassador SILBERMAN. I decided.

Mr. FELDMAN. We decided—

Ambassador SILBERMAN. I decided after talking to Mr. Feldman that he was not personally biased.

Mr. FELDMAN. So he doesn't put me in the same camp as my wife.

Ambassador SILBERMAN. That is right.

Senator BROCK. Same camp, but maybe not the same troops.

Mr. FELDMAN. In fact, he did invite me to Yugoslavia—without my wife.

Ambassador SILBERMAN. That is true. But in any event, these are always tough questions.

Mr. FELDMAN. I understand.

But going back to the question, do you think or don't you want to comment on that? He would have disqualified himself?

Ambassador SILBERMAN. I would have disqualified myself in both cases, with respect to you and with respect to Bartels, if I were either one of you.

Mr. SLOAN. Let me ask one more question on the written as opposed to oral questions.

You have stated you have not seen the February 28 sworn statement of Mr. Promuto; is that correct?

Ambassador SILBERMAN. That is correct. It is still correct.

Mr. SLOAN. Did anyone in your office review that?

Ambassador SILBERMAN. Probably. Let me explain. I have turned over most of the operational operations to Hutchinson and I think Wolf was working with him, too, because I was just too busy with the FBI investigation, that is to say, my investigation of the FBI's OC files, and then by February 28, I may well have been in the process of going to another job.

So at that point I was virtually out. I was also involved with other matters which are not relevant.

Mr. SLOAN. So if anyone was aware, it would have been Mr. Hutchinson. The reason I am concerned about this is that we understand that Mr. Promuto was permitted to change some answers in that statement.

Ambassador SILBERMAN. I don't have any idea.

Mr. SLOAN. You don't have any knowledge on that subject?

Ambassador SILBERMAN. After the middle of January, I was not operationally in the thing except insofar as Jim came to me with certain recommendations. He thought there were new matters coming up which deserved another investigation. But I never—I put this forth in a self-serving way—but I didn't mind that there were further investigations.

If, indeed, it was ever determined that Promuto was guilty of a crime, I wanted to see the Department go after him with everything they could, but I just wanted it to be fair.

Mr. SLOAN. For our records, since June 9, 1975, have you been in contact with the Department of Justice in connection with this subcommittee's investigation?

Ambassador SILBERMAN. Hell, yes. I will tell you when I saw the newspaper article after some of the statements Senator Jackson made when they arrived in Belgrade, I hit the ceiling because I thought——

Mr. SLOAN. Which statements?

Ambassador SILBERMAN. Let me tell you. The staff drafted a statement, I am sure, for Senator Nunn, one for Senator Jackson, and said agents Williams and Hegarty said Mr. Silberman did not allow them to conduct the kind of comprehensive investigation they would have conducted had they been performing investigations under established procedures followed by the FBI. That statement is false. They didn't testify to that.

What they did testify to was the routine FBI investigation and what they clearly meant, given the context, if they had been an internal inspection where Promuto was one of theirs, obviously they would have been going after the Promuto matter as well as the impedance.

But you read that transcript of that FBI investigation and I submit to you the committee confused the devil out of those FBI agents because they started out clearly saying there was no limitation on their investigation of the allegations Tartaglino made against Bartels.

Then through the dialog, the question is, well, you didn't go into the underlying Promuto investigation? No. Isn't that improper? Well, no. But, well, then it wasn't a complete investigation? Well, in that sense it wasn't complete.

So you go through that kind of dialog and I think this staff has mischaracterized their testimony. I did in fact, yesterday, meet with Bassett, who was the Director of the FBI, and he is perfectly willing with those two agents to come back up here and straighten out that record so that these statements won't stand.

I asked the committee to call them back to confirm what I have testified to. Let me go on. They said their actual investigation—these are statements by the committee—lasted less than 10 days and that information which could have shed light on the integrity issue was never sought from persons who had first-hand knowledge that might have enabled them to more accurately evaluate the allegations being made by Tartaglino and Brosan.

That statement is false. They never so testified. If anybody can find that in the record, I will give them a dollar.

Then they went on, you went on to say, that the FBI inquiry of several months, that my statement indicated that the FBI conducted an inquiry of several months. I dealt with that this morning with Senator NUNN.

He agreed that I didn't say that. There was a possible implication which the committee drew, but I didn't say it.

So my point is, that is why I got angry. I called the Department and said, "Look, these statements are coming out phony and I want the Department to do what it can to try to straighten it out." The general disposition is the only way it can be straightened out was by my coming back to testify. So, unfortunately, the taxpayers—

Mr. FELDMAN. That is why you were requested and I think we are straightening out the record here.

Ambassador SILBERMAN. I think there were mischaracterizations of the FBI testimony which compared to my press statement are dreadful.

Mr. FELDMAN. There were a couple of points you wanted to hit. Mr. Ambassador, one of which was the removal of Tartaglino and Brosan from their duties, I believe.

Ambassador SILBERMAN. Yes. I think we testified to that this morning. The reason I did it, was two reasons, three reasons: One, it was clear that Tartaglino and Brosan had lost Bartels' confidence and as the FBI agents put it to me, there was just no way they could exist together. Second, I had lost confidence in Tartaglino and Brosan. I thought they were extremists, Brosan less competent, Tartaglino more of an extremist. That is to say, he was overly zealous in investigations and you can be overly zealous. You can be overly zealous to the point where you jeopardize civil rights of individuals.

In that respect I noted you were asked about Jack Anderson earlier, I recall the Jack Anderson column of March 14, 1975, which talked about Tartaglino, I didn't know this at the time, but it confirms my appraisal of the man, was involved in the suicide which he engineered or at least induced—

Mr. FELDMAN. Again, that is your characterization. We have had testimony by him and examination by Senator Javits on that.

Ambassador SILBERMAN. I haven't seen it. Did he admit it?

Mr. FELDMAN. Of course he didn't admit it. I mean it is your characterization that he engineered a suicide.

Ambassador SILBERMAN. No. No. I said "induced."

Mr. FELDMAN. I will make the transcript available to you.

Ambassador SILBERMAN. I certainly will.

Mr. FELDMAN. I don't like to characterize what he said under oath.

Ambassador SILBERMAN. I am just asking whether he did induce it or not?

Mr. FELDMAN. I am not going to say "induce." You are talking about words here.

Ambassador SILBERMAN. I am sorry. I got the impression he had admitted it before the committee.

Mr. FELDMAN. I will make the transcript available to you.

Ambassador SILBERMAN. In any event, I got the impression he was an extremist. There is this other matter that I have in my possession which the Department may have in its possession which may well confirm that even more.

So the point is I did not want him involved in the law enforcement, direct law enforcement investigations.

Mr. SLOAN. Ambassador Silberman, you have discussed this in part, but could you relate the recommendations you have made to the new Attorney General, Edward Levi, when he took over the Department of Justice?

Ambassador SILBERMAN. Yes. I went down to Personnel. I said John is a weak manager and you ought to replace him for management grounds. I did not think he was corrupt. For John's benefit—first of all, the Attorney General wanted to broaden this investigation which Jim had suggested, to go into broad management bases so that he would have, besides my recommendation, more grounds to make his judgment on Bartels.

I certainly couldn't fault him. I thought he was within not only his rights, but it was a sound and intelligent thing to do, which is one of the reasons that investigation became so broad.

But my judgment was Bartels was a weak manager.

Mr. SLOAN. Ambassador Silberman, are you familiar with the second memorandum dated December 11, 1974?

Ambassador SILBERMAN. I think I already testified about it.

Mr. SLOAN. That is right. I would like to clear up a few points. I am going to ask a few questions about it. It refers to alleged violations of the civil service system, informant homicides, and other matters.

Ambassador SILBERMAN. What was the second one? Homicides?

Mr. SLOAN. Informant homicides.

Ambassador SILBERMAN. I don't have it in front of me.

Mr. FELDMAN. Here it is.

Mr. SLOAN. The question I wanted to ask, is whether you can tell the subcommittee what action you took or directed to be taken with regard to those allegations?

Ambassador SILBERMAN. My recollection is the civil service one was the one I testified about this morning. Which one is it? Would you point to the page?

Mr. FELDMAN. The civil service is on page 4.

Ambassador SILBERMAN. Yes. As I told you earlier today, the FBI had interviewed Tartaglino about this and he had referred to one individual which we did run down, and then his own case which he felt had been in violation, his treatment had been in violation of Civil Service. That was a long time ago.

Frankly, I didn't think the fact that he even raised that issue at that stage in the context of worrying about the Promuto investigation would damage his credit. He accepted the downgrade, although he claimed it was in violation of the Civil Service.

That suggested to me a personal motive against Bartels which in my judgment colored much of what he said.

Mr. SLOAN. With regard to another allegation, and I just want to get this clear since we have been discussing the memorandum, the allegation having to do with Thomas Durkin, you were not aware at that time that he did not have a security clearance?

Ambassador SILBERMAN. No.

Mr. SLOAN. Did you take any action?

Ambassador SILBERMAN. No. As I told you this morning, I remember going through the FBI—in this letter he talks about Durkin being a man of great—is this the letter?—of great integrity; Tartaglino himself did. So far as I know, he is of high integrity and strongly motivated to advise assistant counsel and executives of DEA, but he does not have a security clearance.

Mr. SLOAN. If I can read just a few of the next sentences:

But he does not have a security clearance and I find it uncomfortable and improper discussing official matters with him. Theoretically, I am in charge of security and have no written evidence of suitable efforts to conduct such inquiry.

Ambassador SILBERMAN. I remember now. I think maybe somebody looked into that, maybe the FBI, and he had received the benefit of the names check, but he hadn't formally gotten security clearance. It was not of earth-shaking importance, it seemed to me at that time.

Tartaglino didn't make any allegation against his integrity. I didn't even know what kind of security clearance they were talking about, to tell the truth.

Mr. SLOAN. He did have access to——

Ambassador SILBERMAN. Wait a minute. I am not sure what they are talking about when they are talking about security clearance. Do you know what they are talking about?

Mr. SLOAN. No, not the precise form.

Ambassador SILBERMAN. If you don't know what they are talking about, why are you worried about it?

Mr. SLOAN. I presume anybody who works in DEA and has access to investigative files and inspection files with informants' names in them has to have some sort of clearance. Would you assume that?

Ambassador SILBERMAN. I am now the beneficiary of so many different forms of clearances I must say I get a little confused as to what we are talking about.

Mr. SLOAN. You would assume some form of clearance is necessary?

Ambassador SILBERMAN. Every employee of the Justice Department has some kind of clearance.

Mr. SLOAN. He was an unpaid consultant, special adviser, and he did not have any sort of clearance. Was he an exception to the general rule you just stated?

Ambassador SILBERMAN. There was an allegation that he didn't, but I didn't take it seriously because Tartaglino claimed he was a man of the highest integrity. Somebody may have followed up on that. I was trying to determine whether a presidential appointee was corrupt and whether Durkin had a security clearance, if he was a man of the highest integrity did not rise to an issue that bore on

whether John Bartels was corrupt. Somebody else could worry about that down the line.

Mr. SLOAN. Did you know that Mr. Thomas Durkin at that time and earlier had been performing legal services at no cost for Mr. Bartels and other senior DEA executives?

Ambassador SILBERMAN. No, nor do I understand the relevance.

Mr. SLOAN. I am just asking you the question. He had access to all sorts of files and he was also performing——

Ambassador SILBERMAN. What files did he have access to?

Mr. SLOAN. He had access to the Promuto file, for example.

Ambassador SILBERMAN. My understanding is John used him as a management adviser. I will confess when I was Deputy Attorney General, on occasion I would call in people outside the Government to advise me on sensitive issues.

One person I particularly used to call on was an old employee of the Justice Department, under Attorney General Kennedy, and an ex-partner of mine. Whether he had a security clearance at that point that was still live, I don't know.

But the point is, when he is called on on management matters, I don't think that is terribly important. In all truth, this is stuff that I have seen in the record but it was not in the FBI file. I don't even recall whether it was a serious matter Tartaglino raised. It was in the December 11 memo. But it looked to me like pretty small potatoes because he said he was a man of the highest integrity.

If Tartaglino had said Durkin is corrupt and he is in there advising Bartels, then I would have been worried. But he said he is the man of the highest integrity.

Mr. SLOAN. Just to finish up on this matter, the issue really here is the role he had in this investigation, not whether he had high integrity.

Ambassador SILBERMAN. Yes.

Mr. SLOAN. I can assume you have high integrity but——

Ambassador SILBERMAN. Thank you. Given some of the statements this committee has made, I am amazed. Your point is he shouldn't have been involved in the investigation because he didn't have a security clearance.

Mr. SLOAN. Not just this investigation, any number of investigations about which he has testified.

Ambassador SILBERMAN. You know, the funny thing about that is I saw Bartels' testimony that he inherited Durkin from the old BNDD. Nobody ever raised this issue over all of this period of time.

I don't know why Tartaglino didn't raise it before he raised it to me or raised it to the FBI. Look, this was a make-wave.

Mr. SLOAN. The issue was raised with Mr. Ingersoll. He will be a witness.

Ambassador SILBERMAN. I am glad you are really pursuing major issues.

Mr. SLOAN. I am glad you are glad.

Ambassador SILBERMAN. It does not seem to me of significance unless Durkin in some way is a man that we ought to be worried about. But I understand there was a name check run on him.

What else they have to do to give him what level clearance, I don't know.

Mr. SLOAN. I should say, Ambassador Silberman, many files have been denied to this subcommittee on the grounds that informants names are in them and I think justifiably so.

Ambassador SILBERMAN. Do you have any indication that Durkin had access to informants names?

Mr. SLOAN. He saw inspection files——

Ambassador SILBERMAN. Do you have any indication that he had access to informants names?

Mr. SLOAN. Yes.

Ambassador SILBERMAN. I thought Bartels denied that.

Mr. SLOAN. Mr. Bartels' testimony is inconclusive on that. He saw Mr. Bartels often and testified that when he got involved in the case he was given permission to see any materials that were necessary.

Ambassador SILBERMAN. There were other matters, though, in that—I thought you were going to go into some other things that were raised, the six issues that Tartaglino had raised. I know, the Civil Service business. That is something I ought to respond to. I thought that was an intelligent action on the part of DEA.

I remember Tartaglino and Brosan thought it was premature and somehow wrong to go to the Civil Service with a hypothetical case to see whether the Civil Service would regard this as disciplinary activity or actions which would support discipline.

That seemed to be no more than a lawyer starting out an investigation or in the process of an investigation, stopping and asking himself, is the material we are developing probative to any substantive standard?

So they took it over to Civil Service and found out that even if they proved X, Y, and Z, they couldn't fire him anyway.

That didn't mean that they stopped their investigation, but it gave guidance to what they ought to be investigating. So I didn't think there was anything improper about that at all.

Senator BROCK. Mr. Silberman, I hate to interrupt. We have a vote going. I have to leave as soon as the next round rings or shortly before.

In trying to wrap up and let you go back to your principal occupation, I hope, I will give you just a couple of opportunities.

If you have any other particular comment you would like to make with regard to any charges or implications or anything that you would like to respond to, you may do so at this point.

Ambassador SILBERMAN. Thank you so much. So far I would say unequivocally I never stopped, halted or limited the investigation that the FBI made, limited in the sense of any way constraining what the FBI wanted to go into. They are professional investigators. I gave them carte blanche. I did not give them the responsibility of going after the underlying Promuto investigation, but if they had come to me and said there is any aspect of the underlying Promuto investigation which bore on their investigation, I am sure they knew, and indeed, I think the implication of their testimony is, and I hope when you bring the others up that I would have authorized that.

They had finished in their view. I agreed with them. It was my responsibility.

I did not, although it has been suggested by Senator Percy, that I abused the FBI, I find that offensive and I find it wholly and totally without foundation.

The only aspect of that that makes, that I can even comprehend what he means, is that that investigation did not go through Nick Callahan and Clarence Kelley, but went from Bassett to me.

I have explained why I wanted this investigation to be cloaked with the authority of the Deputy Attorney General rather than the FBI, because of the competing and indeed, in some respects, rivalries between the FBI and DEA, and because I was the supervisor of both.

Finally, that I wanted to move towards a situation where the Department of Justice had an Inspector General who could investigate anybody in the Department and who would bring agents from any place.

So I was moving towards a new system, a system which, incidentally, I regard as essential.

I guess I would hope the committee would check up on some of the matters. The committee should know by now that the administrative inquiry is a standard tool in the Department. I was somehow amazed that the implication was that that was somehow, that it was unusual. The committee has enough access to Justice Department people to bring down 100 witnesses to tell you that that is standard.

Finally, let me tell you what I think this committee, if I may be so bold as to suggest something that would be enormously helpful. I think the opening day Senator Ribicoff said the DEA ought to be put into the FBI. I think that would be a mistake.

The FBI is already too big for the rest of the Justice Department, the single biggest management problem in the Department, as I think any long-time student of the Department will recognize, is for them to make sure the Justice Department has appropriate management policy control, policy control, over the FBI. To make them even bigger would hurt.

Second, DEA engages in a dirty, miserable business. There will always be allegations of corruption against DEA officials because of the nature of their business. They are often in the situation where they are right in the middle where crime is being committed. That is how they get their evidence. That is inconsistent with the way the FBI normally operates when they go post hoc to investigate an alleged incident.

So I think that would be a mistake to put them together. But I think this committee, if it has, if you will forgive me, if it has the courage, because it will take courage, could do something that would be of enormous help for DEA and for the Justice Department, and that is to pass legislation to take Civil Service away from DEA and give them the same personnel status as the FBI.

If you do that, you will end up with a much better DEA, which will be much less susceptible to corruption.

As you dug into this investigation, I think this committee has become aware that the protections which Civil Service gives employees, while very valuable, are probably inappropriate in an organization engaged in direct law enforcement. You need a higher degree of discipline and you need a higher degree of flexibility of management.

The Bureau has been virtually incorruptible. I don't mean to suggest that there hasn't been corruption cases. I investigated some of them myself: Nobody is perfect. But one of the strengths of the Bureau since J. Edgar Hoover took control back in the twenties is that there has been a relative absence of corruption. That is true only because of its unique personnel status, not only leadership, plus the personnel status.

If this committee were to recommend Congress legislate to get it passed, which would put DEA under the same personnel status, I think you would do a great service to the country.

Senator Brock. I thank you very much. I just must go. Let me suggest to you that if you have additional comments or responses that you would like to submit for the record, without objection they will be received and made a part of the permanent record of the committee. You have that right.

We will keep the record open for a period of time for you to do so. Any other comments you want to make in any sense of the word, I would welcome them. There may be a minority report before this is over, but I appreciate your openness and frankness and I appreciate your trouble in coming to respond to something that was very burdensome for you.

Ambassador SILBERMAN. Let me tell you how much I appreciate the fact you were here, Mr. Chairman, and how much in a sense resent the fact that the people who were attacking me were not here.

Senator Brock. The committee will stand in adjournment. Thank you.

[Whereupon, at 4:15 p.m., the subcommittee recessed, to reconvene subject to the call of the Chair.]

[Members present at time of recess: Senator Brock.]

APPENDIX

NEW YORK, N.Y., September 3, 1975.

PHILIP R. MANUEL, Esq.,
Senate Permanent Subcommittee on Investigations, U.S. Senate,
Washington, D.C.

DEAR MR. MANUEL: Per your request of July 16, I enclose an affidavit relating to the Archer case and the work of Andrew Tartaglino. You have my permission to insert the affidavit in the record of the proceedings.

Sincerely yours,

WHITNEY NORTH SEYMOUR, Jr.

Enclosure.

AFFIDAVIT OF WHITNEY NORTH SEYMOUR, JR.

STATE OF NEW YORK,
County of New York, ss.

Whitney North Seymour, Jr., being duly sworn, deposes and says:

1. From January 16, 1970, until June 1, 1973, I was United States Attorney for the Southern District of New York. I make this affidavit in response to a letter request from Philip R. Manuel, an investigator with the Senate Permanent Subcommittee on Investigations, Committee on Government Operations.

2. My attention has been directed to testimony of John R. Bartels, Jr., former Director of the Drug Enforcement Administration, given before the Subcommittee on July 1, 1975. In that testimony, at page 1166, Mr. Bartels stated that Andrew Tartaglino, an aide to Mr. Bartels in DEA, had "ordered" a DEA agent to give perjurious testimony before a state grand jury in the course of an undercover investigation which later resulted in a prosecution entitled *United States v. Archer, et al.*, in the Southern District of New York. I have been asked to state my knowledge of this case and of the incident to which Mr. Bartels refers, and to give my evaluation of the professional conduct of Mr. Tartaglino in investigations which took place in the Southern District of New York while I was United States Attorney.

3. Mr. Tartaglino conducted himself in a highly professional manner throughout the many investigative matters on which his office and ours were associated during the period I served as United States Attorney. Mr. Tartaglino brought energy, enthusiasm and imagination to these law enforcement matters. He had unique talents and rare dedication. The support and assistance of DEA, resulting largely from Mr. Tartaglino's own personal efforts, were of great value in contributing to the success of a major series of investigations into corruption in the criminal justice system in New York, particularly in the area of narcotics enforcement, which were conducted in my office from 1971 to 1973.

4. Specifically with reference to the *Archer* case, Mr. Tartaglino provided extraordinary investigative assistance in an undercover investigation which disclosed serious corruption on the part of the Assistant District Attorney in charge of the Indictment Bureau of the Queens County District Attorney's office in New York City. Mr. Tartaglino was in no way responsible, however, for the decision to permit a DEA Agent to testify in his undercover capacity before a state grand jury in the *Archer* investigation. The facts concerning Mr. Tartaglino's involvement in investigations conducted by my office and, in particular, in the *Archer* case, are as follows.

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5. In May, 1970, New York City Mayor John V. Lindsay issued an executive order establishing a commission, chaired by Whitman Knapp, to investigate the extent and nature of police corruption in New York City to make recommendations for reforms.

6. In February, 1971, New York City Detective Robert Leuci had a series of meetings with Nicholas Scoppetta, a lawyer for the Knapp Commission. Leuci, who had at one time been a member of the Special Investigations Unit ("SIU") of the New York City Police Department, a suit charged with the responsibility for major narcotics investigations, disclosed to Scoppetta that he had direct and hearsay knowledge of widespread corruption in the enforcement of the narcotics laws, involving organized crime figures, policemen, lawyers, Assistant District Attorneys and Judges. Leuci's information and contacts with the world of corruption were considered too important by the Commission's Chairman, its Chief Counsel and Scoppetta to be utilized solely as a means of publicizing the problem, as was done through public hearings in the case of other forms of corruption. Therefore, after verification of some of Leuci's information from tape recorded conversations between Leuci and certain corrupt police officers, Leuci was asked to act as an undercover investigator so that those involved in corrupting the administration of criminal justice in New York City could be conclusively identified, removed and prosecuted.

7. The Knapp Commission, whose mandate included a study of the existing local machinery for combatting corruption, concluded that the Leuci investigation simply could not be handled by any existing local law enforcement agency. Any such investigation conducted on a local level would inevitably have had to be done in part by the New York City Police Department and local prosecutors' offices, employees of which were to be the subject of the investigation. The Commission doubted seriously whether police officers, and perhaps some of the local prosecutors' offices, would pursue the investigation to the fullest extent and was also concerned that word of Leuci's undercover role would inevitably spread among those to be investigated. In fact, Leuci himself refused to participate in the investigation unless it was conducted by the Federal Government.

8. Thus, the Commission decided to seek the assistance of the Department of Justice. On March 10, 1971, at a meeting which I attended in New York City with the Assistant Attorney General of the United States in charge of the Criminal Division, my office agreed to a specific request by representatives of the Knapp Commission to conduct the investigation. On April 2, 1971, the Chief Counsel of the Knapp Commission and I met with the New York City Police Commissioner, then Patrick Murphy, and advised the Commissioner and his First Deputy of the Leuci investigation and its purposes. The Police Commissioner thoroughly endorsed not only the investigation but also the fact that it was being conducted by the Federal Government, and stated his opinion that the Federal Government was the only government body capable of effectively pursuing the investigation. The Commissioner offered the full support of the Police Department and, to facilitate the investigation, transferred Leuci back to SUI on April 14, 1971.

9. The investigation commenced. A few months later, on July 1, 1971, Knapp Commission Assistant Counsel Nicholas Scoppetta was sworn in as a Special Assistant United States Attorney. From that time on, Scoppetta and Leuci worked on a daily basis with Executive Assistant United States Attorney Edward M. Shaw, who was at that time Chief of the office's Official Corruption Unit.

10. At my request, Mr. Tartaglino arranged for investigative support for this investigation to be provided by DEA. Mr. Tartaglino's own personal efforts resulted in the supplying by DEA of a team of investigators, and from time to time, financial assistance, without both of which the investigation could not have succeeded. Mr. Tartaglino's realization that combatting local corruption in narcotics enforcement should be an essential part of federal narcotics enforcement showed, in my judgement, extraordinary farsightedness.

11. During the ensuing months Detective Leuci engaged in an undercover investigation, the results of which were all that had been expected. He uncovered evidence, in the form of numerous tape recorded conversations with many police officers, attorneys and others, of fixes of many narcotics cases pending in the courts of this City. The investigation has resulted in, in the years since, in many federal and state convictions of corrupt police officers and officers involved in the corruption of narcotics enforcement.

12. Six months before Detective Leuci's undercover role was publicized in the New York Times, Nicholas DiSefano, a corrupt private investigator who was the

subject of a number of investigations, including Leuci's, discovered that Leuci was in fact an undercover agent. The private investigator, who by this time had committed several provable federal crimes, was immediately confronted with the proof against him. During a number of meetings with Special Assistant U.S. Attorney Scoppetta, the private investigator agreed not to disclose Leuci's undercover assignments and also provided some limited information on corruption. In particular, he indicated that many felony cases were being fixed on a regular basis in Queens County and that some of these "fixes" involved participation by Supreme Court and Criminal Court Judges sitting in Queens County. He identified a bondsman named Wasserberger as a man who habitually fixed cases by paying bribes to policemen, prosecutors and judges in Queens.¹ Prior investigation had established that in the field of corruption this particular private investigator qualified as an expert. After many conversations, the private investigator agreed to make an introduction to Wasserberger in order to provide proof that Wasserberger was corrupt and that public officials in Queens County were involved in fixing cases.

13. After this commitment by the private investigator had been made, the Government formulated the plan of having an undercover agent arrested in Queens County and having the private investigator introduce the agent to Wasserberger. While Leuci had obtained direct evidence of corrupt dispositions of real cases by lawyers, private investigators, members of organized crime and police officers simply by posing as a corrupt policeman and engaging them in conversation on tape, he was obviously not able to uncover similar evidence of corrupt dispositions by Judges or Assistant District Attorneys. At the same time, there was considerable information gleaned from these conversations that judges and prosecutors were involved in fixing cases, including cases involving out-of-state and organized crime-related defendants. It was decided that the only technique likely to uncover conclusive evidence was the creation of an undercover defendant. Obviously any agent selected for this role would have to have an out-of-state "cover" to reduce the risk that these very sophisticated defendants with connections in the New York underworld could through any inquiries discover the agent was not what he claimed to be.

14. Before this was done, however, two steps were taken. First, the Police Commissioner and other top officials of the New York City Police Department were informed of the plan. The Commissioner not only continued to support the investigation fully, but, in spite of his concern that the Queens District Attorney would retaliate against any one assigned to this project, also provided the patrolman who would make the arrest. In addition, I disclosed the plan to a senior member of the state judiciary with administrative responsibility over the state court system in Queens.

15. Special Agent Sante Bario of the Federal Bureau of Narcotics and Dangerous Drugs was then arrested on a gun charge in Queens under the name of Salvatore Barone. Successful efforts were made to make him appear to be a member of organized crime.² After Bario's arrest, DiStefano said that Wasserberger was out of town and could not be contacted. After some delay—during which Bario had to waive preliminary hearing—DiStefano introduced Bario to the defendant Leon Wasserberger, also a bondsman, who was the nephew of the Wasserberger about whom DiStefano had originally spoken. DiStefano indicated that the nephew was as well connected as the uncle, and, as it turned out, he was.

16. Wasserberger introduced Bario to lawyer Klein, and Klein indicated that it would cost \$15,000 to fix the case (Tr. 176-179; GX 20).³ During the course of this and other conversations the defendants revealed a staggering history of corruption in Queens County involving both prosecutors and judges.⁴ On April 27, 1972, Klein told Bario that the only way he could fix the case was for Bario to

¹ In addition to the private investigator's information, Leuci had many tape recorded conversations with police officers in which those officers explicitly referred to a senior official in the Queens County District Attorney's Office who fixed cases involving members of organized crime.

² The subsequent tape recorded conversations with Klein reveal that Klein believed Barone to be a mob "hit" man who was in New York because of the gang warfare between the Columbos and the Gallos which was then very much in the news.

³ References are to the trial transcript and exhibits.

⁴ Klein identified one particular New York Supreme Court Justice whom Klein claimed to have assisted in obtaining his Judgeship, and encouraged Bario to refer to Klein any of his confederates who were arrested on narcotics charges so that Klein could have this Judge fix the case (Tr. 422; GX 32, pp. 30-32).

testify in the Grand Jury and give a fictitious explanation for Bario's possession of the gun. Klein said he had discussed this with his friend in the Queens County District Attorney's Office, who had told him that he and Bario must "come up with some kind of story to justify the possession of the two guns." Bario, seeking to avoid a Grand Jury appearance, told Klein that such testimony would be false. Klein said that he knew that, but that the friend had planned it that way and would know just the right questions to ask. He also assured Bario that he had fixed other cases with this friend before and that he could be "trusted" (Tr. 210-211; GX 23).

17. Agent Bario sought instructions from the Assistant United States Attorneys who were conducting the investigation, and they in turn discussed the matter with me. We were confronted with a clear choice: either the investigation was to be aborted and the corrupt Assistant District Attorney would remain in office, or Bario would have to permit himself to be suborned. At that point, there was, to say the least, substantial reason to believe that the Assistant District Attorney had agreed to receive a bribe and that he had done so before and would do so again in the future. On the state of the evidence then existing, neither the Federal Government nor the State could have commenced a successful prosecution, and almost certainly this public official could not have been removed from his highly sensitive position. Given the Government's evidence in this case and its other reliable information concerning corruption in the Queens County District Attorney's Office, it was concluded that there was no choice, consistent with our obligation to the public, but to pursue the investigation.

18. While very conscious of the sanctity of the Grand Jury, I concluded that Bario's following the defendants' plans and testifying in the Grand Jury would be legally justifiable and would not constitute a crime or a violation of anyone's constitutional rights, and that any speculative or theoretical injury caused to the court system would be miniscule in comparison with the injury caused in future cases by the corrupt Assistant District Attorney should he remain unexposed and continue to fix actual criminal cases presented to future Queens Grand Juries. Accordingly, the decision was made that Bario should continue to participate in the perjurious plan which had been hatched by Klein and A. her. As a direct result, Archer was revealed as a criminal, removed from his position of public trust, prosecuted and convicted.

19. That conviction was reversed by the Court of Appeals on the ground of inadequate federal jurisdiction for the prosecution. While the Court of Appeals was originally critical of the decision to permit Bario to testify in his undercover capacity before the Queens County Grand Jury, the Court, in a subsequent opinion, rendered after the facts set forth above were for the first time presented to it, made clear that its earlier remarks had been dicta. It might be noted that at the time of the petition for rehearing, *amicus curiae* briefs supporting the Government's undercover investigative technique were filed by Frank S. Hogan, District Attorney of New York County; Maurice Nadjari, Special Prosecutor; and Michael Armstrong, then District Attorney of Queens County, which office had been the subject of the investigation.

20. While respectful of the Court's opinion, I remain satisfied that the Archer investigation was, in the highly unusual circumstances presented, conducted in an entirely appropriate manner. For the purposes of this affidavit, however, it is necessary only to state the fact that the investigative plan for the Archer case was conceived by Assistant United States Attorneys in my office, and not by Mr. Tartaglino, and that the decision to permit Agent Bario to testify before the Queens Grand Jury was made by me in consultation with Assistants in my office, and was not made by Mr. Tartaglino. Mr. Tartaglino's sole role in this case was to supply Agent Bario and backup investigative personnel for DEA, and to consult with Assistants in my office as the investigation progressed.

21. In summary, specifically referring to the areas on which I have been asked to comment, (1) Mr. Tartaglino's performance in law enforcement matters of which I have direct knowledge has consistently been of the highest quality and in the public interest; (2) Mr. Tartaglino did not, in the Archer case, either make the decision as to the circumstances and nature of the arrest of Agent Bario, or the decision to permit him to testify before the Queens County Grand Jury in accordance with the instructions of the corrupt attorney and Assistant District Attorney in that case.

WHITNEY NORTH SEYMOUR, Jr.

Sworn to before me this 2nd day of September, 1975:

LOIS DAVERSA,
Notary Public State of New York.

THE CITY OF NEW YORK,
DEPARTMENT OF INVESTIGATION,
New York, N.Y., September 19, 1975.

MR. PHILIP MANUEL,
*Investigator, Senate Permanent Subcommittee on Investigation, Russell Senate
Office Building, Washington, D.C.*

DEAR MR. MANUEL: This is in response to your request of this date for my consent that the affidavit I executed on May 13, 1975 entitled

"in the Matter of the investigation leading to the Indictment and Conviction of Detective Louis D'Ambrosio on May 15, 1973 before Judge Sylvester J. Ryan. 73 cr. 456"

be made part of the record of the Senate Permanent Sub-Committee on Investigations' inquiry into the operation of the Drug Enforcement Administration. By this letter, please be advised that the Sub-Committee has my consent to make this affidavit, a copy of which is attached to this letter, part of the record in your investigation of the Drug Enforcement Administration.

Please let me know if I may be of further assistance to the Sub-Committee.

Sincerely yours,

NICHOLAS SCOPEPETA,
Commissioner.

Encl.: Affidavit.

AFFIDAVIT OF NICHOLAS SCOPEPETA

IN THE MATTER OF THE INVESTIGATION LEADING TO THE INDICTMENT AND CONVICTION OF DETECTIVE LOUIS D'AMBROSIO ON MAY 15, 1973 BEFORE JUDGE J. RYAN.
73 CR. 456

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.

Nicholas Scopetta, Commissioner of Investigation of the City of New York, being duly sworn deposes and says:

From July 1, 1971 to December 1, 1972, I was a Special Assistant United States Attorney for the Southern District of New York and as such was fully familiar with the facts and circumstances concerning an investigation of alleged bribery and unlawful wiretapping committed by two former New York City police officers, Joseph N. Nunziata and Detective Louis D'Ambrosio.

1. On or about February 1, 1972, Detectives Nunziata and D'Ambrosio together with other police officers and federal agents, arrested one Carlo Dandalo on charges that he was in possession of $\frac{1}{4}$ ounce of heroin.

2. On or about February 2, 1972, Dandalo waived arraignment in the United States District Court and was released in the custody of Detectives Nunziata and D'Ambrosio.

3. I was informed by members of the Drug Enforcement Administration (then the Federal Bureau of Narcotics and Dangerous Drugs), that for many years prior to February 1, 1972, Dandalo had been a special civilian employee for the Bureau of Narcotics and Dangerous Drugs and had been a highly productive and important undercover operative for the Bureau of Narcotics and Dangerous Drugs.

4. On February 1, 1972, at the time of his arrest, Dandalo was working in his undercover capacity for the Bureau of Narcotics and Dangerous Drugs in connection with an investigation then being conducted by the United States Attorney for the Southern District of New York into allegations of corruption in the criminal justice system. These allegations concerned themselves with corruption among police officers, bondsmen, lawyers, Assistant District Attorneys and judges.

5. On or about February 2, 1972, I was informed that Dandalo while in the capacity of undercover agent had given Detective D'Ambrosio a one hundred dollar bill to pay for lunch for the two of them. Dandalo reported that D'Ambrosio kept the change from the one hundred dollar bill. I was also informed that other officers and agents who were with Dandalo on February 1, and February 2, 1972, also received money from Dandalo to pay small amounts of money for various items and that they had kept the change from these payments which amounted to \$50.00 to \$100.00.

6. On or about February 14, 1972, after a number of meetings between Dandalo and Detectives Nunziata and D'Ambrosio, Dandalo discussed with the officers

the possibility of his being able to recover his passport which had been taken from him at the time of his arrest. Dandolo reported that Nunziata and D'Ambrosio decided on a "story" to tell the United States Attorney's Office to obtain the release of Dandolo's passport in return for which they wanted Dandolo to pay them "\$4,000 or \$5,000."

7. On or about February 17, 1972, after Nunziata and D'Ambrosio failed to obtain the release of Dandolo's passport, Nunziata and D'Ambrosio received \$4,000 in cash from Dandolo, during a conversation which was recorded, to allow him to attempt to leave the country on his own. Nunziata and D'Ambrosio told Dandolo they would "cover" for him while he was gone by failing to report his absence and by claiming they were having daily contact with him in their efforts to obtain cooperation from him in narcotics investigations. I have been informed that Nunziata and D'Ambrosio filed false reports alleging daily contact with their "informant" Dandolo, during this time.

8. Subsequent to February 17, 1972, Carlo Dandolo did in fact leave the United States and went to Italy. Detective D'Ambrosio had several phone contacts with Dandolo while he was out of the country. During one of these phone conversations, D'Ambrosio told Dandolo to return to this country after an Assistant United States Attorney insisted that Dandolo be produced for questioning.

9. On or about March 13, 1972, I was informed by Drug Enforcement Administration agents and New York City police officers assigned to the First Deputy Commissioner's Special Force who were assigned to this investigation that an unlawful wiretap had been found on a telephone in an apartment in which Carlo Dandolo had been living while in New York. New York City police officers and federal agents "staked out" the basement of the building in which the unlawful wiretap had been found and during the evening hours of March 13, 1972, Detectives Nunziata and D'Ambrosio were apprehended while attempting to retrieve the tape on the wiretap.

10. Following their apprehension during the evening of March 13, 1972, Detectives Nunziata and D'Ambrosio were brought to the United States Attorney's Office for the Southern District of New York, where I questioned them in the presence of federal agents Taylor and Carros from the Drug Enforcement Administration.

11. During this questioning and after being warned of their constitutional rights, both Nunziata and D'Ambrosio admitted having received \$4,000 from Dandolo for allowing him to leave the country. Detective Nunziata stated that on March 10, 1972 he had installed an illegal wiretap on the phone listed to the apartment which was occupied by Dandolo. Nunziata stated that he had learned where Dandolo was living by following him after meetings that they had held with Dandolo prior to March 10, 1972. D'Ambrosio stated that he was aware of the fact that Nunziata had installed an illegal wiretap on March 10, but that he had not been present at the installation. Both officers had admitted that they had gone to the basement of the building on March 13, 1972, in order to recover whatever tape recorded conversations they had received over the unlawful wiretap and to "service" the plant.

12. Both Nunziata and D'Ambrosio agreed to cooperate in an investigation of corruption in narcotics related cases and further agreed to attend a meeting on March 15, 1972 to discuss the specifics of their cooperation.

13. On or about March 15, 1972, together with Drug Enforcement Administration agents Taylor, Carros and the then Director of Operations for the Drug Enforcement Administration, Andrew Tartaglino, I met with Detectives Nunziata and D'Ambrosio.

14. At this meeting, Mr. Tartaglino described the nature of the investigation which was being conducted and both officers were told that this investigation concerned itself with corruption in narcotics cases involving a broad spectrum of the criminal justice system. Detective Nunziata was specifically told by Mr. Tartaglino that a good deal of information existed concerning corrupt activity on his part and on the part of other police officers in the Special Investigations Unit of the Narcotics Division of the New York City Police Department. Mr. Tartaglino told Nunziata that we very much wanted his cooperation in this investigation. Mr. Tartaglino outlined the seriousness of the two charges then pending against Nunziata; Bribery and Violation of Federal and State Wiretap Laws. In the course of this discussion, Mr. Tartaglino suggested to Detective Nunziata that he well knew what options were available to him in this situation, because as a police officer investigating narcotics investigations he had made frequent use of informers who had themselves been involved in misconduct. It

was suggested to Detective Nunziata that he had undoubtedly, in the past, had occasion to discuss options available to defendants from whom cooperation was sought. Nunziata agreed that he was aware of the possible courses of conduct available to him. Mr. Tartaglino then reviewed with Nunziata the choices that were available to him. Mr. Tartaglino suggested to the police officers that if they chose to litigate the charges against them, they would, in his opinion, be convicted and they would face the possibility of a lengthy jail term. He urged both police officers to cooperate and, thereby, attempt to obtain for themselves a more lenient disposition of the charges and a more lenient treatment, if and when they should face sentencing in court. They were told that the consideration they would receive on the disposition of their cases would, of course, be related to the nature of the cooperation they gave. At one point in the conversation Mr. Tartaglino told both police officers that it did not seem to him that they had any other course to follow other than to cooperate. In this connection, he added that they could either fight the indictment or cooperate with the government and stated that there seemed nothing else that they could do unless they wanted "to kill themselves." Mr. Tartaglino made this passing reference to suicide in a way that made it clear it was an unrealistic alternative to the real alternatives available. Both police officers said that they intended to cooperate and that they would attend further meetings on the subject. Following this meeting, I met with Detective D'Ambrosio in the presence of his lawyer at the United States Attorney's Office, Southern District of New York, and he discussed specific items of cooperation which he felt he could offer. At all times in these conversations it was stressed to both police officers that the only course of conduct which seemed rational for them under the circumstances was for them to cooperate in the investigation.

15. On March 27, 1972, I was to meet with Detective Nunziata to discuss the specifics of his cooperation. He failed to keep that appointment. I was informed that day that Detective Nunziata had shot and killed himself while seated in an automobile in Kings County.

16. On May 15, 1973, Detective D'Ambrosio pleaded guilty in United States District Court for the Southern District of New York, to an information charging him with receiving half of a \$4,000 payment from Carlo Dandalo. During the course of this plea, Detective D'Ambrosio stated that \$4,000 was received from Dandalo by his then partner, Detective Nunziata and that he, D'Ambrosio, had accepted \$2,000 of that money. Detective D'Ambrosio stated the money was accepted for allowing an informer (Carlo Dandalo) who had been under his control, to leave the United States. (Page 6, Transcript of minutes of May 15, 1975. 73 cr. 456, Judge Sylvester J. Ryan.)

This affidavit is based on personal knowledge and information supplied to me by federal agents of the Drug Enforcement Administration formerly known as the Federal Bureau of Narcotics and Dangerous Drugs and members of the New York City Police Department.

NICHOLAS SCOPPETTA.

Sworn to before me this 13th day of May 1975:

JOSEPH T. MCGOUGH, Jr.,
Notary Public, State of New York.

AFFIDAVIT OF ANDREW C. TARTAGLINO

In accordance with the Subcommittee's request I have prepared an affidavit for inclusion in the record which relates to some of the testimony given by Ambassador Laurence H. Silberman and former Administrator John R. Bartels, Jr. I find it essential to place in perspective and proper context portions of their testimony that are inaccurate and/or misleading. My comments do not address any new areas and I submit this with the sole purpose of clarifying the record.

A great deal of discussion took place regarding a study of the inspection service by Dr. Mark Moore. The record will disclose I was Chief Inspector of the Bureau of Narcotics and Dangerous Drugs until May 31, 1969 and had no direct responsibility for the function of that office after May 31, 1969 at which time I was promoted to Assistant Director of Enforcement by the then Director of the Bureau of Narcotics of Dangerous Drugs.

At the time I had responsibility, the Department's priority was to eliminate corrupt elements or resolve existing allegations of criminal misconduct. No manual was in existence at the time I served in inspection. BNDD was comparatively new and I had the mandate to locate and build an effective inspection service. At the time I relinquished responsibility, there were nine inspectors

assigned full time. Consequently, I was directed to devote all resources to corruption as a top priority. I have already testified that during my tenure, eighty-three investigations were initiated. When I departed sixty-two had been closed, and twenty-one still remained opened. An Exhibit submitted to this Subcommittee will show that I recommended courses of action for each of the twenty-one open investigations in June 1969.

There is not an item of criticism in Dr. Moore's study that reflects adversely on the work of inspection while I had responsibility. The individuals who assumed responsibility after my departure are available and due to appear before this Subcommittee and will most certainly talk to their own programs.

The only portion of the study in which I actively participated with Dr. Moore was the sampling of unresolved cases in which it was disclosed that 25 percent of the cases marked closed had not been closed in a completely professional manner, and that more work needed to be done because they were incomplete.

I don't mention this as adverse criticism but urge that in the interests of fairness, that those responsible be permitted to respond.

I did not receive a copy of the Moore Study until December 30, 1974 when a draft copy was given to me by Executive Officer Casey. I have reviewed my copy and cannot locate the areas of so-called mismanagement mentioned by Mr. Bartels in his testimony. In fact, the study points up the deficiencies that led me to request more resources from Mr. Bartels on August 26, 1974.

Dr. Moore can characterize his study regarding intent and interpretation rather than have individuals interpret his preliminary findings. In fact, it is more of a discussion paper than a study and I do not find any evidence of its formal adoption by DEA.

My calendar discloses four meetings with Dr. Moore between September 10, 1974 and November 7, 1974 which all related to the need for more resources to alleviate the inspection situation.

As I mentioned earlier, the Inspection Manual was drafted and formalized in the Bureau of Narcotics and Dangerous Drugs after I departed on May 31, 1969. Therefore, there was no set policy in effect to formally close integrity investigations.

Former Administrator Bartels refers to an inspection program that trained seventeen agents in C.I.A. for undercover inspection work. I had no knowledge of that program until the DEA merger on or about July 1, 1973, when I was advised of its existence and purpose by Mr. Fuller. Mr. Ingersoll and Mr. Fuller will attest to that, however, and again I urge that the program in question be evaluated on its merits. I trust this Committee and others will reserve judgment until those familiar with its intent and purpose have an opportunity to explain it. I did, however, recommend to Mr. Bartels that it be terminated because all seventeen agents had come from BNDD. It lacked balance and representation from the other agencies merged on July 1, 1973.

Mr. Bartels states he started to lose confidence in inspection at a time when matters were put in writing calling his attention to the areas of mismanagement, a backlog of integrity violations, and many cases involving violations of the Civil Service system.

Mr. Bartels states the Dr. Moore Study is critical of inspection because:

- (1) It lacked policy direction.
- (2) Violated the civil liberties of agents and inflicted larger personnel costs.
- (3) Destroyed agent morale.

These conclusions are not in the Moore Study in any form. When asked if these conclusions are contained in the Moore Study, Mr. Bartels states:

"No, well, yes. Not verbatim, that is not a quote, but yes. It is in there".

The following exchange of conversation quoted from the record is relevant:

"Mr. SLOAN. Again, the word endemic was used the other day. This Subcommittee hasn't charged endemic corruption.

"Mr. BARTELS. Widespread by Mr. Tartaglino.

"Mr. FELDMAN. Could I just interrupt? You made a statement that Mr. Tartaglino has stated in this forum that there was widespread corruption within DEA. I would like you to cite the record reference to that.

"Mr. BARTELS. Let me take a look at it and get back to you."

Mr. Bartels never gets back to that because it is not in the record. Nor did I make any such statements in Executive Session. The fact is there was no evidence of widespread corruption in DEA, however, there were a number of investigations that had to be resolved one way or the other. The overwhelming per-

centage of DEA agents and other personnel are dedicated and have a high degree of integrity.

Mr. Bartels states I promoted Mr. William Durkin (from GS-15 to GS-16 and from GS-16 to GS-17).

I had nothing to do with any promotion or demotion given to Mr. William Durkin, either in BNDD and DEA.

Ambassador Silberman testified he gave copies of my letter dated November 14, 1974 to the Criminal Division.

Let me read from the record:

"Mr. SLOAN. Ambassador Silberman, just to clear this up for the record, did you feel there were possible criminal charges and that is why you originally discussed it with Mr. Petersen.

"Mr. SILBERMAN. That is a fair question. Tartaglino, who was a long time Criminal Investigator, did not charge obstruction of justice. If you look at his memo, he charged a number of management matters, which he disagreed with Bartels on, and then he claimed, with respect to the Promoto matter, that Bartels had impeded the investigation."

My memorandum dated November 14, 1974 states, "impede at every step".

Inspectors Williams and Hegarty interviewed me on December 5, 1974 and I outlined Mr. Bartels efforts to "impede, frustrate or obstruct". This is included in my memorandum dated December 13, 1974 to Inspectors Hegarty and Williams. I was not going to presume the guilt or innocence of Mr. Bartels and that is precisely why I categorized the allegation in the manner I did. I felt it was up to the Department of Justice to resolve this matter.

Mr. Bartels testified that Associate Deputy Attorney General Michael Spector warned him (Bartels) of his rights and the charges made against him when Bartels returned from Jamaica on November 21, 1974.

Mr. Silberman mentions my motivation in his testimony before this Subcommittee.

The Department of Justice and senior officials of DEA are aware of the fact that I have no interest in a non-career job. I was promoted to GS-18 in May 1969 and have been at the top of the career service since that date.

In fact, I was actively engaged in trying to assist Mr. Bartels in locating a person to take the job of Deputy Administrator which is not in the career service.

On February 27, 1974, I accompanied Mr. Bartels to the White House and met with officials there in an effort to fill the vacancy of Deputy Administrator. Mr. Bartels wanted me there as a senior career official who could assure the White House that his candidate was professionally competent and would be well accepted by the professionals. However, the Department of Justice subsequently found Mr. Bartel's candidate unacceptable.

On March 5, 1974, I conducted a preliminary interview of a White House candidate for Mr. Bartels. This person had excellent credentials but was not acceptable to Mr. Bartels. There was a second White House candidate who was also unacceptable to Mr. Bartels. I spent many long meetings trying to get all these candidates on board.

Mr. Bartels was simultaneously trying to get one of several State Law Enforcement Officials to take the position. Most of these candidates were fully qualified and I tried to help Mr. Bartels get them on board.

There were at least three FBI executives under consideration who were either not interested or not acceptable.

Mr. Thomas Durkin, the Special Advisor or Consultant will tell you he had a mandate to find someone for the job.

I had suggested to Mr. Bartels that he create a panel with the express purpose of locating a Deputy Administrator.

Departmental and DEA officials will substantiate the fact I devoted a great deal of energy to locate a Deputy Administrator and categorically stated then as I do now I was not interested in any non-career position.

With regard to the position of Inspector General or Director of Office of Special Review in the Department of Office of Special Review in the Department. It is true that I became interested in that position, if established, provided it was in the career service and with the same Civil Service status and grade I enjoyed in DEA. It was to be created at GS-18, the same grade I now hold and would not have been any advancement in grade.

In fact, Mr. Bartels was supporting me for that position. Entering a conflict situation as I did certainly did not enhance my chances of being considered for another position which was a lateral position.

Mr. Silberman raises motivation in July 1975. He did not discuss it in our meeting of January 9, 1975 or at any other time.

His press release, which he has talked to before this Committee states, "Following a thorough review, I concluded that Mr. Tartaglino's concerns, although raised in good faith were without substantial foundation". In January, Mr. Silberman states the matters I raised were in "good faith".

Ambassador Silberman started to detail my allegations on a number of occasions. He focused on my motivation and never did address the charges. Let me outline the charges in my memorandum of November 14, 1974. It is verbatim in my testimony:

- (1) Increased manpower: I don't even draw a conclusion but I attempt to show an attitude of indifference by Mr. Bartels.
- (2) Failure to consult with inspection in advance of sensitive high level appointments.
- (3) Withholding information from the FBI regarding the FBI investigation of our Deputy Administrator.
- (4) Mr. Bartels wanting to appoint as a consultant an individual who may have submitted fraudulent travel vouchers.
- (5) The Promoto matter.

Ambassador Silberman never addresses the conclusions in talking of my allegations. He refers to oral conversations with the FBI inspectors and stops when asked to cite conclusions.

Ambassador Silberman states the issue with Advisor Thomas Durkin was a "make waves". Conforming to Departmental regulations is not "making waves". We have a requirement that everyone including the Attorney General must have a background investigation. Mr. Thomas Durkin did not have the required background investigation and all I suggested is that we follow prescribed procedure.

I hope this statement will clarify some of the issues raised before this Subcommittee.

ANDREW C. TARTAGLINO.

Subscribed and sworn to before me this 26 day of September, 1975:

NINA L. CONNER,
Notary Public in and for the District of Columbia.

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., June 24, 1975.

HON. ROBERT E. HAMPTON,
Chairman, Civil Service Commission,
Washington, D.C.

DEAR MR. HAMPTON: This letter is in connection with this Subcommittee's investigation of Federal drug enforcement operations.

The Subcommittee is examining the activities of a person carried on the rolls of DEA as a "Special Adviser" from November 29, 1973, until an undetermined date between May 30, 1975, and June 20, 1975. The person's name is Thomas E. Durkin, Jr., a Newark, New Jersey, lawyer.

On June 2, 1975, the Subcommittee asked Attorney General Edward H. Levi for information concerning Mr. Durkin's status and activities at DEA. A copy of the letter was made an exhibit at our hearings and is enclosed.

On June 17, 1975, Mr. Togo West, Jr., Associate Deputy Attorney General, replied to my June 2, 1975, letter and transmitted a document entitled, "Memorandum" prepared by an unnamed person at DEA. Both Mr. West's letter and the "Memorandum" were made exhibits and are enclosed.

On June 20, 1975, the date of Mr. Durkin's appearance before the Subcommittee, I noted, in opening the hearings, that I did not feel the June 17 letter of Mr. West or the undated DEA "Memorandum" were satisfactory responses to my June 2 letter to the Attorney General. A copy of my remarks at the hearings is enclosed.

On June 23, 1975, I sent a letter to Attorney General Levi expressing my view that neither Mr. West's letter of transmittal nor the DEA "Memorandum" was a satisfactory response to my original letter of June 2. I proposed that a new reply be written, under the supervision of the Attorney General; that certain documentation be incorporated into the reply; and that Justice Depart-

ment personnel, knowledgeable in personnel and administration matters, be assigned to work with Subcommittee staff to arrive at a more comprehensive description of Mr. Durkin's duties at DEA while a "Special Adviser." A copy of my June 23, 1975, letter is enclosed.

As this Subcommittee seeks to more clearly understand the manner of services Mr. Durkin provided DEA in his "Special Adviser" capacity, the Civil Service Commission can be of assistance to us.

The Subcommittee would be most appreciative if you would provide for us information and analysis, supported whenever possible by documentation, relating to the overall Federal regulations pertaining to "Special Adviser" positions in the Executive Branch.

In this matter, we would appreciate answers to the following questions:

(1) Does a "Special Adviser" have the authority to carry credentials identifying him as a representative of the Federal agency for which he is being retained?

(2) Does a "Special Adviser" have to be paid a salary or fee of some kind in order to qualify as a representative of the Federal government?

(3) In order for a Federal agency to give a person credentials identifying him as a "Special Adviser," must that agency follow the same steps of certification required in the certification of a consultant and a full-time employee?

(4) Does there exist within Federal management, personnel and administration regulations a stipulation enabling certain representatives of an Executive Branch agency to be employed or otherwise engaged without having to be subjected to the required security clearance provisions in use at the given Executive Branch agency? In other words, is it lawful for a "Special Adviser," under certain circumstances, to be retained by an agency of the Executive Branch and then be given access to documents and information which other persons affiliated or employed by that same agency could not have access to without the specified security clearances required by that agency?

(5) In order to qualify as a "Special Adviser" in the Executive Branch, is it required that the "Special Adviser" demonstrate that he is knowledgeable in the field or fields within which he is retained or otherwise engaged to give advice? Moreover, is it correct to assume that the role of "Special Adviser" in the Executive Branch is inherently a role in which the "Special Adviser" gives advice in areas in which he has some expertise?

(6) Mr. Durkin, the DEA "Special Adviser" in this instance, received reimbursement for certain travel expenses and for certain long distance phone calls. Is it the Subcommittee's wish to have the Commission's judgment as to the procedures which must be adhered to in the reimbursing of a "Special Adviser" for travel and phone expenses while, at the same time, not paying him a fee or per diem or actual expenses.

(7) Sworn testimony before the Subcommittee and independent inquiry by the Subcommittee staff indicate that Mr. Durkin, as an unpaid "Special Adviser," did on several occasions give directions, or seek to give directions, to full-time, career Civil Service employee of DEA. Would it be the judgment of the Civil Service Commission that full-time career Civil Service employees of DEA should be given directions by persons fitting the description of "Special Advisers" at DEA?

The Subcommittee will be the most appreciative of information you can provide in response to these questions.

Sincerely yours,

HENRY M. JACKSON,
Chairman.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., August 18, 1975.

Hon. HENRY M. JACKSON,
Chairman, Senate Permanent Subcommittee on Investigations, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further response to your letter of June 24, 1975, regarding your Subcommittee's investigation of Federal drug enforcement operations. I regret the delay in responding. As we explained to Mr. Phil Manuel of your Subcommittee staff, the questions you raised regarding Mr. Durkin's

status are complex and do not lend themselves to easy answers—in fact they raised other questions which we have been trying to resolve.

The key to Mr. Durkin's status as we see it, is determining whether or not he was, in fact, a Federal employee. It should be noted that the term "Special Adviser" is not recognized in the personnel laws or in the Commission's regulations or instructions. Since it has no definitive meaning, the status that such a person might hold is not discernible from the title.

Under 5 U.S.C. 2105, a person is an employee when he is:

- (1) appointed in the civil service by a duly authorized official acting in an official capacity,
- (2) engaged in the performance of a Federal function, and
- (3) subject to the supervision of a Federal official.

It is not clear from the Drug Enforcement Administration memorandum enclosed with your letter and other sources we checked whether Mr. Durkin met all three of these tests.

In an attempt to determine Mr. Durkin's status we checked with the Federal Records Center in St. Louis and also contacted DEA. The Federal Records Center has no record of his employment and DEA informed us it has no personnel file on him. DEA also stated that Mr. Durkin was paid as a consultant for 6 days at the rate of \$150 per day (which included transportation and per diem). He apparently was not paid a fee for whatever other services he may have performed.

Service without compensation may be accepted by a Federal agency only as allowed in chapter 311, subchapter 1-4 of the Federal Personnel Manual. Among other things, this chapter discusses "gratuitous service" which is defined as follows:

d. Gratuitous service. Gratuitous service is service offered and accepted without pay which:

Is rendered to the Government in an official capacity under regular appointment to perform duties the pay for which is not fixed by statute; or

Is advisory service rendered by individuals under circumstances not involving an employer-employee relationship. When an employer-employee relationship exists, gratuitous services may be accepted from experts and consultants appointed in conformity with 5 U.S.C. 3109 and from any employee appointed to a position the pay for which is not fixed under the classification law ... or another statute.

It is possible that Mr. Durkin may have been performing "gratuitous service" as defined above, although here, too, the evidence is not clear. It does not appear, for example, that he performed "in an official capacity under regular appointment." If his service was strictly advisory and did not involve an employer-employee relationship, DEA would have had to obtain a signed waiver of pay for him, as required by 27 CG 194. We understand the agency did not obtain such a waiver.

With regard to your question about whether an adviser or consultant can supervise or direct the activities of regular Government employees, our instructions clearly provide that this would be inappropriate. Specifically, the pertinent portion of our instructions to agencies reads as follows:

- (1) Consultant means a person who serves as an adviser to an officer or instrumentality of the Government, as distinguished from an officer or employee who carries out the agency's duties and responsibilities. He gives his views or opinions on problems or questions nor supervises performance of operating functions. Ordinarily, he is expert in the field in which he advises, but he need not be a specialist. His expertness may consist of a high order of broad administrative, professional, or technical experience indicating that his ability and knowledge make his advice distinctively valuable to the agency. (FPM chapter 304 1-2)

With regard to your questions on the credentials a "Special Adviser" may carry and the security clearance such a person must have, these are matters that are under the jurisdiction of the head of the agency—not the Civil Service Commission.

Because this case raises serious questions which we have not yet been able to fully resolve, we are initiating an immediate review to determine if and to what extent there may have been a violation of Commission regulations and instructions. Should our investigation disclose any significant additional facts we will let you know.

I appreciate your bringing this matter to my attention. If we can help in any other way, please let us know.

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., September 10, 1975.

Hon. ROBERT E. HAMPTON,
Chairman, Civil Service Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your August 18, 1975, letter and your research concerning the association of Thomas E. Durkin, Jr., with the Drug Enforcement Administration. As Chairman of the Permanent Subcommittee on Investigations, I know I speak for other Senators on the Subcommittee when I say how much we appreciate your assistance in this inquiry.

Moreover, we are particularly interested in the review which you have initiated in connection with the role Mr. Durkin played at DEA. In that regard, please be advised of our interest in the results of that review.

In that the Commission has already been in contact with Philip R. Manuel, Subcommittee Investigator, you may wish to continue to advise Mr. Manuel of developments in your review whenever appropriate.

Thank you again for your help.

Sincerely,

HENRY M. JACKSON,
Chairman.

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FEDERAL DRUG ENFORCEMENT

HEARINGS
BEFORE THE
PERMANENT
SUBCOMMITTEE ON INVESTIGATIONS
OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
UNITED STATES SENATE
NINETY-FOURTH CONGRESS
SECOND SESSION

PURSUANT TO SECTION 5, SENATE RESOLUTION 363,
94TH CONGRESS

JULY 27, 28, AND 29, 1976

PART 4

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(III)

FEDERAL DRUG ENFORCEMENT

TUESDAY, JULY 27, 1976

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 3302, Dirksen Senate Office Building, under authority of section 5, Senate Resolution 363, agreed to March 1, 1976, Hon. Sam Nunn presiding.

Members of the subcommittee present: Senator Lawton M. Chiles, Jr., Democrat, Florida; Senator Sam Nunn, Democrat, Georgia; Senator Charles H. Percy, Republican, Illinois; and Senator Jacob K. Javits, Republican, New York.

Members of the professional staff present: Howard J. Feldman, chief counsel; F. Keith Adkinson, assistant counsel; William B. Gallinaro, investigator; Stuart M. Statler, chief counsel to the minority; Robert Sloan, special counsel to the minority; and Ruth Y. Watt, chief clerk.

Senator NUNN [presiding]. The committee will come to order.

[Members of the subcommittee present at time of reconvening: Senator Nunn.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct hearings in public session, without a quorum of two members for administration of oaths and taking of testimony in connection with Drug Enforcement Administration on Tuesday, July 27, 1976.

SAM NUNN,
Acting Chairman.
CHARLES H. PERCY,
Ranking Minority Member.

OPENING STATEMENT OF SENATOR SAM NUNN

Senator NUNN. Today we will begin our examination of how the Drug Enforcement Administration was created and whether the objectives established for our lead drug agency have been fulfilled. These hearings will provide a platform for a debate and evaluation of our Federal drug enforcement efforts. Subsequently, during a second phase, the subcommittee will call present officials from DEA, the Cus-

toms Service, the Justice Department, State Department and the White House to discuss the current Federal drug law enforcement effort.

I can think of no more pressing problem facing our country today than the drug problem that we are talking about this morning and will be in subsequent hearings.

As Robert L. DuPont, Director of the National Institute on Drug Abuse, has said: "The trend is now for a worsening situation in heroin abuse . . . The epidemic is continuing. It has never ended."

The number of drug addicts continues to increase at a rapid rate, brown heroin from Mexico continues to come into this country in massive amounts and drug abuse continues to spread into rural and suburban areas. We have passed the point where drug abuse is a problem peculiar to certain areas or particular groups of people.

It is a national problem and a national tragedy.

The central issue which Congress must examine is the effectiveness of Federal efforts in fighting this drug epidemic. These efforts must include rehabilitation of drug addicts, international cooperation for the suppression of crops from which drugs are derived, drug education programs, especially for our youth, and Federal narcotics law enforcement.

Each of these activities plays an essential role in the fight against drug abuse.

The subcommittee has chosen initially to place its primary emphasis on Federal narcotics law enforcement, not because we think it is the whole problem, because it is not, but because we have to have a logical point of beginning.

Is our enforcement system working? Is the methodology used in fighting offenders of drug laws helping to stem the flow of drugs? How can we improve the Federal enforcement effort and have it truly complement the activities of State and local authorities?

Today's witnesses are important in helping us understand the motivation behind the formation of DEA as well as its goals and objectives.

John Ehrlichman, as Counsel to President Nixon and Executive Director of the Domestic Counsel, spent a good deal of his time mediating disputes between the competing Federal agencies and recommended to the President that all Federal drug enforcement be placed in one Federal department.

Egil Krogh, Jr., who served as Assistant to President Nixon, was actively involved in the development and structuring of both the Office of Drug Abuse Law Enforcement and DEA.

Last year the subcommittee held extensive hearings focusing on integrity problems in Federal narcotics enforcement. I am pleased to say that as a result of those hearings, DEA has strengthened and expanded its internal integrity unit.

I am also pleased to say that the subcommittee has forwarded information in recent months and recent weeks to DEA on specific corruption cases and that DEA has taken quick and decisive action on these matters.

The new Administrator, Peter Bensinger, has also embarked upon other new programs which will help alleviate some of the deficiencies

we have pointed out over the course of our investigation. He will undoubtedly report these to us in the course of our hearings.

Finally, a new spirit of cooperation has been developed between the Justice Department, DEA and this subcommittee. In this regard, I would like to thank the Attorney General, Edward H. Levi, and Mr. Peter Bensinger. I would also like to thank my colleague, Senator Charles H. Percy, the subcommittee's ranking minority Member, for his support and cooperation in this investigation, and for his vital leadership in this overall area.

We all view the drug problem as one of the most critical issues facing the country; one which goes to the fabric of our society and especially affects our young people. The drug abuse epidemic is still continuing. Congress must assert its responsibilities over a problem which so adversely affects the health, welfare, and security of the Nation.

Our first witness is going to be here in about 2 minutes.

I am going to go ahead and proceed. Is Mr. Krogh here?

Mr. KROGH. Yes, sir.

Senator NUNN. Mr. Krogh, why don't you come up, if you would? We will proceed with you because we are on a tight time limitation. We have special permission to be meeting. We have two witnesses. We will proceed with our second witness while we are waiting on our first one.

Mr. Egil "Bud" Krogh served in the White House from 1969 through 1972 as an assistant to President Nixon. In this capacity, he was assigned a number of areas to coordinate, including narcotics control, law enforcement matters, and others.

Mr. Krogh reported to John Ehrlichman while in the White House. In December 1972, he was nominated to the post of Under Secretary of the Department of Transportation.

Mr. Krogh was very active in the narcotics enforcement efforts of the White House and has continued his interest in this area.

Mr. Krogh, the staff has informed me of the rather detailed interviews with you. They found you not only to be very knowledgeable but very cooperative and very sincerely interested in not just the past, but the future of this drug effort. We appreciate your being here this morning. I will administer the oath.

Mr. Krogh, please raise your right hand.

Do you solemnly swear that the testimony you are about to give before this subcommittee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KROGH. I do.

TESTIMONY OF EGIL KROGH, JR., FORMER DEPUTY ASSISTANT TO THE PRESIDENT FOR DOMESTIC AFFAIRS AND FORMER ASSISTANT DIRECTOR OF THE DOMESTIC COUNCIL

Senator NUNN. Have a seat. I know you have a statement. If you will proceed with that statement, then we will have several questions for you.

Mr. KROGH. Mr. Chairman, would it be permissible for me to tape the hearing?

Senator NUNN. That would be fine. We have no objection.

Mr. KROGH. Mr. Chairman, I appreciate the opportunity to appear before this committee. I have enjoyed the opportunity also to speak with various members of the staff of the Government Operations Subcommittee.

I am especially appreciative of being able to appear this morning to discuss a problem which has plagued America for many years, the problem of controlling narcotics and drug abuse, smuggling, and unlawful domestic distribution.

Through the years, the Federal Government has attempted various means and methodologies, created special task forces, and organized new agencies to help combat narcotics. Still the problem prevails. It is difficult, I feel, to know when the Government has done all that it can if a problem still persists. And I feel that no matter what is done on the Federal level, there will continue to be a drug problem. Heroin will be smuggled in. It will be distributed. The challenge is to do the best that can be done, within the limits of available resources, manpower, and wisdom.

I. BACKGROUND

From 1969 through 1972, I served as an assistant to the President in the White House. I came to this position from the law practice in Seattle, Wash., and was assigned a number of areas to coordinate: law enforcement matters, transportation issues, District of Columbia affairs, and narcotics control.

I reported to Mr. John Ehrlichman, who was the President's Assistant on Domestic Affairs. We used option papers for the presentation of policy and program questions to the President which, unfortunately, I cannot submit to the committee, as they are unavailable to me at the present.

II. HOW THE DRUG PROBLEM WAS VIEWED IN THE WHITE HOUSE

Within the White House staff, the drug issue was viewed in a comprehensive manner. Mr. Chairman, I am speaking about the period exclusively from 1969 to 1972 when I was present and working on the problem.

All aspects of the drug programs conducted by the Federal Government but within the ambit of responsibility for the Domestic staff. All of these aspects were divided into two main conceptual categories: supply and demand.

On the supply side, we grouped such issues as international production, including the growing of the poppy and its conversion into morphine base and heroin; cooperation with foreign governments; smuggling in its broadest sense; interdiction at our borders; and domestic law enforcement.

Within the demand category, we grouped drug treatment and rehabilitation, education programs, including both general public education and programs for schools, and research.

Those on my staff at the White House felt that our responsibility entailed policy analysis of existing programs and recommending new ones if the circumstances warranted; coordination of the various Federal programs within the Government; organization of the Federal effort in drug abuse; and recommendation of legislation and budgets

to achieve the President's goal of a substantial reduction in crime and drug abuse.

As you will remember, the campaign in 1968, from Mr. Nixon's view, focused on the need for much more effective law enforcement. The problem of drugs, and particularly heroin, was seen as a main contributor to the crime problem.

In 1969, we received some fairly clear evidence of this linkage between the use of heroin and crime. The President had vigorously campaigned on the specific need to reduce the high level of street crime in the District of Columbia.

We needed to determine where the Government's resources could be applied most effectively. A substantial increase in the number of police seemed justified and this program was implemented. A new court system, expanded street lighting, and programs for increased job opportunities were also initiated in an effort to cut crime in the District of Columbia.

Of special significance to the eventual Federal effort in narcotics law enforcement was a study carried out in the District of Columbia jail. This study, conducted, as I recall, in the middle of 1969, indicated that of those inmates who had been arrested for certain street crimes in the District of Columbia jail, approximately 50 percent of them had traces of opiates in their system when arrested. This study, too, was conducted only with volunteers in the jail who agreed to take a urinalysis test.

In late 1969, when the crime rate in the District of Columbia was not abating, the President ordered the comprehensive effort to drop this rate which had reached a peak in November 1969 of approximately 202 FBI index crimes per day. It was at this point that a recommendation came from the District of Columbia government to implement a multimodality drug treatment program. Those of us in the White House responsible for carrying out the President's order secured a transfer of funds from the Law Enforcement Assistance Administration and the National Institute of Mental Health to expand the treatment capacity in the District.

I mention this background in the District of Columbia because it provided firsthand evidence of the link between drugs and crime and, accordingly, it is easier to understand why such emphasis was placed on the need to curb the smuggling and illicit distribution of narcotics.

It is accurate, I feel, to say that those on the White House staff tasked with responsibilities in law enforcement and drug control felt that it was our responsibility to do all we could within the 4 years of Mr. Nixon's first administration to present a record of accomplishment: to reduce drug dependence if possible; to curb the level of smuggling; to cut down on foreign production of opiates by cooperation where possible or by pressure; to cut street crime wherever possible.

A strong presidential interest and involvement in the effort to solve the drug problem was maintained throughout the first 4 years. I should say, too, that Mr. Nixon viewed the drug law enforcement program as primarily the responsibility of the Department of Justice.

In the 1968 campaign, Mr. Nixon had suggested that the incumbent Attorney General, Mr. Ramsey Clark, would in all probability not remain as the Attorney General if he were elected.

While there may have been some differences between the two in various matters, they were agreed on the wisdom of vesting the law enforcement responsibilities in the drug area in the Department of Justice.

Mr. Clark had testified in support of Reorganization Plan No. 1 of 1968, which created the Bureau of Narcotics and Dangerous Drugs in Justice out of prior organizations, the Bureau of Drug Abuse Control in the Department of Health, Education, and Welfare and the Bureau of Narcotics in Treasury.

Mr. Nixon endorsed the policy of the Department of Justice maintaining dominant responsibility in law enforcement matters and placed great emphasis on his new Attorney General, Mr. John Mitchell, serving as his principal spokesman for law enforcement.

On various occasions, Mr. Mitchell advised me of his commitment to the Bureau of Narcotics and Dangerous Drugs and of his personal view that Mr. John Ingersoll, as the Director, was providing exceptional service.

I would like to address the BNDD and Customs conflict.

III. THE BNDD-CUSTOMS CONFLICT

The basic conflict between the Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs apparently centered on which agency would have the primary responsibility abroad in our drug control effort.

While the committee's interim report suggests fairly comprehensive support for Reorganization Plan No. I of 1968, there were those within Treasury in 1969, who argued quite strongly that it had been a mistake to remove the Bureau of Narcotics from Treasury.

Some of these spokesmen felt that Treasury had a proven record in law enforcement and that Customs should have a much expanded role in the narcotics effort. The apparent issue involved foreign responsibility, but I feel that the fundamental issue was whether Treasury should ever have lost the Bureau of Narcotics to the Justice Department in the first place.

Senator NUNN. On that point, let me say that I know what you say at the end of your statement. Your conclusion is we should not reorganize again.

I think you make a very interesting point on that, but if you had hindsight now, placing yourself back where you were then, would you still conclude that the Department of Treasury should lose control over the narcotics enforcement effort?

Mr. KROGH. My mind isn't really clear on that point, Mr. Chairman. When we came in, in 1969, it had already been removed from Treasury and was currently in the Department of Justice.

The performance of the Bureau of Customs, 1969 and 1970, with increased manpower and increased resources, where they multiplied the number of arrests and seizures at the border many times over suggested to me that perhaps the Bureau of Narcotics if left in Treasury with the Bureau of Customs there could have been a major element in the narcotics effort, and perhaps could have been very effective, had it remained in Treasury.

[At this point Senator Percy entered the hearing room.]

Mr. KROGH. Your committee has explored in depth the Bureau of Narcotics and Dangerous Drugs approach to enforcement involving purchase of evidence, purchase of information. While BNDD used ever-increasing amounts of buy money, Customs opposed this practice.

One Treasury official felt that Justice Department buy money was in some places a major factor in keeping the drug traffic going.

I might note, Mr. Chairman, that that point was also made in the committee's interim report that was published this last week. BNDD countered at the time by claiming that this method was necessary to work their way into the traffic and then up the ladder of distribution to major figures in the system.

How did the White House attempt to resolve this impasse? An early effort was made to draft memoranda of understanding which would specify jurisdiction for BNDD and the Bureau of Customs. Customs would retain their statutory jurisdiction over the border law enforcement, with little or no overseas intelligence capacity of their own, and BNDD would have jurisdiction in foreign countries as well as domestic law enforcement within our borders.

Compromises were reached so that Customs would be able to place an agent within the BNDD office abroad for the purpose of determining, along with the BNDD regional official, which intelligence should be passed on to Customs, which to BNDD and which to both.

In addressing this conflict, we affirmed the basic policy that the Department of Justice was to remain the lead agency in narcotics law enforcement. Accordingly, BNDD was able to be the main law enforcement agency abroad.

But we also supported heavy increases in funding for both BNDD and Customs as each agency had requested. So both agencies in fact received increases in manpower, equipment, and other resources.

It is worth noting, too, that in my direct experience, there were examples of close cooperation between Customs and BNDD agents in the field. For example, in Bangkok, on one of my visits I noted that the BNDD official, Mr. Wanzeck, and Joe Jenkins, the Customs regional director, cooperated closely in their activities.

Throughout the period from 1969 to 1972 competition of sorts did exist between BNDD and Customs. It is a question in my mind today whether this competition may not have acted as a stimulant in the drug enforcement effort.

I can well understand the frustrations White House staff people felt regarding this conflict and the desire to eliminate it by organizing the Drug Enforcement Administration. And I feel that the values in having a coordinated drug enforcement effort, such as DEA, probably outweigh the value of incessant competition between warring agencies, but I am not altogether sure today.

Suffice it to say, I'm confident that representatives of BNDD, and the Bureau of Customs, Justice, Treasury felt then that the White House in this 1969-72 period did not provide an adequately clear preference for one or the other, that we were, in effect, straddling the fence.

Given the pressure for results, the powerful competing Cabinet heads and their subordinates, and the jurisdictional difference of opinion in the Congress, I did not feel that we could do more than

continue the policy begun in 1968 and provide additional resources to both Departments.

IV. OTHER SPECIFIC RESPONSES TO THE DRUG PROBLEM

The committee has already summarized in its interim report the numerous programs undertaken from 1969 to 1973. Operation Intercept, which became Operation Cooperation with the Mexican Government, was the initial offensive abroad in the narcotics effort.

During one of the joint Mexican-U.S. discussions on the drug issue in Mexico City, I was asked to assist the State Department representative in the drafting of the joint communique to be announced by the two countries because neither the Justice nor Treasury officials felt that the other could provide an unbiased hand in this effort.

Our main policy was to secure maximum Mexican cooperation in the drug effort, and as I understand the problem today, our relationship with Mexico is a vital factor in the success or failure of the drug effort.

In addition to the activities with Mexico, discussions were proceeding with the French Government. BNDD had cited Turkey as a primary source for opium and morphine base, which was subsequently smuggled into France for conversion into heroin.

Our policy in France was to gain support for a greatly expanded detection and enforcement effort in the Marseille area where intelligence and history indicated the laboratories were located.

A major action in this early period was law enforcement support to Turkey whereby we tried to provide them help in their effort to curb the flow of morphine base into the illicit traffic.

We also began negotiations with the Turkish Government to persuade them to cease the production of the opium poppy altogether. These negotiations, directed by the U.S. Ambassador to Turkey, William Handley, achieved success approximately 2 years later.

This effort was part of administration policy to combat the drug problem wherever it would affect the United States. In the beginning of the administration, our focus was Mexico, France, and Turkey. Later, with the growing abuse of drugs in Vietnam, our activities spanned 59 countries.

Prior to this worldwide program, the President had elevated narcotics control to the level of a major foreign policy objective, and placed responsibility in our Ambassadors for carrying out the drug control program.

V. ORGANIZATIONAL RESPONSES

A. Demand

I would like to turn to organizational responses, as I know that is one of the issues before the committee, and talk first about the demand side of the narcotics equation.

While the major concern of the committee is the law enforcement side of narcotics control, I think it may be helpful to sketch briefly the approach taken on the demand side. I have already mentioned the multimodality treatment program which was begun in the District of Columbia.

The first 2 years: 1969 and 1971—it is an error; it should be 1970 and not 1971—were years of learning what to do with the drug problem.

Senator NUNN. You are saying it was 1969–70 and 1971?

Mr. KROGH. Yes, the first 2 years: 1969 and by 1970. By 1971, we were prepared to recommend specific organizational responses. Those first 2 years were years of learning what to do with the drug problem.

New ideas and methodologies were developed and tested. Of growing concern to the White House staff in this period was what would happen if we were successful in our efforts to stem the supply of heroin.

A basic question was asked whether this would not lead to a shortage, increase the price, and thus compel addicts to commit more crimes to feed their habits.

The response from those in the treatment area was that we could provide various modes of treatment to these addicts, offering an expanded methadone maintenance modality, as the alternative to the commission of more crime. The evidence we were able to observe in the District of Columbia suggested that this is, in fact, what happened.

As the supply of heroin diminished and its availability and purity were reduced, more addicts entered treatment programs. There was satisfactory data which indicated that a consequent drop in the crime rate in the District of Columbia took place as well.

The initial months in working with the demand side of the drug equation were somewhat frustrating. Many agencies and bureaus were involved. Differing points of view about the effects of certain substances were forthcoming from various agencies.

Duplication of efforts, overlap, confusion—the entire litany of evils which are supposedly corrected by reorganization—afflicted the demand side. So it was determined that a reorganization was essential.

Utilizing the device of a study group within the Government and a study group outside the Government with no predominant interest in maintaining the status quo, we researched the question of how to organize the Federal treatment, rehabilitation, education, and research efforts.

The Special Action Office for Drug Abuse Prevention came from the outside study group, and this unit was established first by Executive order in 1971 and later by statute in 1972. I would like to say that there would have been little success with this proposal without the full support of the Senate and House, and particularly the support of Senator Percy and the committee members and staff who worked so closely with us, in the development of the Special Action Office.

The Special Action Office for Drug Abuse Prevention was to have overall responsibility for formulating a national strategy on the demand side, to initiate research into the effects of drugs and programs to help galvanize the Federal agencies into a strong force, to set budget levels, and in general to be the principal unit directing Federal treatment, rehabilitation, education, and research.

The creation of SAODAP, in effect, elevated the health side of the narcotics issue to equivalence with the supply side—at least in terms of organizational focus and budget.

Dr. Jerome Jaffee, the first Director, brought to his position extensive experience in treatment and rehabilitation. His probing, question-

ing mind and executive energy led to numerous breakthroughs in Federal cooperation with States and local communities.

He mobilized a major effort to terminate the waiting lists for those desiring treatment in New York City and other major metropolitan areas which were, I feel, quite successful. With the assistance of a panel of experts, the Special Action Office prepared a strategy document each year of its existence to indicate the directions it would be following.

Not wishing to create just another Federal agency, the legislation creating the Office mandated its dissolution after 3 years with its functions devolving on other Federal agencies.

The reason for the institution of the Special Action Office was to get what the name clearly states: special action. Only with direct, immediate White House support of the Office's Director, and by this I mean Presidential support, could its major task of setting a strategy and organizing the Federal activities into a cohesive force be accomplished.

The second Director of the Special Action Office, Dr. Robert DuPont, continued the excellent work of Dr. Jaffee. Dr. DuPont had been a major contributor in developing the health side of the Federal drug program, and he drew extensively on his experience as the first Director of the District of Columbia's Narcotic Treatment Administration.

B. Supply

While I have spent some time discussing the demand side, I felt that it was important to explain the totality of White House concern during these years. I would now like to turn specifically to the organizational issues on the supply side.

The BNDD-Customs conflict has already been discussed. I would like now to address three other units that came about in 1971: the Cabinet Committee of International Narcotics Control, the Office of Drug Abuse Law Enforcement, and the Office of National Narcotics Intelligence.

CCINC: In the summer of 1971, it became apparent that our international efforts would be protracted and extensive. We felt the need of a policy coordinating body, a unit which could set out our objectives and marshal all the members of a country team to achieve them.

This led to the recommendation that the Secretary of State chair this committee with staff support from my office in the White House. I should say, too, that the National Security Council staff provided direct assistance in our policy analyses in the Middle East and South-east Asia.

Other Cabinet members whose agencies were involved with the international program such as Justice, Treasury and Agriculture were on the committee as well.

The Cabinet Committee grappled with the issues of foreign cooperation and how to get it, U.S. manpower levels abroad, cooperation with the United Nations, and how to inspire high priority efforts within the country teams.

ODALE. In late 1971, after SAODAP and CCINC had been created, it was suggested that the Federal Government could initiate a highly effective combined drug enforcement program in 34 cities around the country.

The theory behind this program was that use of Federal officials, rather than local officials, would in these cities encourage greater local citizen cooperation with these grand juries.

An assumption—untested so far as I know—was that in many cities, minority groups had little trust in or respect for local police and investigatory officials, but that they would be more likely to support a Federal unit.

Senator NUNN. This is still a problem of carryover, although we don't have ODALE anymore. We still have a major effort, I think, going on at the street level by Federal agents, maybe to a lessening degree in the last 6 or 8 months, but nevertheless there.

Where did this suggestion come from originally as to going into a major Federal effort on the street?

Mr. KROGH. The initial idea was presented by Mr. Ambrose, who was then the Director of the Bureau of Customs feeling that from his experience if we had Federal officials present on the local level, particularly using the grand jury device that we would be able to solicit more cooperation than some of the local grand jury and local police agencies had been able to secure.

I accepted that assumption when it was presented at the time. We discussed it at some length. But as I mention in my statement, Mr. Chairman, I don't recall having it tested. By that I mean going out and actually talking to citizens to determine whether they would be more willing to cooperate with a Federal force rather than a State or a local force.

In addition, it was thought that by gathering intelligence at the local level, it might be possible to work up the distribution system to more highly placed individuals. The ODALE was established within the Department of Justice because of the policy of emphasizing Justice in all of these matters.

Senator PERCY. Mr. Krogh, may I interrupt you? As I understand your statement, ODALE dealt with street level trafficking as recommended by the Commissioner of Customs?

Mr. KROGH. No, sir.

Senator PERCY. I am sorry. I misunderstood you because on the bottom of 5, I thought I had remembered you saying that while BNDD used ever-increasing amounts of buy money, Customs opposed this practice.

Mr. KROGH. That is correct, Senator Percy. As a matter of fact, Mr. Ambrose was the one who felt that there was too much buy money out from BNDD at the time.

Senator PERCY. I misunderstood you. Thank you.

Mr. KROGH. Severe criticism has been leveled at the Office of Drug Abuse Law Enforcement on two counts: First, that its agents participated in unlawful break-ins and violations of the fourth amendment; second, that its creation was politically motivated, an effort to stress Federal involvement in the drug war on the local level going into an election year.

On the first charge, I simply have no information regarding it. I have read in newspapers that all the charges have been dismissed. I am not sure on that point. On the second charge, it was felt that the value in political terms of a Federal force directly engaged with

investigating and prosecuting drug violations was important, but that this was not the primary reason for the implementation of ODALE.

In any event, it is difficult for me to quantify the relative weights given to substantive or political considerations if they can be separated. There is little doubt that I felt that successful indictments, prosecutions, and convictions of drug offenders would be good policy and good politics.

Whether the policy choice of bringing concentration to the local level rather than remaining primarily focused on the high level, class I and class II violators was correct is a question which has been answered by both this committee and current activities of DEA.

The focus today, as I understand it, is overwhelmingly on the higher class I and II offenders. That is my understanding and from what you suggested, Mr. Chairman, apparently there is still a strong emphasis on the local level.

Senator NUNN. We hope that becomes the focus but most of that focus has changed in the last 12 months. So a lot of history you are giving us today is still part of the current status quo. The question is how much and to what degree? That is the question we are trying to resolve now.

Mr. KROGH. At the time, Mr. Chairman, I felt that the proposed ODALE mission was an important one, would serve the overall drug effort well, and thus recommended its adoption.

ONNI, the Office of National Narcotics Intelligence was formed for the purpose of enabling intelligence analysts to coordinate the seemingly haphazard narcotics intelligence effort.

It was to serve as a clearinghouse and evaluator of intelligence, not as a collector. By that, I mean a collector in the primary sense. There is not much that I can add on the ONNI. I understand that its functions have also been absorbed within the DEA.

In retrospect, I am persuaded that the major factor in whatever successes were achieved stemmed from direct presidential interest and concern.

Mr. Nixon spent quite a lot of time, relatively speaking, in persuading his Federal team to greater and greater effort in their drug control work. With strong, direct presidential involvement, a great deal can be accomplished without the best organizational framework.

Without this support, the best conceived and structured unit will have difficulty.

Senator NUNN. Let me ask you this because I believe it is a very important point here. What you are basically saying is, based on your experience, unless the President himself and the White House staff is vitally involved in this area, the bureaucracy simply does not focus in a coordinated way. Is that a fair statement?

Mr. KROGH. I think that it is a fine distinction. I would say coordinate and work with special focus, and special action. I think you are required, must have a President's direct interest and support, in order to get the maximum energy from the departments and agencies.

I think you can design a program where there will be coordination. But I just feel in retrospect, Mr. Chairman, that without the President inspiring his team directly, which Mr. Nixon did during this period on a repeated basis, that the output level is not going to be as high.

Senator NUNN. Is that unique to drug enforcement, because we all know the limitations on Presidential time? He has foreign policy decisions. He has tremendous domestic considerations and I know this is one of the most important domestic areas. But are you describing something that is unique to drug enforcement, or is the President to exercise this kind of close supervision in all the important domestic areas?

Mr. KROGH. I don't think that he has the time to do it in all domestic areas. I do know that he had singled out narcotics control and drugs as one of his major domestic issues, which was also an international issue.

It was a combination of the two. When I put the point in, relatively speaking, I am talking about the time he spent focused on this issue, let's say, in comparison with others, whether they were housing issues, transportation issues, or what have you.

He had meetings on those other subjects, but with the drug program he wanted to have an agency that was specifically responsive to him, that he could talk to directly, that he could energize on a case-by-case basis, which he did.

Senator NUNN. You are saying that President Nixon made this one of his top domestic priorities?

Mr. KROGH. Yes, sir.

Senator NUNN. You agreed with that decision at that time?

Mr. KROGH. Yes.

Senator NUNN. Do you still think that is the best course of action if we are going to energize the bureaucracy to an all-out effort?

Mr. KROGH. Yes, sir.

In looking at the time period involved with the Drug Enforcement Administration, 1973-1976, we see a period of deteriorating ability to govern by Mr. Nixon and a new President's efforts to salvage what was left.

It is hard to assess the value of energy infused into a program by a President, but it is my view that only with a strongly reinvigorated Presidential involvement in all aspects of the drug program will there be a chance of major success in the future.

Senator NUNN. You are basically saying there has not been the focus from 1973 to 1976 that there was prior to that, back in the early seventies?

Mr. KROGH. Yes, sir. I am not speaking as a direct participant in the drug program during those years, merely as an indirect observer and in discussions with people who are still involved.

I feel, Mr. Chairman, that the Drug Enforcement Administration should remain. I think another reorganization would cripple what is left.

This committee can do much to recommend improved management procedures, assisting the DEA in its selection of priorities. And I feel that the DEA should welcome this assistance.

Between 1969 and 1972, the administration enjoyed strong congressional support. I don't mean to imply this support was free of criticism—far from it. But we were able to join the issue with many congressional committees and members and together forged a major effort.

I would be happy to respond to any questions you may have.

Senator NUNN. Thank you, Mr. Krogh. I do have a good deal of questions. I know Senator Percy does. At this time, I would like Senator Percy to be given an opportunity to make an opening statement since he wasn't here when we started.

Senator PERCY. I certainly welcome the appearance of our two expert witnesses today because they were greatly responsible in working with this committee in trying to develop the best organizational structure for Federal drug enforcement. I think it is wise that this committee now look back and reconstruct what happened at the time of Reorganization Plan No. 2 and then try to assess what is happening today and why DEA has not achieved the degree of success we had hoped for.

That is the purpose of these 3 days of oversight hearings on the formation and the performance of the Drug Enforcement Administration.

When DEA was established in mid-1973, hopes were high in the Congress and around the country that an effective organizational structure had finally been created at the Federal level to stem the trafficking in illicit narcotics. In retrospect, hopes were unrealistically high. For the Nation's drug abuse problem is more serious today than it was in 1973 in terms of the availability and purity of many illicit drugs as well as the deaths, injuries, and high crime rate attributable to drug abuse.

In the broadest possible sense, the subcommittee hopes to take some steps toward meeting what President Ford has recently called "the challenge posed by the worsening drug situation."

Over the next 3 days, witnesses should give the subcommittee a clear idea as to why the Federal narcotics enforcement program was reorganized under DEA and what this new agency was expected to accomplish. In addition, witnesses should provide us with a means of evaluating current DEA procedures and techniques, a topic we will pursue further in hearings after the August recess.

Reorganization Plan No. 2 went into effect on July 1, 1973. The plan was designed to consolidate Federal drug law enforcement programs in a single "lead" agency, located within the Department of Justice. DEA absorbed the functions and most of the staff of the Bureau of Narcotics and Dangerous Drugs—BNDD—the Office of National Narcotics Intelligence—ONNI—and most of the intelligence capability of the U.S. Customs Service.

Administration spokesmen testified before the Subcommittee on Reorganization, citing expected benefits to be gained from the plan, namely:

1. A centralized development and coordination of the Federal drug law enforcement strategy and program;
2. An easing of the interagency rivalries between the various Government departments involved in drug control;
3. An increased effort in arresting and prosecuting high-level drug traffickers; and
4. A close working relationship between DEA and the FBI, and DEA and Customs.

Earlier inquiry by this subcommittee into Federal antidrug programs has indicated that progress has been made toward these ends, mostly due to the dedication and commitment to excellence of Attor-

ney General Levi, Deputy Attorney General Tyler, DEA Administrator Peter Bensinger, former DEA Administrator Henry Dogin, and Customs Commissioner Vernon Acree. But there have been some disconcerting developments.

At this time, I would wish to make it very clear that the recently released report by this subcommittee on the investigations that we made of DEA 13 months ago does not and should not reflect upon the efforts that have been made in the recent months to improve some of these problems that I will now proceed to discuss.

Although DEA, and BNDD before it, has always had the stated purpose of immobilizing major drug traffickers, this policy has not consistently been followed. Until recently, too much of DEA's manpower has been concentrated on the arrest and prosecution of low-level street drug dealers rather than on major narcotics distribution lines. Intelligence gathering and dissemination have been underutilized or misdirected. Neither the Customs Service nor the FBI have been fully integrated into the Federal drug effort. Military resources have been largely untapped.

Today's witnesses should be particularly helpful to us in our inquiry. John Ehrlichman, former Director of the Domestic Council and Egil Krogh, President Nixon's closest adviser on narcotics problems, can explain the rationale for the 1973 reorganization and what it was expected to accomplish.

I think, Mr. Krogh, that your testimony this morning greatly refreshed my mind with regard to some of the arguments for the creation of the reorganization that was recommended by the administration.

Later, the subcommittee will hear from those now responsible for Federal drug law enforcement programs to determine the extent to which those expectations have been fulfilled.

If reorganization plan No. 2 was not fashioned so as to maximize the Federal antidrug effort, we should know that. If there are actions that the Congress can take to improve the operation of DEA, Customs, and other agencies involved in combating drug abuse, we should also know that. And if there are ways in which DEA has lived up to the hopes of its creators and its congressional sponsors and proponents, we and the Nation would want to know that, too.

But this we do know: More must be done. We cannot expect dedicated agents in DEA and Customs to fight a so-called "War on drugs" with only halfhearted backing by their Government and by the international community of nations.

More and better resources, techniques, and technology are called for and new strategies must be devised and implemented.

Balanced oversight hearings, analyzing the complex nature of this country's drug abuse problems and probing the strengths and weaknesses of Federal drug agencies, are certainly needed at this time and should provide the impetus for a renewal national commitment to more effective drug law enforcement.

Mr. Chairman, at the outset of the hearings, I should like to comment on the fact that we are in the unusual position of having the Senate in session now. I have been representing the Government Operations Committee in a House-Senate conference on the Federal Energy Administration which expired this week. Forty-two hundred

people will be affected unless we reach an agreement in that conference that is going on simultaneously with these hearings. So I trust both Mr. Krogh and Mr. Ehrlichman will understand if I have to slip in and out of the hearing. Your testimony is very much valued and we are grateful for it.

Senator NUNN. Thank you very much, Senator Percy.

[At this point, Senator Percy withdrew from the hearing room.]

Senator NUNN. Mr. Krogh, one of the things that this subcommittee has been very interested in goes back to the reorganization plan No. 2 when Congress was informed that one of the motives of reorganization plan No. 2 was to get the FBI more vitally involved.

Would you give us your view on that and what you envision might flow out of the reorganization plan in 1972 and 1973, regarding the FBI? What did you think they would do? What would their role be and what did you hope for in terms of their participation in this effort?

Mr. KROGH. Yes, sir. I believe it was in 1972. Mr. Hoover passed away and Mr. Gray was the Acting Director of the FBI.

We saw that event as an opportunity to perhaps persuade the Federal Bureau to get directly involved in the narcotics program. We hoped to be able to make use of their vast system of informants. We felt that they had responsibility for investigating organized crime.

The narcotics problem was an organized criminal activity and that we would be able to add a tremendous amount of law enforcement effort by using those informants and using the resources of the Bureau. Mr. Gray was approached with this suggestion which was made to him by myself and by others in the White House and he agreed to get an opinion on that point, whether the FBI should be involved from his inspectors around the country.

I don't have access to the report that was submitted to him, but Mr. Gray received a report from all of his inspectors and I think out of 50-plus, there were only two or three that showed any willingness whatsoever to get involved in the narcotics problem.

Senator NUNN. That was a written report?

Mr. KROGH. Yes, sir; that was a written report.

Senator NUNN. It should be in the possession of the FBI. Is that right?

Mr. KROGH. Yes, sir. It should be.

It was quite clear that it was not the kind of move—in other words, to vest them with some jurisdiction of law enforcement that would come just by asking them to do it. There would be quite a bit of negative response to that. We didn't feel Mr. Gray was in the position at that point to force his agency to take on these responsibilities or to expand the work of the Bureau of Narcotics and Dangerous Drugs.

In fact, I am confident, even though I can't tell you exactly who was working this when they were developing DEA, but the fact that the FBI had rejected it at that point, I think, was a factor of trying to incorporate that into DEA, by reorganization plan and almost insisting by congressional agreement that the FBI should be involved, that it would in fact get involved.

Today, I don't think it will ever get involved until there is statutory authority that vests that responsibility in the FBI.

Senator NUNN. But you did envision the FBI would become more vitally involved as a result of the reorganization plan?

Mr. KROGH. Yes; I need to point out as well that I was not in the Government at the time that these representations were made to the committee, but I do know those of my staff who continued the work with the DEA did feel that was one of the benefits that would flow, and a necessary one as well.

Senator NUNN. Do you think the only way we are going to get the FBI vitally involved in this is to make it part of their statutory duty?

Mr. KROGH. Yes.

Senator NUNN. Even then, do you believe we would have substantial resistance based on your past experience?

Mr. KROGH. I think there will be resistance. I think there was a history of resistance to the narcotics law enforcement problem within the FBI. I can't give you specific comments that were made.

Senator NUNN. What was your impression about the reasons for the resistance, without trying to quote anybody directly? I know it has been a long time. You don't have access to that report now. But what was the general thrust of the remarks opposing FBI involvement made by the FBI themselves?

Mr. KROGH. I think they range in two or three areas: One, that the FBI was already burdened with more responsibilities and priorities than they could currently handle; that the agency man-hours that were spent currently on their list of statutory crimes was tremendous and that they could not add any more to it; but second, I think maybe more importantly, narcotics law enforcement is dirty law enforcement.

It is tough. It is the kind of law enforcement that has a high potential for corruption. There is a lot of money that changes hands. While I can't say specifically that one inspector or some other inspector felt that way, I feel that the FBI simply did not want to get involved in that kind of narcotics enforcement.

Senator NUNN. In other words, the FBI was really reluctant to get involved in an area that they knew lent itself to a great deal of corruption because of the tremendous amount of money involved?

Mr. KROGH. That was an impression I had. I would be hard put to tell you specifically who said that to me at the time. We had had corruption problems that were brought to our attention in BNDD—in New York City, for example, in 1968—and that the corruption level was always a prefactor in that kind of law enforcement.

[At this point Senator Chiles entered the hearing room.]

Senator NUNN. Based on your background and experience and what you have learned since you have left Government, do you think at this time it would be important to get the FBI involved in narcotics enforcement? First of all, is it desirable? Secondly, is it possible?

Mr. KROGH. I am reluctant at this point to suggest anything that would almost tamper with the Drug Enforcement Administration as it currently stands. I say that because I know the committee has stressed the need for more professionalism, for professionalism, stability, expertise in the narcotics law enforcement effort. I think it is hard to build that kind of professionalism when there are constant changes in the organizational structure. In the last 7, 8 years, we have

come from the Bureau of Narcotics, the Bureau of Narcotics and Dangerous Drugs, the Office of Drug Abuse Law Enforcement, the Office of National Narcotics Intelligence, the Cabinet Committee for International Narcotic Control to the Drug Enforcement Administration. There has almost been one per year.

Senator NUNN. There has been turmoil in the drug effort for at least the last 10 years?

Mr. KROGH. Yes; there has. There was turmoil at the time I was involved, as well. I suppose my answer is somewhat circuitous, but I feel going with the Drug Enforcement Administration, as it currently exists, supporting it, improving its management practices and forging a close relationship between the committee and that Administration would help it substantially. Whether the FBI can add to what DEA is doing today, I frankly don't have enough information to offer.

Senator NUNN. Did you ever consider recommending to the President that he directly order the FBI to become involved in the narcotics effort?

Mr. KROGH. No, sir, I never recommended that he order Mr. Hoover to do anything.

Senator NUNN. How about Mr. Gray?

Mr. KROGH. Yes; in fact, that was the reason behind asking Mr. Gray at that point to conduct a study of his agency, to determine the receptiveness there to going into the narcotics law enforcement program.

Senator NUNN. But the result of that was essentially negative and you decided not to do it. However, you decided to try to get the FBI involved, sort of by the back door, through DEA. Is that right?

Mr. KROGH. We felt perhaps that was the front door. I think the idea was that we had to do this directly and come to the Congress with a proposal that would lay the framework for FBI involvement directly. Yes.

Senator NUNN. But, up to this point, Reorganization Plan No. 2 has not resulted in getting the FBI involved even though that was your intention? Would you agree with that?

Mr. KROGH. I can only go by the committee's report, Mr. Chairman, that suggests that the FBI has not had a direct involvement in narcotics enforcement.

Senator NUNN. Let me ask you about the Internal Revenue Service and their role in this. I have read reports for the period perhaps in the time frame of 1970, 1971, 1972 that the IRS was vitally involved in the area of prosecuting narcotics violators on income tax evasion. Is that correct?

Mr. KROGH. Yes, sir. It is my understanding that that program was initiated by Mr. Rossides, in Treasury, did attempt to use the IRS criminal jurisdiction for attacking narcotics figures.

Senator NUNN. What was your experience with that particular tactic? Did that result in placing major violators behind bars?

Mr. KROGH. To be quite honest, Mr. Chairman, I don't have a recollection specifically of performance in that program. I know Mr. Rossides felt it was proceeding successfully, but I just don't have data that I could offer the committee on that.

Senator NUNN. We have some information. We will have a statement later on this week that that was a very successful tactic. The

point I want to make really, is not so much a judgment on the success or failure; but whether there was any consideration given in Reorganization Plan No. 2 to getting the IRS more involved? Was that part of the plan in any way?

Mr. KROGH. Not to my recollection.

Senator NUNN. While you were in office, was there any effort to get IRS out of the prosecution of narcotics dealers on tax evasion charges?

Mr. KROGH. No, sir. As a matter of fact, when it was submitted as an idea to the White House for consideration, there was support for it. I don't recall anybody opposing it from within the administration.

I might say that the basic policy, however, was to retain major responsibility in the Department of Justice. That was primarily attributable to the personalities involved, as well as Mr. Nixon's personal feeling that the Department of Justice should be the central law enforcement agency; but that did not necessarily lead to a downplaying of the Department of Treasury. The Bureau of Customs, at the same time, did receive increases in manpower, resources, equipment, whatever they requested.

Senator NUNN. I have the distinct impression that somewhere along the line, between 1972 and the present time, IRS was discouraged; they in some way lessened their efforts in this area. That is what I really want to pin down. Why was that decision made, if it in fact was made, and what is the current status?

We will be getting to this point with other witnesses, but as far as you know, there was no effort to discourage the IRS from participation in this tax evasion aspect of narcotics?

Mr. KROGH. Not that I recall.

Senator NUNN. One other question along that line with other agencies. What did you see as the Central Intelligence Agency's role in narcotics intelligence and enforcement?

Mr. KROGH. 1971, as I mention in my statement, we felt that the international program in narcotics was going to have to cover many nations. We started out with the unilateral or bilateral discussions with Mexico, with France, and Turkey.

But it was the kind of problem that when you would squeeze in Turkey, it would pop out somewhere else on the globe. If it came from Turkey, it would pop out in Southeast Asia, so that you were dealing with a commodity, heroin I am talking about specifically, that because of its high potential for profit, it would be manufactured in various places around the world which necessitated our being able to be responsive to that problem in various parts of the world.

I think a number of us viewed the CIA as having special expertise in Southeast Asia, particularly in understanding how those nations would operate. By that I mean specifically in Laos, Thailand, and in Burma, we could use CIA assets for intelligence purposes and to secure greater cooperation with those foreign governments.

The Bureau of Narcotics and Dangerous Drugs officials for the most part were law enforcement people that were not accustomed to countries in which they were operating. As a matter of fact, it was the first time they had gone abroad in any substantial number. It began in 1969-70.

The CIA had a structure abroad in Southeast Asia that we felt should be utilized to enhance our intelligence collection capacity and, in fact, that is exactly what happened. Mr. Nixon did ask Mr. Helms to have the agency directly involved.

I would say, too, that I think the support that was received from the CIA was substantial and quite effective, particularly in the area of the Golden Triangle in the southeastern part of Burma.

Senator NUNN. You didn't run into any bureaucratic battles there. The CIA was willing to be of assistance when you asked for it. Is that correct?

Mr. KROGH. It took some time, but it wasn't, not a bureaucratic battle, no. I think they accepted the responsibility. I think the next step was to determine whether or not that acceptance of responsibility actually was reflected in narcotics intelligence being placed at a high priority level within the station chief's level of responsibility in each country.

By that I mean to see whether or not anything had been lost in the translation from the Director to the station chief, which is what we felt in the White House had to be done, make sure nothing was lost.

In fact, in Laos, there was and in Burma there was a very effective contribution made by the CIA station chief working with his counterparts in the Burmese Government, providing intelligence in other areas that resulted in his receiving narcotics intelligence. That, I think, led to some of the destruction of heroin laboratories in that area.

Senator NUNN. Senator Chiles, do you have questions at this point?

Senator CHILES. No, Mr. Chairman.

Senator NUNN. Do you believe that the CIA still has an involvement? Do you have any indication that they are not being involved now to the extent that they were in intelligence?

Mr. KROGH. I don't know what their current status is, Mr. Chairman. I feel that if the other agencies, the Drug Enforcement Administration particularly has developed its agents into being effective men abroad, being able to speak the language, being sensitive to the cultures of these countries, and able to operate effectively without stumbling or making mistakes, then perhaps the CIA's involvement is no longer necessary.

But at the time in 1971, Mr. Nixon had really declared an all-out war on narcotics and we felt that we had to make use of whatever agencies could contribute and that the CIA did have a role to play at that time. I simply can't answer the question for today.

Senator NUNN. Is it fair to say that, based on your experience, intelligence is one of the essential keys to effective apprehension and prosecution of major violators?

Mr. KROGH. Yes, sir.

Senator NUNN. But intelligence by some body?

Mr. KROGH. Yes; but that does create a problem.

Senator NUNN. I am speaking of foreign intelligence.

Mr. KROGH. I know sir. Like last year, I know there was a hearing in the House regarding intelligence collected by the CIA regarding a drug violator, that when it was collected, it was not with the understanding that it would be used in the prosecution.

The CIA felt that its assets could be jeopardized, its informants, if in fact that intelligence were used in the prosecution. There are some

very tough issues with respect to the prosecutorial interests and the intelligence and the secrecy interest of the CIA.

Yet, I think that the help of the CIA in understanding the flow of traffic, the patterns of traffic, using their own informants that provide them intelligence in other areas is useful. It gets difficult when you get into the prosecutorial mode.

Senator NUNN. One other general question along the lines of the various agencies: Based on your experience, how much difference do personalities make, say, who is the Secretary of Treasury and who is the Attorney General? Are we going to see this kind of sway in one direction every time we have a strong man in the Treasury Department, and sway in the other every time we have a strong man as the Attorney General?

You look at the history over the last 5 or 6 years. It seems to me this is something we have to guard against.

Mr. KROGH. Yes, sir. I don't know how it can be guarded against. I think just stating the fact that it has been the case might help; but I do know that in 1969 Mr. Mitchell was clearly the principal spokesman for the administration on law enforcement matters. Secretary Kennedy was a backer, Secretary of the Treasury at the time, and I think Mr. Nixon just felt that he should vest that responsibility in Justice.

With the advent of Secretary Connally, Secretary of Treasury, there was a decisive shift in the emphasis placed on Customs. We had tried to, let us say, minimize the problems of conflict between the two agencies abroad. Mr. Connally was successful in persuading the President that at the outset, 25 customs agent should go abroad. In fact, they were sent abroad. He was a very effective and dominant spokesman within the administration.

How to prevent against that in the future, I don't know.

Senator NUNN. One thing is a little frustrating, looking back and reviewing this history, although I wasn't here the several years that this was going on. It seems, if you look back at the very peak of our law enforcement efforts in terms of major violator prosecutions, we went into Reorganization Plan No. 2—of course, that is the benefit of looking from 1976 back and not from 1972. You never know you are at the peak until you get to the valley.

But looking at it now, do you wonder why we really did reorganize back in 1972 or whether or not we might have disrupted a more effective apparatus than what we have now?

Mr. KROGH. I think the logic of the reorganization in 1972-73 was sound; just as I look back on it, I know that there was conflict, there was competition, there was disagreement. I think that the witnesses that will come before the committee this week will probably not agree with each other on every point as to where individual agencies stood or individuals.

But I think the feeling, very strongly, in 1972 was that we would do a better job, we could bring under one house all of the law enforcement programs very much like we tried to do with the Special Action Office for Drug Abuse Prevention on the demand side. I think the theory behind it was sound.

I think the challenge today is how you can galvanize that administration, provide it more support, backing, making sure that the priori-

ties the committee establishes are in fact the priorities which that administration understands. That is the kind of support that I think will lead to a greater effort again.

Hopefully, whoever is President this coming election, after the election, will provide the kind of leadership and support that I think is necessary.

Senator NUNN. Still, even with Reorganization Plan No. 2, it is still essential that Customs and DEA have maximum cooperation, is it not?

Mr. KROGH. Yes, sir. I think it has to be.

Senator NUNN. Customs still has a vital role to play at the border?

Mr. KROGH. I think they do. I think in a sense the Drug Enforcement Administration can work more closely with Customs and perhaps providing them more intelligence than they have.

I am only going, again, by what I read in the published report of the committee, that I think you could have a very effective law enforcement program once again. I don't mean to suggest it is not effective today. The last 12 months is something that I cannot speak to.

Senator NUNN. I was interested in your theory and your apprehension, back before plan No. 2, that if you actually restricted the supply of heroin to a great degree, you might drive up the prices and thereby increase the crime problem because the addicts would then have to secure more money. You also made clear that that fear was later somewhat lessened and allayed.

Was that problem a real problem and, if so, what is solved by treatment?

Mr. KROGH. We felt it was a real problem. The only way we could determine what was happening was to go on the street, find out about the availability of heroin, which in 1972 was going down. Its availability was going down, its purity had dropped from 7.8 percent to below 5 percent, its price had gone up.

We felt that that would, as a theoretical matter, lead to more crime. We had been developing treatment at the same time, simultaneously with our supply effort. The theory from the outset was the two had to work together, that we couldn't just do an effective job in law enforcement and let treatment go by the boards.

I think the evidence in the District of Columbia suggested that in fact we were able to gain a great number of people into treatment that otherwise would have been committing crimes for the higher priced heroin. It simply was their only option.

That was the point we tried to stress at the time we came up with requests for the Special Action Office, Drug Abuse Prevention, to buy up the waiting list, get as many addicts as we could in the treatment. I think we went from a figure of 150 in the District of Columbia in 1969 to over 3,000 in about 18 months to 2 years.

Senator NUNN. So you found when you dried up the supply you had an effect on treatment; you increased the number of addicts who went to treatment?

Mr. KROGH. Yes, sir.

Senator NUNN. Senator Chiles?

Mr. Krogh, we could spend a long time. I have a lot more questions, but we do have a time restriction here. We are very grateful to you not only for your testimony this morning, providing us insight into the problems that existed when you were in office, but also for your exten-

sive interviews with the staff and, most of all, for your genuine interest in seeing that this problem is dealt with effectively in the future.

Mr. KROGH. Thank you, Mr. Chairman. I appreciate the opportunity.

Senator NUNN. Our next witness is Mr. John Ehrlichman, who served as counsel to President Nixon in 1969. Mr. Ehrlichman, would you come up, please, sir? Mr. Ehrlichman was assistant to President Nixon from 1969 to 1973 and executive director of the domestic council staff from 1970 to 1973.

Mr. Ehrlichman, would you hold up your right hand? Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. EHRlichman. I do.

**TESTIMONY OF JOHN D. EHRlichman, FORMER ASSISTANT TO
PRESIDENT NIXON, AND MEMBER OF THE DOMESTIC COUNCIL
STAFF**

Senator NUNN. Also, I want to thank you for your very frank discussions with our staff. I have read their rather lengthy report on the interviews. You provided, in the staff interview, some very interesting insights into the formation of the present drug effort. You played a key role in this. We have already heard from Mr. Krogh. I believe you also have a statement this morning.

If you do, we would like for you to proceed. Then we will have some questions.

Mr. EHRlichman. Mr. Chairman, as you know, far too much of the resources of the White House staff have been spent in adjudicating jurisdictional disputes between the departments and agencies of the executive branch. One of my first assignments in 1969, as counsel to the President, was to convene a meeting between Secretary of the Treasury David Kennedy and Attorney General John Mitchell to try to obtain their agreement on how their Departments would divide their overlapping responsibility for narcotics law enforcement in the new administration.

The narcotics bureaucracies of Customs and BNDD thoroughly prepare their respective champions to justify larger responsibilities, more personnel, and bigger budgets, each to the disadvantage of his competitor. For example, I recall that, on that particular Saturday morning, jurisdiction over overseas intelligence activities was vigorously contested by Secretary Kennedy and Attorney General Mitchell.

I was unable to get their joint agreement on anything that day. A few days later, therefore, I had to ask the President to consider and decide the jurisdictional dispute on the basis of written summaries of the arguments of both Departments. As I recall, the Justice Department prevailed on virtually every issue.

BNDD and Justice were continually preferred over Customs in Treasury later as new disputes arose, until John B. Connally was appointed Secretary of the Treasury. Then the pendulum began to swing back in Treasury's direction.

In the 4½ years that I was given some responsibility for mediating organizational overlaps in the executive branch, the narcotics law enforcement conflict between Treasury and Justice was the most per-

sistent. It soaked up hours and hours of valuable staff time in the White House, and the Departments created expense and inefficiencies and caused serious friction among the enforcement people themselves.

In some specific cases, genuine cooperation among departments and agencies in the suppression of narcotics smuggling was achieved. When the President and his staff were directly involved, the customary competition was usually abated. The Departments of State, Defense, Justice, Treasury and the CIA cooperated well in the effort to solve the problem of heroin addiction among U.S. troops in Vietnam, but the lead in that case was taken by a White House staff man, who acted under the President's delegation.

The problem, of course, is how to organize the executive branch so that coordination naturally takes place, outside the oval office, preferably at the operational levels within the departments and agencies.

Senator NUNN. That is the exact question I had for Mr. Krogh. I know the President of the United States has got to indicate to all the people in this country and in government that he is making drug enforcement a national priority, one of his top priorities. I also realize he has got to spend some time on it. But it just seems to me, with the degree of importance of the American people attached to this, that there ought to be a way we can structure this so that it is not dependent on a day-by-day involvement by the President of the United States as a referee.

Mr. EHRLICHMAN. Yes, sir. I think there is an important distinction between his spending his time refereeing jurisdictional disputes and spending his time in a leadership role. I think, Mr. Krogh is correct and the chairman is correct in the statement that the President has to be a leader in this.

But there is no reason why he has to spend his time in a lot of niggling boundary disputes.

Senator NUNN. He could spend profitably almost full time just trying to work with foreign nations in stemming the tide of drugs flowing in those countries, could he not?

Mr. EHRLICHMAN. Sure. Yes, sir.

[At this point Senator Javits entered the hearing room.]

Senator NUNN. Excuse me for interrupting.

Senator Javits has come in. I would like to say to Senator Javits and Senator Chiles, too, since we just have three here this morning, if we get to a point where you want to ask a question, we will handle it very informally and feel free to interrupt. Mr. Krogh already testified this morning. We had to reverse our witnesses. But feel free to interrupt.

Senator JAVITS. Thank you.

Mr. EHRLICHMAN. There is one fact of life exception to this organizational principle which applies to narcotics law enforcement and must be noted for the record—it is obviously well known to the members of the committee—narcotics suppression is a very sexy political issue. It usually has high media visibility. Parents who are voters are worried about narcotics. They listen to a politician when he talks about drug suppression just as they seem to tune him out when he makes speeches about the energy problem.

Therefore, the White House often wants to be involved in narcotics problems, even when it doesn't need to be. The politics of narcotics

may also account for some of the organizational competition between the departments and the anomalies we find in the Federal effort.

For example, the Feds went into street enforcement partly in response to the obvious political mileage to be gained.

Parents all over the country were complaining bitterly of the failure of State, county, and city police to clear pushers from their urban neighborhoods.

Senator NUNN. Are you saying ODALE was formed primarily for political purposes?

Mr. EHRLICHMAN. At least partly for political purposes, Mr. Chairman. I don't say that in any sort of a critical sense because I think politics obviously involves responding to a political vacuum, to a functional vacuum in government. There was a vacuum. There was a need out there. It was not being met. There was obviously mileage to be gained. There was credit to be shared. There was a job to be done. There were results to be gotten for moving in on it.

That is what I mean by politics.

Mr. Krogh said that the concept came from Mr. Ambrose. I am inclined to think that before Mr. Ambrose was consulted on the question that there was, showing up in the polls around the country, and there was showing up in a lot of the grassroots, contacts that the White House had, a strong feeling that the job was not being done at the street level.

I can recall vividly a meeting that I had with some leaders of the black community where they complained bitterly about the fact that you could go out on the street corners and count 6, 8, 10, 12 pushers, and nobody was doing anything about it and that that was what the people in their community really cared about.

So that is the sense in which I use the term "politics."

Senator NUNN. Was there any consideration given to helping the local and State authorities beef up their own street efforts, rather than having the Federal Government go into the street activity?

Mr. EHRLICHMAN. Yes; there was. I think this obviously was one of the range of options that was considered at the time.

Senator NUNN. How thoroughly was that considered and why was it rejected?

Mr. EHRLICHMAN. I don't know, Mr. Chairman. I can't tell you that.

Senator NUNN. Who would know that?

Mr. EHRLICHMAN. I think the decision was made by the President and I think ultimately it would come down to the question of his judgment as to whether or not the Federal Government should get involved in one way as opposed to another and decided he wanted direct Federal involvement.

Having dealt with the problem only until 1973—and incidentally, it was before Reorganization Plan No. 2 went into effect—I am not current on the problem. But, in general, it would be my guess that things have not improved much, organizationally, in the last 3 years. I know DEA and Customs have signed a treaty with a White House gun at their heads, but the structural separation between them continues. The treaty—the need for such an agreement—is a symptom of the problem, not evidence that it has been solved. I agree with the GAO report in that respect.

I would recommend that every narcotics enforcement activity be placed all in one place—I really don't think it matters much where—

from an operational standpoint. Either all in Justice or all in Treasury, they will be able to get things coordinated eventually. Probably on balance, it makes better sense to put it all at Justice since it is law enforcement we are talking about.

In actuality, Customs could do its basic work about as well there as in Treasury, perhaps better. You might even consider moving all the law enforcement functions which Treasury has—just take that one Assistant Secretary of the Treasury for Law Enforcement and all his people and put them over in Justice, with the other Federal police.

You will bear in mind, I am sure, the enormous outcry which will come from those Members of the House and Senate who enjoy the status, comforts, and enjoyments which accrue from having Treasury law enforcement functions within the purview of their committees or subcommittees. They may be expected to oppose any transfer to a subcommittee of the Judiciary Committees which might result from such a consolidation of law enforcement in the executive branch.

Congress is a big part of this problem you are examining. But perhaps the courage and good motives of this committee can prevail over such traditional congressional impediments.

For reasons which I cannot identify—I don't want to stress this point too heavily because I am really an outsider in this—but for reasons that I cannot identify, it was apparent to me that a significant number of the personnel attracted to the administration of Federal narcotics enforcement programs were not of the same quality as the people who were or could be recruited to activities of equal importance in other domestic subject areas. Perhaps some of your later witnesses from the departments will be able to address the accuracy of my impression and, if correct, the reasons for it.

Senator NUNN. Thank you very much. On that latter point, do you think that the fact that there have been frequent reorganizations in the overall narcotics area could be a factor in the quality of people attracted to it?

Mr. EHRLICHMAN. I don't know, Mr. Chairman. I am sure it is not very pleasant to work in a situation where you are competing all the time, fighting for your turf and fighting for jurisdiction and having to justify it and being shuffled around all the time. There are lot better ways to spend your time, I am sure.

Senator NUNN. I want to ask you the same question I asked Mr. Krogh about the FBI and their involvement, or lack thereof, and what you envisioned about the proper role of the FBI in this area.

Mr. EHRLICHMAN. The FBI, really during my experience, breaks down into two eras. One was the J. Edgar Hoover era and the other was sort of the post-Hoover era. I don't think there was ever any serious question of getting the FBI to do anything that Mr. Hoover didn't want them to do during the time that he was Director.

The politics, the congressional alignments, all of the realities of that situation just precluded the President or the White House giving him any kind of direct orders to get involved in things he didn't want to get involved in.

In the post-Hoover era, there was a lot of confusion, a lot of thrashing around, there was the problem of getting Mr. Gray confirmed and a lot of lost time and lost motion. So I don't think it was terribly realistic during the post-Hoover era, up to the time that I left, at

least, for anybody to be talking about trying to wheel the bureaucracy over there and get them to do something they didn't want to do.

So I think the realities were the principal explanation for why the FBI didn't get involved. I think eventually you come to the question of whether the FBI would have done the job or not. I think that raises the whole question of whether the FBI is any good at this kind of thing or would be any good at it. I think there is a fundamental question. We have the sort of Efram Zimbalist, Jr., image of the FBI, kind of a stainless steel, inexorable law enforcement operation that is really good.

I think before you take any action to recommend that the FBI be mandated to get into this, you have to get to the fundamental question of whether they would be any good at it. That raises the whole question of whether they are any good at anything.

I think there is real serious room for examination on the question of how good they really are.

Senator NUNN. Do you want to give us your opinion on that?

Mr. EHRLICHMAN. I don't think they are very good, obviously. I have seen an awful lot of FBI work product in the time I was in the White House. It is greatly overrated on the outside.

Senator NUNN. So you don't think we make any quantum jumps in getting the FBI vitally involved in the narcotics area?

Mr. EHRLICHMAN. Not as you find it today. I think the FBI has the capacity to be very good, but I don't think it has done work to its capacity for many, many years, if it ever did.

Senator NUNN. What about the CIA and their involvement in this overall area? In your experience, did the CIA contribute to the intelligence necessary for effective drug enforcement, particularly with respect to major violators?

Mr. EHRLICHMAN. I have to rely on Mr. Krogh for that almost entirely because he worked directly with them. The impression he gave me was the same impression he gave the committee this morning. They were pretty good.

Senator NUNN. Did you and Mr. Krogh have any major differences in this area or did you see things along the same lines?

Mr. EHRLICHMAN. I relied very heavily on him and I think basically it was the same.

Senator NUNN. One of the things that is apparent in your testimony is the fact that you actually had to almost referee a dispute between the Attorney General and the Secretary of the Treasury as one of your first duties. You also say the President of the United States had to spend a lot of his time in refereeing this kind of dispute. How did that kind of impasse arise?

Mr. EHRLICHMAN. That arises from the fact that a man becomes a Cabinet officer and he gets pretty much programed by his bureaucracy and it is not just in the area of narcotics, Mr. Chairman. I would say probably 20 percent of my time in the White House was spent in mediating jurisdictional disputes between Cabinet officers or agency heads across the board.

It is a very badly organized executive branch, as you know. It was organized back in Coolidge's time or someplace back in there and it was organized along the lines of constituency. You had the Depart-

ment of Labor, you had the Department of Commerce for business and so on. That is not the way the problems come at you anymore.

It is a very complex society. The problems come at you in very complex forms. So the fact that you have health scattered in 11 or 12 principal places around in your Government means that the White House inevitably gets involved in refereeing jurisdictional disputes over health all the time.

Senator NUNN. So you are saying that the internal need in disputes you found in the narcotics area appeared in every field.

Mr. EHRLICHMAN. Yes.

Senator NUNN. Would you say it is most severe in the narcotics area or about the same as in the rest of government?

Mr. EHRLICHMAN. I think it reached heights of virulence in narcotics that perhaps it never reached in other areas. Maybe that is because the disputants were in law enforcement pursuits. I am not sure. Maybe it is just because it is a highly vulnerable and visible subject matter.

But it was somehow or another more aggravated in this area than it seemed to be in others.

Senator NUNN. On the dispute you referred between the Treasury Department and the Attorney General, do you feel it was really a substantive dispute or do you think it was more of a bureaucratic kind of petty jealousy; a rivalry kind of thing among bureaucrats?

Mr. EHRLICHMAN. Men of very good will and high intelligence very willingly lent themselves to the dispute. I think, for instance, a man like Secretary Shultz would not involve himself on behalf of his bureaucracy if he didn't really feel there was some substance to his argument. So I had to take them at very good faith. It becomes a judgmental thing as to who can better operate, for instance, the intelligence activity abroad and there is room for bona fide differences of opinion on this.

The only thing I am saying here is we ought to eliminate the occasion for the conflict which I think can be done organizationally.

Senator NUNN. Do you think putting narcotics enforcement in one Department under one Cabinet official would cause that Cabinet official to be the only referee rather than escalating the dispute to the Cabinet and Presidential level?

Mr. EHRLICHMAN. As a matter of fact, he may be able to delegate it down further so somebody at the lower level could adjudicate the dispute so he wouldn't have to do it.

Senator JAVITS. Mr. Chairman, would you yield?

Senator NUNN. I would be glad to.

Senator JAVITS. I just want to question Mr. Ehrlichman. Under your jurisdiction, I believe while you were in the White House, an effort was made to combine treatment and enforcement in Dr. Jaffee's office, which was the White House Office. Could you tell us how that worked out, in your opinion?

Mr. EHRLICHMAN. I think actually Dr. Jaffee's office primarily concerned itself with the treatment end. I think they made some real strides. Certainly the state of the science was not very advanced when he came in. I think by the time he left, it had been considerably advanced. We knew a great deal more about the dimension of the problem, if not what the solution was.

But I think there was a fairly clear demarcation between Dr. Jaffee's efforts on the one side and the law enforcement efforts on the other.

Senator JAVITS. Do you think that is the optimum way to proceed?

Mr. EHRLICHMAN. I suspect that it is.

Senator JAVITS. Not to combine the two?

Mr. EHRLICHMAN. Yes.

Senator JAVITS. But you, however, have one coordinating person, let us say, in the White House, to do the two or is it going to be a White House office?

Mr. EHRLICHMAN. I am a great believer in putting the coordination out of the White House if at all possible. There is enough to do there without having to perform the coordination function. It seems to me the ideal government organization involves as much coordination in the department and agencies themselves as possible.

Senator JAVITS. Would you put enforcement and treatment in the same agency?

Mr. EHRLICHMAN. Yes. It should be possible. Maybe there is some logical inconsistency in that of which I am not aware.

Senator JAVITS. I think there is because it involves so heavily the research and demonstration treatment. That is why Jaffe was successful.

Mr. EHRLICHMAN. I understand, Senator. I always regretted the fact that that Special Action Office had to be an adjunct of the White House. It seemed to me that it could have found its place in HEW or even in Justice under the aegis of the Cabinet officer.

Senator JAVITS. But to sum up, you think law enforcement, drugs and treatment should be combined.

Mr. EHRLICHMAN. I think so, yes, functionally so.

[At this point Senators Javits and Chiles withdrew from the hearing room.]

Senator NUNN. What about the question of the Customs intelligence capabilities? Did this become a major dispute about the capability of Customs to have its own intelligence force?

Mr. EHRLICHMAN. Yes, sir.

Senator NUNN. Give us the nature of that.

Mr. EHRLICHMAN. This was the primary point of irritation, early in the game, the maintenance of the Customs intelligence capability overseas in conflict with, or at least allegedly in conflict with, the intelligence activities of BNDD.

Senator NUNN. There is a considerable difference of opinion as to whether Customs ever really had an effective intelligence capability. It is amazing how that opinion still is current, even though it was a question back 4 or 5 years ago. Did they have an effective intelligence capability?

Mr. EHRLICHMAN. I don't know, Mr. Chairman. One of the really hard problems in the White House is to get facts, as you know. This is one of the subjects on which it is really hard to get facts. Certainly, various successive Secretaries of the Treasury contended that there was in fact an intelligence capacity in the Customs group.

Senator NUNN. Some people in BNDD disputed that?

Mr. EHRLICHMAN. Yes, or disputed whether there should be, if there was.

Senator NUNN. Did you recommend against the additional slots that were assigned to Customs intelligence, or do you remember that?

Mr. EHRLICHMAN. I don't recall.

Senator NUNN. Did you form any opinion as to which agency really was more effective, BNDD or Customs?

Mr. EHRLICHMAN. No. I just knew it was a plague on everybody's house that they couldn't get together.

Senator NUNN. You say the Congress is as much to blame in this area as the executive branch. I don't disagree with that. I don't have the background that you do on it, but was this dispute carried to Capitol Hill?

Mr. EHRLICHMAN. Yes.

Senator NUNN. Between Customs and BNDD?

Mr. EHRLICHMAN. No. The general subject of reorganization was. That was the thing I would rather, in that context, respond to, rather than to focus on narcotics.

We had more than a year of very intensive study on the reorganization of the executive branch to try to consolidate a number of these areas of conflict and to avoid the conflicts. We sent four omnibus pieces of legislation to the Congress. I think it was in 1971 or early in 1972.

We couldn't even get a hearing in the Congress on any except one of them. It was probably the more innocuous of the four. They constituted blueprints for the complete reorganization of the executive branch, from one end to the other. They were radical, sure. Any reorganization is.

The thing we encountered was a total reticence on the part of influential Congressmen to entertain the idea of reorganization of the executive branch because it would have destroyed the traditional alignments in the Congress, the subcommittees and the committees themselves.

Congressional liaison people from the White House came to the Hill to talk about this reorganization concept with influential members and came back and just said, "Forget it, these fellows are not going anywhere."

If you tell a subcommittee chairman that he is going to lose his inspection trips because you are going to consolidate his responsibilities with somebody else's, he is not about to vote for that kind of thing.

Senator NUNN. Do you think this transcends party lines?

Mr. EHRLICHMAN. Yes.

Senator NUNN. You think it is not a Republican-Democratic thing?

Mr. EHRLICHMAN. It is not a partisan matter. It is a matter of the enlightened self-interest of the individual Congressmen. That exists, I am sure, on both sides of the aisle to a degree that probably dooms any hope of fundamental reorganization in the executive branch for the foreseeable future.

Senator NUNN. You are saying if we have a Democratic administration and the President sets upon reorganization, he will face the same problems?

Mr. EHRLICHMAN. Yes, and without the capacity to step out and face his partisan brothers in the Congress in the way that a President

of the opposite party might be able to do. The only hope that I see for this is somehow or another for the people to get sufficiently upset about it that they get commitments from their congressional candidates, senatorial candidates, at the time they run for office. It doesn't do much good to consider it in the Presidential context.

Senator NUNN. Getting away from narcotics just a minute and going on to this broader subject, is the problem reorganization itself or is it program consolidation? Which is it?

Mr. EHRLICHMAN. It is both, Mr. Chairman. Certainly, we need both in this country; but it seems to me that they are apples and oranges, two different things. We have an executive branch administering programs and it is very, very anciently organized in terms of the problems that the Federal Government faces. That is on purely the executive end.

Up here, in the programs, we have all kinds of programs, and the overlapping of the programs and the duplication of the programs and the surpluses of the programs are wasteful, No. 1—No. 2, they are reflected then in some of the organization that you find in the departments and agencies which have to be set up to carry out the programs.

So it is not one or the other.

Senator NUNN. It is both?

Mr. EHRLICHMAN. Yes.

Senator NUNN. I just wonder if you can really have an effective, efficient Federal Government with a number of programs and all the responsibilities centered in Washington now.

Mr. EHRLICHMAN. You are entitled to a healthy skepticism on that, but at the same time, it is no excuse not to try reorganization of the executive branch.

Senator NUNN. You say it can be made better?

Mr. EHRLICHMAN. Yes.

Senator NUNN. Shortly before Mr. Ambrose recommended the creation of ODALE, he, as Commissioner of Customs, was putting out a good many press releases that were praising the success of the Federal Government in making large seizures. If there was that much success going on at this time, what was the necessity in the underlying compulsion to reorganize at that time?

Mr. EHRLICHMAN. You mean reorganization No. 2?

Senator NUNN. That is right.

Mr. EHRLICHMAN. I think, at least as I saw it—I must say that I wasn't paying terrifically close attention to the problems except at the intra-cabinet level, during that era. I looked kindly on the prospect of Reorganization Plan No. 2 as a future step, certainly not a complete answer; but some step in the direction of solving this continuing conflict between Treasury and Justice.

The idea of the "lead agency" was at least a partial step in the direction and solution of that problem, certainly by no means an ideal solution. I personally would have preferred and still prefer the idea of putting it all under one tent, but at least it was a step in the right direction.

Senator NUNN. You are saying things weren't so glowing and rosy then; that there was a tremendous amount of infighting?

Mr. EHRLICHMAN. Still have. I can well remember George Shultz when he was at the White House, struggling with these problems and

then when it got to Treasury, all of a sudden becoming an advocate of the Treasury position. I made a mental note of the fact that it isn't very long before these fellows marry the natives, once they go out into the departments.

Senator NUNN. Mr. Ehrlichman, you say in your statement, and I quote, "The Feds went in the street enforcement partly in response to the obvious political mileage to be gained."

We have already explored that to some degree, but we still have an awful lot of DEA manpower and money spent in the street. Do you think that looking back on it, that politics was working in the interest of good government or do you think the two were divorced? In other words, were we pursuing political objectives that were not necessarily in the best interest of the law enforcement?

Mr. EHRLICHMAN. I don't know. I think they were probably going in the same direction in a sense. I don't know how good this Federal effort has been at the street. Apparently, not very good from just what I read; but neither has the State and local effort been very good at that level. It is kind of like spooning out the ocean, I guess. I am not sure anybody can make a success of it at that level.

Senator NUNN. Was any fear expressed at that time that we might be going into a so-called national police force when we got the Federal Government involved at the street level?

Mr. EHRLICHMAN. Not that I recall.

Senator NUNN. You didn't have any particular fear along that line?

Mr. EHRLICHMAN. No, sir.

Senator NUNN. John Ingersoll, head of BNDD when ODALE was created, has told the staff he was not consulted on the creation. Do you want to comment on that?

Mr. EHRLICHMAN. I don't recall whether he was or not. I would not be surprised if he had not been. He didn't enjoy the President's confidence, particularly in the latter stages of his tenure.

Senator NUNN. Whose tenure, Mr. Ingersoll's?

Mr. EHRLICHMAN. Sir?

Senator NUNN. Mr. Ingersoll's tenure?

Mr. EHRLICHMAN. Yes, sir.

Senator NUNN. What about Mr. Acree, who was the Director of Customs, do you recall whether he was consulted?

Mr. EHRLICHMAN. No. I don't know. Ordinarily the question of who would be consulted would have been Mr. Krogh's decision in the White House.

Senator NUNN. Perhaps Mr. Krogh would respond to that particular question.

Mr. KROGH. They were not consulted. Would you like me to sit at the table?

Senator NUNN. If you would, on this particular question.

Mr. KROGH. In 1971, when ODALE was recommended, I had a meeting with Mr. Kleindienst. This was before I had met with Mr. Ingersoll about it; explained what he tried to do or what he wanted to do with the Office of Drug Abuse Law Enforcement given the time.

He felt there was some reservations about it. We felt that the analysis that had been done by Mr. Ambrose at the time, which I had alluded to in my testimony, justified its creation and we went forward with it at that time.

I think that the feelings had been very strong, personal feelings at least as I was privy to them between Mr. Ambrose and Mr. Ingersoll and that we did not feel that consulting Mr. Ingersoll at this point would have been useful.

It was my decision at that time not to consult him beforehand in the creation of the Office of Drug Abuse and Law Enforcement and did not do so.

Senator NUNN. Thank you.

Mr. Ehrlichman, on page 4 of your statement, you made the disturbing observation that:

It is apparent to me that the personnel attracted to the administration of Federal narcotics enforcement programs were not of the same quality as the people who were or could be recruited to activities of equal importance in other domestic subject areas.

It has always seemed to me that Federal drug enforcement programs have had some serious drawbacks, but that many of the individuals serving in DEA, BNDD, or the Customs Service have had unusually high quality and dedication.

Upon what facts do you base this observation?

Mr. EHRLICHMAN. Mr. Chairman, it is just an impression. I certainly wouldn't want to specify individuals or cite examples that would lead to the designation of individuals, but I felt that you ought to have just my sort of basic subjective impression; that we are not attracting the highest quality of people to this effort that the Federal Government is entitled to attract.

[At this point, Senator Percy entered the hearing room.]

Senator NUNN. Mr. Krogh, that is all I had on that. I might want to call you back.

Senator Percy?

Senator PERCY. Mr. Ehrlichman, I certainly welcome you today.

I am sure that you have been asked many detailed questions. If this question has been put to you, I will read the record on it.

Are we working on an impossible situation in the drug treatment and enforcement field? Is it true that no matter how effective these programs are, the problems and individual frustrations in our society are at such a high level that people feel a need for some relief or escape? Perhaps we have to go back to solve some of the country's social problems.

Drug abuse seems to be most prevalent among the young and the old. The old are seemingly left out of society and put on a shelf. They live much longer but they are retiring earlier and they have a sense of frustration at having nothing to do. Young people also have a great sense of frustration. Certainly a high level of unemployment, like the 40-percent rate in East St. Louis, among young blacks, causes idleness and idleness creates problems. It leads to crime and also drug abuse. One feeds on the other in a sense.

Would you conclude that maybe this issue is bigger than just treatment and law enforcement, and that we also have to look at the entire problem, including its causes, in order to effectively grapple with it?

Mr. EHRLICHMAN. Senator. I would agree in part with what you said. In the years since I have been out of Government, having in mind all the conversations that I heard in Government, I watched with interest what is really going on out there in the country.

Believe me, the Federal Government is behind the power curve on this subject by miles and miles. It is not a simple matter of interdicting at the borders, it is not the simple matter of knocking over the big dealers, and that kind of thing.

There is a magnetic field that exists. There is an enormous demand out there for narcotics. People are using it. They are getting it, and they are going to get it. I don't care if we get the very best people in the Nation in the narcotics effort, I just have a hunch we are never going to catch up.

It has just gotten way beyond the capacity of the Federal Government to deal with. The stuff is out there; people are using it; they are enjoying it. It isn't good for them. They know that, but they want it and they are going to have it. It is a question of supply and demand.

As long as we have open borders in this country, which essentially we do, the stuff is going to come in and the people are going to use it.

Why is yet another subject; one that I am certainly not equipped to advise this committee on, but I think it is a healthy thing for the committee not to kid itself on this subject.

We can consolidate, we can reorganize, we can budget and you can put up a lot of money. You can hire a lot more agents and put them out there. It is going to be marginal. You are going to affect maybe 25 percent, something of that kind, I would guess, and the other 75 percent is just going to go along.

I think there is a genuine question of hypocrisy in all of this, as to whether the Federal Government, the people in the Federal Government aren't just kidding themselves and kidding the people when they say we have mounted a massive war on narcotics when they know darned well that the massive war that they have mounted on narcotics is only going to be effective at the margins.

If they don't know it, they ought to know it. Maybe we can use the money better some other way.

Senator NUNN. You are not suggesting we drop the efforts against drugs, but you are saying we ought to have more realistic goals and expectations and be frank with the American people?

Mr. EHRLICHMAN. Yes; I think there is a lot of self-delusion to the Federal approach to narcotics. Maybe it is a representative delusion that is reflective of the sort of delusion among people generally in this country or maybe it is just that I have seen an aspect of what is going on out in the country that is distorted in some way.

I am not prepared to say, but I do know that there is a wide gap between what I thought was going on when I was here in government and what I see going on out there in the real country. That is not limited to narcotics, I might say.

Senator PERCY. Now that you are out of government, you say you have been hearing different concerns than what you heard before. Touring schools for the Bicentennial, I have talked to around 35,000 high school students in the last couple of months.

After I make a couple of comments, I move to a half hour or 45 minutes of questions.

At each school either the first or second question is about decriminalizing marihuana. In the point of view of these students, society

is hypocritical in condemning the use of marihuana while permitting the virtually unrestricted use of alcoholic beverages and cigarettes. All scientific studies have shown that cigarette smoking is highly dangerous and that alcohol is responsible for widespread misery and suffering as well as thousands of traffic deaths annually.

At the same time, it is very difficult for us to prove the effects of marihuana use. Possibly we haven't had a long enough experience with it. And, yet, the possession or use of marihuana constitute violation of Federal law. A significant portion of the Federal law enforcement effort involves chasing young people for alleged marihuana law violations.

What would your advice be now that you have been out of government for a while; what should the Federal effort be; should we lessen our effort in the marihuana area, and what should be our approach to legislation in this area?

Mr. EHRLICHMAN. On marihuana, Senator, I would be for local option. I think that it is the most difficult thing to legislate nationally and probably the easiest thing to handle on a local option basis.

Just like prohibition has been handled in a way. I don't see any reason why it can't be broken down State by State or county by county.

I think if you try to put some kind of national Federal policy on marihuana, you are going to end up with some of the regions that are highly localized situations in strong disagreement with whatever you do: you have a highly disparate public opinion on this.

Senator PERCY. Certainly the amount of man-hours and law enforcement going into marihuana law enforcement is tremendous. It involves hundreds of thousands of arrests at all levels of government.

Mr. Chairman, I wonder if we could recall Mr. Krogh and ask if he could give us his judgment on the question of marihuana and any advice he might have for the Congress in this regard?

Senator NUNN. Mr. Krogh?

Mr. KROGH. Senator Percy, I know that in 1970, when we submitted the Controlled Dangerous Substances Act, one of our first acts was to reduce the criminality attaching to possession of marihuana from a felony to a misdemeanor.

I think there was a move at that time, a feeling that it was not the kind of offense that should receive the same kind of focus that, let's say, possession of heroin, traffic in heroin should receive.

I think, consequently, following that decision there was relatively less time spent by the Bureau of Narcotics and Dangerous Drugs and the Bureau of Customs on marihuana offenses than on heroin and cocaine.

That was a specific policy directive I know that did flow from the White House during that 2-year period. In terms of what should be done today, I would support decriminalization in a number of the States—they have in California, and other places—not necessarily legalization at this point. The two are distinct because they are not at all certain——

Senator PERCY. Your position is that you favor decriminalization but still want possession to be a noncriminal offense?

Mr. KROGH. Yes, sir.

Senator PERCY. Not legalize it?

Mr. KROGH. Not legalize it.

Senator PERCY. Something like a stiff traffic ticket?

Mr. KROGH. No more than that.

Senator PERCY. So you say that we should not put the stamp of approval of society on marihuana use but that we should lessen the severe penalty sometimes attached to its possession or use. It certainly is very hard to justify labeling individuals as criminals for that kind of activity.

Of course, I wouldn't encourage marihuana use for anyone. I certainly wouldn't want to. On the other hand, to stand there with a martini in one hand, a cigarette in the other, and moralize about marihuana seems to me the height of hypocrisy.

Senator NUNN. It must be an interesting speech you are making before the high schools.

Senator PERCY. Yes. As a matter of fact, I did use that once. I have one last question I would like to ask.

Senator NUNN. Let me ask this on this point on the decriminalization that Mr. Krogh offers and the local options Mr. Ehrlichman offers. There is nothing incompatible with them, is there?

Mr. KROGH. No.

Senator NUNN. You could decriminalize, theoretically, at the Federal level but leave it up to the local level if they wanted to make it a criminal or civil offense; you could leave it up to the local option. You are not talking about mutually exclusive ideas, are you?

Mr. EHRLICHMAN. I wonder whether the Federal Government belongs in this subject at all? It certainly soaks up a tremendous amount of the law enforcement resource. I think you might want to take a look at the question of whether it can be left to the States.

I am sure in Georgia there would be one point of view, and there might be quite another in Illinois. I know that when the Commission came in with its report, Ray Shafer and that Marihuana Commission came in with its report, I saw for the first time how difficult it is for a Federal officeholder to deal with that problem.

It became a sort of lowest common denominator kind of problem for a Federal decisionmaker and he tends to—whatever result you come to—tends to be distorted by the fact that you are looking at the most difficult areas of the country from a political standpoint, and you tend to go along with them, even though it works a terrific hardship in the other parts of the country and the people in that part of the country really don't want it.

I wonder whether it is really a Federal problem or whether it is not more legitimately and correctly left for local decision.

Mr. KROGH. I would support that. In the State of California, a bill was enacted last June which did decriminalize possession of marihuana following the State of Oregon and Michigan.

I think incarcerating young people for marihuana offenses in maximum security facilities by itself is a criminal offense. I think it is wrong.

Senator PERCY. I think that statement is very helpful. The last question I have relates to your opinion of the management of the Bureau of Narcotics and Dangerous Drugs and the Customs Bureau during your tenure as assistant to the President.

Can you give us a management evaluation of those agencies?

Mr. EHRLICHMAN. I am incompetent to respond to that, I think, in any sort of current terms. Anything that I might say would attach to people who are long gone.

It doesn't seem to me that that would be particularly fair. I can't say how they are being managed now. I think you will want to pay close attention to your General Accounting Office report, which I think is the best information that I have seen on the subject as to the current situation.

Senator PERCY. Thank you very much. We appreciate both Mr. Krogh's and your testimony this morning.

Senator NUNN. I don't have any other questions. Do you have any other thoughts you want to share with us this morning on the subjects that have been raised? I don't want to cut you off.

Mr. EHRLICHMAN. No.

Senator NUNN. Mr. Krogh?

If you have any additional comments as we proceed through these hearings, I want you to know the record will be open and we will welcome those comments.

Tomorrow morning, we will have Mr. Roy Ash, former Chairman, President Nixon's Advisory Council on Executive Organization, and former Director of the Office of OMB.

We will also have a witness offering a different perspective altogether on this problem—Mr. Eugene Rossides, former Assistant Secretary of the Treasury for Enforcement, at 9:30 in this room.

Mr. FELDMAN. Mr. Chairman, just one housekeeping detail. I would like to offer as an exhibit to our April 5 executive session on guaranteed student loan an investigative folder and have that entered as exhibit No. 36 to that hearing.

Senator NUNN. Is there objection?

Without objection, it will be entered in the record.

[The document referred to was marked "Exhibit No. 36" for reference and is retained in the confidential files of the subcommittee.]

[Whereupon, at 11:30 a.m., the subcommittee recessed, to reconvene at 9:30 a.m., Wednesday, July 28, 1976.]

[Members of the subcommittee present at time of recess: Senators Nunn and Percy.]

FEDERAL DRUG ENFORCEMENT

WEDNESDAY, JULY 28, 1976

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 3302, Dirksen Senate Office Building, under authority of section 5, Senate Resolution 363, agreed to March 1, 1976, Hon. Sam Nunn presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia.

Members of the professional staff present: Howard J. Feldman, chief counsel; F. Keith Adkinson, assistant counsel; William B. Gallinaro, investigator; Stuart M. Statler, chief counsel to the minority; Robert Sloan, special counsel to the minority; and Ruth Y. Watt, chief clerk.

Senator NUNN [presiding]. The committee will come to order.

[Members of the subcommittee present at time of reconvening: Senator Nunn.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct hearings in public session, without a quorum of two members for administration of oaths and taking of testimony in connection with Drug Enforcement Administration on Wednesday, July 28, 1976.

SAM NUNN,
Acting Chairman.
CHARLES H. PERCY,
Ranking Minority Member.

Senator NUNN. Our first witness this morning, as we continue the subcommittee's hearing and investigation into the background of the present DEA and how it was brought about, is a man who did head up one of the most important agencies in the Federal Government, the Office of Management and Budget.

From 1969 to 1971, Roy L. Ash was Chairman of President Nixon's Advisory Council on Executive Organization, which became known as the Ash Council. Prior to holding that position, Roy Ash was president of Litton Industries, of which he was cofounder.

In 1972, Ash was appointed Director of the Office of Management and Budget. In this capacity, he became actively involved in the de-

velopment and implementation of the concept of a unified drug enforcement agency—the DEA.

Roy Ash had a lot to do with Reorganization Plan No. 2, and he will tell us this morning about how that plan came about and why some of the problems that were supposedly going to be solved by that plan perhaps have not been solved to this date.

Mr. Ash, we will be delighted to hear from you. Then we will have questions for you.

We have been swearing in all the witnesses. We do that as a matter of custom.

Please stand and raise your right hand. Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ASH. I do.

TESTIMONY OF ROY L. ASH, FORMER CHAIRMAN, PRESIDENT NIXON'S ADVISORY COUNCIL ON EXECUTIVE ORGANIZATION, AND FORMER DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET

Mr. ASH. Thank you very much, Mr. Chairman. Since my comments might vary in some small degree from my previously written statement, I would prefer to make the statement as I have here prepared it. It will be about 8 minutes, if that is OK.

Senator NUNN. That will be fine.

Mr. ASH. Until this country can demonstrate substantial progress in reducing drug abuse, governmental activities designed to do so deserve continued high level attention, such as being given by this committee.

I first became involved in Federal efforts to deal with drug abuse as a member of the President's Advisory Council on Executive Organization. That six-member Council from outside of Government was established by the President in 1969 to evaluate and make recommendations to improve the organizational structure and functioning of the executive branch.

During the course of its work, and while working on a study of how the Government should be organized to deal with organized crime, the Council was asked by the President's office to look into a then developing dispute between the Treasury and Justice Departments concerning the overseas intelligence gathering functions related to drug traffic.

The first reaction of the Council, as stated publicly at the time by Andrew Rouse, its deputy executive director, was that the Council "wouldn't have in 1 million years put it (the interagency dispute) on its list of priorities. * * * This overseas problem in the narcotics area is a problem which has occupied successive Attorneys General and Secretaries of Treasury, successive chiefs of the Bureau of Narcotics and Bureau of Customs, God knows how many untold man-years of bureaucracy time in waging a jurisdictional battle." But it was a current problem, and a growing one, so the Council stepped in.

We met with top executives and staff members of the Departments; its own staff conducted extensive interviews in the United States and abroad. The Council deliberated the matter at length.

It concluded that the Justice Department, through the BNDD, should have the sole responsibility for overseas intelligence gathering regarding drug traffic and recommended that to the President. The President agreed and so directed the agencies.

While considering the narrower issue of overseas drug intelligence, the Council concluded that it would be even more productive to look into the broader ramifications of the executive branch organization to deal with drug abuse problems.

It initiated that broader study, engaged in extensive interviews and deliberation, and made its recommendations to the President in mid-1970.

The Council's conclusions and recommendations were:

1. Enforcement programs designed to reduce drug supply require a different kind of "mentality," and thus management leadership, than do research, education, and treatment programs designed to reduce demand. Thus the two should be looked at quite differently.

2. We recommended that the enforcement functions should be considered further by the Office of Management and Budget, giving special attention to the long-range implications of colocating investigative and prosecutory functions in the Justice Department, about which the Council had some reservations.

3. The governmental responsibilities for drug research, education, and treatment should be consolidated in a new administration within HEW and as a part of the Public Health Service. The Special Action Office for Drug Abuse Prevention, and later the present National Institute on Drug Abuse ensued.

Then, in 1973, while Director of OMB, I again became involved in the Government problems of dealing with drug abuse. By then, not only had the interdepartmental dispute over foreign drug intelligence become revived, but further and more significant disputes arose between Justice and Treasury regarding drug interdiction and enforcement in general.

The President designated me Chairman of an interdepartmental group, including the Secretary of the Treasury and the Attorney General, and I, and my staff, again stepped in to resolve the issues. A major factfinding and analysis effort was undertaken. All interested parties were interviewed and carefully listened to; I participated in a number of these discussions personally and especially was involved in considering the alternate solutions possible and the one finally recommended to the President.

I observed strong personal feelings of the disputants and had some difficulty in developing objective facts and engaging in objective reasoning with those involved. That was also true in discussing the matter with interested congressional personnel.

The basic problem was that the growing jurisdictional disputes regarding operating matters were threatening the effectiveness of drug abuse enforcement. Under the then organizational arrangement, disputes could only be resolved at the Presidential level; that is, the Customs position was generally supported by the Secretary of the Treasury and the BNDD one by the Attorney General.

Thus only the President could resolve the differences, yet they were often at the detailed operating level. Obviously, that is bad organization.

I still believe Reorganization Plan No. 2 was the best possible solution to the organizational problems, yet I understand there are still deficiencies in dealing with drug abuse enforcement.

That was a response to those problems as the best possible solution, yet I understand there are still some criticisms of drug abuse enforcement as it is carried out today.

While I do not have current knowledge concerning these criticisms or any deficiencies, my own observations regarding earlier deficiencies in DEA performance may be relevant. Basically, they were ones of management, not organization. Proper organizational structures don't assure good management, but they are essential in making effective management possible.

In 1973 and into 1974, DEA needed a more completely thought through strategy for enforcement, as I saw it then. The questions that were then being posed to the DEA were: How is the intelligence function to be coupled to the interdiction one? What enforcement techniques pay off the best; the systems approach, street trafficking control, or other? Overseas, at the border or inland? Are resources—they are always limited—deployed to fit strategies?

What are the best arrangements for relating to local law enforcement agencies? What are the operational agreements by which DEA can effectively work with INS, the FBI, Customs, and other governmental offices having related functions?

In fact, what constitutes success for the total effort, and how can it best be measured? By that time we were concerned that the measurement solely by seizures and arrests was far from the best possible way to measure and determine success.

From a management point of view, DEA, in its early years, had substantial room to improve its information gathering and flow, the development of strategies, the responses to the questions such as the ones I have just indicated, the evaluation of programs and feedback control so as to manage toward stated goals and objectives.

I understand there have been substantial improvements since I last knew of the problems. To the extent DEA still falls short of achieving the goals set forth, my own view would be to work further on management factors.

The organizational arrangements are the right and workable ones, I believe. In fact, so long as the reorganization plan is still considered an open matter, the longer uncertainty and potential for conflict interfere with drug abuse enforcement.

Now is the time, once and for all, to state unequivocally that the organizational arrangement is decided; let's get on with management improvement.

Thank you, Mr. Chairman.

[The statement of Mark Alger follows:]

STATEMENT OF MARK ALGER

BACKGROUND OF REORGANIZATION PLAN 2, 1973

During the early 1970's, two agencies were each independently responsible for interdicting the narcotics traffic which had become a major problem to the United States by that time. The Bureau of Narcotics and Dangerous Drugs (BNDD) in Justice, created in 1968 by a merger of staff and functions of the Federal Bureau of Narcotics (FBN) (Treasury) and the Bureau of Dangerous

Drugs was responsible for enforcement of narcotics and dangerous drug laws at whatever point in the narcotics traffic it was possible to make a case. Customs in Treasury had the responsibility of precluding the smuggling into the United States of contraband and so was also legitimately concerned with seeking out and investigating the drug traffic.

As the flow of heroin and cocaine increased, so did the attention of the administration. A Cabinet Committee on International Narcotics Control was created in recognition of the foreign origin of hard narcotics and was designed to coordinate policies for action by U.S. agencies to stop the flow of narcotics into this country. The Committee was chaired by the Secretary of State and his Special Assistant on International Narcotics matters spearheaded the formulation of narcotics action plans by embassies in both producing and transiting countries. An important feature of these plans was enlistment of the cooperation of the enforcement resources of the host country and the augmentation, where feasible, of those resources through the provision of training and equipment. The intensified overseas involvement recognized that it was easier to interdict the flow of narcotics if action was taken as close as possible to the point of origin. The further from the country of origin action is taken, the greater is the choice of routes and means of concealment available to the trafficker and hence the more difficult is the investigative problem. To carry out the intensified efforts against the narcotics traffic, budget requests by both BNDD and Customs were sharply escalated and the Congress provided increased appropriations. After the first year or two of major increases, it became apparent to the examining staff in the Office of Management and Budget (OMB) that the tripling and quadrupling of resources of both BNDD and Customs was resulting in increasing marginal performance, difficulties in training and absorbing new manpower, and, more significantly, a greater conflict between the two agencies.

The narcotics effort is essentially conducted by undercover operations. Contacts and informers are carefully guarded by agents and communication with respect to operations are held to a minimum to avoid compromising the case and to minimize the risk to the agents' life. It was not surprising that with additional resources in the field, with BNDD and Customs each operating on the same turf, that conflicts would arise. This was particularly so as Customs sought to expand its operations beyond the border and behind the border to gain intelligence on routes, means of concealment and timing of shipments in order to be more effective in discovering smuggled narcotics. BNDD's resources enabled it to follow more and more cases from points abroad, across the border and to major domestic distributors.

Competition for recognition of effectiveness in "making cases," attendant media coverage, and favor with the administration and the Congress had become pervasive and counter productive. Reports were rife of compromised evidence, kidnapping of suspects, shoot-outs between agents, and a complete lack of coordination in spite of the existence on the books of a Presidential directive identifying the Attorney General as the coordinator and director of what was to have been a unified "war on narcotics." In part, the conflict was merely the intensification of a long-existing problem which had been present between the old FBN when it was in Treasury and Customs in which the same problem of different methodologies escalated differences to the Secretary; now they were escalated to the White House.

Customs shares with the Immigration and Naturalization Service (INS) responsibility for the integrity of our borders. While Customs operates to levy import duties and insure that only properly taxed and admissible goods enter the United States, INS is concerned with the legal admission of people to the U.S., and the exclusion of those whose admission is illegal. People carry narcotics, and hence, the resources of INS were also enlisted in the narcotics battle. Of primary concern to INS was the Mexican border where INS's border patrol had led a long and historic mission of regulation. In the early 1970's the border had not assumed the significance to the hard narcotics traffic it later was to become, but it did represent an attractive avenue for the transit of goods by way of South America and Mexico. While INS's authority with respect to narcotics was inferior to Customs, the personnel represented a valuable asset to the control efforts. In fact, in many border stations, INS inspectors and Customs inspectors were performing each others jobs from time to time under a cross deputization arrangement. The service, like BNDD, is a part of the Justice Department.

A fourth element entered the picture early in 1972 with the creation of the Office for Drug Abuse Law Enforcement (ODALE), which provided high visibility to the enforcement effort in an election year, but which also was designed to serve a real purpose in mobilizing on a cooperative basis other Federal resources in the attack on narcotics trafficking together with those local jurisdictions whose enforcement personnel were above suspicion. The entire task force concept, headed frequently by an investigating prosecutor, working up the narcotics distribution chain from the street pusher to the network head with the aid of a grand jury, immunity to small time operators and the use of income tax returns, with inputs from the FBI, Postal Service, and others, was an interesting and sometimes effective way of handling cases.

During the late winter or early spring of 1972 after a meeting of the Cabinet Committee on International Narcotics Control, the President agreed to the Secretary of the Treasury's urgent pleading for permission to locate 25 Customs agents abroad for the purpose of gathering information undercover and in cooperation with foreign police and customs services. The reason offered by the Secretary was to enhance Customs ability to deal with smuggled narcotics. Similar budget requests for up to 75 or so agents had been rejected on at least two previous occasions because the function would completely duplicate the information gathering mission already being performed by BNDD, but, according to Treasury, with no feedback to Customs.

The intelligence problem had been earlier recognized as being a weakness in efforts to control the narcotics trafficking. The intelligence efforts of BNDD were largely directed to individual cases abroad, agents were relatively few, and the resources of foreign countries either of origin or transit were meager. There were no trained intelligence agents per se in BNDD and little, if any, assessment and collation of material reported back to headquarters. To fill this void and to utilize a service in being, the Cabinet Committee requested the Central Intelligence Agency to expand its mission to include narcotics intelligence, an assignment the Agency reluctantly accepted.

In light of the prospect of another Federal enforcement agency operating abroad in both narcotics investigations and intelligence, the Central Intelligence Agency's recent entrance into narcotics intelligence, and the reports being received on the difficulties of developing an alternative to the Turkish opium crop (a commitment made when the U.S. persuaded Turkey to agree to abandon poppy cultivation), the Executive Secretary of the Cabinet Committee urged that a team from the Executive Office visit some of the countries involved in the then drug problem and come back with an assessment.

In June of 1972, a team consisting of a member of Mr. Krogh's staff, the Chief of the General Government Division of OMB and the Assistant Chief (Intelligence Community) of the International Division visited France, Germany, Turkey and Italy. Ambassadors to France and Italy and the Acting Chief of Mission in Turkey were interviewed. Their narcotics control plans were gone over with the narcotics control officer. Problems were discussed with CIA and BNDD personnel at all stations. The French control effort was discussed with the head of the French narcotics squad and his efforts, together with those of French Customs, against the laboratories of Marseilles were reviewed. The team talked with U.S. Customs personnel in Paris and Munich. The head of the Army's narcotics effort in Munich was consulted as well as the science attache in Paris who had been involved in assisting the French in their laboratory investigations.

The Chiefs of Mission were unanimous in opposing the presence of another U.S. agency in the intelligence and investigatory area. They cited the additional problems of coordination of the narcotics efforts which was already most time consuming. Increased difficulties with host countries were also raised. The Chiefs of Mission also said that what was really needed was a more rational structuring of the nation's narcotics efforts, and an effective narcotics intelligence system. They viewed the CIA involvement (as did CIA) to be transitory.

As an immediate outgrowth of the trip, the Office of National Narcotics Intelligence was established, designed to receive intelligence reports from all sources abroad. It was to analyze them and distribute pertinent information to enforcement agencies in this country. The function was to be analysis and dissemination, not operations. Working with the State Department, an agreement was reached concerning the role to be performed by the Customs personnel posted abroad. The agreement incorporated an understanding of their relations with Ambassadors as well as their relations with the rest of the narcotics team.

It was recognized, however, that the basic problem with which the executive branch was faced was that the narcotics effort of the country was badly fractionated; that two principal agencies, Customs and BNDD, had essentially the same mission; that various administrative devices to coordinate their efforts were crutches at best; that ODALE was beginning to lose the support of its "cooperating" members; and that the first few months of ONNI were not too promising.

Early in 1973, the President, disturbed by continued reports of confusion and conflict in the narcotics effort, appointed a committee of his advisers to review the situation and to recommend how the effort might better be organized. The President designated the Director of OMB as Chairman. Other members were the Attorney General, the Secretary of the Treasury, the Director of the Domestic Council and Mr. Ehrlichman. The members agreed to appoint a working group to review and present alternatives to the principals. The Chief of the General Government Division of OMB was designated by the Director of OMB as his representative and as Chairman of the working group. Other members were Ed Morgan, Assistant Secretary of the Treasury for Enforcement; Donald Santarelli, Justice Department; and Geoffrey Sheppard, Domestic Council staff.

The working group considered several alternatives, the principal ones being: Do nothing; transfer all responsibility for drug enforcement and investigation to the FBI; transfer the overseas functions of BNDD to Customs and restrict BNDD to domestic operations after narcotics had entered the country; and consolidate all drug investigation and enforcement in a new agency in Justice, while increasing Customs' capability at ports of entry by transferring INS inspectors to Customs.

The first alternative was not deemed practical nor responsive to the situation. The second alternative, while presented to the principals, found little favor in view of the objections by the FBI. These objections were that the FBI already had a very large number of laws to enforce and that the investigative techniques necessary to narcotics operations were not compatible with those used by the Bureau.

The third alternative recognized the essentiality of providing intelligence on overseas activities to Customs so that Customs could be more effective in seizing contraband at the border. It would also have provided for a certain amount of domestic operations by Customs within the continental U.S. as it conveyed selected shipments to the primary importer. At that time, or shortly thereafter, the case would be turned over to BNDD. This generally was favored by the Treasury representative and the Secretary.

The fourth alternative, which was finally adopted by the President and formulated as Reorganization Plan 2, was considered to have as its primary advantages:

A major overseas effort to interdict shipments before they reached U.S. shores by working with the police of countries of origin or transit. It was recognized that, the further the shipment was from its origin, the more difficult it was to interdict. Moreover, after entering commerce in the U.S., the task became even more difficult.

The plan contemplated an unbroken agency responsibility for investigation of a drug case from point of origin to point of distribution in the U.S. At ports of entry, a drug agent would take over the investigative responsibilities then carried out by Customs agents. The Customs inspector, acting on information from the drug agency or through his own inspection, would continue to perform the search and seizure function. However, decisions on convoy arrests and subsequent follow-through would be a drug-agency decision.

The consolidation in Customs of the immigration function at ports of entry was designed to strengthen the Customs inspection activity thereby making possible a more intensive screening of persons and contraband entering the U.S. It would also eliminate the dual system that places the admission of persons into the U.S. under divided authority.

By making a single agency responsible for control of all aspects of narcotics and dangerous drugs, flexibility would be gained allowing an enforcement continuity between heroin, cocaine and other natural narcotics, which are imports, and domestically produced dangerous drugs. We could expect that both of these kinds of drugs would be handled by the same criminal element, depending on market demand and what might evolve as a drug of choice.

From an organizational point of view the plan placed in the Justice Department a major law enforcement function compatible with the Department's

mission, whereas the proposal to make Treasury and Customs the primary locus for enforcement of narcotics laws was at variance with the primary function of Customs as the assessor and collector of import duties. Furthermore, Treasury, the parent agency, is concerned with financial matters—banking, currency, money, supply, tax collection, debt financing, etc. Many of these functions properly involve criminal investigations, but they are pursuant to the major tax or revenue mission of the department. There are now two minor exceptions to this principle of organization—firearms control and the protection of the President and certain other persons.

It was further contemplated by the Attorney General that he would establish a litigative division to supervise the prosecution of drug cases and that the President would appoint an Assistant Attorney General in charge of such division.

As the record shows, opposition by the INS inspectors union and its parent organization caused that portion of the plan strengthening Customs by Transfer of the INS group to be dropped. Moreover, the drug litigative division was never created in Justice.

In reviewing the above recollections of the genesis of the plan, the situation it was designed to correct, and the results that could logically have been expected, I still believe that the plan as presented to the Congress was sound and the most optimum of the organic structures that could have been adopted to deal with this complex enforcement problem. If results have not lived up to expectations, I do not believe it is because the plan is faulty or that some other organizational arrangement is called for. Problems of management, techniques of operations and targets of enforcement are all factors involved.

Nor should a drug strategy rely entirely on enforcement to solve the problem. Enforcement can only deal with supply. The demand side of the equation is of equal importance and the development of an overall plan relating the nation's efforts on both the supply and demand sides of the problem is essential to an intelligent allocation of resources and an effective attack on the drug problem.

MARK ALGER—BACKGROUND INFORMATION

Mark Alger retired in June 1972 after 30 years as a career civil servant in the Bureau of the Budget and OMB. This period of service was interrupted by 16 months duty as a Supply Corps officer in the Navy during World War II. He was appointed Chief of the General Government Division in the Bureau in August 1970 with responsibility for supervising the examining staff concerned with budget and program for, among other agencies, the Treasury and Justice Departments. Prior to his assignment to the General Government Division, he was Deputy Chief of the Human Resources Division and had dealt with those programs since 1950. Other positions in the Bureau of the Budget involved Government organization and the legislative clearance process. He was graduated from the University of Michigan in 1934 and was on the staff of the Michigan Municipal League from that time until he came to the Bureau of the Budget in 1948.

Since retirement, Mr. Alger has joined a consulting firm in Arlington, Virginia, as a principal associate.

The statement submitted pertaining to Reorganization Plan 2 has been prepared without reference to notes or files as no papers pertaining to the development of the plan were taken upon retirement.

Senator NUNN. Thank you, Mr. Ash. Taking up with that last statement where you say so long as Customs is encouraged to hold on another day, the longer we will see inadequacy in drug abuse enforcement. Are you saying Customs has been encouraged to agitate for their presence in narcotic enforcement in spite of what Reorganization Plan No. 2 says?

Mr. ASH. The observations I have made over the years, I referred to them in my prepared statement, were that not each and every department approached the problem with objectivity. There were, and I suppose not unexpectedly, subjective interests of all the departments involved. I had my own observations, found them also to come

out of the customs department, the Bureau of Customs, but again, this was a number of years ago.

The usual succession of events was that the problem was resolved, resolved tentatively, and then something out of left field, generally seemingly initiated by Customs, would reopen it again. But I understand that last December an agreement was reached, very detailed, and I think a very effective agreement, between DEA and Customs that specifies to the satisfaction of both the functions that each will have in this very complicated matter of drug enforcement. I would hope that that agreement might itself be the answer to the matters that I raise, letting us put to rest the continuing dispute.

I didn't know when I prepared my statement there even had been that agreement. Now that I have read it and have seen how extensively it deals with the kinds of problems I faced earlier, I think I should say, let us rest on that agreement and see if we haven't largely, and maybe totally, solved the problem.

Senator NUNN. Is that agreement between the Attorney General and the Secretary of the Treasury?

Mr. ASH. It is signed by DEA and the Bureau of Customs, but I would presume that it effectively represents the views and the positions of the Attorney General and the Secretary of the Treasury and, therefore, binds them. It may turn out that we can all stand here and say the low point is now behind us following the signing of that agreement.

Senator NUNN. I know that you are looked on by many, and your background reflects the tremendous capacity you have for management decisions, organizational structure, and so forth.

Assuming that the top people in DEA and the top people in Customs, the Attorney General and the Secretary of the Treasury are sincere, how do you have that kind of agreement implemented down at the field level? How is it implemented at the working level, the border, in the intelligence apparatus with thousands and thousands of agents that have had a degree of competition and in some cases animosities?

How do you translate that high-level management decision down to the operational level?

Mr. ASH. Obviously, agreements don't enforce themselves or cause their provisions to be followed just because they have been written. I think that the way to cause any agreement reached at a high level to be reflected in the actual conduct at a lower level is to build personal penalty and reward systems around such agreements.

In fact, in the agreement, there is the explicit statement that as field personnel carry out their daily work they will be judged and rewarded consistent with their ability to reflect the spirit and the letter of the agreement.

The penalty and reward systems in any organization have to be the mechanism for gaining response, gaining conformity to stated policy. I worry sometimes that undue attention to seizure-and-arrest statistics may provide the wrong penalty-reward system because it has encouraged some of the very kind of competition that we have seen.

If the heads of both agencies—and for that matter, those above them who at every opportunity should support that agreement—deal with their own personnel, rewarding those who conform well to the spirit and intent of that agreement, penalizing by one means or other those who don't, that is the only way I know to effect response in a widespread organization such as both of these are.

Senator NUNN. Backing up to the so-called Ash Council, I believe that you said that you chose to approach the consumer side of the problem rather than waging a jurisdictional dispute between BNDD and Customs. You tried to avoid that if possible. Would you give us a little bit of the background there and tell us when you decided and why you decided you had to face that inevitable jurisdictional bureaucratic problem?

Mr. ASH. When the President formed his Advisory Council for the Executive Organization, the six members of the council met and laid out its modus operandi. Basically, we observed we had a limited amount of time. In fact, we wanted to limit our time, yet we wanted to be effective. So we began by identifying and concentrating on those issues where in limited time and with limited resources we could truly make a difference.

We analyzed a number of possible areas to employ our energies. We listed those where we thought we could truly make a difference in the time and with the resources that we had. The list did not include the matter of drug enforcement. Among other reasons, we soon saw that it was a hornet's nest, that we could expend all of our energies and come out with not only nothing very useful, but would in turn take our resources away from other matters that we thought were even more important.

And there were and are still other matters even more important than that.

So that is why we put it aside. We did work, though, on the matter of organized crime. It was a very big issue at that time, not only a national policy one, but an issue of organization.

As we got further and further into the organized crime problem, we had a request to deal with drug enforcement. Then, as we began to examine the drug problem, we saw that proper definition of the problem might help determine the proper solution.

We observed that maybe the problem hadn't been defined correctly, that some were defining it largely in terms of enforcement when in fact we should have been defining it more broadly. There were discussions of putting everything concerning drugs in the Department of Justice because it is fundamentally an enforcement issue. But, as we saw it, it wasn't fundamentally an enforcement issue, although enforcement was important.

Research leading to better understanding of the causes of drug abuse, and education of the population of the country, and treatment, were equally important and maybe in some ways more important.

So as we began to see how we could best apply our efforts we decided that we could make a significant contribution in the area of research, education, and treatment.

We identified enforcement as important, but a subject that we should defer as it would use up the council's efforts, and suggested

that OMB take up that one. I didn't know at the time I would be back later at OMB to deal with it. But as our Advisory Council dealt with it, we recommended that OMB take up the matter of enforcement. The council would make its contribution to the other side of the problem feeling that it hadn't received all of the attention it might because enforcement had loomed as the key issue in drug abuse.

Senator NUNN. Are you insinuating that, if you had known you were going to later on have to deal with that problem with OMB, that that fact might have affected your recommendations in the Ash Council?

Mr. ASH. It might have. I am not sure in what direction, but on the other hand, it wasn't a surprise to find it still there when I got to OMB.

Senator NUNN. At one time, did you not consider—I don't know whether this was when you were head of the Ash Council or later when you headed OMB—did you not consider giving all narcotics enforcement to Customs? Was that one of your options?

Mr. ASH. Yes, sir. We considered a number of options. I would like to think that we did a very objective analytical job, not biased toward any one of the departments, biased instead toward an effective solution of the problem. We considered every option that was identified by the proponents of the different departmental interests.

We didn't have our minds made up to favor this or that solution. We considered every solution offered. One of those was that the function of enforcement might be consolidated within the Bureau of Customs. We thought that was not the way to go. We viewed the definition of the problem as much more than seizure and arrest, much more than merely the interdiction of drugs at the border or inland. Drug traffic was a major criminal activity in the country with many ties to other crime. Means for dealing with it required more than the ones of the Bureau of Customs. We looked on customs as primarily a revenue-raising function, although in the process of raising revenue, it certainly has the job of enforcing illegal transportation into this country of various products, including drugs.

We defined the drug enforcement problem as broader than interdiction, broader than seizure, broader than arrest. These were merely elements of a very complex kind of crime. We felt that it would better fit the statutory mission and the capabilities of the Justice Department.

Senator NUNN. Did you concern yourself with the argument against the merger that those who prosecute should not also investigate?

Mr. ASH. We did. As you may remember, Mr. Chairman, in my earlier comments, when our Advisory Committee on Executive Organization first came face to face with this issue, we observed that the matter you mention was worthy of very careful consideration. One of our members in particular, who later became the Secretary of the Treasury, John Connally, was very interested in that aspect of the problem.

And when we did report to the President, we did so in a way that would flag his attention to that issue. We didn't propose a solution. We merely wanted to identify that as a problem and to make sure that those in Government would not inadvertently overlook the kind of questions that should be asked as they might deal with Justice

Department organization matters—not that those function's shouldn't be in the same department, but that if they were, we should be very mindful of the implications of doing so.

Senator NUNN. There are a good many people in Customs that, in the past, and even today feel that Customs had a very good intelligence capability overseas prior to Reorganization Plan No. 2 and that they had lost that capability under Reorganization Plan No. 2 to DEA. They feel that that has greatly impeded Customs' narcotics enforcement at the borders because of the lack of coordination.

The first question that I would have on that is do you believe, and did you believe at the time you made this examination, that Customs did possess a capable overseas intelligence apparatus?

Mr. ASH. We looked into that extensively. Members of my own staff and others actually went to some of those overseas locations to learn at firsthand the activities of both the Customs and Justice Department in intelligence. Our conclusions were that Customs had a very good foreign intelligence activity, but one largely applied to the nondrug activities.

They did have a small drug intelligence activity abroad. My recollection of the numbers of people were something between 12 and 20, quite separate from their other Customs activities. Customs drug intelligence activities were not ineffective, but were small and disconnected from the rest of Customs. They were operating so separately that they needn't be in Customs to be effective. They were a group of very few people that were effective in their own right, not particularly because they were a part of the Customs Bureau.

On the other hand, Justice had its own foreign intelligence activities with greater number of people and also effective, but the two separate activities were crisscrossing each other's trail.

One classical story, I am not sure whether it was literal or figurative, was that when the last bar in Marseilles closed early one morning, there were only two people remaining on the barstools, one from Customs and one from the Justice Department.

There was not criticism of their effectiveness. It was merely that on the one hand, the Customs people were few in number and not related particularly strongly to the rest of Customs and therefore didn't need that connection to be successful. On the other hand BNDD of Justice also had a reasonably effective foreign intelligence operation. But with two competing organizations and particularly if those two would be growing as was intended and as later took place, considerable effectiveness would be lost.

We also talked to foreign government personnel. An argument had been raised by Customs that the intergovernmental connections which Customs people had were such that they couldn't be equalled by Justice Department personnel.

I understood their argument, and we had our own discussions with foreign government personnel, we did not conclude that that was a very strong argument, certainly not one to weigh heavily, but recognized it, weighed it to the extent that it was a valid argument.

I think I can say that as we looked into the whole matter we had no predispositions ourselves. We considered those kinds of issues as objectively as we and our staff could and did acknowledge some of the

various points that Customs made. But the existence of the point doesn't necessarily give it sufficient weight to lead to the conclusions an agency might desire, in this case that Customs have the sole responsibility for overseas intelligence.

Senator NUNN. You would agree with the statement that it is absolutely necessary for Customs people on the border to have good intelligence if they are going to adequately deal with the drug situation?

Mr. ASH. Absolutely. They needed good intelligence. My understanding was that after Reorganization Plan No. 2, there were some management failures in DEA. Customs was not provided the kind of intelligence that it should have, that the country should have, but that considerable progress has been made since to the point that the level of intelligence provided Customs people at the border today through DEA exceeds that which they got from their own foreign intelligence operation earlier.

I am sure there is more to be done. I think one should also take into account that while that intelligence information is very valuable, still a substantial portion, maybe 95 percent or so of Customs seizures are still cold; that is, without any intelligence information.

Senator NUNN. Does that mean that they are not getting that information, the kind of information they should be getting?

Mr. ASH. That particular statistic does not mean that they are not getting the information they should, but it doesn't mean that they are. It still means they should get all that is possible. There should be a very good system for doing so. It is my understanding there are now Customs people in the DEA intelligence operation to help make sure right from the inside that Customs agents have available to them all of the intelligence information it is possible to get.

Senator NUNN. Is that a recent development? Has that taken place since the agreement?

Mr. ASH. That is what I have been told has taken place since I last knew at firsthand what was going on. My guess is that there is always work to be done in this area, but that at least all parties involved are working hard, have been making substantial improvement and that it certainly is far better than it was either at the beginning of DEA or for that matter, even before DEA had these responsibilities at all.

Senator NUNN. So we can get this time frame in the proper perspective, when was the Ash council formed?

Mr. ASH. It was formed in 1969, took up this subject and made its recommendations probably in early 1971.

Senator NUNN. When were you Director of OMB?

Mr. ASH. 1973.

Senator NUNN. When did you leave that position?

Mr. ASH. 1975.

Senator NUNN. Approximately what time during 1975?

Mr. ASH. February, in each case.

Senator NUNN. February of 1975. So you have been absent from OMB about 1½ years?

Mr. ASH. One-and-a-half years. Yes, sir.

Senator NUNN. Now you are in private industry?

Mr. ASH. That is correct.

Senator NUNN. What is your present position?

Mr. ASH. I guess I should say I am not in private industry. I am in private life having no corporate position except a member of a number of corporate boards of directors.

Senator NUNN. No formal connection with Government one way or the other?

Mr. ASH. No formal connection with Government at all.

Senator NUNN. Back when Reorganization Plan No. 2 was originally designed, it called for Immigration and Naturalization agents, known as INS, to be transferred to Customs as, I suppose, a way of offsetting the loss of agents. Of course, there was a tremendous amount of political activity on that, a lot of intense lobbying by INS employees. That never came about.

Do you believe if that had come about, it would have affected in any way, positively or negatively, the relationship between DEA and Customs?

Mr. ASH. I am not sure it would have affected the relationship one way or the other, but I still think it would have made more effective the operations of these two agencies at the border. It is true there was a lot of political activity and as a result, as you know, Reorganization Plan No. 2 was in effect modified so as not to move approximately 900 people from Justice to Treasury.

I still think it was a good idea to have done so; certainly it was not the main thrust of our recommendations, but I can't really speculate how it would have affected the relationships. I am not sure that was the main problem or would have been the main problem anyway. Effectiveness is what we worried about. We made our recommendations so as to have a more effective operation at the border, rather than just to compensate one department for a loss of personnel, although that was brought up in discussions at the time of that political debate.

Senator NUNN. Why is it we have, on the one hand a rather intensive and continuous battle between DEA—and its predecessor, BNDD—and Customs on the one hand, to keep drug enforcement jobs, and on the other hand, we have the FBI who doesn't want to touch it with a 10-foot pole?

What is the reason there is such a tremendous amount of in-fighting to hold on to drug enforcement jobs between certain agencies and then, on the other hand, the FBI doesn't want any part of it?

Mr. ASH. I would generally join with what I am sure has been publicly said over and over again about the FBI's reluctance to take up the subject. In earlier years had the FBI considered its mission to deal with drug abuse we might not be arguing about the subject today. But as our investigations determine, and I think it is pretty generally publicly known, the FBI was reluctant to get into an area where corruption was maybe a little more a temptation than it was in their other activities and where they might harm the reputation of the FBI. As I understand it, the FBI decided not to be involved in drug problems, leaving it to somebody else. That left a vacuum in which Customs began to enter.

Customs should be applauded for having stepped into an area that the FBI chose not to get into even though it may not have been the most rational place to do the work.

From the points of view of the two departments, BNDD and now DEA, and Customs, I guess it is easy to see how this dispute first arose and still carries on to some degree. Drugs are an important matter. Government organizations like to work on matters that are important and receive public attention, which provide opportunities for growth and promotions and interesting and exciting work.

I can think of a lot of activities of Government that are less exciting and would be less susceptible to this kind of jurisdictional problem.

So it is merely the human propensity of people to want to work where the action is, where the public attention is. Thus they respond as humans would and end up with the kind of problems that we have.

Senator NUNN. What about the Internal Revenue Service's role in this? At one time, they were rather active in prosecuting cases on tax evaders involved in narcotics, where there wasn't sufficient evidence to prosecute them on narcotics charges. Do you know of any effort by OMB or anyone in the Administration to in any way deter or prevent IRS from continuing that kind of activity?

I have the impression, even though we haven't gotten any detailed testimony on this subject, that there was a rather vigorous effort at one point, and then that effort by IRS was almost terminated. Do you know anything about that?

Mr. ASH. I don't know of any current effort one way or the other. I know that when our Advisory Council, in 1969, identified the area of organized crime as one needing improved Government processes we observed that there could be great value in bringing together the various governmental agencies that had to do with such crime. We recommended, and there came about, a strong interplay between IRS and the other efforts of Government dealing with organized crime.

I am sure it was very helpful. Clearly those engaged in drug traffic are a type of criminal which generally doesn't cross the border carrying illicit drugs. They stay way behind the scenes.

They are best reached through various conspiracy-type approaches and sometimes those conspiracies involve the evasion of tax liability. I would think that there can be a role for INS to play. We really want to get to the central core of drug traffic criminals.

Senator NUNN. You don't know of any, let us say, post-Watergate order by the President—either President Nixon or President Ford, or by OMB—to limit IRS in its tax evasion prosecution in the narcotic area?

Mr. ASH. I know of none. So long as I was in OMB, there was no such directive. I don't know of any since. I don't know what the current status is.

Senator NUNN. You don't know of any reason why IRS should not pursue this area vigorously, do you?

Mr. ASH. I don't know of any reason. I think it could make a contribution. I realize there are always complications when you try to interconnect IRS and its revenue raising, but at the same time, law enforcement function with others. But I would think in good hands substantial benefits can be gained and the potential problems avoided.

Senator NUNN. Do you believe, at this time, there should be any effort to get the FBI more involved in narcotics enforcement?

Mr. ASH. I think there is a role for the FBI. At one time, one of the options that we considered was whether the drug enforcement activities should in fact be placed in FBI, whether they wanted to undertake them or not.

I feel that they should not be a prime responsibility of the FBI for a number of reasons. There are different techniques employed, different kinds of personnel. I am personally against moving toward a national police force type of operation. But while not placing the primary responsibility in the FBI, I would nevertheless think that having it in DEA alongside the FBI within the Justice Department should allow for better interconnection between the two, especially as they deal with crime at its highest and most organized level which crisscrosses so many of our activities of Government.

Senator NUNN. The staff informs me that, in their discussions with you, you had some very interesting thoughts about the problems in the Department of Justice in general. Could you share those with us?

Mr. ASH. When I had occasion to consider issues of management in Government, one conclusion I drew was that the Department of Justice had not adopted as good managerial techniques as had some other departments of the government.

I suppose I may be drawing generalizations when they are not fully justified, but one is that the kinds of activities in which lawyers engage generally are not ones requiring management, that the organizational culture that surrounds the lawyer in his work generally doesn't fit a management approach to accomplishing any task.

Lawyers and broad scale management don't always go hand in hand.

Senator NUNN. You are saying, in general, lawyers are not necessarily always the best managers, to put it mildly?

Mr. ASH. That is generally what I am saying.

Senator NUNN. You don't say they are usually the worst managers?

Mr. ASH. Lawyers go about their work in a different way. That is my view. They go about their work building case upon case, and fact upon fact, and gradually adduce a body of policy out of an accumulation of cases of like kind. To exagggregate, managers—which I am not saying is better—stand up and declares policy and then measure performance against that policy.

Lawyers like to carefully develop their policies by working up from the facts and managers enunciate policy and then operate penalty-reward systems that bring people into conformity with that policy. So I guess I am saying there are two approaches to doing the world's work.

The lawyer's approach is no less effective for what he is trying to do, but is not necessarily the same as a manager's approach and there is a role for each; but when you try to bring them together as in the Department of Justice, it is a rare lawyer that is at the same time an able manager and probably it is a rare manager that is at the same time an able lawyer.

Senator NUNN. What can be done about that problem in the Justice Department?

Mr. ASH. Finding those rare lawyers who are at the same time excellent managers.

Senator NUNN. Would you care to comment whether we have one now?

Mr. ASH. I don't really know. I have had no occasion to know anything that is going on in the Justice Department.

Senator NUNN. Do you have any names to suggest?

Mr. ASH. I think the President is a lawyer and an increasingly good manager. So there is one name that I can put before you.

Senator NUNN. By increasing good, do you mean he wasn't very good to start with?

Mr. ASH. He had to learn and he learned. He has done a good job of learning. He knew he had to learn. I am not here to make political speeches at this particular time in the year. But I have seen a lot of managers that wouldn't make good lawyers. That might be me, actually.

Senator NUNN. I assume you are not a lawyer.

Mr. ASH. I am not a lawyer.

Senator NUNN. If you were the head of the DEA, getting back to the particular problem of narcotics, what steps, what management steps would you take? I think you made it very plain that you think one of the main problems in DEA is and has been the lack of good management. What management step would you take?

Mr. ASH. I think I attempted to make it clear that when I last saw DEA close up, I saw it as having some management problems.

Senator NUNN. There is a gap here.

Mr. ASH. My understanding is that much has been done to deal with those problems and that which has been done is what I would have done had I been there. Setting goals, developing strategies to meet those goals, applying resources to carry out those strategies is what I saw lacking and what I think they have since concentrated on.

A white paper on drug abuse, now 10 months old, was very revealing to me. I hadn't read it until just this week, even though it has been out almost 10 months. It describes what I think are some very good actions taken within DEA to overcome the kinds of problems that I observed when I was looking at it.

Senator NUNN. Senator Percy has another meeting he is attending this morning. I am going to permit his counsel to ask a couple of questions for Senator Percy.

Mr. SLOAN. Mr. Ash, in your prepared statement, you indicated that the Ash council had some reservations about putting certain investigative and prosecutorial drug law enforcement functions in one agency. Could you elaborate on that? Why?

Mr. ASH. We observed that problem at its more general level, rather than just about drugs. We observed that one should be very cautious when those two activities are brought under the same head because it could lead to an undue pressure unjustifiably to engage in prosecution merely to justify the investigative functions that the same department may have undertaken.

We may, if we bring those together, create unjustified prosecution and that would not be consistent with the democratic principles of this country. It is true that those types of functions do go on side by side in the Justice Department. I would hope that we continue to give attention to the potential problem.

I know of no specific problem. I just see the potential for a problem and would hope that within the Justice Department, any place where these two kinds of activities go on, they are separated to the degree that

investigation itself doesn't generate prosecution. Investigation generates information. It may generate a basis for prosecution, but shouldn't of itself generate prosecution just because an investigation has been undertaken.

So I don't know of any specific problem, but I just see it as a matter of principle. It is one that those in Government should always give attention to because it has the seeds of problems and, therefore, is worthy of watching.

Mr. SLOAN. Mr. Ash, what role did OMB and did you personally play in the development and structuring of ODALE?

Mr. ASH. Zero, at least to the extent that I had anything to do with creating ODALE. It was done when I was not at OMB, therefore, I can't comment on what OMB did. I had no role in creating it, didn't even know it was created until sometime after it happened.

Mr. SLOAN. Do you have any opinion as to its effectiveness?

Mr. ASH. We concluded that ODALE among other activities, should be brought together into the DEA and had no reason to stand alone; but that is the extent of the opinion that I personally have of ODALE.

Mr. SLOAN. I would like to follow up on a few points that Senator Percy asked about yesterday. At the hearing that was held yesterday, Messrs. Krogh and Ehrlichman expressed concern about the tendency of Federal drug law enforcement programs to require direct presidential involvement if they were to be effective.

Was Reorganization Plan No. 2 designed solely to end the need for that involvement?

Mr. ASH. Let me answer it in two ways. First, so long as drug abuse is as big a problem as it is, I think the President should be interested, concerned, and should participate in all policy actions taken to deal with it. So I wouldn't want to suggest that an objective would be to relieve the President of such involvement and concern. It is important enough nationally that he should be involved.

Yet, at the same time, when two dependents have conflicting responsibilities or in some way get into conflict at a detailed level that can only be resolved by the President, because he is the lowest common denominator organizationally to those two departments, it can unduly burden the President's schedule with minor operating details. He instead should concern himself about policy.

So a part of Reorganization Plan No. 2's objectives were to place the operating problems that should be resolved out of the President's office into an agency where they can be resolved. He would be assured of their attention, while continuing his concern for policy.

As a matter of general organizational principle, it can always be said that any function brought into the President's office and using the President's time probably would be improved. But the President has to deal with so many functions that good organizational principle is to place responsibilities for every issue as far down in the organization as it can be.

Then he can reach into any one issue as he sees the need and use his time on that, rather than have his time preempted when some low-level part of the organization doesn't seem to be able to resolve a problem with some other low-level part of the organization.

Mr. SLOAN. I have one final question that relates to some of the testimony given yesterday and also the testimony of former Assistant Secretary of the Treasury Rossides which will be given later today.

In his prepared testimony, Mr. Rossides argues that, "OMB's reorganization plan was simplistic" in that it "shut Customs out of all antidrug smuggling, investigative, and intelligence gathering functions."

In your statement, you argue that it is now time to state unequivocally that the organizational arrangement is decided and that we should get on with managing DEA effectively.

Are you confident that Reorganization Plan No. 2, even though it was never fully implemented, established the optimal organizational structure for ensuring truly effective Federal drug law enforcement?

Mr. ASH. Yes.

Mr. SLOAN. Thank you.

Senator NUNN. Mr. Feldman has a couple of things to put in the record.

Mr. FELDMAN. Mr. Chairman, I would like to place in the record a statement of Mark Alger who retired from the Bureau of the Budget and the Office of Management and Budget. He worked under Mr. Ash, and gives some supporting data for his testimony. I think Mr. Ash has had a chance to review it. If not, you can review it in detail. If you want to comment further on this, we will keep the record open; but I think it is valuable.

Mr. ASH. I have had a chance to read it this morning and I find it a very useful document to be put in the record.

Mr. FELDMAN. May we have that printed right after Mr. Ash's testimony?

Senator NUNN. Without objection.

[Mark Alger's statement appears on p. 812.]

Mr. FELDMAN. Second: I would like to place in the record, as an exhibit, the white paper of the Domestic Council that Mr. Ash has referred to. If that is your only copy, I have a copy back in the office.

Let's make it an exhibit. The title is "White Paper on Drug Abuse." It is by the Domestic Council, Drug Abuse Task Force, and has some very important information.

Senator NUNN. Without objection, we will put a copy of that in the record. If you have one, I think Mr. Ash would probably like to keep his.

[The document referred to was marked "Exhibit No. 58" for reference and may be found in the files of the subcommittee.]

Mr. FELDMAN. This was initiated after we commenced our investigation in this area. I think it lends support to many of the issues we have raised.

Third; in our interim report, which you released 2 weeks ago, we refer to the General Accounting Office report of December 18, 1975, which I would like to place in the record as exhibit No. 2 and make that report public. It has been excerpted in our report, Mr. Chairman.

Senator NUNN. Without objection.

[The document referred to was marked "Exhibit No. 59" for reference and will be found in the appendix.]

Mr. FELDMAN. Finally, Mr. Ash, I would like to explore the matter of the national police force, which you raised and which other witnesses have raised. We often hear the phrase "national police force."

Was one concern in discussing the reorganization the fact that the FBI gets into crimes which are of a national nature. In fact we have seen in recent cases where they drop in and out of cases, failing to get that Federal handle—whereas DEA can go across State lines and actually work on a local level with local officials. DEA can have a purely intra-state crime to examine. If the FBI had this kind of authority, and taking the assumption that many other crimes are drug-related, would we be truly creating a national police force? Is that the argument?

Mr. ASH. Our concern at that time wasn't as specific as you have defined it; but what you have described is consistent with what our concerns were.

Our concerns were that if we were to adopt, as a matter of general policy that over the years we should gradually pull every law enforcement activity out of every department and place it in the Justice Department, we would be on a policy course that would get us to an undesirable end; and if we were to do that with any one department now, we would be contributing to a trend that we thought was bad.

We did not think in terms of the specifics you have brought out, of intra-versus interstate activities, but merely the general idea that we should avoid adopting as organizational policy a goal of bringing into one location, from all of Government, all of Federal Government, each and every enforcement function.

Such a centralized police function wouldn't be consistent with how this country should be run; but the point you bring up is certainly not inconsistent with that more general view.

Mr. FELDMAN. The thing that leaped out at me, as I have studied this, is the fact that so many crimes are drug-related. This could give a jurisdictional handle to any force which is given the responsibility in this area.

Mr. ASH. It certainly could. For that matter, the fact that so much of crime, and particularly important crime, is drug-related suggested to us that a location within the Justice Department rather than Customs, even though not a part of FBI, is almost essential because the Justice Department has a mission primarily of dealing with crime, whereas Customs deals with it as an ancillary function to its basic revenue raising function.

Mr. FELDMAN. My last question is: Did you examine some of the potential problems in the use of Justice Department personnel in overseas intelligence gathering? As I understand it, there has always been a restriction on the use of FBI agents overseas, although I know they are attached to our embassies. Was this a question that was examined and how did your recommendation flow in light of the restriction on the use of FBI agents in embassies?

Mr. ASH. In our examination, we had members of our own staff talk to U.S. Government personnel abroad, and talk to foreign government personnel to gain their views as to the acceptability of personnel from different departments getting intelligence in foreign countries.

That matter was raised, raised by Customs especially, as one of the factors that they felt justified continuation of the Customs intelligence activities. We saw it, took note of it, measured it, and found that it didn't measure anywhere nearly as heavy a problem as Customs presented it.

Sure, Customs did have and probably does have a lot of good relationships in foreign countries; but we didn't find that that was because those countries necessarily resented or consciously wouldn't work with representatives of the other departments and particularly of the BNDD, now DEA.

So we saw no fundamental limitations on effective DEA foreign intelligence gathering activities; certainly, nowhere near the problems that Customs hoped we would have seen when we talked to foreign government personnel.

Mr. FELDMAN. One last point, Mr. Chairman.

The FBI has never had to fight for budget or personnel. They have been given what they wanted, perhaps because of J. Edgar Hoover, perhaps because of the status or image of the FBI. Customs and DEA on the other hand, have always tried to fight for more spots and more money. Is DEA's and Customs' enthusiasm for that which the FBI abhors a money kind of problem or a personnel or budget or slot problem?

Mr. ASH. I don't think it is that much of a problem. Certainly, had the FBI wanted to go into the drug business, they would have had no trouble getting whatever budget that they wanted. For the very reasons that you just described, they could get whatever they wanted.

On the other hand, DEA and Customs have not done badly in getting resources for drug enforcement either, because it has been a major problem, and I think I could say resources have not been the limiting factor to carrying out their work.

There was a time in the early stages of DEA when they did want more money than they got. Our answer limiting their resources was not that they didn't deserve those resources, but back to the point I mentioned earlier, they were not managing the ones they had well enough. We told them, let's concentrate on that first, then we will talk about additional resources.

Senator NUNN. Mr. Ash, thank you, very much, for appearing. We appreciate your cooperation with the staff prior to your appearance, the interview and the time you have taken to be with us here this morning. You have been very helpful.

Mr. ASH. Thank you, Mr. Chairman.

Senator NUNN. Our next witness is Mr. Eugene Rossides.

Mr. Rossides served as Assistant Secretary of the Treasury for Enforcement, Tariff and Trade Affairs, and Operations from 1969 to 1973.

While at Treasury, Mr. Rossides' responsibilities included the direct supervision of Customs, the Secret Service, and Alcohol, Tobacco, and Firearms, among others.

Mr. Rossides also served as the U.S. Representative to Interpol from 1969 to 1973.

Prior to becoming Assistant Secretary of the Treasury, Mr. Rossides had served as assistant attorney general for the State of New York

assigned to prosecute stock frauds—1956-58—and as assistant to Treasury Under Secretary Fred C. Scribner, Jr.

Mr. Rossides, we have as a matter of course, an oath to take. Will you please raise your right hand.

Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ROSSIDES. I do, Mr. Chairman.

TESTIMONY OF EUGENE T. ROSSIDES, FORMER ASSISTANT SECRETARY OF THE TREASURY FOR ENFORCEMENT, TARIFF AND TRADE AFFAIRS, AND OPERATIONS

Senator NUNN. I have been through your well documented and well prepared statement. I understand you are going to summarize it for us this morning so we can get into questions. It will be admitted without objection as written as part of our overall record.

[The statement follows:]

STATEMENT OF EUGENE T. ROSSIDES

Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to be here and respond to the Subcommittee's request for my views on Reorganization Plan No. 2 of 1973, which created the Drug Enforcement Administration (DEA), and on how Federal law enforcement against the illicit drug traffic should be organized for maximum results and the most efficient use of our resources and tax dollars.

The Subcommittee issued an interim report on Sunday, July 18, 1976, which I enthusiastically commend. It provides indispensable background information on Federal law enforcement efforts pertaining to drugs, gives the history of Federal organizational efforts, and summarizes previous reports of commissions and studies, as well as the 1975 hearings of this Subcommittee. It is essential reading for an understanding of where we are in our efforts to control illicit drugs and the alternatives facing us now.

The current Federal enforcement efforts regarding drugs are the outgrowth of several reorganizations over the past half century. Until 1965 virtually all Federal drug law enforcement programs were administered by the Department of the Treasury.

Treasury's role in drug law enforcement started in the early days of the Republic through the role of Treasury's collectors of customs in protecting the United States borders against the smuggling and illegal importation of *all* contraband, including opium and its derivatives. The Coast Guard, an outgrowth of the original customs responsibilities of Treasury, assisted the Customs Service in its efforts.

In the 1920's, after the creation of the Internal Revenue Service in the Treasury Department, additional control and regulation of the drug traffic was exercised through Federal tax laws. By an act of Congress of June 14, 1930, the Bureau of Narcotics was created within the Treasury Department and began operations on July 1, 1930. It took over most of the narcotic enforcement duties of the Bureau of Internal Revenue. Its basic charter was grounded in the excise tax laws. The responsibility for controlling the smuggling and illegal importation of drugs remained with the Bureau of Customs.

From 1789 to 1973 Customs was responsible for the prevention of smuggling of drugs into the United States, and from 1930 to 1965 Federal law enforcement against drugs was centered in two Treasury agencies—the Bureau of Customs and the Bureau of Narcotics, with a third agency, the Coast Guard, which at that time was a part of Treasury, providing assistance.

With the explosion of synthetic drugs in the 1960s—depressants, stimulants, and hallucinogenic drugs—the Congress enacted the Drug Abuse Control Amendments of 1965 (Public Law 89-74), and created a new Federal enforcement agency, the Bureau of Drug Abuse Control (BDAC), within the Food & Drug Administration of the Department of Health, Education, and Welfare.

In 1968, Reorganization Plan No. 1 created the Bureau of Narcotics and Dangerous Drugs (BNDD) in the Justice Department by transferring the responsibilities, manpower, and assets of Treasury's Bureau of Narcotics and HEW's BDAC to Justice and amalgamating them into BNDD. Customs' smuggling responsibilities relating to drugs were not changed, although BNDD was asserting primacy in all drug smuggling investigations by Customs.

In 1970, the basis of Federal drug enforcement laws was changed from the taxing power to the commerce power. Again BNDD asserted primacy over Customs smuggling investigations relating to drugs.

Reorganization Plan No. 2 of 1973 created DEA by merging BNDD, Office of Drug Abuse Law Enforcement (ODALE), and Office of National Narcotics Intelligence (ONNI) into it and by taking Treasury's Customs Bureau responsibilities for intelligence-gathering and investigation of drug-related smuggling. All other smuggling investigatory and intelligence-gathering activities of Customs remained in Treasury.

REORGANIZATION PLAN NO. 2 OF 1973, WHICH CREATED THE DEA, WAS A TRAGIC MISTAKE. FEDERAL DRUG ENFORCEMENT AUTHORITY SHOULD BE RESTRICTED TO MAJOR INTERNAL DRUG TRAFFICKER CASES AND THAT AUTHORITY SHOULD BE PUT IN THE FBI OR SOME OTHER AGENCY

Reorganization Plan No. 2 of 1973, which created the DEA, was a tragic mistake and has led directly to failure of Federal drug enforcement. Reorganization Plan No. 2 of 1973 stemmed from basic misconceptions of law enforcement in the drug area and also probably from a desire to put *all* law enforcement investigatory functions in the Department of Justice. The result has been to weaken the whole drug enforcement effort.

DEA should be abolished. Federal drug enforcement authority should be restricted to major internal drug trafficker cases and that authority should be transferred to the FBI or some other agency.

In 1973 I opposed Reorganization Plan No. 2 and worked with Congressman Tom Steed and others to defeat it. I opposed it because:

1. It would weaken drug enforcement by erroneous policies regarding drug enforcement and other activities abroad.

2. It would weaken drug enforcement by badly misconceiving the domestic Federal, state, and local drug enforcement roles and would be inconsistent with concepts of Federalism and revenue sharing.

3. It violated the fundamental American criminal justice concept of separation of the investigating function and the prosecuting function.

4. It would raise the spectre of a national police force by adding yet another investigative arm to the Department of Justice, the law department of the United States, and by the continuation in DEA of the ODALE street-level drug operations.

5. It would remove an important barrier against corruption by eliminating Customs' anti-drug smuggling investigatory and intelligence-gathering activities.

6. DEA would waste the taxpayers' money (now at an annual rate of well over \$125 million) for weaker drug enforcement.

7. It would not, and cannot, as it purports to do, centralize all drug enforcement in one agency. Nor would such centralization be more efficient.

The DEA record of the past three years, and the increasing heroin and drug abuse throughout the nation, confirm and strengthen my conviction that Reorganization Plan No. 2 of 1973 and the creation of DEA was a tragic mistake and must be reversed.

Before setting forth my proposal in full as to how the Federal Government should be organized for the most effective effort against illicit drugs and at the least possible cost, I believe it might be helpful to the Subcommittee to analyze each of the reasons why I believe Reorganization Plan No. 2 of 1973 was a tragic mistake. My proposals are based on this analysis. Activities relating to illicit drugs can be conveniently broken down into two general geographic areas: overseas and domestic.

1. Reorganization Plan No. 2 of 1973 and its creation of DEA has weakened drug enforcement by erroneous policies regarding drug enforcement and other activities abroad

United States interests outside our borders relating to drugs should be three-fold:

a. a priority diplomatic effort on a continuing basis to have other governments: (1) meet their international responsibilities, and (2) commit their own resources to carry them out.

b. a priority effort by the U.S. Customs Service to gather intelligence relating to drug smuggling into the United States.

c. cooperation with foreign enforcement agencies in a mutual exchange of information and in training.

United States interests overseas are not served by U.S. agents working cases overseas.

a. Diplomatic Efforts

(1) Drug enforcement by foreign governments to meet their international responsibilities has become, and rightly so, a foreign policy interest of the United States (and most nations of the world). To be effective, this means making drug enforcement a foreign policy issue of the highest priority and placing on our ambassadors the responsibility to do everything possible to convince those nations from which illicit drugs emanate to meet their international responsibilities. Too often instructions to our embassies are relegated to DEA officials who are assigned overseas for their police expertise. They are not qualified to carry out diplomatic assignments.

The objective is to have those nations control drug production and trafficking within their own borders, not to have them host teams of DEA agents who endeavor to clean up those countries by participating in local investigations, seizures, and arrests, and thus Americanize the total world drug abuse problem. (For DEA to use statistics on foreign seizures which may never have been destined for the U.S. as evidence of accomplishment is obviously deceptive.)

By strenuous diplomatic efforts we should on a priority basis express ourselves as to the importance of foreign governments making drug enforcement a priority item; and, wherever possible, making cultivation of narcotics and other drugs illegal.

(2) The diplomatic effort must encompass the basic policy position that each nation must commit its *own* resources in carrying out its national and international responsibilities. We are looked upon as a soft touch when we continually try to buy cooperation. We are wasting millions of dollars a year in handouts to countries relating to drug enforcement with little or no benefit.

I understand that the AID budget for this area is about \$35 million in this fiscal year. It should be largely eliminated. We should only consider a contribution to the UN Fund for Drug Abuse Control for monitoring country adherence to international treaty obligations and research efforts—not to be passed on by the UN to member nations to pay for operating responsibilities or equipment of those member nations. And our contribution should be tied to an equitable formula.

b. Intelligence-gathering Relating to Drug Smuggling Into the U.S.

The priority effort overseas must be the gathering of tactical intelligence relating to smuggling of drugs into the U.S. (The CIA can easily handle strategic intelligence-gathering relating to drugs.) No one is better equipped to do the job of tactical intelligence gathering than Customs, which has had as its main enforcement responsibility since 1789 the prevention of smuggling of goods and merchandise into the U.S. (including drugs, until Reorganization Plan No. 2 of 1973 stripped Customs of drug smuggling responsibilities).

Customs has the expertise and contact with the shipping and transportation industries and exporters to the U.S. It is not possible for DEA or anyone else to develop the contacts Customs has and to obtain the cooperation of these groups as Customs can because of Customs day-to-day business dealings with them. Neither DEA nor the Justice Department has any leverage with foreign governments whereas Treasury and Customs have a host of commercial, trade, and monetary dealings with foreign nations every day.

In addition and of prime importance, only Customs can get the full cooperation of its sister Customs organizations throughout the world.

While I was Assistant Secretary of the Treasury, I initiated a program of customs-to-customs cooperation regarding anti-drug smuggling efforts. Our first effort was with Mexico. The Mexican Government agreed fully with the idea and a fine program was started. We were then successful in having the Customs Cooperation Council (CCC), headquartered in Brussels, pass a resolution officially calling for a priority effort including automatic exchange of narcotic intelligence.

among its approximately 70 members to suppress drug smuggling. Customs has a unique fraternal and working relationship with other Customs services of the world which it can use to combat the drug traffic, but which no other agency can exploit. Reorganization Plan No. 2 of 1973 has seriously slowed this program because of DEA pushing the concept of a central police authority in foreign countries at the expense of local customs authorities who must protect borders.

UNITED STATES INTERESTS OVERSEAS ARE NOT SERVED BY U.S. AGENTS WORKING CASES OVERSEAS

Further and specifically, no U.S. agents should be allowed to conduct case operations abroad either unilaterally or in conjunction with foreign enforcement officials. Enforcement operations abroad are the job of foreign law enforcement officials.

We remove full responsibility and accountability from foreign enforcement agencies when we "Americanize" world drug enforcement operations. And we create the conditions for potentially serious incidents adverse to U.S. interests. Just look at the fiasco of DEA efforts in Mexico which have been reported in recent newspaper articles.

Let me further state that the value of U.S. agents working actual cases abroad is highly questionable. I remember asking in Paris a high-level career enforcement official about the value of U.S. agents working cases in France. His reply was that you could put 1,000 U.S. agents in Marseilles and it would not make any difference.

Frankly, the whole concept of U.S. agents working cases abroad is nonsensical. We certainly would not tolerate foreign agents working cases in the United States.

Fortunately, the Congress under the leadership of the Majority Leader, Senator Mike Mansfield, with the strong support of Senator Charles Percy and with the work of this Committee, has recently taken a step toward eliminating the working of cases abroad by DEA agents. The following amendment to the International Security Assistance and Arms Export Control Act of 1976, introduced by Senator Mansfield, was accepted by the Senate Foreign Relations Committee and the full Senate earlier this year: "Notwithstanding any other provision of law, no officer or employee of the United States may engage in any police action in any foreign country with respect to narcotics control efforts."

It was specifically developed in a colloquy on February 5, 1976, on the Senate Floor, between Senator Mansfield and Senator Percy that the amendment did not pertain to or prohibit intelligence-gathering activities not involving the use of force.

The amendment was subsequently softened and reads as follows as passed and signed into law on June 30, 1976: "Notwithstanding any other provisions of law, no officer or employee of the United States may engage or participate in any direct police arrest action in any foreign country with respect to narcotics control efforts."

From an enforcement point of view, our primary concern is with drugs that are actually aimed at being smuggled into the U.S. and not with all drugs grown or produced in the world.

c. Cooperation With Foreign Enforcement Agencies in a Mutual Exchange of Information and in Training

Technical aid missions and training projects are a useful part of the overseas enforcement effort. Customs-to-customs training is especially well received because it produces improved revenue collection for the foreign host country as well as drug enforcement.

Exchange of information on a mutual basis is obviously part of our dealings with foreign enforcement agencies. It may require the placing of a few personnel abroad. There are several traditional methods of exchange, including Interpol, another activity built to operating efficiency by Treasury which Justice has recently decided to take away.

2. *Reorganization Plan No. 2 of 1973 and its creation of DEA has weakened drug enforcement by badly misconceiving the domestic Federal, state, and local drug enforcement roles and it is inconsistent with concepts of Federalism and revenue sharing*

Domestic enforcement regarding drugs must deal with: (a) The smuggling of drugs (narcotics, cocaine, marijuana and pills) into the U.S.; (b) The distribution of illicit drugs after they have been successfully smuggled into the U.S.; (c) The illegal domestic manufacture and/or diversion of pills; and (d) Removing the capital and profits from the drug trafficking business by utilizing the criminal and civil provisions of the Federal tax laws.

The most effective Federal weapons to attack the domestic traffic are the tax and smuggling laws of the U.S. Please note that both of these sets of laws are not drug laws.

a. The Smuggling of Drugs into the U.S.

It is at the point of passage into the United States that we have our greatest opportunity through our enforcement effort to impact upon the drug traffic. First, since all hard narcotics are produced abroad, the traffic must pass through our borders. Second, since large quantities of the drugs can be grown on a few acres of land in any number of parts of the world, it is impossible to eliminate the cultivation of the raw material. Third, at the time of passage through the U.S. border the narcotics is generally in bulk quantities of the highly pure drug. Once it passes into the country, it is divided and cut (diluted), so that seizure at such time is of much less significance. Fourth, narcotics smuggling is carried on by a relatively small number of closely knit units, organizations or networks as compared to the domestic distribution system. If a case can be made against one such organization, it can have a substantial impact upon the traffic. This is as opposed to the effect of making a case against a domestic trafficker. There seems always to be someone able to step in and take over the business. The Subcommittee's hearings and interim report discuss fully this area.

Thus, a priority mission of Federal drug enforcement must be to prevent the smuggling of drugs into the United States.

In 1969, we initiated at the Treasury a priority program aimed at the illicit drug traffic. Although anti-drug smuggling efforts had previously been downgraded and Customs enforcement role neglected, we determined that the smuggling laws of the U.S. were a primary weapon to be used against the illicit drug traffic.

Despite many obstacles, we persisted and were successful in obtaining additional appropriations in the summer of 1969 for a major anti-drug smuggling effort and for another customs program, the interdiction of illicit drugs at U.S. borders and ports of entry. These two interrelated programs reinforce each other. Tied to both was a third Customs program described above, namely, customs-to-customs cooperation.

The Customs Service demonstrated during the years 1969 to 1973 that, even though denied virtually all access to overseas smuggling intelligence, it could employ its historic expertise effectively to interdict drug smuggling and to seize bulk quantities of uncut, high-purity, hard narcotics destined for the U.S. market. A scrutiny of the record of the period will reveal that almost without exception *the major cases against key figures were drug smuggling conspiracy cases initiated and developed by Customs.*

A major reason for the downturn in heroin supplies in the U.S. in late 1971-1972 and into 1973 was the success of the anti-drug smuggling and interdiction efforts of Treasury's Customs Service.

On March 28, 1973, three days before reorganization authority lapsed, OMB, over the Treasury Department's objections, produced its simplistic Reorganization Plan to shut Customs out of all anti-drug smuggling investigative and intelligence-gathering functions.

In one stroke, the most effective instrument for accomplishing the anti-drug smuggling mission was wiped out. *DEA has not and cannot replace this Customs Service capability.*

It was illogical and counterproductive to take away responsibility for enforcing our smuggling laws regarding drugs from the Customs Service with its proven expertise, experience, and contacts, and place that responsibility in DEA.

To separate the anti-drug smuggling investigative and interdiction responsibilities and Customs general smuggling responsibilities and its close working relationships with the Customs organizations throughout the world, wastes this key resource and is nonsensical. There is no way in theory or practice that DEA or any other agency can substitute effectively for Customs agents in dealing with other Customs personnel and Customs organizations throughout the world.

The crime of smuggling is not a drug crime—it is a smuggling crime and presents distinct and separate types of enforcement problems from those dealing with illicit drugs after they have been smuggled into the U.S., from those dealing with the illegal domestic manufacture and/or diversion of pills, and from those dealing with the removal of the capital and profits from the drug trafficking business.

The only persons profiting from the present statutory and organizational framework are the drug traffickers. They could not have devised a better setup for themselves.

b. The Distribution of Illicit Drugs After They Have Been Successfully Smuggled Into the U.S.

Reorganization Plan No. 2 of 1973 misconceived the enforcement problem regarding the distribution of illicit drugs after they have been successfully smuggled into the U.S.

The over 400,000 state and local law enforcement officials are the first line of defense against internal drug trafficking. The Federal effort should induce and assist their discharge of this responsibility and not seek to override, control or supplant them. Yet, the Reorganization Plan tends to dominate and displace the local effort. It runs directly counter to our Federal system under the Constitution and to the bipartisan revenue sharing and LEAA programs designed to strengthen the capabilities of state and local authorities in these areas.

The primary domestic enforcement role against the illicit drug traffic lies with the 400,000 state and local police, not the now bloated DEA personnel roster of 4,200 personnel, including over 2,500 agents. Federal enforcement should be required to concentrate on major interstate conspiracy cases and the furnishing of assistance and coordination for state and local police. It must not be involved in street-level drug work, making buys from, or arrests of, small-time and medium-level dealers. This is not and should not be a Federal enforcement function.

Continuation of DEA's efforts in primarily state and local drug enforcement matters *weakens the responsibility and accountability of the 400,000 state and local officials for drug enforcement.*

I have stressed this point since 1969. It is a fundamental of our Federal system.

It was obvious that Reorganization Plan No. 2 of 1973 misunderstood and misconceived, deliberately or otherwise, the proper Federal role regarding internal drug trafficking. But I did not realize that it was even more serious and appalling than I thought until I recently read the hearings of 1975 and the interim report of July 18, 1976 of this Subcommittee, which sets forth the facts that demonstrate that most of DEA's efforts are street-level enforcement work.

The ODALE program, aimed at street-level drug work, was ill-conceived, counterproductive, and alienated local enforcement officials. Its incorporation into DEA and increased statutory authority is horrendous in practice and in its implications. Surgery must be applied as soon as possible.

We now have the spectacle of DEA openly encroaching on state and local enforcement. With drug abuse again on the climb, I can hear the next step—DEA calling for more money, more manpower and more authority. Will we never learn?

Use of the FBI for the domestic Federal function of investigating major interstate drug traffickers will ensure use of FBI capabilities, economy of effort by combining it with the FBI's program against organized crime, and a proper avoidance of entanglement in purely state and local cases. *There is simply no need for a separate Federal drug enforcement agency.*

I might also add that state and local officials are as fully competent in police work generally, including drug enforcement, as are DEA personnel, if not more so. They are closer to the scene and with far more avenues to obtain information than DEA. They are also fully capable of developing major trafficker cases which Reorganization Plan No. 2 of 1973 does not seem to or want to understand. And after reading the hearings and interim report of this Subcommittee, it seems to me that DEA is the agency that needs training rather than the agency to give training.

c. The Illicit Domestic Manufacture and/or Diversion of Synthetic Drugs

Internal enforcement must also deal with the illegal manufacture and diversion of pills. The Food & Drug Administration (FDA) regulates the drug industry.

While I have not been as close to this area of drug enforcement as other areas, and have not analyzed it as much, it can be argued that enforcement generally is more efficient when under the same authority as the regulators. The separation of this authority from the regulators in the 1968 reorganization probably set back effective Federal enforcement regarding pills.

This control program has not received the attention it deserves. The internal enforcement problem regarding pills is different from internal heroin and cocaine enforcement. Determination of dangerous drugs manufactured in the U.S., and the control of pill and other drug production, including criminal enforcement probably should be the responsibility of HEW's Food & Drug Administration.

It may be that solely criminal enforcement authority regarding pills could be in the FBI or, when the case warranted it, be referred to the FBI by the FDA.

d. Removing the Capital and the Profit From the Drug Trafficking Business by Utilizing the Federal Tax Laws

It seemed clear to me in 1969 that from an enforcement point of view the Achilles heel of the illicit drug trafficking business was its financing and its illegal but taxable income or profits.

Obtaining evidence against major drug dealers on drug charges is one of the most difficult law enforcement jobs. They can easily insulate themselves from the street-level pusher and minor dealers. It is a rarity to catch them in possession of drugs. The crime is victimless in the enforcement sense in that the addicts and users are not interested or willing to give evidence. They don't consider it a crime. They want the drugs. They want to protect their source of supply, not turn him in.

This is the key reason why I felt it was a necessity to develop a tax enforcement program against the illicit drug traffickers.

I tried unsuccessfully in mid-1969 to get the Organized Crime Strike Forces to accept illicit drug trafficking as a priority item, if not the priority item. I then recommended that Treasury initiate its own special Narcotics Trafficker Tax Program for two reasons: (1) jurisdiction over the tax laws was in Treasury, and (2) from the time of Al Capone, the tax laws have proven to be an effective tool to put major crime figures out of business.

In the short period the Treasury/IRS Narcotics Trafficker Tax Program¹ was active—from July 1, 1971 to early 1974, it proved to be one of the most successful enforcement efforts in Federal history. (I happen to believe it is the finest from the point of view of results, professionalism, and costs.)

The NTTP was designed to take the illegal profit out of drug trafficking and IRS initiated full tax audit investigations of over 1800 upper and middle level drug traffickers and dealers; found tax deficiencies totaling \$200 million; it paid for itself or practically paid for itself in taxes and penalties collected; and its impact put drug dealers out of the illicit drug business.

The essence of the NTTP was (1) the careful selection of targets utilizing the talents and information of Federal, state and local enforcement agencies, and (2) the use of *both* the criminal and civil sections of the IRS Code against major drug distributors and financiers who are often insulated from the traffic and, therefore, in effect, immune from prosecution under the drug laws.

The Treasury Department developed through the target selection system of the NTTP a comprehensive nationwide list of over 1800 major drug traffickers and financiers who were put under full tax audit investigations; gathering information from the then BNDD, Customs, IRS, the Bureau of Alcohol, Tobacco & Firearms, and of substantial importance, from state and local police.

The importance of this substantial list of major drug dealers cannot be over-emphasized. While DEA and its predecessors tried, with little success, to bring drug cases against major drug dealers (there were not more than a handful of successful cases), the NTTP, within its first twelve months, identified and put under tough tax investigation 793 major targets in 53 metropolitan areas in 40 states!

State and local police agencies and personnel welcomed the NTTP because it helped them get immediate, short-term, and long term results, they could see and feel the almost immediate effect of their activities, and of great significance, the NTTP did not encroach on their jurisdictions.

¹ The abbreviation most often used is NTP. I prefer NTTP because it emphasizes that it is a tax program.

The NTTP was downgraded by IRS Commissioner Donald Alexander shortly after he assumed his duties in mid-1973 and by 1974 it was gutted, despite the clear Congressional and Executive policy, and specific earmarked appropriations. Although Commissioner Alexander has unjustifiably criticized the NTTP, the fact remains it was a most successful *tax* program which had an extraordinary impact on the illicit drug traffic. Fortunately, the NTTP has now been revived by Presidential directive.

The importance of NTTP to our nation's efforts to reduce the illicit drug traffic and bring it within manageable proportions is overriding and requires a detailed analysis of the program.

I state to this Subcommittee and to the Congress that without an effective Treasury/IRS Narcotics Trafficker Tax Program we will fail in our efforts to reduce the illicit drug traffic. In view of the overriding importance of this program, I would like to describe in some detail its theory and practice.

The NTTP was initiated as part of the overall effort to crack down on the illegal traffic in narcotics. Recognizing that the huge profits of the drug trafficking business are largely unreported and therefore untaxed, in late 1969 I recommended to the Secretary of the Treasury, David M. Kennedy, and to Under Secretary Charles E. Walker, who had the responsibility for direct supervision of IRS, that the Treasury develop a tax program aimed at the drug trafficking business.

Preliminary surveys in 1970 showed that among a group of suspected narcotics traffickers several patterns could be observed. First, there was a high incidence of non-filing of income tax returns. Second, a large number appeared to have life styles which would require income far in excess of that on which taxes were being paid.

As a result of these findings and our general studies and review, in the late spring of 1971, Secretary John B. Connally obtained White House and Congressional approval for the program and \$7½ million in appropriations for the first year of operation.

Thus, this program had the full backing of the Congress and the Executive. Monies were appropriated specifically for the NTTP—monies and manpower which would not have been authorized or appropriated but for this program and were not authorized and appropriated for any other IRS activity.

The Narcotics Trafficker Tax Program is an *income tax* program. The goal of the NTTP is to *tax the illegal profits of the drug trafficking business, a major area of tax noncompliance*. The program was carefully developed over a two-year period and the results during the short time it was active—from July 1, 1971, to some time in 1974, including substantial start-up and training time—demonstrate that it was extremely successful.

It is important and central to the NTTP program to understand that the income from the illegal narcotics traffic business is *taxable*. And it is the responsibility of the Treasury Department to go after this taxable income. Drug trafficking is a *business*. It is not some isolated activity.

It is damaging to the "voluntary compliance" concept of tax administration to suggest that income from *illegal activity* should be given a *lower* priority than income from *lawful activity*. The narcotics trafficking business is a highly organized criminal activity which requires a sophisticated and comprehensive program to identify the individuals involved and to determine the income which is taxable. Are we to encourage unlawful activity of the most serious kind by our failure to enforce the tax laws against the narcotics traffickers?

The enormous profits of the narcotics trafficking business constitute taxable income to traffickers. To develop a program to identify major narcotics traffickers and tax them is part of administering the tax laws. There is no meaningful distinction between this type of activity and the ordinary IRS methods of identifying what is referred to as "pockets of noncompliance."

There is no difference in concept in deciding to select suspected major drug traffickers for tax audit and in deciding to select waitresses and taxicab drivers regarding gratuities income, corporate executives, individuals regarding interest and dividends payments or tax resister groups, and other classifications of taxpayers. Indeed, the incidence of tax noncompliance by drug traffickers is, I submit, higher than other noncompliance groups.

The significant point with respect to the NTTP was that under such a tax program we were able for the first time on an organized and comprehensive basis to get major drug traffickers, persons who use intermediaries to insulate

themselves from the day-to-day operations of the drug traffic. In this way, they achieve virtual immunity from prosecution under the substantive narcotics laws. The Narcotics Trafficker Tax Program was able to get at many of the kingpins of the traffic.

In developing the original program and thereafter while I served at the Treasury, the program had the full bipartisan support of the Congress; the full support of three Secretaries of the Treasury, David M. Kennedy, John B. Connally, and George P. Shultz; the excellent cooperation and leadership of two Commissioners of IRS, Randolph Thrower and Johnnie M. Walters; and the full support of the Tax and Criminal Divisions of the Department of Justice and the various U.S. Attorneys.

Important and central to the NTTP was the policy decision to stress civil as well as criminal enforcement. This policy decision was a significant improvement on previous uses of tax administration to go after profits from criminal activity. It was our position that the illegal profits must be taxed and should be attacked either by civil enforcement or criminal enforcement. If a criminal case could be made, fine. If not, then the decision should be made as soon as possible and appropriate civil action pursued vigorously. It can be argued that in many cases the greater punishment and deterrent is taking the illegal profits from the illicit drug trafficker.

A critical innovation in federal law enforcement, and essential to the success of NTTP, was the development of the major drug traffickers target selection procedure—a coordinated and cooperative selection of persons to be audited.

As of July 1, 1971, the paucity of information identifying known major drug traffickers was appalling.

We developed a program for selection of targets, which once selected would be turned over to the IRS for audit. We organized field target selection committees throughout the country and developed guidelines for target selection. The persons selected had to be considered major traffickers and there had to be an indication of assets to warrant a full audit.

The field target selection committees were composed of professional career personnel from federal, state and local agencies. On the federal level, the committees included personnel from IRS, the then BNDD, and Customs. On the state and local levels, it included representatives from the local and state police. The committees would meet periodically and pool their knowledge.

Targets selected would then be sent to Washington, D.C. for review and final selection by an inter-agency target selection committee composed of personnel from IRS, BNDD and Customs and chaired by the Deputy Assistant Secretary for Enforcement. This Treasury committee would meet periodically to review the field recommendations and decide to accept, reject, or hold for further consideration each field recommendation.

Once a person was accepted the file would be sent to IRS and from that point on in the investigative process, it was an IRS tax case and handled in accordance with IRS operating procedures. After investigation if the decision was that the evidence justified a criminal prosecution it was referred to the appropriate U.S. attorney's office. Otherwise it was pursued civilly by IRS.

Important byproducts of multi-agency analyses and review of potential targets, supervised by the Office of the Secretary and not at IRS or other agency level, are that it insures selection of high-level targets, increases cooperation and efficiency, and reduces the possibilities of corruption in the selection process to a minimum. I want to stress my belief that this interdepartmental and inter-agency activity must be supervised by the Office of the Secretary of the Treasury and not at an agency level.

We also developed a minor drug trafficker tax program designed to go after the profits of the minor dealer and pusher. The individuals involved were primarily lower-level drug traffickers—dealers and pushers—who were *arrested* by state, local and federal officials on substantive drug charges and where there was cash found. We decided against a full audit of these individuals but instead we took tax action; we stressed a tax check type of investigation—did they file a return—and the use of tax year termination and jeopardy assessment procedures on these individuals to reach their large, conspicuous assets. Such tax action was taken on over 3,300 minor dealers and pushers.

This part of the program achieved outstanding success in taxing and reducing the working capital and street-level profits and, thereby, in disrupting the distribution system.

A monthly report system was developed to monitor the progress of this tax program. That report system enabled the Secretary and me to follow the progress of each element of the program. The monthly report listed the numbers of cases by states and metropolitan areas and the status of the cases.

Within the first twelve months of the NTTP, 793 major targets in 53 metropolitan areas in 40 states were selected for intensive tax investigation and 563 minor traffickers were put under tax action. Within seventeen months 1,175 major targets were selected for intensive tax investigation and 1,239 minor traffickers were put under tax action. Attached to this statement are excerpts from reports I made after 12 and 17 months of the program and statistical tables which tell the unique story of this tax program. (See Exhibit A.)

The extraordinary success of the program stems from three groups of dedicated personnel: (1) the target selection efforts of Federal, state and local officials; (2) the several hundred men and women in IRS—*tax* specialists performing a *tax* function—who took this program to heart and dedicated themselves to it; and (3) the attorneys in the Department of Justice and the U.S. attorneys' office throughout the country.

I strongly recommend that the NTTP be reactivated quickly and given the highest priority possible under the overall supervision of the Assistant Secretary of the Treasury for Enforcement, Operations and Tariff Affairs.

This highly successful program was unique in the spirit of cooperation it engendered among state, local and Federal officials and among Federal agencies. No jealousies and no infringement of jurisdiction existed among the various agencies cooperating in the NTTP. I submit that it ranks as one of the finest, if not the finest, cooperative law enforcement programs in our history from the point of view of results, professional performance, and costs. It can be put back in operation and effective within months with strong supervision from the Office of the Secretary of the Treasury.

3. *Reorganization Plan No. 2 of 1973 and its creation of DEA violated the fundamental American criminal justice concept of separation of the investigating function and the prosecuting function*

A basic tenet of our criminal justice system is the separation of the investigating function and the prosecuting function. Consolidating these vast powers destroys traditional checks and balances. Prosecutors develop proprietary interests in particular cases or targets and tend to exercise undue control over activities of the investigators. There is a great danger that, as prosecutors become involved in the investigative stages, they will lose the objectivity so essential to their review responsibility.

When the prosecutor assumes the investigative function, the end result is to reduce the professionalism of the enforcement agents, making them mere aides or clerks to the prosecuting attorney.

This is comparable to a State Attorney General's having direct control of the state police department or a District Attorney's having control of the local police department. It has ominous implications for the future of law enforcement in the United States and subverts the role of the Department of Justice.

This issue has received too little attention in recent years as we have seen prosecutors more and more involving themselves in all stages of investigations and assuming control of investigations. Cooperation between prosecutor and investigator is necessary, but the power inherent in the office of the prosecutor is sufficient to insure this.

4. *Reorganization Plan No. 2 of 1973 and its creation of DEA raises the spectre of a national police force by adding yet another investigative arm to the Department of Justice, the law department of the United States, and by the use of DEA personnel in street-level drug operations*

The Department of Justice is the law department for the Federal branch of government. All criminal prosecutions are handled by the Justice Department. The Department of Justice also carries the largest investigative role through the FBI, the Immigration and Naturalization Service (INS), and the DEA. It also has the U.S. Marshal's Service.

Because of our constitutional system of Federalism, we do not have a national police force. The general police power is reserved to the states. Federal enforcement is a combination of decentralization in specialized agencies throughout the Executive Branch, and the FBI in the Department of Justice, having a multiplicity of investigatory responsibilities and no regulatory duties.

I oppose the centralization of enforcement authority in any one department and particularly in the Department of Justice which has the Federal prosecuting function.

In addition to the increased investigative authority and manpower in Justice, I was appalled to read in the Subcommittee's hearings and interim report the extent to which DEA is doing state and local enforcement work. DEA's encroachment on state and local enforcement must be stopped.

Further, to argue as they do that they have to work the street-level drug scene to get leads and information to reach the major dealers is an admission that they have no special expertise in investigating major interstate cases. After reading the hearings and the interim report, I doubt that they have any special expertise except to make "buys" of drugs, which practice is considered by many to be counterproductive.

5. Reorganization Plan No. 2 of 1973 removed a barrier against corruption by eliminating Customs anti-drug smuggling investigatory and intelligence-gathering activities

Drug enforcement is fraught with greater potential for corruption than any other police activity. When there are two or more agencies which interface and must coordinate their investigative activities, any agent or other enforcement officer inclined to collaborate with a trafficker faces a greater risk of discovery than if there is only one agency. This check against collusion has now been removed.

6. DEA is wasting the taxpayers' money at an annual rate of well over \$125 million for weaker drug enforcement

The growth of BNDD/DEA funding has been astronomical:

(Dollar amounts in millions; fiscal years)

	1968		1974		1975		1976		Transition quarter estimate, amount	1977 requested	
	Posi- tions	Amount	Posi- tions	Amount	Posi- tions	Amount	Posi- tions	Amount		Posi- tions	Amount
Bureau of Narcotics and Dangerous Drugs	948	\$14									
Drug Enforcement Administration			3,978	\$112	4,186	\$141	4,263	\$153	\$43	4,365	\$159

For FY 1977, DEA is requesting \$159 million and 4,365 positions. This is at least 3,500 more DEA personnel than necessary. And if my contentions, analysis and proposal are accepted, practically all 4,365 positions are unnecessary.

7. Reorganization Plan No. 2 of 1973 does not and cannot, as it purports to do, centralize all drug enforcement in one agency. Nor would such centralization be more efficient

Reorganization Plan No. 2 of 1973 was the product of a management philosophy that all functions relating to narcotics should be administered by one agency. When applied to a multidimensional problem that cuts across functional and jurisdictional lines, it was an erroneous philosophy at best. The hearings and interim report of this Subcommittee clearly set forth the weaknesses of the reorganization plan and the failures of DEA.

Of necessity, many agencies contribute to the drug enforcement mission. IRS must still investigate tax violations by traffickers. Customs still has the responsibility for the interdiction of narcotics at our ports of entry and along our land and sea borders. The Bureau of Alcohol, Tobacco & Firearms must still investigate gun violations by traffickers. State and local enforcement officials must still make the majority of domestic seizures and arrests. Our ambassadors must still consider drugs a foreign policy issue.

So Reorganization Plan No. 2 merely shifted the points of interface and further obscured the lines of coordination needed to connect activities of the various agencies and departments. Actually, the points of interface should be chosen based on the *function* which each agency or level of government is best able to perform. This, not centralization, will achieve maximum efficiency and effectiveness.

PROPOSAL FOR REVISED FEDERAL DRUG ENFORCEMENT ORGANIZATION AND POLICY

My proposal is based on the following fundamentals and on the belief that drug enforcement is a multidimensional problem and requires a multidimensional response.

1. The domestic drug traffic (other than tax and smuggling investigations) is the primary responsibility of the 400,000 state and local police.

2. The Federal role in the domestic drug traffic (other than tax and smuggling investigations) must be confined to major interstate drug traffickers. Major intrastate drug trafficking is a state and local responsibility.

3. Recognition that the single most important program is the Treasury/IRS Narcotics Trafficker Tax Program and its two parts: (1) target selection process, and (2) IRS tax investigations and tax action. The target selection part of the NTTP must be a combined multi-agency Federal, state and local effort. It must be under the overall control and supervision of the Office of the Secretary of the Treasury and not under the control of IRS or any other agency. Regarding the IRS part of the NTTP, there must be full use of both the criminal and civil sections of the Internal Revenue Code.

4. The anti-drug smuggling effort is a Federal law enforcement responsibility. Smuggling is a distinct crime, separate from internal drug trafficking crimes and involves generally different enforcement methods and techniques. The Treasury Department's Customs Service is clearly and obviously the agency with the greatest anti-smuggling experience, competence, and contacts, and which has the drug interdiction responsibility at our borders and ports of entry. No agency can duplicate or substitute for Customs.

5. Diplomacy must stress each nation meeting its international responsibilities and each country providing its own resources.

6. Our agent work overseas should be strictly intelligence-gathering regarding suspected drug smuggling attempts into the U.S. and the normal mutual exchange of information and in cooperative training exercises. The responsibility for operation of cases overseas is strictly that of the foreign enforcement officials.

With this background and the comments and analysis throughout this statement, I respectfully make the following overall proposal in order to achieve maximum results, and at the least cost.

1. Abolish DEA. There is no need for a separate drug enforcement agency.

2. Reactivate on a priority basis the Treasury/IRS Narcotics Trafficker Tax Program under the direct supervision of the Assistant Secretary of the Treasury for Enforcement, Operations, and Tariff Affairs.

The manpower required would be less than 750, composed of about 600 Treasury Agents and about 125 support personnel. As the program developed each year the number of personnel would not increase because the information would be put on computers and it would be much easier in succeeding years to check on previous targets. The point is that there is a finite number of major dealers and as each was identified and put in the system, subsequent examinations would be less difficult and time consuming.

No additional legislation is needed, only oversight by the Congress similar to the oversight of the Office of the Secretary of (1) the target selection process, and (2) IRS operations once the targets selected were transmitted to the IRS.

3. Return to Treasury the full responsibility for drug smuggling investigations and intelligence-gathering. Customs does not need any additional manpower for this function. Legislation would be needed to accomplish this.

4. Restrict Federal domestic enforcement of the substantive drug laws to *major* interstate drug traffickers and transfer that responsibility to the FBI or another agency. Because of the minimal Federal role only limited manpower would be required.

5. Return all regulatory responsibilities regarding synthetic drugs to HEW's Food & Drug Administration. Enforcement of criminal cases can be referred to the FBI. The Food & Drug Administration may need some additional manpower for this responsibility which could come from DEA. I note in DEA's fiscal year '77 budget request approximately \$12.5 million for compliance and regulation. Legislation would be needed for this proposal.

Mr. Chairman and members of the Subcommittee, I respectfully submit that these proposals will return us to the path of stronger enforcement against the illicit drug traffic and will save the U.S. taxpayer over \$125 million annually.

Thank you, Mr. Chairman.

EXHIBIT A

12-MONTH REPORT OF THE TREASURY/IRS NARCOTICS TRAFFICKER TAX PROGRAM

During the first year of operation—July 1, 1971, to June 30, 1972—the Treasury/IRS Narcotics Trafficker Program has accomplished the following:

1. 793 major targets in 40 states, 53 metropolitan areas and the District of Columbia were selected by Treasury's Target Selection Committee and referred to the IRS for intensive tax investigation (see attached Table I). Under the direction of IRS Commissioner Johnnie M. Walters, 410 Treasury Agents and 112 support personnel are presently conducting the intensive tax investigations. In addition, 565 minor traffickers are under tax action.

2. \$54.2 million in taxes and penalties have been assessed under the program, of which more than \$8.5 million has already been collected in the form of cash or valued property. This is \$1 million more than the \$7.5 million appropriated for the program by Congress. *We are now using the drug traffickers' illegal profits to put them out of business* (see attached Table II).

3. Six men have been convicted on criminal tax charges; 15 other criminal tax cases are pending in Federal District Courts in New York, Miami, Detroit, Los Angeles, San Francisco, Indianapolis, Baltimore, and Washington, D.C.; and another 35 investigations have been completed with prosecution recommendations. Investigations were completed in an additional 78 cases with civil assessments and penalties determined in 64 cases.

We believe this represents a substantial achievement. By focusing attention on the persons responsible for the narcotics distribution, this program is making a major additional contribution to the President's offensive against drug abuse.

The word for the drug traffickers is to get out of the illegal drug traffic or face up to intensive tax investigation. This word should be spread in every city and town in the United States. We have institutionalized this program. Everyone in this illegal business should realize that they will be subjected to tough tax scrutiny.

The program's objectives—to take the profit out of the illegal traffic in narcotics and thereby further disrupt the traffic—are accomplished in two ways:

1. *Major targets*: by conducting systematic tax investigations of middle and upper echelon narcotics traffickers, smugglers, and financiers. These are the people who frequently are insulated from the daily operations of the drug traffic through intermediaries.

2. *Minor targets*: by the systematic drive underway to seize—to be applied to taxes and penalties owing—the substantial amounts of cash that are frequently found in the hands of minor narcotics traffickers—those below the middle and upper echelon level.

Computers are now being used in this program to facilitate the year in, year out scrutiny of the finances of these narcotics traffickers. By computerizing our information, we will be able to examine systematically and quickly each major and minor trafficker targeted under this program.

Although all of the penalties and taxes that have been assessed may not be collected, the impact of this program on the narcotics traffic is already substantial and increasing each month.

TABLE I.—12-MONTH REPORT

State and Metropolitan areas	Targets	Completed Investigations	State and Metropolitan areas	Targets	Completed Investigations
Alabama: Mobile.....	2	-----	Illinois:		
Alaska: Anchorage.....	1	-----	Chicago.....	40	7
Arizona: Phoenix, Tucson, and Yuma..	35	4	Springfield.....	4	-----
Arkansas: Little Rock.....	2	-----	Indiana: Indianapolis.....	8	2
California:			Louisiana: New Orleans.....	12	4
Los Angeles and San Diego.....	39	10	Maine: Bangor.....	1	-----
San Francisco and Oakland.....	33	3	Maryland: Baltimore.....	6	1
Colorado: Denver.....	8	-----	Massachusetts: Boston.....	12	1
Connecticut: Hartford.....	12	3	Michigan: Detroit.....	53	6
Delaware: Wilmington.....	1	-----	Minnesota: St. Paul and Minneapolis..	2	-----
District of Columbia: Washington.....	17	4	Mississippi: Gulfport.....	1	-----
Florida: Miami.....	64	17	Missouri: St. Louis and Kansas City....	10	2
Hawaii: Honolulu.....	10	2	Nevada: Las Vegas.....	3	-----
Georgia: Atlanta.....	19	6	New Hampshire: Portsmouth.....	2	1
			New Jersey: Newark-Camden.....	52	6
			New Mexico: Albuquerque.....	9	2

TABLE I.—12-MONTH REPORT—Continued

State and Metropolitan areas	Targets	Completed Investi- gations	State and Metropolitan areas	Targets	Completed Investi- gations
New York:			Tennessee: Nashville and Memphis...	5	
Albany.....	4		Texas: Austin, Houston, and El Paso...	41	11
Buffalo.....	9		Dallas.....	3	1
New York City and Suburbs.....	130	30	Utah: Salt Lake City.....	2	
North Carolina: Greensboro-Charlotte.....	16	1	Virginia:		
Ohio:			Richmond and Norfolk.....	24	
Cincinnati-Dayton.....	9		Arlington and Alexandria.....		
Cleveland.....	7		Washington: Seattle.....	11	2
Oregon: Portland.....	11	1	West Virginia: Parkersburg.....	1	
Pennsylvania:			Wisconsin: Milwaukee.....	1	
Philadelphia.....	40	1			
Pittsburgh.....	15	5	Total.....	793	134
Rhode Island: Providence.....	1				
South Carolina: Columbia.....	5	1			

TABLE II.—12 MONTH REPORT

	Number	Amount
Major Target assessments:		
Regular assessments.....	18	\$4,373,126
Jeopardy assessments ¹	19	18,764,281
Tax year termination assessments ²	23	7,974,616
Total.....	70	31,112,023
Minor target assessments: ³		
Jeopardy assessments.....	36	863,712
Tax year termination assessments.....	529	22,256,438
Total.....	565	23,120,150
Total assessments involving narcotic traffickers.....		54,232,173

SEIZURES INVOLVING NARCOTIC TRAFFICKERS

	Major targets	Minor targets	Amount
Currency.....	\$1,763,213	\$5,449,923	\$7,213,136
Property.....	86,738	1,249,828	1,336,566
Total dollars seized.....			8,549,702
Cases recommended for prosecution.....			35
Criminal tax cases in U.S. courts awaiting trial.....			15
Criminal tax convictions.....			6

¹ Jeopardy assessments are assessments of taxes made where a return has been filed or should have been filed, but where circumstances exist under which delay might jeopardize the collection of the revenue.

² Termination of tax year is a computation of the tax due and assessment made where the time for filing the return has not become due where circumstances exist under which delay might jeopardize collection of the revenue.

³ These are assessments made as a result of seizures by other law enforcement agencies of cash or other assets against current income of narcotic traffickers where delay might jeopardize collection of the revenue.

17-MONTH REPORT OF THE TREASURY/IRS NARCOTICS TRAFFICKER TAX PROGRAM

During November, Treasury Agents and support personnel of the Internal Revenue Service seized and collected \$2.4 million from narcotics traffickers and made assessments of \$5.4 million. In addition, 68 new major targets were selected and 157 minor targets were placed under tax action.

In the Courts, 2 traffickers were convicted, and 4 indictments were returned. The Treasury has recommended an additional 11 cases for prosecution.

The additional targets expanded the program into one new state, South Dakota, and eight metropolitan areas—Aberdeen, South Dakota; Augusta, Georgia; Peoria, Illinois; Annapolis, Maryland; Reno, Nevada; Chattanooga, Tennessee; Fort Worth, Texas, and Bridgeport, Connecticut.

The 17 months result of this program are as follows:

1,175 Major Targets and 1,239 Other Traffickers

In 46 states, 82 metropolitan areas and the District of Columbia, 1,175 targets have been selected by Treasury's Target Selection Committee and referred to the IRS for intensive tax investigation (see attached Table I). Under the direction of IRS Commissioner Johnnie M. Walters, 550 Treasury Agents and 112 support personnel are presently conducting these investigations.

The Congress has passed a supplemental appropriation of \$4.5 million which will increase the number of Treasury Agents to 648.

In addition, 1,239 minor targets traffickers are under tax action.

\$82.5 Million Assessed—\$15.6 Million Collected

\$82.5 million in taxes and penalties have been assessed under the program, of which more than \$15.6 million have already been collected. The drug traffickers illegal profits are being used to put them out of business (see attached Tables II and III).

20 Convictions +44 Indictments +61 Prosecution Recommendations =125

Twenty men have been convicted on criminal tax charges; 44 other criminal tax cases are pending in Federal District Courts in Atlanta, Miami, Detroit, Los Angeles, San Francisco, Seattle, Boston, Indianapolis, Baltimore, and Washington, D.C., and in other areas; and another 61 investigations have been completed with prosecution recommendations (see attached Tables II and III).

DEPARTMENT OF THE TREASURY

TABLE I.—17-MONTH REPORT, TREASURY/INTERNAL REVENUE SERVICE NARCOTICS TRAFFICKER PROGRAM; RESULTS AS OF DEC. 1, 1972

State and metropolitan areas	Targets	Completed Investigations	State and metropolitan areas	Targets	Completed Investigations
Alabama: Mobile.....	13	2	New Jersey: Newark, Camden and Trenton.....	67	7
Alaska: Anchorage.....	1	-----	New Mexico: Albuquerque.....	11	5
Arizona: Phoenix, Tucson, and Yuma..	61	9	New York: Albany.....	14	1
Arkansas: Little Rock.....	3	-----	Buffalo and Rochester.....	20	3
California:			New York City.....	157	55
Los Angeles, San Diego.....	45	22	North Carolina: Greensboro and Charlotte.....	17	1
San Francisco, and Oakland.....	42	7	Ohio:		
Colorado: Denver.....	12	2	Cincinnati, Dayton and Columbus..	17	-----
Connecticut: Hartford, Bridgeport.....	16	2	Cleveland and Toledo.....	24	-----
Delaware: Wilmington.....	1	-----	Oklahoma: Oklahoma City.....	3	-----
District of Columbia: Washington.....	22	5	Oregon: Portland.....	18	4
Florida: Miami, Jacksonville, Tampa, and Orlando.....	55	27	Pennsylvania:		
Hawaii: Honolulu.....	10	1	Philadelphia.....	42	3
Georgia: Atlanta, and Augusta.....	31	12	Pittsburgh.....	39	6
Illinois: Chicago, Springfield, and Peoria.....	61	7	Rhode Island: Providence.....	6	-----
Indiana: Indianapolis and Gary.....	12	3	South Carolina: Columbia.....	5	2
Iowa: Des Moines.....	4	-----	South Dakota: Aberdeen.....	1	-----
Kansas: Lawrence.....	1	-----	Tennessee: Nashville, Memphis and Chattanooga.....	8	-----
Kentucky: Louisville, Covington, and Newport.....	6	-----	Texas:		
Louisiana: New Orleans.....	16	2	Austin, Houston and El Paso.....	51	11
Maine: Bangor.....	1	-----	Dallas and Fort Worth.....	8	2
Maryland: Baltimore and Annapolis.....	14	3	Utah: Salt Lake City.....	6	-----
Massachusetts: Boston.....	24	3	Virginia: Richmond and Norfolk, Arlington and Alexandria.....	28	2
Michigan: Detroit.....	71	13	Washington: Seattle.....	24	5
Minnesota: St. Paul and Minneapolis..	5	-----	West Virginia: Parkersburg.....	1	-----
Mississippi: Gulfport.....	3	-----	Wisconsin: Milwaukee.....	5	1
Missouri: St. Louis and Kansas City..	21	8			
Nebraska: Omaha.....	3	-----			
Nevada: Las Vegas and Reno.....	5	-----			
New Hampshire: Portsmouth.....	4	2			
			Total.....	1,175	239

TABLE II.—17-MONTH REPORT

	Number	Amount
Major target assessments:		
Regular assessments.....	189	\$11,052,523
Jeopardy assessments ¹	43	19,450,434
Tax year termination ²	51	9,172,179
Total.....	283	39,675,136
Minor target assessments: ³		
Jeopardy assessments.....	91	2,862,639
Tax year termination.....	1,148	39,997,320
Total.....	1,239	42,859,959
Total assessments involving narcotic traffickers.....		82,535,095

COLLECTIONS AND SEIZURES INVOLVING NARCOTIC TRAFFICKERS

	Major targets	Minor targets	Amount
Currency.....	\$3,163,904	\$10,237,426	
Property.....	141,463	2,082,999	
Total dollars seized and collected.....			\$15,625,792
Cases recommended for prosecution.....			61
Criminal tax cases in U.S. courts awaiting trial.....			44
Criminal tax conviction.....			20
Total criminal cases.....			125

¹ Jeopardy assessments are assessments of taxes made where a return has been filed or should have been filed, but where circumstances exist under which delay might jeopardize the collection of the revenue.

² Termination of tax year is a computation of the tax due and assessment made where the time for filing the return has not become due where circumstances exist under which delay might jeopardize the revenue.

³ These are assessments made as a result of seizures by other law enforcement agencies of cash or other assets against current income of narcotic traffickers where delay might jeopardize collection of the revenue.

TABLE III.—17-MONTH REPORT

Metropolitan areas	Major target program						Minor target program				
	Number	Assessments	Dollars seized	Cases recommended for prosecution	Criminal cases in U.S. courts awaiting trial	Criminal convictions	Number	Assessments	Dollars seized	Collections	
Atlanta, Ga.	14	\$415,977	\$28,511	5	4	0	37	\$476,433	\$136,797	\$67,877	
Austin-Houston-El Paso, Tex.	15	1,576,515	54,220	3	1	0	91	1,629,038	817,487		
Baltimore, Md.-Washington, D.C.	11	1,362,882		3	1	5	2	238,834	44,879	92,636	
Boston, Mass.	5	5,561,815	22,183	2	1	1	67	2,132,887	542,582		
Buffalo, N.Y.	3	16,383		1	0	0	19	149,326	82,122		
Cleveland, Ohio				0	0	0	12	690,646	113,375		
Chicago-Springfield, Ill.	10	311,713	16,850	3	2	0	78	2,264,421	178,008		
Detroit, Mich.	17	1,252,166	13,555	4	3	2	69	1,310,544	367,806	692,000	
Charlotte-Greensboro, N.C.	3	163,933	15,240	2	0	1	34	320,680	53,989	10,052	
Miami-Jacksonville-Tampa, Fla.	32	10,183,653	1,300	2	11	4	49	762,032	593,594	142,877	
Los Angeles-San Diego, Calif.	25	915,441	59,238	4	1	1	177	10,291,836	1,325,802		
Newark-Camden-Trenton, N.J.	14	3,721,619	1,656	0	2	0	27	1,502,991	869,319		
New York City	53	7,503,738	1,621,027	10	3	1	108	7,794,275	3,766,264		
Philadelphia, Pa.	5	206,195	16,000	1	0	0	41	714,073	320,447		
Phoenix-Tucson, Ariz.	10	280,422	5,620	3	2	0	58	1,416,699	337,765		
Pittsburgh, Pa.	4	36,689	2,843	3	1	1	11	451,202	120,752	8,144	
San Francisco-Oakland, Calif.	12	760,888	79,684	2	3	0	61	2,582,650	531,163		
Seattle-Tacoma, Wash.	5	137,838	35,000	1	2	1	13	224,932	122,204		
St. Louis, Mo.	9	1,019,793	5,573	2	2	2	8	247,712	27,071		
Richmond-Norfolk-Arlington, Va.	3	146,734	11,274	1	0	0	7	264,880	15,836	26,895	
Other	33	4,100,742	274,114	9	5	1	270	7,393,868	1,953,073		
Total	283	39,675,136	2,263,888	61	44	20	1,239	42,859,959	12,320,425	1,041,481	

Note.—Dollars seized includes both property and currency.

Senator NUNN. If you would, proceed to summarize it in your best fashion.

Mr. ROSSIDES. I appreciate being here, Mr. Chairman. I do intend to summarize it.

The issue before us is the value of the creation of the Drug Enforcement Administration created by Reorganization Plan No. 2 of 1973, and generally the committee has asked my views on how the Federal enforcement role against the illicit drug traffic should be organized.

I might say to begin with, Mr. Chairman, that the hearings of this committee and the interim report released on July 18 are absolutely essential for anybody who wants to have any understanding of that area. I commend the committee for that effort.

The history of Federal enforcement is generally that up until 1965 both the two bureaus primarily concerned, the old Bureau of Narcotics and the Bureau of Customs were in the Treasury Department. The reorganization plan of 1968, removed the Bureau of Narcotics from Treasury and combined it with a new bureau that had been created, as you know, in 1965, the Bureau of Drug Abuse Control in HEW. That bureau had been created because of the explosion of synthetic drugs in the sixties.

Then came, after I left the Treasury in January of 1973, the decision to create DEA by combining BNDD, ODALE or the Office of Drug Abuse Law Enforcement, and an office called the Office of National Narcotics Intelligence and the Treasury's drug smuggling responsibilities, not the other smuggling responsibilities.

Mr. Chairman, I say very bluntly, as I have in the past, I opposed that reorganization plan. I think it was a tragic mistake. Federal drug enforcement should be restricted to major interstate crimes and that authority should be put in the FBI or some other agency.

In the early part of my statement, I set out seven reasons why I said at that time that it would weaken drug enforcement. It just misunderstands what our role is overseas, it misconceives the policies domestically; it violates our criminal justice system of separation of the investigating and prosecuting functions; it raises the specter of national police force; it removes an important barrier against corruption, and it wastes the taxpayers' money now estimated well over \$125 million annually, Mr. Chairman.

It cannot, it would not centralize all drug enforcement, nor would such centralization be efficient.

I will summarize my proposals which are based on fundamentals.

First, the fundamental responsibility for the domestic drug traffic internally in the United States, other than tax and smuggling investigations, is clearly in the State and local police: 400,000 of them. It should remain there. If that is accepted, so much flows from that.

Second is that the Federal role is the major interstate trafficking, not intrastate, and shall be limited to major interstate drug trafficking cases.

Third, a recognition that has not really come out in so many studies in this area, that the single most important program, if we want to do anything about the illicit drug traffic in this country, is the Treasury IRS narcotics trafficker tax program and the two parts of it, the target selection process which is not an IRS function, and the actual

investigation of the tax cases using both the criminal and civil sections of the Internal Revenue Code, which is the IRS function.

Senator NUNN. Let me ask you a question on that point. I think that is a very important point. When you were at the Treasury Department, did you in fact carry out a vigorous IRS attack on narcotics traffickers?

Mr. ROSSIDES. We did—and I plan to go into that quite fully—as probably the most extraordinary enforcement program we have had against the illicit drug traffic. You will be surprised as to its impact as we go into it. Just take the first year, Mr. Chairman: 793 major dealers put under tax investigation and we are here talking about DEA, whether they should be in local stuff or the major traffickers. They can't even make a handful of cases.

I am not blaming them. It is very difficult to make major drug cases. But in 1 year, and a very simple, commonsense program, with marvelous cooperation with the Department of Justice, we put under tough tax investigation 793 major dealers.

Senator NUNN. This was what year?

Mr. ROSSIDES. July 1, 1971, to June 30, 1972.

Senator NUNN. Out of that 793, let us carry that down from the investigation, to prosecution. Can you furnish us that?

Mr. ROSSIDES. At the end of the first year, yes, the chart is in the appendix. If you turn to my exhibit A there are two reports, the 12-month report and then the 17-month report of the program, 17 months because it was my last month.

Table 2 of the 12-month report shows that within 1 year—again, you have to remember the first two, July and August, were organizational months—we had 35 cases recommended for prosecution; criminal cases in U.S. courts awaiting trial, 15; criminal tax convictions, 6; and we seized and obtained more money in taxes and penalties than we spent the first year. We used their illegal profits to put them out of business.

I say to this committee and to the Congress as I have in my prepared statement, that unless there is an active, effective narcotics tax program supervised at the Office of the Secretary level and the two parts effected, the target selection system which is unique and then the use of the criminal and civil sections of the tax code and the followup by the Department of Justice, unless we have that, you can forget this whole thing about doing anything of value regarding illicit drugs to really get it down to manageable proportions. Otherwise, we are just kidding ourselves and we have been for a long time.

Senator NUNN. I don't disagree with you on that at all. I think that is a very valid point.

Did this effort stop, if so, when?

Mr. ROSSIDES. Mr. Chairman, as I point out in my statement, it stopped when the new Commissioner of Customs Mr. Donald Alexander, came on board in 1973.

Senator NUNN. Commissioner of Customs?

Mr. ROSSIDES. I am sorry. Commissioner of Internal Revenue Service, Donald Alexander, in 1973. He downgraded the program in 1973 and by 1974, it was gutted. He has criticized the program in his speeches and in testimony.

I think there is no merit to his criticism. I have testified on this before the Senate Finance Committee, as well as the House Government Operations Committee.

He alleged some abuses. In the 18 months that I supervised this program and in which we had all of this activity, including the minor traffic program, not one single abuse was brought to my attention. When he testified in 1974 or 1975, I understand there might have been 8 cases of alleged abuse out of 2,000 minor trafficker cases. That is the program using tax action, Mr. Chairman, when a drug dealer is arrested. The case I used as an example, someone found some cocaine, in an apartment in New York and there was \$4,000 found also.

The police arrested the suspect. Under this program, we can terminate the tax year, assess what the taxes are and take that \$4,000.

At the Federal level the minor trafficker program does more to attack the street level dealers and pushers than all of this nonsense of DEA getting involved in street level stuff. When we have the impact of a tax investigation at the audit level and then at the street level, you go in and you tie up that money with tax action, you do major damage to the illicit drug traffic.

You hurt people in two ways, Mr. Chairman, in the criminal enforcement area.

One is by jail. Frankly, a lot of them don't worry about that. They are in and out. The other is taking away their profits. The drug dealers don't end up with drugs. That is what has been the misconception of drug enforcement. The major or minor drug dealer is looking for money. He ends up with cash. It is taxable. The gutting of his program is an abuse of a clear congressional policy and executive policy. Now we have fortunately stemming from the white paper that was introduced in evidence by Mr. Feldman, the Presidential directive to revive it.

Unless it is revived, we will not succeed in significantly reducing the illicit drug traffic. The role of Congress is so crucial in this regard. Let me state another theory of mine, Mr. Chairman. The Executive cannot supervise fully and adequately the bureaus unless there is a full, tough, oversight by the Congress.

Frankly, the two committees that should become the new stars in Congress are the Government Operations Committees of the Senate and House. They have got to exercise the oversight role and move in to help the appointed officials.

You have got the bureaucracy and as much as we try and there should be tough supervision enforcement at the Assistant Secretary level, it shouldn't have to be the White House involved as much, obviously, but only with a full role of this committee and the Congress can the proper job be done.

Senator NUNN. Thank you, sir. I will come back to that. That is a very interesting point. I will let you go ahead.

Mr. ROSSIDES. The fourth fundamental relates to smuggling. It is clearly a Federal enforcement function. The question is who can best do it? Do you have the first team in, or the substitutes in? Do you have the second-rate team in? Smuggling is a distinct crime. It is a separate crime from internal drug trafficking crimes and different techniques are involved. Nobody can reach the competence and ex-

pertise of Customs. By definition, no one can reach their expertise and contacts and no one can duplicate or substitute for Customs.

I make the point no matter how well run DEA is, you can have the best management in the world, they cannot simply reach the capabilities of Customs with its experience in anti-smuggling and its total responsibilities on how materials come into this country and its contacts around the world. For example, we had a major case because the import specialist didn't like the way the invoice read on a shipment of art work from India. I forget whether it was the weight of the frame. They broke open the frame and found 600 pounds of illicit drugs. I forget which drug it was at the time. This is what happens when you have total effort. The idea that Customs interdiction is going to work as well without having the investigators is not so.

Fifth: Diplomacy overseas, Mr. Chairman. It has got to be other nations meeting their responsibilities and with their own resources. We have raised this to a foreign policy issue, but other nations must use their own resources. We shouldn't be financing the drug enforcement around the world.

Sixth: Our agents overseas should gather intelligence regarding suspected drug smuggling attempts into the United States and the normal exchange of information and cooperative training exercises.

Clearly they should not be running cases and fortunately this Congress, through Mr. Mansfield—and Senator Percy has put a large dent in the DEA's having agents running cases overseas. U.S. agents running cases overseas is so nonsensical, I don't understand it. You talk about the Marseilles, the story that Roy Ash mentioned. I also talked to someone in foreign enforcement, a high-ranking official in Paris.

I asked him, "What is the story? I have these problems between BNDD and Customs. Is there any value having our agents running cases overseas?" "You could put 1,000 U.S. agents in Marseilles and it wouldn't make any difference," he said. It is just nonsensical and fortunately the Congress has moved. But they softened the provision in the colloquy on the floor. There is a very simple way of getting them out of running cases, just no appropriations, remove all 180 or 200 DEA agents overseas.

Senator NUNN. You are not saying we don't need intelligence overseas. You are saying we shouldn't run cases?

Mr. ROSSIDES. Absolutely, not run cases. That is official U.S. policy signed by the President. What are we going to do? Are we going to have our men running cases with guns overseas? Intelligence gathering, yes, and specifically in the colloquy on the Senate floor, they pointed out that intelligence gathering was not included in any prohibition.

Senator NUNN. Do you see the CIA playing a role in this intelligence gathering?

Mr. ROSSIDES. Yes, on the strategic intelligence. In other words, Customs, and Roy Ash is right, that there was only a small number, 12 to 20 Customs overseas on the tactical. But the strategic is CIA, not the tactical. But let me tell you, because Roy Ash wasn't in it as much as I was before he came on, the 12 or 20 were not put in there until late 1971 or 1972. In fact, it was March of 1972. We were kept out of the foreign intelligence before that. I had to agree that I would

take out of the budget proposal in June of 1969, 20 to 30 slots for overseas intelligence gathering before the Department of Justice would clear our supplemental budget request as part of the President's major drug package in July of 1969.

It was more important to get the \$7 million in that package than to worry about an extra 12, 15, 20 men overseas. We never got overseas until 1972 in Customs. The fact that they were not related to other Customs personnel overseas is not the point. The point is conceptually by function, they can do more.

The proposal itself would actually abolish DEA. There is no need for a separate enforcement agency. I can qualify that because when I go to No. 4 about putting it in the FBI or some other agency, the main thing is you restrict Federal enforcement to major interstate trafficking. That can go FBI, it can go to another agency. If the committee so feels it can stay in DEA with a maximum of a couple of hundred people like the old Bureau of Narcotics, which was no more than a couple of hundred agents. I believe it is preferable to abolish DEA.

Second, you reactivate on a priority basis the tax program. I point out how much manpower you need. Only 750, only 600 agents, 125 support personnel. Keep in mind, Mr. Chairman, that is a finite number of major dealers. So once you get them into the system, the next year is less and less work to keep on top of them. You get the word out. We used to get the word out on the street, fellows get out of this business. If you are in the drug business, you are going to get audited. Get into some other business if you want. I didn't quite put it that way in the Government.

Senator NUNN. Legally, I hope.

Mr. ROSSIDES. I was saying informally, for the major dealers, that is a byplay. The police know who the key people are out on the street. They know who the key crime figures are. Word can get through from the local police forces. Get out of the drug business or else.

That is what I was trying to get across. If they wanted to keep in gambling, devote that extra time to gambling fine, we will play the usual cat and mouse game, police work fine. But that word can help. You are in psychological warfare. Also, drug enforcement involves working in your own community. I know in my own community in New York, working in Bedford-Stuyvesant, St. Albans, you work in the community, you work with the ministers, you work with the professional women's group and they start getting the word out that drug abuse is looked down on.

This is all part of the enforcement problem. Smuggling, clearly should be given back to Customs and Customs doesn't need one single extra person. Roy Ash was right, we have all the budget we need, we have too many. The combined increases in 1969 and 1971 gave them too many. They don't need one single extra person to start in the anti-drug smuggling effort tomorrow.

Senator NUNN. What is it you are saying Customs would be doing under your new suggestion that they are not doing now?

Mr. ROSSIDES. Namely, that they would have the responsibility to actually investigate drug smuggling cases and gathering intelligence related to it.

Senator NUNN. Overseas and internally?

Mr. ROSSIDES. Right.

Senator NUNN. So they would expand in both directions from the border, internally and externally?

Mr. ROSSIDES. Jurisdiction, not manpower.

Senator NUNN. You are saying they have enough manpower now?

Mr. ROSSIDES. Absolutely.

Senator NUNN. What are the people doing now who would all of a sudden be available to do this?

Mr. ROSSIDES. I would say two things. One, part of them are just sitting around.

Second, they are involved in minor civil fraud and penalty cases, pertaining to legal importations, someone might have forgotten to put down that there were 100 packages in the goods instead of 90.

You just have too much manpower. In 1971, the Assistant Commissioner for Investigations came to me and said, "Mr. Secretary, I have got enough agents, maybe you ought to build up that patrol force."

When the Assistant Commissioner for Operations came to me and said, I think we have enough inspectors, but the patrol force needs more manpower, I knew that we had given them too much before.

DEA took away 500 or more people. But Customs still does not need another person. I have become very, very skeptical about any Government agency asking for more manpower. But clearly, they don't need more. But what would happen is this, Mr. Chairman. It relates to a very important point, when they talk about all of these studies. Most of the major cases in this period, 1969 to 1973—during my time at the Treasury—most of the major drug cases were drug smuggling conspiracy cases initiated by Customs. It was just utterly incredible.

They had been downgraded before. We finally revived their concept in 1969 that smuggling was an important crime, to go after the drug dealer.

One former assistant U.S. attorney who did the drug prosecutions, said you can't stop smuggling. But as this committee pointed out, and in your reports, it is high purity, uncut bulk items at the border.

That convinced me when I had to face this dispute as to who should have authority.

Senator NUNN. At the border 1 pound is worth many many pounds in the street.

Mr. ROSSIDES. Incredible. That is why I came to the conclusion, when I talked about drug smuggling responsibility in Customs. You cannot stop all smuggling. That is not the point.

Senator NUNN. You have got to catch enough to make it risky.

Mr. ROSSIDES. Right, to create the high risk. We didn't want everything back. Initially, I said maybe the Bureau of Narcotics should be back. Then I modified, just the smuggling, just give us the responsibility on smuggling and have BNDD do the internal and BNDD can do the external dealings with the local police as long as we have the smuggling ones that are starting toward the United States.

I didn't like that. I preferred them out of overseas. But they had this concept. Big, beautiful empire building around the world, because they get to a foreign country, Mr. Chairman, they say, make sure you centralize all drug enforcement in one central agency. and we have this international statute which said, we should have it in one agency.

Then we start dealing with each other. Relationships build up. You now have 4,300 people in DEA? Most of them have to do street work because there is nothing else to do.

There is just simply not that much work for them to talk about major cases. When they talk about buys and going on up, everyone knows that. There is no special expertise there. The point was you are supposed to go over to the major drug dealers, not just by the buy system going on, the police can do that and then there is another myth that there is something great about the Federal agents.

They can do the job and the State and local cannot. That is nonsense. The State and local can do it, by putting 4,300 men in the DEA the Congress and executive weakened the accountability of the State and local because they can just do what the foreign governments do.

Oh, well, we have your DEA people. They are helping us. By working every case overseas you reduce the accountability of the foreign government to its responsibility.

By a bloated DEA internally you reduce the accountability of the New York Police, the Los Angeles Police and everybody else who should be doing the job. I might say this is how Japan did it.

Japan went after tough enforcement after World War II. They trained every one of their police in drug work. It was tough drug work.

Senator NUNN. What did they do that we are not doing? They trained their local and State police?

Mr. ROSSIDES. Yes; they put the responsibility in the street level. They really worked it at that level.

Senator NUNN. Not international?

Mr. ROSSIDES. I don't know their full setup. I remember the Tokyo Police, all 35 or 40,000 had special courses in drugs.

We have a constitutional system; we have our Federal system. The other objection, let's get into it; prosecuting, investigating functions. It was bad enough then.

But the idea, and I just object strenuously that the Department of Justice has these combinations. The FBI is there historically. Maybe it should stay there. But adding more? I am glad at least that the Ash council thought of it. But they didn't do anything concrete about it.

As I gather from the testimony yesterday, the concept was yes, all law enforcement in the Department of Justice. When we had the Ash council hearings, the comment was made in behalf of Justice, they felt that all law enforcement should be in Treasury, IRS enforcement, Coast Guard; everything.

I stood there in disbelief. But what has happened now? You have a more dangerous problem. From your hearings and your interim report, I was appalled to see the amount of street work being done.

The next step is going to be this. Oh, the drug problem is increasing, we need more manpower. Isn't this a Federal function because, after all, drugs hop between States?

Let's now take over the whole drug thing as a Federal matter.

Then 4,300 in a couple of years? We had 200 narcotics agents in Treasury in the 1950's. We have a different problem today, primarily the synthetic, which has not been given enough work.

But I am trying to say that that issue is a very serious one, the spectre of a National Police Force; as well as the combining of the prosecuting and investigating functions.

Mr. Ash pointed out very clearly, what we have now is we have the prosecutors getting into cases at the earliest stage. The investigators are a bunch of clerks so often. I am very, very concerned about this amalgamation of authority in the Department of Justice.

For a few minutes, Mr. Chairman, on the taxpayer program, because that is so crucial, it has not been aired enough and understood enough in the sense of being exposed to it enough by the Congress—

Senator NUNN. I have a phone call. There is no other Senator here. Would you give us about a 2-minute recess?

[Brief recess.]

Senator NUNN. Excuse me, Mr. Rossides. Go ahead.

Mr. ROSSIDES. If I may spend a few moments on the Treasury/IRS/Narcotics Traffic for tax program and how it developed and why I say it is the most important program from the point of view of reducing illicit drug traffic in this country.

Senator NUNN. I think you make a very strong point. Let me ask you one question as a lead-in. Then you can go ahead with the point you want to make.

Assuming DEA remains in existence and assuming DEA's functions remain relatively the same just for the purpose of this question. What would prohibit IRS from continuing this tax effort against drug traffickers, major and minor level, even if drug enforcement is vested in the Justice Department under DEA?

Mr. ROSSIDES. Nothing whatsoever, Mr. Chairman. In other words, that program was developed by my office, and its implementation was with the cooperation of BNDD, other Federal agencies such as Customs, INS, ATF, and the State and local police. It doesn't require the substantive drug enforcement laws.

That can be done without the other. Just as you can return smuggling responsibility to Treasury, with a simple amendment and still retain DEA.

Senator NUNN. It is pretty apparent the more you get into this that the problem is not necessarily identifying the major drug traffickers. It is getting a case to prosecute them for a narcotics violation which is about 100 times more difficult than making a tax case against them.

Mr. ROSSIDES. Correct.

Senator NUNN. DEA has them identified now, a lot of them.

Mr. ROSSIDES. Let me go back to that again.

Senator NUNN. I don't mean all of them.

Mr. ROSSIDES. In July of 1971, when we started this program, I said we are going to scour everybody. We are going to get from DEA who the major dealers are, from Customs, from IRS, from State and local police.

The quality that we got back from BNDD in July of 1971 was disappointing. Some had died and many were minor figures. Maybe they weren't trying to cooperate at first, but then we had full cooperation from them. But you must not leave the identification of who the major dealers are to DEA or IRS because then you are going to have the usual game of the agencies putting on the show for Congress.

But what you have is a multi-agency target selection procedure so that if you are sitting there, Mr. Chairman, and you have a man from DEA, you have a man from IRS, but you have a man from Customs, then you have a local policy intelligence official. One is checking the other. That is how we got this incredible list of major dealers. Many of them came from the State and local police. They loved this program. It did not interfere with their jurisdiction. They could see the results, the person is picked up, they could see the money taken. A major dealer in the Los Angeles area, we had about 20 police officers assigned, we had about 10 or more people from BNDD and other agencies developing that tax case.

They all were so delighted because he was one of the major dealers that no one could get to. So the target selection process was crucial. I had tried to get the whole Organized Crime Strike Force to go into drugs as a priority—it was unsuccessful—in 1969. I then recommended to the Secretary we initiate our own because of two things:

One: the Treasury had the tax responsibility and authority;

Two: in proven history, in the Al Capone proven concept, you can put major dealers out of business just as Roy Ash mentioned.

Senator NUNN. Did anybody ever prepare any statistics on traffickers you deterred and got out of business by successful tax prosecutions? You had some 700 investigations. I don't have the exact figure, but whatever the number of successful prosecutions that flowed out of that 700 some odd investigations, can you make any comment about what happened to those who were investigated and perhaps not prosecuted from that? Is there any deterrence here, other people who aren't successfully prosecuted?

Mr. ROSSIDES. I think very much so. I think it hits the newspapers more frequently when you are going after a criminal prosecution, but when that minor dealer has tax action taken against him, that spreads throughout the community like wild fire. My own feeling is that you probably get even more deterrence out of these kinds of cases not just from persons who are prone to engage in criminal activity, but from the general public, but I don't know if there are any statistics.

IRS may have it. But I don't think so. All I know is that when we had the unique effort against these major dealers, Mr. Chairman, suddenly the major dealers are saying let us cool it. Let us wait until this investigation is over. We will see what happens. The impact is great on disruption of the traffic and taking away their capital. When the pusher is arrested now with \$5,000 before he goes out on bail, he is given a slip. It is a TS slip, an IRS receipt. He doesn't have the capital now to buy the stuff. So it is an enormous disruption. So I say most of the reason, the major cause, for the drug downturn in late 1971-73, was the NTTP. You normally say the drug enforcement agency, we looked to them, they must have done a good job. They may have. But the major reason was the tax program, secondly, smuggling.

For example, in Atlanta, they prosecuted several of the key drug figures they never could get before. Similar stories were told to me during field trips I made to Chicago, Los Angeles, Detroit, New York, and Miami. By this target selection, multiagency effort, you get high-level targets, minimum possibility of corruption and you get a comradeship developing.

I can only say that the other aspect of the tax program was the use of the civil penalty. When they went after Capone, it was all criminal, criminal, criminal, but by using the civil code and deciding at an early stage whether you have a criminal case or not, you move ahead. You can tie up that money. That was the very important aspect of this. Then the minor target program which I think I have explained is tax action. We don't have the manpower to be sending agents on a full audit of a minor dealer or pusher.

But tax action, did he file a tax return? We found through studies that many of them didn't file returns. They are using tax-year termination, jeopardy assessments, this is how we had the impact.

Senator NUNN. Why don't you take some time and tell us about the major tax program and how you go about it procedurally; also about the minor tax program and how you go about it procedurally? Let us stay on those two points. Walk us through both of them from the time somebody selects a target onto the prosecution.

Mr. ROSSIDES. First of all, let us go to the selection of the target. You have a committee meeting. I remember telling you about one in Chicago, a target selection committee. I was out there for a meeting. They asked me to join this meeting. Ten people around the table, approximately 10. The Federal agencies I mentioned, Illinois Investigating Commission, Chicago police.

They select target, Mr. Smith. That jacket, first of all, as I mentioned, the protections and the cooperation and the comradeship that develops from that type of agency work.

Senator NUNN. This is a major dealer?

Mr. ROSSIDES. Major dealer. They discuss him. Is he a major dealer? We have issued guidelines that he has to be considered a major dealer and there has to be some assets that can be attached. Maybe his lifestyle is such, where is the money coming from? There are guidelines in the selection because one of the problems is not to have an abuse of who was selected. I felt very great concern. Let me put it a different way. I always like a check and balances system. That recommendation along with say 10 others goes to Washington and at Washington, we had another interagency selection committee chaired by the Deputy Assistant Secretary for Enforcement and all the members of the committee, by the way, Mr. Chairman, in the field are career officials.

All members of the committee at the Washington level, we had on that committee at that time IRS, Customs and BNDD; chaired by my deputy who may or may not attend the meetings. He didn't do it too often. But they would review the jackets coming in from around the country.

They reviewed Mr. Smith's jacket to see if he met the guidelines, was he sufficiently high up in the traffic? What was his lifestyle, what were his assets? They would say, Mr. Smith owns a building on 125th Street and Amsterdam Avenue. What does he do? We don't know what he does.

He doesn't do any known work that we see him doing. So maybe, where did he get it? This is an exact situation in the Los Angeles area, several apartment buildings by one of the key dealers.

Then they say, accept. I had no greater pleasure then once a month reading those reports, accept, reject or hold. By this level, most were

accept. It would just give a line or two, major dealer in St. Albans, N.Y., New York City Police recommendation.

Then that case, once selected, and the selection process is a separate, distinct function from IRS tax investigation functions, would go to IRS and now it was an IRS tax case. But an investigation case, a full audit.

That would go to the group and would end up with an intelligence agent and an audit agent or an intelligence agent until he decided it would be a civil case. Usually, it was a team. Commissioner, John Walters, when we started this program in the summer of 1971, we had appropriations for 400 agents, but he put 100 experienced intelligence agents and 100 experienced audit agents at our disposal, in the program and new people coming in behind.

If the agents have sufficient evidence for a criminal prosecution recommendation, fine, they recommend it, right to the U.S. attorney. Then if he decides to accept then it goes on for trial. If the agents say we don't have enough for criminal, instead of trying to stretch a weak case, they immediately move ahead on the civil side.

That is the major case system. A very simple report system that this committee could insist on from the Office of the Secretary could keep you posted monthly or quarterly.

Senator NUNN. The Secretary of the Treasury?

Mr. ROSSIDES. The Secretary of the Treasury. Yes; the simple report system set forth by State and metropolitan area, the number of targets, completed investigations, the assessments, cases recommended for prosecution, and so forth in the program.

Coordination in the Federal Government is very simple in this tax program. I just call over to the Department of Justice to get the full cooperation of the tax division attorneys. They just loved it; as simple as that. We found out from the report that in one particular city, there was only one target. We would then ask why? If the report listed only 1 completed investigation out of 20 in a particular area, we would call over to the IRS and ask why.

If the report showed only two targets in a major city then you would go to the target selection process and say find out what is happening in that city. It is a very simple monthly report to keep up.

Now the minor trafficker program. This is the area that has been criticized, not the major trafficker program. The criticism is unfair and without merit. They try to smear the entire program as if it is not a tax program, but it is a tax program.

It is a business. The minor tax one, the way we developed it, was that after the State and local police arrested a person on a drug charge, you are talking about the lower level dealer, the pusher, not the addict, you are talking about someone who is arrested on a criminal charge and if he has any assets, immediately, IRS under the statutes, is authorized to come in and close the tax year and assert a jeopardy assessment because of jeopardy to the revenue.

He has money. Where did he get the money? What business? Then you can build your quick tax case, first you have to have tax check, did he file a return? That was very simple, very easy. You didn't have extra manpower. That is the collection division. They have a beautiful coordinated effort with the police department, any time of day or

night. The people in IRS, the enthusiasm they put behind this program was wonderful. You would have collection people that wouldn't bother normally after hours, but on this program they would make sure they had a system, 24 hours a day, they could be called to come up and give the tax receipt on a drug arrest.

Then to have the local police see a person arrested and if out on bail not using the money for more drugs to buy and sell, but to see this effective coordinated action, it was quite something.

Senator NUNN. Do you know why the program was stopped, Mr. Rossides?

Mr. ROSSIDES. I cannot answer that.

Senator NUNN. It was stopped, was it not?

Mr. ROSSIDES. It was downgraded in 1973, and I think stopped is an accurate description. I said gutted. I think whether or not they could argue that they still have a case or two that was going, it was effectively stopped.

Senator NUNN. You don't know why? You don't have any speculation on why?

Mr. ROSSIDES. No. I would rather not speculate, Mr. Chairman. I don't know the gentleman. I don't know all of the ins and outs of what is happening. I have been away from the day-to-day details although I follow the matter with intense interest.

Senator NUNN. Within what time frame do you think it was gutted or stopped?

Mr. ROSSIDES. I left in January of 1973, the new commissioner came on in mid-1973. By the fall of 1973, I understand that it was being downgraded.

Senator NUNN. You heard Mr. Ash testify that he didn't know of any order from OBM or from the President?

Mr. ROSSIDES. No. This was strictly agency level. This was strictly agency level.

Senator NUNN. You have no information that it came from any higher authority?

Mr. ROSSIDES. It absolutely did not come from higher authority. In fact, I have the opposite information, the dismay at higher levels that the program was literally effectively curtailed.

Senator NUNN. Who was Director of IRS when you were there?

Mr. ROSSIDES. Two wonderful gentlemen who gave us tremendous cooperation, Mr. Randolph Thrower of Georgia and Johnny Walters, very distinguished lawyers, were the commissioners at that time.

We had concern, and IRS always has concern, but this is typical of any agency, of supervision from the Office of the Secretary on that. That is normal. Frankly, it is my own feeling that there has to be much more supervision of these agencies.

But we had only one dispute, Mr. Chairman, as to procedure, with Commissioner Thrower and Commissioner Walters. That was whether or not the national office on this program, on the tax audits, the investigation, not the routine tax action, whether the national office would have direct line control of IRS, not by my office, but IRS national office, the Assistant Commissioner of Compliance, with his audit and intelligence units would have direct line control to the agent in Atlanta, to the agent in Denver, or whether they would have to go

through as they do in the regular cases to the District Director who then would go to the agent in the Intelligence Division in Atlanta.

I didn't feel as strongly about that as my staff. I said all right, and I argued it out and then we had the discussion regarding that with Under Secretary Walker. He decided to do it direct line. I felt you can do it either way; go through the district director, but have the authority of the national office to call directly to the agent. That is a technical point; but that seemed to have upset some of IRS's personnel.

Once the decision was made, we got marvelous cooperation, and without IRS individuals, without IRS cooperation, it will not work. There are some IRS people who disagree, but they disagree because they don't want to have anyone supervising them. That is a basic, fundamental rule of life in the bureaucracy.

Senator NUNN. Let me turn to one other point. I think we have developed this one rather thoroughly and I think you have made an excellent case on it.

I am particularly interested in our situation in Mexico since it is a country of origin. I am also interested in intelligence the staff has gathered regarding weapons being smuggled into Mexico and traded for narcotics that are smuggled into the United States. Are you aware and familiar with that problem?

Mr. ROSSIDES. Yes; it couldn't have been a more acute question because it raises another point about the importance regarding overseas. When we had our first meeting with the Mexican officials in June of 1969, the United States-Mexican Joint Drug Commission, and that is when I tried to work to initiate the customs concept working with our sister agency—in other words, have everybody and his uncle get into the act; have disruption by national police of a foreign country certainly, but have disruption at the border. We were able to work out customs to customs agreement.

But do you know, Mr. Chairman, the only thing that they were after me for as the Assistant Secretary of Treasury, because Treasury had the responsibilities for gun enforcement, they were more interested in getting our cooperation to prevent smuggling of guns into Mexico. That was a Treasury function and Treasury leverage.

Senator NUNN. These guns were going to revolutionary groups?

Mr. ROSSIDES. That is what they were very concerned about and still are from what I understand, and only recently someone mentioned that to me. It is most important because the question, you talk about leverage overseas, Senator. The Justice Department has not one iota of leverage.

Roy Ash talks about penalties and the awards. There is no penalty or award that the Justice Department can give any foreign government. The Treasury Department, State Department, the Defense Department, Commerce, Agriculture, Agriculture more than Commerce, all have daily dealings with these departments, with their foreign counterparts.

Do you realize that a comment from the Secretary of the Treasury to his counterpart in Mexico has far more significance than the Attorney General of the United States talking to his counterpart?

Senator NUNN. To oversimplify it, you are saying if the Mexican authorities were perceived to be very lax in their concern about nar-

cotics flowing from Mexico into the United States, then that could be their perception of our agents' concern about the guns flowing from the United States to Mexico? Is that what you are saying?

Mr. ROSSIDES. That is what I am saying. I would like to put it more firmly. I happen to believe from the discussions I had there that they are concerned about the drug abuse problem because it is hitting their youth; but keep in mind that no one worries that much about the American youth from foreign governments. They think we are the rich country, let us worry about it. But they are worried about it.

But yes, in effect, they say to themselves, if you help us, we will help you more. It is not quite so *quid pro quo*, but in effect, in diplomacy, it is; you can find out very quickly if they are making the effort.

I was very annoyed at our own Custom Service. The attitude that they would take when I came on, as if, oh, well, you are dealing with corruption, so on and so forth, and I tried to stop that nonsense and tried to develop a working relationship between the United States and Mexican Customs and get Spanish-speaking Customs officers in our Service, which we have now done, and we never had before, and we never had the signs up in Spanish. It was incredible. So again, we had a lot of things that we had to do.

But yes, Senator, it is leverage. It is not just on the very unique leverage with Mexico of real effort on gun smuggling into Mexico because the United States can—fine, they have to enforce the laws; but there are priorities. If the Bureau of Alcohol, Tobacco, and Firearms, which I supervised in the department, if they put some real effort on guns, the Mexican Government would appreciate that a great deal.

Senator NUNN. You said that Customs' successes prior to Reorganization Plan No. 2 were rather large. You also, I believe, said that they accounted for some of the heroin shortage that took place in the early seventies.

What part did the Turkish opium ban play in this shortage?

Mr. ROSSIDES. It played a significant part, but I would say well down the line, compared to the tax program; and then you have the Customs and, third, the Turkish one because the ban was put in as of late June 1971, effective a year later, because they have a law that they would announce it a year hence, Mr. Chairman.

So there was planting and cultivation and growing and producing and diversion of the opium poppy all through 1971 up until June 30, 1972.

That impacted primarily from June 30 of 1972 on and the downturn was continuing, but the point, the importance regarding the Turkish ban which was unilaterally breached by Turkey in June of 1974, was not so much that you can eradicate, because frankly, eradication should not be a priority of our foreign enforcement. But by making it illegal you strengthen greatly your enforcement. Turkey at that time was the main supplier. Again, you disrupt, you make them regroup, get new lines of communication.

Clearly, this is very important, Mr. Chairman—there is so much actual cultivation in the world, you are never going to eradicate. For years, we had the old Bureau of Narcotics and the others in BNDD

and DEA, talk of eradication. Eradication, nonsense, you can't eradicate this stuff around the world because only a few miles can produce enough for the entire U.S. addict population. That is why you use diplomacy, you use it to have that country meet its international obligations at its own expense and you concentrate far more on tough enforcement here.

But by making it illegal, Mr. Chairman, by making it illegal, the whole point is by making it illegal you increase your ability for the legal enforcement. You increase your enforcement capability, but if you are allowed to grow thousands of acres, then it is much easier to have the illegal diversion.

But I would say No. 3, maybe No. 2 as to impact of the Turkish ban. But there is a major difference between the impact of the tax program and then the next level, whether it is Customs or the Turkish ban.

Senator NUNN. In your opinion, based on your knowledge today, do you think that the customs agents are getting the cooperation from DEA on foreign intelligence?

Mr. ROSSIDES. The comment made to me, Mr. Chairman is that 99 percent of the cases made right now are cold turkey cases, nothing from foreign intelligence. So all this talk about signing an agreement, some agreement of last December, fine. Maybe there is, but I don't think there is any intelligence. That is fairly clear.

I think anyone at Treasury and Customs will probably testify to that, but the fact that they are working better together, I am sure that may be so. But when they talk about the fundamental functions, and the management, about the FBI and the budgets and all, the reason Customs will always fight, no matter who is there on this issue, is because smuggling is their responsibility. They now have part of that taken away.

They don't want—I wanted to clear up any impression that the idea that Treasury will seek to have it all in Customs. That was an option that may have been mentioned. But the only part that should go back to Treasury is the smuggling function. Here is an agency, nearly 200 years old and its work is antismuggling, so part of that is taken away.

Senator NUNN. Part of it has been taken away except for the Foreign Intelligence?

Mr. ROSSIDES. Drugs. They are not allowed to do any investigation of the drug cases. The way that works is this.

Senator NUNN. You mean the investigative end of it? If they find drugs at the border—

Mr. ROSSIDES. Absolutely.

Senator NUNN. You mean their functions right now. As you interpret it, they have had their arms and legs cut off; they are strictly at the border; it is cold turkey. If they get it, fine. If not, fine. They can't pursue it in the country.

Mr. ROSSIDES. Exactly. One of the things we beefed up in the budget was the interdiction program and the concept of radar. Here is what happens.

With or without intelligence, you get someone on a plane and you find a pound or a kilo of heroin. Customs would get his cooperation

and say, we don't need anything else. We don't need warrants; we don't need searches. You now face 10, 20 years. Will you cooperate? Fine, he will cooperate.

So what they do is take some of the heroin, substitute a different package. They let him go to his contact, whether it is a hotel in the city, and that is when they can nab the person. Or they may have time to set up a proper, authorized wiretap of the meeting before the man gets into the city, some fine police work is done in this way.

The more intelligence they get as to who may be coming, it makes it easier. But now they see a fleck of narcotics. They stop someone with narcotics, immediately their jurisdiction stops. They have to call DEA. You come over and take the case.

Beforehand when this happened, BNDD agents would be notified, they participated in the case, but Customs ran that case and that is the point of interface.

So that you remove a barrier of collusion as well. But that is a typical convoy case what we call it. But don't overestimate the amount of intelligence that can be gathered.

The point is that Customs can gather it more easily and fully than anyone else.

Senator NUNN. Are you saying that, before Reorganization Plan No. 2, we had a smoothly working organization and a cooperative attitude between BNDD and Customs?

Mr. ROSSIDES. No. The whole thing started to break down with ODALE, I guess, I don't think they ever had it except in Treasury. It was tolerated then, but again Treasury didn't supervise it properly.

There was corruption in the Bureau of Narcotics under Treasury supervision. The Treasury hadn't analyzed it enough and pushed on some of it. I don't think there has ever been, and there will never be as long as DEA has smuggling responsibility which is not basically a drug crime. Everything related to drugs we are going to put in DEA? It just doesn't make sense, Mr. Chairman.

Senator NUNN. Let's go back. In closing out here this morning, let's go back and have you again summarize the sort of organizational structure that you would impose if you were President of the United States if you were in Congress writing the law.

What kind of organization is it that you are recommending now? Who would do what? Let's stay away from the numbers of agents, and so forth. That is a management kind of thing. Let's get into the structure.

Mr. ROSSIDES. First: I would make a finding by the Congress of the necessity to have the tax investigations of the drug traffickers as the priority program: Treasury selection process and an IRS tax investigation of the major dealers, and tax action against the minor trafficker.

Second: all smuggling cases would be the responsibility of the Department of the Treasury. That would include the authority to gather intelligence overseas, dealing with foreign law enforcement and custom officials.

Third: I would make a finding, and I would revoke the finding that is in the current Dangerous Substances Control Act, I would make a finding that the Federal role is major interstate cases and I would revoke the finding that it is intrastate.

By statute, restrict the Federal Government to major interstate cases.

That function could remain in DEA, could go to the FBI, or could go to another agency.

Senator NUNN. What functions?

Mr. ROSSIDES. The major interstate, internal function.

Senator NUNN. But keep the Federal Government out of intrastate activities, regardless of the agency?

Mr. ROSSIDES. Yes. No Federal agency should be in intrastate cases. I would have the further finding: (1) The importance of the tax program; (2) Major interstate cases; (3) That the primary responsibility for the domestic trafficker, State and local police.

I would make a specific finding, no intrastate cases.

Senator NUNN. Would you have a training program for the State and local police at the Federal level?

Mr. ROSSIDES. Yes and no, Mr. Chairman. There is an awful lot of talk about the training. I think that there has been a great deal of improvement. I only hesitate there in this sense: Where do we get off saying as if the Federal Government knows it all? I don't buy it.

I think maybe some of the State and local police could train some of the Federal agents. So from that point of view, is the only reason I hesitated. I think there should be exchange of training techniques and information, but not some large scale Federal training program.

The other part is on the HEW; I am not sure on the synthetic drugs; I am not sure how I would go. I recommended here clearly that the regulatory function should all be in the Food and Drug Administration, HEW.

Criminal enforcement could stay with the agency that does the major interstate cases. But maybe it could all go to HEW.

Senator NUNN. Any other particular points that you think we have failed to cover of significance? I know we didn't go through your whole statement. I have read it. I found it very interesting. I think you have made a very valuable contribution.

Mr. ROSSIDES. I would only say, sir, on the foreign, that we are giving away on the AID budget, just unnecessary amounts and I would re-emphasize no operation of cases overseas which the Congress has already moved in it.

I appreciate—yes, one other function. One minute on the role of Congress which I mentioned here.

I am absolutely convinced in my 4 years of service, Mr. Chairman, the executive cannot properly supervise the agencies alone. It is a mythology. I believe we are best governed when the Congress is exerting strong leadership in the three areas.

It is the Congress that writes the statutes, not the executive.

Second, Congress appropriates the money, and third, the oversight. We need a strong oversight function. I cannot emphasize that enough. I mean a procedure—not just at the agency level, but putting the pressure on that Cabinet officer, sub-Cabinet level; are they doing their job in supervising the agencies?

It is not the function of a bureau-level chief to tell the Congress whether they are going to take over or not take over certain responsibilities.

Senator NUNN. We think our subcommittee has had some effect in this drug area in the last 12 months. We suspect some things have been done that might not otherwise have been done.

Mr. ROSSIDES. I congratulate the committee.

Senator NUNN. Although I don't think we would get agreement from the executive branch on that, if we wait for that, we will be waiting for a long time, I suppose.

We have been very pleased to have you this morning. You have been extremely helpful. I hope you will consider the record open as far as additional comments that you might want to make; if you want to add anything else at any time, just let us know. We appreciate it.

Thank you very much.

Mr. ROSSIDES. I will, Mr. Chairman. I appreciate it. I am available to the subcommittee at any time.

Senator NUNN. One other question from the minority counsel.

Mr. STATLER. I would like to correct the record on a couple of points. Customs Commissioner Acree informed the staff within the last couple of days that the "cold" seizures made by Customs are—

Mr. ROSSIDES. Right, without advance intelligence.

Mr. STATLER [continuing]. Are now at about 94 to 95 percent, not 99 percent. Before Reorganization Plan No. 2 took effect, the figure was 89 percent.

So there hasn't been a major change along those lines, regardless of whether Customs has an overseas intelligence capability. Commissioner Acree made the point that it is likely that most of the seizures are going to be cold anyway.

Second, he also informed us that within the past several weeks, a new agreement has been worked out with the DEA Administrator. Whereas DEA has always been called in to survey intelligence once Customs makes a seizure, where DEA is now declining to pursue followup intelligence, customs agents will be permitted, at least in a limited way, to carry through with an intelligence function.

He seemed to be pleased that these kinds of cooperative agreements were now being worked out.

Senator NUNN. We will be hearing from Director of the Bureau of Customs in later hearings, as well as from DEA.

I appreciate your making that a part of the record.

Mr. STATLER. I just have one quick question.

I don't quite understand—I fully understand your view that DEA should go after major 'narcotics' cases, and that is what this subcommittee has recommended.

I don't understand your distinction of "interstate" versus "intrastate." I don't know of any cases in this area that could conceivably be intrastate. In other words, heroin coming into Chicago or Atlanta is not being produced in Illinois or in Georgia.

It is coming from foreign countries. So there is an interstate aspect to all drug trafficking.

Mr. ROSSIDES. It doesn't follow. The stuff can come into Chicago by plane and three-quarters of it stay in Illinois or Chicago. That is intrastate. That is local enforcement once it is in, in other words, once it is in, you now have the internal distribution system.

When it goes into New York, it goes from New York probably to all over the country, half may stay in New York if it comes in by ship.

But in the congressional testimony, this is again built up by DEA, that you can't distinguish between the drug. Nowadays you can. In other words, you have State lines.

Mr. STATLER. You are not saying, simply because a plane lands in a southern area, and then the illicit narcotics are shipped to Illinois and it happens to stay in Illinois, that therefore we have an intrastate operation, or are you?

Mr. ROSSIDES. That is an intrastate case.

Mr. STATLER. That the DEA agent should not followup on something like that if it is a major case?

Mr. ROSSIDES. Now you say it is a major. The question is, "Is it a major?" If it is a major case they think it is going to go in interstate, that is only what they should followup. The actual smuggling into Chicago, Customs, Federal function.

Mr. STATLER. What I am saying is that regardless whether it is interstate or intrastate, if it is major, DEA should go after it?

Mr. ROSSIDES. No; the intrastate stays out of it.

Mr. STATLER. Even if it is major?

Mr. ROSSIDES. Even if it is a major case, the point is the State and local police are fully competent if not more competent than DEA agents to run cases in their own jurisdiction. That is the point. By running DEA into them, you remove the incentive and the responsibility and accountability of State and local police; 400,000 of them.

Senator NUNN. You are saying DEA should notify them when they find out it is going in?

Mr. ROSSIDES. Absolutely. Both should notify each other; absolutely. If they notify going in, that is a Federal thing, the actual transportation in is Federal. But once it gets in, it is already in—in other words, if they knew it was coming in, they would stop it. That is a Federal function. That is the smuggling function.

But now the pass has been made, at the hotel, or whatever. It is in, undetected. Now we get a lead that there is some distribution going on in Illinois. That is a local function is what I am trying to say.

To the extent you allow DEA to get into that stuff, you are removing the accountability of State and local, and that is one of the most dangerous things, the new aspect I have seen in the 3 years, primarily from your hearings, are the extent to which they are doing street work.

If they go from less than 1,000 people to 4,200 in about 3 years, where do we go next?

Senator NUNN. Thank you very much.

We will have another hearing on this subject tomorrow morning at 9:30 a.m., in this room.

[Whereupon, at 12 o'clock noon, the subcommittee recessed, to reconvene at 9:30 a.m., Thursday, July 29, 1976.]

[Members of the subcommittee present at time of recess: Senator Nunn.]

FEDERAL DRUG ENFORCEMENT

THURSDAY, JULY 29, 1976

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 3302, Dirksen Senate Office Building, under authority of section 5, Senate Resolution 363, agreed to March 1, 1976, Hon. Sam Nunn presiding.

Members of the subcommittee present: Senators Sam Nunn, Democrat, Georgia; Charles H. Percy, Republican, Illinois; and William E. Brock III, Republican, Tennessee.

Members of the professional staff present: Howard J. Feldman, chief counsel; F. Keith Adkinson, assistant counsel; William B. Gallinaro, investigator; Robert Sloan, special counsel to the minority; Stuart Statler, chief counsel to the minority; and Ruth Young Watt, chief clerk.

Senator NUNN. The subcommittee will come to order.

[Members of the subcommittee present at time of reconvening: Senator Nunn.]

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct hearings in public session, without a quorum of two members for administration of oaths and taking of testimony in connection with Drug Enforcement Administration on Thursday, July 29, 1976.

SAM NUNN,
Acting Chairman.
CHARLES H. PERCY,
Ranking Minority Member.

Senator NUNN. Our first witness this morning is Myles J. Ambrose, who was Commissioner of Customs from 1969 to 1972. Prior to that, he had been Director of the Office for Drug Abuse Law Enforcement (ODALE).

ODALE has been the subject of part of our inquiry. There has been so much criticism of the overall program that we want to hear his views this morning.

Mr. Ambrose told the staff in a prehearing interview that ODALE was created based upon his recommendations to the White House. We want to go into that at length.

Also, as we have already documented, there has been interagency fighting since the old Bureau of Narcotics was moved out of the Treasury Department into the Department of Justice. A good many witnesses have testified on that.

I think Mr. Ambrose will be in a unique position to give us his insight into that particular area.

If you will come forward, we are delighted to have you this morning.

We swear in all of our witnesses as a routine matter. Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. AMBROSE. I do.

TESTIMONY OF MYLES J. AMBROSE, FORMER COMMISSIONER OF CUSTOMS

Senator NUNN. Mr. Ambrose, you have a statement which you can lead off with. We then have some questions for you.

Mr. AMBROSE. Mr. Chairman, in conjunction with your recent request that I appear and testify before this committee—which I am pleased to do—your staff requested that I prepare a written statement containing my background which I have submitted to the committee; some discussion of interagency problems as they relate to narcotics enforcement; and some information relative to the Federal response to narcotics enforcement problems during the period I served as Commissioner of Customs, Special Assistant Attorney General, and consultant to the President. This was from August 1969 to July 1973.

In addition, they requested that I give you information on the Office for Drug Abuse Law Enforcement program and the creation of the Drug Enforcement Administration.

I have attempted to meet this request by this statement which also contains my own personal views gained as a result of over 23 years of association with law enforcement—particularly narcotics law enforcement.

Due to the pressures of time, this statement is necessarily incomplete and sketchy. I will be prepared to answer any questions you may have candidly with the caveat that my knowledge of conditions that exist in DEA and of the narcotics situation since July 1973 when I left Government is largely derived from hearsay.

Just after completing this statement, I received from your staff a copy of your interim report and I would like the opportunity to extend my remarks to cover a few points made therein.

I should like to point out that it was only in the past few months that I was contacted by any staff member of this committee concerning any of these matters.

INTERAGENCY PROBLEMS

As you know, prior to 1968, Customs and the Federal Bureau of Narcotics were both in the Treasury Department, and both responsible to the same Assistant Secretary. There was an assistant to the Secretary who served as Chief Coordinator of Treasury enforcement agencies which then included: The Customs Agency Service of the Bureau of Customs; the Federal Bureau of Narcotics; U.S. Secret Service;

the U.S. Coast Guard Intelligence; the Alcohol, Tobacco and Tax, Intelligence, and Inspection Divisions of the Internal Revenue Service. I held that position from August 1957 to January 1960.

During that period of time there were disagreements between the Bureau of Customs and the Bureau of Narcotics, principally in two areas. The first was Customs' desire to engage in "convoy cases"—that is, permitting couriers carrying drugs to enter the United States under surveillance and make a delivery to the purchaser in the United States, principally from the Mexican border area.

This was an investigative procedure generally opposed by the Bureau of Narcotics, but reluctantly consented to with certain safeguards and only with my prior consent.

The second was the utilization of Customs agents overseas in developing intelligence for seizures at ports of entry. Customs, long before World War II, had agents overseas who, among other things, were charged with this responsibility.

After World War II, the Bureau of Narcotics filled a vacuum left by the Customs Service, which had withdrawn most of its agents from Europe.

The Federal Bureau of Narcotics then sent agents to work overseas, particularly in France and Italy. For the most part, these agents engaged in operational activities overseas as opposed to more intelligence gathering.

Senator NUNN. You are saying the Bureau of Narcotics people engaged in operations, but that Customs, as you said previously, engaged strictly in intelligence?

Mr. AMBROSE. Strictly in intelligence. That is my understanding.

The Federal Bureau of Narcotics subsequently set up a full district for its operation overseas. They were quite successful in making cases and developing the patterns of Mafia involvement in the heroin traffic. Basically they worked on the theory that stopping drug transactions overseas was important to our domestic enforcement programs.

The disputes which occurred between the two agencies were usually resolved at the agency level and if there was a failure of agreement, at the Chief Coordinator's level. Rarely, if ever, did it go beyond this.

After the reorganization plan of 1968, the Bureau of Narcotics was removed from Treasury and placed in the Justice Department. Increasing difficulties occurred between the two agencies when the new Bureau of Narcotics and Dangerous Drugs gained virtually full jurisdiction overseas, and Customs continued to have legal responsibility for the enforcement of smuggling and the interdiction of narcotics. The question of overseas intelligence efforts and followup of border arrests caused severe problems.

[At this point Senator Percy entered the hearing room.]

Mr. AMBROSE. Narcotics enforcement, indeed, law enforcement in general, was the subject of a great deal of debate during the 1968 campaign, and President Nixon, upon taking office, gave specific directions to both the Secretary of the Treasury and the Attorney General to increase the enforcement efforts directed toward reducing narcotic trafficking and related criminal activity. None of us were then aware

of how much the problem had mushroomed during the sixties. The available resources had not been increased to match this growth. Immensely expanded resources were almost immediately furnished to the various agencies involved.

As this effort progressed, further agitation developed between the Customs and Narcotics agents, both of which were desirous of conducting what they perceived to be the most productive type of investigation.

There has been, is, and always will be some philosophical difference over what constitutes the appropriate or best enforcement techniques to utilize in narcotic cases. I am convinced that a properly balanced approach should be taken, utilizing all available legal enforcement techniques on a programmed basis. I am not an ardent advocate of the so-called buy-bust technique. I have long recognized both the problems associated with its use and the necessity for its utilization under carefully controlled conditions.

As conflicts increased, various attempts to reconcile and to spell out the jurisdictional responsibilities of the two agencies became increasingly difficult. Ultimately the White House staff, through a high level nongovernment commission headed by Roy Ash which included the chairman of A.T. & T. and John Connally, former Governor of Texas, among others, formulated some guidelines in a report to the President.

These guidelines were insufficient, and caused even further disagreement and debate within and among the various individuals in the White House, the Justice Department, and the Treasury Department who had a role in our national efforts.

The disputes which were heretofore settled within the Department of Treasury had now reached the point where, when they were not resolvable by the Bureau heads, the Assistant Secretary of the Treasury dealt with the Deputy Attorney General.

Failing agreement at this high level, ultimately the Attorney General and the Secretary of the Treasury became directly involved with the assistant to the President and the President himself in attempting to resolve these conflicts through the establishment of some workable formula. I might add that we were all under terrific pressures to get these programs moving. I for one believed quite firmly that the threat to our country from increased heroin addiction and the consequent social costs was by far the most pressing internal problem facing our society.

It is this type of background which ultimately resulted in the decision to incorporate all the intelligence and enforcement agencies involved in the suppression of narcotics into one agency.

For a variety of reasons I think the Treasury may have been a better home for the combined agency, but as a practical matter, this did not appear feasible and probably still isn't because of the unique role which the Department of Justice and the Attorney General play in our system.

Senator PERCY. Mr. Ambrose, since I have to leave at 10 minutes after the hour, with the permission of the Chair I would like to ask you a few questions as you go along with your prepared testimony.

Could you expand on your conclusion that the Treasury Department may have been a better home for the combined narcotics enforce-

ment agency? Additionally, if Treasury would have been a better home, why then was the DEA ultimately placed within the Department of Justice?

Mr. Ambrose. I think it would have been a better home. It seems to me, Senator, since we are on this subject, that the initial mistake here was made in 1968 when a decision was made to take the Bureau of Narcotics out of the Treasury Department in the first place. For the very simple reasons I just tried to enunciate, that the disputes between the two agencies, the fact that there is an overlapping area of legal jurisdiction between the Customs Service and the Bureau of Narcotics—after all, most of the narcotics that we are concerned about are smuggled into the United States its obviously—those problems were much more easily resolvable at the departmental level.

I think I was a grade 16 in those days. We resolved them pretty much at that level at the time. When you put them in two separate agencies, obviously that is where everything escalated to the point where we had the President of the United States having to club people over the head.

The reason for the Treasury Department, on the other hand, is, and this goes to the whole heart of the Federal law enforcement in my judgment, which properly should be a judgment of this committee, not a segment of it, but the question is should the prosecutors and investigators be in the same department?

That is one aspect which has been raised a number of times. Should there be a separation? Should the entire Federal Enforcement structure be reorganized? Why put all of these things in one department such as the Department of Justice?

I might add, incidentally, at the time this thing came about, I was concerned about it going into the Department of Justice because we used to have an expression in the Treasury Department that in the Department of Justice the tail wagged the dog; that is, that the FBI told the Attorney General pretty much what to do. Of course, that has historically been the pattern when Mr. Hoover was alive.

So that moving DEA or moving BNDD or whatever you were going to call the agency, into the Department of Justice at the time struck me as a mistake because you would subordinate the enforcement effort to the control of the Federal Bureau of Investigation.

Those of us who have had experience in both of these areas, particularly in narcotic enforcement, have always been much more impressed with the ability of Treasury agents to combat organized crime than we ever were with the FBI.

For that reason I thought it would be better if we kept it in the Treasury Department. In addition to which the management responsibility in the Treasury Department was much looser. That is probably not a good thing in some respects, but as far as the operating agency is concerned, it was a substantial improvement over what happened later on.

Senator Nunn. Will the Senator yield for one followup question on that point?

You say Treasury has been more effective than the FBI in combating organized crime?

Mr. AMBROSE. Absolutely, without any caveat whatsoever.

Senator NUNN. Is that based on their tax powers, the power to bring tax evasion charges?

Mr. AMBROSE. That is one of the tools that the Treasury used, obviously. But if you look over the history of organized crime in the United States, you will see, the prosecution under the Federal effort, that I would take a guess off the top of my head, until, say, 1970 or 1965, somewhere in there, that 75 percent of the major organized crime figures that ever went to jail went to jail as a result of Treasury enforcement investigations.

I jokingly said, and I frankly am not so sure it is a joke, that the FBI didn't discover that there was a Mafia in the United States until after studying the results of the Apalachin meeting for a year and a half.

I think that probably is true to some extent. It was the Bureau of Narcotics that was in the Treasury that really did the job on this and originally even the Secret Service. Of course it was the Internal Revenue Service Intelligence Division which did successfully investigate a good number of the major violators.

Senator PERCY. I look upon what you have just said as one of the more provocative statements that I have heard this year. I know that heretofore no one ever dared criticize the FBI.

I admire you for laying it on the line and telling it the way you saw it.

What exactly was the rationale for the Reorganization Plan No. 2 of 1973 and the creation of DEA?

Was the reorganization designed simply to end the jurisdictional squabbles that you mentioned between Customs Service and BNDD, or was it also designed to produce other benefits in the narcotics law enforcement field?

Mr. AMBROSE. Senator, it seemed to me that we were faced with a problem that was totally unresolvable when you had these two agencies and two different departments under those circumstances.

Having contributed a great deal to the exacerbation of the problems between the two agencies, when I was the Commissioner of Customs, I was well aware of the fact that whoever sat in that chair was going to have that problem. So I think that the basic reason for it was that we should have these agencies together to try to put this total effort together in one area, one place. It is as simple as that.

I also added my idea as part of the situation with reference to Customs was to remove a barrier to a single border inspection system. This would eliminate the silly system we have of three sets of inspectors—Customs, Immigration, and Agriculture.

We need a single line border inspection agency. Frankly, it would have been smart to put the Immigration inspectors into the Customs Service, in my judgment.

We were overruled on that by the efforts of the AFL-CIO and a few other people. But be that as it may, I still think it was a good idea.

May I continue with my statement or do you have any more questions?

Senator PERCY. Having looked ahead in your testimony, there is one area, in particular, that intrigues me. On page 7 you say the Customs

Service and the Bureau of Narcotics and Dangerous Drugs were making some significant narcotic cases in 1971 and 1972.

If this was the case, could you explain to the subcommittee why then it was necessary for the Federal effort to be shifted somewhat to the street level through the ODALE program?

Mr. AMBROSE. I can go into that in great detail later on in my statement, Senator. I am delighted to have the opportunity to comment on this subject.

I believed then and I believe now that it is silly for us to engage in law enforcement efforts, diplomatic efforts, border control efforts or anything else, to stop the growth of heroin addiction in the United States if we allow addiction itself to proliferate.

And if the addict population continues to expand, obviously the supply to meet that must continue to expand. Something like the chicken and the egg. Which causes which has always been the subject of some concern.

It was then the popular belief of treatment, and I think based on a good deal of study done here in the District of Columbia—and I still think it is true—that a person becomes a heroin addict because he meets another heroin addict and as a result of this attempt to experiment and this inducement to experiment he becomes a user himself.

He then has to have an available supply of heroin to work with, to use, to experiment with, to become addicted to.

If we are going to concentrate all of our efforts on the upper levels, whatever those upper levels happen to be—I haven't quite understood all of that, but be that as it may—what is happening at the lower level where addiction is proliferating?

What is happening in areas where there is virtually no local law enforcement? Thirty to fifty percent of the problem that we had in the United States, was in the city of New York. The city of New York had severe police corruption problems at the time. There was no question about it. A great deal of the heroin addiction took place in the black ghettos.

I met over the period of time with a great number of people in ghetto areas all over the country, who had absolutely no confidence in local police enforcement. One result was heroin addiction was continuing to proliferate in those areas without police interference.

Something had to be done to stimulate local enforcement efforts. The Federal presence, which is kind of a nice way of putting it, but our efforts were basically designed to stimulate work with, and develop local law enforcement assistance and local law enforcement programs, and to monitor to some extent the effectiveness and the influence of this.

I think we were quite successful, Senator.

Senator PERCY. Mr. Ehrlichman, in his testimony before this committee, implied that the war on drugs was a "hot item."

Clearly, the drug problem was glamorous in that it was a lead news item. Mr. Ehrlichman implied that this was one of the reasons why the White House jumped into the anti-drug effort.

Mr. AMBROSE. I don't think there is any question about it nor do I see anything wrong with the White House responding to this kind of situation.

Senator PERCY. Mr. Ambrose, how much of a factor is politics in decisions made within the executive branch? I am particularly in-

terested in whether political concerns were the motivating force behind the jurisdictional disputes between the various departments involved in narcotics enforcement. For example, Mr. Ehrlichman mentioned on Tuesday that he had held meetings where the Secretary of the Treasury and Attorney General fought to retain their respective territories in the drug enforcement field. As a former government insider, could you expand on Mr. Ehrlichman's observations?

Mr. AMBROSE. I would be delighted to. I don't know of a single program that has been enunciated by the executive branch of the Government or, indeed, by the legislative branch of the Government that did not have some political significance or considerations.

I don't think there is anything wrong with that, Senator. I have never thought that politics was a dirty business. I happen to think that it can be a very clean business. It is the way our system works.

Of course, there was interest in this from the political standpoint of seeing that something could be done. I know that Mr. Nixon has been kicked and there are all kinds of things that have come about as a result of Watergate and everything else about which I knew nothing, but I can tell you that in my judgment, in my meetings with the President, he was personally very interested in this problem. Obviously this was an important element to him relative to his presidency and to our society.

The political ramifications, of course, did not escape him, having spent most of his life in politics. I would be surprised if it did. So I think that politics of course played an issue in it. I am not in any way apologizing for it.

I might also add that the political glamour—I think Mr. Ehrlichman used the phrase “the sexy appeal of narcotics enforcement” which is kind of an unusual term for it, but at any rate, I think that is the term he used, did not escape me. The White House was interested in this and any program that we would put forward which would have some political appeal would be helpful.

The agencies would not have gotten the resources without this kind of political impetus and without the kind of pressure that we got from the press, from the people themselves. People were sick and tired of being ripped off by drug addicts. There is no question about it.

People are still sick and tired of it. It is one of the great threats to the very existence of our urban society. So that is politics. If that is politics in the broad sense, yes, sir; I think it played a very important factor.

As far as the interagency difficulties are concerned, I don't know of any politics that were particularly involved there in the sense of Republican-Democratic politics. There is, of course, a constitutional built-in mechanism in any bureaucrat that his agency ought to do everything and the other agencies ought to do nothing. That is a standard situation. That is the way the system works.

It usually operates as a check and balance.

I had the occasion of reading my former associate and long-time friend, Mr. Rossides' testimony yesterday, who views the entire Government as if it would be operated better from the Treasury Department. He has always felt that way. That is his feeling about the matter.

I don't particularly care what party you are involved in. I am nondepartmental in the governmental sense.

Senator PERCY. Mr. Chairman, I will be leaving in a couple of minutes to meet with the Prime Minister of Australia. If his schedule permits, I will come back when Mr. Ingersoll is here.

Before I go, I would appreciate it very much if I could ask another question or two.

Mr. Ambrose, as you know, I have been very much interested in trying to determine why the Federal Government seemed to be spending so much time on street crime instead of leaving that to local law enforcement officials and concentrating on those things like international networks, and so forth, that only the Federal Government can effectively deal with.

Obviously, the Federal Government has to do a certain amount of local work in order to be well informed. But it shouldn't be preoccupied with it.

Yesterday at the subcommittee hearings, former Assistant Secretary of the Treasury, Eugene Rossides, stated that in many cases local law enforcement officials were better equipped to handle narcotics problems than the Federal agents. Do you agree with that statement? If so, wouldn't it be better to permit local law enforcement officials to handle most of the enforcement burdens against most users and small time dealers?

Mr. AMBROSE. What you are doing is giving the manager the option which is of course what you have to do. I don't have any idea how much Federal involvement there should be. In some cases there probably should be very little Federal involvement where the local operation is efficient or where there isn't any significant interstate trafficking of any kind. But there has to be some Federal involvement.

Also, I didn't note it in the report, there seems to be some feeling among the committee staff that these low-level cases do not develop into big cases. That proposition always has been interesting to me. The concepts that people have about how you just start off at the top by arresting the big criminals. The biggest Mafioso that was put in jail that I know of was a result of trafficking in heroin. He was a fellow named Vito Genovese, who was the Don of all Dons, the boss of all bosses, all the words that go with that.

The Genovese case started on a one-eighth of an ounce buy by an undercover agent in a bar on Eighth Street in lower east side of New York, which I tried as an assistant U.S. attorney. That was in 1955. That case formed the basis for subsequent investigations which ultimately led to the conspiracy indictment and conviction, of among others, Vito Genovese. How in God's name is somebody going to get at Vito Genovese unless there is some kind of substantive violation somewhere along the line? I just don't know.

Senator NUNN. Was he put in prison on the narcotics charge?

Mr. AMBROSE. He sure was; absolutely.

Senator NUNN. Very few of the top figures, the so-called boss of bosses, have been put away on narcotics charges. Most of them have been put away on tax evasion. Isn't that true?

Mr. AMBROSE. Senator, that is not true. I am sorry to disagree with you. Carmine Truanti, I can't remember all the names, I noticed

former Commissioner Giordano is here this morning. I am sure he could cite a million of them. But some of the major Mafioso figures in the United States were put in jail on narcotics charges during the late fifties and early sixties.

Senator NUNN. How about since the early 1960's?

Mr. AMBROSE. I left the Government, Senator, in January of 1960 to go back to New York and I worked in the government there. I know of the association basically until 1965 or so, and from 1965 to 1969 my knowledge is mostly of newspapers and bitching that I heard from agents about what was going on.

Senator NUNN. This is very interesting. We can get the statistics. But this is directly contrary to the testimony Mr. Rossides gave yesterday. There is nothing wrong with that.

Mr. AMBROSE. I don't want to get involved in the comment on personalities. Gene and I have had some disagreements on this subject. We worked together in the Treasury in the fifties.

Gene, as I said, has a very definite view that the world would be better off if the Secretary of the Treasury were the President of the United States, and frankly, that is his view. I have no objection to it.

Senator PERCY. I would suggest that we join together in making a request that the record be kept open so that we can put the actual figures in.

Senator NUNN. I think this is something the staff really ought to clarify—it is a matter of fact. It shouldn't be just a matter of opinion. We ought to be able to get the record of convictions on narcotics charges. From what date would you suggest we get this information?

Mr. AMBROSE. I would suggest, Senator, that we talk about the period from, say, 1955, 1952; somewhere in there, until say about 1963-64-65, in that vicinity.

Senator NUNN. Of course we want it updated.

Senator PERCY. I think we ought to update it.

Senator NUNN. You are saying we ought to go back to 1955 in order to get a complete perspective?

Mr. AMBROSE. I think there is no way of studying this problem, and one of the things the committee did which I think was quite appropriate, was review the history of narcotics enforcement.

I don't think you can separate the two, unfortunately. I might add there have been a great number of cases made in recent years. I personally don't know offhand—I could be wrong on this because I haven't followed up on it closely—I don't know of any major traffickers recently who have gone to jail solely on the basis of an income tax investigation. I am not aware of it.

Senator NUNN. Not in the last 2 or 3 years because it has almost been virtually stopped.

Mr. AMBROSE. I don't recall any during the period when we set up the so-called Treasury Tax program. It is a very effective program, a fool which should be used. But what I am saying is when we talk about the involvement of a major criminal operator, the Mafia, so-called Mafia groups, that was in that earlier period.

I might add, Senators, that we always believed that one of the reasons for the Apalachin meeting was to get the Mafia out of the junk business. I think that has been the fairly well-known situation.

You may not be getting those kinds of convictions because they are not in it anymore. I don't know.

Senator PERCY. Mr. Ambrose, I will have to leave now. I am leaving additional questions with the Chairman, one of which concerns Customs, which I would particularly appreciate having asked. Then the others, if we don't have time, could be given to you to be answered for the record. We would appreciate it very much indeed.

Mr. AMBROSE. I would be delighted.

Senator PERCY. I am very grateful to you for being with us today. Mr. Chairman, I will try very hard to get back for Mr. Ingersoll.

Senator NUNN. Why don't you go ahead, Mr. Ambrose?

Thank you, Senator Percy.

I believe you were at the bottom of page 6. That is my recollection.

Mr. AMBROSE. That is right, sir.

Where the agency is located, however, is far less important than that our narcotic investigative and intelligence forces be integrated into one agency.

[At this point Senator Percy withdrew from the hearing room.]

Mr. AMBROSE. Background on the creation of the Office for Drug Abuse Law Enforcement.

During the early part of 1971, while serving as Commissioner of Customs, I received a memorandum from the then Under Secretary of the Treasury, Charles E. Walker, informing me that high-ranking officials of the Government were being asked to furnish new ideas for governmental programs. I sent a memorandum to Mr. Walker suggesting the creation of a joint task force which would bring all the resources of the Federal Government directly to bear on the narcotics problem. Having become thoroughly familiar with the bureaucratic problems in the narcotics area, I suggested that the President might want to appoint an official with plenary powers who would be able to pass over all bureaucratic obstacles so that we could get on with the job. It was clear to me at that point that our efforts were fragmented and incomplete. Policy directions of our programs were in the hands of well meaning but inexperienced individuals in the White House, the Treasury, and the Justice Department.

There was some progress. The Customs Service was beginning to make spectacular seizures. The Bureau of Narcotics and Dangerous Drugs was making some interesting cases and increasing its overseas efforts, but they had made a determination to work only on so-called high level cases and leave smaller trafficking cases to local police establishments.

It was increasingly apparent in major urban areas of the United States that there were increased patterns and incidences of serious police corruption, a good deal of which was narcotic related.

[At this point Senator Brock entered the hearing room.]

Mr. AMBROSE. In most urban ghettos, narcotic addiction had become a major social disaster. Evidence was abundant that residents of these areas were distrustful of the police and indeed there were numerous reports of local vigilante action being taken against heroin peddlers. It appeared in many respects, despite all our efforts to reduce the supply of heroin, that we were not doing so with enough speed to stop addiction from proliferating—not only in the inner city, but in the affluent suburbs.

It was further clear that the tremendously increased Federal effort was not publicly recognized—a fact which contributed to the citizen's loss of confidence in his Government. I felt as did many others that we were sitting on a powder keg.

The evidence available at the time indicated, and I still think it is true, that addiction is spread by addicts who introduce neophytes into the world of drugs. The other necessary ingredient is an easily available supply of drugs to which the experimenter can have quick access.

We, therefore, had to deal with the problem of trying to stop new addicts from being created at the so-called street level. Hopefully this would help reduce the demand. At the same time, we had to reduce the supply of heroin available and the ease of access to that supply by addicts and those they would tempt to experiment.

All our efforts to stop the Turks from growing opium—increasing our arrests of major traffickers and our border interdiction efforts, and so forth, would be meaningless if we allowed this easy development of a continually larger addict population to grow unabated.

Attempting to reduce the supply of drugs without reducing the demand for drugs was like attempting to stop the flood by putting a finger in the dike. We believed the social consequences of failure to be enormous.

Under our legal system we have no way to isolate addicts although many have advocated such a procedure in one form or another. We could, however, through the utilization of close law enforcement at the lower levels of the distribution system, legally coerce addicts into treatment programs. You must recall that about two-thirds of the funds appropriated went into treatment related activities.

By doing this we could also make it difficult for people to obtain heroin. I believed then, and I believe now, that such a program is necessary. I might add that it was no secret in the minds of a good many of us that the Bureau of Narcotics and Dangerous Drugs was not making enough significant cases to have a substantial impact on the traffic and that its leadership was less than satisfactory.

Its inability to capitalize on arrests in the lower levels of traffic, whether by its own or local police actions, frustrated efforts to get at wholesale distribution systems.

ODALE was created to fill this vacuum. The real purpose for pressure at the lower levels of the distribution system was not the mere collection of statistics or the accumulation of an arrest record, but to stop the proliferating addict population and ultimately to reduce it to manageable proportions. Such a program as this can only be useful and successful if done in conjunction with a major effort overseas, at the borders, and in arresting and prosecuting major violators.

I purposely designed the ODALE program to be experimental and of short duration—18 months—to see if we could put together all our resources to attack the problem at the lower levels to utilize grand juries, lawyers, tax investigators, local police, prosecutors, Federal agents—the whole panoply of resources available to attack this one area.

We would have to use undercover purchases as one method of operation, but under the control of experienced agents and attorneys. Incidentally, we intended to have far more local police officers involved in our program than Federal. This, we did.

'One of the important objectives of ODALE was to see if we could effectively develop other means of accomplishing our objectives other than through the so-called buy and bust technique. I am not an advocate of the practice of putting large amounts of money into the hands of the underworld for the purchase of evidence or information.

For your information, while I was Commissioner of Customs, I was the one who raised objections to the BNDD procedures relative to large amounts of money going out for purchases of information and evidence.

As a matter of fact, I talked to Mr. Krogh the other night before he testified and in his testimony he made reference to the fact that a Treasury official had objected to that and that official was me, according to his statement to me on the phone.

ODALE personnel were instructed to try every other legal means devisable. Naturally, it was one tool and it would and should be used where other tools are unusable.

I am still convinced that by every objective test available we succeeded in slowing down, if not arresting, the continuing entrance of large numbers of new addicts into the drug culture. We had more than 8,000 arrests among the 9,568 suspects identified.

We removed from the traffic 230 pounds of heroin of varying purity. When we concluded the program, 20 percent of our cases had already been tried resulting in a 90 percent conviction rate. I have no reason to believe that the ultimate conviction rate was any lower.

As part of our experimental approach we attempted to measure the effect of enforcement efforts through analysis of heroin purity and street price of the product. This was very carefully and selectively done under a staff headed by our Chief Investigator, Jack Cusack, of the BNDD.

Some of the results: In New York City, the street price of heroin quadrupled between April 1972 and May 1973, while purity dropped from 8 percent to less than 3 percent. In Washington, D.C., the price tripled and the purity dropped from 12 percent to 2.9 percent during that same period.

We felt that this clearly indicated the success of our narcotic programs—and I underline "programs"—and that it had a substantial impact on reducing the number of new addicts entering the market.

In addition, it was during this period that heroin and drug related deaths decreased markedly and the number of addicts entering treatment programs increased tremendously.

Senator NUNN. Underscoring the word "programs," I think we have had several different views of this decrease in addicts in that particular period of time. What other programs would you attribute—obviously you think ODALE was one of them—what other programs would you attribute part of this success to?

Mr. AMBROSE. I think a number of things, the fact that the Turkish Government, of course, had reduced or stopped growing during that period of time, the fact there was a port strike in New York undoubtedly had an effect on it for some period of time, the breakup of the Latin-American connection which was a very substantial organization entering drugs into the United States, the tremendous number of seizures that Customs was making both in New York and principally, I think, in Florida during that era, which stymied major groups from

delivering drugs to the United States. I think all of those had an impact.

ODALE investigations led to the identification and breakup of a number of large-scale major distribution systems in New York, Los Angeles, Miami, and other cities. Many of these groups were previously unknown to the authorities.

The intelligence gathered by those offices is still useful. Our community action programs did much to restore confidence in enforcement operations and convince a portion of our population that there was someone trying to help them.

We had no integrity problems because of undercover operations, largely, I think, as a result of the close control exercised by our attorneys in conjunction with our chief investigators. We did have a few, very few, incidents resulting from overzealousness—Collinsville, for example. Such unfortunate acts tended to obscure the program's accomplishments.

ODALE was intended to be a model for testing unified law enforcement concepts and to prove the effectiveness of good coordination and the development of close relationship between Federal and State Governments. There are, and have been, many police and prosecutorial officials throughout the country who worked closely with us and will attest to the success of these efforts. For example, about a year ago the New York City Police Department did a study of the effectiveness of various narcotic enforcement programs which they operated either individually or participated in over a period of the last few years. The report rated the ODALE program as the most effective.

Managerial problems. Your staff has asked me to comment on narcotic program management problems.

Consideration of these problems must proceed from a sympathetic understanding of the difficulty any administrator has when he is faced with dealing with an enormously complicated situation which grew all out of proportion to expectations—where for years support for Federal programs was minimal.

Remember, the Bureau of Narcotics had less than 400 agents in the early sixties, and Customs had about 300 agents when I became Commissioner in 1969. The application of a large quantity of resources brought about many difficulties.

Narcotics enforcement budgets didn't just increase, they multiplied about 11 times—\$65 million in fiscal year 1969, \$719 million in fiscal year 1974. There were few trained management personnel. It was truly similar to raising an army overnight. People may disagree with what we did from the enormous vantage point of hindsight, but unbiased judges will examine the results with some consideration of the complexity of the problem.

Narcotics enforcement people are an unusual breed. They also require a certain amount of understanding. It is a difficult, dirty business, subject to unusual temptations and, unfortunately, conditions and human nature being what they are, one is always going to have some difficulties.

Narcotic agents are not and cannot be like FBI agents, putting on their fedoras, carrying their notebooks, and sallying forth to do battle with violators of the Peanut Statistics Act or perpetrators of bank-ruptey fraud.

Attempts to make narcotic agents like that will only result in less effective enforcement. It is a different trade and we must recognize it as such. In stating this, I am not attempting to be critical of the FBI or in any way to condone illegal or unusual acts by narcotics agents.

It is just what we must recognize that some unique problems exist and will. We have to minimize them and try to deal with them in the best way possible without frustrating our enforcement objectives.

One of the great problems I had as Commissioner of Customs, Ingersoll had as Director of the Bureau of Narcotics and Dangerous Drugs, and Bartels had as head of the Drug Enforcement Administration, is the inability to pick your own people to run the show.

There is also a huge amount of backbiting and personal dissension in enforcement bureaucracies as I suppose there is in others.

Senator NUNN. Senator Percy has introduced a bill to remove GS-15 and over personnel in DEA from the civil service regulations; making it more nearly like the FBI, at least at the top levels, so that the Administrator can have more management flexibility and can get more done in terms of management changes.

Do you agree with that based on this testimony?

Mr. AMBROSE. I would go down to grade 13 or 14, to the supervisory level. But always leaving the civil service rights of the individual intact.

In other words, as a matter of fact, this is nothing new. This was a recommendation that the Chairman of the Civil Service Commission had in a bill which was an administration bill sent up to this Congress in 1969 in which all senior personnel of the Government would work, once they got to supervisory or supergrade levels, would work on so-called 5-year term arrangements with the managers.

That is just the same in other bureaucracies as it is in enforcement, no question about it. The man who is the manager needs some people who he can pick and who are responsible to him but they should still retain civil service status. I am not under any circumstances, advocating, never have, never will, that Treasury, or any agents be removed from civil service such as they were in the FBI.

One of the problems of the FBI in my judgment is that the agents were not civil service and they were subject to the whim of any supervisor and dismissal for violation of anything, almost.

I think that given the circumstances surrounding the creation of DEA—the time it was done, during the developing Watergate investigation—we are lucky it survived at all. You should remember that DEA was created during the Kleindienst tenure as Attorney General, passed through Congress under Richardson, started really functioning under Saxbe, and is now operating under Levi: all in 2 short years during which narcotics use was apparently increasing and the Agency was being investigated by Congress and the press and what have you.

John Bartels is an honorable and decent man. He was an excellent prosecutor with a distinguished national reputation, the recipient of the highest awards from the Department of Justice and the accolades of the national press. He was an effective administrator in ODALE.

He had to survive 2 years under four Attorney Generals and two Presidents, working with a White House staff which dealt with the outside as if they were in a "bunker," to use one of their own terms.

I might also add that John had to face hostility from certain elements within DEA who were not happy over his appointment and who apparently did everything they could to undercut him, and from some employees of the Bureau of Customs who spent a good portion of their time up here on the Hill revving up opposition to DEA and the concept of a unified enforcement effort. I am sure this was done without the support of their superiors.

As a former Commissioner of Customs who devoted a good portion of time to narcotics enforcement in that agency, I am confident that the creation of DEA was not only the logical but the correct step.

I am also confident that if allowed to go forward and do its job, it will do a reasonably good job. It cannot if its very existence is constantly being questioned—if it must spend its time fending off critics, fighting jurisdictional brush fires, or constantly being threatened with extinction.

It seems to me that this committee ought to condemn whatever abuses it finds, commend the concept of a unified, unfragmented approach to the solution of this awful problem, and let the professionals get on with their tasks.

To say that the Federal effort has been a failure is like saying that our system of government—our legislative, our executive, and our judicial systems—have failed because there is still crime, corruption, and poverty abroad in the land.

We know that is not true. We also should realize that the narcotic situation would be a lot worse than it is if it were not for the efforts of the men and women of the Drug Enforcement Administration and their cohorts in Customs and elsewhere. This effort is not a failure—there is just a lot more to be done and I am sure with your help, it will be.

Senator NUNN. Thank you, very much, Mr. Ambrose.

I think these hearings are pointing out very vividly the tremendous difficulties involving this overall area. I think your testimony has added a contribution to this. For one thing, every witness has almost a different view. I have never seen any subject where there is less consensus; everybody has taken credit for the decrease in drugs from 1971 to 1973.

I am sure there is some degree of truth in everybody's testimony because, as you point out, there were many different things going on at that time.

Mr. AMBROSE. I think they all contributed. I think there is no question about it. That is the very reason, Senator, why I object to so-called simplistic solutions which have been proffered for solving this problem. It is a very, very complicated problem. For that reason, I would like to make a couple of comments on the report, if you don't mind.

Senator NUNN. I don't mind at all. I would be glad to have your comments, critical or otherwise. Let me ask you this question before you go to that.

It seems to me that one of the prime things we have got to have is at least some agreement of what success and failure is. We have got to have some reasonable goals and objectives. In terms of the administration that you served in and since then, and in terms of Congress, I see no goals and objectives. I see no criteria by which we measure success..

How do we expect the press, the media, and the American public to conclude in a rational, reasonable way, that we have either been successful or unsuccessful? How can we expect a congressional committee to evaluate success if there are no goals, if there are no objectives, if there is no criteria to measure success other than in terms of doing away with narcotics and drugs.

We both know we are always going to have a problem to some degree. It is a question of to what degree and it is a question of minimizing it.

Would you find fault with both Congress and the executive branch, without talking about parties and people, for not setting up detailed criteria and goals and objectives?

Mr. AMBROSE. I think there are some goals and objectives now, Senator. I am not quite sure how you really completely establish them all. I think the problem that we face and which is the realistic issue at hand is that this problem of addiction proliferated during the sixties unabated, virtually unabated; that when we had an estimated—I say estimated, underlined—50,000 heroin addicts in the United States in 1960 and possibly half a million or three-quarters of a million or maybe even a million in 1970, I think this growth is the problem.

I think this is the proper area, the appropriation area for measurement because it is the social costs of addiction that concerned us most. Most of us, most individuals, realistically don't care if somebody wants to be a junkie or if somebody wants to be a drunk. If that is their choice in life, that is their choice in life.

We do care when they are being a drunk or a junkie affecting us, whether they have to ripoff our television set or commit crimes or whatever it has to be done to feed the underworld. So it seems to me that our direct thrust here should be at the addict population. That is the program. That is the goal. We should bring it down to whatever the manageable proportion is.

I am not prepared to give you any figure, per se, on that; but that is what we should be going with.

Senator NUNN. I don't disagree with that. I think that could be one goal. There might be other ways of measuring, too, but under the goals of the last 2 or 3 years, I would say that we have been going in the wrong direction.

Mr. AMBROSE. That could well be. It could well be that the results have not been productive. Again, I would like to emphasize that without this direction, it may have been two or three times worse. I don't think that conclusion necessarily follows, Senator, with all due deference.

Senator NUNN. With all due deference, too, if you use your logic, then there is no way of finding out what the success really is. You could just establish that it has tripled in the last 2 years. It has gone up. It is getting worse in the cities and suburbs and in the country, but my gosh, it would have been a lot worse if we hadn't been there. Under that rationale, there is no way of measuring success.

Mr. AMBROSE. I think measurement only goes so far anyhow. I don't think that the success or failure of any governmental program is susceptible to mathematical calculation. I just don't think it is possible.

Senator NUNN. I don't either, but I think the American people have a right to look at their Government—not Customs, not ODALE, not

BNDD, DEA, not the Attorney General, not the Department of Treasury, not the Senate Permanent Subcommittee on Investigations—but their Federal Government, and say you are our Government.

We don't care about all of these disputes and complications. We care about our children. I think they have a right to look at that. We are all looking at it with tunnel vision. We are looking at who is at fault and so forth.

Our subcommittee has made some of those same mistakes, no doubt about that. But the American people have a right to look at their Federal Government and say we expect you to set up some reasonable goals and criteria. We expect to be able to measure you and your Government on an accountability basis in this area that affects so vitally our whole social fabric.

They are not able to do that now. They haven't been able to do it for the last 8 or 10 years. I don't know of anything right now that is improving the situation.

Mr. AMBROSE. Senator, it is very difficult for me to argue with you on that subject. As far as the bureaucratic turf, jurisdictional problems, again I call to your attention, sir, that I was the Commissioner of Customs. I am the one who recommended the DEA go to the Department of Justice, not the Treasury Department at that point. So it was not a question of any bureaucratic decision.

In my judgment, it was based on what I perceived to be the best, most available, most effective way of meeting the problem at that time. I could be wrong in that judgment, but I think the American people got what they paid for during the period of time that we were running this. We did our level best. I am not apologizing one whit for what we did during that period of time.

Senator NUNN. I am not seeking an apology.

Mr. AMBROSE. Thank you.

Senator NUNN. You wanted to critique the committee report. Why don't you go ahead?

Mr. AMBROSE. I have already made some reference to the fact that on page 55, in my statement which I discovered after, your report indicates that I was a strong advocate of undercover operations. This is in the testimony of the employee of the committee.

First of all, as I have stated, that was not true. Second, no employee of the committee ever talked to me at that time. So I find it very difficult to conceive how they could echo my views without having talked to me about it; but be that as it may, I think the record is fairly clear at this point.

The committee also makes some conclusions that I would like to comment on. They state in conclusion that there should be severe restrictions on the use of Federal agents in the street, and that that should be the primary responsibility of the local and State police. But then they go from there to the conclusion that never again should Federal drug law enforcement become highly visible. That is an open invitation, Senator—

Senator NUNN. Why don't you complete that, at the local level.

Mr. AMBROSE. At the local level, that is what I am saying. That is an open invitation it seems to me, to invite drug dealers to a safe haven where there is little or no effective local law enforcement, a problem which existed in this country and may exist today. I don't know. Fed-

eral law enforcement programs will fail if there is no effective enforcement at the street level.

Senator NUNN. We have the same thing. We have a lot of murders going on in places where nobody is being arrested and prosecuted. We have a lot of burglaries going on. If we use your rationale, people don't worry about whether there are addicts all over the street. I disagree with that.

I think they worry about people as human beings, whether their TV sets are being stolen or not. I do think the crime element does cause additional worry. Under that rationale you used, we ought to be concerned about burglaries from the Federal level, if local law enforcement is not—

Mr. AMBROSE. We are concerned about burglaries in the Federal level if they are organized, part of a chain of criminal activity. In other words, narcotics sales, isolated criminal acts, narcotic trafficking is not an isolated criminal act. It is one link in part of a broad chain which starts in Turkey, Mexico, and winds up in Harlem or wherever it happens to be.

So it is a chain, sir, that is the difference between an isolated murder and certainly the Federal Government should be interested if there is an interstate murder ring. The Federal Government should be involved in the local level. If there is an interstate burglary ring or kidnapping, the Federal Government should get involved in the local level, which they do.

Senator NUNN. I think the essential question you have to ask, first of all, is whether you have confidence in local and State people. People at the local and State level are just as concerned about narcotics addiction as we are here in Washington. I think it is a mistake, one of the real mistakes made here in Washington. We make that mistake in a lot of different fields almost every day. I participate on occasion. I guard against it on other occasions.

But we make the mistake of thinking the only people concerned about drugs are sitting in the Bureau of Customs, or in BNDD or in the White House. That is simply not true. If local people get concerned enough, they are going to insure that they have a degree of competency in their law enforcement.

There is another point that I disagree on fundamentally. Forgetting philosophy, forgetting what level of government should be doing it, I don't think the Federal Government is capable of doing everything in the narcotics field. To the extent you devote a tremendous amount of your Federal resources to local street enforcement is the extent to which you also neglect other areas. I think that is happening.

Mr. AMBROSE. Senator, I am not advocating massive involvement of the Federal Government in the State. Never, at any time have I advocated that. I am saying there has to be some participation, some balance and participation and, of course, where local law enforcement is effective—and more often than not, it is—they should be left to do the job. There is no question about that.

I am saying where you have this vacuum, where you have the absence of it. I am also saying there has to be a certain amount of participation because the Federal Government has no way of identifying who the important people are without knowing who the little people are.

Senator NUNN. Of course, it is a matter of semantics. But you are disagreeing, which is your privilege, with the subcommittee finding. I think I will read the whole thing so it can be put in the proper context. It says:

Never again should Federal drug law enforcement become highly visible at the local level in pursuit of low-level dealers and addicts. It is unnecessary and inappropriate for Federal agents to concentrate on low-level dealers. Federal personnel should be attacking the drug problem at a much higher level, they should not encroach upon the States' responsibilities to conduct their own police functions.

That is an entirely different thing than you have interpreted it to be. You set up the strawman and knocked it down. Your interpretation is that we are saying the Federal Government should not do anything at all at the local level with local and State officials. That is not what the subcommittee is saying.

Mr. AMBROSE. That is the way I read it. If I read it wrong, I am delighted to be corrected; but to me that is the way it reads.

Senator NUNN. That is fine; but I think any normal person reading this with a rational approach, without having already made up his mind, would conclude that we are saying the local and State people have the primary authority at the local level. The Federal Government should help coordinate and cooperate, but, at the same time, concentrate in other areas. That is what we have had one witness after another testify to.

Mr. AMBROSE. That is exactly what I have maintained all along. I said, though—and I repeat again—there has to be some Federal involvement at the local level, the extent of which is dependent on the circumstances, the local situation, the amount of trafficking in that area and so forth. That is proper.

That is my statement. I am not saying the Federal Government, by any stretch of the imagination, should usurp the function of the States and localities.

Senator NUNN. We are not that far apart.

Mr. AMBROSE. In the ODALE program, I would want to point out again that the vast percentage of people that we utilized in that were local law enforcement officers, not Federal agents.

I also have to comment on the conclusion and agree with the conclusion that undercover buys should not be used indiscriminately and that the technique should not become entrenched within an agency. I certainly think those are truisms, but on the other hand, I don't think they out to be put in the context of interpreting or being allowed to be susceptible to the interpretation that this committee is taking the position that undercover buys shouldn't be used and it is just an improper situation.

I don't think it is improper. I think it is a legal thing. I think one fraught with a great deal of danger. Absolutely no question in my mind about it; but it has to be used, unfortunately.

Senator NUNN. I don't disagree with that at all. It is a question of which sentence you put first:

This committee believes that undercover work coupled with buy-bust techniques should not be ruled out altogether as investigative tools, but should never be used in an indiscriminate manner and should most definitely not become entrenched within the Federal agency charged with drug enforcement.

Mr. AMBROSE. We agree. The fact of the matter is it has to be used. It is a question of how you read it. The other thing I had some question about and I would like to comment on is on conclusion two.

I see no reason why agents in the Drug Enforcement Administration, many of whom are Customs agents to start off with, cannot, with the cooperation of the Customs agency service, not with the non-law-enforcement people, work out a satisfactory method whereby the kind of intelligence Customs needs could be furnished.

I hope the members of this committee are not being misled into the belief that there is some magic intelligence gathering capability that can be brought to bear only if one carries a Customs badge. It just isn't so. If we have to return to Customs-Narcotics jurisdictional rivalries, we will have no effective law enforcement at all.

Parenthetically, I might add that the major, most of the major recognized superior narcotics officers of the Customs Agency Service, of the old Bureau of Customs, now hold the principal field positions in the Drug Enforcement Administration.

Senator NUNN. On that point, I don't want to act like I am disagreeing with what you just said. We have made no conclusions about the organization.

Mr. AMBROSE. I appreciate that.

Senator NUNN. We are trying to explore all of this and raise questions.

Mr. AMBROSE. My point is that the kind of intelligence needed by Customs for interdiction efforts can be developed very simply by the Drug Enforcement Administration if programed to do so.

Senator NUNN. Again not disagreeing with you at all, I think that we have to raise these questions. We don't have to make any speedy conclusions. I think one of the big problems is, as you have pointed out, so much reorganization, so much turmoil. I don't know if anybody could draw up a management function that could have done a first-class job during the last 4 years. I don't know that that has been possible.

I think it is one of the fallouts of Watergate, one of the unfortunate fallouts of the Watergate affair. Nevertheless, on the business of Customs now being a part of DEA, we are getting a good many contacts and letters from Customs officials who are part of DEA. They say there is a two-track system and that they are being weeded out and fired as they go along.

Mr. AMBROSE. It is terrible, if that is the case.

Senator NUNN. That is something we cannot correct by throwing it at a different chart here in Washington.

Mr. AMBROSE. One other point I would like to make reference to and I would like to submit an addendum to the record when I have a chance to prepare it, if it is agreeable with the chairman.

Senator NUNN. Without objection.

Mr. AMBROSE. There is some reference in your report to the Collinsville situation. I know of Senator Percy's continuing interest in this. I would like to point out for the record that the Collinsville incident—where some agents of an ODALE unit went into a wrong premise—was the subject of a great spate of publicity at the time, public hearings and everything else. Where the people who were—particularly the

Giglotta family—the first to raise the issue, their statements were echoed all over the press.

As a matter of fact, Giglotta appeared on Dick Cavett's program. Those of us in the Department of Justice, of course, were prohibited from commenting on the case at the time; but the fact of the matter is everybody was quick to believe what Giglotta said and ignored what the agents said.

We conducted an immediate investigation that showed they did make a mistake, but that they did not abuse these individuals. We then had the U.S. attorney conduct an investigation. It was ultimately lifted from the U.S. attorney by so-called civil rights division and they indicted these agents for violation of civil rights. The agents were all acquitted.

These agents were indicted on the complaint and testimony of Mr. Herbert Giglotta and his wife, the Government failed to put them on the stand in the prosecution. I have never heard of a situation where the complaining witness was not brought forth by the Government in the prosecution. These people were acquitted.

Maybe the reason that they didn't put Mr. and Mrs. Giglotta on the stand, particularly Mr. Giglotta, is he has a lengthy criminal record; but his word was immediately believed rather than the agents'. In one of the other cases, in the *Minor* case, the agents subsequently have won libel actions against the individual that does not appear in your records, sir.

Senator NUNN. You said involved. They brought libel action?

Mr. AMBROSE. Against the so-called victim, Mr. Minor, who is referred to in your report and each of the agents have been awarded \$15,000 for libel and under the *Sullivan v. New York Times* theory, they had to show malice in the case. They won \$15,000 each.

Senator NUNN. That has been tried?

Mr. AMBROSE. That has been tried. I think the appeal has already been taken care of.

Senator NUNN. I am glad to know that. We will ask the staff to look into it. We will add that to the record.

Mr. AMBROSE. I might also add with reference to the Herbert Askew, the third party involved, who was also involved in this situation, he claims that he never made the statements that the press attributed to him that he was abused. There is no question that the agents went to the wrong place.

I might also add that the agents were acting with warrants, not with any no-knock warrant situation, and as a result of this, there is a great deal of testimony up here on the Hill about the use of no-knock warrants. I think they have been finally abolished for some reason, but there is reference to this case because there were warrants.

All of the subjects of those warrants were subsequently arrested, all of the people were subsequently tried, convicted, their appeals were held and they were sentenced to jail, those that were involved in this initial investigation. Some of the agents were suspended without pay for a period of 3 to 4 years during this period of time. It cost them legal fees. They have now been restored to duty, as I understand it. There is further action pending trying to make them financially whole.

I would like to just comment on that because the record would seem to me to be incomplete if we let it stand that Collinsville was the way it was portrayed to be in the late spring of 1973.

Senator NUNN. I am delighted to have that as part of the record. If you want to add anything subsequently, we would be glad to hear it. The unfortunate thing, it seems to me, is that the people who know these things, at the time are not permitted to discuss it publicly, while the other side is.

How do we guard against this same thing happening in the future, if all of your facts are correct?

Mr. AMBROSE. I think what needs to be done is what we have to do in most situations that is try not to rush to judgment. I think in this case with the press. Particularly, certain newspapers in the United States which made great play out of this, front page coverage for a period of weeks.

I remember when one case was dismissed, one of the papers that I happened to read frequently, had the dismissal on page 27, the bottom, left-hand. How do these poor fellows who make a simple mistake get back their good name and everything else? I don't know. I just don't know.

Senator NUNN. I think minority counsel would like to ask a question.

Mr. STATLER. No. I would just like to make sure that the record is complete on this question. I therefore ask the Chairman's consent to place in the record Mr. Ambrose's own statements made shortly after Collinsville took place, in which he made various charges relating to what happened and he reprimanded some of the individuals involved. I will produce that document and ask that it be admitted into the record.

I would also ask that the record be kept open to receive a letter that was received by Senator Percy from John Bartels, Administrator of then DEA, the letter indicated that, notwithstanding the acquittals of the various agents, the Department of Justice itself took administrative action against various agents that were involved in the Collinsville incident. I might also note that many of those administrative actions based upon the evidence were sustained by the Civil Service Commission.

Mr. AMBROSE. Senator, with all due deference—

Senator NUNN. Without objection, we will leave the record open.

Mr. AMBROSE. I think the Senator ought to ascertain the facts. I am advised by the counsel for the Drug Enforcement Administration that no administrative action has been taken against the agents and that no reprimands have been issued.

Senator NUNN. I would ask counsel to devote some time to this subject so that we can get the record straight. I would ask that we form a letter to Attorney General Levi to bring us up to date, as far as the Justice Department is concerned, regarding what has happened. Also, we should ask DEA to give us a rundown on what has happened in the libel actions. We would then have a complete record. The minority counsel's request for permission to enter documents in the record is, without objection, granted. Moreover, Mr. Am-

brose shall be given an opportunity to respond to any of these points so we will have a complete record.

Mr. AMBROSE. I would appreciate that in view of the fact that I am sure some of the statements would be third-party hearsay statements allegedly made to reporters. I would like an opportunity to correct that.

Senator NUNN. You will certainly be given that opportunity.

Mr. STATLER. The only two documents I have asked to be admitted are Mr. Ambrose's own statement and the letter from DEA. There will be no third-party hearsay involved in that.

Senator NUNN. We will be glad to have those admitted. We will then give Mr. Ambrose a chance to rebut that; and we will give minority a chance to rebut his rebuttal, and we will give Mr. Ambrose a chance to rebut that. The record will be kept open until everybody is satisfied that every document they want included is included in this record.

Mr. AMBROSE. I think maybe I will have an opportunity to go back and practice law.

[The documents referred to were marked "Exhibit No. 60" for reference and follow:]

EXHIBIT No. 60

STATEMENT BY MYLES J. AMBROSE, SPECIAL ASSISTANT ATTORNEY GENERAL, OFFICE FOR DRUG ABUSE LAW ENFORCEMENT

You were invited today to hear the facts as we know them to date with respect to two raids conducted on April 23, 1973, in Collinsville, Illinois, by a force of agents assigned to the Office for Drug Abuse Law Enforcement (DALE) in St. Louis.

I stress that these are preliminary findings, and that a most thorough investigation continues.

The incidents in Collinsville grew out of an investigation that was begun by DALE in the St. Louis area last September and which is continuing as of this date.

Here are the preliminary findings of the Collinsville incidents:

1. On Monday, April 23, the agents involved in the investigation prepared complaints for the arrest of four suspects who remained at large in the case. Previously, arrest had been made of five other defendants on April 19 and 20. The agents discussed the matter with Mr. Frederick Dana, a DALE Attorney who was in charge of the St. Louis DALE office in the absence of the Special Attorney in Charge, Mr. Jerry J. Murphy. Mr. Murphy was in Washington that week on other DALE business.

Mr. Dana telephoned the U.S. Magistrate in Alton, Illinois, to discuss obtaining arrest warrants. The Magistrate advised Mr. Dana that he would be unable to issue warrants on that date because he was conducting a trial in Edwardsville, Illinois. Mr. Dana so advised the agents and plans were made to attempt to secure the arrest warrants on Tuesday, April 24, 1973, from the Magistrate in Edwardsville. One of the agents requested permission from Mr. Dana to arrest the suspects that same day, April 23, if the defendants were seen by the agents, and this permission was granted. This was based on the belief, borne out by the investigation, that probable cause existed for the arrests. However, no authorization was given to the agents to forcibly enter any premises to effect an arrest.

No warrants were issued on Monday, April 23.

2. On the evening of April 23, several teams of agents, consisting of BNDD agents and local police, proceeded to Collinsville. Acting on information which they obtained from as yet unidentified sources, one team went to the premises at 1008C Arrowhead Drive. At about 8:30 p.m., this group of the agents entered by force the apartment of Mr. and Mrs. Herbert Giglotto at 1003 Arrowhead Drive.

We know there was some damage connected with the forced entry. The extent of the damage and exactly what transpired while the agents were inside the apartment remain to be determined.

The agents had previously been instructed that in the course of executing arrests or searches, it was the policy of DALE to have its team of agents take with them a camera to record any personal injury or property damage. No pictures were taken.

3. Immediately after leaving the Giglotto residence, another group of agents—including some of those who went to the Arrowhead Drive apartment—and without contacting any of their superiors or DALE attorneys, proceeded to the residence of 313 West Washington Street in Collinsville to apprehend one of the suspects. Again, the agents were acting on information which they obtained from as yet unidentified and uncorroborated sources.

An occupant of Number 313 directed the agents to a house directly behind her residence at 312 Garnet Avenue. This was the residence of a Mr. and Mrs. Donald Askew, who were not connected with the investigation or the suspects. The agents wrongfully entered this residence by force and learned of the mistake after interrogating the Askews. What transpired after they entered this home also remains under investigation.

4. Mr. Dana, the DALE attorney referred to earlier, learned of both incidents at approximately 2 p.m. the following day, Tuesday, April 24. Mr. Dana said that one of the agents involved came to his office and told him of the forced entries, at which time he directed them to furnish specific written reports of the incident.

5. Mr. Dana reported the matter to Mr. Murphy, his superior, who had been in Washington since Monday morning and Mr. Murphy instructed Mr. Dana to assemble a report and forward it as soon as possible to Washington.

6. This report was received in Washington on the morning of Wednesday, April 25. On the basis of that report, Myles J. Ambrose, Special Assistant Attorney General and Director of DALE, ordered an investigation be made by the Office of Inspection of the Bureau of Narcotics and Dangerous Drugs.

7. The preliminary report of that investigation was submitted to Mr. Ambrose on Monday, April 30.

8. Also on Monday, April 30, Mr. Ambrose dispatched two Department of Justice attorneys, Mr. Thomas J. O'Malley and James J. McConnell, to proceed immediately to St. Louis and obtain additional facts about the matter.

9. The attorneys began collecting additional facts in the afternoon and evening of April 30 and are continuing as we meet here.

10. On the basis of our findings to date in this investigation, I have been authorized by the Deputy Attorney General to request the United States Attorney in Springfield, Illinois, to conduct a grand jury investigation of the entire Collinsville matter.

11. Our investigation is continuing and all relevant facts will be turned over to the U.S. Attorney.

12. The BNDD agents assigned to DALE involved in the incidents have been suspended from further assignments until this case is concluded. In addition, the local authorities have been asked to withdraw their personnel from the DALE office who participated in these raids, pending outcome of the investigation.

MEMORANDUM

DEPARTMENT OF JUSTICE,
May 3, 1973.

To: Regional Directors, Chief Investigators, Attorneys in Charge, All Personnel.
From: Myles J. Ambrose, Special Assistant Attorney General, Office for Drug Abuse Law Enforcement.

You are all aware of the allegations concerning the recent events which occurred in Collinsville, Illinois. Without in any way making a final judgment on those events, it is clear beyond cavil that our officers forcibly entered the homes of people who were not subjects of any investigation.

One of the treasured rights handed down to us through the common law and guaranteed by our constitution is the right of citizens to be secure in their homes. The usurpation of this right by law enforcement officers is odious and reprehensible. It cannot and will not be tolerated. In addition to the infringement of the subjects' constitutional rights, such action destroys the public's basic confidence in law enforcement. It destroys the credibility of each one of you.

I exhort you to exercise great care and judgment in every way possible in the preparation of search and arrest warrants and complaints and in the execu-

tion of these processes. I need not add that intemperate language is unnecessary and unprofessional and that use of force should be kept to that minimum which is necessary to effect an arrest and for the protection of the officers.

We are fortunate that the overwhelming majority of officers exercise appropriate care and adhere to the standards of conduct. It is imperative that they exert a claiming and restraining influence on those few who do not, lest the actions of the few destroy the efforts of us all.

U.S. DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION,
February 28, 1975.

HON. CHARLES PERCY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PERCY: You requested to be advised of the status of the former Bureau of Narcotics and Dangerous Drugs (now Drug Enforcement Administration) Agents who were involved in the raids at Collinsville, Illinois in April, 1973. They are Special Agents Leon Phillips, Dennis R. Moriarty, Michael W. Hillenbrand, Dennis W. Harker, Kenneth R. Bloemker, and William C. Dwyer.

On August 24, 1973 a seventeen count indictment was filed in the United States District Court for the Southern District of Illinois, charging local police officers and BNDD Agents Harker, Dwyer, Hillenbrand, Moriarty, Phillips and Bloemker with conspiracy to search without a warrant (18 U.S.C. 371), violation of a citizen's civil rights (18 U.S.C. 242), and searching without a warrant (18 U.S.C. 2236). In addition, BNDD Agents Bloemker, Harker and Phillips were also charged with conspiracy to obstruct an investigation (18 U.S.C. 1510). BNDD Agents Hillenbrand and Dwyer were also charged with perjury (18 U.S.C. 1621). On August 27, 1973 all of the Agents were suspended indefinitely.

On March 12, 1974 a trial began before U.S. District Judge Omer Poos with a jury. At that time, the obstruction of investigation and perjury counts were severed. On April 2, 1974 all of the defendants were acquitted. On April 15, 1974 at the request of the Government, the Court dismissed the obstruction of investigation and perjury counts in the indictment. Agents Harker, Bloemker, Phillips, Dwyer, and Hillenbrand were reinstated on April 16, 1974. Agent Moriarty was reinstated on April 3, 1974.

In addition to being indefinitely suspended while criminal charges were pending, the following action was taken on July 9, 1973:

Agent Bloemker was suspended for thirty (30) days for the unauthorized search of the Giglotto residence. This action was upheld upon appeal.

Agent Phillips was suspended for thirty (30) days for the unauthorized search of the Juengal residence. He appealed, and upon the recommendation of a Grievance Examiner, his suspension was cancelled. He received a letter of reprimand. Agent Harker was suspended for thirty (30) days for failing to perform specific duties (improperly booking and detaining one John Meiners). He appealed and his suspension order was cancelled on the recommendation of the Grievance Examiner. Agent Hillenbrand was suspended for thirty (30) days (unauthorized search of the Juengal home, failure to perform specific duties relating to the John Meiner's detention, and making false reports). Agent Hillenbrand did not contest this order. Agents Dwyer and Moriarty were both suspended for thirty (30) days for the unauthorized search of the Giglotto residence. Neither agent contested this action.

All of the agents involved have been transferred away from the area of southern Illinois and Missouri. They are now assigned as follows:

William Dwyer—New York City.
Dennis W. Harker—Dallas, Tex.
Leon Phillips—McAllen, Tex.
Kenneth R. Bloemker—El Paso, Tex.
Michael W. Hillenbrand—Eagle Pass, Tex.

After the conclusion of the trial, the Civil Rights Division of the Department of Justice made available to DEA a transcript of the trial testimony and a portion of the Grand Jury minutes. A review of this material disclosed Dennis Moriarty, the BNDD Supervisory Agent during the raids, to be the prime mover and undoubtedly the most culpable of all the Agents involved. He resigned from

DEA on August 6, 1974. Upon the conclusion of the pending civil litigation, DEA will determine whether any additional administrative action is warranted against the remaining five Agents.

Sincerely,

JOHN R. BARTELS, Jr.,
Administrator.

Senator BROCK. As usual in the case, we will not resolve a thing.

I would like to go back a little bit to the point relating to the Customs Department and your administration currently. I might say parenthetically that I found some areas in the committee's report, print, that I personally could not agree with.

I am still concerned about the continuing assault on John Bartels. I found little to justify the intensity or the type of assault made on him. I appreciate your statement in his regard and in his behalf. It is one that just from what I know, I share. I thank you for saying so.

Mr. AMBROSE. I am sure he will too.

Senator BROCK. He knows how I feel. I think we were very quick to criticize on the basis of superficial evidence. It bothers me greatly about it, and the Congress' opportunity to abuse an individual without his having the right to respond. This also happened to Lawrence Silberman and we were able to gain from him a chance to respond. I think he did so magnificently and I appreciated the integrity of his own posture.

That has nothing to do with my question. I just wanted it to be on the record and I wanted you to know where I stood on it.

With regard to Customs, we have had some pretty strong expressions from the officials at Customs that their efforts to combat the smuggling of narcotics had been severely hampered and their efforts were very badly crimped by Reorganization Plan No. 2 because they no longer had the intelligence gathering and dissemination authority in foreign countries with respect to narcotics.

Let me just track for you what happens in a hypothetical case. Let's say that DEA has, with its agents overseas, a bit of intelligence. If DEA officials wanted the individual to bring a supply of heroin into the country, to go through the Customs and on into the mainstream where they can track down the higher officials that are involved, should they not inform Customs that they are coming if for no other reason than to protect themselves?

Mr. AMBROSE. Absolutely. To do otherwise would be a violation of law.

Senator BROCK. Should they not also have the authority to tell Customs don't stop him?

Mr. AMBROSE. Senator, of course. Exactly what I am saying is, first of all, there should be a combined intelligence unit so that this kind of information is available and can be readily transmitted to the fellow in the uniform along the line.

The people who are overseas gathering the intelligence, for the most part for the DEA, are the same fellows that were down at Customs. So they know the kind of information. It is really a question of program management, making sure that everybody gets together and some heads are possibly whacked together on occasion.

Senator BROCK. Now looking at it from Customs' perspective, don't they get a black eye when major shipments get into the country and all of a sudden a bust is made and 30 days down the line?

Mr. AMBROSE. Senator, you have traveled all over the world, as have I. I don't think there is a country in the world that has a closer inspection of arriving citizens than we do and we probably seize a small percentage of the amount of heroin coming into the United States. We could conceivably get a lot more. So automatically you have that black-eye concept there.

I don't think that is really a problem. It should be conjunctive. It should be a situation where if they are working together on occasion, DEA gives all the credit in the world in Customs because they perform a very useful, very valuable function. There is no question about it.

They have to continue to do so. I don't think it is a question of turf. It shouldn't be the question of turf that it does get to be on occasion.

Senator BROCK. I am not arguing turf. I am groping for the best way to utilize our various agencies and talents we have to effectively deal with the problem. The question I have for you then is should Customs have a supplementary intelligence capability overseas that would be coordinated with DEA?

Mr. AMBROSE. Senator, I think that the kind of intelligence the Customs Service needs, for its border interdiction efforts can be basically a profile situation, plus some hard intelligence on occasion. But mostly, it is the mode of entry, methods of introduction, and so forth, that they are interested in; the types of couriers, where they come from, et cetera.

That information can be developed by DEA on a programed basis. It should be then fed into some kind of combined, coordinated, intelligence operation so it is properly funneled to the on-line offices.

I see no need for the intelligence officers of Customs to be overseas side by side with his confederate in DEA who was a former Customs intelligence officer overseas anyhow. I think that is a useless duplication and would not tend to resolve any difficulties.

But you see, DEA's activities overseas are both intelligence gathering and operational. They work cases with foreign police agencies. That is another difficult area. There are occasions when you have to balance whether you are going to stay in a country or how you will work with that given police agency.

We are guests of those countries. So it is very hard. As an example of one of the difficulties you run into, if the French ever heard that we were allowing a courier to leave France with heroin for interdiction at the Port of New York, they would go bananas unless they were told in advance and they cleared it.

They would rather seize it in France and take the credit for it. I don't think I would blame them, because certainly we wouldn't want to permit a situation like that.

Senator BROCK. Sort of a followup question that ties to that: Is there some method by which we could improve the State Department's support of our drug program?

Mr. AMBROSE. Again, sir, I am not current on that. The State Department with all due deference, I think, performed magnificently when goaded by President Nixon, Bill Rogers was the Secretary of State, they deputized a high ranking embassy official in every source country or trafficking country to assist in stimulating the host country to take action.

I think they did a magnificent job. I could not fault the State Department one whit, particularly, when it ran into problems with the host countries that they were in. You can imagine the kind of situation that the Ambassador to Turkey had when we are standing up saying those dirty Turks are sending opium to our kids and the Ambassador is trying to handle the problem with NATO, and everything else. We also have that kind of situation.

I may disagree with the State Department on some issues. That is beside the point.

Senator Brock. There have been some contrary feelings—I don't think it is fair to ask you to comment now—in recent years.

Mr. AMBROSE. I tend to keep in touch with a variety of people with varying persuasions and philosophical views on drug enforcement. None of them yet have convinced me in any way, shape, form, that the action we took in July 1973 was wrong. I think it was right.

I think the agency can go on and do its job if everybody will try and do it. But I agree strongly with one of the recommendations, I think it was the GAO report, I am not sure it was in yours, that there be an official in the White House at sufficiently high level, who will guarantee that this jurisdictional problem does not erupt beyond the very minimal level.

I think it is an absolute necessity that there be at least some official in the Government, whether it is the Attorney General or whoever it happens to be to do this.

Senator Brock. With the exception of that, do you feel that our current structure, if properly supported and managed and financed is adequate to the need?

Mr. AMBROSE. Yes, sir.

Senator Brock. One final question. Would you briefly comment on the continuing plea of the Assistant Secretary Rossides, previous Secretary, for narcotics traffic tax program?

Mr. AMBROSE. I completely agree with Gene on having a tax program. I think that the action of the Internal Revenue Service Commissioner, whom I have never met, I don't know him and for whom I have no personal animosity, was a tragic mistake.

I think the Internal Revenue Service should always have a percentage of its programs designed toward major criminal violators and certainly narcotics trafficking problem violators constitute a portion of that.

It had apparently gotten a little out of hand, like everything else, when some agents are overzealous, the first reaction is to withdraw from the program. I think that is a mistake.

Senator Nunn. I think that is one thing we are coming to a conclusion on. We have one bright spot that everybody is agreeing on. This business of cutting out IRS from playing their active role was a tragic mistake.

Mr. AMBROSE. Absolutely.

Senator Nunn. They have no doubt an unquantifiable but nevertheless a major impact on the drug traffic in this country.

Mr. AMBROSE. The best weapon that was used, and we used it very frequently in the ODALE, was not just the tax program way of making cases but the utilization of the immediate seizure procedure. The closing of a tax year which agents can do. If you seize a violator with

\$25,000 in his possession, the agent, a Revenue Agent, is authorized to make a demand for the closing of the taxable year, seize the money, base the tax on the year to that date. That is a very valuable weapon, sir.

Senator NUNN. I have had instances pointed out to me, not in formal hearings, but that I can document, by agents who found as much as \$1 million buried in a backyard of some of these people. People on whom there was very scanty evidence of narcotics violations.

Mr. AMBROSE. I think it was Mr. Ingersoll's case, the famous bagel maker in Long Island or Staten Island, who had \$1 million or \$2 million. It is a very lucrative business. There is no question about that.

Senator NUNN. We do intend to call—this subcommittee intends to call both Don Alexander of the IRS, and also Secretary of the Treasury Simon. We intend to go into this matter in detail in the near future—particularly as to the intentions of IRS now. I understand now that there is a revival of that program underway or beginning.

Mr. AMBROSE. I am glad to hear that as a citizen.

Mr. FELDMAN. Senator, we have been told just 2 days ago the IRS and DEA signed an agreement to have DEA target some of the major traffickers. The question is whether there is going to be an enthusiastic approach by IRS or not.

Senator BROCK. I might point out that one of the problems might have been exacerbated by an action of the Senate on yesterday, or maybe it was the day before, when an amendment was offered on the Senate floor to require notification 20 days in advance of any such tax investigation.

Senator NUNN. I agree with you completely on that, Senator Brock, and was very much opposed to that amendment. I was under the impression it failed. Did it not?

Senator BROCK. I think we had better check because if it did pass, I think maybe we ought to have some reconsideration.

Senator NUNN. I think that would be the most devastating thing we could do. You would be just telling every person that deals in narcotics and every member of organized crime that comes under the scrutiny of IRS, you would be giving them advance notice of everything that is being done. You would be giving more protection to a tax return than you do to a person's home because the law as envisioned by the Finance Committee already provides that, to get a tax return, you have to have a court order.

That is a new innovation. If you go beyond that, requiring notice, then you could logically extend that same principle to a person's home. Then, if there is a search warrant issued to a police officer, before the officer could execute the warrant he would have to give a prior 20 days notice. That is the same kind of principle.

Mr. AMBROSE. May I comment for a second because I think this is part of the problem? As I mentioned earlier in my testimony, I was the coordinator of the Treasury Enforcement Agencies during the fifties.

One of the greatest problems you always had was that the agents in the Intelligence Division, the Tax Fraud Unit of the IRS, who were gung ho for making criminal cases were never particularly appreciated by the management structure in the Internal Revenue Service.

So that you have a very serious problem careerwise for these fellows, if they are the gung ho type agents. That is one of the reasons, sir, why at some stage of the game I would hope that this committee or some other committee would examine the total enforcement responsibilities of the various departments and agencies.

For example, it would be very helpful if all financial investigations were centered in the Treasury Department in one agency, rather than just in the Internal Revenue Service or something like that. That is an area that the Senate ought to certainly consider doing something about some day.

Senator NUNN. Mr. Ambrose, thank you very much for appearing. We appreciate your testimony. We appreciate your comments. We welcome your critique of the subcommittee report.

We don't take the position that this is a final say. We are willing and ready to change any of our opinions. We have an open mind on this subject. What we are trying to do is provide a constructive oversight to a very important Federal effort.

Mr. AMBROSE. No more than that can we ask. I appreciate it very much.

Senator NUNN. We think you contributed. We appreciate it very much.

Mr. STATLER. Mr. Chairman, before Mr. Ambrose leaves, I would like to make two other comments. Mr. Ambrose mentioned the *Meiners* case, where the ODALE agents succeeded in getting a counterclaim judgment against John Meiners, arising out of the so-called Collinsville situation. I would like to have entered into the record a series of correspondence that Senator Percy has had with the Attorney General and Assistant Attorney General Rex Lee, which discusses the propriety of the Department of Justice assisting in the defense of the agents in these actions under circumstances where the agents sought a counterclaim of sizable proportion. The correspondence addressed the appropriateness of the actions that the Department of Justice took with respect to the substantive claim, as to which the agents were defendants, since the actions of the Department may have had a very definitive effect on the success of the counterclaim.

Senator NUNN. Without objection, it will be admitted.

[The documents referred to were marked "Exhibit No. 61" for reference and follow:]

EXHIBIT No. 61

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., March 7, 1975.

Hon. EDWARD H. LEVI,
Attorney General, U.S. Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: A matter has come to my attention which both surprises and disturbs me. It involves a determination by the Department of Justice to afford legal representation to the Federal drug agents associated with a series of raids occurring in and around Collinsville, Illinois in mid-April of 1973. I am not questioning the authority of the Department to provide such representation—there is ample authority under 28 U.S.C. 518 (b). But I do question the wisdom and fairness of that determination based on the circumstances at hand.

The background of these incidents, and the involvement of both myself and the Department of Justice, is referenced in the Department's file. My present con-

cern relates to matters discussed in the attached report from the Department's Civil Division in response to issues raised after my receipt, recently, of a letter from the attorney for several of the victims of the Collinsville raids.

Unfortunately, I do not feel that the report of the Civil Division is either adequate or responsive to the issues that were raised.

First, as to the matter of possible conflict of interest, I have a difficult time understanding how the Department of Justice can effectively represent the United States government against these agents in a suit filed by them arising out of the Collinsville incidents while at the same time defending the agents in a civil suit arising out of the same set of circumstances. If a private attorney or law firm were engaged in such a potential conflict the attorney or the firm might well be in violation of the American Bar Association's Canon's of Ethics and thereby risk censure or other disciplinary action. I fail to see why the same standards of professional responsibility should not apply to the Department of Justice. The fact that the suit by the agents may be for recovery of attorneys fees only, as alluded to in Mr. Anderson's report, does not, in my mind, eliminate the potential conflict, although, admittedly, the conflict would appear to be less blatant. Moreover, I am at a loss to understand why, when a report from the Department was sought on February 21 and the response back from the Civil Division is dated February 25, it was not possible during that interim for someone in the Division to place a 5-minute phone call to ascertain the nature of the pleadings in that suit against the United States government instead of speculating as to the nature of the suit. To this day, that information has not been transmitted to me.

Second, a question was raised concerning what would seem to be an inherent unfairness in assisting the agents in their defense, when, at the time, such assistance will likely have an important bearing on what I understand to be a \$1 million counterclaim brought by these same agents in that suit. The response from the Civil Division states that:

"If there is any assistance at all they are receiving in connection with those counterclaims it is only that which indirectly arises out of our representation of the agents as defendants. Such assistance, if it can be called that, is inherent in the situation and would exist even if the agents were maintaining a separate suit instead of counterclaims."

The assistance rendered by the Department to the agents in connection with their counterclaim, however incidental to the main suit, is not a matter of speculation: it is significant and real. To imply that there is no assistance, or little assistance, is misleading.

It would seem to me that where a major counterclaim of this nature is involved, or even where there is a separate suit involved alleging damages, such factors should enter into the Department's determination as to whether to assist in the defense of the original suit. My own belief is that it is highly questionable for the Department of Justice to undertake assistance in the defense of this suit in the first place in light of what I understand to be unrefuted evidence of agent misconduct associated with the Collinsville raids. But in view of the counterclaim, in view of what may prove to be unequal access to FBI investigative reports assembled in connection with the investigation and indictment of these agents, and in view of the adverse administrative actions which have been recorded by the Civil Service Commission against these agents for matters arising out of their conduct in the Collinsville incidents—it would appear that the Department's intercession under these circumstances is both unfair and unwise at this time.

The inherent unfairness, simply stated, is this: we have here innocent citizens who had their homes broken into (and, in the case of one, was incarcerated for 3 days without charges being brought); who testified under oath before a Committee of the United States Senate; who testified before a Federal grand jury; and, finally, who testified again, at the request of the Department of Justice and on behalf of the United States government, in a criminal proceeding against the agents in question. And now, in attempting to recover for the harm done to them, they incur the heavy hand of the very government they faithfully served, now assisting—however directly or indirectly—in an effort to punish them for their actions to the amount of \$1 million.

Third, looking also to the interests and rights of the agents, DEA Administrator John Bartels has informed me (letter attached) of his belief that it would be inappropriate to undertake any further adverse action proceeding before the Civil Service Commission while a civil suit is pending, out of concern for

possibly influencing the civil suit. Mr. Bartels' letter states: "Upon conclusion of the pending civil action, DEA will determine whether any additional administrative action is warranted against the remaining agents."

To me, this would appear to be the most bizarre aspect of this entire matter. It defies logic—where an agency believes that its own personnel have acted in violation of agency rules or regulations, or in violation of the law, or have otherwise acted in a manner that warrants the commencement of an adverse action proceeding—that the agency would defer bringing such action, and continue instead to employ such individuals in active status throughout the pendency of a civil suit. As you well know, it is not unusual for a civil suit which goes to full trial to consume up to 3 to 7 years before final determination. Does that mean that the Drug Enforcement Administration, or for that matter any agency of government, is prepared to retain personnel in highly-sensitive positions for long periods of time under circumstances where the agency believes that the men may be unworthy of maintaining such positions? In my mind, administrative actions—if they are deemed further warranted, as I understand they are—should have commenced immediately upon the availability of evidence of misconduct; and, in any civil action arising from the same set of facts, the determination of the Civil Service Commission probably should be some evidence, though not conclusive evidence, of the propriety of the acts alleged to have been committed.

From the standpoint of the agents, it is grossly unfair to leave unresolved charges hanging over their heads pending the outcome of the private damage suit against them. Either DEA has evidence against them warranting further disciplinary action or it does not. If it has such evidence, DEA should commence such proceedings immediately, having already delayed the matter for almost two years. If it has no such evidence, then DEA should inform the agents accordingly so that they can perform their functions more effectively, relieved at least of the anxieties attendant to unresolved charges.

In sum, Collinsville, and the lack of concern for citizens' rights which Collinsville came to symbolize, caused considerable disturbance and personal anxiety throughout the nation. The Collinsville raids energized the Congress to eliminate the climate of lawlessness that helped nurture Collinsville, through repeal of the Federal and District of Columbia no-knock laws. Also, in response to Collinsville, Congress acted to amend the Federal Tort Claims Act to make the Federal government, for the first time, civilly liable for the intentional misconduct of Federal law enforcement officials. Though a proud sponsor of both of these changes in the law, I recognize the tragic irony that neither measure provides assistance to the victims of Collinsville itself. But clearly, Congress did not intend that those victims be further harassed by the strong arm of government effectively thwarting whatever legal remedies they might pursue for the losses and harm they suffered.

It is for these reasons, and in this context, that I ask you to direct your personal attention to this matter.

Sincerely,

CHARLES H. PERCY,
U.S. Senator.

Attachments.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., March 19, 1975.

Hon. CHARLES H. PERCY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PERCY: This is in response to your letter of March 7, 1975, in which you indicate your reasons for believing that this Department should not provide legal representation to the federal agents sued civilly as a result of the so-called Collinsville drug raids.

As you note in your letter, the statutory authority is clear for the Department of Justice to afford legal representation to officers and employees (or former officers and employees) of the United States Government who are sued in their individual capacities for conduct arising out of the performance of their official duties (28 U.S.C. §§ 501-519.) This representation has consistently been afforded to officers and employees and former officers and employees who otherwise might be reluctant to perform their duties if they had to fear the results of damage suits brought against them, and the costs and burdens of defending themselves.

The cases of *Askeu v. Bloemker*, United States District Court for the Southern District of Illinois, Civil Action No. S-CIV-73-70 and *Meiners v. Moriarty*, United States District Court for the Southern District of Illinois, Civil Action No. S-CIV-73-139, were instituted prior to the August, 1973, criminal indictments of some of the agents named as defendants in those civil suits. When those agents were subject to criminal prosecution by the Civil Rights Division of the Justice Department, it was apparent that representation could not be afforded them because of the existence of a conflict of interest. In May, 1974, however, after the agents were acquitted by a jury of all the criminal charges on which they were tried, and the remaining charges against them were dismissed, the conflict no longer existed and the Department offered to represent them. At that time the Civil Division of this Department conducted an investigation into the conduct of those agents and concluded that they were being sued for conduct which was within the scope of their employment and which they had performed in good faith.

Certain of these federal agents recently filed an action against the United States for damages resulting from having been subjected to criminal prosecution. I concluded that the existence of this suit against the United States, coupled with this Department's defense of the federal agents in the *Askeu* and *Meiners* actions, gave rise to the appearance of a conflict of interest. I therefore directed the Civil Division to apply to the United States District Court for the Southern District of Illinois for leave to withdraw as counsel for the agents in the *Askeu* and *Meiners* cases on the ground that the recently filed suit by the agents against the United States created the appearance of a conflict.

Before our decision to withdraw had been communicated to the Court and counsel, on March 14, 1975, the federal agents who were suing the United States for damages filed a motion under Rule 41, F.R.C.P., to dismiss their suit. That motion was granted without prejudice by the Federal District Court on Monday, March 17, 1975. Although the Court ordered dismissal without prejudice, the statute of limitations for any tortious action by the agents against the United States arising out of the Collinsville raids has run. Therefore, any future actions by these agents against the United States are barred. Given this removal of conflict, we shall continue to represent the federal agents in *Askeu* and *Meiners*.

We are also representing the agents in the case of *Bell v. United States*, U.S.D.C., E.D. Mo., No. S-CIV-73-142. In that case the plaintiff claimed that the agents had beaten him. The plaintiff originally joined the United States as a defendant. Subsequently the United States was dropped as a defendant, but the name of the case has not been changed. The federal indictment of the agents did not have anything to do with the alleged beating that forms the basis of the complaint in the *Bell* case and accordingly, the agents' suit against the United States made no reference to the events alleged in *Bell*. None of the conflict of interest issues raised in other cases are therefore pertinent to the *Bell* case and we will continue to represent the agents in *Bell*.

The Civil Division advises me that it is not providing any assistance to the agents in the prosecution of their counterclaims. The Civil Division has been defending the agents against the allegations of the complaints made against them. It has not been assisting private counsel who has been retained by the agents for the purpose of presenting the counterclaims. The statement you refer to from Mr. Anderson's letter of February 25, 1975 to Mr. Statler was an effort to be exceedingly precise. To the extent that our defense of the agents established that they were acting in good faith in the performance of their official duties, a defense independent of the existence or nonexistence of a counterclaim, one of the predicates for the maintenance of a counterclaim would have incidentally been established. But this is different from providing private counsel with assistance in his prosecution of the counterclaims.

I do not believe there is inherent unfairness occasioned by the fact that the agents have filed counterclaims. These counterclaims were filed with the approval of the Court, and the agents have a right to assert their claims against the plaintiffs—as the plaintiffs have a right to sue the agents.

With regard to the question of further administrative action against the agents involved in the Collinsville raids, I hope the following will clarify our position.

Based upon findings made by the Inspection Staff of the Bureau of Narcotics and Dangerous Drugs (BNDD) after their investigation of the Collinsville raids, all of the agents involved were suspended for thirty days. Upon appeal to a Grievance Examiner, two of the agents were successful in having their suspensions canceled and one was reprimanded following cancellation. In addition, the Special Agent in Charge of the St. Louis District Office of BNDD was

suspended for thirty days, removed from supervisory duties and transferred. He was later reduced in grade.

In May, 1973, the Collinsville investigation was referred to the FBI. A Grand Jury later heard evidence presented by attorneys of the Civil Rights Division of the Department and returned an indictment in August, 1973. All of the agents involved were again suspended indefinitely. The indefinite suspensions were lifted in April, 1974, when the agents were acquitted after a trial. The agents were all then transferred to new duty stations far removed from the St. Louis, Missouri, area.

In July, 1974, the trial transcript, Grand Jury minutes and FBI reports were made available to the Drug Enforcement Administration (DEA) by the Civil Rights Division of the Department of Justice. This voluminous material portrayed in detail the actions of the agents involved, principally those of Special Agent Dennis Moriarty, the BNDD supervisor in charge. (August, 1974, Agent Moriarty resigned from DEA.) I wholeheartedly agree that the pendency of civil litigation cannot be a reason for not taking administrative action. However, DEA has determined that administrative action in addition to the suspensions, transfers and indictment already meted out would not be upheld by the Civil Service Commission. Substantial impediments to bringing additional administrative charges exist in view of the acquittals and dismissals of the remaining counts in the indictments. It is for this reason that additional charges have not been brought.

I realize that there are a number of issues which have had to be thought through with respect to the Department's position on all of these matters. We have tried to do this with great care. There is a public interest in providing legal representation for employees who are sued for acts in the performance of their official duties. We recognized a limitation on this public policy or a probable conflict when these agents were under indictment. But they are not now under indictment. I do not believe it would be proper to further limit the application of the public policy because counterclaims have been filed. But we are not of counsel in connection with the counterclaims. I regard the matter of administrative action discussed above as a separate issue which has been pursued.

I certainly hope that this information will clarify the Department's position on the issues you have raised. I would be more than ready to discuss these matters with you further, if you wish.

Sincerely,

EDWARD H. LEVI,
Attorney General.

APRIL 26, 1976.

Hon. REX B. LEE,
Assistant Attorney General, Department of Justice

DEAR MR. LEE: Please apprise me in detail of any and all assistance which was rendered by the Civil Division, or any other part of the Justice Department, with respect to the civil suit in Alton, Illinois filed by John Meiners against nine drug agents involved in a raid on the Edwardsville home of Mr. Meiners in April 1973. I would also like to have copies of any documents that may have been prepared by the Department in connection with the suit. I note from a newspaper account last week that a six-member federal jury upheld the agents' counterclaim in that case and ordered Mr. Meiners to pay \$15,000 to each of eight of the raiding officers who alleged that Mr. Meiners libeled them.

Sincerely,

CHARLES H. PERCY,
U.S. Senator.

DEPARTMENT OF JUSTICE,
Washington, D.C., June 1, 1976.

Hon. CHARLES H. PERCY,
*Committee on Government Operations,
Washington, D.C.*

DEAR SENATOR PERCY: This is to respond to your letter to me dated April 26, 1976 regarding the case of *Meiners v. Moriarty*, (S.D. Ill., No. S-CIV-73-139).

On Thursday, April 29, 1976, Mr. Raymond D. Battocchi of my staff visited with Mr. Stuart M. Statler, Minority Counsel, Senate Permanent Subcommittee

on Investigations, to discuss the subject matter of the letter. In view of that meeting, Mr. Statler advised that you were not interested in obtaining documentary materials at this time. As the Attorney General explained to you in his letter of March 19, 1975, after the federal agents were acquitted of criminal charges, the Civil Division of the Department of Justice has represented the agents in their defense of the suit brought against them by Mr. Meiners. Our Civil Division lawyers did not handle the counterclaim against Mr. Meiners. For purposes of the counterclaim, the agents at all times have been represented by private counsel employed by them. The counterclaim raised by the defendants was a compulsory counterclaim under Rule 13(a) of the Federal Rules of Civil Procedure, since it arose out of the same occurrence that was the subject of Mr. Meiners suit, but the involvement of our lawyers reached only the defense of the claim against the agents.

If we can supply any further details or answer any further questions, please advise.

Sincerely,

REX B. LEE.

U.S. SENATE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., July 1, 1976.

Hon. REX B. LEE,
Assistant Attorney General, Civil Division, U.S. Department of Justice, Washington, D.C.

DEAR MR. LEE: I have your letter of June 1, 1976 in which you suggest that I advise you if I have further questions in the *Meiners v. Moriarty* case. I do, as I do not find your letter fully responsive to my earlier inquiry.

The underlying reason for my letter of March 19, 1975, was to ascertain the extent to which the Civil Division's involvement in the defense of those agents sued by Mr. Meiners may have contributed to the award of a substantial counterclaim against Mr. Meiners arising out of that same suit.

This point was clearly related to Mr. Battocchi of your staff by Stuart Statler, Chief Counsel to the Minority of the Permanent Subcommittee on Investigations. Instead of addressing the matter, your reply restates that the counterclaim raised by the defendants was a compulsory counterclaim arising under Rule 13A of the Federal Rules of Civil Procedure, and that the agents had employed private counsel in this regard. I am and was fully aware of those facts.

But the clear import of my earlier letter, elaborated upon in the discussion between Mr. Battocchi and Mr. Statler, and which I now reiterate, is my desire to have from you a candid assessment of the actual relationship, in terms of presentation and impact of evidence, of Justice Department involvement in a claim-counterclaim situation. I would like you to discuss that relationship in terms of the specifics of the case of *Meiners v. Moriarty*, and generally with respect to like circumstances.

In that same regard, I would like your assessment of any peculiar advantage the Department may have in these circumstances by way of access to personnel, resources, and documents, including those documents contained in the investigative files of the Department of Justice (for example, in this instance, within the FBI, the Civil Rights Division, and the U.S. Attorney's office).

Finally, I would like to have your candid assessment of the impact on a jury, particularly in circumstances such as this where a counterclaim is involved, of having the Government of the United States so clearly identified with one party to the so-called "private" litigation.

In addition to your own views, please provide me with copies of any memoranda or other writings prepared by the Civil Division or elsewhere within the Department which address the issues I have raised.

I am concerned that the rights of private parties in such civil litigation may be unduly skewed when the entire resources of the federal government are brought to bear in representing one of two sides to a civil suit of this nature.

I look forward to receiving your prompt reply.

Sincerely,

CHARLES H. PERCY,
U.S. Senator.

JULY 26, 1976.

HON. CHARLES H. PERCY,
Committee on Government Operations,
Washington, D.C.

DEAR SENATOR PERCY: This replies to your letter to me dated July 1, 1976, regarding the *Meiners v. Moriarty* (S.D. Ill., No. S-CIV-73-139) case.

You inquire as to the extent to which the Civil Division's defense of the federal agents may have contributed to their recovery on counterclaims. In his complaint Mr. Meiners alleged that the agents stole his property, ransacked his home and committed other improprieties. Mr. Meiners made similar accusations of impropriety out of court which were publicized by the media. The basic defense to Mr. Meiners' lawsuit, handled by the Civil Division, was that the allegations of impropriety were not true, and that the agents acted within the scope of their official duties and in good faith. To prevail on their counterclaims for defamation, the agents had to prove that Mr. Meiners' public accusations of wrongdoing were not only false but made maliciously.

As part of the defense to this suit, we presented evidence that Mr. Meiners' allegations of misconduct, and his earlier sworn testimony, were untrue. As part of our defense showing good faith on the part of the agents and that they were acting within the scope of their duties evidence also was presented showing that the agents had probable cause to believe that Mr. Meiners was involved in a narcotics conspiracy. By proving in defense of the agents that Mr. Meiners' allegations of wrongdoing were unfounded, the Civil Division necessarily "assisted" the agents on their counterclaims. After we forced Mr. Meiners to admit, on cross-examination at trial, that he gave false testimony before the Grand Jury which indicted the agents, and that several of his other allegations of misconduct were untrue, the element of falsity essential both to our defense and to the counterclaims had been established. The agents then could prevail on their counterclaims by establishing the additional element of malice. However, the Civil Division's defense of this suit was separate from the counterclaims, and the same evidence would have been offered by the defense to disprove Mr. Meiners' allegations even if no counterclaims had been filed.

The investigatory resources of the United States are made available to federal employees sued for on the job conduct because it is in the interest of the United States to do so. The interests of the United States are best served when its officers and employees discharge their official duties and responsibilities without fear that they will be burdened with the cost and expense of defending themselves against groundless suits based on alleged misconduct. In this case, however, no separate investigation was made to assist us in our defense. The FBI had utilized its resources to conduct an extensive investigation for use in the criminal prosecution against these agents. Since an investigation of the incident had been completed, it was unnecessary for any federal agency to conduct any new or additional investigation for the purpose of defending the *Meiners* suit against the federal agents, and none did so. Pursuant to court order, portions of the FBI investigation relating to the *Meiners* incident were provided to Mr. Meiners' counsel, obviating the need for him to hire his own investigator for this purpose. Thus in the circumstances of this case, the investigatory resources of the federal government were made available for utilization against employees who were sued.

You inquire regarding the impact upon a jury, particularly in cases involving counterclaims, of having the Department of Justice identified with one side to the "private" litigation. We do not regard suits against Government employees as purely private litigation. The interests of the United States are also directly involved and are the bases for our representation. However, I know of no reliable way, short of questioning jurors after they have delivered a verdict, of assessing the impact, if any, that Department of Justice representation may have upon the outcome of any case. In this case it is possible that Department of Justice representation worked to the disadvantage of the federal employees. For example, if the jury here had speculated about non-evidentiary matters, it could have inferred that the Department's failure to represent these agents on their counterclaims resulted from a Departmental view that they were not well-founded.

One of the main reasons we represent members of the executive, legislative and judicial branches sued personally for damages is because it is in the interest of the United States to avoid the adverse consequences which would flow from

requiring these employees to pay for the cost of defending themselves. In such circumstances, there is no way to avoid having the Department of Justice identified with one side to the litigation, nor should there be. However, judges and juries are charged with the duty to render decisions and verdicts based upon the evidence presented in court, not the identity of counsel. In the *Meiners* case, the jury's verdicts were amply supported by the evidence.

I understand and share your concern that the legal rights of parties not be unduly skewed. Mr. Meiners had the right to recover money damages from these agents if he could prove his allegations by evidence presented in a court of law. But I cannot subscribe to the view that federal employees who are represented by the Department of Justice on the suits against them should be precluded from litigating counterclaims through private counsel. Federal employees have the same rights as other persons to seek legal redress for their grievances. The agents involved in the Meiners incident have maintained that they were subjected to a criminal prosecution and otherwise injured because Mr. Meiners made accusations and gave testimony which was knowingly untrue. Like Mr. Meiners, those employees had the legal right to sustain their position by evidence presented in a court of law. By proving, through clear and convincing evidence, that Mr. Meiners' public allegations against them were false and malicious, they earned the legal entitlement to be compensated for defamation to their character. The jury's verdict demonstrates that the agents, not Mr. Meiners, are the ones who have suffered legally cognizable injury.

I have given careful consideration to the matters raised in your letter and have attempted to be responsive. Leaving aside the jury's verdicts, it is my view that the conduct of the Department of Justice in this litigation has been appropriate and proper. I would be pleased to discuss these matters further with you personally, if you wish.

Sincerely,

REX B. LEE,
Assistant Attorney General.

Mr. STATLER. Finally, Mr. Ambrose referred to the fact that the so-called Federal no-knock statute was repealed as a result of the Collinsville incident. That move was led here in the Senate by Senator Ervin, who was the chairman of the Government Operations Committee at the time; Senator Nelson, and Senator Percy.

But I think the record should be clear that in the course of the debates on the Senate floor, which did indeed take place after Collinsville, the point was made time and again that Collinsville itself was not the typical no-knock situation as there was not a no-knock warrant involved in that situation.

However, the point was further made that Collinsville symbolized a lack of concern for due process and for the fundamental safeguards of the Constitution. In sum, the Senators regarded certain fast and loose tactics which were used in Collinsville as the kinds of things that the no-knock statute symbolized. It was for that reason that no-knock was repealed.

Senator NUNN. I think we have a rebuttal coming.

Mr. AMBROSE. I think more than rebuttal. I think the facts will speak for themselves. I am glad that Collinsville will no longer symbolize the action of these agents because Collinsville is pretty clean at this point.

Mr. STATLER. I think the facts will speak for themselves.

Senator NUNN. We will have the facts.

Mr. Ambrose, thank you for appearing.

Our next witness is Mr. John Ingersoll.

Mr. Ingersoll was the Director of the Bureau of Narcotics and Dangerous Drugs from 1968 to 1973. Between 1969 and 1973 he also

served as the U.S. Representative to the United Nations Commission on Narcotic Drugs, of which he was President in 1973.

Prior to 1973, Mr. Ingersoll served as chief of police, Charlotte, N.C.

Mr. Ingersoll, while head of BNDD, made an effort to correct internal integrity matters. In a prehearing interview, Mr. Ingersoll stated that the difficulties BNDD had with Customs were primarily a result of the personalities involved. He also stated conditions improved dramatically when the current Commissioner of Customs, Vernon Acree, took over from Myles Ambrose.

[At this point Senator Brock withdrew from the hearing room.]

Senator NUNN. Mr. Ingersoll, we are pleased to have you today. We will proceed with your statement. First of all, let me swear you in, if you will stand.

Do you swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. INGERSOLL. I do.

TESTIMONY OF JOHN E. INGERSOLL, FORMER DIRECTOR OF THE BUREAU OF NARCOTICS AND DANGEROUS DRUGS

Mr. FELDMAN. I would like to say Mr. Ingersoll is living in France. He made a great effort to come here. He interrupted his vacation to be with us. We, the staff, greatly appreciate his cooperation in helping us tell this important part of the story before us today.

Senator NUNN. I join in those sentiments. Thank you, very much for being here. I hope you are vacationing in this country.

Mr. INGERSOLL. Yes, sir.

Mr. FELDMAN. He is now.

Mr. INGERSOLL. Thank you, Mr. Chairman, and thank you, Mr. Feldman, for that good start.

Mr. Chairman, I have a statement which I would like to submit. In the interest of time, with your agreement, I will summarize, or at least go through just certain parts of it orally.

Senator NUNN. We will submit the whole statement for the record. [The statement follows:]

STATEMENT OF JOHN E. INGERSOLL

Mr. Chairman, and members of the Subcommittee, my name is John E. Ingersoll. I am here today at your request to discuss a few issues of interest in federal drug law enforcement. I should like to note that I am representing only myself in this respect. For the purpose of your biographical needs, I was born, reared and educated in California. I am a graduate of the University of California, Berkeley, where I also did my graduate studies and lectured in Criminology courses. Except for the past three years I have spent my adult life in law enforcement work, serving on the Oakland, California, Police Department, as Director of Field Operations for the International Association of Chiefs of Police, as Chief of Police in Charlotte, North Carolina and as Director of the U.S. Bureau of Narcotics and Dangerous Drugs between 1968 and 1973. Between 1969 and 1973 I had the secondary responsibility of being the U.S. Representative to the United Nations Commission on Narcotic Drugs, of which I was President in 1973. Presently, I live in Paris, France, where I am Director of Security for IBM in Europe, the Middle East and Africa.

My previous public service has been recognized by numerous commendations and awards, including the Silver Medallion from the National Conference of Christians and Jews, awarded in 1968 for efforts in human relations as Charlotte's Chief of Police.

You will please understand that my presentation here today will necessarily be historical because I have had no direct contact with federal drug enforcement for three years. Thus, I have no special experiences or insights concerning the Drug Enforcement Administration since it came into being. It is my understanding that the Subcommittee's main purpose in this inquiry is to assess how well DEA has performed since it was established.

With your agreement, my statement will cover the following matters as they relate to federal drug enforcement: (1) Integrity, (2) interagency cooperation (especially with Customs), (3) focus of effort—objectives and goals, and (4) policymaking.

The Interim Report of the Senate Committee on Government Operations released July 18, 1976, discusses these issues and the historical background of federal activity in the field. My purpose today is to try to provide a perspective based on my own experience as BNDD Director.

BNDD was established by Reorganization Plan No. 1 in 1968. As you know, previously BNDD's functions were divided between two agencies: the Federal Bureau of Narcotics (FBN), a part of the Treasury Department; and the Bureau of Drug Abuse Control (BDAC) of the Food and Drug Administration. FBN's jurisdiction was over the opiates, cocaine and marijuana. BDAC enforced the amendments to the Food, Drug and Cosmetic Act, passed in 1966, which covered other dangerous drugs, barbiturates, amphetamines, hallucinogens, tranquilizers, etc. The former directors of the two predecessor agencies had already been designated Associate Directors of BNDD when I was appointed director of BNDD in August, 1968.

One of FBN's most pernicious problems during its four-decade history was repeated incidents of corruption. Much of it was petty, but some of it was highly organized and pervasive. At the time that BNDD was started, a severe corruption problem was under investigations by the Treasury Department in cooperation with the Criminal Division of the Department of Justice. Andrew Tartaglino testified in detail about this situation before the Subcommittee on June 10, 1975. As far as I can recall, the facts, premises and conclusions he related to you are entirely accurate and correctly reflect our concerns in 1968 and after. I feel that corruption in FBN had reached some high levels, especially in the New York Office. Unfortunately, with the transfer of certain personnel, the corruption spread to some other offices and BDAC as well. It was a problem that at times overshadowed all others.

While corruption is a danger in any law enforcement agency and will flourish where management is unable or unwilling to control it, the exposures in narcotics enforcement are particularly great. I think the following were the most important factors we found:

1. An inability or unwillingness to recognize and react to warning signals. Cases were compromised. Key informants were killed. Other law enforcement organizations did not trust FBN. Someone was selling out.

2. Arbitrary discipline. Rank and file agents were rewarded or not depending on the numbers of arrest they made—numbers without regard to quality. Agents were afraid to report suspicions of corruption because of the real possibility of retribution.

3. An inability or unwillingness to install controls that would reveal and diminish if not totally prevent corruption. Because of arrest quotas and poor controls over the use of informants, informants had too much freedom and too much influence in determining who would be arrested and when. In some cases one could and did wonder who was in charge of the investigation, agents or informants. Informants were not screened by supervisors, there was no provision for supervisors or management to debrief them and evaluate their continuing value to the organization. On the other hand, ironically, there was no particular security over the files that revealed the identities of informants. Money to pay informants was very scarce. Often as a consequence, an agent paid out of his own pocket. Some resorted to bartering, an exchange of narcotics for the information.

4. Evidence controls were loose, at least until the physical evidence was delivered to a laboratory or office safe. There is no way to prove if any was divested, but information obtained during the corruption investigations indicated that this had happened—often.

At this point, Mr. Chairman, before I am misunderstood, I would like to make two observations:

The first is that laymen often misunderstand the need to use informants in criminal investigations. All investigations depend in whole or in part upon the

willingness of people to tell what they know of a subject matter. This is as true of this Subcommittee's investigation as it is of a police investigation. Every witness who has appeared before you or talked with your staff is an informant. In narcotic cases, however, as in other vice cases, the informant must be recruited from the milieu in which the crime is committed. He expects to be paid for his work. He reports on incidents which occur in secret. All parties concerned are willing participants in the offense. There is not the usual offender-victim relationship. He may be involved in criminal activities himself. He is well aware of the personal hazards attached to his occupation. Therefore, careful controls must be established by the agency working with him to assure due process, to protect the public, and to protect the informant himself.

Second, corruption in police work is a constant threat. According to the press, the Police Foundation issued a study stating that "corruption is endemic to policing." I think it simply means that the very nature of police service is bound to subject officers to temptation. My own experience confirms that. Corruption was an important factor in the problems of many of the scores of police departments I surveyed when I was with the IACP. I had to deal with it, or at least gross misbehavior, as a Chief of Police and most certainly as Director of BNDD. It does not excuse transgressions when I say that I fully expect to find corruption in law enforcement. Our police are given great trust and subjected to more temptation in a year than most people experience in a lifetime. But the head of a law enforcement agency must work to reveal its presence, dispose of it and establish controls that will deter all but the most foolhardy to succumb to it. The manager who fails to do that is planting the seedbed where it will flourish. My quarrel with the previous leadership of FBN was not so much that corruption existed, but they failed to at least try to eliminate it. Finally, the Treasury Department had to step in, and later the Department of Justice.

As mentioned, my work before coming to BNDD had brought me into contact with corruption problems in many police agencies. I had long since learned that an effective, vigorous and objective internal investigations unit was essential to controlling the problem. A good one not only detects integrity problems and operational errors, it prevents them by its mere presence. People who otherwise might not be able to resist pressures to cut corners or engage in unethical conduct can at least use the fear of inspection as a crutch. A properly working one gives management timely information enabling problems to be solved before they become crises.

I appointed Mr. Tartaglino Chief Inspector and, in simple language, told him to clean house. He was free to select his staff (within reason) and could draft additional people from the field for special assignments. Employees at all levels were informed of the corruption that was exposed. Specific, formal controls were installed over the use of informants and tight accountability was required over all agent activities. The quota system for arrests had never been formally stated by FBN but we emphasized in writing to eliminate any misunderstanding that quotas were not my policy. I wanted quality arrests and made it very clear that, if that meant fewer arrests, I was perfectly willing to explain that to Congress and others and take whatever consequences might follow. I did, indeed, have some interesting sessions before appropriations committees on that issue. Evidence accountability was enforced. The rules, policies and procedures of the agency were overhauled. In short, I believe we corrected the problems that had fostered corruption.

As a result of the investigations, some people, including agents, were convicted of crimes. Others were fired or asked to resign. Still others were cleared. Unfortunately, some cases were never satisfactorily resolved.

As evidence that our efforts were paying off, I point to the following indicators:

1. No homicides or mysterious disappearances of informants occurred for several years.

2. While there were still instances of misconduct, they appeared to be isolated, except for one rather systematic pattern we detected later in California.

3. Agents showed a greater willingness to come forward to report suspicious internal misconduct (this is particularly difficult because of the pressures in any law enforcement organization on honest members to remain silent.) Agents began reporting efforts to bribe them. The U.S. Attorneys prosecuted the persons responsible. Our internal system of watching for symptoms of something going wrong enabled us to act swiftly.

4. The distrust of other enforcement agencies was replaced with increasing trust and assistance.

5. Inspections of field offices showed a greater improved degree of compliance with controls. Informant feedback on agent misconduct was unexceptional.

6. Morale improved and operations against major drug traffickers became increasingly successful. That was the bottom line.

I do not intend to leave you with the impression that I thought everything was perfect. As I said earlier, I expect there is going to be misconduct and insubordination in any law enforcement agency. My purpose was to keep it from getting out of hand. This is a major reason why I later appointed Mr. Targaglino as Assistant Director, in charge of our enforcement divisions, and later Deputy Director for Operations. His successor as Chief Inspector, until DEA came into existence, was Patrick Fuller, a man of equal integrity and dedication to our cause.

The Chief Inspector's office consisted of two groups: a permanent cadre of assigned agents and another group of agents who served a two or three year tour in preparation for increasingly responsible line management positions. They were carefully selected. They were assigned both for the contributions they could make and for their own career development. Working as an inspector gives a future manager a great opportunity to learn about problems he will face later and how to deal with them successively. We were trying to sensitize the future leaders of the organization by exposing them to integrity problems, which, while unpleasant, cannot be swept under the rug. That is why Mr. George Brosan found what he referred to in his statement before the Subcommittee as "inspector trainees." They were not trainees. They were journeymen investigators and were destined for increased responsibilities. In fact, I purposely avoided staffing the inspection service only with those who "desired" the assignment. I felt this was important because, where there are careers and reputations at stake, there must exist checks and balances to prevent overzealousness on the part of those whose views may become jaundiced from the pressures of long-term investigations of the colleagues.

I would like to turn now to the questions of interagency cooperation. A lot of attention has been given to the so-called friction between BNDD and Customs. I think it would be best to avoid trying to discuss their complexities and concentrate on conclusions. I will be happy to try to answer any questions you may have requesting additional details.

Briefly then,

1. There was a problem. It was most serious in New York and along the Mexican border. The problem had existed for over 20 years before I came to BNDD. It existed even while FBN was in the same department as the Customs Service. Additionally, if I were to guess, I would say that, if BDAC had continued as a separate operation, serious friction would have evolved between it and FBN.

2. The problem basically can be attributed to an absence of a clear definition of jurisdiction in the law. Narcotics enforcement agencies and Customs laid claim to identical jurisdictions. Attempts to remedy this dispute between FBN and Customs were made by Treasury. Later, the President tried to solve this dispute between BNDD and Customs. At the same time, the heads of the agencies concerned tried to solve it with guidelines, memoranda of understanding and a gentlemen's agreement. They were all foredoomed to failure. For example, in a memorandum sent to the Attorney General on February 5, 1970, the President stated that he had approved the Advisory Council on Executive Organization's recommendations as follows:

a. Representative of BNDD should continue to be accredited to represent the United States Government in dealing with foreign law enforcement officials on narcotics questions. Customs should not represent the United States in this area, except when authorized by BNDD.

b. BNDD should be designated as the agency to control the narcotics area. Customs should support BNDD's efforts to reduce and eliminate the flow of narcotics into the United States and its intelligence network should be used to assist in the overall effort.

c. Consistent with the recommendations made in this paper, the Attorney General should be designated to pass on disagreements that cannot be resolved by the bureaus concerned.

The Attorney General was requested to prepare "guidelines to implement these recommendations" and submit them to the President for approval by February 15, 1970. What followed was a period of very tough negotiations, involving meetings in the White House, and an exchange of letters between the Secretary of

Treasury and the Attorney General. I thought the President's language was clear, but I apparently was wrong, in view of the debate.

The "guidelines" that did appear were the result of compromise, because we were beginning to look ridiculous in the eyes of the Congress and the public. Worse still, they did not provide a lasting solution. They were interpreted by various members of the Administration in many ways. Moreover, the establishment of the Cabinet Committee on International Narcotics Control (CCINO) provided an opportunity for Treasury executives unilaterally to say that the Attorney General's authority to resolve differences had transferred to the committee. Increasingly the White House staff, through the committee, involved themselves and made ad hoc changes which I thought were at variance with the President's expressed policy. In my judgment, a clear statement of policy, followed by implementing guidelines approved by the President had been unilaterally changed by his own staff. I submit, therefore, that nothing short of legislation passed by the Congress will provide a permanent solution to jurisdictional disputes of this kind.

3. The friction between the various groups did contribute to failures in some cases. I do not think however, they overshadowed the accomplishments of the two agencies. Several previous witnesses have noted that significant inroads were made against the narcotics (particularly heroin) problem during the period 1971-1973. This simply would not have been possible had BNDD and Customs been totally incapable of cooperation. Still, there was much room for improvement and I believe cooperation between the two agencies improved greatly after Vernon Acree became the Commissioner of Customs. He and I had a mutual respect for each other's professional abilities. We each pledged that our agencies were going to cooperate either with the help of, or in spite of, members of our respective staffs who might feel to the contrary. In early 1973 we showed tangible success.

Overseas Customs and BNDD agents were sharing the same office space, information and resources. Both agencies focused their expertise on a common goal in a heretofore unparalleled manner. Working together along the Mexican border and in Arizona in cooperation with the Mexican federal and state police, the two agencies disrupted a significant trafficking organization then plaguing certain border communities.

We also joined efforts in studying the influence of Turkish immigrant workers in Germany on morphine base smuggling. Information was exchanged between the two agencies like it never had been before. If our field staffs could not work out a problem, Commissioner Acree and I did; on some occasions Mr. Acree would yield a position, on others I would yield. If one agency overstepped its bounds, or failed to communicate with the other apologies were quickly offered and accepted, without rancor. There was no competition between this Commissioner of Customs and the Director of BNDD. We were determined to work together and our subordinates were well advised of this by word and by deed. I believe that this situation would have continued so long as the personalities were present. It might even have survived long enough to supplant the previous long-standing spirit of competition with a new spirit of complete cooperation. But, while we were able to discipline our subordinates along these lines, we did not have the same success without superiors. I am speaking again of the White House staff, who did not believe or did not want to believe that the two agencies really were cooperating, or could do so on a permanent basis.

Reorganization Plan No. 2, 1973, was, in part, their solution to what was becoming a non-problem.

Before that happened, however, the White House staff clearly expressed its dissatisfaction with my enforcement policies by creating the Office of Drug Abuse Law Enforcement (ODALE) program in early 1972 under Myles Ambrose, the former Commissioner of Customs, who was transferred to the Justice Department as a Special Assistant Attorney General, and Consultant to the President on drug matters. The announced intention of this program was to bring a conspicuous federal presence to bear on the street-level traffic. It was felt by the Administration that the average citizen did not appreciate the existing federal effort because it was carried on at levels that were out of his immediate view. The ODALE program, about which much has already been said, was developed, as I understand it, mainly by the White House staff, with the assistance of Myles Ambrose while he was still Commissioner of Customs. I was first advised of it after it had become a fait accompli and opposed it strongly within the Justice Department. Nonetheless, it became an entity under Executive Order

and all agencies, including BNDD, were directed to contribute manpower and other resources to it.

I objected to the program because I thought federal efforts aimed at street-level trafficking did not make the best uses of federal resources and jurisdiction. We had been working since 1968 to assist state and local police departments by providing training and some operational assistance, but I objected to taking a lead supervisory role in what was essentially a state and local problem. This was not only philosophically alien to me, but I felt that our limited resources should be applied to that area where no other but the federal government had jurisdiction; namely interstate and international trafficking. Since we were building our resources carefully, any diversion of them from our main goals would adversely affect their achievement.

I also had misgivings about the use of local police officers under the federal authority outside of their primary jurisdiction, as called for in the plan. My experience in municipal and federal law enforcement led me to believe that a policeman's feeling of responsibility is paramount in his own jurisdiction and it diminishes elsewhere.

A third objection that could be raised was that there were too many inexperienced attorneys working very closely with agents and policemen and it could be difficult for them to retain the objectivity a prosecutor needs to decide if evidence on which to base charges is adequate and properly gathered. The massive use of investigative grand juries to examine thousands of suspects was a threat to individual rights.

Hindsight tells me at any rate that this program together with its much heralded Heroin Hot line did not contribute to the Administrators' declared "war" against drugs. I will not go into detail. The data and history are available from others, particularly the program's designers and managers.

Six months later the Administration created another office by Executive Order, the Office of National Narcotics Intelligence (ONNI).

Finally Reorganization Plan No. 2 of 1973 was promulgated. It was preceded by a White House Task Force study. This time I was invited to present my views on one occasion about how to strengthen the federal drug enforcement effort.

One of the stated purposes of the Reorganization Plan No. 2 was to consolidate the federal drug enforcement, parts of which were then to be found in numerous agencies. I would like to point out that in 1968, there were only two agencies primarily involved in drug traffic enforcement, BNDD and Customs. The others were subsequently produced by the same Administration that in 1973 was arguing for consolidation.

Another purpose was to eliminate the competition between BNDD and Customs. I have already noted that that problem was well on the way toward resolution. Whether it would have been a permanent solution is arguable. Legislation was necessary.

While I supported the concept of assigning primary authority and responsibility for drug control in one agency, I had some private reservations about Reorganization Plan No. 2. It did not seem the right time for such a drastic reorganization. We were achieving significant successes, even though there were problems. BNDD and Customs had accepted their responsibilities and tried to fulfill them. But the constant changing of policy signals and tinkering with our activities made us less effective than we could have been.

Finally, I strongly objected to the manner in which it was done and the obvious political considerations involved.

I will now address the goals and objectives to which Federal Drug control efforts should be directed.

In BNDD, we had, as a formally stated goal, the immobilization of the source and distribution of illicit drugs of abuse. Our principal emphasis was on stopping the flow of drugs at their foreign sources and disrupting the illicit domestic commerce in them at the highest and most organized levels. Our good relations with foreign police agencies, plus the ability to provide them with various forms of assistance, eventually resulted in significant successes.

This policy underlined our feeling that the apprehension of significant violators was far more important than the numbers of arrests. We felt that a lasting disruption of major lines of illicit commerce was far more important than the quantity of drugs which might have been seized as a by-product of an enforcement operation. Unless key people are immobilized, arrests and seizures may merely represent a single event in a long stream of illicit traffic which will con-

tinue to flow. Thus it is important not to settle for high "body counts," if those "body counts" are of violators whose positions can be readily and easily filled with newcomers. Thus, our overruling objective was to bring about an overall reduction in the amount of available drugs.

This emphasis on high level violators included our recognition that we should not permit any area of sanctuary to develop in which a violator would feel that he might safely operate. Federal programs should not be conducted in such a manner as to give defector freedom for criminals to operate at middle or lower levels. Flexibility was a principal of the strategy and we recognized the importance of local actions. Our thinking, however, was not to present a greater Federal presence on the streets. It seemed more appropriate to assist local and state agencies in improving their capability to deal at these levels. The litany of cooperative training and assistance programs is very long.

In our efforts to disrupt traffic at the highest organized levels we first developed a program directed at identifying the participants in various organized drug trafficking activities. We then concentrated on disrupting the organizations. Although this effort had some very significant successes, it was also found to lack needed flexibility. So, in 1972, we embarked upon a system of enforcement management which rated violators according to their capabilities in drug traffic. Those who were financiers, or who could deal in very large quantities of drugs, or who were leaders in organizations, were given higher investigative priority and attention than those who were at the low end of the scale. During the first six months of this program, 31 of 163 preselected targets of the highest category were successfully arrested. An additional 33 in this category were later arrested. In Class 2, 33 of the initially identified 163 were immediately arrested, soon followed by the arrest of an additional 118. In other categories, 1,492 Class 3 violators and 943 of the lowest Class 4 violators were arrested.

This indicated that, if diligently applied, the management system we set up could work. I might add that these successes were achieved during a period of time when about 20% of our agent force had been sidetracked into the Administration's ODALE program.

At the same time the White House machinations were going on, BNDD was assuming a much more active role in attempting to stem the tide of controlled substances. And we were successful. Within one year after the Controlled Substances Act of 1970 became effective in the Spring of 1971, we were able to effect a 90% reduction in the domestic manufacture of amphetamines. This led to a sharp reduction in the availability of this drug in the illicit market.

SUMMARY AND CONCLUSIONS

I would like to make five points, Mr. Chairman, to summarize and conclude this statement:

1. Individual professional conduct in any law enforcement agency, especially one handling a problem like the drug traffic, has to be carefully monitored, inspected and regulated to maintain integrity. Positive policies should be promulgated. The example set by top leadership is all important.

2. Where overlapping jurisdictions create conflict between two agencies, legislative or judicial review should be sought to clarify the issue. At the same time, a certain amount of competition may, in fact, increase effectiveness and some duplication in a democratic form of government may be desirable to preclude abuses of power. Consultation between various agencies at all levels of government can be constructive, especially among law enforcement agencies where a spirit of kinship as well as competitiveness exists. In the Federal arena, Congress could help by frequent consultations with enforcement agencies such as this Subcommittee's inquiry.

3. Federal drug enforcement efforts should concentrate on reducing interstate and international traffic. Federal agencies should assist in supervising state and local efforts to control traffic at those levels. Such assistance can be rendered in many forms. Providing information about illegal activities in the other jurisdictions is one such form, but it seems to me that the best way is to increase state and local capabilities in their own right. In time, this approach will make them less dependent on Federal assistance. This observation has been made so many times by so many people that it seems redundant to repeat it again. But, it is a difficult policy to implement in the absence of a clear-cut mandate and commitment to it by all who are involved.

4. We should not expect that enforcement alone is going to solve the drug problem. However, if it is to achieve any success at all, the responsible agency

should be given an opportunity to put programs in effect, test them and evaluate the results. Constant tinkering with details of policy implementation can only detract from effectiveness. There should be, however, a concise and clearly stated strategy. Agencies should be measured against how well they carry out the strategy. Objectives and goals should be required.

5. Between 1968 and 1973 many positive steps were taken vis-a-vis our drug problem and they produced a clear, understandable program. I think that the efforts to persuade other governments to improve their own controls were notable. This is difficult in the best of circumstances, but particularly with governments that are not concerned about drugs either in their own countries or ours. The effort required the cooperation of many U.S. agencies.

None of these ideas is new or particularly innovative. They have been expressed many times before to the point where they are almost axioms. I believe that the best service this Subcommittee could perform is to find a way to formalize them as part of the U.S. policy on drug abuse.

Thank you, Mr. Chairman, for inviting me to appear before you. I will try to answer any questions the Subcommittee may have.

Senator NUNN. If you want to summarize, we will certainly agree to that. Also, though, if you want to give a more complete statement, we will be perfectly willing to hear it.

Mr. INGERSOLL. Thank you, Mr. Chairman.

Because this statement was prepared under some unusual circumstances with which your staff is familiar, I would appreciate it if you would also allow me to clarify one or two points which may not be clear as stated and add a couple of thoughts that occurred to me after its preparation.

Senator NUNN. That will be fine.

Mr. INGERSOLL. Thank you.

As you know, I am here at your request to discuss a few issues of interest in the Federal drug law enforcement. I would like to note that I am representing only myself in this respect. The rest of that page, Mr. Chairman, has to do with my background, some of which you have already mentioned.

I would like to skip to page 2 and note also that my presentation necessarily has to be historical because I have had no direct contact with Federal drug enforcement for 3 years. Thus, I have no special experiences or insights concerning the Drug Enforcement Administration since it came into being.

With your agreement, my statement will cover my views of the following matters as they relate to Federal drug enforcement: The question of integrity; the question of interagency cooperation, especially with the Customs Service; what the focus of effort should be; objectives and goals; and the question of policymaking.

The interim report of the Senate Committee on Government Operations released July 18, 1976, discusses these issues and the historical background of Federal activity in the field. My purpose today is to try to provide a perspective based on my own experiences as BNDD Director. The rest of that page and down to the second paragraph of the next page, is largely historical. I will skip over that.

I would like to note that at the time BNDD was started, a severe corruption problem was under investigation by the Treasury Department in cooperation with the Criminal Division of the Department of Justice. Andrew Tartaglino has testified in detail about this situation before the subcommittee, on June 10, 1975. As far as I can recall, the facts, premises and conclusions he related to you are entirely accurate and correctly reflect our concerns in 1968 and after.

I feel that corruption in FBN had reached some high levels, specifically in the New York office. Unfortunately, with the transfer of certain personnel, the corruption spread to other offices and to one of the other predecessor agencies of BNDD, the Bureau of Drug Abuse Control as well.

I think the following were the most important factors we found: (1) An inability or unwillingness to recognize and react to warning signals; (2) arbitrary discipline; (3) an inability or unwillingness to install controls that would reveal and diminish if not totally prevent corruption; (4) we found that evidence controls, that is the controls over physical evidence, were loose at least until the physical evidence was delivered to a laboratory or office safe.

Senator NUNN. If you don't mind, let's go back and get these four points in the record completely. I think they are important. I want to have, starting on page 3.

Mr. INGERSOLL. In the case of point No. 1, an inability or unwillingness to recognize or react to warning signals, we found that cases had been compromised, key informants had been killed, other law enforcement agencies did not trust the FBN, and we felt that it was apparent that someone was selling out.

Arbitrary discipline, rank and file agents were rewarded or not, depending upon the number of arrests they made. These were numbers without regard to quality. Agents were afraid to report suspicions of corruption because of the possibility of retribution.

Third, an inability or unwillingness to install controls that would reveal and diminish if not totally prevent corruption. Because of the arrest quotas and poor controls over the use of informants, informants had too much freedom and too much influence in determining who would be arrested and when.

In some cases, one could and did wonder who was in charge of the investigation, agents or informants. Informants were not screened by supervisors, there was no provision for supervisors or management to debrief them and evaluate their continuing value to the organization.

On the other hand, ironically, there was no particular security over the files that revealed the identities of the informants. Money to pay informants was very scarce. Often, as a consequence, an agent paid out of his own pocket. Some resorted to bartering, an exchange of narcotics for the information.

Fourth, evidence controls were loose, at least until the physical evidence was delivered to a laboratory or office safe: There is no way to prove if any was diverted, but information obtained during the corruption investigations indicated that this had happened and often.

Senator NUNN. What frame of time are you talking about in these problems?

Mr. INGERSOLL. The investigations were going on in 1968 and probably 1967, if my memory is correct. They covered a period of time going back to the mid-fifties, as I recall it.

At this point, Mr. Chairman, before I am misunderstood, I would like to make two observations concerning investigative work in law enforcement organizations. The first is that laymen often misunderstand the need to use informants in criminal investigations.

All investigations, criminal or otherwise, depend in whole or in part upon the willingness of people to tell what they know of the subject matter. This is as true of this subcommittee's investigation as it is of a police investigation. Every witness who has appeared before you or talked with your staff is an informant.

In narcotics cases, however, as in other vice cases, the informant must be recruited from the milieu in which the crime is committed. He expects to be paid for his work.

He reports on incidents which occur in secret. All parties concerned are willing participants in the offense. There is not the usual offender-victim relationship. Therefore, we cannot expect a victim to report the crime.

He, the informant, may be involved in criminal activities himself. He is well aware of the personal hazards attached to his occupation. Therefore, careful controls must be established by the agency working with him to assure due process, to protect the public, and to protect the informant himself.

Second; corruption in police work is a constant threat. According to the press, the Police Foundation issued a study sometime last year stating that, "Corruption is endemic to policing." I think that simply means that the very nature of police service is bound to subject officers to temptation.

My own experience confirms that. Corruption was an important factor in the problems of many of the scores of police departments I assisted when I was with the International Association of Chiefs of Police. I had to deal with it, or at least gross misbehavior as a chief of police and most certainly as Director of BNDD.

It does not excuse transgressions when I say that I fully expect to find corruption in law enforcement. Our police are given great trust and subjected to more temptation in a year than most people experience in a lifetime; but the head of a law enforcement agency must work to reveal its presence, dispose of it and establish controls that will deter all but the most foolhardy to succumb to it.

I will skip down a little bit. I had long since learned before coming to BNDD that an effective, vigorous, and objective internal investigations unit was essential to controlling the problem. A good one, not only detects integrity problems and operational errors, it prevents them by its mere presence.

So I appointed Mr. Tartaglino chief inspector, and in simple language told him to clean house. He was free to select his staff within reason and could draft additional people from the field for special assignments. Employees at all levels were informed of the corruption that was exposed.

Specific, formal controls were installed over the use of informants and tight accountability was required over all agent activities. The quota system for arrests had never been formally stated by FBN, but we emphasized in writing, to eliminate any misunderstanding, that quotas were not my policy.

I wanted quality arrests and made it very clear that if that meant fewer arrests, I was perfectly willing to explain that to Congress and others and take whatever consequences might follow. I did indeed have some interesting sessions before appropriations committees on that issue.

Evidence accountability was enforced. The rules, policies, and procedures of the agency were overhauled. In short, I believe we corrected the problems that had fostered corruption. As a result of the investigations, some people, including agents, were convicted of crimes. Others were fired or asked to resign. Still others were cleared. Unfortunately, some cases were never satisfactorily resolved.

As evidence that our efforts were paying off, I point to the following factors: No homicides or mysterious disappearances of informants occurred for several years. While there were still instances of misconduct, they appeared to be isolated, except for one rather systematic pattern detected later in California.

Agents showed a greater willingness to come forward to report suspicions of internal misconduct and this is particularly difficult because of the pressures in any law enforcement organization on honest members to remain silent. Agents began reporting efforts to bribe them. The U.S. attorneys prosecuted the persons responsible.

Our internal system of watching for symptoms of something going wrong enabled us to act swiftly. The distrust of other enforcement agencies was replaced with increasing trust and assistance. Inspections of field offices showed a greater improved degree of compliance with controls. Finally, morale improved and operations against major drug traffickers became increasingly successful. That was the bottom line.

Mr. Chairman, I would like to skip over to page 9 and turn to the bottom of page 9 to the question of interagency cooperation. A lot of attention has been given to the so-called friction or some called it a feud between BNDD and Customs. I think it would be best to avoid trying to discuss the complexities and concentrate on some conclusions. I will be happy to try to answer any questions you may have, requesting additional details.

Briefly then, there was a problem. It was most serious in New York and along the Mexican border. The problem had existed for over 20 years before I came to BNDD. It existed even while FBN was in the same department as the Customs Service.

Second, the problem basically can be attributed to an absence of a clear definition of jurisdiction in the law. Narcotics enforcement agencies and Customs laid claim to identical jurisdictions. Attempts to remedy this dispute between FBN and Customs were made by the Treasury. Later, the President tried to solve this dispute between BNDD and Customs.

At the same time, the heads of the agencies concerned tried to solve it with guidelines, memoranda of understanding, and a gentlemen's agreement. They were all foredoomed to failure. For example, in a memorandum sent to the Attorney General on February 15, 1970, the President stated that he had approved the Advisory Council on Executive Organization's recommendations as follows:

A. Representative of BNDD should continue to be accredited to represent the U.S. Government in dealing with foreign law enforcement officials on narcotics questions. Customs should not represent the United States in this area, except when authorized by BNDD.

B. BNDD should be designated as the agency to control the narcotics area. Customs should support BNDD's efforts to reduce and

eliminate the flow of narcotics in the United States and its intelligence network should be used to assist in the overall effort.

C. Consistent with the recommendations made in this paper, the Attorney General should be designated to pass on disagreements that cannot be resolved by the bureaus concerned.

The Attorney General then was requested to prepare guidelines to implement these recommendations and to submit them to the President for approval by February 15, 1970. What followed was a period of very tough negotiations involving meetings in the White House, and an exchange of letters between the Secretary of Treasury and the Attorney General. I thought the President's language was clear, but apparently I was wrong in view of the debate.

The guidelines that did appear were the result of compromise because we were beginning to look ridiculous in the eyes of the Congress and the public. Worst still, they did not provide a lasting solution. They were interpreted by various members of the administration in many ways.

Moreover, the establishment of the Cabinet Committee on International Narcotics Control provided an opportunity for Treasury executives unilaterally to say that the Attorney General's authority to resolve differences had transferred to the committee. Increasingly, the White House staff, through the committee, involved themselves and made ad hoc changes which I thought were at variance with the President's expressed policy.

In my judgment, a clear statement of policy, followed by implementing guidelines approved by the President had been unilaterally changed by his own staff. I submit, therefore, that nothing short of legislation passed by the Congress will provide a permanent solution to jurisdictional disputes of this kind.

Third, the friction between the various groups did contribute to failures in some cases. I do not think, however, they overshadowed the accomplishments of the two agencies. Several previous witnesses have noted that significant inroads were made against narcotics, particularly the heroin problem, during the period 1971-73. This simply would not have been possible had BNDD and Customs been totally incapable of cooperation.

Still, there was much room for improvement and I believe cooperation between the two agencies improved greatly after Vernon Acrea became the Commissioner of Customs. In early 1973, we showed some tangible successes.

I will skip the historical account that follows of some of the achievements, Mr. Chairman, and go down to about two-thirds of the way on that page. The Commissioner of Customs and the Director of BNDD were determined to work together and our subordinates were well advised of this by word and by deed.

I believe that this situation would have continued as long as the personalities were present. It might even have survived long enough to supplant the previous long-standing spirit of competition with a new spirit of complete cooperation. However, while we were able to discipline our subordinates along these lines, we did not have the same success with our superiors. I am speaking again of the White House staff who did not believe or did not want to believe that the two agencies were really cooperating or could do so on a permanent basis.

Reorganization Plan No. 2, 1973, was in part their solution to what was becoming a nonproblem. Before that happened, however, the White House staff clearly expressed its dissatisfaction with my enforcement policies by creating the Office of Drug Abuse Law Enforcement, the ODALE program, in early 1972 under Myles Ambrose, former Commissioner of Customs, who just testified.

I was first advised of this program after it had become a fait accompli and I initially opposed it strongly within the Justice Department. I objected to the program because I thought Federal efforts aimed at street-level trafficking did not make the best uses of Federal resources and jurisdiction. We had been working since 1968 to assist State and local police departments by providing training and some operational assistance.

Mr. Chairman, I would like to interrupt at this point by suggesting that the committee might find the record interesting if it would review some of the joint operations between BNDD and State and local police departments in late 1971, particularly one called Operation Seaboard, which joined together the efforts of a great number of State and local agencies with BNDD and other Federal agencies in what was a tremendously successful cleaning up of narcotic trafficking, not only at the high level of activity, but also at the street level, addict level as well.

Senator NUNN. This is prior to the formation of ODALE?

Mr. INGERSOLL. That is correct, sir, just prior.

I objected to taking a lead supervisory role in what was essentially a State and local problem. This was not only philosophically alien to me, but I felt that our limited resources should be applied to that area where no other but the Federal Government had jurisdiction;

Since we were building our resources carefully, any diversion of them from our main goals would adversely affect their achievement. I also had misgivings about the use of local police officers under the color of Federal authority outside of their primary jurisdictions. My previous experience in municipal and Federal law enforcement, led me to believe that the policeman's feeling of responsibility is paramount in his own jurisdiction and it diminishes elsewhere.

A third objection that could be raised was that there were too many inexperienced attorneys working closely with agents and policemen and it could be difficult for them to retain the objectivity a prosecutor needs to decide if evidence on which to base charges is adequate and properly gathered.

There have been other objections, such as massive use of investigative grand juries to examine thousands of suspects and the heroin hotline and so on, which I won't go into detail about at this time.

Six months later, after the creation of ODALE, the administration created another office by Executive order in the Justice Department, the Office of National Narcotics Intelligence.

Finally, Reorganization Plan No. 2, of 1973, was promulgated. It was preceded by a White House task force study. This time I was invited to present my views on one occasion about how to strengthen the Federal drug enforcement effort.

One of the stated purposes of Reorganization Plan No. 2 was to consolidate the Federal drug enforcement effort, parts of which were then to be found in numerous agencies.

Senator NUNN. Let me back up on page 14. You make it clear, but I want to also emphasize a point for the record. ODALE was formed when you were head of BNDD without anybody talking to you about it whatsoever until after it was a fact. Is that correct?

Mr. INGERSOLL. That is correct. I was told about it before the Executive order was signed, but after it became approved down the line and the Executive order in effect had been drafted.

Going back to page 16, Mr. Chairman, one of the stated purposes of the Reorganization Plan No. 2 was to consolidate the Federal drug enforcement.

I would like to point out that in 1968 there were only two agencies primarily involved in drug traffic enforcement, BNDD and Customs. The others were subsequently produced by the same administration that in 1973 was arguing for consolidation.

While I supported the concept of assigning primary authority and responsibility for drug control in one agency, I had some private reservations about Reorganization Plan No. 2. It did not seem the right time for such a drastic reorganization. We were achieving significant successes, even though there were some problems. BNDD and Customs accepted their responsibilities and tried to fulfill them. But the constant changing of policy signals and tinkering with our activities made us less effective than we could have been.

The statement now next addresses, Mr. Chairman, the goals and objectives to which Federal drug control should be directed. They are similar to the recommendations made in the subcommittee's interim report and so I will not read them again and go on. I might point out however that they were implemented in BNDD and I thought they were being continued in DEA.

But now I will go on to page 19 with your permission.

Before going to the conclusion, I would like to add to the discussion of our goals and objectives and the level of traffic that we were aiming at, that in the early seventies and I believe maybe 1969, we did start emphasizing conspiracy investigations which is another recommendation contained in the subcommittee's interim report.

A large number of our agents were trained in the conspiracy investigations techniques and a number of such investigations were embarked upon. As far as I know, at least through 1973 and possible mid-1974, there was still an active conspiracy program going on in DEA. I can't speak beyond those dates.

In summary and conclusion, Mr. Chairman, I would like to make five points.

First of all, individual professional conduct in any law enforcement agency, especially one handling a problem like the drug traffic, has to be carefully monitored, inspected and regulated to maintain integrity. Positive policies should be promulgated. The example set by top leadership is all important.

Second, where overlapping jurisdictions create conflict between two agencies, legislative or judicial review should be sought to clarify the issue. At the same time, a certain amount of competition may in fact increase effectiveness and some duplication in a democratic form of government may be desirable to preclude abuses of power.

Consultation between various agencies at all levels of government could be constructive, especially among law enforcement agencies

where a spirit of kinship as well as competitiveness exists. In the Federal arena, Congress could help by frequent consultations with enforcement agencies such as this subcommittee's inquiry.

Third, Federal drug enforcement efforts should concentrate on reducing interstate and international traffic. Federal agencies should assist in supervising State and local efforts to control traffic at those levels.

I agree completely that there should be no de facto area of freedom for criminals to operate because of Federal policy. The Federal Government should be actively involved in assisting State and local agencies in controlling the traffic at those levels.

Senator NUNN. Let us assume the local government doesn't have any effective drug enforcement, if you were head of DEA now and you knew that would you feel the Federal Government should get in and fill the vacuum with street agents?

Mr. INGERSOLL. We had that problem when I was head of BNDD. We worked with the police agencies concerned in an effort to try to build up their own resources. I am satisfied that that is the best way to do it. In time, by increasing State and local capabilities, there will be less dependence upon the Federal Government. We have seen examples of this occur in State and local enforcement time and time again. When a new problem arose, such as the disturbances and riots in the 1960's, initially State and local police agencies were unprepared to cope with it adequately.

As time went on with the assistance of the Federal Government, with training, and with additional resources, these local and State agencies built up expertise to the point where they could handle the disturbances not only effectively, but equitably and humanely.

Senator NUNN. It appears to me that you and Mr. Ambrose have almost a totally different opinion on this particular point. Is that a fair assessment?

Mr. INGERSOLL. Judging from his testimony today, that may be true; yes. I think we both have the same goals in mind. I think our methods may differ. I would prefer to work through the State and local agencies rather than directing them or supervising their efforts.

Such assistance can be rendered in many forms. Providing information about illegal activities in their jurisdictions is one such form, but it seems to me that the best way is to increase State and local capabilities in their own right.

In time, this approach will make local enforcement less dependent on Federal assistance. This observation has been made so many times by so many people that it seems redundant to repeat it here again. But it is a difficult policy to implement in the absence of a clear-cut mandate and commitment to it by all who are involved.

We should not expect that enforcement alone is going to solve the drug problem. However, if it is to achieve any success at all, the responsible agency should be given an opportunity to put programs in effect, test them and evaluate the results. Constant tinkering with details of policy implementation can only detract from effectiveness. There should be required, however, a concise and clearly stated strategy. Agencies should be measured against how well they carry out the strategy. Objectives and goals should be required.

Fifth, between 1968 and 1973, many positive steps were taken vis-a-vis our drug problem. And they produced a clear, understandable pro-

gram. I think, for example, that our efforts, the U.S. efforts to persuade other governments to improve their own controls were notable. This would be difficult in the best of circumstances, but particularly with xenophobic governments that are not concerned about drugs either in their own countries or ours. The effort required the cooperation of many U.S. agencies.

None of these ideas is new or particularly innovative. They have been expressed many times before to the point where they are almost axioms. I believe that the best service this subcommittee could perform is to find a way to formalize them as part of the U.S. policy on drug abuse.

Thank you, Mr. Chairman, and the subcommittee for inviting me to appear before you. I will try to answer any questions the subcommittee may have.

Senator NUNN. Thank you very much, Mr. Ingersoll.

In your statement, you refer to a severe corruption problem which you inherited when you became Director of BNDD. You also stated you appointed Andrew Tartaglino as Chief Inspector to "clean house." Were you able to make strides in improving this corruption situation?

Mr. INGERSOLL. Yes. I think my statement indicates some of the things that happened, not complete success, but I don't think one ever obtains the complete elimination of corruption in police organizations.

Senator NUNN. Who succeeded you as head of BNDD? Was there a gap between your tenure at BNDD and DEA or did you go out right after that?

Mr. INGERSOLL. No. I was the first and only Director of BNDD, Reorganization Plan No. 2 abolished that position, I served as Director through June 30, 1973. The reorganization plan took effect the next day. John Bartels was appointed Acting Administrator, was later confirmed by the Senate.

Senator NUNN. Did you have many integrity problems at the time DEA was formed?

Mr. INGERSOLL. Certainly we didn't have the organized kind of corruption problem that existed in 1968 with one possible exception. That exception was a situation in California that was very, very difficult for me to get a hold on in terms of understanding what it really was because it appeared to me not only to have elements of corruption, but there were also severe disputes and rivalries and feuding going on between different factions in that office. It was hard to separate the feuding from substantive integrity problems.

Senator NUNN. Did you take any steps, when DEA was formed, to consult with Mr. Bartels and to inform him about what you were doing in personnel integrity cases? Did you have any coordination between the transition?

Mr. INGERSOLL. I asked the then Chief Inspector, Patrick Fuller, to take on that responsibility during the transition period and afterward, as long as Mr. Bartels wanted him to do it.

Senator NUNN. Where was Andrew Tartaglino at that time?

Mr. INGERSOLL. At that time, he was my Deputy Director for Operations. He was in charge of all the operational aspects of BNDD.

Senator NUNN. Did he do, as far as you know, a good job while he was Chief Inspector?

Mr. INGERSOLL. I think he did an outstanding job.

Senator NUNN. You didn't have any personal conversations with Mr. Bartels about the personnel integrity matters?

Mr. INGERSOLL. I don't recall whether I did or not. I rather think I did not. I am not certain. I know I did not have any conversations after July 1, 1973.

Senator NUNN. Mr. Ingersoll, Myles Ambrose said this morning that ODALE was created to fill the vacuum resulting from BNDD's shortcomings and poor leadership. Would you want to comment on that?

Mr. INGERSOLL. I don't know what he is referring to about poor leadership. I think many people in the White House thought I was not their kind of leader at that time. I don't agree that there was a vacuum. I made reference parenthetically a little while ago to some of the activities that were going on in conjunction with State and local police organizations who were aiming their efforts at the street level or addict, pusher problem. I could recite some others, the so-called metropolitan enforcement program. There was another one that combined State and local police agencies in a given area, combined their resources. We assisted through training and the provision of information and operational assistance as well as some other resources.

In the area of controlling the dangerous substances which are legitimately produced in this country, we also joined forces with State organizations in order to police the manufacture and distribution of those substances more carefully.

Senator NUNN. Mr. Ingersoll, when Attorney General Mitchell was in office, while he was Attorney General, you served as head of BNDD. Is that correct?

Mr. INGERSOLL. That is correct.

Senator NUNN. Was he the only Attorney General that you served under?

Mr. INGERSOLL. No. I was appointed by Mr. Ramsey Clarke. I served under Mr. Mitchell, Mr. Kleindienst and Mr. Richardson.

Senator NUNN. Mr. Mitchell was in office longer than any of the others while you were there?

Mr. INGERSOLL. While I was there; yes.

Senator NUNN. Did he support your approach to narcotics enforcement?

Mr. INGERSOLL. I think he did 100 percent. Yes.

Senator NUNN. Did Attorney General Mitchell play any role that you know of in the creation of ODALE?

Mr. INGERSOLL. I think I may have been the one who informed him of it. I think he was as surprised as I was.

Senator NUNN. You don't think the Attorney General was notified either until it was completed?

Mr. INGERSOLL. You would have to ask him, Mr. Chairman. But the impression I had at the time, my memory tells me that he did not know about it at the time.

Senator NUNN. Don't you think it is highly unusual, to create a major new drug effort with no consultation at all, with the exception of Mr. Ambrose, with the people who are conducting the present effort?

Mr. INGERSOLL. I would say it was highly unusual. Yes, sir.

Senator NUNN. Why do you think that was done?

Mr. INGERSOLL. I can only think what I was told, I suppose. As I have said in my statement, I think it was an expression of dissatisfaction with my policies. I think also it was an effort to gain more attention to Federal efforts in the drug enforcement area. As I recall, I was told that a poll had been taken and the average citizen didn't even know that the Federal Government had a drug enforcement effort. I have never seen that poll, incidentally. I think it was a private one.

So the real issue in the minds of the White House staff was not whether we were after some high-level international trafficker, but what was happening to kids on playgrounds. I quite agree that that was also a valid issue. The question was whether or not it was a valid issue for the Federal Government to go on those playgrounds and enforce the law or whether that was the responsibility under our system of government, the responsibility of that locality.

Senator NUNN. You haven't changed your view on that?

Mr. INGERSOLL. No, sir, not a bit.

Senator NUNN. Did the President's attitude toward BNDD change after the Attorney General left?

Mr. INGERSOLL. I don't think I had as much support after he left.

Senator NUNN. When did he leave? When was that date?

Mr. INGERSOLL. I believe it was in early 1972. But somewhere around March or April, as I recall.

Senator NUNN. How long were you there after that? You were there about 15 months after that?

Mr. INGERSOLL. Approximately, yes.

Senator NUNN. Mr. Richardson was Attorney General then?

Mr. INGERSOLL. He was Attorney General for maybe 2 months before I left, succeeding Mr. Kleindienst.

Senator NUNN. Mr. Kleindienst was before Richardson, then Mr. Saxbe?

Mr. INGERSOLL. I wasn't there when Mr. Saxbe came in.

Senator NUNN. You served under Ramsey Clark, Attorney General Mitchell and under Kleindienst and Richardson?

Mr. INGERSOLL. Yes, sir.

Senator NUNN. Mr. Ingersoll, you made it clear in your statement that you disagreed with ODALE's approach with narcotics law enforcement. We have already gone into that to some degree, but what do you think was the primary factor on which ODALE was performed?

Mr. INGERSOLL. The primary factor?

Senator NUNN. What was the cause of ODALE being formed? You weren't consulted? Do you have any opinion as to the causes of the formation of ODALE?

Mr. INGERSOLL. I think the times were significant. It was early 1972, which was the last time we elected a President.

There was intense campaigning going on. I am not a politician, so I am only voicing a layman's view on this, Senator.

There was an intense campaign going on not only to win an election, but to win a vast landslide. So I think that every effort was being made to picture the administration in as good a position as possible on any issue. Like Mr. Ambrose, I see nothing wrong with that from a political viewpoint. I think if you have good programs, you ought to go

out and sell those programs or advise the people of those good programs.

But I saw no reason to disrupt what I thought was a pretty solid Republican view about the relationships between Federal and local, the Federal Government and the State governments for the purpose of controlling narcotics.

Narcotics as serious a problem as it may be and as deadly as it may be, is just one symptom or one facet of the many problems that the Federal Government could step in and take over from State and local units of government.

The main point I believe was political, the main factor.

Senator NUNN. In your professional opinion, how effective was ODALE?

Mr. INGERSOLL. I don't think it was too effective. It produced large numbers of arrests but I think that could have been done anyhow. I am not sure. It is hard to judge, Mr. Chairman, because it is quite true, in the 1972-73 period, we did finally start to change the trends a little bit. We started to see a decrease in the availability of heroin at all levels of the traffic. We saw more addicts in the treatment centers. We thought the addict population might finally be going down.

Senator NUNN. That was at what stage?

Mr. INGERSOLL. This was in the 1972-73 time period. ODALE may have contributed to that. I frankly don't think that it did. That is a matter of my own personal opinion because I think many of the things that contributed to that change in 1971 or 1972-73 time period, I think the groundwork for those changes was laid in the 1969-70-71 time frame.

Senator NUNN. Would it be fair to say that Reorganization Plan No. 2 really grew out of the mistake, if there was a mistake, in creating ODALE? Let us say this: If ODALE had not been created, do you think there would have been the necessity for creating the Reorganization Plan No. 2?

Mr. INGERSOLL. That is a very difficult thing for me to speculate on because I know only what did happen.

Senator NUNN. Let me ask it another way. Why do you think Reorganization Plan No. 2 was proposed?

Mr. INGERSOLL. I think in that case, there was a concern about the fragmentation that had developed in the Federal drug enforcement effort, and I think there was continuing concern over whether or not the improving relations between Customs and BNDD would become a permanent thing.

There are also some other parts of Reorganization Plan No. 2, such as those commented on this morning, presenting one line at the border rather than having several agencies involved in border inspections.

Senator NUNN. That was dropped.

Mr. INGERSOLL. That was eventually dropped because of the great amount of political pressure from a very interested party.

Senator NUNN. Do you think that the creation of DEA was the right step at that time?

Mr. INGERSOLL. No, sir. I do not.

Senator NUNN. What do you think should have been done in lieu of it?

Mr. INGERSOLL. I thought then, and I think now, that if an expanded effort were going to be made, that it should have been BNDD's, been given to BNDD. I think that is quite, very simply what my thinking has always been.

Senator NUNN. You mean continuing with the same jurisdiction. Customs had prior to the formation of DEA?

Mr. INGERSOLL. That is another part of the question because for the 5 years that I was in Washington, I argued for resolving that issue. I argued for resolving it in the direction of giving BNDD the lead responsibility for narcotics enforcement, overseas or narcotics enforcement as it affected the interstate and international trafficking with support from Customs.

Senator NUNN. Isn't that what Reorganization Plan No. 2 actually did?

Mr. INGERSOLL. That is right. That is correct. That was consistent with by argument of the 5-year period.

Senator NUNN. On what grounds do you disagree with the creation of DEA?

Mr. INGERSOLL. I thought that the reorganization plan itself was very drastic. It added a number of elements. It placed great emphasis on such things as developed a large intelligence organization which I had serious reservations about. It brought the Office of Science and Technology, part of the Office of Science and Technology staff which had been disbanded in the White House in to develop all kinds of new, so-called research and scientific techniques in order to control the traffic. Three years later, I still am not aware as a citizen of any great inroads that have been made in the area of science and technology on drug enforcement trafficking.

Senator NUNN. Any other objections to DEA?

Mr. INGERSOLL. I thought it was the wrong time.

Senator NUNN. You felt functionally what was done vis-a-vis Customs and BNDD should have been done? That part of it you agree with?

Mr. INGERSOLL. In concept, yes, sir. But I also thought at the time BNDD and Customs were making real progress in cooperation. We were sharing office space overseas, for example. We worked together as part of my statement which I didn't read says, we worked together on studying the consequences of morphine base smuggled into Germany. We engaged in a very, very successful joint operation with the Mexican, Federal, and State police on the Arizona-Mexico border. We disrupted a very large trafficking organization that had been harassing those border communities for several years.

So we showed that we could work together. As I said in my statement, given enough time, perhaps that would have become institutionalized cooperation instead of competition. But it just seemed to me that early 1973, when a lot of progress or at least signs of progress were being made, that to disrupt that progress by creating an entirely new organization was a matter of poor timing, poor judgment.

I want to make it very clear, also, Mr. Chairman, that I am not arguing that DEA now should be disbanded. I feel that this organization has been tinkered with enough. It has competent, dedicated, sincere, honest people within its ranks at all levels. It has some others, too.

But it has people who have devoted lifetimes to trying to rid this country of the menace of drug trafficking. Yet, in the last 10 years, they have been reorganized at least three times, major reorganizations, if you include the establishment of the Bureau of Drug Abuse Control; then BNDD; then DEA.

To go through that process again, Mr. Chairman, I submit is going to be absolute folly, worse than 1973.

Senator NUNN. I don't know of anybody that is proposing that at this time. We are trying to look at the background and so forth. I don't know of any proposals to completely revamp it at this stage.

What, in your experience, was the role of the FBI when you were head of BNDD and what should be the role of the FBI in narcotics enforcement?

Mr. INGERSOLL. I think almost everybody knows that Mr. Hoover wanted to have nothing to do with drug enforcement, narcotics enforcement for many of the reasons that Mr. Ambrose stated today. It is a dirty business. It can get you in trouble. You are looking at one who has had a lot of trouble as a result of heading that organization. It isn't something that you are going to build a reputation on.

In my judgment, it is a dead end for somebody in law enforcement. It is certainly no stepping stone to higher office. At least it hasn't been in my case.

If anybody has those ambitions, I would advise them to stay out of that job. So Mr. Hoover was very, very smart. I don't think anybody has ever questioned that as far as this decision was concerned.

So during my tenure, at the outset there was very little cooperation because the FBI distrusted us, almost every place. In those cases where I had a personal relationship with an SAC—special agent in charge of the FBI or assistant director or somebody of that nature—there was cooperation. But it was always done very carefully. After Mr. Hoover died and he was succeeded by Mr. Gray and Mr. Ruckelshaus, the cooperation improved greatly.

Mr. Kelly and I have been friends for many, many years, personal friends as well as professional friends and the cooperation I think when he came into office, although it was just a month before I left, then would have developed, very, very well. I think that there would have been or should have been a lot of interaction and a lot of exchange of information between the two organizations.

Senator NUNN. What kind of role do you think the Internal Revenue Service should play? You have heard the discussion here this morning. Do you differ with any of the views expressed, Mr. Ingersoll?

Mr. INGERSOLL. No, sir, I believe that the tax investigations are very useful.

Senator NUNN. You believe—

Mr. INGERSOLL. I believe that the investigations, that the program you were speaking of was very useful, at least had a useful potential. Again, I am not aware of any specific results. I can't remember any, if any occurred while I was there. I am not aware of any that may have occurred since.

But it seems to me that in principle, it is a good program. I believe that every legal route available to the Government should be used to get at narcotics traffickers as well as other criminals of that type.

Senator NUNN. What advice can you give now as to what ought to be done in the narcotics effort, both to the Congress and to the executive branch, that is not being done or you think that is being done that should not be done?

Mr. INGERSOLL. Mr. Chairman, if I answered that question, it would be an academic answer because I just absolutely have not been in touch with the substance of what has been going on in the last 3 years. I have been out of the country living abroad for the past 16 months. The newspapers that are available to me there do not discuss this problem very often.

Senator NUNN. You did say you did not think there ought to be another reorganization?

Mr. INGERSOLL. That is correct. But that again is an abstract suggestion. It is made without detailed knowledge of any of the problems that you are concerned with.

Senator NUNN. You would emphasize, I suppose, if there are problems, management within the present structure?

Mr. INGERSOLL. Yes, sir.

Mr. SLOAN. Mr. Ingersoll, I just have a couple of questions. What role do you feel agents of DEA should be playing abroad?

Mr. INGERSOLL. I think their role is automatically limited by the fact that the U.S. Government has no jurisdiction abroad in operations, at least to carry on unilateral operations. So I think their role should basically be one of advising, assisting other governments, providing those that have competent or capable narcotics control machinery, providing those countries with intelligence and information and the other less well equipped countries training, counseling, and help in organizing narcotics units and so forth.

Mr. SLOAN. Should DEA agents abroad be involved in enforcement?

Mr. INGERSOLL. I think to some degree they are going to be, yes, but only in a secondary role, assisting the Government of another country because, again, the United States has no jurisdiction in these countries. Any agents who are there are there at the invitation of the other Government.

If they are there at the invitation of the Government and that Government wishes their assistance in a specific case, then I see nothing wrong with providing it on occasion.

Mr. SLOAN. But only if the foreign government specifically invites them to engage in the activity.

Mr. INGERSOLL. Of course, absolutely.

Mr. SLOAN. I would like to ask you one question about the civil service system. Legislation has been introduced by Senators Percy, Nunn, and Ribicoff to take the very top level positions at DEA out of the civil service system in order to give greater management flexibility to the Administrator.

Do you favor such legislation?

Mr. INGERSOLL. I am going to answer that question very obliquely. I am sorry and it may sound like a bureaucratic answer, and I am sorry that I sound that way. So I apologize for it at first. I think it is a two-edged sword.

Mr. SLOAN. I will listen before I accept the apology.

Mr. INGERSOLL. I think it is a two-edged sword. As a manager, I favor being able to move people in and out and around and if neces-

sary, move them out easily. As a manager in private industry, I also recognize that even though it is not civil service, it is not an easy thing to do because of the human factors involved.

On the other hand, I wonder what would have happened to people like Mr. Tartaglino, Mr. Brosan, Donald Miller, and so on in 1973 had this possibility existed.

At the close of my directorship of BNDD, there was an intense power struggle going on. Those people who supported Ingersoll might have been out in the woods and might have lost a great deal of their careers as a result of it. I can only speculate that that might have happened.

I know my chief counsel, for example, was sent over to the State Department to work over there and an assistant chief counsel came in from the outside to replace him. Now Mr. Miller is back in DEA as Chief Counsel.

Senator NUNN. Even without this flexibility, that actually happened—

Mr. INGERSOLL. That is correct, but he did not lose his grade. That is the part of it that bothers me. Obviously, I believe I am the best manager in the world and everything I would do would be done equitably and so on. I would like to have that authority.

When I was in Charlotte, in effect, I did have that authority. I could suspend, demote, or fire people, and all I had to do was notify the Civil Service Commission and they had to do nothing unless there was an appeal.

Senator NUNN. What would you think of a 5-year term for the top people?

Mr. INGERSOLL. I think that provides some of the safeguards that I don't see in the other approach.

Did you accept my apology?

Mr. SLOAN. I accept your apology.

Mr. Ingersoll, while you have not been involved in Federal drug law enforcement for several years now, do you feel that a major problem in this field has been a lack of strong management rather than organizational or structural deficiencies?

In short, are there any changes that need to be made in the Federal drug enforcement programs that can't be made under the present organizational structure?

Mr. INGERSOLL. I think you have asked me two questions. I would like to respond to the first one, first. I think strong management is absolutely essential because as other people have said, narcotics agents are different kinds of people.

I used to try to use the analogy of a racehorse. A racehorse does remarkable and wonderful things as long as it is kept under control. But if the reins are not under control, then it can run wild. It serves no purpose. So strong management is an absolute must. If it is not present, then the organization is going to run away.

As far as any major changes, any major organizational changes at this point, again, I think that the present management of DEA—I don't know Mr. Bensinger, never met him—I think he ought to be given an opportunity to work unfettered for a period of time and see what he can do with it instead of somebody constantly looking over that Administrator's shoulder and second-guessing him later on.

Let me remind you that for 5 years there was only one director of BNDD. Of course, he had career service status. There have been three administrators of DEA, one acting. You had a similar problem in LEAA during its earlier years when there was a constant turnover of administrators in LEAA.

I really think that those people have to be given some time to get settled and get themselves organized.

Senator NUNN. Mr. Ingersoll, we appreciate it very much, your being here. I know you made considerable sacrifice to be here. We think your testimony is very valuable. We are very indebted to you for it. We hope you will feel free to add to the record, if you see fit to later on, if you have any additional thoughts or comments.

Today we conclude the first phase of our hearings examining the Federal narcotics enforcement effort. This week we have received testimony from those individuals who were involved in the creation of the Drug Enforcement Administration.

We have heard, in detail, of the dialog and debate which preceded Reorganization Plan No. 2. Our reconstruction of this dialog and debate, of the ongoing jurisdictional disputes and of the motivations of the plan's architects, is of critical importance in helping us to understand whether the goals and objectives of the reorganization plan have been fulfilled, and what should be done now, if anything.

The second phase of our hearings—an analysis of the present Federal narcotics effort—will include testimony from officials of the Drug Enforcement Administration, Customs Service, FBI, Treasury Department, Justice Department, State Department, the White House, and others. Subcommittee staff is already involved in the preparation of those hearings.

We are determined, therefore, to put together as complete a record as possible on Federal narcotics enforcement. We are compiling this record, I believe, in an impartial and judicious manner and hear from varying points of view, and will continue to do so.

From this record, we will gain a unique perspective which will allow us to make an informed judgment of whether legislative and/or administrative recommendations are in order.

We will announce further hearings in the next few days. These hearings, in my view, will not take place until after the next recess because they will involve a tremendous amount of preparation. We will make an announcement probably within the next week.

At this point, do either majority or minority counsel have anything additional to add to the record?

[Whereupon, at 12:20 p.m., the subcommittee recessed, to reconvene subject to the call of the Chair.]

[Members present at the time of recess: Senator Nunn.]

APPENDIX

EXHIBIT No. 59



REPORT OF THE COMPTROLLER GENERAL OF THE UNITED STATES

Federal Drug Enforcement: Strong Guidance Needed

Departments of Justice
and the Treasury

Federal drug law enforcement efforts have for years suffered from problems of fragmented organization and resulting interagency conflicts. Efforts to resolve the problem have not been successful.

This report addresses this problem and several other issues related to Federal drug law enforcement.

GAO made recommendations to the Attorney General concerning:

- Cooperation and coordination between Drug Enforcement Administration and Customs Service on intelligence.
- The role of the FBI in Federal drug law enforcement.
- Funds for purchase of evidence and information.

GGD-76-32

DEC. 18, 1975



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20540

B-183363

The Honorable Henry M. Jackson
Chairman, Permanent Subcommittee
on Investigations
Committee on Government Operations
United States Senate

Dear Mr. Chairman:

This report on Federal drug law enforcement was made in accordance with your March 6 and May 1, 1975, requests.

As requested by the Subcommittee staff, we did not submit the report to the Federal agencies involved for their official comments. However, we did discuss our findings with officials of the Drug Enforcement Administration, the U.S. Customs Service, and the Federal Bureau of Investigation and their comments were considered in preparing this report.

We invite your attention to the fact that this report contains recommendations to the Attorney General which are set forth on pages 42 and 56. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We will be in touch with your office in the near future to arrange for release of the report so that the requirements of section 236 can be set in motion.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "James A. Stacks".

Comptroller General
of the United States

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ACRONYMS

BNDD	Bureau of Narcotics and Dangerous Drugs
DEA	Drug Enforcement Administration
DECS	Drug Enforcement Coordinating System
EPIC	El Paso Intelligence Center
FBI	Federal Bureau of Investigation
G-DEP	Geographic Drug Enforcement Program
GAO	General Accounting Office
INS	Immigration and Naturalization Service
LAPD	Los Angeles Police Department
LEAA	Law Enforcement Assistance Administration
NADDIS	Narcotics and Dangerous Drugs Information System
ODALE	Office for Drug Abuse Law Enforcement
OMB	Office of Management and Budget
ONNI	Office of National Narcotics Intelligence
PE	Purchase of Evidence
PI	Purchase of Information
RIU	Regional Intelligence Unit
TECS	Treasury Enforcement Communication System
UID	Unified Intelligence Division

COMPTROLLER GENERAL'S REPORT
TO THE PERMANENT SUBCOMMITTEE
ON INVESTIGATIONS, SENATE
COMMITTEE ON GOVERNMENT
OPERATIONS

FEDERAL DRUG ENFORCEMENT:
STRONG GUIDANCE NEEDED
Department of Justice
Department of the Treasury

D I G E S T

For years Federal drug law enforcement in the United States has not been as effective as it could have been if the agencies responsible had worked together to enforce the drug laws.

The price paid in this country for the lack of a concerted effort in attempting to control illicit drug activities cannot be measured.

The Federal agencies concerned--primarily the Drug Enforcement Administration and the U.S. Customs Service--have statistics on drug arrests, convictions, and seizures. However impressive these appear, they are not necessarily accurate indicators of how effective drug enforcement is.

True, statistics show increased arrests, convictions, and seizures. Law enforcement has not necessarily improved. Drug abuse is considered one of the most serious and most tragic problems in this country.

In his Reorganization Plan No. 2, of 1973, the President intended the Drug Enforcement Administration, the U.S. Customs Service, and the FBI to cooperate and coordinate their forces into a cohesive and powerful instrument for drug enforcement. They did not do so.

The Drug Enforcement Administration must obtain more valuable and reliable intelligence to assist the U.S. Customs Service in catching smugglers at border inspection posts. (See pp. 23 to 28.)

Since the 1973 reorganization, the Drug Enforcement Administration and the FBI have interpreted the FBI role in a narrow sense and have not materially changed their working relationship.

GGD-76-32

Tear Sheet. Upon removal, the report cover date should be noted hereon.

The Drug Enforcement Administration headquarters has not provided the FBI with names and information about drug traffickers. If the FBI was supposed to play a larger role in drug enforcement, it seems logical that the Drug Enforcement Administration would have provided the FBI with names and information about certain major traffickers. (See pp. 34 to 41.)

A recommendation that problems be solved by action at the highest level was made by the Domestic Council Drug Abuse Task Force in September 1975. Its chief recommendation said:

"The task force recommends that the President direct the Attorney General and the Secretary of the Treasury to settle jurisdictional disputes between DEA and Customs by December 31, 1975, or to report their recommendations for resolution of the matter to the President on that date."

GAO endorses this recommendation. History shows, however, that establishing inter-agency agreements alone usually will not solve problems.

It is questionable whether such agreements ever will work without a clear directive on the part of someone acting on the President's behalf to compel agencies to comply.

The Drug Enforcement Administration considers the purchase of evidence and information as one of the most effective tools available in narcotics investigations.

The use of funds for purchase of evidence and information has been controversial. The effectiveness of the use of these funds is difficult to assess. GAO recommends that the Attorney General develop better policy and criteria governing their use. (See pp. 43 to 57.)

GAO did not obtain written comments from either the Department of Justice or the Treasury; however, the Drug Enforcement Administration, FBI, and U.S. Customs Service reviewed the report and their comments and suggestions were considered.

Tear Sheet

CHAPTER 1INTRODUCTION

The Permanent Subcommittee on Investigations of the Senate Committee on Government Operations began hearings in June 1975 on the effectiveness of the Drug Enforcement Administration (DEA). The goal was a thorough analysis of DEA's ability to effectively deal with the ever-increasing narcotics and dangerous drugs problem. By letters of March 6 and May 1, 1975, the Chairman requested that we review certain areas which are of major concern to the Subcommittee. (See app. I.)

Specifically, the Subcommittee wanted us to provide:

1. "An analysis of purchase of evidence/purchase of information (PE/PI) funds used by DEA as an approach to drug law enforcement focusing on the number of convictions and significance of violators convicted, including (a) a study of the amounts of Federal dollars allocated to PE/PI over the last five years and to whom these dollars flow, and (b) an accounting of all such money so used since the creation of DEA."
2. "An analysis of the results of the BNDD[1]/DEA, U.S. Customs Service, and the former Office for Drug Abuse Law Enforcement efforts in drug enforcement, from fiscal year 1970 to present, focusing on the number of convictions, nature of the case, significance of violators convicted, and the nature, quantity, quality and/or street value of illicit drugs seized as well as an analysis of the law enforcement methodology utilized by each agency."
3. "An analysis of DEA enforcement and intelligence manpower allocations to various activities and functions in the agency."
4. "An analysis of the exchange of information between Customs and DEA, including the frequency and nature of requests for information or assistance by one agency or the other and the disposition of such request."

1/Bureau of Narcotics and Dangerous Drugs

5. "An analysis of the controls exercised by DEA over narcotics seized, including any information available on the nature, quantity, quality and/or street value of any narcotics unaccounted for after original seizures."
6. "An analysis and accounting of any "confidential fund" maintained by DEA, including the purposes for which the funds were expended."
7. "An analysis of the program of cross designation of DEA agents to allow them the same search and seizure authority as U.S. Customs agents, to include the number of DEA agents so designated and the number and quality of arrests made and convictions obtained by them in this capacity."
8. "An analysis of the quantity and quality of intelligence information exchanged between DEA and the U.S. Customs Service since July 1, 1973, which would enable both agencies to function in the manner intended by Reorganization Plan No. 2."
9. "A study and analysis of the type and quality of cooperation that exists between the Federal Bureau of Investigation and the Drug Enforcement Administration since Reorganization Plan No. 2 was implemented on July 1, 1973."
10. "A study and analysis of how Federal money from LEAA [1] is allocated, by DEA, to the various narcotics Task Forces currently in operation in the country."
11. "A study and analysis of the Unified Intelligence Center, a federally funded narcotics related operation in the New York City area."

The Chairman also requested our views on the results of DEA compliance programs.

On June 9, 1975, our representatives testified before the Subcommittee on work in progress on this request and other work done in recent years to develop several reports to the Congress. This report presents the final results of our work pursuant to the Subcommittee's request.

1/Law Enforcement Assistance Administration

As part of our testimony at the June hearings, we provided copies of the digests of our prior reports on drug enforcement. Since then, we have issued another report which gives our most recent views on DEA's compliance program: "Improvements Needed In Regulating And Monitoring The Manufacture And Distribution Of Licit Narcotics" (GGD-75-102, Aug. 28, 1975).

We were denied access to DEA's "confidential fund" by the Department of Justice. Certain funds appropriated to Department of Justice agencies are outside the scope of our audit authority. DEA's annual appropriation acts authorize DEA the use of not more than \$70,000 to meet unforeseen emergencies of a confidential nature. According to the act, these confidential funds are to be expended under the direction of the Attorney General and accounted for solely on his certificate. We were told by the Department that it had internal auditing procedures to insure the propriety of expenditures from these funds.

PRINCIPAL AGENCIES INVOLVED

Federal drug law enforcement from fiscal year 1970 to the present has been shared by several agencies.

Before July 1, 1973, Federal effort in drug law enforcement was characterized as "fragmented" and having "serious operational shortcomings." The criminal investigative and intelligence functions were shared by (1) BNDD and the Office for Drug Abuse Law Enforcement (ODALE) in the Department of Justice and (2) the U.S. Customs Service, as part of its antismuggling functions, in the Department of the Treasury. The Office of National Narcotics Intelligence (ONNI), also in the Department of Justice, was responsible for developing and maintaining a national narcotics intelligence system and for serving as a clearinghouse for Federal, State, and local agencies needing access to such intelligence.

This fragmentation of effort was one of the principal reasons leading to Reorganization Plan No. 2 of 1973 (effective July 1, 1973), which created a single comprehensive Federal agency, the Drug Enforcement Administration, within the Department of Justice and abolished BNDD, ODALE, and ONNI. The functions and resources of these agencies together with the investigative and intelligence-gathering functions and resources of the Customs Service relating to drug law enforcement were transferred to the new DEA. The Customs Service's antidrug role was limited to interdiction of illicit drugs at U.S. borders and ports of entry. Reorganization Plan No. 2 of 1973 also intended a more

significant role for the Federal Bureau of Investigation (FBI) in drug enforcement.

DEA's State and local task force program is partially funded through grants by the Department of Justice's LEAA.

CHAPTER 2RESULTS AND METHODOLOGIES OF FEDERALDRUG LAW ENFORCEMENT

In the March 6, 1975, letter, the Subcommittee Chairman asked us to perform:

"An analysis of the results of the BNDD/DEA, U.S. Customs Service, and the former Office for Drug Abuse Law Enforcement efforts in drug enforcement, from fiscal year 1970 to present, focusing on the number of convictions, nature of the case, significance of violators convicted, and the nature, quantity, quality and/or street value of illicit drugs seized as well as an analysis of the law enforcement methodology utilized by each agency."

We found that each agency had made numerous arrests, convictions, and seizures, but the statistics are difficult to interpret and are not necessarily true measures of enforcement effectiveness. Increased arrests, convictions, and seizures could be due to increases in trafficking and amounts of illicit drugs available rather than more effective law enforcement. Heroin seizures by Customs and DEA declined during fiscal year 1974, the first year following the reorganization. DEA stated that the decline was due to the combined effects of the Turkish opium ban and the intensified enforcement in France. Customs said its drop in heroin seizures was due, in part, to a decline in the overall smuggling of the drug and to diminished intelligence available.

DEA, Customs, BNDD, and ODALE used various enforcement methodologies to carry out their respective missions. BNDD and Customs, when each performed drug intelligence and investigative functions, had different approaches. Customs focused on the borders and ports and used resultant seizures as springboards for investigations. BNDD and ODALE used extensive undercover activities, relying heavily on the purchase of evidence and information. It should be pointed out that BNDD and Customs worked together on many cases.

DEA has adopted and used methodologies of BNDD, ODALE, and Customs. The U.S. attorneys and assistant U.S. attorneys we talked to in New York, California, and Washington support the intent of Reorganization Plan No. 2 of 1973.

RESULTS DIFFICULT TO INTERPRET

In transmitting the Domestic Council Drug Abuse Task Force report on drug abuse to the President in September 1975, the Vice President stated that drug abuse is one of the most serious and most tragic problems this country faces.

Federal agencies responsible for drug law enforcement have looked at arrests, convictions, and seizures as indicators of progress and results. These statistics, however, can be deceptive and are not necessarily true measures of enforcement effectiveness. Increases in arrests, convictions, and seizures may have little impact on drug availability if the arrests and convictions are for easily replaceable traffickers and if seizures, regardless of quantity or purity, do not result in disruption of the traffic. Changes in drug trafficking patterns are viewed as indicating the impact of enforcement efforts.

Furthermore, although law enforcement has a major responsibility for reducing the availability of illicit drugs, it cannot be held solely accountable. In addition to law enforcement, other elements of the criminal justice system, such as prosecution, the Courts, and treatment programs for drug abusers, together with U.S. diplomatic actions abroad, all affect the overall U.S. effort to reduce illicit drug availability.

DEA, Customs, BNDD, and ODALE routinely reported statistics on arrests, convictions, and seizures; however, the reporting systems did not relate these statistics to particular enforcement methods and jurisdictions. These systems did not and do not routinely provide, for example, statistics on the number of arrests and convictions from conspiracies, undercover penetrations, or convoy operations. DEA maintains statistics, as did BNDD during its last year of existence, on the significance of violators arrested. Customs, however, is the only agency that routinely reports on the average purity of its seizures. This reporting precludes misrepresentation, and Customs believes it should become an integral part of reporting all drug seizures.

Since the agencies operated under different legal authorizations and had different roles and responsibilities, the results are not comparable. For example, it would be difficult to compare ODALE's efforts, which were geared to reducing availability at the street level, with BNDD's efforts, which were geared toward reducing availability at the highest levels in drug trafficking networks.

BNDD/DEA arrests, convictions
and drug removals

Since DEA adopted the BNDD enforcement program (about 75 percent of DEA's enforcement personnel were former BNDD

agents) and continued BNDD's reporting system for arrests, convictions, and seizures, we will discuss BNDD and DEA efforts together.

Arrests and convictions

Arrest statistics are of limited value if the significance and importance of the arrestees are not included. Total arrests reported by BNDD and DEA from fiscal year 1970 to 1975 are shown in appendix II. As shown, arrests have increased over the years. DEA's Geographic Drug Enforcement Program (G-DEP), which ranks violators into four classes, has the added dimension of providing arrest statistics by significance of violator. Upper level traffickers are identified as class I and class II violators, while middle and lower level traffickers are identified as classes III and IV. The number of upper level traffickers (classes I and II) arrested has increased. The number arrested domestically increased from 459 in fiscal year 1973 by BNDD to 832 and 1,328 in fiscal years 1974 and 1975 by DEA. Likewise, the number of classes I and II traffickers arrested by foreign law enforcement agencies with BNDD/DEA assistance increased from 106 in fiscal year 1973 to 221 and 239 for fiscal years 1974 and 1975, respectively.

If there are arrests without convictions, little has been gained. DEA's effectiveness in immobilizing drug traffickers depends not only on the speed and quality of arrests but also on the conviction and incarceration of the violators. Although factors other than the sufficiency of DEA evidence may influence the outcome of a case, its responsibility does not end at the time an arrest is made. DEA has a responsibility to present high-quality cases for prosecution. As pointed out in our report "Difficulties In Immobilizing Major Narcotic Traffickers" (B-175425, Dec. 21, 1973), DEA should evaluate cases after court proceedings to see where improvements in enforcement could be made.

BNDD/DEA's convictions in Federal and State courts for fiscal years 1970 through 1975 are shown in appendix II. Convictions, like arrests, have increased over the years.

Our analysis of the 6,126 defendants arrested by DEA, including task force arrests, whose court cases were concluded in fiscal year 1975, showed that

--80.6 percent were convicted,

--15.9 percent were dismissed, 1/ and

1/Includes dismissals due to defendants' cooperation with the prosecutors.

--3.5 percent were acquitted.

Drug removals

DEA maintains information on the purity of every drug seizure and purchase that the agency makes and seizures turned over to DEA by other agencies. DEA uses this information for intelligence but does not report purity in routine statistics made available to the Congress, other Government agencies, and the public. We believe that information on the average purity of illicit drugs, such as heroin and cocaine, would be beneficial and should be included in DEA external statistical reports.

DEA believes that removal statistics can be deceptive in evaluating effectiveness. For example, a considerable amount of time may be spent in arresting and convicting a major trafficker on a conspiracy case based on a small seizure. The seizure in itself is not significant; but the fact that a major trafficker capable of supplying large quantities of drugs is no longer operating is important.

Drug removals reported by BNDD/DEA for fiscal years 1970 through 1975 are shown in appendix II. According to DEA, its removals of heroin from the domestic market were down in its first year of existence because of the Turkish opium ban and the intensified enforcement in France. At the same time, however, supplies of heroin from Mexico started to increase substantially.

Customs' arrests, convictions, and drug removals

The Customs drug enforcement and control efforts for fiscal year 1970-75 can be conveniently separated into two basic periods--before and after Reorganization Plan No. 2 of 1973. Before the reorganization, Customs, in carrying out its antismuggling responsibilities, used all phases of enforcement, including interdiction, inspection, intelligence, and investigation. Customs strategy was to interdict illicit drugs at the border before the drugs entered the United States. Border seizures were the focal point for its drug investigations.

Following the reorganization, Customs antidrug smuggling activities were curtailed to include only inspection and interdiction. Its drug intelligence collection and investigation capabilities were transferred to the newly formed DEA. The reorganization plan reaffirmed Customs' traditional role of interdicting contraband, including illicit drugs, at ports of entry and along the land and sea borders of the United States.

Statistics on Customs seizures, arrests, and convictions for fiscal years 1970-75 are shown in appendix III.

Drug removals

More than to anything else, Customs looks to seizures as indicators of its progress and success. As shown in appendix III, from fiscal year 1970 to 1973, Customs seized large quantities of illicit drugs. Cocaine seizures steadily increased year by year, while heroin seizures peaked in 1971 and declined in fiscal years 1972 and 1973.

After the July 1973 reorganization, Customs heroin seizures dropped from 389 pounds in fiscal year 1973 to 97 pounds in fiscal year 1974. Customs believes that the drop in heroin seizures was partly due to a decline in the overall smuggling of the drug but also to diminished intelligence available to Customs. The problem of intelligence to support interdiction functions is discussed in detail in chapter 3.

Arrests and convictions

Customs arrests steadily increased over the years from 5,872 in fiscal year 1970 to 10,825 in fiscal year 1973. Following the reorganization, Customs arrests dropped to 8,208 in fiscal year 1974 but were at a high of 16,214 for fiscal year 1975.

Customs pointed out that, when it had drug smuggling investigation and intelligence responsibilities, it arrested at least 299 major traffickers and disrupted many drug smuggling conspiracies. Customs did not have a classification system to readily show the significance of violators arrested.

Before the reorganization, Customs was responsible for preparing its drug arrest cases for court action. Its convictions on arrests for all violations, including drugs, increased from 2,006 in fiscal year 1970 to 4,334 in fiscal year 1973. Our analysis of the defendants arrested by Customs for all violations, the majority of which were drug violations, whose court cases were concluded in fiscal years 1972 and 1973, showed

- 76.5 percent were convicted,
- 17.8 percent were dismissed, 1/ and
- 5.7 percent were acquitted.

1/Includes dismissals due to defendants' cooperation with the prosecutors.

ODALE arrests, convictions, and drug removals

The Office for Drug Abuse Law Enforcement in the Department of Justice was established by Executive Order 11641, January 28, 1972, and was abolished 17 months later by Executive Order 11727, July 6, 1973. Its functions were transferred to the new DEA. As discussed in chapter 6, DEA continued the ODALE concept through its State and local task force program.

ODALE's primary mission was to attack the low and middle levels of the domestic heroin distribution systems to reduce its availability on the street. An underlying objective was to bring a Federal presence to the street level. To carry out its mission, ODALE established task forces made up of Federal, State, and local enforcement personnel in selected target cities.

On July 5, 1973, the Director of ODALE highlighted the agency's results. He stated that, during its relatively short existence, ODALE made more than 8,000 narcotics arrests, removed 230 pounds of heroin from the illicit traffic, and had a conviction rate of more than 90 percent. Appendix IV shows the available statistics on ODALE arrests, convictions, and seizures during its 17-month existence.

METHODOLOGIES

The U.S. approach toward reducing drug abuse and the many related problems comprises a variety of domestic and international efforts to curb the supply and reduce the demand for illicit drugs. As stated in the Federal Strategy for Drug Abuse and Drug Traffic Prevention 1973: 1/

"A major strategic issue is whether we should attempt to affect the entire chain of production and distribution or focus exclusively on what are postulated to be the more vulnerable links in the chain. After considering a wide range of options from exclusive focus on border inspections and domestic control, to increased penalties on simple possession, to eradication of opium productions, we have concluded that we must attempt to break the chain of supply in as many places as possible."

1/Prepared for the President by The Strategy Council on Drug Abuse pursuant to The Drug Abuse Office and Treatment Act of 1972.

The success of investigation and intelligence techniques in reducing the availability of drugs are, to a considerable extent, dependent upon and affect the drug traffickers' methods, routes, and organizations. The difficulty and changing nature of the problem is illustrated in the following statement from the 1975 Federal Strategy.

"Although important reductions in the supply of narcotics and dangerous drugs have been achieved there is widespread recognition that more extensive, sophisticated, and coordinated efforts are needed if the availability of abuse-prone drugs is to be sufficiently restricted. The sharp reductions in east coast heroin traffic and illicit diversion of dangerous drugs, for example, have been countered by drug traffickers' producing new routes and new organizations. The decentralization, smaller-sized amounts, and multiple sources of supply that replace the relatively centralized, wholesale European connection for heroin have made detection and seizures more difficult. The achievements in reducing licit dangerous drug availability have similarly been countered by traffickers in those drugs." (Underscoring provided.)

Overall, DEA, Customs, and the former BNDD and ODALE used a wide variety of tactics and methods in enforcing the drug laws. Many similarities in methods and tools did exist among these agencies, but there were some significant differences.

Customs drug law enforcement was predicated on the premise that hard drugs, such as heroin and cocaine, being contraband, had to be smuggled into the United States. Therefore, over the years, Customs developed methods for enforcing antismuggling laws.

On the other hand, BNDD, like its principal predecessor, the Federal Bureau of Narcotics, believed the enforcement of U.S. criminal drug laws required enforcement action similar to that for vice-type crime, such as gambling and prostitution, which is characterized principally by the lack of a complainant. This often necessitates the participatory involvement of enforcement personnel.

DEA, being an amalgamation of BNDD, ODALE, and the drug investigative and intelligence activities of Customs, would be expected to adopt some of their various methods.

The ODALE approach

ODALE's primary mission was to attack the low and middle levels of the domestic heroin distribution systems to reduce availability on the street. ODALE's task force approach, using the enforcement expertise of personnel detailed from various law enforcement agencies, along with the legal expertise of assigned attorneys, was somewhat unique for drug law enforcement. Because of its street enforcement objective, ODALE relied heavily on purchases of drug evidence and payments to informants. One method used extensively by ODALE was the investigative grand jury. The participation of attorneys made available many avenues of investigation which the working agent would not ordinarily have.

The BNDD approach

As discussed in our report on "Difficulties In Immobilizing Major Narcotics Traffickers" (see p. 7), BNDD's primary objective was to reduce drug availability in the United States. Through an enforcement program called the "systems approach," BNDD attempted to identify illicit drug distribution systems and immobilize domestic and international drug traffickers operating within the systems. BNDD had some success with the systems approach in disrupting the activities of several major systems; however, several BNDD regions continued to pursue targets of opportunity--mostly low-level traffickers. By 1972, BNDD realized that the systems approach was not producing the desired results and in July modified that approach into G-DEP.

The DEA approach

DEA continued with BNDD's G-DEP and other programs of the former BNDD and ODALE. Unlike BNDD, which shared drug investigative responsibilities with Customs, DEA was charged as the single Federal agency with this responsibility. Its main objective is to reduce drug abuse in the United States by controlling the availability of illicit drugs. DEA, because of its broad mandate from Reorganization Plan No. 2 of 1973, has been building up drug intelligence operations (see ch. 5) and has continued the ODALE task force program with certain modifications (see ch. 6).

DEA's operational strategy is to collect, analyze, and disseminate information identifying major drug traffickers and their organizations and to initiate and develop investigations toward the apprehension and prosecution of major traffickers. In carrying out its broad enforcement mandate, DEA employs a variety of enforcement methodologies--from simple purchases of drug evidence to complex conspiracy

investigations with primary emphasis on eliminating the sources of illicit drugs and disrupting the highest levels of trafficking. DEA relies heavily on purchases of evidence and information and tries to "buy" in at middle and lower levels and work up to upper level traffickers. (See ch. 4.) Also, DEA, in its overseas program in some countries, has assumed a broad operational posture, including international casemaking, strengthening local capabilities, intelligence gathering, and, in some countries, undercover work.

The Customs approach

Customs has long had responsibility for interdicting all types of contraband and preventing the smuggling of contraband into the United States. Although drug investigation and intelligence functions of Customs were transferred to DEA by Reorganization Plan No. 2 of 1973, the plan reaffirmed Customs' responsibilities for interdicting all contraband, including illicit drugs, through inspection and enforcement activities at ports of entry and along the land and sea borders. Before the reorganization, when it had drug smuggling investigation and intelligence functions, Customs used a variety of enforcement methodologies--interdiction, investigation, and intelligence--which it considered to be fully integrated. Customs stressed the importance of stopping illicit drugs at the border when the drugs were of high purity and using border seizures as a focal point for drug smuggling investigations. Customs maintained that drug interdiction and investigative functions should be linked and were mutually supportive.

After the reorganization, Customs' methodologies were limited to a border interdiction program, and Customs was dependent on DEA for the investigation and intelligence required. Both before and after the reorganization, the Customs Service focused on port and border interdiction.

Numerous methodologies used

The following table displays the methodologies most frequently used in narcotics enforcement by the four agencies discussed. They fall into two categories--investigative/intelligence, which pertains to the drug enforcement functions that DEA has assumed sole responsibility for as a result of the reorganization, and interdiction, which pertains to the drug enforcement function carried out primarily by Customs prior to the reorganization and which continues to be a responsibility of Customs today.

Narcotics Enforcement Methodologies

	<u>Prior to reorganization</u>			
	<u>ODALE</u>	<u>Customs</u>	<u>BNDD</u>	<u>DEA</u>
<u>Investigative/Intelligence</u>				
Purchase of evidence--Funds used to buy drug evidence. (See ch. 4.)	X	Limited	X	X
Purchase of information--Funds paid to cooperating individuals for information, expenses, and rewards. (See ch. 4.)	X	X	X	X
Conspiracy--Indepth investigations attempting to surface all links between two or more persons who have agreed to commit an offense in violation of drug laws.	X	X	X	X
Convoy--Monitored passage of drugs to point of delivery.		X	X	X
Undercover activity--Agents disguised as drug traffickers in order to penetrate drug organizations.	X	X	X	X
Surveillance--Keeping a close watch on targeted drug traffickers.	X	X	X	X
Title III electronic interception--Court ordered wiretaps against suspected drug violators.	X	X	X	X
Intelligence/information systems--Organized programs for collecting and disseminating data related to drug law enforcement.		X	X	X
State and local cooperative programs--Organized joint operations with State and local law enforcement agencies.	X		X	X
Overseas cooperative programs--Cooperative assistance with foreign law enforcement agencies.		X	X	X
Financial investigations--Tracking large international transfers of currency as they relate to drug smuggling.		X		
Flash rolls--Large sums of money shown to drug traffickers as proof that the undercover agent can make a substantial purchase of illicit drugs.	X	X	X	X

Narcotics Enforcement Methodologies

	Prior to reorganization			
	ODALE	Customs	BNDD	DEA

Investigative/Intelligence
 (continued)

Investigative grand jury--Used to conduct long-term inquiries through avenues which are unavailable to the working agent, such as grand jury subpoenas, immunity, sworn testimony, and the handling of reluctant witnesses.

X	X	X	X
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Interdiction

Controlled mail delivery--Delivery of foreign mail found to contain drugs in order to identify and arrest the recipient.

	X		X
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Border surveillance--The use of patrol forces, airplanes, boats, or sensors to detect drug smuggling.

X		X	X
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Border inspection and search--The unique authority vested with Customs that allows warrantless search and seizure at U.S. borders. (See ch. 3.)

X			Limited
---	--	--	---------

Detector dog program--The use of dogs trained to sniff out concealed drugs.

X			
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False documentation detection--Linking persons with false identification to drug trafficking groups.

	X	X	X
--	---	---	---

DEA's attempts to use
the various methodologies

Whether the Customs approach to drug law enforcement was superior to that of BNDD or vice versa, we cannot say. Both approaches have merit and have had some successes. An important issue is whether DEA, as the primary drug law enforcement agency, has adopted the various methodologies and capitalized on the successful approaches of Customs and the former BNDD and ODALE. DEA has continued BNDD domestic methodologies and relies heavily on the undercover approach and purchase of evidence and payments to informants. ODALE-

type task forces have been continued with certain modifications. The extent to which DEA uses ports and borders as a focal point for a drug investigation, as Customs formerly did, cannot be precisely determined, although we did find that it had been used in some cases.

The following case illustrates how DEA used a "cold" 1/ seizure to develop a major case just as Customs would have done if it still had drug smuggling investigative authority. It also shows the use of numerous enforcement methodologies.

Following the cold seizure of approximately one kilo of heroin, one-half kilo of cocaine, and 25,000 units of dangerous drugs by Customs from a lower level trafficker, DEA initiated an intensive investigation, using the resources of and in cooperation with the Los Angeles Police Department (LAPD) and Los Angeles County Sheriff's Office. The initial defendant in this case had been placed in the Treasury Enforcement Communications System (TECS) as a trafficker and was the subject of a LAPD narcotic investigation. The coordinated action on the part of the three agencies, at the time of our review, had resulted in about 30 arrests (10 in Mexico and 20 in the United States), including the head of a major heroin trafficking organization in Mexico, and additional seizures of 4 pounds of heroin, 3 pounds of cocaine, and 100,000 dosage units of dangerous drugs. Included in the 30 arrests were 17 upper-level violators (class I or II). This organization was estimated to be supplying about 25 percent of the heroin used in the Los Angeles area as well as a major portion of heroin and cocaine in other large U.S. cities.

Various techniques were employed during the investigation besides the normal undercover penetrations, including a \$240,000 flash roll. Several of the defendants were arrested on conspiracy charges. Telephone toll analysis and a joint prosecution agreement with Mexico, in which evidence was exchanged for prosecution of defendants in their respective countries, were also used.

This case also illustrates the coverage DEA obtained--from a lower level trafficker to the major supplier abroad--when a variety of techniques were used in working with domestic and foreign counterparts.

1/A seizure made without any advance information.

In its overseas program, DEA has continued BNDD's broad operational and intelligence-gathering activities. Although the operational posture continued by DEA, which has included casemaking and undercover work in some countries, has its risks and is subject to controversy, it has had some success in increasing foreign drug arrests and seizures, developing domestic conspiracy cases, and improving the capabilities of foreign government enforcement personnel.

Also, it should be noted that there is within DEA, at the very least, a potential for using those more successful Customs techniques for developing border-type drug investigations. Significant operational authority is vested in DEA regional directors. Of the 13 domestic regional offices, 5 include most of the high-activity ports of entry and border areas. These are the Dallas, Miami, Seattle, Los Angeles, and New York regional offices. These offices, together with the Mexico City, Manila, and Caracas regional offices, are all headed by former senior Customs agents. These regional directors could be expected to be well versed in Customs' drug law enforcement techniques and methods.

U.S. attorneys' views

The assistant U.S. attorney and chief of the criminal division in the eastern district of New York, advised us that the quality of cases presented to him for prosecution by DEA and Customs was excellent. Also, cases presently being submitted by DEA, both substantive and conspiracy, are good; he stated that he had had a high rate of success with these cases.

This official further stated that he had no problems with the cases submitted to him either before or after the reorganization. Both BNDD and Customs used the conspiracy approach successfully. He also stated that prior to the reorganization, international conspiracy cases were easier to prosecute than domestic conspiracy cases because of the documentary evidence, such as passports and tickets, associated with the international travel. He did note that it is easier now because only one agency, DEA, investigates and prepares cases for prosecution; thus, he does not have the problem of having to handle a case with both agencies or becoming involved in the interagency friction which existed.

Other U.S. attorneys and assistant U.S. attorneys that we talked to in California and Washington support the intent of Reorganization Plan No. 2 of 1973.

One U.S. attorney said that the Attorney General's Advisory Committee, consisting of 15 U.S. attorneys, had unanimously recommended in June or July of 1975 that drug enforcement should continue under the direction of DEA. It was the Committee's belief that any major reorganization would seriously disrupt the drug enforcement effort.

CONCLUSIONS

DEA and Customs and the former BNDD and ODALE had impressive statistics on drug arrests, convictions, and seizures. These statistics, however, can be deceptive and are not necessarily accurate measures of enforcement effectiveness. Increases in arrests, convictions, and seizures can occur with little impact on reducing drug availability if the arrests, convictions, and incarcerations are for easily replaceable traffickers and if seizures, regardless of quantity or purity, do not result in the disruption of the traffic.

DEA, and BNDD during the last year of its operations, provided an added dimension by routinely reporting on the significance of violators arrested and convicted.

BNDD and Customs, when it had drug investigative responsibilities, adopted enforcement approaches and drug investigative methodologies that fit their respective authorities. Customs capitalized on its port and border authorities, including warrantless border search and seizure authority, and used the border as the focal point for its drug smuggling investigations. The former BNDD, which had authority to enforce Federal laws dealing with interstate trafficking and limited authority at ports and borders, concentrated its efforts overseas and in the interior of the United States to immobilize international and interstate drug trafficking networks. BNDD relied heavily on purchase of evidence and information and undercover penetrations. Customs purchased information and used other methodologies but was generally opposed to purchases of drug evidence as a means of apprehending drug traffickers.

Whether the BNDD approach was superior to the Customs approach or vice versa is difficult to determine. Both approaches have merit and have had some proven success. DEA has adopted the BNDD and ODALE approaches and, on some cases that we reviewed, has used Customs' approach.

CHAPTER 3MORE INTERAGENCY COOPERATION NEEDEDIN FEDERAL DRUG LAW ENFORCEMENT

The Subcommittee expressed concern that Federal agencies' cooperation and coordination on drug-related intelligence and enforcement might not be adequate. Specifically, the Chairman's letters requested:

- "An analysis of the quantity and quality of intelligence information exchanged between DEA and the U.S. Customs Service since July 1, 1973, which would enable both agencies to function in the manner intended by Reorganization Plan No. 2."
- "An analysis of the exchange of information between Customs and DEA, including the frequency and nature of requests for information or assistance by one agency or the other and the disposition of such request."
- "An analysis of the program of cross designation of DEA agents to allow them the same search and seizure authority as U.S. Customs agents, including the number of DEA agents so designated and the number and quality of arrests made and convictions obtained by them in this capacity."
- "A study and analysis of the type and quality of cooperation that exists between the Federal Bureau of Investigation and the Drug Enforcement Administration since Reorganization Plan No. 2 was implemented on July 1, 1973."

Responsibility for enforcing Federal drug abuse laws has long been shared. The Customs Service has traditionally been responsible for the control of smuggling. Other agencies have, at one time or another, been responsible for controlling narcotics, marihuana, and dangerous drugs. The intersection of these responsibilities--smuggled narcotics, marihuana and, to a lesser degree, dangerous drugs--has been the primary source of conflict. The executive branch, many years ago, recognized the operational and organizational shortcomings that resulted from this basic conflict. Various reorganizations and Presidential directives have attempted to resolve problems stemming from this conflict. The problem, however, continues to exist due, in part, to the lack of a focal point with sufficient authority and information to resolve agency conflicts. Clearly one cabinet officer does not have authority to dictate the solution to a conflict with a fellow cabinet officer.

The impact of these problems on the effectiveness of drug control activities cannot be measured. Our analyses show that much more needs to be done to achieve the coordination among law enforcement agencies that was intended by Reorganization Plan No. 2.

DEA needs to place greater emphasis on obtaining intelligence data to assist the Customs Service in its interdiction function, and both agencies should cooperate on enforcement activities along the border. About 2 years have passed without these two agencies' reaching operational agreements at either the national, regional, or district level regarding the exchange of data and cooperation in enforcement activities. Since June 1975, both agencies have taken steps to strengthen cooperation.

Customs was originally opposed to designating DEA agents the search and seizure authority of Customs agents. Customs believes the designation to be illegal since DEA agents would be using it to perform DEA functions rather than Customs functions. Eventually, a limited number of DEA agents were granted the designation. To date, DEA has made little use of this authority.

The FBI's role in drug law enforcement needs to be clarified. Both agencies have interpreted the FBI's role to mean routine exchange of information and intelligence at the operating level and have not materially changed their working relationship since the reorganization.

WHAT HAS BEEN DONE

Since 1968 numerous actions have been taken to strengthen Federal drug law enforcement, including:

- Reorganization Plan No. 1 of 1968, creating BNDD.
- Presidential directive of February 1970, requiring guidelines to settle jurisdictional disputes between BNDD and Customs.
- The Comprehensive Drug Abuse Prevention and Control Act of 1970, consolidating fragmented Federal laws governing narcotics and dangerous drugs.
- The creation of ODALE and the Office of National Narcotics Intelligence (ONNI).

--Reorganization Plan No. 2 of 1973, which transferred the functions and resources of BNDD, ODALE, ONNI, together with the investigative and intelligence-gathering functions and resources of the Customs Service relating to drug law enforcement, to the new DEA.

--Domestic Council report on drug abuse of September 1975, containing recommendations for improving Federal drug abuse programs.

The Office of Management and Budget (OMB) proposed a solution to the problems of cooperation among Federal law enforcement agencies along U.S. borders. However, OMB's proposal was rejected by the Congress.

Reorganization Plan No. 1 created BNDD within the Department of Justice. This agency consolidated the resources and functions formerly directed by the Secretary of the Treasury, through the Federal Bureau of Narcotics, and the Secretary of Health, Education and Welfare, through the Bureau of Drug Abuse Control. One purpose of this plan was to unite previously fragmented investigative and enforcement functions of Federal narcotics and drug laws and to locate this new organization in the Department of Justice.

After this plan was implemented, jurisdictional problems arose between BNDD and Customs. Customs was charged with the control of smuggling; BNDD was charged with the control of narcotics. The interface of the two elements--smuggled narcotics--was a source of conflict between the two agencies. The jurisdictional problem became serious enough to require Presidential action.

In February 1970, the President directed the Attorney General to prepare guidelines to settle the jurisdictional dispute between BNDD and Customs. The President approved the guidelines in June 1970; and in July the Director of BNDD and the Commissioner of Customs entered into an implementing agreement. In our report on "Heroin Being Smuggled Into New York City Successfully" (B-164031(2), Dec. 7, 1972), we reported that at the operating level cooperation and coordination called for in the guidelines had not been fully realized.

Jurisdictional problems were further aggravated by the establishment of two additional agencies--ODALE and ONNI--in 1972. These agencies were established by Executive order on the basis of an urgent need for strong antidrug measures. The order creating ODALE provided that it should be headed

by a director, having the title of Special Assistant Attorney General. The director also served as Special Consultant to the President for Drug Abuse Law Enforcement to advise the President on all matters relating to more effective enforcement by all Federal agencies.

In 1973 it was again recognized that the Federal drug control effort was fragmented with no overall direction, and Reorganization Plan No. 2 was enacted. The President envisioned a more effective involvement of the FBI in Federal drug law enforcement, particularly in attacking the relationship between drug trafficking and organized crime.

The President also envisioned the Attorney General having authority and responsibility for coordinating the collection of drug trafficking intelligence from all Federal departments and agencies. Specific language for accomplishing this was not spelled out in the plan. Executive Order 11727, July 6, 1973, did authorize the Attorney General "to the extent permitted by law" to coordinate all activities of executive agencies related to drug law enforcement. However, the Senate Government Operations Committee's report on the reorganization plan said that the Attorney General had no statutory authority to direct other Cabinet officers even when so authorized by Executive order of the President; only the President himself has such authority.

The reorganization plan also reaffirmed the role of the Department of the Treasury in the total Federal drug law enforcement program.

In June 1974, the Director of OMB informed the Attorney General and the Secretary of the Treasury of the conclusions reached in its analysis of Federal law enforcement along the southwest U.S. border. This analysis pointed out continuing competition, conflicts and overlaps in functions, and duplicative expenses in multiagency operations.

OMB directed that Customs be the lead agency for air interdiction and routine air enforcement; that Customs assume single-agency management at U.S.-Mexican border ports on a test basis; and that the Immigration and Naturalization Service (INS) be the single agency for land patrols between ports of entry. Subsequent congressional action has precluded implementation of OMB's recommendations.

In September 1975 the Domestic Council presented a white paper on drug abuse control to the President. This white paper contained many recommendations, including, in particular, a recommendation that the President direct the Attorney General and the Secretary of the Treasury

"* * * to settle jurisdictional disputes between DEA and Customs by December 31, 1975, or to report their recommendations for resolution of the matter to the President on that date."

IMPROVED COOPERATION NEEDED
BETWEEN DEA AND CUSTOMS

The conflicts between DEA and Customs have affected the exchange of intelligence and other information and the coordination and cooperation of enforcement activities.

Intelligence is used for strategic, operational, and tactical purposes. Strategic intelligence provides a situational overview on the magnitude of the problems, for use in formulating broad policy and strategy. Operational intelligence provides an overview and insight on the modes of operation, traffic patterns, and principal personalities involved in the illegal operations. It is used in allocating law enforcement resources. Tactical intelligence identifies specific traffickers and their methods of operation. This data is used to plan and conduct specific and imminent law enforcement.

Intelligence information may also be referred to as "finished" or "raw." Finished intelligence represents reports, publications, or studies. Raw intelligence represents undeveloped information that has not been analyzed.

Exchange of intelligence
and other information

We were unable to obtain accurate statistics on the extent to which data and intelligence information have been exchanged between DEA and Customs. Neither agency systematically and routinely maintains such statistics at the national, regional, or local level. Their records provide only limited assurance that supplied input is attributed to the other agency.

DEA has provided Customs with intelligence and other information in a variety of forms, depending on the nature and urgency of the information. While the data Customs has attributed to DEA is less than the amount claimed by DEA, DEA has demonstrated a willingness to share data with Customs.

About 2 years have passed since the reorganization without Customs and DEA reaching a formal agreement on exchanging information and intelligence. Since the reorganization, these agencies have held meetings to discuss the matter. Proposed agreements were exchanged in 1974; however,

the problem was not resolved. In June 1975 Customs proposed language for a circular to be issued by DEA defining Customs' continuing role in the narcotics effort and directing DEA agents to collect and forward interdiction-related narcotics information. Shortly thereafter, in response to Customs' proposal, DEA stressed the need to develop such data to its agents in the field, issued instructions for relaying intelligence on drug trafficking to Customs, and established a special liaison unit with Customs in its Office of Intelligence.

Intelligence information systems

The Narcotics and Dangerous Drugs Information System (NADDIS) was designed by DEA to further investigations on drug violators. It provides agents with biographical information on known violators and references to case files. The data includes

- the trafficker's residence, phone number, and such identifying characteristics, as height, weight, and age;
- the drug involved and the level of the case;
- the trafficker's passport data, vehicles, boat, and aircraft numbers; and
- the trafficker's associates.

The El Paso Intelligence Center (EPIC) is a prototype for a national narcotics intelligence system intended to serve Federal, State, and local law enforcement agencies with data from various sources. Its purpose is to provide a complete and accurate picture of drug trafficking, immigration violations, and smuggling--by land, sea, or air--between Mexico and the United States. Raw data is acquired and analyzed, and the resulting intelligence is disseminated to agencies with border enforcement responsibilities.

The Treasury Enforcement Communication System (TECS), operated by the Customs Service, makes enforcement-related data available instantly at border crossing points, airports, and seaports throughout the country. This capability has been used successfully to intercept known or suspected traffickers and associates and cargoes of firms engaged in smuggling. The types of information on individuals which can be entered into the system are

- name, race, sex, height, weight;
- date and place of birth;
- address information; and
- such identifying numbers as social security, driver's license, passport, National Crime Information Center, license plate(s), and aircraft.

Narcotics case records in TECS are increasing. One month after the reorganization, TECS contained 149,547 narcotics case records and, as of June 5, 1975, contained 152,730, an increase of 3,183.

The TECS system is accessible to DEA and the NADDIS system is available to Customs by computer terminals installed in each agency. One NADDIS terminal is located at Customs headquarters, and one TECS terminal is located at EPIC.

In the early stages of EPIC, DEA anticipated a joint effort by DEA, INS, and Customs, with DEA maintaining overall responsibility. It further anticipated that including Customs' personnel would be a substantial contribution toward accomplishment of EPIC's mission and prove mutually beneficial to all concerned. However, Customs did not feel its participation during the early stages of EPIC would be mutually beneficial. In July 1975 Customs agreed to send an observer to EPIC for 6 months to determine if participation with DEA and INS would now be beneficial for Customs. At the time DEA and Customs were negotiating to assign the observer to EPIC, Customs was placed on the distribution list to receive EPIC's weekly briefing report. With the exception of these reports and 156 pieces of drug information placed in TECS, EPIC has furnished intelligence information to Customs only on specific requests. Customs, as of June 30, 1975, had requested drug intelligence information from EPIC 47 times.

Finished intelligence

At the headquarters level, finished intelligence, such as the periodic intelligence bulletin, are disseminated on a relatively wide basis. DEA's Office of Intelligence reported forwarding 53 finished intelligence items to Customs since the reorganization. These items included operational data on traffickers, trafficking trends and routes, smuggling methods relating to concealment of narcotics, and drug prices and availability.

A review of available files by Customs headquarters identified 12 finished intelligence reports received from DEA over a 22-month period. Customs characterized some of these products as helpful and informative while additional information was required on others.

According to Customs, formal DEA requests for information are received on the average of two per month, while informal working level requests vary in frequency, depending on ongoing projects.

Raw intelligence

Raw intelligence information is disseminated between DEA and Customs both in the field and at the headquarters in Washington. According to field personnel interviewed, most intelligence sharing is the result of interpersonal relationships rather than formal exchange agreements or mechanisms. The exchanges are seldom documented by either agency or formally attributed to the providing agency by the other.

Customs' review of products, reports, cables, and letters available in headquarters files identified 83 items of raw intelligence received from DEA headquarters during a 22-month period. Of these, 60 were TECS entries. Customs' officials said that time constraints precluded their acquiring a meaningful assessment of DEA products available at Customs field offices. It was their belief that the exchange of intelligence information between Customs field offices and DEA was minimal and had been informal and uncoordinated.

DEA has committed its resources almost entirely to identifying major traffickers and eliminating sources of supply. Intelligence efforts are geared toward these goals rather than the gathering of intelligence information to interdict drugs at ports of entry and along the U.S. border. Information developed to assist domestic enforcement to interdict drugs is a byproduct of investigation. For instance, the DEA Mexico City regional office in June 1975 had no programs designed for developing information to assist in intercepting drugs at the borders. Except for several instances, such as developing data on aircraft and pilots landing at an airport in Southern Mexico or responding to a request from EPIC regarding aircraft registered in Mexico, no such data had been compiled.

According to DEA officials, DEA headquarters had provided many items of specific tactical intelligence, both formally and informally, to Customs headquarters. They pointed out that DEA's International Intelligence Division from January through June 30, 1975, referred 13 items to Customs involving 350 individuals and 20 different methods of smuggling. In addition, DEA headquarters has on five occasions turned over NADDIS tapes to Customs. These tapes contained approximately 123,000 records relating to more than 200,000 individuals. Initially, in mid-1974, DEA provided tapes to Customs containing approximately 110,000 records, which, after screening by Customs for adequacy and duplication, added about 40,500 records to TECS. In July 1975, Customs obtained about 13,700 additional records from NADDIS. How much of that information had previously been transmitted by letter, telephone, or teletype to Customs from DEA headquarters was not known.

DEA reported that, from the implementation of the re-organization through May 1975, its domestic regional offices transmitted about 3,700 referrals of specific tactical intelligence to their local Customs counterparts. These referrals ranged from a high of 1,195 for the New York region to a low of 40 for the New Orleans region. According to DEA, a substantial number of additional referrals to Customs offices were not documented.

Along the borders of the United States and at the ports of entry, the exchange of raw intelligence usually is an informal referral from a DEA agent to a Customs inspector or officer for entering a lookout into TECS. A lookout usually consists of a name, an automobile registration or license plate number, an aircraft number, or a boat number to help Customs inspectors intercept known or suspected criminal violators and the vehicles they use.

Customs told us that since July 1, 1973, it had turned over to DEA confiscated drugs--with collateral information--from 35,000 seizures having a total street value in excess of \$600 million but had received virtually no feedback. Information from the locations visited in our review generally supported this claim.

Some Customs investigators in the field routinely sent specific pieces of narcotics intelligence to DEA. Although field offices maintain some liaison with each other, they do not automatically make available to each other their files, intelligence, and other information. Such information was exchanged, for the most part, on a specific request or on the basis of need rather than by routine sharing or pooling of such data.

Customs' reports on DEA-provided TECS entries are understated. Customs automatically codes TECS input by the terminal from which the data was received rather than by the agency providing the data. DEA has only one TECS terminal for entering data. Since many DEA lookouts are transmitted at Customs terminals convenient to the source of the information in the field, they are permanently coded as Customs' input. This tends to overstate Customs' TECS input and understate DEA's input. For example, from July 1973 through March 30, 1975, Customs requested the input of 260 lookouts on the TECS terminal at San Pedro, California, while DEA requested that about 390 lookouts be inserted. All 650 lookouts were counted as Customs' inputs.

Customs headquarters reviews daily the TECS entries from the field, by reading each entry to determine whether it meets TECS requirements. As a byproduct they identified approximately 5,000 DEA entries from field offices for the period February 17, 1974, through July 13, 1975. This figure appears to be understated because Customs procedures, according to a regional official, automatically purge such entries every 30 days unless otherwise requested; a Customs-provided printout of June 23, 1975, showed about 4,600 entries which were referred from DEA.

Seizures based on prior information

On March 28, 1974, in testimony before a House Appropriations Subcommittee on Customs' budget for fiscal year 1975, the Commissioner of Customs said that before reorganization, less than 90 percent of their drug seizures were cold seizures. He stated that, after the reorganization and the creation of DEA, the cold seizures rose to over 95 percent because the volume of information Customs obtained from DEA to enter into the Customs' intelligence network was low. We found that the 90-percent figure cited was a rough estimate. A recent Customs survey of 11 major districts or ports, representing close to half of Customs seizures for fiscal year 1973, indicated the percentage of cold seizures before the reorganization was about the same as Customs' current estimate--about 95 percent. In commenting on this report, Customs officials stated that Customs was not receiving as much seizure producing information from DEA as that previously produced by its own agents and was becoming increasingly dependent on narcotics information from sources other than DEA.

Coordination and cooperation of enforcement activities

DEA and Customs are not fully coordinating their efforts along the U.S.-Mexican border. Since the reorganization, there have been disputes about officers of the two agencies going beyond their jurisdictional boundaries and instances

of each agency's thwarting the other's law enforcement efforts. At some ports sharp rivalries and infighting still occur between DEA and Customs.

Acceptable agreements regarding coordination have not been worked out. Each agency headquarters published its own instructions on this subject without agreement from the other. At some ports of entry, informal understandings between DEA and Customs have improved the daily working relationship. Some of the problems experienced between DEA and Customs are described below.

Methods of operation hinder cooperation

Customs procedures provide that all drug seizures must be weighed and marked for identification before being delivered to DEA. Customs officials at two ports of entry in Texas commented that, when drugs were located and seized, the Customs inspectors would photograph the seizures in unusual places of concealment, would remove the seizure from the vehicle or persons and weigh it, and would arrest and obtain certain information from the suspect before DEA arrived. DEA officials at these locations believe this practice destroys the force of DEA's standard investigation techniques, such as locating fingerprints on drugs, taking picture of drugs while still in place, and having the advantage of surprise in interrogating the suspects. This practice also hinders or may preclude the opportunity to convoy 1/ a load of drugs to the intended receivers in the United States. At a major port of entry in California, officials of both agencies acknowledged such problems existed but stated that some had been solved through interagency meetings.

The frequency of convoys was significantly reduced after reorganization. Initially, Customs instructed its officers not to participate in convoys due to lack of personnel. With the reappearance of the Customs Patrol, convoying is being used again at some locations along the border. For instance, from October 1973 through May 1975, 34 convoys were conducted from the California border. DEA initiated 26 and Customs 8. Some convoys were successful, resulting in arrests on both sides of the border and in seizures of large quantities of narcotics.

1/ Monitored passage of narcotics to a point of delivery.

DEA officials cited a case where a convoy of 55 pounds of marihuana resulted in closing down a close-knit family smuggling operation that had been operating for several years. Nine violators were arrested in California and six in Mexico. A total of 65 kilos of marihuana, 10 ounces of heroin, \$14,200 in cash, and numerous items of stolen property were seized in California. In Mexico, 109 kilos of marihuana were seized. In contrast to this, at certain locations along the Texas border, a mood of distrust continues to limit the use of convoys. At some locations Customs officers' actions have been so restrictive that convoying does not occur.

Both DEA and Customs agents said that analyses of seized drugs were duplicated in some cases because the respective regulations required it. This could raise prosecution problems when analyses differ. Also, examples were cited by DEA where Customs had refused DEA's request to release vehicles found with illicit drugs, and Mexican authorities would not investigate or prosecute in such cases since they require the vehicle as evidence.

Jurisdictional disputes

Disputes regarding investigation versus interdiction have occurred. DEA agents work the border to interdict drugs without Customs assistance, and the Customs Patrol works away from the border on surveillance and investigation without DEA assistance.

DEA officials commented that they work on an interdiction case when it is based solely on specific intelligence developed by DEA and pertains to moving narcotics across the border. Customs Patrol officials acknowledge that they have worked other than interdiction cases. When DEA refuses to respond to calls from the ports of entry pertaining to drug suspects, the Customs Patrol provides surveillance from the ports. This sometimes requires surveillance of motels for several hours and leads to seizures several miles from the port. Customs officials consider it within its jurisdiction to conduct surveillance of suspects from the ports of entry.

One Customs port director commented that DEA was no longer called for surveillance of suspects from the port of entry because DEA had not responded to previous calls and Customs assumed that DEA was not interested. In responding to the port director's comment, DEA personnel said that, when called on by Customs inspectors to follow a suspected drug smuggler, they were not provided with all the important facts. Consequently, DEA did not consider some of the suspects worthy of surveillance.

For example, DEA received a call from a port of entry on a narcotic suspect carrying about \$4,800 in cash. The agent did not respond because the amount of cash did not appear excessive since Customs allows an individual to pass through the port with as much as \$5,000. What DEA had not been told, which would have changed the decision, was that the suspect was a drug user as shown by the needle marks on his arm. The Customs Patrol followed the suspect and seized about 4 ounces of heroin.

Cooperative efforts have
been successful

Cases were noted where cooperative efforts between DEA and Customs were successful. The following examples illustrate what can be done.

Between January 1974 and June 1975, DEA agents and Customs Patrol officers cooperated in three narcotic cases in the McAllen, Texas, area which resulted in 13 arrests and seized about 2,000 pounds of marihuana. In another instance, the Customs Patrol in El Paso was alerted to an air shipment of possible narcotics and requested DEA's participation. A Customs dog gave a positive alert on the shipment, and arrangements were made to let the shipment go through. Because of this effort, DEA agents at the shipment's destination seized about 300 pounds of marihuana and arrested one suspect.

Lookouts placed by DEA agents at the Hidalgo, Texas, port of entry helped Customs inspectors make seven narcotic seizures consisting of about 817 pounds of marihuana; 114 grams of heroin; and 1 gram of cocaine. Nine defendants were arrested.

CUSTOMS SEARCH AUTHORITY

When Reorganization Plan No. 2 became effective, DEA requested the Commissioner of Customs to designate all DEA agents with U.S. Customs search and seizure authority. The designation of other Federal agency personnel as Customs officers is authorized by law, and employees of several agencies, including INS, the Department of Agriculture, and the Department of Defense, hold Customs officer designations. The Customs Service maintains, however, that this authority is given only when necessary to perform the duties of a Customs Officer in discharging Customs responsibilities.

The Justice Department claimed that the use of Customs authority for search without warrant by DEA was necessary in making border-related narcotics investigations, particularly when convoy techniques were used to follow drug shipments away from border areas. Justice maintained that this technique was used successfully by the Customs Service in narcotics investigations before the reorganization and that DEA did not intend to use this authority at ports of entry in competition with ongoing Customs activity.

The Treasury Department's position was that use of this authority by DEA agents would be illegal since the authority was not going to be used to assist in carrying out Customs responsibilities and since narcotics investigation searches away from the border in convoy situations were legally supportable on grounds of probable cause and not dependent on Customs authority. The request was therefore denied.

DEA insisted, however, that this designation was essential to its mission and proposed a compromise that only former Customs agents with training and experience in the use of this authority and now assigned to DEA because of the reorganization be granted this designation. Customs and DEA signed an agreement to this effect on January 11, 1974.

Approximately 350 DEA agents were so designated, and DEA issued policy and procedure guidance in a March 1974 notice. The procedures outlined the agreed-upon terms governing the use of the authority and instructed DEA agents to formally notify local Customs regions of their assignment to an area, give advance notice when possible and/or immediate followup notice for each use of the authority, submit written reports on the results of the search, and exchange information obtained. The designation, however, was to be used only when Customs officers were not immediately available; when requested by Customs; or when the search, seizure, or arrest could not be justified except by using the authority. Infrequent use was anticipated. Only about 250 agents holding this designation remain with DEA.

According to Customs headquarters, the use of this designation has been reported on only three occasions, although requested and refused on two additional occasions because Customs officials were available. Customs maintains that DEA does not need this authority as evidenced from the lack of use.

DEA, on the other hand, has documented 19 instances in which this designation has been used. Although we were unable to determine if all these instances had been properly reported to Customs, we did find that sometimes notification was given at the local level and not passed along to Customs headquarters.

DEA Use of Customs Search Authority
as of August 1975

<u>DEA region</u>	<u>Number of times used</u>	<u>Arrests</u>	<u>Seizures</u>
I. Boston	-	-	-
II. New York	7	5	Cocaine (1.1 lbs.)
III. Philadelphia	-	-	-
IV. Baltimore	-	-	-
V. Miami	-	-	-
VI. Detroit	3	9	Hashish (unspecified) Cocaine (38 grams) Marihuana (27.5 grams)
VII. Chicago	1	-	-
VIII. New Orleans	-	-	-
IX. Kansas	-	-	-
X. Dallas	4	5	Marihuana (166 lbs.) Hashish oil (4 oz.) Cocaine (4 oz.)
XI. Denver	-	-	-
XII. Seattle	4	-	-
XIII. Los Angeles	-	-	-

As illustrated above, DEA has made little use of this designation during the past 2 years. Officials believe the designation has been of little value because of Customs' administrative restrictions.

In Texas, New York, and California, we found DEA officials and field agents who believe DEA's enforcement would not be hampered in the absence of the Customs authority. DEA had relied on Customs agents to assist and make searches when necessary and was satisfied with Customs' ability to respond. In addition, DEA field agents usually had sufficient probable cause to obtain a warrant and conduct a search on their own authority.

DEA headquarters officials, on the other hand, do not want DEA agents denied this enforcement tool. They would like to have all DEA agents given this designation and obtain a relaxation of the administrative restrictions imposed upon its use by Customs.

We believe that DEA, as the focal point for Federal drug law enforcement, should have at its disposal any appropriate enforcement tools that are legally justified and properly used. Customs' search and seizure authority is one of these tools. We believe that only DEA agents working in a border situation should have the designation, and it should be used only in the event Customs assistance is not readily available. It is recognized, however, that Customs needs to protect and control this authority to insure prudent utilization.

FBI ROLE IN DRUG LAW ENFORCEMENT

The role of the FBI in drug law enforcement as intended by Reorganization Plan No. 2 needs to be clarified. The Presidential message transmitting the plan and several statements by officials of the executive branch since enactment of the reorganization indicate that the FBI resources and methods would be used to assist DEA in its drug law enforcement responsibilities. Both agencies have interpreted the expansion role to mean exchange of information and intelligence at the operating level and have not materially changed their working relationship since the reorganization. The FBI is assisting DEA under the same guidelines used to assist State and local law enforcement agencies working on illicit narcotics traffic.

The Subcommittee on Reorganization, Research, and International Organizations of the Senate Government Operations Committee, in its report on the reorganization plan, recommended that the Attorney General prepare, and update at least annually, a formal plan covering the day-to-day coordination and cooperation between DEA and the FBI. No formal plan nor general memorandum of understanding between the two agencies has been developed.

Expanded FBI role needs clarification

The FBI's role in Federal drug law enforcement should be clarified if more is expected than the routine exchange of information and intelligence with DEA at the operating level.

At the time of hearings on Reorganization Plan No. 2 of 1973, various statements were made about FBI involvement in drug law enforcement. The plan itself is not specific and merely requires the Attorney General to provide for maximum cooperation between the FBI and DEA on drug law enforcement and related matters. The Presidential message transmitting the plan contains statements about committing FBI resources to assist in drug law enforcement but is not specific as to what the commitment should be. The message calls for "a more effective antidrug role for the FBI, especially in dealing with the relationship between drug trafficking and organized crime." It further states that the President intended "to see that the resources of the FBI are fully committed to assist in supporting the new Drug Enforcement Administration."

The Subcommittee of the Senate Committee on Government Operations, in its report on the reorganization plan was more specific in its comments on an expanded FBI role. The Subcommittee recommended that the Attorney General prepare, and update at least annually, a formal plan covering the day-to-day coordination and cooperation between DEA and FBI. Further, the Subcommittee recommended that this plan should require:

- A close working relationship on the use of informants.
- Daily headquarters liaison at high levels.
- Access to each other's intelligence memorandums relating to crime areas of mutual interest.
- Sharing of laboratory, identification, and training facilities and selected case records.

Since the reorganization plan went into effect, various statements have been made re-emphasizing that the FBI will play a greater role in drug law enforcement. The Federal budget for fiscal year 1975 stated that the FBI will place increased emphasis on drug intelligence collection to support intensified drug enforcement. The Strategy Council on Drug Abuse, consisting of several cabinet members and agency heads, stated in its Federal Strategy for Drug Abuse and Drug Traffic Prevention 1974, that the FBI "will begin systematic collection of domestic drug intelligence for the first time."

Although an expanded FBI role was expected, the nature, extent, and details have been left to the FBI and DEA to define. The FBI has taken steps to increase and formalize the dissemination of drug-related information and intelligence obtained from informants, but little is being done beyond this--such as having DEA provide the FBI with the names of and descriptive data on selected drug traffickers.

As previously mentioned, DEA and FBI have not developed a formal operating plan covering day-to-day cooperation as recommended by the Subcommittee.

DEA recognizes that there may be a need to clarify the FBI's role.

DEA headquarters' officials reported that the FBI's relationship with DEA (and BNDD before it) had been characterized by the mutual exchange of information and assistance which, over the years, helped both agencies function more effectively. They stated that excellent cooperation was received from the FBI and that the two agencies enjoyed a relationship of mutual respect. Furthermore, they stated that exactly what the Congress expected from the FBI's playing a more significant role was unclear to DEA. It was their feeling that, although the two agencies can and must assist and complement each other, their responsibilities differ and neither can perform the other's functions.

Sharing of information and
related arrests and recoveries

The FBI for many years has shared information which could be helpful to other Federal, State, and local law enforcement agencies.

Our work in FBI and DEA field offices shows FBI cooperation and assistance has consisted, for the most part, of the exchange of intelligence information obtained by FBI agents in debriefing informants on drug matters. The exceptions to this have been (1) an occasional joint enforcement effort when violations under the jurisdiction of each agency have occurred and (2) DEA agents speaking to FBI training classes.

In August 1972, 10 months before the reorganization, pursuant to agreements between the Director of BNDD and the acting Director of the FBI, steps were taken by the FBI to provide more effective and expanded cooperation with other law enforcement agencies in the drug abuse field. Specifically, FBI headquarters instructed its field offices to:

- Step up liaison with other law enforcement agencies to speed and facilitate the exchange of data relating to illicit narcotics traffic.
- Designate a special agent in each field office as narcotics coordinator. All narcotics intelligence information was to be channeled through this agent.

--Debrief informants on at least a monthly basis regarding drug matters and pass such information through the narcotics coordinator to BNDD and local law enforcement agencies.

After enactment of the plan, the FBI sent other messages to its field offices reiterating the importance of fully cooperating with and assisting DEA. In addition to disseminating information as required by the August 1972 instructions, subsequent instructions (1) required periodic meetings with their DEA counterparts by the special agents in charge of 16 FBI field offices located in cities with Organized Crime Strike Forces and (2) informed all FBI field offices that progress in cooperating in the drug enforcement area would be monitored. We were informed that, since 1973, the FBI's Inspection Division has been instructed to monitor the effectiveness of drug intelligence work in its annual inspection of field offices. Also, several meetings at the headquarters level have been held between DEA and FBI to determine ways to achieve maximum cooperation without infringing on the jurisdiction of the other agency.

In the exchange of memorandums in 1973 between these agency heads regarding ways of increasing their impact upon the drug problem, the BNDD Director proposed to provide FBI field offices with lists and descriptive data concerning major narcotics violators so that information could be exchanged on these subjects. While the acting Director of the FBI expressed the opinion that this appeared worthwhile, such exchange has not occurred either at the headquarters level or in the Los Angeles area; it did occur to a limited extent in New York. As mentioned in our report on "Difficulties In Immobilizing Major Narcotics Traffickers," (see p. 7) BNDD took various actions to coordinate its enforcement activities with those of other law enforcement agencies. These actions included supplying the names of selected upper level traffickers (classes I and II) to the Internal Revenue Service. In our opinion, information on selected upper level traffickers should also be sent to the FBI.

DEA and FBI officials agreed and stated that DEA should provide the FBI with the names of selected high level subjects who may, because of their methods of operation come, within the jurisdiction of the statutes enforced by the FBI.

FBI statistics

DEA does not tabulate the number of referrals of information and intelligence given to or received from the

FBI. The FBI tabulates the total number of drug-related items disseminated to all other agencies but does not identify those provided specifically to DEA.

Nationally, according to statistics developed by the 59 FBI field offices, the following accomplishments were made in fiscal years 1973 and 1974 by other agencies, both Federal and local, on the basis of narcotics data disseminated by the FBI.

<u>Fiscal year</u>	<u>Arrests</u>		<u>Recoveries</u> (note a)		<u>Items</u> disseminated (note b)
	<u>Federal</u>	<u>Local</u>	<u>Federal</u>	<u>Local</u>	
	(millions)				
1973	215	816	\$ 5.3	\$9.8	19,273
1974	255	989	26.2	3.4	19,897

a/Includes narcotics, automobiles, and weapons seized at street values.

b/Not broken down between Federal and local.

Los Angeles

The statistics pertaining to the FBI's Los Angeles District Office showed the following accomplishments, including the results of information disseminated.

Fiscal year	Arrests				Recoveries (note a)	Items disseminated		
	FBI	Other Federal	Local	Total		Federal	Local	Total
(millions)								
b/1973	12	6	38	56	\$ 3.3	568	673	1,241
1974	11	25	54	90	14.3	1,694	1,888	3,582
1975	16	2	50	68	4.2	3,761	3,957	7,718
Total	39	c/33	142	214	\$21.8	6,023	6,518	12,541

a/Represents street value of narcotics seized by Federal and local enforcement agencies.

b/Represents the 10-month period which began September 1972.

c/Twenty-three of the arrests were attributed to DEA.

The "items disseminated" figures could be misleading. In the absence of guidelines from FBI headquarters, the Narcotics Coordinator in the Los Angeles District has developed his own criteria for reporting accomplishments or quantifying information disseminated. In quantifying the items disseminated, the Narcotics Coordinator counts a name and physical description; a specific location, such as the city where a drug is distributed; a type of drug; a mode of shipment; and so forth, as separate items. Identical items disseminated to more than one agency are counted separately. For example, if data in a letter to DEA containing four items is also sent to the Internal Revenue Service, the Los Angeles Police Department, and Los Angeles County Sheriff's Office, it would represent 16 items disseminated--8 Federal and 8 local.

In fiscal year 1974, the reported accomplishments for the Los Angeles District represented a large portion of those reported nationally. Specifically, this office reported 19 percent of the items disseminated, 48 percent of the recoveries, and 7 percent of the arrests. A major portion of the arrests and recoveries were the result of only three cases made by DEA. These three cases involved 17 arrests and recoveries of about \$11.5 million.

DEA said that in many instances the information received from the FBI had been vague or sketchy but that the quality was constantly improving. This improvement is attributable, in part, to the training sessions by the DEA's Los Angeles Regional Training Coordinator during 1974 and 1975. According to both DEA and FBI officials, the training was well received by the FBI agents. Approximately 90 percent of the FBI staff attended at least one of the sessions in 1974, and approximately 60 percent in 1975. One of the sessions covered the debriefing of informants on narcotic matters and the type of information that was needed.

Informal understandings exist regarding the exchange of information or intelligence that falls within the other's jurisdictional area. The agencies hold periodic meetings to discuss problems and any special information that one would like the other to obtain. Initially, the meetings were held monthly. At the time of our review, these regularly scheduled meetings were no longer considered necessary by officials of either agency because of frequent contact by telephone. They are held on an as-needed basis.

New York City

The FBI's New York field office sends drug related information to DEA by letter and telephone. FBI officials estimate that DEA is sent 25 pieces of information monthly.

We checked this estimate with DEA and their files generally supported the FBI statement. DEA said FBI information was generally good and had resulted in cases being developed.

While DEA has not provided the FBI with a large number of intelligence items, since 1974 it has made 17 major reports dealing with narcotics trafficking. At least one of these reports included the names of leaders and emerging leaders in narcotics trafficking. It supplied the FBI with the names of black narcotic violators (classes I, II and III) in New York City. DEA also supplies fingerprint cards to the FBI when it makes an arrest.

Dallas, El Paso, and McAllen

The officer in DEA's Dallas regional office responsible for liaison with the FBI told us that the exchange of information with the FBI had been limited and of little investigative or intelligence value. Further, there had been no periodic meetings between the agencies and DEA agents did not have access to FBI files.

According to the agent in charge in El Paso, DEA had very little contact or exchange of information with the FBI. He could recall only one undocumented referral from the FBI since the reorganization. In contrast to this, the intelligence officer at the McAllen district office said that there had been a free exchange of information and that DEA agents had been allowed to look at FBI files regarding information furnished.

Use of informants

FBI policy is to fully protect the informant's true identity and personal safety. No informant is turned over to another agency unless the informant is willing. Neither DEA nor the FBI maintain statistics on using FBI informants. DEA stated it had used FBI informants with increased frequency in the past 2 years, and on many occasions, both before and after the reorganization, FBI informants had been given assignments by DEA.

An FBI informant, used by BNDD in 1972, led to the seizure of nearly 174 kilograms of heroin (ranging from 84 to 100 percent in purity) in Miami, immobilizing a number of foreign and high-level U.S. drug traffickers. This seizure, according to the officials, was the largest ever recorded by a law enforcement agency in the United States.

Our work in Los Angeles, New York, and Texas indicates that only on infrequent occasions has an FBI informant been

made available to DEA. For the most part, the use of informants has been limited to their debriefing by FBI agents, who then provide the information to DEA.

CONCLUSIONS

Federal agencies' cooperation and coordination on intelligence and drug enforcement activities has not materialized to the extent intended by the reorganization plan.

Improved cooperation is needed in enforcement activities along the border so that manpower and other resources can be more effectively deployed. DEA's intelligence gathering has been geared almost entirely to identifying major traffickers and eliminating sources of supply; little effort has been devoted to gathering intelligence to interdict drugs at U.S. borders and ports of entry. DEA and Customs have yet to agree on the routine sharing of drug intelligence and information; however, since June 1975 both agencies have taken steps to increase the flow of information.

Customs gave certain ex-Customs agents, transferred to DEA by the reorganization, its search and seizure authority. DEA has made little use of this authority due, in part, to restrictions placed on DEA field agents that are greater than those placed on agents of other Federal agencies possessing such authority. As the agency responsible for investigating suspects connected with illegal drugs entering the United States, DEA should have at its disposal any appropriate enforcement tools that are legally justified and properly used. The use of Customs' search and seizure authority in border situations is one of these tools and should not be denied to DEA. It is recognized that appropriate training may have to be provided by Customs.

The FBI role in drug law enforcement needs to be clarified if more is expected than the exchange of information and intelligence at the operating level. DEA and the FBI have interpreted the FBI role in a narrow sense and have not materially changed their working relationship since the reorganization. DEA headquarters has not provided the FBI with the names of and descriptive data on major traffickers. Such an exchange would seem to be a basic requisite to the FBI's playing a significant role in assisting Federal drug law enforcement and in exploiting the relationship between drug traffickers and organized crime.

We endorse the recommendation in the Domestic Council's September 1975 report calling for a settlement of the jurisdictional disputes between DEA and Customs. We believe, however, especially in light of the failure of a prior

agreement brought about by a Presidential directive, that establishing such agreements will not solve the problem. It is questionable whether such agreements will ever work without a clear delegation of authority to someone acting on behalf of the President to monitor adherence to guidelines and tell agencies what is expected of them. We discussed this with officials of OMB and they agreed.

RECOMMENDATIONS

We recommend that the Attorney General:

- Require the Director of the FBI and the Administrator of DEA to (1) reach a formal understanding as to the role of the FBI in helping DEA to carry out its drug enforcement responsibilities, (2) develop operational guidelines to insure that agents at the working level are cooperating and exchanging the kind of information that will be useful to each agency, and (3) exchange names of and descriptive data on selected major traffickers.
- Require DEA to place increased emphasis on the gathering of intelligence information to interdict illicit drugs at U.S. ports and borders and make every effort to increase the flow of intelligence to Customs to that end.

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Although we did not request written comments from the agencies involved, our findings were discussed with them; and DEA and FBI generally agreed with the recommendations.

CHAPTER 4DEA'S USE OF FUNDS FOR PURCHASE OFEVIDENCE AND INFORMATION

One method for controlling drug traffic of particular interest to the Subcommittee is DEA's purchase of evidence and information. We were asked to make:

--"An analysis of purchase of evidence/purchase of information (PE/PI) funds used by DEA as an approach to drug law enforcement focusing on the number of convictions and significance of violators convicted, including (a) a study of the amounts of Federal dollars allocated to PE/PI over the last five years and to whom these dollars flow, and (b) an accounting of all such money so used since the creation of DEA."

DEA, and BNDD before it, has long considered purchase of evidence and information as one of the most effective tools available to narcotics investigators. Although DEA could not tell us the number and significance of arrests and convictions that have resulted from PE/PI, it has been used successfully in numerous cases. Critics of PE, however, question the rationale for a practice which they claim stimulates the market for illicit drugs by adding to its monetary rewards. They claim that purchase money is being targeted at the street violator and not at identifying and arresting upper level traffickers.

To determine whether PE/PI spent on middle and lower level cases was leading to upper level traffickers, we reviewed case files in DEA's New York and Los Angeles regions. Our review showed:

--Although amounts allocated to PE/PI over the years have increased--to over \$9 million for fiscal year 1976--DEA has never evaluated its effectiveness to determine how it could be used more judiciously.

--In fiscal year 1975, DEA spent about 70 percent of its domestic PE/PI budget on middle and lower level traffickers with the primary objective of identifying and arresting upper level traffickers.

--In the New York and Los Angeles regions, PE/PI spent on middle and lower level traffickers was, to some extent, successful in identifying upper level traffickers. About 11 and 16 percent, respectively, of the middle and lower level cases led to upper level traffickers. Some were very successful in identifying numerous upper level traffickers.

--DEA's success with PE/PI is difficult to assess because DEA has no policy indicating what expected results should be.

AMOUNTS ALLOCATED TO PE/PI
HAVE GROWN SUBSTANTIALLY

DEA spends money to purchase evidence from suspected traffickers and information from informants, to pay rewards, and to use as "flash rolls"; that is, large sums of money shown to drug traffickers as proof that DEA agents can purchase substantial quantities of illicit drugs.

The budget for purchasing evidence and information has increased from \$775,000 in fiscal year 1969 for BNDD to \$9 million in fiscal year 1976 for DEA. This increase is consistent with overall budget growth for BNDD and DEA. In addition, beginning in fiscal year 1975, DEA's Office of Intelligence was authorized \$400,000 for special intelligence programs, and of this amount \$213,000 was obligated for the purchase of information. The following table does not include the Office of Intelligence funds but only presents BNDD's and DEA's enforcement program figures.

Fiscal year	BNDD/DEA Planned budget			BNDD/DEA Actual obligations		
	PE	PI	Total	PE (note a)	PI	Total
	(000 omitted)					
1969	\$ 615	\$ 160	\$ 775	\$ 607	\$ 150	\$ 757
1970	1,476	375	1,851	1,449	265	1,714
1971	1,836	939	2,775	1,780	825	2,605
1972	3,090	1,250	4,340	2,914	1,710	4,624
1973	3,400	1,844	5,244	3,228	2,018	5,246
1974	3,600	2,800	6,400	3,975	2,512	6,487
1975	3,700	3,121	6,821	3,958	3,075	7,033
1976	5,024	4,004	9,028	-	-	-

a/PE obligations do not include recovered money spent on PE during the year. This amount has ranged from \$31,000 in FY 1972 to \$122,000 in FY 1975.

One of the reasons for needing the 32-percent increase in purchase funds in fiscal year 1976 is the increased cost of heroin and dangerous drugs in the illicit market. According to DEA, the standard one-eighth-kilogram sample purchase now costs \$5,000 to \$6,000 compared to \$2,000 to \$3,000 a year ago.

In addition to DEA-appropriated funds shown above, LEAA grants are also used for PE/PI by various DEA State and local task forces. The amount budgeted in LEAA grants was \$2.4 million ¹/ for fiscal year 1975.

Expenditures for PE/PI have not varied significantly from planned estimates. In the late 1960s and early 1970s, BNDD spent considerably more on PE than on PI; however, in

¹/The \$2.4 million is composed of \$1,919,920 for the DEA State and local task force program (former ODALE program); \$300,000 for the New York City Joint Task Force; and \$150,000 for the Unified Intelligence Division located in New York City.

recent years increased emphasis has been placed on purchasing of information, but most of the PE/PI budget still goes for purchase of evidence.

PE expenditures are generally unrecoverable

Little of the money spent on purchases of evidence by DEA is recovered because of DEA strategy to buy and penetrate. Relatively small amounts, generally less than 5 percent, of PE money is recovered because DEA may make several buys on the same case in order to penetrate to higher level traffickers. Any money spent on earlier buys before an arrest is generally unrecoverable. Also, DEA spends some unrecoverable PE money to make sample buys to learn what the drug situation in a given area is. In addition to drug intelligence, these buys are used to make arrests and cultivate informants. BNDD's and DEA's PE obligations and the amounts recovered for fiscal years 1971 through 1975 were:

<u>Fiscal years</u>	<u>Amounts obligated</u>	<u>Amounts recovered</u>	<u>Percent recovered</u>
1971	\$1,780,000	\$174,869	9.8
1972	2,914,000	103,713	3.6
1973	3,228,000	148,290	4.6
1974	3,975,000	160,200	4.0
1975	3,958,000	182,335	4.6

Although most PE money is not recovered, DEA believes that the results achieved far outweigh the expenditures, and DEA identified cases where PE contributed to the arrest of major traffickers. Furthermore, DEA seizes cash, vehicles, boats, and planes as part of its investigations, the value of which offsets unrecovered PE expenditures. For example, although DEA spent about \$4.0 million in unrecovered PE money in fiscal year 1975, it seized \$3.1 million in cash and \$5.5 million in vehicles, boats, and planes.

EVIDENCE PURCHASE IS CONTROVERSIAL

PI is generally recognized as a widely used technique of law enforcement agencies. However, PE has been more controversial. Critics cite the uniquely corruptive environment of undercover work in the narcotics area and claim that purchase money stimulates the narcotics economy. They claim that most purchase money is targeted at the street level violator and that it duplicates State and local enforcement efforts and does not lead to major violators.

DEA considers the purchase of evidence and information as one of the most effective investigative tools available. Some of the advantages cited by DEA to justify PE follow.

--Since many drug investigations are conducted while the crime is being committed, the undercover agent can negotiate, gather intelligence information, identify and implicate a source of supply, and better develop a solid case for prosecution.

--Undercover purchases provide strong evidence that can be prosecuted with greater success and can serve to induce defendant cooperation.

--Evidence purchases insure a maximum of investigative return and, if not available, cases would require more resources over a longer period with lower probability of conviction.

According to DEA, the objective of purchase funds is to serve as an enforcement tool, not just to remove drugs from the street. They are not used simply to make an arrest and seizure. DEA cites the effectiveness of this buy and penetrate approach with examples where lower level traffickers have led to the identification and apprehension of major violators.

DEA has given several reasons why multiple purchases are necessary in developing a case. Such purchases tend to weaken charges of entrapment by defense attorneys, are used to identify and implicate the source of supply and associates and to gain further intelligence, and tend to establish an agent's credibility. Also, they are more economical than attempting a large, single transaction at a higher level.

EFFECTIVENESS OF PE/PI COULD BE IMPROVED

During the Subcommittee hearings in June 1975, it was pointed out that one LEA regional office, Los Angeles, had made a study of its purchase funds and concluded that they were not leading to the identification and apprehension of higher level traffickers. No overall DEA study of purchase fund effectiveness has been made.

As part of our audit, we reviewed a sample of cases where PE/PI funds were expended in DEA's New York and Los Angeles regional offices. We found that PE/PI expenditures on lower level cases were successful, to some extent, in

leading to the identification of upper level traffickers. DEA, however, has no standard to say whether the success achieved was worth the investment.

We also reviewed DEA purchase fund records for all regions for fiscal year 1975. Overall, DEA spent 56 percent for the purchase of evidence and 44 percent for the purchase of information. DEA spent 30 percent of PE/PI on upper level traffickers and 70 percent on middle and lower level traffickers within its domestic regions. Some regions spent a substantial share of their PE/PI on middle and lower level traffickers. For example, in fiscal year 1975, the New York and the Boston regions spent 80 and 92 percent, respectively, of PE/PI funds on middle and lower level traffickers.

New York

To determine whether DEA's New York regional office was successfully using PE/PI funds to identify upper level traffickers, we reviewed some cases from the first quarter of fiscal year 1975 in which PE/PI was expended. Of 46 middle and lower level cases, 5 cases were successful in identifying 8 upper level violators.

As of June 30, 1974, a total of 916 cases were open in this region's files. During the first quarter of fiscal year 1975, an additional 178 cases were opened. Therefore, the total number of active cases being worked was 1,094.

Class I	112
Class II	100
Class III	670
Class IV	<u>212</u>
Total	<u>1,094</u>

This total includes some cases which are "administratively" open because a case cannot be officially closed until all evidence is disposed of even though the defendants have been prosecuted. DEA officials estimated that approximately 3 percent or 33 cases were administratively open during the period, reducing active cases to 1,061.

During the first quarter of fiscal year 1975, PE/PI funds were used in 127 cases.

Class I	23
Class II	30
Class III	71
Class IV	<u>3</u>
Total	<u>127</u>

It is important to note that PE/PI funds may have been used in all 1,094 cases at one time or another.

Of the expenditures for the 127 cases during the first quarter of fiscal year 1975, 33.5 percent were on classes I and II traffickers while 66.5 percent were on classes III and IV.

	<u>PE</u>	<u>PI</u>	<u>Total</u>	<u>Percent</u>
Class I	\$ 1,000.00	\$19,801.60	\$20,801.60	20.3
Class II	3,900.00	9,650.00	13,550.00	13.2
Class III	59,855.00	7,695.00	67,550.00	65.7
Class IV	525.00	290.00	815.00	.8
Total	<u>\$65,280.00</u>	<u>\$37,436.60</u>	<u>\$102,716.60</u>	<u>100.0</u>
	63.6%	36.4%		

Of the 74 class III or IV cases, 46 were being investigated by the New York City and Newark district offices. We reviewed these 46 cases and found that:

- 5 cases (about 11 percent) resulted in the identification of 8 class II violators.
- 12 cases resulted in the identification of 20 additional class III violators.
- 20 cases resulted in the arrest of the targeted violators and 9 have been convicted.
- 61 purchases of information were made, costing \$5,600.
- 25 purchases of evidence were made, costing \$45,755.

At the time we completed our review, 33 of the 46 cases were still open and could lead to the identification of additional upper level traffickers.

In the 20 cases where targeted class III or IV violators were arrested, we asked the agents involved to explain why they arrested the targets in lieu of cultivating them in an attempt to build the case to a higher level. We were told the decision in 15 cases was based on the opinion that the supply of information from the target was exhausted and that arrest was a final effort to elicit more information about the target's source of supply. The other five arrests were made for various reasons.

Los Angeles

DEA's Los Angeles regional office conducted a study of PE/PI and concluded that PE/PI spent on lower level traffickers seldom led to upper level traffickers. After this study, the region made two limited followup surveys.

The initial study covering July 1, 1973, through March 31, 1974, concluded that (1) about 74 percent of PE/PI funds was being spent at the class III and IV levels and (2) class III and IV investigations rarely resulted in identification or apprehension of upper level traffickers. This was based on the fact that only 32 of 238 (13.5 percent) class III cases reviewed led to the identification of class I and II violators. As a result, the regional director, in October 1974, issued a regional policy that expenditures of PE/PI at the class III and IV level must be more selective. We could not validate the findings of the study because the DEA Los Angeles region could not provide all the backup data, and it would be difficult to reconstruct.

In April 1975 a followup survey, covering December 1974 and January and February 1975, for three of the region's offices stated no conclusions. The study looked at expenditures for the three locations to see if the trend in expenditures had changed. This quick analysis showed that PE/PI expenditures were being spent

--44 percent on level III and IV cases and

--56 percent on level I and II cases.

In May 1975, a subsequent followup covering PE/PI expenditures for the whole region for the 6 months of November 1974 through April 1975 was made. The followup was to determine if the directive issued by the regional director in late 1974 had been implemented. The survey showed that PE/PI expenditures were being spent about

--40 percent on classes III and IV cases and

--60 percent on classes I and II cases.

This was almost a complete reversal of trends found during the initial study.

In the followup surveys, however, no analysis was performed on the level III and IV violators to determine if cases/violators were being upgraded. Analysis of arrest

statistics showed that the region was redirecting its efforts toward major violators. The conclusions of the initial study, compared to this effort, were that:

- The regional director's directive was being complied with.
- Most PE/PI expenditures were in the classes I and II areas.
- The arrest of classes I and II violators almost doubled, while the arrest of classes III and IV decreased.

We analyzed PE/PI expenditures in the Los Angeles region to verify the results of the DEA study.

Specifically, we wanted to determine (1) if most PE/PI money was being directed at upper level violators and (2) if the money expended on middle and lower level violators aided in the identification of upper level violators.

We reviewed PE/PI expenditures for the third quarter of fiscal year 1975 and also made a detailed case analysis on 37 classes III and IV cases investigated at the Los Angeles and San Diego offices. One or more PE or PI payments were made during January through March 1975 on each case reviewed. We discussed each case analyzed with special agents and group supervisors.

During the third quarter of fiscal year 1975, PE/PI funds were expended on 161 cases.

<u>Class</u>	<u>Number of cases</u>
I	63
II	29
III	58
IV	<u>11</u>
Total	<u>161</u>

We did not obtain the total number of active cases being worked during this period because it was not readily available.

Of PE/PI dollar expenditures for these 161 cases, upper level cases accounted for \$129,395 or about 70 percent of the total, while middle and lower level cases accounted for \$55,116, or about 30 percent of the total.

<u>Class</u>	<u>PE</u>	<u>PI</u>	<u>Total</u>	<u>Percentage</u>
I	\$25,105	\$ 77,142	\$102,247	55.4
II	14,650	12,498	27,148	14.7
III	32,595	16,851	49,446	26.8
IV	<u>4,775</u>	<u>895</u>	<u>5,670</u>	<u>3.1</u>
	<u>\$77,125</u>	<u>\$107,386</u>	<u>\$184,511</u>	<u>100.0</u>
	41.8%	58.2%		

We made a detailed analysis of 37 of the 69 classes III and IV cases. Twenty-five of the cases were investigated by the San Diego office, and 12 were investigated at the Los Angeles office. The case analysis showed

- 6 cases (about 16 percent) led to the identification of one or more upper level violators,
- 33 cases resulted in the arrest of the original targeted class III or IV violators, and 21 of these have been convicted,
- 109 purchases of information totaled \$27,478, and
- 13 purchases of evidence totaled \$9,160.

Information from the investigation of these 37 cases led to the identification of 40 class I violators, 19 class II violators, 85 class III violators, and 15 class IV violators. It should be pointed out that some of the cases were still open at the time we completed our review and could lead to the identification of additional upper level traffickers.

The number of cases that led to upper level traffickers compared to those that did not should not be viewed as an absolute indication of success or failure of PE/PI. The number of upper level traffickers identified regardless of the comparative number of successful cases is also important. One case may lead to the identification of a major drug trafficking network. For example, one of the 37 cases was very productive in identifying a large number of domestic and foreign upper level traffickers. This case, investigated in San Diego, involved 53 purchases of information

from nine informants totaling \$12,668 in PI expenditures and resulted in the identification of 39 class I violators, 15 class II violators, and 9 class III violators. While considered to be far from typical, this illustrates how the initial use of PI at a lower level led to a major international trafficking organization wherein many domestic and foreign upper level narcotics traffickers were identified.

DEA's Los Angeles region has been redirecting most PE/PI expenditures to upper level investigations. About three out of every four purchase dollars are now directed toward investigations involving major traffickers, and there has been some success in upgrading investigations to a higher level. Numerous upper level traffickers have been identified and one case in particular was well worth the investment. While PE/PI resources have been redirected, our analysis of PE/PI resources still being devoted to middle and lower level cases shows that the success rate for upgrading or opening new cases where upper level traffickers are targeted was about 16 percent--slightly more than shown by the original Los Angeles study.

Need for more evaluation

Except for the recent study and followup surveys by the DEA Los Angeles region, DEA has not evaluated PE/PI to determine its effectiveness and how it could be used more judiciously.

The Office of Planning and Evaluation in DEA recognizes the need to analyze specific resources, such as PE/PI funds, informants, agent time, and intelligence analysis to produce high-impact cases. The Office of Planning and Evaluation states that little is known about the "technology" of case production. DEA does not know how the pattern of enforcement activity is changed by increases or decreases in PE/PI money, the number of informants, the number of agents, or the amount of intelligence analysis. DEA has proposed that the Office of Planning and Evaluation make a case production study to determine where DEA should spend additional resources. We believe that such a study is needed and should be done on a priority basis because of the congressional interest in this area. Furthermore, an evaluation of PE/PI would be helpful to DEA in establishing a more definitive policy on the use of PE/PI.

Need for a more definitive
PE/PI policy

In a memorandum on "DEA Priorities and Objectives for FY 75 and FY 76," January 17, 1975, the Administrator of DEA stated that one of the agency's priority objectives was to improve the quality of cases. One way to achieve this quality is through "an increase in the amount of PE/PI coupled with improved management of these funds at the Supervisor/ARD [Assistant Regional Director] level of the organization." Along with improved management at the operating level, we believe that DEA headquarters needs to develop a definitive policy on PE/PI.

Other than procedural controls, DEA has no definitive policy on using PE/PI to guide its regional offices. DEA regions are authorized to spend allocated PE/PI as they deem appropriate, consistent with DEA's overall mission and enforcement objectives. There is no policy on what percentages of PE/PI should be spent on upper level classes I and II traffickers, nor is there any policy on the ratio of PE to PI or whether one should be emphasized more than the other.

DEA maintains statistics on where PE and PI are being spent (classes I, II, III, and IV cases); but without a policy on which to evaluate the statistics, they are of limited value. What percentage of PE and PI should be spent on upper level classes I and II traffickers?

DEA has a general policy that 70 percent of its enforcement resources should be devoted to the apprehension of classes I, II, and III violators. It is not clear whether this policy can be applied specifically to PE/PI, but if so, it is questionable because it would not provide for a minimum commitment of PE/PI to class I and II cases.

The need for some specific policy on what portion of PE/PI should be spent on classes I and II cases can be seen in the DEA Los Angeles study and followup surveys. When only 25 percent of PE/PI was spent on classes I and II cases, there was concern by the regional management; however, when the percentage subsequently increased to 60 percent on classes I and II cases, it was considered acceptable. We realize that requirements on the use of PE and PI may vary between regions and may differ between PE and PI; however, we believe that DEA should develop an overall definitive policy.

CONCLUSIONS

DEA has had some success in identifying upper level traffickers based, at least in part, on PE/PI funds spent on middle and lower level cases. It has had some success in penetrating at low levels and working up to higher level traffickers. This success, however, is difficult to assess. In terms of the numbers of middle and lower level cases that have developed into upper level cases, the success rate has been about 11 to 16 percent in the two largest DEA regions. One case in particular, however, was very successful in identifying large numbers of upper level domestic and foreign traffickers.

The DEA Los Angeles PE/PI study concluded that purchase money spent on middle and lower level cases rarely led to identifying upper level traffickers. This conclusion was based on the finding that only about 13 percent of the cases led to higher level traffickers. The 13-percent payoff was apparently considered to be low, as indicated by the strong conclusion and subsequent recommendations for improved allocation of resources. Our analysis at the DEA Los Angeles region verified that the region was, in fact, redirecting most of its PE/PI expenditures to upper level cases. The percentage of successful middle and lower level cases that led to higher level cases was about 16 percent.

In the DEA New York region, our analysis showed that, during the first quarter of fiscal year 1975, the region was spending most of its PE/PI on middle and lower level cases and that about 11 percent of these cases led to the identification of upper level traffickers. The percentage payoff for both the Los Angeles and the New York regions could increase because some of the cases are still open.

Was the percentage of successful cases that targeted upper level traffickers acceptable? It is very difficult to penetrate the upper echelons of drug trafficking networks. Upper level traffickers are skillful and insulate themselves by dealing with trusted friends they have known for years. Fear of swift reprisal is also a factor deterring middle and lower level traffickers from identifying upper level traffickers.

Although the use of purchase money has been successful in certain cases, we believe that improvements can be made. DEA should direct its regions not to spend a disproportionate share of its PE/PI on classes III and IV cases if sufficient classes I and II cases are available for enforcement action.

The DEA Los Angeles region concluded that spending 75 percent of its purchase money on classes III and IV cases was unacceptable considering the results. Other DEA regions also spend a substantial share of their PE/PI money on middle and lower level cases. In fiscal year 1975, the New York region spent about 80 percent of its PE/PI on classes III and IV cases, and the Boston region spent about 92 percent on classes III and IV cases. We believe that DEA should develop a policy on PE/PI, giving its regions some guidance on what portion should be spent on classes I and II cases, compared to classes III and IV cases, and what is expected in terms of a payoff.

Although the amounts allocated to PE/PI have grown substantially over the years to about \$9.0 million for fiscal year 1976, DEA has not, except for the Los Angeles studies, made an evaluation of PE/PI and its effectiveness.

RECOMMENDATIONS

We recommend that the Attorney General instruct DEA to:

- Proceed on a priority basis with its proposed case production study to analyze the importance of specific resources, such as PE/PI.
- Develop an overall policy on PE/PI covering its intent and expected payoff.
- Develop criteria to assist operating managers to better screen requests for expenditures of PE/PI and minimize any indiscriminate buying at the lower levels of drug trafficking.

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We did not request written comments from the Department of Justice on these recommendations; however, we discussed them with DEA officials. They agreed that the recommendations were valid, but believed that the basic methodology used by GAO and DEA's Los Angeles region in attempting to evaluate the effectiveness of purchase of evidence expenditures was insufficient to adequately portray the benefits derived from PE utilization. They pointed out that:

- It failed to reflect that PE, in addition to its use in furthering the identification of high level traffickers, serves other important purposes.

--It relied upon a data base which was not sufficiently sensitive, in and of itself, to measure PE effectiveness.

--It used relatively newly closed cases (as well as some open cases), which biased the results of the analysis.

For further DEA explanation, see appendix IX.

CHAPTER 5DEA ENFORCEMENT AND INTELLIGENCEMANPOWER ALLOCATIONS

The Subcommittee requested that we make:

--"An analysis of DEA enforcement and intelligence manpower allocations to various activities and functions in the agency."

At the time of the reorganization, DEA was given the responsibility for developing and maintaining a national narcotics intelligence system. This responsibility encompasses the acquisition and analysis of information on the legal and illegal traffic in narcotics and dangerous drugs and the dissemination of such information to DEA agents and appropriate agencies.

Intelligence collection and analysis are only two of the various DEA responsibilities requiring manpower. Others include enforcement of Federal criminal laws, regulation of the legal trade in narcotics and dangerous drugs, coordination of drug enforcement among Federal, State, and local agencies, and implementation of research programs to improve accomplishment of its mission.

DEA resources have been allocated and programs formalized to cover these responsibilities, but these programs are not always clearly categorized and responsibilities can overlap. They interrelate and complement one another. To illustrate, it is a basic part of the job of every field agent to collect intelligence even though he is not assigned directly to intelligence functions.

MANPOWER ASSIGNMENTS

DEA assigns both agents and professional/technical staff members (intelligence specialists) on a full-time basis to the intelligence function. The schedule below shows the allocations among intelligence, enforcement, and other functions.

	<u>FY 1973</u>	<u>FY 1974</u>	<u>FY 1975</u>
Headquarters:			
DEA agents	3	17	27
Intelligence specialists	<u>4</u>	<u>48</u>	<u>66</u>
Intelligence function total	<u>7</u>	<u>65</u>	<u>a/93</u>
Enforcement and other functions (note b)	116	133	181
Regions:			
DEA agents	80	86	127
Intelligence specialists	<u>5</u>	<u>5</u>	<u>21</u>
Intelligence functions total (note c)	<u>85</u>	<u>91</u>	<u>148</u>
Enforcement and other functions (note b)	1,223	1,778	1,712

a/Includes 5 agents and 12 intelligence specialists assigned to El Paso Intelligence Center.

b/Does not include personnel assigned to school--FY 1974, 55; FY 1975, 12.

c/Includes agents and professional/technical specialists assigned to foreign regions--FY 1973, 13; FY 1974, 13; FY 1975, 11.

At the end of fiscal year 1975, 154 agents and 87 intelligence specialists were in intelligence positions.

Within the United States, DEA cites two major changes in the allocation of manpower resources. From the end of fiscal year 1973 through 1975, the number of agents in offices along the southwest border increased 284 percent, while overall agent strength domestically increased only 44 percent. This increase along the border was due to two factors: the large number of Customs agents transferred to DEA in the border area at the time of reorganization and the transfer of additional DEA agents to cope with the increased flow of Mexican heroin entering the United States. Another major shift domestically was an increase of 50 agents (69 percent) assigned to regional intelligence units.

In foreign countries, DEA increased its agent strength from 113 to 171 (51 percent) from the end of fiscal year 1973 through 1975. DEA said this increase was in keeping with its philosophy that greater supply reductions are effected per agent by suppression activities in those countries that are the source or transshipment points for much of the drugs abused in this country. The increases would have been even greater had it not been for such limiting factors as the political sensitivity of U.S. presence and the time lag which is required for language training for agents.

INTELLIGENCE PROGRAM

Shortly after the reorganization, DEA established an Office of Intelligence at headquarters and placed it organizationally on the same level as the Office of Enforcement. Intelligence units were also set up in each regional office.

The intelligence system in DEA has been expanding for the past 2 years and, while some progress has been made, it is far from complete. DEA feels an additional 3 years will be needed to develop a satisfactory system. The additional time is required for acquiring information for the intelligence data base and for recruiting and training intelligence specialists.

Regional intelligence unit (RIU)

We observed at three DEA regions that authorized positions in RIU's were not filled, and in some instances agents assigned to RIU's were not working full time on intelligence functions. Instead of an RIU, the New York regional office of DEA joined forces with the New York City Police and the New York State Police and formed the Unified Intelligence Division (UID). This unit is funded by the Law Enforcement Assistance Administration and is discussed in chapter 6.

Mexico

The Mexico City RIU is not at authorized strength. As of July 1975, only 4 of the 11 authorized positions were filled. Although formally established in late 1973, it did not have a supervisor until mid-1975. At the time of our review, DEA was not able to increase the staffing because of the reluctance of the Government of Mexico to admit additional DEA personnel. Subsequently, DEA advised us that, as of early November 1975, the Mexico City RIU had eight people.

RIU's past efforts consisted of developing country analysis reports for Central America; performing special analyses, such as profiles of major traffickers; and making periodic administrative reports. RIU officials review each piece of intelligence developed by agents and file the data by subject. However, due to limited personnel, little analysis was made of this data to identify drug trafficking trends, distribution routes, and methods of narcotic concealment. Thus, this unit is not systematically analyzing information which could assist Customs and other agencies in intercepting drugs along the U.S.-Mexican border.

DEA maintains that this is not the function of the RIU. Further, they claim that any information accumulated which will enhance Customs' interdiction capabilities would be forwarded to DEA headquarters where a specially designated unit in the Office of Intelligence would provide it to Customs.

California

We visited the Los Angeles regional office and its San Diego district. We learned that before 1975 agents assigned to the intelligence function often performed nonintelligence duties. Although less frequently, RIU personnel continue to be diverted to nonintelligence tasks. About 19 people are assigned to the Los Angeles RIU, and they spend about half of their time on intelligence-related functions.

Texas

We visited the Dallas regional office and two of its district offices. A regional official said that the office had 1 intelligence officer for every 12 enforcement agents. Personnel assigned to the RIU occasionally were used in an enforcement role when the need arose. A district official stated that one of his two intelligence officers was being reassigned to enforcement due to a shortage of agents.

CHAPTER 6THE DEA STATE AND LOCALTASK FORCE PROGRAM

DEA is involved in narcotics law enforcement at the local level through participation in joint missions with State and local personnel. The Subcommittee expressed interest in DEA's role at this level and asked us to provide:

--"A study and analysis of how Federal money from LEAA is allocated, by DEA, to the various narcotics Task Forces currently in operation in the country * * * [and the criteria] used by DEA for determining how much money is allocated to each task force; how that money is used; and what results have been achieved in relation to the stated mission or objectives of these task forces."

--"A study and analysis of the Unified Intelligence Center, a federally funded narcotics related operation in the New York City area."

DEA TASK FORCES

In July 1973, as a result of Reorganization Plan No. 2 of 1973, DEA assumed responsibility for ODALE task forces. The objective of the task forces was to interdict heroin on the street through the arrest of middle and lower level traffickers by teams of Federal, State, and local agents.

Each ODALE task force was directed by a Department of Justice attorney with Federal enforcement personnel borrowed from other agencies, such as BNDD, Customs, and the Internal Revenue Service. Salaries of State and local agents and the equipment and operating costs of the task forces were generally funded through LEAA grants, as were costs relevant to administering the grants. The grants were made by LEAA's National Institute of Law Enforcement and Criminal Justice under part D, Title I, the Omnibus Crime Control and Safe Streets Act of 1968, as amended, which allows LEAA to make grants for improving and developing new methods of law enforcement. Since the reorganization, LEAA has continued to provide State and local support costs while DEA has funded salaries and operational support costs for all DEA special agents assigned to the task forces and has furnished equipment in support of their needs.

In April 1974, a memorandum of agreement between DEA and LEAA outlined a comprehensive strategy for joint efforts

in the field of drug control and the reduction of drug abuse. It was agreed that LEAA would continue to provide funding and that DEA would have primary responsibility for directing and evaluating the task force program. LEAA would have primary responsibility for fiscal monitoring and audits.

Criteria used by DEA for allocating LEAA funds

Essentially, DEA considers four factors in determining the amount of LEAA funds to be allocated to each task force.

1. Prior effectiveness.
2. The number of State and local participants.
3. Geographical location as it affects cost or resources.
4. Level of investigative activity.

The amount of LEAA funds available for the DEA task force program for a fiscal year is set by LEAA after a series of coordinating meetings between the two agencies. After the total funding level is set, DEA notifies each of its regional directors of the funding each task force within his region will receive. The regional director then has the task force grantee submit a grant application to LEAA for the appropriate level of funding and LEAA awards the individual grants.

DEA began annual evaluations of task force effectiveness in November 1974. These evaluations resulted in closing seven task forces in early 1975 and taking steps to correct deficiencies in others.

Allocation of LEAA funds and their use

In fiscal year 1974, there were about 40 task forces. Additional task forces were created during fiscal year 1975, and at one point 43 task force programs were operating and were receiving DEA and LEAA support. During fiscal year 1975, about 600 State and local law enforcement officers and about 180 DEA agents were assigned to the various task forces. For fiscal year 1976, the program has been reduced to 22 1/ task forces.

1/As of September 30, 1975, the Detroit task force was closed, reducing the number to 21.

The following table shows LEAA funding and an estimate of DEA support for task force operations during fiscal years 1974 and 1975 and that projected for 1976.

<u>Fiscal year</u>	<u>DEA</u>	<u>LEAA</u>	<u>Total</u>
	<u>(millions)</u>		
1974	\$4.4	\$7.1	\$11.5
1975	5.1	9.1	14.2
1976	2.8	6.8	9.6

The estimated fiscal year 1975 funding by cost categories is shown below.

	<u>DEA</u>	<u>LEAA</u>	<u>Total</u>
Salaries and benefits	\$4,666,000	\$4,050,000	\$ 8,716,000
Operating expenses			
and equipment	362,000	3,130,000	3,492,000
PE/PI	<u>112,000</u>	<u>1,920,000</u>	<u>2,032,000</u>
Total	<u>\$5,140,000</u>	<u>\$9,100,000</u>	<u>\$14,240,000</u>

In some cases, either a portion or all of the salary expense for State and local personnel is being paid by their agencies and does not appear in these charts. In addition, DEA equipment in support of DEA agents is not included. This equipment is officially assigned to the regional offices.

Information showing the LEAA and DEA funding for each of the 43 task forces in operation during fiscal year 1975 is included as appendix V. We requested DEA to conduct a physical inventory of the DEA equipment being provided at five selected task forces. (See app. VI.)

During fiscal years 1974 and 1975, a State planning agency normally was the grantee for a task force or several task forces in an area. For those years, LEAA grants funded 100 percent of State and local participation. LEAA is allowed to make such grants for developing new and innovative methods of law enforcement. LEAA, however, questioned the continued use of this type of grant since the task force concept has evolved beyond the developmental stage.

Because of this concern, it was agreed that for fiscal year 1976 all task force projects will be funded through LEAA discretionary grant funds, which require State and local participants to provide 10 percent of the total grant amount. The 10 percent to be provided by State and local agencies can be met in either of two ways: (1) they can

contribute cash or (2) they can meet the requirements by hiring new employees to "backfill" the positions of personnel assigned to task forces.

For fiscal year 1976, the program has been reduced to 22 task forces because of a reduction in LEAA funds. On the basis of DEA's evaluation of each task force and the probability of State and local agencies meeting the 10-percent matching requirement of discretionary funding, a decision was made as to which task forces would be closed and which would continue. A listing of the 22 task forces to be funded in fiscal year 1976; the level of LEAA grant support; and an estimate of DEA support, based on a projection of the number of agents to be assigned in fiscal year 1976, are included in appendix VII.

While no decisions have been made for fiscal year 1977, DEA and LEAA have agreed that the funding mechanism for DEA task forces needs to be changed since LEAA has, in effect, relinquished all control other than funding. If the Department of Justice and OMB approve, DEA will seek additional budget authority for fiscal year 1977 and incorporate the funding of task force operations directly.

Results achieved in relation
to stated mission or objectives

The task force's mission is to control the illicit drug traffic in its geographic area through (1) upgrading the level of drug enforcement of local and State enforcement agencies, (2) targeting its efforts at a higher level--to include primarily street and middle level violators--but not restricting investigations leading to upper level violators, (3) directing its activities to communities where adequate resources are not available, (4) emphasizing investigations of heroin, cocaine, such dangerous drugs as amphetamine and barbituates, and cannabis (investigative effort is not to be expended in petty marihuana cases), and (5) coordinating its drug enforcement activities with the appropriate DEA regional or district office.

We are presenting arrest and conviction data to indicate results achieved by task forces. As discussed in chapter 2, however, statistical results are only one measure of enforcement and do not form the sole basis for determining success.

Organizationally, DEA regional directors are responsible to the DEA Administrator for task forces in their regions. They serve as project directors of the task forces, but the degree of control that a regional director may exert over

task force operations is dependent on a memorandum of understanding between DEA and State and local law enforcement participants. Additionally, some task forces may have a board of directors to serve various administrative functions. In fiscal year 1975, for example, the Pittsburgh Task Force Board of Directors was responsible for evaluating the unit's performance, recommending manpower allocations, approving budgetary expenses, and screening prospective personnel.

Each task force is headed by a DEA special agent. The ODALE practice of using Department of Justice attorneys has been eliminated, and staff from other Federal agencies are used on an as-needed basis rather than as a permanent assignment.

DEA headquarters personnel make an annual evaluation of task force progress in relation to its mission. As a result of this evaluation, the task force may be terminated, continued, or expanded, or certain corrective action may be recommended to increase effectiveness.

It is recognized that DEA's policy on implementing the mission or objective of task forces is general. This was thought appropriate because drug problems differ among geographic areas. No attempt was made to define the local operational policies of a task force with the intent that this could best be determined by local DEA officials and the State and local authorities.

Results of the task forces in terms of arrests and convictions as reported by DEA by fiscal year are shown below.

	<u>Arrests</u>	<u>Convictions</u>
FY 1974	4,000	1,934
FY 1975	5,205	2,039

Appendix VIII shows the results of the 43 DEA task forces receiving LEAA grant funds in fiscal year 1975.

UNIFIED INTELLIGENCE DIVISION
IN NEW YORK CITY

During the early 1970s, New York City, in addition to harboring a substantial portion of the nation's drug addicts, also served as a major narcotics distribution center for the country. Since the wider the range of drug-related information available to narcotics officers, the greater the likelihood that those officers will be successful in their investigations, many experts felt that an integrated drug intelligence system was needed in New York to help combat the problem.

To this end, representatives of the Department of Justice and New York City met to discuss a system which would develop and disseminate a wide range of information to those law enforcement people who need it. It was under this concept that UID was conceived.

Approved by the Attorney General of the United States, the Administrator of DEA, the Mayor of New York City, the Police Commissioner of New York City, the Governor of the State of New York, and the Superintendent of New York State Police; UID began operation on October 15, 1973.

Basically, UID is a task force composed of DEA agents and officers of the New York State Police and New York City Police Department. They are supported by civilian intelligence analysts and statisticians, who collect, collate, and analyze information concerning drug traffickers and patterns and changes in the drug traffic itself. UID's goals and objectives can be summarized, as follows:

1. Establish the nature and magnitude of the drug problem in New York.
2. Identify current leaders, emerging leaders, and associates in the drug trade.
3. Establish a program to stimulate the flow of information.
4. Establish a liaison unit to insure cooperation with other enforcement agencies.
5. Initiate indepth investigations of persons, networks, places, etc.
6. Refer information coming to the attention of members concerning integrity within the criminal justice system.
7. Prevent duplication of effort.

UID, funded by LEAA, was awarded an initial grant of \$644,251 in July 1974. The funds have been used for salaries of support personnel, operating expenses, and equipment for State and local personnel; \$150,000 was allocated for PE/PI.

It should be noted that DEA agents working in UID are paid by DEA, and State and local police officers are paid by their respective police departments. Vehicles and support for DEA agents are provided by DEA.

UID is presently operating with the funds from the initial grant, and no further money is expected from LEAA. Beginning in fiscal year 1977, it is expected that UID will require approximately \$400,000 each year which is tentatively planned to be incorporated into DEA's budget.

Basically, the information gathered by UID can be categorized into four areas, according to DEA.

1. Basic law enforcement intelligence is gathered for UID through established investigative procedures. It may be obtained directly by UID personnel or, more often, through Federal, State, and local law enforcement agencies and private citizens.

Procedures used to obtain this data vary but include undercover penetration of criminal organizations, surveillance (to uncover new organized crime figures and new meeting places), and interviews with complainants and prospective informants.

Once obtained, the basic law enforcement information is translated into intelligence, defining criminal methods, routes, and organizations and showing the interrelationship among narcotic networks.

2. Information extracted from any source relating to the drug abuse problem is a catch-all category of information used by UID. It differs from raw intelligence not so much in nature but in source, focus, and sometimes utilization. As an example, the trends in heroin price and purity inspired UID to make an exhaustive survey to establish statistical information regarding drug price and purity on the street, thefts of drugs from pharmacies and manufacturers, methadone admissions, the rate of recidivism, arrests, and so forth.

Gathering this information required questioning of police officers, medical examiners, defendants, drug users, individuals involved with drug rehabilitation, and chemists analyzing drugs. It also involved, at a later date, undercover purchases of drugs at the street level by UID personnel to determine availability, purity, and perhaps country of origin.

A liaison unit was created to afford UID personnel access to sources beyond those immediately involved with UID, such as the FBI.

3. Published information, such as intelligence bulletins; United Nations' reports; and information on newspaper

articles and different projects and profiles, is periodically forwarded by UID to the three participating agencies.

4. Information concerning the integrity of any segment of the criminal justice system which comes to the attention of a member of UID is reported for investigation. A DEA official told us that 151 integrity allegations had been received by UID concerning personnel throughout the criminal justice system as of October 6, 1975. Of these, 120 were sent to the New York Police Department, 30 were sent to DEA's Office of Internal Security, and 1 to the New York State Police.

UID is a repository for DEA informant files in the New York region. Three types of informant files are maintained.

- Class I, participating informants, who usually have a criminal record.
- Class II, nonparticipating informants, usually a business proprietor who will notify DEA of suspicious buyers of drug ingredients.
- Class III, exempt informants, usually persons whose identity is extremely sensitive and whose files are maintained by the regional director.

These sensitive files, maintained by the regional director and DEA's Planning and Evaluation Group, are subjected to rigid security procedures. Access to the room containing the informant files is controlled by a card-activated electric door strike, which is part of a computer controlled access system. Access to this room is limited to 17 persons. They are the regional director, three associate regional directors, the deputy regional director, seven agents and three secretaries from the Planning and Evaluation Group, the deputy chief of UID and an LEAA secretary.

The files themselves are maintained in combination safes and combinations are known only by nine DEA persons assigned to the group and the chief of field support. Should a DEA special agent, New York City Police Department officer, or New York State Police officer assigned to UID choose to review the files of one of his own informants, he must complete a special form in duplicate which must be approved by his supervisor. Should one UID agent or officer choose to review the informant files of another, he must complete the same form, which must be approved by both employees' supervisors.

In either case, the supervisor of the Planning and Evaluation Group must then initial the form before the file can be reviewed. Only in rare instances, and with special approval, can any other party review any informant files. In all cases, after the file is reviewed, one copy of the request form is filed in the informant file; the other copy is retained in a chronological file for these forms.

The only persons allowed to review the informant files without such records being made are personnel of the DEA Inspection Service. Should inspection personnel wish to remove an informant file from the area, they must execute a receipt to be kept by the supervisor of the Planning and Evaluation Group; the DEA regional director; associate regional director; or chief of field support, UID.

Another function of UID is to prevent a duplication among the enforcement agencies. This function is so vital that UID has formalized it into a system called the Drug Enforcement Coordinating System (DECS). The idea of DECS is simply this: Prior to investigation, officers enter the names of the suspects into DECS. If any name has been previously registered, a "hit" is made. When an ongoing investigation is found, the agency working the case and the agency seeking clearance to initiate a case are notified. The agencies involved confer and agree on action. This action may take the form of a joint operation, or the agencies may choose to submit the information to the one agency which can best conduct the investigation.

Since UID's inception, approximately 11,400 submissions to, and approximately 4,200 inquiries of, DECS have been made, with 474 "hits" registered, avoiding as many as 474 duplicate investigations which might have otherwise occurred.

CHAPTER 7DEA CONTROLS OVER SEIZED DRUGS

The Subcommittee expressed interest in controls over seized drugs and asked for:

--"An analysis of the controls exercised by DEA over narcotics seized, including any information available on the nature, quantity, quality and/or street value of any narcotics unaccounted for after original seizures."

DEA, through purchase, seizure, and surrender, acquires large amounts of narcotics and dangerous drugs in its criminal law enforcement duties. Narcotics are an extremely high profit commodity in the illicit market, requiring stringent security measures to safeguard the narcotics seized.

During the 2-year period ended July 31, 1975, DEA obtained almost 37,000 drug exhibits. Appendix II shows the amount of drugs removed in the United States by DEA. Many of these exhibits are still being held as evidence. DEA identified 17 incidents of drug losses, nationwide, which will be discussed later.

Our review indicates that DEA has established written procedures for internal controls over seized drugs which appear to provide adequate safeguards if properly followed. However, in our visit to the DEA regional office in Los Angeles, we observed that some prescribed procedures were not being followed. DEA officials in Los Angeles informed us in November 1975 that steps were being taken to insure that these procedures will be adhered to in the future.

INTERNAL CONTROLS

Most seized substances must be retained as evidence. Seized drug evidence must be properly identified (through laboratory analysis), sealed, assigned exhibit numbers, stored, used as evidence, and finally destroyed after court proceedings. DEA has established procedures to be followed by agents and laboratory personnel in handling seized controlled substances, from their initial seizure to final disposition. These procedures are designed to eliminate loss or diversion of evidence and to locate any particular item of evidence in the shortest time possible. The procedures include

--security standards for evidence storage areas,

- the documented transfer of evidence from one party to another to maintain an accountable chain of custody,
- periodic accountability inventories of drugs being stored, and
- the maintenance of a drug evidence inventory file for each regional and district office, documenting the total drug evidence responsibility for that office.

CONTROLS WERE NOT STRICTLY ADHERED TO

Although none of the previously mentioned 17 drug evidence losses occurred at the Los Angeles regional office, we noted during our review there several instances where controls had not been adhered to and where the possibility of undetected thefts and losses existed. If an item was lost or stolen it would not be detected until the item was requested because the region's periodic inventory would not disclose if there were missing drugs. Also, the accountability records were not always complete, the vault was crowded, and evidence was often held for years awaiting disposition.

DEA procedural controls over seized drugs require periodic accountability inventories and inventory records to be kept for every item of evidence stored. The Los Angeles region was taking the required periodic physical inventory but was not verifying the results with inventory records. As a result, the region identified only what drugs were present and would not know if drugs were missing. A regional office order was issued in May 1975 which required inventories to be reconciled to inventory records twice a year. Two district offices have responded to that order, and Los Angeles regional officials stated that they will conduct an inventory in December 1975.

Our analysis of what was stored in the DEA Los Angeles regional vault compared to what was shown on inventory records showed that the records were, in some cases, incomplete. A check of evidence in the vault revealed 33 evidence packages that did not have a corresponding card in the inventory file. In one case we noted that 95 grams of heroin were in the vault, although listed in the case file as being destroyed. Los Angeles officials told us that they are revising their recordkeeping system to strengthen controls over seized drugs.

DEA procedures also require minimum physical security standards for evidence storage areas. In July 1974 the DEA

Los Angeles regional office pointed out that a large quantity of marihuana was being stored in a ground floor interrogation room that had window entrances. This room did not meet minimum security requirements. As a result of our inquiry, the marihuana was moved from the room for destruction. DEA regional officials stated that they were moving into new facilities in December 1975, which will alleviate the storage problem.

We also found that evidence was not always promptly destroyed. The case agent is supposed to prepare documents authorizing the disposal of evidence, but the agent is not always aware of the current status of the court case. Documents authorizing destruction of drug evidence were found in closed-case files, and the evidence custodian was still holding the drugs.

Further, the evidence custodian duties are shared by four DEA employees on a part-time basis. Security and accountability would be improved if one person was given the duties and responsibilities on a full-time basis. The conditions described produce a potential for theft or loss of evidence that should not exist. Los Angeles officials stated that they will request a full-time custodian and take the necessary steps to insure that drug evidence is destroyed promptly when no longer needed.

INCIDENTS OF UNACCOUNTED-FOR LOSS OF EVIDENCE

All incidents of lost or stolen drug evidence are investigated by DEA's Office of Inspections and Internal Security. The following chart summarizes the incidents of DEA drug evidence unaccounted for, after original seizure or purchase, from July 1973 through July 1975.

Total inci- dents	Lost		As a re- sult of factors outside DEA control	Stolen by indivi- duals out- side DEA	Lost and re- covered	Under investi- gation
	As a result of cor- ruption	As a result of procedural failures				
17	2	5	4	2	a/6	1

a/Three of these incidents involved drugs which were partially recovered. One is also included under "stolen by individuals outside DEA" and the other two under "lost as a result of procedural failures."

These 17 incidents involved at least 33 separate drug evidence exhibits. No data was available on the street value of the lost exhibits.

One of the incidents of lost evidence due to corrupt DEA personnel resulted in the loss of 800 pounds of marihuana. The 800 pounds of marihuana was stolen for resale over a period of time by a DEA special agent from a DEA district office storage facility. The agent was apprehended, discharged, prosecuted, and sentenced to 5 years in prison. The other incident of unaccounted-for seized drug evidence involving the corruption of DEA personnel was a case of evidence tampering. In this case, the agent's buy money was stolen and he attempted to substitute other drugs for those he was supposed to have purchased. The agent resigned following the incident.

The five incidents of lost evidence because of DEA procedure failures resulted in the loss of

--16.233 grams of heroin (0.03 percent purity).

--7.3 lbs. of marihuana.

--0.69 grams of heroin.

In the four incidents outside DEA's control, the following evidence was lost.

--17 grams of amphetamine.

--7.61 grams of cocaine.

--21 kilograms of marihuana inadvertently destroyed by State authorities.

In all these incidents, State or court officials had taken custody of the evidence.

The two incidents of evidence stolen by non-DEA personnel included 104.6 grams of suspected cocaine stolen from a DEA laboratory and 748 grams of cocaine stolen by airport ground service employees while the evidence was being shipped to an assistant U.S. attorney. The suspected cocaine was not recovered. About 677 grams of the shipped cocaine were recovered, leaving 71 grams lost.

CONCLUSION

Internal controls over seized narcotics and dangerous drugs require adequate safeguards to protect drug evidence

while in DEA's custody. DEA's Los Angeles regional office was not fully adhering to established safeguard requirements. Similar conditions could exist at other DEA field offices. Therefore, undetected theft or loss of seized drug evidence is possible. DEA needs to more carefully monitor the compliance of its personnel with established drug evidence controls.

CHAPTER 8SCOPE OF REVIEW

Our review was primarily directed toward an analysis of DEA and its predecessor agencies, BNDD and ODALE. We also reviewed the involvement of the U.S. Customs Service, the FBI, and LEAA in drug law enforcement and the degree of cooperation that exists between those agencies and DEA.

We reviewed policies and procedures, correspondence, and documentation relating to each agency's approach to drug law enforcement and the exchange of intelligence information by the FBI and Customs with DEA. Additionally, we examined and analyzed selected DEA investigative case files. Statistical data was compiled and analyzed regarding drug seizures, arrests, and convictions. DEA, Customs, FBI, and LEAA officials in Washington, D.C., were interviewed as were those of the former BNDD and ODALE.

We visited the New York, Dallas, Los Angeles, and Mexico City regional offices of DEA and the New York, Houston, and Los Angeles regional headquarters of Customs. Other selected review areas were:

- DEA district offices in Newark, San Diego, El Paso, McAllen, and the El Paso Intelligence Center.
- Customs district offices at Kennedy Airport, Laredo, El Paso, San Diego, and the TECS Data Center in San Diego.
- FBI field divisions in Los Angeles and New York City.
- U.S. attorneys' offices in Seattle, Los Angeles, San Diego, and New York City.

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United States Senate

COMMITTEE ON
 GOVERNMENT OPERATIONS
 SENATE PERMANENT SUBCOMMITTEE
 ON INVESTIGATIONS

(PURSUANT TO SEC. 4, S. RES. 34, 89D CONGRESS)
 WASHINGTON, D.C. 20510

B-183363

My dear Mr. Staats:

March 6, 1975

The Permanent Subcommittee on Investigations has been engaged in an ongoing inquiry into the Drug Enforcement Administration. The scope of this inquiry includes allegations concerning the effectiveness and the integrity of the DEA as well as its entire approach to Federal narcotics law enforcement. Our goal, as we go forward with our investigation, is a thorough analysis of the ability of the agency to effectively deal with the ever-increasing narcotics problem.

It is my belief that the General Accounting Office can be of invaluable assistance to our effort. Accordingly, I am requesting that the General Accounting Office examine the following areas which are of major concern to the Subcommittee:

1. An analysis of purchase of evidence/purchase of information (PE/PI) funds used by DEA as an approach to drug law enforcement focusing on the number of convictions and significance of violators convicted, including (a) a study of the amounts of Federal dollars allocated to PE/PI over the last five years and to whom these dollars flow, and (b) an accounting of all such money so used since the creation of DEA.
2. An analysis of the results of the BNDD/DEA, U.S. Customs Service, and the former Office for Drug Abuse Law Enforcement efforts in drug enforcement, from fiscal year 1960 to present, focusing on the number of convictions, nature of the case, significance of violators convicted, and the nature, quantity, quality and/or street value of illicit drugs seized as well as an analysis of the law enforcement methodology utilized by each agency.
3. An analysis of DEA enforcement and intelligence manpower allocations to various activities and functions in the agency.

APPENDIX I

APPENDIX I

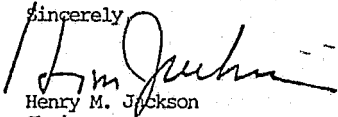
4. An analysis of the exchange of information between Customs and DEA, including the frequency and nature of requests for information or assistance by one agency or the other and the disposition of such request.
5. An analysis of the controls exercised by DEA over narcotics seized, including any information available on the nature, quantity, quality and/or street value of any narcotics unaccounted for after original seizures.
6. An analysis and accounting of any "confidential fund" maintained by DEA, including the purposes for which the funds were expended.
7. An analysis of the program of cross designation of DEA agents to allow them the same search and seizure authority as U. S. Customs agents, to include the number of DEA agents so designated and the number and quality of arrests made and convictions obtained by them in this capacity.
8. An analysis of the quantity and quality of intelligence information exchanged between DEA and the U.S. Customs Service since July 1, 1973 which would enable both agencies to function in the manner intended by reorganization plan #2.

We also understand that your staff has done considerable work on the DEA compliance programs and we would like their views on the results of these programs.

Since time is of the essence with regard to certain of the above items, it would be appreciated if your representative contacted Howard Feldman, Chief Counsel to the Subcommittee, to discuss our priorities and the time required for your studies.

Your cooperation is greatly appreciated.

Sincerely


Henry M. Jackson
Chairman

The Honorable Elmer B. Staats
The Comptroller General
of the United States

APPENDIX I

ABRAHAM RUDOFF, CONN., CHAIRMAN
 JOHN J. MCCLELLAN, ILL.
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 BILL BRIDGE, TENN.
 LOWELL P. WEICKER, JR., CONN.

RICHARD A. WISMAN
 CHIEF COUNSEL AND STAFF DIRECTOR

APPENDIX I

BY COMMITTEES:
 HENRY M. JACKSON, WASH., CHAIRMAN
 JOHN J. MCCLELLAN, ILL.
 JAMES E. ALLEN, ALA.
 SAM MARIN, CAL.
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 WILLIAM V. ROY, D.C.
 BILL BRIDGE, TENN.

HOWARD J. FELDMAN
 CHIEF COUNSEL
 STEWART M. STALLER
 CHIEF COUNSEL TO THE MINORITY

United States Senate

COMMITTEE ON
 GOVERNMENT OPERATIONS
 SENATE PERMANENT SUBCOMMITTEE
 ON INVESTIGATIONS

(PURSUANT TO S. RES. 111, 91ST CONGRESS)
 WASHINGTON, D.C. 20510

B-183363

May 1, 1975

My dear Mr. Comptroller General:

Pursuant to our continuing investigation of the Drug Enforcement Administration, I request that the General Accounting Office conduct an inquiry of the following pertinent subjects in addition to those identified in my letter to you of March 6, 1975:

1. A study and analysis of the type and quality of cooperation that exists between the Federal Bureau of Investigation and the Drug Enforcement Administration since Reorganization Plan #2 was implemented on July 1, 1973. As you are aware, testimony by Administration officials before the Congress when Reorganization Plan #2 was being considered, indicated that the creation of DEA would enable the FBI, for the first time, to become actively involved in drug enforcement.

Administration witnesses testified that the FBI would participate with the DEA in narcotics cases by providing both information and informants, especially in those cases dealing with organized crime figures and interstate and international conspiracies.

It is appropriate, therefore, as a part of our current investigation, that your agency determine how and under what circumstances the FBI has cooperated with DEA in the development of major narcotics cases and whether that cooperation has resulted in significant disruption of narcotics traffic.

2. A study and analysis of how federal money from LEAA is allocated, by DEA, to the various narcotics Task Forces currently in operation in the country.

We are especially interested in knowing what criteria is used by DEA for determining how much money is allocated to each task force; how that money is used; and what results have been achieved in relation to the stated mission or objectives of these task forces.

3. A study and analysis of the Unified Intelligence Center, a federally funded narcotics related operation in the New York City area.

APPENDIX I

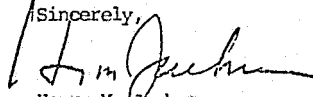
APPENDIX I

With regard to this center, we are interested in determining the nature and scope of its operation, the amount of federal monies involved, the identity of participants in the system, the type of information utilized by the participants and any past instances of misuse of this information.

The results of your inquiry on the matters I have requested will be made part of the record of Subcommittee hearings on the operations of the Drug Enforcement Administration.

May I take this opportunity to express my appreciation for your cooperation in this investigation.

Sincerely,



Henry M. Jackson
Chairman

The Honorable Elmer B. Staats
The Comptroller General
of the United States

BUREAU OF NARCOTICS AND DANGEROUS DRUGS/DRUG ENFORCEMENT ADMINISTRATION

ARREST, CONVICTION, AND DRUG REMOVAL STATISTICS IN THE UNITED STATES

	BUREAU OF NARCOTICS AND DANGEROUS DRUGS				DRUG ENFORCEMENT ADMINISTRATION	
	FY 1970	FY 1971	FY 1972	FY 1973	FY 1974	FY 1975
ARRESTS:						
BNDD/DEA Federal	1,660	2,212	4,579	5,592	6,168	7,155
BNDD/DEA initiated						
State and local						
(task forces)				7,176	4,372	5,463
Total	<u>1,660</u>	<u>2,212</u>	<u>4,579</u>	<u>12,768</u>	<u>10,540</u>	<u>13,018</u>
CONVICTIONS:						
BNDD/DEA Federal	1,678	1,231	2,239	3,155	3,243	2,744
BNDD/DEA initiated						
State and local						
(task forces)					2,018	2,192
Total	<u>1,678</u>	<u>1,231</u>	<u>2,239</u>	<u>3,155</u>	<u>5,261</u>	<u>4,936</u>
(note a)						
DRUG REMOVALS ((seized and delivered):						
BNDD/DEA including BNDD/DEA State						
and local removals (task forces)						
Opium (lbs.)	8	9	16	7	11.5	8.5
Heroin (lbs.)	427	226	995	515	380	598
Cocaine (lbs.)	197	427	443	391	537	700
Marihuana (lbs.)	17,401	12,723	47,700	44,391	122,511	140,660
Hashish (lbs.)		1,054	127	1,193	535	1,318
Hashish Oil (lbs.)						71
Hashish Oil (qts.)						5
Hallucinogens (d.u.) (note b)	7,127,742	3,697,737	157,697,643	17,146,806	3,313,245	2,595,720
Hallucinogens (gross lbs.)				12		
Depressants (d.u.)	2,339,590	319,006	688,810	933,199	653,060	855,641
Stimulants (d.u.) (note c)	7,196,481	10,319,923	48,707,942	4,710,767	13,133,477	16,608,362
Stimulants (gross lbs.)				6		
Methadone (d.u.)		36,465	155,290	203,651	6,658	5,390

a/ DEA provided statistics indicate that between fiscal years 1971-75, removals by BNDD/DEA alone have averaged 57 percent purity for heroin and 47 percent purity for cocaine. These statistics exclude BNDD/DEA initiated State and local task force removals as well as cooperative cases with Customs.

b/ D.U. - Dosage Unit

c/ D.U. - changed from 5mg. to 10mg. as of July 1, 1971

U.S. CUSTOMS SERVICE

DRUG ARRESTS, CONVICTIONS, AND SEIZURES

	<u>FY70</u>	<u>FY71</u>	<u>FY72</u>	<u>FY73</u>	<u>FY74</u>	<u>FY75</u>
ARRESTS	5,872	6,248	7,860	10,825	8,208	16,214
CONVICTIONS	1,604	1,820	2,202	3,846	1,774	(a)
SEIZURES						
(note b):						
Heroin/opium						
(lbs.)	67	975	686	389	97	127
Cocaine (lbs.)	108	360	379	734	706	717
Marijuana/						
hashish						
(lbs.)	67,800	113,100	190,400	321,100	459,100	418,959
Dangerous						
drugs (5-						
grain dos-						
age units-						
millions)	12.3	6.3	16.2	15.8	23.5	19.3

a/Not available.

b/Customs reported that its heroin and cocaine seizures average 60 percent purity.

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OFFICE FOR DRUG ABUSE LAW ENFORCEMENTARREST, CONVICTION, AND DRUG REMOVAL STATISTICSJanuary 1972 through June 1973

ARRESTS:

Narcotics	7,308
Other	<u>769</u>
Total	<u>8,077</u>

CONVICTIONS

(note a):

Narcotics	1,582
Other	<u>117</u>
Total	<u>1,699</u>

DRUG REMOVALS (note b)

(seized and delivered):

Heroin (kilos)	105.2
Opium (grams)	230.73
Cocaine (kilos)	71.5
Marihuana (kilos)	8,559.2
Hashish (kilos)	20.6
LSD (kilos)	5.6
LSD (d.u.)	54,312.5
Methadone (kilos)	3.5
Methadone (d.u.)	19.201

a/ODALE arrests resulted in convictions subsequent to June 1973; however, these statistics were not available.

b/No information is available on the purity of ODALE drug removals.

DEA TASK FORCE FUNDING FISCAL YEAR 1975

Task force city	Salaries and benefits		Operating expenses and equipment		Purchase funds		Total	
	LEAA	DEA	LEAA	DEA	LEAA	DEA	LEAA	DEA
Boston	\$ 9,670	\$170,618	\$ 19,830	\$ 3,463	\$ 30,000		\$ 59,500	\$174,084
Bartford	47,070	47,935	14,430	1,034			61,500	49,969
New York	131,400	294,801	117,600	23,583			249,000	318,384
Chicago	173,700	71,903	57,300	5,752	12,000		243,000	77,655
Boston	225,700	15,979	34,500	1,163	12,000		274,200	17,142
Long Island	25,200	79,891	95,100	5,817	79,000		199,300	85,708
Newark	223,800	119,838	105,200	9,585	79,000		408,000	129,423
Philadelphia	194,762	223,347	220,006	12,140	155,232	\$ 19,440	574,000	254,927
Pittsburgh	230,254	13,981	152,275	760	87,471	5,000	500,000	19,741
Baltimore	83,717	202,997	37,696	8,400	39,087		160,500	211,397
Miami	92,169	269,169	149,670	26,351	130,150	42,376	371,989	337,890
Atlanta	100,694	83,885	113,349	9,131	124,150		338,193	93,016
Orlando	45,635	57,071	126,183	5,218	75,000		247,818	63,189
Detroit	75,751	238,967	120,450	21,434	138,520		334,721	230,405
Cleveland	129,622	98,177	73,517	9,396	96,000		299,139	107,573
Columbus	43,115	57,971	53,525	5,166	25,000		121,640	63,137
Chicago	198,513	312,477	175,439	19,710	155,240	35,510	529,192	367,697
Sanford	21,314	31,956	33,873	2,056	19,000	1,104	74,187	35,116
Indianapolis	22,439	19,973	41,559	1,285	17,000		80,998	21,258
St. Vernon	41,523	17,976	17,600	1,149	15,000	4,350	74,123	23,475
New Orleans	97,879	89,490	71,654	6,375	22,500		192,037	95,865
Austin	20,007	107,355	48,843	4,932	11,880		80,730	112,287
Dallas Ft. Worth	51,297	220,502	113,001	10,802	27,000		194,301	231,304
Houston	102,384	152,361	112,455	5,615	21,600		236,439	157,976
El Paso	34,543	43,141	61,353	1,703	23,760		123,696	44,844
Liberty	19,053	48,771	41,796	1,892	11,880		72,729	50,663
San Antonio	25,821	82,263	52,367	3,056	11,880		90,068	85,319
Kansas City	281,292	124,632	118,946	11,435	47,000	300	447,238	136,367
St. Louis	130,482	70,305	41,681	5,893	30,000	35	202,163	76,233
Minneapolis	62,460	59,319	18,639	4,972	23,000	3,875	104,699	69,166
Denver	252,832	108,303	92,895	7,898	65,560		417,287	116,201
Phoenix	87,320	67,558	57,955	4,623	(b)		145,275	72,181
Albuquerque	17,750	77,757	30,570	5,779	(b)		48,320	83,536
Seattle	109,100	103,664	40,155	12,384	35,000		184,255	113,052
Spokane	46,660	7,988	25,410	904	(c)		72,070	8,896
Portland	77,135	93,474	50,540	11,504	(c)		127,675	104,978
Los Angeles Orange County	67,528	426,622	107,780	48,348	83,335		258,643	474,970
San Diego	157,310	214,259	98,420	23,903	66,670		322,400	238,162
San Francisco	137,300	161,681	58,265	16,742	83,335		278,900	178,423
Reno	18,150	9,986	46,005	907	33,335		97,490	10,893
Honolulu	95,260		74,590	(d)	33,335		203,185	(d)
Total	\$4,049,651	\$4,666,243	\$3,130,429	\$362,275	\$1,919,920	\$111,984	\$9,100,000	\$5,140,502

a/ Travel included in Chicago budget

b/ Included in Denver budget

c/ Included in Seattle budget

d/ Honolulu was operational only 2 to 4 weeks. No DEA agents were permanently assigned and LEAA grant funds were re-programmed to other task forces.

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APPENDIX VI

INVENTORY OF DEA EQUIPMENT ATFIVE SELECTED TASK FORCESAS OF AUGUST 1975

<u>Task force</u>	<u>Quantity</u>	<u>Type of item</u>	<u>Value</u>
Pittsburgh	11	Desks	\$ 2,257
	2	Clothing lockers	88
	2	File cabinets	740
	4	Chairs	216
	1	Safe	354
	3	Automobiles	14,865
	3	Radios (leased)	65 (monthly)
Denver	2	Desks	\$ 270
	4	Automobiles	13,416
	2	Radios	1,000
	3	Radios (leased)	58 (monthly)
Orlando	1	Typewriter	\$ 625
	1	File cabinet	565
	3	Desks	958
	1	Chair	240
	2	Credenzas	234
	2	Automobiles	6,379
	2	Radios (leased)	48 (monthly)
	2	Recorders	430
	2	Automobile sirens	360
	1	Intelligence Kel-Kit	3,000
	1	Truck	1,700
Atlanta	4	Automobiles	\$14,810
El Paso	3	Desks	\$ 540
	5	File cabinets	1,368
	3	Chairs	300
	1	Credenza	258
	1	Paper shredder	500
	7	Radios (leased)	280 (monthly)
	3	Automobiles	11,829

APPENDIX VII

APPENDIX VII

DEA TASK FORCE FUNDINGFISCAL YEAR 1976 PROJECTIONS

<u>Task force</u>	<u>LEAA support</u>	<u>DEA support</u>	<u>Total</u>
New York	\$ 249,446	\$ 312,861	\$ 562,307
Long Island	331,697	130,359	462,056
Rochester	274,000	26,072	300,072
Newark	457,546	156,430	613,976
Philadelphia	550,861	199,093	749,954
Pittsburgh	554,566	81,661	636,227
Atlanta	418,517	106,395	524,912
Orlando	258,069	53,197	311,266
Detroit (note a)	365,290	239,294	604,584
Chicago	646,763	244,248	891,011
Hammond	97,945	103,808	201,753
Mt. Vernon	111,816	81,730	193,546
Kansas City	407,000	310,257	717,257
Minneapolis	113,000	(b)	113,000
Austin	166,194	99,624	265,818
El Paso	160,447	99,624	260,071
Lubbock	79,000	49,812	128,812
Denver	457,648	105,054	562,702
Phoenix	300,000	52,527	352,527
Los Angeles	254,669	79,135	333,804
San Diego	381,045	263,083	644,128
Reno	<u>114,465</u>	<u>52,757</u>	<u>167,222</u>
Total	<u>\$6,749,984</u>	<u>\$2,847,021</u>	<u>\$9,597,005</u>

a/As of September 30, 1975, the Detroit task force was closed.

b/Included in Kansas City budget.

APPENDIX VIII

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ARREST AND CONVICTION STATISTICSLEAA FUNDED DEA TASK FORCESFISCAL YEAR 1975

<u>Task force city</u>	<u>Arrests</u>	<u>Convictions</u>
Boston	81	56
Hartford	7	37
New York	5	28
Buffalo	43	27
Rochester	79	8
Long Island	147	7
Newark	74	36
Philadelphia	299	146
Pittsburgh	174	24
Baltimore	259	119
Miami	83	42
Atlanta	214	45
Orlando	65	1
Detroit	162	77
Cleveland	94	20
Columbus	29	19
Chicago	140	13
Hammond	94	35
Indianapolis	21	21
Mt. Vernon	12	2
New Orleans	89	71
Austin	92	31
Dallas/Ft. Worth	309	83
Houston	114	15
El Paso	229	35
Lubbock	123	14
San Antonio	117	68
Kansas City	126	79
St. Louis	60	24
Minneapolis	105	32
Denver	220	67
Phoenix	269	106
Albuquerque	46	18
Seattle	135	43
Spokane	87	28
Portland	115	44
Los Angeles/Orange County	124	70
San Diego	625	398
San Francisco	110	42
Reno	21	0
Honolulu	5	3

APPENDIX IX

APPENDIX IX

DEA COMMENTS ON METHODOLOGY USED
TO EVALUATE THE EFFECTIVENESS
OF PURCHASE OF EVIDENCE

The basic methodology used by GAO to evaluate the effectiveness of purchase of evidence expenditures was based upon an ad hoc survey employed by the DEA Los Angeles Region to evaluate a related, but entirely different matter--relative allocation of PE/PI expenditures with respect to classes of defendants. While DEA is in no position to refute the results of the recommendations covering PE/PI policy, we do feel strongly that the methodology GAO utilized is insufficient and does not portray an adequate picture of the derived benefits of PE utilization. Very basically, it is not correct to assume that PE is expended solely to identify higher level violators. PE does serve other purposes and an evaluation of its effectiveness must also take into consideration how well these other purposes are served by its use. For example, just a few other reasons for expending PE funds are:

- To obtain strategic, operational and tactical intelligence not related to the instant investigation.
- To locate and seize a significant cache of drugs.
- To obtain the most unimpeachable and cost efficient evidence in a particular investigation.
- To corroborate information and statements made by a potential witness to enhance his future credibility in a court of law.
- To protect the identity of an informant.

Even if we did assume that the only reason for expending PE is to identify higher level violators, then the GAO methodology would have to be expanded to include, among other things, the impact of purchases of evidence on long-range conspiracy cases; the extent to which evidence purchased in past (closed) cases has been beneficially used in open or more current cases; and the expanded use of evidence and defendants to develop prosecutable cases by other DEA regions than the one in which the original evidence was obtained. One other very important point that must be considered is the fact that G-DEP, the data base on which the DEA Los Angeles and GAO studies were

APPENDIX IX

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based, is not, in and of itself, a sufficiently sensitive indicator measurement of PE effectiveness. G-DEP is a system designed to classify violators according to their trafficking capabilities. It does not reflect how a trafficker's removal would impact on the traffic.

APPENDIX X

APPENDIX X

PRINCIPAL OFFICIALS RESPONSIBLE FOR ADMINISTERING
ACTIVITIES DISCUSSED IN THIS REPORT

	<u>Tenure of office</u>	
	<u>From</u>	<u>To</u>
<u>DEPARTMENT OF JUSTICE</u>		
ATTORNEY GENERAL OF THE UNITED STATES:		
Edward H. Levi	Feb. 1975	Present
William B. Saxbe	Jan. 1974	Feb. 1975
Robert H. Bork, Jr. (acting)	Oct. 1973	Jan. 1974
Elliot L. Richardson	May 1973	Oct. 1973
Richard G. Kleindienst	June 1972	Apr. 1973
Richard G. Kleindienst (acting)	Feb. 1972	June 1972
John N. Mitchell	Jan. 1969	Feb. 1972
ADMINISTRATOR, DRUG ENFORCEMENT		
ADMINISTRATION:		
Henry S. Dogin (acting)	June 1975	Present
John R. Bartels, Jr.	Oct. 1973	May 1975
John R. Bartels, Jr. (acting)	July 1973	Oct. 1973
DIRECTOR, BUREAU OF NARCOTICS AND		
DANGEROUS DRUGS (note a):		
John E. Ingersoll	Aug. 1968	July 1973
SPECIAL ASSISTANT ATTORNEY GENERAL,		
OFFICE FOR DRUG ABUSE LAW		
ENFORCEMENT (note a):		
Myles J. Ambrose	Feb. 1972	July 1973
ADMINISTRATOR, LAW ENFORCEMENT		
ASSISTANCE ADMINISTRATION:		
Richard W. Velde	Sep. 1974	Present
Donald E. Santarelli	Apr. 1973	Aug. 1974
Jerris Leonard	May 1971	Mar. 1973
Vacant	June 1970	May 1971
Charles H. Rogovin	Mar. 1969	June 1970
DIRECTOR, FEDERAL BUREAU OF		
INVESTIGATION:		
Clarence M. Kelley	July 1973	Present
William D. Ruckelshaus (acting)	Apr. 1973	July 1973
L. Patrick Gray III (acting)	May 1972	Apr. 1973
J. Edgar Hoover	May 1924	May 1972

a/Effective July 1, 1973, BNDD and ODALE were merged in the new DEA. All BNDD and ODALE functions were transferred to DEA.

APPENDIX X

APPENDIX X

<u>Tenure of office</u>	
<u>From</u>	<u>To</u>

DEPARTMENT OF THE TREASURY

SECRETARY OF THE TREASURY:

William E. Simon	May 1974	Present
George P. Shultz	June 1972	May 1974
John B. Connally, Jr.	Feb. 1971	June 1972
David M. Kennedy	Jan. 1969	Feb. 1971

COMMISSIONER, U.S. CUSTOMS SERVICE:

Vernon D. Acree	May 1972	Present
Edwin F. Rains (acting)	Feb. 1972	May 1972
Myles J. Ambrose	Aug. 1969	Feb. 1972