FORFEITURE OF NARCOTICS PROCEEDS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

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SECOND SESSION

ON

FORFEITURE OF PROFITS OF NARCOTICS TRAFFICKERS

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FORFEITURE OF NARCOTICS PROCEEDS

WEDNESDAY, JULY 23, 1980

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 1:08 p.m., in room 5110, Dirksen Building, Senator Joseph R. Biden, Jr. chairman of the subcommittee, presiding.

Present: Senators Biden and DeConcini.

Staff present: Mark Gitenstein, chief counsel; Lillian McEwen, counsel; Barbara Parris, research assistant; Edna Panaccione, chief clerk; and Kathy Collins, staff assistant.

OPENING STATEMENT OF SENATOR BIDEN

Senator BIDEN. We open these hearings today to discuss and investigate the degree to which the forfeiture of profits of narcotics traffickers has occurred.

Despite a decade of intensive Federal effort by the past three administrations, narcotics trafficking still flourishes. The result of this trafficking is the addict who steals from neighbors to maintain an expensive habit; the teenager who goes to high school stoned and apathetic; and the career criminal millionaire who purchases cars, businesses, and real estate with cash delivered to banks in suitcases.

The Federal narcotics control program has been the subject of several recent Senate hearings. As chairman of the Subcommittee on Criminal Justice, I have assigned the highest priority to the area of narcotics control. Some of the most significant dimensions of that effort extend abroad where the narcotics are produced, processed, and shipped along clandestine routes to Western Europe and the United States. The subcommittee last week released a report dealing with narcotics control overseas. But the narcotics problem also has important domestic dimensions, and that means the country must also use every method available in the law to stem the flow of drugs across and within our own borders.

The case of the State of Florida alone provides a striking example of the huge dimensions of the illegal domestic trade in drugs. Florida, with more than 8,000 miles of coastline and hundreds of small airports, has for years been a major area for the importation and distribution of illicit drugs.

Federal Reserve officers in Florida have generally received more currency from commercial banks than they have returned to circulation. This surplus grew from $921 million in 1974 to $3.3 billion by

1978. Last year the surplus was $4.4 billion and this year it may well reach the $6 billion mark. When criminals make that kind of money, outside the normal channels of commerce and for the most part beyond the reach of the Internal Revenue Service, within a single State, it is clearly time to bend every possible effort toward snaring the drug traffickers and taking away their assets.

Since 1970, the Federal Government has had the statutory authority to punish a convicted criminal for distributing drugs illegally not only by incarceration but also by forfeiture; that is, the surrender of assets generated by illicit trading in drugs to the Government by court order. It was hoped that taking away the enormous sums of money involved would eliminate the drug network by not only seizing illicit drugs and incarcerating traffickers but also by confiscating the enormous profits that sustain the elaborate trafficking networks.

The various forfeiture statutes were enacted in 1970 as part of an effort by Congress and the Nixon administration to seek the eradication of organized crime. The premise of the drafters of the legislation is explicit in the statement of findings of the organized crime bill:

> [A]s long as the flow of money continues, such prosecutions will only result in a compulsory retirement and promotion system as new people step forward to take the place of those convicted. What is needed here * * * are new approaches that will deal not only with individuals, but also with the economic base through which those individuals constitute such a serious threat to the economic well-being of the Nation * * *.
>
> [A]n attack must be made on their source of economic power itself, and the attack must take place on all available fronts. [S. Rept. No. 91–617, 91st Congress, 1st session, 78–79 (1969).]

The priority tool which Congress gave the Department of Justice for attacking the economic power of organized crime was forfeiture. This hearing explores the effectiveness of the Department's implementation of the forfeiture provisions.

This hearing will explore what one Justice official has described as a "dismal record" in that regard. It appears, in fact, that the Department's record in attacking the financial foundations of organized crime has been very nearly nonexistent. Indeed, I believe it is a major reason why we have failed to close the revolving door for bigtime traffickers and why illicit drug trafficking continues to flourish to the degree that it has in this country.

Last winter, in order to insure that the forfeiture statutes were being fully implemented, I asked the General Accounting Office to examine cases in which forfeitures were attempted or successfully obtained. Their report will not be ready for publication until 1981. However, the preliminary results are discouraging. These hearings will examine the General Accounting Office results and the use of the forfeiture statutes generally.

Just to illustrate how poor the Department's forfeiture strategy has been, when we started our study we learned to our dismay that the Department did not even have adequate records from which to answer our questions. I hasten to point out that all three administrations involved share the responsibility for this deficiency; that is, the Nixon, Ford, and Carter administrations. Before the authors of the report could examine the use of the forfeiture statute, they had to have a list of the major narcotics cases. The authors had to create the list themselves. In the entire Department of Justice, including the

Drug Enforcement Administration, no person had available in a single source of data a list of the number of forfeiture cases attempted and the ultimate disposition of these cases.

The list attached to the statement of the representative of the General Accounting Office thus is the first effort of this nature. The General Accounting Office found and compiled a list of 99 narcotics cases that have been adjudicated through the indictment stage under the Racketeer Influenced and Corrupt Organization—RICO—Act and the continuing criminal enterprise—CCE—statutes.

These are the statutes that enable the Government to seek the forfeiture of property employed in or proceedings from illegal enterprises. The failure of the Department to generate such a list symbolizes its apparent inability to implement the forfeiture laws effectively. The Department has not been able to learn the valuable lessons of experience in earlier cases so that they can be applied in subsequent cases. No one knew how many of these cases had been attempted, what happened in the cases, how many cases involved attempts to forfeit assets, or why those attempts failed or succeeded. There may be an explanation for this but, if there is, I must tell you at this point it escapes me.

The General Accounting Office results must be placed in the context of the $54 billion estimated to be produced annually by narcotics trafficking in the United States. From the 99 narcotics cases found by GAO, assets forfeited already and that may be forfeited during the next few years total only $3.5 million out of an estimated $54 billion of traffic annually.

Most astounding of all is the fact that in the last decade less than half a million dollars has been actually forfeited and placed in the U.S. Treasury with the help of the forfeiture statutes. Testimony of the General Accounting Office will demonstrate that assets of narcotics traffickers have been taken by the Government in the form of fines, tax assessment, and seizures at the scene of the offense. But these are certainly minimal inroads upon the enormous profits available from illegal drug trafficking. For example, in 1979, narcotics violators were assessed only $13.9 million in additional taxes and penalties through the operation of the Internal Revenue Service narcotics program.

There are many complex reasons why narcotics traffickers have not been required to deposit their profits in the Treasury. It appears that prosecutors and investigators have little professional training or incentive to go after the profits of the illicit drug trade. If that proves to be the case, there will be an obvious opportunity for improving forfeiture enforcement, and I am confident that other equally important proposals will be forthcoming.

But as we open these hearings today, I believe perhaps the single most important thing we can accomplish by them is for us in this subcommittee to develop completely realistic goals for our domestic narcotics control programs—and that will be very hard to do.

How important are the forfeiture statutes? If they are important, can they be implemented in such a way that we can really impact on organized crime, that we can really impact on the control of the illegal substances? If they cannot, maybe we should say that they cannot and decide whether or not there are other laws necessary or conclude that there is not anything that we can do and we should not be wasting our

time in this committee or in the Justice Department talking about these forfeiture proposals.

On the one hand, we are faced with a problem of enormous proportions that threatens our youth, our families, and our national economy. It is too big and too urgent to be ignored. It is so critical that we must attack it across as broad a front as possible. But we must not delude ourselves about how quickly or how completely we can solve such a problem. In the case of forfeiture, for example, the ease with which large-scale financial transactions can be accomplished and concealed from official scrutiny in the United States makes forfeiture of large amounts of assets exceedingly difficult under the best of circumstances and perhaps impossible. To expect too much from these forfeiture statutes may prove to simply encourage the recipe for frustration and despair at this point at the minumum effort of depriving the criminals of ill-begotten gains that he or she has come by as a result of illicit trafficking in drugs.

On the other hand, to attempt too little or not to manage forfeiture actions to the best of our ability would clearly deprive us of what should nevertheless be a major weapon in our attack on drug trafficking and organized crime. The forfeiture statutes are not a magic wand with which we can wave away our problems with illicit drugs, but I believe these hearings can show us how to forge those statutes into a hard, practical tool with which we can attack drug trafficking at its financial foundations. It is an absolutely essential tool, and we must learn to use these tools better and make them work if they can work.

One of the most essential things is that this money does not find its way into legitimate businesses and end up corrupting the economic businesses of this country. It would be like a cancer that would go beyond whether a local chieftain of a crime syndicate would be able to drive around in a white Cadillac and have a winter home and a summer home and buy $300 fedora hats. That has always been a problem, but these folks who are involved in a big way in drug trafficking are no longer wearing iridescent ties and black shirts and $300 wool pinstripe suits. They are wearing $500 and $600 suits and they may sit on the board of directors of banks and insurance companies. They may be the largest real estate broker in the area. Those are the things that are of great concern to all of us.

I am told, and the record indicates, that was one of the things to which the forfeiture statute was directed. If it turns out that we are not in fact seeing this illegal money finding its way into those kind of businesses, then I would acknowledge that the urgency is not there. I am much less concerned about depriving someone of their ill-gotten gains if they are already behind bars than I am about seeing to it that we go after the next person in line.

It is argued that we have a number of prosecutors who have no incentive, that promotion is not based upon how much money is forfeited to the Government, but how many people you convict and put in jail. That is fine as long as that one is not going to continue the organization and finance its way into legal businesses.

These are some of the things we want to find out about today. And I want to emphasize that before I yield to my colleague, Senator DeConcini.

Senator DeConcini has shown a great interest, and has probably more experience and knows more about the subject than most of the U.S. Senate and the Congress.

Before I yield to Senator DeConcini, I would like to emphasize that these hearings are not designed to place blame upon any Government agency. They do not start off with a conclusion as to the ultimate value of the forfeiture statute. One of the things I want to establish for the record is how valuable is the forfeiture tool in dealing with drug trafficking and, No. 2, if we conclude that it is valuable, how can we better see to it that it is implemented with greater frequency and with more success than it has been thus far.

With that, I will yield to my colleague from Arizona.

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

I have no prepared statement at this time, but I do want to compliment the chairman of the Criminal Justice Committee and the staff for putting together these hearings. I know some of the witnesses. We have talked before and I believe we will have a very enlightening presentation here as to what value the forfeiture tool is today as well as what it might be expanded to.

I think the reference the chairman makes to the tax format problem is one that I truly hope is brought out in the hearings.

Once again, the permanent subcommittee has conducted hearings as has the Appropriations Subcommittee on this subject matter and have concluded time and time again that it was overkill on the part of Congress, not realizing the significance of all the enactments of that Tax Reform Act.

I am hopeful again that that will be brought out and perhaps the amendments can be put together to make a realistic adjustment of that particular statute. I do thank you, Mr. Chairman, for conducting these hearings and bringing together the expert witnesses that I see are on the agenda today.

Senator Biden. Thank you, Senator.

We will proceed—so everyone knows where they appear on the list—we will begin with the General Accounting Office, William J. Anderson, Director, General Government Division, and after that we will go to Mr. Richard J. Davis, Assistant Secretary of the Treasury, and then we will have a panel of prosecutors consisting of Kathleen P. March and Dana Biehl.

Then we will have a second panel consisting of Mr. Brent Eaton, special agent, Drug Enforcement Administration and Mr. James McGivney, special agent, Drug Enforcement Administration. We will proceed in that order.

To help expedite the matter this afternoon, I would suggest that you all attempt to keep your statements within the 10-minute range. There will be no hard and fast rule. If you feel you need to go 15 minutes, fine; but if you can cut it down, it will give us a chance to get more questions in. Both of us may very well interrupt you while you are proceeding or probably at the conclusion of your statement with questions which we have on the subject matter.

Mr. Anderson, if you will introduce the people with you at the table and proceed, we will appreciate it.

PANEL OF GAO OFFICIALS:

STATEMENTS OF WILLIAM J. ANDERSON, DIRECTOR, GENERAL GOVERNMENT DIVISION, ACCOMPANIED BY KENNETH MEAD, ATTORNEY, THOMAS COLAN, GROUP DIRECTOR, AND EDWARD STEPHENSON, TEAM LEADER

Mr. ANDERSON. Good afternoon, Mr. Chairman and Senator DeConcini.

With me today is Kenneth Mead, who is with the Office of General Counsel providing legal advice. To my right is Thomas Colan, Group Director, and beyond him, Edward Stephenson, who is team leader on the specific project that we are doing for you.

I would like to have my statement entered into the record in order to save time. It is one-half to 1 hour long—more than we can bear—so I would like to read the summary part.

Senator BIDEN. Because you have done so much work on this, if you want to read it, we are prepared to listen. If you would rather do that, it is all right.

Mr. ANDERSON. I cover an awful lot of ground. A lot of important information is presented here and there that I might miss in my oral summary of it.

Let me, if I may, read it and then skip over parts of lesser importance mainly to be sure that I cover all the important material.

Senator BIDEN. Proceed.

Mr. ANDERSON. We are pleased to be part of your hearings on improving the ability of law enforcement agencies to take illicitly acquired profits and assets from organized crime. Our work is continuing and my testimony today should be considered more in the nature of a status report than a complete analysis of the problems and the ways they can be solved. This committee, in particular, is fully cognizant of the fact that the problems are complex and will continue to require a commitment by all branches of Government before satisfactory results are achieved. As requested by this subcommittee, our audit work has focused on identifying the various statutes that provide forfeiture authority and on determining the extent the authority has been successfully used by law enforcement agencies, particularly in drug trafficking prosecutions.

Unfortunately, we must report that the Federal Government's record in obtaining asset forfeitures is not good. Forfeitures to date have consisted primarily of the vehicles used to smuggle drugs and the cash used in drug transactions. Compared to the profits realized, these forfeitures have amounted to little more than an element of operating expenses. The illicit profits themselves and the assets acquired with them have remained virtually untouched. Yet these kinds of forfeitures were the target of legislation passed nearly 10 years ago as law enforcement's answer to organized crime.

The reasons for the meager success are many. Investigators and prosecutors have had little incentive to go beyond incarcerating criminals and obtain forfeiture of their illegally acquired assets; investigators of major drug traffickers lacked expertise in tracing financial transactions; schemes to launder dirty money are complex and aided by bank secrecy laws of some countries; and our own laws and

administrative procedures have hindered the disclosure of financial data to Federal law enforcement agencies.

The Government's efforts in this area show signs of improvement. Recently, the Department of Justice acknowledged inadequate use of forfeiture statutes and the need to increase financial expertise in tracing the flow of illicit money; additionally, the Administrator of the Drug Enforcement Administration, DEA, has expressed his commitment to certain types of financial investigations. However, there is a long way to go before anyone can claim that the use of forfeiture statutes has had an impact on criminal enterprises.

At this point, Mr. Chairman, I would like to discuss the statutes providing this forfeiture authority, the extent to which the statutes have been used, and some of the reasons they are not used any more.

At this point, sir, I will switch off the written statement itself and try to hit the highlights. The principal tools that were given to the law enforcement agencies were included in two acts that were passed in 1970 that you referred to, principally the Racketeer Influenced and Corrupt Organization Act and the continuing criminal enterprise authority. Beyond that, there is also the civil forfeiture authority available in 21 U.S.C. 881 which has been the authority that has been brought to bear most to date as opposed to either the RICO or the CCE authority.

I would like to refer to page 23 of my statement, Mr. Chairman, to see the hard facts on what has been accomplished with the authority provided. As shown there, in 1979, a total of $33 million was recovered through civil seizures and criminal forfeitures. If you will look at that schedule, you will see only $300,000 of the forfeitures can be attributed to the criminal forfeiture authority that was provided Federal enforcement agencies in 1970.

Under civil seizures, the currency of $5.5 million represented there was seized by DEA pursuant to 21 U.S.C. 881; specifically, the additional authority provided by the Psychotropic Substances Act Amendments of 1978. Similarly with respect to currency, you see $100,000 was seized by Customs.

Finally the figure you mentioned earlier, the real estate figure of about $300,000, really is the only forfeiture that would have been encompassed by the RICO and CCE statutes—not a very impressive set of statistics in relation to the problem as shown above, based upon the Department of Justice's estimates that about $54 billion are the gross proceeds of drug dealers and narcotic traffickers in this country.

On the two pages preceding this schedule, Mr. Chairman, we have a list of the cases we were able to identify. We are reasonably confident that we have accounted for 95 percent or more, in the absence of definitive data on the part of the agencies, of those cases; 12 of the 95 cases included forfeiture actions.

In order to pursue some of the cases in a little more depth, we selected 25. We actually selected four districts and we went out and looked at all cases that had been taken through the indictment stage under CCE or RICO. There were 25 in the 4 districts selected. Of those, six involved forfeitures.

Perhaps more startling though is that of the 25, the initial planning to pursue the traffickers in only 6 instances had as a goal for-

feiture, whereby a plan was devised to identify and account for the assets as part of the investigative plan so that an attempt could be made to seize them in the course of the case.

Again, some other information bearing on what has been done to date. Since the 1978 amendments to section 881 of title 21, DEA has seized $7.1 million in currency involved in drug transactions. They have not availed themselves of the other authority granted by the 1978 amendments in that there have been no forfeitures of derivative proceeds, that is those proceeds that were converted to some kind of other asset.

Civil forfeitures by Customs, ATF and DEA of vehicles, vessels, and monetary instruments used to facilitate criminal activities totaled $57 million in 1979, of which $32 million was drug related.

Fines are another way to recover money from the type of people we are talking about. Only 11 percent of the defendants convicted for narcotics violations in 1978 were fined, and only 20 of those were fined in an amount over $100,000.

The Internal Revenue Service is also trying to do something for the Government in recovering assets. Tax assessments and penalties in 1979 on the part of the Internal Revenue Service resulting from its class I narcotics violators program totaled $13.9 million.

I would like to move on to the reasons why we have not been more successful in applying the authorities we have. You referred earlier to the absence of incentives and expertise. I think that probably is the principal cause why we have not been more successful to date. The role that expertise plays is especially important we believe.

I know that there were some hearings held last month by the Senate Finance Committee—because I testified—concerning possible revisions to the Tax Reform Act of 1976 and great importance was placed on IRS participation in trying to attack narcotics traffickers because these people do have the financial expertise to try to identify what the assets were and how, at least from a tax viewpoint, to recover some part of them for the Government. Our statement does bring out that there is recognition on the part of the agencies that they have a problem here. The Drug Enforcement Administration has established a training program which we refer to in our statement, training programs that run from 3 to 5 days. We really don't have too much optimism that a training course of that length or that depth, as we understand the course of instruction to be——

Senator DeConcini. Did you look at the program?

Mr. Anderson. Yes. We spoke to the instructors and we spoke to the students and we have a pretty good understanding of what it is all about. We came away not persuaded that it would provide the type of expertise required by the agencies.

There have been IRS and DEA task forces to try to marry the financial expertise of the IRS people with the investigative expertise of DEA. They have been few in number and the results have been modest. Similarly, the FBI has participated in a task force and I would assume the same observation could be made of those task forces.

In explaining why forfeiture is not pursued, many Federal prosecutors said they were inexperienced on the specific RICO and CCE forfeiture procedures.

We spoke of the problem that foreign laws pose by making it relatively easy for narcotics traffickers to launder money through certain Caribbean countries and, presumably, bring it back into this country. Again, it is uncertain how much money is laundered in this way. We have no idea. Some progress has been made. We have a treaty with Switzerland which enables us to cooperate with them in coming to grips with these cases and similar treaties are being negotiated with Turkey, the Netherlands, and Colombia. Unfortunately, the countries where most of the problems lie are not willing to enter into such treaties with us.

With respect to the Tax Reform Act of 1976, this has created problems. Not knowing what information the Internal Revenue Service has, the other agencies cannot comply with the legal requirements to identify the specific request.

Senator Biden. The Tax Reform Act and the provision of the Tax Reform Act which provide the impediment you referred to were passed when?

Mr. Anderson. 1976.

Senator Biden. When was the continuing criminal enterprise passed?

Mr. Anderson. 1970.

Senator Biden. Is there any indication that there was a stemming in the flow of implementation and use of those two statutes upon the passage of the Tax Reform Act?

Mr. Anderson. I personally am not aware of any connection between the application of those statutes and the Tax Reform Act. The Tax Reform Act definitely had an effect on the degree of cooperation between the Internal Revenue Service and the other agencies. On cases that were undertaken specifically pursuant to RICO and continuing criminal enterprise, I think the cases are so few in number as evidenced by the 99 that we have identified since the legislation existed that you could not establish any kind of relationship.

Senator Biden. Is there a relationship between the effort of the Federal Government to go after traffickers to forfeit through the tax structure or through the criminal statutes that provide for the forfeiture, any relationship between their inclination to do that and the passage of the Tax Reform Act?

One of my concerns is that the Tax Reform Act is being used by the agencies as an excuse for their not taking certain actions which does make it more difficult for them, but actions that they were not taking anyway before it was passed. That is what I am trying to establish.

Mr. Anderson. I would think probably the major factor in Internal Revenue Service's participation is not that much associated with passage of the Tax Reform Act. I think there was sort of an administrative situation over there, a policy decision that the business of the Internal Revenue Service was more properly to enforce the tax code and not to pursue criminal prosecutions.

Unilaterally the Internal Revenue Service scaled down its own narcotics program that it established and that it had been having quite a bit of success with. On its own initiative it cut back the narcotics program scope before passage of the Tax Reform Act. The big unknown right now, absent IRS authority to unilaterally provide information to the other agencies, is what do they have in their files

that might be of use? For example, relaxing access—we agree with Senate Resolutions 2402, 2403, 2404, and 2405 which would make it easier to facilitate access to IRS data, but there is a real question as to what benefit that would be at this time.

Senator BIDEN. Thank you.

Mr. ANDERSON. All right, the Bank Secrecy Act.

The Bank Secrecy Act could also be used to greater advantage. This was another advantage through which Congress tried to provide law enforcement officials access to information to make their job a little easier. The GAO, my division in GAO, currently has an effort of looking at what happens under it because of congressional concerns. It appears that the information that is being obtained is not being analyzed as fully and effectively as it could be and is not being put into the hands of those who might have use for it

That information which is reported properly and getting into the system is not being drawn on, on the one hand, by law enforcement agencies. I might cite the 25 cases that we looked at. In only four of those cases was there even a request, a query, as to whether any Bank Secrecy Act reported information was available on the subjects being investigated, so there is potential there that could be realized. Again, steps have been taken in the last year to strengthen the analysis and the use of this information.

There are other problems that loom with respect to the effectiveness of RICO and continuing criminal enterprise. These concern a lack of clarity in the law itself. Questions have been raised by several lower court decisions suggesting a need for close examination of the adequacy of the forfeiture status; four recurring areas of concern. First, the precise scope of forfeiture authorizations is uncertain. What exactly is profit under CCE?

Are profits interest, as that term is used in RICO?

Confusion exists over the degree to which assets must be traced to their illicit origin to be subject to forfeiture.

Does CCE require a nexus identification, a tracing to illicit proceeds of the assets acquired? It is difficult to establish when the assets change form or hands.

There is a question on net-worth increase. Many courts believe that the Government must show that the specific property to be forfeited was itself purchased, acquired, or maintained with illegally derived funds. The statutes themselves provide little guidance on the tracing and specific identification necessary to sustain a criminal forfeiture. This makes the prosecutor's job and investigator's job very difficult at this point in time. We are hopeful that these court decisions will ultimately be pursued. There are inconsistencies among jurisdictions that will finally arrive at a uniform interpretation of the Congress' intention. Once that interpretation is arrived at, Congress can decide whether there is a need to change the law.

There is a problem of the status of funds being transferred to third parties or converted to clean assets. This creates complications in getting to the illegally derived assets.

I guess I would like to just close at this point in time, Mr. Chairman, and open it for questions by making one parting remark. It is obvious that the Congress expected that passage of RICO and CCE was going to enable Federal law enforcement agencies to start striking at vast

quantities of assets, say $54 billion a year over 10 years, $500 billion of assets—the Government's efforts to employ these statutes have not been very successful. As to whether much more can be done is kind of an open question. The first thing that will have to be done is the law enforcement agency's investigative planning provide for a strategy to examine and identify assets, seek and actively pursue application of the forfeiture statutes. When that effort has been undertaken and completed, then we will be in a position to know whether RICO and CCE have any potential at all, and I will close it there.

Senator BIDEN. Senator DeConcini?

Senator DECONCINI. Mr. Anderson, I take it from your analysis here that one might draw some conclusions that some of it depends upon the emphasis that law enforcement places on whether or not this tool should be used more, or the number of people that are placed in the effort toward using the RICO statute on organized criminals and tracing their economic gains and investments; is that a fair analysis?

Mr. ANDERSON. Yes, sir. There is a need for a couple of true model tests of whether this can be done. We might find, in fact, that it is truly impractical to trace and identify the assets of these people.

Senator DECONCINI. From the standpoint of time and priorities of a law enforcement agency?

Mr. ANDERSON. That is correct.

Dr. DECONCINI. You are not prepared to make that kind of judgment?

Mr. ANDERSON. No, we are not.

Mr. DECONCINI. You are just calling our attention to the fact that that may be the root of the problem and not necessarily the ineffectiveness of the RICO statute or just curing the Tax Reform Act of 1976 may not help? It will take the emphasis from the law enforcements?

Mr. ANDERSON. That is correct, sir. That is our view.

Mr. DECONCINI. I think that is a very valid point and one that I think the GAO has properly assessed as you have in some of your other reports that I have had the privilege of reading based on the narcotic enforcement in this country over the last 10 years, which brought out some real areas for Congress to address itself to and also areas for the law enforcement agencies to make a determination of whether or not their priority should be shifted.

I think you do a valid service by those types of approaches and I am anxious to see the pending investigation or whatever you are doing. That will be available when?

Mr. ANDERSON. Later this year, in November.

Senator DECONCINI. In November?

Mr. ANDERSON. Yes.

Senator DECONCINI. Thank you, Mr. Anderson.

Thank you, Mr. Chairman.

Senator BIDEN. Thank you.

Mr. Anderson, I would like to pursue a couple of points. First of all, you point out in a section of your written report, and I would like to note for the record that your entire statement will be made a part of the record at the conclusion of your testimony, in one section that there is an absence of incentive and expertise. Let us take incen-

tives first. What do you mean? Why is there a lack of incentive? Are you talking about prosecutors? Are you talking about agents?

Mr. ANDERSON. I think if I had to choose, I think I should have properly chosen another word rather than "incentive."

What we had in mind was how can investigators better spend their time. No. 1, their accomplishments are basically measured by obtaining arrests and convictions of narcotics traffickers. Their view is that their time is better spent on pursuing evidence associated with the movement of the goods rather than trying to pursue a case and identifying and locating assets. So rather than take another 500 staff-days to flesh out the holdings of this particular organization, their time would be better spent in going and finding somebody else to develop evidence on another case.

Senator BIDEN. When you spoke to some of these people, from speaking to them are you able to tell us whether or not there is a feeling among the investigators, the law enforcement officials to whom you spoke, and the prosecutors, that there is not a direct conduit between the profits derived from the illicit trafficking in drugs and the establishment and continuation of legitimate businesses?

Mr. ANDERSON. I would say that there is a complete lack of knowledge. I notice that there is an estimate that the Department of Justice has put out. I cannot remember whether we referred to it in our statement or not. The estimate is that there are about 700 legitimate businesses in this country that have been infiltrated by organized crime, and 700 is not a lot in a universe of several millions of such businesses. So if you accept that 700, it would seem to say though that the odds are kind of long that much of this money is ending up in legitimate businesses.

Senator BIDEN. One of the ongoing debates that I have recently been acquainted with is that on the one hand there are those who argue that the initial premise upon which the forfeiture statute in the early 1970's was passed is still correct, that there is a need to go after the assets of these drug traffickers—not just drugs because it goes beyond the case of drugs—drug trafficking operations in order to not only prevent the pollution of legitimate business with illegal business, ill-gotten gains by the criminal element, but also as a mechanism for eliminating the existence of the trafficking apparatus. There are those who suggest that if, in fact, through forfeiture we are able to strip away the financial empire of the person who is arrested, that that would mean that the trafficking apparatus that he or she had set up would fall apart.

There are others who suggest that the fact of the matter is that most of the drug traffic in this country is done by entrepreneurs and is not a case of well-organized, computerized operations whereby even if you put the head of the organization behind bars, the organization can continue to run smoothly, continue to disseminate this poison throughout the streets of this country and continue to make profit.

I am getting the feeling that what I hear from some of the Government officials, and I suspect some who will testify, and the reason I am asking it now, those who will testify later should listen to it also because it is one of the things I want to determine, that there is not the great potential that some thought for forfeiture in the 1970's, and the reason the potential does not exist is that not only is it a cumber-

some, sophisticated process which must be employed in determining the derivative process—very difficult—but also that it is not a worthwhile endeavor because it takes so much time and energy to accomplish so little. Effectively when you put Charlie Schmedlap in jail the ring breaks up anyway and there is another entrepreneur. Better than going after Schmedlap's assets, it is better to go after Harry Wilson who is setting up a new ring.

If in fact that school of thought is correct, then I think we would be misguided on this committee and in this Congress to continue to insist with the degree that I have in the past that forfeiture be implemented to a greater degree. There is always a benefit in forfeiture even if it does nothing else but deprive Schmedlap of his yacht.

But in fields of priority, that is not correct. It is best not to spend 500 hours to go get his yacht, but to spend 500 hours to get the new entrepreneur in the city, in the block, in the street.

With that long preface, do you have a sense at this point, as I characterized them, that the two schools of thought are correct or do you not have enough information to make that determination?

Mr. ANDERSON. Having been exposed to a lot of information, I could give you a sense that, No. 1 with respect to using the forfeiture statutes and affecting the operations by striking at their capital base so to speak—forget it. It just doesn't operate that way. You could come up and increase our forfeitures to the tens and hundreds of millions. You really are not affecting—using your word—their apparatus. Their apparatus will not be affected. Their ability to traffic narcotics will not be affected.

I am also pessimistic that there is always another person out there to take the place of the one convicted. Part of the reason for pursuing forfeitures is beyond the incarceration, beyond the fine, take away the goodies they will get when they come out.

Senator BIDEN. Thank you for that opinion.

The second question I have—I hope you are wrong and I hope my inclination is wrong because I would like to believe that we could do more. I am afraid you may be right.

The second question that I have relates to the expertise or the lack of expertise. Mr. Bensinger of the DEA in a hearing we held in this subcommittee several months ago listed for us or outlined for us the new program for training, the one to which you referred, 3 to 5 days or whatever it was of training on implementation and use of the forfeiture statutes.

As you indicated in your statement, apparently DEA thinks it is adequate. Mr. Bensinger at the time testified he thought it was adequate. I am of the opinion that you seem to express that it is not adequate. Could you give us a little more detail as to in what manner the training program is lacking?

And what are the dimensions of the training program you think would be necessary in order to put agents in a position to be able to have the expertise to employ and want to employ these forfeiture statutes?

Mr. ANDERSON. I would say the thing it would suffer most of is its brevity—3 to 5 days. The Federal Bureau of Invesitgation has trained accountants in its ranks to obtain expertise they need to pursue white-collar crime. They have recruited people. This was their

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professional background. They have trained them with investigative skills as well. Or even the Internal Revenue Service agent who is also a financial expert and analyst. And I will contrast the expertise those people have with what you would obtain from 3- to 5-day courses regardless of the curriculum and instructors. I don't see how you could communicate the body of knowledge that would be one-tenth or one-twentieth of that possessed by these other experts.

Senator BIDEN. In light of the fact that there has been so little implementation, 99 cases of these forfeiture statutes, is there any data base upon which you could draw to speculate or do something more than speculate as to whether or not those engaged in drug trafficking are among the more sophisticated, financial wizards in this country?

In other words, can we have the degree to which it would be difficult for a prosecutor or DEA agent to trace, track and garner the assets of a convicted drug trafficker? I know it would depend upon how sophisticated that drug trafficker was. If he put all his money in the name of his second wife and had her open a bordello in Reno, Nev., that might not be all that hard to follow.

But on the other hand, if he had some of the folks who were able to launder the money through Mexico for campaign funds, it would be a more difficult process. Do you have any indication of the degree of sophistication of the people whose assets we are trying to trace? Are they very sophisticated?

Mr. ANDERSON. The only information we would have is the information obtained by the law enforcement agencies. They have encountered some very sophisticated systems. Money can buy a lot of things including legal and financial experts.

Senator BIDEN. And there has been indication they have been wise enough to buy the more sophisticated financial planners.

Mr. ANDERSON. I have no feel on the portion that have the good sense to do that, but obviously too many do.

Senator BIDEN. Of any of the cases that you looked at, can you tell whether or not the investigation for the purpose of forfeiture was pursued and then dropped because it became too sophisticated to trace, not because they didn't believe it was worth going after in terms of the dollar amount, but they believed they didn't have the expertise to follow it down?

Mr. ANDERSON. On the 25 cases we followed through in detail, I can give you some information. On the six cases where they actually set out to obtain a forfeiture, in five of the six where they set out with that as a goal, they in fact ended up with a specific statement in the indictment concerning forfeiture. So where it was set as an initial goal, they were rather successful in ending up with a count on that in the indictment in the identification of some specific assets.

Senator DECONCINI. Would the chairman yield?

Senator BIDEN. Yes.

Senator DECONCINI. To go back a step, you left me with the impression that it is your opinion and I think that of the chairman that perhaps you cannot really slow down organized crime or the criminal activity of sophisticated criminals by attempting to go after their assets through the statutes that exist today; was that your opinion?

Mr. ANDERSON. The question, as I understood it in my response, Senator DeConcini, was essentially this. If one of the intents of these

acts was to get to the assets and thereby inhibit the ability of narcotic traffickers to continue their operations, what was my view of the logic of that conceptual approach.

My view was no, in all probability, there is enough money out of the country or enough liquid assets that would not be found in this country that would enable them to go out and buy the stuff and bring it back in.

Senator DECONCINI. To continue the actual day-to-day trafficking?

Mr. ANDERSON. That is right.

Senator DECONCINI. What is your opinion if there was a concerted effort to track and trace investments, if that was successful in those cases that they did succeed with, if that was done a hundredfold or a thousandfold with the same success ratio, what would your opinion be as to just how much investment organized crime may have in this country?

Mr. ANDERSON. There is such a lack of information right now, Senator, that I really hesitate to venture an opinion. I believe what there is a need to do is perhaps obtain better information on what the potential is for this type of investigation.

Senator DECONCINI. Could that be done?

Mr. ANDERSON. I believe that DEA or the Department of Justice must be tasked in that regard.

Senator DECONCINI. You have been running around trying to implement some laws that we passed that you perhaps have some information about. We would like you to examine into their cost effectiveness. Is there a better way of spending this investigative time? Perhaps some kind of study could be done to provide Congress with the information it needs.

You hear rumors, and I am sure the chairman has people writing to him and saying that the State of Arizona and, more so, the coast of Florida, Fort Lauderdale, both have tremendous cash investments. If you talk to other local DEA, and law enforcement agents that I have talked to, they are just as convinced as can be that those are illegal funds. That is raising the price of all the property because price is no real objective as long as they have the money to pay for it and they want to get it invested.

Is there any way that the General Accounting Office can address that?

Can you go to any place in the country, some place in Arizona or Florida, and attempt to make some assessment of the investments that are made there?

Mr. ANDERSON. I would say that requires an expertise that the General Accounting Office does not profess to have, namely criminal investigative expertise. You would need access to information and certain approaches that auditors don't have.

Senator BIDEN. So law enforcement would have to participate in any such effort?

Mr. ANDERSON. That is correct.

Senator DECONCINI. Would you conclude besides law enforcement agents, it would require a great deal of expertise in the area of accounting and finance?

Mr. ANDERSON. The type of people you are looking for is the type of people that the FBI has working in the white-collar crime area

where they have the financial expertise as well as investigative expertise.

Senator DECONCINI. Thank you, Mr. Chairman.

Senator BIDEN. One of the concerns that I have may be slightly afield of your report, and I wonder if you could comment on it?

As we looked in our oversight capacity at the budget of the Justice Department which includes obviously the FBI and other agencies, we asked the question as to what percentage of the expenditure of dollars was devoted to what types of crime in the Criminal Division.

I was quite frankly surprised to learn and disappointed to learn—I am acknowledging my own prejudice—that there is a greater allocation of resources in the area of white-collar crime than in organized crime, and my question is, you do not have any sense of the degree to which organized crime plays a role in drug trafficking? It is not what you were tasked for, but I wonder in your exposure to the persons who were involved in the forfeiture question, whether you got any sense for that?

Mr. ANDERSON. I don't personally, sir. I would like to defer to Mr. Colan.

Mr. COLAN. You have to have an answer to what is organized crime to begin with. I don't have that.

Senator BIDEN. That is a question left more appropriately to the agencies.

Gentlemen, I have a series of eight more questions. Most of them relate to the specific data you have submitted in your statement. I would like to submit those to you in writing and, at your convenience, have you answer them. They are not very long. They deal with further clarification of the dollar figures that you have put in the record and the cases, et cetera.

[Questions of Senator Biden and answers of Messrs. Anderson and Colan appear in the appendix.]

Mr. ANDERSON. Fine.

Senator BIDEN. Again, thank you very, very much for undertaking my request for doing such a report and I look forward to receiving the report at the end of this year.

Thanks an awful lot. We appreciate it.

Mr. ANDERSON. Thank you.

[The prepared statement of Mr. Anderson follows:]

STATEMENT OF WILLIAM J. ANDERSON

We are pleased to be part of your hearings on improving the ability of law enforcement agencies to take illicitly acquired profits and assets from organized crime. Our work is continuing and my testimony today should be considered more in the nature of a status report than a complete analysis of the problems and the ways they can be solved. This Committee, in particular, is fully cognizant of the fact that the problems are complex and will continue to require a commitment by all branches of Government before satisfactory results are achieved. As requested by this Subcommittee, our audit work has focused on identifying the various statutes that provide forfeiture authority and on determining the extent the authority has been successfully used by law enforcement agencies, particularly in drug trafficking prosecutions.

Unfortunately, we must report that the Federal Government's record in obtaining asset forfeitures is not good. Forfeitures to date have consisted primarily of the vehicles used to smuggle drugs and the cash used in drug transactions.

Compared to the profits realized, these forfeitures have amounted to little more than operating expenses. The illicit profits themselves and the assets acquired with them have remained virtually untouched. Yet these kinds of forfeitures were the target of legislation passed nearly 10 years ago as law enforcement's answer to organized crime.

The reasons for the meager success are many. Investigators and prosecutors have had little incentive to go beyond incarcerating criminals and obtain forfeiture of their illicitly acquired assets; investigators of major drug traffickers lacked expertise in tracing financial transactions; schemes to launder dirty money are complex and aided by bank secrecy laws of some countries; and our own laws and administrative procedures have hindered the disclosure of financial data to Federal law enforcement agencies.

The Government's efforts in this area show signs of improvement. Recently, the Department of Justice acknowledged inadequate use of forfeiture statutes and the need to increase financial expertise in tracing the flow of illicit money; additionally, the Administrator of the Drug Enforcement Administration (DEA) has expressed his commitment to certain types of financial investigations. However, there is a long way to go before anyone can claim that the use of forfeiture statutes has had an impact on criminal enterprises.

At this point, Mr. Chairman, I would like to discuss the statutes providing forfeiture authority, the extent to which the statutes have been used, and some of the reasons they are not used more.

FORFEITURE STATUTES

Forfeiture means a judicially required divestiture of property without compensation. Excluded from this definition are such things as fines, bail and bond forfeiture, and the imposition of civil damages. Forfeitures may be accomplished either criminally or civilly, depending upon the nature of the property involved, the circumstances of each case, and the forfeiture statute under which the Government proceeds.

Four classes of property are subject to forfeiture under at least one of the several provisions of American forfeiture law. The first class, contraband, describes property which is inherently dangerous and the possession or distribution of which is itself usually a crime. Certain types of guns, controlled substances, liquor, and gambling devices qualify as contraband. The second class, derivative contraband, describes property such as boats, airplanes, and cars which serve the function of warehousing, conveying, transporting, or facilitating the exchange of contraband. The third class, direct proceeds, describes property such as cash that is received in exchange or as payment for an illegal transaction. The fourth and final class, secondary or derivative proceeds, describes property such as corporate stock, legitimate businesses, and the like that are purchased, maintained, or acquired, indirectly or directly, with the direct proceeds of an illegal transaction.

The Federal Government has obtained forfeiture of properties falling within the first two classes described above—contraband and derivative contraband—for nearly two centuries. However, prior to 1970, the Government had no authority to forfeit direct and derivative proceeds.

In common law England, forfeiture of property to the Crown, without regard to the property's relationship to the crime of conviction, automatically followed most felony convictions. Widespread abuses of this authority account for the aversion to criminal forfeitures in the United States. For all intents and purposes, criminal forfeitures were nonexistent in this country until 1970.

CRIMINAL FORFEITURE

In that year the Congress enacted two statutes that provided the Government criminal forfeiture authority. Title IX of the Organized Crime Control Act, entitled the Racketeer Influenced and Corrupt Organization Act (RICO), provided that upon conviction for racketeering involvement in an enterprise, the offender shall forfeit all interests in the enterprise. The Comprehensive Drug Prevention and Control Act provided for criminal forfeiture of profits derived through a continuing criminal enterprise (CCE) that trafficks in controlled substances.

RICO and CCE were intended to create new remedies to combat the infiltration of organized crime into commercial enterprises and to destroy the economic base of organized criminal activity.

CIVIL FORFEITURE

In civil forfeiture, the property subject to forfeiture is deemed "tainted." The legal proceeding in such cases is theoretically against the property itself, meaning that the forfeiture stems from the guilt of the property. Conviction of the property holder for a crime is rarely a prerequisite for the imposition of civil forfeiture.

DEA's civil forfeiture authority is in Section 881 of Title 21, United States Code. Historically, the most frequent applications of this statute have been against contraband and derivative contraband, not against proceeds of controlled substance transactions.

DEA's civil forfeiture statute was amended in November 1978 and, if read literally, seems to have approximately the same reach in terms of classes of property subject to forfeiture as the RICO and CCE criminal forfeiture authorizations. Since 1978, Section 881 has been used successfully to reach the immediate cash proceeds of drug transactions; it has never been applied to derivative proceeds.

FEW ASSETS HAVE BEEN FORFEITED

Simply put, neither the dollar value nor the type of assets forfeited to the Government from criminal organizations have been impressive. Although a recently initiated Department of Justice/DEA study is being conducted on the use of RICO and CCE, no single source of data currently exists on the number of forfeiture cases attempted and the ultimate disposition of the cases. However, on the basis of data we pieced together from several sources, we conclude that:

Through March 1980, RICO and CCE indictments have been returned in 99 narcotics cases. Assets forfeited and potential forfeitures in those cases amounted to only $3.5 million. Attachment I to our prepared statement provides the details of these 99 cases.

For other than narcotics cases concluded under RICO, our work is not complete, but indications are that, as in narcotics cases, forfeitures have been minimal.

Since enactment in November 1978 of the Psychotropic Substance Act amendments providing for civil forfeiture of real estate, corporate stock holdings, and other property, DEA has seized $7.1 million in currency involved in drug transactions. No seizures or forfeitures of other types of assest have been made.

Civil forfeitures by the Customs Service, the Bureau of Alcohol, Tobacco and Firearms, and DEA, of vehicles, aircraft, vessels, and monetary instruments used to facilitate illegal criminal actions totalled about $57 million in 1979, including $32 million directly related to drug trafficking. However, more than 60 percent of this amount will probably be returned to the alleged violator or to the legal owner.

In addition to forfeitures, it could be argued that assets are also taken through fines and additional tax assessments and penalties. However, not much is being done in this area. For example, in 1978 only 11 percent of defendants convicted of a narcotics violation were fined, and only 20 of these were fined $100,000 or more. In addition, in 1979, narcotics violators were assessed only $13.9 million in additional tax and penalties as a result of the Internal Revenue Service's (IRS) narcotics program.

A measure of the magnitude of what is available for forfeiture is the $54 billion estimated to be generated annually through drug trafficking alone. Additional billions of dollars are generated by organized crime through gambling, prostitution, and other illegal activities. Compared to these amounts, that taken by the Government has indeed been small. A comparison of narcotics related seizures and narcotics income is included as Attachment II.

Of equal disquiet is the kinds of assets forfeited. As previously mentioned, the RICO and CCE statutes were intended to combat organized crime's infiltration into commercial enterprise. The Department of Justice estimates that 700 legitimate businesses in this country, varying from bars to banks, have been infiltrated by organized crime. Yet we find no forfeiture of significant business interests acquired with illicit funds.

WHY MORE FORFEITURES HAVE NOT BEEN REALIZED

For many reasons, relatively little has been accomplished in the forfeiture area. The Government lacks the most redimentary information needed to manage the forfeiture effort. No one knows how many RICO and CCE cases have been attempted, the disposition of the cases, how many cases involved forfeiture attempts, and why those attempts either failed or succeeded. Problems extend across the investigative, prosecutive, and legal areas.

INCENTIVES AND EXPERTISE LACKING

Both investigators and prosecutors need to improve their performance in conducting financial investigations of sufficient scope to obtain not only long-term incarcerations, but also forfeiture of derivative proceeds. Of the 25 major RICO and CCE drug investigation cases we examined, only 6 had a goal of asset forfeiture. DEA's system of rewards and incentives has favored arrests of major violators over forefeiture of their assets; many investigators were not trained in financial investigations; and many Federal prosecutors simply did not use the forfeiture statues.

Although DEA has begun a concerted effort to use asset forfeiture data as an additional performance measurement indicator, its primary performance measurement indicator remains the number and importance of arrested violators. Because cases involving asset forfeiture take more time, agents have had little incentive to go beyond incarcerating the trafficker. Many DEA agents told us they believe their time is better spent working additional cases than developing the additional evidence required to obtain forfeiture of the illicit assset of drug dealers.

Although some DEA agents have a formal background in accounting or financial analysis, DEA does not have any positions classified as a financial investigator or agent/accountant. DEA officials claim their limited resources do not permit such specialization.

DEA has instituted financial analysis training courses and hopes to have one-half of its 2,000 agents trained by the end of 1980. The 3- to 5-day courses represent only an introduction to a complex topic. In additon, the courses concentrate on forfeitures of vehicles and cash with little mention of investigative methods needed to realize forfeiture of derivative proceeds.

Other law enforcement agencies with personnel who have financial investigative experience have not worked particularly well with DEA in the past. Although IRS has joined DEA in a few "task force" investigations, IRS primarily emphasizes investigations involving tax violations, not criminal forfeiture of trafficker's assets. The FBI also has agents with financial expertise, but, except for participation in a few task forces, they have not been regularly used on narcotics investigations. These joint task forces have not had overly impressive results.

Given DEA's lack of financial expertise and the problems of combining different law enforcement agencies into a task force, a question remains as to how the Government can attack derivative proceeds.

Federal prosecutors also have not put much effort into attacking the criminal's profits. Of the 25 RICO and CCE cases we studied, Federal prosecutors for 18 of these cases did not attempt to use the forfeiture provisions. Many Federal prosecutors pointed out that adding forfeiture to an already complicated case was simply not worth the effort. Others said they were inexperienced with or unsure of the specific procedures for forfeiture under RICO or CCE.

The reluctance of investigators and prosecutors to pursue asset forfeiture is not wholly unjustified, as illustrated by the following example.

In this case, a Florida-based organization imported over one million pounds of Colombian marijuana and grossed about $300 million over a 16-month period. Forfeiture was attempted on the following:

Two residences worth $750,000;

An auto auction business used as a front for the trafficking organization; and

Five yachts.

Of the $750,000 for the residences, $175,000 was returned to the wife of one of the defendants, and $559,000 was used to pay the defendant's attorneys. The auto auction business, being a front, was worthless, and the five yachts were never found. The Government wound up with $16,000.

FOREIGN AND U.S. LAWS RESTRICT AVAILABILITY OF FINANCIAL INFORMATION

Various foreign and U.S. laws hamper greater use of forfeiture authorizations by restricting investigators' access to valuable financial information. The bank secrecy laws of some foreign countries make gathering foreign financial information extremely difficult and, for privacy and other reasons, our own laws place certain restrictions on the disclosure of tax data. In addition, the usefulness of currency transaction reports has been limited.

FOREIGN LAWS RESTRICT DISSEMINATION OF BANK INFORMATION

Criminals are employing sophisticated techniques to "launder" illicitly derived profits through overseas banks. Compounding the investigator's problem is the fact that the bank secrecy laws of some foreign countries prohibit the disclosure of needed bank information.

Banks in foreign countries with stringent secrecy laws are used to "legitimize" illegal profits. In one scenario, a courier smuggles currency from the United States to a bank in the Caribbean and deposits it in a bank account of a Caribbean corporation used as a front. The money is then wire-transferred to the U.S. bank account of a domestic front corporation using a false loan document that not only justifies the money transfer, but also makes it appear exempt from U.S. income taxes. This money can then be used to invest in legitimate corporations or real estate. The secrecy laws of this Caribbean country prevent U.S. investigators from obtaining information on bank accounts, front corporations, or money transfers, making it difficult to trace the illegally generated profits to the legitimate assets.

Experts have reported how schemes such as this are used to purchase large amounts of real estate. In December 1979 congressional testimony, a real estate economist estimated that real estate investments in Florida resulting from narcotics dealings along totaled $1 billion in 1977 and 1978.

The Government has tried to breach the cover that foreign banking laws provide through agreements with foreign countries. Such Mutual Judicial Assistance Treaties provide for assistance in acquiring banking and other records, locating and taking testimony from witnesses, and serving judicial and administrative documents. One such agreement with Switzerland already exists, and three others are being negotiated (Turkey, the Netherlands, and Colombia). Even if treaties with these countries are successfully implemented, numerous other countries with strict bank secrecy laws are more reluctant to cooperate because of their desire to protect the lucrative offshore financial business that often is a primary basis of their local economy.

TAX REFORM ACT OF 1976 HAS LIMITED IRS' ROLE IN DRUG ENFORCEMENT

Regarding our own laws, the Tax Reform Act of 1976 has restricted IRS' role in drug enforcement. In previous testimony we supported revisions to the Tax Reform Act of 1976 aimed at striking a proper balance between privacy concerns and law enforcement needs. We are particularly concerned that present law provides no means for IRS to disclose on its own initiative information it obtains from taxpayers regarding the commission of nontax crimes. We recommended that the Congress authorize IRS to disclose such nontax criminal information by obtaining an ex parte court order.

As a result of the hearings, identical bills (S. 2402 and H.R. 6826) significantly revising the disclosure statute were introduced. Although we agree with the basic thrust of the proposed amendments, we believe the legislation can be further refined to authorize a more effective disclosure mechanism and to improve the balance between privacy and law enforcement concerns. Our recommended refinements include more clearly defining tax information categories and providing a court order mechanism though which IRS may unilaterally disclose information concerning nontax crimes.

CURRENCY INFORMATION NOT BEING EFFECTIVELY USED AGAINST DRUG TRAFFICKERS

The Bank Secrecy Act passed by the Congress in 1970 furnished Federal agencies with additional tools to fight organized crime, including drug trafficking, and white-collar crime. It was felt the act's financial reporting requirements would help in investigating illicit money transactions as well as those persons using foreign bank accounts to conceal profits from illegal activities.

Basically, the Bank Secrecy Act regulations require three reports to be filed with Federal agencies:

Domestic banks and other financial institutions must report to IRS each large (more than $10,000) and unusual transaction in any currency.

Each person who transports or causes to transport more than $5,000 in currency and other monetary instruments into or outside the United States must report the transaction to the U.S. Customs Service.

Each person subject to the U.S. jurisdiction must disclose interest in foreign financial accounts to the Treasury Department.

Treasury has overall responsibility to coordinate the efforts of Federal agencies and to assure compliance with the act.

Numerous problems have been identified restricting the act's effectiveness, including—

delays in implementing the act's requirements,
slow dissemination of information,
inconsistent compliance by banks, and
limited analysis of reported information.

Treasury recently strengthened its regulations governing the reporting of currency transactions. Additionally, legislation has been introduced in both the House and Senate to—

make it a crime to attempt to transport the currency without filing the proper report,
authorize the Customs Service to search without a warrant or probable cause suspected violators of the act, and
authorize rewards for information leading to the conviction of currency report violators.

Some believe these changes will help improve compliance and the quality of currency report information. However, to be useful in investigating financial transactions, these reports will have to be employed more often by criminal investigators. Of the 25 RICO and CCE cases we examined, agents used financial information available through the Bank Secrecy Act in only 4.

POTENTIAL RICO AND CCE IMPEDIMENTS

The Judiciary's views on the RICO and CCE forfeiture authorizations are only now emerging through case law. Questions raised by several lower courts go to the heart of forfeiture law, suggesting a need for close examination of the adequacy of forfeiture statutes in the organized crime context. Four recurring and significant areas of concern have been identified.

First, the precise scope of the RICO and CCE forfeiture authorizations is not known. The CCE authorization speaks in terms of forfeiture of, among other matters, "profits"—language which in ordinary usage means the gross proceeds of a transaction less expenses. Although CCE does not explicitly define profit, the ruling in one case suggests that the cost of narcotics to the dealer might be deductible from profit, and hence not subject to forfeiture. RICO, on the other hand, speaks in terms of forfeiting "interests" in an enterprise. Several courts have questioned whether profits qualify as an interest in an enterprise, thus subjecting the profits to forfeiture.

Second, confusion exists over the degree to which assets must be traced to their illicit origin to be subject to forfeiture. RICO and CCE both require a nexus, other than mere ownership, between a defendant's criminal misconduct and the property to be forfeited. If the property represents the direct proceeds of an illicit transaction and is held in the form in which originally received, there is little difficulty in showing the origin of the forfeitable property. Serious identification problems arise, however, if the property has changed hands in multiple transfers, or changed form, or both.

There is uncertainty, for example, whether the Government can successfully obtain forfeiture of property such as cash through a net worth analysis showing only that a defendant's net worth was increased as a result of criminal activity. Many courts believe the Government must show that the specific property to be forfeited was itself purchased, acquired, or maintained with illicitly derived funds. RICO and CCE provide little guidance on the tracing and specific identification necessary to sustain a criminal forfeiture.

A third area of conern is the status of assets that would otherwise be subject to forfeiture, but which, for any of a variety of reasons, are transferred before forfeiture can be accomplished. These transfers may occur in three basic ways. One is for the property to be transferred to a third party, with or without consideration. The difficulty with transfers of this type is that a criminal trial under RICO and CCE determines the guilt or innocence of the defendant and, by implication, the defendant's rights in the property. Once the property is transferred. there are serious conceptual and legal difficulties in requiring the defendant to forfeit property he no longer has or, alternatively, in requiring third parties to forfeit property without a trial. A second type of transfer occurs when a defendant places ill-gotten gains in foreign depositories beyond the jurisdiction of the United

States, yet retains "clean" money in domestic depositories and domestic investments.

Neither RICO nor CCE make explicit provision for forfeiture of clean assets in substitution for assets beyond the reach of the United States. A third way is for a lien to be filed against the property by, for example, the defendant's attorneys. After defense counsel's fees are deducted, only the remainder of the property may be forfeited to the Government.

A fourth problem revolves around the procedures which must be followed to accomplish a criminal forfeiture. The Federal Rules of Criminal Procedure were amended in 1970 to provide for inclusion of a forfeiture count in the indictment and for the return of a special jury verdict on such count. Once an indictment is obtained, both RICO and CCE authorize the court to issue a restraining order prohibiting the transfer of assets subject to forfeiture. If the indictment does not contain a forfeiture count, criminal forfeiture automatically ceases to be an available remedy.

Beyond these basic procedures, however, both RICO and CCE direct the use of customs forfeiture procedures for matters relating to the disposition of the property, proceeds from the sale thereof, remissions, and the compromise of claims. Customs procedures are somewhat difficult to apply in the organized crime context, because they cover civil forfeiture where, unlike criminal forfeiture, the guilt of the property is at issue—not the guilt of the property holder. Use of these procedures has resulted in several anomalous situations where a defendant convicted under RICO was permitted to redeem or repurchase assets ordered forfeited.

The fundamental questions identified in these four areas of concern deserve definitive answers. Without them, the need for any legislative refinements to the RICO and CCE forfeiture authorizations will remain unknown.

In summary, Mr. Chairman, we believe that despite the many problems we have discussed, attacking criminal profits, coupled with the more traditional sanction of incarceration, offers the best opportunity to combat major criminals. To do so, the Government's effort must be better managed. Someone must assure that investigators and prosecutors have the capability and incentive to pursue all types of asset forfeitures, that domestic financial information is available to assist those pursuits, that means be discovered to trace illegal monies through offshore laundering operations, and that judicial experience is carefully evaluated to determine the adequacy of the RICO and CCE statutes. This will require a cooperative effort between the legislative and executive branches and among the law enforcement agencies themselves.

ATTACHMENT I

ATTACHMENT I

LISTING OF ALL NARCOTICS CASES IN WHICH CCE AND RICO INDICTMENTS WERE RETURNED SINCE ENACTMENT OF STATUTES (THROUGH MARCH 30, 1980)

Main defendant(s)	Year investigation initiated (note a)	Judicial district (note b)	Charge (CCE or RICO)	Disposition (note c)	Criminal forfeitures (note d)
Abrahem	1972	SD New York	CCE	CCE conviction	None
Adams	1976	SD Ohio	RICO	RICO conviction	None
Alessi	1971	ED/SD New York	CCE	Acquitted	None
Arenya	1977	ED Michigan	CCE	CCE conviction	None
Avila-Araujo	1978	CD California	RICO/CCE	CCE conviction and 1 fugitive	Forfeited $260,000 (estimated value) in vehicles, real estate, and a residence under CCE
Barger	1978	SD California	RICO	Pending	None
Barnes	1976	SD New York	CCE	CCE conviction	None
Berydoll	1975	Dist. of Delaware	CCE	Convicted of lesser charges	None
Blasco	1976	ND Illinois	RICO	Acquitted	None
Boyd	1979	SD Florida	CCE	Pending	None
Burt	1979	CD California	CCE	CCE conviction	Pending CCE forfeiture of a ranch (estimated value $55,000) and $47,000 cash
Cady	1975	ED Michigan	CCE	CCE conviction	None
Carr	1979	SD Indiana	CCE	Pending	Pending CCE forfeiture of properties with an estimated value of $965,000
Casey	1978	ED Michigan	CCE	Pending	None
Cason	1977	ED Michigan	CCE	CCE conviction	None
Castro	1977	SD Indiana	RICO	RICO conviction	Forfeiture under RICO of a taxi company having no value
Chagra	1977	WD Texas	CCE	CCE conviction	None
Christian/Palmeri	1975	SD California	RICO	RICO convictions (3)	Forfeited $100,000 cash pursuant to RICO plea in lieu of real property
Collier	1970	ED Michigan	CCE	CCE conviction	None
Cortez	1978	WD Michigan	CCE	Convicted of lesser charges	None
Cravero	1974	SD Florida	CCE	CCE conviction	None
Crisp/Peronne	1974	SD Florida	CCE	Acquitted	None
Douglas/Stone	1976	ED Michigan	CCE	CCE conviction (Douglas); convicted of lesser charges (Stone)	None
Enriquez	1977	Dist. of Arizona	CCE	CCE conviction	None
Farese	1978	SD Florida	CCE	Pending	None
Fry	1975	ED Michigan	CCE	CCE conviction	None
Gallardo	1976	SD New York	CCE	Fugitive	None
Gamba	1976	ND California	RICO	Convicted of lesser charges	None
Garr/Hawkins	1975	WD Missouri	CCE	Convicted of lesser charges	None
Gibson	1976	Dist. of New Jersey	CCE	Convicted of lesser charges	None
Godoy	1979	CD California	RICO	RICO conviction	A pending RICO forfeiture (currently under appeal) of $800,000 (estimated value) in properties.
Gottlieb	1979	SD Florida	CCE	Convicted of lesser charges	None
Gordon	1979	SD Florida	CCE	Pending	None
Grammatikos	1977	ED New York	CCE	CCE conviction	U.S. Government realized nothing although a boat and disco in Greece were forfeited under CCE
Grant	1972	SD New York	CCE	CCE conviction	None
Griffin	1975	SD New York	CCE	Convicted of lesser charges	None
Harris/Young	1973	ED Pennsylvania	CCE	Convicted of lesser charges	None
Hawkins	1977	SD Florida	RICO/CCE	Pending	Pending forfeiture under both CCE and RICO of properties having an estimated value of $352,000
Helton	1979	SD New York	CCE	CCE conviction	None
Hicks	1975	ND Texas	CCE	CCE conviction	None
Holman	1978	ED Pennsylvania	CCE	Convicted of lesser charges	None
Howard	1977	Dist. of Maryland	CCE	CCE conviction	None
Huffine	1977	ND Texas	RICO	Convicted of lesser charges	None
Jackson	1974	Dist. of Utah	CCE	Convicted of lesser charges	None
Jeffers	1973	ND Indiana	CCE	CCE conviction	None
Johnson	1972	SD West Virginia	CCE	Convicted of lesser charges	None
Johnson	1976	ND Florida	CCE	CCE conviction	None
King	1977	Dist. of Colorado	RICO	Convicted of lesser charges	None
Kirk	1974	ED Missouri	CCE	CCE conviction	None
Kulik/Davis	1977	CD California	CCE	CCE conviction (Davis); Convicted of lesser charges (Kulik)	None
Lombardozi	1977	SD Florida	RICO	RICO conviction	None
Lucy	1978	ED Virginia	RICO/CCE	RICO conviction	A trailer, land and dwellings (estimated value of $167,000) were forfeited under RICO
Lurtz	1978	Dist. of Maryland	CCE	CCE conviction	None
Lyles	1975	Dist. of Maryland	CCE	CCE conviction	None
Lynch	1977	Dist. of Columbia	RICO/CCE	CCE and RICO convictions	None

ATTACHMENT I

ATTACHMENT I

LISTING OF ALL NARCOTICS CASES IN WHICH CCE AND RICO INDICTMENTS WERE RETURNED SINCE ENACTMENT OF STATUTES (THROUGH MARCH 30, 1980)

Main defendant(s)	Year investigation initiated (note a)	Judicial district (note b)	Charge (CCE or RICO)	Disposition (note c)	Criminal forfeiture (note d)
Maddin/Broussard	1975	MD Texas	CCE	Convicted of lesser charges	None
Manfredi	1972	SD New York	CCE	CCE conviction	None
Mannio	1979	SD New York	CCE	Pending	None
McLaughlin	1975	MD Tennessee	CCE	Convicted of lesser charges	None
McNeely	1979	WD Tennessee	CCE	Pending	None
McPartland	1975	Dist. of Oregon	RICO	Convicted of lesser charges	None
Meinster/Platshorn	1978	SD Florida	RICO	RICO convictions (4)	$16,000 ultimately realized from forfeiture of residences (estimated value $750,000) and an auto auction (no value) under RICO
Moseley	1976	SD California	RICO/CCE	CCE conviction	A yacht forfeited (estimated value $400,000) under CCE
Mitchell	1979	SD Illinois	RICO/CCE	Pending	None
Mottan	1975	SD New York	CCE	CCE conviction	None
Muller	1975	SD Texas	CCE	Convicted of lesser charges	None
Mullins	1979	SD New York	CCE	Pending	None
Nichols	1979	Dist. of Delaware	CCE	Convicted of lesser charges	None
Parce	1976	MD Texas	RICO	Convicted of lesser charges	None
Pellon	1978	SD New York	CCE	CCE conviction	None
Peralra	1977	SD New York	CCE	Convicted of lesser charges	None
Perez	1976	SD California	CCE	Fugitive	None
Phillips/Wagner	1976	Dist. of Maryland	CCE	Convicted of lesser charges	None
Pokorney	1977	ED Michigan	CCE	CCE conviction	Forfeiture under CCE of a residence (estimated value $300,000) is pending
Rittenberg	1977	SD California	RICO	Pending	None
Robinson	1977	SD New York	CCE	CCE conviction	None
Rose	1976	SD Indiana	CCE	CCE conviction	None
Rosenthal	1979	CD Georgia	CCE	CCE conviction	None
Samango	1975	Dist. of Hawaii	CCE	Acquitted	None
Sanders	1979	SD Indiana	CCE	Convicted of lesser charges	None
Santos	1979	Dist. of Guam	CCE	Convicted of lesser charges	None
Savage	1979	SD Florida	CCE	Pending	None
Schneider	1977	ED Michigan	CCE	Convicted of lesser charges	None
Schwartz	1979	SD Florida	CCE	Convicted of lesser charges	None
Sisca	1972	SD New York	CCE	CCE conviction	None
Snead	1979	ED Texas	RICO/CCE	CCE and RICO convictions	None
Sotelo-Casterena	1975	SD California	RICO/CCE	Convicted of lesser charges	None
Sperling	1973	SD New York	CCE	CCE conviction	None
Stepaney	1978	SD New York	CCE	CCE conviction	None
Stricklin	1974	WD Texas	CCE	Acquittal	None
Stuckey	1979	Dist. of Columbia	CCE	CCE conviction	Forfeited two vehicles (estimated value $10,000) and apartment in which defendant had $10,000 equity interest under CCE.
Swiderski	1976	Dist. of Columbia	RICO	RICO conviction	Forfeited under RICO a bar/restaurant having no value to the Government after satisfaction of encumberances against it.
Tramunti/Inglese	1973	SD New York	CCE	CCE conviction (Inglese)	None
Valencia	1976	ED New York	CCE	CCE conviction	None
Valenzuela	1976	CD California	CCE	CCE conviction	None
Vasquez	1976	SD New York	CCE	Could not determine	None
Webster	1977	Dist. of Maryland	RICO/CCE	CCE conviction	None
Wheeler	1975	Dist. of New Hampshire	RICO	Convicted of lesser charges	None
Wind	1974	ED Michigan	CCE	CCE conviction	None

Notes:
a/Represents original involvement of DEA in investigation.

b/Abbreviations used in this column: ED - Eastern District, WD - Western District, ND - Northern District, SD - Southern District, and CD - Central District.

c/Acquitted includes cases in which the CCE or RICO counts were dropped. Convicted of lesser charges includes pleas to lesser charges.

d/Includes forfeitures under CCE and RICO only.

ATTACHMENT II

ATTACHMENT II

NARCOTICS RELATED SEIZURES COMPARED TO ESTIMATED ILLICIT NARCOTIC INCOME
----------(in millions)----------

	1979
NARCOTICS INCOME RETAINED BY U.S. DISTRIBUTORS (note a)	$54,275
CIVIL SEIZURES	
DEA (note b)	
Vehicles	$ 3.5
Aircraft	.8
Boats	.6
Currency	5.5
Total DEA Civil	$10.4
Customs (note c)	
Vehicles	$ 5.3
Aircraft	4.3
Boats	12.8
Currency	.1
Total Customs Civil	$22.5
Total Civil Seizures	$32.9
CRIMINAL FORFEITURES (note d)	
DEA	
Real Estate	.3
Total Criminal Forfeitures	$ .3
TOTAL CIVIL SEIZURES AND CRIMINAL FORFEITURES	$33.2
SEIZURES AS A PERCENT OF INCOME	0.06%

See notes on p. 24.

ATTACHMENT II

ATTACHMENT II

a/Estimates based on the National Narcotics Intelligence Consumers Committee study, "Narcotics Intelligence Estimate," 1979.

b/Seizures under 21 U.S.C. 881.

c/These amounts represent seizures under four specific statutes normally used for narcotics related violations (21 U.S.C. 881, 49 U.S.C. 781-4, 19 U.S.C. 1595(a), and 19 U.S.C. 1703). Additionally, in 1979, Customs seized $23.2 million in assets related to criminal activity. Most of this amount was seized under authority granted in 31 U.S.C. 1102-3 (currency violations). Although some of these seizures may be related to narcotics trafficking, the narcotics related portion cannot be segregated from the data provided by Customs.

d/Limited to forfeitures under 21 U.S.C. 848 and 18 U.S.C. 1961-4.

Senator BIDEN. Our next witness is Richard J. Davis, Assistant Secretary of the Treasury.

Welcome, Mr. Secretary.

STATEMENT OF RICHARD J. DAVIS, ASSISTANT SECRETARY OF THE TREASURY, ACCOMPANIED BY ROBERT STANKEY, ADVISER

Mr. DAVIS. I thank you very much, Mr. Chairman and Senator DeConcini. I will follow your initial guidelines and summarize my statement. I request that the entire statement be submitted for the record.

Senator BIDEN. The entire statement will be made a part of the record as if read. That will be included at the conclusion of your testimony.

Mr. DAVIS. Thank you.

Accompanying me is Mr. Robert Stankey who is an assistant in my office whose responsibility is the financial crimes area.

I appreciate the opportunity to be here to discuss certain aspects of the financial parts of drug trafficking and, particularly, the Treasury Department activities under the Bank Secrecy Act. Traffic in narcotics is undoubtedly big business and while one can see whole ranges of numbers as to the dimensions of the amounts of narcotics of various kinds imported and their dollar values, I think the differences are unimportant because we can agree that the numbers are big. The numbers exceed $40 billion, and whether it is $40 billion or $50 billion is not important. It is not typical big business as previous witnesses indicated. It is the kind of business that does by necessity deal in cash. You don't write a check or use your American Express card to make narcotics purchases. Criminals have to convert that cash to usable income. That involves moving it across borders and moving it through the banking system to get it into a form so that it can be used for a variety of purposes—legitimate investments or other criminal activities.

To attack the narcotics industry and to attack other parts of organized crime, it is necessary to try to develop strategies to deal with this use and movement of cash. One of the tools provided is the Bank Secrecy Act. It is in a way strangely named because it doesn't provide for bank secrecy, but allows us to attack bank secrecy. First, it requires reports on individuals who cross our borders in either direction with more than $5,000, in cash or cash-type instruments.

Second, it requires banks and other financial institutions to file reports of unusual currency transactions that exceed $10,000. Third, it requires reports of foreign bank accounts.

Finally, it authorizes certain recordkeeping requirements that the Treasury Department has developed for financial institutions.

The Bank Secrecy Act has criminal penalties. It has a 5-year penalty and a $500,000 fine. It authorizes the forfeiture of moneys brought across the borders without reporting, and it provides for civil penalties up to the amount of money involved in the violation.

The philosophy of the statute is to provide, first, information that can be used by other law enforcement agencies to help carry out their responsibilities.

Second, it intends to provide vehicles for prosecution. A prosecutor would have a difficult time proving an underlying narcotics business, but proving that somebody carried more than $5,000 across the border without reporting it can be done. In that case, the transportation becomes a crime.

Over the last 3 years, a variety of steps have been taken to enhance the usefulness of this statute.

Prior to 1977, we disseminated very little material that was collected. We created at that time a reports analysis unit to receive all three of the reports I previously described. The unit was initially in my office. Later it was transferred to the Customs Service where it can receive greater staffing and support. To assist in the dissemination of information, guidelines were developed for automatic dissemination to organizations like the Drug Enforcement Administration. Letters were sent to virtually all Federal law enforcement agencies reminding them of the information setting up procedures by which they could obtain it and, in general, trying to make that information more useful.

A good example is discussed in my prepared text. It illustrates how narcotics and financial aspects of narcotics trade can be woven together in narcotic prosecutions.

I cite a case in California involving very unusual cash transactions. There was a series of deposits between $200,000 and $800,000 in a southern California bank. It seemed unusual. The Customs Service started an investigation which quickly included other agencies, the IRS, DEA, et cetera. They discovered that the bank account into which these deposits were going was in a fictitious name. They were ultimately able to identify a group of people smuggling over 300 pounds of heroin into the country. They were able to identify that about $31 million had been laundered through the banking system and that a little less than half of it had been carried back across the border into Mexico and, at that point, deposited in Mexican financial institutions.

The prosecution that resulted from this case was successful. There were convictions in this case. The organization's leader was sentenced to 35 years' imprisonment for currency and income tax violations as well as a concurrent 15-year sentence for narcotics violations and assessed $1.2 million in fines. There are still pending potential IRS assessments, and there are still pending potential civil penalties under the Bank Secrecy Act as to the amounts of cash carried across the border illegally. There may be an issue at some point as to locating assets to collect the assessments.

A second area where we are attempting to broaden the use of the Bank Secrecy Act relates to a study we released last September concerning cash flows in the United States. We used the Federal Reserve records, and you refer to this in your opening remarks, to identify two specific trends, one indicates that we are supposed to be becoming a cashless society, but we are not. Around the country there was in excess of $10 billion more put into circulation by the Federal Reserve System than was taken out. People out there needed more cash to meet their daily needs.

In Florida, however, the situation was exactly the opposite. Florida was awash in cash. Instead of the Federal Reserve having to put in

more cash in circulation to meet the needs, there was $3.3 billion of excess cash; and in 1979 it increased to $4.9 billion. It is estimated in 1980 that it might reach $6 billion.

In analyzing that, it became clear that certainly not all of that cash and all of those moneys relate to narcotics traffic. Florida is a very heavy tourist area, particularly for Central America and South America. Therefore there is going to be a lot of cash.

On the other hand, it is also clear that a substantial amount does relate to the narcotic traffic. In trying to deal with that, investigations are going forward. We are working with the IRS to use their expertise, with Customs to use their authority, the IRS to use their authority in the Internal Revenue Code, and also investigations under the Bank Secrecy Act to determine if there is a failure of banks or other people in the money business in filing necessary reports. We are also working with bank regulatory agencies to determine if banks reported the cash as it came into their institutions. There is a whole range of investigations going on in Florida with the active participation of DEA and Department of Justice attorneys in Florida. We are attempting to use some of these techniques.

I also feel it is necessary to put in a note of caution because I think again, Mr. Chairman, in the earlier questioning you touched on this. There is a tendency that we have in passing any statute, when we in the executive branch come up to urge the passage, to assert that that mere passage would give us the one tool that would solve the problem. I would suggest that we don't have any tools that really can solve the problem. The goal that I think we have to try for is to make it as burdensome, as tough, as difficult, and as hard for people to participate in the narcotics trade as possible. Putting them in jail is the first step. Stripping them of their profits, if we can do so, is the second thing. Both are goals that we have to try to put forward recognizing that does not mean that you will solve the problem for all time and recognizing that the budget environment has not allowed increases in personnel in the last 4 or 5 years, so you frequently cannot do anything you want to in all particular areas.

That completes my summary. I will be happy to answer any questions.

Senator BIDEN. Thank you, Mr. Davis.

Why do criminal organizations launder their money? Why do they deposit their money in banks when they are obviously aware that the recordkeeping requirements that are established by the Bank Secrecy Act will bring to the attention of the Government the existence of these funds of money?

Mr. DAVIS. A variety of reasons. The goal is to get it out of the country permanently or to get it out of the country and then launder it into a more usable form. The banking system is a good way to do that. It is a safer way frequently than trying to carry suitcases worth $5 million around. That has its own danger in the criminal environment. So I think the reason they go to the banks is, one, because it is safer than physically transporting it. Second, in some situations where we found money was not reported, there have been some reported cases, although not as many as we think exist, and the most famous is the Chemical Bank in New York, where they bribed some branch officers and they didn't file the necessary reports.

Also there have been cases of not filing reports because of the looseness of our own regulations. They also frequently will use, as they use a courier for narcotics, a courier for banks; and they use fictitious banks. The money will be wired out of the country. We do not require reports when wire transmission is made. We do require the records be kept for tracing purposes.

Senator BIDEN. Obviously Customs officials, although they are supposed to fill out a form, do not always do it. In all the times that I have traveled outside the country—and maybe it is not appropriate and even embarrassing—I am unaware of Customs officials searching baggage when you leave.

Why go through the process? Is it that the country of origin is where you will have to declare it? Is that the reason why?

Mr. DAVIS. There is a requirement—and it is important to have a requirement—and what you are suggesting is correct; it is not easy to stop somebody. Basically, our entire customs system is premised in putting our resources, and properly so, in preventing contraband from coming in.

Senator BIDEN. Right.

Mr. DAVIS There are some problems in the current statutory scheme that there be a probable cause and search warrant for currency leaving. That is not constitutionally required. We have made some suggestions to try to deal with that situation by seeking legislative amendments which, one would reduce the standard for exit search for currency when you have reasonable cause to suspect, which is a standard approved by the Supreme Court.

Second, what we really need is the ability to get information and so the statute could also provide us the ability to pay rewards for information about couriers carrying money.

Third, there are some courts who have said that the crime is not complete until, essentially, somebody gets on the plane and the plane leaves; that even if we had information that somebody had $200,000 that they didn't report and we took him off the plane and he had the $200,000 and he didn't report it; some courts have said the crime is transporting it, therefore, the person has not left and it is not a crime. Once the person leaves, it is not very useful to know they committed a crime, and the amendment we are supporting would also deal with that.

Senator BIDEN. I don't disagree with anything you just said, but my question is, because of the impediment you just outlined, it is fairly easy for me to put $200,000 in cash in a suitcase and leave. Why would I not do it that way rather than find a third party to walk into Chase Manhattan Bank and deposit the money or get an order of deposit and transfer the money through the banking system to Sicily or Guadaloupe?

Mr. DAVIS. One, I don't suggest that people don't do that. People do both. Frankly, if you are carrying large amounts of cash or you are trusting a courier, you probably would not feel safe. I am not sure that these people are eager to carry millions in cash—not that they don't do it.

Senator BIDEN. I am not sure I could lift it.

Mr. DAVIS. On the other hand, if the banking system is working and they can do it that way and they are not having that much difficulty, there is the ability to use that route.

Senator BIDEN. One last question before I yield to Senator DeConcini.

Are bank safe deposit boxes presently immune from the requirements of the Bank Security Act?

Mr. DAVIS. There is no requirement to report what goes into a safety deposit box; that is correct.

Senator BIDEN. Although that does not get it in the banking system in the sense that we have been talking about, it can get it out of circulation and in a safe spot?

Mr. DAVIS. It gets it stored.

Senator BIDEN. So that can happen without there being a requirement of any disclosure. It is not a crime to take a half million dollars and put it in a bank safety deposit box and not tell anyone?

Mr. DAVIS. It is not a crime unless you did not tell the IRS and it was income; then it is that crime.

Senator BIDEN. OK.

Senator DeConcini.

Senator DECONCINI. Regarding the banking regulation reporting sums of deposit, is that a $10,000 cash requirement? A certain form has to be filled out?

Mr. DAVIS. That is correct.

Senator DECONCINI. Those forms are sent where?

Mr. DAVIS. They are initially submitted to the IRS. Then they go to customs to this reports analysis unit where there is an attempt to computerize it.

Senator DECONCINI. Does that apply only to cash, not checks?

Mr. DAVIS. That is cash, where you buy a check with cash or things of that nature.

Senator DECONCINI. But if I go deposit a check from Chairman Biden made payable to Dennis DeConcini, that doesn't happen?

Senator BIDEN. They would probably know it was stolen.

Senator DECONCINI. That would not require it?

Mr. DAVIS. No; that would not require a report.

Senator DECONCINI. But if I put in $11,000 in cash, the bank has to fill out a form?

Mr. DAVIS. Yes.

Senator DECONCINI. Do you know how many forms that generates?

Mr. DAVIS. Slightly over 100,000 a year which is much less than was predicted by the banking industry at the time the statute was passed.

Senator DECONCINI. Do you have any reason to believe that is substantially complied with?

Mr. DAVIS. There are two problems which we have identified. Problem No. 1 is that there are exemptions from that reporting requirement. They were intending that we didn't get overreported from regular businesses ranging from bus companies or anything else where it would not be unusual to have $10,000 transactions.

We have discovered that there has been a great abuse of that system and everybody from boat dealers to foreign nationals were being given these exemptions so we, in amendments, recently tightened those up to make them substantially tougher. So that was one form of noncompliance.

Senator DECONCINI. You are saying it used to be easier to get an exemption?

Mr. DAVIS. Yes.

Senator DECONCINI. That has been tightened up?

Mr. DAVIS. Yes. There was also clear abuse in that situation. There were improper exemptions. We feel that there were certain situations where reports were just not being filed. We are trying to investigate it to see if we can establish it.

Senator DECONCINI. What if I make five consecutive deposits of $8,000 for 5 days in a row—deposits of cash?

Mr. DAVIS. Probably if you spread it over days, it is not reportable.

Senator DECONCINI. There is not a requirement for the bank to report it?

Mr. DAVIS. That is correct.

Senator DECONCINI. However, if you would attempt to go in 1 day, it is the same as breaking up that 1 day's deposit?

Mr. DAVIS. It is very difficult because of the way the banking system works.

Senator DECONCINI. If I deposited it in Riggs Bank—if I put in $8,000 in cash in my account for 5 days straight, there is no way anybody would——

Mr. DAVIS. It is very difficult. What we found in the narcotics area is that they would have to break it up in an awful lot of packages because the amounts tend to be much greater. There is the capability of spreading it out over days.

Senator DECONCINI. The forms that are filled out to go to IRS and Customs, who reviews those or looks at those on an ordinary day's basis or monthly basis?

Mr. DAVIS. There is a unit in Customs, reports analysis unit, whose principal responsibility is to look at these forms along with the 4790's, and there is also an IRS representative at that unit who participates. I don't know if they look at every form.

Senator DECONCINI. But they look at a substantial number?

Mr. DAVIS. Yes; they develop amounts.

Senator DECONCINI. Some kind of a profile?

Mr. DAVIS. I am also told that the IRS, for their own purposes at service centers, do look at every one. But for the broader analysis, it is more selective. What we are trying to do, and we have made some progress although we have more to go, is to have a more sophisticated computer program in the 1980's for reports—for forms 4789—to make that information more useful. We are disseminating lots of it. We have a way to go to make it as useful as it could be.

Senator DECONCINI. If the IRS looks at it and analyzes and picks out some people they want to investigate for possible tax evasion, they are prohibited from divulging any of that information to you?

Mr. DAVIS. That is correct. They could not divulge tax information. If it relates to the Bank Secrecy Act, they could divulge that.

Senator DECONCINI. I have one other area.

The large deposits that you mentioned which were made in the State of Florida or that banking area, are you in the process and is Customs and IRS in the process of making any specific analysis of what those deposits are, where they are coming from when there is so much additional cash?

Mr. DAVIS. We have done analyses through the Federal Reserve Bank to try to identify those banks which are the source of the excess currency. At the same time with IRS, Customs, and bank supervisors, actual criminal investigations are underway to try to identify the principal sources and to determine if we can make cases.

Senator DECONCINI. Thank you, Mr. Chairman.

I am sorry to say that I am going to have to leave, although I think this is most productive. I will be here tomorrow.

Senator BIDEN. The $40 billion that you have estimated, whether it is $40 billion or $50 billion or $36 billion or $38 billion, it is a whole bunch of money.

In your calculations at Treasury, do you factor that amount of money which is underground money? It is not easily calculable or put into the projections and/or the estimates of the gross national product, the impact it has on anything from inflation to recession?

Are these numbers big enough to be anything more than a blip on the overall screen of the economic picture?

Are we talking about money that has effects beyond a localized effect? You mentioned south Florida and you mentioned Arizona, parts of Arizona. Does it have any national effects as to economic-related functions of the economy?

Mr. DAVIS. If we ever collected taxes on all the subterranean economy, both you and we would be happy because we would balance the budget and provide all sorts of tax cuts. At the base level, as to unreported income, the IRS did release an analysis of all unreported income for the 1976 tax year based on criminal unreported income and noncriminal unreported income. I don't know if you are familiar with it, but we could make it available to you. I don't have the figures at the top of my head.

In terms of blips on the gross national product, I think those are more blips. In terms of blips on particular localities, they would be substantial both in the economic sense as was discussed and also as a contribution to an atmosphere of lawlessness which accompanies a lot of this traffic.

Senator BIDEN. You talked earlier about incentives or disincentives on the part of the agents to disclose the forfeiture group. Could you discuss, to the degree you are competent to do it, the incentive in the banking industry to cooperate and report? I would think, if I am a local savings and loan in southern Florida and someone is depositing $3, $4, $5, $6, or $7 million a year in my bank, I am not going to be really anxious to do a whole lot about that other than to hope that it keeps up.

Mr. DAVIS. I think as in other areas, there are two types of bankers. There are good-citizen bankers and bad-citizen bankers. There are certainly bankers who look at that as deposits and they don't care if it comes in in bags of currency, grocery bags of currency or whatever, and some of those certainly do exist.

On the other hand, there are others who are concerned about what it means to their financial institutions, that it is not a very reliable source of deposits. There are those who are concerned about the overall image of the banking institution.

We have a number of banks who—I don't want to be smearing all banks.

Senator BIDEN. Let me say it another way.

Do we have any evidence that not only have the profits from illicit drug trafficking found their way into—and let us focus on south of Florida for a minute because that seems to be the most celebrated area right now, and it does seem, based on figures which you presented here, that that is an area where you are taking money out of the system rather than having to put it in; where everything from housing to other kinds of investment is booming while many other parts of the country are on a precipitous decline and there are other indicia of illegal trafficking, notwithstanding the fact that there are a lot of rich South Americans and Arabs and foreign nationals who are making investments and so forth.

Now having said that, is there any evidence thus far that the profits from illegal drug trafficking in southern Florida have not only found their way into the deposit schemes of the bank, but into the control of the banks by organized crime syndicates?

Are there banks owned by, in effect, controlled by, directed by organized crime elements? Is the banking industry in that area of the country one where we should be looking at whether or not it is a place where legitimate business, the banking industry, has become the product or province of illegitimate organized crime?

Is there any evidence of a move to take over banks?

Mr. DAVIS. In terms of is there any evidence, the answer is yes. There is some evidence that there may be some connection with some institutions, and I underline the "some." Whether it is established, I am not prepared to say.

Senator BIDEN. I would rather you would not unless you can prove it.

Mr. DAVIS. Certainly that is one of the things that the law enforcement effort in Florida and everyone is trying to accentuate, DEA, Customs, bank supervisors, et cetera.

Senator BIDEN. Are there any efforts in the legislative activity that would be able to facilitate that?

Mr. DAVIS. As I sit here, I don't have a recommendation to make. If there are other things we do develop, we would be happy to submit them.

Senator BIDEN. One last, but broad question, the same one I have already asked of our previous panel of witnesses.

That is going back to the original premise for the forfeiture statute in the first instance which was that it was thought, as I read the record before I arrived here in 1973, it was thought and felt that one of the ways to break up the organized crime network—not just to have forced the retirement of the board of directors—but to break up the institution and send it into bankruptcy was to go after the assets, and I am wondering whether or not you believe that that is a goal which is able to be accomplished through forfciture? Is it realistic?

Mr. DAVIS. I think it is important to make the attempt in most cases, to make it as painful as possible. Having said that, I think the current forfeiture scheme when you have to trace it specifically to a specific asset, that is a big problem. There is a difference between that kind of statute and the IRS statute. When theirs shows you owe $1 million on illegal income their code lets us grab $1 million of yours wherever we can find it.

Senator BIDEN. I think the previous witnesses identified one of the dilemmas. It is a resource question. In the ideal world we spend all the time trying to take apart any particular major heroin dealer. You would try to get him in jail as long a time as possible and strip away any profit, not only to punish him, but to make the whole enterprise less attractive. With the level of resources, you do not always have the luxury to be able to do that. There are substitute organizations that develop. You make a dent. That dent may last for a time by knocking out that one organization. However, it is much too profitable for it to go untended as a business occupation. There is a problem of resources to do everything in theory that would be useful.

I found your testimony very helpful. I have an additional five questions which I will submit in writing, if I may and, at your convenience, I would appreciate your answering.

I expect that over the period of the next year we will be back to you This is just the beginning of the whole hearings on drug trafficking which we will undertake. I appreciate your cooperation thus far.

Mr. DAVIS. We will be happy to cooperate.

Senator BIDEN. Thank you.

[The prepared statement of Mr. Davis follows.]

PREPARED STATEMENT OF RICHARD J. DAVIS

I appreciate the opportunity to testify during this hearing on the financial aspects of illegal drug trafficking and the use of forfeiture as an enforcement tool. I will focus my remarks on the Treasury Department's responsibilities under the (Foreign) Bank Secrecy Act and how those responsibilities, although chiefly concerned with enforcing financial recordkeeping and currency transaction reporting requirements, are becoming increasingly important as highly effective tools in Federal investigations.

THE BANK SECRECY ACT AND IMPLEMENTING REGULATIONS

The Bank Secrecy Act was introduced in 1969 after law enforcement officials expressed concern about the difficulties in investigating and documenting the financial aspects of transnational crimes. During extensive hearings in both the House and Senate, witnesses described how foreign accounts are used in tax evasion, bribery, securities violations, black marketing, and drug violations. One of the more illustrative cases cited was a drug investigation that involved the use of a Latin American shell company, a European bank, a New York bank, two New York foreign exchange firms, and a South American brokerage firm in a complex scheme to make drug related payments totalling $950,000.

The Act was designed to make such transactions easier to detect and document. There are two types of provisions to help law enforcement officials investigate the financial aspects of crime. The Act provides for recordkeeping standards for banks, savings and loan associations, and a wide variety of other financial institutions. Congress recognized that many major criminals use legitimate financial institutions to conduct their business transactions. In addition, the Act requires reports of certain types of financial transactions. They include reports of foreign financial accounts, reports of unusual currency transactions, and reports of the international transportation of monetary instruments.

The reports were intended to serve two purposes. First, to provide leads and intelligence as to possible violations of law and, second, to provide added criminal sanctions for and thereby, an additional deterrent to illegal activity.

The Act gives the Secretary wide discretion in its implementation; however, the stated purpose of the Act is that only records and reports that "have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings" should be required. With that background, in 1972 the Treasury Department issued regulations which require banks to maintain certain basic records, including the following:

Cancelled checks and debits over $100;
Signature cards;

Statements of account;
Extensions of credit in excess of $5,000; and
Records of international transfers of more than $10,000.

The regulations also provide for the following reports:

IRS Form 4789.—(Report of Currency Transactions). All financial institutions are required to report to the IRS any unusual currency transaction in excess of $10,000.

Customs Form 4790.—(Report of the International Transportation of Currency or Other Monetary Instruments). Except for certain shipments made by banks, the international transportation of currency and certain other monetary instruments in excess of $5,000 are required to be reported to the Customs Service.

Treasury Form 90-22.1.—(Report of Foreign Bank and Financial Accounts). The Act provides specific legal authority to require reports of foreign bank accounts.

Regulatory changes have recently been made to strengthen compliance with the Act. The changes amended regulations that required financial institutions to report unusual currency transactions in excess of $10,000.

Among other things, the new regulations (1) restrict the ability of financial institutions to exempt customers from the reporting requirements; (2) remove existing exemptions from the reporting of large currency transactions by securities dealers, foreign banks, and miscellaneous financial institutions, such as dealers in foreign exchange, persons in the business of transferring funds for others, and money-order issuers; and (3) require more complete identification of a person dealing in large amounts of currency.

Transactions with an established customer maintaining a deposit relationship have always been exempt from the reporting requirement. The recent amendment limits this exemption to certain domestic businesses and requires that the location and nature of the business be identified in the report of exempt customers furnished to Treasury. These changes were made necessary when it became clear that certain banks were abusing the existing exemption rules, exempting foreign nationals, boat dealers and others whose only real trait was that they frequently deposited large amounts of cash.

Criminal organizations traditionally strive to obliterate all traceable links between their actual criminal activities and the profits and assets derived from those activities. High-echelon members of criminal enterprises are as far removed as possible from the actual criminal acts. This reality of the business of crime makes the Bank Secrecy Act a necessary weapon in dealing with those who are the profiteers from crime. It provides a criminal sanction; available for separate use or as an adjunct with other Federal criminal sanctions, such as the drug laws—it provides a device to impose civil penalties or forfeitures of crime related currency; and, it provides the mechanism to assure that financial records needed to trace illegal activities are maintained.

Willful violations of the Bank Secrecy Act may constitute either a felony or a misdemeanor. Fines of up to $500,000 and imprisonment for up to 5 years are provided in cases of long-term patterns of substanial violation, and violations committed in furtherance of certain other Federal crimes. It is also a felony for any person to make a false or fraudulent statement in any required report. Any currency or monetary instruments being transported without the required report having been filed, or as to which the report omits material facts or contains misstatements, may be seized and forfeited to the United States. The Act also provides for assessing a civil penalty which may range from $1,000 up to the amount of currency or monetary instruments seized, less any amount forfeited.

MONITORING FINANCIAL INSTITUTIONS' COMPLIANCE

In accordance with the intent of the Act, the Treasury Department's implementing regulations delegated responsibility for assuring compliance with the regulations to existing Federal agencies to the extent that was feasible. The delegation is as follows:

(1) To the Comptroller of the Currency and other bank supervisory agencies, with respect to institutions within their respective jurisdictions;

(2) To the Securities and Exchange Commission, with respect to brokers and dealers in securities;

(3) To the Commissioner of Customs, with respect to reports of the transportation of currency or monetary instruments. The regulations give him

authority to seize currency and monetary instruments which have not been properly reported;

(4) To the Commissioner of Internal Revenue, as to all aspects not otherwise delegated.

Overall responsibility for coordinating the procedures and efforts of those agencies and for administering the regulations was delegated to the Office of the Assistant Secretary (Enforcement and Operations).

In 1973 the bank supervisory agencies generally began to check the compliance of the banks that they would normally examine. They used a uniform examiner's check sheet and operated under guidelines which were developed with Treasury's assistance. In 1978, however, my office, together with the bank supervisory agencies, developed much more detailed guidelines to assist examiners in assuring compliance with the currency reporting requirements.

Since 1978 we have required the bank supervisory agencies to provide us with the name of every bank that is not in compliance. In many of these cases we now ask the reported institution to provide us with a list of depositors whose transactions it has exempted from the reporting requirements. By receiving the specific names of institutions where there has been some non-compliance, we can request the bank supervisory agencies to provide additional information about repeat violators and to make recommendations concerning possible civil penalties.

In addition, the IRS continues to identify instances of non-compliance and request authority to initiate the necessary investigation in cooperation with a Federal prosecutor. The Chemical Bank case, which was concluded in 1977, was the most publicized of the IRS cases. It included allegations that a number of bank employees were involved in laundering drug money by exchanging small bills for $50s and $100s. In 1979 there were two more convictions. One involved the United Americas Bank in New York City, and the other a senior official of the Ridglea State Bank in Texas.

In the United Americas Bank case the bank pled guilty to 12 counts of failure to file the required currency transaction reports (Forms 4789). It entered into a consent decree with the Government and was fined $12,000.

In the Ridglea State Bank case, the official was convicted of failing to report the disbursement of $45,000 in currency in connection with a loan he made to a cocaine dealer. The banker was aware that he was financing a drug transaction. The principal witness was the cocaine dealer. The judge imposed a sizeable fine, as well as a prison sentence, and commented on the serious nature of the offense.

DISSEMINATION FOR ENFORCEMENT PURPOSES

One of the major purposes of the Bank Secrecy Act is to provide information for use by other agencies. To help accomplish this, in 1977, an analysis unit to act as a focal point for the computerization, analysis and dissemination of data obtained from all the reports required to be filed in compliance with the Bank Secrecy Act was established. Initially, the unit was located in my office and included Treasury, Customs and IRS personnel. To provide the unit with a permanent home, we transferred it to the Customs Service in 1978 where it could obtain needed resources, including data processing support. This change was consistent with the fact that Customs already had important enforcement responsibilities under the Act.

To date the Unit has developed computerized indices for both the currency transaction reports and the reports of foreign financial accounts. The Department is now able to identify all of the reports pertaining to a specific person or entity in a matter of seconds. While added refinements remain necessary, this has greatly improved our ability to analyze the reports and to service requests from the Congress and Federal law enforcement agencies. This information is, of course, also available to other Treasury bureaus.

Since 1977, we have provided DEA, alone, with more than 3,600 currency transaction reports totalling more than $500 million. Nearly 2,100 of those currency transaction reports reflecting bank transactions totalling $228 million were provided in Fiscal Year 1979. Several hundred reports of international transportation of currency have also been supplied to DEA. DEA has acknowledged that some major investigations have been initiated based upon information provided by the reports.

One case stands out as an outstanding example of the cooperative efforts and obtainable results by Federal agencies using the Bank Secrecy Act to successfully investigate and prosecute an international narcotics trafficking organization. The

case was initiated by a Customs Investigations field office in Southern California following the receipt and analysis of a number of Forms 4789 in 1977 which reflected frequent cash deposits of between $200,000 and $800,000 each in a local bank. The investigation quickly revealed that a bank account in a fictitious name was being used to conceal the true depositors and serve as a conduit to funnel proceeds from the sale of narcotics to secret bank accounts in Mexico. The key figures were ultimately identified as Mexican nationals residing in the United States and Mexico. It is believed that the organization, headed by Jaime Araujo-Avila, was responsible for the importation and distribution of approximately 300 pounds of heroin per month with monthly proceeds of approximately $1 million.

The organization used two methods to transmit their narcotics proceeds, each involving the conversion of the currency to monetary instruments and the use of one domestic and two foreign banks. By the first method, a bank account was opened in a fictitious name at a domestic bank close to the Mexican border. A courier then retrieved the currency from the storage location and made deposits into the domestic account. On the date of deposit, the courier entered the United States from Mexico with personal checks drawn against the domestic account. These checks were normally in excess of $100,000 and, in a further effort to conceal identities of members, the checks were made payable to "Cash" or "Bearer". The courier presented these checks to the domestic bank and used them to purchase cashier's checks which were then transported back to Mexico and deposited into accounts maintained under the control of the violators. The investigation disclosed that 39 currency deposits totalling approximately $15.5 million were made to the U.S. bank account during a 19-month period.

By the second method, the group would transport the funds by vehicle from Los Angeles across the international border and into the Mexican bank accounts controlled by the violator. An additional $16 million was deposited directly to the Mexican bank accounts during a 3-year period. Thus, over this 3-year period, transactions involving a total of $31.5 million occurred.

Based on this 2-year investigation, a Federal Grand Jury indicated 21 members of the criminal enterprise. Of these violators, 16, including the 5 key ranking members, were charged with felony currency conspiracy (31 U.S.C. 1059 and 18 U.S.C. 371). Other charges included narcotics trafficking (21 U.S.C. 846), RICO (18 U.S.C. 1962) and tax evasion (26 U.S.C. 7201).

In 1979, the organization's leader Jaime Araujo-Avila, was sentenced to 35 years' imprisonment for currency and income tax violations as well as a concurrent 15-year sentence for narcotics violations, and assessment $1.2 million in fines.

While the criminal penalties were severe in this case, the potential civil penalties are also impressive. The smuggling organization had moved millions of dollars in currency across the Mexican border without reporting it to Customs, and members of the gang had failed to pay income tax on the profits from their illegal activities.

Another recent case, still under investigation, involved $3.2 million in currency that Customs seized in Southern California. Two individuals attempted to hire an armored car service to transport the currency to a bank in Florida. The matter was brought to DEA's attention and subsequently, Customs entered the investigation and seized the money.

Treasury is in a position to make a valuable contribution to the combined Federal effort to attack large-scale dealers in illegal drugs. We have recognized for some time that the Internal Revenue Service, the Customs Service and the bank supervisory agencies all have important responsibilities in both the civil and criminal aspects of financial investigations related to drug trafficking.

CUSTOMS ENFORCEMENT

Bank Secrecy Act

To emphasize the importance of currency reporting investigations, in 1977 Customs created the Currency Investigations Division. We believe that the wisdom of this action is reflected in Customs' enforcement statistics. In fiscal year 1979, there were 1,206 currency seizures involving $20,766,666, before mitigation, as compared with fiscal year 1977 when there were 462 seizures involving $7,353,000.

In fiscal year 1980, through March 31, there have been 491 currency seizures by Customs involving more than $13 million.

Figure A is a tabulation of currency seizures for violations of the Act. While those statistics have shown impressive gains, significant increases are expected in the future as the result of concerted Customs, IRS, and Treasury activities.

FIGURE A

	Fiscal year—		
	1978	1979	1980 (through Mar. 31, 1980)
Total currency seized	$12,791,014	$20,766,666	$13,235,639
Number of seizures	643	1,206	491
No identified related criminal activity	534	1,085	427
Identified related criminal activity	109	121	64
Narcotics related	21	27	23
Arrests	79	105	55
Convictions	54	61	6
Pending	8	20	45
Dismissals	17	24	4
Fines imposed	$2,050,838	$1,903,000	$500
Civil penalities assessed	$568,287	$978,615	$3,929

I would note that although a great majority of the currency seizures reflected in Figure A could not be identified as directly related to other criminal activities, there is no requirement that such a relationship be established prior to seizure and forfeiture. It would be reasonable to assume that although not identified as such, more of the total seizures than indicated were actually related in some way to other criminal activities, such as drug trafficking, tax evasion, or smuggling.

Border Interdiction

Although I have emphasized Customs efforts to enforce the Bank Secrecy Act, Customs also has major interdiction programs which when successful also obviously affect drug profits. These activities include land, air and sea patrol. During fiscal year 1979, the Customs Service made more than 20,000 seizures involving drugs valued at almost $3 billion. The details are as follows:

NARCOTICS SEIZURES, FISCAL YEAR 1979

	Number of seizures	Quantity seized (pounds)	Value
Heroin	173	123	$75,386,000
Cocaine	1,259	1,438	$424,353,800
Hashish	4,379	50,849	$198,056,855
Marijuana	12,323	3,583,556	$2,164,467,824
Other drugs, barbiturates, and LSD	3,130	[1] 15,912,218	$44,235,966

[1] Tablets.

It is estimated that, at a minimum, at least $40 billion dollars has been generated by the drug trade within this country during each of the last three years. Between $2 and $3 billion has been paid to foreign sources of illegally imported drugs during each of those years. Before I describe our most recent investigative activities, I would like to review some background information and statistics that will provide perspective to the magnitude of the financial side of the business of drug trafficking in the U.S.

Customs has projected the flow of money out of this country to purchase drugs during fiscal year 1979. Those projections are based on the assumption that only ten percent of each illegally imported substance was interdicted at our borders. The foreign value of the seized narcotics was based upon information concerning price in the country or region of origin.

Heroin smuggled into the U.S. is produced in Southwest Asia, Southeast Asia and Mexico. The Customs projections indicate an outbound flow of funds to those heroin production regions in fiscal year 1979 of $52,044,780.

Cocaine entering this country is produced from coca plants grown almost exclusively in Bolivia and Peru, then converted into cocaine and smuggled from Colombia and other Central and South American sources. The Customs projections indicate an outbound flow of money to those source regions of $114,119,680.

Customs projects over 35 million pounds of marihuana illegally entering this country, based upon the fiscal year 1979 marihuana seizures, and a resultant outbound money flow of $2,329,311,400, at an estimated foreign value of $65 per pound. The NNICC (National Narcotics Intelligence Consumers Committee) Estimate for 1978 puts illegally imported marihuana at from 10,000 to 15,000

metric tons for calendar year 1978. The Customs projection of 35,000,000 pounds, or approximately 16,000 metric tons, therefore appears to be a reliable basis for the projection of outbound marihuana money flow.

Marihuana is the single most important income-producer for drug traffickers. From 90 to 95 percent of the U.S. marihuana market is satisfied by imports from Colombia, Mexico and, to a lesser extent, Jamaica. The greatest smuggling activity occurs in the Southeastern U.S., particularly in South Florida.

Figure B. represents a consolidation of the Customs projections of outbound money to purchase illegally imported heroin, cocaine and marihuana during fiscal year 1979.

FIGURE B

Substance	Mideast	Far East	Central and South America	Mexico
Heroin	$2,844,805	$19,077,398		$30,122,577
Cocaine			$114,119,680	
Marihuana			1,863,449,120	465,862,280
Total	2,844,805	19,077,398	1,977,568,800	495,984,857
Grand total		$2,495,475,860		

The Reports Analysis Unit of the Customs Service has developed information on the outbound flow of currency, based on filed Forms 4790. The reported currency flow outbound to known drug source countries was about $176,000,000 during fiscal year 1979. The wide disparity between the total projected (Figure B) and the reported outbound currency flow is probably due to a failure to report every reportable transportation and/or that many international transfers may have been through normal banking channels not involving actual physical transportation of currency or monetary instruments.

CASH FLOW STUDY

As part of our continuing efforts to improve the implementation of the Bank Secrecy Act, in September, 1979 Treasury released the report of a study of currency transactions at Federal Reserve offices throughout the U.S. As the report of our findings indicates, it was undertaken "to gather information which would be useful in assessing the effectiveness of the existing reporting requirements and in identifying areas that appear to merit further study or investigation." The data covered the period 1970 through 1978 and showed a constantly increasing supply of currency in circulation. In 1978, for example, an additional $10.2 billion was placed into circulation. Our analysis of the data highlighted a pattern which we believe warrants additional investigation.

That pattern, related to the currency transactions in Florida, would appear to be especially pertinent to the subject of these hearings. The Federal Reserve offices in Florida have consistently received more currency from commerical banks than they have returned to circulation. Since the end of 1974, there has been an alarming acceleration in the amount of this surplus. The net receipts (surplus) grew from $921 million in 1974 to $3.3 billion in 1978. Last year it was $4.9 billion and it could reach the $6 billion plus mark during calendar year 1980.

Although a variety of factors contribute to the currency surplus in Florida, it is clear that a substantial amount of it is related to drug trafficking. Information from Customs, DEA, and other Government and law enforcement sources indicates that there has been a tremendous influx of drug money there. Customs seizure statistics indicate that Florida is the principal gateway for cocaine and marihuana moving into the United States.

ADDITIONAL TREASURY EFFORTS

As a result of that currency flow study and information obtained from currency transaction reports filed by banks in Florida, the Treasury Department has initiated a comprehensive, financially-oriented law enforcement program. It was undertaken with the encouragement of the White House and the full support and cooperation of the Department of Justice and the bank regulatory agencies. We anticipate that this program will have significant impact upon a variety of criminal activities, including drug trafficking, tax evasion, violations of the Bank Secrecy Act.

The program will integrate both civil and criminal inquiries. Criminal aspects are being coordinated by the Department of Justice. The key Treasury agencies involved in the program are the Internal Revenue Service, the Customs Service and the bank supervisory agencies. These efforts are also being coordinated with DEA and the FBI. We look forward to significant results and meaningful disruption of the drug trafficking business through our cooperative efforts in Florida.

NEED FOR LEGISLATIVE IMPROVEMENTS

Certain statutory changes in the Bank Secrecy Act provisions are necessary to improve Treasury's effectiveness in combatting the unreported international transportation of currency by drug traffickers and other criminals. In particular, the Customs Service needs additional authority to enforce the provisions with respect to persons who are transporting currency or monetary instruments in amounts greater than $5,000 out of this country. The necessary legislation has already been introduced in both the Senate and the House of Representatives. S. 2236, which the administration supports, is similar in many respects to H.R. 5961, which the Treasury Department has endorsed. As presently proposed, H.R. 5961 would:

Make it illegal to attempt to export or import currency or other monetary instruments without filing the required reports;

authorize Customs to conduct a search at the border for currency and other monetary instruments when there is reasonable cause to suspect that persons are in the process of transporting currency or instruments for which a report is required; and

encourage persons to cooperate by furnishing information concerning violations through authorizing payment of awards based upon a percentage of the amount actually forfeited.

While the proposed legislation would not impose any additional reporting requirements on travellers, it would greatly increase the ability of the Customs Service to deal with the transportation of currency out of this country in connection with the business of drug trafficking.

While it is not realistic to expect that all who are transporting currency internationally will file the required report, it is obvious that we are not receiving reports that should be filed. The amendments are necessary to deal with this problem. Therefore, we are asking the Subcommittee to support our recommended enforcement improvements to the Bank Secrecy Act.

Through interdiction efforts and continued use of the various provisions of the Bank Secrecy Act, Treasury is determined to continue its support of the fight against major drug traffickers. This completes my testimony. I will be happy to answer any questions you may have.

Senator BIDEN. The next two witnesses will appear as a panel of prosecutors: Kathleen P. March, assistant U.S. attorney, Central District of California, and Dana Biehl, attorney with the Department of Justice. Dana Biehl was the prosecutor in the *United States* v. *Meinster, et al.*, case in the Southern District of Florida. The reason I do not know the pronunciation is that I am always hearing about the black tuna case I never thought of it in terms of what the real name was.

Thank you very much for appearing. Ms. March, if you would begin? If you have a statement, please present it, and then Mr. Biehl will make his presentation and then we will go to questions, if that is convenient.

PANEL OF PROSECUTORS:

STATEMENTS OF KATHLEEN P. MARCH, ASSISTANT U.S. ATTORNEY, CENTRAL DISTRICT OF CALIFORNIA, AND DANA BIEHL, ATTORNEY, DEPARTMENT OF JUSTICE

Ms. MARCH. Thank you, Senator Biden.

I am pleased to appear for the U.S attorney's office for the Central District of California. It includes the Los Angeles metropolitan area,

so we are one of the largest U.S. attorney's offices in the country. I have submitted a written statement and I would ask that that be included in the record in full.

Senator BIDEN. It will be included at the conclusion of your testimony.

Ms. MARCH. I will run over a summary of that statement.

Since the continuing criminal enterprise statute was passed in 1970, there have been four continuing criminal enterprise cases in my office. Three of those have been tried. The most recent one was tried by me. One of them was disposed of by a guilty plea.

The case that I tried on behalf of the Government which I also handled in the grand jury was *United States* v. *Burt* and four additional codefendants, one of whom was a lawyer who performed services on behalf of the drug organization.

Now the case charged in a 12-count indictment and the jury found defendant Burt carried out a continuing criminal enterprise by setting up and operating a series of amphetamine and methaqualone laboratories in California. There was evidence of four different laboratories that we proved out. One of these laboratories was located in Hinkley, Calif. As was testified to by a chemist, one was the largest illicit drug laboratory every seized in the State of California, and to his knowledge, the most sophisticated.

The financial proof in the case, what we could prove and did prove at trial is that defendant Burt personally made over $500,000 of expenditures in cash or cashier's checks over a period of about 14 months. That includes purchases of over $140,000 for precursor chemicals, that is, chemicals used to make amphetamines and methaqualone and for laboratory equipment.

Senator BIDEN. So he only cleared $360,000?

Ms. MARCH. No, Senator. The evidence at trial was that defendant Burt in relation to one of his smaller laboratories mentioned to one of the unindicted coconspirators working for him that he could work 30 days and make $200,000. That was the time it took in the small laboratory to produce approximately 30 pounds of amphetamine. The large laboratory was capable of turning out hundreds of pounds of amphetamine a month.

The chemicals that were seized at the laboratory and at the other sites searched, and there were over 20 search warrants executed in relation to this case, the chemicals seized were enough to make hundreds of pounds of amphetamine and methaqualone. What we could prove in the case was probably the tip of the iceberg.

However, in my testimony I want to stick with what is in the public record. That is only appropriate. I can only talk about what we proved at trial.

Senator BIDEN. You proved at trial that his income for 1 year was $500,000?

Ms. MARCH. No, we proved that he made expenditures of $500,000 personally. In addition, he made admissions of how much he could make from his operation—$200,000 in 30 days.

Senator BIDEN. I am sorry, he made expenditures on the business or for going to the movies?

Ms. MARCH. We basically proved up his case by having a starting point which was that the defendant had filed divorce papers where he said he had no income and no assets. That was at the end of 1977.

Senator BIDEN. That is not unusual.

Ms. MARCH. We also had witnesses who testified that the defendant had no legitimate employment.

Senator BIDEN. They were right about that?

Ms. MARCH. We had insiders in relation to one laboratory who testified that he did spend time in supervising them and setting up and running this small laboratory. We had no insiders as to the larger laboratory.

Senator BIDEN. I understand. I was trying to understand the $500,000 figure.

Ms. MARCH. We used a specific items method of proof, lacking in general an insider, which was to get a starting point and then trace the amount of moneys being spent; since there was no legitimate source for this money other than the drug operation, we argued, and the jury did find, that that money was produced by the illicit laboratory operation. We had about $140,000 of raw materials, precursor chemicals. The defendant Burt purchased a ranch for $55,000 where this large laboratory was set up at Hinkley, Calif. He also purchased a house in Palm Springs where he resided. The purchase price was over $400,000 and he put in over $100,000 of improvements in redecorating the house. However, the proof was he paid into escrow $170,000 in cash or cashier's check, not the full $400,000 was paid in cash.

We were lucky that we could use a specific items method of proof. If we had to use true net worth analysis or bank deposits method of proof, it would make the case much more difficult from a financial point of view. Those were the high points of what the financial proof was.

We did allege in the indictment that the Hinkley ranch where the largest laboratory was located and the proceeds from the sale of the Palm Springs house that Burt had bought and personally occupied, that those were subject to forfeiture under the continuing criminal enterprise statute.

Senator BIDEN. What do you have to establish to show it fits under the continuing criminal enterprise statute?

Ms. MARCH. There are three basic elements to prove to get to the question of forfeiture, and those are the three basic elements of a continuing criminal enterprise offense. The first is that the defendant charged with continuing criminal enterprise has carried out a series of narcotic offenses, the series being defined as at least three. We had over seven charged in the indictment.

The second element is that the defendant has to supervise, direct, or manage at least five or more persons in the course of carrying out this series of offenses.

The third element of the continuing criminal enterprise offense is that we have to prove at trial that the defendant received substantial resources by virtue of operating the continuing criminal enterprise. That is why one-third of the proof is the financial proof.

If the jury then comes back with a verdict of guilty or not guilty as a continuing criminal enterprise, and the jury did find Burt guilty, the indictment alleges these two properties were subject to forfeiture.

One of the problems that I think legislators have, and one of the problems that the Congress had is that we in our zeal to produce results that we think our constituents want, in this case, the eradication or the significant impacting upon drug trafficking in America—everybody wants that—we sometimes do not tell the American people the truth. Sometimes we do not even know the truth. I would like to be very specific about that.

I would not like to conclude these hearings, which will go on for another year, probably, by saying to the American people there is now a new legislative agenda which will really enable us to get a handle on this thing, because what we are going to do, we who sit in this body, we are going to provide the Kathleen Marches with the tools to really go get it all and we tend to say that. We wage wars on crime. We wage wars on drugs. We declare victories before the battle has been engaged and we, in turn, then say, why don't those prosecutors do more? Why aren't those judges putting more people in jail? Why are not those law enforcement officials doing more to solve it?

I would rather tell the American people that the Kathleen Marches, the professionals of this country, have told me—if it happens to be true—that there are not many more tools we can give them. There is no way they know of how they could, given the tools, go after all of Mr. Burt's assets and gain back to the Treasury the millions of dollars they know out there is missing.

They don't know how to do it.

Because they do not know how to do that, I am not going to try to pass some hackneyed law and tell the American people that I have given you a tool. We should tell the American people what we can do and what we cannot do. If everybody who testifies at this hearing says that, I want to come down with a judgment which says what the state of the art is now. You should tell the American people we are not going to eradicate drugs in this country. That is a bunch of malarkey. Flat out, we are not going to do this. That is not going to happen. We think if you spent x billions, we can cut down 10 percent, 5 percent, 25 percent, 50 percent—tell them straight out.

It is just like we cannot rehabilitate people. We haven't the slightest idea how to do it. Liberals like me have been going around talking about rehabilitation for the last 15 years. We cannot do it. Now the American people do not have any faith.

If I say they should make the prisons more humane, they say, you have been telling us that for 15 years. Ronald Reagan gets up and states that we will save $50 million by not coddling criminals. We end up with a movie like "Brubaker." They exist. It is real life. They do.

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We should tell the folks if it is true, it is too sophisticated. We will not be able to get it. We will not be able to get the Burts and all they have because things are just too sophisticated. We just do not have the tools to do it.

End of my one-person colloquy.

I am delighted to have you here. If you think I was charming, I was not intending to be.

That is the general purpose. It was a general feel on the theme of what should we be doing, and maybe the best thing is not even telling the American people about that. Just plug away with what we have got and realize we are never going to whip it.

Folks can't take much more of Joe Biden's or heads of agencies announcing that we have declared war and that we are about to win. They are not ready for more of that. I would rather tell them it will be a limited engagement. There might be a fight. We may start to rebuild our confidence in our ability to do what we need to do. We do not have a very good track record.

By "we," I mean me, not you. We do not have a good track record.

Did you receive any assistance from any law enforcement agencies?

Ms. MARCH. Can I go back to what you asked, Do we have the tools we need?

Senator BIDEN. I think that is the one.

Ms. MARCH. Nathan will speak to the broad policy answer of what we need or what we think we need. I would like to take a specific piece of that problem with the question you asked the first witness, Mr. Anderson: Is forfeiture worth it, or is it too difficult?

I can put some light on that question, at least in relation to continuing criminal enterprise, which is the type of case I have tried. We just went over the elements of that type of crime. The third element is showing that the defendant has derived substantial resources.

When you prove that up, you are basically proving up what is necessary to forfeit the property. So by merely alleging it in the indictment and by proving up what you have to prove up to prove the substantive offense, you are proving up enough to forfeit the property. So by merely adding a paragraph to the indictment, assuming the jury returns a favorable verdict, you can get a judgment forfeiting the property. That is not the final step in the procedure. That gives you basically a right to try to turn that judgment into money.

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In some cases, there are cases where they cannot find the assets or, in some cases, a decision was made that it was more dangerous to allow the organization to continue so the organization should be stopped even though the proof had not been fully connected to forfeit property.

Senator BIDEN. Are there any cases where you made the judgment where you thought you would be able to have a continuing criminal enterprise prosecution and you concluded you could not for other reasons, since you lack specific evidence?

The procedure, after the jury comes back with the general verdict, assuming it is guilty, the jury is then instructed on elements of forfeiture. They go back and deliberate in a special verdict proceeding as to whether the properties alleged in the indictment should be forfeited. The special instructions are that they must find that the defendant owned the property and then they must find that the property is property as described in the statute which is either profits from the continuing criminal enterprise or profit or assets giving the defendant control—influence, it says in the statute—over the entreprise.

The jury in our case deliberated approximately 15 minutes and returned with the special verdict.

Senator BIDEN. Was there anything else that in this case Burt owned or had control of beside what you had alleged in the indictment?

Were there things you did not put in the indictment because you did not think you could reach them with the statute?

Was there anything else? Is Burt now stripped of all his financial assets to the best of your knowledge? Or were you unable to get at some of them?

Ms. MARCH. Well, one piece of evidence in the trial was that Burt did not have any bank accounts and never used checks. The evidence in the case was—and the witnesses testified—that Burt was in the habit of paying for the things he needed by opening a briefcase full of stacks of $100 and $20 bills and merely counted off the correct number of thousands of dollars of bills. We know from that evidence that there was a large amount of cash that was going through the organization.

The only seizure of cash was made of the $18,000 that was found in the garage of one of the lesser defendants when the search warrant was utilized. We alleged that the major assets that we found——

Senator BIDEN. It was obvious to you, although possibly not provable in a court of law, that after operating an enterprise like he operated and the other codefendants for the period of time they operated them, it, the largest one, they made more than, much more than you were able to seize? Is that correct?

Ms. MARCH. That is our belief; yes.

Senator BIDEN. It is very difficult to prove that. I do not care so much about this case, but I want to know whether or not this case is illustrative of other cases and circumstances.

If, in fact, from what I understand, it does not take a genius in this business to generate profits in excess of $20,000, $30,000, or $40,000 a month, that is not something that takes the best in the business to do and in the combined operation of the business that he had, it suggests more than that over a period of time.

I guess what I am trying to figure out—and it goes to my original concern—is, how much is laundered in ways that we cannot touch? You can go to his house and his car and his diamond ring and those property assets that are observable and obviously he spends—he or those persons spend—a good deal of money maybe eating caviar instead of tacos; so based on what you can consume physically, what you spend on entertainment and transportation which are gone—you cannot go back and repossess that chartered jet that cost him $50,000 to go to the Ali-Frazier fight or whatever—so you are left with accounting for those kinds of things, and there is no forfeiture involved. The money is spent and you have only the physical assets that you can lay your hands on.

I suspect in most cases, and in this case in particular, if you add up all of those expenses of how high on the hog Mr. Burt lived in terms of his lifestyle and the assets that you were able to identify, that they will fall far below what was reasonable to anticipate was his profit margin from the operation; is that correct?

Ms. MARCH. What you are really asking is for me to estimate what assets he had that we didn't find?

Senator BIDEN. Not in terms of dollars and cents. Is it impossible to find them? What I am trying to figure out is, how much of this gosh-darn money goes into areas that we are unable to trace? Are we talking about tens of millions of dollars? Billions of dollars?

So even if we employ all the RICO statutes, all the statutes that involve forfeiture, the statute that you are referring to, we are still not going to get the bulk of what is out there still floating around in the system under somebody's control doing something?

That is what I am trying to determine from this small case in terms of the total picture; from this case at point, what is your estimate as a professional who is looking at every dollar and cent and making sure you could substantiate comething in a court of law? When you walked away when it was over, other than feeling you had a conviction and forfeiture, did you go home and lay your head on the pillow and say, "We got that son-of-a-bitch; we got all that he had," or did you go home and say, "My God, I wish we would have gotten five times as much money that we couldn't find"? I am not looking for a treatise; I want to get a sense of that moment.

Do you think you got most of the illegal proceeds that flowed into his briefcase?

Ms. MARCH. I think from the proof in the case you could say, no, we did not get it. You could say that from the size of the laboratories we know existed, from the testimony of witnesses about how much cash was going through. There was a coded chit book indicating that $450,000 of drugs had been advanced on credit and $350,000 had been collected from the wholesaler-dealers.

From the evidence in the case, it would be fair to say, no, we did not. It would not be appropriate to speculate further. Some of the cases are on appeal.

Senator BIDEN. That is a very valid point, and I don't mean to get into it beyond that. I guess my ultimate question—sitting here as a legislator, someone who wants to give you, the prosecutors, the tools that you need in order to do the best job possible—is there a legislative approach that would enable you to go after what you feel in your heart is out there that you are unable to with the tools you now have? Or is it just not possible?

Ms. MARCH. I must comment that you lead in a charming manner, but that question is a little general for me to be able to answer it effectively. If you could phrase it a little more specifically, I would do better with it.

Senator BIDEN. I surrender.

All right.

I want to make a little editorial comment here.

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One of the problems that I think legislators have, and one of the problems that the Congress had is that we in our zeal to produce results that we think our constituents want, in this case, the eradication or the significant impacting upon drug trafficking in America—everybody wants that—we sometimes do not tell the American people the truth. Sometimes we do not even know the truth. I would like to be very specific about that.

I would not like to conclude these hearings, which will go on for another year, probably, by saying to the American people there is now a new legislative agenda which will really enable us to get a handle on this thing, because what we are going to do, we who sit in this body, we are going to provide the Kathleen Marches with the tools to really go get it all and we tend to say that. We wage wars on crime. We wage wars on drugs. We declare victories before the battle has been engaged and we, in turn, then say, why don't those prosecutors do more? Why aren't those judges putting more people in jail? Why are not those law enforcement officials doing more to solve it?

I would rather tell the American people that the Kathleen Marches, the professionals of this country, have told me—if it happens to be true—that there are not many more tools we can give them. There is no way they know of how they could, given the tools, go after all of Mr. Burt's assets and gain back to the Treasury the millions of dollars they know out there is missing.

They don't know how to do it.

Because they do not know how to do that, I am not going to try to pass some hackneyed law and tell the American people that I have given you a tool. We should tell the American people what we can do and what we cannot do. If everybody who testifies at this hearing says that, I want to come down with a judgment which says what the state of the art is now. You should tell the American people we are not going to eradicate drugs in this country. That is a bunch of malarkey. Flat out, we are not going to do this. That is not going to happen. We think if you spent x billions, we can cut down 10 percent, 5 percent, 25 percent, 50 percent—tell them straight out.

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Senator BIDEN. Are there any cases where you made the judgment where you thought you would be able to have a continuing criminal enterprise prosecution and you concluded you could not for other reasons, since you lack specific evidence?

Ms. MARCH. Luckily, I have only tried the one continuing enterprise case.

Senator BIDEN. Not what you tried. You brought more than one indictment?

Ms. MARCH. I have not; but the district had the Valenzuela case. There was no forfeiture stressed. There was the *Arajo* case in Mr. Perry's testimony before the Senate Subcommittee on Investigations of the Governmental Affairs Committee at the end of last year. That case was a large Mexican heroin case. The indictment did allege a long series of properties that were subject to forfeiture and alleged to be subject to forfeiture. That case was disposed of by plea bargaining. The plea of Henry Arajo was a plea of guilty to the continuing criminal enterprise charge, among other charges. However, the plea was to the offense, but the plea did not include a plea that the property was forfeitable.

I cannot speak for the other assistant U.S. attorneys. It was Mr. Perry. There were tactical reasons for accepting that plea bargaining.

The additional 348 case, tried in my district, was the *Davis* case. In that case, there were basically no assets found so there was no forfeiture alleged. So from my district, of the three cases tried, mine was the only one that had in it a forfeiture. I am doing what I can for forfeitures.

Senator BIDEN. I do not have any doubt about that. I do not doubt that there are very legitimate tactical reasons for not pursuing the forfeiture route. Many, many years ago, when I was as young as you, I was on the other side. All I have ever done besides this job was to work as a criminal defense attorney. I can understand the system a little bit. I can understand from a practical background where a U.S. attorney might very well not proceed with the forfeiture route. I am not passing judgment on the competence or the will of a U.S. attorney who does not, for example. What I am trying to get a fix on through these hearings is how much emphasis we should really be putting on forfeiture. The DEA witnesses who will come up next, I suspect, in their private conversations with one another, say that Senator Biden puts too much emphasis on forfeiture. It is unrealistic.

Maybe I am unrealistic. That is one of the purposes of the hearing.

To be more specific with you, Ms. March, let me ask you, in working up your case, how much assistance did you have from the law enforcement agency? Did you have to work up the points? Did you have to do the investigation? Did you have the Drug Enforcement Administration doing it for you?

And for the record, since many who read this will not be prosecutors or defense attorneys, and may not understand this, when you have a traffic case, you have the policeman come in from the local agency and he has the radar machine, assuming you have one, and he brings in witnesses and gathers them up. You do not go out and interview the witnesses; he brings them in for you.

Is that what happened in a case like this, or did you have to work up the forfeiture side?

Ms. MARCH. Well, in this case, actually, in a way, it is somewhat atypical because it started with a State invesigation of this laboratory operation. There was a surveillance carried out by the State and local authorities, the California State Department of Justice, special agents,

who were assisted by local police. There were over 30 officers involved in the surveillance for over 2 months. This overlapped other investigations.

The search warrants issued were State search warrants. When the State law enforcement agency saw the scope of this eventually there was consultation with the U.S. attorney and the Drug Enforcement Administration and there were joint meetings in which a decision was made by the State agents, the district attorney's office, my office, and by the Drug Enforcement Administration to turn the case over for Federal investigation. That was basically because of some of the advantages that the continuing criminal enterprise statute provides and one of the key reasons was the possibility of forfeitures, the fact that the statute does provide much stronger penalties than the State statutes provide.

Senator BIDEN. So you had the police agencies helping you with the financial aspects of this case?

Ms. MARCH. No; I am getting to that.

Another advantage was the Federal grand jury. We knew the drug side had been worked out. Nothing had been done on the financial side. It was clear that a financial investigation was going to be needed.

Senator BIDEN. I thought you told me that was one of the reasons why they chose the Federal route.

Ms. MARCH. That is one of the reasons. The Federal agency that was assisting me was DEA. Unfortunately, in this case, although we would have liked to have had a joint investigation with IRS—because of the posture of the case, because it was transferred, because the defendants were arrested and the search warrants were being executed—there was a need to move it along quite fast—6 months from the time we got the investigation until the time the grand jury handed down an indictment. There was not time for a joint IRS and DEA investigation. That meant, practically speaking, we did not have the services of IRS agents. Generally, they have accounting backgrounds and are trained in financial analysis.

The DEA case agent was not trained in financial analysis. The State agents were not trained in financial analysis. Basically, we did the best that we could.

In a way, I was very lucky because I had tried some tax cases and had received some internal training from the Department of Justice in the way of being sent to tax seminars and fraud seminars where I had basically from that and from working in some tax cases——

Senator BIDEN. Had you not had that background, would you have been as anxious to pursue the route that you pursued?

Ms. MARCH. I don't think it is a case of whether I would be anxious or not. It is a case that you may want to do an invesitgation, but without financial skills somewhere on the prosecution team, and by that, I mean, assistant U.S. attorney and——

Senator BIDEN. I better choose my words more carefully.

Had you not had that background, would you have been reluctant to pursue the case along the lines that you did if you had no background into the financial aspects and your case officers had no financial background? No prosecutor likes to walk in and lose a case.

Ms. MARCH. It certainly would have been exceedingly difficult. It was exceedingly difficult. It was exceedingly difficult in any case. Basically, the agents did assist and we did receive piles of documents,

financial documents that had to be analyzed, some of them real-estate escrow documents, some of them relating to businesses—just piles of receipts from chemical warehouses that had to be added up to find out what was purchased.

So there was a lot of financial investigation that had to be tied together. I was lucky that I had had some experience from tax matters. I was lucky, as I said before, that there was basically a simple financial proof that was necessary. I would not have had the time or knowledge to do a bank deposit analysis. If we had found the bank records, we would have been sitting around looking at them and we would have been in trouble in trying to analyze them if we had to do a full blown net worth analysis. That is the kind of thing in an Internal Revenue Service case where you have a revenue agent assigned to the case or he is an accountant or he has had years of training and he can sit down and take a stack of bank records and do a source analysis where the funds came from that went into the account and where they went to.

An assistant U.S. attorney would not have time because he would have to do other things in preparing the case for prosecution. You have to have an agent that is trained if you have that kind of proof that you need to do. You have to have somebody that is trained in that.

I understand the DEA is attempting to train the agents, and certainly my agent was working against the odds in attempting to work with me on this case.

Senator BIDEN. Again, I want to make it clear that I am not suggesting that you and the agent and anyone else in the case did not do yeoman service. The case is illustrative of the problem that—and I would be willing to bet you—major drug trafficking cases tend to be more complicated than the one you tried.

You just heard the gentlemen from the General Accounting Office and the Treasury Department talk about the banking transactions and the use of the banking systems. If you had been sitting in a situation where there had been very sophisticated transactions, involving half a million, $2 million, $10 million, $50 million, how would you handle it?

Ms. MARCH. We would have had to have assistance. We might have tried to get it by special arrangement with the Internal Revenue Service. We might have tried to——

Senator BIDEN. In your whole district, do you know of any cases where such special arrangements were attempted to be made? Any case? Any case at all? Los Angeles is one of the larger districts.

Ms. MARCH. I did some looking into doing it on this case. I cannot speak for the whole district. I think prosecutors who want to prosecute, we try hard to find the ways to get the resources we need to carry on the case.

Senator BIDEN. Well, anyway, this is becoming unproductive.

What kind of training did you receive in the use of forfeiture statutes, specifically, the statutes themselves, not your background in tax matters, but on RICO or the continuing enterprise statutes? Any particular training? Seminars?

Is there anyone in the U.S. Attorney's Office who is considered expert as there are those considered experts on tax matters and other matters?

Who is the expert in your office on forfeiture?

Ms. MARCH. Well, since I tried the only case that had forfeiture, I hesitate to think that I might be the expert. I did not receive any formal training to go on to the other part of your question. However, I did consult with some people in the Department of Justice in the drug unit, and I did talk to other assistant U.S. attorneys in other parts of the country that had tried forfeiture cases, so basically there is a network by which you can call on people and receive assistance. I did not receive any formal training, though.

Senator BIDEN. It is sort of like the same network every other young prosecutor has and every other defense attorney. The fact is there was no special training that you received. You do not know if there were any in your office that received training in forfeiture? Forfeiture is not something that rises to the level of your staff meetings as something that you should be dealing with?

Ms. MARCH. I think there have been some nationwide seminars. I know a drug case seminar was held in Los Angeles.

Senator BIDEN. Did anyone from your office attend, if you know?

Ms. MARCH. I think one of the people teaching was the chief of our controlled substances unit, Bob Perry.

Senator BIDEN. Bob Perry. Is he a prosecutor?

Ms. MARCH. Yes, yes. He was the prosecutor on the *Araujo* case, which is described in a portion of my submitted statement.

Senator BIDEN. I understand why the jury came in with a guilty verdict. You are good.

(Discussion off the record.)

Senator BIDEN. Proceed, Mr. Biehl, with your statement, and then we will get the questions, and I may have a few more questions for both of you.

Mr. BIEHL. Good afternoon, Mr. Chairman. I did prepare a statement that I would submit for the record at this time, and I would simply briefly summarize the forfeiture aspects in my case.

I am honored to be here on behalf of the Criminal Division to describe the prosecution in *U.S.* v. *Meinster et al.*, or as you stated earlier, you heard from the press, the *Black Tuna* case.

I will just go through the different financial aspects in order.

The first financial aspect was the targeting procedure to list Meinster and Platshorn and their organization as an organization worthy of putting effort into. They were targeted specifically because the BANCO unit in Miami comprised of the DEA and FBI, was examining 4789's. Through an examination of Treasury forms 4789 that were testified to earlier, they were able to establish that a man named "Howard Blumin" made a number of deposits into one of the banks in Miami. He specifically made three deposits, which ranged from $200,000 to about $500,000. DEA followed Mr. Blumin and he led them to Mr. Meinster and Mr. Platshorn. This amount of money led them to decide that Meinster and Platshorn, who they had some intelligence on as narcotics dealers, were worthy of investigation. That was the first stage of the investigation. That is really how the organization was targeted.

After that, the agents went and found witnesses. They developed approximately eight coconspirator witnesses and spent the next number of months corroborating their testimony.

The investigation was run around a grand jury. We spent about a year in the grand jury, about 350 hours. We called probably close to 150 witnesses in the grand jury. Thousands of documents were submitted to the grand jury.

The next financial aspect was the evidence presented in the case. Probably the most important thing was that we presented testimony that this organization distributed at least 1 million pounds of marihuana.

Senator BIDEN. A million pounds of marihuana?

Mr. BIEHL. Right.

Senator BIDEN. What is the street value of that?

Mr. BIEHL. You would be better off asking an agent in that particular locale than asking me. They sold it at a wholesale value from about $220 a pound to around $300 a pound.

Senator BIDEN. You are talking about a quarter of a billion dollars?

Mr. BIEHL. Roughly.

Senator BIDEN. Roughly?

Mr. BIEHL. Yes.

Senator BIDEN. That is the kind of money I was talking about before.

Mr. BIEHL. We showed evidence of about 40 marihuana transactions. Most of them were multiton transactions.

Senator BIDEN. Multiton?

Mr. BIEHL. Yes. We had three seizures in the case, which added up to 70,000 pounds. There was financial evidence of the nature that one of the witnesses testified that he walked into a room and there was a table—a little bit wider, but not quite as long, as this—that was carpeted about 8 inches high with stacks of twenties and fifties which he was told amounted to $8 million, in payment of marihuana.

We presented evidence of purchases of expensive boats that were sometimes used to carry marihuana. A couple of witnesses testified that they were present when $270,000 was used to purchase a boat, which was refurbished and substantially improved.

There were a number of other yachts purchased like this. This particular yacht was called "The Presidential." We presented evidence of the use of Lear jets and evidence of a $60,000 restaurant bill.

Senator BIDEN. $60,000 restaurant bill?

Mr. BIEHL. Well, it wasn't for one evening.

Senator BIDEN. It was not all tuna fish?

Mr. BIEHL. Yes.

They headquartered their organization in the Ben Novak suite in the Fountainebleau in Miami, which most people who have been to Miami for conventions are aware of. There are four bedrooms on top and it is a duplex. They headquartered their organization there for a couple of months and then they moved it into a houseboat across the street.

Senator BIDEN. Hospital?

Mr. BIEHL. No, houseboat; I am sorry. They would order from the restaurant in the Fountainebleau and the waiters would carry it across to the houseboat, and that is how they built up a $60,000 bill.

Senator BIDEN. It is the American way.

Mr. BIEHL. Basically, we showed evidence of tremendous expenditures. We saved some financial information in reserve for cross-examination. IRS forms were included. Entry forms for safety deposit boxes were included in this. Some businesses they owned, like a barber shop and dress shop and Auction Auto we had financial information on that we saved for the cross-examination, but the defendants did not end up taking the stand and that information was not used at all.

At sentencing, we presented a lot of the financial information that had been developed throughout the case. It was cited by the court, and I think it was instrumental in getting decent sentences in this cases.

Platshorn was sentenced to 64 years—it was 100-some years, but consecutive to 64. He got 34 years under the continuing criminal enterprise statute, to which parole does not apply, so it is really doubtful that he will get out of prison in his lifetime.

Meinster was sentenced to 54 years—31 years on a continuing criminal enterprise statute. He is 37 years old, so it is doubtful that he will get out of prison in his lifetime. Eugene Myers, the third defendant, got 33 years and 21 years on continuing criminal enterprise. They were fined. Platshorn was fined $325,000, which has not been collected. Robert Meinster was fined $270,000, which has not been collected; and Eugene Myers was fined $100,000, which has not been collected.

The last financial aspect would have been the forfeiture aspect. We alleged forfeiture in count 2 of the indictment—the substantive RICO count—for those items we could show had an influence over the enterprise. In the RICO count, we asked for forfeiture on profits from continuing enterprise defendants.

Senator BIDEN. Can you excuse me for 1 minute?

[Brief recess.]

Senator BIDEN. Please come to order. I am sorry to have had to interrupt you.

Mr. BIEHL. On RICO, we asked forfeiture on three homes on the source-of-influence-over theory, which had been used for meetings and to store marihuana. We asked for forfeiture on the houseboat across from the Fountainebleau Hotel, three yachts to carry marihuana and three airplanes. One house was sold before the indictment was returned. We were entitled to profits, but we never identified cash assets or money assets.

The yachts, houseboat, and planes disappeared shortly before the indictment was returned. If we can ever identify them, we can get them under the indictment. Forfeiture as to their portion of those assets has been ordered. The two houses left belonged to Platshorn. The Pinetree house was sold for $425,000, and the other house was sold for a little over $300,000.

At the beginning of the case, the defendants alleged that these were the only assets that they had. We said that we could prove they had made a lot more income, but we could not point to any specific assets. Judge King found that their sixth amendment rights to counsel took precedence over our RICO rights to have the assets frozen. He issued an order.

Senator BIDEN. Being the house and boat?

Mr. BIEHL. Yes; which he allowed them to sell for their attorneys' fees. Then there was $16,000 left, which was forfeited to the Government. Total RICO forfeiture would have been $2.5 million if you

counted the yachts, and we got in the end $16,000. As to the other forfeiture as to profits made by the three criminal defendants, we were never able to trace the assets.

Senator BIDEN. What do you estimate the profit to have been?

Mr. BIEHL. I don't know. Give a quarter of a billion dollars as a round figure for their organization in gross receipts. They were paying, most of the time, around $80 a pound to Raul Davila, their supplier in Colombia. That would reduce it substantially there.

People in this business have a lot of expenses. There was a $60,000 restaurant bill. Of course, that does not eat up that much, but there are a lot of expenses. You have minor operators who will go and off-load a boat for one evening. He might make $10,000 to $40,000 for his physicial, manual labor. While that is a lot of money for him, that also costs the head of the organization a lot of money, so it is expensive to maintain an organization like that. We think there is still substantial money around. Public records show that. As part of our case——

Senator BIDEN. Substantial money around from the organization?

Mr. BIEHL. Yes.

One of our defendants was Mrs. Lynne Platshorn, wife of the lead defendant, Robert Platshorn. During the trial, they cooperated with organized crime people in New York to try to obstruct our trial, possibly killing Judge King. That has gone to trial. She pled guilty to that indictment. In tapes presented, she talked about money she had in banks and foreign accounts.

Back in the beginning when I talked about the two $500,000 deposits put into the one account in Miami that led us into this investigation, they were wire transferred out of the country. This is strictly my own personal opinion. I think most of the money was transferred out of the country and it might have come back in and it might not have. Mrs. Platshorn said she could not pay for some of the things she needed done by possibly killing Judge King until she got to this money, which was out of the country. That is where I think a lot of the assets are.

Senator BIDEN. You are not the first prosecutor or first Government official who has indicated a similar story; that is, that a significant portion of the proceeds end up out of the country, and then at least coming back in.

Mr. BIEHL. It is impossible to trace it. If a person puts money in a bank in Miami, and this is happening every day down there, and I spent 2 years there, and it is wire transferred to the Cayman Islands, which has complete bank secrecy, and they wire transfer it to Panama, and there is no way we can get their bank records, no way, and then to Hong Kong, and back into the country to a foreign corporation, as some of the defendants in my other cases have said, it is virtually impossible for us at this stage to do anything about that.

Senator BIDEN. That is what I want to get from you.

As a prosecutor, being aware of the type of transactions you have just described, is there anything, as a practical matter, that you can think of that we would be able to equip the prosecutors of this country with to be able to go after that?

Mr. BIEHL. I think Mr. Nathan will talk a little bit about the one that has been proposed. The problem that both Kay and I and so many prosecutors have that try these cases is that, you still have to

find and identify the defendant's assets. When the assets come back into the country or they stay in the country in cash, very few of these criminals list these assets in their own names. We went through the property records in Dade County and looked under all their aliases. You have to show where it is.

Senator BIDEN. Even if you do not have the burden of proof to show its derivation, even if that is not there, you still have to find something to take?

Mr. BIEHL. Yes.

Senator BIDEN. So changing the statute, which may be helpful in terms of a prosecutorial truth, not requiring the same burden of proof as to what constitutes derivative proceeds may not very well get at the bulk of the big money we are talking about. As a matter of fact, I suspect it won't.

Let me ask you this:

What is the extent of your training in complicated financial transactions either as an undergraduate or in graduate school or professional training.

Mr. BIEHL. Law school. I did not take very many courses in law school that would equip me. I took a basic tax course and that was it.

Senator BIDEN. Not many law schools offer that.

Mr. BIEHL. Basically, my training would be on-the-job training in trying cases or talking to other prosecutors. There have been some handouts from the Justice Department that I have read before trial, but I haven't attended any seminars.

To some extent, forfeiture can be done. It should not be written off. Unfortunately, some of the best cases are in the course of development. We have run a study and about half the prosecutions since this statute was enacted, Continuing Criminal Enterprise, have come in the last 2 years of a little over 2 years. I think prosecutors will get better at this and they will get forfeitures in the next few years.

Senator BIDEN. In your investigation and prosecution of the case you have described for us, what degree of assistance in locating and tracing financial transactions and assets did you get, either from within your department or from agencies outside of your department?

Mr. BIEHL. I think both in proving the events of our last case and in trying it.

Senator BIDEN. How about the financial aspects?

Mr. BIEHL. And in trying to get to the financial aspects, the DEA cooperated to their ability. There was a joint FBI–DEA case. We had a full-time FBI case agent. He certainly put in long hours and tried to the best of his ability to trace these assets.

Senator BIDEN. You are sounding less like a prosecutor and more like a Senator when you say: "To the best of his or her ability."

What ability did they possess?

Mr. BIEHL. They possessed the ability to look in the places that they and I thought of for assets, like real estate in Dade County. We did not have the time to go far out. It would have helped if we had IRS involvement.

Senator BIDEN. You only think. You would think it would have helped a great deal, do you not?

Mr. BIEHL. I think it would have helped. We asked for it in November, trying to indict the case in February. They told us it would take too long to get involved in the case.

Ms. MARCH. One difficulty that both Dana and I had in our cases—because we did not have a joint investigation with the IRS, we had to go through the disclosure procedure. We had to get court orders to have the taxpayers' returns revealed to us, and that is a procedure that takes several months prior to Department of Justice approval. It is a whole involved procedure. It is just one more thing you have to do in preparing the case for trial. Not only do you have the disadvantage of not having the IRS agent, but you cannot get information from the IRS.

In my case, we did get the court ordered disclosure. It showed the defendant had not filed any tax returns for the last 5 years. That is a potential offense that could be charged. There are always potential tax offenses. There is no time to work them up. That is why you cannot have IRS to begin with. That is one area where you have a problem.

Senator BIDEN. Let me ask you a question every press person always asks.

In hindsight, what did you fail to do that you now wish you would have done differently? They usually ask in your first term what mistakes you made.

Mr. BIEHL. The case should have had a joint tax grand jury, IRS participation from the beginning and not just because they might have been able to show us some ideas as to where to look, but for some other reasons, too. We could have cut down the indictment. We alleged everything from kidnaping to RICO and continuing criminal enterprise offenses. Four and one-half months was too long to spend before the same jury.

Senator BIDEN. Do you want to add anything?

Mr. BIEHL. We still need 881.

Senator BIDEN. Let me make this clear: It is not so much why should we have these, all the tools that we talk about here, but to what degree do they benefit us in (a) in significantly impacting upon the trafficking networks; or (b) dissuading people from entering the enterprise because it is not as lucrative as it was, whether it can impact on that or (c) aiding in the prosecution, getting the guilty person, bringing back the man?

I appreciate very much your time and your effort and, most of all, your successes, which you have had on behalf of the people in this country in important cases which are not insignificant. They are of consequence, and I think you are right; the last couple of years, one of you said, in the last 2 years there has been increased implementation of the tools to which we have been referring today, and I expect that one of the outgrowths of the newly acquired evidence is the heightened concern by the public at large about drug trafficking. It will happen again.

Not everyone was very pleased with the long report I just issued on heroin trafficking, but in my humble opinion, we are about to see a really big influx. It will change the dimensions of the drug problem in this country in the very near future, it having already begun, and there is one aspect of the enforcement mechanism which is important, which is the forfeiture side, and there is another one which is most important, which is the eradication of source and that is to burn up the opium fields, the poppy fields, before they are transshipped.

But we are focusing at this point on what is intended to be an overall and continuing investigation of the narcotics field and the organized

crime relationship to that field. We have begun by focusing on the tail end of it, and that is the prosecution.

There is an equally important or more important aspect in the front end: How do you deal with eradication of source?

I really appreciate your efforts. You may think it was a long way to come to testify for so short a time, but I assure you that your testimony was valuable and I hope that you both stay in the business and continue to have the success you have had on our behalf.

Thank you very much.

Your complete statements will be made a part of the record.

[The prepared statements of Mr. Biehl and Ms. March follow:]

PREPARED STATEMENT OF DANA D. BIEHL

I am honored by the opportunity to appear today and to present testimony concerning the investigation and prosecution of *United States* v. *Meinster*, et al., Case No. 79–105–Cr–JLK, Southern District of Florida, which has been termed by the press and is known as the "Black Tuna" case.

This case has been labelled by many as a "financial" investigation and prosecution. I think at the outset it is important to describe the financial aspects of this case and to explain what the case was and what it was not in the financial area.

The case was a financial investigation in that financial information was used at the targeting stage of the investigation to identify the lead defendants. In 1978 the intelligence unit of the "Banco" Group (a joint FBI–DEA. project in Miami, Florida) was able, by the examination forms submitted by banks to report substantial deposits (treasury form 4789) and by surveillance to identify an accountant named Howard Blumin as an individual who deposited large amounts of cash in banks in Miami. Surveillance of Mr. Blumin disclosed the fact that Mr. Blumin was working for Robert Meinster and Robert Platshorn at this time. DEA had intelligence that Meinster and Platshorn were in the marihuana business. The size of the money flow led "Operation Banco" to direct resources into the investigation of Meinster and Platshorn's organization. After the organization was targeted DEA and FBI agents spent a number of months developing coconspirator witnesses, around which the prosecution was built and searching out evidence which corroborated the testimony of these witnesses.

Financial evidence was used at trial to the extent that many large expenditures were proven. For example, evidence demonstrated that many yachts were purchased by the organization, some for hundreds of thousands of dollars, that Lear jets were owned and used by the organization, and that a $60,000 restaurant bill was part of the organization's expenses. There was also testimony that different businesses were used by the organization to launder money.

Some financial evidence was reserved to be used for cross-examining the defendants. When the defendants did not take the stand this evidence was not used. The defendants' tax returns were included in this evidence.

Financial evidence was presented to the Court at the sentencing hearing and was cited by the Court when the sentences were announced. The three primary defendants were given prison sentences consecutive to 64 years and a fine of $325,000 for Robert Platshorn, to 54 years and a fine of $270,000 for Robert Meinster, and to 33 years and a fine of $100,000 for Eugene Myers.

The indictment sought the following forfeiture under Count II, which charged the defendants with operating a racketeer influenced and corrupt organization, in violation of 18 U.S.C. § 1962: three residential houses, the combined value of which totaled about $800,000 a business, the South Florida Auto Auction, which had no value by the time the trial ended, two expensive yachts, a houseboat and three airplanes. Under the Continuing Criminal Enterprise (21 U.S.C. § 848) Counts, the indictment sought forfeiture of all profits obtained in violation of Title 21 of the United States Code by defendants Meinster, Platshorn and Myers.

Upon motion and affidavits filed prior to trial by the defendants Meinster and Platshorn that the houses were their only assets, the Court ruled that the houses could be sold to pay for their attorneys' fees. Attorney fees consumed all but $16,000 of the proceeds from the sale of the houses. The remaining $16,000 was forfeited to the Government. The yachts, houseboat and airplanes which belonged to these defendants disappeared shortly before the indictment was returned and their location is unknown at this time.

The investigation was not able to trace or identify the marijuana and cocaine profits of the defendants. Therefore, no profits were identified or forfeited.

The case was developed by a grand jury investigation that took over one year and in excess of 350 grand jury hours. There were over 100 witnesses and thousands of documents presented to the grand jury.

The indictment charged 14 defendants and was 100 pages in length. Its 36 counts charged R.I.C.O. conspiracy, R.I.C.O., kidnapping aboard an aircraft, obstruction of justice, perjury, interstate and foreign travel in aid of racketeering, interstate communication in aid of racketeering, importation of controlled substances, distribution of controlled substances and engaging in a continuing criminal enterprise.

The case was set before the Honorable James L. King, United States District Judge for the Southern District of Florida.

There were over 1,000 written pleadings, motions and responses filed during the pretrial stages of this cases. The research and argument of these motions took several months. During this stage the only motions of any great import which were lost by the Government were discovery motions.

One of the Government's significant witnesses was beaten severely, threatened and warned not to testify soon after the defense was notified of her testimony pursuant to court ruling. However, a causal link between her beating and the releasing of her identity as a witness to the defense, months in advance of trial and pursuant to a Magistrate's ruling, was not established. As a result of this beating the witness was hospitalized and placed under the care of a psychiatrist. She did not recover emotionally and her condition precluded her use as a witness at trial.

During the first weeks of trial a separate F.B.I. investigation, which included several hours of undercover tape recorded conversations with the defendants Meinster and Platshorn disclosed that Meinster and Platshorn were planning the imminent importation of 1,000 kilos of cocaine and 2,000,000 quaaludes, and in another operation the imminent importation of 40,000 pounds of marijuana. The investigation and tape recorded conversations of the defendants also disclosed that Meinster and Platshorn were attempting to obtain false passports and other identification and that they were planning to flee the country. After a bond revocation hearing in which this evidence was presented Meinster and Platshorn were remanded for the duration of the trial.

During the first six weeks of the trial some of the defendants approached a juror and arranged to bribe her. The F.B.I. discovered this operation through a D.E.A. informant and the juror was removed from our trial. The juror, involved defendants and three others were indicted for conspiracy to obstruct justice. Everyone in that indictment, including the juror, has since pled guilty to that conspiracy.

During the first months of the trial defendants Robert Meinster, Robert Platshorn and Lynne Platshorn hired organized crime figures from New York and New Jersey for a fee of $1,000,000 to cause a mistrial. The $1,000,000 was never delivered, however. One of the plans discussed involved the possible murder of Judge King. This plot was discovered by the F.B.I., who then conducted an investigation including over 100 hours of tape recorded conversations with the principals involved.

This investigation led to the indictment of Robert Meinster, Robert Platshorn, Lynne Platshorn, Joe Cataldo, Ralph Stein and Archie Morris for conspiracy to obstruct justice. Lynne Platshorn and Archie Morris pled guilty to this conspiracy. The trial of the other four defendants started in June 1980 and is now in its second month, however, last week Joe Cataldo died from a heart attack.

During the second month of trial two defendants, Carl London and Mark Phillips, deserted the trial and became fugitives. Carl London left court on a Friday and was arrested that weekend in Aruba, which is about 50 miles from Colombia. London was charged in Aruba for violating the air space of Aruba while he was flying an unsuccessful marijuana smuggling mission. The week following London's arrest in Aruba, London was tried, convicted and sentenced to a six week prison term. The United States Marshals communicated with the State Department and with the authorities in Aruba and arrangements were made to have the Marshals notified when London was to be released so that the Marshals could pick him up and escort him back to Miami. The Marshals were not notified, however, until the day after London was released and London did not return to Miami. Both London and Phillips were convicted of racketeering and other counts in their absence. London has since been indicted by the State of Georgia in an unrelated racketeering case. In March 1980, London was arrested

in the Bahamas when he landed there in an airplane with 2,000 pounds of marijuana. Arrangements were made with Bahamian Police authorities for D.E.A. to be notified if and when London was released. A few days later London was released on bond without any prior notification to D.E.A. and he disappeared again.

The trial began on September 17, 1979 and the jury returned a verdict on February 4, 1980. The eight defendants still in the trial on that date were convicted of racketeering and other counts and in addition Meinster, Platshorn and Myers were convicted of engaging in a continuing criminal enterprise.

It took almost four months to present the Government's case to the jury and about one week to argue it. It is not possible, therefore, to detail the events proven at trial in this testimony.

Evidence was presented to the jury which showed that from October, 1974 to early 1978 Robert Meinster and Robert Platshorn organized and managed an organization which distributed well over one million pounds of Colombian marijuana. The Meinster and Platshorn organization imported most of this marijuana into the United States themselves. There were over 40 separate major marijuana transactions testified to at trial, most of which involved several tons of marijuana. Evidence of three seizures was introducted at trial. In these three seizures the marijuana was weighed by law enforcement officers and was analyzed by a chemist. These three seized Meinster/Platshorn loads of marijuana totaled over 70,000 pounds.

The evidence showed at least 60 individuals who worked for the Meinster-Platshorn marijuana and cocaine organization at different times. These individuals included successful businessmen, a doctor, airline pilots, ship captains and others.

After the trial finished the prosecutors were able to listen to the tapes from the collateral investigations for the first time and to talk to convicted defendants. These conversations revealed many transactions involving well over a hundred thousand pounds of marijuana, which were unknown to the prosecution during trial.

The amount of money which was shown by the evidence throughout this case is quite sobering. Strong evidence presented at trial, buttressed by the undercover tape recorded conversations with the defendants from the collateral investigations and by conversations with convicted defendants after the trial shows that this organization handled over 1,000,000 pounds of marijuana. The evidence showed that the wholesale price for which this organization sold its marijuana ranged from $220.00 to $300.00 per pound depending upon the market and the status of the customer. Simple arithmetic puts their gross receipts at a minimum of 220 million dollars.

Our evidence began in 1974 when Meinster and Platshorn were buying their marijuana from Luke McLeod. McLeod testified that he sold Meinster and Platshorn about six loads of marijuana which averaged 2,000 to 2,500 pounds apiece and that Meinster and Platshorn paid him in cash from five-hundred thousand dollars to eight-hundred thousand dollars for each of these loads.

Meinster and Platshorn were able to establish a connection with Raul Davila-Jimino, a Colombian who is one of the largest marijuana growers in the world. By 1976 they were importing from Colombia, a large portion of their marijuana themselves and they had moved from small operators into the higher echelons of the business. By 1977 they were importing forty thousand pound boatloads of marijuana from Colombia. One of these boats, the Presidential, ran aground off the Bahamas, and while some of the marijuana was rescued by the organization the Bahamian Police seized 32,000 pounds. At $250.00 per pound this one load had a wholesale value of about 8 million dollars.

This was an organization that lived in a world of private Lear jets, of quarter to half million dollar yachts, of $60,000 restaurant bills. One witness testified to seeing a three by eight foot table completely carpeted eight inches high with stacks of twenty and fifty dollar bills, which he was told represented a payment for marijuana. While the investigation never really penetrated the financial operation of the organization, that is, how the money flowed or where the profits are, the investigation did disclose that there had been numerous bank deposits ranging up to about half a million dollars.

A comparison of the tremendous wealth demonstrated by the evidence to the almost insignificant $16,000 which has been forfeited and turned over to the Government in this case certainly raises questions. Under both the R.I.C.O. and continuing criminal enterprise statutes assets are generally subject to forfeiture if they are proven to have had a source of influence over the enterprise

or if they are proceeds acquired in violation of those statutes. After the indictment was returned, except for the houses, we were not able to locate those assets which were owned by the defendants and which had a source of influence over the organization. As stated above the investigation was not able to trace the profits of the organization.

This concludes my testimony. I would be pleased to respond to any questions.

PREPARED STATEMENT OF KATHLEEN P. MARCH

I am Assistant United States Attorney Kathleen P. March. I have served in Los Angeles in the Criminal Division of the Office of the United States Attorney for the Central District of California for two and one-half years and am currently assigned to the Major Crimes Unit. Prior to joining the United States Attorney's Office I was the law clerk to a federal judge and worked in litigation practice with a law firm in New York City.

I have been asked to testify concerning the case of *United States* v. *Bradford J. Burt, Roy D. Snarr, James Franklin Rounsavall, Michael J. Vaccarino, and William L. Dennis,* CR 80–36–R, in which defendant Burt was prosecuted for and convicted of carrying out a continuing criminal enterprise, in violation of Title 21 United States Code Section 848, through setting up and supervising the operation of a series of illicit amphetamine and methaqualone laboratories in Southern California.

I was the Assistant United States Attorney assigned to the case from the investigation stage forward. I presented the case to the federal grand jury and tried the case as lead counsel for the Government, together with Assistant United States Attorney William J. Landers.

The case arose from a state investigation begun in late 1978 which culminated in a two month surveillance in early 1979 by California State Department of Justice agents, sheriff's officers, and local police, of an isolated ranch in Hinkley, California where activities consistent with construction and operation of a clandestine drug laboratory were observed. In March, 1979, as a result of the surveillance and investigation, over 20 California State search warrants were executed by the state authorities. A search of the ranch in Hinkley revealed a massive amphetamine laboratory, the largest and most sophisticated ever seized in California. Remains of a second laboratory were found at an isolated mountain cabin in Perris, California, and evidence of a third laboratory in Palm Springs was also seized. Later investigation through an informant revealed the existence of a fourth laboratory.

Defendants were first charged in state court with violation of California state drug statutes. Consultations were held between the Office of the United States Attorney, the Drug Enforcement Administration, the District Attorney, and state law enforcement personnel concerning whether, in light of the scope and sophistication of the drug operation and the need for financial analysis, the case should be prosecuted federally. A joint decision was made to cease the state prosecution in favor of federal prosecution. A federal grand jury investigation started in approximately June of 1979. The indictment in the instant case was returned by the grand jury in January, 1980. A copy of the indictment is attached.

The indictment was in 12 counts. The first five charged defendant Burt with conspiring with co-defendants William Dennis, a lawyer, and Snarr, Rounsavall and Vaccarino to manufacture and distribute amphetamine and methaqualone at the Hinkley and Perris laboratory sites, and with substantive counts of manufacturing and possessing with intent to distribute amphetamine manufactured at the Hinkley laboratory. Counts Six through Ten charged defendant Burt with conspiring, during the same time period, with additional persons to operate the laboratory located in Palm Springs, and with manufacturing and possessing with intent to distribute the amphetamine manufactured at this third laboratory. Count Eleven charged Burt with distributing amphetamine on an additional occasion. The proof at trial concerning this count was that this additional amphetamine, sold by Burt to an informant, had been manufactured by Burt at a fourth laboratory, where he had a chemist and other persons working for him. Count Twelve charged defendant Burt with conducting a continuing criminal enterprise by committing the series of substantive offenses alleged in the first eleven counts of the indictment, as just described. Count Twelve also alleged that defendant Burt had obtained certain profits as a result of the operation of the

continuing criminal enterprise which were subject to forfeiture pursuant to provisions of 21 United States Code Section 848(a)(2).

First, the indictment alleged that the Hinkley ranch was subject to forfeiture as having been acquired by Burt with funds derived from the illegal drug operation. Second, the indictment alleged that the proceeds derived by Burt from the sale of his Palm Springs residence were subject to forfeiture because the house had also been acquired by Burt with the assets from the illegal continuing criminal enterprise.

Trial was set for April, 1980. Defendants filed over 15 pretrial motions. These included motions to suppress all of the state search warrants and the arrests of the defendants to dismiss the indictment for pre-indictment delay; to dismiss the indictment as a vindictive prosecution on the grounds that the federal court penalties were more severe than the state court penalties would have been; for grand jury discovery; for jury panel discovery; for discovery relating to the transfer of the case to federal court; to disqualify the judge; to sever various defendants and various counts; to dismiss the continuing criminal enterprise charge on the grounds that the statute was unconstitutional, a motion by defendant Burt for a bill of particulars, etc. Briefing and hearing of the motions took several weeks.

The court denied all of the motions except that it severed the trial of defendant Burt from the trial of the other defendants, who were charged only in the first five counts of the indictment. However, since proof as to the first five counts was common to all defendants, the trial judge ordered that two juries be impaneled and hear the joint evidence simultaneously. Defendants took an interlocutory appeal of the district court's denial of the vindictive prosecution motion. Trial was delayed a week while the Government moved for and received an emergency affirmance from the Ninth Circuit Court of Appeals of the district court's denial of that motion.

Bail for defendant Burt had been set by a federal magistrate at $150,000, with $15,000 cash deposit, $50,000 secured by property and the remaining $85,000 secured by the signature of defendant Burt's mother. The Government had sought initial bail of $250,000. When defendant Burt posted bail the Government moved for a hearing to inquire into the source of the bond funds. Bond hearings on defendant Burt continued on three different days, with the Government showing that Burt's mother was basically judgment proof and that $50,000 of the bond had been posted by unindicted co-conspirators. The District Court refused to raise the bond but required defendant Burt to post an $85,000 corporate surety bond in place of the $85,000 bond of his mother, for a total bond of $150,000 of which $15,000 was in cash and $135,000 was corporate surety bonds. The Government argued that the bond as set was insufficient and that defendant Burt would flee. Burt posted bond as set.

As trial approached, co-defendant Vaccarino pleaded guilty to conspriracy and manufacture of amphetamine as charged. Co-defendants Snarr and Rounsavall stipulated to a court (non-jury) trial on the basis of the facts to be proved in the Burt and Dennis trials. On April 22, 1980 the trials of defendants Burt and Dennis commenced, with one jury impaneled to try Burt and a second to try Dennis.

On the first day of trial, the Government's informant testified concerning Burt's activities. Defendant Burt, free on bail, attended the first day of trial but did not appear for the second. When he had still not appeared on the third day, the court held a hearing out of the presence of the jury and ruled that defendant Burt had voluntarily absented himself from trial. As provided in the Federal Rules of Criminal Procedure, Burt's trial continued in his absence, with Burt being represented by his attorney. Defendant Burt never reappeared during trial and is still a fugitive.

The evidence presented at trial can be summarized as follows: defendant Burt conspired with co-defendants Snarr, Rounsavall and Vaccarino to operate illegal drug laboratories at a mountain cabin located on Cajalco Road in Perris, California and at the Hinkley ranch. From January through December, 1978, defendant Burt, using an alias, purchased over $140,000 of laboratory equipment and precursor chemicals for the manufacture of amphetamine and methaqualone. Burt supervised co-defendants Snarr and Rounsavall in manufacturing methaqualone at the Perris laboratory site, starting in approximately March, 1978. The Perris laboratory site had been purchased in January, 1978 in the joint names of defendants Snarr and Rounsavall. Early in mid-1978 defendants Snarr and Rounsavall rented storage lockers for use in storing precursor chemicals. As Burt's agents, they purchased a generator for $4,000 and purchased and trained guard dogs

which were later used to guard the laboratory sites. A formula for methaqualon seized in the searches was found to be partially written in Burt's handwriting. A coded chit book seized in the searches reflected that over $450,000 of drugs had been advanced on credit to wholesale drug dealers, and that over $300,000 had been received against the amount sold on credit. A wholesale customer testified that from March, 1978 through March, 1979 he and his partner were buying multi-pound quantities of amphetamine from defendants Snarr and Rounsavall.

In the fall of 1978, defendant Burt purchased the Hinkley ranch for $55,000, paying the full price on closing of escrow, with profits from the drug operation. The Hinkley ranch was purchased in the name of "Gonzo Corporation," which was a front corporation incorporated for the co-conspirators by defendant lawyer William Dennis. Defendant Dennis also assisted defendant Burt with the details of purchasing the Hinkley ranch. Also in the fall of 1978, defendant Burt, in partnership with defendant Dennis, purchased the residence in Palm Springs, later ordered forfeited by the jury, which defendant Burt redecorated and proceeded to live in. Defendant Burt, who had not deposited the correct amount of cashier's checks into escrow, brought $15,000 in $5, $10, and $20 bills to the escrow company on the day of the closing on the Palm Springs house to pay the balance due into escrow.

As soon as the Hinkley ranch was purchased, defendants Snarr, Rounsavall and Vaccarino, under the supervision of defendant Burt, outfitted the ranch as a laboratory site. Attorney Dennis assisted by arranging to have a six-foot fence erected around the property and by obtaining electrical service, again in the name of Gonzo Corporation. The Government argued that the use of the front corporation to purchase property and to hook up the electricity was an attempt to make actual ownership and use of the property more difficult to trace. Defendant Dennis was further linked to the conspiracy by the fact that a search of his law office revealed that he was safekeeping the chemical formulas for the amphetamine manufacturing process being used at the Hinkley ranch. The California state search warants were executed on the Hinkley laboratory site just after it became operational, and 25 pounds of amphetamine were seized. Additionally, enough precursor chemicals to make hundreds of pounds of amphetamine and methaqualone were seized at the Hinkley and Perris lab sites and at various storage lockers rented by the defendants.

In addition to the operation of the Hinkley and Perris laboratories defendant Burt caused to be set up and supervised the operation of an additional laboratory in Palm Springs, where he directed four additional co-conspirators in producing and distributing amphetamine. Finally, the evidence was that after the seizure of the Perris and Hinkley laboratory sites in November of 1979, defendant Burt was again selling amphetamine, this time from an additional lab, to the Government's informant.

The financial evidence in the case included the fact that as of the end of 1979 defendant Burt had filed documents under oath in a divorce proceeding indicating that he had no income and no assets. Witnesses testified that from September, 1978 through March, 1979 defendant Burt was not employed in any regular job. No checking or savings accounts were ever discovered for him. The testimony at trial was that defendant Burt made all purchases by cash or cashier's checks. One of the unindicted co-conspirators from the Palm Springs laboratory testified that Burt would commonly open a briefcase filled with stacks of $100 bills and count off thousands of dollars to take necessary weekly expenditures. Defendant Burt had told an additional unindicted co-conspirator at the Palm Springs laboratory that he could work 30 days (the time it took to produce 30 pounds of amphetamine at that laboratory) and make $200,000. The testimony was that approximately 55 pounds of amphetamine was prepared at the Palm Springs laboratory before that laboratory was disassembled. The evidence was that Burt, who had no legitimate job or assets, made approximately $500,000 of expenditures in cash or cashier's checks during the period of January, 1978 through March, 1979, including the purchase of over $140,000 of precursor chemicals and equipment, purchase of the Hinkley ranch for $55,000, purchase of the Palm Springs residence for which he personally paid $120,000 into escrow, purchase of over $100,000 of improvements to that residence, and various miscellaneous additional expenditures.

The Government called over 70 witnesses in the course of the two and one-half week joint trials of defendants Burt and Dennis. The case was argued first to the Dennis jury which began its deliberations on May 5, 1980 and returned its verdict the same day. The verdict, which was sealed until after the verdict in the Burt

case was returned, found defendant Dennis guilty as charged, of conspiring with defendant Burt and the other co-defendants to manufacture and distribute amphetamine and methaqualone, and of manufacturing and possessing amphetamine with intent to distribute it. After the Dennis case was completed the *Burt* case was argued and the jury instructed, beginning deliberations on May 6, 1980 and returning its verdict the same day. The Burt jury found defendant Burt guilty as charged on all counts.

After the guilty verdicts were returned by the Burt jury, the trial judge instructed the jury on the law regarding forfeiture and sent them back to deliberate as to whether the Government had proved its case concerning the forfeiture of the ranch and assets as alleged in the indictment. After approximately 15 minutes of deliberation, the jury returned special verdicts against defendant Burt forfeiting (1) the Hinkley ranch, and (2) the proceeds of the sale of the Palm Springs residence which had been purchased by defendant Burt, including $47,000 of cash received by Burt for the sale of that house. The court ordered the Government to prepare forfeiture judgments.

A forfeiture judgment for the Hinkley ranch was prepared by the Government and signed by the Court. The judgment has been filed with the County Recorder's Office in the County where the ranch is located to prevent transfer of the ranch. Since the 10 day appeal period after entry of the forfeiture order has expired without any appeal of the order by defendant Burt, the Government will now commence administrative procedures to sell the property. No restraining order had been sought as to the ranch when the indictment was returned because there was already a state tax lien pending against the property at the time the federal investigation commenced, which effectively blocked transfer of title of that property.

The Government also prepared and the court signed and entered a judgment forfeiting the proceeds from the sale of the Palm Springs residence. No restraining order concerning the sale of that property had been sought at the time the indictment was returned because the property had been sold prior to the transfer of the case to federal investigation. The Government proved at trial that defendant Burt had quitclaimed the house to his attorney the day after he was arrested in March, 1979, and that the attorney had sold the house, placing the proceeds from the sale in a trust fund for Burt, and then making payments from the fund as authorized by Burt, including checks for $47,000 written to Burt from the trust fund account. However, though the disposition of funds was proved through records and testimony, no actual funds were ever located. Therefore, no further action can be taken concerning execution of this judgment unless assets belonging to Burt are located.

All financial analysis in the case was carried out by the DEA case agent and me. Much of the financial data was obtained by grand jury subpoenas. Since the federal investigation was supplanting a pending state case, there was pressure to complete the federal grand jury investigation in as few months as possible.

Consequently, under the then existing IRS–DOJ guidelines and regulations, there was insufficient time to establish a joint investigation between the Drug Enforcement Administration and the Internal Revenue Service. Unavailability of IRS agents was a hardship because the DEA case agent was not trained in financial analysis. Other major drug trafficker cases in the Central District of California have benefitted greatly from the shared expertise of IRS and DEA Special Agents working together with Assistant United States Attorneys in joint grand jury investigations.

In the absence of a joint investigation with IRS, the Government was required to pursue the time-consuming procedure of procuring a court order to receive access to defendant Burt's federal income tax returns and return information, pursuant to the applicable IRS–DOJ regulations and guidelines governing disclosure of such information.

Pursuant to the court order, the Internal Revenue Service revealed that its records reflected that defendant Burt had not filed federal personal income tax returns for the past five tax years. The Government sought to offer this evidence of failure to file federal personal income tax returns as circumstantial evidence that defendant Burt had no legitimate income to report. However, the trial court rejected this evidence.

The *Burt* case provides a good example of the value of combining critical elements in the national effort against drug trafficking: close federal-state cooperation, financial investigation, and the continuing criminal enterprise statute. We in the office of the United States Attorney in Los Angeles are proud of the

success of the use of the joint agency approach in significant narcotics cases. We have found that by emphasizing the development of financial evidence and by marshalling the talents of special agents from DEA, Customs, and IRS, and by working with local agencies, we have been able to develop the evidence necessary to prosecute successfully the leaders of major narcotics organizations and to seize their assets. This past year saw the seizure in our District of more than $5,000,000 in currency and assets owned by major traffickers. Much of this money will be forfeited to the United States pursuant to various criminal and civil forfeiture provisions of Titles 18, 21, 26, and 31 of the United States Code.

The *Burt* case is one of a number of cases concluded in the past year in our office which have shown the value of joint agency investigation. The landmark *Araujo* case, a joint investigation by DEA, Customs, IRS and local agencies resulted in the destruction of a mammoth heroin organization which had channeled more than thirty-two million dollars ($32,000,000) to Mexico. One of the leaders of the Araujo organization was sentenced to thirty-five years in prison and fined $1,200,000. In addition, more than $600,000 in assets was seized from members of the organization. The *Araujo* case was the subject of testimony by Assistant United States Attorney Robert J. Perry, Chief of our Controlled Substance Unit, before the Senate Permanent Sub Committee on Investigations last December.

In the *Godoy* case, a joint investigation by FBI and DEA agents resulted in a successful prosecution for racketeering under the RICO statute. After returning a verdict of guilty on all charges, the jury found that more than $1,200,000 of assets should be forfeited to the United States. That case was prosecuted by Assistant United States Attorney William J. Sayers, who is now the Chief of our Complaints Unit.

In the *Anderson* case, prosecuted by an Assistant who has since left the office, a joint investigation by DEA and IRS led to the convictions of members of a major heroin trafficking organization. The leader was convicted of conspiracy and income tax evasion and was sentenced to seventeen years in prison and fined the maximum $45,000. Following the trial, IRS assessed more than $600,000 in jeopardy tax assessments on many assets.

In the *Davis* case, another joint DEA/IRS investigation, a jury convicted members of a hashish oil smuggling operation which employed devotees of a religious sect as couriers. The principal defendant was convicted of operating a continuing criminal enterprise and sentenced to fourteen years in prison and $55,000 in fines. In just over one year of operation, that conspiracy had generated close to four million dollars in income. This case was prosecuted by Assistant United States Attorney Eric Dobberteen, a member of our Controlled Substance Unit.

We in the Central District of California are mindful of the importance of seizing the assets of major traffickers which represent the ill-gotten gains of narcotics trafficking. We applaud the interest of the committee in this area.

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

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. BRADFORD J. BURT, aka Brad Burton, aka Bob Davis, ROY D. SNARR JAMES FRANKLIN ROUNSAVALL, MICHAEL J. VACCARINO, WILLIAM L. DENNIS, Defendants.	)	CR 80- 36 INDICTMENT [21 U.S.C. §846: Conspiracy to manufacture, possess with intent to distribute and to distribute controlled substances; 21 U.S.C. §841(a)(1): Manufacture, possession with intent to distribute, and distribution of controlled substance; 21 U.S.C. §848: Continuing Criminal Enterprise; 18 U.S.C. §2: Aiding and Abetting]

COUNT ONE

[21 U.S.C. §846; 21 U.S.C. §841(a)(1)]

A. OBJECTS OF THE CONSPIRACY.

Beginning on a date unknown to the grand jury and continuing to on or about March 14, 1979, defendants BRADFORD J. BURT (also known as Brad Burton and as Bob Davis and hereinafter referred to as BRAD BURT), ROY D. SNARR, JAMES FRANKLIN ROUNSAVALL (hereinafter referred to as FRANK ROUNSAVALL), MICHAEL J. VACCARINO, WILLIAM L. DENNIS, and unindicted coconspirator Donald Sommer, Rene LaFlamme, and other coconspirators both known and unknown to the grand jury, agreed,

confederated and conspired to commit offenses against the United States of America in violation of Title 21 United States Code, Section 841(a)(1), namely:

1. Knowingly and intentionally to manufacture amphetamine and methaqualone, Schedule II Controlled Substances; and

2. Knowingly and intentionally to possess with intent to distribute amphetamine and methaqualone, Schedule II Controlled Substances; and

3. Knowingly and intentionally to distribute amphetamine and methaqualone, Schedule II Controlled Substances.

B. MEANS OF THE CONSPIRACY.

The objects of said conspiracy were to be accomplished by the following means:

1. Defendant BRAD BURT organized, supervised and caused the co-defendants and others to establish and operate clandestine laboratories used to manufacture large quantities of amphetamine and methaqualone.

2. Defendant BRAD BURT organized, supervised and caused the co-defendants and others to possess with intent to distribute and to distribute amphetamine and methaqualone.

3. Defendant BRAD BURT, normally using the alias Bob Davis, purchased large quantities of laboratory equipment and precursor chemicals needed to manufacture amphetamine and methaqualone.

4. Defendants FRANK ROUNSAVALL and ROY SNARR purchased an isolated house located at 9450 Cajalco Road, Corona, California where the defendants set up a hidden laboratory (hereinafter referred to as the Cajalco laboratory).

5. Defendant BRAD BURT, using a "front" corporation named

Gonzo Corporation to conceal his identity, purchased an isolated ranch located at 34930 Mountain View Road, Hinkley, California (hereinafter referred to as the Hinkley ranch) for use as a laboratory site for manufacturing amphetamine.

6. Defendant WILLIAM L. DENNIS, an attorney, assisted defendant BRAD BURT in purchasing the Hinkley ranch, knowing this ranch was to be used as a laboratory for manufacturing amphetamine, by incorporating the above "front" corporation, and assisted the co-defendants with setting up and operating the laboratory at the Hinkley ranch.

7. Defendant BRAD BURT supervised defendants ROY D. SNARR, FRANK ROUNSAVALL and MICHAEL J. VACCARINO in constructing and operating a laboratory for the manufacture of amphetamine at the Hinkley ranch.

C. OVERT ACTS.

To accomplish the objects of this conspiracy, the defendants and other unindicted coconspirators committed various overt acts in the Central District of California and elsewhere, among which were the following:

1. Starting on or about January, 1978, and continuing until December, 1978, defendant BRAD BURT, normally using the alias Bob Davis, purchased large amounts of chemicals and equipment from Argon Chemical Supply Company, Incorporated, 2675 Skypark Drive, Torrance, California.

2. On or about a date in January, 1978, defendants ROY D. SNARR and FRANK ROUNSAVALL purchased as joint tenants a house located at 9450 Cajalco Road, Corona, California.

3. In mid-1978, defendant BRAD BURT supplied chemicals and equipment to defendants ROY D. SNARR and FRANK ROUNSAVALL for use in

the manufacture of amphetamine and methaqualone at the Cajalco laboratory.

4. In mid-1978 defendants ROY D. SNARR, FRANK ROUNSAVALL and others caused construction of a hidden laboratory in the house located at 9450 Cajalco Road, Corona, California.

5. In mid-1978, defendants ROY D. SNARR, FRANK ROUNSAVALL, and others knowingly and intentionally manufactured amphetamine and methaqualone at the Cajalco laboratory using chemicals and equipment purchased by defendant BRAD BURT.

6. From on or about March, 1978 through March, 1979, defendants ROY D. SNARR and FRANK ROUNSAVALL distributed approximately 40 pounds of amphetamine and approximately 20,000 to 30,000 tablets of methaqualone, commonly known as "quaaludes," to Donald Sommer and Rene LaFlamme.

7. From on or about March, 1978 through March, 1979, defendants ROY D. SNARR and FRANK ROUNSAVALL sold and distributed large quantities of amphetamine for which they received approximately $320,000.

8. On or about March 6, 1978, defendant FRANK ROUNSAVAL rented storage locker #451, located at The Footlocker, a Mini-Warehouse, 250 North Cota Street, Corona, California.

9. On or about June 2, 1978, defendant BRAD BURT rented storage locker #F-10, located at Rent-A-Space Storage Lockers, 3440 Monroe, Riverside, California.

10. From on or about January, 1979 through March, 1979, defendant WILLIAM L. DENNIS paid the rent on storage locker #F-10 at Rent-A-Space Storage Lockers, 3440 Monroe, Riverside, California.

11. On or about November 26, 1978, defendant BRAD BURT caused

the rental of storage locker #K-5, located at Security Storage, Tamarisk Road, Palm Springs, California.

12. On or about December 8, 1978, defendant BRAD BURT caused the rental of storage locker #H-28, located at Security-U-Store, Executive Drive, Palm Springs, California.

13. On or about April 15, 1978, defendant ROY D. SNARR, accompanied by defendant FRANK ROUNSAVALL, purchased an electrical generator for $4,400 cash.

14. On or about June 24, 1978, defendant BRAD BURT selected guard dogs at Spartan Kennels, Rowland Heights, California.

15. On or about June 26, 1978, defendants ROY D. SNARR, FRANK ROUNSAVALL and MICHAEL VACCARINO paid for guard dogs at Spartan Kennels and signed contracts for the dogs as defendant BRAD BURT's agents.

16. On or about August 7, 1978, defendant WILLIAM L. DENNIS, at defendant BRAD BURT's direction, caused a "front" corporation named Gonzo Corporation to be incorporated.

17. On or about October 17, 1978, defendant BRAD BURT, using Gonzo Corporation and the name Brad Burton, purchased the Hinkley ranch, 34930 Mountain View Road, Hinkley, California.

18. On or about December 21, 1978, defendant WILLIAM L. DENNIS, acting as defendant BRAD BURT's agent, caused a six foot fence to be erected around the Hinkley ranch.

19. On or about December 23, 1978, February 3, 1979, and February 7, 1979, defendant BURT purchased chemicals at K/N Chemical Corporation, Colton, California.

20. On or about February 6, 1979, after visiting the Cajalco laboratory site, defendant FRANK ROUNSAVALL met with defendant ROY D.

SNARR and defendant SNARR then went to the Hinkley ranch laboratory site.

21. On or about February 7, 1979 through February 16, 1979, defendants MICHAEL VACCARINO and ROY D. SNARR carried on construction activities at the Hinkley ranch.

22. On or about February 20, 1979, defendant MICHAEL J. VACCARINO visited the Cajalco laboratory site.

23. On or about February 27, 1979, defendant BRAD BURT argued about money with defendant ROY D. SNARR at the Hinkley ranch and defendant SNARR then telephoned defendant WILLIAM L. DENNIS and defendant FRANK ROUNSAVALL.

24. On or about February 28, 1979, defendant BRAD BURT delivered items to defendant ROY D. SNARR at the Hinkley ranch.

25. On or about March 1, 1979, defendant ROY D. SNARR burned liquids and other items at the Hinkley ranch, while defendant BRAD BURT was present at the ranch.

26. On or about March 6, 1979, defendant FRANK ROUNSAVALL delivered items to the Hinkley ranch which he and defendants ROY D. SNARR and MICHAEL J. VACCARINO unloaded.

27. From on or about March 1, 1979, through on or about March 13, 1979, defendants ROY D. SNARR, MICHAEL J. VACCARINO and FRANK ROUNSAVALL manufactured approximately 26 pounds of amphetamine at the Hinkley ranch.

28. On or about March 5, 1979, defendant MICHAEL J. VACCARINO purchased chemicals at K/N Chemical Corporation, Colton, California.

29. On or about March 14, 1979, defendants ROY D. SNARR and FRANK ROUNSAVALL possessed with intent to distribute approximately 18.05 pounds of amphetamine at the Hinkley ranch.

30. On or about March 14, 1979, defendants ROY D. SNARR and FRANK ROUNSAVALL possessed with intent to distribute approximately 3.64 pounds of amphetamine at 901 Melody Lane, Lytle Creek, California.

31. On or about March 14, 1979, defendant FRANK ROUNSAVALL possessed with intent to distribute approximately 4.13 pounds of amphetamine in a 1974 Oldsmobile.

32. On or about March 14, 1979, defendant WILLIAM L. DENNIS, possessed a chemical formula for the manufacture of amphetamine at his law office, 4075 Main Street, Riverside, California.

33. On or about March 14, 1979, defendant ROY D. SNARR, possessed a chemical formula for the manufacture of amphetamine at the Hinkley ranch.

34. On or about March 14, 1979, defendent FRANK ROUNSAVALL possessed a chemical formula for the manufacture of methaqualone at his residence at Sunset Crossing, Diamond Bar, California.

35. On or about March 14, 1979, defendant MICHAEL J. VACCARINO possessed a single stage pill press at his residence, 18281 Cajalco Road, Perris, California.

36. On or about March 14, 1979, defendant FRANK ROUNSAVALL possessed punches and dies to a pill press at his residence at Sunset Crossing, Diamond Bar, California.

COUNT TWO

[21 U.S.C. §841(a)(1); 18 U.S.C. §2]

On or about March 13, 1979, in San Bernardino County, within the Central District of California, defendants ROY D. SNARR, MICHAEL J. VACCARINO and JAMES FRANKLIN ROUNSAVALL, knowingly and intentionally manufactured approximately 18.05 pounds (8193 grams) of amphetamine, a Schedule II Controlled Substance.

On or about the same time and place, defendants BRADFORD J. BURT (also known as Brad Burton and as Bob Davis), and WILLIAM L. DENNIS, aided, abetted, counseled, commanded, induced and procured the commission of said offense.

COUNT THREE

[21 U.S.C. §841(a)(1)]

On or about March 13, 1979, in San Bernardino County, within the Central District of California, defendants BRADFORD J. BURT (also known as Brad Burton and as Bob Davis), WILLIAM L. DENNIS, MICHAEL VACCARINO, ROY D. SNARR, and JAMES FRANKLIN ROUNSAVALL knowingly and intentionally possessed with intent to distribute approximately 18.05 pounds (8193 grams) of amphetamine, a Schedule II Controlled Substance.

COUNT FOUR

[21 U.S.C. §841(a)(1)]

On or about March 14, 1979, in San Bernardino County, within the Central District of California, defendants ROY D. SNARR and JAMES FRANKLIN ROUNSAVALL knowingly and intentionally possessed with intent to distribute approximately 3.64 pounds (1651 grams) of amphetamine, a Schedule II Controlled Substance.

COUNT FIVE

[21 U.S.C. §841(a)(1)]

On or about March 14, 1979, in Los Angeles County, within the Central District of California, defendant JAMES FRANKLIN ROUNSAVALL, knowingly and intentionally possessed with intent to distribute approximately 4.13 pounds (1874 grams) of amphetamine, a Schedule II Controlled Substance.

COUNT SIX

[21 U.S.C. §846; 21 U.S.C. §841(a)(1)]

A. OBJECTS OF THE CONSPIRACY.

Beginning on a date unknown to the grand jury and continuing to on or about the end of January, 1979, defendant BRADFORD J. BURT (also known as Brad Burton and as Bob Davis and hereinafter referred to as BRAD BURT), and unindicted coconspirators Lee Cooper, Ernest Hall, and other coconspirators both known and unknown to the grand jury, agreed, confederated and conspired together, in the Central District of California and elsewhere, to commit offenses against the United States of America in violation of Title 21, United States Code, Section 841(a)(1), namely:

1. Knowingly and intentionally to manufacture amphetamine, a Schedule II Controlled Substance; and

2. Knowingly and intentionally to possess with intent to distribute and to distribute amphetamine, a Schedule II Controlled Substance.

B. MEANS OF THE CONSPIRACY.

The objects of said conspiracy were to be accomplished as follows:

1. Defendant BRAD BURT, using the alias Bob Davis, obtained large quantities of the precursor chemicals and laboratory equipment needed to manufacture amphetamine;

2. Defendant BRAD BURT rented property consisting of two houses located at 590 Patencio Road, Palm Springs, California, for use as a laboratory site.

3. Defendant BRAD BURT organized, supervised and caused unindicted coconspirators Lee Cooper and Ernest Hall to assist him

to assemble a laboratory for the manufacture of amphetamine at the 590 Patencio Road, Palm Springs, California property (hereinafter referred to as the Patencio laboratory).

4. Defendant BRAD BURT organized, supervised and caused unindicted coconspirators Lee Cooper and Ernest Hall to assist him to manufacture amphetamine at the Patencio laboratory.

5. Defendant BRAD BURT organized, supervised and caused unindicted coconspirators Lee Cooper and Ernest Hall and other persons to possess with intent to distribute amphetamine manufactured at the Patencio laboratory.

6. Defendant BRAD BURT distributed amphetamine manufactured at the Patencio laboratory to other persons.

C. OVERT ACTS

To effect the objects of this conspiracy, defendant BRAD BURT and unindicted coconspirators Lee Cooper, Ernest Hall, and others committed various overt acts in the Central District of California, and elsewhere, among which were the following:

1. Starting on or about January, 1978, and continuing until December, 1978, defendant BRAD BURT, using the alias Bob Davis, purchased chemicals and equipment from Argon Chemical Supply Company, Incorporated, Torrance, California.

2. On or about the end of November, 1978, defendant BRAD BURT stored precursor chemicals for the manufacture of amphetamine and laboratory equipment at his home located at 860 Panorama Road, Palm Springs, California.

3. On or about November 26, 1978, defendant BRAD BURT instructed unindicted coconspirator Lee Cooper to rent storage locker #K-5 at Security Storage, Tamarisk Road, Palm Springs,

California.

4. On or about December 1, 1978, defendant BRAD BURT, using the alias Brad Burton, rented a property known as 590 Patencio Road, Palm Springs, California, consisting of two houses.

5. On or about the first week of December, 1978, defendant BRAD BURT directed unindicted coconspirators Lee Cooper and Ernest Hall to help him build a laboratory in one of the two houses located at 590 Patencio Road, Palm Springs, California.

6. On or about December 8, 1978, defendant BRAD BURT instructed unindicted coconspirator Lee Cooper to rent storage locker #H-28 at Security-U-Store, Executive Drive, Palm Springs, California.

7. On several occasions during December, 1978 and January, 1979, defendant BRAD BURT instructed unindicted coconspirator Ernest Hall to remove chemicals from storage locker #H-28 at Security-U-Store and to use said chemicals in the Patencio laboratory.

8. During December, 1978, defendant BRAD BURT and unindicted coconspirators Lee Cooper and Ernest Hall manufactured approximately 26 pounds of amphetamine at the Patencio laboratory.

9. On or about December 31, 1978, defendant BRAD BURT instructed unindicted coconspirator Ernest Hall to dry and weigh approximately 26 pounds of amphetamine at the Patencio laboratory.

10. On or about December 31, 1978, defendant BRAD BURT possessed approximately 26 pounds of amphetamine at the Patencio laboratory.

11. During January, 1979, defendant BRAD BURT and unindicted coconspirators Lee Cooper and Ernest Hall manufactured approximately 29 pounds of amphetamine at the Patencio laboratory.

12. On or about January 31, 1979, defendant BRAD BURT instructe unindicted coconspirator Ernest Hall to dry and weigh approximately

29 pounds of amphetamine at the Patencio laboratory.

13. On or about January 31, 1979, defendant BRAD BURT possessed approximately 29 pounds of amphetamine at the Patencio laboratory.

COUNT SEVEN

[21 U.S.C. §841(a)(1)]

On or about December 31, 1978, in Riverside County, within the Central District of California, defendant BRADFORD J. BURT (also known as Brad Burton and as Bob Davis), knowingly and intentionally manufactured approximately 26 pounds (11804 grams) of amphetamine, a Schedule II Controlled Substance.

COUNT EIGHT

[21 U.S.C. §841(a)(1)]

On or about December 31, 1978, in Riverside County, within the Central District of California, defendant BRADFORD J. BURT (also known as Brad Burton and as Bob Davis), knowingly and intentionally possessed with intent to distribute, approximately 26 pounds (11804 grams) of amphetamine, a Schedule II Controlled Substance.

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COUNT NINE

[21 U.S.C. §841(a)(1)]

On or about January 31, 1979, in Riverside County, within the Central District of California, defendant BRADFORD J. BURT (also known as Brad Burton and as Bob Davis), knowingly and intentionally manufactured approximately 29 pounds (13166 grams) of amphetamine, a Schedule II Controlled Substance.

COUNT TEN

[21 U.S.C. §841(a)(1)]

On or about January 31, 1979, in Riverside County, within the Central District of California, defendant BRADFORD J. BURT (also known as Brad Burton and as Bob Davis), knowingly and intentionally possessed with intent to distribute, approximately 29 pounds (13166 grams) of amphetamine, a Schedule II Controlled Substance.

COUNT ELEVEN

[21 U.S.C. §841(a)(1)]

On or about November 8, 1979, in Riverside County, within the Central District of California, defendant BRADFORD J. BURT (also known as Brad Burton and as Bob Davis), knowingly and intentionally distributed approximately one pound (451 grams) of amphetamine, a Schedule II Controlled Substance.

COUNT TWELVE

[21 U.S.C. §848]

From on or about January, 1978, and continuing to on or about November 8, 1979, in the Central District of California, defendant BRADFORD J. BURT (also known as Brad Burton and as Bob Davis, and hereinafter referred to as BRAD BURT), unlawfully, willfully, intentionally and knowingly violated Title 21, United States Code, Sections 841(a)(1) and 846 as alleged in Counts One through Three and Six through Eleven of this indictment, which are incorporated herein by reference, which violations were part of a continuing series of violations undertaken by defendant BRAD BURT in concert with at least five other persons with respect to whom defendant BRAD BURT occupied a position of organizer, a supervisory position, and any other position of management, and from which continuing series of violations defendant BRAD BURT obtained substantial income and resources.

From his engagement in the aforementioned continuing enterprise, defendant BRAD BURT obtained profits and property which are subject to forfeiture to the United States pursuant to Title 21, U.S.C. §848(a)(2) including:

1. That certain real property vested in the names of Gonzo Corporation/Brad Burton, located in the County of San Bernardino, California and described as follows:

The west half of the southwest quarter of the southeast quarter of the northeast quarter of section 10 township 9 north rang. 3 west, being five acres more or less. Parcel number 488-081-35 having a property address as 34930 Mountain View, Hinkley, California and filed in the office at the County Recorder of San Bernardino

County, October 9, 1978.

2. All assets received by defendant BRAD BURT directly or indirectly from the operation of the aforementioned continuing enterprise, including but not limited to, bond, stocks, bank deposits, cash on hand, and monies due, owing or owed to defendant BRAD BURT as a result of operation of the continuing criminal enterprise, including but not limited to all assets derived from the divestiture by BRAD BURT of the property known as 860 Panorama Road, Palm Springs, California, and further described as:

PARCEL 1:

Lot 15 of Little Tuscanny, unit #2, as shown by map on file in book 19, page 28 of maps, Riverside County records.

PARCEL 2:

That portion of the southwest quarter of section 3, township 4 south, range 4 east, San Bernardino base and meridian as shown by U.S. Government survey described as follows:

Beginning at the southwest corner of lot 14 of Little Tuscanny as shown by map of file in book 18, page 96 of maps, Riverside County records;

Thence westerly on the northerly line of Panorama Road, as shown on said map, 217.14 feet to the southeast corner of lot 15 of Little Tuscanny no. 2, as shown by map on file in book 19, page 28 of maps;

Thence northerly along the easterly line of said

lot 15, 221.23 feet to the northeast corner of said lot 15, said point being the southwest corner of the parcel of land conveyed to Frank C. Adams and Anna V. Adams by deed recorded March 6, 1937 in book 312, page 565 of official records;

Thence south 81° 53' east on the southerly line of said parcel so conveyed, 283.58 feet to a point on the westerly line of said lot 14;

Thence southerly on the westerly line of said lot 14 to the true point of beginning.

A TRUE BILL

FOREMAN

ANDREA SHERIDAN ORDIN
United States Attorney

Senator BIDEN. Our last panel is from the Drug Enforcement Administration. With their permission, I would like to recess for 3 minutes.

[Brief recess.]

Senator BIDEN. The hearing will come to order, please.

Our next panel consists of special agents.

We have with us today James McGivney, special agent, Drug Enforcement Administration and Brent Eaton, special agent, Drug Enforcement Administration.

I wish to welcome you gentlemen and thank you very much for waiting until the end of the day.

Will each of you, please, for the record, give your name and title and place of employment and what you are doing?

PANEL OF DEA OFFICIALS:

STATEMENTS OF BRENT EATON, SPECIAL AGENT, AND JAMES McGIVNEY, SPECIAL AGENT

Mr. MCGIVNEY. I am James McGivney, special agent from the Drug Enforcement Administrtaion, and I am stationed in Indianapolis, Ind.

Mr. EATON. My name is Brent Eaton, E-a-t-o-n, special agent with the Federal Drug Enforcement Administration in Miami. I have been a special agent for 9 years with the Drug Enforcement Administration and a Federal investigator for 13 years.

Senator BIDEN. Federal investigator with whom?

Mr. EATON. Prior to my 9 years with the Drug Enforcement Administration, I was an officer in the U.S. Air Force and an OSI special agent.

Senator BIDEN. Mr. McGivney, are you presently in Indiana?

Mr. MCGIVNEY. Yes, sir.

Senator BIDEN. You are still there.

Mr. Eaton, we have heard testimony through the previous witnesses about the *Meinster* case.

What connection, if any, did you have with that case?

Mr. EATON. I was the DEA case agent. My partner, Dick Moehle. who is an FBI agent, was co-case agent.

Senator BIDEN. So it was you, Moehle and Mr. Biehl, who were the primary people working on that case?

Mr. EATON. Yes, sir.

Senator BIDEN. Is that the biggest case that you have ever been involved in?

Mr. EATON. In some respects.

Senator BIDEN. In what respect?

Mr. EATON. In the magnitude of the smuggling aspect, you know, the aircraft, equipment, and manpower that were required to keep an operation of that nature going. In the past, I have worked on heroin cases in New York that I felt were very significant, but they were not smuggling cases. They were domestic distribution cases.

Senator BIDEN. Did they have the kind of dollar amounts that you were talking about in the *Meinster* case?

Mr. EATON. Well, it has been so long for the one that I am trying to think of which occurred in 1971 and 1972, but I don't believe the gross dollar amounts were as large as the *Meinster-Platshorn* case.

Senator BIDEN. Mr. McGivney, have you been involved in any major narcotics cases?

Mr. MCGIVNEY. Yes, sir.

Senator BIDEN. What cases? Can you tell me what some were?

Mr. MCGIVNEY. In particular, as to continuing criminal enterpries and RICO violations, there were two. My experience with RICO has been with the *Alonzo Jones-Ramon-Castro* case, which was in Indiana, southern Indiana, northern Indiana, and Chicago, Ill. It was primarily a black heroin organization. My experience with continuing criminal enterprise was more recent. That was the *Bertran Sanders* case, which centered around his practice, which was diverting large quantities of illegal pharmaceutical drugs.

Senator BIDEN. Were you the only one?

Mr. MCGIVNEY. I was the lead agent. I had assistance from other DEA agents.

Senator BIDEN. Since I have heard a lot already about the *Meinster* case, would you, Mr. McGivney, tell me the salient facts in the *Sanders* case?

Mr. MCGIVNEY. Yes, sir.

The *Sanders* case was initiated in 1978, by the Indiana State Police, using an informant that had infiltrated the doctor's organization. The doctor's organization consisted of several individuals, but primarily, there were two main lieutenants and the underlings.

What he would do, using his positions as a physician, he would order large quantities of schedule II, III, and IV drugs, but particularly amphetamines, quaaludes, and barbiturates. He would order them through legitimate pharmaceutical houses. Through his practice, he would account for them through a system of double bookkeeping. He was taking the pharmaceutical drugs and supplying the lieutenants and they, in turn, would distribute them on the streets.

The investigation was multifaceted in scope because we approached it from several different angles. As I stated, we had an informant who infiltrated the group. Through the use of his services, we made approximately 15 purchases of drugs from either Dr. Sanders or his lieutenants. These purchases ranged anywhere from a quantity of 500 pills to 6,000 to 8,000 pills at a time.

We also audited all of the pharmacies in the area where he practiced medicine and, through doing that, we took all the schedule II prescriptions that all had the doctor's handwriting. We went through those then and determined the doctor's patients and the amount of drugs he was in effect prescribing.

Once the investigation began to reach the final——

Senator BIDEN. It was a time-consuming job?

Mr. MCGIVNEY. They had a little over 10,000 prescriptions and they were each indexed on a 5-by-8 card. That was our compliance investigators. I cannot take credit for that.

Senator BIDEN That is a big job.

Mr. MCGIVNEY. When we felt that we had a case that the jury would appreciate and understand, we ordered approximately 5,000 amphetamines. When delivered, he was arrested. We served search

warrants on his office and medical records. Subsequent to that, his records were analyzed. We were trying to account for the various drugs by listing them as having been dispensed to patients while they were not. They had been sold on the illicit market.

We audited for a 2-year period only the schedule II drugs. The schedule III and schedule IV's were numerically impossible to account for.

Mr. BIDEN. Tell me what a schedule II drug is.

Mr. MCGIVENY. In this case, it was quaaludes, biphetamines, amphetamines, and barbiturates. They are scheduled according to medical use and potential for abuse. It is complicated. Some of the others would be Demarol, morphine, and Dilaudin.

Most of them will vary as to being habit forming. This was schedule II. They have a bigger demand for schedule II than schedules III and IV and they are harder to get.

In the schedule II class, the audit showed in the 2 years, he could not account for over 250,000 amphetamines, 75,000 quaaludes, and approximately 100,000 barbiturates. Those could in no way be accounted for through dispensing, theft, or loss. We also discovered at that time he was also using a double bookkeeping system for the proceeds.

Senator BIDEN. What is the magnitude of the dollars we are talking about in that case for the 2 years that you audited, roughly?

Mr. MCGIVNEY. The average price—the bottles usually contained 1,000 pills. At the beginning of the investigation, he was charging $650 for a bottle. Toward the end, because of the inflation, it went up to $850 per bottle. On amphetamine types, using a figure of $700 per bottle, he had $200,000. Totally, it was close to $1 million on the street price.

Senator BIDEN. Can you tell us a little bit about whether forfeitures were considered and used successfuly in this case and what happened on the forfeiture side?

Mr. MCGIVNEY. When we initiated the case, we considered RICO and continuing criminal enterprise statutes, but we didn't know if we could develop the evidence to prove those violations. We committed ourselves to the investigation with that in mind, to developing evidence to prove continuing criminal enterprise or RICO for foretiture provisions. Particularly what we were looking for is forfeiture of his medical license, his right to practice medicine, and his medical offices.

The evidence subsequently developed that we could charge continuing criminal enterprise or RICO and after consultation with the U.S. attorney's office and the Department of Justice, we decided we would try under the continuing criminal enterprise schedule.

Senator BIDEN. Whose idea was it to proceed under the continuing criminal enterprise statute? Was it a joint decision or was it a prosecutor's decision?

Mr. MCGIVNEY. It was a joint decision between me, and the assistant U.S. attorney. We have to obtain permission from the Department of Justice to file these judgments and submit prosecution memos. After the prosecution, it looked as if continuing criminal enterprise looked to be the most effective way to attack the problem.

Senator BIDEN. Both of the fellows—can you tell us what conclusions in the two cases each of you mentioned, the Meinster case and the

Sanders case or any other cases you have been involved in that you want to draw? For example, what actions would you take or did you take to insure that property or assets might be forwarded could be (*a*) identified; and (*b*) held intact for possible forfeiture proceedings?

Mechanically, what do you do? You sit down. You have got an informant in both these cases or you built a case that led you to believe there are a number of dollars and there is more than one person involved in the distribution and smuggling operation, and you conclude that, in addition to convicting that person under criminal statutes and sending them to jail, you would also want to employ the foreiture provisions you might think appropriate under the law.

What do you do at that point when you make that decision? That usually occurs prior to the indictment, whether you are thinking in terms of forfeiture and build a forfeiture side; is that right? Or am I wrong?

Mr. EATON. It should be in the back of your mind as you investigate. Our primary goal is to figure out what the drug distribution organization is about. We try to keep in the back of our minds, as we go through those items of value that they are assets and that perhaps down the line will be foreitable; we use financial investigations not only for forfeiture purposes.

Senator BIDEN. But as a matter of proof?

Mr. EATON. To prove the criminal enterprise, but also as targeting and intelligence probes to more fully understand the organizations.

Mr. MCGIVNEY. As to locking up the assets, the only thing that I am aware you can do, and you can't do it until the indictment stages, is to file a temporary restraining order. In the case of Sanders and Jones, it was that coupled with the performance by demanding 2½ times the properties valued.

Senator BIDEN. Of the property valued?

Mr. MCGIVNEY. Yes.

Senator BIDEN. How did you identify the property?

Mr. MCGIVNEY. In the case of Sanders, it was medical offices and that was not very hard, their contents and his home, and vehicles. He had property in the State of Michigan and we developed that information through the tax records and records of the assessor's office. The information developed on the land in Michigan came through an informant.

Senator BIDEN. How about bank accounts?

Mr. MCGIVNEY. We did run into a problem and Brent Eaton did too. In this type of investigation, particularly the Sanders investigation, it was a covert investigation. He was very prominent in the community. He had sources of information throughout the community and we felt that if he became aware of our investigation, he would close his operation down and shut off some of the avenue of proof that we might have.

So on the financial aspect of the investigation, we could not initiate it with certain exceptions until he was arrested. Then it would not have alerted him or compromised our security. Up until that point of time, there was northing to do to safeguard the assets. He could dispose of them at any time up until the time of the indictment.

Senator BIDEN. When you bring the ndictment, can you seal the assets?

Mr. EATON. Yes; at that time you ask for a restraining order from the judge and he freezes those assets at that time.

Senator BIDEN. What does a financial investigation consist of? That is a very broad question, I understand that. Let me rephrase it.

I understand the value, the intelligence value of being aware of the extent of the assets of the organization, but does a financial investigation exceed that determination and go to the question of what the individual who is the target defendant owns and does?

How do you go about establishing that? Is it a different track than the investigation that is required to prove the allegation that a crime has been committed under whatever statute you are bringing it? Are the things in addition to the burden of proof of the elements of the crime that are required in order to establish the financial chain of events, or do you only establish the financial picture as a consequence of what you learn from establishing the commission of a crime and the burden of proof under the statutes involved?

Mr. MCGIVNEY. I think they go hand in hand in a major organization. Once you identify the organization and whether you are putting money into it through purchases of evidence or just using a surveillance approach, you will develop information as to where the money is going and to whom, what the individual owns, what type of lifestyle he has. Then you have to go to a direct financial approach: banking, securities, and real estate.

Senator BIDEN. Can either of you fellows, or both of you fellows, do a net worth analysis?

Mr. MCGIVNEY. I cannot.

Senator BIDEN. You can or cannot?

Mr. MCGIVNEY. Cannot.

Mr. EATON. I have been trained to do a net worth analysis. I have attended the DEA 3-day financial training course, and the FBI 5-day white-collar-crimes course for nonaccountants.

In both of those courses, an outline was set forth as to what to look for. No net worth analysis is absolute, but by making certain determinations through grand jury subpenaed records of banking, of mortgage information, of business information you can make determinations, and we do it for several reasons. One reason is just to determine how much unexplained income there may be coming into a man's assets. In other words, seeing his assets grow from 1 year to the next, and/or seeing his expenditures grow from 1 year to the next.

Normally in a drug traffickers situation, his assets and/or expenditures will far exceed what is legitimate, if he has any legitimate income capabilities.

But it also helps you as to targeting bank accounts, assets and so forth, which I have been able to do. It helps you prove up a continuing criminal enterprise to show that the head of the organization derived substantial profits because of his participation in the organization. That is very critical as the attorneys mentioned. It is just one of the three parts of proving the case.

Senator BIDEN. Do either of you have any expertise with regard to the banking industry?

Mr. EATON. Well, just 2 years' experience in south Florida.

Senator BIDEN. I mean, for example, I guess you both understand fully how numbered Swiss accounts work and the rules and regulation relating to them and how money is transferred in and out; is that right?

Mr. EATON. Yes; I am.

Senator BIDEN. And you are prepared to answer questions on that?

Mr. EATON. Yes.

Senator BIDEN. And you do also?

Mr. MCGIVNEY. Basically I am.

Senator BIDEN. Are either or both knowledgeable in accounting? Are either of you accountants or trained as accountants?

Mr. EATON. I am not an accountant. I have learned basic accounting procedures and this arose from the two financial courses I attended and through on-the-job experience.

Senator BIDEN. Is there any case either of you have been involved in where you were able to, or were involved in the tracing of the laundering of any money?

Mr. MCGIVNEY. Not in the two cases I spoke of.

Senator BIDEN. Are there any cases in your total experience?

Mr. EATON. Well, I have been——

Senator BIDEN. Are there any cases in your total experience where you have been able to trace laundered money?

Mr. EATON. Well, I have been involved with broad projects where we have looked into certain targeted individuals who were—I don't know if in all cases it would be called—laundering money, but in transmitting money into and out of the country for a variety of reasons. We know through intelligence that these couriers and people working through the banking system in south Florida were first of all sending payments through telex and hand-carrying cash and negotiable instruments to the growers in South America and, at the same time, laundering money by bringing cash and negotiable instruments back into the United States and/or wiring back into the United States under the cover that it was legitimately gained U.S. currency, gained by foreign individuals outside the country, thus it was not taxable in the United States, and they were simply bringing it in for investment within the United States. The United States is just as much of a tax shelter for foreign investors as some of the foreign co ntr es are tax shelters for Americans.

What normally happens in the drug trade, an individual either wires his funds out of the country by telex, which do not fall under the Bank Secrecy Act, as far as being regulated and having to be reported separately to the Internal Revenue Service. Once the funds or the telex money is out of the country it goes into corporate accounts in the Cayman Islands, Panama, Colombia, or the Bahamas. These corporations may be owned by people in Miami, or by drug traffickers in Detroit who are American citizens. Once the funds are out of the country, the banks provide officers and write up articles of incorporation for them, and maintain the accounts, and enable the American citizens, who are oftentimes drug traffickers, to control their money and purchase businesses, land and properties in the United States in the name of the Grand Caymans ABC Corp. or something of that nature. It looks like a foreign investor is investing money in the United States; but actually it is a U.S. citizen who is investing money through the offshore banks or corporation.

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Senator BIDEN. Can you give us an example of that having occurred? Can you reveal to us a case that you worked on or which you have direct knowledge of that having occurred, can you tell us the process you just described?

Mr. EATON. Well, I have knowledge of it occurring on numerous occasions, none of which I can specifically spell out at this time.

Senator BIDEN. Why is that? Because they are under investigation?

Mr. EATON. Yes, sir, and I am involved in joint investigations with other agencies.

Senator BIDEN. You know about this wiring of money and how it occurs and the setting up of the phony corporations and the rest; but is the source of your information informants or do you get much help from the intelligence community?

Mr. EATON. Well, the source of the information is from informants who, in some cases, have operated as couriers and conduits of funds; also by reading the Miami Herald in which banks in the Cayman Islands advertise that they will set up corporations for you and provide officers for you to help you invest. It is well known too, I think, even street people in Miami that it is very simply done.

Senator BIDEN. I have no doubt about that. I guess what I am trying to establish is, have you been able to crack that? Have you been able to garner enough proof where you can follow the dollar from the telex to the Cayman Bank to the phony corporation that is set up and then back into Miami or wherever as a consequence of the corporate action taken by this corporation that even the street people know can be done?

Are you able to show that? Is that able to be proved? Is that one of the things you know happened? Or is it like you know how babies occur, but you have never seen it? You know what I mean?

Mr. EATON. I know in fact it occurs from speaking with people who have participated in it.

Senator BIDEN. All right.

Mr. EATON. But it is impossible to get those records from any of those countries because of their laws and the lack of any specific treaty between those countries that would aid us.

Senator BIDEN. So if an organization gets as far as the telex with the dollars, that about ends it for us, does it not, in terms of being able to seize those assets later, even if we know that short of an informant, someone who is part of the operation giving testimony to the effect, even if we know that it went to the Grand Caymans and came back, and it is now the ABC Corp. of south Florida and has assets of $5 million—you may know that, and you may have reason to believe that, but it makes it difficult, if not impossible, for you to be able to—in the indictment that you bring under the continuing criminal enterprise statute—to claim that one of the assets is the ABC Corp. in south Florida?

Mr. EATON. It is virtually impossible unless one of the participants were to testify, and then it would be up to the jury to make the final determination.

Mr. MCGIVNEY. Senator, I have to correct my last statement on that. There was laundering of cash in the *Sanders* case. I am basically familiar with it. He was incorporated under the laws of Indiana

and he had several corporations, including a bowling alley, a liquor store, and a restaurant and bar facility.

Senator BIDEN. At least he is typically midwestern in his ownership?

Mr. MCGIVNEY. No, sir.

Senator BIDEN. He had no beauty parlor?

Mr. MCGIVNEY. Beg your pardon?

Senator BIDEN. I am being facetious. He had no beauty parlor?

Mr. MCGIVNEY. No. The reason we ask questions in the grand jury of this particular witness was because during our investigation, once the doctor was arrested, we subpenaed his financial records. We obtained most of those records, and then the IRS got permission to work cooperatively with the case.

Senator BIDEN. If we were able to establish in the case where money is telexed out of the country through a numbered or confidential account in a third country, and back into the United States in the form of an ABC Corp., if we were able to establish that the criminal defendant was an officer of that corporation or was receiving a salary, income or dividend from that corporation, or was a stockholder in that corporation, and was reporting that income, and was paying taxes on that income—essentially that money is immune from our getting at it other than through a fine, if the judge levies a fine and decides the way I get it is to fine him x number of dollars, but if he finds out as in the *Meinster* case he was the controlling stockholder of ABC Corp. that was in the business of doing whatever, and the corporation had a net worth of $15 million or $16 million and he was the controlling stockholder—as long as he reported that, there is not much that can be done about it, is there, under the RICO or any of the forfeiture statutes?

Mr. EATON. It would depend upon the circumstances. If you knew that much information and could show it factually.

Senator BIDEN. As a practical matter, it is impossible to show it factually, that is the telexed money that is in that corporation?

Mr. EATON. Are you referring to a corporation that is a foreign corporation?

Senator BIDEN. Yes; the corporation we talked about in our hypothetical case that the Grand Cayman Bank sets up for so and so. As long as you can be a stockholder in a foreign corporation and pay taxes on your income received from its American activity, domestic enterprise in this country, it is a foreign corporation allegedly doing business in other countries?

I guess what I am trying to get to is the legitimate business side of it. Do we have any evidence that it comes back in the form of setting up and establishing a legitimate business enterprise? Do you understand what I am saying?

Mr. EATON. Yes. It is difficult to answer without being more specific. It is virtually impossible to find out whether he is a member of the corporation unless there is someone who is a participant in it or we would have a treaty with the government that would allow us that information.

Senator BIDEN. Let us say that he is a stockholder in the corporation, a foreign corporation. I can be a stockholder in a foreign corporation. I can hold stock in Gucci. Let us pick a foreign corporation that does not do business in the United States, I cannot think of one, but I am a

U.S. citizen and I receive income from that foreign corporation. I am a major stockholder in the foreign corporation. As long as I report that income, I am not violating any law in this country.

If I take that income and, in turn, establish a legitimate business, I buy a Chevrolet dealership in South Miami and now you find that I am a drug trafficker and I am convicted of trafficking in drugs and you decide you are going after my assets.

You cannot prove that I took any of those assets and directly put them into the purchase of that automobile dealership, but you well know what happened, that it went from the telex to Grand Cayman and a corporation was set up. I received income from that corporation as a stockholder of a corporation. I brought that money back into the United States, declared it as income, dividends from the corporation in which I held stock, and I purchased the automobile agency. Is that immune from the reach of the Federal Government under the statute that discusses forfeiture?

Mr. EATON. I would think in most circumstances, it would have to depend on how you know that the money was telexed down and that it was drug money that was telexed down and put into the——

Senator BIDEN. You cannot know that unless someone tells you, so short of an informant, someone turning State evidence, you would not know that?

Mr. EATON. It would have to be a participant who would probably have to provide documentation to make it a really strong case.

Senator BIDEN. So as a practical matter, not a whole lot can be done under those circumstances?

Mr. EATON. Right.

Senator BIDEN. Do either or both of you know how to do a specific item analysis?

Mr. EATON. I am not sure what you mean by that. I heard the lawyer mention it, but I am not quite sure. I think she was referring to specific items of expenditures or assets to prove it as opposed to a general picture of net worth. However, I am just guessing. I am not familiar with that term.

Senator BIDEN. How about the term "a bank deposit analysis"?

Mr. EATON. Well, I have done those.

Mr. MCGIVNEY. I am familiar with the term.

Senator BIDEN. Are you guys typical, average DEA investigators, as they say in my profession, good old boys like the rest of the group?

Are you boys more qualified in the forfeiture side than most? Please do not be humble, fellows. This room is not used to humility.

Mr. MCGIVNEY. If I were more qualified, it would be because I handled two cases.

Senator BIDEN. Your qualification is in large part perceived because you handled two cases; is it not?

Mr. MCGIVNEY. Yes.

Senator BIDEN. How about you, Mr. Eaton?

Are you the guy that would tell the other agents how to handle these forfeiture cases when you are sitting around or are they likely to know as much about how to handle them?

Mr. EATON. There is enough training going on that a basic agent with a basic IQ can do a great deal if he is given the time and the opportunity and direction to think in those terms. What is trying to

be done in the agency right now, as I understand, is to orient everyone to think in those terms. That is 90 percent of it. Of course, you can always be more trained and you can always go to someone and there is no limit to how well you can be educated. I would never deny that we do not need more training, that anyone does not need more training.

Senator BIDEN. Let me ask you a question.

I get the feeling that your shop thinks that the forfeiture route is not as promising as I think it is and as some others think it is. How do you rate the forfeiture angle of the drug investigations? Are they likely to have major impacts on drug trafficking? Are they something that is useful as a penalty tool rather than as a prevention tool or disruptive tool? Do you understand what I mean by that?

Obviously, I have never met a prosecutor or law enforcement agent who did not want the guilty man to pay the price. I do not mean to imply anything short of that, but is that the basic motivation for the forfeiture? Is that the basic value of implementation of forfeiture, or is there a benefit, a purpose, a utility that extends beyond that? I am trying to get you guys to do what you are trained not to do. It is like going to a dentist's convention talking to you guys. Help me out, can you? It is getting late. I am getting a little bored.

How important is RICO or the continuing criminal enterprise and this forfeiture issue? Is it a big deal?

Mr. MCGIVNEY. Yes. I think it is a big deal. It has a great impact on organized crime, although it may not be what you think is traditional organized crime.

In my experience, the mere fact that these people are subject to forfeiture terrifies them. Most of them have the attitude that a professional dealer will do 2 or 3 years or stand on his head if he has $5 million to come out with. If he realizes that you will take that away from him so that when he comes out he has nothing to start over with, it has a positive impact. It goes hand in hand with increased penalties. If you can do it, you take everything but the shirt off his back. In some cases you can, and in some cases you cannot.

Senator BIDEN. How about you, Mr. Eaton?

Mr. EATON. I pretty much agree with what he said. From the first day that the continuing criminal enterprise law was explained to me, I was impressed with the forfeiture aspect of it. That was as a basic agent going through agent school back in 1971. It is unfortunate that it is a complex thing to put into practice, and it takes a lot of hard work on the part of the prosecutors and training on the part of the prosecutors as well as agents to effect those things.

I like both of those laws for two different reasons. I like the continuing criminal enterprise law because it has a devastating penalty for leaders. You can get actually a life sentence or a very severe sentence without the possibility of parole which is very frightening to criminals. I think a man's freedom is more important to him than his assets if he knows he is going to be away for the rest of his life.

I like the structure of the continuing criminal enterprise law because it presents the whole organization to the jury and you have to prove the profits that were made to show that it was a big organization. I just like the way the whole group is presented to the jury, and I

think they usually sink or swim together and they frequently sink together once the jury understands the whole organization.

I like the RICO statute because RICO can encompass people who were auxiliary suppliers of equipment or criminal coconspirators, but that did not fit into any slot as far as the drug distribution, but they were integral parts of a criminal organization. I believe the RICO forfeiture statute also has great promise. It just has not been applied that much because criminal justice crawls before it walks and walks before it runs and it has taken many years for prosecutors around the country to be confident enough to really go forth with a RICO indictment.

They have to compare notes. They have to go to conferences. I think we are getting into the position where prosecutors are less reluctant to work up a RICO case.

Senator BIDEN. Why would they be reluctant in the first place? Why are they reluctant? I agree they have been reluctant.

Mr. EATON. They lacked experience and were afraid of the unknown. That was basically it.

Mr. MCGIVNEY. There were no precedents. Until 2 or 3 years ago, there was no case law concerning it.

Senator BIDEN. What happened to the $100 million that we never accounted for in the *Black Tuna* case? Where is it? Maybe $200 million, maybe $300 million? Who's got it?

Mr. EATON. All of our testimony indicated that the bulk of their transactions domestically were cash. What they did beyond that, they did not confide to the people who were witnesses for us. We subpenaed all the records of the South Florida Auto Auction, which was a front for their operation and which might as well have been a laundering organization, but it was not. The problem with using those records and having a grand jury investigation is that the grand jury investigation began in April 1978, just at a time when there was a lot of publicity about banks in Florida and money laundering and the RICO statutes and joint operations between the FBI and DEA. As soon as these people received grand jury subpenas for their business records and some of their subordinates were subpenaed and asked questions, they realized they were involved in a RICO investigation.

Our indictment did not come forth until May 1, 1979, a year later and during that time they were able to make the right moves.

Senator BIDEN. I know you can't prove it, but I am just curious.

Where do you think it went? Even with a $60,000 restaurant bill, it is hard to eat $100 million worth of food in a year. It is hard to buy $100 million worth of entertainment. What do you think happened to it?

Mr. EATON. As Mr. Biehl mentioned, we have evidence out of the mouth of Lynn Platshorn in the obstruction matter that is still in trial. She plead guilty to her part of it. At any rate, she and other witnesses have indicated that there is a good deal of money in South Africa and there is money somewhere in the islands.

Senator BIDEN. It is a lot of money.

Mr. EATON. I have even heard Switzerland. Even though we have treaties with Switzerland, we cannot go fishing in Switzerland. You have to have a specific account and——

Senator BIDEN. We do not have that?

Mr. EATON. That is correct.

Senator BIDEN. What is Dr. Sanders doing?

Mr. MCGIVNEY. He is in jail. He was sentenced to 104 years, but the actual consecutive time broke down to 10 years. He was fined $25,000 which we did collect.

Senator BIDEN. That was the ultimate disposition of the Sanders' case?

Mr. MCGIVNEY. Yes.

Senator BIDEN. That is one of the reasons, fellows, why I am not too crazy about probation and parole.

What happened with the continuing criminal enterprise count of the indictment?

Mr. MCGIVNEY. We went to trial on that. Prior to trial, Dr. Sanders, through his counsel, made an offer to plead guilty to several of the counts if we would drop the continuing criminal enterprise. We felt that we had a strong enough case so that we could prove it. We went to trial. The trial lasted 2 weeks. At the end of the trial, the defense attorney made a motion to the judge for a directed verdict of acquittal on all counts. The judge denied it with the exception of the continuing criminal enterprise count which he dismissed, and his reasoning was that we did not provide to the court testimony that the doctor derived substantial income from his drug dealings which we felt we did.

Senator BIDEN. What would you have done differently the second time around in that case with regard to the continuing criminal enterprise count?

Mr. MCGIVNEY. With regard to the continuing criminal enterprise count, I do not think there was anything more we could have done as far as financial analysis or unit losses. The IRS did a commendable job in a short period of time on the financial analysis which they did. In fact, they did it so quickly that we had two criminal tax counts in the indictment. The only thing I could say now would be—I do not know if it would help—instead of having a bench trial, it would be a jury trial.

Senator BIDEN. What happened to forfeiture?

Mr. MCGIVNEY. When he dismissed the continuing criminal enterprise count, the forfeiture count went out of the window.

Senator BIDEN. In the two cases you are each involved in, would it have made any substantive difference if you had from the outset, in full-blown cooperation with you, an IRS agent working with you? Would that have changed the dynamics of the case with you in any way?

Mr. MCGIVNEY. In the Sanders' case, we could not because of the security aspect. The IRS agent could not have done any overt investigation until after the arrest.

Senator BIDEN. And his knowledge or background would not have been of any value to you until he could overtly begin to move through the financial transaction? It was of no value because it had to be overt and you could not be overt?

Mr. MCGIVNEY. It would have been more disruptive than valuable at the time. We were limited to the actual drug investigation, conspiracy investigation, until the arrest, until the investigation became known, and then we would do what we had to do as far as financial investigation was concerned.

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Senator BIDEN. How about you, Mr. Eaton?

Would it have made any difference in your case?

Mr. EATON. I would like to have had a civil forfeiture with respect to the houses we lost to the lawyers. The lawyers' fees were $300,000. I would rather have had the IRS involved with this early on and working hand in hand with us so that they could perhaps have made seizures independently. I do not care who gets credit for seizing it. I would rather see it go to the U.S. Government than some defense attorney in New York.

Senator BIDEN. Spoken like a true prosecutor—you are not a prosecutor—spoken like a true law enforcement official.

[Discussion off the record.]

Senator BIDEN. I appreciate your time. I have one last question.

Fellows, in your experience, not just in the cases we discussed, but across the board, how much involvement in your opinion, if you can state it, is there in drug trafficking on the part of traditional organized crime families in Miami or anywhere in the country?

Do you have a sense of whether it is still an entrepreneurial business, more an entrepreneurial business than an organized business?

I am told by the Italians, French, and Germans, that they are pretty much overseas. They can pretty much pinpoint families, and individual organizations abroad. They know who they are and where they are located. They pretty much know which ones control the vast bulk of heroin traffic.

Do you have any sense how that is controlled once it hits this country? Agents are out on the streets working every day. Compared to traditional organized crime, as big as Black Tuna is, we are still talking small potatoes. With all due respect to our good doctor who violated the Hippocratic Oath, he does not even appear as a blip on the screen.

Do you have a serse of what you think is happening in this country in terms of drug trafficking? I realize it is a broad question and you may be reluctant to answer.

Mr. EATON. I left New York City in 1974. At that time, the traditional La Costa Nostra Italian-type organized crime was getting knocked out of the heroin business because of activity abroad, treaties, and law enforcement activity abroad as well as some activity domestically.

Since that time, I have been working in Miami for only 2½ years. Heroin is not a factor in Miami, so I cannot speak with authority.

Senator BIDEN. How about with regard to cocaine and marihuana?

Mr. EATON. As far as cocaine and marihuana and quaaludes, the traditional La Costa Nostra organized crime in south Florida is minimal.

Mr. MCGIVNEY. As far as the Midwest is concerned, in the late 1960's or early 1979's, it was Mexican marihuana and not the traditional organized crime just because of the law of supply and demand. They had better heroin for lower prices. I was transferred to Indianapolis. In that part of the country, they do not have traditional organized crime. It is the Midwest, middle class.

Senator BIDEN. I thank you very much. I appreciate your time and the testimony that you have given.

The hearing is recessed until tomorrow morning at 10 o'clock.

[At 5 p.m., a recess was taken until 10 a.m., on Thursday, July 24, 1980.]

FORFEITURE OF NARCOTICS PROCEEDS

THURSDAY, JULY 24, 1980

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:25 a.m., in room 5110, Dirksen Building, Senator Joseph R. Biden, Jr., chairman of the subcommittee, presiding.

Present: Senators Biden, DeConcini, and Cochran.

Staff present: Mark Gitenstein, chief counsel; Lillian McEwen, counsel; Barbara Parris, research assistant; Edna Panaccione, chief clerk; and Kathy Collins, staff assistant.

Senator BIDEN. The hearing will come to order.

I apologize for the delay. It is totally my fault, not Senator Cochran's or anyone else's, and I appreciate the indulgence of our witnesses.

Our first witness this morning is Mr. Irvin B. Nathan, Deputy Assistant Attorney General, Criminal Division.

This is the second day of hearings of the Subcommittee on Criminal Justice of the Senate Judiciary Committee. The subject is the Federal forfeiture of assets of narcotics traffickers. The first day the witnesses raised a number of interesting points and salient questions. I guess to summarize how I think the first day went thus far is that the value of forfeiture and the extent to which it can impact upon narcotics traffickers and organized crime generally is questionable, both because of the difficulty of implementation, the expertise required in implementation and the effect of implementation even if implemented fully.

So without further comment by me, unless Senator Cochran has any comments, we will proceed.

Senator COCHRAN. No comments from me.

I just wish to say good morning.

Senator BIDEN. Mr. Nathan, you may proceed.

STATEMENT OF IRVIN B. NATHAN, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. NATHAN. With your permission, I would like my entire statement to be put in the record, and I will summarize it.

Senator BIDEN. It will be placed in the record at the conclusion of your oral testimony.

Mr. NATHAN. Mr. Chairman and members of the committee: I am pleased to appear today to discuss with you the efforts undertaken, and the difficulties faced, by the Department of Justice in obtaining forfeiture of the assets of major criminals, particularly those engaged in narcotics trafficking.

We in the Department of Justice think forfeiture is one of the valuable tools available to law enforcement by the Federal Government. It is at this point untested. We have a considerable amount of work to do to insure that it is an important tool. We think it is important to take away the asset base of large narcotics traffickers. It is clear that the large proceeds which they obtain from their transactions allow them to keep operating and to buy the boats, the airplanes and the other significant assets—including public corruption—that entrench these organizations. There should be some substantial basis to take it away and to try to take away the profit motives from these organizations.

We have found a number of cases where organizations have been able to have their leaders go to prison and either run their organizations from prison or have others serve in a temporary capacity because they still have a financial base. So we believe forfeiture is an important response and it is at present untested.

Senator BIDEN. I beg your pardon? At present untested?

Mr. NATHAN. Yes. We have not had enough experience and we have had difficulty implementing it. What I am talking about is criminal forfeiture. In criminal forfeiture, the first statutes were passed only 10 years ago, and in light of all the history of Federal law enforcement, that is a very short time. Prior to that time the goal, and that goal persists in some quarters today, was simply to investigate, to try and apprehend and then convict the criminal and to have him sentenced. That was the full extent of the concern of Federal law enforcement.

These novel ideas of forfeiture, criminal forfeiture, came about in 1970 in the organized crime statute and in the continuing criminal enterprise narcotics statute. There is still a great deal of uncertainty about these provisions, about how they work and how to implement them, both within the DEA and within the judiciary. We will have to take some time to try to implement these provisions until they become a common and familiar aspect of law enforcement.

I note in some of yesterday's testimony that some of the agents and prosecutors went through some of the substantial difficulties that are involved in forfeiture. I would like to highlight those difficulties today.

First, of course, is trying to find exactly what the assets are, what are the proceeds of these criminal enterprises. This is a very difficult task.

Senator BIDEN. Excuse me, is that distinguishable as a matter of practice from the assets of the criminally accused? I know it is in a matter of law.

Mr. NATHAN. Yes, it is different from the assets of a criminally accused. A criminally accused person could have a lot of legitimate interests, corporate interests, stocks and bonds. Trying to establish a nexus between those assets and his criminal activities is not simple.

What is even more difficult is where the assets are in someone else's name. You have to prove that he first had a controlling interest—and then show how he obtained that controlling interest. It is a very difficult question of proof to first find a criminal's assets, and then the next step is to try to connect up the criminal enterprise to those assets.

The third problem we have, of course, is the dissipation of assets once a defendant or a person who is a target has some notice that the Government is looking into that situation. Presently, of course, we can seek a temporary restraining order, which freezes the assets once there has been an indictment. But, of course, that is a long way into an investigation. There are a lot of tips that there is an investigation before that time, so the assets are dissipated before the indictment comes down. Even when you have an indictment, we have some difficulty with courts not wanting to grant the freezing of assets because, and rightly so, the defendant is resumed innocent and to freeze his assets at the beginning of the proceeding is a little bit inconsistent with that presumption.

Then, of course, even if you do get the restraining order, that is an order that runs against the individual. If the individual disobeys the order and the assets disappear, you can't find them. Then all you are left with, of course, is a contempt citation. You can convict the criminal for contempt and send him to jail, but you don't end up with the property unless you can find it and assert your rights against the third parties who have puchased it.

Then we have a problem at the trial. If we have succeeded at all these points, we have traced the assets, established a nexus and were able to freeze them, we complicate the trial. We end up not only having to prove the guilt of the individual, but we have to establish for the jury's satisfaction beyond a reasonable doubt how the person obtained the assets, how he is holding them and that they come from illegal ventures. This complicates the task. Certain posecutors are concerned that that will make the proceedings unduly long and protracted and complicated for the jury to follow. In some cases, it is not worth risking the loss of conviction.

Once you have gone through all the steps, then you have to collect on the judgment. That is a difficult procedural problem because the order runs against the individual. You have to seize the assets and follow procedures to be sure you protect the rights of third parties.

I have listed some of the difficulties at various stages. One of the most important difficulties is the question of the training of the agents who are not necessarily adept or who have not been in the past adept at making this very detailed and complicated financial investigation. That, it seems to me, is one place where we have to try to start to improve our record. We have to establish, first of all, that it is a priority within law enforcement, as it is within this Administration, to make these kinds of investigations, to seek out these forfeitures in part, I think, because there are a lot of spinoff beneficial effects from making this investigation. If you do this in the first place, you are insured you are going against high-level traffickers and you are looking for the financiers of these organizations and, of course, the money is the lifeblood of these organizations. If we focus on that

from the outset, we are tending to insure that we are looking at the highest level traffickers.

Second, the facts that have developed from the financial investigation are useful in the bail proceeding to allow the courts to understand how much money is available to these individuals, how significant they are to society and, therefore, what the bail should be set at.

It is also important with respect to proof that the individual heading up the enterprise is making substantial profits. It is important for the jury to understand how significant it is and how much money is involved in these organizations. It is also important for the judge to understand in terms of sentencing, even if we don't have forfeiture, to see what kind of economic threat is posed by these individuals. So focusing the early stage of investigation on the financial aspects of narcotics is, in our view, extremely important and should be encouraged and incentives should be provided for agents both in DEA and in other investigative agencies so that we do focus on the large-scale and wealthy traffickers.

Now the DEA representative will testify today about the training that they are receiving. I can testify from our perspective that the DEA management is well aware of this issue, is committed to it, and is making sincere efforts to improve the financial training for its agents. Whether more can be done will have to be left to the others to determine.

In addition to DEA, of course, the main agency that we should get some help from is the Internal Revenue Service. They have the largest amount of experienced financial investigators, and these are people who, by temperament and training, are very capable of making the kind of financial investigations which are the essential predicate to the forfeitures.

We have had a number of successful operations in which the IRS agents have worked in conjunction with agents from other agencies, including DEA, in which we have had large forfeitures, large fines, or that have resulted in large tax assessments. We think that that ought to be continued and enhanced.

There is, as I will get to in a while, a very significant difficulty in cooperation with the Internal Revenue Service as a result of the amendments to the tax statutes enacted by the Tax Reform Act of 1976, which has posed serious problems to cooperation and to the availability of information which is in the hands of the Service which could be vital for proving the financial holdings and activities of these traffickers.

Of course, beyond the acts and the investigators, we have to look to the prosecution community. I will speak frankly and say that most assistant U.S. attorneys have not aggressively pursued forfeitures. It involves a tremendous amount of added work. There are legal difficulties. They have not in the past been familiar with it and they have tended to stick with what is familiar.

I would say that this is true not only of forfeitures but of a number of other types of statutes. The RICO statute and the continuing criminal enterprise statutes were enacted in 1970; but it was several years before proceedings were brought under either of those, and certainly not any number. It was difficult to understand what the methods of proof were and it has taken some time to establish what the law means and how it can be operated. I think we are now having

some success in using the RICO statute in organized crime and also using continuing criminal enterprise statutes in obtaining convictions. It will take some time before we are familiar with forfeiture and some of the criminal remedies provided in the RICO statute.

We are also taking a look at that to see how we can implement that. We are doing what we can to familiarize the U.S. attorneys and their assistants with these statutes.

We have prepared a guide on civil forfeiture, which is 881 of title 21, and which is different from the criminal statutes. We have a manual on RICO distributed some time ago which had very little in it on forfeitures. We are in the process of developing a manual solely on forfeiture.

I might mention that Senator Biden is, in part, the impetus for that manual. That manual is near completion. It will set forth in language that is understandable for the assistant U.S. attorneys exactly how to proceed.

Senator BIDEN. In light of the kind of press I have been getting in my home State, I wish you would clarify how I was the impetus for it. I can just see how the headlines read.

I am just kidding, but things are read very differently.

I can just see now when the next election comes up in 1984 someone picking up this transcript and saying the U.S. attorney admitted that Senator Biden was the cause of the RICO statute being used more.

Mr. NATHAN. We are hopeful that this will clear up the issues for the U.S. attorneys, that the forms contained therein will be helpful to them and encourage them to use it further.

In addition, both the Drug Enforcement Administration and the Criminal Division are conducting a study of Continuing Criminal Enterprise, and RICO cases, involving drugs to see what lessons can be learned with respect to forfeiture and, more broadly, to show why we are not having more cases and to see what cases lend themselves to these powerful statutes.

I would like in the remaining time to discuss the legislation that I think could help us. I described what the Department of Justice intends to do to try to further the use of forfeiture, to try to determine whether or not it can be successful. I don't view it as a panacea. I don't make any elaborate promises for it, but it seems that it is one of the tools that should be utilized. However, I think we need some help from the Congress in trying to improve the utility of the concept of forfeiture.

The first problem relates to the nexus between the criminal activities and the assets which we seek to have forfeited. As I said, it is very difficult to prove what the assets are. It is even more difficult to prove the connection between the criminal activities and those assets.

The Senate's proposed reform of the criminal code has a provision in it which would alleviate this problem and which we think would be one of the most significant steps which the Congress could take to enhance our ability to make forfeitures. Under the proposed criminal code, we would either show that the proceeds came from the criminal enterprise and, therefore, we could forfeit them or that it was not possible to trace the proceeds directly back to the criminal enterprise, and we could then forfeit property up to the amount of the proceeds which we could establish had been made in the criminal enterprise.

So for instance in the *Black Tuna* case that has been testified to, if we could show the amount trafficked and get a sense of the proceeds, even though we could no longer find them, and we could find assets in the hands of those people, we could forfeit the assets in the hands of the criminals.

Senator BIDEN. f we could support that, there would be no need to establish a nexus; is that right?

Mr. NATHAN. Yes.

Senator BIDEN. No one would really try?

Mr. NATHAN. Except as was suggested there could be situations where the proceeds are invested and are at that time worth more than they were at the time of the criminal enterprise, and you might prefer to go after the proceeds as presently constituted instead of the value.

Senator BIDEN. I see.

Mr. NATHAN. I must say that in addition, we have some problems with courts in interpreting the existing RICO statute or forfeiture. The statute reads that we can forfeit the interest of a defendant and his interest in the enterprise. This has been interpreted, at least in the ninth circuit by the appeals court, to mean that we cannot get the proceeds that that corporate enterprise obtained from its activities.

The U.S. Attorney's Office did a good job in seeking to obtain the proceeds and the court said you are not allowed to go after that, but only the interest in the enterprise which is considerably less. We think this is not consistent with the intent of the Congress in passing the RICO statute back in 1970 and that some amendment could be made to be more explicit so that it would follow the congressional intent. It would be helpful to have a provision such as we have in the proposed criminal code which says that all the proceeds derived, or the result of the proceeds, would be forfeitable under RICO and under the Continuing Criminal Enterprise.

We have a slightly similar problem in Continuing Criminal Enterprise when the language refers to forfeiting profits. The question arises whether you can deduct necessary business expenses. I am sure that was not intended. An amendment there would be helpful.

Apart from the language of the forfeiture provision, there are some changes that the Congress could make which would enable us to make these financial investigations. It would not be simple even with the changes, but presently we have some provisions which tie us up in a tremendous amount of redtape and which keep us from getting certain information, including information in the hands of the Government. The most significant statute is the Tax Reform Act of 1976.

The Tax Reform Act of 1976 caused a major setback in both the interagency cooperation and the access by law enforcement to financial data that are essential to an effective forfeiture program. The act had the laudible purpose of protecting the privacy of tax information in the hands of the IRS. Extensive substantive and procedural requirements were therefore established for the disclosure of tax information. But these requirements have proved so restrictive that the act has gone far beyond its original purposes and severely restricted the use of tax information for legitimate law enforcement purposes. Cooperation between the Department of Justice and the IRS was seriously affected.

Essentially it has created a great barrier between those two agencies so they are not allowed to communicate with one another. It is difficult to obtain tax returns and information that the Internal Revenue Service has that comes from third parties, that comes during the course of investigations, very significant tips and leads that prior to 1976 were routinely turned over to the FBI and the Drug Enforcement Administration and other law enforcement agencies and were used to develop significant cases.

Now Commissioner Kurtz of the Internal Revenue Service and I recently testified before the Senate Finance Committee on the administration's proposals to amend the Tax Reform Act. We think these are significant and can enhance our ability to work together and obtain the tax returns and other information that is in the hands of the Service in time to be used at the early stages of these financial investigations, and we urge you to consider favorable action on the administration's proposals to amend the Tax Reform Act.

Another statute that poses problems is the Right to Financial Privacy Act of 1978. We laud the purpose, but the paperwork and procedural restrictions that are involved have made it extremely difficult and have been a major deterrent to using financial information in the course of these narcotics and organized crime investigations. We think there has to be some streamlining of those statutes and those provisions so that we can use these tools a lot more effectively.

Now if you could make the changes in those statutes, in the Tax Reform Act and the Right to Financial Privacy Act of 1978, and we can make the changes with respect to the forfeiture provisions themselves, then I think you will have gone a long way toward helping us in this experiment with forfeitures. At the same time, we are going to continue within the administration to encourage the agents and prosecutors to use forfeitures where appropriate and continue to make the detailed financial investigations at the early stages of the investigation so that we can assure ourselves that we are going after the largest traffickers and to insure that the penalties are appropriate to insure the forfeiture of the assets of the individual.

Thank you.

Senator BIDEN. Very good statement.

Mr. Cochran?

Senator COCHRAN. We are coming up with some legislation to implement a new FBI charter. One of the interesting provisions in that legislation has to do with access to documents, to records held by a third party. My office and I have been working with the Federal Bureau of Investigation and the Department of Justice in coming up with some suitable language that will protect the rights of privacy of innocent persons, but yet let the Federal Bureau of Investigation go in and get these records when they have good cause to believe they would assist in the prosecution of those who violate Federal criminal laws.

I wonder if the recommendations that are being made by the Department of Justice for that legislation take into account the experience we have had in trying to take advantage of the forfeiture provisions of the criminal laws in light of the Right to Financial Privacy Act of 1978 and the Tax Reform Act of 1976?

Mr. NATHAN. They do. That is one of the reasons in the Stanford-Daley legislation, of which this committee is well aware, we have opposed the efforts to broaden the restrictions, broaden the people whose documents we are talking about and the requirements that have to be met before we can use compulsory process to obtain those documents.

It is precisely for those kinds of reasons. People tend to view these different issues in a vacuum. They do not consider what impact that will have in making the investigation and trying to achieve the objective we all would share in trying to bring those individuals to justice and trying to make them feel the results of our investigation.

Senator COCHRAN. There is no danger of the Department of Justice being as guilty as the Congress is in letting one hand know what the other hand is doing. We pass the forfeiture laws and then pass another one that makes it not worth the paper it is written on. I would hope we will not be guilty of supporting one approach and, at the same time, working just as hard for another approach that will shrink the legislation and keep you from doing your duty.

Mr. NATHAN. There is that danger.

With respect to the FBI charter, we have looked at all the provisions of the administration's proposal with this in mind. We have concluded it would not make it more difficult as presently proposed, but some of the additional amendments we think would hamper our abilities in these areas.

Senator COCHRAN. Thank you.

Senator BIDEN. In your prepared statement, Mr. Nathan, you refer to 25 major identified traditional organized crime groups in the United States. Based on your information, are any of these groups involved in drug trafficking?

Mr. NATHAN. Yes. The information that we have, which of course derives from investigative agencies, the FBI and the DEA, tends to indicate that certain of these groups in certain parts of the country are involved directly in heroin trafficking, to a lesser extent in cocaine trafficking, and that in addition they are involved in extortion of people who, in turn are involved in narcotics trafficking. In other words, if you want to traffic in marihuana in a territory in which one of these organizations operate, you have to pay a tariff to that organization. They are not directly involved themselves in it but, of course, these organizations have nowhere to go for protection. They cannot go to law enforcement, so they must pay. So in terms of direct trafficking and also in terms of extortion, some of the organizations are involved.

I would not say with respect to the Florida situation that traditional organized crime is a major factor in that case. It appears to be different types of organizations that are involved. I do think because it is lucrative they are beginning to look into the situation and have some involvement, but I don't think at this time they are a major factor.

Senator BIDEN. How about in the East? New York, Philadelphia, Baltimore?

Mr. NATHAN. We certainly had a major conviction for heroin trafficking in Buffalo. The connection there is New York to Buffalo. We have had a major arrest in New Jersey in traditional organized crime trafficking in cocaine. I think it is fair to say in the Philadelphia-New York area and the east coast, there is some involvement. Again,

I don't want to suggest that they are the major factors there, but it is certainly one of the enterprises that organized crime is involved in.

Senator BIDEN. Of the drugs trafficked in those areas, are they the major players? Not is that the major part of their business, but are they the major players?

Mr. NATHAN. I am not certain and I would defer to the intelligence arm of the Drug Enforcement Administration, but I do think they are major factors. Whether they are the major factor, the most prominent, that is another question.

Senator BIDEN. Have any RICO or continuing criminal enterprise cases been brought against any of the 25 identified traditional organized crime groups in this country?

Mr. NATHAN. They have been brought against the individuals who are leaders. There have been RICO cases brought against the leaders of a number of these organizations.

Only recently have we actually alleged, for example, that the Cosa Nostra is the enterprise that we seek to convict or the enterprise that is charged under the RICO Act. For example, recently in the southern district, we have indicted——

Senator BIDEN. Southern District of New York?

Mr. NATHAN. In the Southern District of New York, we indicted an individual who is reported to be the head of one of these families and we have alleged the Cosa Nostra as the organization, as the enterprise involved.

Senator BIDEN. Has that been done in any other case save that one that you are aware of?

Mr. NATHAN. Yes, it has been done in another case that is presently under indictment on the west coast in Los Angeles. These are cases that I prefer not to talk about too much because they haven't yet gone to trial.

Senator BIDEN. I am not asking you to divulge anything other than what is stated in the indictment which is a public record.

Mr. NATHAN. Yes; that is right.

Senator BIDEN. Can you tell us the names of the two cases?

Mr. NATHAN. Yes; the case in California is *United States* v. *Brooklier*.

Senator BIDEN. I beg your pardon?

Mr. NATHAN. *United States* v. *Brooklier*.

The case in New York is *United States* v. *Funzi Tieri*, T-i-e-r-i.

I am also aware of a case in New Jersey which was a State case which has a similar State statute to RICO in which this allegation has been made.

Senator BIDEN. I have a number of additional questions. Unlike other times that I have said that, I am not going to ask you to leave. I am going to ask you to stay. There is a vote on. Senator Cochran and I have 9 minutes to make it to the floor to vote.

I am going to recess this proceeding for about 12 minutes which will give us a chance to get to the floor and vote and come back at which time we will continue.

[A brief recess was taken.]

Senator BIDEN. The hearing will come to order.

Mr. Nathan, I think that your statement has been very balanced. The tendency is to come into a committee where the views of the com-

mittee, or at least the views of the chairman are fairly well known, and hardball it. I think we had a little hardballing yesterday. We had a lot of experts testify yesterday about how much they knew about all these things, and I want to say that I think your statement is balanced.

You point out the need for the U.S. attorneys to be more aggressive. There is reluctance to engage in the use of a statute where there is already confusion, where the courts already confuse it, where special requirements of expertise may be required to use it effectively, and it is human nature that that difficulty occurs, so I compliment you for that.

I would like to flesh out a little more some of the specific elements of your testimony. You indicated that there were four difficulties in implementation of forfeiture provisions. One is what are the assets.

You further point out that the criminal code revision has some remedial language there that could help in that difficulty in the sense that a nexus would not necessarily be required, but it doesn't solve the problem like in the *Black Tuna* case as to whether there are any assets, how you can decide whether there are any at all.

Mr. NATHAN. First, I distinguish if there are assets and if there is a nexus. Finding the assets, that won't help .

Senator BIDEN. So the first difficulty is what are the assets, that is finding them, and that will remain a difficulty no matter what legislation we would pass almost. In other words, I cannot think of any legislation we could pass as to what the prosecutors and the Drug Enforcement officials testified to yesterday in regard to the *Black Tuna* case. There was a great deal of speculation and, understandably, little proof as to whether or not there were hundreds of millions of dollars that were wired out of the country and that are floating around somewhere. They are somewhere because it was pretty clear that there was a lot more money made than was identified in a dinner bill and airplane and boats.

Mr. NATHAN. There are legislative changes that could help us find assets, and those would be amendments to the Tax Reform Act, the Right to Financial Privacy Act, and the Bank Secrecy Act. That would help.

Senator BIDEN. You indicated the second difficulty is the dissipation of the assets once the criminal accused or that person or parties being investigated had become aware that they are under investigation, and further the reluctance of courts to freeze the assets even at the point of indictment where you ask for the court to do that?

Mr. NATHAN. Yes, there could be some help there, of course.

Senator BIDEN. Again, why don't you tell me?

Mr. NATHAN. If Congress would pass legislation which would authorize and regularize that kind of injunction, that kind of restraining order and establish what the standards are, it would help.

On the civil side, you can get a preliminary injunction where you can show you have a probability of success and where there is a balance which suggests that the moving party ought to be entitled to an injunction. That is unfamiliar ground in the criminal area. A district judge may feel uncomfortable in applying it.

If we could have some kind of preliminary standards in a district court, you would not have a jury trial, but you would have some idea of what the assets were.

Senator BIDEN. Let us assume Congress passed legislation in the criminal field similar to what exists in the civil field, as you just pointed out, and codified that. Would that really help a great deal?

I thought the testimony I have heard so far, and in the background memorandum which I received from the committee staff, indicated that the reluctance grows out of showing your hand in the first place. Once you raise the question in court, you have announced to all concerned that they are under investigation, and there is a great deal of reluctance to do that; is there anything that can be done at the inception of the investigation that does not require your going public that would, in any way, enhance the location and the identification of assets?

Mr. NATHAN. Well, of course, the possibility of an ex parte order is there. It is possible. I don't think we would propose that. Without notice to the defendant, of course, it wouldn't be effective. If he did have notice, you could hardly charge him for selling it after he had been informed of a proceeding like that. If we can move quickly and have this in our arsenal and have the court know it and defense counsel know it, it would enhance our ability to obtain forfeiture and it might enhance our ability to proceed successfully in the plea bargaining process and move things along more quickly and that person might hold on to his property and tell us about others who have even more property that we might want to explore.

Senator BIDEN. The third point you raised is that there is difficulty in establishing how the assets were obtained, and you say that this complicates the task and worries prosecutors.

Can you elaborate on that? How does it complicate the task, and how does it concern prosecutors?

Mr. NATHAN. Some of the trials are quite complicated and protracted. The *Black Tuna* case took months. There were a lot of side issues. The concern of the prosecutors is if you go off into evidentiary hearings on when a fellow bought a house and what moneys he used to buy the house, you would divert attention from the main point that he was selling narcotics in the first place.

Senator BIDEN. How does that divert attention?

Mr. NATHAN. Because the jury might get lost in the welter of facts and not understand how this relates to the basic transaction. Some of the things would be quite complicated. They wouldn't see how this fits in and they would be confused. That is one part.

The other part is that it will take some time and, of course, juries sitting out there if they are sequestered, you don't want to delay or protract these cases. If it is a relatively simple case in terms of illegal activities, the prosecutors would rather keep it simple rather than bring into it transactions which are not common to the lay people on the jury.

Senator BIDEN. How will we overcome that other than having the mind set of prosecutors changed?

Mr. NATHAN. That is what we have to do. We have to show that there are benefits that outweigh these potential dangers. We have to find ways to shortcut it. We have to have investigations that make this thing simple so that when we come to trial all the evidence has been developed and the prosecutor can put it on in a simple fashion, keeping it understandable to the jury and keeping down the time frame. We have to show the prosecutors that it will have some beneficial effects

both on the organizations and in terms of their own careers. This is as important to us as getting convictions and getting large sentences.

Senator BIDEN. One of the comments made by the prosecutor in the *Black Tuna* case before this committee when I asked what he would do that was different, he indicated one of the things that he would do differently, and he had the indictment in his hand, was that he would have charged a good deal less. He said they were alleging everything from kidnaping to I am not sure what else. He said, "I am not sure I would have done that."

Actually, I am not quoting directly.

I am going to be an old man. I am 37. It has been a long time since I defended a case. It has been almost 9 years, but I get the impression that it is less the first argument that you offered. The reason why Drug Enforcement Administration agents on the one hand or prosecutors on the other are reluctant to go into these transactions is less their concern that they are going to confuse the juries than it is that they are confusing themselves.

I have never found a prosecutor who was reluctant to proceed on multiple charges. They would go ahead and allege and try to prove in the same case everything from assault and battery of a police officer to murder. They had no reluctance about it. They were not reluctant to say that he beat up the cop, he murdered the victim and kidnaped another victim and was going 95 miles an hour and went through four stoplights and had a hit and run. I never found any prosecutor saying, "I don't want to confuse the jury."

They went for all of it.

Mr. NATHAN. In the example that you gave, all of those activities would tend to convince the jury that we are dealing with a very bad fellow who should be convicted on the charges in the indictment. Evidence about commercial transactions that that person had engaged in with a bank, some transactions that any normal person would engage in, don't convince the jury that he is a bad fellow. That would serve to divert the jury.

Senator BIDEN. I am glad that I have not forgotten to question completely. I think you are all wet about what juries and the public think.

Mr. NATHAN. It is possible.

Senator BIDEN. You can point out that he put $1 million into a bank. If there is anything that is going to make them want to put someone in jail forever and ever, it is not that he was wholesaling to the Mafia or others involved in drug traffic. I find in my limited experience as a politician and in dealing with these subjects out on the street, they are not a whole lot different.

We have Drug Enforcement Administration agents come up here to testify, or you guys come up here or the White House folks come up here during the last administration, and they all say the public should be outraged by the fact that heroin deaths have increased. The public says, "Forget them. Why should I care about heroin addicts? Why should I spend my money to keep them alive?"

However, if they came up here and said that those sales of heroin (a) filter down to the street which gets your kid or family involved and (b) you know what else it does, it means they own the 7–11 store up the street, the automobile dealership that you deal with; it means you have got billions of dollars out there.

If you say that, I find that people go "Whoa! I am not worried about a heroin addict, but this is different." How many people do you know who are concerned about their kid being a heroin junkie?

Mr. NATHAN. I agree with what you have suggested. In certain cases, we have had clear evidence when we went to the jury, of assets and palatial houses in which the defendants are living with no visible means of support. That is extremely powerful evidence and it has led jurors to convict. I am talking about prosecutors, and I am not saying that they are necessarily right, but I am telling you what the empirical data is, why some of them want to divert attention from it. If you have to show bank records and bank accounts, it would go on forever. It is just a paper trial. It is not as graphic as showing the mansion in which the fellow lives. It is a question of balancing.

Senator BIDEN. I do not want to beat this to death any more than I already have. It is the last time. It is the underlying thesis of my whole view of forfeiture, and that is if you have most of the traffickers that you end up in court with, and you have them sitting on the stand and in the witness chair and the prosecutor is cross-examining him and using nothing but a computer printout, the jury will not understand about the computer printout, but they will say to themselves: How can this guy know anything about computer printouts? He must be more sophisticated, brighter and potentially more dangerous to me because anybody who uses all those things and is still a junkie—or worse, a wholesaler selling the stuff and not using it, that is a dangerous fellow.

And I think you all think that Elliott Ness is alive. I think you think in terms of the public thinking about fedoras and black shirts and white ties. They are beyond you all. They are a lot sharper and a lot more sophisticated. They may sit in the jury box and actually fall asleep for the same reason half of the people concluded about Vietnam. They did not want to hear George McGovern talk about it. They concluded it. You can make all the speeches you want.

Just take those 84 pages of printouts about financial transactions and I will guarantee you that any jury in my State is going to think: Holy God, this guy is a bad, bad guy.

Another thing that has happened in this country, they are not really crazy about banks. They are not really crazy about people who are involved in big financial transactions. If you talk about the prejudice of the juries, that is why I did not lose any cases.

Mr. NATHAN. I agree 100 percent with you that the prosecutor should have those options available. The main focal point is that we need to have that investigation done prior to trial.

Senator BIDEN. I agree. I have not gotten to your fourth point yet. I am just taking your points one at a time.

Mr. NATHAN. OK.

Senator BIDEN. One of the underlying psychological factors about why prosecutors and Drug Enforcement Administration agents and the rest have not implemented these, if I were a prosecutor I would be reluctant to use these statutes for several reasons. Most of your prosecutors—except when you have strike forces out there—most of your prosecutors get their experience on the job. They do not train us in law school on any of this stuff. I guess they did not train me. I guess I am from another century.

Did they train you?

Senator COCHRAN. I do not remember, it was so long ago.

Senator BIDEN. They do not train many of us in law school, and unless things are talked about, unless you are talking about the main office of the Criminal Division and strike forces, what we have are very bright, very young and rightfully—I mean this to compliment you—ambitious people who are prosecutors. One thing, bright young people do not want to fail. I cannot think of one thing they would less likely want to do. It is no different in State courts than it is in Federal courts. I offer this as an underpinning. I will drop it after the point is made.

If you look at the cases where there are pleas offered, they relate more to the lawyer who is requesting the plea than to the client or the type of case. There is a very simple reason for that. If I am a young lawyer and I have got two cases, the same in terms of strength, and both of them are difficult and one of those clients comes marching in with a person I went to law school with, I am going to say that I am going to take that to court. If the other one walks in represented by the dean of the criminal bar and he knows a whole lot more about trying a case than I do, that is the guy I am going to give the plea to.

I see the prosecutors shaking their heads no. If they think they can whip him, they will do it because they will make their reputation. If they think they cannot, better not get whipped because most of the time you are going to go looking for a job in the same town. If you prosecutors don't know this, listen. If you are looking for a job in a town where you are living, don't whip the dean of the bar too many times; don't lose. He will be hiring you. Most prosecutors are pretty smart.

I do not say this as an indictment of the system. It does not mean it is bad. That is the way human nature works. I think it is very, very important that we give from the central offices of the Drug Enforcement Administration and the Justice Department a countervailing weight for them to take the chance because they might take the risk of the forfeiture things more when they know that they do not have to win it.

I had two prosecutors here, and they are both here today, and I was really impressed with the two prosecutors who testified yesterday. I am not being solicitous. I am not disinclined to be critical of people. I was very impressed, but they are young and new and they did not know a thing about these statutes until they got into their first case. I don't care if they stood on 12 Bibles and swore that they did. It was on-the-job training. Not all prosecutors will be as smart and gutsy as these folks, and you balance all the other things that human nature dictates to the practice of law and criminal practice and you say, "why take the chance?"

I am now going to get a letter from Benjamin Civiletti. God bless you. Yor are top and good. Forfeiture is higher than kidnaping in the *Black Tuna* case. Take a shot at it. We are with you. Go at it, and I want all my prosecutors, where there is a 25-percent chance of getting a forfeiture conviction, to try it. We are going to make a full-court press on forfeiture.

What will happen is that you will have a lot of young prosecutors saying at least these guys know it is difficult. They know I am not likely to win it. They know if I get whipped on it that I tried something very hard, so it is not going to be looked at as Joe Biden is not

all that hot a prosecutor, he is not that good because we are trying new ground.

Enough of my lecturing.

Mr. NATHAN. Let me respond from my experience. I think I have observed a concern by prosecutors to win their cases. Clearly, that is a main concern. I just want to say that I have never seen any examples of prosecutors who have made a better bargain or been more ready to make a bargain based upon the nature of counsel on the other side.

Senator BIDEN. How many major cases have you tried?

Mr. NATHAN. A handful of cases that I have tried. I am talking about my observations.

Senator BIDEN. My observation from having tried cases on the order of major murder, rape, burglary, murder one, kidnaping—little cases like that—my observation is that is exactly how it works. You find me a prosecutor who tells me that it does not work that way and you will find a person who did not try a great many cases.

Mr. NATHAN. I have had an opportunity to observe a great many.

Senator BIDEN. This is not an indictment of prosecutors. I am not stating that prosecutors, because of the fear of their career, will throw away a good case.

But are you telling me that a young prosecutor in the Justice Department will try that case if Melvin Belli is walking in the door?

Mr. NATHAN. Yes.

Senator BIDEN. I am talking about where they are sitting in the library and they say that our shot on this case is 50–50 and it will really depend upon the credibility of that witness and we have got a bad witness. The witness is just not a good witness. Now they are sitting there and they say that Charlie Smith is the defense attorney. He is not sharp enough to take this witness apart, but I have watched Belli take these guys. He ripped this witness apart.

Mr. NATHAN. That is different.

Senator BIDEN. If they don't think that way, they should not be prosecutors.

Mr. NATHAN. Right.

Senator BIDEN. On the forfeiture, from interviewing the prosecutors yesterday, I know how they think. It is hard. It is difficult. It is going to be tenuous. I am not sure I can put together 10,000—the Drug Enforcement Administration mentioned this yesterday—10,000 prescriptions on category III drugs. It is hard. I am not sure that I can provide a nexus. It is going to be tough to provide a nexus between the proceeds of the sale and the ownership of that home. That is tough. That is hard, and that is the same category as a bad witness. There is nothing easy about this forfeiture thing.

Mr. NATHAN. The difference is to make that judgment; you have to have the facts at hand. You have the witness. You have interviewed the witness, and you can tell whether he is going to be a good witness or whether his credibility is going to be easily attacked. The prosecutors do not have the basic evidence because we have not had the agents who have devoted attention to it.

Senator BIDEN. Also because you do not have the expertise to know how to go out and direct the agents and the witnesses.

Mr. NATHAN. Exactly.

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Senator BIDEN. So, again, please keep in mind that the point I am trying to make here is not an all-encompassing one. It does not suggest this is the only problem of forfeiture. I am just trying to make the point that it does impact upon the psychological maneuvering that goes on in a prosecutor in determining: (a) do I take the case on; (b) once I take it on, do I allege the forfeiture provisions; do I go after that route; (c) if I do, it is going to make a difference how sophisticated their defense is going to be.

That is all I am saying. It complicates it.

Mr. NATHAN. I agree. What is important is that we have to encourage these prosecutors to make this effort. I applaud this committee for bringing this to everyone's attention and for bringing able prosecutors here. I want them to show where we succeeded in Kay March's case and where we haven't in Dana Biehl's case. Incentive is important for prosecutors and agents. They should be given awards for this kind of investigation.

Senator BIDEN. I am glad we agree. I can think of no greater incentive than you all getting your act together, have the strike force pick out a family and go after the case. You need to have the best in the Department from the Criminal Division, not a local outfit. Get DEA, instead of decentralizing their operation, have it more centralized and several big forfeiture cases where you all, as they say in the southern part of my State, you put your rear end on the line and where the credibility of the prosecutor goes on the line and people say, "Benjamin Civiletti tried this case," or "We had the No. 1 criminal prosecutor in the U.S. Justice Department take this case on." To use the example that the people think in terms of, Elliott Ness is on this case. Forfeiture is one of Elliott's big items. But that does not happen. I see no sense of urgency on the part of the U.S. attorney's office and/or DEA to do that.

Mr. NATHAN. I cannot speak for the DEA, and their management will have to talk for them in terms of centralizing or decentralizing.

Senator BIDEN. I am speaking in terms of you and the Justice Department—not you—the Justice Department better be able to speak for DEA.

Mr. NATHAN. Yes. But with respect to organized crime, I have a much greater involvement. We have that situation where we have strike forces out in the field and where we have made major cases and where our reputations are on the line including large RICO cases and large forfeiture cases.

Senator BIDEN. That are ongoing now?

Mr. NATHAN. Yes. In the narcotics area, the *Black Tuna* case was that kind of case. Dana Biehl, who appeared yesterday, is from Washington. He is one of our trial lawyers. He and a crew from Washington did go down to try that case. DEA did put tremendous effort in it, along with the FBI which was involved in investigating that. We had the *Hell's Angels* case as well where there was a similar kind af arrangement. It has not worked out as well. We had a hung jury in that case.

Senator BIDEN. I am trespassing on the good will of my colleague here, and I have a number of additional questions. What I am going to do, as they say, since you are in town, is not pursue each of them, but to take one or two more and let you go and ask you if you have a

chance in the next couple of weeks, if you will look at the rest of the questions and answer them?

Mr. NATHAN. Absolutely. I will either do it in writing or come back here.

Senator BIDEN. In writing will be sufficient.

Can you give us any example in your testimony, and I cannot think of anything I disagreed with that you said—and I am not being solicitous and I mean that—based on my knowledge of the area which I noted at the outset and I will reiterate here because I may have left the wrong impression in the last 10 minutes, I do not consider myself an expert. I am learning along with everyone else, but at first blush, it seems that the legislative changes you proposed to help the forfeiture process all seem to make sense to me.

Mr. NATHAN. They are relatively modest.

Senator BIDEN. But with regard to the Tax Reform Act of 1976, you said it severely restricts the ability of the Internal Revenue Service to give information. I do not disagree. Can you give us any case where had you been given that, you would have gone ahead with the forfeiture provisions? I think you could sit there and say that, as we step up forfeiture, this is obviously going to be a problem, and that you need not have any empirical evidence to prove it. It just seems to make sense on the face of it. Are there any cases? Can you say that had that legislation not existed in the X, Y, Z, case, we would have gone forward, but that prevented us? Is there any case you can point to?

Mr. NATHAN. We have conducted a survey of all U.S. attorney's offices to get from them, with specific examples, the impact of the Tax Reform Act. We have gotten back about 300 lengthy responses. We can certainly go through that and try to document if there are some of those types. Tom Sear, former assistant U.S. attorney, prosecutor in *United States* v. *Nicky Barnes*, Southern District of New York, will testify about that case. As I understand the facts, and he can amplify that when he testifies, the request for the tax returns for Barnes and some of his codefendants was made prior to trial and, as a result of the complexities of the statute and some misunderstandings, those returns were not provided until midway through the trial. In fact, there was a fortuitous hiatus in the trial where the judge postponed it for a couple of weeks and at that point the tax information came in. When the tax information came in, it showed each of the defendants had had their returns prepared for them by the same accountant. Each showed approximately $250,000 of miscellaneous income without any explanation as to where it was derived. That information was used with good success at the trial to show these individuals were declaring large amounts of income from sources that they could not explain and that helped to convict them.

If that information had been available early on to show the type of proceeds these individuals were receiving, and if we had had some changes so that you could forfeit up to the amount you could prove as proceeds, it would have enhanced the ability to go after forfeitures. If you have the stuff early and you can focus on the investigation, it is logical that you will have more cases where you can seek forfeitures or at least have that option open to the investigators. That is at least one classic example where you have difficulty.

Senator BIDEN. I would appreciate it if you have the time, or you could make the time to give us information you have—it would be helpful to us because I support what you are saying—to make the case later down the road where the Tax Reform Act of 1976 and the Right of Privacy Act of 1978 specifically were impediments to proceed in a specific case.

How would the $250,000 from a tax return help identify assets for forfeiture in the *Barnes* case? Maybe I should wait to ask the prosecutor.

Mr. NATHAN. All I am suggesting is if a person is claiming assets in that amount and cannot explain where he derived those assets and your proof is that he has been dealing in narcotics and that is his exclusive business——

Senator BIDEN. Is it admissible?

Mr. NATHAN. Yes; and it is a fair inference that that unexplained source of income can be attributed to his illegal activity.

Senator BIDEN. What does that have to do with forfeiture? It may help you in establishing that he made x number of dollars but how does it impact on forfeiture?

Mr. NATHAN. I am assuming, too, a statute-like amendment in the proposed criminal code which says even if you cannot make the direct nexus, you could have up to the amount the individual made in narcotics traffic. It would be hard for him to deny he made at least that much—that is only 1 year—say that is the minimum amount he has declared over the period of time he was engaged in narcotic trafficking. You have to find assets to forfeit. It can be up to the amounts that you are proving.

Senator BIDEN. All right, thank you.

Do you have any questions?

Senator COCHRAN. If I have any more questions, I will just submit them in writing. You have been here quite awhile.

Senator BIDEN. That is a polite southern way to say move on to the next witness. I like to work with Senator Cochran because he is always polite to me.

Mr. NATHAN. I will be glad to make room for the next witness.

Senator BIDEN. I am sure you will, but hang on for just a second.

Well, there are too many other questions. I have a series of about 13 questions here, and I would appreciate it if you would be able to answer those. I will finish with this last one.

Would a system of higher fines at sentencing time solve the problems created by the forfeiture statute and achieve the same ultimate goals? What happens if the judge, just based on the information without the establishment of—if we wrote a statute that says that we have instead of having minimum mandatory sentencing, we wrote if it is established there is x number of dollars traffic, the fine must be x number of dollars?

Mr. NATHAN. There are a number of questions that that raises. The most important question it raises is paying the fine. What is the penalty for failing to pay the fine? You would assume you would keep the person in jail. The forfeiture adds that you are going after the property that person controls, so you are not limited to incarcerating him. The record payment of fine in this country and in the Federal courts is not very great. We find that people are not paying them. There is no pursuit of it. People are not inclined to pay it.

Senator BIDEN. I know. No one is ever inclined to pay a fine. I am not inclined to pay a traffic fine.

Mr. NATHAN. But if you sentence a trafficker involved in Continuing Criminal Enterprise over 10 years to life imprisonment, and then you say if don't pay the fine, you will be in jail—he is there anyway—what leverage do you have?

Senator BIDEN. Most of these folks do not go to jail that long. Take the case of the doctor, he will be out in 10 years.

Mr. NATHAN. What doctor?

Senator BIDEN. The Sanders case that we had testimony about yesterday where we talked about the tens of thousands, millions of dollars of drug business, he got x number of years, but he is eligible for parole in 3 years, I think that was the testimony, and he will be out soon. But if that good old boy knew he was going to stay in there for another 5 or 10 years because he did not pay that fine, you would have some impact.

Mr. NATHAN. There are a lot of aspects to be thought through. I would like to finish on the forfeiture. I do not view it as an exclusive tool and the answer to everything. These things cannot be viewed in isolation. You have to view sentencing and incarceration as one aspect and forfeiture as another and civil penalties as another. They can be compatible and not mutually exclusive.

Senator BIDEN. When I first got involved in running for the Senate, a woman came to me saying that she wanted to raise my consciousness, and she wanted me to go to a consciousness-raising session. She said that she hoped it would help me. I learned to say "Ms." and "Chairperson." I hope you learn to say "forfeiture."

Mr. NATHAN. Thank you.

[The prepared statement of Mr. Nathan follows:]

PREPARED STATEMENT OF IRVIN F. NATHAN

I am pleased to appear today to discuss with you the efforts undertaken, and the difficulties faced, by the Department of Justice in obtaining forfeiture of the assets of major criminals, particularly those engaged in narcotics trafficking.

We commend the subcommittee's interest in this area. The importance of forfeitures is readily apparent. Federal law enforcement efforts in the narcotics trafficking and organized crime fields are directed toward large-scale criminals and their organizations. We seek to prosecute the leaders and key members of criminal organizations whenever possible. However, we have learned that the incarceration of individual criminals, even those of the highest rank, is generally not sufficient to immobilize or even to reduce the incentive of entrenched criminal organizations. As long as immense criminal profits remain available as operating capital, a convicted criminal's compatriots will be able to keep the organization functioning, and the prisoner himself may be able to resume business upon or even before his release. For example, in the past five years the 25 major identified traditional organized crime groups in the country have had 75 separate changes in leadership—28 resulting from prosecution. Yet, to our knowledge not a single one of these groups has broken up as a result of the change in leadership. Further, it is the attraction of quick, large illegal profits—and this is particularly true in the narcotics field—that encourages the formation of new criminal organizations.

For these reasons, forfeiture of assets illegally obtained by these individuals and organizations is one essential element of our overall law enforcement strategy. Depriving criminals of their illegal gains reduces the incentive to conduct criminal enterprises. Forfeiture also tends to insure that a conviction will have an adverse impact on the enterprise's financial viability. These factors have generated a firm consensus among the leaders of the federal law enforcement community concerning the importance of forfeiture.

It is important to recognize, however, that transforming a consensus among leaders into positive results in the field is a major undertaking. For almost two

centuries American police and investigatory agents, prosecutors, judges and the public have viewed criminal law enforcement as a matter of identifying, apprehending, convicting and incarcerating criminals. Patterns of information, organizational activity, and individual attitudes have developed in accordance with that view. Now only very recently, since 1970 to be exact, it has been suggested that that traditional view may be significantly expanded to include identifying and removing criminal assets as well as individuals from society. This has required and will continue to require the evolution of sophisticated investigative techniques, the resolution of unique legal issues and the formulation of new administrative and judicial procedures. There is still a great deal of uncertainty concerning these developments among the law enforcement and judicial personnel who are being called upon to implement an effective forfeiture program. The law itself is still unclear. It is going to take time and effort before forfeitures become a common, familiar and routine aspect of law enforcement.

The complexity of forfeiture can be illustrated by briefly examining the steps in the process, each of which is fraught with difficult problems of investigation and proof. The first step is to ascertain exactly what assets a potential defendant possesses. Such asset investigation is a laborious task—bear in mind we are dealing with sophisticated criminals who have access to the best lawyers and accountants money can buy. These professionals may be well within the law and their professional ethical responsibilities by structuring the defendant's finances in a way that make his assets difficult to trace. The personal property and residence of a successful narcotics trafficker or other criminal can usually be discovered simply by observation, but a residence may be held in the name of a third party, who could perhaps be innocent. And even if his personal property is luxurious, the items which can be directly linked to the defendant will probably be of relatively lit*le value compared with a trafficker's business interests or with his holdings of other forms of wealth: cash, bank accounts, stocks and bonds, precious metals, real estate. Cash and precious metals can be hidden. Stocks and bonds may be held by nominees or in bearer form. Bank accounts may be offshore. Real estate may be owned of record by dummy corporations, also frequently offshore. To link such assets to the defendant requires painstaking effort by skilled financial investigators. No one agency will have all the information or expertise required—the Internal Revenue Service may have information on reported assets, the Securities and Exchange Commission on corporate ownership, and the Treasury Department on bank deposits. Extensive interagency cooperation is often required.

The next step is equally difficult. The defendant's assets cannot be forfeited simply because they are his. They must be directly connected with the criminal activity, i.e., shown to have been utilized in the crime or to have been purchased with income derived from the crime or to constitute an interest in a criminal enterprise. Establishing this direct connection between an asset and a crime, which itself is difficult to prove, can ordinarily be done only if the investigators are proficient and dedicated.

The third step is the indictment, in which the property subject to forfeiture must be alleged. This, of course, provides the defendants complete notice of what the government is up to, and they may well attempt to dissipate or conceal their assets. In fact, in many cases the defendants are able to ascertain that an indictment is in the offing and to dissipate their assets prior to its issuance. Only after the indictment is issued is the prosecutor entitled to seek a restraining order to freeze the assets. This means, of course, that a prosecutor must be heavily involved in the pre-indictment stages of every investigation with forfeiture potential so that he is prepared to seek a restraining order immediately upon indictment—something we are working toward but which is unfortunately not yet always the case. Even if the prosecutor is prepared, the judge may be reluctant to grant such orders against defendants who at that point are presumed innocent. The defendants will make convincing arguments against a total freezing of their assets; in the mammoth "Black Tuna" case, the defendants convinced the judge to release almost all their assets in order for them to retain high-priced counsel. And finally, even a timely and tough restraining order can be enforced only by a contempt citation.

The fourth step is to prove the case at trial. If the detailed investigative work has been properly done, the forfeiture case will be based upon the evidence compiled during that process. But the length and complexity of the trial is increased thereby.

Not only does this increase the amount of scarce Assistant U.S. Attorney time consumed by the case, but the complicated financial testimony and documents may have a tendency to confuse the jury. Because of the possibility of risking the substantive conviction, prosecutors may even decide not to submit the forfeiture question to the jury.

The fifth and final step is to collect on the judment of forefeiture. This can be done only after appeal, so once again there is the possibility of dissipation of the assets. Another problem is how to protect innocent third parties who may have an interest in the forfeited assets. Finally, there is substantial confusion and uncertainty regarding the collection and disposition of forfeited assets. The legal problems can be extensive, and the division of responsibilities for following through of forfeiture collections is unclear. Once again, significant expenditure of scarce attorney and agent resources may be required.

As a result of this series of difficulties, obtaining forfeitures consumes valuable time and resources. The decision of whether to seek forfeiture is a case-by-case one made by the local U.S. Attorney or by his Assistant trying the case. And in many cases U.S. Attorneys may well decide that the effort necessarily expended in obtaining forfeiture would be put to better use convicting another defendant. This is an important reason for the small amount of forfeitures obtained so far.

I have attempted to paint a realistic picture, but it is not a pessimistic one. We believe that a number of things can be done, some by the Department of Justice and some by the Congress, to increase the rate of forfeiture of criminal assets. First and foremost, we must improve the ability of federal enforcement personnel to conduct sophisticated financial investigations. By "financial investigations" I mean tracing a flow of illegal revenue from its source at the point where illicit goods or services are purchased or funds diverted from legal channels to its destination in the hands of the criminal leadership. This may entail following a paper trail through multiple bank accounts, shell corporations, offshore bank havens, any money laundering operations.

We view financial investigations as bearing valuable fruit in addition to forfeitures. They provide intelligence. Sometimes the only way to identify the well-insulated leaders of a criminal organization is to trace the illegal profits to their pockets. Financial investigations also produce evidence. Not only can financial data be used to prove the case in court against organization leaders, but evidence on vast illegal incomes has also helped prosecutors explain to the court the need for substantial bail and the propriety of a lengthy sentence. Finally, as noted, the accurate tracing of money flows is necessary to prove the defendant's assets are criminal and subject to forfeiture.

All federal law enforcement agencies are working to improve the ability of their agents to conduct these fruitful financial investigations. The Drug Enforcement Administration has traditionally not had extensive capabilities in this area, but DEA management has worked hard in recent years to train its agents in financial techniques. I am sure the DEA representative will discuss these efforts with you in more detail. We believe that effective drug law enforcement will require the skills of investigators with formal training in accounting.

The IRS now has by far the greatest number of experienced financial investigators. Until other agencies upgrade their financial investigative capabilities, it is important to utilize this existing IRS expertise against narcotics trafficking networks and organized crime groups.

More important, the IRS can assist drug and organized crime enforcement by focusing on the tax offenses of the criminals. Some of our most successful prosecutions—and cases which produced extensive forfeitures—have been joint tax-non-tax investigations involving the IRS. Last year the major heroin trafficking/network operated by Jesus and Jaime Araujo was immobilized in a Continuing Criminal Enterprise case in Los Angeles. A joint task force of agents from DEA, IRS, Customs and local agencies spent one and a half years tracing the flow of some $32 million into Mexico. Forfeiture of about $260,000 in real estate and automobiles was obtained. The court also imposed fines of $1,500,000 and a tax liability assessment of $19 million.

The *Ashok Solomon* cases in Minnesota last year, which involved an Indian hashish smuggling organization, was another successful joint DEA/IRS effort. As the investigation was culminated and arrests made, DEA agents seized about $750,000 in currency and bank accounts. Forfeiture of these funds would have been difficult, as the connection of the money to narcotics trafficking was unclear. However, the IRS was able to prove that collection of the assessed tax was in jeopardy and to obtain the entire amount in discharge of the assessment.

The combination of IRS expertise, information, and its power to obtain tax assessments against criminal assets make IRS participation in drug investigations extremely desirable. Commissioner Kurtz agrees as to the importance of joint investigations, and the IRS recently revised and streamlined its procedure for reviewing and approving requests for such joint efforts.

The IRS is by no means the only other federal agency which can make an important contribution to financial investigation and forfeiture. As I indicated, the pooling of the information and expertise of a number of agencies is necessary to identify a defendant's assets and prove that they were derived from crime. The coordination of such a multi-agency financial investigation is extremely important and is ordinarily undertaken by the Department of Justice in its prosecutorial role. To achieve smooth cooperation of federal agencies with historically competitive tendencies is never easy.

A particularly difficult problem arises when criminal assets have been laundered through sham corporations in offshore tax havens. We suspect that billions of criminal dollars move each year through banks in the Cayman Islands, the Bahamas, and Panama. An Interagency Study Group on Financial Transactions, whose formation was encouraged by the White House staff and which is now chaired by the Criminal Division, is studying this situation. The group is composed of representatives from the White House, State, Treasury and Justice Departments, DEA, FBI and Comptroller of the Currency, Federal Reserve, Securities and Exchange Commission and others. The principal focus of the study has been how money moves through the offshore banking system, what information is collected by federal agencies, and the extent to which that information is available for dissemination to law enforcement agencies conducting financial investigations of criminal activity. This group plans to develop a more detailed model of the offshore flow of money, which will assist our efforts to trace and obtain forfeiture of money involved in organized crime and narcotics cases domestically. We believe that this is a critical source of information for federal investigative agencies, particularly the Drug Enforcement Administration. The IRS is also currently conducting a study of the tax havens that should increase our knowledge of the problem.

The ability to conduct more sophisticated financial investigations is only a first step. The federal prosecutorial community must develop both the expertise and will to convert the information produced by completed financial investigations into successful forfeitures. Speaking frankly, to date most Assistant U.S. Attorneys across the country have not aggressively pursued forfeitures. There is an understandable lack of enthusiasm for taking on the added work and legal difficulties generated by forfeiture. When the evidence has been developed to a point making prosecution possible, there is a tendency to rush to indictment without pursuing the less exciting forfeiture work. AUSA's have defined success in terms of convictions, not forfeitures. And many have simply not been familiar with the details of forfeiture proceedings.

We are attempting to address both of these problems. A guide on the use of the civil forfeiture provisions of Section 881 of Title 21 has been distributed to all U.S. Attorneys. We are also in the process of preparing a manual on the criminal forfeiture provisions of the Continuing Criminal Enterprise and the Racketeer Influenced and Corrupt Organization statutes. This manual, the impetus for which comes in part from Chairman Biden, is based upon the experiences of those prosecutors around the country who do possess experience and expertise in RICO and CCE forfeiture.

The manual is intended to explain the legal operation of the statutes and also to provide instructions for resolving the practical problems involved in their implementation. Each federal prosecutor will receive this manual along with an urging that it be put aggressively to use. We are hopeful that the manual will clear up most of the confusion still surrounding these statutes. In addition to these manuals, lectures on forfeiture are presented at each of the Justice Department's semi-annual narcotics conferences for agents and prosecutors. Finally, DEA and the Criminal Division are now concluding a study of the roughly 100 CCE and drug-related RICO cases brought to indictment so far. By indicating the reasons some of these cases produced substantial forfeitures while others did not, this study is expected to show us what procedures and techniques should be applied in all such cases.

I believe that through the training and inter-agency efforts I have mentioned, and through the work of the GAO and Congressional committees such as this, prosecutors and agents in the field are gradually becoming alert to the possibility of obtaining forfeitures in every major case. I understand that during the course

of your hearings you will hear testimony from two federal prosecutors, Dana Biehl of the Criminal Division, who prosecuted the so-called "Black Tuna" case in Miami, and Kathleen March of the U.S. Attorney's office in Los Angeles, who prosecuted the *Burt* case. Both cases produced forfeitures, though not without encountering the difficulties I have enumerated. I do think their testimony will illustrate for you the kind of dedication and expertise being developed among our prosecutors.

Congressional action is needed, however. To a certain extent, the decision by U.S. Attorneys not to pursue forfeitures may be a rational one—the results may not justify the costs in prosecutors' time. If more forfeitures are desired, then that resource cost must be reduced. There are a number of ways in which Congress could readily decrease the difficulty of making a successful forfeiture.

Congress has provided us three principal forfeiture statutes for use in organized crime and narcotics cases. Civil forfeiture of vehicles used in the illegal sale of drugs is provided by the Controlled Substances Act, 21 U.S.C. 881. An important amendment to that statute in 1978 broadened its coverage to include proceeds of an illegal drug transaction. The Continuing Criminal Enterprise statute, 21 U.S.C. 848, authorizes the criminal forfeiture of the profits from and the defendant's interest in a continuing criminal enterprise, which is defined as an entity of five or more persons deriving substantial income from violation of the Controlled Substances Act. The Racketeer Influenced and Corrupt Organization statute, 18 U.S.C. 1963, provides for the criminal forfeiture of any interest acquired, maintained, or carried on through a pattern of racketeering activity such as murder, robbery, extortion, bribery, and numerous other crimes. The CCE and RICO statutes were both passed in 1970.

As broad as these statutes are, they have one common limitation: the defendant's assets must somehow be directly connected to a particular crime. This creates enormous problems of investigation and proof. Section 2004 of the Senate's Criminal Code Reform Act would eliminate the necessity of proving this connection. If the amount of criminal proceeds or the value of an interest in a criminal syndicate could be ascertained, then any property of the defendant up to that amount would be subject to forfeiture. The bill would also make it easier to reach the assets of parent companies of criminal syndicates and to prevent the dissipation of assets. No other single action would do more to enhance our ability to obtain forfeitures than passage of this bill.

Even current law is somewhat in doubt at this point. The 9th Circuit Court of Appeals has ruled in a RICO case that income derived from a racketeering enterprise does not come within the forfeiture provision of the statue. A number of other cases raising the same issue are pending. Clearly, if this interpretation stands, the effectiveness of the RICO forfeiture provision will be greatly reduced. The Department of Justice has taken the position that the statute does reach income from as well as an interest in a rackteering enterprise. The statute should be amended, making explicit that income from criminal enterprises is forfeitable under RICO.

Short of changing current forfeiture law, Congress should act to improve our ability to obtain the financial information needed to apply that law. The Bank Secrecy Act of 1970, which requires reporting of large domestic cash deposits and the movement of cash into or out of the United States, is one of our most important tools for conducting financial investigations. Just this month the Treasury Department issued new regulations under the Act. The new regulations will enhance the Treasury Department's ability to enforce compliance with the Act and will broaden its coverage.

The Tax Reform Act of 1976 caused a major setback in both the interagency cooperation and the access by law enforcement to financial data that are essential to an effective forfeiture program. The Act had the laudable purpose of protecting the privacy of tax information in the hands of the IRS. Extensive substantive and procedural requirements were therefore established for the disclosure of tax information. But these requirements have proven so restrictive that the Act has gone far beyond its original purposes and severely restricted the use of tax information for legitimate law enforcement purposes. Cooperation between the Department of Justice and the IRS was seriously affected.

Commissioner Kurtz of the IRS and I recently testified before the Senate Finance Committee on the Administration's proposals to amend the Tax Reform Act. We believe the impediments to law enforcement can be eliminated while still preserving the legitimate privacy expectations of taxpayers. We are hopeful that Congress in the near future will see fit to adopt these proposals. In the meantime, I am pleased to report that we have recently been able to improve our cooperation with

the IRS under the existing statute. But I cannot overemphasize the importance of legislative action.

The Right to Financial Privacy Act of 1978 has also had an adverse impact on the ability of investigative agencies to obtain evidence of financial transactions. The Act establishes complex procedural restrictions when federal law enforcement agencies seek to obtain records from private financial institutions. Where in the past informal cooperation was possible, now the Act requires a formal written request, to which the financial institution is not required to respond. A copy of the request must be served upon the customer unless a court finds the investigation would be jeopardized thereby. Banks and other institutions which previously cooperated in providing information now resist our formal inquiries for fear of being sued. Certain investigations have been prematurely exposed when financial institutions notified the subjects of federal law enforcement inquiries. Ambiguities in the statute have created a great deal of uncertainty about the authority or obligation of financial instutituons to volunteer information revealing a violation of law to the Department of Justice.

The present requirements of these two statutes exacerbate the paperwork and resource cost to obtain financial information. As a result, the resource cost of obtaining forfeitures is extremely high. If Congress wants to see more forfeitures, it must reduce that cost to a manageable level.

We fully agree that financial and taxpayer privacy are important values, and we support their careful protection. However, in our view, the particular legislation currently providing that protection is seriously flawed. The concepts are sound, but technical revisions are needed. In our view, many of the burdens of unnecessary delay and excessive paperwork in these two statutes could be eliminated with no reduction in the privacy afforded our citizens.

While I have noted some of the difficulties in obtaining forfeitures, I think we have laid the foundation for an effective forfeiture program. We have a consensus among law enforcement officials on the importance of forfeitures. We have the interest of concerned legislators such as yourself. We have a growing number of agents and prosecutors with experience in forfeitures, and we are taking steps to communicate their knowledge to their colleagues across the country so that we can enhance the ability of the Federal Government to conduct the financial investigations that are essential predicates to forfeiture. With help from Congress in the problem areas I have mentioned and with growing experience, we are hopeful that forfeitures can become an integral part of federal law enforcement.

Senator BIDEN. Our next witness, if he is willing, is Ted W. Hunter, Chief of Special Action Division, Office of Enforcement, Drug Enforcement Administration. Mr. Hunter is the Chief of Special Action Division, Office of Enforcement, Drug Enforcement Administration, U.S. Department of Justice. Mr. Hunter, welcome and please proceed in any way you feel most comfortable.

STATEMENT OF TED W. HUNTER, CHIEF, SPECIAL ACTION DIVISION, OFFICE OF ENFORCEMENT, DRUG ENFORCEMENT ADMINISTRATION

Mr. HUNTER. Thank you, Mr. Chairman.

I am pleased to be here this morning on behalf of the Drug Enforcement Administration to discuss the removal of drug assets from trafficking organizations. We do welcome the interest and support displayed. I have a statement and I would like to offer it for the record.

Senator BIDEN. I beg your pardon?

Mr. HUNTER. I have a statement and I would like to offer that for the record.

Senator BIDEN. Fine. It will be included in the record in its entirety at the conclusion of your testimony.

Mr. HUNTER. The interest displayed by the GAO and the subcommittee is most welcome. There is one hesitation, however, that is a concern that this examination might be a bit early. I would be most eager to see this examination pursued and the results determined 1 year from now.

Senator BIDEN. Why is that?

Mr. HUNTER. The program and the dedicated interest that has been attested to is relatively new. There are several reasons for that. The truth of the matter is that the Drug Enforcement Administration's activity and enforcement program with respect to asset removals started within the last 18 months. Most of our cases are open. Those available for GAO audit and examination, unfortunately, cannot be totally examined.

Senator BIDEN. It sort of coincided with this committee's taking an interest in forfeiture, did it not?

Mr. HUNTER. It coincided with the passage of 21 United States Code 881(a)(6). We were given new civil authority that never existed before. That law was the catalyst which caused significant asset seizure activity by DEA.

Senator BIDEN. Why did you need that? You had RICO and the other one for 10 years. I am amazed you needed a civil spur.

Mr. HUNTER. Because that law has resulted in the most definitive and successful enforcement tool that we have enjoyed.

Senator BIDEN. Why? You didn't try the other one. That is malarkey.

Mr. HUNTER. If you will allow me, Mr. Chairman?

Senator BIDEN. I will. Go ahead.

Mr. HUNTER. RICO and the continuing criminal enterprise were passed in 1970. I think there was a very valid and legitimate question that you asked yesterday as to what has transpired and what hasn't in recognition of the fact that we are talking about a 10-year period of time.

If you will, I would like to describe, because sometimes it is lost in the passage of time, what was transpiring and what the situation was in 1970 as far as drug enforcement in the United States.

I think that has a bearing and lends some explanation to this valid concern that DEA, by our admission and most honest soul searching didn't get started in effect until 1978. You may recall the situation in 1970. The Federal drug enforcement involved an agency; namely, the Bureau of Narcotics and Dangerous Drugs which was enacted by a Reorganization Plan No. 1 of 1968—consolidating the Federal Bureau of Narcotics and Federal Drug Abuse and Control.

In 1970, BNDD was a 2-year-old organization. For the first time there was a consolidation of all Federal drug laws in the Controlled Substances Act of 1970. The flag was up and it was entitled "War on Drugs." The enforcement activity commenced at that time with an effort to go after the conspiracy aspects of drug trafficking organizations.

In 1972, in the face of this conspiracy effort by the Bureau of Narcotics and Dangerous Drugs, Executive Order 11641 mandated the Federal effort to reverse its then philosophy and attack street-level traffickers through the utilization and exploitation of a grand jury system reporting directly to the Attorney General's office.

In my recollection, that was a significant reversal and it diverted resources away from any attention that may have been directed at that time to RICO and continuing criminal enterprise.

There were further reorganizations in June 1972, and in July 1973, Reorganization Plan No. 2 consolidated all those previous agencies into what is now called the Drug Enforcement Administration.

June 1975, there were extensive subcommittee hearings examining the impact of Reorganization Plan No. 2 of 1973 on Federal enforcement efforts. March 1977, there was created the Office of Drug Abuse Policy, ODAP. In that same time frame, the Tax Reform Act was passed and the Right to Financial Privacy Act followed in 1978.

For the sake of not getting too far afield, those circumstances, I would submit to you, Mr. Chairman, did, in fact, play some part in why we didn't get started much before November 1978 when there was an amendment to the Controlled Substances Act.

Senator BIDEN. But the Controlled Substances Act, even in your little rendition here which I would agree with, was not the thing that changed it. We stopped tinkering with all the reorganization.

I find it hard to understand why whether it is in this committee or the Foreign Relations Committee or in the Budget Committee, whenever you speak to a Government agency everything is a stonewall. Why can you not say: Hey, look, we didn't implement it. There are a lot of reasons why we didn't implement it. A lot more has to be done.

Mr. HUNTER. I was responding to your question as to why. You showed some visible and real concern. I was trying to respond.

Senator BIDEN. It was not concern, it was anger. Your suggestion was that the GAO disclosure was welcome, but premature, and why don't we wait a year? My point is that I waited a year last year to begin questioning on this issue. I doubt whether the questioning would have occurred. I am not saying that I moved you along. Nothing like leaning over the precipice focuses one's attention, and you are at the precipice. There are probably three of us in the whole Senate who are willing to do your bidding, who are willing to focus on the drug question. I am with you, but I get so angry because there is such an unwillingness to acknowledge that you just did not do it and there has to be something more than this little 3-day program that you have got going.

Mr. HUNTER. I would like to respond to that in a moment. I think that question has been raised. If I may, I would like to start hopefully following along with my prepared statement. I am concerned that I may get too far away from the statement and not follow it in.

Senator BIDEN. Do whatever you want to do.

Mr. HUNTER. It is important from an enforcement standpoint to establish a perspective of what drug trafficking is in an organizational sense. I believe DEA policy addresses it in this regard. Trafficking organizations contain or are comprised of three dimensions. Quite simply, they are comprised of people, drugs, the commodity, and their assets. The enforcement community over the years has been fairly successful in all levels of investigating the people, the violators. We have arrested them and they have been convicted. They have been put away, perhaps not as long as they could or should be, but nevertheless there has been a clear focus on the people of the organization.

The drug seizures similarly have been increasing significantly. In fact, they are awesome today.

The fact of the matter is just focusing on those two dimensions does not provide adequate attention to the most notable area that deserves attention—the assets, those fluid things, that influence the people in becoming a member of the organization and to traffic in the drugs.

Not until all three elements of the organization are attacked equally, on balance, does the organization cease to exist and become immobilized. The DEA program and recognition of that fact originated in 1978 when we could proceed under civil provisions in a much faster and expeditious manner. We will attack an organization's assets in any manner or fashion that we can acquire them. We do not necessarily put all our efforts in the financial investigation egg basket. We will take vehicles, guns, property, and conveyances. We will aggressively remove any asset that the organization can market or sell as the law provides. We are making progress in this area. Unfortunately, those results cannot be analyzed in total as they should be.

Senator BIDEN. They will be, I guarantee you.

Mr. HUNTER. Fine. I am most receptive to such review.

I would like to emphasize the fact that the DEA must in fact have a drug violation first. There must be a nexus to a drug violation before we can legitimately enter into any kind of investigation no matter what kind of asset is involved. There must be a suspicion or sufficient information to believe that there is a drug violation. We conduct investigations under that stipulation and we will exploit the financial aspects of the organization and we have so mandated our field enforcement elements.

The first 9 months of fiscal year 1980 are encouraging, encouraging in the sense that we have seized to this point in time, the first three quarters, removal of assets under all prevailing laws that we can utilize, and in cooperation with states and foreign governments and referrals to other agencies based on our investigations, the approximately $50.3 million in seizures.

It is important to understand that the enforcement community moves first on a seizure. There is a subsequent adjudication period which, hopefully, leads to a forfeiture based upon a criminal judgment or civil action. The figures for that same period of time in assets that have in fact been forfeited are $22 million approximately.

Senator BIDEN. What do you estimate drug trafficking to be among the cases that you prosecute? Do you have any estimate of what the total profit margin is for those cases? What are we measuring it against?

Mr. HUNTER. We measure that against the value of drugs—those are intelligence estimates and, unfortunately, we are dealing in contraband and what we have is the best estimate.

Senator BIDEN. It runs in what area?

Mr. HUNTER. In round figures in the average of $50 billion per year, the resale value of those drugs.

Senator BIDEN. And the forfeiture is $50 million?

Mr. HUNTER. The seizure figure is $50 million for the first 9 months of this year.

Senator BIDEN. You think that is pretty good?

Mr. HUNTER. That is the tip of the iceberg, Mr. Chairman. There is a long way to go. I am making the point that we are starting; the catalyst once again was the civil—most of that—in fact, $22 million is under the provisions of 21 U.S.C. 881(a)(6).

Senator BIDEN. Cash on hand?

Mr. HUNTER. Cash on hand, vehicles.

Senator BIDEN. It is the cash that you actually seize in the briefcase at the time of the arrest?

Mr. HUNTER. It includes that.

Senator BIDEN. And automobiles and ships and planes?

Mr. HUNTER. Those are the very real assets of the organization; that is correct.

Senator BIDEN. Of that $50 million, how much of it is pieces of business, the auto dealership he has a piece of or the bank account you track down, or the house that he owns, but not in which he was arrested or in which the drugs were found or the trust fund that he has set up? How much of that $50 million is any of those things, would you guess—rough percentage, 1 percent; 50 percent?

Mr. HUNTER. I wish to make the point with a response that we are concerned about assets. Those things the organization has and enjoys in furtherance of their operating capability—that is what we are interested in. The point of how it is derived and what percentage of it is compared to property and whatnot, I do not have those figures.

Senator BIDEN. I can guess for you. I bet it is not 50 perecnt. I bet it is not 40 percent. I bet it is not even 10 percent.

Mr. HUNTER. I will offer you an estimation. The best estimate we have is somewhere in the neighborhood of 20 percent.

Senator BIDEN. What are the easiest things for an organization to replace? Cars?

Mr. HUNTER. Drugs.

Senator BIDEN. Planes?

Mr. HUNTER. The drugs.

Senator BIDEN. The drugs, the cars, the planes, the guns? They are the easiest things. They are, to use an expression, they are a little blip on the screen. You take away the guy's 47 cars next day and then he can have 47 new cars.

I do not think you are able, and I do not think anyone is able—I am discouraged by these hearings not because you are not doing enough, but how do we get to where the big money is? If we were able to get the Grand Cayman bank account with $2.5 billion in it, that gets at the organization?

Mr. HUNTER. Certainly.

Senator BIDEN. The cars do not get the organization.

Mr. HUNTER. Your illustration is very graphic and I would comment that for us to get to a bank in the Caymans is not within our statutory authority or our jurisdictional mandate, so they are more sensational, visible funds.

Senator BIDEN. It is a mandate.

Mr. HUNTER. We will work with the laws we have.

Senator BIDEN. It is a mandate. Just do not get confused on that.

Mr. HUNTER. It is a mandate without an ability.

Senator BIDEN. You have the overwhelming mandate of the American people, the Congress, the laws and everything else.

Mr. HUNTER. Not of the laws.

Senator BIDEN. The mandate is there.

Mr. HUNTER. The laws do not allow us that authority.

Senator BIDEN. This is getting to be a little semantic here. OK, fine.

You see, what I wish we would get beyond is that I think that the DEA in the last 2 years, not just on forfeiture but across the board, is just continuing to get bigger and better, leaner and meaner every year—good. I think the leadership of Peter Bensinger is very good. I think it is really moving in the right direction. There is an old expression, and I will not put it in its crudest form—I will clean it up a little bit—you never kid a kidder. Don't fool a fooler. Now we got here because we are not bad at that. When you and Peter and others come up and give me the figures like neon lights—dum-te-dum—we got $50 million—I think we could do a little less about the tonnage you give me—that is good to do out there, but please save it with me.

Mr. HUNTER. The point is well taken, Mr. Chairman. I believe yesterday I heard the figure of $3.5 million and I was merely attempting to temper that with current figures.

Senator BIDEN. The $3.5 million and the other figure offered are different from what you are offering. We are talking about what they are able to get in forfeiture procedure that you didn't get at the time you arrested the fellow. The police in Delaware, who have nothing to do with drugs, could come out with a press release saying, "We have received $3 million of assets of the criminal element in the State of Delaware."

You know what that would be—automobiles. The guy is in jail, and the automobile is impounded. The kids go to private school. He is eating at Hotel DuPont and not at Shakey's. He got his car.

Mr. HUNTER. A lot of cars go for $10,000 or so today.

Senator BIDEN. I know, but that is not what the forfeture statutes were written for. It is not why they are on the books, to get their cars. You should get their cars.

Well, anyway, I promise I am not going to interrupt you any more. I can see it is not a productive avenue to pursue publicly. I am anxious to hear your statement. I will submit further questions in writing. We will be doing this for a long time not necessarily with you, but DEA and me.

Five bells. I am saved by the bell, not you, but me. There is a vote on the final passage of the mental health bill which I may need. I am going to hate to do this to you since we are getting to lunch time, but I will recess and run over quickly and vote and be back in 10 minutes.

Since I will not take any more time to question the witness, I want to say that our next witnesses will be Tom Sear, Professor Blakey and Leslie Smith. I promise I will not keep you long. I will be most interested in hearing your statements. I have expressed my concerns and, hopefully, I will get you all out of here by 1:30 this afternoon so that no one will have to go without lunch or at least delay it very long. I will be right back.

[A brief recess was taken.]

Senator BIDEN. The hearing will come to order.

Mr. Hunter, please proceed.

Mr. HUNTER. Thank you, Mr. Chairman.

There have been concerns and statements as recently as a few moments ago by you, Mr. Chairman, regarding DEA's training, and developing of our expertise in this area. I would like to make a couple of

comments in that regard. I think it is important to start with the basic foundation of what is our human resource capability, our agents, and their academic background. The vast majority of the agents do, in fact, have college degrees. When they come to DEA, there are immediately subjected to a 12-week basic agent's school. Within that curriculum, there are courses and subjects taught relating to financial investigation, and conspiracy laws—those elements in a brief sense—but nonetheless the agent starts with some degree of awareness and training at that point in his career.

They subsequently receive further training in advanced agent schools, conspiracy schools and ultimately a 5-day financial investigative school either in heaquarters or in the field. In that regard, to date we have trained approximately 800 agents with a total expectation of 1,000 agents trained this year in the latest and most current curriculum of financial investigations.

Additionally, of our total agent work force of approximately 1,900 agents, over 300 actually have graduate—pardon me—have undergraduate degrees in a related field such as accounting, finance and those kinds of degrees in an educational sense. The point I am trying to make is that we have established some degree of awareness, sensitivity, and educational backgrounds in pursuit of financial investigations. We intend to intensify that training. More can be done. More will be done. We do have some training. We do have expertise.

We have set up a specialized unit in the Office of Enforcement, Financial Investigative Section, which offers direction and guidance and onsite training in addition to the formalized program. We spent a great deal of time within that section traveling as requested by various field elements in the field to offer them guidance and direction in sensitivity in pursuit of investigations.

DEA recognizes that we are not the experts. We do see the importance of interagency cooperative investigations. The IRS is of great assistance to us in that area, along with the FBI and the Customs Service. We have approximately 22 IRS agents on a full-time basis assigned to DEA primarily in the field. We are seeking to enter into new and expanded utilization of joint title 26 grand juries with IRS to fully exploit, as much as possible, the financial aspects of drug trafficker organizations. It is an obligation of the entire spectrum of law enforcement in pursuit of these financial concerns of trafficking organizations. We have started. We are on the way. There is a lot more that we can do. There is a lot more that we will do. There are problems with the laws. They have been discussed in great detail this morning and are articulated quite well in the GAO report. I believe there are four areas that GAO identified as having difficulty with respect to title 18, the RICO statute, along with the continuing criminal enterprise statute.

I seemingly went on a bit of a tangent perhaps to explain the background of 1970. There is one other aspect that I would like to relate. Nothing existed in the law addressing forfeiture up until 1970. What that means to a prosecutor is that he has not case law, no frame of reference. Essentially he has nothing to go on in the way of forfeiture pursuit. It was a new element of law in 1970. We will continue to train more agents. We will intensify our training. The statistics are the tip of the iceberg. They will gather and increase in

volume. It will take a coordinated effort among the prosecutors and all the law enforcement authorities.

That concludes my remarks, Mr. Chairman.

Senator BIDEN. Thank you very much. I appreciate your statement and your cooperation. The last point you made reminds me of that expression that receives a thousand different means of expression about the journey of a thousand miles beginning with a single step. I am glad to see that you stepped out. I am anxious to see how rapidly you go from there.

Thank you very much.

[The prepared statement of Mr. Hunter follows:]

PREPARED STATEMENT OF TED W. HUNTER

It is a pleasure to be here today to represent the Drug Enforcement Administration before the Subcommittee on Criminal Justice. The theme of today's hearing, the removal of assets from drug trafficking organizations, is integral to DEA's mission. It is our responsibility to immobilize upper-echelon narcotic traffickers and to bring them to justice.

It is important that a drug trafficking organization be viewed and understood in its proper perspective. There are three dimensions to a drug organization; until all three are addressed, an organization has not been rendered truly immobile. The traffickers have to be removed from the operation. The drugs have to be removed from the marketplace. The assets of the organization have to be removed—seized. Trafficking organizations are resilient. Their nature is such that the human element is the most easily replaced; the controlled substances are, unfortunately, readily available to the highest bidder; however, the tie that binds—money—is far less expendable. As our Administrator, Peter Bensinger, has repeatedly stated, "the money is the lifeblood of the organizations."

In his State of the Union message, President Carter emphasized that a program of asset removal would become a critical element in the United States' approach to working toward resolving the drug problem. Since that time, we have been working with the Congress and other Federal agencies to help resolve this problem. Of course, we in DEA wholeheartedly welcome this support of our mission. I would like to take this opportunity to make it clear that the concept of conducting investigations in such a manner as to exploit the financial intelligence is not new. Several years ago in Congressional testimony Administrator Bensinger quantified his remarks about a major trafficking organization not only in terms of the amount of heroin the organization was capable of trafficking, but also in terms of the financial dimensions and capabilities of the group. In the intervening years, in a variety of forums, and particularly with the advent of the financial assessments made by the National Narcotics Intelligence Consumers Committee (NNICC), we have all become increasingly aware of the financial implications of drug trafficking.

Before I delve into the history and evolution of DEA's program to remove the assets of major drug violators, I think it would be beneficial to clarify exactly what I mean when I refer to a "financial investigation." Specifically a DEA financial investigation is the process of identifying through drug investigations, financial information/evidence which will result in the prosecution of drug violators, as well as the identification and seizure of illicit profits and/or assets.

As is clearly evident, we are interested in information and evidence so that successful prosecutions can be brought which will lead to lengthy prison sentences for the violators as well as seizure, removal and forfeiture of their assets. I would like to stress that in order for a DEA special agent to become involved in a financial investigation, there must first be a nexus to a drug law violation. It is within that context that there is then the authority to pursue an investigation directed towards asset removal. It is one of many investigative techniques available to an agent. From our perspective of pursuing cases of drug-related violations of law, financial investigation is a technique, a tool, just as is conducting surveillance, debriefing informants, utilizing a wire intercept, or acting in an undercover role.

DEA's asset removal program is affected by the following pieces of legislation, all of which relate to the application of financial data in conducting a drug investigation.

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21 USC 848—Continuing Criminal Enterprise.
18 USC 1961–1964—Racketeer Influenced and Corrupt Organization (RICO) Statutes.
21 USC 881(a)(6)—Civil Forfeiture of Proceeds of Illegal Drug Transactions.
31 USC 1051, et seq—Bank Secrecy Act and 31 CFR 103.11 et seq.
12 USC 3401 et seq—Right to Financial Privacy Act of 1978.
Internal Revenue Statutes.

Our statutory authority affords DEA the opportunity to identify assets which are liable for forfeiture, both criminal and civil. To repeat, it is the seizure/forfeiture statutes which require that DEA investigate—not audit—the financial aspects of criminal drug-related activities.

Frankly, both investigators and prosecutors have been slow in developing and utilizing the weighty criminal forfeiture provisions of the Continuing Criminal Enterprise and RICO statutes. We reacted on a case-by-case basis. This may be attributable to the complexity of the laws and the concomitant lack of understanding on the part of investigators, prosecutors and the judiciary about the utilization of these provisions. The November 10, 1978 enactment of the Psychotropic Substances Act proved to be the catalyst. The Controlled Substances Act was amended (21 USC 881(a)(6)) to allow DEA to seize assets, bank accounts, real estate, stocks, bonds and other property derived from, traceable to, or intended to be used for narcotics trafficking. We realized that this civil forfeiture provision would be a very powerful tool.

The Financial Investigations Section of the Office of Enforcement was formed in March 1979 to promote and expedite enforcement action in order to exploit the financial aspects of drug investigations. The responsibilities of this section include:

Providing guidance and assistance to DEA field elements regarding practical application of statutes governing the seizure and ultimate forfeiture of drug-related profits and assets.

Providing instructional data for ongoing DEA investigations on drug violators use of international banking channels and fiscal havens.

Providing (when needed) analysis of drug-related financial information on investigations leading to the seizure of assets through utilization of appropriate statutes.

Maintaining a working knowledge of domestic and foreign currency statutes for exploration along with other investigative approaches to immobilize and dismantle drug organizations.

Developing and maintaining through liaison with other agencies access to specialized data bases and essential assistance for enhancing DEA capabilities to attain financial aspects of narcotics trafficking.

Training personnel in all facets of the financial aspects of drug investigations.

As we have become more actively involved in drug-related financial investigations, the mechanism that is needed to ensure that there is proper focus on violators' assets and financial information for prosecution, forfeiture, or other legal actions has evolved. The first step is to make sure that the agents understand the provisions of the law and the courses of action available to them.

As I noted a moment ago, the Financial Section is involved in our training program. The intent of this training program is not to turn our special agents into accountants or auditors, but rather to make them aware of the utility of the seizure statutes and sensitive to the application of financial investigations. The program is structured to build upon the instruction in conspiracy law and investigative techniques that most Special Agents have already received.

In addition to the street agents, senior management, including Regional Directors, are receiving financial investigation training. Programs are conducted both in Headquarters and in the field. The use of seizure and forfeiture statutes is also addressed at supervisor's school and at basic agent's schools.

In furtherance of the development and institutionalization of the asset removal program, this past spring the Assistant Administrator for Enforcement established the protocol for ensuring that the program is effective. The policy directive is clear. It is the responsibility of the DEA field offices to identify the financial aspects of their investigations. All Class I and II cases will be examined with an eye toward exploiting the financial aspects of the investigations. Regional Offices will monitor and support development of the financial aspects of its cases. The Headquarters Office of Enforcement, which already monitors investigations and is in the position to screen active cases for possible seizure and ultimate forfeiture of assets, will take

affirmative action in this regard. The Headquarters Office of Intelligence will have a supportive role in Enforcement's efforts which will entail developing strategic intelligence geared to the flow of funds and the profits derived from narcotics trafficking. The Office of Training will continue to ensure that all agent personnel receive training in this important tact.

Of course, the full financial investigations program goes beyond the limitations of any one agency. DEA is not alone in pursuing financial aspects of criminal violations. The cooperation and expertise of the entire enforcement community is required to reach all dimensions of trafficking organizations—the drugs, the traffickers and their assets. DEA has entered into expanded, joint investigations with appropriate federal agencies. Depending on the circumstances of a particular case, we call upon the Department of the Treasury, the U.S. Customs Service, the Internal Revenue Service and the Federal Bureau of Investigations.

Cooperative efforts enhance the Government's ability to dismantle drug trafficking organizations. In utilizing the well-established expertise of our sister agencies, DEA derives the maximum benefit from financial evidence from existing resources.

Our objective is to work with other agencies as closely as the law permits. For example, an IRS special agent is detailed to each of the CENTAC and many of the Mobile Task Force (MTF) units, which are DEA's investigative teams directed at the most sophisticated, complex conspiracy cases. The IRS input is exceedingly valuable and beneficial. Mr. Bensinger and Mr. Kurtz, Commissioner of the IRS, have met and, on June 20th, signed an agreement reaffirming the joint Memorandum of Understanding and the commitment to exchange information as allowed within the confines of the Tax Reform Act.

As a criminal investigating agency, of necessity we work hand in glove with the prosecutors—the U.S. Attorneys Offices. The DEA Domestic Guidelines require that DEA keep the U.S. Attorneys Office abreast of all significant developments. They ultimately will take all the evidence we develop, financial and otherwise, and proceed with the case in court. Yet, the prosecutors are also in the developmental stages with respect to pursuing complex and time consuming cases involving asset removals. They, too, require supplemental training on the complexities of forfeiture and asset removal. Prosecutors have participated in DEA-sponsored training programs. DEA Special Agents and the Assistant United States Attorneys also attend semi-annual conspiracy conferences where the financial aspects of investigations are considered.

We have received enthusiastic response from the Narcotic and Dangerous Drug Section and the Criminal Division of the Department of Justice and from most of the prosecutors across the country. I am aware that Department of Justice officials are working toward making certain that the policy of pursuing forfeiture is instituted nationwide.

As I mentioned a moment ago, the restrictions established by current law have had a detrimental impact on our program. The restrictions of the Tax Reform Act, the Right to Financial Privacy Act, the Freedom of Information and Privacy Act, all have taken their toll on our investigative program. It is difficult to exploit financial evidence when there are such limitations on information sharing. I am pleased to be here today in response to the Committee's demonstrated interest in our asset removal program and I would be able to report better results to you if we were not hampered by the restrictions of these laws. A clear Congressional mandate is needed.

The impact of these restrictions has been scrutinized carefully by the Department of Justice, the Administration, the General Accounting Office and the Congress, itself. The Administration now supports amendments to the Tax Reform Act which would being into balance taxpayer privacy interests and the needs of criminal law enforcement. From my perspective, law enforcement, it is reassuring to note that the Congress is taking a second look at these statutes.

Within our organization we are becoming much more sensitve to the whole issue of asset removal. The response from our field agents is reassuring. Within the limitations of the laws and regulations, we are getting needed help from the financial experts to assist us in strengthening our cases against major trafficking organizations. The forfeiture provisions are a valuable tool. The civil forfeiture provision of 21 USC 881(a)(6) is working well. As I noted a moment ago, it was the enactment of this statute in November 1978 that was the real impetus to our assets removal program. Thus, our program is in its early stages and yet there has been measurable progress. I have every expectation that the volume of assets removed will continue to increase.

The drug business is founded on supply and depand. That basic economic tenet ensures that the profits will continue to be there for any trafficker who is

willing to take the risk. Our asset removal program increases those risks. Very simply, that is why we need to nurture this viable program.

Senator Biden, that concludes my formal comments on the overview of our asset removal program. I would be pleased to respond to any questions you may have.

Senator BIDEN. Our next witness is Tom Sear, former assistant U.S. attorney, prosecutor in the *United States* v. *Nicky Barnes* case, southern district of New York.

Mr. Sear, we welcome you. We thank you for your patience in waiting.

STATEMENT OF THOMAS H. SEAR, FORMER ASSISTANT U.S. ATTORNEY, AND PROSECUTOR, SOUTHERN DISTRICT OF NEW YORK

Mr. SEAR. Good morning.

Senator BIDEN. Good morning.

Mr. SEAR. It certainly is a pleasure to appear before this committee, and let me emphasize at the outset, the fact that I am here alone belies the reality. There were two other prosecutors, the U.S. attorney himself, Robert B. Fiske, Jr., and another assistant U.S. attorney, Robert B. Mazur. The three of us tried the case.

This was a case in which the Drug Enforcement Administration certainly made a massive commitment to developing the best case possible against an individual whom everybody recognized was a most important criminal figure in New York City, and since I am in private practice now, I have no ax to grind relative to the Department of Justice and the Drug Enforcement Administration.

At times in my career I have certainly been very critical of the Drug Enforcement Administration. This was one instance in terms of effort—that is the manpower and financial resources and the concerns—where the Drug Enforcement Administration was determined to obtain a successful result which we got.

Senator BIDEN. What was the result that they were seeking?

Mr. SEAR. Well, Nicky Barnes, by way of background, as of 1977 Mr. Barnes was somewhat of a mythical, notorious figure in New York City. After the indictment, his picture was on the cover of the New York Times magazine entitled "Mr. Untouchable." He had been in jail for narcotics conviction and charged with bribery and other violent crimes and acquitted.

He ran an extremely successful narcotics organization and made millions of dollars with concentration of street-level sales. He and 10 members of his organization were convicted. He received a life sentence. Four of the members received 30-year prison sentences. One person who was only charged and convicted under one count received a maximum sentence of 15 years, and there were two or three other sentences in the range of 10 to 20 years. There are many aspects of the case I could talk about.

Senator BIDEN. How much was forfeited?

Mr. SEAR. There were cash seizures made prior to the investigation by New York police officers. With respect to Mr. Barnes, $132,000 was seized from his car. That was seized by the Internal Revenue Service in a jeopardy assessment.

One hundred and three thousand dollars was seized from another defendant's car also prior to another specific investigation. That was seized by the Internal Revenue Service.

There was $202,000 seized by the Drug Enforcement Administration in this investigation. That evidence was suppressed by the trial judge and was not used at the trial, but those moneys were also seized by the IRS.

I will get to, and I think it merits some discussion, why we did not attempt forfeiture under 848.

Senator BIDEN. Have you answered the question fully? You may have.

How much money was seized? What assets were forfeited?

Mr. SEAR. Well, cash moneys, additional cash moneys to the total of approximately $20,000, again seized by the IRS.

Senator BIDEN. For my purposes, I am not interested in that. I would like to go back to my first question then.

What was the objective? You stated very forcefully that the Drug Enforcement Administration made a massive commitment. You have no ax to grind. They set out for an objective and they accomplished it. What was the objective?

Mr. SEAR. To convict Leroy Barnes.

Senator BIDEN. To incarcerate him for as long as humanly possible?

Mr. SEAR. Yes.

Senator BIDEN. So one of the objectives at the outset was not to seize the assets of his organization?

Mr. SEAR. I would say that was not a primary objective.

Senator BIDEN. I think you did a great job. I am not being sarcastic. I have no argument about DEA's brilliance, and I am not being sarcastic, brilliance in assisting for convictions. They are some of the most impressive people I have met in law enforcement. The most impressive was a guy who works for the DEA in Italy, really a super, super guy.

I think you would be saving the committee time and saving yourself time if you focused on the focus of the hearing which is not whether or not they assisted you in the conviction, but what happened with regard to forfeiture. Why or why not? Why was it pursued? Why was it not pursued?

Mr. SEAR. At the time of the investigation, the U.S. attorney's office and the Drug Enforcement Administration was aware in a general manner of the existence of Mr. Barnes' interest in two housing projects, one in Michigan and one in Ohio, with investment somewhere in the range of $1.3 million or $1.5 million. Because of the limitations of the Tax Reform Act, our knowledge from that avenue of information was somewhat limited.

Senator BIDEN. Why? Be more explicit.

How did that limit it?

Mr. SEAR. Because our ability to obtain information from the Internal Revenue Service about those investments was severely limited.

Senator BIDEN. You mean the income from those investments?

Mr. SEAR. Yes. We did obtain certain tax returns eventually which reflected his partnership interests and so forth. We eventually obtained, as Mr. Nathan testified we obtained, tax returns relative to Mr. Barnes and other defendants in the case.

Senator BIDEN. For what purpose?

Mr. SEAR. Conviction. At the time of the investigation and prior to obtaining the indictment, people involved in the investigation considered whether or not we should attempt forfeiture. We did not insert a forfeiture clause in the indictment for two primary reasons. First of all, we did not have evidence as to flow of money from narcotics operations into these housing projects; thus, we would have had to rely evidentially on the inference that he necessarily obtained these moneys that he put into these housing projects.

Senator BIDEN. How big an operation did Nicky Barnes have going for him in terms of dollars and cents that he was turning over in his organization? Monthly, yearly?

Mr. SEAR. I would give a very rough estimate that on a weekly basis the turnover of organization, gross turnover, was somewhere in the range of $100,000 a week, somewhere between $50,000 and $150,000 a week. The main profits of the organization were derived from massive sales of the street level variety, usually quarters that sell for about $50 apiece. There was evidence that there was at least 2,000 or 3,000 sold by portions of the organization each week. We are talking about millions of dollars of narcotics dealings almost for any period you want to pick.

Senator BIDEN. Of those millions of dollars, your information was, at the time you were determining whether or not to include a forfeiture count in the indictment, that Nicky Barnes had several million dollars, you didn't know how much, but investments and two real estate operations.

Is there anything else Nicky Barnes had his money doing?

Mr. SEAR. We were aware of the number of cars he owned. In terms of evidence, in terms of reliable kind of information as to where he put other assets, we did not know.

Senator BIDEN. But a reasonable person would assume—and I assume that you assumed—that there was a lot of other money that went somewhere else?

Mr. SEAR. That is right.

Senator BIDEN. But because of the lack of information, some of which is a consequence of not having his IRS form, although I doubt whether you assumed even his IRS form would reveal where the bulk of his money was invested?

Mr. SEAR. Absolutely.

Senator BIDEN. You concluded that it would not make sense to include a count for forfeiture in the indictment.

Now what would have happened if you had had a team of investigators doing nothing but trying to follow assets?

Mr. SEAR. The first thing that I would have done would be to try to convince somebody that I needed some of those people to help prepare other aspects of the trial.

Senator BIDEN. Why?

Mr. SEAR. Because I viewed, and I think the U.S. Attorney's Office and the Drug Enforcement Administration, viewed the priority in that situation to convict Mr. Barnes. With all due respect to the thrust of some of the committee's inquiries, I believe to this day that in that situation, the highest priority was to convict Mr. Barnes. I wish to amplify an earlier remark I made. In addition to the fact

that the proof problems of showing the money was in the housing project, at the time this case went to trial in 1977, I was not aware or really was not imaginative enough to think of asking the court to have a bifurcated hearing with respect to guilt and then a special minitrial with respect to forfeiture. If I had been aware of the potential availability of such a procedure, I guarantee you I would have put a forfeiture clause in the indictment. We would have proceeded to trial on the guilt or innocence and would have given a shot in attempting to forfeit the assets in a separate proceeding. Not only were we concerned about the jury inquiry with respect to the housing project as a major complexity, but an opening statement defense and cross-examination type defense that was raised or constantly implied through the trial was the notion that he was a real estate investor, and if we had introduced proof as to his real estate investments in Michigan or Ohio, no matter how sophisticated the jury we had was, it was our judgment that it would hurt us rather than help us.

Senator BIDEN. Is it fair to say then that this was the case with Nicky Barnes, who was the reputed organized crime Cosa Nostra leader in New York now?

Mr. SEAR. I don't know.

Senator BIDEN. Give me a name. Funzi Tieri. Assume it was Funzi Tieri you were after. If Nicky was this sophisticated, then a real lifetime criminal involved in across-the-board prostitution, banking and international trade organizations would be even more sophisticated and you would have to even dwell more on the conviction side. The more sophisticated the operation——

Mr. SEAR. You can't answer that question in the abstract. Some of the profit that we had as to moneys was extremely helpful. I firmly maintain that passing cash money, $103,000 in cash money, among jury members or even what you were talking about in terms of showing some complex business transaction that an individual obviously could not have been legitimately involved in, that may have a very beneficial effect.

Senator BIDEN. You could do that without going after the big numbers, meaning a quarter of a billion or half a billion? You don't need forfeiture.

Mr. SEAR. No; it is an entirely different concern than forfeiture.

Senator BIDEN. What you did not have the benefit or detriment of hearing is the first statement to the first witness of the hearing. I have a doubt as to whether or not the statutes are worthwhile. I have a doubt whether or not the forfeiture statutes can have an effect even if DEA did more than they are doing now, even if all the prosecutors were trained and on their toes about forfeiture, and I wonder, and I must acknowledge it, and I did acknowledge it in the very beginning, I wonder whether or not it would be worth all the effort and time?

Let us say that I was able to convince the Justice Department to set up a special unit along the lines of a strike force unit, a special forfeiture unit and put together 25 or 30 prosecutors who were supersophisticated in trying paper trials and really knew how to go at the forfeiture thing and were able, in the way a DEA agent is now to you in your case, I question whether or not the statute is really of much value. Do not forget the basic premise, one of the basic premises, that this would be a way to really break up an organized crime ring.

I want you to understand, since you did not have a chance to hear it, what it was that I questioned. I am not sure of that. What we have been focusing on is whether or not there has been an attempt to fully implement the statute. I am absolutely convinced that there has not. Absolutely, unequivocally, there is no doubt in my mind, notwithstanding the brilliant testimony I have heard so far—it just is not so. Even if you had, you get to the question of the—the popular phrase in this town—bottom line. What difference would it make if you had? That is what I am trying to get at.

I said the first day that one of the biggest problems today, particularly with the Federal Government, is that we who serve in the Federal Government and write the laws, tend to overpromise what the effect of the law could be, and one of the objectives of this hearing is, and subsequent ones will be, whether or not we stop telling American people that we have another tool that we can use with which to get at the organized crime infrastructure. This is advertised as one of the tools that enables prosecutors and DEA people to get at the infrastructure, so I have no argument against that; but you will have to be the most persuasive counsel to convince me that DEA or the Justice Department does its job on forfeiture. Your testimony is overwhelming that they did not do their job on forfeiture because it was not worth going after for good reason.

Mr. SEAR. It is only a question of emphasis. It is all a question of priorities. The problem with somebody who has worked at least at the lower level in Government, the problem to my mind is that the likely result of a hearing like this is that the word will go forth down through DEA that we have to have more forfeitures. You can see that I want to place it in context.

Senator BIDEN. I do not want to. Not only will the the word go out, but three times a month I will call up and ask how many they had so it won't be a minor, little point. I an· very heavy handed. Bureaucracy is like the mules we talk about. It takes a 2-by-4 to get its attention. I have no reluctance to use a 2-by-4 for the remainder of my years in office. I will use it with abandon. I am trying to find out if it is worth using the 2-by-4.

Does it make any sense?

Mr. SEAR. I don't know whether it makes sense to take 5, 10, or 15 people away from working on cases and putting them on a specific attempt to obtain forfeitures. In the *Barnes* case, to use one case, and several other large narcotics cases, that I worked on, I believe we used fairly sophisticated financial investigative tools. They were very helpful. I could not be more in favor of encouraging DEA and encouraging all Government investigative agencies to become more sophisticated and to use financial tools.

Revision of 881, 21 U.S.C. 881, was clearly much more important toward improving the forfeiture situation than any sort of strong words.

Senator BIDEN. By strong words, by inference, you are referring to RICO.

Mr. SEAR. No. Strong words and then forming committees and so forth—not committees, but groups of agents that are specifically told to go out and obtain forfeitures; 881 is a boon to law enforcement and narcotics——

Senator BIDEN. How about RICO?

Mr. SEAR. I am not an expert on RICO or experienced. My judgment would be that RICO is a specialized tool which would be extremely valuable and necessary to use in certain situations, but a strong word that we need more RICO prosecutions, I don't think in and of itself necessarily accomplishes anything. The emphasis in one area given a static level of money and manpower, emphasis in one area takes away from another area.

I hate to ring this bell again, but I have to do it because I spent 3 years talking about the Tax Reform Act. Anybody that can get rid of some of the difficulties with the Tax Reform Act ought to be canonized in the annals of law enforcement history.

Senator BIDEN. I am prepared to be canonized.

How would it have changed? What more would you have gotten in your case that you did not get had the Tax Reform Act been changed the way you want it?

Well, you don't have to go into that. We know how it should be changed.

Mr. SEAR. First of all, there were some tax returns we never got. Most importantly, however——

Senator BIDEN. What would that have done? You know very well they would not declare the big numbers. What would that have done?

Mr. SEAR. For example, with the housing project in Michigan and Ohio, they had been investigating Barnes on tax aspects of it. We never got any of that paper.

Senator BIDEN. What would it have done?

Mr. SEAR. It would have increased the chances of using that evidentially to prove his guilt and, secondly, increased the chances of obtaining a forfeiture of those assets. If we could have clearly shown the manner and means that the money went in, to show the jury this was not a legitimate real estate investor, we would have been in a better situation.

And if we did not have the Tax Reform Act back at that point in time, Bob Mazur spent half of his time from January 1977 up until the end of the trial, at least a third of his time, on the phone with the Internal Revenue Service trying to obtain tax returns because we were very confident that we would obtain valuable evidence. If he had not spent all that time going through the bureaucratic jungle, he could have used the time to prepare witnesses and other aspects of the case. The fact that it has to go through eight levels of the Internal Revenue Service, that severely impacts law enforcement in terms of narcotics and all other areas of law enforcement where you need that information.

To use one of our terms, the bottom line, in my view—and I don't pretend to be an overall expert on this subject matter—I think the forfeiture provisions can be a useful tool. Second, they can be improved in some of the areas that Mr. Nathan testified about.

As I know, as I indicated, if there were specific authority for bifurcated treatment for the forfeiture proceedings, I know in many instances, that would improve the situation. Nevertheless, I view it as a limited tool in the overall law enforcement effort and not something that should take such priority as to take precedence over what is the most important goal of law enforcement.

Senator BIDEN. What is that?

Mr. SEAR. To convict violators. The public impact of convicting people like Barnes and other people is, I think, more important, given the realities of the forfeiture opportunities. It is more important than concentrating on forfeiture.

Senator BIDEN. I don't want to, nor do I mean to diminish the importance of what you did.

Mr. SEAR. That's OK.

Senator BIDEN. What is the impact on drug traffickers, of putting Barnes in jail for life as opposed to the impact of knowing that every asset, if it were possible, was able to be seized—to be the devil's advocate? Do you think the folks sitting around in the organized crime family are saying, "Nicky went to jail for a long time. I guess we ought to get out of this business."

Mr. SEAR. People will never say that, no matter what happens.

Senator BIDEN. Do you think it is a deterrent?

Mr. SEAR. In many cases, forfeiture would probably have a greater impact than mere conviction and incarceration of the leader of the group.

In this case, because of his public posture and the way the public perceived him and the way he was glorified in the press—throughout the trial, he was surrounded by many reporters who portrayed him as the Robin Hood of Harlem. In this case, the conviction had a greater impact.

Senator BIDEN. On whom?

Mr. SEAR. Harlem and South Bronx. People who are using narcotics; people who sell it; people who are thinking of selling it. Oftentimes a conviction means that 6 months later somebody else is in the same situation. To my knowledge, there is no Leroy "Nicky" Barnes and no organization of the same sort of magnitude. It had an impact. Who is to say if we ever have any kind of major impact, but it had an impact.

Senator BIDEN. Please don't misread what I am saying. I think it is very, very important that Nicky Barnes be in jail for life. I think it is very, very important what you did. I think it is very, very important that prosecutions go forward and convictions are obtained.

My point is that the focus of this is how do we deal with the organized crime aspects of narcotics distribution in the United States of America which the Drug Enforcement Administration will tell you, and others, is about to hit this country in a way like gangbusters? We have new evidence, that is overwhelming evidence, that there is a big, big new area of operation.

I am suggesting that we have to decide what is going to have the greatest impact on the organization and the distribution networks of these outfits.

Obviously, the kid who is thinking about becoming an entrepreneur sees his hero Nicky Barnes go to jail and maybe he thinks he ought to go to law school. I doubt that anyone who is a hardened criminal is the least bit, the least bit impacted upon the news that Nicky goes to jail for life. There has never been any evidence of that as to this Nicky and all the Nickys of the world.

Mr. SEAR. That is different from considering the general efficacy of law enforcement in general. The reason in my perception that the prosecutors don't use forfeiture and RICO is not because, as suggested

earlier, they may be hard or difficult. It is a question of measuring the likelihood of gain and the size of that gain.

Senator BIDEN. Isn't that hard or difficult?

Mr. SEAR. Every aspect of law enforcement can be hard and difficult. Where one engages in trying to forfeit someone's assets, it may be hard and difficult. You may say we have a chance of doing it and getting a lot of money.

But if you say I am not going to invest so many man-hours and so much time in that direction because it is more important to convict another five people in the organization; it is not a question of your not doing it because it is hard and difficult. You are making a value judgment.

Senator BIDEN. When the statute was written, the congressional dictate was that the value judgment should be made the other day. We may be wrong.

Mr. SEAR. But there are other statutes, statute for selling heroin and conspiring to sell heroin and statutes for continuing criminal enterprise. That does not decide the issue as to where the priority lies. I am not saying that there is an easy answer. Focusing on financial investigations and adding some sophistication is very, very important.

Senator BIDEN. Not for the purpose of breaking up——

Mr. SEAR. For any purpose.

Senator BIDEN. For any purpose.

OK. Thank you.

By the way, have you ever seen that advertisement that says, "What is your EQ?"

Mr. SEAR. No.

Senator BIDEN. The Wall Street Journal has an ad that they put on television and they show Mary Smith, an attorney for such and such, and she walks up to the courthouse steps. The question is "What is your EQ?"

"My EQ? My IQ is high."

Charlie Johnson, head of such and such a corporation. "What is your EQ?"

It is economic quotient.

Were you a liberal arts major?

Mr. SEAR. I was barely able to graduate as a history major. I had to graduate from college to go to law school. I could not do anything but talk.

Senator BIDEN. I understand that. That is the reason I went from college to law school to the Senate.

Do you know what a dirty float is?

Mr. SEAR. No.

Senator BIDEN. Your EQ is probably like mine, nonexistent?

Mr. SEAR. Yes.

Senator BIDEN. What I am suggesting is that the EQ in a more perverted sense of folks like you and me, if we are going to deal with the growing sophistication of not just narcotics, but little things like computer fraud, will have to be improved. Do you know anything about computers?

Mr. SEAR. No. I know a little bit about computer fraud, but not about computers.

Senator BIDEN. You have to understand a little bit about computers to know about computer fraud to find out what they are doing. What I am suggesting to you, as brilliant attorney as you are, many of us who are trained in the law are trained in a way that we are out there to capture the criminals of yesterday, not the criminals of tomorrow. The criminals of tomorrow are much sharper than they were yesterday. Unless we learn the tools, we are not going to make much more of an impact and there is an inertia that exists in our profession, one which you demonstrate graphically and one which I demonstrate in my profession, and you have to try to overcome it. We all try to be renaissance men. Some of us have more difficulty than others.

I am suggesting that we need a renaissance in the broad sense of the application of that term. Part of the renaissance is that if the statutes make any sense, we better be a whole lot more sophisticated about how to apply them or to be more sophisticated about the financial operations of drug empires so that we can begin to fashion new statutes or else we should say, you know, we really are never going to get at those big dollars. We are not going to do it, so let's go put folks in jail.

The way I arrived at it with regard to sentencing, I had even more of a disability than you. Your disability was a history major. I graduated with three majors: history, political science, and English which qualifies you to do almost nothing. Now, having those qualifications, I found that there really are some problems attendant to coming out of that kind of background. One of them is that I also as a consequence of that went through school in a behavioral stage. Everybody can have their behavior altered, if we just alter the environment. The reason I did not take a job as a prosecutor and public defender is because of the ability of the public defender and undesirability of you guys. That is how much I was in the mold of the liberal when I came out of school.

One of the things that I felt very strongly about is that we had to remodel our prisons and rehabilitate prisoners. Guess what I conclude? Can't do it. There is no way. Don't know how.

Our Swedish friends spent thousands of dollars on that, and they concluded that it does not work, it does not impact on recidivism. The only thing that will change you from beating me up in the parking lot, the only evidence we have, is that you folks who beat people up in parking lots tend to burn out the older you get—when you can't run as fast, when you are not as strong, and your genes change a little bit you can't beat up people in the parking lot. So the answer is to keep you in jail until you get old. That is the only way. There is no program that I can put that person through and put him back on the street, if that person is a repeat offender, that will give you a shot at that person not coming back.

Maybe that is what I should say to them about this area. Stop talking about breaking up the sophisticated mechanisms of organized crime. Let us just concentrate on the other end. Let us change the laws—I mean leave these laws in the books, but let us add super, super big fines. Let us add mandatory sentences. Let us do other things. The only thing we can be sure of is get them off the street and keep them off and go after the other guy who fills the slot because you know the organization is going to be there.

I am sorry to be so philosophical about this, but that is really what this is all about, not whether or not you all do a good job or not. I think you did a great job. I wouldn't have the competence to try the

case. It is very complicated and difficult. I am not being solicitous when I say it was done brilliantly.

I wonder how you are going to make any difference?

Mr. SEAR. I would like to make one last comment. There are basic inquiries as to whether the whole effort is worth it or what results can be obtained on an overall level. However, there are things that can be done to maximize the impact of present efforts and to go back to the Tax Reform Act, that is a perfect example. You have got IRS agents. In the *Barnes* case, they had independent investigations as to six of seven people. They had manpower on the one side working on these people and the DEA on the other side working on these people sometimes talking to the same witnesses, and the agents of the Government couldn't talk to each other.

Senator BIDEN. I understand.

Mr. SEAR. You eliminate that, whatever the overall impact; the basic philosophy, however you come out, you have at least improved the impact somewhat.

Senator BIDEN. Let us take that one point because I cannot pass it. It is only allowing the risk of your talking to one another, and there is significant risk of you all talking to one another. That is why the Tax Reform Act occurred in the first place. It is a balance. If in fact it is going to make a significant impact upon organized crime and narcotics rings, I will trade in a few on the civil liberties side. If it were only marginally to increase it, and not accomplish the purpose we stated it would, it will be just a little helpful.

There is a little thing called Fednet. If we allowed the Federal Government to build their supercomputer and every single piece of information that the intelligence community wants, they will get. They will be able to operate better. I am on the Intelligence Committee. I am supposed to overlook the spooks. I have been doing that from the inception. I know a little bit about the area.

I am on the Foreign Relations Committee. I have had a good deal to do with the CIA, the Defense Establishment. It would increase the arm of law enforcement. DEA would be very excited to punch into one computer and get everything from your tax return to the census material, and it would help in law enforcement, but it would scare me because what happens then is that I get a Jimmy Carter that goes out of whack or a Richard Nixon who doesn't like me sitting here, and that is why we have the Tax Reform Act. If you guys tell me it makes a marginal difference, don't tell me about trading in civil liberties.

The difficulties you have are as a consequence of the act.

I don't ask the question idly, how much difference would it mean if you had amendments to the Tax Reform Act? If you said I could get Nicky Barnes' quarter million, I would say, fine, I will think about it. However, things flow from here and it trickles down. If you listen to my words, show me it makes a big difference, otherwise, don't let me risk other people's civil liberties.

Wiretaps would impact on organized crime a great deal more. But you have the tradeoffs. They are the things that somehow we have got to focus on as we talk about this kind of legislation. That is why I find myself sometimes getting upset about it.

Again, for the record and for your benefit and for the benefit of anyone who is listening, I really do think you did a tremendous job. I really do think you and your counterparts, including the DEA, did the public a great service in putting Nicky Barnes in jail. I really mean that. I am not in any way attempting to denigrate that. I am just wondering whether or not the more I study this, the more I listen, the more I go into it, I really wonder if there is much we can do in terms of the stated objective of these forfeiture statutes.

At any rate, thank you for your time. Thank you for your effort. Thank you for coming down. Your complete statement will be made part of the record.

Are you practicing law in New York now?

Mr. SEAR. That is right.

Senator BIDEN. Thanks.

Mr. SEAR. Thank you very much.

[The following was received for the record:]

PREPARED STATEMENT OF THOMAS H. SEAR

General subject matter of testimony.—Investigation, trial and conviction of Leroy "Nicky" Barnes and 10 members of his narcotics organization in the Southern District of New York after a nine and a half week trial in 1977. The defendants were convicted of distributing heroin and cocaine, and conspiracy to distribute heroin and cocaine. Barnes was also convicted of engaging in a continuing criminal enterprise and was sentenced to life imprisonment. The testimony will focus on the financial aspects of the investigation and the reasons why although Barnes was convicted, forfeiture of his assets was not attempted.

Trial counsel.—U.S. Attorney Robert B. Fiske, Jr., myself and Assistant United States Attorney Robert B. Mazur.

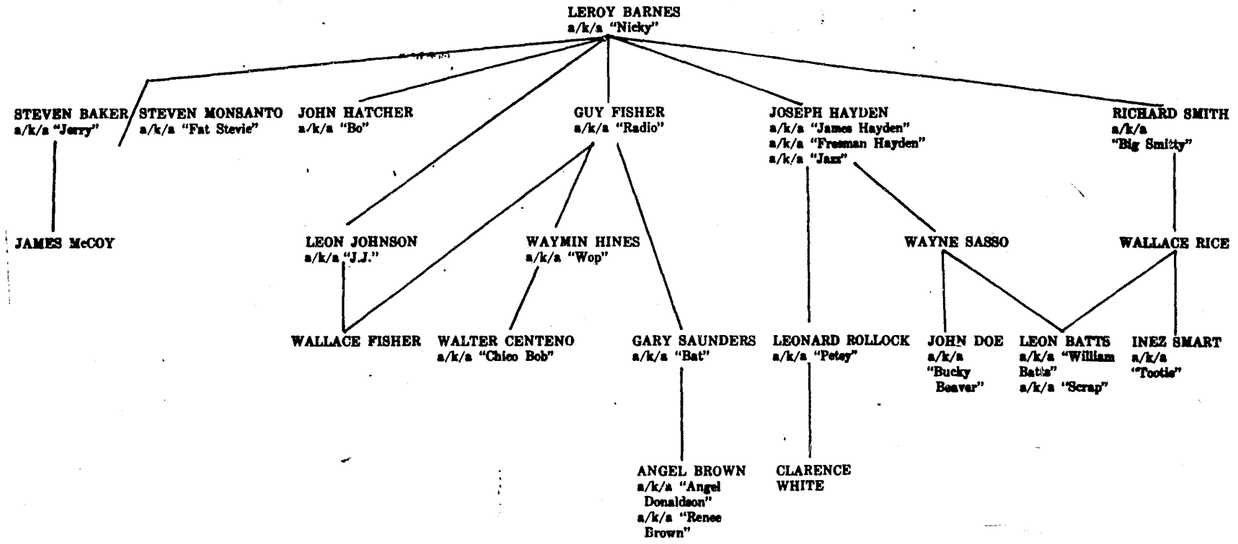
STATEMENT OF FACTS: THE GOVERNMENT'S CASE

The proof at trial established that the defendants and their co-conspirators were all members of a narcotics organization headed by Leroy Barnes. The defendants, along with many others operating at lower levels in the organization who were not indicted, distributed massive quantities of narcotics on the streets of Harlem and the South Bronx over a period of several years. In the course of their business they reaped enormous profits—literally millions of dollars—at the expense of the public and the addicts who purchased and used the drugs.

Their dealings took two principal forms. On certain occasions, they made wholesale "bulk sales"—that is sales of narcotics in quantities of one-eighth kilogram or more and of a quality which allowed for further dilution before being sold for use by addicts. However, the greatest profits of the organization came from high-volume, retail "street sales"—amounting to tens of thousands of dollars worth a day—of small "street quarters" of user quality heroin.[1] In order to accomplish the massive distribution of minimal purity narcotics, the organization depended upon obtaining large quantities of "cut"—typically quinine or mannite—needed to dilute the heroin. Also, because the street quarters were paid for by addicts with large amounts of small bills, there was a continuing need to "wash" those proceeds, that is, to exchange those bills for large denomination bills which could not be traced back to narcotics transactions.

The organization operated in a loosely-knit form, with varying levels of command and responsibility, and with each defendant having a particular role in the organization. A conceptual chart portraying the basic structure of the organization was used at trial and is reproduced here:

[1] A street quarter contains about 4 grams of 1.5 percent pure heroin.


LEROY BARNES
a/k/a "Nicky"
STEVEN BAKER
a/k/a "Jerry"
STEVEN MONSANTO
a/k/a "Fat Stevie"
JOHN HATCHER
a/k/a "Bo"
GUY FISHER
a/k/a "Radio"
JOSEPH HAYDEN
a/k/a "James Hayden"
a/k/a "Freeman Hayden"
a/k/a "Jazz"
RICHARD SMITH
a/k/a
"Big Smitty"
JAMES McCOY
LEON JOHNSON
a/k/a "J.J."
WAYMIN HINES
a/k/a "Wop"
WAYNE SASSO
WALLACE RICE
WALLACE FISHER
WALTER CENTENO
a/k/a "Chico Bob"
GARY SAUNDERS
a/k/a "Bat"
LEONARD ROLLOCK
a/k/a "Petey"
JOHN DOE
a/k/a
"Bucky
Beaver"
LEON BATTS
a/k/a "William
Batts"
a/k/a "Scrap"
INEZ SMART
a/k/a
"Tootie"
ANGEL BROWN
a/k/a "Angel
Donaldson"
a/k/a "Renee
Brown"
CLARENCE
WHITE

Although the chart reflects certain of the interrelationships between members of the conspiracy, the proof showed that the organization was not strictly compartmentalized. Within his area of particular responsibility, each defendant often worked with defendants and co-conspirators in other areas.

In particular, Barnes directed and controlled all narcotics selling and related activities. Steven Baker, Steven Monsanto, John Hatcher, Joseph Hayden, Guy Fisher and co-conspirator Richard Smith were his chief lieutenants. They obtained and distributed heroin in bulk quantities, obtained cutting material and arranged for the "washing" of the proceeds of the narcotics sales.

Other convicted defendants performed various functions in assisting the chief lieutenants. Leon Johnson dealt directly with Barnes in connection with obtaining "cut" and distributed cocaine in bulk quantities. Waymin Hines, Leonard Rollock, James McCoy and Walter Centeno, operating at various levels of the conspiracy, received narcotics for redistribution, both in bulk and street-quarter form. Wallace Fisher, Guy Fisher's brother, acted as a "go-between" in arranging sales of heroin. Co-conspirators Wallace Rice, Leon Batts and Inez Smart participated in the obtaining of cutting materials and distributing heroin.

Several members of the conspiracy, including Monsanto and McCoy, possessed and carried firearms for the purpose of protecting themselves, other conspirators, their narcotics and the proceeds of their narcotics activities.

The activities of the conspiracy were centered, principally, at various social clubs in Harlem and the South Bronx, the Harlem River Motors Garage in Manhattan, which was managed by Hatcher, and the Kingdom Garage on Inwood Avenue in the South Bronx, which was owned by Guy Fisher and operated by Wallace Fisher.

The garages were not only the focal point of several large narcotics transactions, but also served to house the automobiles used by the organization. During the period 1973–76, many of the members used the Hoby Darling Leasing Corporation, operating out of the Harlem River Motors Garage, to "lease" their cars, a practice undertaken to mask their true ownership and to protect the vehicles against forfeiture if found with narcotics. In 1976–77, Barnes and others in the conspiracy began to use the Kingdom Auto Leasing Corporation, which was organized by defendant Guy Fisher, for similar reasons.

During the period of the conspiracy, Barnes himself was the owner and/or operator of five Mercedes Benz, a Cadillac, a Corvette and Citroen Maserati registered to Hoby Darling or Kingdom Auto Leasing; Baker was the listed driver of two Mercedes Benz registered to Hoby Darling Leasing and drove a Jaguar registered to Harlem River Motors; Monsanto was the driver of no less than 17 Hoby Darling Leasing automobiles, including five Mercedes Benz, three Volkswagens, two Cadillacs, two Mercurys, two Oldsmobiles, a Chevrolet, a Ford and a Volvo; Hatcher drove a total of 13 Hoby Darling Leasing automobiles, including ten Mercedes Benz,[2] a Chrysler, a Lincoln and a Corvette; Hayden operated a total of three Mercedes Benz registered to Hoby Darling or Kingdom Auto Leasing; Leon Johnson operated two Mercedes Benz, one registered to Hoby Darling on Kingdom Auto Leasing; Waymin Hines was the driver of three Jaguars registered to Hoby Darling Leasing and a Chevrolet registered to Kingdom Auto Leasing "c/o Linda Hines", Hines' wife; Gary Saunders operated a Cadillac registered to Kingdom Auto Leasing "c/o Loretta Saunders"; Wayne Sasso drove a Chevrolet registered to Kingdom Auto Leasing during the course of the $10,000 money wash of December 16, 1976, see infra at 22–23; and Richard Smith drove a Lincoln registered to Kingdom Auto Leasing "c/o Clarence Dixon" during the course of a guinine transaction with Inez Smart.[2]

The Government's evidence as to each of the defendant-appellants was truly overwhelming. This evidence was presented through the testimony of 49 witnesses, including three confidential informants who had direct dealings with the defendants; two undercover agents of the Drug Enforcement Administration who, from November, 1976 through March, 1977, penetrated the Barnes organization; one participant in the conspiracy who testified about the narcotics activities of Barnes and certain co-conspirators from 1974 to September 1976, DEA agents who engaged in important surveillance activity; and several officers of the New York City Police Department who took part in an investigation of Barnes and certain of his associates in 1976. In addition, the Government introduced more than twenty narcotics exhibits; thirty-six tape recordings; two videotapes; $132,874 in cash found in Barnes' car; $103,702 in cash found in Guy Fisher's

[2] In the spring of 1976, Hatcher purchased one of these Mercedes Benz from a New Jersey doctor. He paid for that automobile with $16,500 in ten and twenty dollar bills. (Tr. 5650–57, 5880; GX 223 I.)

car; tax returns of five defendants which showed reported "miscellaneous" income totalling over $1,380,000 for the years 1974–76,[3] and a variety of other documentary proof of the relationship between the defendants, their narcotics activities and of the literally millions of dollars in profits made by them in the narcotics business.

On January 19 and 23, 1978, the trial judge, the Honorable Henry F. Werker imposed the following sentences, all of which were consecutive except as otherwise noted:

Defendant (total prison term; total fine)	Counts	Terms of imprisonment and special parole	Fine
Leroy Barnes, a/k/a "Nicky" (life; $125,000)	1	No sentence	
	2	Life	$100,000
	3	15 yr, life parole	25,000
Steven Baker, a/k/a "Jerry" (30 yr; $20,000)	1	15 yr, 3 yr parole	10,000
	3	do	10,000
	7	15 yr, 3 yr parole, (concurrent with sentences on counts 1 and 3).	10,000
Steven Monsanto, a/k/a "Fat Stevie" (30 yr; $20,000).	1	15 yr, 3 yr parole	10,000
	3	do	10,000
John Hatcher, a/k/a "Bo"	1	do	10,000
Joseph Hayden, a/k/a "James Hayden," a/k/a "Freeman Hayden," a/k/a "Jazz" (15 yr; $25,000).	1	15 yr, life parole	25,000
Wallace Fisher (8 yr as youth offender)	1	8 yr as youth, 3 offender	
	4	(18 U.S.C. sec. 5010(c))	
	11		
Leon Johnson, a/k/a "J.J." (30 yr; $10,000)	1	15 yr, 3 yr parole	10,000
	12	do	
	13	15 yr, 3 yr parole (concurrent with sentence on count 12).	
Waymin Hines, a/k/a "Wop"	1	15 yr, 3 yr parole	
	11	15 yr, 3 yr parole (concurrent with sentence on count 1).	
James McCoy (20 yr)	1	15 yr, 8 yr parole	
	8	15 yr, 3 yr parole	
	7	15 yr, 3 yr parole (sentences on counts 1, 3 and 7 concurrent with each other).	
	8	5 yr	
Walter Centeno, a/k/a "Chico Bob" (young adult offender).	1	Young adult offender	
	5	(18 U.S.C. secs. 4216, 5010(b))	

Note: All of the defendants are presently serving their sentences.

FINANCIAL ASPECTS OF INVESTIGATION

There are several aspects to this investigation and to the trial itself which involve significant and interesting aspects of law enforcement. However, for purposes of this hearing two general areas of the case merit discussion: First of all it cannot be over-emphasized how important evidence as to the defendant's wealth was in obtaining the convictions. Specifically, the "miscellaneous" income reflected on certain of the defendant's tax returns, which amounted to total monies well in excess of $1,000,000, the evidence as to the luxury automobiles owned by various of the defendants and the seizures of over $250,000 in cash were essential to the success of the case. Certainly, the Drug Enforcement Administration should be encouraged to continue to obtain and utilize such evidence in cases involving large and substantial narcotics organizations.

It is equally clear, however, that the biggest problem in investigations of financial aspects of narcotics organizations stems from the severe limitations imposed by the Tax Reform Act. I do not intend to go into all the problems caused by the

[3] Barnes and four other defendants—all of whom used the same Detroit, Michigan, tax lawyers, Bolden & Blake, to prepare their returns—reported income, denominated as "miscellaneous" or "other", as follows:

	Barnes	Hayden	G. Fisher	Hines	S. Sasso
1974	$285,000	----------	$69,000	----------	$18,937
1975	287,000	$67,500	194,000	$31,592	28,757
1976	(*)	136,640	72,000	44,904	45,195
Total	572,000	204,140	435,000	74,496	92,889

*No return filed at time of trial.

legislation. However, I must point out that in the Barnes case itself if the trial had occurred when it was first scheduled we would have had virtually no evidence by way of tax returns. Several returns were not provided until the trial was actually in progress and we simply did not receive at all some tax returns that we had requested. Those problems were in no way caused by the individual IRS agents who were involved in producing information. In fact, because of the nature of the case, the individual agents were most anxious to help us. However, the limitations imposed by the Tax Reform Act severely affected our ability to obtain such information and retarded the investigation with respect to the finances of the Barnes organization.

Secondly, it is relevant for purposes of this hearing that we did not seek to obtain forfeiture of Barnes' assets under 21 U.S.C. § 848. Of course, the automobiles that were seized were forfeited in accordance with 21 U.S.C. § 881. Also, the cash monies seized were claimed by the Internal Revenue Service and not returned to the defendants.

We were aware that Barnes had an ownership interest in two housing projects in Michigan and that his investment supposedly was worth around $1,500,000. There were two basic reasons why we did not seek to obtain forfeiture of those assets. First of all there was no direct proof that those assets had been derived from Barnes' narcotics deals. We would have had to rely on the fact that our proof showed that he was a narcotics dealer and we would have then had to rely upon the inference that those assets necessarily must have been obtained from those activities. Because of that weakness in proof we were concerned that if we attempted forfeiture, it might appear to the jury that we were severely overreaching. Secondly, any proof as to real estate holdings by Barnes would have strenghtened one of his defenses which was that he was supposedly a "real estate investor".

In hindsight, it perhaps would have been possible in insert a forfeiture clause in the indictment and then obtain, through a bifurcated trial, a hearing on the forfeiture only after a determination as to his guilt was made on the substantive charge itself. However, as of 1977 at least, there was no direct authority for such a bifurcated trial and as a tactical matter the possible negative impact of seeking forfeiture indicated that it should not be attempted.

Much can be said, and I am sure, has been said before this Committee, concerning the desirability of forfeiting the assets of narcotics dealers. Perhaps legislation could facilitate such forfeitures. For example, amending Section 848 so as to provide for forfeiture of assets in a separate proceeding initiated and conducted after conviction on the substantive charge would be helpful. However, it is most important for the Committee and for Congress not to lose sight of the central objective of narcotics law enforcement. The most important aim of law enforcement and the best way to deter narcotics violations and immobilize narcotics violators is to convict them and send them to prison for substantial periods of time. The desire to obtain forfeiture of assets derived from narcotics dealings should not be allowed to deflect law enforcement from that primary goal but should be utilized as a tool as part of an overall law enforcement effort when appropriate

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Senator BIDEN. Our next witness is G. Robert Blakey.

Mr. Blakey, welcome. I did not keep my promise. It is 25 minutes after 1. Unless you can give everything in 5 minutes, I will break my promise and go to lunch. I would rather not do it.

Please state your name.

STATEMENT OF PROF. G. ROBERT BLAKEY, PROFESSOR AT LAW, NOTRE DAME LAW SCHOOL

Mr. BLAKEY. My name is G. Robert Blakey. I am a professor of law at the Notre Dame Law School. I was, up until this summer, professor of law and director of the Cornell Institute on Organized Crime. Most immediately preceding that, I was the chief counsel of this committee's predecessor, the Subcommittee on Criminal Law and Procedure, when it was chaired by the late Senator John L. McClellan, and I was the staff counsel who worked on drafting both RICO and the forfeiture and sentencing provisions of the Comprehensive Drug Abuse and Control Act of 1970.

Senator, I really have only a couple of germane points to make.

Under my supervision at the institute, a series of papers were prepared by students on what criminal forfeiture is, how it works, how it might be implemented in tracing funds and disposing of funds and a particular criticism of the *Marubeni* opinion—611 F. 2d 763—that Mr. Nathan mentioned, and I would like, with your permission, to incorporate them in the record.

[The material referred to above is on file with the committee.]

Beyond that, Senator, I really only have a couple of points. Perhaps I can personalize them and bring them home to you. I have listened with a great deal of, frankly, sympathy to what you said this morning and a deep sense of frustration, as one who has been very much interested in law reform and changes over the years.

Before becoming chief counsel of the Subcommittee on Criminal Law and Procedure, I was a young rackets prosecutor on Attorney General Kennedy's staff, and it was out of the frustrations with the organized crime program, between roughly 1960 and the President's death in November 1963, that many of the ideas that were embodied in RICO—and the other provisions of the Organized Crime Control Act of 1970—were developed and then matured in the 1967 President's Crime Commission.

There was a study made by a number of people, Henry Roth who ultimately became one of the special prosecutors, and Roscoe Pound was on the Task Force on Organized Crime. He subsequently became a Justice of the Supreme Court. We worried a great deal about precisely the kinds of questions you are raising. How can we deal with organized crime, not just the individuals, but the organizations? How adequate were the traditional remedies that we had, basically a fixed fine and some form of imprisonment? We found they were not adequate.

This committee did a study comparing Federal offenders against a designated class of Cosa Nostra offenders: the average criminal career, the number of cases brought against them, and the fines and imprisonments they received. It proved, in a scientific way, what everybody on the street knows: That organized crime pays very well indeed.

I worked with Senator McClellan on the wiretap statute and on the RICO provision that has criminal forfeiture. It also has dangerous offenders sentencing, and it has a variety of civil antitrust provisions. We thought that if we strengthened them, we would get a different result.

Frankly, Senator, my experience after that time has been one of a great sense of personal despair and frustration. I, as chief counsel to this committee, went over to the Department of Justice and sat down and discussed with prosecutors, many of whom were my close personal friends, friends that I have played poker with, whose family and my family had eaten together. And I said to Bill Lynch and other people: This is what RICO is. This is in 1970, Senator.

If you will stop thinking about this as case by case and think about it as organization, you could, if you think about it, think of a family of La Cosa Nostra as the "enterprise" and indict the whole family at one time, instead of indicting Mr. Luciano, who is succeeded by Mr. Genovese, who is succeeded by Mr. Tramunte, who is succeeded by Mr. Tieri, and you get nowhere.

That is exactly where we are. Here I sit, 10 years later, and I have to listen to the Deputy Attorney General who says that we have two cases under a statute that the Congress of the United States enacted over 10 years ago, and they are just getting around to conceptualizing the "families" of the Mafia "enterprises" and proceeding against them as groups. I have a great sense of frustration as a law enforcement official. I hear you say it is important that we get long-term sentences on some of the people we cannot afford to have around, and I hear what you say as a relatively young man is what I hear Senator John McClellan say as a relatively old man.

Senator BIDEN. Relatively speaking, I hope to get to be as old as Senator McClellan.

Mr. BLAKEY. When I started working for him, I was considerably younger than he was. He was chairman of five committees. He was in his seventies. At the time title III was enacted, we were on the floor of the Senate until 10:30 or 11 o'clock that night. The next morning, I could not rise from my bed. The 1968 act had gone through. We had been on the floor for several weeks. That man was in his office dictating letters at 8 o'clock the next morning. When I reach his age, I hope I will be half the man he was.

We gave the Congress the authority to seek higher sentences, up to 25 years. We set standards of who should be imprisoned and provided for appellate review if the district judge didn't see the situation the way the Congress of the United States saw it. I have not been able to convince my friends in the Department of Justice to use that statute. It has been used maybe five or six times in 10 years. I like it when you say, "Let us just talk about forfeiture." I would expand your vocabulary and say, "Let us talk about sentencing, too."

Mr. Nathan's testimony indicated that of the 25 major families, none have been destroyed; they have had 75 changes of leadership—20 of which had some effect of prosecutions. Ask them for the names of those 28 organized crime offenders. Ask them what statute the case was brought under, and ask them if, in fact, they had a DSO proceeding. Ask what was the authorized term and what term did they get, and I will suggest to you that they have not used it, and they have not got an adequate lock-him-up implementation policy with those people.

The current estimates are that there are approximately 5,000 members of La Cosa Nostra. They are prosecuting approximately 50 of those people each year. If like in the *Nicky Barnes* case, they got life terms, and nobody else was involved in organized crime, even as a liberal arts major, and I majored in philosophy, my mathematics is sufficient and I can tell it will take 100 years to lock up La Cosa Nostra if they got life terms in every one of them, and they are not even getting life terms.

In 1969, the average authorized sentence was 5 years and they were getting 2½ to 3 years per case. So I am somewhat disturbed when I find that the policies and priorities of the Department of Justice today, after a change of three or four administrations—Republicans, Democrats, good people, bad people—we indicted a couple of attorneys general—nothing changes. The people change, but the bureaucracy goes on as an institution.

What happens in many cases, is that they come before you and they say if you will change the Tax Act and this other statute a little bit, then we will get our job done. Do not believe it for a minute. When

they tell you that their problems are with the laws, they are telling you that their problems are with you, and you are the reason why they have not had a greater impact on crime and crime control.

Senator BIDEN. I have been so indoctrinated that it is even believable to me.

Mr. BLAKEY. Roscoe Pound says whatever law can do, it includes four elements—people, organizations, substance, and procedure. People, organization, and procedure are the most important. Substance does not make that much difference. I will tell you as one deeply involved in law reform and in writing the Criminal Code—I worked with Senator McClellan for some 10 years—Federal enforcement, largely, has the tools that law can give it. If you give me the right to rewrite the law, I could change a couple of things, but it would not make that much difference.

The problem is not the Tax Reform Act, although I would change it. The problem is not the RICO provisions, although I would clarify some of them. They are adequately drafted as they are.

The real problem is with organization. They are not organized to fight crime. They don't have a mission paper. They don't know what they are doing, how to go about it, and what the impact is. What you have is superior lawyers, people who stay up all night in gathering evidence and then presenting it to the jury, but then walk away and not worry about what happens afterward.

There was a case which was just prosecuted in New York. I am referring to the *Scotto* case. He was identified as part of the Cosa Nostra in this subcommittee's hearings when the RICO statutes went through. It almost amounted to a bill of attainder because his father-in-law was Tough Tony Anastasia, that family, the blood family, and the Fictive family have had control of the New York docks since the Kefauver committee hearings. That is 30 years ago.

We identified Anthony Scotto as a member of the Cosa Nostra and said he was corrupting the union. What is the impact? People do not ship in material into New York City. Because of corruption, we enacted title III, wiretapping. As a matter of fact, Mr. Fiske, Southern District of New York, and the best set of prosecutors, built a substantial case against Mr. Scotto. The jury said that without wire taps, we wouldn't get a conviction. They got a RICO conviction of Anthony Scotto. If they prosecuted under Taft-Hartley, it would be only a misdemeanor. Under RICO, it was a serious felony. They got it up to conviction. But there was no forfeiture clause. I am talking about his presidency of that union.

There was also a decision in the fifth circuit, *United States* v. *Rubin*, that specifically sustained the use of the forfeiture provision of RICO to take a union official's job away from him when he has abused his union power.

There has been no subsequent civil proceeding brought by the Department of Justice to reform that union, to clean it up, to make it no longer a stranglehold of organized crime over the docks because the Department of Justice's imagination is limited to being a court room advocate and bringing criminal convictions. They have no concept of sanctions in the broad sense.

I feel about the 1970 acts a lot like Chesterton felt about Christianity. It has not been tried and found wanting. It simply hasn't been tried. Until they go out on the street and use it, and vigorously

use it, and say it didn't make any difference, then I will believe it, that it hasn't worked.

Take the wiretap statute. This Judiciary Committee was concerned that the wiretap statute be appropriately used. They formed a commission to study the wiretap statute 7 years after it was enacted. I was privileged to sit on that commission. I had drafted the statute and, as a commissioner, I got to see the record of how it was employed and, let me tell you how it was employed by the Drug Enforcement Administration. This is in our public hearings and in our record. They found that the statute was so effective in the gathering of evidence that they had more evidence than they knew what to do with. They did not have the manpower to assimilate the evidence, to put it together, and to use it in criminal cases. They didn't even have the manpower to disseminate it to the States. What was their solution to this evidence-gathering tool that gathered too much evidence? They ceased to use the tool because it causes them administrative problems. We asked them, if you are getting more evidence than your manpower can consume, why don't you ask for more manpower? They didn't do it. There has been a steady decline in the use of the wiretap statute since 1968—but not because it is ineffective. It is because, frankly, it is too much trouble to use, it is too difficult to use.

We found that the DEA agents would much rather work 8 to 5 and "bust and buy" and talk to informants than put a wiretap on, because if you put a wiretap on, you have to monitor it at all hours, so instead of being at home watching TV with your kids, talking to your wife, or watching the Saturday football game, you have to be on a phone. It may come in fast and thick and heavy. You have to have surveillance teams on the street at night, and it may cost you your marriage. It is a lot easier to sit at home and work banker's hours 9 to 5. You are dealing with restructuring and remotivating and retraining the lawyers in the Department of Justice, insisting, for example, that they do have a plan.

For example, up until the Law Enforcement Assistance Administration was largely abolished by not funding it, the Federal Government was spending approximately $500 million on local law enforcement and another $500 million on Federal law enforcement. Congress insisted that the States have a comprehensive plan on how they would spend their $500 million. Congress, not very wisely, has never insisted that the Department of Justice have a comprehensive plan on how they spend their $500 million. I am not bad mouthing just Benjamin Civiletti, because I know him, and I know of his craftsmanship case by case. As the Nation's chief law enforcement officer, if you ask him how many people do you have in all the agencies—from Fish and Wildlife to the Drug Enforcement Administration and the FBI—and how are each of them being used, he could not tell you how they are specifically being used to reduce crime. Where is the crime you are concerned about?

Have you allocated your resources where you get your best bang for the buck?

Are you using tools for dangerous criminals sentencing?

For forfeiture?

A lot can be said that it ought to be focused on the rising groups in Florida who are putting together organizations like the Italians

put together in the thirties. Many of the Italian families are so old that age is going to handle that facet of the organized crime problem. Some of the young "cocaine cowboys" in Florida are going to put together organizations that will look like 10 or 15 years from now the old line families.

Maybe they ought to be working on preventing their organization, because if they ever want to get organized they will be very difficult to deal with. If I thought they had a strategy, a thought-through strategy, such as I am not going to work the old line Italian family, but the new groups, in Florida, so I won't have that kind of a problem 10 or 15 years from now, I would say fine, let us debate your strategy. You might be right. You might be wrong, but at least you are thinking about it.

That does not now exist in the Federal Government, and until it exists, I don't think it is going to make any difference whether we have forfeiture or not.

Senator BIDEN. I have been critical along those lines when I had the oversight hearings for the Criminal Division, and you are right. It does not exist. But one of the things stated to me, and I would like to hear you respond to it, one of the reasons it does not exist is that the Congress keeps meddling in it. It changes the priority. They just get set.

A case in point is the Drug Enforcement Administration. Here we went through periods where we set it up and then every new President and Congress came in and said we are going to reorganize it and change it around and alter it and all of that——

Mr. BLAKEY. I don't believe that, Senator. I'm sorry I don't believe it. Let me put it in another personal context. When some of us were on the staff of the President's Crime Commission in 1967, some of us had a sense of history. We said let us figure out how it has been done before 1967. Has anybody else thought this? Lo and behold, there was a Wickersham Committee on which Roscoe Pound sat. We said is that the first one? No. In 1922, a young law professor, Felix Frankfurter, and Roscoe Pound had a study on how the criminal justice system was working in Cleveland. What was said in 1922 was said in 1930 and said in 1967, and LEAA had another group, the Peterson Commission, and they said it in 1977. The ideas on how this should be done; that is, working out strategies of thinking this through with a "mission paper," of particular strategies, this has been around since 1922.

I think it really is playing a dishonest game to shift this off to the Congress, because in the last 4 or 5 years, there have been some changes in the administration and changes in personnel and changes in reorganization.

They just don't do it because, in part, they are run by lawyers, and I will stand convicted along with my fellow professors if you want to indict me for the way our legal education goes on. We train people how to bring cases, not what difference it makes if you bring a case. It is a question of a series of cases and not the impact of any one. All we think about is get the conviction and hang one more scalp to a lodge pole. Until you can force the people down there to do it by holding up their budget, you will not change things. If that is required to come up with a strategy, that is what you will have to do. For

example, they have all come up here and said that they are training themselves now—talk is nice—10 years after the statute was enacted. They have got their priority set. You said "forfeiture." Now they will do forfeitures.

One of the problems if you begin measuring them with forfeitures they will produce forfeitures. When you measure a person, sometimes a person will produce whatever you want measured. They don't worry about what it does to the drug traffic. If you want forfeitures, they will give it to you.

Congressman Rooney used to want recovery of stolen property. Hoover went out and worked car cases, because you could recover a stolen car 90 percent of the time. He used to explain to Mr. Rooney how good the FBI was in recoveries. They were making their cases off State arrests. When the FBI agent walked into the local jailhouse, the kid confessed. They then had a Federal conviction and the recovery of a stolen car and they looked good when they came up to talk to Mr. Rooney.

One of the problems that I have with what you are saying, do forfeitures——

Senator BIDEN. I am not asking it yet. I am not sure it is worth doing.

Mr. BLAKEY. I am sure that a limited program of only criminal convictions has been tried and found wanting. That is very clear. We have been working La Cosa Nostra—to heck with other organized crime groups—and La Cosa Nostra is not the be-all and end-all. We have been working them for 20 years. We have yet to break up one of the families, much less the whole nationwide structure. The way we have been doing it is one-by-one, criminal convictions. Because each prosecutor has said to you or his boss, it is important to get the conviction. I am not going to worry about forfeiture, about a sentence or subsequent civil remedies. I have to get my conviction first.

My problem is that they never get to Nos. 2, 3, and 4. No. 1 is conviction.

Senator BIDEN. How do I accomplish what you set out—running and winning? McClellan couldn't get them to do it. How is an insignificant guy from Delaware going to do it?

Mr. BLAKEY. I think Senator McClellan was going to do it. He sat on the Appropriations Committee and Investigations so he knew; and he sat on Criminal Law and Procedures and over time he got the statutes in order. He did. He found out what they were doing on Investigations. He got laws enacted on criminal laws. He was appropriating the money for them and we were, at the time of Watergate when everything else got in the way, beginning to plan oversight hearings on how they were being run, and I think that where your attention belongs is not necessarily in the drafting of new statutes, where we promise the American people that with the enactment of this law we will do this for them.

Senator BIDEN. On that point, I agree with you.

Mr. BLAKEY. We have to make them work the ones that they have. We have to make them work well. That is what you were doing this morning, lecturing them and expanding their imagination, asking them why they are not bringing RICO forfeitures, DSO's, and so forth. Let me expand.

If you were to ask them which of the 28 people, members of La Cosa Nostra, what was the authorized sentence, what did the judge give them, did they use RICO, did they use forfeiture, did they follow any of those cases up with civil proceedings, and did they have a title X dangerous special defendants sentencing on those cases in order to get the maximum sentences, I dare say you will find in the 28 cases all they went for was a criminal conviction, despite the fact that we know that just criminal conviction is not enough.

Senator BIDEN. One of the problems I have at the outset, I have been on this committee 4 years, maybe longer, and I have been in the Senate for 8 years, trying to give the Justice Department more money, trying to get them to increase their staff, trying to—as a matter of fact offering. The fact of the matter is that that is just in the Criminal Division, just this past year. I am not in the power position that Senator McClellan was in, but I am on the Budget Committee and this committee to increase the Criminal Division, but I think it was 40-some additional people.

Although I am a supporter of the present President, I didn't find a lot of support from the Office of Management and Budget and/or the Justice Department for this so I find it a strange phenomenon. I think I understand the pressures of the guy or woman who heads the Criminal Division at any one time.

You know if the boss up top says, look you have got a friend up there trying to give you more money, we have got tight budget problems, and we don't want more in this division, we want more in such and such a division, I understand that. That is part of the frustration.

I daresay if we had a commitment as to what the plan would be, what the strategy would be, the Congress and the American people—the only place wherever we poll and everybody who sits in this body will tell you, and I know among professionals, politicians aren't thought very highly of, but we do have a sense of being able to read the public on occasion. I think they will all tell you that we have no problem in increasing the Justice Department's budget significantly. I can go back home in this day of balancing the budget and increaes the Justice Department's by 40 percent and not get a ripple—nothing but support. Nobody is going to argue with me any more than they will argue about the present support for increasing the defense budget—the only thing that everybody agrees on.

In all the polls when they ask people what do you think are the major issues, they list the economy, the Defense Department, and the foreign policy. They don't put crime up there like in the sixties or seventies. Few—some—law enforcement officials say that means we are doing a better job.

Yet, when you ask the people do you feel any safer, do you feel like we are making any greater dent on crime, the answer is absolutely, unequivocally no. We have developed a new multibillion-dollar business of locks, guns, and mace and weapons less sophisticated than guns. Why? That is the outcome because the American people concluded that they can't do anything about it. The American people have concluded even though fewer women will go to the local shopping center at night than did 10 years ago or more, fewer feel safer. I realize this is not organized crime. Yet, there would be no

problem in spite of all that, of significantly increasing the budget of law enforcement officials if there were a plan. Do you know why LEAA died? When I asked them the question, what did you do, there weren't any good answers. Found out everybody got a little piece, no concentration. Found out when we asked what the overall strategy was, there wasn't any overall strategy as a practical matter. All generalizations are false as Clements said. That is why it just slipped through the cracks here. I find it difficult.

I asked the Criminal Division when they go up to oversight, how much time do you spend on organized crime, and they are not quite sure, and they point out accurately a lot of white-collar crime is organized crime, but I wonder whether or not my saying all this and what you have said is not too harsh a criticism of the agencies because I am beginning to wonder maybe I have been talking to the people too much. I am beginning to wonder if there is anything we can do, whether the best we can do is put our fingers in the dike and get convictions.

Mr. BLAKEY. Let me make two comments, and let me draw one from some personal experience. I was chief counsel of the Assassinations Committee. We had to go back in and look at how this Government responded to President Kennedy's death. It was clearly the judgment of our national leadership that the American people were deeply disturbed about the President's death, and it was important to get to them a clean, simple explanation of why he died. If we didn't do this and do it quickly, the American people would become disturbed.

They developed a shortrun solution. They gave a quick, easy answer to why President Kennedy was killed to the American people. It satisfied some of the people for a very short period of time. But it put into the body politic a long-term dissatisfaction—a loss of credibility with the Government. The problem then was not with the American people. I think the problem was with the political leadership. Let me come forward in time and note the enormous maturity of the people during Watergate, when this country, in a deliberate and legal and in a full due-process way unseated a President—without riots in the street or other things that in other parts of the world are characteristic of changes in their leadership. The American people would have waited a long period and permitted a complete and full investigation of the President's death. They would have accepted the answer, we know who did it, but we don't know if he had help. We honestly don't know. Candor in 1964 would have eliminated a lot of credibility problems of 1980.

If the American people are becoming despondent about crime control, the problem is not really with the American people. They are not supposed to know how and what is to be done. The experts are. The American people are perfectly capable of picking experts to do something, even if they are not capable of doing it themselves. Expertise has been around as to what should be done. The failure is in political leadership. It is not Mr. Civiletti, because his predecessor was no better, and his predecessor's predecessor was no better, and his successor will probably not be better either. If I have some hope in

the matter, and I do, it is that Members of Congress will stop thinking about passing more laws, although laws are important and should be passed, and start spending their time, particularly in the Senate, where you are here long enough to learn what the problem is, what the law should be and then how it is to be implemented, and then begin holding their feet to the fire.

Unless Congress insists that the administration administer, organize themselves and bring in the best in ideas and implement it on enough of a long-term basis that we see some results, I am unwilling to accept the inability to do something as an excuse.

So this kind of hearing which is oversight if that leads them forward—they now tell us as a result of these hearings, 10 years after these statutes were enacted, they are developing a manual to implement it. That is not in criticism of the fact that a manual is being developed. I am glad that it is. I am glad the manual is being developed, and I hope the U.S. Attorney's Office implements it. We will find out it works. Unless you do that, watch it day by day, and worry about its implementation, I don't think we will get anything done.

You asked how you do it. You are doing it in these hearings. You hold up their budget and insist they they give you a written plan, which is an assessment of the crime problem that they face, an assessment of the number of men and women that they need, how those men and women are organized and allocated, what their shortrun, 5-year plan is, and what their longrun, 10-year plan is, and why they have selected these cases, and not those and what the results were from these cases.

They don't even have the capability of studying themselves. When GAO went over to ask them about forfeiture, they didn't have the data.

How do they possibly know what their impact is unless they have basic management statistics?

If the Department of Justice were a private corporation, its creditors would have long since put it into involuntary bankruptcy. It is only because their product is justice and they have a monopoly over it that it has gone on as bankrupt as it is, for as long as it has. It is not a criticism of the individuals who are doing enormously important work, case by case. They are great legal craftsmen. The fact is that there are no people who have thought systematically about what they are doing with resources as an 18th century—not 19th—18th century law shop with some veneer of change.

Senator BIDEN. There are some people from the Department of Justice who are anxiously waiting to take you to lunch.

Mr. BLAKEY. Senator, I have not said anything in this hearing publicly that I have not said privately, and I have not said anything in 1980 that I have not said to them in 1970.

Senator BIDEN. I am not sure that that gives me hope or makes me feel depressed, but I appreciate your time and I will warn you that, with your permission, the subcommittee will continue to call on your expertise and background.

Mr. BLAKEY. I will be glad to cooperate.

Senator BIDEN. Thank you very much.

Our next most patient and last witness is Mr. Leslie C. Smith. Mr. Smith, welcome.

STATEMENT OF LESLIE C. SMITH, ATTORNEY, TRUTH OR CONSEQUENCES, N. MEX.

Mr. SMITH. Good afternoon, Senator.

Senator BIDEN. Would you for the record, state your name, your educational background, your professional background, where you are employed, and in what capacity.

Mr. SMITH. I am a lawyer at Truth or Consequences, N. Mex., and I am a small town country lawyer. I have written many articles, and I wrote my LLM thesis about forfeiture, and I have handled a lot of forfeiture cases, as defense counsel. I know a little bit about the practice. I am not sure that I am not in tall cotton. I am very pleased by the people I have heard testify.

I would like to make a couple of observations about forfeiture. Anytime you have a forfeiture law on the books, it has got to have a reason to be there, as you say, and that reason is to deter, to punish, to deprive criminals of an economic base, and I will tell you flat out that the forfeiture laws in my experience are right now not doing that. If you look at the civil forfeiture laws, for a minute, the people that are in organized crime and the people that are in smuggling, those people also have boats and cars and aircraft and they don't own an interest in hardly any of them. They go out and lease them or else they put down $150 and buy it. They make payments on it, and then when it is forfeited, what have they lost? They have not lost anything. The big money is buried somewhere. I don't mean in the backyard, but it is out there somewhere. How you get to it, I don't know.

I will say this, the people that go out and buy their cars and do buy their airplanes and then have them forfeited—it is a risk of doing business. Marihuana goes up next week on the street. It is just cranked into the formula. At least that is the way I see it. I think that Professor Blakey is right. I think there are plenty of laws on the books right now. I think one of the ways I have seen, and this is the way I have seen it in the Commonwealth countries, is that you go after those people with heavy fines, and I am not talking about $25,000—that is pocket change—I am talking about $1 million. How do you get that out of those people? One way is that you may take any asset that they have as security for the fine and foreclose it. Now, you don't have to show any nexus and connection between Mr. Barnes' houses in Michigan and his narcotics ring. He has got houses in Michigan. He has got a $500,000 fine. We are going to foreclose that and that is it.

I think right now I would have to agree with the professor, and I guess I have serious questions in my own mind about the efficacy of the forfeiture laws as they are on the books and whether they are doing what they are supposed to be doing. That is in essence my statement.

Senator BIDEN. Tell me a little bit about your involvement in forfeiture cases. In what way have you been involved?

Mr. SMITH. I have been the person in several cases or in many cases where people call and say, "My car has been seized." Or in more likely cases, the banker calls and says that the car or airplane which we lent $50,000 on has been seized by the Government. The people punished there are innocent people. I say, innocent people—these people are bankers, leasing companies.

Senator BIDEN. Have you handled any criminal defense cases where your client has been alleged to have been a narcotics trafficker?

Mr. SMITH Yes, sir.

Senator BIDEN. How do narcotics traffickers wash their money and why do they do that?

Mr. SMITH. Well, again, I have got limited experience on it, but I assume it is fairly easy to take money and most narcotics dealers deal in cash or precious metals. If you are dealing in cash, it is easy to take cash money and have an investment in a foreign country or to turn it into—like I said, buried money is not unusual. I am being literal. There is buried money. When I say money, I am talking about metals or just cash.

Now, how do you get rid of it, I don't know, except that in the Commonwealth countries, the man is convicted of the crime and after the conviction, there is a sentencing hearing, and the judge says: "Let us take a look, not a reasonable doubt, but let us take a look at the entire picture of this guy's finances just to see what kind of fine we should impose."

It is not unheard of to do plea bargaining when you have got, OK, say 5 years, and $1 million in fines, or 25 years, and $5,000. You will see some money come out of the bushes. I think that kind of money, big money like that, hurts.

Senator BIDEN. So you think that if big dollars, tens of millions of dollars, were able to be extracted from convicted narcotics dealers that that would have an effect on the continuation of that apparatus of the organization? What effect would it have other than getting the money which is not unimportant?

Mr. SMITH. I honestly just don't know. These people for the most part have got to have some kind of money to make money just like anybody else in business, I guess. If they don't have that capital, then it is going to be that much harder for them to get into business next week. If you take their grubstake, as it were, then they are going to be back down in the peon level again working for somebody, driving a truck across the border with marihuana, rather than engineering entire networks.

Again, I have real questions with it.

Senator BIDEN. You think, as a practical matter, the efficacy of the forfeiture statute would probably be exceeded by a healthy fining policy, a policy where there were significant fines?

Mr. SMITH. If the fine is backed up with security interests in any of the man's assets, whether they are traceable to the crime or not traceable, he pays a fine. And if they don't pay the fine, we take the sheriff out here and auction that apartment house off until we get the fine. That has got to hurt. Again, this is no novel idea. This is a thing that is used in the Commonwealth nations now.

Senator BIDEN. Well, I am afraid that I have taken so much time with everybody's testimony that I have gone almost 1 hour and 15 minutes beyond the 1 o'clock time we intended to stop. I think your practical suggestion is maybe one of the most meaningful things that was said by me or that has been brought by anybody here this morning.

I don't know, I really don't know whether or not the position of the forfeiture statutes will be worth the trouble that it will take, and it will take more trouble to do it, not withstanding what everybody

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else has said here today, in my opinion, and maybe this committee should be focusing on how as we come up with a criminal code and we are hopefully going to pass the revised Criminal Code this year, that the sentencing provision as it relates to narcotics offenses may very well mandate, as we are mandating other areas in terms of time spent in jail, a different structure.

I appreciate your coming.

Mr. SMITH. I'm honored that you invited me.

Senator BIDEN. Thank you very much.

I would like to thank the members of the Justice Department and the Drug Enforcement Administration and our other witnesses for their patience. With regard to the administration officials, I am sure we will be talking some more about this. I hope this is not viewed as a means of somehow vilifying any group in the Government. Quite frankly, I have been sitting here for the last 10 minutes thinking about how and what kind of report I should write based on these hearings. Maybe the kind of report that should be written is more of a narrative of what the hearings were and a summary with an attempt after speaking with members of the Justice Department and the Drug Enforcement Administration again privately as to how we could restructure further down the road. Our last Drug Enforcement Administration witness suggested, and quite properly so, that there will probably be a greater data base a year from now to measure some of these questions that have been raised than there is now. Maybe what we should be doing is spending most of our time thinking about where we go from here, but I am convinced and in a sense the Drug Enforcement Administration and the Justice Department have created a monster to me because they have convinced me of the absolutely insidious impact that organized crime and narcotics has had and is going to have.

The first 6 months of my chairmanship of this committee, the Drug Enforcement Administration was up trying to educate me as to the horrendous prospects of what is about to come. As they say in the southern part of my State, "Y'all convinced me." Now, I am very anxious to know what we are going to do about it.

I know it is not a very definitive way to end the hearing, but I do not see anything definitive about the hearings. This is just a start of what, hopefully, will be, over the next several years, a coordinated effort on the part of the Congress and the administration to give you the tools and to make sure that the tools are used, not just by the Drug Enforcement Administration, but by the Justice Department generally to see what we can do because I surely do not have the answers, but I surely have a lot of questions. I have even more questions after the hearing than I had before they started.

Again, thank you very much for your patience. I mean that sincerely. I also want to thank you for your cooperation. There will be more.

The hearing is adjourned. Thank you.

[At 2:20 p.m., the hearing adjourned subject to the call of the Chair.]

APPENDIX

QUESTIONS OF SENATOR BIDEN AND RESPONSES OF IRVIN B. NATHAN

Question. In your statement you refer to 25 major identified traditional organized crime groups in the United States. Are any of these groups involved in drug trafficking? Have any RICO or CCE cases been brought against them? If so name them. If not, why not?

Answer. Since May of 1979 allegations have reached the Department of Justice that traditional organized crime groups have once again become active in the heroin trade. For example, Pasquale Politano, who has been alleged to be a lieutenant in the Buffalo syndicate, and two associates are currently under indictment for large-scale heroin trafficking. And convictions were obtained last month in *United States* v. *Alfred Ponticelli, et al.*, a RICO case involving two members of the Los Angeles syndicate and three associates charged with heroin, cocaine and oxycodone offenses and with collecting "protection" payments from narcotics traffickers in the Los Angeles area. Organized crime trafficking in other drugs has also appeared. On September 2, 1980, sentencing took place in *United States* v. *Ralph Natale, et al.*, which involved five defendants convicted of cocaine and quaalude trafficking in the Miami area. Natale is alleged to have been an associate of the late Angelo Bruno, reputed boss of the Philadelphia organized crime family.

Strike Forces now report organized crime groups involved in importation of Southwest Asian heroin by way of the old French Connection route. In two instances, the elements active in this area have been identified as "third generation" people, that is, grandsons of organized crime members who are getting their start in this area.

A number of RICO cases have been brought against the leadership of these traditional organized crime groups. They include *United States* v. *Brooklier, et al.* (alleged hierarchy of the Los Angeles mob); *United States* v. *Inendino, et al.* (alleged to be the Chicago syndicate's largest loansharking operation); *United States* v. *Licavoli, et al.* (alleged hierarchy of the Cleveland mob); *United States* v. *Barton, et al.* (alleged hierarchy of an insurgent mob faction in Rochester, N.Y.); *United States* v. *Marcello, et al.* (bribery scheme involving the alleged chief of the mob in New Orleans); and *United States* v. *Tieri* (alleged boss of what was once the Genovese family, now the Tieri family, in New York).

The *Inendino* and *Barton* cases have resulted in convictions. The remaining cases are pending.

Question. Does the Department have a procedure for ascertaining what major drug cases have used the forfeiture statute? What is it? Why did GAO have to generate their own list of cases?

Answer. The various components of the Department of Justice have different reporting systems that provide certain information about use of the forfeiture statutes. The Executive Office for United States Attorneys collects and computerizes docket cards on every case brought by U.S. Attorneys across the country. From this computer system cases can be retrieved according to the primary statute used and the investigating agency involved. Since, if they are used at all, the RICO or CCE statutes would ordinarily be listed as the primary statute, retrieving all CCE cases and DEA-investigated RICO cases would indicate what drug cases had the potential for criminal forfeiture. However, ascertaining whether forfeiture was actually obtained in these cases would require looking into each case. The Executive Office can also retrieve all civil cases involving DEA; the vast majority of these would be civil forfeiture actions. The gross forfeiture figures compiled by the Executive Office cannot be broken down by individual case.

The Criminal Division does not ordinarily compile information on cases brought by U.S. Attorneys in which it has no involvement. The Division's Office of Policy and Management Analysis has recently developed a case management information system for all cases within the Division's operational responsibility. This system will enable the Department to ascertain which major drug cases handled by the Criminal Division have used the forfeiture provisions. Additionally, U.S. Attorneys are required to obtain approval before seeking indictment under the RICO statute. The Deputy Attorney General recently established a similar requirement for indictments under the CCE statute. Accordingly, the Criminal Division will henceforth have a record of those RICO and CCE cases authorized by the Department and in which forfeiture is sought.

The Drug Enforcement Administration recently compiled a list of drug-related RICO and CCE cases from its records and ascertained through questionnaires which cases had used the forfeiture statutes and what the results were.

The GAO was assisted in its study and in the preparation of its list of RICO and CCE cases by the Criminal Division.

Question. Are you in agreement with the GAO list of cases and forfeitures? Why are there so few cases and forfeitures?

Answer. We believe that perhaps with several exceptions the list which GAO prepared with our assistance is accurate.

As I indicated in my statement to the Committee, most Assistant United States Attorneys have not aggressively pursued forfeitures for the reasons I discussed. It is an aspect of law enforcement that is rightly perceived as difficult and time-consuming. Many prosecutors and agents were reluctant to commit the time necessary to develop these kinds of cases and considered the investigation of the drug-related activities of defendants to have a higher priority. We have sought to address this problem and to bring about more effective use of these statutes.

Question. What factors enter into the decision of whether to seek forfeiture in a particular case? Are there any guidelines in the area?

Answer. The factors are many. We believe that some of the more significant include the impact of the potential forfeiture on the criminal enterprise, the difficulty in identifying property which would be subject to forfeiture, the ease with which assets can be dissipated, the difficulty of proof of the connection of the property to the criminal activity, the relative value of the asset compared with the effort required to forfeit the asset successfully and the existence of third-party interests in assets believed to be generated by criminal activity.

Although no definitive guidelines have been promulgated by the Department, we will soon publish a Manual on Criminal Forfeitures that will set forth the proper procedures and identify the pitfalls involved in obtaining forfeitures. The Manual is essentially complete and should be published before the end of this year.

Question. Why do drug traffickers wash money? Where do you think the drug money is located? Is there any in legitimate businesses?

Answer. Drug traffickers wash money to insulate themselves and their income from drug-related activity. By sending the money through the banking system and through ostensibly legitimate businesses, the traffickers can generate an asset which can then be used in such a way as to elude investigative efforts to trace it to the drug-related activity.

The Criminal Division has no intelligence-gathering capacity of its own. According to information from the Drug Enforcement Administration and other investigative agencies, drug-related monies and assets are located in businesses—both legitimate and illegitimate—and in personal and corporate accounts—both domestic and foreign—and in personal and real property. The assets are held in some instances in the name of sham corporations or third parties acting as straw men for the real owners of the assets. As I stated in my testimony, billions of dollars generated by drug activity are apparently sent through the banking systems of the offshore tax havens in the Cayman Islands, the Bahamas and Panama.

Question. How can the ability of federal enforcement personnel to conduct financial investigation be improved? Should DEA agents and prosecutors include among their ranks a number of accountants to conduct financial investigations? What kind of formal training in accounting do you recommend?

Answer. The most important step in increasing our ability to conduct financial investigations is to provide more and better training to investigators and prosecutors. We also believe there has to be increased interagency cooperation in the development of cases. Finally, there must be a greater sharing of information and resources within the federal community, not only among the agencies traditionally involved in law enforcement but among the regulatory agencies as well. As I have

testified on several occasions, this process would be greatly assisted by bringing about changes in several statutes, including the Right to Financial Privacy Act of 1978 and the Tax Reform Act of 1976.

We believe that agents and prosecutors should include among their ranks individuals trained in accounting. There should also be greater sharing of accounting resources from agencies other than DEA participating in financial investigations of drug traffickers. Additionally, we believe that opportunities for training by agencies such as the IRS should be made available to agents of the DEA to increase their capacity to develop financial investigative techniques.

Question. Do you believe that assistants are wrong in defining success in terms of convictions and not forfeitures?

Answer. We believe that any definition of a successful prosecution necessarily includes the conviction of the defendant for the criminal activity. What we have perceived, however, is that agents and prosecutors have not given sufficient attention to the potential for successful forfeiture in these cases. As I indicated in my testimony, we are addressing this problem to bring about a change.

Question. What kind of guidance or training have prosecutors had available to them for ensuring successful forfeitures under RICO, CCE, and Section 881 of Title 21?

Answer. Prosecutors and DEA agents have attended the Advocacy Institute Training Conferences which have been offered twice annually since 1974. In the past several years, these conferences have included lectures and workshops on RICO and CCE cases. Additionally, the Department distributed to the United States Attorneys manuals on RICO, Section 881 of Title 21, U.S. Code, and the Bank Secrecy Act of 1970.

Question. When was the study of 100 CCE and drug-related RICO cases initiated by the Department?

Answer. The study was initiated in May 1980 after a number of discussions among several Assistant United States Attorneys, Criminal Division attorneys, DEA personnel and the Deputy Attorney General concerning the problem of Southwest Asian heroin.

Question. You refer to necessary changes in the present law to eliminate the need to prove a connection between the defendant and his property. However, we have heard testimony in the hearings to the effect that present proof of a CCE case necessarily involves sufficient proof for forfeiture. In that light, is there any need to amend the statutes to eliminate the need for a connection?

Answer. Section 2004 of the Senate-passed Criminal Code Reform Act provides for the forfeiture of all proceeds derived from a RICO enterprise (thereby solving the problem created by the decision in *United States* v. *Marubeni America Corp.*, 611 F.2d 763 (9th Cir. 1980)). Section 2004 also provides that if the proceeds of the enterprise or property derived from such proceeds cannot be located or identified, any other property of the defendant shall be forfeited up to the value of the criminal proceeds.

The Department is convinced that this change in the RICO statute would be extremely valuable in obtaining significant forfeitures. Currently, as a result of the *Marubeni* decision and several district court decisions to the same effect, the Department has been unable to obtain the forfeiture of any proceeds of a RICO enterprise, even where such proceeds can be precisely identified and located. However, we believe that where, as is often the case, the criminal proceeds have been washed or hidden so that they cannot be traced, the Government should be able to forfeit any other property of the defendant up to the value of the criminal proceeds.

We do not believe that proof of a CCE case "necessarily involves sufficient proof for forfeiture." Proof of a CCE case merely requires that the defendant be shown to have derived "substantial income or resources" from the drug enterprise. But forfeiture under the CCE statute is limited to "profits" and property purchased with such profits. Thus, the Government must be able to locate the property and trace it back to profits derived by the defendant from the drug enterprise—and that is often not possible. Section 2004 of the Criminal Code Reform Act would allow the Government to forfeit any other property of the defendant up to the value of the criminal profits.

Question. Was cooperation between IRS and DEA before passage of the Tax Reform Act of 1976 such that substantially more narcotics money was placed in the Treasury before passage of the Act?

Answer. We are aware of instances of cooperation between IRS and DEA prior to the passage of the Tax Reform Act of 1976. Although we are confident that this cooperation resulted in the collection of narcotics-generated money into the

Treasury through the civil and criminal process, we are not able to say what the level of collection was or to what extent the passage of the Tax Reform Act changed that in any way. We believe that IRS and DEA could be in a position to furnish information which may be more helpful.

Question. What investigations in what cases were prematurely exposed when financial institutions notified subjects of federal law enforcement inquiries?

Answer. During the first three months following the March 10, 1979, effective date of the Right to Financial Privacy Act of 1978, reports were received from eight field offices of the Federal Bureau of Investigation, several United States Attorneys' Offices and an Organized Crime Strike Force that financial institutions were notifying customers of grand jury subpoenas for financial records. No record was kept of the specific investigations involved. Such notifications were attributed to a misinterpretation of the Act by the financial institutions. Despite efforts by tne Department to correct the interpretation of the Act, this problem continues to exist.

Question. Would a system of higher fines at sentencing time solve the problems created by the forfeiture statutes and achieve the same ultimate goals?

Answer. A properly designed system of higher fines could tend to accomplish the goals of the forfeiture statutes, but there are significant limitations. We do not generally have mandatory minimum fines in this country; the potential for unfairness in such a system is high. The effectiveness of a discretionary system is uncertain because it depends upon the willingness of judges to impose fines high enough to provide a meaningful deterrent. Fines that high run into a Constitutional limitation—Article III, Section 3, Clause 2 of the Constitution prohibits "forfeiture of estate," i.e., the forfeiture of essentially all of the defendant's property upon conviction of a crime. See, e.g., *United States.* v. *Berg*, 620 F.2d 1026 (4th Cir. 1980).

For these reasons we continue to believe the best way to proceed is along the lines of Section 2004 of the proposed Criminal Code, which provides that forfeitures must bear a relationship to income derived from criminal activity.

Questions of Senator Biden and Responses of William J. Anderson

Question. You state that, with the 1978 amendment, the DEA civil forfeiture statute (21 U.S. Code § 881) seems to have the same reach as RICO and CCE. Is it your opinion that § 881 is superfluous or duplicative?

Answer. The answer to that question would be a qualified "no." Civil forfeiture requires a lesser burden of proof, and operates on the theory that the property to be forfeited is tainted or, the property itself, as distinguished from the property holder, is guilty. Civil forfeiture under section 881 works reasonably well as applied to derivative contraband (i.e. cars, boats, planes and other items used to facilitate the exchange of narcotics). But some believe there are two problems on the horizon for section 881, if it is to be used to forfeit profits. First, the prosecutor's failure to seek or achieve a proceeds forfeiture in a CCE criminal prosecution may raise due process considerations if the government later attempts a civil forfeiture of the same proceeds. Second, courts are increasingly attaching to civil forfeiture proceedings the constitutional safeguards that normally attend a criminal prosecution. These two factors make it difficult to forecast the potential for civil forfeiture of proceeds.

Question. You stated that the new § 881 has been used since 1978 to reach the the immediate cash proceeds of drug transactions, but that it has rarely been applied to derivative proceeds. Does either RICO or CCE provide the means to reach those immediate cash proceeds that were achieved by § 881? Was the $7.1 million in currency seized by DEA seized pursuant to § 881?

Answer. CCE clearly reaches cash proceeds. But there is controversy whether RICO reaches proceeds, cash or otherwise, in the form of profits. Under either RICO or CCE, however, forfeiture cannot be accomplished without a criminal conviction. Forfeiture under 21 U.S.C. 881 is civil and requires a lesser burden of proof.

Yes, the $7.1 million was seized pursuant to 21 U.S.C. 881.

Question. What is the difference between a seizure and a forfeiture? Does the $7.1 million figure constitute money that is now in the United States Treasury?

Answer. Forfeiture as described on page 3 of our statement means a judicially required divestiture of property without compensation. Seizure, as normally defined, represents the physical securing of property by law enforcement personnel. For example, an automobile used to transport drugs is seized by law

enforcement agents at the time the suspected trafficker is arrested. This automobile cannot be forfeited (legal title turned over to the Federal Government) until after an administrative or legal decision on the propriety of forfeiture is made.

The $7.1 million figure is DEA seizures of cash pursuant to 21 U.S.C. 881 from enactment of the statute in November 1978 through March 1980. Of this amount only $250,000 of the seizures have been adjudicated as of March 31, 1980. Of that amount $234,000 is forfeited and in the U.S. Treasury.

Question. What were the sources from which you obtained the data on the 99 narcotics cases described in the table?

Answer. As noted in our testimony, no single source of data exists on the number and disposition of forfeiture cases. To compile our list of RICO and CCE narcotics cases, we used the following sources: various legal sources including the U.S. Code Annotated, Federal Supplement, Federal Reporter, Supreme Court Reporter, and Shepherd's U.S. Citations; information in the Files of the Narcotics and Dangerous Drug Section, Criminal Division, Department of Justice; information supplied by the Drug Enforcement Administration; and discussions with Federal prosecutors and DEA agents.

Question. You describe the figure of $3.5 million in assets forfeited and potential forfeitures. What are potential forfeitures and what amount of the $3.5 million do they account for?

Answer. Potential forfeitures are items that have either been ordered forfeited, but not yet realized by the Government or forfeitures listed in an indictment in a pending case. Potential forfeitures account for $2.5 of the $3.5 million.

Question. Do you include in your list of 99 cases the $32 million seized by various government agencies in the form of vehicles, aircraft, vessels, and monetary instruments used in drug trafficking? If not, why not?

Why do you conclude that over 60 percent of the $32 million figure described above will be returned to the alleged violatcr or legal owner?

Answer. No, our list of 99 cases represents all CCE and RICO cases only. The $32 million represents all civil seizures related to drug activity. The two are separate and distinct. Any criminal forfeitures under CCE and RICO would be determined based on criminal proceedings. Civil forfeitures are based on civil proceedings.

Our estimate that over 60 percent will be returned to the violator or legal owner is based on actual dispositions of DEA, Customs, and ATF seizure cases. Specifically our data showed that:

[Dollar amounts in thousands]

Agency	Calendar year	Total seizures	Total seizure cases closed	Total returned to legal owner or violator	Percent returned to legal owner or violator
ATF	1976–79	$1,721	$1,559	$1,035	66.4
DEA	1976–79	22,019	7,556	2,526	33.4
Customs	1979	23,016	15,188	11,662	76.8
Total		46,756	24,303	15,223	62.6

In our report "Customs' Office of Investigations Needs to Concentrate Its Resources on Quality Cases," (GGD–79–33, April 20, 1979) we stated that 89 percent of Customs seizures were returned to the violator.

Question. Assets such as corporate stock and legitimate businesses that are purchased or acquired with direct proceeds of an illegal transaction have been characterized as secondary or derivative proceeds in your statement. Is this the class of assets that the forfeiture statutes address? Do you believe that there is substantial investment of criminal proceeds in such assets?

Answer. The RICO and CCE statutes were enacted to specifically address these types of assets. Also, the Psychotropic Substances Act amendment to 21 U.S.C. 881 was passed to provide a civil mechanism to forfeit these types of assets.

No one really knows the extent of criminal proceeds invested in such assets; however, Department of Justice officials have stated that over 700 businesses have been infiltrated by organized crime. Various other sources have reported on the extent of investments made with money generated from narcotics trafficking. In December 1979 hearings, a real estate economist estimated that real estate investments in Florida resulting from narcotics dealings alone totalled $1 billion in 1977 and 1978.

Question. Are you aware of any figures from the Department of Justice and the drug Enforcement Agency that would be relevant to your study? Are there any conflicts between the two conclusions? If, so why?

Answer. The Department of Justice and Drug Enforcement Administration are currently conducting a joint study of CCE and RICO prosecutions, which we have not yet had the opportunity to evaluate. DEA officials have noted in testimony that the agency seizures were about $50 million during the first three quarters of fiscal year 1980. The figure includes, in addition to forfeitures under RICO, CCE and 21 U.S.C. 881, fines (both Federal and State), bond forfeitures, taxes imposed by IRS and currency seized by Customs. The portion it represents of illicit drug profits is extremely small.

Questions of Senator Biden and Responses of Richard J. Davis

Question. In your testimony you describe currency seizures of about $20 million "before mitigation" for fiscal year 1979. How do these seizures occur? Are they all incidental to arrests? What is mitigation and how would it affect the ultimate figures for seizures?

Answer. Seizures of unreported currency—as with other Customs seizures—are a mixture of "cold" seizures made by Inspectors and Patrol Officers without prior information; and seizures made as a result of prior information received from confidential informants or developed during investigations.

Only in rare instances are seizures made incidental to an arrest, for example, currency discovered and seized during a search following the arrest of a subject in connection with another charge. Some seizures do, in fact, result in arrests, but in those cases, it is the arrest itself that is incidental to the seizure. Most seizures of unreported currency do *not* result in arrests and they are *not* incidental to arrests. There are several reasons for this lack of arrest activity: Current Department of Justice policy of not prosecuting minor offenders without extenuating circumstances—preferring civil remedies in lieu of criminal prosecution, and Customs own policy of conserving limited investigative resources to focus Special Agent manpower on priority cases and not minor offenses.

Persons who have an interest in monetary instruments that have been seized can petition the Customs Service for the return of their property. The petition generally explains the circumstances that contributed to the failure to file the required report and states reasons why the monetary instruments should be released by Customs. In many instances, these cases are settled by local Customs officials. While no formal records are maintained within Customs on currency seizure mitigations, it has been our experience that more than 90 percent of the amount of currency seized has been returned in misdemeanor-type cases after it has been determined that prosecution is not appropriate; generally, *none* of the seized currency has been returned in the more serious felony cases accepted for prosecution.

Question. Does the additional $10.2 billion placed in circulation in 1978 cover the entire United States? How is this surplus related to illegal drug activity? Does the $10.2 billion surplus include the $4.9 billion surplus in Florida? Do these figures mean that major drug traffickers are not burying huge amounts of money in their backyards or spending on consumer items?

Answer. The $10.2 billion added to circulation in 1978 is a net figure, the difference between $14.4 billion added to circulation by 30 Federal Reserve offices and $4.2 billion removed from circulation by 7 Federal Reserve offices. The $4.2 billion figure includes the $3.3 billion surplus in Florida. The Florida surplus increased to $4.9 billion in 1979.

These figures, in themselves, do not indicate what the drug traffickers are doing with their receipts. They show that large amounts of currency are moving to Florida and are being spent or laundered there. The figures do not indicate that cash is being buried.

Question. Are there any statutory impediments to fuller cooperation between government agencies such as Internal Revenue Service and the Department of the Treasury that would prevent full enforcement of narcotics laws? Do you believe that government agencies are cooperating fully in an effort to eliminate drug trafficking? Can drug trafficking be eliminated under existing law?

Answer. There are a number of statutory provisions that make cooperation between law enforcement agencies difficult in many instances. Restrictions on the disclosure of tax related information and financial data obviously impede cooperation between law enforcement agencies in certain instances including some involving drug violations. Provisions in the Right to Financial Privacy Act, for example, not only limit a bank's cooperation with Federal law enforcement officials, but also restrict the transmission of bank account information from one agency to another.

I have no reason to believe that Federal agencies are not cooperating in the effort to eliminate drug trafficking. I recognize, however, that we must continue to encourage that cooperation and maintain it at a high level.

I do not believe that drug trafficking can be eliminated by enforcement activities alone. We must have realistic goals. I believe, however, that we should try for the maximum degree of control of the drug traffic and maintain pressure on those engaged in it.

Questions of Senator Biden and Responses of Ted W. Hunter

Question. You draw a distinction between investigation and auditing of financial aspects of criminal drug-related activities and I gather that it is your view that agents are to investigate but not audit. What is the difference between the two functions and who is required to do the remainder that may be necessary to prove financial matters?

Answer. The laws governing DEA's involvement in financial investigations require that there be an evidentiary nexus between profits, assets, etc., and criminal activity. This requirement is directed toward intended seizure and forfeiture actions. The term audit is viewed as a simple accounting of profits, losses, assets, etc. With respect to Federal law enforcement, the audit function is most often performed in conjunction with IRS responsibilities. Their concern is one of total worth and taxation; IRS is not concerned with the source of income, legitimate or not.

The mere fact that a person, even if he is an alleged drug violator, has accumulated wealth, does not in and of itself provide the necessary balance of evidence to effect seizure and forfeiture. Consequently, DEA must first establish via traditional investigative actions (i.e., debriefing witnesses and informants, using wiretaps, conducting surveillance, acting undercover, subpoenaing evidence, etc.) that drug violations exist.

Furthermore, in order to effect seizure/forfeiture, an investigation must establish where the alleged drug money is going. Again, this must be established on an evidentiary level and not merely based on supposition, assumption or presumption. Only when an investigation identifies the termination of drug-related monies and develops the evidence to prove it, does a seizure/forfeiture situation exist.

All subpoenaed documents are investigative leads and are pursued as such. If ledgers or other accounting like documents are obtained, they would be analyzed for corroboration of known events or transactions and for possible identification of "unexplained income." At present, DEA is developing the basic techniques to pursue this avenue. More complex situations require the expertise of DEA Headquarters' experts, the IRS and the FBI. An auxiliary issue to working jointly and utilizing the expertise of other agencies is the application of other Federal statutes in addition to the Controlled Substances Act.

Question. Where do the roles of the investigator and the prosecutor begin to diverge in financially related matters?

Answers. Both the investigator and the prosecutor are concerned with the legal process of utilizing financial information as either evidence of illicit drug trafficking or in a forfeiture action. The DEA Domestic Guidelines cover in detail the interrelations between DEA and the U.S. Attorney's Office. In particular, the Guidelines specify at what point the Assistant United States Attorney must get involved.

The prosecutors are concerned that all evidence obtained be admissible in compliance with constitutional considerations, the Federal Rules of Criminal Procedure, previous case law, the District Court's procedures, and pressures of the court calendar.

Question. How has 21 USC 881 been used by DEA? What kinds of assets have been seized pursuant to that relatively recent provision?

Answer. Most applications of 21 USC 881 have been against cash and conveyances. DEA has begun application of these provisions against real property. Our use of the forfeiture provisions of 21 USC 848 against property other than cash and conveyances has been more extensive.

Question. Do you believe that agents conducting a financial investigation should be able to trace a flow of illegal revenue from its source at the point where illicit goods or services are purchased or funds diverted from legal channels to its destination in the hands of the criminal leadership? Where does the agent's responsibility and the prosecutor's responsibility begin in forfeiture cases?

Answer. Yes. We believe that DEA agents have and are further developing their ability to trace the flow of illegal revenue through the drug purchasing and exchange cycles. Please see answer two (2) for information regarding agent's and prosecutor's role.

Question. Should an agent be capable of following a paper trail through multiple bank accounts, shell corporations, offshore bank havens, and money laundering operations?

Answer. DEA has many specialized programs within the scope of its total enforcement efforts. Many of these require particular expertise in one facet of our operations. One such specialization is following the complex paper trail of traffickers. As noted earlier, DEA is continuing to evolve and expand our expertise in this one area. We are accelerating our training program (see question 7) and are furthering our interaction with IRS, who possesses this capability.

Question. Do you believe that enforcement of drug laws should require investigators with actual formal training in accounting?

Answer. The enforcement of Federal drug laws requires the application of a broad spectrum of techniques. Through the utilization of many approaches, DEA necessarily must start with the basics of any criminal investigation—the who, what, where, when and how. A more refined technique, the conducting of the investigation into the financial aspects of the case, does require a certain expertise. Special Agents with a formal education at the college level are an asset. DEA has a number of agents who do have this background. Accounting training is not a requisite. It is useful in certain situations. It is important that it is understood the utilization of individuals with accounting backgrounds will not provide any shortcuts in the process of forfeiting violators' assets. The successful investigation and prosecution of complex criminal drug cases depend on a melding of numerous talents. The financial aspect of drug investigations is being explored and its proper perspective within the context of the total drug investigation has yet to be firmly established.

Question. Please explain in detail the course material, length of class days and hours, and quality of teachers in the training program conducted by the Financial Section. Do you believe that this program is presently adequate? How much instruction in conspiracy law and investigative techniques is offered to Special Agents?

Answer. The overall objective of the Financial Investigations Training Program within the Drug Enforcement Administration is to go beyond the depth of instruction presented in current training programs in order to give DEA Special Agents and Intelligence Analysts a thorough understanding of the Forfeiture of Currency and Proceeds Law, 21 USC 881(a)(6), current trends, and useful techniques in relation to the financial aspects of drug investigations. The seminar is presented at the National Training Institute in Washington, D.C. for five (5) days from 9:00 AM to 5:00 PM.

Subject areas covered during the course include: overview of banking operations; the mission of the Financial Investigations Section within the Office of Enforcement; discussion of the Memorandum of Understanding between IRS and DEA; discussion of the Financial Privacy Act; Bank Secrecy Act; 21 USC 881(a)(6); 21 USC 848 (the Continuing Criminal Enterprise Statute); the RICO Statute; and DOJ/International Liaison and Procedures. These subjects are supplemented by a discussion and case analysis of three major DEA narcotic/financial cases. These describe in detail, from inception to culmination and prosecution, narcotic investigations having financial aspects. Participants are guided through the case analysis by a Special Agent and/or prosecuting attorney from a field office. As new cases are successfully completed, they are added to the curriculum.

It should be noted that the Financial Training Program is conducted by the Office of Training rather than the Financial Section. Instructors are selected both from Headquarters and field personnel based on their demonstrated expertise in their respective subject areas. Continuous evaluation of the program has shown that instructional delivery is of the highest quality and course contents fully satisfy program objectives. Program evaluation also indicates that the Financial Training Program adequately meets DEA's objectives.

DEA Special Agents receive a minimum of 18 hours of classroom instruction supplemented by hundreds of hours of practical applications exercises in conspiracy law and related investigative techniques.

Question. What are the Class I and Class II cases which are examined for financial aspects?

Answer. DEA policy requires that all field supervisors ensure that every Class I and Class II level case is scrutinized for possible application of forfeiture proceedings and that, where appropriate, the financial aspect of the case is investigated. It is not possible to release a list of the Class I and II cases because they are under active investigation.

Question. Have any indictments been brought in cases pursuant to the policy directive issued last spring?

Answer. Yes. Indictments with forfeiture action have been brought and several forfeiture actions have been consummated.

Question. Are you aware of any major narcotics cases that have been hampered by restrictions of the Tax Reform Act, the Financial Privacy Act, or the Freedom of Information Act? Can you name them and tell us how these statutes hampered investigative efforts?

Answer. Statistics and case listings are not available. For the most part, these Acts have a chilling effect on investigations. It is difficult to prove a negative, that which may have gone forward had these Acts not been in force. Specifically, as former Assistant United States Attorney Tom Sear recounted at the hearing, the Tax Reform Act hindered the development of the Nicky Barnes case. The Right to Financial Privacy Act hampered another case where DEA attempted to track a violator's financial actions. The notification to the violator resulted in his disposal of his assets. Although the Right to Financial Privacy Act does have non-disclosure provisions, the drain on resources and manpower often preclude pursuing this avenue. The DEA Freedom of Information Division surveyed its field offices and determined the following:

Approximately two-thirds of the 95 field offices responding to the survey indicated that the FOIA has had an adverse impact on law enforcement. Of those reporting negative or little adverse impact on their operations, over 70 percent were foreign and small domestic DEA offices not directly involved in large-scale investigations.

Nearly all the DEA offices reporting the existence of an adverse impact indicated that the basis cause is the development of a major perception problem—the inability to offer credible assurances of confidentiality and/or protection by the U.S. Government. Most of the current concern can be classified as either the inability to recruit and maintain reliable informants, the sudden reluctance on the part of both State and local governments as well as private businesses to participate in the valuable informal exchange of information, or the adverse circumstances that have arisen because of either misinformation or a misunderstanding of the requirements of both the Freedom of Information and Privacy Acts.

Question. In what way has the effect of 21 USC section 881 been felt in asset removals?

Answer. With respect to Section (a)(6) of 21 USC 881, most seizures occur on site. As DEA becomes more proficient in the related tasks, we are conducting investigations in a manner to forfeit property. The pertinent data reflects that in FY79, DEA removed approximately $13 million from drug violators. Because of increased training and awareness, in FY80, approximately $60 million in assets has been seized. The majority of these removals are based upon 21 USC 881(a)(6).

Question. Is there any distinction between asset removal and forfeiture?

Answer. "Asset removal," as used by DEA, is a general category and includes forfeiture pursuant to statute and other drains on violator resources including fines, bond forfeiture, and actions of other law enforcement entities such as IRS tax levies. The term "forfeiture" is a legal term and refers to action pursuant to 21 USC 881(a)(6); 21 USC 848, RICO, et al.

Question. Are you familiar with the figures in the GAO testimony of July 23? Do you agree with their figures? Why are they so low?

Answer. DEA is fully aware of the GAO review as described in their July 23 testimony. In fact, this agency has cooperated fully with the GAO on this study, as we have with many other studies conducted by the GAO. The figures provided by GAO are incomplete. They necessarily were permitted to review only those case files of investigations that were closed at the time their study commenced.

There have been several major cases of these types conducted since then. Furthermore, because within the Department of Justice there has been no method to retrieve data by charges filed, there is no way to ensure that the GAO survey is comprehensive.

Question. Are you in agreement with the list of cases attached to the GAO statement? Do you have any cases to add? Why are there so few?

Answer. Some of the cases provided to the Subcommittee by GAO were inaccurately identified as being narcotics-related RICO/CCE cases. The Department of Justice (Criminal Division) and DEA are currently conducting a joint study to ascertain which cases have brought narcotics-related RICO/CCE indictments. The as yet uncompleted study has tentatively identified 110 narcotics related RICO/CCE cases. Although there may have been few of the indictments in the past, the trend is toward accelerated use of the provisions. The following clearly establishes this momentum:

Year:	*Number of cases*
1970	0
1971	0
1972	1
1973	2
1974	4
1975	2
1976	9
1977	20
1978	17
1979	33
1980 (through June)	22
Total	110

Question. Are you generally satisfied that the kinds of networks and traffickers targeted by DEA and prosecuted are the same ones identified by DEA intelligence as the major figures in the narcotics area? Is Enforcement adequately following through on the data generated by the Intelligence arm of DEA?

Answer. Although DEA has separate offices for Intelligence and Enforcement, the activities of the two units are interdependent. The Enforcement element, through the Special Agents, is the primary source of information utilized and analyzed by the Intelligence Analysts. Thus, Enforcement provides the raw intelligence which is used by Intelligence to target traffickers and networks. Based on Enforcement input, the Intelligence Analysts provide the various Enforcement units with support, detailed views of violator activity, and refine information to prepare Strategic Intelligence to deal with projected violator activity. In conclusion, DEA is satisfied that the major violators are being targeted and apprehended.

Question. What happens to drug profits not forfeited? Are legitimate businesses financed with the money or is it telexed out of the country for retirement income?

Answer. There is ample documentation of alleged drug violator groups having large and varied legitimate business holdings. The use of telex facilities by drug violator groups is also well documented. It is presumed that drug profits have been directed into these holdings. Of course, all the procedures used by drug violators to move profits are accepted legitimate business practices. If DEA has specific knowledge of any drug "profits" not forfeited, that knowledge would, in fact, provide the probable cause to proceed with a forfeiture action. DEA is now directing its efforts toward exploiting available information regarding the laundering of drug profits so that future forfeiture action can be initiated.

Question. Are forfeitures capable of destroying drug networks permanently?

Answer. To immobilize a drug trafficking network all three dimensions of the organization must be addressed. The violators must be arrested and incarcerated; the contraband must be seized; the assets must be removed. Of course, if the violators regroup and recruit new confederates, if they procure additional contraband, if they secure new financial resources, if they have the will and determination to begin the distribution cycle again, then the network could reappear.

The extent of the forfeiture is one of the critical elements. Forfeiture actions to date have affected only a small percentage of drug assets. Thus, in the current spectre, a drug network cannot be "destroyed permanently."

As DEA moves forward with its asset removal program, and as the prosecutors and judiciary realize the potential of the forfeiture provisions, we expect to see more concrete evidence of the impact of forfeiture. In the interim, preliminary

data in several areas of the country indicates that the DEA asset removal activity is causing an unsettling and disruptive effect among the drug distribution groups.

Question. Does enforcement or forfeiture statutes justify the agent time necessary to investigate these aspects of drug cases?

Answer. Yes. As discussed more fully in the preceding answer, the only way to effectively immobilize a drug trafficking network is to remove the violators from activity, remove the contraband and remove the powerbase—the assets and resources.

Question. What incentives are there for an agent to engage in financial investigations that may or may not result in successful forfeiture?

Answer. The incentive for the agent is two-fold. First, he is aware that the only successful way in which the agency can accomplish its mission is to immobilize the drug trafficking networks which necessarily requires asset removal and forfeiture. Second, each agent is cognizant of the fact that his performance as an agent will be evaluated based on a standard set of criteria. The degree to which an agent applies financial investigative techniques during the course of drug investigations is a factor considered within the DEA Special Agent Performance Appraisal System.

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