DEA OVERSIGHT AND BUDGET AUTHORIZATION

HEARING

BEFORE THE

SUBCOMMITTEE ON SECURITY AND TERRORISM

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

DRUG ENFORCEMENT ADMINISTRATION OVERSIGHT AND BUDGET AUTHORIZATION AND S. 2320

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S. 2320, a bill to amend section 1963 of title 18, United States Code, and the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.) to provide for the criminal forfeiture of the proceeds of racketeering activity, to provide for the sanction of criminal forfeitures in drug related and racketeering cases, and for other purposes 57
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DEA OVERSIGHT AND BUDGET AUTHORIZATION

FRIDAY, APRIL 23, 1982

U.S. SENATE,
SUBCOMMITTEE ON SECURITY AND TERRORISM,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:52 a.m., in room 2228, Dirksen Senate Office Building, Senator Jeremiah Denton (chairman of the subcommittee) presiding.

Staff present: Joel S. Lisker, chief counsel and staff director; Bert W. Milling, Jr., counsel; and Fran Wermuth, chief clerk.

OPENING STATEMENT OF SENATOR JEREMIAH DENTON

Senator DENTON. Good morning. This hearing will come to order.

There was a delay because I was hoping that Senator East, Senator Leahy, or Senator Biden could come. They had expressed intentions to come, but Senator East has two other hearings in which he has more immediate responsibility. The other two, I believe, are returning to their States.

I regret that the hearings have not been better attended, not only in this field of drug enforcement but particularly in the field of terrorism which, as you will learn from the opening statement, in terms of the Latin American situation, is definitely related to the drug situation. It is a source of some frustration to me that my colleagues in the Congress and elsewhere are not apprised and current as to the findings of this subcommittee.

We are no longer being accused of McCarthyism, but there is an alarming ignorance of what we have found through investigations and hearings. This will delay the establishment of sufficient understanding in the Congress, much less sufficient understanding and consensus among the public regarding the facts upon which certain policies and legislation would be founded.

This morning I welcome Francis M. Mullen, Jr., Acting Administrator of the Drug Enforcement Administration, who will testify during this oversight hearing on the activities and programs of the DEA. Efforts were made to schedule this hearing earlier this year, but conflicts in the schedules of the full committee, the subcommittee, and the DEA thwarted those efforts.

The Drug Enforcement Administration, the principal Federal drug law enforcement agency, is charged with providing leadership in the suppression of narcotics and dangerous drugs at the national and international level, and enforcing the controlled substance laws to restrict the aggregate supply of drugs susceptible to abuse.

Despite the concerted efforts of the DEA and other Government agencies who cooperate in this effort, such as the FBI, the Coast Guard, the U.S. Customs Service, and State and local law enforcement agencies, the seriousness and magnitude of the drug problem in this country has not diminished. Indeed, according to a recent statement by Director Webster and Acting Administrator Mullen:

> The drug trafficking industry has been growing rapidly and has become increasingly more sophisticated. There has been a marked acceleration in the involvement of traditional organized crime, outlaw motorcycle gangs and other groups in the highest levels of narcotics trafficking. Furthermore, the FBI has encountered increasing drug trafficking violations coincident with its investigations into public corruption and major theft. We estimate that about one-quarter of our traditional organized crime or public corruption investigations involve drug trafficking.

The direct relationship between drug trafficking and abuse and the incidence of crime is demonstrated daily by reports from authoritative sources. These reports provide the grist for many press accounts. I saw one NBC television documentary the night before last about cocaine in particular but drugs of pleasure in general. There is much spoken about it, much like the weather, but we need to do more about it, obviously, because the violations and abuse are increasing.

A particularly graphic example of this relationship between crime and drug abuse, which was cited at last year's oversight hearing, is the finding of a Temple University Medical School study that 243 addicts committed almost 500,000 street crimes in 10 years and that these addicts are 84 percent more likely to commit a crime when on drugs than when they were free of drugs.

Drug trafficking and abuse have far-reaching ramifications that affect our citizens and institutions in many ways. Besides the tremendous toll that drug abuse takes on its victims and the increasing level of crime in our communities, there are other costs. These costs include, to name but a few, the increased tax burden required to finance greater police protection and crime control, lost time in civilian and military work forces, less freedom of individual movement and use of personal property by our citizens, and a negative environment for our children at school.

Testimony received by the subcommittee during the recent hearings on worldwide Cuban activities revealed another alarming dimension of the drug problem that we must confront. Ambassador Thomas O. Enders, Assistant Secretary of State for Inter-American Affairs, told the subcommittee:

> We [the Department of State] now also have detailed and reliable information linking Cuba to traffic in narcotics as well as arms. Since 1980, the Castro regime has been using a Colombian narcotics ring to funnel arms as well as funds to Colombian M-19 guerrillas.

The drug ring referred to was led by Jaime Guillot Lara, a Colombian who is now in custody in Mexico. Ambassador Enders went on to say:

> In return for Guillot's services, the Cubans facilitated the ring's trafficking by permitting mother ships carrying marijuana to take sanctuary in Cuban waters while awaiting feeder boats from the Bahamas and Florida.

Detailed information confirming this Cuban link to drug trafficking into the United States and elsewhere was presented by Special Agents Sergio Pinon and Daniel Benitez of the Florida Department

of Law Enforcement. They told the subcommittee of a source, later interviewed by staff members of the subcommittee, who advised us that narcotics trafficking was coming via Cuba from Colombia.

This testimony went on to say:

> When the boats left Colombia, they left with the Cuban flag in order to let the Cuban government know that they were coming in friendly. The Cuban government boats would come to the mother ships to escort them into the Cuban key, which is called Cayo Paredon Grande; . . . the mother ship will be escorted there and it is met by Cuban intelligence officers, who will then view the exchange when boats coming from the United States would come to Cayo Paredon Grande to transfer the narcotics from the mother ship into the smaller vessels.
>
> Those boats were escorted to a limit close to the United States; . . . . The Cuban Government has advised these drug smugglers that as long as they bear the Cuban flag, the U.S. Coast Guard will not interfere so as not to cause an international incident.

From a separate source, Special Agent Pinon learned that—

> * * * The government of Cuba has been providing marijuana to the smugglers that has been grown in Cuba, and the Cuban boats are using a radar system to detect the U.S. Coast Guard in order to find a clear way into the United States to assist them in smuggling.

It has long been alleged that subversive and terrorist groups and governments such as Cuba that encourage and support such groups have utilized drug trafficking to fund their activities. The testimony received during our Cuban hearings is consistent with those allegations and with the stated aim of the Cubans to contribute to the destabilization of the United States by encouraging and enhancing the drug trade.

There has been testimony about the Cuban mission to destabilize the United States. The link between drug traffic, arms, money, espionage, terrorism, all those links have been well established and are among the facts which I regret have not received more governmental and public dissemination.

There are several other matters I want to mention before we proceed. First, I have become increasingly concerned about the abuse of methaqualone, or quaaludes, a licit drug that is obtained by prescription from physicians as well as from illegal illegitimate sources. Its growth as a drug of abuse has accelerated rapidly over the past few years, especially among our young people.

There have been a number of documentaries, particularly one by Cable News Network, an excellent documentary on the abuse of quaaludes in southern Florida.

When this drug was introduced, it was believed to have low abuse potential and to be nonaddictive; experience in the United States and elsewhere, however, has proved the opposite to be the case. I am informed that few, if any, ethical physicians prescribe the drug because there are safer drugs with fewer and less severe side effects, a much lower abuse potential, and the same medical applications. I suggest that the removal of methaqualone from the market be seriously considered by the DEA as one step in our attack on the drug problem.

Second, the subcommittee will monitor very closely the recent reorganization of the DEA, whose administrator is now under the general supervision of the Director of the FBI as ordered by Attorney General Smith in January of this year. The subcommittee intends to play a part, in cooperation with the Attorney General, in

achieving maximum effectiveness and efficiency in the enforcement of the criminal drug laws and the interdiction of drug trafficking into the United States.

During today's hearing, the subcommittee will also review and receive testimony on the authorization and budget request by the DEA for fiscal year 1983.

The subcommittee is committed to working with the DEA to insure that it has the necessary authority and proper resources to fulfill its mission effectively. Toward this end, it is my hope that together we can realistically and forthrightly examine all aspects of the DEA's performance, its shortcomings as well as its strengths, to insure that the DEA remains the leader in the offensive against our escalating drug problem, both in the domestic and international arenas.

At the conclusion of Mr. Mullen's testimony, we will hear briefly from Deputy Associate Attorney General Jeffrey Harris. He will present the Department of Justice's position on a legislative proposal, S. 2320, to facilitate the forfeiture of property that is utilized in, and obtained as a result of, racketeering and major drug-related crimes. In my view, the persistence and pervasiveness of racketeering and drug trafficking is due to the economic power that is generated by and which maintains such criminal activity. Thus, the effectiveness of society's efforts to punish and deter the commission of these offenses depends to a significant degree on our ability to cut off those engaged in organized crime and illicit drug trafficking from their access to this economic power.

I am informed that Mr. Frank Monastero, the Assistant Administrator for Operations, and Mr. Gene Haislip, Deputy Assistant Administrator for Diversion Control, are accompanying the Acting Administrator, Mr. Mullen. I would like to welcome all three gentlemen and offer Mr. Mullen the opportunity to make an opening statement.

TESTIMONY OF FRANCIS M. MULLEN, JR., ACTING ADMINISTRATOR, ACCOMPANIED BY FRANK MONASTERO, ASSISTANT ADMINISTRATOR FOR OPERATIONS, AND GENE HAISLIP, DEPUTY ASSISTANT ADMINISTRATOR FOR DIVERSION CONTROL, DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE

Mr. MULLEN. Thank you, Mr. Chairman. I am pleased to appear before this committee for the first time as Acting Administrator of the Drug Enforcement Administration.

You mentioned that I am accompanied by Mr. Monastero and Mr. Haislip. Mr. Monastero oversees all investigative activity for the Drug Enforcement Administration. Mr. Haislip is in charge of our diversion control program and very familiar with the topic of methaqualone.

I do have a very brief statement. I know you have many questions. I have a long, full statement that I would like to submit for the record.

Senator DENTON. It shall be included in the record, without objection.

Mr. MULLEN. The 1983 authorization request for DEA totals $246,945,000 and 3,953 positions. This represents a net increase of

$16,096,000 from the pending 1982 amount of $230,849,000. Our budget includes a decrease of $2.5 million in the salaries and benefit base equivalent to 100 work-years. The ongoing level of operations, however, will be maintained. The greater involvement of the FBI in the investigation of Federal drug offenses, the recent initiatives by the Department of Justice to place the highest priority on the coordination of drug investigative efforts involving the DEA, the FBI, the U.S. attorneys and other Federal agencies, and our internal reorganization should result in a more efficient use of drug enforcement resources.

The drug problem is one which requires Federal leadership not only to manage the international and interstate aspects but also to influence and motivate State and local authorities to implement effective drug enforcement programs. Trafficking in drugs must be made less lucrative and the use of drugs made less appealing.

The President has established the Cabinet Council of Legal Policy headed by the Attorney General. At its first meeting on March 24, 1982, the drug situation and the interagency activities were fully deliberated. From these meetings, and meetings such as this will come a cohesive national drug enforcement policy.

Control of drugs at the sources—usually overseas—is a pillar of our strategy. We will continue to fulfill the role of lead agency in drug enforcement activities overseas. Domestically, our commitment to working with the Federal law enforcement community has never been stronger. We are seeing an increase in the number of high-level interagency investigation, and investigative resources from around the country are being marshaled in Florida to exert more enforcement pressure on traffickers.

Further, the El Paso Intelligence Center will assume an even more critical role as a result of the enactment of the Defense Department Authorization Act of 1982, which increased military assistance in combating drug trafficking. The control of the drug problem requires action by every level, individuals, organizations, local and State government, and the judicial, legislative, and executive branches.

Mr. Chairman, that concludes my statement. I am prepared to answer any questions you may have.

Senator DENTON. May I ask you to take the usual oath, please? If you will stand, Mr. Mullen.

Mr. MULLEN. Certainly.

Senator DENTON. Do you swear that the testimony which 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. MULLEN. I do.

Senator DENTON. Thank you. Please be seated.

We are in an era of budget cutting, trying to induce more efficiency. Do you or your staff know of any areas in which the DEA budget can be further trimmed in order to contribute to this reduction?

Mr. MULLEN. I do not know of any areas where we can further trim. I believe we are operating with an adequate budget, but any further trimming could impact upon our ability to carry out our mission.

Senator DENTON. In my opening statement I referred to prior testimony the subcommittee received confirming Cuban involvement with drug trafficking. Does the DEA have information indicating involvement of the Cuban Government in drug trafficking? If so, would you tell us about it?

Mr. MULLEN. We have had some indications of involvement of Cubans in the drug trafficking activity. I am aware of the Guillot Lara matter inasmuch as the case in which he was indicted did involve a DEA investigation. As you are aware, he is currently held in Mexico facing extradition either to Colombia or to the United States.

Recently, we prepared at DEA an intelligence report. It pertained to any indication of Cuban involvement in the drug trafficking over the past 10 or 12 years. I have reviewed that report. There are indications in this report that throughout this period there was some Cuban involvement in drug activity. However, I would not like to go into specifics in open session. I would be prepared to brief you or make this report available to you in a closed session.

Senator DENTON. Would you make that intelligence report available to the staff after this hearing?

Mr. MULLEN. Yes, we will.

Senator DENTON. Would you care to say anything on an unclassified basis about information indicating the involvement of governments other than that of Cuba in illicit drug traffic?

Mr. MULLEN. We are seeing more and more involvement on the part of terrorist groups in the drug trafficking all around the world: The Mideast, Europe, and in the Caribbean. The same standards apply. We do have some specific information which I would prefer to go into in closed session rather than open session. But there is a definite relationship between terrorist activity and drug trafficking.

Senator DENTON. Can you tell, within the restrictions of the classification of the information, anything about the motivation behind the use of drugs by the terrorists, the use of the trafficking, their participation in the trafficking? What is their end? Is it to finance or subvert sociologically or both? Or can you tell?

Mr. MULLEN. It appears basically to be to finance activities, not to use the drugs to destabilize. I would agree that it does not make unfriendly governments or terrorist organizations unhappy to see the United States with the difficult drug problem that it has, but we have not detected any activity to facilitate the drug trafficking to destabilize the populace or the Government. It is basically to finance their activities.

I mentioned, Senator, terrorist organizations. We do have some corrupt activities on the part of some governments for financial gain in drug trafficking, but I do not personally know of any government that is involved in drug trafficking for destabilizing or for income to finance terrorist activities.

Senator DENTON. Other than Cuba, perhaps.

Mr. MULLEN. Again, the information which is available to me has been made available to the intelligence agencies, and I have heard the statements of Ambassador Boyette and others. They apparently have additional information, based on their presence in

countries such as Colombia, other than that which is available to me.

The information that I am presently aware of indicates possible Cuban involvement. Perhaps our intelligence agencies, putting our information with what they have, have been able to make this link.

Senator DENTON. We would hope that that kind of interchange of information is already a matter of practice.

Mr. MULLEN. It is a matter of practice. We have held frequent meetings to make the information available.

Senator DENTON. We had public hearings in which it was made evident that officials of the Cuban Government, in that they were officers, were on the scene taking part in these operations. Other testimony from defectors was verifiable and common in the testimony of several that it is officially known by the Cuban Government and, at least, condoned.

Mr. MULLEN. I listened with interest to your opening statement. Apparently, we just do not have the sources that Mr. Pinon has. I am not aware that the same information has come to DEA through its informants.

We do have an increased presence in the Caribbean area, an increased presence which is supported by the military as a result of the amendment to the Posse Comitatus Act. Hopefully, with the intelligence gathering capability we now have, if this information is there, we will obtain it.

Senator DENTON. Because of the thrust of this subcommittee into terrorism and the interest we have in international activities, it is possible that we have come across information which you do not have.

Mr. MULLEN. Yes.

Senator DENTON. We can refer you to the source of this information. He is in detention in a Federal corrective institution in Miami. We would like to share and compare with you the findings resulting from any check you might make with him.

Mr. MULLEN. We would like to do that. Now, if it involves terrorist activity, it would also involve the FBI in the sharing of this information. Any information that your staff may have would be of interest to us.

Senator DENTON. But no other governments officially, other than Cuba which we have been discussing, appear to be, as a matter of policy, involved in illicit drug traffic?

Mr. MULLEN. That is correct, Senator.

Senator DENTON. That is taking into account the fact that there may be some corrupt officials within those governments, as there can be in any government.

Mr. MULLEN. Yes; there are some corrupt officials in some governments profiting from the drug trafficking.

Senator DENTON. Could you estimate the total U.S. currency outflow resulting from international drug trafficking and to what extent this currency is finding its way to Cuba? We had some quantitative figures on that with respect to shipments and the amount they charge for the boats: $50,000 for a certain size vessel, and so forth. Is there any kind of gross estimate of the currency outflow resulting from that trafficking?

Mr. MULLEN. The National Narcotics Intelligence Consumers Committee [NNICC] estimates that the drug industry generated $79 billion in 1980. A good part of that does flow out of the country. I do not have an estimate as to how much is going out or how much is going to Cuba.

Do you have anything to add to that?

Mr. MONASTERO. We have information about how much it costs to put a load together coming to the United States, which is in the range of the figure you mention; but we do not have any exact estimate.

Senator DENTON. The transfer between the feeder boats and the other boats in the Cuban waters involved a $50,000 fee for a small boat.

Mr. MULLEN. I am told that is what it costs to put a drug load together.

Senator DENTON. It might be enlightening to get some idea of the amount involved because it seems that it could be a pretty considerable figure that the Cuban Government could receive from this.

On January 13, 1982, two Soviet-manufactured grenades were recovered from a source named Lazaro Vizuna by Florida Department of Law Enforcement Special Agent Sergio Pinon and Special Agent Juan Perez of the DEA. Mr. Vizuna informed representatives of the subcommittee that he had told another DEA agent and a local law enforcement officer about the grenades more than a year earlier but that they responded that he should keep the grenades. The name of the DEA agent has previously been furnished to you by Mr. Lisker.

Have you taken investigative steps to establish the truth of those allegations? Have those allegations been referred to the Department of Justice Office of Professional Responsibility?

Mr. MULLEN. We have conducted an internal inquiry regarding the information relating to the grenades. My first exposure to the information was from your staff. Mr. Lisker did call me. The information indicated that the source exploded two grenades that he had received from an individual, allegedly a Cuban official; and he later obtained two more grenades. He was working with a Miami Police Department officer on the case and said that during a debriefing, after the fact, that he had mentioned to the DEA agent that he had exploded the grenades and that he had grenades in his possession. Our information was that the source was advised by the DEA agent to continue working with the police officer.

Upon interview by DEA inspectors, the DEA agent involved said that he did not recall being told by the source about the grenades. He said that it is possible that he was told about them, but he did not recall it and that, if he had been told, he probably would have told him to continue to work with the police officer. But, up to this time, he did not recall discussing the grenades with the source.

Senator DENTON. If he told the man to keep the two grenades, the gentleman in question who had the grenades did use them and caused their detonation at Eloy Motors, 1479 Southwest Sixth Street in Miami on October 2, 1980, and then on September 29, 1981, another one at the El Morroco Bar. There was someone injured in that explosion. The exchange with the DEA agent took place about a year before the first of the two explosions. Since the

man's arrest, there has been another explosion of one of the Russian grenades on February 22, 1982 at the residence of Manuel Lorenzo in Miami.

There are allegedly a large number of those grenades down there. Of course, we are interested in this subject.

Mr. MULLEN. Mr. Chairman, we do not have the same information. The information that is available in my report based on the internal inquiry is that two grenades were exploded prior to the contact with the DEA agent, one in an empty garage, one in an empty car. These occurred in late 1980 according to the information available to me. The meeting with the DEA agent took place in March of 1981.

Our agent says that he does not recall being told about the grenades. He has never seen the grenades in the possession of the source.

Based on that, I did not take any disciplinary action nor did I refer it to the Department of Justice.

Senator DENTON. Was an internal report on this event prepared by the supervisor in Miami detailing this event?

Mr. MULLEN. Yes; it was.

Senator DENTON. Do you have that in your possession in DEA?

Mr. MULLEN. I do have it in my possession.

Senator DENTON. It appears that the two explosions you are talking about in 1980 are not these two.

Mr. MULLEN. That is correct. This is new information to me. I have not been advised of this before.

Senator DENTON. He has stated that he did use the grenades on these two occasions I have mentioned.

Mr. MULLEN. He did not state it to our internal inspectors.

Perhaps, Senator, we should get with your staff and compare reports here.

One thing I do see here is a need that, when we do get information which could possibly relate to terrorist activity, that we furnish it immediately to the FBI or the CIA and other interested agencies. There may be a shortcoming there. We have taken steps internally, and we have written guidelines now calling for this exchange. We are going to cross-train DEA and FBI agents so that DEA agents will be aware of the FBI jurisdiction in this area and we can pursue this type of information.

Senator DENTON. We certainly will follow that up, staff to staff. I recognize the room for improvement in interchange of information and the tremendous task that you have in trying to correlate all of the information available. This subcommittee, as you know, is only a year and a half old, not even that. But we want to help. We will keep coordinating with you.

It has also been reported to the subcommittee that this DEA agent was a member of Accion y Sabotage, a terrorist group under the direction of Fidel Castro in Cuba which operated against the Batista regime. Do you have any comments on that allegation?

Mr. MULLEN. From my perspective, that statement is absolutely untrue. I have been told by the agent's supervisors that just the opposite is true. I am referring to the special agent in charge of the DEA office in Miami, who indicated that this particular individual is very, very anti-Castro.

Senator DENTON. It says was a member. So, I do not know that those two statements are incompatible in any way. We have had so many defectors here from South Africa and Cuba. I have met a lot of them myself in my visit to one of their nations.

You do not have information which establishes that he was never a member of that——

Mr. MULLEN. That is correct. We went back and pulled his background——

Senator DENTON. Oh, you do have?

Mr. MULLEN. No; we do not.

We pulled his background investigation which was done prior to his becoming a DEA agent, and just nothing has turned up to support that allegation.

Senator DENTON. I think you misunderstood my question. I said you do not have information that would substantiate or prove that he was not a member of that organization. Even a background check could hardly do that because this was taking place in the country of Cuba. How can you——

Mr. MULLEN. That is true; Yes, I would have to agree with that statement.

Senator DENTON. Do you deal, as an administration, with national security investigations?

Mr. MULLEN. Not with national security investigations per se.

Senator DENTON. Has anyone at DEA been authorized to represent to any Florida State law enforcement official that the Lazaro Vizuna case is a national security investigation?

Mr. MULLEN. No.

Senator DENTON. Does DEA have criteria established for cases in which it will recommend that a State or Federal prosecutor seek a grant of immunity for a subject of an investigation in exchange for that subject's testimony in another case?

Mr. MULLEN. Yes.

Senator DENTON. Could you give us some examples? For example, if a subject is facing Federal charges on smuggling a couple of hundred tons of marihuana at the same time he is facing State charges of murder, could you envisage a situation in which the DEA would recommend to a State prosecutor that the subject be given immunity or a light sentence on a murder charge in exchange for his testimony against others in the marihuana case?

Mr. MULLEN. In other words, he is facing a State murder charge and we would want a lesser charge or a reduced charge in the State to pursue the marihuana case?

Senator DENTON. Yes.

Mr. MULLEN. That would be very unusual. There may be information indicating that this has happened. I would have to see the facts here, but it would seem to be unusual.

Senator DENTON. I am informed that there is indication of that in the Vizuna case. I have no collection of proof to establish that. At this point I just mention it because it seems to be——

Mr. MULLEN. I will look into that and see if it is the case. That would be unusual, very unusual.

Senator DENTON. Remembering our concern with the quaaludes, what is the DEA's assessment of the quaaludes situation? What

steps are being taken to do something about it? For example, what reasons have existed for not removing the drug from the market?

Mr. MULLEN. I will let Mr. Haislip respond, if I may, Mr. Chairman.

Senator DENTON. Surely.

Mr. HAISLIP. Mr. Chairman, the problem with methaqualone in the country is a very serious one. As you have indicated, it has been one of the most rapidly increasing drug abuse problems that the country has faced. It is a complicated problem.

First of all, I think it is important that you understand that the vast bulk of this methaqualone enters the country in the form of counterfeit quaalude tablets which originate principally from Colombia. The methaqualone powder from which these counterfeit tablets are made is derived from legitimate manufacture in other countries of the world. This is a matter which we have given a great deal of attention.

Senator DENTON. What is that powder—the counterfeit powder?

Mr. HAISLIP. The powder is legitimate methaqualone powder. The pills that are entering the country are counterfeit quaalude tablets which contain legitimate methaqualone powder from other sources in the world. This is the bulk of the problem that we face.

In addition to that, methaqualone is distributed in this country principally as a legitimate product called Quaalude. This is a much smaller quantity than we receive the other way, but even a substantial portion of this is being diverted into abuse by unscrupulous practitioners and others who back them in that method.

Mr. Chairman, we are doing a number of things about this problem which, if you like, I will very quickly describe.

Senator DENTON. The counterfeit part of it was what confused me. I gather that it is just a matter of infringement of the copyrighted name of it as a drug?

Mr. HAISLIP. The Quaalude tablet in this country has a certain identity in the abuse circles. The counterfeit product is to assume that identity because of its ease of sale. The drug is just every bit as good. It has about the same amount of methaqualone in it. The products are nearly identical to the legitimate product in every way.

Both sources are sources of diversion for abuse. The foreign source is by far the larger percentage, but both are diverted. We are taking measures against both, which I think are going to be effective and have already been effective.

Senator DENTON. Couldn't you eliminate domestic production of it?

Mr. HAISLIP. In the first instance, we have eliminated domestic production. The company that formerly manufactured this drug in the United States was a source of diversion itself. Through an agreement with that company, they no longer produce the drug. So, it is not manufactured in this country any more. However, it is still legitimately distributed by a company in the United States—and that continues. DEA does not have the authority to eliminate this drug as a medical drug available for prescription. That authority resides principally with the Food and Drug Administration. DEA does have the authority to regulate the quantities which will be made available. That is a matter that we have had under study

quite recently. We are going to take measures with regard to reducing that quantity in order to minimize the diversion which is occurring. But I would like to point out again, which I think is very important, that the vast bulk of this material does actually come from overseas.

Senator DENTON. Would the DEA have the authority? Would it be the Drug Enforcement Administration or the Food and Drug Administration which would have the authority to put quaaludes on a schedule II level?

Mr. HAISLIP. Schedule I, perhaps. It is schedule II.

Senator DENTON. I mean by putting it on a higher schedule. I know there is categorization which would permit a more restrictive——

Mr. HAISLIP. Yes, Mr. Chairman, let me explain it quickly to you. At the present time, because of the past abuse with this drug, it is in the highest schedule of control for any drug which has a legitimate use. The State of Florida quite recently—and probably the State of Georgia will follow suit—has listed this drug in schedule I, which is the schedule for drugs which have no recognized medical use. That power exists in the Federal Government, also. We have not exercised it. It is principally a matter for the Food and Drug Administration, not DEA. But there are other measures which we are taking that are going to substantially impact on this problem, measures which DEA can take unilaterally and is going to.

Senator DENTON. Are you also taking steps with the Food and Drug Administration to implement this type of action as Florida and Georgia have? Or do you consider that worthwhile?

Mr. HAISLIP. We are not pursuing that. I cannot tell you if they are. They are the proper ones to pursue it, but they have advised us that they support reduction of the amount that is available in the country. We are going to reduce that amount.

Senator DENTON. Can you tell us what you mean by these other steps that you are taking which will greatly reduce the problem?

Mr. HAISLIP. Yes. We have an extensive and intensive program of working with the several affected foreign nations which has resulted in, I think, a very measurable success. I can just give you a brief figure which will illustrate that. In 1980, prior to the initiation of our efforts, we were able to count the seizure of about 13 tons of this material in the United States in the form of pills principally. In 1981, as a result of our efforts, we now count more than 57 metric tons which have been seized either here or in Colombia or other foreign countries as a result of these cooperative programs. In addition to that, three nations in the world have curtailed their production completely because that production was the source of this criminal activity.

There is currently a shortage of the material in Colombia. We believe there is a shortage throughout the Nation. We have that partially documented, and we expect it to become more apparent with the next reports that we receive.

Senator DENTON. When you say shortage throughout the Nation, do you mean this Nation?

Mr. HAISLIP. Yes.

Senator DENTON. Would you describe the physiological effects of quaaludes on an individual and the adverse effects on an individual

when quaaludes are taken in combination with alcoholic beverages? "Luding-out," I understand, is the term.

Mr. HAISLIP. Yes. I will attempt to do that although it is dangerous ground for a lawyer.

Of course, the effects on abusers are quite different from the effects on those who take them for some legitimate purpose because the intentions are entirely different. But methaqualone is a powerful depressant drug very much like barbiturates. It is addicting if an individual takes it for sufficient periods of time. It causes a very high degree of ataxia, which is the staggering, drunken gait, the complete loss of control. Therefore, abusing methaqualone by itself can cause major problems and death through accident or disregard. In combination with alcohol, the likelihood of it resulting in serious injury or death becomes extremely great.

Senator DENTON. As I recall, one of the documentary programs indicated that 80 percent of fatal automobile accidents, perhaps within a certain age group, in a section of Florida were attributable to this combination of quaaludes and, I think, beer.

Mr. HAISLIP. Mr. Chairman, that is our understanding. I believe that figure is correct. I do not think that that is unusual for other sections of the country, as well.

Senator DENTON. You say the other sections of the country as well. The memory I have is that it was in Florida working its way up toward the Norfolk area and from there into New York. Is that correct?

Mr. HAISLIP. The largest pockets of abuse have been in the Southeast and the Northeast, but the drug appears throughout the Nation. There is a Mexican counterfeit product which appears along the border States. It also is methaqualone under a different counterfeit disguise called Mandrex. But, again, the figures that we have as a result of our efforts show that this problem is decreasing.

We expect a much sharper decrease than we have yet seen, but I think we have now accounted for in excess of 100 tons of methaqualone removed from the illicit traffic in the United States. That is an enormous quantity because the entire legitimate distribution for this country has been only slightly over 4 tons. Much of that has been diverted, too.

Senator DENTON. So, there has been a drying-up of the supply at the source, some indication of a shortage already developing in this country, and you expect the shortage to become more acute as the production is reduced from other countries?

Mr. HAISLIP. Yes.

Senator DENTON. Would you kindly keep us informed on that to see whether or not it does realize itself in that way?

Mr. MULLEN. We will do that periodically, yes.

Senator DENTON. At last year's hearing and during the course of last year, the following list of major problems was furnished by you as impeding the Drug Enforcement Administration in accomplishing its mission: first, the restrictions on U.S. funding of marihuana eradication programs using paraquat; No. 2, present bail law and practice; No. 3, the Tax Reform Act of 1976; No. 4, the Freedom of Information Act; No. 5, the Posse Comitatus Act; and, No. 6, present procedure on forfeited assets.

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Could you tell us which of these problems have been alleviated and how—administratively, legislatively, and so forth—and what is the present status of these impediments and the efforts to resolve them?

Mr. MULLEN. With regard to the use of paraquat, the ban on the use of paraquat was rescinded. It is now available for use. We are working with several States with regard to domestic eradication programs. There are indications that some of these States will be using paraquat in their eradication programs.

This is also true of some foreign countries. As you know, the Mexican Government continued to use paraquat successfully. Working through the State Department, we believe that other countries will begin to use paraquat. So, that problem has been resolved.

With regard to use of the military, as you know, the Posse Comitatus Act has been amended. We are now working with the military very effectively. We have set up a committee consisting of DEA, U.S. Customs, the FBI, and the Coast Guard. The group is chaired by the Coast Guard to funnel requests for military assistance in the drug enforcement effort. The military has responded most favorably. For example, making the E2C radar aircraft available off of Florida, which allows for a very effective drug enforcement program; making available the Cobra helicopters down in Florida; and making available intelligence to DEA. It has been very helpful. So, that problem also has been resolved.

Senator DENTON. I worked on that reasonably hard in the Armed Services Committee. You say the Coast Guard chairs it. I gather the E2C's might be Navy aircraft, and the Cobras, of course, Army.

Mr. MULLEN. Army, that is correct.

Senator DENTON. So, the Navy have been actively helping you already?

Mr. MULLEN. They are and have been. The E2C aircraft are very effective. I think the best feature here with regard to drug enforcement, aside from the fact that they are very effective, is that they are handling this as an adjunct to their regular training missions at no cost to the enforcement agencies. That is a tremendous help to us. We are looking for other areas of the country where they can be of help.

The program is going well. We are still in the process of finding out what is available and what can be made available without adversely impacting upon their primary mission, which is the defense of the Nation. But their attitude has been excellent.

Senator DENTON. I worked to overcome some inertia there because there was no reason whatever that they could not improve the effectiveness and results of training missions by actually having some real interesting targets.

Mr. MULLEN. It is interesting, Mr. Chairman, because at first, when the amendment occurred, it seemed to be moving very slowly. In our meetings they acknowledged that strong pressure from the Hill and from the White House had made the difference. But it is going well at this time. I thank you for that help.

Senator DENTON. I am glad to hear it. I did not know how it was actually turning out at the operational end. I am glad to hear that it is really moving along.

Mr. MULLEN. I think we have organized well. What we did not want were different agencies running to the military with different shopping lists. So, we have coordinated that. But I think the involvement of the military is going to be as significant, maybe more so, as the involvement of the FBI in this. I think it is going to have that much of an impact. I think both are equally important to the drug enforcement effort.

Senator DENTON. Certainly the Coast Guard was spread too thin on this, considering their other requirements.

Mr. MULLEN. Yes.

In another area, bail reform, at last count I believe there were as many as 11 bills pending. We are still looking for bail reform. I think if we can get a consensus bill passed by the Congress, it would be of tremendous help. We are looking at such factors as danger to the community and repeat offenders and other areas of consideration when authorizing bail.

There is one bill, Senator, S. 1554, which is pending in the Judiciary Committee, which we would support.

Senator DENTON. I am informed that there is bail reform provision in the Criminal Code reform bill, which is up for discussion now. Unfortunately, there are disagreements about other provisions of that bill which could delay it. At least I am glad to hear that bail reform is in there. Go ahead.

Mr. MULLEN. We have the tax reform amendment. I understand we also have a bill pending in the Senate Judiciary in that area.

We would still like to see some reform of tax law, but we are getting more cooperation from the Internal Revenue Service in the drug investigations. They have set up a group to conduct criminal investigations. We are working with them, but what we have is basically a one-way street. We are giving them information which they can act upon but not getting the information in return.

Senator DENTON. What proportion of importance do you put on that?

Mr. MULLEN. On the——

Senator DENTON. The Tax Reform Act.

Mr. MULLEN. I think it is very important. As you know, Internal Revenue was very effective many years ago in dealing with organized crime. I think one of the keys to getting to the drug problem and resolving it is getting to the money flow and getting to those at the very top who are profiting. Really, DEA can do some, the FBI can do some, but I think Internal Revenue can do much more. They can be very effective in that area. If we can seize the traffickers' assets, take the profit, and make it prohibitively expensive for them, then we are going to be effective. I think it is extremely important.

Senator DENTON. Please continue.

Mr. MULLEN. On the Freedom of Information Act, of course, we are still looking for reform in that area. I do not know the status of the bills pending before the Senate. As you know, it has been a tremendous burden on law enforcement. Of the requests under the Freedom of Information Act and Privacy Act, 60 percent are coming to DEA from the criminal element. We are almost 1 year behind in responding to requests. We are just overwhelmed by the requests we are getting.

Senator DENTON. Of all the requests under the Freedom of Information Act are 60 percent coming from the criminal element to DEA?

Mr. MULLEN. Yes, that is correct. And many of those are in prison.

Senator DENTON. You have already discussed the Posse Comitatus Act.

Mr. MULLEN. I think procedures for forfeiture is the only one remaining. There are bills pending before the Congress, I believe, calling for presumptive forfeiture. That is where we will presume that the assets were derived from drug trafficking rather than having to prove it. I believe Mr. Harris is going to discuss that area during his appearance this morning.

Senator DENTON. Yes.

Have you any other new problems not mentioned last year to us that you would like to invite our attention to or give suggestions regarding their resolution?

Mr. MULLEN. No, I think we have covered all the areas. That list pretty well covers the areas of concern to DEA.

Senator DENTON. Could you tell us about the present system of rewards used by DEA. From what fund does the money to pay rewards come? Is there a limit to the amount that can be paid as a reward?

Mr. MULLEN. Yes. We limit it to paying $50,000 as a reward. These moneys come from our appropriated funds, our so-called fund to pay for evidence or pay for information. Last year, I believe we spent $5.2 million for evidence and a like amount, slightly more, for information. It is not enough when you are dealing with a multibillion-dollar-a-year problem. We could use more.

Senator DENTON. Did you say $5.2 for the purchase of evidence?

Mr. MULLEN. Million.

Senator DENTON. For the purpose of purchasing evidence?

Mr. MULLEN. Yes, drugs. In other words, we go out and deal with traffickers, and they have drugs for sale. We buy them and take them off the street.

Senator DENTON. We may not be looking at it in its most complete context. Under the multiyear authority it looks as if you are not to exceed 1.7 million for the purchase of evidence and payments for information.

Mr. MULLEN. It is $11 million.

Senator DENTON. It must be a misprint in this book.

Mr. MULLEN. That figure you cite, I am told, is for the task force operations. That is separate and apart from DEA operations.

Senator DENTON. Right.

Mr. MULLEN. With regard to moiety, Mr. Chairman, whereby we could use funds that we obtain in our investigations through forfeiture and seizure, that is still under discussion with OMB and with the Department of Justice in order to raise the amount which we may pay for awards and the possibility of using these funds.

Senator DENTON. I understand that amount is now limited to $50,000.

Mr. MULLEN. That is correct.

Senator DENTON. Would you discuss for the record the realism of that limit, considering the huge amounts of money that are thrown around in drug trafficking?

Mr. MULLEN. It is not realistic, being very frank. We are talking in the millions of dollars. You have million-dollar bails which are a cost of doing business. We recently had one person who offered to furnish information. He was talking in the area of a $5 million reward for his efforts. So, it is big money.

When you do go in at a low level and offer $20,000 or $30,000, it kind of hints that it is law enforcement. What we are looking for, Mr. Chairman, is some flexibility. We do not intend to run about handing out money in every case, but there may be occasions where we would like to go higher. I think in most cases the sums would be relatively small, but there are occasions when much more is needed.

Senator DENTON. How would you dicker? Would you try to get more for rewards or more for moiety? I would think it would be easier to get it out of moiety.

Mr. MULLEN. Moiety would be the best approach, that is right, rather than get the appropriated funds.

Senator DENTON. How are your discussions coming on that? Is there any way we can help you with senatorial input?

Mr. MULLEN. There is a difference of opinion with regard to what law enforcement needs and what the budget process allows.

Senator DENTON. But in terms of moiety that does not appear to be a direct problem.

Mr. MULLEN. Well, the only problem with moiety is that there are those who say: "well, you are going outside of the budget process when you are doing that."

Senator DENTON. Where do you run into that, in the Budget Committee or the Appropriations Committee or where?

Mr. MULLEN. Oh, no, normally at the Department and OMB, and they have legitimate concerns which we are discussing with them. Hopefully, we can work out a program that will be acceptable.

Senator DENTON. We know that you have to work with Customs and Coast Guard in drug interdiction and that the FBI is becoming more involved. Recent Federal district court decisions have raised the issue of whether FBI agents and Customs patrol officers have the statutory authority to investigate and prosecute domestic drug violations. This is an issue due to the substantial transfer of drug enforcement authority to the DEA resulting from Reorganization Plan No. 2 of 1973.

What is your position regarding the increasing involvement of the FBI, Customs, and Coast Guard in drug enforcement?

Mr. MULLEN. Coast Guard has its mission, and that has not changed. They may be increasing their emphasis and putting more resources into this area. So, my opinion in that area is that there is no problem whatsoever with the relationship with Coast Guard and their involvement.

With regard to U.S. Customs, that decision which occurred indicating they did not have the authority to pursue an investigation—I believe it involved a search warrant—is being appealed by the Department of Justice. I believe they think they will get a favorable opinion.

With regard to Customs jurisdiction in the drug enforcement area, this issue was decided back in 1973 with the reorganization. I believe it has been effective, whereby DEA does handle the investigative activity and the U.S. Customs the interdiction activity, referring the cases to DEA when drugs are discovered. It has worked well. Prior to that time, I am told from a historical perspective, there were many, many problems and many confrontations; it did not work well. It has worked well since 1973.

Customs has a tremendous contribution to make. I cite the south Florida initiative. In this case, where we determined we had a serious regional problem, Customs has been given authority in south Florida by the Attorney General. They are working with and under the auspices of DEA. DEA has the overall command of the operation with a Customs deputy. We have resolved the working relationships very well. It is working effectively.

With regard to FBI, as you know, they have been given concurrent jurisdiction in drug enforcement matters. We have worked out written guidelines between the two agencies, whereby DEA remains the principal drug enforcement agency, and the FBI will supplement their activities. When the FBI is conducting a drug investigation, DEA must be notified. DEA is aware of all drug investigations being conducted, will continue to coordinate the overall national effort, and the FBI will supplement. That one seems to be working well, also.

Senator DENTON. Next, let's turn to the question of physicians and licensing to prescribe controlled substances. Is that licensing a Federal or State function?

Mr. HAISLIP. Mr. Chairman, if I may respond to that. Physicians are licensed to prescribe drugs by the State in which they reside, but they cannot prescribe controlled substances unless they have a registration from the Drug Enforcement Administration.

Senator DENTON. Unless they have a what?

Mr. HAISLIP. A registration. That is the term of art here. They must have a registration from our Agency.

Senator DENTON. Are there any limits on the quantity of controlled drugs that a given physician can prescribe? Or is that monitored in any way to indicate something suspicious?

Mr. HAISLIP. Yes, it is, but there are problems with this system. We have a very limited authority to revoke that registration. It is so limited that we find that in most cases it is of little utility. What we do in these situations, which are numerous and important, although the percentage is small compared to the legitimate medical profession, is we will undertake criminal investigations against the largest illicit distributors, physicians who are engaging in large scale diversion. We undertake criminal investigations of those people with the object of arresting them and bringing them to justice.

We are having some increasing success here, but it is a very labor intensive type of an investigation; and we are forced to do this because we do not have the authority to deal with this from a regulatory point of view. Our authority there is extremely limited. What authority exists, exists on the part of the various States. Unfortunately, in so many cases, they have neither the resources and

oftentimes not the expertise to deal with the problem. So, it is a problem.

Senator DENTON. I am going to ask a rather categorical question. The last time I was briefed at the DEA, I got the feeling that you were tackling a problem that was growing faster than the means to control it. Today, although we have just discussed quaaludes principally, I am getting the feeling that it is not the case that things are getting a whole lot better.

Mr. HAISLIP. I would like to give you the most truthful answer that I can. That would be that it is a mixed picture. There are areas in which we are having a great deal of impact, and there are areas in which our effort is not up to the task. It is a mixed picture, in truth.

Senator DENTON. It would add greatly to our perspective were you to expand on that a little.

Mr. HAISLIP. Yes, sir, I will try to do so. DEA is in a position, because of its legal power and because of its expertise, to undertake some strategic actions to control the diversion of drugs of this kind. The methaqualone example that I mentioned is one that I think we are indeed really going to succeed with. But there are other areas in which we have not the ability to be as effective because of limitations of various kinds including lack of sufficient legal authority. You should remember here, Mr. Chairman, we are talking about something in excess of 550,000 individuals that register with DEA. Every physician, every pharmacy, and, of course, all of the companies that deal in this area must register. That is a tremendous number.

The vast bulk of those individuals and businesses are honest, law-abiding enterprises that cooperate quite fully with us. But there is a percentage which are either negligent or criminally inclined. Though the percentage is small, they handle enormous quantities of drugs and therefore cause enormous problems in their community.

We probably need to assess our legal tools and our full ability to deal with some of these problems and to assist the States. That kind of examination is an ongoing activity in DEA. I can assure you that we have not been in the past and will not be hesitant in the future to try to propose creative and economical solutions to the problem.

We have examined the question recently. We are still examining it. We are talking about proposals with the Department and others.

Senator DENTON. It would appear, because of the scope of the problem and your limitations, that you have to attack it in the areas which are most susceptible to the kind of remedy that you are using. From your answer, it would appear that, perhaps the IRS approach to the problem might be effective. Were the incomes of these people checked and ascertained to be too high; considering what they are doing, this could be a good lead.

These people do not have to be criminally inclined by nature; they just have to be a little greedy, and then they get criminally inclined, I suppose. There is a great deal of money involved here.

Is that the most promising way of going at it?

Mr. HAISLIP. No, Mr. Chairman. I think a more direct approach is through the exercise of the kind of power that DEA and the

States possesses. For example, we have a good deal of broad authority in dealing with manufacturers and distributors of drugs, but our authority is much narrower when it comes to physicians. For example, we are only able to revoke a registration if a physician has been convicted of a felony, has falsified his application, or has had his license revoked by a State. So, that individual can be causing enormous problems in the community, which we could prove by a preponderance of the evidence, and yet we are unable to move against him.

So, there are some limitations in authority which I think are difficult.

Another thing I would point out is that this is a problem we should share with each of the 50 States. They have a responsibility here which I think they could shoulder better, and we are trying to help them with this. We have had some success here, too. It cannot be attacked without their assistance, but they have deficiencies in their ability to meet this problem.

I do not want to mislead you into thinking that this has been adequately dealt with; however, I believe we can devise economical means of doing so.

A final thing I should mention is that we do work very closely with the American Medical Association and others. I believe that their concern is very legitimate. We have an excellent relationship with them. There is much that they can do. I think that there is a willingness on the part of the professional associations to help us. So, we are also turning in that direction.

Senator DENTON. We are now considering the reform of the criminal code. It may be a propitious opportunity, as we look at amendments to that code over the next week or so, to bring those up. If you have any particular remedy that is in amendment form or could be put in amendment form rather easily, we are very open and eager to help you in that field.

Mr. HAISLIP. We appreciate that, Mr. Chairman. I think that all of us at DEA are aware of that.

Senator DENTON. You have just begun to talk about Federal drug strategy. You mentioned the physicians and the difficulty with your legislative limitations. We have gone over the constraints which you mentioned last year and discussed, to some extent, those that still exist this year. I would like to know what your strategy is. I realize that there is a new situation obtaining. You have a new Acting Administrator. Have you developed your strategy yet? What are the drugs of abuse which are giving you the most difficulty? I would like that kind of general overview at this point.

Mr. MULLEN. The national strategy, Mr. Chairman, is currently being determined. We have draft reports that are being circulated. These will come from the White House and from the Cabinet-level Committee on Drug-Supply Reduction. There is, in fact, a national cohesive strategy, and it will be a written document in the very near future. Dr. Turner at the White House is playing a key role in that area.

With regard to DEA, we have for many years considered heroin to be the No. 1 priority because it was the killer drug. The last figures available, I believe from 1980, show 800 overdose deaths and about 12,900 injuries. We have continued to stress heroin as a priority, but more so in areas where it is the main problem. These are the urban areas, the Northeast corridor and cities such as Chicago. The heroin problem impacts heavily upon our minority population.

But in other areas of the country, Miami being the prime example, cocaine and marihuana are the problems. There is also the attendant violence as traffickers compete for drug territories and steal each other's drugs. I have heard that at least one-third of the murders which occur in Miami and in Dade County can be directly related to drug activity. So, in this area we have marihuana and cocaine as priorities.

Senator DENTON. When you say one-third of the murders are attributed to drug activity, you mean principally in that area of fighting over territories?

Mr. MULLEN. That is correct.

Senator DENTON. And protection?

Mr. MULLEN. That is correct. The figures that come to mind, I do not have the complete year for 1981, but I understand in the first 11 months there were 321 murders, 107 of which were drug related. That is a very clear picture, I think, of the violence attendant to drug trafficking activity.

The fourth area of concern are the dangerous drugs, the uppers, downers, hallucinogenics, the area where Mr. Haislip is concerned with the diversion. The overdose deaths from the dangerous drugs are twice as high as from heroin and the injuries are seven times as high. So, this is becoming a priority area.

What we are doing at DEA——

Senator DENTON. Let me ask you something before I forget. You call heroin the No. 1 killer, and you give the numbers——

Mr. MULLEN. I said was.

Senator DENTON. All right, go ahead. I was thinking that the drug itself can kill in overdose. On the other hand, accidents caused by quaaludes in abuse might be killing a heck of a lot more.

Mr. MULLEN. Very true. That is why we are taking a more diversified approach. We do concentrate on heroin, especially with regard to the organized crime involvement in those areas where it is a problem.

All 94 judicial districts have set up law enforcement coordinating committees, chaired by the U.S. attorney. They are determining what their problems are locally, and what is having the most serious adverse impact. We are trying at DEA headquarters to give a national cohesiveness to this. We have gone from a regional structure at DEA headquarters to a drug-specific approach. We have set up, for example, a section on heroin, one on dangerous drugs, one on marihuana, one on cocaine, and then a fifth section for investigative support, which will support the other five with wiretap help, aircraft support, and assistance such as that.

We will address the problems relative to their seriousness as they impact upon the country. You could not really say there is a No. 1 priority because all of them are having a serious adverse effect. That is our approach at present.

Senator DENTON. I have one final question pertaining to this topic. Do you think that we are overtaking the problem with remedies? Or is the problem still getting out in front of the remedies?

Mr. MULLEN. My view—and I have been at DEA now for almost 10 months—is that I see the problem stabilizing with the initiatives underway. And I am not referring just to enforcement. It seems that everybody is aroused. In the public, you see groups such as the National Federation of Parents for Drug-Free Youth. It has 3,000 chapters and is growing stronger every day with the simple message: more discipline and no more drugs. It is going to take that. We have to cut off the demand as well as to cut off the supply. I see the Congress aroused. I see the administration aroused with the Vice President jumping in and becoming personally involved by heading up a task force. This is having an effect.

The foreign governments are seeing, when Congressmen visit and they talk about the drug problem, that we are serious about it. We mean business. I do see it turning around.

I believe we can stabilize it and, in the not-too-distant future, minimize it. I do not think we will ever eliminate it, Mr. Chairman. As long as you have drugs and people to abuse them, we will have some sort of a problem. But we can make it less of a problem than it is today.

Senator DENTON. Thank you. Could you compare and contrast the roles of the DEA and the CIA in gathering drug-related foreign intelligence?

Mr. MULLEN. Yes. The CIA has a much broader role than DEA does. DEA normally confines its intelligence gathering activities to drug trafficking. When we do get information in other areas, as I indicated earlier in the testimony, we are working out guidelines to make sure that information is disseminated. CIA is assisting in the drug intelligence area by means of identifying what impact drugs are having on foreign governments, the growing areas, and the primary source countries. They assist in those areas. DEA concentrates on identifying those individuals involved in the trafficking and identifying the money flow, who is profiting. We try to bring all of this intelligence information together. We have a regular exchange of information with CIA. On scene, overseas, they are in many areas reviewing the raw reports that DEA obtains to have the intelligence which may be of value to them.

Senator DENTON. You sound satisfied with the adequacy of the mechanisms for cross-dissemination.

Mr. MULLEN. I am satisfied with it. Judge Webster and I visited with the Director of the CIA when I first went to DEA. We have worked out what I believe is an acceptable program for exchanging information. It has gotten much better.

Senator DENTON. What is the role of the El Paso Intelligence Center in collecting and disseminating such information?

Mr. MULLEN. El Paso Intelligence Center is perhaps a key to the drug enforcement effort. That is where the intelligence goes in regarding identity of the traffickers, the vehicles they are using, the ships they are using, the aircraft they are using, and is also going to be the focal point for the intelligence information which we will receive from the military. As you know, many agencies are involved: the Immigration and Naturalization Service, U.S. Customs, Coast Guard, and the FBI has a liaison relationship now. We are looking toward full involvement of the FBI. We now have 47 States

on line, and they have access to the drug intelligence which we have there.

Senator DENTON. Given the apparent disparity between the DEA's responsibility for overall drug case investigation and prosecution, given the Customs and Coast Guard shared responsibility for drug interdiction, what are the policies by which DEA coordinates these efforts and supports them through the provisions of foreign intelligence only available through DEA/EPIC?

Mr. MULLEN. The question is what procedures do we have in place to disseminate information of an intelligence which would come to DEA only from foreign sources? We do have a weekly, monthly, quarterly, and annual intelligence report which we do make available to these agencies. The intelligence information received from foreign sources is fed to EPIC, where it is accessed by these other Agencies.

Senator DENTON. On February 1 of this year, the FBI's authorization and exemptions from certain laws and regulations bearing on undercover operations expired. Many of their undercover operations have been adversely affected, either by curtailment or shutdown. Does your organization have similar problems in this regard? Or does it have general operating authority and exemption in undercover operations?

Mr. MULLEN. DEA does not have the authority, the exemptions, to use appropriated funds to lease property or deposit funds in a bank account, or to use income to offset expenses. The FBI obtains that authority on an annual basis in connection with its appropriation. I would like to obtain similar authority for DEA. It would be very helpful to us.

Senator DENTON. We are in the right committee to do that, so give it to us.

Mr. MULLEN. We will be in touch with the staff on that.

Senator DENTON. What proportion of those cases presented to a U.S. attorney in which prosecution is authorized result in a conviction?

Mr. MULLEN. I am told the figure exceeds 95 percent. I do not have an exact figure. I will submit that for the record, if I may.

Senator DENTON. If you are referring to cases which go to trial, how many cases result in dismissal because of improper searches, inadequate probable cause, defective warrant, and so forth?

Mr. MULLEN. It is very few. I do not have the number. If I can obtain or recapture that information, I would like to submit it for the record.

Senator DENTON. Thank you.

Mr. MULLEN. It is not a problem. We do review each of those at headquarters. Our legal counsel takes a look at those types of problems to make sure we do not repeat mistakes. I see very few of them come in.

Senator DENTON. How helpful has information in DEA's automation of reports and consolidated orders system [ARCOS] been to the States? To what extent have you provided States with analytical reports on the actual distribution patterns of highly abused schedule II drugs?

Mr. HAISLIP. If I may respond to that, Mr. Chairman. This question relates to a computerized system we maintain which we call

ARCOS. I would like for you to understand what that consists of, and then I will answer your question directly.

We receive on a quarterly basis from all of the drug distributors their records of what they have distributed in terms of at least the major categories of drugs, the schedule II drugs. We have to take this information, which we receive in different ways because businesses do have different practices, and computerize it and program it and then obtain a product from it. We do obtain products from it which I think are very helpful to us and to the States, where the States have resources and means to deal with it.

I have some examples that I can leave with the subcommittee that show the fashion in which this data can be used. Basically, through this we are able to spot large anomalies in distribution that show where problems may be. We give this to States either through our regional offices or directly. But, again, this is a program that at this point still has more promise than practical application. There are a number of problems with it which are currently our concern. One is the timeliness of the data. But here is an area in which we are now making some significant improvement.

I do not want to mislead you that the maximum use is being made of this information, but we are increasing the efficiency with which it is being employed.

Senator DENTON. Thank you. We have a number of other questions which we will submit to you in writing and request that within 2 weeks we get the answers. We will keep the record open for any other information that you choose to submit at your own initiative.

Thank you, Mr. Mullen, Mr. Monastero, and Mr. Haislip, for your testimony this morning. I hope you will recognize our willingness and eagerness to help you with your very difficult and vital task.

Mr. MULLEN. I do, Mr. Chairman. I do want to say my outlook is one of optimism. I do believe we are making progress. I do believe we are going to win this one.

I mean this sincerely. I want to thank in general the Congress and you personally for the help. It has meant a lot to us. I have yet to come up here before a committee without being asked: what can we do for you; what do you need. And that makes the job a lot easier. We thank you for it.

Senator DENTON. You are welcome.

[The prepared statement of Mr. Mullen follows:]

PREPARED STATEMENT OF FRANCIS M. MULLEN, JR.

Mr. Chairman and Members of the Subcommittee: I am pleased to have this opportunity to appear before this Subcommittee for the first time to discuss with you the Drug Enforcement Administration's (DEA) mission, our objectives and our plans for the upcoming year.

Since the DEA last came before the Congress for consideration of its program in conjunction with the Department of Justice's authorization request, there have been several significant changes with regard to our organization. As you are no doubt aware, on January 21, 1982, Attorney General William French Smith announced major revisions in the nation's Federal drug enforcement effort. The purpose of these changes is to promote more effective drug enforcement through coordinated efforts involving DEA, the FBI, the United States Attorneys and agencies from other Departments, where appropriate.

The Attorney General has created a committee that will oversee the development of drug policy and assure that all the Department's resources, including its prosecutorial and correctional efforts, are effectively engaged in the effort against drug trafficking.

Additionally, the Attorney General adopted the recommendations of a committee of Department of Justice officials he appointed last summer to study how the DEA's and FBI's efforts could be better coordinated. Responsibility for the general supervision of drug enforcement efforts has been delegated to the Director of the FBI, so that as DEA's Administrator, I now report to the Attorney General through Director Webster. In furtherance of this relationship, the

Attorney General also has moved to involve the Federal Bureau of Investigation in the drug enforcement effort. This will, for the first time, bring the resources of the FBI to bear on the problems associated with drug trafficking.

Assigning the FBI jurisdiction in drug investigations will immediately increase the number of agents available for our mission. DEA will be able to make maximum use of the FBI's wide deployment. In quite a few areas, DEA has small representational offices that will certainly benefit from the manpower and expertise of the FBI. Already, the number of DEA/FBI cooperative cases has increased significantly. There were 15 ongoing joint cases last July; there are now over 150.

No less significant will be the enhancement of investigations into the many other violations that go hand in glove with drug trafficking. Uniting the efforts of DEA and the FBI will afford the government the opportunity to attack the other crimes uncovered in drug investigations, such as organized criminal activities, money laundering, bank fraud and public corruption.

Internally, DEA is moving toward streamlining its Headquarters' programs, adjusting to a drug program management structure, while at the same time we are dismantling the geographic regional structure and advancing to a direct reporting mode. These two actions will make DEA a more effective, less bureaucratic agency and will also provide managers with more resources for field investigations of drug violations.

In short, the greater involvement of the FBI in the investigation of Federal drug offenses, the recent initiative by

the Department of Justice to place the highest priority on the coordination of drug investigative efforts involving the DEA, the FBI, the U.S. Attorneys, and other Federal agencies, and our internal reorganization should result in a more efficient use of drug enforcement resources.

My interests and objectives are to keep the United States Government at the forefront of the drug war. The public has entrusted us with their faith to address this insidious problem which is a major cause of crimes against the public. Violent crime associated with drug trafficking is unacceptable; the drug-money induced erosion of our financial and tax structure is unacceptable; the injurious health repercussions our youth are suffering are unacceptable. Clearly, the drug problem is one which requires Federal leadership not only to manage the international and interstate aspects; but also to influence and motivate state and local authorities to implement worthy drug control programs.

The strategy of the U.S. Government must be to make the trafficking of drugs considerably less lucrative in terms of increased and consistent punishment, and to assure the certain loss of accumulated profits and proceeds of this criminal enterprise. We must also approach the demand issues and make the use of drugs less appealing. Finally, we need to better educate the public about the health consequences of drug abuse.

Federal drug law enforcement can act aggressively in several areas:

<u>Internationally</u>

* to stop production at the source
* to assist in the interdiction of drugs and moneys before they penetrate U.S. borders.

Domestically

* to investigate and develop cases at the highest levels of violators
* to strike at organized crime
* to hold to a minimum the availability of controlled substances
* to seize for forfeiture the profits and proceeds of drug trafficking
* to strengthen the cooperative Federal, state and local drug enforcement apparatus to increase the likelihood of law enforcement activity at all levels of drug trafficking.

I think it needs to be said that the efforts of DEA have had a demonstrable impact in protecting the American public from the dangers of drug abuse. This success over an extended period of time is the result of following the U.S. national strategy of placing first priority on heroin suppression.

Heroin availability and subsequent abuse continue at relatively low levels compared with record high levels as recently as 1976. We accurately predicted increased supply and trafficking in Southwest Asian heroin, which has allowed time for adequate planning and shifting of resources to prevent the influx from seriously afflicting the U.S. population. We have had unprecedented international success in penetrating drug trafficking networks and disabling their conversion laboratories at overseas locations in Italy and the Middle East and thus preventing the converted heroin from reaching the U.S. population.

Attacking the illicit trafficking in dangerous drugs is also a priority objective. This facet of drug abuse, although perhaps the least publicized component of our total operations, is no less a vital element in our strategy. Sixty to seventy percent of all deaths and injuries from controlled substances are associated with legally-produced drugs. Our international

efforts directed toward control of bulk shipments of pharmaceutical material have had significant results. Domestically, our initiatives are targetted at controlling diversion of drugs from legitimate handlers, particularly practitioners. Overprescribing and misprescribing are problems of diversion that are recognized by health professionals as warranting attention. Mobilizing the resources of the business community in the area of diversion of legitimate drugs will be a major component of a Federal strategy.

Clandestine laboratories are another source of dangerous drugs. These laboratories are located both in the U.S. and in neighboring countries. The continued monitoring of precursor chemical shipments and increased emphasis on international shipments will aid in impacting on this problem.

Cocaine and cannabis trafficking seem to be relentless. Our multi-faceted enforcement operations, such as the recently concluded Operation Tiburon III, remove vast amounts of these drugs from the marketplace. However, without meaning to detract in the least from the accomplishments of this enforcement campaign, we need to have effective controls on the illicit cultivation of these substances. Control at the source must be a pillar of the U.S. drug strategy foundation. All the coca leaves are cultivated on foreign soil; all but 7 percent of the cannabis is cultivated beyond our shores. A strong, viable international program is critical to the realization of a measurable impact on the supply of these drugs and the narco-dollars that grow and multiply as a result of the market for cocaine and marihuana. Eradication, crop substitution, income subsidies and enforcement actions need to be accelerated.

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DEA's lead agency role overseas of working actively with counterpart agencies has been highly effective and must be continued. This effort includes technical assistance in eradication, cooperative investigations and legislative proposals, the provision of training, and the exchange of intelligence. We are seeing the results of our investment in the international program. We called upon our counterparts in West Germany and Italy to act forcibly against the Southwest Asian heroin problem. They both responded swiftly and helped contain this heroin threat. We are prepared to work more diligently to achieve our program goals.

However, we will need the support of the Congress to help convince the leadership of drug-source nations that the United States is firmly and irrevocably supportive of drug control abroad and at home.

To effectively persuade foreign governments to act on drug control, the Federal Government must combine a convincing domestic program with a consistent diplomatic program. Strong coordination must be established to ensure that all aspects of U.S. policy support our drug control interests overseas. Advancement of a firm domestic marihuana control program is a needed demonstration of this commitment. We are actively involved with marihuana source states to develop and implement domestic eradication programs.

Domestically, our commitment to working with the Federal law enforcement community has never been stronger. In these austere times, we have all recognized the need for further enhancement of cooperative endeavors. We are maintaining a strong emphasis on interagency activities with the Customs Service, the Coast Guard and the rest of the Federal enforce-

ment community. I believe we will be seeing an acceleration in the number of interagency, high-level investigations.

The El Paso Intelligence Center (EPIC) has a vital place at the heart of our operations. EPIC is an interagency operation supported by DEA, the FBI, Coast Guard, Immigration and Naturalization Service, U.S. Customs Service, Bureau of Alcohol, Tobacco, and Firearms, Federal Aviation Administration, U.S. Marshals Service and the Internal Revenue Service. EPIC also has working agreements with 46 state law enforcement agencies and the Virgin Islands. As the number of participating agencies has increased, the reliability of EPIC's products and services has been recognized by consumers and, as a result, the increase in demand for EPIC's services has been significant. With drug enforcement emphasis on international operations, conspiracy cases and financial investigations, EPIC's workload has become more complex. As a result of the enactment of the Department of Defense Authorization Act, 1982 (P.L. 97-86) on December 1, 1981, the Federal effort can look forward to increased military assistance in drug smuggling incidents and cases, which should provide for further enhancement and utilization of EPIC's capabilities.

Thus far, I have discussed our major program directions and, in so doing, I have left unstated the critical components of DEA's activities which support our enforcement program and provide the DEA agents with the needed tools of the trade. Support operations activity encompasses: our strategic and tactical intelligence program; laboratory analysis of evidence in support of investigations prosecution of drug traffickers and support of state and local operations; training programs for all levels of DEA operational person-

nel, state and local personnel, and foreign officials; and maintenance of an effective technical equipment program, including aircraft operations to support increasingly complex high-level investigations. The individuals who staff these vital functions are extraordinarily committed to supporting our agents and the DEA mission.

For years, DEA has done fine work at home and abroad. In my nine months as Acting Administrator, I have been pleased at the obvious dedication and professionalism of the staff and the continued effectiveness of the enforcement effort. I am confident that an infusion of FBI resources to supplement those of DEA will aid immeasurably in our national drug enforcement effort. Through a unified effort involving DEA, the FBI, prosecutors and others, we will have the resources and the expertise to attack the upper echelons and the financial structures of the nation's large drug trafficking organizations.

The new unified DEA/FBI effort, however, is only one part of the Administration's concerted program to impact on the flow of drugs into the United States and on those who control and profit from drug trafficking. With statutory restrictions clarified, the Administration is now implementing a program to involve the military in lending equipment, such as radar, to civilian law enforcement and passing on information related to drug smuggling. The Treasury Department is establishing a financial intelligence center in Florida designed to follow and seize the millions of dollars in profits which are transitting banking institutions in Florida.

In addition, the Administration is marshalling into Florida investigative resources from around the country, including

FBI, DEA, and Customs officers, to exert more enforcement pressure on the trafficking organizations. The Vice President is directing a special task force to coordinate the Administration's program.

The control of the drug problem requires action by every level -- individuals, organizations, local and state government, and the Judicial, Legislative and Executive Branches. Legislative initiatives in the areas of criminal forfeiture, bail, and sentencing are essential to these integrated enforcement efforts. We look forward to your support of our agenda.

This concludes my statement, Mr. Chairman. I shall be pleased to answer any questions you or other members of the Subcommittee may have.

Senator DENTON. Next we have Mr. Jeffrey Harris, Deputy Associate Attorney General, to testify.

I will ask you to be sworn in now, Mr. Harris.

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

Mr. HARRIS. Yes, I do.

Senator DENTON. Thank you for taking the time to come over here. You are accompanied by whom?

Mr. HARRIS. I am accompanied by Mary Ellen Warlow of the Department of Justice.

Senator DENTON. Welcome, Ms. Warlow. Do you have an opening statement, Mr. Harris?

Mr. HARRIS. Yes, I do, Mr. Chairman.

Senator DENTON. Please go ahead.

Mr. HARRIS. Since my prepared statement is rather lengthy, if it is acceptable to the subcommittee, I will submit it for the record and simply highlight some of the major points made in the statement.

Senator DENTON. We would appreciate that. Your written statement will be included in its entirety in the record, without objection.

TESTIMONY OF JEFFREY HARRIS, DEPUTY ASSOCIATE ATTORNEY GENERAL, ACCOMPANIED BY MARY ELLEN WARLOW, ATTORNEY, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. HARRIS. Mr. Chairman, I would like to thank you for the opportunity to describe the major elements of S. 2320,[1] legislation which is designed to enhance the effective use of forfeiture as a law enforcement tool in combating two of the most serious crimes facing the country: drug trafficking, about which you just had testimony from Mr. Mullen, and racketeering.

In the fall of last year, the Attorney General identified forfeiture as one of the several areas where deficiencies in the present criminal law were in urgent need of correction. Thus, at his direction the Department of Justice prepared S. 2320, which was reviewed and subsequently introduced by Chairman Thurmond. I believe there is a growing consensus concerning the need for legislation to improve the current forfeiture statutes. We cannot hope to adequately deter and punish the crimes of drug trafficking and racketeering unless we have the ability to separate drug traffickers and racketeers from their ill-gotten profits and economic power bases from which they operate.

Forfeiture and in particular the sanction of criminal forfeiture holds great potential as a means of achieving this goal, but to realize its potential current forfeiture laws need to be amended. Presently, congressional commitment to such change has been evidenced by the introduction in both the Senate and the House of several bills amending various aspects of our forfeiture laws.

I must acknowledge in particular the contribution made by my law school classmate, Senator Biden, whose leadership has been instrumental in generating the present interest and potential utility of forfeiture as a weapon in the fight against narcotics trafficking and racketeering and the need for changes in our forfeiture laws.

There are two types of forfeiture statutes applicable in narcotics and racketeering cases. For the most part, forfeiture of drug-related assets is now accomplished through civil forfeiture provisions of title 21, United States Code, section 881. The utility of title 21 civil forfeiture provisions was greatly enhanced in 1978 when amended by the Congress to provide for forfeiture of the proceeds of drug transactions. This provision would be further improved if amended as done in S. 2320 to permit the forfeiture of real property used in major violations of the narcotics laws.

I note that Senator Humphrey has introduced a bill, S. 2196, that would also permit civil forfeiture of real property.

The second type of forfeiture is criminal forfeiture, a sanction imposed upon conviction. Presently, this sanction is available in only two offenses, both enacted in 1970. These are the RICO statute, the racketeering statute, and title 21's continuing criminal enterprise statute, which punishes the leaders of drug trafficking organizations. We are convinced that criminal forfeiture can be an extremely effective tool in combatting racketeering and drug trafficking. Indeed, we have concluded that this section should have broad application to drug trafficking offenses, an application that

[1] The text of S. 2320 can be found in the appendix, p. 57.

has not now been possible because only a very small number of the thousands of major drug offenses prosecuted each year may be brought under the RICO or Continuing Criminal Enterprise statute. Thus, the forfeiture of most drug-related assets, including the enormous profits produced through drug trafficking, must be accomplished through civil forfeiture, an often cumbersome and inefficient procedure that requires the filing of a separate civil suit in each district where the forfeitable property may be located.

In our view, a far more effective way of achieving forfeiture of substantial assets of drug traffickers would be to give prosecutors the option of consolidating prosecution of the criminal case and forfeiture of a defendant's drug-related assets by providing a criminal forfeiture statute that would be applicable in all major narcotics prosecutions. The creation of such a generally applicable criminal forfeiture statute for all major drug crimes is a primary feature of S. 2320.

Basically, S. 2320 consists of three parts. The first sets out an amended version of the RICO criminal forfeiture statute. The second contains amendments to the Comprehensive Drug Abuse, Prevention, and Control Act, and its core provision is the new generally applicable criminal forfeiture statute for drug offenses that I have just described. The third establishes a 2-year trial program for using a part of the proceeds of forfeitures of drug-related assets for the payment of rewards to persons who have provided assistance leading to such forfeitures.

The major change in the RICO forfeiture provisions that are incorporated in S. 2320 address two problem areas. The first, an issue also addressed in Senator Biden's bill, S. 1126, is our present inability to obtain the forfeiture of proceeds of racketeering because of court decisions that have held that such proceeds do not constitute a forfeitable interest under the RICO statute since they are not interests in the enterprise. These decisions have seriously inhibited realization of the intended purpose of the RICO criminal forfeiture provision, which was to separate racketeers from their sources of economic power.

To address this problem, S. 2320 amends the RICO statute to provide specifically for criminal forfeiture of the proceeds of racketeering activity.

The second significant deficiency of the current RICO criminal forfeiture provisions—and this is true of the analogous provisions of the continuing criminal enterprise statute as well—is that they fail to provide adequate mechanisms for dealing with the problem of defendants who defeat the forfeiture provisions by transferring, removing, and concealing their forfeitable property so that it no longer will be able to be reached by the Government at the time of conviction.

Amendments to S. 2320 that are designed to address this problem include the following: First, a provision codifying the recognized principle that the U.S. interest in property relates back to the time of the actions which give rise to the sanction of forfeiture. Thus, subsequent transfers of property may be considered void in the context of a criminal forfeiture action.

Second, the provision that would expand current authority of the courts so as to permit in certain circumstances the entry of protec-

tive orders with respect to forfeitable property during the period in which the filing of formal charges against the defendant is still pending. The protective order authority of the courts may now be invoked only after the time that the defendant has been formally charged. However, many defendants become aware of the Government's development of a case against them at an early stage and are able to move or conceal their assets and thus defeat the possibility of forfeiture before the Government can file formal charges to obtain an appropriate restraining order.

Third, S. 2320 includes a provision that would permit the court to order a defendant to forfeit substitute assets when the particular property subject to forfeiture is no longer available at the time of conviction because it has been transferred, concealed, or placed beyond the jurisdiction of the court or commingled with other property. A similar provision is included in Senator Biden's bill.

We view these three measures as essential if a criminal forfeiture statute is to be effective. Thus, they have been incorporated in the new criminal forfeiture statute for all major drug offenses that are set out in the second part of S. 2320. This new statute would permit the criminal forfeiture of the proceeds of drug transactions and of other property the defendant has used in the commission of the offense.

In order to facilitate the criminal forfeiture of huge profits generated by drug trafficking, our proposal contains a permissive presumption whereby assets of a drug defendant could be considered property subject to criminal forfeiture if it were established the defendant acquired the asset at or soon after the time he committed the offense and that he had no legitimate source of income to explain his acquisition of the property.

These then are the major features of S. 2320. Through changes such as these and other improvements set out in S. 2320, our forfeiture laws can become more effective means of depriving racketeers and drug traffickers of the proceeds and profits of crime and of the economic power through which they continue to victimize society. I believe the crucial elements for achieving this goal are now present: A consensus that forfeiture laws must be more effective and a commitment to accomplish this.

Mr. Chairman, that concludes my remarks. I would be pleased to answer any questions that you have.

Senator DENTON. Thank you very much, Mr. Harris. I want to recognize Senator Biden's expertise in this regard, too, as well as Senator Thurmond's in coming up with S. 2320.

Under present law, as I understand it, the Government can use the Racketeering Influenced and Corrupt Organizations Act [RICO] to gain forfeiture of enterprises or their interests generated by illegal racketeering activity, but the Government has some legal difficulty in reaching the proceeds. How does this bill help in that regard?

Mr. HARRIS. Mr. Chairman, let me first give you an example. We had a case in the fifth circuit, the *Martino* case, in which organized crime activity was involved in arson for profit. The court ruled that the Government could not reach the insurance proceeds which were generated by that arson since that was a proceed of the arson

for profit and not part of the enterprise. That simply is a ridiculous result and never intended by the Congress.

The present bill makes it clear that the Government has a right to reach the proceeds of racketeering activity as well as the capital from which these activities are generated.

Senator DENTON. We read in the newspapers about drug dealers with million-dollar homes, expensive cars, and yachts. I cannot help but be reminded of that Doonesbury guy who is barely breaking even on his liquor bill.

Although the Government can, I believe, gain forfeiture of these items, what other kinds of property, personal and real, will be subject to forfeiture under the provisions of this proposed bill?

Mr. HARRIS. The main kind of property that we now have difficulty reaching is real property. Under the bill, in addition to personal property such as cars and boats, any property which is used in a narcotics transaction will be reachable. So, for example, the land on which marihuana is grown would be forfeitable to the Government. If a home is used as a place in which narcotics are packaged, that home could be forfeited to the Government.

Basically, the primary addition would be to make it clear that real property is forfeitable as well as personal.

Senator DENTON. Suppose in the case of the Mafia, they buy a legitimate business or a big building, and only part of it is drug related. Can you snatch the whole thing away from them if it is fairly clear that the profit which obtained that building is from drug traffic?

Mr. HARRIS. You could, but innocent parties would have a right to have their portion severed out and given to them. Obviously, if it was an unseverable piece of property, the law would deal with it like it does, for example, in domestic relations cases. The house would be sold, and the portion would be returned to the innocent party that represented their interest; and the rest would be forfeited to the Government.

Senator DENTON. The bill contains a provision that would allow the DEA to set aside 25 percent of the proceeds of forfeitures for paying informants. How much money could we be talking about here? How would it be accounted for by DEA?

Mr. HARRIS. First let me give you an example. We recently had a forfeiture ordered in a case, even under the present law. We estimate the value of the property forfeited to the Government in this one case to be $50 million. It was a chain of stores. The potential in this area is really unlimited. My guess is that, with adequate forfeiture laws, we could——.

Senator DENTON. We could balance the budget.

Mr. HARRIS. We could clearly avoid having Mr. Mullen have to come up here and ask the Congress for money. He would be running a profitmaking operation at DEA.

There clearly would be millions and hundreds of millions of dollars available. This would inure to the benefit of the Treasury generally. Obviously, this is not a revenue-producing measure. It would have that effect. But it just gives you an idea of the magnitude.

One figure I think will illustrate it. It is estimated that narcotics trafficking in this country grosses $80 billion a year. That is second

only to the Exxon Corp. in gross receipts. It would place it as the No. 2 business in the United States.

Senator DENTON. Well, thinking about that $80 billion and the forfeiture of assets, I do not know what happened to the Georgia chain gang concept. You could put those guys to work on the highways and so forth and really do a lot on the budget. Whatever happened to our commonsense approach to criminality? We are putting all of our money into rehabilitation. Sometimes these guys are not going to respond to that.

Mr. HARRIS. We started out, you know, with the concept that a trial was going to be a fair determination of whether the defendant did what he was accused of doing. We have now added onto it so many collateral purposes and examinations that our system of law has fallen upon times of disrespect by the populace and simply is not working. We have to restore some balance, in my view, and this is one way of doing it.

Senator DENTON. I would be interested in knowing your reaction to the present Criminal Code revision. I understand the Attorney General has sort of irrevocably attached his stamp of approval to it, I imagine, with some of the reservations which the chairman of the committee has with respect to other amendments. But there is criticism of it which would sort of further the sense of what you have just said in that we are not moving forward, we are moving backward.

Mr. HARRIS. I think that the Criminal Code does move forward for several reasons. One, there is a real need to have some logical organized presentation in our criminal laws, which are scattered, as you know, through many, many statutes. I have watched the Criminal Code now for 10 years as it has been debated in various sessions of the Congress. My view is that, while if I were writing it there would be some provisions I would write differently than I now see it, I think on the whole its merits clearly outweigh the objections that I might have personally to it.

It is interesting. At times it has been said to be too liberal. At times it has been said to be too conservative, whatever those terms mean in this context. I guess where I finally come out after 10 years of seeing both criticisms, I think it is somewhere in the middle and would represent a great improvement for us.

Senator DENTON. One of the things I have learned, aside from my original and retained awareness that I am not a lawyer and thus have difficulty with dealing with that question in a professional and informed manner, I have a ratio of 500 letters to 1 against it from my State. I am privileged to represent those people. So, their perception counts to some degree with respect to the way I have to handle myself on that bill. So, I must say that I guess the public relations on it has some work yet to be done.

We are told that attempts to achieve forfeiture in criminal proceedings can be time consuming and complicated. That is one reason so few forfeitures are pursued. What changes in the legislation are directed at that problem?

Mr. HARRIS. There are several. Let me just run through a few problems.

One is one that you have already touched on, the innocent third party who has a piece of the property. The bill deals with that in a

way which will make for fairer, easier determinations; namely, a petition to the Attorney General for remission. Obviously, the Department is not looking to hurt innocent third parties. Then, finally, there is access to the courts if that fails to satisfy the third party.

Also, very important, the current statute does not reach substitute property. So, if you use your yacht to bring in narcotics and then sell it the next day, the Government has no right to go after the cash that you have gotten from that sale. This bill would allow the Government to reach substitute assets.

Third, when criminals find out that the Government is on to them, through pieces of legislation such as the Freedom of Information Act, they often can find this out at an early stage of the investigation. As you know, we hope to make some changes in that law as well. These subjects often get rid of the property or conceal it. This would allow us to attach the property at an early stage so that they could not get rid of it before we were able to deal with them in court.

Last, the two things I already mentioned, it would allow us to go after proceeds and real property. That authority is not now clear, and the bill would make it clear.

Finally, the most important is that it would apply to all narcotics felony prosecutions. Presently, it applies only to the RICO statute and continuing criminal enterprise. Let me tell you what that encompasses. Those 2 statutes a year encompass about 100 prosecutions in this country. There are literally thousands of narcotics felony prosecutions that criminal forfeiture does not now reach. This bill would allow the Government to go after the proceeds and the property that are used in narcotics transactions in every felony case.

Senator DENTON. Are civil forfeiture procedures more practical, or potentially more successful, than the procedures under criminal forfeiture?

Mr. HARRIS. There are certain instances in which civil forfeiture has a place. That is why we recommend that that section of the law be retained with some revisions. But what it means if you are required to go by civil forfeiture, which we are now in the run-of-the-mill narcotics felony, you have to go through a criminal trial. Then you first have to file a separate civil lawsuit. It clogs the courts. It means two lawsuits in every criminal case in order to get forfeiture. Civil suits, as you know, generally fall to the bottom of the pile. It is years before the Government gets their claim adjudicated.

By using criminal forfeiture, the jury at the time they go in to deliberate on whether the defendant is guilty or innocent, would also be asked to deliberate on the question of whether the property is forfeitable to the Government. If they decide he is guilty of the crime, they would also then decide what property the Government should be given.

So, with the one trial, the one jury verdict, and the one appeal, we would accomplish forfeiture as well as the determination of the criminal issues. This makes economic sense in terms of court time. Also, it makes sense if you are a believer, as I am, that the swift and certain punishment is a deterrent. The defendant not only

finds out that he is losing his liberty, but he also finds out that he is losing his Cadillac, his yacht, his home, and the ill-gotten gains on the same day. I think that has more of an impact than waiting 4 or 5 years for a civil judgment to come down.

Senator DENTON. Thank you very much, Mr. Harris, and thank you, Ms. Warlow.

We may submit further questions to you in writing. If you have anything else you wish to submit to us, the record will be kept open for 2 weeks.

Thank you very much for your testimony and assistance this morning.

Mr. HARRIS. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Harris follows:]

PREPARED STATEMENT OF JEFFREY HARRIS

Mr. Chairman and Members of the Committee:

I would like to thank you for this opportunity to describe to the Committee the major features of S. 2320, the Administration's legislative proposal to enhance the use of forfeiture in racketeering and drug trafficking cases which was introduced last month by Chairman Thurmond.

In his testimony before this Committee's Subcommittee on Criminal Law in October of last year, the Attorney General discussed the contours of the Administration's legislative program for improving the ability of federal law enforcement to fight the growing problems of crime and corruption that are plaguing our country. Criminal forfeiture was among the subjects cited by Attorney General Smith as being in need of major statutory modifications and as to which the Department would undertake the development of a comprehensive legislative proposal to facilitate the use of forfeiture in narcotics and racketeering cases and thereby deprive criminals in their highly lucrative pursuits of their ill-gotten gains. I would like to present to the Subcommittee today the major elements of that proposal, S. 2320.

At the outset I shall first describe briefly why we view forfeiture as an important and necessary tool in the fight against drug trafficking and racketeering. I will then turn to a discussion of the primary aspects of S. 2320, which is designed to make forfeiture the powerful weapon that we believe it can and should be in government's efforts to combat such criminal activity.

The concept of the civil forfeiture of crime-related property through an in rem proceeding is one that has long been a part of federal law. Criminal forfeiture differs in that it is a sanction directly imposed upon a defendant following his conviction. Criminal forfeiture, although having its origins in ancient English common law, is relatively new to federal criminal law. Congress first acted to provide for criminal forfeiture in

1970, when it passed the Racketeer Influenced and Corrupt Organizations (RICO) statute (18 U.S.C. 1961 et seq.) and the Continuing Criminal Enterprise (CCE) statute (21 U.S.C. 848). These statutes address, respectively, the conduct, acquisition, and control of enterprises through patterns of racketeering activity, and the operation of groups involved in patterns of serious drug offenses. Congress's inclusion of the penalty of criminal forfeiture in both these statutes reflected an understanding of the importance of the economic aspects of these crimes and the valid conclusion that with respect to these types of offenses, the traditional penalties of fine and imprisonment were not sufficient to fulfill the goals of deterrence and punishment, but that effective tools to remove the wealth generated by, and used to maintain, racketeering and drug trafficking were also necessary. The Department shares this view that forfeiture can be a powerful tool in separating racketeers and drug traffickers from their sources of economic power.

In the extensive hearings that preceded the enactment of the RICO and Continuing Criminal Enterprise statutes, the Congress focused on the economics of organized group criminal activity. As was made clear in those hearings, not only does this type of crime generate considerable economic gain, but the wealth so generated is used, in turn, to finance continued patterns of crime and to obtain and corrupt other organizations and enterprises. Hence the focus of the RICO statute included criminal forfeiture as a measure to deprive racketeers of the property they acquired and controlled through patterns of serious criminal activity.

In more recent years, both the Congress and the law enforcement community have given similar attention to the economic aspects of drug trafficking. Quite simply, drug trafficking is enormously profitable. While it is difficult to measure the extent of illicit income produced by illegal distribution and importation of controlled substances, it is clear that these

profits run in the billions, or more likely tens of billions, of dollars annually. These huge profits are a compelling index of extraordinary growth in drug trafficking, and many believe that the influx of these illicit funds has reached such a level in certain parts of the country that the stability of the legitimate economies of these regions is being seriously disrupted.

The tremendously lucrative nature of drug trafficking makes it all the more difficult a problem for federal law enforcement officers to address. First, only the naive would fail to recognize that the punitive and deterrent effects of conviction are often outweighed by the prospect of huge profits to be reaped through the importation and distribution of dangerous drugs. Second, these huge profits are used to finance ever larger and more sophisticated drug trafficking rings complete with fleets of ships and airplanes, secluded stash pads, and ample funds to bribe public officials, pay hit men and enforcers, and to acquire, corrupt, and influence legitimate businesses and organizations. In sum, the huge profits produced through drug trafficking provide criminals with an attractive incentive for engaging in such crime and an economic power base through which drug trafficking operations can flourish and grow.

Although we do not suggest that forfeiture of drug related assets alone is a sufficient mechanism to eradicate drug trafficking, we believe that if the government were able to deprive narcotics dealers of significant portions of the illegal gain they realize, this would have an important deterrent effect and would stem the growth of drug trafficking. Futhermore, it is the Department's view, and a view which I believe is shared by the members of this Committee, that it is only appropriate that persons convicted of serious drug crimes and racketeering bear the penalty of forfeiting to the United States the property they have amassed through, or used to facilitate, the commission of these crimes.

Both the criminal forfeiture provisions of RICO and the

Continuing Criminal Enterprise statute and section 881 of Title 21, which provides for the civil forfeiture of the proceeds of, and property used in, drug crimes, give the government the authority to seek forfeiture of assets related to drug trafficking and racketeering. However, both the limitations of current law, and its failure to address some major practical problems have kept forfeiture from being as effective a law enforcement tool as it can be. The introduction of several bills in both the House and Senate including S. 1126, sponsored by Senator Biden and S. 2196, sponsored by Senator Humphrey, reflect a welcome interest in the Congress to cure some of the deficiencies of current forfeiture statutes. In the development of the legislation which I would like to outline for you now, the Administration has drawn on the experience and expertise of those who have dealt with forfeitures in drug and racketeering cases to identify the problems posed by current law, and to formulate some workable solutions to these problems.

The primary problems we have encountered in achieving substantial forfeitures in RICO and narcotics cases fall into three categories. First, we have had difficulty in obtaining the forfeiture of two important types of property: (1) the proceeds of racketeering activity punishable under the RICO statute and (2) real property used in drug crimes, for example, as stash pads or to cultivate marihuana for distribution. (The domestic cultivation of large amounts of marihuana is a relatively recent problem.) Second, our ability to use the criminal forfeiture provisions of the RICO and CCE statutes has been hampered by those statutes' failure to address the practical problems that have arisen in actually reaching property that is subject to forfeiture. These problems arise most frequently when defendants are successful in concealing, transferring, or removing from the jurisdiction of the courts, forfeitable assets. Third, we have in many instances found proceedings under the civil forfeiture provisions of Title 21 -- presently the only means of achieving forfeiture in the

vast majority of drug cases -- to be cumbersome and inefficient proceedings when the same elements of proof relating to forfeiture are also central to parallel criminal prosecutions of drug offenses.

S. 2320 is designed to address these and other problems we have met in obtaining forfeitures. Part A of the bill is an amendment of 18 U.S.C. 1963, the provision of current law that governs criminal forfeitures in RICO cases. Part B amends the Comprehensive Drug Abuse Prevention and Control Act of 1970, creating a new criminal forfeiture statute that would be applicable in all major drug prosecutions and improving some of the provisions of 21 U.S.C. 881, which governs civil forfeitures and certain matters arising in both civil and criminal forfeitures of drug related assets. The final part establishes, for a two-year trial period, a program under which twenty-five percent of the amounts realized from drug related forfeitures would be set aside and made available to pay awards to persons providing information or other assistance that lead to forfeitures.

The first substantial amendment to the RICO criminal forfeiture statute set out in S. 2320 is to specifically provide that the proceeds of racketeering activity are subject to an order of forfeiture. While the government has consistently argued that such profits can constitute a forfeitable "interest" in a RICO enterprise, several appellate courts have held the opposite. This problem is well illustrated in the case of United States v. Martino. 1/ Martino involved the prosecution of a number of defendants for violations of mail fraud and RICO statutes arising out of an arson for profit ring. Three of the defendants, including Martino, were ordered to forfeit the insurance proceeds they had obtained from the burning of their properties, and Martino was also ordered to forfeit his interest in two companies through which funds were provided for the arson and fraud scheme. While a panel of the Fifth Circuit affirmed the order of forfeiture of

1/ 648 F.2d 367 (5th Cir. 1981)(vacated in part, rehearing en banc pending).

Martino's interest in his two companies, it reversed the order of forfeiture of the insurance proceeds, determining that these profits of the arson scheme did not constitute an "interest in an enterprise." The Fifth Circuit has on its own motion ordered an en banc rehearing on this issue, and we are now awaiting its decision. Regardless of the outcome of this case, it is our view that the purpose of the RICO forfeiture statute -- to deprive racketeers of their sources of economic power -- cannot be fully realized if the profits gained through racketeering activity are beyond the reach of the statute. Therefore, it is essential that this provision be amended to remove any ambiguity about the forfeitability of such assets, and S. 2320 achieves this goal.

In addition to including the proceeds of racketeering activity among the property subject to criminal forfeiture, we have also attempted in S. 2320 to provide a fuller description of the types of property that are now clearly within the scope of 18 U.S.C. 1963. But no matter how thoroughly or how expansively we may define property forfeitable under the RICO statute, it will avail us little if we are unable in fact to reach this property. It is with a view towards this problem that the majority of S. 2320's other amendments to the RICO forfeiture provisions were designed. These amendments are also to be included in the portion of the bill concerning criminal forfeitures in narcotics cases.

It is not uncommon for sophisticated criminals routinely to take measures to conceal their ownership and transfers of property, for financial transactions often provide important evidence of criminal activity, not the least of which are banking and tax law violations. Understandably, this practice makes the tracing of forfeitable assets all the more difficult. In addition, however, we increasingly encounter instances in which transfers of assets out of the country or to other persons (often with no apparent consideration) appear to be made not as a matter of routine, but rather as a criminal's specific reaction to the prospect of forfeiture. To the extent that forfeitable assets are easily transferred or removed from the country or are highly liquid, this phenomenon becomes more problematic. Thus, it presents particular difficulties when we seek the forfeiture of the assets of drug traffickers, who often deal in large amounts of cash, precious metals and gems.

Three of S. 2320's substantive amendments to the RICO statute are designed to address these difficulties. First, the bill would codify the concept that the United States' interest in forfeitable property vests at the time of the commission of the criminal acts giving rise to the forfeiture, and that thus a subsequent transfer will not bar a forfeiture order. This is in essence the same "taint" theory that has long been recognized in civil forfeiture proceedings and which has more recently been applied in the context of criminal forfeiture as well. 2/ This provision should discourage the practice of defendants engineering sham transfers of their property to associates and relatives in an attempt to defeat forfeiture.

Another way in which the government can prevent transfers of forfeitable property and other actions designed to defeat forfeitures, is by obtaining appropriate protective orders from the courts. Both the RICO and CCE statute now give the courts the authority to enter restraining orders, require the execution of performance bonds, or take other actions to preserve property subject to forfeiture pending resolution of the criminal case. However, under current law, this statutory authority may be invoked only after the filing of an indictment or information. This limitation ignores the fact that defendants in such cases are often aware of the government's investigation prior to the filing of formal charges. Indeed, it is the Department's policy generally to inform the subjects or targets of a grand jury investigation so that they may have an

2/ See United States v. Long, 654 F.2d 911 (3rd Cir. 1981), in which it was held that property derived from proceeds of a violation of 21 U.S.C. 848 could be subject to forfeiture although transferred to the defendant's attorneys more than six months prior to indictment, and that an order restraining the attorneys from transferring or selling the property was properly entered.

opportunity to appear before the grand jury. Obviously, such knowledge will often motivate these persons to move quickly to shield their assets from forfeiture, and the government is powerless to prevent them from doing so.

To address this problem, S. 2320 would amend 18 U.S.C. 1963 to expand current protective order authority to give the courts the discretion to enter such orders in the pre-indictment stage, if the government can present sufficient evidence to establish probable cause to believe that a RICO violation has been committed and that the property for which the order is sought is subject to forfeiture as a result. The term of such an order would be limited to ninety days, unless extended for good cause by the court. Further, the court would be required to deny the government's request for the pre-indictment order if it determined that it would work an irreparable harm to the affected parties that is not outweighed by the need to preserve the availability of the property in question.

A further aspect of S. 2320's amended protective order provision would be to specify the circumstances in which the initial entry of such an order may be made pursuant to an ex parte proceeding. Where forfeitable property is in a form that makes it easily concealed, removed, or transferred, notice to the defendant of the government's intent to seek a restraining order or other protective measure may provide an opportunity for him to dispose of the property, and thus preclude any opportunity for the government to obtain a forfeiture order. Such ex parte orders now are obtained, although more frequently in CCE cases which involve cash or other easily movable assets than in RICO cases which often involve assets such as interests in businesses. Under S. 2320, a protective order granted without notice to defendant or other adverse parties (for example, a bank in which the defendant's funds are deposited) would be limited to a term of only ten days, and could be granted only upon a showing of probable cause and a determination that the nature of the property was such that it

could be concealed or moved before an adversary hearing could be held. After the entry of the initial order, the affected parties would then be given notice and an opportunity to contest the order in the context of an adversary hearing.

While this improved restraining order provision should enhance our ability to preserve forfeitable property pending a defendant's conviction and the entry of the order of forfeiture, there will continue to be instances where a defendant will be successful in concealing, removing, or transferring forfeitable property either by acting before the government can obtain a protective order, or, where the financial incentive is great, by defying a protective order. To address this problem, S. 2320 would provide for the forfeiture of substitute assets of the defendant where property which has been found during trial to be subject to criminal forfeiture is no longer available at the time of conviction. I note that Senator Biden's bill, S.1126, contains a similar substitute assets provision. The purpose of a substitute assets provision is straightforward -- it prevents a defendant from escaping the economic impact of a forfeiture order by disposing of his property prior to conviction.

No such provision exists in present law, but it is, in our view, a necessary component of an effective criminal forfeiture statute. Absent a substitute assets provision, defendants will continue to have a strong incentive to conceal their assets, or move them out of the country, so as to defeat the possibility of their forfeiture. Therefore, S. 2320's amendments to 18 U.S.C. 1963 include authority for the court to order the defendant to forfeit substitute assets up to the value of forfeitable property that can no longer be located, has been transferred to or deposited with third parties, has been placed beyond the jurisdiction of the trial court, has been substantially diminished in value by the acts of the defendant or has been commingled with other property that cannot be divided without difficulty.

Under current 18 U.S.C. 1963 the disposition of property ordered forfeited is governed by provisions of the customs laws. It has been our experience, however, that the customs laws often do not adequately provide for the more complex issues that arise with respect to RICO forfeitures, particularly where the forfeited property is an interest in an ongoing business. Therefore, S. 2320 would require the development of Department of Justice regulations to govern these matters. However, the bill would continue to emphasize, as does current law, the responsibility of the Attorney General to protect the rights of innocent persons and to grant, in appropriate cases, petitions of innocent parties for remission or mitigation of forfeiture, and to provide for the return of forfeited property that was obtained from victims of a RICO offense.

These and S. 2320's other amendments to the RICO forfeiture statute would substantially improve our ability to achieve the criminal forfeiture of significant amounts of property used in, and obtained as a result of, the racketeering offenses punishable under the RICO statute.

As noted above, the second part of S. 2320 is designed to facilitate forfeitures in narcotics cases. The most important element of this portion of the bill is the creation of a new criminal forfeiture statute that could be applied in all major drug trafficking prosecutions. While drug prosecutions now comprise nearly a quarter of all cases on the federal criminal docket, only an extremely small portion of these cases may be prosecuted as violations of the Continuing Criminal Enterprise statute, and an even smaller portion are crimes prosecutable as RICO violations. As a result, the forfeiture of the vast majority of drug related property must be sought in the context of civil forfeiture proceedings under 21 U.S.C. 881.

In many respects, the civil forfeiture provision of Title 21 is an extremely useful law enforcement tool, particularly since 1978 when Congress amended this statute to provide for

the forfeiture of the proceeds of illicit drug transactions. The standard of proof for a civil forfeiture is lower than that for an order of criminal forfeiture, and because civil forfeiture is an in rem proceeding against the property itself and does not depend on the criminal conviction of the person owning or using the property, it may be used when a defendant is a fugitive, which is a not uncommon occurrence in narcotics cases.

However, there are also drawbacks to civil forfeiture which become apparent when the acts giving rise to civil forfeiture are also the basis for prosecution of a drug offense. Forfeiture under 21 U.S.C. 881 must be pursued as a civil suit entirely separate from any criminal prosecution, even though the evidence on which the forfeiture action is based is the very same evidence which will be at issue in the criminal trial. In addition, civil forfeiture is an in rem proceeding. As such, the government must file suit in the district in which the property is located. Therefore, if property of a defendant is located in a district different from that in which the criminal trial is held, the case must be handled by a different U.S. Attorney's Office. Furthermore, it not unusual for property relating to a single drug case to be located in a number of districts, thus necessitating the filing of separate forfeiture suits in each of these districts.

Where the issues relating to civil forfeiture are the same as or closely related to those that will arise in a prosecution of a narcotics offense, it is a waste of valuable judicial and prosecutive resources to require an entirely separate consideration of forfeiture in each district in which the property of the defendant may be located. We also anticipate that the forfeiture of significant amounts of drug related property will more likely be achieved when the judge and jury hearing the criminal case also consider whether property of the defendant is to be forfeited to the United States, and when the prosecutor and

investigative agents who prepared the criminal case can apply their enthusiasm and expertise to an aggressive pursuit of forfeiture as well.

In addition to being cumbersome and clearly inefficient, parallel criminal prosecutions and civil forfeiture actions often create such problems that we find it necessary to stay the forfeiture proceeding pending resolution of the criminal case. This step is necessary because continuing the civil forfeiture action may result in the premature disclosure of evidence in the government's criminal case, including the identity of confidential informants.

Thus, while it is clear that there will continue to be a need for civil forfeitures, the United States' ability to seek forfeiture of drug profits and other property used in drug trafficking cases would be improved if prosecutors had the opportunity in all felony drug prosecutions of seeking forfeiture of such property of the defendants in the single context of the criminal trial. For these reasons, S. 2320 amends the Comprehensive Drug Abuse Prevention and Control Act to create a new criminal forfeiture statute that could be applied in all felony prosecutions under the Act. In addition to encompassing property now subject to forfeiture under the Continuing Criminal Enterprise statute, this provision would permit the criminal forfeiture of the proceeds of all felony drug violations as well as property that is used in the commission of these crimes.

This new criminal forfeiture statute for drug felonies would include provisions paralleling the bill's amendments to the RICO forfeiture statute, including a provision for voiding third party transfers of forfeitable property, expanded authority to obtain appropriate restraining orders, and a provision for the forfeiture of substitute assets of the defendant. The bill's proposed Title 21 criminal forfeiture statute also includes two elements that are not incorporated in its RICO amendments. The first is a permissive presumption, or more correctly an inference, that property acquired during, or within a reasonable

time after, the defendant's commission of the drug offense may be considered by the trier of fact to be property subject to forfeiture, if it is also found that the defendant had no legitimate sources of income to explain his acquisition of the property. Because of the considerable evidence of the profits produced through drug trafficking crimes and the fact that this provision is phrased as a permissive presumption or inference, we believe that it will clearly withstand constitutional scrutiny under the Supreme Court's decision in Ulster County Court v. Allen. 3/

The second of the provisions unique to the proposed Title 21 criminal forfeiture statute would be a provision for the issuance of a warrant of seizure upon a probable cause showing and a finding by the court that a restraining order would not suffice to preserve the availability of property subject to forfeiture. Because the proceeds of drug transactions are often in the form of highly liquid or easily movable assets, a protective order may not be sufficient to safeguard the property, and it may be necessary to remove it from the custody of the defendant pending the disposition of the criminal case.

In addition to creating a new criminal forfeiture statute of general applicability in felony drug cases, S. 2320 would also make two substantive amendments to 21 U.S.C. 881, the provision of current law that governs the civil forfeiture of drug related property. First, as mentioned earlier, this provision does not authorize the civil forfeiture of real property, although real property is often used to a significant degree to facilitate the commission of drug trafficking crimes. Such real property includes "stash pads" or warehouses for controlled substances and equipment and vehicles use in these crimes, and also agricultural lands on which illicit drugs are cultivated. Therefore, this amendment, like S. 2196 introduced by Senator Humphrey, includes

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3/ 422 U.S. 140 (1979).

real property used in felony drug offenses among the types of property subject to civil forfeiture, with an "innocent owner" exception similar to that now included in the provision authorizing the forfeiture of drug proceeds.

The second substantive amendment to 21 U.S.C. 881 is the inclusion of language spelling out the authority to obtain a stay of civil forfeiture proceedings pending disposition of a criminal case involving the same matters. This stay could be obtained once an indictment or information in the criminal case has been filed. Currently, our prosecutors have, for the most part, been successful in obtaining such stays, but it would be preferable if there were direct statutory authority (rather than only the courts' inherent authority) to support our motions.

The final part of S. 2320 would establish a two-year trial program under which a portion of the proceeds of forfeitures of drug-related property would be available for the payment of awards to those who provide information or other assistance that lead to such forfeitures. Under section 301 of the bill, the Drug Enforcement Administration would be authorized to set aside twenty-five percent of the amounts realized by the United States in such forfeiture actions to create a fund to be used solely for the purpose of paying these awards. Payment of these awards would be discretionary, but the total amount of awards for a particular case could not exceed the lesser of $50,000 or twenty-five percent of the net amount realized by the government. We believe that the reward authority established under this trial program would, in certain cases, give us important leverage in obtaining information that would lead to the forfeiture of significant amounts of drug related assets. It also seems particularly appropriate that the funding for these awards come directly from a portion of forfeiture proceeds.

Formerly, a somewhat similar reward authority existed in 21 U.S.C. 881, which incorporated by reference the "moiety" provisions

of the customs laws. However, certain aspects of the moiety provisions were so problematic that they could not be utilized as an effective rewards system in forfeiture cases, and in 1979 the reference to them was removed from section 881. The award program set out in section 301 would, in our view, represent a workable and effective system. But as a trial program with a detailed audit requirement, it will be possible to assess the utility of the program and any problems it may present before determining whether it should be extended on a permanent basis.

These, then, are the basic elements of S. 2320. We firmly believe that enactment of S. 2320 will bring us closer to realizing the intended goals of our forfeiture laws: depriving racketeers and drug traffickers of the profits of crime and the economic power through which they continue to victimize our society.

Mr. Chairman, that concludes my prepared statement, and I would be pleased to answer any questions which the Committee may have.

Senator DENTON. This hearing stands adjourned.
[Whereupon, at 11:50 a.m., the meeting was adjourned.]

97TH CONGRESS
2D SESSION

S. 2320

To amend section 1963 of title 18, United States Code, and the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.) to provide for the criminal forfeiture of the proceeds of racketeering activity, to provide for the sanction of criminal forfeiture for all felony drug offenses, to facilitate forfeitures in drug related and racketeering cases, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 31 (legislative day, FEBRUARY 22), 1982

Mr. THURMOND (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend section 1963 of title 18, United States Code, and the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.) to provide for the criminal forfeiture of the proceeds of racketeering activity, to provide for the sanction of criminal forfeiture for all felony drug offenses, to facilitate forfeitures in drug related and racketeering cases, and for other purposes.

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 "Comprehensive Criminal Forfeiture Act of 1982"

PART A

SEC. 101. Section 1963 of title 18, United States Code, is amended to read as follows:

"§ 1963. Criminal penalties

"(a) Whoever violates any provision of section 1962 of this chapter—

"(1) shall be fined not more than $25,000 or imprisoned for not more than twenty years, or both; and

"(2) shall forfeit to the United States any property, irrespective of any provision of State law—

"(A) constituting, or derived from, any interest in or contribution to an enterprise he has acquired, maintained, established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962 of this chapter;

"(B) constituting a means by which he has exerted influence or control over any enterprise he has acquired, maintained, established, operated, controlled, conducted, or participated in the acquisition, maintenance, establishment, operation, conduct or control of, in violation of section 1962 of this chapter; and

"(C) constituting, or derived from, any proceeds which he obtained, directly or indirectly,

from racketeering activity or unlawful debt collection in violation of section 1962 of this chapter. The court, in imposing sentence on such person, shall order, in addtion to any other sentence imposed pursuant to this section, that he forfeit to the United States all property described in paragraph (2).

"(b) Property subject to criminal forfeiture under this section includes—

"(1) real property, including things growing on, affixed to, and found in land; and

"(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities including, but not limited to—

"(A) any position, office, appointment, tenure, commission, or employment contract of any kind which the incumbent acquired or maintained in violation of section 1962 of this chapter, through which the incumbent conducted, or participated in or facilitated the conduct of, the affairs of an enterprise in violation of section 1962 of this chapter, or which afforded the incumbent a source of influence or control over the affairs of an enterprise which was exercised in violation of section 1962 of this chapter;

"(B) any compensation, right or benefit derived from a position, office, appointment, tenure, commission, or employment contract described in subparagraph (A) which the incumbent obtained, directly or indirectly, through a pattern of racketeering activity or unlawful debt collection in violation of section 1962 of this chapter, or which accrued to the incumbent during the period that he controlled, influenced, conducted, or participated in or facilitated the conduct of, the affairs of the enterprise in violation of section 1962 of this chapter; and

"(C) any amount payable or paid under any contract for goods or services which was awarded or performed through a pattern of racketeering activity or unlawful debt collection.

"(c) All right, title, and interest in property described in subsection (a)(2) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is held in the name of, or possessed by, a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States: *Provided*, That the Attorney General shall not direct disposition of any such property if

the person establishes to the Attorney General by evidence contained in a petition pursuant to subsection (h) that—

"(1) he was a bona fide purchaser of the property for value; and

"(2) he was reasonably without cause to believe that the property was of the type described in subsection (a)(2).

"(d) If any of the property described in subsection (a)(2)—

"(1) cannot be located,

"(2) has been transferred to, sold to, or deposited with, a third party,

"(3) has been placed beyond the jurisdiction of the court,

"(4) has been substantially diminished in value by any act or omission of the defendant, or

"(5) has been commingled with other property which cannot be divided without difficulty,

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

"(e)(1) Upon application of the United States, the court may, after a hearing with respect to which any adverse parties have been given reasonable notice and opportunity to participate, enter a restraining order or injunction, require

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the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a)(2) for forfeiture under this section—

"(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

"(B) prior to the filing of such an indictment or information, if the court determines—

"(i) that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that the property is in the possession or control of the party against whom the order is to be entered, and

"(ii) that the party against whom the order is to be entered has failed to demonstrate that the entry of the requested order would result in substantial and irreparable harm or injury to him that outweighs the need to preserve the availability of the property through the entry of the requested order:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

"(2) Upon application of the United States, a temporary restraining order to preserve the availability of property described in subsection (a)(2) for forfeiture under this section may be granted without notice to the adverse party or his attorney if—

"(A) an indictment or information described in paragraph (1)(A) has been filed or if the court determines that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that the property is in the possession or control of the party against whom the order is to be entered; and

"(B) the court determines that the nature of the property is such that it can be concealed, disposed of, or placed beyond the jurisdiction of the court before the adverse party may be heard in opposition.

A temporary order granted without notice to the adverse party shall expire within such time, not to exceed ten days, as the court fixes, unless extended for good cause shown or

unless the party against whom it is entered consents to an extension for a longer period. If a temporary restraining order is granted without notice to the adverse party, a hearing concerning the entry of an order under paragraph (1) shall be held at the earliest possible time and prior to the expiration of the temporary order.

"(f) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. No property forfeited pursuant to this section may be ordered applied to offset any claims against, or obligations or expenses of, the defendant. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from an enterprise, or an interest in an enterprise, ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

"(g) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. The proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending is disposition, advertising and court costs. The Attorney General shall forward to the Treasurer of the United States for deposit in the general fund of the United States Treasury any amounts of such pro-

ceeds or moneys remaining after the payment of such expenses.

"(h) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

"(1) grant petitions for mitigation, or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

"(2) compromise claims arising under this chapter;

"(3) award compensation to persons providing information resulting in a forfeiture under this section;

"(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

"(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

"(i) The Attorney General shall within one hundred and eighty days of the enactment of this Act promulgate regulations with respect to—

"(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

"(2) granting petitions for remission or mitigation of forfeiture;

"(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

"(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

"(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

"(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of

customs or any other person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

"(j) Except as provided in this section, no party claiming an interest in property subject to forfeiture under this section may—

"(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

"(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property, prior to or during the trial or appeal of the criminal case, or during the period in which any petition for remission or mitigation of forfeiture is pending before the Attorney General.

"(k) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

"(l) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States,

order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under rule 15 of the Federal Rules of Criminal Procedure.".

PART B

SEC. 201. Part D of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by adding at the end thereof the following new section:

CRIMINAL FORFEITURES

"Property Subject to Criminal Forfeiture

"SEC. 413. (a) Any person convicted of a violation of this title or title III punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law—

"(1) any property constituting, or derived from, any proceeds he obtained, directly or indirectly as the result of such violation;

"(2) any of this property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

"(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 408 of this title (21 U.S.C. 848), he shall forfeit,

in addition to any property described in paragraphs (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this title or title III, that he forfeit to the United States all property described in this subsection.

"Meaning of Term 'Property'

"(b) Property subject to criminal forfeiture under this section includes—

"(1) real property, including things growing on, affixed to, and found in land; and

"(2) tangible and intagible personal property, including rights, privileges, interests, claims and securities.

"Third Party Transfers

"(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is held in the name of, or possessed by, a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States: *Provided,* That the Attorney General shall not direct disposition of any such property if

the person establishes to the Attorney General by evidence contained in a petition for remission or mitigation of forfeiture that—

"(1) he was a bona fide purchaser of the property for value; and

"(2) he was reasonably without cause to believe that the property was of the type described in subsection (a).

"Substitute Assets

"(d) If any of the property described in subsection (a)—

"(1) cannot be located,

"(2) has been transferred to, sold to, or deposited with a third party,

"(3) has been placed beyond the jurisdiction of the court,

"(4) has been substantially diminished in value by any act or omission of the defendant, or

"(5) has been commingled with other property which cannot be divided without difficulty,

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

"Presumption of Forfeitability

"(e) Any property of the defendant may be presumed to be property subject to forfeiture under subsection (a) if the trier of fact finds that—

"(1) the defendant acquired the property during, or within a reasonable time after, the period during which he committed the violation for which he was convicted; and

"(2) the defendant's apparent sources of legal income during such period were substantially insufficient to account for his acquisition of the property.

"Protective Orders

"(f)(1) Upon application of the United States, the court may, after a hearing with respect to which any adverse parties have been given reasonable notice and opportunity to participate, enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

"(A) upon the filing of an indictment or information charging a violation of this title or title III for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

"(B) prior to the filing of such an indictment or information, if the court determines—

"(i) that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that the property is in the possession or control of the party against whom the order is to be entered, and

"(ii) that the party against whom the order is to be entered has failed to demonstrate that the entry of the requested order would result in substantial and irreparable harm or injury to him that outweighs the need to preserve the availability of the property through the entry of the requested order:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

"(2) Upon application of the United States, a temporary restraining order to preserve the availability of property described in subsection (a) for forfeiture under this section may

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be granted without notice to the adverse party or his attorney if—

"(A) an indictment or information described in paragraph (1)(A) has been filed or if the court determines that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that the property is in the possession or control of the party against whom the order is to be entered; and

"(B) the court determines that the nature of the property is such that it can be concealed, disposed of, or placed beyond the jurisdiction of the court before the adverse party may be heard in opposition.

A temporary order granted without notice to the adverse party shall expire within such time, not to exceed ten days, as the court fixes, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. If a temporary restraining order is granted without notice to the adverse party, a hearing concerning the entry of an order under paragraph (1) shall be held at the earliest possible time and prior to the expiration of the temporary order.

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"Warrant of Seizure

"(g) The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (f) may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

"Execution

"(h) Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. No property forfeited pursuant to this section may be ordered applied to offset any claims against, or obligations or expenses of, the defendant. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this sec-

tion may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

"Disposition of Property

"(i) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

"Authority of the Attorney General

"(j) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

"(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

"(2) compromise claims arising under this chapter;

"(3) award compensation to persons providing information resulting in a forfeiture under this section;

"(4) direct the disposition by the United States, in accordance with the provisions of section 511(e) of this title (21 U.S.C. 881(e)), of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

"(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

"Applicability of Civil Forfeiture Provisions

"(k) Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 511(d) of this title (21 U.S.C. 881(d)) shall apply to a criminal forfeiture under this section.

"Bar on Intervention; Exhaustion of Administrative Remedies

"(l) Except as provided in this section, no party claiming an interest in property subject to forfeiture under this section may—

"(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

"(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property, prior to or during the trial or appeal of the criminal case, or during the period in which any petition for remission or mitigation of forfeiture is pending before the Attorney General.

"Jurisdiction to Enter Orders

"(m) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

"Depositions

"(n) In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United

States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under rule 15 of the Federal Rules of Criminal Procedure.".

SEC. 202. Section 304 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 824) is amended by adding at the end of subsection (f) the following sentence: "All right, title, and interest in such controlled substances shall vest in the United States upon a revocation order becoming final.".

SEC. 203. Section 408 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 848) is amended—

(a) in subsection (a)—

(1) by striking out "(1)";

(2) by striking our "paragraph (2)" each time it appears, and inserting in lieu thereof "section 413 of this title"; and

(3) by striking out paragraph (2); and

(b) by striking out subsection (d).

SEC. 204. Section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881) is amended—

(a) in subsection (a) by inserting at the end thereof the following new subsection:

"(7) All real property, including any appurtenances to or improvements on such property, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this title punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.";

(b) in subsection (b)—

(1) by inserting "civil or criminal" after "Any property subject to"; and

(2) by striking out in paragraph (4) "has been used or is intended to be used in violation of" and inserting in lieu thereof "is subject to civil or criminal forfeiture under";

(c) in subsection (c)—

(1) by inserting in the second sentence "any of" after "Whenever property is seized under"; and

(2) by inserting in paragraph (3) ", if practicable," after "remove it";

(d) in subsection (d) by inserting "any of" after "alleged to have been incurred, under";

(e) in subsection (e)—

(1) by inserting "civilly or criminally" in the first sentence after "Whenever property is"; and

(2) by striking out in paragraph (3) "remove it for disposition" and inserting in lieu thereof "and dispose of it"; and

(f) by inserting at the end thereof the following new subsections:

"(h) All right, title, and interest in property described in subsection (a) shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(i) Pending, or upon, the filing of an indictment or information charging a violation of this title or title III for which criminal forfeiture may be ordered under section 413 of this title, and alleging that property would, in the event of conviction, be subject to criminal forfeiture, any civil forfeiture proceeding concerning such property commenced under

this section shall, for good cause shown, be stayed pending disposition of the criminal case.".

SEC. 205. Part A of title III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by adding at the end thereof the following new section:

"CRIMINAL FORFEITURES

"SEC. 1017. Section 413 of title II, relating to criminal forfeitures, shall apply in every respect to a violation of this title punishable by imprisonment for more than one year.".

SEC. 206. The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended—

(a) by adding immediately after

"Sec. 412. Applicability of treaties and other international agreements."

the following new item:

"Sec. 413. Criminal forfeitures."; and

(b) by adding immediately after

"Sec. 1016. Authority of Secretary of the Treasury."

the following new item:

"Sec. 1017. Criminal forfeitures.".

PART C

SEC. 301. (a) Without regard to the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), the Drug Enforcement Administration is authorized to set aside 25 per centum of the net amount of money realized from the forfeiture of assets seized by it under any provision of the Compre-

hensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.) to be available for obligation and expenditure only for the purpose of paying awards of compensation with respect to such forfeitures as described in subsection (b). The amounts credited under this section shall be made available during the fiscal year in which moneys are realized, except for those proceeds realized from seizures occurring prior to September 30, 1984 which may remain available for the purpose of making awards related to forfeitures arising from such seizures. The remaining 75 per centum of the net amount of money realized from such forfeitures shall be paid to the miscellaneous receipts of the Treasury and any unobligated balances remaining at the end of each fiscal year of the 25 per centum set aside shall be paid into the miscellaneous receipts of the Treasury.

(b) From the amounts set aside under subsection (a), the Drug Enforcement Administration is authorized to pay, totally within its discretion, awards to any entity not an agency or instrumentality of the United States, or to any person not an officer or employee of the United States or of any State or local government, that provides information or assistance which leads to a forfeiture referred to in subsection (a). Such awards can be made in any amount up to 25 per centum of the net amount realized from the forfeiture, or $50,000,

whichever is lesser, in any case, except that no award shall be made based on the value of the contraband.

(c) The authority provided by this section shall expire on September 30, 1984: *And provided further,* That the Attorney General shall conduct detailed financial audits, semiannually, of the expenditure of funds from this account.

Responses of the Drug Enforcement Agency to Questions of Senator Denton

Question #1

It is my understanding that since the hearing, DEA has reviewed and reassessed any information it may have bearing on Cuban and other government involvement in drug trafficking.

Does the DEA have information indicating involvement of the Cuban government in drug trafficking? If so, please give the Subcommittee the benefit of such information.

Does the DEA have information indicating the involvement of governments other than that of Cuban in illicit drug trafficking?

ANSWER

A classified answer was provided the subcommittee.

Question #2

Does the DEA have any indications of involvement in illicit drug trafficking by subversive or terrorist groups, in the United States of elsewhere? Please provide as much information as possible for the public record.

ANSWER

A classified answer was provided the subcommittee.

Question #3

Can you estimate the total U.S. currency outflow resulting from international drug trafficking and to what extent this currency is finding its way to Cuba? Please provide any information you have on this subject.

ANSWER

A classified answer was provided the subcommittee.

Question #4

What justifications are there for allowing the manufacture or distribution of Quaaludes when there is no absolute indication for their use and when good substitute drugs are available (such as flurazepam for methaqualone)?

ANSWER

The determination as to whether any drug substance has an indication for use in medical treatment is made by the Food and Drug Administration.

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Once an indication has been approved, as in the case of Quaalude, the Drug Enforcement Administration is required under the Controlled Substances Act to allow the manufacture and distribution of the product.

Whether or not flurazepam is an adequate substitute for methaqualone in all cases is a matter of medical judgment, which cannot be made at DEA. So long as both substances have been approved for use by the Food and Drug Administration, the physician has the discretion to prescribe the specific product he believes is most useful for his patient.

The Controlled Substances Act provides specific mechanisms to limit the availability of Schedule II substances, such as methaqualone, to that amount necessary to meet legitimate needs. The Drug Enforcement Administration is attempting to use these mechanisms to the fullest extent possible to limit the diversion of legitimately manufactured Quaalude into illicit channels.

Question #5

At last year's hearing, and during the course of last year, the following list of major problems impeding the DEA in accomplishing its mission was furnished:

a) Restrictions on U.S. funding of marihuana eradication programs using paraquat.

b) Present bail law and practice.

c) Tax Reform Act of 1976.

d) The Freedom of Information Act.

e) The Posse Comitatus Act.

f) Present procedure on forfeited assets.

Please tell the Subcommittee which of these problems have been alleviated, and in what way they have been alleviated, i.e., administratively, legislatively, etc. In other words, what is the present status of these impediments and the efforts to resolve them?

ANSWER

The current status of the six legislative initiatives referred to is as follows:

a) Marihuana Eradication: On December 29, 1981, the International Security and Development Assistance Act of 1981 was enacted (Public Law 97-113) which amends the Foreign Assistance Act of 1961. Section 502 of this law repealed the prohibition of U.S. funded herbicide spraying programs in foreign countries.

b) Bail Reform: The Department of Justice endorses S. 1554 which was reported out of the Senate Judiciary Committee on March 4, 1982 (S. Rep. No. 97-317).

c) Tax Reform Act: The Administration proposal to amend the tax disclosure restrictions enacted in 1976 to facilitate Federal law enforcement access to tax information was introduced as S. 1891. More recently, a "consensus" bill has been developed in cooperation with Senate Finance Committee staff and was introduced on May 25, 1982 as S. 2565 (a companion measure had been introduced on May 25, 1982 as H.R. 6475).

d) Freedom of Information Act: The Department of Justice proposal to amend the Freedom of Information Act and remove the adverse effects it has on Federal law enforcement was introduced as S. 1751. As a result of hearings held by the Senate Subcommittee on the Constitution, another measure, S. 1730, was revised to reflect provisions from a variety of pending measures including many of those proposed by the Department in S. 1751. This bill was ordered reported by the Judiciary Committee on May 20, 1982.

e) Posse Comitatus: On December 1, 1981, the Department of Defense Authorization Act was signed into Law (P.L. 97-86) which included a provision to revise the posse comitatus statute and authorize certain military cooperation with civilian law enforcement activities. Department of Defense policy and procedures for the provision of assistance in the form of equipment, base facilities, research facilities and personnel were promulgated April 7, 1982.

f) Asset Forfeiture: The Department of Justice proposal to facilitate criminal forfeiture in racketeering and narcotics cases has been introduced on March 31, 1982 as S. 2320 (a companion measure was introduced as H.R. 6051). This measure provides for comprehensive reforms in criminal and civil forfeiture provisions and creates a provision in Title 21 to allow criminal forfeiture in all felony drug offenses.

Question #6

Please describe the present system of rewards used by DEA. From what funds does the money to pay these rewards come? Is there a limit to the amount that can be paid as a reward?

It is my understanding that the authorization bill for FY83 will contain a moiety provision, but that the amount of the moiety will be limited to $50,000.

In light of the huge amounts of money to be earned in drug trafficking, is the $50,000 limit on moiety realistic? Please give the Subcommittee your views.

ANSWER

DEA presently pays informants for information and/or active participation in the development of enforcement cases. Informants may be paid either in a lump sum or in staggered payments. Funds for these purposes come from appropriated funds which have been administratively segregated by DEA for such use. There is no limit to the amount that can be paid in any particular case, but purchase of information funds must be cautiously utilized so that a sufficient amount is always available for unanticipated contingencies.

The DEA FY83 authorization bill will include a provision allowing DEA to make discretionary payments to informants from the proceeds of forfeited assets. This is not "moiety" as it is strictly defined in that DEA will decide in which cases to make such payments. The traditional concept of moiety, as employed by the Customs Service, allows no such discretion, the informants in these cases having a statutory right to payment. The DEA authorization bill will limit the amount of payment to an informant from the proceeds of forfeited assets to $50,000.

The authorization to pay informants from the proceeds of forfeited assets is very important to DEA because it would free appropriated funds for other enforcement purposes. The $50,000 limit is a first step in the use of proceeds from forfeited assets. As our experience develops

under the FY-83 authorization, it is possible that we will find a very real need to ask for authority to increase the limit.

Question #7

Although DEA is the nation's lead drug enforcement agency, Customs and the Coast Guard have significant roles in drug interdiction. In addition, the Attorney General has directed the FBI to become more involved in drug investigations.

Recent Federal District Court decisions have raised the issue of whether FBI agents and Customs patrol officers have the statutory authority to investigate and prosecute domestic drug violations. This is an issue due to the substantial transfer of drug enforcement authority to DEA resulting from Reorganization Plan No. 2 of 1973.

What is the position of DEA regarding the increasing involvement of the FBI, Customs and Coast Guard in drug enforcement?

Are you concerned that these developments will diminish the independence and integrity of DEA as the lead agency for drug enforcement? If so, what problems have been encountered? If not, would DEA support legislation to clarify the authorities of other Federal agencies to conduct drug-related investigations?

ANSWER

DEA has always worked closely with the Coast Guard, Customs, the FBI, other Federal and state and local agencies. It has been our position that only through concerted, cooperative efforts can any meaningful progress be made against ever-innovative drug traffickers. Once drug trafficking by sea became a problem, we sought the Coast Guard's assistance and have continued to work closely with them. Even before the possibility of a formal relationship with the FBI was considered, on numerous occasions DEA sought assistance in technical areas from FBI Agents.

It is our position that all cooperative efforts are useful and welcome. The Attorney General has stated that DEA will function as the principal Federal drug enforcement agency. The FBI will supplement our agents and support personnel particularly in technical areas where it has long experience and recognized expertise.

Our experience thus far is that the increased infusion of FBI talent in the effort against drugs is successful. There have been no significant problems encountered and we are in routine, everyday contact with FBI officials at the Headquarters level as well as in the field.

The Attorney General established concurrent drug law enforcement jurisdiction for the FBI. In other instances, other Federal agencies have been delegated limited concurrent jurisdiction. These delegations, we are assured by counsel, are sufficient to overcome any problems of jurisdiction. Thus, there is no current need for legislation to clarify the authorities of other Federal agencies to conduct drug-related investigations.

Question #8

What procedures do physicians have to go through to license them to prescribe controlled substances? Is licensing a federal or state function?

ANSWER

There is a dual responsibility for licensing/registration; however, the Controlled Substances Act (CSA) provides that the Attorney General shall register a physician to prescribe and dispense controlled substances if

he is authorized by the state in which he practices unless it is determined that the applicant: (1) has materially falsified his application, (2) has been convicted of a drug-related felony or (3) has had his state registration denied or revoked. After meeting state requirements, physicians apply for a registration with DEA. DEA checks with the state to determine whether the applicant has state authority and then checks to determine if the applicant has any past convictions. If these are in order, DEA is mandated to grant registration.

Question

Are there any limits on the quantity of controlled drugs that a physician can prescribe?

ANSWER

No, physicians are not limited by regulation with regard to the quantity of drugs they can prescribe or the frequency with which they can prescribe any given substance. Physicians must use controlled substances in the usual course of professional practice for a legitimate medical reason. Physicians who knowingly and willfully use their prescription privileges as a vehicle to indulge in illicit drug trafficking would be indictable for illegal sale.

Question

In what ways are physicians monitored to insure they do not abuse this prescription privilege? How does the DEA become alerted to violative physicians?

ANSWER

State medical boards and regulatory agencies are responsible for ensuring that physicians use sound medical judgment in the conduct of their profession.

DEA has developed a program to identify, investigate and prosecute physicians who are trafficking in large quantities of drugs. (See Question 26 regarding the Targeted Registrant Investigation Program). Lead information with regard to physician violators is developed through a variety of sources. Excessive purchase information is furnished through the cyclic investigation program and through DEA computer systems such as ARCOS. Excessive prescribing practices are identified by pharmacists, concerned citizens, DEA confidential informants, and other sources of information. Additionally, state enforcement agencies and medical associations or boards also alert DEA to physicians who may be excessively prescribing drugs. Low-level drug traffickers who are arrested for illegal sale may often implicate physicians as their source.

Question

What recommendations does the DEA have to insure better control and monitoring of physicians with reference to the prescribing and dispensing of controlled substances?

ANSWER

State and local regulatory agencies have the primary responsibility to monitor and control physician prescribing and dispensing. The effectiveness of those agencies varies from state to state. By developing programs tailored to their specific needs, states could strengthen their monitoring capabilities. These programs could include violator targeting, investigative techniques, drug control actions, reformed administrative procedures, and stronger licensing programs.

The DEA is also formulating proposed amendments to the Controlled Substances Act which cover a variety of issues related to drug law enforce-

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ment. One of these amendments would enhance DEA's authority to deny a physician registration in egregious cases where it is in the public interest. Under the current law, the DEA can only revoke or deny a physician's registration for: (1) a falsified application, (2) conviction of a drug-related felony, or (3) loss of state license to handle controlled substances. Added authority would benefit our enforcement efforts, especially in states where there is a weak regulatory structure.

Question #9

For the record, please delineate the present Federal strategy for combatting drug trafficking and abuse; also, describe the role that the DEA is to play in this strategy. Please submit for record or furnish the Subcommittee a copy of any reports, studies, or documents pertaining to the present or proposed Federal strategy.

ANSWER

The Federal Government continues to advocate a balanced drug control strategy of demand reduction and supply reduction. The first meeting of the Cabinet Council on Legal Policy, convened by the Attorney General in March 1982, focused on strategic issues relating to drug supply reduction. A Working Group on Drug Supply Reduction, chaired by Associate Attorney General Rudolph W. Giuliani, is addressing in detail the primary issues affecting interagency cooperation. The Working Group is also developing specific agendas to implement the evolving international, interagency drug supply reduction strategy. The Drug Enforcement Administration continues to be the principal Federal drug law enforcement agency. Additionally, Dr. Carlton Turner, Director of the Drug Abuse Policy Office at the White House, and his staff are currently coordinating the development of the Federal drug strategy to be published this summer.

Question #10

In light of the amendments to Posse Comitatus legislation contained in Section 905 of the DOD Authorization Act of 1982, what progress has been made in identifying potential military capabilities which could be employed in support of drug interdiction?

ANSWER

Several areas for potential military assistance have been identified. These include the sharing of narcotics related information obtained during routine military operations, the loan of military equipment, and assistance in tracking vessels and in towing them to U.S. ports.

Question

Is DEA coordinating discussions between U.S. Customs, Coast Guard and DOD?

ANSWER

Discussions regarding the provision of assistance by the military to civilian law enforcement entities are being coordinated by a committee. This committee was established in March 1982 and is composed of representatives from DEA, FBI, U.S. Customs, U.S. Coast Guard, National Security Agency, and DOD.

Question

What role is currently planned for EPIC in the coordination, analysis

and dissemination of military intelligence related to illicit drug trafficking?

ANSWER

EPIC will be the focal point for processing, coordinating, and analyzing the information received from the Armed Services. EPIC will disseminate the resultant intelligence on a timely basis to other Federal and state law enforcement agencies as appropriate.

Question

What obstacles, if any, are being encountered in obtaining military assistance for drug enforcement?

ANSWER

Military procedures to request, select and obtain the required service or equipment are difficult and complex. A greater obstacle, is the very high cost of reimbursement sought by the military for equipment loaned.

Question

Is DOD willing to share its sophisticated intelligence gathering and tracking capabilities with Federal law enforcement agencies such as DEA?

Answer

Yes, DOD is willing to share its sophisticated intelligence gathering and tracking capabilities with Federal law enforcement agencies, and is doing so on a case-by-case basis.

Question #11

Is DEA using financial investigative techniques as a targeting tool for immobilizing major drug traffickers, or are financial investigative techniques being used primarily after arrest to seize readily available assets?

ANSWER

Both. DEA continues to implement a broad-based enforcement effort against drug traffickers in the United States and abroad utilizing financial investigative approaches. In appropriate cases, extensive financial assets are being pursued with a high degree of success. Notable investigations have been and are being conducted in virtually all major metropolitan areas of the United States.

Question

What have been DEA's accomplishments to date using financial investigative techniques?

ANSWER

DEA's statistical accomplishments for FY 1981 and FY 1982 available to date by category of activity are attached and are self-explanatory. DEA has engaged in numerous forfeiture actions, the largest of which occurred in Texas, resulting in excess of $20 million forfeited in a single case. DEA also is involved in several undercover money laundering operations, as well as joint endeavors with Department of the Treasury agencies and the FBI.

Question

What percentage of assets seized by DEA result in forfeitures?

ANSWER

Reference is made to the statistical data attached, specifically the sections entitled "DEA Seizures" and "DEA Forfeitures." A compilation of DEA seizures for the entire FY-1981 and FY-1982 (to date) totals $119,140,587 with forfeitures for the same period totaling $43,789,688. Based on these figures, 37 percent of seizures are currently reflected as forfeitures.

Question

What obstacles preclude the Government from returning all or part of assets forfeited back to enforcement agencies?

ANSWER

All current drug-related forfeiture statutes require the deposit of forfeited proceeds into the General Treasury of the United States.

OCTOBER 1980 THRU SEPTEMBER 1981

DOMESTIC
FISCAL YEAR 1981
DEA ASSET REMOVAL PROGRAM

	DEA SEIZURES					SEIZURES THROUGH DEA INTERAGENCY COOPERATION							
	881A	881J	848	RICO	ABANDONED	REFERRALS TO IRS	REFERRALS TO CUSTOMS	REFERRALS TO OTHER FEDERAL	REFERRALS TO FOREIGN	REFERRALS TO STATE/ LOCAL	FEDERAL/ STATE BOND FORFEITURE	FEDERAL STATE FINES	TOTAL
R1	1,062,998	6,305,671	1,363,125	0	251,827	1,146,850	1,313,731	2,350,387	119,364	2,010,272	384,000	1,560,021	17,868,246
R2	1,398,882	20,002,445	247,775	0	2,259,851	12,671,289	16,848,967	3,245,366	8,591,044	9,299,608	6,962,000	6,477,050	88,004,277
R3	1,403,661	7,241,859	2,956,700	1,177,550	0	2,650,647	92,000	21,650	1,000,000	671,887	275,000	829,653	18,320,607
R4	1,307,235	4,144,353	323,200	24,400	72,100	1,783,904	105,900	401,400	0	75,170	868,850	426,917	9,533,429
R5	1,395,659	10,089,896	1,382,078	241,000	5,013	8,162,496	2,024,730	27,215	476,994	989,537	1,344,335	1,130,030	27,268,983
GT	6,568,435	47,784,224	6,272,878	1,442,950	2,588,791	26,415,186	20,385,328	6,046,018	10,187,402	13,046,474	9,834,185	10,423,671	160,995,542

	DEA FORFEITURES					FORFEITURES THROUGH INTERAGENCY COOPERATION							
R1	347,811	1,721,028	1,759,015	0	251,827	1,146,850	1,313,731	2,350,387	119,364	2,010,272	384,000	1,560,021	12,964,306
R2	171,490	807,062	254,508	0	2,259,851	12,671,289	16,848,967	3,245,366	8,591,044	9,299,608	6,962,000	6,477,050	67,588,238
R3	208,457	1,662,540	175,000	288,500	0	2,650,647	92,000	21,650	1,000,000	671,887	275,000	829,653	7,875,334
R4	248,036	595,017	1,050	0	72,100	1,783,904	105,900	401,400	0	75,170	868,850	426,917	4,578,344
R5	222,158	387,936	4,440	1,500,000	5,013	8,162,496	2,024,730	27,215	476,994	989,537	1,344,355	1,130,030	16,274,904
GT	1,197,952	5,173,586	2,194,013	1,788,500	2,588,791	26,415,186	20,385,328	6,046,018	10,187,402	13,046,474	9,834,205	10,423,671	109,281,126

*THIS FIGURE REPRESENTS THE TOTAL VALUE POTENTIALLY AVAILABLE FOR FORFEITURE. HOWEVER, THE VARIOUS AGENCY RECORDKEEPING SYSTEMS AND REGULATION DO NOT ALLOW FOR TRACKING THE END RESULT OF THESE VARIOUS PROCEEDINGS.

OCTOBER 1981 THRU APRIL 1982

DOMESTIC
FISCAL YEAR 1982
DEA ASSET REMOVAL PROGRAM

	DEA SEIZURES					SEIZURES THROUGH DEA INTERAGENCY COOPERATION							
	881A	881J	848	RICO	ABANDONED	REFERRALS TO IRS	REFERRALS TO CUSTOMS	REFERRALS TO OTHER FEDERAL	REFERRALS TO FOREIGN	REFERRALS TO STATE/ LOCAL	FEDERAL/ STATE BOND FORFEITURE	FEDERAL STATE FINES	TOTAL
R1	430,448	1,750,435	0	0	5,375	512,000	19,600	0	0	286,389	100,668	1,026,216	4,131,131
R2	506,811	9,023,930	2,366,362	0	210,200	850,000	5,155,469	392,343	2,082,204	2,565,405	1,107,242	4,274,431	28,534,397
R3	576,935	1,998,125	0	0	300	99,396	200,000	0	0	323,812	175,000	623,962	3,997,530
R4	496,023	2,760,086	469,757	20,318,400	2,105	180,390	78,050	600	0	860,418	673,800	394,434	26,234,063
R5	1,363,438	10,579,232	1,625,000	0	30,347	1,618,361	2,188,142	93,950	0	1,044,776	230,000	2,989,761	21,763,007
GT	3,373,655	26,111,808	4,461,119	20,318,400	248,327	3,260,147	7,641,261	486,893	2,082,204	5,080,800	2,286,710	9,308,804	84,660,128*

	DEA FORFEITURES					FORFEITURES THROUGH INTERAGENCY COOPERATION							
R1	144,143	201,790	0	0	5,375	512,000	19,600	0	0	286,389	100,668	1,026,216	2,296,181
R2	142,547	418,705	113,783	0	210,200	850,000	5,155,469	392,343	2,082,204	2,565,405	1,107,242	4,274,431	17,312,329
R3	156,003	576,583	0	0	300	99,396	200,000	0	0	323,812	175,000	623,962	2,155,056
R4	143,337	197,780	414,690	20,300,000	2,105	180,390	78,050	600	0	860,418	673,800	394,434	23,245,604
R5	349,849	7,656,089	31,547	0	30,347	1,618,361	2,188,142	93,950	0	1,044,776	230,000	2,989,761	16,232,822
GT	935,879	9,050,947	560,020	20,300,000	248,327	3,260,147	7,641,261	486,893	2,082,204	5,080,800	2,286,710	9,308,804	61,241,992

*THIS FIGURE REPRESENTS THE TOTAL VALUE POTENTIALLY AVAILABLE FOR FORFEITURE. HOWEVER, THE VARIOUS AGENCY RECORDKEEPING SYSTEMS AND REGULATIONS DO NOT ALLOW FOR TRACKING THE END RESULT OF THESE VARIOUS PROCEEDINGS.

Question #12

What effort has DEA made to investigate the laundering of trafficking revenues through foreign banks (e.g., the Cayman Islands)?

ANSWER

Specific criminal investigations have led to the identification of foreign banking institutions utilized to disburse drug-related money. DEA's success in this area is predicated upon the laws of the country involved. The United States Government and Swiss Governments have entered into a Mutual Assistance Treaty on Criminal Matters, which has been used very successfully. The Cayman Islands and Panama, on the other hand, invoke their strict "bank secrecy" statutes which preclude a thorough and successful tracking of any drug trafficking revenues.

Question

What is DEA's role in such drug-related currency investigations, as opposed to Customs' Office of Intelligence (OI) and the IRS?

ANSWER

DEA's role has multiple objectives:

1. Develop "financial" information as evidentiary proof of criminal drug trafficking in violation of U.S. law.

2. Relate drug trafficking evidence with "financial" information and the identification of assets for application of forfeiture laws relating to drug profits.

3. Cooperate with and support other U.S. agencies in using their statutory authority against individuals involved in drug trafficking.

NOTE: "Currency Investigation" is a term which more appropriately applies to U.S. Customs Service and IRS Title 31 investigations. DEA conducts a three dimensional approach arresting traffickers, seizing drugs, and seizing assets. Asset seizures are predicated upon investigating the finances and assets of drug traffickers. This approach may lead to the conviction of the trafficker and forfeiture of his drug profits.

Question

What mechanisms, if any, exist for the sharing of such information between DEA, Customs, IRS, and other involved agencies? Is it a reciprocal relationship between DEA and these agencies?

ANSWER

Currency-flow data, administered by the Reports Analysis Unit at the U.S. Customs Service is available via direct request from DEA Headquarters to the Commissioner of Customs or in task force operations where the information is available to the members of the task force. Consideration is being given to permit access to this data at the field office level. In addition, DEA has formal ongoing day-to-day liaison and case-oriented operations with these agencies where such information is exchanged during the conduct of the investigation.

Question

Is EPIC involved in the processing and dissemination of currency-related as well as drug-related intelligence?

ANSWER

The use of the term "currency-related" is construed to mean the Treasury data base on Treasury Forms 4789 and 4790. EPIC is not the processor or disseminator of that information. EPIC is a conduit for drug-related intelligence on reported financial/asset matters of drug traffickers.

Question 13

Given that the states bear the primary responsibility for controlling the retail level where most abused prescription drugs are obtained, what more does DEA believe the Federal government can do to encourage and help the states to effectively deal with this problem.

ANSWER

This question was partially addressed in Part IV of Question Number 8. In addition to state assistance programs, DEA feels that its ongoing enforcement programs such as the Targeted Registrant Investigations Program (TRIP), provide direct leadership to state agencies. A discussion of TRIP is contained in Question Number 26; however, it is appropriate to note here that the program interfaces directly with our state liaison efforts. TRIP provides for constant referrals to state agencies, periodic joint evaluation of their most serious violators and, further, permits joint investigations where appropriate. ARCOS information is also supplied routinely to state agencies to aid in the development of targets.

Question #14

What proportion of those cases presented to a U.S. Attorney in which prosecution is authorized result in a conviction?

How many cases result in dismissal because of improper searches, (i.e., held to be improper searches) because of inadequate probable cause, a defective warrant, etc.?

ANSWER

Records for the years 1976 to 1981 reveal that of the DEA cases for which complete records are available, 82 percent of the defendants were convicted.

The same review of records for this period reveals that the most prominent reason for Federal Court dismissals of charges against DEA defendants have been: first, insufficient evidence; second, pending prosecution in Mexico; and third, cooperation by defendant with the Government. There are no records indicating the number of dismissals because of improper searches.

Question #15

Marijuana interdiction programs are largely run by the Coast Guard and the Customs Service which have the logistical resources to combat smuggling by private aircraft and vessels. The Subcommittee is aware of the current multiagency effort in South Florida to attack drug smuggling and related law enforcement problems. To what extent is DEA coordinating the efforts of Customs, the Coast Guard, the military, and other Federal, State and local resources in this effort?

ANSWER

DEA is coordinating all activities of the other agencies involved in the

South Florida operation. The actual operations are being managed by DEA in Miami. Headquarters, EPIC and various DEA field offices are involved in oversight and support.

Question

Was the El Paso Intelligence Center (EPIC) utilized in mapping out the most effective strategies?

ANSWER

Yes. EPIC was involved in all strategy sessions and is presently the central clearing house for all information pertaining to aircraft and vessels believed to be involved in the smuggling of marihuana into the United States.

Question

How has the large amount of publicity surrounding the Bush Task Force impacted the effectiveness of this costly interdiction effort?

ANSWER

The publicity has enhanced the effectiveness of the Task Force's efforts. There has been a significant reduction in drug smuggling by air from South America because of AWACS-type surveillance. Further, the success of Operation Tiburon and successive operations, which have accounted for 116 vessels and 1,300,000 pounds of marihuana seized since February 1, 1982, have led traffickers to believe that the Task Force is using satellites to monitor vessel movement from Colombia.

Question #16

Federal drug policy continues to stress that DEA focus its investigative resources on the highest level traffickers.

How does DEA target high-level traffickers?

How will the DEA/FBI concurrent drug investigative jurisdiction enhance DEA's target mechanism?

ANSWER

DEA identifies and targets high-level traffickers by analyzing and evaluating intelligence and information from a number of sources, including informants, citizens, legitimate drug handlers, documentary records, and other agencies--including Federal, state and local. As probable targets are identified, there is usually a gradual increase in the investigative effort expended on those targets. It then becomes a stepping-stone situation: as each investigative step is taken, more is learned, and more investigative avenues are opened. At some point along this continuum, a decision may be made to target the subject as a trafficker worthy of the expenditure of major investigative resources. Subjects who are identified as other than high-level traffickers may be arrested on accumulated evidence at any appropriate time after their status in the traffic has been determined.

As stated above, DEA utilizes many sources to determine the relative standing of violators in the criminal hierarchy. Input from the FBI and other agencies is vital to these determinations. And, as the FBI becomes more involved with and experienced in drug investigations, their contributions to DEA's identification of violators as high-level traffickers will become even more valuable.

Question #17

DEA continues to state that its number one objective is heroin, yet the White House's Drug Policy Office says that drugs will no longer be prioritized. Is heroin still the number one objective of DEA?

ANSWER

Regardless of whether there is or is not a formal declaration of drug priorities, DEA must still carefully budget its limited resources in such a manner as to have the maximum impact on the availability of controlled substances in the United States. To accomplish this, DEA has developed a number of criteria which are viewed collectively whenever a decision must be made regarding the commitment of resources. The relative status of the violator in the drug hierarchy is important. It would be imprudent, at best, to invest substantial resources on a street-level violator regardless of the drug. On the other hand, a violator who is importing extremely large amounts of drugs and amassing many millions of illegal dollars must be stopped, again, regardless of the drug involved.

All other things equal, heroin, because of its potential harm to society if not held in check, is given priority recognition by DEA. If there are equivalent-level violators, one dealing in marihuana and one dealing in heroin, heroin will receive first available resources. But, it is unlikely that such determinations need be made often. If violators are of such a stature that they merit Federal enforcement attention, then resources will be diverted from lower-level investigations rather than from equivalent-level investigations in other drug areas.

Question #18

It is my understanding that Attorney General Smith has created a committee to oversee the development of drug policy and to assure that all Department of Justice resources are effectively engaged in the effort against drug trafficking.

Please tell the Subcommittee in more detail about this committee and its activities, its membership, etc.

ANSWER

Because the activities of one criminal justice component directly affect the activities of the others, the Attorney General proposed the establishment of a forum to foster a systematic, coordinated, cooperative environment wherein such activities could be discussed. On January 14, 1982, he directed that the criminal justice components of the Justice Department meet regularly to discuss matters of mutual concern, both at the policy and operational levels, to ensure that all affected agencies/ divisions are well-informed regarding significant issues.

A primary goal of this group, called the Forum for Cooperative Strategy, is to enhance positive interactions among Department elements and to make certain that the Department plans and acts in a unified fashion, rather than as fragmented entities. This would also promote a proactive rather than a reactive departmental posture. Another goal of the Forum is to ensure that all Justice Department resources are used efficiently, without duplication.

Although drug enforcement issues are frequently on the agenda, other matters not specfic to this area are also handled by the Forum. In a general sense, the Forum oversees drug policy, as it oversees the policies of the other criminal justice programs.

The Forum has been meeting since January 1982. Meetings are held twice a month to discuss those issues that cross agency/bureau jurisdictions,

and/or that require resource commitment from more than one element. Regular members of the Forum for Cooperative Strategy include:

Rudolph W. Giuliani, Associate Attorney General, Chairman

Robert A. McConnell, Assistant Attorney General, Office of Legislative Affairs

William P. Tyson, Director, Executive Office for United States Attorneys

Lowell Jensen, Assistant Attorney General, Criminal Division

James P. Turner, Deputy Assistant Attorney General, Civil Rights Division

Norman A. Carlson, Director, Bureau of Prisons

Francis M. Mullen, Jr., Acting Administrator, Drug Enforcement Administration

William H. Webster, Director, Federal Bureau of Investigation

Alan C. Nelson, Commissioner, Immigration and Naturalization Service

William E. Hall, Director, United States Marshals Service

Gilbert G. Pompa, Director, Community Relations Service

Question #19

What is the primary role of DEA agents stationed in source and transit countries? Is intelligence routinely gathered and passed on to Customs and Coast Guard for use in interdiction activities? If not, are there constraints?

ANSWER

The primary role of DEA agents in source and transit countries is the elimination of the source and interdiction of the movement of drugs, specifically those drugs trafficked to the United States. This is accomplished primarily through daily liaison and coordination with host country enforcement agencies. Activities include the exchange of intelligence, case coordination and development. Liaison is also furthered by the training of foreign enforcement organizations to maximize their efforts which are directed toward interdiction and elimination. DEA also works with host country policy makers and within the U.S. Mission to influence the host country to increase and improve their commitment to international drug interdiction.

Strategic intelligence routinely gathered both from within and without the U.S. Mission is passed on to U.S. Customs and to the U.S. Coast Guard for use in their interdiction activities. DEA does this through EPIC and by coordinating with Customs at the suspected point of entry. The attempt is always made to coordinate Customs activities with DEA's in order to maximize the interdiction effort. The only possible exception to the above would be our own governmental constraints involving restricted intelligence dissemination, which would legally prohibit DEA from passing on information obtained from other U.S. agencies abroad. This would be a rare occurence.

Question #20

From your testimony regarding Cuban government involvement with drug trafficking, it appears that there is a very low level of coordination and joint analysis of intelligence gathered by DEA and other intelligence agencies such as CIA, DIA, FBI, Customs, and DOD. Is this true?

ANSWER

A classified answer was provided the subcommittee.

Question

Do these agencies supply hard copy reports to DEA? If so, is the intelligence in evaluated or raw form?

ANSWER

DEA has received evaluated intelligence in the form of hard copy reporting and oral briefings.

Question

Do you meet periodically with your counterparts in the community to discuss specific problems? How often do you meet? How many such meetings have taken place over the last two years? Which agencies are represented at these meetings?

ANSWER

During the past three months, we have had meetings with the CIA on an average of one every two weeks, and we talk on the secure telephone almost daily. Over the past two years, we have met approximately forty times. The bulk of our activity has been with the CIA, although meetings, as needed, have been scheduled with the FBI, Customs, NSA, and other agencies.

Question

Do you work from a prepared agenda? How much in advance is the agenda supplied?

ANSWER

Most of the meetings are related to specific issues which are identified in advance. However, there was a prepared agenda with working papers distributed one week prior to the aforementioned April meeting. Elaborate agendas are not often required.

Question

How would you assess the level of cooperation received from the CIA, DIA, NSA with respect to providing full and complete responses to your inquiries? Does DEA receive timely and full information from the other intelligence gathering agencies?

ANSWER

The level of cooperation has been good. There are, however, some legal problems related to the NSA material, and efforts are currently underway to resolve these issues.

Question

Do adequate mechanisms exist for the sharing of such intelligence between DEA and the CIA, and for its dissemination to other agencies with drug enforcement responsibilities such as the Customs Service and the Coast Guard?

ANSWER

DEA and the CIA currently have an ongoing intelligence exchange which seems to be working quite well. The CIA is responsible for evaluating the information of national security interest and disseminating it. The Customs Service and the Coast Guard coordinate directly with the CIA.

Question #21

DEA is the lead agency for drug enforcement and the U.S. Customs Service is the lead agency for border enforcement. As a part of its responsibilities, Customs interdicts large amounts of drugs and arrests numerous smugglers, yet many of these cases are allegedly neither investigated by DEA, nor prosecuted by U.S. Attorneys. Does DEA refuse to investigate and present cases for Federal prosecution? Please comment.

ANSWER

In each Federal judicial district, the United States Attorney sets criteria for cases which he will prosecute. With regard to drugs, these criteria are usually quantitative and, quite properly, vary from district to district. In the Southern District of Florida, for instance, the United States Attorney may insist that there be a substantial amount of marihuana involved before he will routinely prosecute. In a less active district in the Midwest, the U.S. Attorney may well prosecute every drug case offered. Prosecutors are limited in number and in the time they can devote to any class of cases, and therefore they must set certain standards. Nevertheless, in most jurisdictions the U.S. Attorney has agreed to prosecute cases below their established criteria when DEA can show good cause. One example is when a potential informant with known ties to more important violators is arrested with a small amount of drugs. In such a case, DEA would argue that it is important to charge the individual in spite of the small amount of drugs involved in order to elicit his cooperation.

DEA is aware of these prosecutor-set limitations and presents cases to the U.S. Attorney accordingly. When Customs notifies DEA that an arrest has been made involving only small amounts of drugs, DEA first ascertains--usually through computer records checks--if the violator has a previous record, ties to other drug figures, or any other significant involvement in the drug traffic. If he does, then the U.S. Attorney may be consulted and asked to waive his minimum-amount criteria. If the violator is unknown, has no record, and no known ties to other violators, then Customs is advised that the amount of drugs involved is below the criteria set by the U.S. Attorney and prosecution will be declined. Customs then either proceeds to levy administrative penalties or, in some areas, asks local enforcement authorities to take the case to state court.

In no instance where substantial amounts of drugs or substantial violators are involved does DEA refuse to investigate or present the facts for prosecutive opinion.

Question #22

Many interdiction cases seem to result in convictions of low-level violators or deportation of foreign nationals arrested. Is DEA making the best use of information available from interdiction cases?

ANSWER

DEA is making the best use possible of information from low-level interdiction cases. Regrettably, however, the defendants in these cases frequently know that conviction will result only in deportation or minimal sentences, and they therefore refuse to assist the Government. We have arrested the same violator, particularly in boat cases, repeatedly only to have

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the defendant ultimately returned to his home country. In other cases, the couriers who are arrested simply do not know enough about the operation in which they are involved to provide any meaningful assistance to the Government.

Question

What percentage of interdiction cases developed by other Federal agencies are investigated and/or presented to U.S. Attorneys for prosecution by DEA?

ANSWER

There are no statistics available to indicate the percentage of other-agency referrals which are ultimately investigated or presented to the U.S. Attorney for prosecution. Frequently, such referrals fall below the criteria established by the U.S. Attorney and no records are kept relating to the number of declinations in these small cases.

Question

How productive are DEA follow-up investigations of interdiction cases? Who debriefs smugglers arrested by Customs and Coast Guard personnel?

ANSWER

When smugglers are arrested by Customs or Coast Guard and either the amount of drugs involved is substantial or there is other reason to suspect that the defendant has ties to other traffickers or a major trafficking organization, DEA agents personally debrief the defendants. Productivity from this activity varies with the willingness of the defendant to cooperate and his ability to provide meaningful information.

Question

How does DEA routinely ensure that arrestees are thoroughly debriefed and that any information obtained is linked to current or potential conspiracy investigations which could lead to the kingpins of smuggling organizations?

ANSWER

All information elicited from violator debriefings is reported in writing and entered into DEA's national computer indexing system. In this manner, such information may be correlated with historical data and the maximum investigative insight gained.

Question #23

Multi-agency operations (special projects), such as those conducted in Florida in recent years, appear to be much more successful than when each agency acts independently. How does DEA encourage multi-agency efforts of this kind nationally?

Are Customs, the Coast Guard, IRS and other agencies willing partners in these operations?

Does some permanent mechanism need to be devised to encourage and coordinate more multi-agency efforts on a continuing basis?

Since EPIC has participating representatives of most involved Federal agencies on-site, and links with many other Federal, State and local law enforcement bodies, is it a logical location to promote, plan and coordinate such efforts on a continuing basis?

ANSWER

The success of multiagency operations in which DEA has played a lead is attributable to several factors. Among these is the excellent cooperation DEA has received from other agencies and the care which DEA has exercised in choosing appropriate investigative targets. As particular trafficking groups or geographical areas begin to assume prominence in the illicit traffic, DEA maintains a careful watch and reviews enforcement options which might be employed successfully to interrupt the illegal activity. When warranted by circumstances, DEA may approach other agencies who have jurisdiction over some of the criminal acts involved and invite participation in a joint investigation. This activity occurs frequently at the local level when a DEA SAC informally contacts his counterpart at another agency and the two agree to share information and resources. When the illegal activity is more widespread, DEA Headquarters reviews the situation and may contact counterpart headquarters of other agencies and suggest a joint effort at the national level. Agencies invited to participate in multiagency operations are generally receptive and the results achieved in past cases is a fair measure of their interest and cooperative attitude.

The most critical element in any multiagency operation is cooperation. In the structured environment of a well-defined operation, cooperation is achievable and rewarding. However, to initiate a continuing multi-agency arrangement without specific targets would degrade the level of cooperation possible. When specific targets are involved, agencies participating in joint efforts know that they must keep unilateral enforcement activity, as it regards the target, to a minimum during the period of the joint operation. With a continuous, multiagency effort, it would be virtually impossible for all agencies to keep up with what the "task force" is doing. The result would be duplicative investigations of the same targets by the "task force" and one or more individual agencies. There would be frequent conflicts among agencies to determine whether the "task force" had priority in an investigation or whether an individual agency did. In short, an ongoing multiagency effort dedicated to drug enforcement is not likely to work. There must be a lead agency and one of the responsibilities of that lead agency should be to recognize the proper time to invite participation by other agencies in joint efforts.

The El Paso Intelligence Center was designed and is operated to provide real-time operational and analytical support to various agencies. EPIC is staffed with analytical experts and personnel trained to quickly research numerous data bases for inquiring member agencies. To charge EPIC with promotion, planning, and coordination of multiagency efforts would dilute EPIC's exemplary performance in the areas for which its personnel have been trained.

Question #24

What priority does DEA place on controlling the diversion of legally-produced prescription drugs?

ANSWER

The DEA considers dangerous drugs investigations to be one of its major priorities. These investigations include both clandestine manufacture and diversion cases.

These investigations are important to DEA because of the large number of persons who abuse dangerous drugs. The Government Accounting Office (GAO) estimates that 7 million Americans abuse controlled pharmaceuticals each year. The National Institute on Drug Abuse (NIDA) estimates that between 12 and 16 million people have used stimulants for nonmedical reasons. Diverted drugs make up a substantial portion of these abused drugs.

This abuse is also partially substantiated through information in the Drug Abuse Warning Network (DAWN). DAWN statistics indicate that legally-produced prescription drugs are involved in 7 out of the 10 most frequent emergency room situations.

DEA has an existing diversion control program with an authorized staff of 247 investigators (see question number 26). This program has been designed to have an impact on the diversion of legally-produced prescription drugs. DEA also uses other control mechanisms such as drug scheduling actions and quota authority to have an impact on diversion.

Question #25

To what extent has the DEA shifted its efforts from monitoring the wholesale level (manufacturers and distributors) of the legitimate drug distribution chain to combatting the diversion of drugs by practitioners at the retail level?

ANSWER

DEA's diversion control program procedures were changed in 1980 to reduce the amount of time spent investigating those wholesale level handlers, who have demonstrated a low potential for diversion. These registrants are investigated with the same frequency; however, the depth of investigation has been reduced. Resource savings are used for investigating targeted high-level registrant violators (mostly physicians and pharmacists). These changes were initiated in 1981 and have now been completed. Over one-half of the investigative efforts of DEA's diversion investigators are now concentrated on the investigation of high-level practitioner violators with excellent results (see Question Number 26).

Question #26

Please describe Operation Script and the Targeted Registrant Investigation Program (TRIP). How successful has DEA been with retail level investigations conducted in Operation Script and in the Targeted Registrant Investigations Program?

ANSWER

Operation Script was developed in 1979 as a pilot project to develop investigative efforts which would have a more direct impact on high-level pharmaceutical traffickers. The project used DEA computer systems to target potential high-level violators. Operation Script demonstrated that there were practitioner violators operating at the Class I and II level. The project further established that a pretargeting system could be successfully applied to practitioners.

During 1980, DEA used its experience with Operation Script to design a continuing program--titled TRIP (Targeted Registrant Investigations Program)--which would have an impact on high-level diversion activity. Investigative resources were shifted from the nonpractitioner level into this program area. TRIP relies upon intelligence information developed through DEA's liaison with state regulatory and enforcement agencies to develop potential major targets in conjunction with the states. Further information regarding these potential targets is then developed through the use of purchase information available in DEA computer systems and through limited field investigative efforts to document that these potential targets are, in fact, operating at high levels. Once these preliminary efforts document trafficking activity at the Class I or II level, the target is identified under TRIP as appropriate for Federal investigation. If the preliminary work does not justify Federal enforcement efforts, the case is referred to the state for independent action.

Although TRIP has been designed to focus on Class level I and II violators,

there are provisions to investigate targets who may not technically reach this level. This can occur when a violator has been identified as a principal source of a major drug of abuse within a given state. If the state assigns this suspect the highest priority for investigation and there are available DEA resources to assist with the investigation, the violator can be identified as a special TRIP target. For example, if a state ranks number three nationally in consumption of hydromorphone and one pharmacy has purchased a significant share of the total purchases, the pharmacy can be targeted even if it does not meet Class I or II classification.

Question

How effective has DEA's targetting of high level violators been in both Operation Script and TRIP?

ANSWER

DEA is very pleased with the results of the program given the amount of resources devoted to it.

Developing and implementing these diversion programs required some field adjustments which occurred in 1980. TRIP case activity became substantially more sophisticated during 1981. DEA diversion cases resulted in indictments and convictions under the continuing criminal enterprise provisions of the CSA, as well as for violating the Racketeer Influenced Corrupt Organization (RICO) statute. Indictments of this nature had not previously been considered feasible for registrant violators. A total of 115 TRIP investigations were initiated in FY-1981. Many of the investigations required specialized investigative techniques to indict the individuals running sophisticated trafficking operations, such as stress clinics, which have a cloak of legitimacy. The number of arrests resulting from the TRIP program activities increased from 35 in 1980, to 81 in 1981, and 81 for the first 6 months of FY-1982. Asset removals, civil penalties and criminal fines reached a high of $4,235,150 during FY-1981 and have continued at this accelerated rate during FY-1982.

DEA has recently accelerated progress in investigating stress clinics. These clinics are probably the major source of methaqualone diversion. The stress clinics are established by financiers to provide a distribution source for methaqualone while also providing a careful facade of legitimacy. DEA noted that certain individuals are financing these clinics in major American cities such as New York, Chicago, Miami and Atlanta. It has been difficult to indict these clinic operators and the physicians they hire because the clinic operations have been skillfully designed to provide for a physical examination and diagnosis before a prescription is provided to the patient. Nevertheless, DEA's efforts recently resulted in indictments charging clinic operators in New York City with conducting a continuing criminal enterprise, conspiracy and other drug related offenses. Also, in Miami, two clinic operators and multiple lesser defendants have been recently arrested for conspiracy and illegal sale. This latter case is also being reviewed for possible indictment under the continuing criminal enterprise provisions of the CSA.

Question

Were high level violators and/or multi-state operations targeted and investigated?

ANSWER

While TRIP has been designed to concentrate scarce Federal resources on Class I and II violators, it should be pointed out that the program is also designed to provide Federal leadership and assistance to the states. The identification of targets requires constant liaison with state

regulatory and enforcement agencies. Intelligence information is shared by Federal and state authorities. DEA field investigators may spend limited amounts of time with state investigators to determine whether a potential violator would be an appropriate target under TRIP. Conversely, state agencies may assist the DEA in TRIP investigations if the state has the resources and inclination to do so.

Thus, although the vast majority of targets were in fact high-level violators under DEA guidelines, registrants who presented a significant source of diversion in a particular state could also be investigated.

Question #27

What has been the effect, if any, of eliminating DEA's Diversion Investigation Units (DIU) Program?

ANSWER

From 1972 to 1980, DEA established 23 Diversion Investigation Units (DIU) in a coordinated effort to assist the states in developing effective programs against practitioner diversion. Of these 23 units, eleven are still fully functional, four operate in a limited role under state funding, and eight have ceased operation. The elimination of the DIU project has prevented (1) the expansion of the program into new states, (2) the continuation of the program in some states, and (3) the granting of supplemental funds to existing units.

Question #28

What is the most prominent way Quaaludes are diverted to the illicit market?

ANSWER

Methaqualone diversion involves diversion from two "legitimate" sources of supply. The major source of supply is from foreign pharmaceutical companies. The second "legitimate" source is from domestic sources under the guise of stress clinics. A third lesser source is from domestic, totally illicit clandestine laboratories where the bulk methaqualone powder is actually being chemically synthesized.

The following is a typical drug diversion scheme where the source of the bulk methaqualone used for tabletting is from a foreign pharmaceutical supplier. The violators, through the use of false letterheads, addresses, and perhaps forged importation documents, represent themselves to brokers in European free trade zones as "legitimate" purchasers of the drug involved. The use of free trade zones, for illicit purposes, plays a major role in this diversion problem. The brokers in turn will place the order with a major manufacturer and arrange for necessary shipping, without verifying the legitimacy of their customers. In this fashion, millions of dollars in potential illicit profits are obtained for mere thousands of dollars in investments. The goods will then move in the stream of commerce to their final destination usually without detection, since most Customs officials are looking for different types of drugs, (i.e., heroin, cocaine, and marihuana), being smuggled in an entirely different fashion.

Sometimes the scenario is more complicated. The broker may be in collusion with the violators and thereby obtains an inflated fee for his services which may include mislabeling the goods as "harmless chemicals," "fertilizer," or "soda ash."

Once the traffickers receive the bulk powder it is used to make counterfeit tablets that closely resemble legitimately-produced Quaaludes. After that, they are smuggled into the U.S. by traditional methods and enter the illegal drug market.

Domestically, the most prominent way methaqualone tablets are diverted to the illicit market is through stress clinics. Legitimately-produced methaqualone tablets are prescribed in stress clinics that are being established throughout the United States. These clinics are typically set up as independent corporations by nonmedical financiers who are knowledgeable of the existing case law regarding the standards of legitimate medical practice. The physicians and other staff personnel are recruited through newspaper advertisements and have no control over the clinic's operations or its standards of medicine. Each of the clinics has a set program of physical and/or psychological examinations for all new patients which has been specifically developed to present the appearance of legitimate medical treatment. However, after receiving the examination and paying a fee of $100-$125, the patient is almost always given a prescription for a one-month supply of Quaalude. To reinforce the appearance of legitimate treatment, each patient is allowed only one prescription every 30 days. The stress clinic phenomenon is widespread. Clinics have been identified in Boston, New York, New Jersey, Chicago, Los Angeles, Miami and Atlanta.

There have been recent successes in stress clinic prosecutions. In May 1982, 10 indictments were released by a grand jury in New York including violations under the RICO statute, continuing criminal enterprise, conspiracy, tax fraud and other statutes. At the same time, in a New Jersey state court, five individuals were convicted for illegal distribution and conspiracy charges.

Domestic clandestine labs producing methaqualone powder present a third means of illicit supply. In 1981, 14 clandestine labs capable of producing methaqualone were seized. These labs, however, account for a smaller percentage of the total methaqualone available in the illegal market from the two methods described above.

Question

What is DEA doing about the international diversion of bulk methaqualone powder?

ANSWER

In response to the problem of international diversion of bulk methaqualone powder, the Drug Enforcement Administration launched a three-pronged program.

The first involved bilateral diplomatic initiatives between the United States and foreign producing nations to curtail the manufacture and exportation of methaqualone for illicit purposes. In late 1980 and in early 1981, DEA, with the assistance of the State Department, undertook a series of diplomatic initiatives with several nations designed to increase operational cooperation and eliminate the sources of diversion. In response to our initiatives, the Federal Republic of Germany, a major source and transit country of psychotropic substances, imposed stringent import and export control measures; Hungary, another leading source country, voluntarily curtailed the production and exportation of methaqualone; and Austria, a third producing country, recently curtailed methaqualone production. These actions alone removed at least an additional 40 to 50 tons of methaqualone that were available for diversion to the United States illicit market and resulted in a long-range solution by eliminating availability at the source.

Secondly, in conjunction with these bilateral efforts, the DEA embarked on a campaign involving multilateral diplomacy to prevent this drug diversion problem. For example, DEA has taken advantage of our leadership role in international drug control bodies to reduce the flow of illicit drugs to the United States. At the 29th Session of the Commission on Narcotic Drugs (CND) held in February 1981, DEA was instrumental in the adoption of a resolution calling for certain voluntary measures to prevent the diversion of legitimately-manufactured drugs from international commerce.

More recently, at its seventh special session held in February 1982, the CND unanimously passed two significant drug control resolutions offered by the United States. One resolution expands the role of international drug control authorities to monitor and report the suspicious movement of controlled substances in international commerce and the other resolution calls for increased action against brokers who intentionally facilitate the diversion of controlled substances. International drug control authorities are also calling for increased monitoring programs by customs authorities to identify the suspicious movement of pharmaceuticals in international commerce.

Another result of multilateral diplomacy to prevent the diversion of methaqualone from international commerce was the Government of Colombia's ratification of the Psychotropic Substances Convention of 1971, the international drug control agreement under which methaqualone is controlled. Taking advantage of Article 13 of this agreement, the Government of of Colombia has notified international drug control authorities that the importation of methaqualone is prohibited and that exporting countries are not to approve shipments to Colombia.

Thirdly, to assist drug law enforcement authorities in the identification of suspicious shipment, DEA has prepared a Drug and Chemical Watch Manual. The manual provides basic technical and investigative guidance to assist U.S. Customs personnel in the identification and interdiction of illicit shipments of diverted pharmaceuticals and chemicals in international commerce. Copies of these manuals have been distributed to U.S. Customs field offices for their use and a foreign version, in several languages, is now being distributed to foreign customs and drug law enforcement authorities.

These examples reflect the successes we have had in reducing the availability of methaqualone for illicit purposes and demonstrate the effectiveness of diplomatic and regulatory initiatives.

Question

What legislative action could best restrict the diversion of Quaaludes?

ANSWER

The abuse and diversion of Quaaludes is a multifaceted problem which will only respond to a variety of efforts. DEA must continue with its diplomatic initiatives to reduce the worldwide oversupply of methaqualone which is available for illicit trafficking. Enforcement efforts must continue, both in the international and domestic arena. Stress clinic cases must be prosecuted and case law must be developed to clearly prohibit these operations. Specifically in relation to legislation, the DEA has supported revised penalty structures which would make trafficking in dangerous drugs subject to the same penalties for heroin trafficking. This tougher penalty structure would also have a significant impact on methaqualone trafficking. Also, DEA intends to use the full weight of its quota authority to maintain U.S. production levels at the absolute minimum required for legitimate medical needs. Efforts of this nature must continue and, where possible, be enhanced and strengthened.

Question #29

Other than the areas already discussed, are there any other suggestions you would offer to improve the overall effectiveness of the DEA and the Federal drug interdiction progress?

ANSWER

Continued Congressional support in the areas already discussed would greatly improve the progress of Federal drug interdiction and the overall effectiveness of DEA.

Question #30

Please give your assessment of drug activity and trafficking in Alabama at the present time. It has been stated by Cecil Moses, SAC of the FBI office in Birmingham that it is a serious problem.

Has Alabama become a haven for drug trafficking?

Are all of the drugs coming into Alabama being used in the State, or is Alabama just a transfer point?

What efforts are being made by the DEA and other agencies to interdict and curtail drug trafficking in Alabama?

ANSWER

The State of Alabama is indeed involved with the drug traffic; however, in relation to many other states, the problem there is less serious. There is no significant local addict population.

Ports on the Gulf and airstrips located inland are being used to some degree by smugglers importing drugs. Some of these drugs are surely being distributed locally, but a substantial part is transported to neighboring or distant states.

The State of Alabama is also fortunate to have a good state police force with approximately 40 state narcotics agents assigned to monitor and interrupt the traffic in controlled substances.

DEA is carefully watching the traffic in Alabama, as we are all along the Gulf Coast, to determine what impact, if any, will be felt as a result of the South Florida Task Force, currently underway. To date, there has been no reported significant change in activity in Alabama.

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