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COMPREHENSIVE DRUG PENALTY ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

H.R. 3272, H.R. 3299, and H.R. 3725

COMPREHENSIVE DRUG PENALTY ACT

JUNE 23 AND OCTOBER 14, 1983

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CONTENTS

NCJRS
JUN 3 1985
ACQUISITIONS

HEARINGS HELD

	Page
June 23, 1983	1
October 14, 1983	117

TEXT OF BILLS

H.R. 3272	263
H.R. 3299	283
H.R. 3725	310

WITNESSES

Cambell, Capt. Coley, Citrus County Sheriff's Office	146
Christman, Robert, acting U.S. Marshal, Southern District of Florida	172
Friedland, Richard, regional counsel, U.S. Customs Service	244
Gruden, Peter, special agent in charge, DEA Office, Miami, FL	172
Haas, Sgt. Douglas K., intelligence unit, Fort Lauderdale Police Department	61
Hedlund, Lt. Eric, commander, organized crime division, Fort Lauderdale Police Department	61
Prepared statement	71
Hochman, Jeffrey, Fort Lauderdale Police Department	146
Horn, Stephen, representing the American Bar Association	40
Prepared statement	49
Jacobson, Jeffrey A., Office of the General Counsel, General Accounting Office	122
Knapp, James I.K., Deputy Assistant Attorney General, Department of Justice	4
Prepared statement	10
Kupferer, Thomas C., Chief Inspector, Enforcement Division, U.S. Marshals Service	172
Prepared statement	198
Lauve, Ronald, Senior Associate Director, General Government Division, General Accounting Office	122
Prepared statement	125
Lenck, William M., counsel, Drug Enforcement Administration, U.S. Department of Justice	172
Prepared statement	209
Marcus, Stanley, U.S. attorney, southern district of Florida	172
Prepared statement	180
Navarro, Maj. N.G., Broward County Sheriff's Office, Fort Lauderdale, FL	61
Orr, Everette, General Accounting Office	122
Plaskett, Bruce, coordinator for antismuggling, Southern Regional Office, Immigration and Naturalization Service	172
Prepared statement	219
Powis, Robert E., Deputy Assistant Secretary of the Treasury for Enforcement, Department of the Treasury	4
Pruss, Richard, president, Samaritan Village, Inc	61
Prepared statement	78
Seidel, Stuart P., Assistant Chief Counsel, Enforcement and Operations, U.S. Customs Service	4
Prepared statement	22
Simpson, John P., Director, Office of Regulations and Rulings, U.S. Customs Service	244
Prepared statement	245
Taylor, William (Zuckerman, Spaeder, Moore, Taylor, and Kolker), Washington, DC	40
Webb, Daniel K., U.S. attorney for the northern district of Illinois	4

COMPREHENSIVE DRUG PENALTY ACT

THURSDAY, JUNE 23, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 2237, Rayburn House Office Building, Hon. William J. Hughes (chairman of the subcommittee) presiding.

Present: Representatives Hughes, Smith, Sawyer, and Shaw.

Staff present: Hayden W. Gregory, counsel; Edward O'Connell, and Eric Sterling assistant counsel; Charlene Vanlier, associate counsel; and Phyllis Henderson, clerk.

Mr. HUGHES. The Subcommittee on Crime will come to order.

The Chair has received a request to cover this hearing, in whole or in part, by television broadcast, radio broadcast, still photography or by other similar methods. In accordance with committee Rule 5(a), permission will be granted unless there is objection. Is there objection? Hearing no objection, such coverage is permitted.

Today we are discussing two bills, H.R. 3272 and H.R. 3299, the Comprehensive Drug Penalty Acts of 1983.

The first bill H.R. 3272, is essentially the same as H.R. 7140, which was developed after a thorough examination by the Subcommitte on Crime in the 97th Congress of the problems confronted by Federal law enforcement agencies in their attempts to take the profits out of drug dealing. The net result of these inquiries reemphasize the fact that the single most important crime problem confronting this country is the vast increase in drug trafficking in recent years. We are now faced with the fact that the drug dealers have been able to accumulate huge fortunes as a result of their illegal activities, and the sad truth is that the financial penalties for drug dealing are frequently only seen by dealers as a cost of doing business. Under current law, the maximum fine for many serious drug offenses is only $25,000—pocket money.

Moreover, the Government's ability to obtain civil or criminal forfeiture of the profits or proceeds of drug dealing has been hampered by a number of deficiencies. H.R. 7140, as developed in the 97th Congress, was a truly bipartisan effort to fill those gaps and was placed on the suspension calendar and passed by the House of Representatives without dissent on September 28, 1982.

A compromise version of this bill (now essentially H.R. 3299), along with other bills, H.R. 3963, the anticrime package, passed the House and Senate late in the lame duck session of the 97th Congress by the margin of 271 to 72 in the House and was passed

unanimously in the Senate. Unfortunately, the President—primarily on an issue unrelated to this bill and against the advice of a bipartisan delegation from the Congress, decided to pocket veto the anti-crime package.

The following are the essential elements of the two new Comprehensive Drug Penalties Acts of 1983, beginning with H.R. 3272.

First, the bill substantially increases maximum permissible criminal fines in drug cases and establishes a new alternative fine concept under which drug offenders can be fined up to twice their gross profits or proceeds where the alternative fine will be greater than that specified in the crime itself.

The new maximum fine limits were developed in large part by the Judiciary Committee during the consideration of the Criminal Code revision in the 96th Congress. The alternative fine concept was recommended in the final report of the National Commission on Reform of Federal Criminal Laws, the so-called Brown Commission.

Second, it amends the present civil forfeiture law. 21 U.S.C. 881, to permit the civil forfeiture of land and buildings used, or intended to be used, for holding or storage of controlled substances when such use constitutes a felony. Current law is unclear as to whether warehouses or other buildings can be so forfeited.

Third, the bill changes certain venue authority to allow the Justice Department to bring civil forfeiture actions in a district where the defendant is found or where the criminal prosecution is brought.

Fourth, it sets aside up to $10 million a year in fiscal year 1984 and fiscal year 1985 from forfeiture dispositions into a revolving fund to be used for drug law enforcement purposes.

Fifth, the bill provides, for the first time, criminal forfeiture provisions for all felony drug cases.

Sixth, it outlines authority for courts to restrain the transfer of property which might be subject to forfeiture and to order the seizure of such property in order to ensure its availability for a forfeiture proceeding. Remission and mitigation provisions are also provided in order to protect the interests of innocent property owners.

It also details procedures for allowing temporary restraining orders in ex parte hearings under extraordinary circumstances.

Seventh, the bill creates a permissive presumption in criminal forfeiture cases that all property acquired by drug offenders during the period of the violations, or shortly thereafter, is subject to forefeiture if no other likely source for such property exists. These provisions follow closely the U.S. Supreme Court opinion in Ulster County Court, *New York* v. *Allen* decided in 1979.

The second bill, H.R. 3299, is the same, essentially, as H.R. 3272 plus it has an added provision dealing with the Customs Service on a related matter. This latter addition, in substance, was initially attached to H.R. 7140 by Senator Baker in the Senate version of H.R. 7140 in the 97th Congress and has been recommended highly to me by numerous fellow Members of Congress and Administration Officials. I am convinced that it is a needed step. After discussion with the appropriate members of the Ways and Means Committee, (Bill Frenzel and Sam Gibbons) we agreed to add that particular provision to this bill. In essence, what it does, is to increase the scope of what the Custom Service could administratively forfeit, (essentially a default judgment process in their civil forfeiture procedure) and increases the jurisdictional amount for this process from $10,000 to $100,000, with no dollar limit in cases involving conveyances of contraband in default situations; second, it sets up a Customs Forfeiture Fund; third, it allows Customs to discontinue forfeiture of property in favor of similar proceedings by State and local agencies; and fourth, it increases certain Customs' law enforcement authority.

Thus we have before us today two bills that have already had considerable legislative scrutiny and acceptance. We are, however, always open to further constructive refinements and therefore welcome the comments of our witnesses today.

Joining us on the first panel this morning, from the Department of Justice, is Hon. James Knapp, the Deputy Assistant Attorney General for the Criminal Division.

Mr. Knapp was named to this position last December, after extensive experience in the district attorney's office of Los Angeles County, CA. He had over 10 years of trial experience and for some 2 years was the head deputy district attorney. Mr. Knapp, we are pleased to have you with us this morning.

Joining Mr. Knapp at the witness table and our other panelists is Robert E. Powis, the Deputy Assistant Secretary of the Treasury for Enforcement, who was named to that position in June of 1981. Mr. Powis previously served in the U.S. Secret Service as a special agent for some 26 years. Most recently as the assistant director for investigation. He has in addition to his positions at the Secret Service headquarters office served in numerous field positions including special agent in charge of the Los Angeles Field Office, SAC of the Baltimore Office and SAC of the Scranton Office. A graduate of Fordham University, and St. John's Law School, Mr. Powis is a member of the New York Bar.

Accompanying Mr. Powis is Stuart P. Seidel, assistant chief counsel for enforcement and operations. Mr. Seidel graduated from Brooklyn Law School with a doctorate in 1969, where he was in the legislative honors program. He was hired by Customs in New York as a Customs law specialist and transferred to the office of chief counsel as of 1970. He was promoted to assistant chief counsel in 1974. Among other special assignments, Mr. Seidel has served as representative of the Customs Operations Council to the U.N. Commission on Narcotics Drugs in Geneva in 1975. Welcome.

We also have with us this morning, the U.S. attorney for Chicago, and perhaps, Mr. Knapp, you might want to introduce him.

Mr. KNAPP. Yes, Congressman, it is Hon. Daniel Webb, U.S. attorney for the northern district of Illinois, which is Chicago.

Mr. HUGHES. Mr. Webb, we are just delighted to have you with us this morning.

Mr. WEBB. Thank you very much.

TESTIMONY OF JAMES I.K. KNAPP, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY DANIEL K. WEBB, U.S. ATTORNEY FOR THE NORTHERN DISTRICT OF ILLINOIS; ROBERT E. POWIS, DEPUTY ASSISTANT SECRETARY OF TREASURY FOR ENFORCEMENT, U.S. DEPARTMENT OF THE TREASURY, ACCOMPANIED BY STUART P. SEIDEL, ASSISTANT CHIEF COUNSEL, ENFORCEMENT AND OPERATIONS, U.S. CUSTOMS SERVICE

Mr. HUGHES. Mr. Knapp, we have your statement, which, without objection, will be made a part of the record in full and you may proceed as you see fit.

Mr. KNAPP. Thank you, Congressman. I intend to read an abridged edition of the statement, since it is quite lengthy. But I will try and summarize the key points.

Mr. Chairman, members of the subcommittee, I am pleased to appear today to discuss H.R. 3299, the Comprehensive Drug Penalty Act of 1983. The Department of Justice strongly supports the goals of this legislation, which are to strengthen our ability to forfeit drug related assets, including the enormous profits made in drug trafficking, and to substantially increase the fines for serious drug crimes. Indeed, two of the titles of the President's comprehensive crime legislation, H.R. 2151, are designed to meet the same goals.

In comparing your bill, Mr. Chairman, and the administration's proposals, it is clear we are largely in agreement about major concepts. In addition to raising the now unacceptably low fines for drug offenses, these objectives include creating a strong criminal forfeiture statute for all drug felonies, providing civil forfeiture authority for real property used in serious drug cases, establishing a funding mechanism to help defray the mounting costs incurred by our law enforcement agencies in pursuing forfeitures, and amending the Tariff Act to increase the use of efficient administrative forfeiture procedures in cases under both the Customs and drug laws. While our approaches to each of these issues vary somewhat, I believe the areas of agreement far outweigh our differences, and we will be pleased to work with the subcommittee to resolve these differences in a mutually acceptable way.

We do differ substantively, however, on certain issues and my statement will be directed primarily to these concerns. These include amending the RICO forfeiture statute and including in criminal forfeiture authority the new concept of substitute assets.

Another difference is our recommendation that a land forfeiture statute like that now in H.R. 3299 include authority to reach land used in the commercial cultivation of marijuana. Mr. Powis of the Customs Service will be discussing the importance of the Tariff Act amendments included in this bill. In addition to that, I will explain the change in department policy regarding third party claims in criminal forfeitures, a change which may require an adjustment in your bill regarding the hearing procedure for these third party claimants.

Finally, at the request of the subcommittee staff, I will give our views on a proposed preponderance of the evidence standard of proof in criminal forfeiture cases.

Two of the issues about which we are concerned, are the problem of RICO criminal forfeiture and substitute assets. On these two points, before going into my statement, I would like to yield to Mr. Webb, who has had a lot of practical experience with these problems in Chicago. He will give a short statement to you on these two subjects.

Mr. WEBB. Mr. Chairman, and members of the committee, I will try to be as brief as I can and my comments are being directed, what I hope will be in using your words, Mr. Chairman, a constructive refinement or addition to the criminal forfeiture provisions that are in the two bills before the committee today, as well as related to the criminal forfeiture provisions of the RICO statute.

I would like to think of myself, Mr. Chairman, as a U.S. attorney, kind of out in the field or in the trenches, that has had a lot of practical experiences in the actual utilization of criminal forfeiture provisions in the actual prosecution of cases. And in particular with great focus on narcotic cases as well as other major organized criminal and structured activity that we frequently attempt to use criminal forfeiture provisions in order to take the profit out of narcotic trafficking as well as other organized criminal activity.

Let me tell you that as a practical matter, unless there is a substitution of asset provision added into these two bills or the bill that comes out of this committee relating to narcotic trafficking and also to the RICO forfeiture provisions, then there are so many practical problems that are faced by prosecutors as they actually utilize the statute of criminal forfeiture that in my judgment is not utilized as effectively and efficiently as it can be. In my experience I am told by the Justice Department in Chicago we use RICO in currently the 848 of the drug statutes relating to forfeiture more than any other district.

And it is my view that while the forfeiture provisions have tremendous potential to accomplish the purpose of Congress which I assume to be that we must impact upon organized criminal activity, including drug trafficking, by breaking the financial backbone that finances the operation and the only way that can be done is to take away the millions and millions of dollars in some effective and efficient manner. And criminal forfeiture which really, obviously, has not been utilized in this country for hundreds of years until RICO, and now in the drug forfeiture area is the way to do it. But as a practical matter, without a substitution of assets provision, we simply don't succeed. And I want to explain to you why, or at least in my opinion, why that is the case.

In most narcotic cases, and other types of criminal organized activity, what we eventually want to forfeit in about 90 percent of the cases is normally profits in the form of dollars, cash. Let me give you an example of what I am talking about.

There is a case under investigation in Chicago. Since this committee is interested in narcotics and these two bills are—it is not under indictment, and I won't go into details, but there is a gentleman that I assume will eventually be indicted. Through specific cocaine transactions that he participated in in 1979, he profited $10 million. That is what we call as prosecutors, a historical case because we weren't there at the time, but now we have witnesses that will document what happened and we can prove our case.

I will include in that indictment and the grand jury will, a criminal forfeiture count, and I would guess the jury will convict on the underlying counts as well as render a verdict on the criminal forfeiture count. He will forfeit $10 million—his profit—the cash that he got in 1979.

The judge will eventually enter a judgment on that verdict and then I will have a $10 million verdict of cash that I cannot perfect. And the reason is because I don't know today where that $10 million is. I don't know whether in 1979 this man put it offshore in a Bahamian trust, I don't know whether he buried it in the ground; I don't know whether he spread it among his relatives; I dont know whether he ploughed it into a business he operates. What I do know is today he has assets, capital assets as well as cash in bank accounts of about $30 million. And what I do know is that while there is a concept which may or may not be applicable to criminal forfeiture called tracing, which is that if I could go back to 1979 and trace out every dollar of that $10 million and show today what asset it is in, a boat, a car, whatever, if I could do that, which I can't, but if I could, that maybe the new asset would stand in place of the cash. Whether that is even applicable will probably have to be decided some day by a court, and it is just crazy. Because, No. 1, I don't know whether it will ever be applied to criminal forfeiture and No. 2, if I have to tie up 15 or 20 agents and bog them down with trying to trace those dollars into a current asset, I am wasting law enforcement resources. And so it won't be done. And so what happens as a practical matter is that the agents and eventually the prosecutors, throw their hands up in the air and they say forget criminal forfeiture in this case. And I see these cases coming across my desk day after day after day. They are cases where I have historical information of cash profits—you can't—the dollars physically are not here today. Those dollars went somewhere else.

There is a case in Chicago right now where I have four lawyers. Four lawyers who bribed members of a local county real estate tax assessment entity—they bribed him to get about $45 million in real estate tax reductions fraudulently. They were indicted on RICO; they made several hundreds of thousands of dollars in connection with legal fees; that's their profit for having engaged in this criminal activity with a RICO enterprise. I got a forfeiture, their legal fees, everyone applauded. But I am not going to collect it because I am now embroiled in a big controversy over tracing, and these dollars aren't there and did the dollars end up in the law firm? And you want to know what happened to the law firm? You could forfeit the interest in the enterprise which is a law firm. They all transferred their stock 3 days before the indictment to a partner and they started working on a salary of $200,000 a year from the law firm. There are too many ways to subvert and get around the statute unless you have a substitution of assets provision similar to what is in the proposed Justice Department, the President's comprehensive crime act which contains a RICO provision, a substitution of assets provision, will be a tremendous asset, Mr. Chairman, to these two bills as well as to RICO.

One other last comment, and then I want to turn it back to Mr. Knapp, and that is as far as criminal forfeiture is concerned, which I know this committee is quite interested in. The current RICO

statute has a very serious defect because the forfeiture language relating to whether or not profits, the actual profits, of a criminal enterprise are forfeitable has now been found not to be forfeitable by the fifth, ninth, and now by my circuit, the seventh circuit. I am now paralyzed in Chicago. I am not going to use RICO forfeiture any longer because every case involves cash forfeiture of profits, and the language is ambiguous. I believe very strongly that it has to be revised by Congress to carry out the congressional intent to give us the tools to impact upon the actual economic backbone of organized criminal activity.

Mr. Chairman, thank you very much for your time.

Mr. HUGHES. Well, the latter problem that you just described, the split between various circuit courts decisions, is probably the easiest matter to take care of. More difficult are the questions of broadening RICO and the question of substitute assets and we will get into that subject after we have heard all the testimony.

We thank you for sharing those insights with us.

Why don't we just, if you don't mind, adjourn for now for about 10 minutes. We have a little practice over here. We have to run to vote. If we are lucky, it won't happen too often this morning. We will stand in recess for about 10 minutes.

[Recess.]

Mr. HUGHES. The subcommittee will come to order. Mr. Knapp, I think you were about ready to pick up again with your testimony.

Mr. KNAPP. Thank you, Mr. Chairman. In summary, first, on the RICO criminal forfeiture issue itself, there are three basic problems with the current statute. No. 1 is the fact that apparently the forfeitability of the profits of racketeering is in dispute. That issue may or may not be resolved to our satisfaction by the Supreme Court, but that is sometime off.

Second is the lack of any preindictment restraints on transfer, like you have in H.R. 3299, and the third, of course, is the lack of a substitute assets provision. I now turn and discuss this substitute assets concept as it applies to both RICO and drug forfeitures in more detail.

The substitute assets provision would greatly enhance the effectiveness of criminal forfeiture. Briefly, we contemplate substitute assets in five different situations: One, where the forfeited property cannot be located; two, where it has been transferred or sold to or deposited with a third party and cannot be reached; three, where it has been placed beyond the jurisdiction of the court, like out of the country; fourth, where it has been substantially diminished in value because of some deliberate act or omission by the defendant; and fifth, where it has been commingled with other property which cannot be divided without difficulty.

A substitute assets provision would work as follows: The Government must prove in the criminal trial that specified property of the defendant was used or obtained in such a way as to render it subject to forfeiture under the applicable statute. If after the entry of the special verdict of forfeiture, it was found that those specified assets had been removed, concealed, or transferred, or one of those five situations was applicable, so they were no longer available to satisfy the forfeiture judgment, the court could order the defendant to forfeit other of his assets in substitution.

Thus, by applying a substitute assets provision, defendants would not be able to avoid the criminal forfeiture sanction simply by making their forfeitable assets unavailable at the time of conviction.

In understanding the importance of a substitute assets provision, we must be realistic about the sophistication of many drug traffickers and organized crime figures. Concealing the extent of their financial assets is not uncommon. Rather it is a common practice, a practice which increasingly involves use of offshore banks. These banks serve both the safe depositories for illicit drug profits and as money laundering facilities that can thwart our efforts to trace tainted sources of a trafficker's stateside assets.

The offshore bank problem illustrates the potential utility of a substitute assets provision. The 1982 prosecution of a large-scale hashish smuggling operation, *United States* v. *Ashbrook,* provides an example. The primary defendant was apprehended leaving the country with $170,000 intended as partial payment on a $2 million hashish deal. This defendant's operation spanned several years. He would deposit the proceeds of his drug trafficking in a Cayman Islands bank account in the name of a fictitious corporation. Amounts needed for new drug deals would be transferred from the Caymans to Lebanon.

In this case, not only were substantial forfeitable drug proceeds in the bank outside the United States, but a $300,000 boat used to smuggle the hashish was in Italy, also outside the reach of the Government. Fortunately, by virtue of a plea agreement, a substantial forfeiture was obtained. However, had this case gone to trial, it is doubtful that absent a substitute assets provision, a forfeiture of much significance could have been assured, despite the fact that the defendant had a number of extremely valuable stateside assets.

There are several other examples in my prepared statement; for example, the *DeLorean* case on page 8 of my prepared statement and the *Webster* case, page 9. In addition, another example is the California case, *United States* v. *Mouzin.* During the course of an undercover drug proceeds laundering investigation, Mouzin laundered $25.8 million through a clothing store front. In the course of talking with an undercover agent, he claimed he made a profit of $1.5 million. This money is all in Panama and cannot be reached.

Now, it is implied in your bill, arguably, that the imposition of substantial fines would be equally as effective as a substitute assets provision. We do not view fines as an adequate alternative for several reasons—certainly an improvement over the current situation but not an adequate alternative. First, the imposition of a fine is not mandatory under this legislation. H.R. 3299 also sets out a new procedure to allow the court to excuse all or part of the fine imposed on a drug trafficker.

A special verdict of criminal forfeiture, however, is binding on the court and under the President's legislation would extend to cases in which forfeiture of substitute assets was appropriate.

Second, collection of criminal fines is difficult. Once the fine is imposed, the United States must pursue collection remedies in State court in the same manner as an ordinary creditor. In the case of criminal forfeiture, the Government is authorized by the trial court to seize specific assets.

Third, there is a conceptual problem, too. A substitute asset of forfeiture procedure demonstrates the importance of showing that we will directly separate a criminal from the fruits of his crime by confiscating them. And the second best alternative, where we can't reach them is to get their exact equivalent. Fourth, it is possible that many transfers could just outright be a sham, and if the defendant was allowed to pay a fine instead, he could still, in effect, have influence over the asset and would continue to control the enterprise, and one of the purposes of asset forfeiture could be defeated.

In addition to addressing the problem of preconviction transfers through application of a substitute assets provision, we believe there should also be specific statutory authority to void these transfers where they are sham transactions, or undertaken with intent to avoid forfeiture, except of course where the transfer is to an innocent, bona fide purchaser for value.

Turning next to the topic of civil forfeiture of real property. H.R. 3299 adds a new provision to allow the civil forfeiture of real property used to store illicit drugs or equipment used in their manufacture or distribution. We strongly support this amendment but urge that it be expanded to reach land used in the domestic commercial cultivation of marijuana. This is a problem of increasing dimensions. Presently the bulk of marijuana still comes from foreign sources. However, large scale cultivation within the country is a burgeoning problem and it appears to often involve a particularly strong type of marijuana, sinsemilla, which can be sold at prices in excess of $1,000 a pound.

Set out in my statement are a number of examples of sophisticated cultivation operations. This is a very real problem. If we act now and have effective enforcement tools, tools that should include forfeiture authority, we can stem the expansion of this problem. I also point out that the land forfeiture authority set forth in H.R. 3299 is drafted to protect against overreaching, and these protections would continue to apply if this authority were expanded to encompass the marijuana cultivation problem.

Resolution of third party claims, H.R. 3299 provides for a procedure for a judicial hearing to resolve third party claims to property that has been criminally forfeited. However, these third parties must first seek relief from the Attorney General by filing a petition for remission and mitigation, a procedure shaped to accord with former Department of Justice policy. It is now our position, after careful study and consideration, that a third party who asserts a legal claim to property that is the subject of a special verdict of forfeiture is entitled to a judicial adjudication of his asserted interest, and that the granting of a petition for remission or mitigation should, as it has always been in the civil forfeiture context, be a matter within the discretion of the Attorney General and reserved for those who assert equitable but not legal bases for relief.

In light of our change in policy, we believe H.R. 3299 should be amended so a third party asserting a legal claim to criminally forfeited property need not seek remission or mitigation before he avails himself of the bill's hearing procedure. The Department would be pleased to submit a draft amendment to achieve this change. We have worked out a tentative draft on this matter.

Finally, the standard of proof for criminal forfeiture. The subcommittee staff has asked the Department's views on providing a preponderance of evidence standard of proof for criminal forfeiture. Neither of the two present criminal forfeiture statutes articulate the standard of proof but it has been the practice in the courts to use a beyond a reasonable doubt test. Since criminal forfeiture is not an element of an offense, but rather a sanction imposed after conviction, we believe a good argument can be made that the preponderance test is legally sufficient. Moreover a preponderance standard does apply in all civil forfeitures. However, we question whether lowering the standard of proof would on balance be beneficial.

First, such a change will doubtless spark litigation that may take years to resolve; second, juries may be confused by having to apply one standard to assess the defendant's guilt, and another to determine whether certain of his property is subject to forfeiture. Admittedly, there may well be cases where a lower standard would make a difference. But to date, meeting the beyond a reasonable doubt test has not been particularly troublesome, probably because the forfeiture issues will already have been established in proving the elements of the criminal offense.

In closing I again stress the importance we place on drug enforcement improvements in H.R. 3299 and our willingness to work with the subcommittee to resolve any of our differences and suggest amendments to further strengthen and clarify this legislation.

Mr. Chairman, that concludes my statement. Mr. Webb and I will be pleased to respond to questions you or the members of the subcommittee may have.

Mr. HUGHES. Thank you, Mr. Knapp.

I think what we will do is take the balance of the testimony and then we will subject the panel to questioning.

[The statement of Mr. Knapp follows:]

STATEMENT OF JAMES I.K. KNAPP, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

Mr. Chairman and Members of the Subcommittee, I am pleased to appear before the Subcommittee to discuss H.R. 3299, the "Comprehensive Drug Penalty Act of 1983." The goals of this legislation, strengthening the use of forfeiture as a weapon in attacking drug trafficking and increasing the fines available for serious drug offenses, are ones which this Administration regards as of the highest priority, for they are essential to our efforts in combatting one of the gravest crime problems facing our country: the importation and distribution of dangerous drugs. Indeed, two of the titles of the President's comprehensive crime legislation, introduced in the House as H.R. 2151, are similarly designed to improve forfeiture and increase drug offense fines.

In comparing H.R. 3299 and the Administration's analogous proposals, it is clear that we are largely in agreement about the major concepts set forth in this legislation. In addition to increasing the now unacceptably low maximum fines for drug crimes, these objectives include creating a strong criminal forfeiture statute that would be applicable in all felony drug trafficking cases, providing authority for the civil forfeiture of real property used in the commission of major drug crimes, providing a funding mechanism whereby amounts realized in forfeiture cases can be used to defray the mounting costs associated with forfeitures, and amending the forfeiture provisions of the Tariff Act of 1930—a statute which governs civil forfeitures under both the customs and drug laws—to increase the use of efficient administrative forfeiture procedures in uncontested cases. While our approaches to each of these issues differ somewhat, I believe the areas of agreement far outweigh the differences, and we would be pleased to work with the Subcommittee to resolve these differences in a mutually acceptable way.

Let me begin by outlining the particular subjects on which my testimony will touch. First, I will address the major differences between H.R. 3922 and the Administration's forfeiture proposal. One such difference is scope. While H.R. 3922 is confined to improvements in the forfeiture of drug related assets, the Administration's forfeiture proposal also amends the RICO criminal forfeiture statute (18 U.S.C. 1963). A second major difference concerns the question of including a substitute assets provision in criminal forfeiture legislation. Our proposal contains such a provision; H.R. 3299 does not. Another difference, although not of the magnitude of the RICO and substitute assets issues, is that H.R. 3299's provision for the civil forfeiture of real property used in serious drug crimes does not permit the forfeiture of land used for the domestic cultivation of marihuana.

In addition to addressing these differences between H.R. 3299 and the Administration's forfeiture proposal, my statement will stress the importance of the Tariff Act amendments to our civil forfeiture efforts since these amendments were not before the Subcommittee in its consideration of forefiture legislation in the last Congress. I will also take this opportunity to inform the Subcommittee of a change in the Justice Department's policy with respect to petitions for remission and mitigation, a change that we believe necessitates a revision in the hearing procedure set out in the criminal forfeiture provisions of H.R. 3299. Finally, at the request of the Subcommittee's staff, I will briefly discuss the concept of lowering the standard of proof in criminal forfeiture cases.

RICO CRIMINAL FORFEITURE

An important part of the Administration's forfeiture legislation focuses on strengthening the criminal forfeiture provisions of the Racketeer Influenced and Corrupt Organization or RICO statute (18 U.S.C. 1961 et seq.). H.R. 3922's forfeiture amendments are confined to those applicable to drug offenses. The authority to reach the profits and financial underpinnings of organized criminal activity through forfeiture is a necessary part of effective law enforcement in this area. This is the very reason that in 1970 the Congress included criminal forfeiture as one of the sanctions applicable to violations of RICO. In our view combatting racketeering is a top priority of federal law enforcement, and depriving those involved in organized criminal activity of the financial resources they amass and use in this crime is an integral part of that enforcement effort. To be successful in this effort, however, we must improve existing forfeiture authority under the RICO statute.

Briefly, the need to improve the RICO criminal forfeiture provisions arises in two areas. First, the forfeitability of profits of racketeering should be clarified. Whether the RICO statute now encompasses such profits is a question currently before the Supreme Court in *Russello* v. *United States* (No. 82-472, cert. granted, Jan. 10, 1983). The property at issue in *Russello* is more than $300,000 in fraudulently obtained insurance proceeds from an arson-for-profit scheme. We believe it is essential that such profits be subject to forfeiture under the RICO statute. Should the Congress fail to address this issue and *Russello* is decided against the government, the effectiveness of the RICO forfeiture provisions will be severely limited.

The second problem posed by the RICO forfeiture statute is one that arises from the distinctive nature of criminal forfeiture. In criminal forfeiture, unlike civil forfeiture, the government cannot obtain control of the assets until after a judgment of forfeiture is entered. As a result, a defendant has ample opportunity to conceal or transfer his forfeitable assets in advance of trial, and such pre-conviction transfers can render the sanction of forefeiture an illusory one. This is the greatest problem posed in using criminal forfeiture effectively, and in the case of RICO violations, in contrast to many drug violations, there is no alternative remedy of civil forfeiture; criminal forfeiture is the sole procedure available.

Presently, under the RICO statute, the only mechanism to address the problem of pre-conviction transfer or disposition of assets is a restraining order, and that remedy is available only after indictment. As is recognized in the drug felony criminal forfeiture statute proposed in H.R. 3299, the authority to obtain a restraining order should be extended, under certain limited circumstances, to the pre-indictment period. This additional authority should apply to RICO forfeitures as well. The Administration also urges that the RICO criminal forfeiture provisions, and the proposed drug felony criminal forfeiture statute proposed in H.R. 3299, be amended to include a substitute assets provision to address those cases where a restraining order cannot be obtained or is ineffective. In short, with isolated exceptions, we see

no reason why the basic language, concepts, remedies, and procedures under the RICO and drug offense criminal forfeiture statutes should not be parallel.

SUBSTITUTE ASSETS

As noted above, it is the position of the Department of Justice that a substitute assets provision would greatly enhance the effectiveness of criminal forfeiture. Briefly, a substitute assets provision works as follows. The government must prove in the criminal trial that specified property of the defendant was used or obtained in such a way as to render it subject to forfeiture under the applicable statute. If after the entry of the special verdict of forfeiture, however, it is found that those specified assets have been removed, concealed, or transferred by the defendant so that they are no longer available to satisfy the forfeiture judgment, the court may order the defendant to forfeit other of his assets in substitution. Thus, by applying a substitute assets provision, defendants would not be able to avoid the criminal forfeiture sanction simply by making their forfeitable assets unavailable at the time of conviction.

Substitute assets is a novel concept. It departs from the traditional concept of forfeiture upon which civil forfeitures are based. In civil forfeitures, it is the property that is "guilty," and indeed, with the exception of a few of the most recently enacted civil forfeiture provisions, the guilt or innocence of the owner of the property is irrelevant. Thus, in civil forfeiture, a nexus between the property forfeited and a violation of law is essential. It is in this respect that a substutute assets provision of a criminal forfeiture statute would differ. Although the government would have to prove that the original asset did have the necessary nexus to the offense, an asset ordered forfeited in substitution (where the original asset was no longer available) would not have to bear a "tainted" relationship to the offense.

The nexus requirement applicable in civil forfeiture, however, should not bar application of a substitute assets provision in the context of criminal forfeiture. Criminal forfeiture differs from civil forfeiture in two important ways. The first is a practical one to which we have already alluded: in civil forfeiture, the action is commenced with the government's seizure of the property. In criminal forfeiture, on the other hand, the government cannot obtain custody of the property until after conviction. Therefore, the very procedural nature of criminal, as opposed to civil, forfeiture creates greater opportunities for a defendant to transfer or dispose of his forfeitable assets.

The second difference between criminal and civil forfeiture is a conceptual one. As noted above, in civil forfeiture, it is the property itself which is the defendant, and the government has a right to the property because it is contraband, or a fruit or instrumentality of a crime. Criminal forfeiture, however, is a punitive sanction imposed against a convicted person. Where, prior to conviction, a defendant transfers his forfeitable property or removes it from the jurisdiction of the court, he can effectively avoid this sanction. A substitute assets provision, therefore, would preserve the sanction of criminal forfeiture in such cases.

In understanding the importance of a substitute assets provision, we mut be realistic about the sophistication of many drug traffickers and organized crime figures. Concealing the extent of their financial assets is not uncommon; rather it is a common practice, for such individuals must fear not only the prospect of forfeiture, but also the fact that exposure of their financial dealings would subject them to liability for tax and currency law violations. This is one reason the use of offshore banks has been such a boom to drug traffickers and such a problem to law enforcement officials. These banks serve both as safe depositories for illicit drug profits and as money laundering facilities that can thwart our efforts to trace "tainted" sources of a trafficker's stateside assets.

By way of illustration you may recall the recent guilty plea of one of the defendants in the *DeLorean* case. As part of the plea, he agreed to forfeit hundreds of thousands of dollars in an account in the Cayman Islands. Had this case gone to trial this money would not have been available for forfeiture, and no forfeiture of substitute assets could have been ordered under current law.

A 1982 prosecution of a large-scale hashish smuggling operation, *United States* v. *Ashbrook*, provides a similar example. The primary defendant was apprehended leaving the country with $170,000 intended as partial payment on a two million dollar hashish deal. This defendant has operated for several years. He would deposit the proceeds of his drug trafficking in a Cayman Islands bank account in the name of a fictitious corporation. Amounts needed for new drug deals would be transferred from the Caymans to Lebanon. In this case, not only were substantial forfeitable drug proceeds in a bank outside the jurisdiction of a United States court, but a

$300,000 boat used to smuggle the hashish was in Italy, also outside the reach of the government. Fortunately, by virtue of a plea agreement, a substantial forfeiture was obtained. Again, however, had this case gone to trial, it is doubtful that, absent a substitute assets provision, a forfeiture of much significance could have been assured, despite the fact the defendant had a number of extremely valuable stateside assets.

The need for a substitute assets provision is not confined to cases involving the use of offshore banks. For example, in *United States* v. *Webster*, 639 F.2d 174 (4th Cir. 1981), modified on rehearing, 669 F.2d 185 (1982), a defendant used a bar as a front in a heroin dealing operation. The bar was clearly subject to forfeiture under the RICO or Continuing Criminal Enterprise (21 U.S.C. 848) statutes. However, it was sold a month before indictment. Without a substitute assets provision, there could be no forfeiture.

It is argued that the imposition of substantial fines would be an effective alternative to a substitute assets provision. Certainly, the two remedies serve the same purpose of imposing an economic sanction on a defendant, and we strongly support the increased drug fines proposed in H.R. 3299. Nonetheless, we do not view fines as an adequate alternative to a substitute assets provision for two reasons. First, the imposition of a fine is not mandatory. Moreover, in H.R. 3299, a new procedure is set out to allow the court to excuse all or part of the fine imposed on a drug trafficker. A special verdict of criminal forfeiture, however, is binding on the court, and under our proposal this would extend to cases in which forfeiture of substitute assets was appropriate. Second, collection of criminal fines is difficult. Once a fine is imposed, the United States must pursue collection remedies in State court in the same manner as an ordinary creditor. In the case of criminal forfeiture, the government is authorized by the trial court to seize specific assets. Furthermore, under the Administration's forfeiture proposal, after conviction the government could obtain a strong restraining order pending its actual seizure of the property. For these reasons, we believe that forfeiture through a substitute assets provision can prove a substantially more effective sanction than the possibility of imposition of fines.

In addition to addressing the problem of pre-conviction transfers through applications of a substitute assets provision, we believe there should also be specific statutory authority to void these transfers where they are sham transactions or undertaken with the intent to avoid forfeiture, except where the transferee is an innocent bona fide purchaser for value.

CIVIL FORFEITURE OF REAL PROPERTY

Section 102 of H.R. 3299 adds a new provision to allow the civil forfeiture of real property used to store controlled substances or equipment used in the illegal manufacture or distribution of drugs. This provision, which would, for the first time, give clear authority for the forfeiture of "stash houses" and illicit drug laboratories, is one the Administration strongly supports. We are concerned, however, that it does not allow us to reach land used in the domestic, commercial cultivation of marihuana—a problem of increasing dimensions.

We have no firm figures on the quantities of marihuana produced domestically, although an inter-agency effort has been recently initiated to provide sound estimates in this area. Clearly, the primary source for marihuana remains foreign. The Drug Enforcement Administration's 1980 estimates for illicit marihuana availability limited the domestic supply to about seven percent. Nonetheless, there is a consensus in the drug enforcement community, both state and federal, that domestic cultivation of marihuana for commercial distribution is significant and growing. Part of this growth, we believe, is a response to successes in interdicting foreign shipments. Moreover, the mere quantities of marihuana produced within the country do not fully indicate the seriousness of this problem, for domestic cultivation operations appear increasingly to concentrate on production of sinsemilla, an extremely powerful type of marihuana that can command prices in excess of $1,000 a pound. For example, in hearings last September before the Senate Subcommittee on Forestry, Water Resources, and Environment, the Sheriff of Mendocino County, California, stated that over a three year period, his county's eradication program resulted in the confiscation and destruction of more than 100,000 pounds of sinsemilla. Just this month, the United States Attorney in Sacramento successfully prosecuted a case involving cultivation of more than 4,000 high-grade marihuana plants on both public and private land. (*United States* v. *Corey Wright, et al.*)

The United States Attorney for the Eastern District of Oklahoma indicates that he is receiving reports of large amounts of marihuana cultivation in his district, and has successfully prosecuted two marihuana growing operations in the last year.

37-763 O - 85 - 2

(*United States* v. *Warhop* and *United States* v. *Barnard.*). One of these cases involved the transportation, on a regular basis, of marihuana from southeastern Oklahoma to Kansas City and Chicago. In another case, a cooperating witness provided information that he and two partners moved from California to Oklahoma specifically for the purpose of buying a farm to grow sinsemilla. This operation included not only the cultivation of plants but also irrigation and drying facilities. Additional examples provided by the Drug Enforcement Administration of large scale marihuana growing operations in other states are attached at the end of our statement.

Right now, we can combat large-scale growing operations only through prosecution and eradication efforts. In our view, forfeiture of the land used in these lucrative commercial operations should be added to the arsenal of enforcement resources. Therefore, we strongly urge the Subcommittee to augment H.R. 3299's provisions for forfeiture of real property by including the authority to reach land used in commercial cultivation operations. The present provision's limitation to felony offenses, coupled with its specific protection of any innocent owners of misused real property, provide adequate assurances against unfair application of the use of this land forfeiture authority.

TARIFF ACT AMENDMENTS

Title II of H.R. 3299, like the Administration's forfeiture legislation, sets forth extremely important amendments to the forfeiture provisions of the Tariff Act of 1930. These provisions govern civil forfeitures under both the customs and drug laws. By far the most significant of these amendments are those that would increase the availability of more efficient administrative forfeiture procedures.

Under current law, civil forfeitures may be the subject of either judicial or administrative proceedings. Administrative proceedings, which are applicable only in uncontested cases, can be used now, however, only if the property at issue is valued at less than $10,000. As you can imagine, assets in drug trafficking cases frequently exceed this $10,000 ceiling. For example, cash seized in a large drug transaction will often exceed this amount, as will the value of most boats and airplanes used to smuggle illicit drugs. Yet many forfeiture cases involving these valuable assets go uncontested. The problem posed by the requirement in current law that these uncontested cases be the subject of judicial, rather than administrative, proceedings is one of tremendous inefficiency in terms of both time and money.

As the members of the Subcommittee are no doubt aware, the number of civil cases filed in the United States District Courts is staggering. As of June, 1982, more than 200,000 civil cases were pending. This huge backlog of civil cases means that periods of more than a year can elapse between the time a civil forfeiture case is filed and the time it is decided. During this period, seized property is subject to deterioration, and in the case of property requiring considerable maintenance, such as a boat, this deterioration can be significant. Moreover, during these periods of delay, the expenses to the government in storing, safeguarding, and maintaining the property mount. Thus, depreciation of the property coupled with huge expenses incurred by the government while awaiting judgment can often mean that the sale of the property ultimately results in little or no return to the government. The interests of third parties can be jeopardized as well in such cases, for there may be inadequate sale proceeds to satisfy liens against the forfeited property.

To address this problem, H.R. 3299 would allow the use of far more efficient administrative forfeiture proceedings with respect to any cars, boats, and planes used in the illegal transport of dangerous drugs and with respect to any other property of a value up to $100,000. As under current law, administrative proceedings would be available only when, after notice, no party comes forward to post bond and require a judicial resolution of the forfeiture.

The bill would also raise the current bond amount, now set at $250. This amount dates from 1844 when the limit on property subject to administrative forfeiture was only $100. In H.R. 3299, the bond is to be set at ten percent of the value of the property up to a maximum of $2,500. The Administration's bill would specify a maximum of $5,000, a figure we prefer. However, even a maximum of $2,500 would be a vast improvement over the current bond which is so low as to provide no disincentive to the filing of clearly frivolous claims and which bears no relationship to the costs to the government in pursuing a successful forfeiture.

Another of the Tariff Act amendments would clarify our authority to discontinue a federal forfeiture action in favor of state forfeiture proceedings. This would enhance cooperation with state and local law enforcement agencies in our drug forfeiture investigations. We believe this cooperation would be further enhanced by the addition of an amendment included in the Administration's proposal, but not in

H.R. 3299, that would allow the direct transfer of forfeited property to state and local agencies who assisted in the case to the forfeiture.

Also included in the Tariff Act amendments is a Customs Forfeiture Fund which would make available for appropriation the proceeds of profitable customs forfeitures to defray expenses incurred by the Customs Service in storing, maintaining, and disposing of forfeitable property. This fund for the Customs Service is analogous to the Drug Enforcement Fund appearing in the first part of H.R. 3299 and approved in the last Congress. The Administration's bill contains two similar funds. Again, the basic conceptual framework of the funds in H.R. 3299 and those in the Administration's bill is the same, and to the extent that our approaches differ, we would be pleased to work with the Subcommittee to resolve these matters as quickly as possible.

RESOLUTION OF THIRD PARTY CLAIMS

Until recently, the Department entertained a variety of petitions for relief from an order of criminal forfeiture in what is known as the remission and mitigation process. These petitions included not only requests for relief which did not challenge the validity of the forfeiture itself, but also claims made by third parties which by their very nature were inconsistent with the order of forfeiture. In essence, this latter category of claims includes those in which a third party asserts that the order of forfeiture is improper because the property was his rather than the defendant's or because his legal interest in the property was superior to that of the defendant. It is now our position that this latter category of claimants—those asserting a legal interest in forfeited property that cannot be co-extensive with the order of forfeiture—are entitled to a judicial resolution of their claims, and that it is improper and arguable even unconstitutional for the remission and mitigation process, which has traditionally been viewed as solely a matter of executive discretion, to be used as the forum for resolution of their asserted interests.

H.R. 3299 now includes a procedure whereby third parties may obtain a judicial hearing after the close of the criminal case to adjudicate their claims to property which has been the subject of a special verdict of criminal forfeiture. However, all third parties are required, in the first instance, to seek relief from the Attorney General through the remission and mitigation process. This aspect of the hearing procedure was designed to accommodate our former policy concerning the remission and mitigation process. In light of our new policy, however, we now firmly believe that true third party claimants (as opposed to persons asserting merely equitable grounds for relief) should not be required to pursue the remission and mitigation process. While we apologize for the fact that in the last Congress the Subcommittee shaped the hearing procedure to accommodate the very policy which we have now changed, this change should allow a more even-handed and expeditious adjudication of third party interests, an issue about which, Mr. Chairman, I understand you and other members of the Subcommittee have had strong concerns.

If it is acceptable to the Subcommittee, the Department would be pleased to submit draft amendments to H.R. 3299's hearing procedure that reflect our change in position.

STANDARD OF PROOF FOR CRIMINAL FORFEITURE

Subcommittee staff has requested the Department's views on changing H.R. 3299's standard of proof for criminal forfeiture from one of beyond a reasonable doubt to one of preponderance of the evidence. The standard of proof issue is not addressed in current criminal forfeiture statutes, and to our knowledge, no court has ever ruled on this matter. From a procedural standpoint, criminal forfeiture is treated in the same manner as an element of an offense. It must be alleged in the indictment, is the subject of a special verdict by the jury in the criminal trial, and as with an element of the offense, it has been the practice in the courts to require proof beyond a reasonable doubt.

However, criminal forfeiture is not an element of an offense. Instead, it is a special sanction, applicable only after criminal conviction, and based on a factual showing of a specified connection between the criminal offense and the property to be forfeited. In at least one other context, the dangerous special offender (18 U.S.C. 3575) and dangerous special drug offender (21 U.S.C. 849) statutes, proof of circumstances to support imposition of a special sanction need only meet a preponderance of the evidence standard. Moreover, even though civil forfeiture has, in certain contexts, been said to be quasi-criminal in nature, a preponderance test applies in all civil forfeiture cases, and so it could be said that there is nothing about forfeiture per se, whether pursued in civil or criminal proceedings, that requires a beyond a

reasonable doubt standard. Thus, a good argument could be made that since criminal forfeiture is not in the nature of a determination of criminal liability but rather is an assessment of a special penalty following a finding of guilt, a preponderance of the evidence standard would be sufficient.

While, therefore, an argument can be made for the preponderance standard, we question whether such a change in the law would, on balance, be beneficial. To date, meeting the beyond a reasonable doubt test in our criminal forfeiture cases does not appear to have been particularly troublesome. This may well be due to the fact that most of the essential elements supporting a forfeiture concern the criminal violation itself and will have to be proven beyond a reasonable doubt in any event before conviction can be obtained. Nonetheless, were the standard of proof lowered, there may well be cases where the government would prevail while under the current standard we would not. On the other hand, however, changing the standard of proof will inevitably invite years of litigation. Moreover, since criminal forfeiture is determined by the jury, there may be considerable confusion if they must assess guilt according to one standard of proof and criminal forfeiture according to another. Thus, our concerns about this change stem not from the legal merits of the proposal, but rather from the potential problems of jury confusion and additional litigation such a revision may generate.

In closing, I again stress the importance the Department of Justice places on the drug enforcement improvements in H.R. 3299 and our willingness to work with the Subcommittee to resolve any of our differences and suggest amendments to further strengthen this legislation. Mr. Chairman, that concludes my prepared statement, and I would be pleased at this time to respond to questions you or the members of the Subcommittee may have.

EXAMPLES OF MARIHUANA CULTIVATION ON PRIVATE LANDS WITH OWNER KNOWLEDGE/PARTICIPATION

1. Case Number: IF-82-X078; File Title: Hill, Lloyd et al; Date of Raid: September 18, 1982; Place: Monroe County, Missouri: Arrested: Lloyd Hill and wife Jane.

Circumstances.—Execution of the search warrant on a farm owned by the defendants revealed approximately 1½ acres of the farm under cultivation in marihuana with a potential estimated yield of 6-7000 pounds. Defendants were tried and sentenced in state court on June 6, 1983. Lloyd Hill received seven years in jail. His wife Jane was given one year probation. The property was not seized.

2. Case Number: IF-82-X063; File Title: Doty William J.; Date of Raid: August 25, 1982; Place: Phelps County, Missouri; Arrested: Willima J. Doty.

Circumstances.—Execution of the search warrant on the Doty's farm revealed marihuana cultivation over a two acre area, which yielded 9,360 lbs. of product. Defendant was tried and sentenced in Federal court on December 23, 1982. He received five years for manufacturing marihuana and five years for possession with intent to distribute. The property was not seized.

3. Case Number: IF-83-X004/DCM1; File Title: Melvin Shaw et al; Date of Raid: October 5, 1982; Place: Randolph Country, Illinois; Arrested: Melvin Shaw.

Circumstances.—Execution of the search warrant on Shaw's farm turned up 4200 lbs. of dried marihuana, which had been grown over a five acre area on the farm. Also found was a large quantity of seeds. Seized were 21 weapons, a tractor and five trash compactors used to press the marihuana. The farm was not seized, however, on December 15, 1982, Shaw was fined $1,106,320 in state court and given three years probation. Shaw's farm was sold to pay the fine. Ten thousand dollars of the fine was for the growing violation. The remainder was for the estimated street value of the seized marihuana which can be levied under Illinois state law.

4. Case Number: MM-83-0002; File Title: Powers, Howard; Date of Raid: September 29, 1982; Place: Roosevelt County, New Mexico; Arrested: Howard Powers and five others.

Circumstances.—Execution of the search warrant on Mr. Powers farm revealed as estimated 62.5 acres of land cultivated in marihuana and milo (corn). The plants were in rows, which alternated a row of corn and a row of marihuana. A harvest of 600,000 pounds of marihuana was estimated for the field. Disposition in state court is pending. The land was not seized.

Mr. HUGHES. Mr. Powis?

Mr. POWIS. Thank you, Mr. Chairman.

Mr. HUGHES. We have your statement which, without objection, will be made a part of the record and you may proceed as you see fit.

Mr. POWIS. Thank you, sir.

Good moring, Mr. Chairman. Mr. Smith. Mr. Shaw.

It is always a pleasure to appear before this subcommittee in view of all you have done to strengthen the criminal justice system and put more teeth in our Federal laws in the continuing fight against criminal activity.

I appear here today to speak in general support of those provisions of H.R. 3299 which deal with the amendment to the Tariff Act of 1930 and which provide for significant and important improvements regarding civil forfeitures under the Customs and drug laws. H.R. 3299 and similar provisions of the administration's Comprehensive Crime Control Act of 1983, that is H.R. 2151, will both increase the effectiveness of the administration of civil forfeiture procedures.

The most important aspects of the proposals in H.R. 3299 which amend the Tariff Act of 1930 have to do with the increase in the value of property which can be handled by administrative forfeiture proceedings from $10,000 to $100,000 and the creation of a revolving fund within the Customs Service which will allow for the payment of expenses incurred in handling and maintaining seized property prior to forfeiture and the payment of rewards to individuals who provide information which leads to forfeiture.

At the present time, seized property cannot be administratively forfeited if the value is $10,000 or more. Many automobiles and the vast majority of aircraft and maritime vessels seized for carrying contraband exceed this amount. Indeed drug traffickers frequently use new and sophisticated aircraft and marine vessels which often range in value to over $1 million. H.R. 3299 will allow administrative forfeiture proceedings for property valued at up to $100,000 and will remove all dollar limits on conveyances used to transport controlled substances.

Hence, the Government will be able to proceed expeditiously and administratively in the numerous cases where seizures are uncontested. It should be noted that in most cases involving the seizure of large amounts of drugs being smuggled into the country, the owners of the seized contraband do not bother to contest the forfeiture action.

H.R. 3299 will continue to allow an owner of seized property to contest the forfeiture by posting a bond. The bill does recognize, however, that the present bond requirement has been in effect since 1844 and is not realistic in today's world. Hence this bill will increase the bond requirement from a maximum of $250 to a maximum of $2,500, or 10 percent of the value of the property. The administration's bill, H.R. 2151 sets the bond at a maximum of $5,000 or 10 percent of the value of the property. While I believe that the $5,000 figure is preferable, any increase over the present bond figure is needed and will be appreciated by the Customs Service.

The creation of a customs forfeiture fund is another major positive feature of the amendment to the Tariff Act of 1930. Presently the Customs Service incurs considerable expense in the maintenance and storage of seized property and also incurs expense in the

disposition of forfeited property. These costs must be deducted from Customs normal operating budget. The revolving fund will allow the proceeds from the disposition of forfeited property to be applied to cover these expenses. It will also allow for the payment of award compensation to persons who provide information leading to forfeitures.

We also support that portion of title II of H.R. 3299 which would permit the discontinuance of a Federal proceeding in favor of a forfeiture under State law. This will allow the Federal Government to assist State and local law enforcement agencies by making available to them certain seized property which they would be able to utilize after forfeiture.

Finally we support section 589 of H.R. 3299 which will give statutory enforcement authority to customs officers. This will fill a void which has existed for a long time. Too much of the customs officers' present arrest authority depends on the interpretation of 50 individual State laws. This will clarify what has been a confusing and poorly defined situation in many instances.

I would like to again thank you, Mr. Chairman, Mr. Sawyer, and Mr. Sensenbrenner of the committee and other members, for your strong support of Federal agencies as evidenced by the introduction of H.R. 3299. Thank you, sir.

Mr. HUGHES. Thank you, Mr. Powis.

Mr. Seidel, do you have a statement or additional comments that you would like to make?

Mr. SEIDEL. Yes, Mr. Chairman, thank you.

Mr. HUGHES. Mr. Seidel, you may proceed.

Mr. SEIDEL. Mr. Chairman, members of the subcommittee. Good morning.

I will limit my comments to title II of the bill which deals with the amendments to the Tariff Act. During recent years, law enforcement agencies such as Customs, Coast Guard, and DEA have been hitting smugglers hard and where it hurts, in the pocketbook. Seizures of drug-related assets and conveyances—particularly vessels and aircraft—have increased over the years. During fiscal year 1982, customs officials seized 5,951 vehicles, 206 aircraft, and $32.7 million in currency and monetary instruments. Customs and the Coast Guard together seized 500 vessels during the same period of time. In many respects these civil forfeitures are more effective than criminal forfeitures because of the ability to immediately seize the articles used in the illegal act and to obtain a forfeiture on a lesser showing than that needed under the criminal laws.

I should point out that in most cases it is discovered as part of a border search or a boarding of a vessel which was recently upheld by the way, by the Supreme Court. Unfortunately, in many cases the seized assets are strangling the very agencies which seized them and which the seizures are intended to help.

Miami alone at the present time has 500 vessels under storage, just in the Miami Customs District alone. Last year the total seizure of vessels wasn't even that high and yet in the Miami District alone, we have that many under storage. Under present law, articles which are valued at $10,000 or less may be forfeited through a relatively brief and inexpensive administrative nonjudicial forfeiture proceeding. Unless the claimant chooses to contest the forfeiture, in which case under present law all he has to do is post a $250 bond and claim. Items valued in excess of $10,000 must go through a rather formal and time-consuming judicial forfeiture. This is true even in those cases where nobody contests the forfeiture. Since criminal cases have preference on the court dockets, and these forfeiture proceedings are civil in nature, they have a lower priority on the same dockets. Even uncontested cases involving assets over $10,000, such as the large number of mother ships that have recently been seized, must be judically forfeited. These forfeitures in the Miami District are taking between 12 and 18 months for a default judgment. It is even longer than that, I understand, very recently and in some districts it ranges from 9 to 12 months. During that period of time obviously somebody has to maintain the property and right now it is the agency which seizes it and is maintaining the custody of the property. In some districts the U.S. Marshals Service maintains it on behalf of Federal agencies. Naturally, they have to expend the funds during that period.

When a forfeiture decree is ultimately entered, and the property is forfeited and title vested in the U.S. Government, it relates back to the time of the offense. And under U.S. law the Government agency which seized the property or any other Federal agency is entitled to have that property or it may be sold at auction. Unfortunately because of the length of time that some of these judicial forfeiture cases are taking, the property is in such a deteriorated condition that it is really of very little use to the agency which seized it, or any other Federal agency and it doesn't bring nearly as much as it could have if sold immediately. H.R. 3299 seeks to remedy the situation and I must point out, in a very favorable manner.

Most importantly, the bill would raise the forfeiture limit to $100,000 for most items and would eliminate the amount for those conveyances which are used to import-export, store or transport controlled substances. I did a survey yesterday, very quickly throughout the Miami region, and I found out that 95 percent of all the conveyances which we have under seizure are drug related. So you can see that the legislation would have a tremendous immediate impact on what would be covered by the legislation. In addition, nearly 100 percent of the coastal freighters which are under seizure are default. Nobody contests the forfeiture whatsoever. Those would immediately be subject to the administrative forfeiture provision. So I can see an immediate clearing up of this problem.

The bond amount would also be lifted under the legislation and as people pointed out previously, this amount has been on the books since 1844. It is interesting to note that at the time the amount of the bond, $250, was two and a half times the amount of the property which could have been administratively forfeited. It was at $100. That $250 amount is still on the books and yet the amount which can be administratively forfeited is $10,000. Obviously an increase in the bond requirement is necessary. The administration bill of $5,000 I think is preferable because I think it will discourage a far greater number of frivolous claims. However, $2,500 would certainly go a long way in solving the problem.

Another very important provision to Customs is section 613a of the Tariff Act as suggested by the legislation. This creates a special customs forfeiture fund. The fund would eliminate or greatly reduce a lot of the fiscal problems which are caused by present laws by permitting the Customs Service to pay expenses from the specially appropriated fund created from sales proceeds rather than having to use the agency's normal appropriations. And although under present law the expenses are reimbured to the appropriation, that is only possible if the item is sold at an amount greater than the expenses. Unfortunately, because of the time delays that the agencies are experiencing, in many cases the cost of storing the property is approaching or actually surpassing the value of the property itself. When you hold a vessel for 2½ years and you have to maintain it during that period of time, and pay a marina and pay pumping costs and have the engines turned over, after 2½ years there is very little left to sell. And so, in some cases, we are not even getting the amount of money to cover the expenses. The fund would be able to remedy that situation by allowing losses to be covered from other profits under the fund.

The need under present law to use regular appropriations results in a Catch-22 situation: The more effective that the seizing agencies are, the more they seize. The more they seize, the longer it takes to forfeit because of backlogs in the courts, the longer it takes, the more expensive it becomes, the more expensive it becomes, the greater the chance is that the Customs Service will not be able to cover expenses from the proceeds of the sale.

The fund would also permit more flexibility in developing streamlined seizure and forfeiture procedures. Hopefully, we will not have to continue the detailed accounting procedures which are required under present law whereby each separate bill for each separate seizure has to be maintained. Perhaps we would even be able to hire individuals to maintain property and charge those costs directly to the property. That is something that ought to be considered.

We do have one problem—it's a very minor problem—with the forfeiture fund as it is created under H.R. 3299 and we would suggest a modification. The Customs Service and many other agencies, by the way, make seizures under a variety of laws other than the customs laws by themselves. For example, Customs uses the currency reporting laws, the export control laws, the Contraband Transportation Act, and even the Controlled Substances Import and Export Act. All of which require the Customs Service as the seizing agency to maintain the property and to make the necessary investigations and reports. We would, therefore, suggest that the language in sections 206 and 207 of your bill be amended to adopt the language which is contained in the administration bill, H.R. 2151, which provides for the fund to be created from proceeds of forfeitures under any law enforced or administered by the Customs Service.

Section 208 of the bill which is intended to improve relationships between State and local governments, I think is a tremendous asset and we heartily endorse it. We would suggest, however, that the bill also be amended to permit turnovers to those law enforcement agencies who directly participated in the seizure after the forfeiture. The present provision would only allow us to turn it over prior to the forfeiture action having a judgment rendered. The problem with this, of course, is not every State has a forfeiture law which would allow them to take over the forfeiture. Several years ago, the Coos Bay, OR, Sheriff's Department spent 6 months in a joint Customs-DEA-Coast Guard investigation which resulted in a tremendous number of forfeitures, seizures of property, several vessels, amphibious vehicles, and a ranch, which under your proposal would also be subject to forfeiture. Unfortunately, under the law that was then in existence, there was no guarantee that even if the Coos Bay Sheriff's Department requested the property through GSA, that it would ever end up in the Coos Bay Sheriff's Department. Nor is there any guarantee that under the present GSA procedures that the property will even end up in Oregon, since any other law enforcement agency or any other nonprofit agency is on an equal footing for seizing forfeited property. We would, therefore, suggest that the bill be amended to allow at least those agencies which participated in the seizure to be able to reap the benefits after a forfeiture decree.

Finally, the Custom Service strongly endorses section 210 of the bill which contains the expanded arrest authority for Customs officers. This provision has been endorsed by every administration since the 1970's, and has been a part of several pieces of legislation of the past several years. Customs' present arrest authority is limited to arrest with a warrant under any provision of law, but warrantless arrests are presently limited by Federal law to narcotics marijuana, navigation, seizure, and revenue offenses and a variety of conservation, wildlife, and pollution laws.

In order to effectively assist INS is enforcing the alien laws, any Customs officers are designated as immigration officers.

In order to assist in the 1980—the Cuban boatlift, the Mariel boatlift—Customs officers stationed in Florida had to be deputized as special deputy U.S. marshals and Immigration officers in order to effectively enforce the export control laws and to make arrests at the point of departure, Customs officers are presently relying on State law. That would be fine if every State had the same provisions for arrest. They don't. New York, for example, does not allow arrests by private persons, which Federal officers are considered, unless the felony has, in fact, been committed. It doesn't have a probable cause standard. Not every State follows the probable cause standard. Some of them are much tougher on arrests by Federal officers. Needless to say 50 different State laws creates a tremendous problem.

The legislation introduced by you, Mr. Chairman, would remedy the situation and we heartily endorse it.

Two minor things that we would also suggest consideration of—the administration bill does contain conforming amendments to section 644, the Tariff Act, to bring it up to date. This allows the application of the Customs laws to aircraft. Unfortunately, the last time that the law was amended, the law that was in effect was a 1926 law, and this has never been updated. It is a very minor provision but it is very important to us and it is not well known what Customs laws apply to aircraft and this would certainly go a long way into straightening that out.

And last, a new section 600 which would apply to Custom seizure and forefiture provisions to any provision of law providing for forfeiture without setting forth the procedure such as the Currency and Monetary Instruments Reporting Act, right now the Custom Service cannot use the administrative forfeiture provisions for seizures of currency and monetary instruments; even uncontested ones, even the smallest currency seizures, $6,000 or $7,000, must go through a judicial forfeiture proceeding. We hope that our suggested amendment would remedy that situation.

On behalf of Customs, I would like to thank you and members of the committee for your consideration. And I would be happy to answer any questions.

[The statement of Mr. Seidel follows:]

STATEMENT OF STUART P. SEIDEL, ASSISTANT CHIEF COUNSEL, ENFORCEMENT AND OPERATIONS, U.S. CUSTOMS SERVICE

Mr. Chairman and members of the Subcommittee, thank you for allowing Customs an opportunity to appear before the Subcommittee today to testify on H.R. 3299. Title I, entitled the Comprehensive Drug Penalty Act of 1983 is of primary concern to the Department of Justice and the Customs Service therefore defers to that Department on its provisions. I will limit my testimony to title II of the bill which contains amendments to the Tariff Act of 1930 and is thus of direct concern to Customs.

During recent years, law enforcement agencies such as Customs, the Coast Guard and the Drug Enforcement Administration have been "hitting" smugglers hard and where it hurts—the pocket book. Seizures of drug related assets and conveyances—particularly vessels and aircraft—have increased over the years. During fiscal year 1982, Customs officials seized 5,951 vehicles, 206 aircraft and 32.7 million dollars in currency and monetary instruments. Customs and Coast Guard officers seized 500 vessels during the same period of time. In many respects these civil forfeitures are more effective than criminal forfeitures because of the ability to immediately seize articles used in illegal acts and to obtain a forfeiture on a lesser showing than that needed under the criminal laws. Unfortunately, in many cases, these seized assets are "strangling" the very agencies which seized them.

When an agency seizes a conveyance, forfeiture proceedings must be instituted to perfect title in the Federal Government. After these proceedings, the items may be retained for official use by the seizing agency or another Federal agency, or they may be sold at public auction or transferred to qualified eleemosynary institutions. Articles valued at $10,000 or less may be forfeited through a relatively brief and inexpensive administration (non-judicial) forfeiture proceeding, unless a claimant chooses to contest the forfeiture by posting a $250 bond to obtain a judicial forfeiture.

Items valued in excess of $10,000 must go through a rather formal and time-consuming judicial forfeiture. Since criminal cases have perference on the court dockets, and these forfeiture proceedings are civil in nature, they have a lower priority on the dockets. Even uncontested cases involving assets valued over $10,000 (such as "mother-ships") must be judicially forfeited. This is inefficient and creates a burden on court dockets and agency budgets. In Miami, these uncontested forfeitures can take anywhere from 12 to 18 months where the conveyances to be forfeited are worth over $10,000. During the forfeiture proceedings, the seizing agency or the U.S. Marshals Service (depending on the district) must store, maintain and provide security for the property. When a forfeiture decree is ultimately entered, the property has frequently deteriorated in condition and depreciated tremendously in value and the storage costs have reached record amounts, in some cases exceeding the value of the article. The tragedy, of course is that the big losers are the taxpayers and the agency maintaining custody. Instead of recouping costs and being able to use the vessel or aircraft, or deposit substantial sale proceeds in the Federal treasury, the seizing agencies must use appropriated funds to offset the increased expenses due to the time delays. The vessels or aircraft have depreciated or been vandalized so that, if sold, they do not bring as much as when seized. If the agency wanted to retain the item for official use, it is now unable to do so because of the deteriorated condition of the conveyance. In addition, innocent third parties (such as lien holders) may also suffer because proceeds may be insufficient to cover their interests.

H.R. 3299 seeks to remedy this situation. Most importantly, it would raise the value of property subject to administrative forfeiture from $10,000 to $100,000 and would eliminate the monetary limit for conveyances used to import, export, transport or store controlled substances, thus removing from the lengthy court proceedings all uncontested seizures of drug conveyances. Of course, persons wishing to contest the forfeiture can do so by posting a claim and cost bond. The bond amount would however, be raised from $250, an amount first contained in the Act of April 2, 1844, when administrative forfeitures were limited to property valued at $100 or less, to a more realistic $2,500 or 10 per cent of the value, whichever is less but not less than $250. Raising the bond to $5,000 as contained in H.R. 2151 might even be preferable to discourage frivolous claims from being filed. Naturally, persons unable to afford to post the bond may have this bond fee waived under existing administrative procedures.

Another very important provision to Customs is new section 613a, which establishes a special Customs Forfeiture Fund.

The Customs Forfeiture Fund will eliminate or greatly reduce fiscal problems caused by present laws by permitting Customs to pay expenses from a specially appropriated fund created from sales proceeds rather than having to use the agency's normal appropriations. The need to use regular appropriations results in the following "Catch 22" situation: the more effective Customs is, the more it seizes—the more it seizes—the longer it takes to forfeit because of backlogs in the courts—the longer it takes the more expensive it is—the more expensive it is—the greater chance customs will not be able to be reimbursed from the proceeds and therefore have to use its appropriations—if it uses its appropriations, less will be available for law enforcement.

The fund will also permit more flexibility in developing streamlined seizure and forfeiture procedures which, when coupled with the increased availability of administrative forfeitures, should result in enormous monetary savings to the Federal Government.

The Customs Service would suggest, however, that the wording of sections 206 and 207 of the bill be slightly modified. The present draft only permits the proceeds of forfeitures under "the Customs laws" to be deposited in the fund. Customs seizures are made under a variety of other laws, such as the currency reporting laws (31 U.S.C. Chapter 53), the export control laws (22 U.S.C. 401), the Contraband Transportation Act (49 U.S.C. 782 et seq.), and the Controlled Substances Import and Export Act (21 U.S.C. 952 et seq.) all of which require seizures by Customs officers to follow the normal Customs procedures regarding custody, storage, forfeiture and sale. We would therefore suggest that the language in H.R. 2151 "the laws enforced or administered by the U.S. Customs Service," be substituted.

Section 208 of the bill is intended to improve relations with state and local governments by authorizing the Secretary of the Treasury or the Attorney General, as appropriate, to discontinue Federal forfeiture proceedings where state or local forfeiture proceedings are being considered. Many seizures involve cooperative efforts between federal, state and local governments, but present interpretations of law do not seem to permit the Federal Government to discontinue forfeiture proceedings to allow similar proceedings in state courts even though, in many cases, the companion criminal trials are held in state courts. We would however, suggest that the section be modified to also permit turnovers after forfeiture to those state or local agencies which participated in the seizure. This would allow cooperating agencies in states without a forfeiture law to benefit from the seizure. Several years ago Congress had to enact a private bill to enable the Coos Bay Sheriff's Department to obtain forfeited amphibious vehicles which were seized by a joint Federal/state task force. There is no guarantee that under present GSA regulations seized property will end up with, or even in the same state as, the local agency which participated in the seizure.

The Customs Service strongly endorses section 210 of the bill which contains expanded arrest authority for Customs officers. This provision has been endorsed by every administration since the early 1970's. Present Customs authority is limited to arrests with a warrant for any Federal offense and warrantless arrests for narcotics, marihuana (26 U.S.C. 7607), navigation, seizure and revenue offenses (19 U.S.C. 1581) and a variety of conservation, wildlife and pollution laws (16 U.S.C. 3605, 33 U.S.C. 413). In order to effectively assist INS in enforcing the alien laws, any Customs officers are designated as immigration officers. In order to assist in the 1980 Mariel boatlift, many were designated as Special Deputy U.S. Marshals. In our export enforcement and arrests for assaults on fellow Customs officers, as well as for arrests for other Federal crimes in our presence (theft from interstate shipments) our arrest authority depends on 50 individual state laws—many of which

deem Federal officers to have only so-called "citizens" arrest authority. This situation is to say the least confusing, and at odds with the arrest authority of other Federal officials such as: Alcohol, Tobacco and Firearms; Drug Enforcement Administration; Federal Bureau of Investigation; Coast Guard and Postal Inspectors.

In addition to the foregoing, I would like to suggest two minor amendments to the Tariff Act which are contained in H.R. 2151 but not H.R. 3299, an updated 644 and a new 600 to cover situations, such as the Currency Reporting laws where forfeiture procedures are not specified. Without the latter change, uncontested administrative forfeitures of seized currency and monetary instruments will not be possible. I would be happy to provide language for your consideration.

I would again like to express my appreciation and that of Customs for this opportunity to express our views. If you have any questions, I would happy to answer them now.

Mr. HUGHES. Thank you, Mr. Seidel.

Mr. Powis and Mr. Seidel, first of all, a number of the recommendations you have made are not squarely within this committee's jurisdiction, as you well know. My suggestion to you would be to begin working with the committees that do have jurisdiction to see if they are in accord with some of the recommendations. I am sympathetic, for instance, with the recommendation that we be permitted to share with local law enforcement agencies the proceeds, the contraband from seizures. Quite often they do commit major resources to an investigation and feel left out, and it does create problems. They likewise need to be, I think, encouraged to assist us in the investigations and efforts to forfeit. However, that issue is not within this committee's jurisdiction. My suggestion in this situation, for instance, that you begin some dialogue with Chairman Brooks from the Government Operations Committee, and such other committees that might have jurisdiction.

Mr. POWIS. Mr. Chairman, we are committed to getting appropriate legislation to appropriate committees just as soon as possible and we are going to do that.

Mr. HUGHES. As I say I am sympathetic with that particular issue, and we endeavored as you well know, in the lame duck session, to accommodate that particular need. But unfortunately, it was not possible to do so, because the committee of jurisdication opposed that.

There is some concern on the part of Ways and Means over the arrest authority. I am sympathetic, as you well know, to making certain that the Customs agents have sufficient arrest authority. It was my understanding that we were codifying arrest authority. Mr. Seidel refers to it as an expanded arrest authority. I have always believed that it was an expanded arrest authority, but I think that it is important for you to begin working with the Ways and Means Committee on that issue. They have some concerns, some members of Ways and Means.

Mr. SEIDEL. It codifies present practice, but what it does it expands the specific statutes that are covered under Federal law.

Mr. HUGHES. I understand. Well, you have asked for additional authority to cover the Mariel boat incidents where you had to get your agents deputized. I agree that the present situation is ludicrous since you must go through that process and I am fully prepared to work with you in developing expanded authority. I do, however, think you have got to do some homework with the other committees that have that specific jurisdiction.

Mr. POWIS. We will go all out on that score, Mr. Chairman.

Mr. HUGHES. Under current conditions you really have an armada of boats pending forfeiture disposition in Florida, don't you?

Mr. POWIS. It is an understatement.

Mr. HUGHES. You haven't seen a fleet like that in one location in many a year, I suspect.

Tell me, what would be the situation today if in fact the anticrime bill (H.R. 3963) with its administrative forfeiture provisions would have become law in January of this year?

Mr. POWIS. I think we certainly would be deluged with a tremendous amount of administrative work, but I think in a relatively short time we would turn over a lot of those administrative forfeitures and it definitely should enhance money coming into the forfeiture fund and cut the costs that are mounting up in terms of storage and maintenance and so forth.

Mr. HUGHES. I would assume that by this time the United States could have administratively forfeited many of the assets, where we knew that the owner would not appear and would default.

Mr. SEIDEL. In a quick count yesterday, I found that perhaps 50 out of the 70 coastal freighters that were presently under seizure, in the Miami region, would have been already forfeited long ago, had this procedure gone through.

Mr. HUGHES. What is the percentage of people that come forward to make a claim, to contest the forfeiture?

Do you know offhand, Mr. Seidel?

Mr. SEIDEL. It depends tremendously on the type of conveyance that you are dealing with. In the case of coastal freighters such as the mother ships that we have been seizing, the percentage coming forward is near zero.

Mr. HUGHES. You can pretty much predict those instances—you can smell them when they are going to forfeit them, can you not?

Mr. SEIDEL. It is fairly obvious. The problem of course is with the trawlers and the shrimpers, where you have bank loans. Those are the only area that you really can predict. But certainly with the coastal freighters carrying 57 tons of marijuana, nobody is going to come forward to claim that.

Mr. HUGHES. I want to tell you that I regret that the omnibus anticrime bill H.R. 3963 was vetoed. I want to tell you that I am a little disappointed that Treasury wasn't heard a little more clearly than they were. In conference, we worked in a bipartisan fashion to work out that anticrime bill, I then listened to representatives from the Justice Department characterize the bill as not really having anything of any saving grace worth preserving, in light of the "czar" provision. I was, to be frank, disappointed, Mr. Powis, that Treasury didn't make a bigger fight to see that that bill was signed into law.

Mr. POWIS. Well, Mr. Chairman, Treasury did agree with the Justice position in that area and the "Drug Czar" was the overriding concern. Certainly we felt that there were all kinds——

Mr. HUGHES. Mr. Powis, that is absoutely ludicrous. I mean, we are now in the process of setting up regional intelligence areas throughout the country with the Vice President as the titular head, if you will, the "Drug Czar." The fact of the matter is that we are in the process of moving in just that direction, to try to

bring law enforcement agencies together, to cooperate more. I applaud that effort on the part of the administration. The regional task force operations that are now being set up, there has been a great interest to make the Vice President the head of all those, because of the symbolism involved that here is somebody that is going to ensure that agencies work together and knock heads when they don't. He could also be able to move resources around and to make the hard decisions.

I don't in this forum, want to get into a long dissertation about the "Drug Czar" provision. I didn't feel it was particularly important at this time but as a matter of fact I am beginning to like it more and more, as the days go on. The fact of the matter is that you had the strongest possible administrative forfeiture provision in our omnibus bill and I am not so sure we can get the same thing in this Congress. It is just unfortunate.

Let me just move on if I may.

Mr. SHAW. Would the gentleman yield on that?

Mr. HUGHES. Be happy to.

Mr. SHAW. I would like to just express my total agreement with the statements that you just made. I think unfortunately the words "Drug Czar" came into the case which had all kind of connotations which created all kinds of turf problems, administrative problems, and perhaps the building of a new bureaucracy.

And I think as the Chairman said, I think that if there is one thing we prove with the South Florida Task Force, it is that we need a drug coordinator. We need it at the highest possible level—being the Vice President, I think, was an absolute stroke of genius on behalf of the White House and I think that that particular decision should be codified into law and included in legislation which would require future Presidents to have a drug coordinator and choose from the highest authority within his own cabinet or the Vice President in making such a person. I believe it so strongly, that I filed such a bill just this week, which I am hopeful will have at least the interest of the administration to the point that they will look at it and instead of just standing at their post, will come forward with constructive amendments and perhaps we can again work in a bipartisan effort to accomplish it.

As the chairman, I feel it was a mistake to veto the legislation last week and I, as the chairman, made many calls to the White House urging them that the President not veto it, however, the decision had obviously been made, and I think unfortunately for the wrong reasons.

Mr. HUGHES. I thank the gentleman from Florida. I likewise have filed a drug coordination bill today so it looks like the gentleman's desire to see some additional hearings on that issue might come to realization.

We have a vote in progress. Mr. Powis.

Mr. POWIS. Well, Mr. Chairman, and Mr. Shaw, just one comment that NNBIS, under the vice president, is coordinating the drug interdiction efforts in a manner so that cabinet departments still maintain their line authority over their assets. But it is a coordination effort. And I think it is a positive effort.

Mr. SHAW. It is not just an interdiction, at least as far as what we did in south Florida. It is come in now to just interdiction, as

the new pronouncement has been made country-wide. But I think that we should not lose the benefits of what we have accomplished by this point and that is a total coordination.

Mr. HUGHES. Thank you. Well, we have a vote in progress and I didn't mean to get bogged down on the so-called Drug Czar provision, but a lot of us worked very, very hard to get that package through and we are very disappointed because we have lost such valuable time in moving ahead with the things that we all want to see done.

Why don't we recess for 10 minutes, and we will come back.

[Recess.]

Mr. HUGHES. The subcommittee will come to order. I apologize for those delays. Hopefully that will be the last vote for a while.

Mr. Knapp, as I indicated in my opening statement, I think the Comprehensive Drug Penalty Act has a considerable amount of legislative history, a general acceptance in the Congress and in fact was supported by the administration and the 97th Congress. The essential differences between the bill this year and the administration's proposal, as you indicate, are the substitute assets issue and whether we should broaden our coverage of this bill to include all RICO offenses. There were several other relatively minor suggested changes, but isn't that a fair assessment of the situation.

Mr. KNAPP. I think that is a fair assessment, plus this new dimension of this remission and mitigation procedure now.

Mr. HUGHES. Mr. Knapp, you know, last year's legislation was the result of a lot of give and take and it represented a compromise. I mean, that is how the legislative process evolves, we compromise. In this compromise, we accommodated a lot of the recommendations of the Department of Justice, even though we had some differences in approach. In the end we worked out a comprehensive package, and that is the bill that we have before us today.

Justice now comes back in again, after having negotiated in the last Congress, and they want to renegotiate and modify the bills on two areas that I thought we had compromised out last time. They are the substitute asset issue and the question of RICO. Now, generally speaking, the administration, (the Justice Department), hesitates to tamper with RICO for reasons you well know, and which I agree with. Now, why is it so important for us to amend RICO. Aren't we in effect reaching the overwhelming majority of the drug peddlers that we are after, by amending the Controlled Substances Act and the Controlled Substances Export and Import Act. Aren't we reaching the overwhelming majority of individuals involved in the type of trafficking that we want to reach?

Mr. KNAPP. Well, yes, but in terms of just the drug traffickers, not necessarily the organized crime figures. Let me say this. You know, in the course of legislative history in a given year, certain compromises may be reached. However, I think what we want the committee to consider is the best possible bill and we feel that these changes are important and——

Mr. HUGHES. Mr. Knapp, we didn't go back in this legislation to where we started from, where we had some differences. I started from where we worked out compromises. You know, I didn't go back in the areas where we had some differences in approach. We all have the same goals, but we have some different ways of arriv-

ing at those goals. We started out from where we left off in the 97th Congress, with the compromises we had effected.

Mr. KNAPP. Well, these are the changes which we feel are important and which we want the committee to consider. We feel they are very critical to having an effective asset forfeiture legislation. We hope the committee will give them serious consideration. These were at least—I believe they were part of the Senate bill that passed 95 to 1.

Mr. HUGHES. I am not adverse to going into RICO in a hearing where we comprehensively examine RICO. We haven't done that. That was the rationale for not tampering with RICO because frankly I want to make sure that before we start amending RICO that we look at it comprehensively.

In the bills before the subcommittee today, we are talking about reaching drug traffickers and it is my belief, unless you can show me differently, that these bills will do that, reach the drug traffickers and reach their assets.

Mr. KNAPP. Well, in terms of reaching the drug traffickers, yes, except for the problem of substitute assets, where they have diverted assets outside of the country which is a very serious problem.

Mr. HUGHES. All right, let's move on to that, then, since we—I think we can agree that diverted assets is a serious problem.

The question is, however, on substitute assets. Now, I really am at a loss to understand the argument that you advance that in the Ashbrook and the other cases you have recited, that we would be in a better position with a substitute asset provision than we are with the legislation before the committee, H.R. 3272 or H.R. 3299.

The legislation before us, in essence, says that first of all, there will be a presumption after conviction that all the assets that came into being after the criminal enterprise commenced, are presumed to come from the criminal enterprise, and are subject to forfeiture. That is a permissible presumption but it requires the defendant to come forward and show that it came from legitimate sources.

It also has an alternate fine provision, which would enable the court to impose a fine of twice the proceeds from the criminal enterprise. If the enterprise was drawing $2 million a year for 5 years, the court could impose a fine of up to $20 million as part of the alternate fine provision.

Now, you suggest that your approach with substitute assets is going to enable the law enforcement agencies to reach assets a lot more effectively. First of all, it is not going to enable you to reach assets—where you don't know their whereabouts, whether in this country or out of this country. Isn't it a fact that generally speaking drug traffickers don't put their names on the assets? They either use straw parties, corporations, wives, mothers, you name it. They use all kinds of blinds to try to throw off people that want to trace assets off their trail. Also you can't reach assets out of the country. It is my belief, therefore, that with the alternate fine provision, the court could, after conviction and after the Justice Department put in evidence of the nature and extent of the criminal enterprise, impose a fine and condition that fine, or at least the jail term that goes along with the fine, upon the payment of the fine and not have to worry about tracing assets or reaching them out of the country.

Now, why isn't that more preferable to the substitute asset provision where you actually have to locate assets, first of all, and you have to make sure that they are within the jurisdiction of the court?

Mr. KNAPP. The problem of the fine is that it is optional first to impose it at all, and the amount is effectively optional, and there is no way effectively that is very difficult to enforce. Whereas a substitute asset, if you can locate a substitute asset, that will be directly forfeited.

Mr. HUGHES. Isn't that why we appoint judges? What you are trying to do, you are trying to do the job of the judges, too. Granted, some of the judges are not measuring up to the challenge as we would like, but in effect what you are criticizing, you know, is a court system that hesitates to impose substantial fines. Your criticism is directed to the judges. We are providing a procedure to reach those assets. You are talking about the same trial judges that are going to have to make some determinations on forfeiture anyway.

Mr. KNAPP. Right, but if you want to have a meaningful asset forfeiture thing and you pointed out the problems of them disguising assets and transferring them out of the country, you want provisions that are mandatory. And where——

Mr. HUGHES. Mr. Knapp, how is your substitute asset provision going to reach assets that are in Brazil, for instance——

Mr. KNAPP. They are not——

Mr. HUGHES [continuing]. When there are no assets in this country.

Mr. KNAPP. Right. They are not. But we assume that to have a substitute assets provision, there obviously would have to be substitute assets available and if there are substitute assets available, whether it be another corporation, interest in another corporation or something like that, they will be subject to forfeiture.

Mr. SMITH. Will the gentleman yield?

Mr. HUGHES. Be happy to.

Mr. SMITH. We went over this problem in Florida in the last few years and one of the flaws that I find in your argument is that first of all you say, well, people don't know what the law is, and they don't bother to read the law. When you are dealing with drug dealers who are into a very sophisticated operations with hundreds of millions of dollars passing back and forth, and I am sure the gentleman to your right will attest to this, they know the law very well. They have been told in advance what the nuance is, what the legalities are. They know now that assets are not reachable, if they are not directly traceable, or they are not the assets specifically. So they don't have to move their money out. They don't really have to. Unless you go RICO, you can't get any of it. Unless you seize it in advance.

But if you have what the chairman is detailing, you have a situation as opposed to what you are detailing, where they would have a procedural need—they might not transfer assets under your way of doing it with substitute assets, they are going to be informed in advance—never keep a dime in this country. Don't under any circumstances, don't have your money in the United States because no matter what you do, if you get caught, and you get convicted, for-

37-763 O - 85 - 3

feiture is going to happen. So what you are doing in advance is making sure that substitute assets will never work because the substitutes will never be available. In my estimation, they are going to be getting the information from their attorneys, in advance.

Mr. KNAPP. I don't know if they are going to operate that way or not. I seriously doubt that it would be practical for them to see that all assets were transferred out of this country. Everything that they own. I should mention there is a second part to our proposal and that is to get at these transfers to non bona fide purchases for value, where they are putting them in other people's names, business associates and so forth, where there is no legitimate consideration and I think we——

Mr. HUGHES. At this time, let's stick with substitute assets, Mr. Knapp.

Mr. KNAPP. Well, except that it provides the alternative tool——

Mr. HUGHES. I understand.

Mr. KNAPP [continuing]. Together to solve this problem.

Mr. HUGHES. Well, under your proposed "substitute asset" provision, subsection D, five conditions are set forth. For instance you indicate that if you are unable to locate the forfeitable assets you can justify forfeiting substitute assets. The Government, therefore, will have to make a good faith effort under that criteria and complete an investigation to locate the assets before seeking substitute assets. Isn't that just going to make any alleged savings illusory?

Mr. KNAPP. I am sorry, I don't understand the question.

Mr. HUGHES. In other words, you have got to make a showing to the court, first of all, that the assets, among other things, are not reachable under the criteria set forth in the administration bill.

Mr. KNAPP. Right, yes.

Mr. HUGHES. Your argument, as I understand it, is that it is going to save a lot of resources and time, and you are going to be able to reach other assets. This procedure you have set forth, however, seems to me is not going to accomplish this in the final analysis.

Mr. KNAPP. Well, it is going to make the remedy meaningful. My concern with the fine approach, that the approach that is in the bill is that it is purely discretionary.

Mr. HUGHES. Well, of course, under our system of justice, that is why we have courts. That is why we have judges. In the legislative process, all we can do is provide tools but the difficulty is, as the gentleman from Florida has indicated, under your proposal you are sending a notice. You might as well send them a telegram. "Move all the assets out of the country." Don't keep any in this country. And when you do that, they are not reachable. We are suggesting a procedure, the alternate fine procedure, where a court can impose—and I would assume that most Federal courts would impose such a fine where there were compelling reasons to do so—where you don't have to trace the assets. Under our procedure you don't have to worry about the assets being in Brazil. If Johnny Jones has assets in Brazil, and you have established by evidence beyond a reasonable doubt, if that is the standard that is adopted, that in fact the criminal enterprise was drawing $2 million a year for 5 years, and you know that there are assets somewhere and you

just can't locate them, the court can reach them very easily by the alternate fine provision. Johnny Jones is going to come up with $10 million in a conditional fine or else he is going to spend 5 extra years in jail. It seems to me that this procedure gives the court and the Justice Department a far better tool to reach assets than substitute assets.

Mr. SMITH. Would the gentleman yield?

Mr. HUGHES. Let him answer the question.

Mr. KNAPP. Well, again the problem—another problem with the fine is that if you have a situation where the person has disguised his assets, so he doesn't have the assets to pay any fine that has been imposed, he may have put them in the name of a third party, we have under our proposal an ability to reach that through the so-called relation back concept. What I am suggesting to you is that our approach, and I don't object to adding the fine as an alternative——

Mr. HUGHES. It doesn't make any difference who has the assets, Mr. Knapp. If the defendant wants to avoid an additional sentence under the procedure that I am suggesting, he is going to get the assets back into this country and pay his fine.

Under our procedure, he is going to save some time on the jail sentence. The court could very easily impose——

Mr. KNAPP. He is going to jail anyway, but——

Mr. HUGHES. Well, OK, but the court could say on the first count, 3 to 5 years. Second count, 3 to 5 years. Third count, 3 to 5 years. Fourth count, 5 to 10 years, all to run concurrently. The court could then say the 5 to 10 years is suspended on the condition the fine of $20 million is paid within 30 days. Isn't that a far better way than the substitute asset approach which is not going to reach the assets in other countries? If my information is correct, more and more traffickers are investing out of the country, they are making it more and more difficult for you to find assets to identify with them.

Mr. KNAPP. Well, it seems to me it makes more sense to give the court in any situation, and the Government, the maximum tools that are available to deal with a specific situation. And a fine may or may not be adequate under a given situation.

Mr. HUGHES. I am not going to prolong this, because we obviously have a very, very basic difference of opinion. We had the same difference of opinion in the 97th Congress, and we are obviously going to have the same difference of opinion in the 98th Congress. If you want a forfeiture bill, it seems to me that we better start talking about what we worked out in the 97th Congress.

Mr. SMITH. Mr. Chairman.

Mr. HUGHES. The gentleman from Florida.

Mr. SMITH. You really need to look no further, Mr. Knapp, maybe I can help you a little bit. In the analogy with reference to bail, for years the prosecutors and the locals were screaming about Federal judges assigning bail in minimal amounts in large drug cases. And they had repetitive flights from justice. Lately they have been doing $5 million bail or more and people all of a sudden aren't fleeing as much. But there are plenty of them making that bail. And the judges have come around to assessing very high bails. Even after repeated attempts by defense attorneys to reduce bail,

over and over. And I think you would have the same situation. All you would have to go is start having these judges, one or two of them, be successful imposing these fines, and having the fines paid to reduce sentences, and you would find the judges slowly but surely moving into the area of assessing large fines in lieu of the large jail sentences. And I think the chairman's approach is a very, very valid one. And I think this analogy is perfect. We didn't have large bails, for years. All of a sudden, everybody is doing it and you know what? They are really keeping them in the jail, or they are coming up with the money even though ostensibly, on paper, they don't look like they have any assets.

Mr. KNAPP. Short of a situation that where a specific judge is willing to hold a specific prison sentence over a head, in lieu of paying a particular fine, you have got a problem if all the liquid assets are outside of the country and the only thing that is available within the country are tangible assets. And that is why I am suggesting that the substitute assets provision is a very legitimate tool.

Mr. SMITH. I don't understand why you say that. What difference does it make if the gentleman or the lady who are being sentenced at that time have no assets ostensibly on paper? If they come up with the $10 million, if they find an angel out there, who is willing to lend them $10 million to buy off 3 years of his sentence, what difference does it make to the Government? Somebody's assets are being used and those are not legitimate assets. Nobody legitimate is going to lend somebody who has been convicted of five heroin dealings $10 million to buy off their sentence. It is obviously assets from an illicit deal to begin with. So what difference does it make if it wasn't in the name of the defendant or if the assets were in Switzerland or in Bolivia or in Peru or wherever? For some strange material reason all of a sudden they reappear in the United States and the $10 million check comes in to the U.S. marshal's desk, into the clerk's office, to pay the fine.

That is what the chairman is suggesting, and I frankly feel that you will find it will happen quite often. They would much rather spend the $10 million than the 3 to 5 years in jail.

Mr. HUGHES. I think the gentleman from Florida makes perfectly good sense. The gentleman is correct, as you well know. The bail has gone up, particularly in southern Florida, simply because under past procedure we were cutting people loose on $200,000 bail, $500,000 bail, and they had it within 20 minutes, only to find that thereafter they became fugitives. Under the new realities they have made higher bail amounts and the judges have become much more realistic about the amount of money involved in drug trafficking. I think, Mr. Knapp, you sell the courts somewhat short when you suggest that the overwhelming majority would not be willing to use the alternate fine provisions to reach the high level traffickers. I don't believe that.

Mr. KNAPP. Well, it seems to me that it just makes simple common sense that if you have got a substitute assets provision available to the Government and to the courts, that you are going to make ultimately the entire concept of asset forfeiture more meaningful, and also the ability to pay the fines because a particular defendant may, when he was faced with losing his farm or

whatever he has, may pay the fine, which he otherwise would not pay.

Mr. HUGHES. The gentleman from Florida, Mr. Shaw.

Mr. SHAW. Thank you.

I would like to pursue that line of questioning just a little bit further. When we talk about the assets, you are talking about a possibility, I believe one of you gentlemen said in your testimony, of going the route of preponderance of the evidence, rather than beyond a reasonable doubt.

Is that correct?

Mr. KNAPP. We were asked to comment on the possibility of segregating the standards for burden of proof on two issues in the criminal case. There is nothing in the legislation on that.

Mr. SHAW. The reason I was pursuing that is the possibility that you may have the seizure of assets and the preponderance of evidence where a fine would have to be beyond a reasonable doubt in criminal law as I see it. Is that——

Mr. KNAPP. That is correct.

Mr. SHAW. Also, I see the possibility here of perhaps both provisions should be in the law, where you could go to the seizure of assets and also have the alternative way of dealing with it as to the fine, as the chairman recommends.

I think the panel and the chairman have both made excellent points. I am quite frankly sold on both of them. I would like to see the tools of both provisions in the law.

What the chairman is saying is a very practical argument. Having been a lawyer, as everyone on this committee is, and having been in the position of trying to collect on judgments, when you knew the assets were out there, it is quite frustrating. You gentlemen will be running into the same thing.

If you could—I know in a lawsuit, if you could always find the least little bit of window where you could go in and have the judge threaten an arrest, that would bring around collection awfully quickly.

I think that on a much larger scale, we will find something——

Mr. KNAPP. I agree with the Congressman. I think that perhaps a combination of these two approaches is something we could work on. We would have all the appropriate remedies available to handle whatever situation comes up in a given case.

Mr. SHAW. Mr. Chairman, I would like to work with you if you think that that would be a good idea.

Mr. HUGHES. Would the gentleman yield to me?

Mr. SHAW. Yes; I will yield.

Mr. HUGHES. I have some very basic concerns with that because in these bills we are increasing the fines tenfold and we also are providing a fairly strong rebuttable presumption, an effective presumption.

If you add to that substitute assets, I wonder if we are not coming dangerously close to some constitutional problems under the eighth amendment and the Constitution's strong negative reference to forfeiture provisions. I frankly think we are.

I am not so sure that it would be held constitutional.

Mr. KNAPP. Well, I do not think there has ever been any direct ruling on this issue, since there is no legislation presently for it.

Certainly the concept of forfeiture has been upheld against the eighth amendment in numerous cases.

I see no reason why the courts would have any problem upholding the constitutionality of substitute forfeiture under the limited circumstances which we have set forth here and in the proposed legislation.

Mr. HUGHES. If the gentleman would yield further?

Mr. SHAW. Yes.

Mr. HUGHES. When you start talking about providing the rebuttable presumption and an alternate fine provisions, and then you start adding on to that substitute assets, not requiring tracing, I think you are starting to tread on very dangerous constitutional grounds. That is my personal opinion.

Mr. KNAPP. I would certainly think that if both aspects of this were in the final legislation, there should be some limitation on the total amount that could be recovered.

Mr. HUGHES. We did draw a limitation, and that was that we just provided the alternative fine provision and did not incorporate the substitute asset provision because we felt that it—for what it added, was not worth the risk that we ran, that it would be stricken down.

Mr. KNAPP. OK.

Mr. HUGHES. Anyway, thank you. I thank the gentleman.

Mr. SHAW. Would the substitute asset provision also ensure to the benefit of local law enforcement? You were talking about the forfeitures and making those particular items being forfeited go to local law enforcement. Would that also apply in substitution?

Mr. KNAPP. I believe it would, yes. I believe so. If the legislation is drafted in such a way that the asset that is forfeited could be turned over to local law enforcement, I would assume——

Mr. SHAW. That would be extremely important to areas that are highly impacted with crime and, of course, south Florida being the shining example of the yacht capital of the world, perhaps for the wrong reason, that would be something that we in Florida would be extremely interested in trying to preserve.

Also, I think that it shows that going by to local law enforcement efforts, it would certainly funnel those assets into the areas that most need them. South Florida, of course, is very much in need of that.

I thank the chairman.

Mr. HUGHES. The gentleman from Florida, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

I was rather pleased with most of the people from Customs with reference to their endorsement of a sharing of assets. In Florida, we have a contraband seizure and forfeiture law which does, in fact, allow, through an amendment we put on a number of years ago, to have a sharing, an equitable distribution as it were, with the agencies that were involved.

I would hope that we—and I am preparing an amendment myself right now—if this is an inappropriate vehicle, to go somewhere else. As the chairman mentioned, Mr. Brooks has some problems with trust funds and giving moneys back to the local agencies, but there is no question that many times, Justice, DEA, FBI, Customs, all need the aid and help of local law enforcement, whether it is State or county or local.

Some of my own county officials are here today. We would certainly like to not only have them at least have their costs offsetted when they are involved in any venture with you, but also share in whatever it is that winds up to be the pot which is seized. Not that you are out there to get money. You are out there to arrest criminals, but as an incidental, it certainly would be valuable.

It has been a valuable tool in Florida. They have been able to come across large amounts of money which have been, frankly, used to offset the taxpayers' burden. I mean, the bottom line is, it costs gigantic sums of money to wage war against crime and the taxpayers pay for it.

If we can find sums of money where the criminals pay for the law enforcement against them, I think that it is a very, very poetic kind of justice. So I would be happy to have you supporting that, and if we find that the appropriate place is some other committee, I will work with you in getting somebody on that committee to do whatever needs to be done in that regard.

I am curious, however, about the statement that you made that right now it is taking about 12 to 18 months for forfeitures in Miami on the nonadministrative. I find that to be rather repugnant. Where there is a default of it, it still is taking about 12 to 18 months?

Mr. SEIDEL. Yes, Mr. Smith. I double checked these figures yesterday to make sure that they were accurate. It is a combination of factors.

First of all, civil forfeitures, because they are civil in nature, follow the criminal docket. As you know, south Florida has had a tremendous increase in the criminal docket lately and, in fact, the U.S. attorney's office has been expanded to compensate for that.

Mr. SMITH. They put criminal trials in a precedent manner. They took precedent. But now they have kind of reversed that to some degree.

Mr. SEIDEL. But under the Speedy Trial Act, you still have a problem because you must conduct a trial in a certain amount of time.

Mr. SMITH. That is true.

Mr. SEIDEL. The civil forfeitures are processed in the following manner: They are referred by the agency to the U.S. attorney's office. In the case of Customs, we prepare the complaints at the Customs Service so that the U.S. attorney's office merely has to review them and file them. They do not have to prepare the documents separately.

They are filed in court under the Federal Rules of Civil Procedures, as I read the rules, after the appropriate time to answer has been given, and no answer has been filed, you can file for a default judgment 14 days after that.

Unfortunately, because of the caseloads, U.S. attorneys are not able to do that, and the courts are not able to get them on the docket to hear the cases.

Perhaps there could be an amendment to the Judiciary Act, but I think that is kind of an overkill for a problem that hopefully is only a temporary problem and only in certain districts.

Mr. SMITH. It sounds to me like you have really more of an administrative problem than a legal problem in this particular regard. I would hope that certainly, at least in Justice, there would be indications to the local U.S. attorney that these could be handled on a somewhat expedited basis. It is costing you and the taxpayers a great deal of money because these things are not expedited.

Mr. SEIDEL. I think you also have a problem with the necessity of having to have an uncontested case be reviewed by a judge when there is no question of fact or law to be decided. Why burden the courts with that?

The legislation, as proposed by Congressman Hughes and the committee here would certainly remove that from the court's burden. There is no reason at all why a court should ever have to consider a case which is not being contested and which involves no legal issues.

A lot of these cases are uncontested. Even if we sped up the administrative forfeiture, you would still be burdening the courts with several hundred a year, certainly of cases that there is no need to have any issue decided.

Mr. SMITH. One other thing, you talked in terms of having this special revolving fund for which you could pay all of these administrative costs and the maintenance and storage costs and what have you. One of the reasons I think that some of the congressional committees who are charged with the responsibility of overseeing that have problems is because that money would not be appropriated through Congress, but it would be almost in the nature of, just to use a term, a slush fund over which Congress would have little or no control.

Why would you not want to have that more directly controlled by Congress, which would make a lot of people here more happy about wanting to give you that ability?

Mr. POWIS. Well, I think the provisions in this bill will allow for that kind of control, Mr. Smith. I believe that this bill sets it up in such a way that there will be control, there will be an accountability at the end of every year, and——

Mr. SMITH. On an overview basis, as opposed to being directly appropriated?

Mr. SEIDEL. Even this bill requires that there be annual appropriations. It merely authorizes the creation of a fund subject to such amounts as may be appropriated in annual bills.

It does set a limit of the authorization, but it does require annual appropriation. The administration bill, likewise, has the same provisions.

Mr. SMITH. Have you run this by anyone who would be chargeable with the jurisdiction over that since we do not have that?

Mr. SEIDEL. As I understand, that was not a problem last session and we do not expect it to be a problem this session, as long as the appropriation language is kept in there.

Mr. SMITH. I think it is certainly a good idea. We do it in Florida. Local law enforcement has their own funds out of which they handle certain things. Of course, in Congressman Shaw's district, there is a raging debate now about whether or not you could build a jail with that money, which the city of Fort Lauderdale did.

It may have to be determined by the courts whether or not that was statutorily allowable, but in any event, there is that money there and it is being used.

Taxpayers are saving money, and I would love to see this happen. Obviously it is a very good thing, and I would be very happy to help you work on that, as well work on this other thing about getting equitable distribution and promoting local law enforcement and helping the fight, because you are not able to carry it on by yourself, and neither are they. That is why we need the joint cooperation.

Mr. SEIDEL. We certainly appreciate your support.

Mr. SMITH. Thank you.

Mr. HUGHES. Thank you. We have come to the conclusion that it is either going to be a revolving fund or we would need money from the Department of Defense, because we are not doing very well otherwise. [Laughter.]

The gentleman from Michigan.

Mr. SAWYER. I somewhat sympathize with Mr. Shaw from Florida in that I was sort of persuaded by both arguments on having both the substitute asset and the large fine.

While it is probably true that a majority—I do not know whether you could say a great majority, but a majority of Federal judges would go along with these kinds of fines. You are always going to find some that will not. At least, if you have not, your experience with the Federal court has been different from mine.

We have pretty much the whole cross-section of philosophies sitting on the Federal bench and some are great lecturers and light sentencers and some are smilingly fatherly people who would give you the maximum while they are hoping you will come out well.

I just think that if you had—and I think almost every jurisdiction with at least more than two or three Federal judges sitting in it, you will find several of different ilk on the idea of penalties.

That is not to say that they have any sympathy with drugs or criminals, either, but they just are philosophically a little bit different. I think it might be nice to have an addition available, the substitute assets, if you have got that kind of a judge. I would say the U.S. District Attorney or strike force attorneys operating in that area would know that they had that kind of judge when they had that kind of judge, because they get to be fairly well known within their districts.

It would just seem to me—I cannot see any constitutional problem myself. I like the fine idea, too, but it seems to me, I do not see where any harm is done by also having the substitute asset. Maybe in the alternative.

Mr. KNAPP. I agree.

Mr. Webb.

Mr. WEBB. Congressman, sir, I am Dan Webb from Chicago, the U.S. attorney in Chicago. Your idea, that is just taking the words right out of my mouth as I listen to the debate here.

You see, if you want us to use criminal forfeiture, you have to segregate it from the fine. The fine and the prison sentence are obviously something the judge should and does have total discretion over. Criminal forfeiture is a concept which first surfaced in Rico and now in the drug trafficking statutes which basically said to

U.S. attorneys, by law, we have to plead it in the indictment long before we know what is going to happen in the case. We set forth and plead a count. We ask the jury to return a verdict, and then the judge must enter judgment for that forfeiture.

If you want us to use that statute—I mean, since it is there and you are passing a criminal forfeiture statute, if you want us to use it and force them to disgorge their profit for certain, not waiting to see what a judge may or may not do with the fine, but if you want us to force them to disgorge their profit, we are willing to do so.

But we need to know, in effect, whether when we do that and we get the judgment, whether we will have assets that we can obtain or not. That is why the substitution of assets is so important because it may be in a given case, we will win on that count and get a forfeiture of assets and obviously that may very well modify the penalty that the judge may seek to impose by way of a fine.

However, by having both provisions there, you are in effect giving meaning to criminal forfeiture, which I assume you want to have meaning because it is in the statute, and No. 2, you are not giving anything away as far as the fine is concerned because the fine can be modified by the judge based on how he views the equities, which is his prerogative.

It will give us an added tool and put teeth into criminal forfeiture. I think both are compatible. The concept of the fine is marvelous and I think it is going to be extremely beneficial and it is going to—it is marvelous, I cannot commend you enough for having that provision in there.

I strongly urge that the substitution of asset provision will be—it is a nice—they could both be married together and work very effectively and it will be—the U.S. attorneys and prosecutors will start using criminal forfeiture where otherwise they are not going to include that count in the first place because they know, when they get their judgment, they are not going to have anything to collect. With substitution of assets, they will.

Mr. SAWYER. One of the things that concerns me is the gentleman from Florida, Mr. Smith, and Mr. Shaw, are from an area that have now gotten pretty sophisticated dealing with these hundreds of millions of dollars and $20 million bails or $5 million bails.

Well, in the western district of Michigan, they ain't that sophisticated and to have a judge put a $5 million bail on somebody would be a major accomplishment, let me tell you, if you were a prosecutor. We do not deal in that kind of money up there. But we nevertheless have some big, important drug dealers.

I would feel—maybe in Florida, it is very easy to get them to impose a $20 million fine. I never heard of anything even approaching those numbers in the western district of Michigan, or even the eastern district, which includes Detroit, which is certainly a big drug center.

I would just feel more comfortable, once you are out of the Florida area, to have the substitute assets and let the Floridians with their judges and the big numbers collect all the big fines.

I also like the idea of seeing the money going into a revolving fund. That was originally my thought to do that because as a prosecutor, that was the biggest problem, to get enough money to buy far enough up the line to get the big dealer. You could get the little

street peddler, but when you got into using the real big bucks to get up into the big ones, it is hard to get. If you get it once, then it is hard to replenish it and go back to the well again. If you have got a way to keep replenishing it, it (a) is an incentive, and (b) it is a way to keep the fund whole once you get it.

I like that idea myself, and that is why I originally pushed one or two Congresses ago. As I say, I think the fine is great and I think it ought to be up there.

In fact, I have kind of gradually come to the impression that on most of these money crimes, where money is the motive, we probably ought to greatly increase and greatly use increased fines, because that is where it is going to hurt the individual, where they would probably be useless in the kind of ruffian or violent kind of direct crimes that are not directly related to making a lot of money.

I just do not see any harm myself with having a good substitute asset provision, plus a very good fine, with the idea that—I know we have five U.S. district judges in the western district of Michigan, all of whom I know intimately, and there are two of them that I would not bet a nickel on getting very tough with big fines. I do not mean to suggest that they are soft on crime; they are not. They just are soft on how much penalty they put on.

I cannot believe we are a lot different than most other U.S. districts. I think you get to know your district judges pretty well if you are practicing either civil law or criminal law there, as well as your State circuit judges or whatever, and I think the prosecutor would know, or the U.S. district attorney would know, if he had the right kind of judge that he could go the fine route, or if he better scrape all he can scrape up on the forfeiture if he drew that particular judge.

Thank you. I yield back.

Mr. HUGHES. Thank you.

Thank you very much. I appreciate the testimony. The panel has been very helpful. We are grateful. Sorry that we have taken so long.

Mr. KNAPP. Thank you.

Mr. SEIDEL. Thank you very much.

Mr. HUGHES. Our next witnesses are Stephen Horn and William Taylor.

Mr. Horn began his legal career in the Attorney General's honors program in the Department of Justice and from 1973 through 1978, was a trial attorney for the Civil Rights Division in the Justice Department.

He entered the private practice of law in 1979, where he specialized in criminal defense and civil litigation. Mr. Horn has published numerous Law Review and other articles, including two articles on RICO.

He is chairman of the ABA committee on prosecution and defense of Rico cases, and appears today as a representative of that committee. Mr. Horn has a wide experience in the matter before the subcommittee today.

Mr. Taylor is an attorney in Washington, DC, associated with the firm of Zuckerman, Spaeder, Moore, Taylor & Kolker. Mr. Taylor has written extensively also on the subject of forfeiture, especially

with respect to the subject of criminal forfeiture in the context of the racketeering statute.

He has been involved in forfeiture litigation, including a recent appearance before the fifth circuit on behalf of the National Criminal Defense Attorneys Association in RICO forfeiture cases. Both have most distinguished careers behind them.

Gentlemen, we are pleased to have you with us today. We have both your statements. Without objection, they will be made a part of the record and you may proceed as you see fit.

Welcome.

Mr. HORN. Thank you, Mr. Chairman.

Mr. HUGHES. Why do we not start with—have you decided on who would want to go first? Mr. Horn.

Mr. HORN. I shall.

Mr. HUGHES. OK, Mr. Horn.

TESTIMONY OF STEPHEN HORN, ESQ., HORN & CONROY, WASHINGTON, DC, REPRESENTING AMERICAN BAR ASSOCIATION; AND WILLIAM TAYLOR, ESQ., ZUCKERMAN, SPAEDER, MOORE, TAYLOR & KOLKER, WASHINGTON, DC

Mr. HORN. Mr. Chairman, members of the committee, first, on behalf of the ABA RICO committee and the criminal section, thank you very much for your kind invitation permitting us to come forward and present our views which are included in a report prepared by the committee.

The RICO committee, as its name implies, is concerned with the RICO statute and it is concerned with proposed legislation to amend that statute.

However, in the course of examining the legislation, we have prepared a report which has something to say about the bills before this committee today because those bills, and the spate of RICO bills that have been proposed recently, have certain common features. We would like to speak to those today.

Both the RICO bills and the bills before this committee today share what appear to be common goals and approaches. Those goals and approaches are of the type that no one could disagree with.

It does seem to us, however, and we point out in the report, that using narcotics cases as models to draft RICO legislation or amendments to RICO legislation, in some instances may be inappropriate. I think Mr. Taylor will get into that in a little bit.

The RICO committee is a committee of prosecutors, defense lawyers, academics, and civil litigators. We all agree that it is absolutely necessary to take the profit out of crime. After all, we are also citizens, and we appreciate the urgency to accomplish that.

I think there is some disagreement on how best to do that. It seems to the committee that the bills that have been drafted were drafted with two ideas in mind: One, draft the most comprehensive bill in terms of what can be forfeited so that nothing escapes; and second, include procedural devices and substantive law creations that will do it as expeditiously as possible.

The problem is this: that when you focus just on those two concerns, the resulting bills, both in the RICO area, which we speak to

in our report, and the bills that you are considering today, wind up presenting a great number of constitutional issues, a great number of policy issues, and practically speaking, they become very cumbersome.

That is the problem. When drafting an effective bill—and I am going to make Mr. Taylor laugh here, because one of my favorite phrases—I was an engineer before I was a lawyer—is a phrase called "suboptimization," which in engineering means to have the best overall result, you cannot necessarily have all the best parts, you have to consider everything.

In drafting an effective bill to deal with drugs, drug penalties, if you consider only those two things, that is, make it as broad as possible, make it as expeditious as possible, that is not necessarily making it most effective.

You also have to consider things like how much of our resources will we have to commit to one prosecution. How many litigable issues are presented by the bill? In other words, to make it truly effective, it should also be a bill that can be administrated and prosecuted reasonably efficiently.

We try to point out in our report, there are many, many litigable issues in these bills that, you know, will put defense lawyers on par with antitrust lawyers in terms of perhaps income potential. But that does not advance society's needs.

We think a lot of what we heard, from the chairman especially, today is right on the mark in terms of drafting legislation that can be prosecuted effectively and get a good dollar return for the effort.

Having said that, I would like to turn it over to Mr. Taylor to get into some of the specific aspects of our report.

Mr. HUGHES. Mr. Taylor.

Mr. TAYLOR. Mr. Chairman, members of the subcommittee, you should be aware at the outset that we speak in a representative capacity. The report which is before you, and which we have submitted to you as our statement, is the product of deliberation by the subcommittee on the prosecution and defense of RICO cases, which is a subcommittee of the criminal justice section of the American Bar Association.

The report itself is a product of substantial deliberation and draftsmanship by a number of different people: first, by a subcommittee of the subcommittee and then by the subcommittee as a whole. I should tell you that the subcommittee as a whole has what I consider to be a very balanced membership, including prosecutors, academics, and defense attorneys.

It is now the statement of the criminal justice section; it is not the statement of the American Bar Association. I am not skilled or experienced in the manner by which a statement becomes an official statement of the American Bar Association, but I know enough to tell you that we are here speaking on the basis of a report which is the statement of the criminal justice section, and to that extent, we are not able to comment as representatives on some of the things which have been discussed here today and perhaps some of the things which you are interested in.

Having said that, I think it is fair to say the approach that we took was designed to deal with what was then a plethora of bills—what we attempted to do was to sit down and look at the ways in

which those bills attempted to change existing law, and to group, if you will, the features by which existing law would be changed.

Having done that, we looked at some of the specific language, but certainly not all of it, and the report speaks to some extent to drafting issues, but to the other extent, it speaks to policy and constitutional issues.

We are here, we recognize, in a hearing which is devoted to the enforcement of the narcotics laws and the potential amendment to the Controlled Substances Act and other laws to put some more punch in the financial penalty for narcotics transactions.

As Steve said, we certainly support that. We have not directed our attention specifically to the language of the narcotics amendments, but in dealing with the features of the forfeiture bills which we looked at, we note that there are some common features with the existing bill, the bill which is before this subcommittee.

Let me tell you what they are. The first, of course, is the third-parties question. I was pleased to hear that the Department of Justice has, to some extent, modified its position on the third-parties issue. I think that makes a lot of sense.

Analytically, our committee felt that the third-parties issue should be handled as follows: In either a RICO or a narcotics forfeiture case, assuming there is a conviction, there would be a verdict of forfeiture. That is the first step under the rules of criminal procedure.

Second, there would be then an order of forfeiture which would permit the judge, or which would require the judge, if you will, to enter an order based on the jury's verdict that the property is to be forfeited and therefore seized. We felt that at that stage, there should be a measure by which the court could exercise discretion in the control or disposition of the property pending appeal and, of course, pending the resolution of claims of third parties.

We felt that the forfeiture verdict analytically determined title as between the United States and the defendant, of course, pending appeal that if there was a going concern involved, it would probably be in everyone's interest for the court to permit the going concern to continue to operate, assuming that it was a legitimate going concern and not an illegal one.

If there were funds or other assets which should be invested, they could be. I do not find clear provision for that kind of discretion at the post-conviction stage in your bill, and I suggest it to you as a consideration.

Also, we felt that with regard to third parties, it was at that stage where title has been determined, as between United States and the defendant, that third parties should be able to obtain judicial resolution of what is really a title question at that point.

Bear with me for a moment if you will. There are at least two types of situations in which third parties are involved. The first is that in which there is a sham, in which property has been transferred to a third party, wife, brother, sister, whatever, and the allegation is that although title is held by the third party, the transaction is, in fact, a sham and the defendant owns it in reality.

The second is where the property has, in fact, been transferred to a third party and under some provision such as the relation-back doctrine, the third party's rights are affected because of the order

of forfeiture, presumably, and there is no practical experience on this, but if the relation-back doctrine is to be applied, presumably the indictment would have to say "property which is now in the hands of Mr. Horn," and it is Mr. Taylor who is on trial, because of the relation-back doctrine, that property is forfeited as a result of the jury's verdict.

I think to say that explains some of the procedural difficulties we see here, but at the very least, the third parties should be able at that point to have their claims to title reviewed by the court. I understand that the Department of Justice has now come around to that view and I am pleased that that apparently is no longer an issue between the ABA and the Department.

The other features of the bill which are common, of course, are the bona fide purchaser standard for third parties. As I understand your bill, it would permit a third party to retrieve, if you will, property which has been forfeited, if he could satisfy that he had given value for it and that he did not have actual or constructive knowledge that it was property which was involved in a crime.

I am more disturbed about that standard in the RICO context than I am in the narcotics context, but nevertheless, for purposes of this discussion, our report deals with that issue. It does appear to be a common issue in both the narcotics area and the RICO area. What we have to say about it, I think, cannot be more clearly said than we do in the report. It is very difficult to prove a negative. It also seems to me to raise some constitutional questions to impose upon a person who holds title to property to a standard by which he must prove that he not only paid value for it, but that he did not have actual or constructive knowledge that it was the subject of a criminal violation, or in the language of some of the RICO cases, of a type which is forfeitable under section A2. If you look back at A2, of course, there is a long and complex definition of property subject to forfeiture. To place upon the unwitting or average human being the ability to parse through that language and to prove that he parsed through the language and did not, in fact, understand that it was property subject to forfeiture may be a little bit more than the Constitution can stand.

I raise those issues with you and suggest that certainly before proceeding to wholesalely revamp the RICO forfeiture statute in this regard, some substantial consideration be given to those issues.

What is of the moment here, it seems to me, right now, is the question that the chairman raised, and that is, whether or not to move forward at the Justice Department's invitation to do more with RICO forfeiture than has been done thus far.

Let me speak to that and pick up a little bit on what Mr. Horn said. There is no question that it is a good idea to impose as much forfeiture as possible in the narcotics area.

We have traditionally regarded the proceeds of a narcotics transaction, the instrumentalities, the vehicles, and other means and measures by which a narcotics crime is committed to be forfeited in rem. The transaction itself is malum in se, if you will. That is, there is nothing legitimate about it.

So to suggest that not only the ill-gotten gains from a narcotics transaction, but the means, instrumentality and so forth should all

be forfeited, does not offend our committee. It is not offensive that the profits should themselves be forfeitable.

I would have thought, Mr. Chairman, that the existing narcotics statute made it clear that profits were forfeitable. As I understand the amendment, it would simply make clear that not only in a continuing criminal enterprise case, but in any narcotics case, profits from the transaction would be forfeitable.

We do not speak to that specifically, but that does not seem to me to be an issue upon which reasonable people would disagree.

The difficulty in taking the next step into RICO is that RICO is applied to a much wider range of conduct than a narcotics statute. The conduct, I suppose, is as diverse as murder for hire on one end, to securities fraud on the other. And in between, there is a host of varied predicate crimes.

But the application of RICO to economic and commercial crime, and political corruption, too, and it is being applied in all of those areas, raises problems of interpretation of forfeiture and it raises difficulties precisely because in those areas, there is an intertwining of legitimate and illegitimate money and legitimate and illegitimate conduct.

So it was one thing to say that the goal of RICO was to separate the racketeer and his money from a legitimate enterprise and that was, I believe, a fair reading of the legislative history of the original bill. I believe that it is also correct to say that the prosecutorial experience was that that was a real good idea and that not only should we separate the racketeer from the enterprise, but we should also take the profit out of his pocket. That also is something, I suppose, that we can approve of.

But as Mr. Horn said, the fascination with that as a cure-all produced, it seems to me, bills that attempt to cover the waterfront on forfeiture, which make it possible to obtain forfeiture of every piece of property or money in the hands of a convicted RICO defendant, or anyone he has sold or transferred his property to.

The difficulty, and the reason why these amendments which attempt to expand the definition of property subject to forfeiture and to interject the taint or relation-back concept, the reason that they are going to create litigation until the cows come home is because, by definition, in RICO cases, which are not, again, narcotics cases, presumably the use of RICO to prosecute narcotics-related enterprises will decline as a result of an amendment that you are considering here.

RICO, I would expect, would become a more precise tool for dealing with nonnarcotics kinds of group activity. But the problem with the forfeiture in the RICO area is that you have this intermingling of legitimate and illegitimate money and you have real tracing problems and you have dangers of disproportionality, that is, forfeitures in excess of that which is reasonably related to the crime itself based on a fair reading of the statute.

The example we give in the report is, if you adopt the language that we would attempt to forfeit anything which is derived from the proceeds of illegitimate conduct, that has no limits on its face. If I today obtained money as a result of an extorted contract, invested in a restaurant, 20 years from now, 10 years from now, I

have parlayed that into a chain of restaurants, arguably the chain is derived from that money.

Whereas, in the present RICO statute, you have at least a workable limitation—I understand that there are other factors which may attract the committee's attention. I assume it is not lunch.

Mr. HUGHES. You are very alert to that. That is probably a good point to break. We are going to recess for 10 minutes.

[Recess.]

Mr. HUGHES. I am sorry, we are going to have to recess until 1:30. We have several votes. There is no sense in our keeping everybody here.

The subcommittee is recessed until 1:30.

[Whereupon, at 12:30 p.m., the subcommittee was recessed, to reconvene at 1:30 p.m., this same day.]

Mr. SMITH [presiding]. Gentlemen, thank you. I am sorry. The chairman has asked me in his absence to open the meeting again from the lunch recess, and we will continue along the same line, as soon as the chairman gets here, of course.

Mr. TAYLOR. One of the members of the press approached me in the cafeteria over lunch and said that we certainly had been dull thus far, and could I liven it up a little bit.

Mr. SMITH. Do you have anything specifically in mind?

Mr. TAYLOR. I was speaking to the question of the application of narcotics model in the RICO context as it relates to forfeiture. I think what I am really saying is that because RICO sweeps so broadly and sweeps into it so many different types of conduct, a great deal of which resembles legitimate commercial activity, the reality is that the forfeiture issues and the forfeiture problems, practically speaking, have to be dealt with by recognizing that there is a property law feature always to forfeiture problems.

There is, for example, the question of community property, when property is ordered forfeited, what is the relevant State law? What are the rules about ownership there? What about secured creditors when the property has been pledged to banks?

Those kinds of things which, although they don't seem to be dealt with in the statute itself, raise themselves as issues that have to be dealt with in a RICO forfeiture litigation. That, again, brings me back to the reality that once you begin to write law, and you begin to amend RICO forfeiture law, it is our studied recommendation that you do so very carefully and that you write specifically because words like "derived from" have a different meaning to different people.

In particular, they can create confusion, litigation and use up the energies of courts, lawyers, FBI agents, and so forth in litigation just of the forfeiture issues which would arise as a result of some of the language that is in 2241.

That really gets us to what I think is the clearest illustration of the problem that I am talking about, and that is the relation back doctrine.

The relation back doctrine, I take it, is designed to remedy the situation in which the potential defendant recognizes that he is about to be indicted, and transfers his assets.

It is designed to permit the court and the Attorney General to have access to those assets, notwithstanding the fact that title ap-

37-763 O - 85 - 4

pears to have passed. It does that by imposing a notion sort of like a taint on the problem.

In the language of 2241, title vests in the United States upon commission of the act, giving rise to forfeiture under this section. We suggest that this is a concept that is going to create a lot of practical problems.

It is going to cause courts to litigate the kinds of good faith title questions that Federal courts have heretofore not had to get into in criminal cases, and it is going to again consume time and energy of prosecutors and defense attorneys when really the objective here, which is to prevent a transfer from the defendant to a place where it can't be reached of assets, can be accomplished in some very simple ways.

The courts do, in fact, try issues of sham all the time. They don't need a concept of relation back to determine whether title, in fact, passed; whether value was, in fact, given; whether the parties intended for title to pass.

The danger of relation back, I suppose, is most clearly illustrated in some recent events which occurred in the southern district of New York. A prosecutor there at the sentencing of one defendant announced that the president of a major communications corporation was himself the real culprit and was himself under investigation.

That statement got in the press, in the business press, and the ordinary press, and I raised the question with you whether if the relation back doctrine were applicable, were written into law, the shares which belong to that president of that corporation would be salable, or that anybody would buy.

Not indicted. Certainly not convicted, but identified as the subject of a RICO investigation. If he wanted to sell his shares to a client of mine, I would advise my client not to buy them because you can't be sure that application of the relation back doctrine under those circumstances wouldn't render any transfer of large quantities of securities invalid.

I don't know what it would do to the market.

Mr. HUGHES [presiding]. Even if fair value were given.

Mr. TAYLOR. Yes. If you look at the language, he was a bona fide purchaser of the property for value—this is the defense. This is the third party who is permitted to come in and assert that the relation back doctrine shouldn't apply. It is on C-1.

He can show that he was a bona fide purchaser of the property for value and he was reasonably without cause to believe that the property was of the type described in subsection A-2 of the section.

Mr. HUGHES. That is the problem.

Mr. TAYLOR. Now, again, I don't know what that means. I certainly wouldn't advise a client to undertake that risk.

I suspect that careful lawyers and business advisers would take the same position.

The idea that you have to have this metaphysical relation back or taint concept in order to prevent the potential RICO defendant from divesting himself of his assets and placing them beyond the reaches of the court seems to me something that is not established as a matter of fact before this committee.

I listened a long time this morning, as I did in the other hearing which I attended and testified at about a year ago. I haven't yet heard statistics or specifics of potential defendants who, in fact, transfer assets, and then they are unable to get at them.

That brings me to the whole question of substitute assets and the problem raised by the U.S. attorney from Chicago, Mr. Webb.

It seems to me that there are two goals here. One is to prevent the sham transfer, the transfer to a straw, or the transfer to a human being, which isn't really a transfer.

The second goal is to be able to collect. The substitute assets provision I read as a collection measure that what Mr. Webb is talking about is he has got a collection problem.

Let me take a second to correct what I think is a misimpression here. I am not an expert on the enforcement and collection of fines, but my understanding is that a fine is an order of the court.

You are ordered, Mr. Defendant, to pay a fine. You can do that in addition to imposing a jail sentence. It doesn't have to be in the alternative, and mostly they are not in the alternative. I order you to serve 5 years and pay a fine of $25,000.

If the defendant doesn't pay the fine, he is in violation of an order of the court, and he can be punished as any other person who violates an order of the court. It strikes me that that point deserves some consideration by this committee.

It is not, in fact, necessary to become a creditor in a State court to collect the fine. The fine is collectible through the inherent power of a U.S. district court when the defendant who is ordered to do a certain thing doesn't do it.

So I think the substitute assets suggestion, again, in the RICO context, particularly, is going to create the kinds of difficult economic litigation that I have been talking about, but I don't understand either how it is supposed to work.

I guess that what is supposed to happen is there is an indictment in which the assets are specified. The provision usually says so-and-so has violated 18 U.S.C. section 1962(c), and he owns A, B, C, and D, certain pieces of property. They are interest in, securities of, claim against, contractual or otherwise, which are forfeitable under 18 U.S.C. section 1963(A)(102).

So let's assume the defendant is found guilty and there is an order of forfeiture of these items which are specified in the indictment, and that the substitute assets provision hasn't yet come into play.

There is an order of forfeiture, and a seizure, an order of seizure, and presumably then the U.S. attorney and the agents of the Department of Justice go out and they look, and they say we can't find any of these things which are ordered to be forfeited, and they come back to court.

Then they have to establish to the judge that the provisions of this subsection D apply, that it can't be located, has been transferred, has been placed beyond the jurisdiction, has been substantially diminished in value by any act or omission of the defendant, or has been commingled with other property so that it can't be divided without difficulty.

It doesn't eliminate the necessity to trace in the first instance. As you, Mr. Chairman, pointed out, it is the property which is or-

dered forfeited in the indictment which they have to chase first, and then they say "we can't find it." They come back to the court and at that point presumably there is another hearing, which will take place.

There will be an additional judicial proceeding of some kind in which they establish that it is gone, give us something else.

Mr. HUGHES. I might say, parenthetically, that is the same judge that they feel will not impose an adequate sentence or fine.

Mr. TAYLOR. That same thought occurred to me, Mr. Hughes. I must say, if the judge has got that much of a problem with leniency, they have got a problem at that stage.

Mr. HUGHES. I must confess I have the same problems.

Mr. TAYLOR. Mr. Webb's hypothetical, which apparently is not really a hypothetical, intrigued me. The idea that he can identify $30 million in the bank account and gets an order of forfeiture for $10 million, if he can't get that $30 million as a result of a forfeiture order for profits, they have got better lawyers in Chicago than I am familiar with.

The bottom line—and I appreciate the subcommittee's patience because some of this material is a bit tedious and intricate—is that I and the committee for which I speak appreciate the caution with which this committee is viewing an effort to revamp or reform the RICO forfeiture provisions.

I think that we are going to have an answer next fall from the Supreme Court on the question of profits or proceeds. That, it seems to me, will either be that profits are forfeitable, in which case there is no need for an amendment, or that they are not, and the Congress can consider whether as a policy matter it simply wants to, with the stroke of a pen, eliminate that problem, if that is a matter of legislative judgment.

To begin to redefine the nature of the interests in the properties which are subject to forfeiture, to introduce into this criminal litigation new property law concepts, new title concepts is a rather dramatic step.

It is one which I suggest to you, lawyers like Mr. Horn and myself, would find to be somewhat of an employment bill for us, but not in the public interest, and certainly not calculated to get the most effect out of the Government's prosecution dollar.

I have testified here before that it seemed to me that after all is said and done, we began in 1970 with an effort to introduce an economic penalty, a real economic penalty into the criminal law.

That was at that point called a forfeiture. It was a concept that really grew out, I think, of Senator Kefauver's hearings and some earlier studies and thoughts on the subject, but it began to appear that that was an obvious but neglected way to go after organized crime.

That doesn't mean they haven't discovered that, and the Department of Justice having come to the conclusion that they really can take the profit out of drug dealing—that doesn't mean that you then become wedded to something called forfeiture.

As I hope we have expressed, in our view the difficulty is created because you have the traditional property concepts which are implicated. Certainly in the RICO context, if not so much in the narcotics context.

The confusion which would be engendered by wholesale revamping of the kind that I see in this bill would not be worth the cost.

Thank you very much.

[The statement of Messrs. Horn and Taylor follows:]

STATEMENT OF STEPHEN HORN, ESQ., AND WILLIAM W. TAYLOR, ESQ., ON BEHALF OF THE CRIMINAL JUSTICE SECTION OF THE AMERICAN BAR ASSOCIATION

NOTE.—These views are being presented only on behalf of the Section of Criminal Justice and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and should not be construed as representing the position of the ABA.

INTRODUCTION

Three bills are currently pending before Congress which contain features to amend the criminal forfeiture features of the Racketeer Influenced and Corrupt Organizations Statute (18 U.S.C. 1963). These are: companion bills S. 829 and H.R. 2151, the "Comprehensive Crime Control Act of 1983," introduced by Senators Thurmond and Laxalt, Title IV of which contains amendments to 18 U.S.C. § 1963; S. 830, introduced by Senator Biden and others, "National Security and Violent Crime Control Act of 1983," subtitle of C which relates to forfeiture and is entitled "Comprehensive Forfeiture Act of 1983;" and H.R. 2241 introduced in Congress by Representative Lungren and others, entitled, "Comprehensive Criminal Forfeiture Act of 1983."

The bills vary in many important respects. There are, however, substantial similarities in the changes they would make in existing law. Those changes would occur in at least the following major respects: (A) the nature of the property subject to forfeiture; (B) the introduction of a "relation back" doctrine; (C) provisions for the forfeiture of substitute assets where the originally forfeitable assets are no longer available at the time of conviction; (D) temporary restraining orders and other preliminary relief; (E) the rights of third parties, both in preliminary and final stages of criminal litigation; and (F) provisions for disposition and preservation of forfeitable property after conviction.

The Criminal Justice Section supports Congress' efforts to take the profit out of crime, specifically with regard to the narcotics industry and organized crime. It expresses concern, however, about some of the proposed amendments. Its concern is stimulated by the fact that RICO and its forfeiture provisions are being applied to a wide range of commercial behavior. RICO prosecutions are being brought not only against individuals associated with inherently criminal activity, *e.g.*, narcotics, arson, murder for hire and loan sharking, but also against persons charged with corporate misbehavior and commercial frauds. In these latter circumstances, the economic consequences of illegal activity are usually intertwined with those of legal activity. The broad sweep of the forfeiture provisions and the accompanying provisions for restraining orders raise potentially serious problems of overbreadth, disproportionality of punishment implicating the eighth amendment, denial of due process where third parties are concerned, and the inhibition of legitimate commerce.

The proposed amendments would expand criminal forfeiture measures both substantively and procedurally. They would increase the number and types of property subject to forfeiture and they would alter procedures now in existence for implementing forfeitures prior to and after criminal conviction. In this report, the Criminal Justice Section analyzes some of these measures and, for the most part, recommends further study and refinement. In some instances, the modification works substantive changes which are intended. This is particularly true in the "relation back" and "substitute assets" provisions. They are new to the law of forfeiture. The Criminal Justice Section points out that these substantive changes will have serious consequences apparently not foreseen by their drafters and not described in the section-by-section analysis of the bills. In other areas, including especially the attempt to redesign property subject to forfeiture, the bills purport to make one fundamental change—making profits of crime forfeitable. However the bills also include numerous unexplained changes in the language of previous law. The new bills will therefore have a number of effects which, even if intended, are not necessarily desirable. The Criminal Justice Section believes that many of these language changes appeared to be casual tinkering. Nevertheless, they create an opportunity for abuse and misunderstanding.

The following statement also focuses on an area which is producing increasing confusion—that is, the rights of third parties. Third parties are often involved in

forfeiture cases, either as putative nominees for property alleged to be owned by the defendant, as true joint owners with defendants, or as creditors or secured parties. Under current law, third parties are required to file petitions for remision or mitigation with the Attorney General prior to seeking judicial review of their claims. The Criminal Justice Section believes that this is fundamentally wrong. Petitions for remission and mitigation should be designed for defendants who wish, because of particular personal circumstances, to have part or all of a forfeiture mitigated.

A number of courts have held that forfeiture is mandatory. See, e.g., *United States* v. *L'Hoste,* 609 F.2d 796 (5th Cir. 1980). If the District Court has no discretion but to order forfeiture the defendant can and should have the right to petition the Attorney General. On the other hand, third parties will usually be making claims involving title. Depriving these parties of judicial review of their claims until after the Executive has reviewed them carefully implicates due process. The Criminal Justice Section also recommends that, although third parties should not be permitted to intervene in the criminal proceeding, they should have a right to be heard concerning the entry and terms of restraining orders affecting property in which they have an interest.

I. PROPERTY SUBJECT TO FORFEITURE

All three bills contain revisions of Section 1963(a). The section-by-section analysis of S. 829 tells us that the "substantive change" is that the new bill "will specifically provide for the forfeiture of the profits generated by racketeering activity that serves as the basis for a RICO prosecution." According to the Analysis, the purpose of the section is to resolve the conflict generated by *United States* v. *Marubeni* and *United States* v. *Russello.* The analysis of S. 829 notes that *Russello* is now before the Supreme Court and the issue as to the forfeiture of profits may be resolved on the basis of the present language.

The Criminal Justice Section supports the effort to take profit out of crime. It expresses concern, however, about the use of the word "proceeds" and the words "derived from" in the new provisions.

The word "proceeds" suggests that the court should make no inquiry into the real profit from a criminal transaction. The defendant should not get to deduct hs costs in determining what amount is appropriate to forfeit. While this may be an appropriate result in cases involving narcotics, arson for profit and crime for hire schemes, it may produce real unfairness in application to other types of cases. As noted above, RICO is employed over a wide range of conduct, some of which is not malum in se. RICO is applied to economic and commercial conduct in which contracts are obtained by fraud or bribery. In those cases, contracts are performed quite properly, but the "proceeds" would include the defendant's costs in performing the contract. Those costs could be substantial.

Situations like this point out the potential for disproportionate forfeitures and unfairness from the indiscriminate application of the word "proceeds." Although the Section determined that it should not attempt to redraft the statute, it does suggest some alternatives to the present language. Alternatives might include attempting to identify those crimes, e.g., offenses, arson for profit and crime for hire, in which all proceeds should be forfeitable and distinguished them from those crimes in which the defendant renders a socially acceptable service, at a cost to himself, but there is criminality involved. In the latter category, "profits" only should be forfeited. Another option might be to require that profits be forfeited but to give the judge discretion as to the balance of "proceeds." In any event, it is hoped that Congress will focus on this potential problem of overbreadth and unfairness before enacting a new definition of property subject to forfeiture.

In addition, we raise our concerns about the use of the words "derived from" which appear in Section 1963(a)(2) (A) and (C). Those words do not appear in existing law, nor is there an explanation in the section-by-section analysis of S. 829 for their inclusion in the proposed law. If the intent is to make it clear that profits are forfeitable, it seems to be surplusage. If "derived from" means a more attenuated relationship, but nevertheless a casual connection, then there should be concern again about the danger of disproportionate and unintended forfeitures. If tainted money is invested in a sandwich shop and, by hard work and ingenuity, the investor parlays his operation into a restaurant chain, arguably the final product of all of his labors is "derived from" the tainted money. In short, "derived from" is not a useful concept because it would carry the forfeiture beyond interests in an enterprise and profits and proceeds from criminality. We recommend that Congress focus on the fact that in the case of legitimate businesses, a piece of property or an investment may be the product of both clean and tainted money. To the extent that Congress is

seeking forfeiture of assets which are not the result of criminal activity or tainted money, real constitutional problems will arise. We propose that these untoward results can be avoided by giving the trial courts discretion, see, e.g., *United States* v. *Huber,* 603 F.2d 387 (2d Cir. 1979), but the proposed legislation all appears to make forfeiture mandatory.

Consideration was also given as to whether it was necessary or required for the trial of RICO cases involving forfeiture to be bifurcated, permitting separate proceedings on the issues of guilt and forfeiture. A jury verdict is now required on the issue of forfeiture and questions of fact will have to be resolved by the jury. The existence of property, its ownership, and its forfeitability are all questions for the jury. It was felt that bifurcation, which is often now the practice, should be available and, in some cases, may be required. For example, a defendant should not be placed in a position of waiving his Fifth Amendment protection to (correctly) inform the jury that a certain piece of property was legitimately earned and should not be forfeited. A statutory scheme which places a "price" (e.g. a property interest) on the privilege against self-incrimination is constitutionally suspect. E.g., *Garrity* v. *New Jersey,* 385 U.S. 393 (1967). It was concluded that it would probably be best to give either the government or the defense the right to request bifurcation. In the event that Congress determines to consider bifurcation, as it is hoped it will, it should also consider whether bifurcation should be complete, i.e., whether the government should not be permitted to offer evidence relevant only to forfeiture in the guilt phase.

Finally, the Criminal Justice Section expresses concern about the language "irrespective of any provision of state law," which appears in proposed Section 1963(a)(2). The Section concluded that this concept is particularly unwise. In the first place, its meaning is unclear. Does it mean that rights of persons other than the defendant which are created by state property laws, e.g., community property, may be extinguished by state forfeiture orders? If it does, it is certainly of dubious constitutional validity. Or does it mean simply that defendant's ownership of property shall not depend upon application of state law concepts involving esoteric matters of trust and estate law?

II. THE RELATION BACK DOCTRINE

All three bills contain a new conept, referred to here as the "relation back doctrine." The section-by-section analysis of S. 829 describes the doctrine as a "codification of a 'taint' theory long recognized in forfeiture cases." That observation is simply inaccurate. A "taint" concept is appropriate for in rem forfeitures. That is because the thing itself is viewed as the culprit and it is forfeitable regardless of ownership (there are some constitutional restrictions even on in rem forfeiture which we do not discuss). Forfeiture under RICO is in personam, both according to its original drafters and according to the analysis of the new bills. Introduction of a taint theory into the RICO forfeitures is very troublesome. As we discuss below, the taint theory impacts only upon third parties. It prevents a defendant who is ultimately indicted for a RICO violation from passing good title by giving the government some kind of inchoate claim to the property defeasible upon the third party's demonstration to the executive that it is a bona fide purchaser for value and that it was "reasonably without cause" to believe that the property was of the type described in subsection (a)(2). The Criminal Justice Section is concerned that in personam rights of the owners shall be decided in the first instance by the Attorney General. This vests in the executive the right to determine personal ownership of property, a measure surely not without constitutional significance. Furthermore, it places the burden on the third party of establishing his ownership, not merely by showing that he gave value for the property and took title to it without notice of the claims of others (the bona fide purchaser standard) but also that he was "reasonably without cause" to believe that the property was ultimately forfeitable. It is difficult enough to prove a negative, but the statute seems to impose upon the third party the burden of a thorough understanding of the very complicated language in Section (a)(2). It is not at all fair nor practical to require third parties to master those concepts and to draw the conclusion that, under no circumstances, is the property subject to forfeiture. Particularly in cases involving legitimate businesses, profits, proceeds and property are the joint product of legitimate and illegitimate activity. Requiring the businessman to unravel the trail of dollars prior to purchasing securities, real estate or other property is not only unfair, but it may in fact impose unintended impediments to the free flow of commerce. Careful businessmen may simply refuse to deal with any entity under investigation for any predicate crime which

might support a RICO violation. Experience has shown that this may include Fortune 500 companies. We do not believe Congress intended that result.

Even if "relation back" were a good policy, the new sections contain a fatal uncertainty as to the time the defendant's title vests in the government. They provide the government's right vest upon commission of the act giving rise to forfeiture. A RICO crime requires more than one act, however. The statute provides no guidance as to whether the government's right vests upon commission of the first predicate crime, which may in fact occur even prior to the enactment of RICO, or the last one.

The Criminal Justice Section recognizes a legitimate concern with sham transfers performed to avoid forfeiture, particularly transfers for insufficient or no consideration. On the other hand, if a transfer is made for consideration, the "proceeds" of the transfer are made forfeitable.

It is suggested that Congress consider analogies to the bankruptcy law, which provides that transfers made within a certain period of bankruptcy are voidable. On the other hand, there should be an outer limit beyond which the government cannot attack transfers, for the sake of finality in commercial transaction. It might also be wise to provide an immediate period during which transfers could be attacked upon proof that they were shams. Courts and juries are equipped to deal with questions of fact involved in the determinations of shams, and have already done so in some RICO cases. See, e.g., *United States* v. *Mandel.*

III. SUBSTITUTE ASSETS

All three bills contain a provision providing that when property subject to forfeiture has been transferred, placed beyond the jurisdiction of the court, substantially diminished in value by an act or omission of the defendant or commingled with other property which cannot be divided without difficulty, the court "shall order the forefeiture of any other property of the defendant up to the value of any property" thus unavailable. The section-by-section analysis of S. 829 states that this provisions is designed to prevent a defendant from avoiding forfeiture by transferring his assets or taking other actions to render the property unavailable at the time of conviction. It is another way of dealing with the problem which stimulated the "relation back doctrine." We approve and support the notion that defendants should not be able to avoid forfeiture by sham transfers or by secreting property. On the other hand. If property has been transferred for consideration, presumably that consideration is forfeitable under other provisions.

The Criminal Justice Section expresses concern that this provision, like several others, can create unintended disproportionate forefeitures. A RICO offense may span many years. Property obtained during it may increase or decrease in value and businesses may fall on hard times. In short, this section would result in orders of forfeiture far in excess of property actually available to the defendant at the time of his indictment, or it might result in forfeiture so disproportionate to the amounts attributable to the illegal conduct as to raise eight amendment considerations. Again, we feel that there exists good reason to consider providing for judicial discretion with regard to provisions such as this one which are really designed to impose a fine. Forfeiture of substitute assets is nothing more than a fine, the intent of which apparently is to present a bill to the defendant for his criminal conduct. Because forfeitures are mandatory courts have no discretion to reduce the potential draconian impact of the substitute assets concept.

IV. RESTRAINING ORDERS

Both S. 829 and S. 830 provide for pre-indictment and post-indictment restraints upon property interests pending trail and judgment. In 1983, it is beyond debate that the imposition of any restraint upon the property interests of an individual involves considerations of procedural due process, which include the availability of an adversary proceeding and the timing of such a proceeding, e.g., *Fuentes* v. *Shevin,* 407 U.S. 67 (1971); *Sniadach* v. *Family Finance Corp.,* 395 U.S. 337 (1959).

The American Bar Association is already on record in favor of forcing the government to establish more than the return of an indictment in order to obtain a restraining order. Regarding post-indictment restraints on a defendant's property, S. 830 provides for a hearing with reasonable notice and opportunity for participation by adverse parties. By negative implication, S. 829 does not. This omission renders S. 829 fatally defective in constitutional terms. "For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard. . . .'" *Fuentes* v. *Shevin,* supra, 407 U.S. at 80 (quoting *Baldwin* v. *Hale,* 1 Wall 223; 233, 17 L.Ed. 531); *Sniadach* v. *Family Finance Corp.,* supra; *United States* v. *Crozier,* 674 F.2d 1293 (9th Cir. 1982); *United States* v. *Spilotro,* 680 F.2d 612 (9th Cir. 1982); *United States* v. *Long,* 654 F.2d 911, 914–15 (3d Cir. 1981); *United States* v. *Veon,* 538 F. Supp. 237, 243–45 (E.D. Cal. 1982); *United States* v. *Milburne,* No. 82–205 (E.D. Mo., filed Nov. 23, 1982).

It is the apparent intention of Section 402(e) of S. 829 that the probable cause determination underlying an indictment can substitute for an adversary hearing. This was the contention of the government in *United States* v. *Crozier,* supra, and it was specifically rejected. Id. at 1297; *United States* v. *Veon,* supra, 538 F. Supp. at 245. One-sided initiatives are "no substitute for an informed evaluation by a neutral official" when property rights are concerned. See *Fuentes* v. *Shervin,* supra, 707 U.S. at 83. "[F]airness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . ." *Joint Anti-Facist Refugee Committee* v. *McGrath,* 341 U.S. 123, 170 (1951).

If Section 402(e) were to become law, the defendant's opportunity to contest the validity of a restraint on his property must await the commencement of the trail itself. A determination that the restraint was inappropriate would be delayed until the jury verdict, if then. By its very terms, S. 829 is a predicate for potentially enormous forfeitures, and, thus, restraints. The impact of the restraint upon the defendant's ability to economically survive is a consideration mandated by due process analysis. E.g., *Sniadach* v. *Family Finance Corp.,* supra, 395 U.S. at 340–42; *United States* v. *Crozier,* 674 F.2d at 1296–98.

When the potential impact is large, the length of the delay in affording the defendant his opportunity to be heard becomes a critical consideration. The right to be heard "must be granted at a meaningful time and in a meaningful manner." *Armstrong* v. *Manzo,* 380 U.S. 545, 552 (1965).

Finally, the fact that the restraint is only pendente lite is not, constitutionally speaking, a saving grace. A "temporary, unfinal deprivation of property is nonetheless a 'deprivation' in the terms of the Fourteenth Amendment." *Fuentes* v. *Shevin,* supra, 407 U.S. at 84–85.

Regardless of the legislation that is adopted, it should be made clear that, although third parties are not entitled to intervene as parties in a criminal case, they may have interests which entitle them to be heard with regard to the issuance of restraining orders and their terms.

V. THIRD PARTIES

Third parties whose rights will be affected by both bills in substantially similar fashion are denied due process because they are excluded from timely, meaningful participation in proceedings necessarily affecting them.

By express provision of proposed § 1963(j) of both bills, third parties claiming an interest in property subject to forfeiture are not to be heard until such time as the Attorney General has considered petitions for remission and mitigation—necessarily after the completion of the trial. Even then, the third party must first have his cause heard and determined by the Executive Branch. See e.g., *Irving T. Schwartz, United States* v. *Mandel,* unpublished opinion dated March 15, 1983. He is precluded from seeking the constitutionally required "informed evaluation by a neutral official" until such time as the Attorney General renders his decision.

The procedural due process requirements of notice and a timely opportunity to be heard are dependent on asserted interests in property and not one's status as dependent or third-party. If, for the reasons previously stated, the provisions of proposed § 1963(e) intrude upon due process guarantees, then the provisions of proposed § 1963(j) trample them completely—and for the same reasons.

The Supreme Court spoke to such endeavors in *Stanley* v. *Illinois,* 405 U.S. 645, 656 (1972):

"The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of congnizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones."

The Criminal Justice Section feels that third parties who assert an interest in property ordered forfeited should have their claims heard in the district courts without having to petition the attorney general for remission. Petitions for remission should concern only claims by defendants seeking reduction in forfietures as a matter of executive grace, not by third parties claiming ownership adverse to the defendant and the government. We also feel that claims of third parties are ripe

and should be heard after judgments of forfeiture are entered and need not await the outcome of an appeal in the criminal case.

VI. DISPOSITION AND PRESERVATION OF PROPERTY AFTER CONVICTION

We have serious concerns that provisions in the proposed bills do not clearly provide that, in appropriate circumstances, a court may order a stay of its judgment of forfeiture and take other measures necessary to preserve the property pending the final resolution on appeal of the rights of the defendant and the resolution in other proceedings of third party claims.

In subsection § 1963(g) of S. 829, for example, the court is given the power to stay a sale by the United States upon application of a third party. This provision might be construed to deprive the court of the right to stay a sale upon application of a defendant. There may be situations in which property owned by a defendant should not be sold pending appeal. This is particularly true where the property is a going concern. The Criminal Justice Section feels that the statute should require the court to enter a judgment of forfeiture upon the jury's verdict, but that it should also authorize the court to stay the judgment of forfeiture, or to take any one of a number of measures to preserve the value of the property pending final resolution of all claims. These measures may include receivers, bonds, or restraining orders, but the court should be given a full panoply of measures by which it can exercise flexible control over disputed property until all claims to it are resolved.

VIII. OTHER MATTERS

Any statute passed by Congress should make it clear that the government holds forfeited property as a trustee for victims. When property subject to forfeiture belongs in fact to third parties by virture of the criminal conduct of the defendant, there should be no question that the government must turn it over the victims. This is necessary not only to protect defendants from judgments for damages they are unable to pay because the government holds the proceeds of their wrongdoing, but to protect third victims from long and cumbersome efforts to regain their property.

Mr. HUGHES. I gather that you welcome the Justice Department's reversal of the policy dealing with third-party clients.

Mr. TAYLOR. Yes, sir.

Mr. HUGHES. Their position now is that there should be direct access to the courts to litigate that issue in the context of the trial.

Mr. TAYLOR. Yes, sir. Well, not in the context of the trial. Of the posttrial.

Mr. HUGHES. Posttrial. After conviction.

Mr. TAYLOR. Right.

Mr. HUGHES. Let me ask you, in your judgment does a court have inherent jurisdiction to not only mete out both a sentence of a fine and jail term, which I think you have already testified is clearly within the court's prerogative, it is not an either/or proposition, but do you likewise agree the court can condition additional jail time on one count to the payment of a fine?

Mr. TAYLOR. Mr. Chairman, there was some litigation about that in the context of indigents in the sixties, I believe. You can't condition freedom for an indigent on the payment of a fine which he doesn't have.

Mr. HUGHES. We are not talking about an indigent now.

Mr. TAYLOR. That is right. So I didn't want to answer too quickly.

I do believe that there is no impediment assuming resources to imposing a jail term in the alternative to a fine, that is, 5 years or $1 million. That appears to me to be constitutionally safe.

Mr. HORN. If I may say, Mr. Chairman, even in the alternative, one of the things a judge is supposed to consider in imposing a sentence is the potential for rehabilitation, whatever that means.

One of the things the judge might probably be interested in is whether this individual has shown sufficient remorse and capacity to be rehabilitated by returning his ill-gotten gains and saying so before imposition of sentence. The sentence being 30 days, and this is what I am going to be considering as a way to get around that problem, if it is a problem, and I don't think it is.

I tend to agree that in the absence of indigency, it is not the problem.

Mr. HUGHES. Mr. Shaw.

Mr. SHAW. I would like to pursue that for a moment. I was a city court judge and when that particular matter came up, and we were dealing with that very issue, and very innovative defense attorneys made some—in our particular court in Fort Lauderdale on that issue.

When you get into an area of imposing extraordinary penalties, as we would like to see come out of this law, at that point who would have the burden of proof to establish that the defendant did, indeed, have the resources to pay that fine after he just got through telling the judge that he did not have that kind of money to pay a fine.

Aren't we getting back into an indigent situation?

Mr. HORN. Well, as a practical matter, unless you knew that he had the money, the assets, and were prepared to prove it, even substitute assets——

Mr. SHAW. I am not into that area now. I am in the fine provision.

Mr. TAYLOR. If the Congressman is worried that those cases involving indigents would be invoked as a defense to some of those fines, that is not an issue which our committee considered and not one that I have given a great deal of thought to.

My understanding of the law is that the court can impose any fine it wishes, unless it knows that the defendant is unable to pay it, and that in the indigent cases there was some factual basis before the court to conclude that the defendant couldn't pay it.

On the other hand, in the kinds of cases we are talking about where there is a lengthy factual record made in a trial of hundreds of thousands of dollars going through the hands of the defendant, I think as a practical matter such a showing would be very difficult, but that may be something that this subcommittee would want to consider and write on, to look at the enforcement provisions for those fines.

As I said, I don't know, I have never really occupied myself with the question of enforceability of fines, but I believe—and I remember from my days as a public defender—that there is that condition.

On the other hand, the imposition of fines which are based upon the evidence in a trial as to what the defendant obtained as a result of his crimes would hardly be unsupported by the record.

Mr. SHAW. Would you foresee a possible type of hearing, such as you would have when you are trying to impose punitive damages as to what are the extent of the assets of the defendant?

Mr. HORN. If I may, you are assuming it has been already established to the satisfaction of a jury beyond a reasonable doubt that

the defendant received x dollars as a result of racketeering activity, let's say $1 million.

Now the only thing that is in the record with respect to this claim of indigency, for example, is that he earned $1 million. Now there is a proceeding where you have to say "Where did it go? It has been established to the satisfaction of the court that you have a million."

You now would have, I suppose, the burden of proof of showing where it went, and you can't say "I gave it to my cousin and there is no bank record."

You are going to have to come forward and actually bring records and show $1 million moving around with no return consideration.

Mr. SHAW. But you have got a situation, though, where the defendant is still proclaiming his innocence.

Mr. TAYLOR. No, not at that point. Not at the point at which the court is determining sentence. At the fine stage, he has already been found guilty.

Mr. SHAW. You might be finding a situation where you are going to require him in order to come back to rebut the presumption that was established by the evidence, you may be coming into the situation where you are going to require that he further incriminate himself.

I can see we are putting together a web here which is going to—no matter how brilliantly we draft the legislation, I am sure that you as defense attorneys are going to do some polishing on it after it leaves here and you are going to have a lot of unravelling as to some of the possible webs that we might be constructing here in the committee.

Mr. HORN. He may have to await the outcome of his appeal. Sentencing may have to be imposed subject to final appeal and no further discrimination, necessarily, flowing, that he would then have to come back.

Mr. SHAW. The million dollars may have gone to finance another drug deal that went sour, something of that nature, which he wouldn't want to be bringing up even after the appeal ran out on the crime for which he was being prosecuted.

Mr. TAYLOR. We suggest in the first section of the report that because of the very problem that you raise, there may be a need for bifurcation, that is, two phases of a trial, one, the guilt phase, and another, the forfeiture phase.

On the other hand, when the only question is what fine to impose, fine, not forfeiture, the sentencing hearing is not restricted by the rules of evidence, and of course, it is a nonjury proceeding, and it is a discretionary matter.

So it seems to us that it is a forum and a proceeding which gives the judge a great deal more flexibility and a lot less restraint than actually trying to try these questions to a jury, either in the second half of a criminal case or in the same criminal case.

Mr. SHAW. One other question on one other area I want to get into. I raised it with the panel just briefly.

Do you have any comments or opinions with regard to constitutionality of a forfeiture bill which would require the preponderance of evidence rather than reasonable doubt?

Mr. TAYLOR. I think I am going to have to pass on that one, Congressman. We spoke to those issues which we were able to speak to.

That seems to me to involve a major question of policy, and I don't think that I could presume to speak for the criminal section of the American Bar Association.

Mr. SHAW. I was asking merely for a legal opinion.

Mr. TAYLOR. It is a legal and important policy judgment, and I would respectfully pass that one, if you won't be offended.

Mr. SHAW. Thank you.

Mr. HUGHES. The gentleman from Florida, Mr. Smith.

Mr. SMITH. I have no questions.

Mr. HUGHES. I just have one additional question, and that deals with just how far we can go without beginning to invite constitutional attack in the area of forfeiture.

What we have done in this legislation is, first of all, we have developed an alternative fine provision. We have increased the fine level in the bill by tenfold, besides the alternative fine provision.

We have set up a procedure where a court can take into account the proceeds from criminal enterprise in considering the fines. It is somewhat unique.

We have also developed a proposed permissive presumption that all assets that are acquired by the defendant after the initiation of the criminal enterprise are presumed to come from criminal enterprise, requiring the defendant to come forward with proof to explain where the assets came from.

So far, in your judgment, are we on solid constitutional grounds?

Mr. HORN. I think the thrust of our report is that we think there is a substantial chance that you are not, because there is—to answer that question, to the extent that you have potential, meaningful potential for disproportionate forfeiture, you may be on shaky constitutional grounds.

To the extent that you require third parties to prove things that may be unfair and allocate burdens in an unfair manner, you may be on shaky constitutional grounds. I think those areas in which there were overlap between the RICO bill and drug penalty bill, we had some real concerns——

Mr. HUGHES. Let me take it one step further. Suppose we amended RICO, and broadened the forfeiture provisions, are we on shakier constitutional grounds? Is that possible?

Mr. HORN. I would think so.

Mr. HUGHES. Suppose we not only amend RICO, but we also throw in to boot substitute assets, are we on yet shakier grounds?

Mr. HORN. I think that that is the thrust of our report, yes. We felt there were policy concerns, serious constitutional concerns that must be weighed, as well as the practical problems.

Mr. HUGHES. I don't doubt but one bit but that it was nice to have as many tools as we could get, but my own approach is that I would rather have tools that I could justify that are going to work than go "hog wild" and attempt to provide law enforcement with additional tools that are only going to be thrown out in the final analysis by some court down the pike, not to mention the litigation that is going to be engendered.

Mr. HORN. If I may, I want to interject a note. This is a personal note. I am not speaking for the section here, but a comment on the

debate that consumes a substantial portion of time regarding "substitute assets."

I share the chairman's view about the alternative fine. When I testified here previously, I said I thought a big fine was the answer.

I see that here in the alternative fine provision. I think it is a great idea. I don't view judges or tribunals that for some reason somebody believes do not share the perception of legislators as to the needs of those large fines as being a real problem. I just don't think that that is a problem.

If I did, if I was concerned that there are some judges out there that are just not fining hard enough—and there is no evidence to that—and I wanted to deal with that problem, Congress has ways of dealing with that problem.

If, in an attempt to deal with that problem—it is the only real reason I heard here today—I came down with substitute assets as the answer, that is biting off your nose to spite your face.

I think any bill that should be passed should be put to a litmus test, bring in a couple of defense lawyers, have them look at it and say: "show me the number of litigable issues that you see in here, and what kinds of proof do you think will be necessary."

Then you have a feel for what you are really getting involved in for the fellows who are down in the trenches, and if you decide that the burden is just too difficult to assume, the resources that will be consumed are too great, then you have to go another way.

I think the alternative fine is the right answer.

Mr. HUGHES. I was interested in U.S. Attorney Webb's example. He said that, in 1979, there was a criminal enterprise that generated, I think he said, something like $10 million in profits, and that there was a fund of some $30 million and with the substitute asset provisions, that would enable him to reach those.

In the first place, the alternative fine provisions would reach those assets, but more importantly the presumption that exists in the statute might very well reach the assets because, under the legislation before the committee, the defendant would have to come forward and explain where the assets came from.

I think that that particular aspect of it was not taken fully into consideration.

Mr. TAYLOR. What troubled me about Mr. Webb's hypothetical is this: I don't understand that the Department takes the position now that if a narcotics transaction nets—"nets" is the wrong word—produces $10,000, and the culprit is arrested, and the Government finds $10,000 in a bank account somewhere, that they have to prove that this is the specie that came from the narcotics transaction.

Today was the first time that I had heard they considered they had to do that kind of tracing where cash is concerned.

May I speak to your constitutional question?

Mr. HUGHES. Sure. Please do.

Mr. TAYLOR. I think when RICO first got started, I was skeptical that the notion would pass constitutional muster. I was persuaded by some research and analysis that the idea of criminal forfeiture was so foreign to our jurisprudence that it probably wouldn't last.

I have since become convinced that I was wrong about that. From a more practical point of view, I believe that forfeiture is

here to stay and, moreover, that it is very difficult to take the position that it is not an important and valuable resource, remedy, and penalty.

The limits of forfeiture, it seems to me, must be determined somewhat on a case-by-case basis. I can certainly give you examples from my own thought process, hypotheticals, of situations in which forfeitures could occur under the statutory language which I think would be so disproportionate that they would be unconstitutional.

My favorite is that $10 which is earned in a holdup which is turned into a sandwich shop which is turned into a restaurant chain 10 years later, if you forfeited the restaurant chain because $10 went in 5 years ago and it was dirty, I think that that would be a problem.

I think it would be a problem when an individual owns a company and he commits two acts of mail fraud to get a contract and the contract is worth $50,000 to his company, by the language of the statute, he can be ordered to forfeit the entire company, which does a whole lot of other things, but his interest in the enterprise which he has corrupted by this one contract, is arguably fulfillable under the statute as it is written today.

The Department hasn't yet pushed it to that extreme, and I think wiser heads will prevent them from doing so. The limits, it seems to me now, are that the forfeiture in dollar amount must be related in some way to the criminal conduct, and that the proceeds, the gain to the defendant is as good a benchmark as you can come up with.

That certainly is not as unfair. It doesn't shock the conscience. It doesn't offend society.

Once you get too far beyond that, then people are going to start asking questions whether it really is constitutional to deprive a human being of substantially more.

Mr. HUGHES. Thank you very much, Mr. Horn, Mr. Taylor. You have both been very, very helpful to us. We are indebted to you.

We are sorry for the manner in which the hearing has dragged out.

Mr. TAYLOR. That is all right.

Mr. HUGHES. Thank you, again.

Our third and final panel consists of Maj. N.G. Navarro, who has worked for many years in narcotics enforcement at Federal, State, and local law enforcement agencies. While employed by the Federal Bureau of Narcotics, he was stationed in Miami and New York City, and also worked special assignments in South and Central America, the Middle East, and Europe.

He was also assigned to the training of Federal, State, and local investigators. Major Navarro has also been employed by the Florida Department of Law Enforcement as agent in charge of the central Florida office located in Orlando.

He has been responsible for the arrest and conviction of many well-known figures in organized crime; has been an instructor at the International Police Academy here in Washington, and he presently serves as a special instructor at the Federal narcotics schools for local and State officers.

Since 1971, Major Navarro has been supervisor of the Broward County organized crime division, combating the narcotics traffic and smuggling in Broward County.

Our distinguished colleague from Florida, Larry Smith, knows of his distinguished record over the years. Would you like to be recognized at this time?

Mr. SMITH. Thank you, Mr. Chairman. Frankly, his record speaks for itself. There are thousands and thousands of things that could be said about Major Navarro.

Both Congressman Shaw and I have had the honor of working with him over the years. We have had the pleasure of watching good results happen as a result of his commitments. I think that, more than anything else, the key word is that he has had a commitment not only to law enforcement, but the problem of relating to drugs, specifically.

If there was a man in the United States who could be said to have been at the fighting edge of the battle against drugs for the last 20 or more years when it wasn't as publicized, it wasn't as popular to be a drug fighter as it is today, it was Nick Navarro, who was there doing those things that needed to be done in the early days.

As you know, in conversations with him, you know the whole south Florida area had four DEA agents when Nick back then tried to control a drug problem which was allowed to get bigger and bigger.

So he has been there. He knows what has happened from the very beginning, and he has been very successful. I might add, unfortunately, there have been threats and attempts on his life numerous times, and it is unfortunate that a man who has dedicated his life and has put his family to that needs to suffer that kind of thing, but it happens, as the chairman knows, who has been in law enforcement himself, and we are all very proud, not only of Nick, but the two gentlemen also who are there from the Fort Lauderdale Police Department who have some pretty impressive credentials of their own.

So I am very happy to be here and have them here.

Mr. HUGHES. We also have another very distinguished Floridian with us, Clay Shaw of Florida. He has been very, very helpful both before he joined this subcommittee, and now that he is a member of this subcommittee. Mr. Shaw was very helpful last year in pushing through the Congress and conference a bill that modified the posse comitatus law that enables us to use the military a lot more. Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman. It is a delight to see you. It looks like we are home. We are having a Florida hearing here in Washington.

A few minutes ago I spoke of the times when I was a city judge, and both the gentlemen from Fort Lauderdale, Sergeant Haas and Sergeant Hedlund, I believe, were both on the department at that time, and before that I was chief city prosecutor and worked very closely with both of these gentlemen.

It is a real privilege of mine now to welcome you to Washington. Of course, Nick and I have been friends for many, many years, and

I certainly know of the distinction that you brought to the Broward County Sheriff's Department over the years.

So I think, Mr. Chairman, and members of the committee, we have here a panel of witnesses that have really been on the front line. They know how the criminals operate.

I think we have brought some of the finest talent of south Florida up here today, and I am looking forward to it.

Mr. HUGHES. Thank you. I should have introduced the other two panelists. The next one is Lt. Eric Hedlund, who is commander of the organized crime division of the Fort Lauderdale Police Department.

Lieutenant Hedlund has 18½ years experience with the department. He was first assigned to the organized crime division, in June 1977.

This division has investigative responsibility in narcotics, vice intelligence, and organized crime-related crimes in a tricounty area. Lieutenant Hedlund is a member of the Florida intelligence unit and the law enforcement intelligence unit, which is a national intelligence organization.

Lieutenant Hedlund has Sgt. Douglas K. Haas accompanying him. We welcome you, also, today.

Our third and final panelist is Richard Pruss, who is president of Samaritan Village, Inc., of Forest Hills, NY, and is representing the Therapeutic Communities of America of which he has been president since 1980.

His home agency is one of the largest in New York City serving some 500 clients. Mr. Pruss has been associated with Samaritan Village since 1965, and its president since 1974.

Gentlemen, we have your statements which will be a part of the record in full, and you may proceed as you see fit.

We understand that you have a time bind. I guess Mr. Navarro does. How about you, Mr. Hedlund?

Mr. HEDLUND. I have plenty of time.

Mr. HUGHES. OK. Mr. Navarro, why don't you begin?

TESTIMONY OF RICHARD PRUSS, PRESIDENT, SAMARITAN VILLAGE, INC., REPRESENTING THERAPEUTIC COMMUNITIES OF AMERICA, FOREST HILLS, NY; LT. ERIC HEDLUND, COMMANDER, ORGANIZED CRIME DIVISION, FORT LAUDERDALE POLICE DEPARTMENT, FORT LAUDERDALE, FL, ACCOMPANIED BY SGT. DOUGLAS K. HAAS, INTELLIGENCE UNIT; MAJ. N.G. NAVARRO, BROWARD COUNTY SHERIFF'S OFFICE, FORT LAUDERDALE, FL

Mr. NAVARRO. Mr. Chairman, distinguished Congressmen, first of all, thank you for your remarks. It was rather flattering. I appreciate it, but let me assure you that it is with a feeling of duty that my career has always been giving the most.

I know that I am not alone, that many members of the law enforcement community feel the same way, and that the ultimate sacrifice is always there for us to be given.

I will address my remarks mostly to the Florida statute, 943.042, which is the Florida Uniform Contraband Forfeiture Transportation Act. When this act first came to light, it became apparent immediately that the civil forfeitures would have to be placed on a

back burner due to the tremendous workload experienced by the State attorney's offices, consisting of overcrowded criminal dockets.

The statute provided in its wording that the forfeiture procedure should commence within a reasonable period of time. This was interpreted to be an approximate 14-day period.

Again, because of the overworked conditions of some of the State attorney's offices throughout the State, in some instances this 14-day period, or reasonable period of time, was not always conformed with.

In the new Florida Contraband Forfeiture Act, amended in July 1980, recognizing the previous problems, allowed the law enforcement agencies to seek private legal counsel regarding this forfeiture, in order to expedite the confiscation proceedings and avoid an extended period of time, which would not be considered by the court as reasonable.

Because of the complexity of the forfeiture law, it was necessary to create a specialized unit that consisted of a unit of four individuals. They are very well versed in the Forfeiture Act.

This was done in order to diligently and continuously protect the assets and interests of any innocent third parties.

Problems of proper storage and maintenance for the confiscated property also became an immediate matter of concern. The problems had to be worked out. If the items were to be returned to the owner, they should be in good condition at the time of the return.

I heard this morning here U.S. Customs' representatives talking about some of the forfeitures and the time that those assets are sitting somewhere waiting for final disposition. I was amazed to hear that 12 and 18 months sometimes are passed before they are disposed of. That is a very long period of time for any vessel or for any aircraft to be sitting somewhere accumulating dust and water.

Because of some agencies' budgetary deficiencies, it became a slight problem to define how the benefits derived from the confiscation would be divided. This problem was immediately resolved.

We sit down and discuss case by case before investigations are fully developed. The supervisors of the agencies or divisions involved in the investigation do so in order to prevent any problems later on after the assets have been confiscated.

Since the original Forfeiture Act was enacted, law enforcement agencies throughout the State of Florida have received incalculable benefits. It has brought local law enforcement out of the Dark Ages.

Equipment that at one time was only a mirage to those in local law enforcement is now a reality. We have been able to acquire equipment beneficial to law enforcement that at one time was only a dream at the local level.

All the equipment that has been purchased from the proceeds of the sale of confiscated property is equipment that had not been included in the fiscal budgets of the local law enforcement agencies.

In the western part of Broward County is a very large wasteland called the Everglades, in which we have documented numerous clandestine landing strips utilized by drug smugglers.

For the first time we feel that we have adequate air support to respond to an investigation, overcoming time and distance, and at

times surprising the violators engaged in their criminal enterprises.

Also, the intricate system of waterways in Broward County is second to none in this country. We are called the Venice of the Americas. In fact, we have more waterways than Venice, Italy.

Today we possess high-performance vessels which are capable of overtaking some of those utilized by smugglers and, again, hindering their performance while attempting to violate the laws of the State of Florida.

Fixed-wing aircraft utilized during surveillances, state-of-the-art surveillance equipment, and sophisticated radio systems have made it possible to successfully conclude investigations that otherwise, even 2 years ago, would have been totally impossible to bring to a successful conclusion.

The benefits that are derived through the forfeiture statute not only are assisting the organized crime division in its endeavors, but they have enhanced the overall performance of the entire Broward County Sheriff's Office.

We have been able to contribute a large sum of money to the emergency communications system, the 911 system, the crime stoppers program, which is the tips program, which is a very valuable one to us, the canine unit, the aviation unit.

The benefits of the forfeiture act have also provided the county with an air evacuation facility in the case of disasters such as condominium fires, floods, hurricanes, et cetera, and also, the Broward Sheriff's Office donated a confiscated vessel to be utilized by the juvenile rehabilitation center.

It has been extremely clear to us in the law enforcement community that if the proper wording had not been placed in the forfeiture statute, assets that had been confiscated by the law enforcement community would probably have been funneled into other divisions by the county and city administrators.

It has been traditional that law enforcement has always received the least benefits when slicing the fiscal pie. It has always been a belief that if given a free hand, law enforcement would purchase toys with which grown boys would be playing.

Furthermore, undercover operatives of any law enforcement agency have always been considered to be the forgotten children of the agency because of the unorthodox type of work in which they are engaged, where they are not immediately recognized by the community as is an officer in full uniform driving a marked unit.

We, in the undercover world of law enforcement, have never shone in the eyes of the community. Therefore, it has always been fashionable to improve the equipment that is going to be readily seen by the taxpayers.

Since the forfeiture act went into effect, this has been turning around completely. The concept that previously existed has changed and the eyes of the administrators have been opened.

It appears that now an undercover unit is in reality an investment in which the local law enforcement agency is placing a certain monetary amount and gaining a very large interest in return.

I personally feel, having worked at all three levels of law enforcement that the Federal Government should see the benefit of giving its own law enforcement personnel the same enhancement

that the local level is receiving, and if it is decided that in any and all cases which are worked hand-in-hand by Federal and local agencies, some of the property and other assets are somewhat divided, that all of us in the law enforcement community would benefit.

This may dissipate some previous professional jealousies which have existed and which at times have kept us separated. I am sure that the local law enforcement community would like nothing better than to be able to work hand-in-hand with the Federal agencies in harmony and in trust with a common cause, which would benefit all of us.

Mr. HUGHES. Thank you, Major. That was an excellent statement.

I think a lot of things that you stated here have been very helpful, but I think that your concluding paragraphs were particularly important.

I agree. The undercover folks have been the unsung heroes. They have not been singled out for praise or assistance.

They have a very dangerous job in most instances. I have seen some of them that have to look like the people they are trying to apprehend; to go weeks without a bath because they have to almost smell like those that they are trying to apprehend.

I think it is commendable that forfeiture enables us to provide some new recognition for those that are really doing a tremendous service to the law enforcement community.

I commend you for your statement. I don't have any questions. I think your statement is a fine one, and I appreciate it.

Mr. NAVARRO. Thank you, sir. Mr. Chairman, if I may also add, we haven't lost the sight that our main thrust and our main goal is to take the contraband off the streets. That is No. 1.

The assets are secondary, but they are very beneficial to us. No. 1 is to eliminate the contraband off the streets and put the violators in jail.

But if all these other assets are coming around, we welcome them. We need them.

Mr. HUGHES. I agree. I think the area of forfeiture is an extremely important area.

I commend you in Florida for leading the way. The list of assets that you forfeited are really very commendable.

I can see many benefits coming to law enforcement agencies utilizing the techniques that you have utilized in Florida.

I have no further questions. Mr. Shaw, do you have any?

Mr. SHAW. What is your schedule?

Mr. NAVARRO. I have got to catch an airplane at 3:50.

Mr. SHAW. 3:50?

Mr. NAVARRO. Yes.

Mr. SHAW. You are going to make it.

In talking about the forfeiture provision, and the tremendous backlog of boats and different types of vessels that are down in the Miami area right now, are some of those—I have received from time to time a request, mostly from the State of Florida, for the use of some of these vessels.

The testimony this morning talked about under the forfeiture bill—I believe it is the one that the gentlemen on the first panel

were supporting—there would be an ability under that to turn some of these assets over to local and State governments.

Have you had an opportunity to review some of the contraband of vessels that have been seized and are being impounded and what use we could make of them in Broward County?

Mr. NAVARRO. Congressman, we can also use more vessels down there. You know the labyrinth of canals that we have in Fort Lauderdale is of great intricacy.

We can always use more, especially high-performance vessels. They are very necessary down there.

However, when a vessel sits in a place for a year, a year and a half, it truly deteriorates. It has to be maintained. It has to be kept going.

We have been lucky in our forfeitures. We are down to uncontested forfeitures. Right now we can get them within 30 days. It is filed within 14 days, and normally if it is not contested—what we are doing, we are going around and finding judges who have sort of a clean docket, and we sneak them in there.

That way we have to—as we used to say in the old days, we have to pound the bricks. You have to go there and find what is available and get them out of the way.

The most that we ever encounter is 90 days. If there is a very complicated situation, maybe 4 or 5 months at the most.

We also try to maintain all the hardware in the best condition. I would like to look at some of those vessels that Customs has on this issue down there. I am sure, also, my colleagues would like to see them, also.

Mr. SHAW. I think you also made mention in the latter part of your statement about the cooperation that is necessary between the Federal and State government.

In so many of these investigations where the local police effort is what really produces the evidence in order to make the bust, then the Federal agency comes in because of the Federal law that has been violated. They actually make the seizure. They make the arrest.

The case is filed accordingly. When the forfeiture of assets comes about, it goes to the Federal Government, rather than State or local law enforcement agencies.

Do you think that the provision that would provide that the Federal Government can share the particular assets in question with State and local governments might actually increase the cooperation that you are speaking of?

Mr. NAVARRO. I am sure there will be, Congressman. I have heard some agencies express very strong professional jealousy when it comes to that, and I don't like the connotations I have heard in some of the statements like if I give them the case they are going to keep everything, and there is big brother coming in, again, to take it over.

Well, I don't like to think that I would ever jeopardize a case because of who was going to get the hardware. But, no, we don't all feel the same. We don't all have the same strong feelings in this world.

There are some agencies that depend very strongly on this issue that they are going to be making in order to justify themselves to

their taxpayers. Some of the small agencies will require to show back to their administrators what they have been able to accomplish.

Maybe their final result would not even be in their own jurisdiction. Maybe because of the magnitude of the case, and that is why they have called the Federal Government, they might go someplace else.

How are they going to show their own taxpayers, well, we made this big case but where is it at, what did we get for it, have we benefited at all? All those questions will be eliminated.

Mr. SHAW. I think, too, that what we are talking about is taking these proceeds—they go into law enforcement, so, actually, you can equate them to further harassment.

Mr. NAVARRO. Absolutely.

Mr. SHAW. I congratulate you for a very fine statement. We very much appreciate having you here. I will yield the balance of my time to Mr. Smith.

Mr. HUGHES. The gentleman from Florida, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Right now I think the bill before us does not contain a provision for sharing of proceeds based upon the work performed by the various agencies, whether they be local or county, State or Federal.

It provides for the ability at the Federal level to give some of the contraband, some of the seizures—not the contraband, some of the seized assets over. I think it talks more in terms of things rather than cash, for instance, to be utilized.

One of the things that I was talking about before, and the gentleman from Customs brought up, was that there should be a sharing of the assets. I am proposing that there be written into this bill or some other vehicle, because there may be another committee having jurisdiction, that we do the same thing as we have in the Florida statute, and that is some equitable distribution.

There is some concern that if forfeited assets were to be shared with local law enforcements, as you indicated, that the Federal level and the local level would begin to compete, who could make the arrest first, who could, by virtue of having the biggest share of the equitable time involved, get the biggest share of the forfeited assets.

These kinds of rivalries could obviously jeopardize the situations in terms of the small departments who have big ideas about getting extra dollars for their departments. Do you see that happening?

Mr. NAVARRO. No, sir; Congressmen, I think that the Federal Government would also see the benefit that they will derive. If the Federal Government keeps the forfeited articles, it would not go back to the law enforcement agency. It would go into the general fund. GSA handles it.

Mr. SMITH. That is my next question. That is one of the problems, also.

Mr. NAVARRO. If we get it, it is shared with us, and we keep it in the law enforcement funds. The Federal Government can also benefit from it.

I don't believe that the problem will be that at all. I think we can work in harmony.

There have been many instances—and maybe it is because I still have some friends there—where I have ended up with the goods, with the seized objects. But that is done on a 1-to-1 basis. There is nothing ever written about it.

We tried to do it because it would benefit one or it would benefit the other. I think that it would be a tremendous asset to all of us, Federal, State, local, to have a cooperation, a mutual understanding, and when we go on a case, we are all going to benefit from it.

Mr. SMITH. I am glad you brought up the other part about the fact that most of these seized assets ultimately, and if they are converted into cash assets, winds up into general revenue, as opposed to going back to law enforcement, so it is subject to being mutilated in its relationship to criminal law enforcement and taking the burden off the taxpayers again.

Mr. HUGHES. No; we could build three more tanks.

Mr. SMITH. Well, that is true, Mr. Chairman. We could do a lot of things with it.

Also, I am interested that you talked about the specializing of units to do the contraband forfeitures, so that you could expedite the whole process.

You were here, as I was, before and heard, as you recall, 12 to 18 months. I find that to be not only stupid, but offensive.

There has to be ways, like you said, of finding the judges, of getting people to move on this process. There are dollars rotting away.

There are assets available to be used in operations sitting there being unused. I know judges myself at the Federal level who, frankly, would be appalled even in Miami, if they knew that with 10 minutes of their time large assets could be literally sprung open for law enforcement.

I don't think that they know. I would venture a guess at this moment that the Justice Department is not concentrating any effort whatsoever or channeling any effort into really expediting that.

I would like you to hopefully, maybe, talk to people in Mr. Marcus' office about the fact that there are expediting units that are available and how you work with them.

Mr. NAVARRO. Congressman, if you recall, you were part of the legislature in Florida when this law was enacted. I was very happy to see it come.

It was long overdue and it was very much needed. There was a wording in there that also gave us the tools to be able to go out and seek private counsel.

In order to be able to work it, we are right now using a law firm in Florida that has been very helpful to us. They have become extremely well versed in forfeitures, and they are being also used by many other agencies at this time because of the way they are handling it expediently.

Everything comes back to our hands in very good shape.

Mr. SMITH. Well, unfortunately, we have our own in-house counsel in the U.S. Government, and I don't think we are going to go out and hire outside counsel, but I would like to believe that there are people out there who could at least try to motivate, and we will do it from this end, the Justice Department could move a little faster.

On expedited procedures, where there is a default, to wait 12 or 18 months where there is a defaulted process is absolutely unreasonable.

Mr. NAVARRO. I am sure that if someone pounded hard on those doors, somebody is going to open the doors and listen to what they have to say.

Mr. SMITH. One final question, and slightly off the subject, but something that you are aware of, I am sure, would you venture a guess now as to what is happening in the Miami area—and I want to get away from the drug task force. We have talked about this over and over and over again.

But, in general, there has been a tremendous effect of law enforcement on the importation of contraband. Do you see an increasing importation?

Do you see a rise in the heroin being brought in? Do you see a rise in cocaine and in marijuana, notwithstanding the additional arrests and the additional contraband seizures?

Mr. NAVARRO. What I have seen, in my personal opinion, is a decline on crimes of violence regarding homicides. There was a constant battle going on between the Colombians, the cocaine cowboys, the forces that are trying to gain control, and homicides were continuously going up every year to the tune that over 50 percent of those killed in Dade County were supposed to have been because of the drug war.

Today we have a decline in those. We have seen also marijuana slow down. We don't see that much marijuana anymore.

Marijuana has become kind of lost down there in south Florida. However, we are seeing an increase in the availability of cocaine.

Cocaine has come down in price. My undercover agents were normally paying between $58,000 and $62,000 a kilogram under cover. Today we are offered cocaine in amounts of 4, 5, 6 kilograms at about $38,000, $40,000, $42,000 a kilogram.

That is the barometer we use to figure out how much the drug is available. We find, much to my dismay, that cocaine has increased.

The marijuana has declined. Yes, it has. Cocaine has increased.

Mr. SMITH. By the way, I might add, Mr. Chairman, I think Nick and the Broward County Sheriff's Department are also in receipt of two mother ships. Right? You confiscated two mother ships?

Mr. NAVARRO. Yes, sir. One in 1976 under the Harbor and Vessel Act, and one recently, also, with the cooperation of the U.S. Customs Service and the Coast Guard.

We were out there in the high seas with them.

Mr. SMITH. The Broward Sheriff's Department once made a foray into the Bahamas, but we won't talk about that either.

Mr. HUGHES. Well, I just want to tell you that we have 10 more mother ships, but they are leaky. You wouldn't want them.

Mr. NAVARRO. No, sir.

Mr. HUGHES. At least some of them are.

Mr. SMITH. Thank you very much, Nick, again. We are proud to have you in Broward County.

Mr. HUGHES. Thank you very much, Major. We appreciate your testimony. Since we have no further questions, you may depart for the airport. You are going to make it.

Mr. NAVARRO. Thank you, Mr. Chairman. It was my pleasure to be here, sir.

Mr. HUGHES. Thank you. We enjoyed it very much.

Lieutenant Hedlund, welcome.

We have your statement, also, and you may proceed as you see fit.

Mr. HEDLUND. Chairman Hughes, Congressman Shaw, Congressman Smith, and other members of the committee, it is a distinct honor and pleasure for me to be here, and as well, I think I can speak for Sergeant Haas. This is a history-making event for myself.

I am really enjoying it and finding it extremely interesting.

The Fort Lauderdale Police Department is constantly interacting with Federal agencies. Most of our investigations are multijurisdictional as is the very nature of organized criminal activities.

We work closely with the FBI, the Drug Enforcement Administration, and more recently, the Vice-Presidential Task Force, and we enjoy a good rapport with these agencies.

Our investigators have developed numerous mutual contacts with Federal personnel, and we find these relationships to be very cooperative and mutually beneficial. I will cite several cases wherein vehicles, vessels and other items were seized jointly or as the result of joint investigations and mutual agreement was reached to "divide the proceeds," so to speak. This attitude of cooperation has been nurtured by many years of working together.

I will interject. When the Drug Enforcement Administration assigned agents to to Fort Lauderdale, they shared space in our office.

I do not believe the majority of other State and local agencies enjoy such a relationship, and to address this problem, I urge you to adopt an amendment to H.R. 3272, or add language to the Comprehensive Drug Penalty Act, establishing guidelines and directives to facilitate the sharing of seized property resulting from joint investigations between Federal, State, or local agencies.

This is not a new or unique request. In fact, similar views were espoused in hearings on October 25, 1978 at Miami, FL, before the Senate Permanent Subcommittee on Investigations.

One case I would like to cite is the Donald Steinberg investigation which began in the early part of 1977. In July of 1978, the Fort Lauderdale Police Department seized $1.1 million at the Ireland's Inn Hotel on the beach.

As I recall, it was all in 5's, 10's, 20's, and there was $30,000 in Canadian money. This precipitated getting involved with the Drug Enforcement Administration on this case.

They formed central tactical unit, number 20, to target the Steinberg group. These tactical units are only formed for major violators.

Ultimately, I believe 17 people were convicted. Steinberg pled guilty and was convicted under RICO.

To obtain probable cause for a wire tap on him, we used a new technique which we believe was innovated by the Fort Lauderdale Police Department. These people used beepers and telephones constantly. They carry bags of quarters.

We monitored the beepers and were able to establish enough probable cause to obtain a wire tap without actually having a dirty conversation on the target phone.

It ended up that the Drug Enforcement Administration seized approximately $5,398,000 worth of cash, vehicles, vessels, and real property. We realized about $16,000 of that by getting two Ford Rancheros to use as undercover vehicles. There was virtually no sharing of proceeds.

I cite about 42 different cases over the past 5 years where we have worked with Federal agencies, either initiating the case or being requested for assistance in manpower, et cetera. The Thomas Farese investigation was a classic on an OC figure. He did a couple of years at Eglin Air Force Base Federal Prison and didn't have two nickels to rub together.

Within 2 years he had the Olympic Shipping Co., Olympic Film Production and massive real estate holdings in the Fort Lauderdale area. That was one we worked with the FBI and the Miami Strike Force.

The recently, highly publicized John DeLorean case was provided a highly important catalyst by a detective Fred Zried who is one of our investigators in the intelligence unit. We were able to show where the money was going and provide the trace for the funds going into the accounts in the offshore banks.

These examples are to illustrate our day-to-day involvement with Federal agencies in major and minor cases. They do not indicate the thousands of man-hours expended in cases that do not result in arrest and/or seizure, or the countless hours involved in intelligence exchange and routine inquiry.

I presume that other State and local agencies function in like manner. This is a service provided in the spirit of cooperation on a national basis by those of us in the intelligence and investigative community.

A vehicle by which Federal agencies were required to reimburse from or share the fruits of mutual effort would be most welcome.

I submit that the use of these funds, if they were made available, would just allow us to, maybe, catch up with the violators. The sophisticated equipment that they are able to purchase and use far outshines ours. It has for years, and I think it will for some time to come. The sharing of forfeiture funds would also allow us to better assist the Federal agencies.

We share in the work and the risks and should also share in the profits. Examples such as the "cocaine cowboys" epitomize the violent nature of the drug traffickers. We recently conducted an operation with the Drug Enforcement Administration and U.S. Customs, whereby we put undercover investigators on a coastal freighter and sent it to Columbia. There was one incident down there where they were laying to and one of the people on watch heard another vessel coming up without lights.

They shined lights on it and these guys all had machine guns, so the guys on our boat all pulled out their machine guns, and it was a standoff. But our investigators firmly believe that it would have been a piracy.

It just points out the extreme danger of these types of operations.

Like I said, we share in the work and the risks. We would also like to share in the awards.

Thank you very much.

[The statement of Mr. Hedlund follows:]

STATEMENT OF LT. ERIC HEDLUND

BIOGRAPHY

Lt. Eric Hedlund, Commander, Organized Crime Division, Fort Lauderdale Police Department, Chief of Police, Ronald A. Cochran.

Eighteen and one-half (18½) years with the Department; assigned to Organized Crime Division in June of 1977. Investigative responsibilities are Narcotics, Vice, Intelligence and Organized Crime related crimes.

Member: Organized Crime Intelligence Unit (Tri-County), Florida Intelligence Unit, and Law Enforcement Intelligence Unit (National).

BIOGRAPHY

Sgt. Douglas K. Haas, Intelligence Unit, Organized Crime Division, Fort Lauderdale Police Department.

Fifteen (15) years with the Department. Responsibilitis consist of Intelligence gathering and analyzing as it relates to Narcotics and Organized Crime activities.

Member: Organized Crime Intelligence Unit (Tri-County), Florida Intelligence Unit, and Law Enforcement Intelligence Unit (National).

TESTIMONY

The Fort Lauderdale Police Department is constantly interacting with Federal agencies. Most of our investigations are multi-jurisdictional as is the very nature of organized criminal activities. We work closely with the F.B.I., the Drug Enforcement Administration, the Vice-Presidential Task Force, etc.; and enjoy a good rapport with these agencies. Our investigators have developed numerous mutual contacts with Federal personnel, and we find these relationships to be very cooperative and mutually beneficial. I will cite several cases wherein vehicles, vessels and other items were seized jointly or as the result of joint investigations. Mutual agreement was reached to "divide the proceeds", so to speak. This attitude of cooperation has been nurtured by many years of working together.

I do not believe the majority of other State and local agencies enjoy such a relationship, and to address this problem, I urge you to adopt an amendment to HR 3272, establishing guidelines and directives to facilitate the sharing of seized property resulting from joint investigations between Federal and State or local agencies.

This is not a new or unique request. In fact, similar views were espoused in hearings on October 25, 1978 at Miami, Florida, before the Senate Permanent Subcommittee on Investigations.

CASES

1. April 1977 thru February 1982: The Donald Steinberg investigation was initiated by our agency and eventually involved the Drug Enforcement Administration, which formed CENTAC XX. Ultimately, Steinberg and more than a dozen members of his organization were convicted in Federal Court.

Seized: $1,521,879 in U.S. currency; $791,350 in real property; $208,050 in vehicles; and $2,877,000 in vessels. The total amounts to $5,398,279, of which the Fort Lauderdale Police Department realized two vehicles valued at $16,000.

2. The Thomas Farese investigation was initiated by our agency, which was joined by the F.B.I. and Drug Enforcement Administration to convict, in Federal Court, a classic Organized Crime violator.

3. The recent highly publicized, DeLorean case initiated by Federal Investigators in California was provided a highly important catalyst by Detective Fred Zried of our unit.

4. 5-11-79, with Drug Enforcement Administration.—Two arrests; seized, one pound cocaine. 1979 Lincoln Continental. Model 59 Smith & Wesson automatic.

5. 8-3-79, with Secret Service.—Five arrests; seized, one gram cocaine and five hundred pounds marijuana.

6. 7-31-79, with U.S. Customs.—Seized, 48 ft Hatteras and ninety-one bales marijuana.

7. 8-2-79, with U.S. Customs.—Three arrests; seized, 4,300 pounds marijuana and 41 ft Hatteras.
8. 8-2-79, with U.S. Customs.—Three arrests; seized, 5,050 pounds marijuana and 41 ft Hatteras.
9. 5-27-80, with Drug Enforcement Administration (sting operation).—Three arrests; seized, $341,000. Three vehicles (Roll Royce, Ford Bronco, Lincoln), and several handguns.
10. 5-14-80, with U.S. Customs.—Two arrests; seized, 42 ft Chris Craft and 4,001 pounds marijuana.
11. 7-27-80, with U.S. Customs.—Two arrests; seized, five hundred fifty pounds marijuana and 30 ft Chris Craft.
12. 8-6-80, with New York Drug Enforcement Administration.— One arrest.
13. 8-9-80, with U.S. Customs.—Two arrests; seized, 3,800 pounds marijuana and 36 ft Egg Harbor.
14. 10-13-80, with U.S. Customs.—Two arrrests; seized, 2,245 pounds marijuana and 1978 26 ft SeaRay.
15. 10-20-80, with U.S.Customs.— Two arrests; seized, three hundred pounds marijuana and 1978 25 ft Wellcraft, Nova 750.
16. 8-8-80, with Drug Enforcement Administration.—Two arrests; seized, three kilos cocaine and 1979 Camaro vehicle.
17. 8-12-80, with Drug Enforcement Administration.—One arrest.
18. 11-21-80, with Drug Enforcement Administration.—Two arrests; seized, one kilo cocaine.
19. 11-28-80, with Drug Enforcement Administration in Detroit, MI.—One arrest; seized, one quart hash oil and two hundred forty-one grams cocaine.
20. 12-8-80, with U.S. Customs.—Two arrests; seized, 2,250 pounds marijuana and 1969 28 ft Hatteras.
21. 12-22-80, with U.S. Customs.—Four arrests; seized, 8,000 pounds marijuana and 1973 45 ft Columbia sailboat.
22. 1-9-81, with Drug Enforcement Administration.—Three arrests; seized 26,000 quaaludes.
23. 2-18-81, with Drug Enforcement Administration.—One arrest; seized, two ounces cocaine.
24. 2-21-81, with U.S. Customs.—Two arrests; seized, six hundred one pounds marijuana and 1980 30 ft SeaRay.
25. 4-24-81, with U.S. Customs.—Two arrests; seized, 2,000 pounds marijuana and 1940 schooner.
26. 5-12-81, with U.S. Customs.—Three arrests; seized, 8,000 tablets quaaludes and 1976 22 ft Anacapri boat.
27. 6-24-81, with U.S. Customs.—One arrest; seized, 28,769 pounds marijuana, three vans and three 58 ft Hatteras yachts.
28. 9-8-81, with Alcohol, Tobacco & Firearms.—Two arrests; seized, 8,000 qualaludes.
29. 9-21-81, with Drug Enforcement Administration.—Six arrests; seized, $117,350 and two vehicles.
30. 11-29-81, with U.S. Customs.—Two arrests; seized, 5,570 pounds marijuana and 37 ft Irwin sailboat.
31. 1-7-82, with U.S. Customs.—Three arrests; seized, 38 ft Chris Craft and three hundred pounds marijuana.
32. 1-9-82, with U.S. Customs.—One arrest; seized, 1974 50 ft sailboat, one brick hashish, and one gram cocaine.
33. 1-29-82, with Drug Enforcement Administration and U.S. Marshall.—One arrest.
34. 2-8-82, with U.S. Customs.—Two arrests; seized twenty-two bales marijuana and 26 ft Formula.
35. 2-26-82, with U.S. Customs.—One arrest; seized, fifty quaaludes and 118 ft yacht.
36. 3-1-82, with U.S. Customs.—Initiated information that led to seizure of 20,000 pounds of marijuana, and a vessel.
37. 4-2-82, with F.B.I.—Assisted in "Esposito" homicide.
38. June 1982, with Vice-Presidential Task Force.—Conducted operation "Trojan Horse." Three Customs and three FLPD officers with two bad guys rented a boat and traveled to Columbia to pick up 50,000 pounds of marijuana. Seized $90,000.
39. 8-28-82, with Vice-Presidential Task Force.—Three arrests; seized two kilos cocaine one gun, and one vehicle.
40. 1-18-83, with U.S. Customs.—One arrest; seized 26 ft Wellcraft and one pound marijuana.

41. 4-1-83, with U.S. Customs.—Two arrests; seized, 6,200 pounds marijuana, 38 ft Chris Craft, and three vehicles.
42. 5-23-83, with U.S. Customs.—Seized 2,000 pounds marijuana and 30 ft cigarette.

These examples are to illustrate our day-to-day involvement with Federal agencies in major and minor cases. They do not indicate the thousands of man hours expended in cases that do not result in arrest and/or seizure, or the countless hours involved in intelligence exchange and routine inquiries. I would presume that other State and local agencies function in like manner. This is a service provided in the spirit of cooperation on a National basis by those of us in the intelligence and investigative community.

A vehicle by which Federal agencies were required to reimburse from or share the fruits of mutual effort would be most welcome.

Thank you for your time and attention.

CHAPTER 932—PROVISIONS SUPPLEMENTAL TO CRIMINAL PROCEDURE LAW

Proceedings on estreat of bond; sureties to be called.
Proceedings on estreat of bond; certificate of judge.
Forfeiture proceedings.

Proceedings on estreat of bond; sureties to be called.—[Repealed by s. 70, ch. 82-175.]

932.46 Proceeding on estreat of bond; certificate of judge.—[Repealed by s. 70, ch. 82-175.]

932.704 Forfeiture proceedings.

(1) The state attorney within whose jurisdiction the contraband article, vessel, motor vehicle, aircraft, or other personal property has been seized because of its use or attempted use in violation of any provisions of law dealing with contraband, or such attorney as may be employed by the seizing agency, shall promptly proceed against the contraband article, vessel, motor vehicle, aircraft, or other personal property by rule to show cause in the circuit court within the jurisdiction in which the seizure or the offense occurred and may have such contraband article, vessel, motor vehicle, aircraft, or other personal property forfeited to the use of, or to be sold by, the law enforcement agency making the seizure, upon production due proof that the contraband article, vessel, motor vehicle, aircraft, or other personal property was being used in violation of the provisions of such law. The final order of forfeiture by the court shall perfect the state's right and interest in and title to such property and shall relate back to the date of seizure.

(2) If the property is of a type for which title or registration is required by law, or if the owner of the property is known in fact to the seizing agency at the time of seizure, or if the seized property is subject to a perfected security interest in accordance with the Uniform Commercial Code, chapter 679, the state attorney, or such attorney as may be employed by the seizing agency, shall give notice of the forfeiture proceedings by registered mail, return receipt requested, to each person having such security interest in the property and shall publish, in accordance with chapter 50, notice of the forfeiture proceeding once each week for 2 consecutive weeks in a newspaper of general circulation, as defined in s. 165.031, in the county where the seizure occurred. The notice shall be mailed and first published at least 4 weeks prior to filing the rule to show cause and shall describe the property; state the county, place, and date of seizure; state the name of the law enforcement agency holding the seized property; and state the name of the court in which the proceeding will be filed and the anticipated date for filing the rule to show cause. However, the seizing agency shall be obligated only to make diligent search and inquiry as to the owner of the subject property, and if, after such diligent search and inquiry, the seizing agency is unable to ascertain such owner, the above actual notice requirements by mail with respect to perfected security interests shall not be applicable.

(3)(a) Whenever the head of the enforcement agency effecting the forfeiture deems it necessary or expedient to sell the property forfeiture rather than to retain it for the use of the law enforcement agency, or if the property is subject to a lien which has been preserved by the court, he shall cause a notice of the sale to be made by publication as provided by law and thereafter shall dispose of the property at public auction to the highest bidder for cash without appraisal. In lieu of the sale of the property, the head of the law enforcement agency, whenever he deems it necessary or expedient, may salvage the property or transfer the property to any public or nonprofit organization, provided such property is not subject to a lien preserved by the court as provided in s. 932.703(3). The proceeds of sale shall be applied: first, to

payment of the balance due on any lien preserved by the court in the forfeiture proceedings; second, to payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property; third, to payment of the costs incurred by the state attorney; and fourth, to payment of costs incurred by the court. The remaining proceeds shall be deposited in a special law enforcement trust fund established by the board of county commissioners or the governing body of the municipality and shall be used for law enforcement purposes only. These funds may be expended only upon appropriation to the sherriff's office or police department, by the board of county commissioners or the governing body of the municipality, to defray the costs of protracted or complex investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or for such other law enforcement purposes as the board of county commissioners or governing body of the municipality deems appropriate and shall not be considered a source of revenue to meet normal operating needs. In the event that the seizing law enforcement agency is a state agency, all remaining proceeds shall be deposited into the state General Revenue Fund. However, in the event the seizing law enforcement agency is the Department of Law Enforcement, the proceeds accrued pursuant to the provisions of this chapter shall be deposited into the Forfeiture and Investigative Support Trust Fund.

(b) If more than one law enforcement agency was substantially involved in effecting the forfeiture, the court having jurisdiction over the forfeiture proceeding shall equitably distribute the property among the seizing agencies. Any forfeited money or currency, or any proceeds remaining after the sale of the property, shall be equitably distributed to the board of county commissioners or the governing body of the municipality having budgetary control over the seizing law enforcement agencies for deposit into the law enforcement trust fund established pursuant to paragraph (a). In the event that the seizing law enforcement agency is a state agency, the court shall direct that all forfeited money or currency and all proceeds be forwarded to the Treasurer for deposit into the state General Revenue Fund.

(4) Upon the sale of any vessel, motor vehicle, or aircraft, the state shall issue a title certificate to the purchaser. Upon the request of any law enforcement agency which elects to retain titled property after forfeiture, the state shall issue a title certificate for such property to the agency.

(5) Any law enforcement agency receiving forfeited property or proceeds from the sale of forfeited property in accordance with this act shall submit a quarterly report to the entity which has budgetary authority over such agency, which report shall specify, for such period, the type and approximate value of the property received and the amount of any proceeds received. Neither the law enforcement agency nor the entity having budgetary control shall anticipate future forfeitures or proceeds therefrom in the adoption and approval of the budget for the enforcement agency.

Mr. SMITH [presiding]. Sergeant, do you want to add anything to that?

Mr. HAAS. I would just like to add, Mr. Chairman, Congressman Shaw, members of the committee, that we in the Fort Lauderdale Police Department are the No. 1 department in the State of Florida with regards to forfeitures.

We have a section set up within the police department that deals strictly with forfeitures. There is in-house legal counsel that handles them.

We need these funds to help us, as Lieutenant Hedlund says, to catch up with the sophistication that these groups are demonstrating to us during surveillance operations, because they have countersurveillance equipment that far outshines some of the military equipment you see.

We enjoy an excellent rapport with Federal agencies. They do share with us when they get involved. However, this is unique to our police department. It is not shared by most other local agencies.

By making this amendment, it would greatly enhance law enforcement efforts throughout the States.

Mr. SMITH. We also have with us today Mr. Richard Pruss, who is the president of Therapeutic Communities of America. Mr. Pruss, your statement is also part of the record.

It will be entered in full, and you may proceed as you wish.

Mr. PRUSS. Thank you. Therapeutic Communities of America is a 300-member consortium of not-for-profit, drug-free rehabilitation programs throughout the United States.

I am not from Florida. I am the only one up here not from Florida—I am almost the only one up here, including the panel.

We have agencies in Florida, though.

Mr. SMITH. Are you intimidated?

Mr. PRUSS. I am neither an attorney, nor do I work in law enforcement, nor am I from Florida.

Mr. SMITH. Are you sure you are in the right room?

Mr. PRUSS. My testimony will not be technical in nature. I haven't appeared previously before this subcommittee, and I am grateful for the opportunity to do so.

I will also add that I probably know less about civil forfeiture than anybody that has testified here today. Our interest came about when an article was published by DEA in their quarterly newsletter recommending that the States pass civil forfeiture legislation.

Within that article they had a model bill and they also indicated that the States could if they so desired put in language that would allow the items or cash received through forfeiture to go to law enforcement agencies' treatment and prevention programs.

Our programs throughout the United States are well over 100 percent of treatment capacity. We started to work with various State legislatures along with the law enforcement representatives in having legislation enacted.

In New York State, my home State, several bills are now under active consideration, which would provide prevention and treatment programs with a share of all cash, property and other assets seized, as well as, of course, law enforcement authorities.

We are hopeful that the New York State bill will pass in this session, but what New York does is not a guarantee of what other States may do, and for very good reasons.

In Florida where we had a State that was very farsighted, you are talking about funds that are already programmed into law enforcement. It would be counterproductive and foolish of us to attempt to amend legislation where agencies are relying on funding.

In Michigan a law was passed last year that allowed 25 percent of all forfeited assets to go to prevention and treatment programs with 75 percent of those assets going to law enforcement agencies.

There was no negative impact on law enforcement agencies because they had not received any from that source previously.

Because we see substance abuse as a national problem afflicting millions of our citizens and affecting all of them, we feel that there should be a Federal statute applying this principle of sharing to the properties seized through forfeiture by Federal authorities.

It was interesting to me to first find out—as I say, I know very little about forfeiture—that whereas DEA recommended that the assets be designated to law enforcement and other drug abuse services—and we consider ourselves a continuum of service. I mean

there are people in the supply end of this field, and there are people in the demand end of this field, and we work very closely together.

We were shocked to find out, just to show you how naive we are, that the assets that were forfeited through Federal statute went to the general fund. It is our hope that legislation can be amended, not only to see that a sharing takes place between local law enforcement agencies and Federal law enforcement agencies, but further that the assets seized federally are designated the same way that DEA recommended for State legislation to the drug abuse field.

I think that the impact on crime on a broader level would be substantial. As I stated, we worked very closely with law enforcement agencies in the department of corrections in many States.

A short time ago a major study on criminal behavior by opiate addicts by John Ball entitled "Criminality of Heroin Addicts When Addicted and When Off Opiates" found as follows:

> One of the major findings of the study was that heroin addicts commit a staggering amount of crime; 237 male opiate addicts were responsible for committing more than 500,000 crimes during an 11 year risk period. It was found that the number of offenses increased six-fold when the subjects were addicted.

They further wrote:

> It is now evidence that addicts are responsible for committing an inordinate amount of crime, that many of these offenses are serious in nature, that addicts' criminality is rather firmly enmeshed in their lifestyle and, therefore, is persistent and recurring.

They also stated:

> We know that criminality is rampant among heroin addicts. We know that addiction markedly increases this criminality. We also know that addiction can be impacted through treatment control measures.

If we can agree that there is a clear and serious connection between drug abuse and crime, then we can move on easily to conclude that reducing drug abuse can lead to a reduction in crime.

Our professional business, our end of the business in the Therapeutic Communities is treating drug abuse. The record shows, according to NIDA research that "a sharp decline in arrests" among clients who had completed a year or more of treatment, in all of the research that NIDA reported:

> Marked improvement was observed in terms of employment and reduction of criminality.

If there was criminal behavior before admission, it was most unlikely to continue after treatment. The client who was unemployed is likely to be working. The client who left school is likely to be back in the classroom and dependence on illicit drugs is likely to have ceased entirely.

What does this mean to law enforcement community and criminal justice system? Obviously, it means less crime, fewer arrests, less court congestion, less crowding in detention and long-term incarceration facilities.

Last March, the Bureau of Justice statistics of the U.S. Department of Justice published a bulletin on "Prisoners and Drugs."

The first paragraph reads:

> Almost a third of all State prisoners in 1979 were under the influence of an illegal drug when they committed the crimes for which they were incarcerated. More than half had taken drugs during the month prior to the crime. More than three-fourths had used drugs at some time during their lives, but only one-fourth of the drug users had ever been in a drug treatment program.

We all know that prisons throughout the United States are overcrowded. New York has 30,000 prisoners in the system with a capacity of 26,000. California expects the prisoner population of 50,000 in 4 more years.

Construction of more cells cannot be regarded as the only practical response because recidivism is so basic a part of the whole problem. It is also vital to work effectively with the offender who can respond to a rehabilitation program.

Although we treat clients from every social and economic background, those that reach us through the criminal justice system, or one of its adjuncts, such as TASC, are admitted only after careful screening and processing and repeated consultation with judges, prosecutors, police probation officers, and counsel.

In my own program, which has a residential client load of 500 people, 34 percent are referred through the court system. Our proposal is essentially simple, but I believe that our case for a share of the assets based on a record of achievement and accountability is a strong one and I urge the subcommittee to consider specific legislative measures to recognize the claim that we are making today.

We believe that accredited drug abuse prevention and treatment services should share with law enforcement authorities the resources that have become available through forfeiture. We certainly, as I indicated, respect and work very closely with the law enforcement authorities in each of the States.

We don't indicate to our residents, the people that we are treating, that they are victims. We indicate that they are responsible for their own behavior.

In fact, when you are talking about the type of dealers and traffickers that you are talking about now, and you are talking about the kid on the street who is abusing drugs in this other context in this room, they certainly are the victims of those people who are becoming very wealthy through the sale of drugs to our kids.

Mr. SMITH. Excuse me, Mr. Pruss. We are in the middle of a vote, again, and we are about at the 9-minute level.

Mr. PRUSS. That is good because my next sentence says, thank you for this opportunity to testify.

Mr. SMITH. Thank you. I know there are going to be some questions. We will come back and spend the last few minutes——

Mr. HUGHES. Will the gentleman yield?

Mr. SMITH. Yes.

Mr. HUGHES. I am not going to be able to come back, and I just want to thank both gentlemen for their testimony. The thrust of your point, I gather, is that those that are working on the therapeutic side should receive a percentage of money set aside for forfeiture.

Lieutenant, I appreciate your tremendous contributions. It sounds like you have had a very good working relationship with the Federal agencies. If, in fact, that relationship existed with most other State and local agencies, we wouldn't have to be talking

about an amendment to the system that would permit or encourage the kind of sharing of assets to which you have alluded to.

So I thank you for your contributions, too. Thank you.

[The statement of Mr. Pruss follows:]

TESTIMONY OF RICHARD PRUSS, PRESIDENT, THERAPEUTIC COMMUNITIES OF AMERICA AND SAMARITAN VILLAGE, INC.

I am Richard Pruss, President of Therapeutic Communities of America, the 300 member consortium of drug-free rehabilitation agencies with programs throughout the U.S. and Canada. We are affiliated with the World Federation of Therapeutic Communities, representing hundreds more programs world wide, but our professional mission is the same everywhere: to rehabilitate drug abusers so that they become drug-free, positive, productive members of society.

I have not appeared previously before the Subcommittee and am grateful for this opportunity to do so now. We have some important mutual interests and, as I hope to show, we also have some good opportunities to work together.

I think an appropriate way to introduce my presentation today is to refer briefly to an exchange I recently had with Rudolph W. Giuliani, former Associate Attorney General of the U.S. and now U.S. Attorney for the Southern District of New York.

Early this spring, I had occasion to write to the New York Times in response to an editorial on forfeiture legislation which, the newspaper said, "can be a useful tool in the drug war, if used with care," the paper took issue, however, with proposals to earmark for law enforcement the cash and other assets seized in raids on illegal drug operations, because, it said, "the pursuit of these assets could distort law enforcement priorities."

I responded that the connection between drugs and crime is well-established, that attacking the drug dealers is also an attack on street crime and that our organization does not see this as a distortion of law enforcement priorities. (A copy of the published letter is attached to my testimony.)

A few days later, Mr. Giuliani reacted in appreciative terms to my letter. He observed that "substantially reducing the large sums of money and other property available to the drug organizations disrupts those organizations as much if not more than imprisioning their operatives." And, he endorsed TCA's appeal for a share of these seized assets to fund drug abuse prevention and treatment services.

I mention this useful exchange of views because it is a helpful demonstration of the mutual respect and potential for partnership between law enforcement authorities and the drug abuse treatment field. The possibilities should be of special interest to this Subcommittee as well, since we all are concerned about protecting the American public from crime. Although I will be focusing on the forfeiture issue today, I think it will help keep this general context firmly in mind. Crime prevention is not the primary responsibility of our treatment programs. We are not police. Yet, because we are often effective in rehabilitating former offenders, we can make the difficult job of law enforcement less difficult.

Let me turn now to the question of Civil Forfeiture and explain what TCA has been dong on the legislative front.

This past winter, at the time I first contacted Chairman Hughes, TCA had been looking into Civil Forfeiture legislation for several months. We became interested initially after learning that the Drug Enforcement Administration—which has made excellent use of the forfeiture statute enacted by Congress in 1978—was recommending that the states consider similar legislation and specify that a share of the receipts be allocated for drug abuse prevention and treatment services, as well as law enforcement. Since our programs have suffered severely from reductions in Federal support during recent years, we are vitally interested in finding alternative sources of funding. Enactment of the block grant formula for alcohol, drug and mental health programs has had drastic results for us: a one-third loss of federal aid. Programs in states which provided little or no funding for treatment services have been catastrophically affected by these Federal cutbacks; a number have been crippled or have simply cased to exist.

There, DEA's experience with forfeiture had unusual appeal for us and we have made legislation a priority in each state where we have agency members. In my home state of New York, for example, several bills are now under active consideration which would provide prevention and treatment programs with a significant share of all cash, property and other assets seized by state law enforcement authorities in arrests of drug dealers. The measure TCA prefers in New York would divide

all these proceeds between drug abuse prevention and treatment programs and law enforcement.

We are hopeful of action in New York this session. But what New York does is not a guarantee of what Florida or California or other states may ultimately do.

And, therefore, because drug abuse is unquestionably a national problem, afflicting millions of our citizens and affecting all, we feel that there should be a Federal statute applying this principle of sharing to the properities seized through forfeiture by Federal authorities.

We believe that treatment has a clear and positive effect on the criminality of heroin addicts. At the risk of seeming to oversimplify, let me start with some of the conclusions of major study of criminal behavior by opiate addicts reported a few years ago by John C. Ball and his associates. In "The Criminality of Heroin Addicts, When Addicted and When Off Opiates," they wrote, in part:

"One of the major findings of this study was that heroin addicts commit a staggering amount of crime . . . these 237 male opiate addicts have been responsible for committing more than 500,000 crimes during an eleven-year risk period . . . it was found that the number of offenses increased sixfold when these subjects were addicted . . .

Further, they write:

"It is now evident that addicts are responsible for committing an inordinate amount of crime, that many of these offenses are serious in nature, that addicts' criminality is rather firmly emeshed in their lifestyle and, therefore, that it is persistent and recurring." But, the researchers conclude:

"We know that criminality is rampant among heroin addicts. We know that addiction markedly increases this criminality. We also know that addiction can be impacted through treated and control measures."

Perhaps this may seem familiar, but there are still people who doubt that drug-connected crime is really serious, just as there are those who question the usefulness of treating the abuser, who still insist that "once a junkie, always a junkie."

If we can agree that there is a clear and serious connection between drug abuse and crime, then we can move on easily to conclude that reducing drug abuse can lead to a reduction in crime. Our professional business in the therapeutic community is treating drug abuse. What does the record show with respect to the effect of the drug-free residential experience on clients with criminal records?

In a study of the "Effectiveness of Drug Abuse Programs" published by the National Institute on Drug Abuse two years ago, a series of research studies of therapeutic community clients is summarized. I have included copies with my testimony. One representative report, focusing on a study completed a decade ago, found that there was "a sharp decline in arrests" among clients who had completed a year or more of treatment compared with those who had spent a year or less in a progam. In all the research, NIDA reported, marked improvement was . . . observed in terms of employment and reduction of criminality."

We are a new profession, but we are now old enough to have a substantial body of outcome research behind us and every careful measurement of therapeutic community results affirms the same findings: the long-term client in our programs is in the large majority of cases, likely to be a long-term success. If there was criminal behavior before admission, it is most unlikely to continue after treatment. The client who was unemployed is likely to be working. The client who left school is likely to be back in the classroom. Dependence on illicit drugs is likely to have ceased entirely.

What does this mean to law enforcement and the criminal justice system? Obviously, it means less crime, fewer arrests, less court congestion, less crowding in detention and long-term incarceration facilities. Last March, the Bureau of Justice Statistics of the U.S. Department of Justice published a bulletin on "Prisoners and Drugs." The first paragraph reads:

"Almost a third of all State prisoners in 1979 were under the influence of an illegal drug when they committed the crimes for which they were incarcerated. More than half had taken drugs during the month prior to the crime. More than three-fourths had used drugs at some time during their lives, but only one-fourth of the drug users had ever been in a drug treatment program."

We are not suggesting that drug abuse treatment is some easy and dramatic defense against violent crime. As a matter of fact, the Department of Justice study I have just quoted notes that "murderers and rapists" had low drug-use rates. In any case, our programs do not normally accept persons with major felony records for treatment.

But, we can show striking results in true rehabilitation of other criminal offenders. It is on this record that I am basing our recommendations to the Subcommittee.

As we talk today, the State of New York, with many others, is again facing the explosive hazard of prison congestion. It is now holding 30,000 prisoners, the highest number in its history in a corrections network with a capacity of 26,000. As the New York Times also reported recently, Texas is taking in more than 400 prisoners a month and California expects a prisoner population of 50,000 in four more years. The public demand for swift, certain punishment of criminal offenders is one reason. Longer sentencing for serious and/or repeat offenders is another. But contruction of more cells cannot be regarded as the only practical response. Because recidivism is so basic a part of the whole problem, it is also vital to work effectively with the offender who can respond to a rehabilitation program. And that is exactly what we do—at an annual cost per client of little more than one-third of what it costs to maintain a prisoner for one year.

Our clients come from every social and economic background. Those that reach us throught the criminal justice system or one of its adjuncts, such as the TASC program, are admitted only after a careful process of screening, which involves thorough and repeated consultation with judges, prosecutors, public probation officers and counsel. Our associations with these professionals tend to be long-standing and are characterized by both mutual respect and genuine concern for the successful treatment of the individual client.

And we are equally used to close working relationships with many of your Congressional colleagues—Representative Rangel and members of the Select Committee on Narcotics Abuse and Control, for example, and the men and women who represent the districts in which our facilities are located. In our experience, elected officials are among the most sympathetic and supportive friends we have.

Our proposal here is essentially simple. You have heard a great many specialists on crime-control legislation and people who are far more knowledgeable about the history and application of the forfeiture doctrine than we are. But I believe our case for a share of these assets, based on our record of achievement and accountability, is a strong one and I urge the Subcommittee to consider specific legislative measures to recognize the claim we are making today.

We believe that accredited drug abuse prevention and treatment services should share, with law enforcement authorities, the resources that have become available through forfeiture.

I want to stress that we do not look upon forfeiture as a miracle substitute for stable, secure funding of drug programs. There is no accurate way of predicting either the amount of income or the duration of the flow of cash and assets. The leadership of organized crime long ago began an effort to protect their illicit earning by investing in legal enterprises and there is no reason to think the big-time drug dealers are not making similar plans. It is true that the Federal RICO Statutes, enforced by hard-working prosecutors, are having an impact on this criminal strategy and drug operations may be equally vulnerable to sophisticated counter measures. But it would be grossly wrong to treat forfeiture income as anything more that a supplementary support. We are, all of us, working to put the drug dealers out of business permanently, not trying to keep them functioning as convenient, easily tapped source of money.

With this understood, we want to make maximum use of the civil forfeiture opportunity and we believe it will give us the resources we need to extend and improve our services to men and women who now have only a place on a crowded waiting list to nourish hope. They have the motivation, they have the capacity to do something for themselves but for thousands of them we do not have the space. Forfeiture income could make the critical difference for these Americans and if they can be saved, as I have tried to show, there can be positive and far-reaching effects elsewhere in our society: reduced crime, more productive employment, significantly improved physical and mental health.

Thank you for the opportunity to introduce ourselves, our programs and our proposals today. I will be happy to respond to questions.

National Institute on Drug Abuse

TREATMENT RESEARCH REPORT

Effectiveness of Drug Abuse Treatment Programs

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Alcohol, Drug Abuse, and Mental Health Administration

The Treatment Research Reports and Monograph Series are issued by the Treatment Research and Assessment Branch, Division of Prevention and Treatment Development, National Institute on Drug Abuse (NIDA). Their primary purpose is to provide reports to the drug abuse treatment community on the service delivery and policy-oriented findings from Branch-sponsored studies, innovative service delivery models for different client populations, innovative treatment management and financing techniques, and treatment outcome studies.

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FOREWORD

This report is designed to provide concise, straightforward, and systematic information on the effectiveness of community-based drug abuse treatment to the reader who does not have a scientific background but nonetheless has a civic or professional interest in the provision of drug abuse treatment. It presents major findings from the more important studies of treatment outcomes of currently available modalities--methadone maintenance, therapeutic community, outpatient drug free, and detoxification--in a summary organized for easy reference. A major consideration in developing the report has been to highlight the more straightforward data presentations in the studies and minimize reliance on the kinds of data presentation which would require a statistical background to understand. Nonetheless, we believe that the essential information regarding treatment effectiveness is preserved in this report for those who will make the decisions regarding the provision of service delivery to drug abuse clients at the Federal, State, and local level. It is also hoped that the reader with a more technical background will find this report useful as well.

Frank M. Tims, Ph.D.
Treatment Research Branch
Division of Prevention
and Treatment Development

CONTENTS

INTRODUCTION	1
Approaches to Treatment	
Measures of Effectiveness	2
EARLY FINDINGS OF TREATMENT EFFECTIVENESS RESEARCH	3
Maturation Hypothesis	4
CONTEMPORARY FINDINGS OF TREATMENT EFFECTIVENESS RESEARCH	
Therapeutic Communities	
Methadone Maintenance	6
Outpatient Drug Free	9
Detoxification	
Studies Involving More Than One Modality	
CONCLUSION	13
REFERENCES	16

INTRODUCTION

This report summarizes what is known regarding the effectiveness of drug abuse treatment in the United States. It is designed primarily to inform laymen and others who have a civic or working interest in the field but are not specialists in research on the results of treatment. Readers who wish to review the material at the specialist's level will find the supporting research literature cited extensively. The report focuses on findings available through 1980 that are likely to be widely applicable and provides historical perspective as well. While most of the studies cited here deal primarily with the treatment of heroin addicts, findings are also presented for samples which include other drug abusers. However, much of this literature gives major attention to the treatment of the heroin addict.

Professionals in the treatment of drug abuse have recognized the need to assess the results of their work, but the task is time consuming and complex. The many interrelated variables of human behavior and environment make data difficult to gather and analyze; the longer the followup period, the greater the difficulty. Still, more than enough evidence has accumulated by now to indicate that the methods of treatment commonly used beginning in the 1960s have been associated with significant behavioral change. Data are emerging also that show the comparative value of the various means of treatment for differing types of patients. These findings clearly demonstrate the significance of publicly funded programs. At the same time they provide guidelines for selecting and improving the forms of treatment best suited to the needs of an evolving population of drug abusers.

Approaches to Treatment

The most extensive and reliable data on the results of treatment relate to four approaches that came into use largely in the 1960s with the advent of large scale Federal support and emphasis on community-based programs. These are the approaches that will be covered in this report. They may vary in detail from program to program, but generally may be described as follows:

Therapeutic Communities: These are full-time, drug-free residential programs. Time in treatment may be scheduled for as little as 2 months, but most programs are considerably longer and often extend well beyond a year. Some 28 percent of clients completing NIDA-funded residential drug-free (primarily therapeutic community) programs in 1979 were in treatment for more than 52 weeks (18).

Therapeutic communites are highly organized and provide, for example, peer support and confrontation, counseling, and residential job functions. The basic goal is to persuade the patient to abandon antisocial and self-destructive behavior and pursue a mature and productive way of life.

Methadone Maintenance: This approach involves replacement of street heroin with methadone, a synthetic opiate intended to allow clients to stabilize themselves physiologically such that they can explore alternative ways of functioning. This modality is usually provided on an outpatient treatment basis. Daily methadone doses are necessary, but most programs provide for take-home methadone on weekends so that patients typically need visit the clinic only 5 days a week for medication. Time in treatment may vary considerably although the majority of clients who complete treatment stay in this treatment a year or more. Fifty-six percent of clients completing treatment in NIDA-funded methadone maintenance programs during 1979 were enrolled for more than 52 weeks (18). Methadone maintenance combined with rehabilitative counseling enables the patient to leave the drug-seeking street life in favor of a normal lifestyle. Detoxification from methadone and subsequent abstinence is usually seen as an eventual objective.

Outpatient Drug Free: This modality provides treatment for abusers of both opioids (i.e., natural or synthetic opiates such as heroin, illegal methadone, dilaudid, etc.) and nonopioid drugs (such as sedative-hypnotic drugs, tranquilizers, amphetamines and hallucinogens). Programs vary widely in duration, goals, and content. At one extreme, are highly organized programs operated as daytime therapeutic communities; at the other extreme, are more relaxed programs that offer conversational (rap) sessions, recreational activities, and help with personal

problems on request. Some 58 percent of all clients completing treatment during 1979 in outpatient drug-free programs reporting through the Client Oriented Data Acquisition Process (CODAP) system were in treatment for 6 months or less. Only about 18 percent of those completing treatment were enrolled for more than 52 weeks (18).

Detoxification: This may be inpatient or outpatient treatment, but typically is outpatient. It is intended primarily to eliminate physiological dependence on heroin. Historically, detoxification programs have lasted as long as 6 months or more, but since 1974 detoxification involving methadone, by law, (Narcotics Addicts Treatment Act of 1974, P.L. 93-281) cannot exceed 21 days. Detoxification is considered a humane means of allowing patients to withdraw from heroin at least temporarily and bring some order into their lives, as well as attracting some patients into long-term treatment.

Measures of Effectiveness

The effectiveness of treatment logically should be measured in terms of the goals of the particular program. These may reasonably vary among programs, but drug abuse treatment has had three widely accepted outcome criteria: reduction in use of drugs; reduction of crime; and an increase in productive activity, such as holding a job, attending school, and homemaking.

These behavioral criteria are well developed and widely applicable. Evaluations based on them are the source of most of the evidence that publicly-funded, drug abuse treatment programs are working. The criteria can be used to assess behavior both during and after treatment. However, although evaluation during treatment can provide useful information, behavior after treatment is the acid test of any program and will be the focus here.

From a research point of view, it might be desirable to have studies making use of random assignment of clients to experimental groups (groups of clients receiving a particular form of treatment), and to control groups (groups receiving no treatment). In this way, we could see still more clearly whether the particular treatment form is alone responsible for any change in client behavior that took place. However, it is readily apparent that assignment of individuals to a no-treatment condition is neither possible nor appropriate in the real world of treatment programing. In that world, and in the studies presented below, the particular treatment outcome obtained is the result of the influence of treatment programing; of community variables (e.g., availability of jobs); and of the client's own characteristics (e.g., arrest history).

Some could argue that in the absence of such experimental designs, observed improvement in client functioning could well be "spontaneous remission" rather than an effect of treatment. However, the prudent person must take several considerations into account which would seem to rebut the "spontaneous remission" argument. First, spontaneous remission is a misnomer in the case of the person entering drug abuse treatment. Remission does occur, but with the aid of counseling, other treatment, and the support systems one finds in the family and community. A second consideration is that the studies described below in the section entitled "Early Findings of Treatment Effectiveness Research" observed high rates of relapse among clients treated in institutional facilities. If spontaneous remission occurs, it was not evident in these studies (except in the case of a minority of the clients reaching middle age). One could also examine the differential relapse rates for treatment modalities, especially in the case of outpatient detoxification programs. Finally, the prudent individual would argue that the often dramatic improvement observed in drug abuse treatment clients from admission to the posttreatment period are unlikely to have resulted from factors unrelated to the treatment intervention.

The studies reviewed here are the major efforts in terms of numbers of patients involved and influence on methods of treatment. However, the omission of one or another study does not imply that it is less valid or less reasonable in approach than those included.

Relatively few reports of research on the effects of drug abuse treatment in this country appeared before about 1970. Most studies involved opioid addicts who were treated at the U.S. Public Health Service Hospital in Lexington, Kentucky. Treatment included detoxification, treatment of medical and surgical problems, psychotherapy, vocational training, and

maintenance of a drug-free therapeutic environment. These patients and the method of treatment, on the whole, were not typical of those that began to emerge in the 1960s; nevertheless, the investigators involved laid important groundwork for subsequent research, and their work will be covered here under "Early Findings." Reports published since about 1970 will be covered in "Contemporary Findings."

EARLY FINDINGS OF TREATMENT EFFECTIVENESS RESEARCH

About a dozen major followup studies on the effects of treatment had been conducted by 1965. All involved opioid addicts. O'Donnell (20) summarized the findings from these studies while recognizing the difficulty in so doing due to differences in investigative approach. O'Donnell reported that among detoxified patients, relapse was common and tended to occur soon after the patient was released from the institution. Even when relapse occurred, rates of abstinence tended to increase with the passage of time after treatment. In addition, higher abstinence rates were found among older patients. Nonvoluntary patients seemed to be abstinent more often than voluntary patients. The studies analyzed by O'Donnell included those by Hunt and Odoroff (14) and by Duvall et al. (10) which follow.

Hunt and Odoroff (14) studied some 1,900 opioid addicts released from treatment at Lexington between July 1952 and December 1955. All lived in the New York City area. Each was followed until he became readdicted or until December 31, 1956. Data were obtained on 1,881 patients. Of these, 90 percent were judged to be readdicted; 7 percent were judged to be abstinent; and 3 percent were using narcotics irregularly or their addiction status could not be determined. Followup periods ranged up to 4 and a half years, but in the majority of cases the classification of abstinence was as of a time shortly after discharge.

Duvall, Locke, and Brill (10) followed 453 of the Hunt and Odoroff patients for 5 years from the time of discharge for each patient. They found that more than 97 percent of the subjects became readdicted at some point during that period. However, while only 6 percent were voluntarily abstinent 6 months after discharge, the figure rose to 17 percent at 2 years and to 25 percent at 5 years. Duvall et al. found also that patients over 30 had significantly higher rates of abstinence during the 5 years than did their younger counterparts. Vaillant (39) investigated 100 of the subjects studied by Duvall et al. for up to 12 years; no surviving patient was followed for less than 4 years. He found that 90 percent returned to the use of opioids at some time during the followup period. Nevertheless, 46 percent were opioid free and living in the community at the time of death or last contact, and 30 percent had been abstinent for the previous 3 to 12 years. Vaillant's data showed in addition that abstinence was clearly correlated with previous compulsory supervision.

Between March 1961 and October 1963, O'Donnell (19,20,21) investigated 266 opioid addicts admitted to Lexington during 1936-59. For the 118 subjects interviewed, the average time from first admission until the interview was 11 years. Information on 144 deceased subjects was obtained from records and informants.

In this study O'Donnell departed from the then common practice of classifying subjects as either addicted or non-addicted. He had seen that, as time passed, individuals tended to shift from one status to another with frequent periods of abstinence, sometimes quite long. A patient's post-hospital history, therefore, would be a more realistic measure of success than his status at the time of death or interview. Thus, O'Donnell set up graduated classifications: institutionalized; addicted to opioids; alcoholic or addicted to barbiturates; occasional use of opioids, barbiturates, or alcohol to excess; abstinent; and unknown. Addicted was defined as use of opioids at least once daily for at least 2 weeks.

On the foregoing basis, 43 percent of the living subjects were abstinent at the time of interview. Post-hospital history was based on total person hours lived by the 266 subjects from first admission to the time of death or interview. Some 23 percent of these person hours were spent completely abstinent. Looked at another way, 73 percent of the men and 62 percent of the women relapsed to opioids, but 38 percent of the men and 79 percent of the women had some period of complete abstinence during the followup period.

Thus, the available studies of treatment effectiveness accomplished for the pre-1970 period had two major findings. On the one hand, relapse rates were found to be high, while on the other, a considerable proportion of treated clients were abstinent for significant periods after leaving treatment.

Maturation Hypothesis

It was during this early period that Winick (40) advanced the maturation hypothesis. Winick studied some 7,200 addicts who were reported to the Federal Bureau of Narcotics during 1955 and were removed from the active file at the end of 1960 because they had not been reported again. He equated transfer to the inactive file with cessation of addiction and concluded that about two-thirds of addicts eventually became abstinent, many of them in their thirties. He then hypothesized that most addicts tend to mature out of addiction by age 40.

Ball and Snarr (3) tested the maturation hypothesis during 1962-64 by interviewing 108 residents of Puerto Rico who had been admitted to Lexington between 1935 and 1962 and subsequently discharged. The subjects were interviewed at a mean age of 33 and an average 13 years after the onset of their opioid addiction. Ball and Snarr found that two-thirds of them had been continuously addicted or in prison during the 3 years immediately prior to the time of interview. Fourteen percent had been off opioids for 1 or 2 of the 3 years; 21 percent had been abstinent during that period and were considered cured.

On the basis of their own findings, and those of O'Donnell (19) and Vaillant (38), Ball and Snarr concluded that 20 percent to 40 percent of opioid addicts apparently become permanently abstinent by age 40. They saw two major patterns: about two-thirds of addicts sink increasingly into drug dependence and a nonproductive or criminal career; about one-third abandon opioids and resume a normal life. The latter group, Ball and Snarr believed, may be said to mature out of addiction.

Vaillant (38) concluded from his own and O'Donnell's work that, although abstinence increased with time, addicts rarely became voluntarily abstinent, as by maturing out or simply being motivated to stop. He thought it more likely that abstinence resulted from loss of source of supply, external coercion, or provision of a substitute for addiction, such as alcohol, religion, or the formation of a close personal relationship. The results of early studies of the maturation hypothesis on the whole were inconclusive. It seems likely that some individuals do eventually mature out of addiction, but the fact that large numbers reenter treatment during the course of their addict careers indicates that maturation alone may be sufficient for only a very limited part of the drug-abusing population. As recently as 1979 Harrington and Cox (13) found little or no support for the maturation hypothesis based on a 20-year followup of 51 addicts in a southwestern city. Of these 51, only 1 was found to be abstinent, with the others still addicted, in prison, or deceased. Thus, the maturation hypothesis remains an open question and a subject for further study.

CONTEMPARY FINDINGS OF TREATMENT EFFECTIVENESS RESEARCH

The material that follows is not intended to be comprehensive, but rather to highlight the significant points of major evaluative studies conducted during the past decade. It focuses on the effectiveness of the four most common modes of treatment in terms of the three generally accepted criteria: drug use, criminality, and productive activity. Studies that deal with only one mode of treatment are grouped under the appropriate heading such as "Therapeutic Communities," "Methadone Maintenance," etc. Those that deal with more than one mode of treatment appear under the heading "Studies Involving More Than One Modality."

Therapeutic Communities

During the past 10 years, the therapeutic community has been one of the major means of treating drug dependency. Representative followup studies have documented the effectiveness of this modality for clients who become significantly invested in treatment whether they are opioid addicts or users of nonopioid drugs primarily; however, the attrition rate for this type of program tends to be high. For example, the latest available figures for such programs show some 34 percent of clients terminating treatment within 2 weeks after admission, a figure several times that of methadone maintenance or outpatient drug-free programs (18).

The research outlined below indicates that perhaps two-thirds of the individuals who complete the prescribed treatment in a therapeutic community can be expected to be doing well a year or more after leaving treatment. Such individuals have been found to be free of drugs, or at least of opioids, and to be functioning acceptably in the community. The evidence shows also that the longer clients stay in treatment, the better they tend to perform after leaving treatment. Similarly, patients who complete treatment tend to do better afterward than those who leave before completing treatment (2,8,32). The high dropout rate during the early weeks of treatment suggests that those who remain in treatment are in some ways a "select" group, perhaps with greater potential to benefit from treatment. Some may argue that self-selection factors may partially account for the dramatic improvement seen in therapeutic community clients who remain in treatment for long periods of time. However, it should be borne in mind that the therapeutic community is normally a program requiring extended time in treatment and, therefore, those who make the investment of time in the program would be expected to have better outcomes.

Collier and Hijazi (5) followed up 204 former residents of Daytop Village, a drug-free, residential therapeutic community in New York City. They conducted the study, which included interviews, from April 1971 to December 1972. The primary drug used by all subjects when they entered the program had been heroin. At followup, the subjects were evaluated in part for use of drugs, illegal activities, and productive activities such as holding a job or attending school.

Of the 204 subjects in the study, 126 had completed the full 20 months of treatment and had been out of treatment for at least 6 months at the time of interview. The 78 subjects who had not completed treatment had been in the program at least 6 months and had been out of it for at least 6 months at the time of interview. For those who completed treatment, average time in Daytop was 22 months, and average time released by the time of initial followup was 11.8 months. For those who dropped out, average time in Daytop was 13 months and average time released was 11.6 months.

At followup, 84 percent of the subjects who had completed treatment were not using drugs, had not been arrested, and were employed and/or furthering their educations. The remaining 16 percent showed some infrequent use of drugs, primarily marijuana, some unemployment, and some arrests; their functioning at least was improved over that shown when they entered treatment. Of the subjects who had not completed treatment, 46 percent were not using drugs, had not been arrested, and were employed and/or involved in school. However, 19 percent had clearly relapsed to frequent drug use, serious criminal involvement, and unemployment. The remaining 35 percent were evaluated only as using marijuana infrequently.

Among both those who completed treatment and those who dropped out, the best performers tended to be older--25 to 30. Clients who stayed in treatment from 12 to 18 months had favorable followup results.

Pin, Martin, and Walsh (22) evaluated the effects of treatment at the Horizon Project, a program in New York City which provided both therapeutic community and drug-free day care programs (the program is no longer operating). All clients had been heroin addicts upon entry into treatment. The study was conducted between January 1971 and December 1973. The measures of effectiveness were abstention from drugs (heroin, cocaine, or methadone), holding a job or attending school, and remaining free of arrest.

At the time of interview, some 164 subjects, including some who had been in treatment only a few days or weeks, had been out of treatment and on their own for at least a year. Of these, 70 percent were abstaining from drugs, 64 percent had a job or were in school, and 65 percent had not been arrested.

Pin et al. found also that success was related to time in treatment. Of persons treated 3 months or less, 75 percent were back on drugs (heroin, cocaine, or methadone), 55 percent were jobless, and 57 percent had been arrested. Of those in treatment more than a year, only 4 percent had returned to drugs, 7 percent were jobless, and 23 percent had been arrested. In addition, an arrest index was devised to compare arrest records before and after treatment. For subjects treated less than a year, the index was about the same for the followup period as before treatment. For those in treatment a year or more, the index indicated a sharp decline in arrests during the followup period.

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1 OF 4

In a later study DeLeon (8) conducted a followup of two groups of clients treated at Phoenix House, a New York City therapeutic community which is one of the largest in the Nation. In this study some 250 clients who were in residence in 1974 were followed up 2 years after admission to treatment, and 240 clients in residence at Phoenix House during 1970-71 were followed up 5 years later. Among the 1970-71 residents, 31 percent completed treatment with the remainder leaving prior to completion. More than 80 percent of the 1970-71 residents were opioid addicts compared to 54 percent of the 1974 residents. Thus, the sample included abusers of nonopioid drugs as well as those using opioids.

For each of the these two followup samples, DeLeon used an index of outcome success based on measures in three areas of post-treatment behavior. Scores were developed for drug use, criminality, and employment.

Among the 2-year followup group, DeLeon found significant improvement over pre-treatment behavior. At the end of 2 years, 68 percent of the subjects who had completed treatment and 39 percent of the dropouts were doing well in terms of the outcome indices. The longer the time in treatment, the greater the improvement. More than two-thirds of the entire group displayed improved functioning posttreatment; in terms of the success indices most of the improvement was due to reduction in criminality.

Among the 5-year followup group, more than 90 percent of those who had completed treatment were doing well in terms of the outcome index 1 year later, and 76.4 percent maintained that improved status throughout the entire followup period. More than a third of all dropouts did well on the index over all years of followup. There was relatively little decline in overall improvement between the first and last years out of treatment. As previously observed, progress tended to be greater for patients who had remained longer in treatment.

In addition to the behavioral measurements, DeLeon assessed the 2-year followup group in terms of psychological criteria. He did so because the therapeutic community approach assumes that addiction reflects personality difficulties and is designed to correct them. The 2-year group had been given a battery of psychological tests upon entering treatment, and these were readministered as part of the followup interview. Psychological tests administered to these clients at entry detected signs of dysfunction. In particular, scores on scales of self-esteem, anxiety, depression, and overall social and psychological adjustment were at variance with the norm. Tests at followup showed significant improvement in psychological status (in terms of these test scores) which appears to be a function of treatment, and this improvement corresponded closely with the behavioral changes (i.e., drug use, criminality, and employment). The greatest progress was found among people who had completed treatment and the longer staying dropouts.

Thus, the several studies reviewed here provide indications that considerable improvement in functioning is derived by clients in therapeutic community treatment. The percentage of clients completing treatment who were abstinent from drugs at followup ranged from 68 to 84 percent, while improvement was found even among those who had not completed treatment. Some 39 percent of clients in one study who had not completed treatment were abstinent from drugs 1 year after leaving treatment. Marked improvement was also observed in terms of employment and reduction of criminality.

Methadone Maintenance

Methadone maintenance, as noted previously, is a major treatment modality for heroin addicts. For those who remain in treatment, various studies have shown drastic reduction and often elimination of heroin use within a year or so of admission. Increases in rates of employment have been reported, as well as sharp declines in criminality and often its cessation in individual cases. Studies cited below generally support the argument that clients who remain in treatment for longer periods of time generally fare much better than those who leave after relatively short periods of treatment.

A persistent question is whether addicts should remain on methadone indefinitely or attempt at some point to detoxify. Dole and Nyswander (7) have argued that methadone maintenance can facilitate social rehabilitation, but does not prevent opioid abuse after treatment is discontinued, nor does social rehabilitation guarantee freedom from relapse. For people with a pretreatment history of several years of addiction and social problems, they held, the soundest course was continued methadone

maintenance with emphasis on social rehabilitation. They believed that in the case of younger clients with short histories of heroin use, a properly managed course of detoxification might be indicated.

An important aspect of methadone maintenance treatment is the size of dose administered. The optimum dose maximizes the useful actions of methadone while minimizing its side effects (e.g., drowsiness, constipation, etc.), improves program efficiency, and helps to avoid the hazards of excessive take-home doses.

The dosage question was investigated by Goldstein and Judson (12) in a 27-week experiment with 3 groups of 40 patients each. The methadone doses tested were 40, 80, and 160 milligrams daily. These investigators found that 160 milligrams of methadone daily had no advantage over 80 milligrams, but that 40 milligrams was too low and that 50 milligrams appeared to be an optimal standard daily dose. However, they were careful to point out that the dose for each patient should be determined individually in accordance with their needs. Other researchers have observed that patients with long addiction histories might require higher doses while patients with short addiction histories should be started on low dose (30-50 mg. daily) treatment. Other researchers have addressed the dosage question. Ling et al. (16) have similarly stressed the need for determining individually the dosage requirements for each client.

Significant benefits from methadone maintenance were found by Gearing, D'Amico, and Thompson (11) in a 10-year review of methadone maintenance treatment in the greater New York City area. Gearing et al. reported that of 64,370 patients who first entered methadone maintenance treatment during 1964-74, some 61 percent were in treatment as of December 31, 1974; among a sample of 1,345 patients in methadone maintenance who first entered treatment during 1964-68, 62 percent were in treatment at the end of 1974. Of these 1,345 clients, 48 percent had been in treatment continuously since their first admission to methadone maintenance.

Gearing et al. also found marked declines in reported arrests. Among patients in treatment, 85 percent of the clients experienced no arrest during treatment. Moreover, there was a general decline in arrest rates with increasing time in treatment. Improvement in productive activity was also noted with increasing time in methadone maintenance. Among a sample of those entering treatment in 1972, the percent engaged in productive activity (i.e., employment, job training, or school attendance) increased from 28 percent to 36 percent during the first year of treatment. Among those who had been in treatment 5 years, the percentage engaged in productive activity increased from 38 percent at admission to 63 percent 5 years post-admission. Thus, Gearing et al. found that clients in methadone maintenance treatment generally fared well with regard to both arrest and productive activity.

The impact of methadone maintenance also was shown by Dole and Joseph (6) in a study of 1,413 opioid addicts first admitted to treatment in the New York City area in 1966-67 and 1972. The performance of these subjects was rated at the end of 1976. At that time, 40 percent of them had been in treatment continuously since admittance, and 60 percent had been discharged. The average time of continuous treatment since admittance was 6 years, and 18 percent of all subjects had been in treatment for 10 years or more.

At followup, Dole and Joseph found sharp improvement in the social functioning of the 40 percent of all patients who had remained in treatment continuously since first admitted. Reported serious use of illicit opioids (more than twice weekly) had fallen from 100 percent before treatment to 1 percent during the last 3 months of 1976. The rate of arrest for all causes had fallen from 90 per 100 person years before treatment to 5 per 100 person years during all of 1976. These patients in general were doing well, and this was especially true of those who had remained in treatment continuously for 10 years or more.

The 60 percent of all subjects who had been discharged were found to be functioning markedly less well than those who had remained in treatment continuously. Serious use of illicit opioids (during the 3-month rating period) was reported by 64 percent of this group as opposed to 1 percent of the subjects who remained in treatment. Only 8 percent of the discharged group denied using illicit opioids and <u>had no other problems</u>, such as alcoholism, use of nonopioid drugs, and criminality leading to arrest during the rating period. The corresponding figure

was 63 percent among patients who had remained in treatment. The performance of the discharged patients did demonstrate that the longer the time in treatment, the better the outcome is likely to be. Those who were doing the worst had an average of 17 months in treatment; those who were doing the best had an average of 47 months.

Maddux and McDonald (17) studied the effects of methadone maintenance among 100 heroin addicts admitted to treatment at the San Antonio (Texas) State Hospital during February-June 1970. The followup period was 1 year from date of admission for each subject. The measures of performance were heroin use, employment, and recorded arrests.

At the 1-year point, 78 percent of the subjects were on methadone maintenance. Of these 78 subjects, 74 had been in treatment continuously since admittance, and 4 had left but returned to treatment by the end of the year. Four of the remaining 22 subjects were using heroin; 10 were incarcerated or hospitalized; 3 were voluntarily abstinent; 1 had died, and the status of 4 was unknown.

All subjects were considered physically dependent at admission except one who was admitted from jail. Urine specimens were taken and tested for heroin at random intervals so long as the subjects continued on methadone maintenance. Of a total of 2,690 such tests, only 9 percent were positive for heroin. Seventy-seven percent of the subjects in treatment had at least one positive urine test during the year, but only 15 percent had five or more positive tests. Employment status was recorded at two points: admission and 1 year later. Subjects were classified as employed if they were working for pay or were engaged in homemaking or full-time education or training. On this basis, employment status for the 100 clients rose from 21 percent at admission to 65 percent at the 1-year point. Twenty percent of the subjects were classified as unemployed, 10 percent were incarcerated or hospitalized, and the status of 4 percent could not be determined. The remaining subject died during the study.

Total arrests recorded for the 100 subjects declined from 129 during the year before admission to treatment to 103 during the year after admission. Maddux and McDonald found this 20 percent decline unexpectedly small. They speculated that criminality related to heroin distribution may in fact have declined markedly and that the high arrest frequency both before and after admission to treatment reflected continued police surveillance of known lawbreakers combined with minor violations (most of the arrests were for minor violations--vagrancy, drunkenness, motor vehicle violations, and theft under $50.00.)

Stimmel et al. (36) investigated outcomes for 429 individuals who had been detoxified from the Mt. Sinai Hospital methadone maintenance and aftercare treatment program. Stimmel followed up all admissions to the Mt. Sinai methadone maintenance and aftercare treatment programs who entered March 1969 through February 28, 1976, and successfully detoxified from methadone maintenance. These clients were followed until May 31, 1977, to determine narcotic abstinence. These clients were classified on the basis of type of termination: (1) treatment completed--based on staff judgment and length of treatment; (2) voluntarily discontinued; (3) arrested; and (4) detoxified after expulsion for violation of rules.

Since most of the clients lived in the same neighborhood, it was possible for social service workers to contact them periodically after detoxification. Clients were judged to have relapsed if they had made application to a treatment program subsequent to termination, admitted drug use to the social service contact person, or produced a positive urine during the periodic followup visit. A client was considered to be abstinent if that individual produced no positive urines, and showed no outward signs of opiate use. Any verified evidence of such use was sufficient to have the individual classified as relapsed, regardless of whether that individual later became abstinent. The average followup period was 31 months.

Of the clients who completed treatment, 57 percent were abstinent during the entire followup period, while 25 percent were identified as relapses, with the rest either deceased, in jail, or status unknown. Among the voluntary detoxification group, 22 percent were narcotic free during the followup period, with 54 percent identified as using narcotics; and the remainder deceased, in jail, or status unknown. Of those detoxified because of arrest, 5 percent were narcotic free, 74 percent used narcotics, and the remainder were either in jail or status unknown.

Among those discharged for violating rules, 13 percent remained narcotic free, 69 percent used narcotics, and the remainder were deceased, in jail, or status unknown.

The length of time in methadone maintenance was an important determinant of outcome, with 14 percent of those in treatment less than 12 months found to be abstinent compared with 21 percent of those in treatment 1 to 2 years; 33 percent, 2 to 3 years; and 40 percent of those in treatment more than 3 years.

Stimmel et al. believed their results showed that some people can detoxify from methadone and remain abstinent for prolonged periods. However, they stressed that detoxification, where indicated, must be well planned and adjusted to the individual's needs. The single most important factor in predicting the ability of a person to remain abstinent, they emphasized, was the consensus of treatment professionals that the full benefit of methadone maintenance had been realized.

In all studies, significant improvement in the functioning of methadone maintenance clients was noted. Among those who had remained in treatment for a period of several years and among those who were still in treatment, particularly dramatic reductions in illicit opioid use were noted. The improvement in illicit drug use was accompanied by a dramatic reduction in arrests (except in the Maddux & McDonald study where the decline in arrests was less dramatic) and improvement in employment status. Thus, methadone maintenance has been clearly shown to be associated with significant numbers of clients achieving high rates of abstinence from illicit drugs, obtaining dramatic increases in employment, and demonstrating significant reduction in criminal behavior.

Outpatient Drug-Free Programs

Outpatient drug-free programs serve a variety of client populations. They may serve abusers of opioid drugs, nonopioid drugs, or both. Some programs are targeted on the youthful, nonopioid abuser, and others accept clients of all ages. Counseling is the backbone of most outpatient drug-free programs, but, as noted earlier, they may vary widely in content and intended duration.

Such programs can also be useful as a means of transition to the community for people completing more intensive treatment and for evaluating the needs of people in treatment for the first time or after relapse from earlier treatment. Research by Sells, Demaree, and Hornick (28) raised the question of whether outpatient drug-free programs might be less effective for opioid addicts than other forms of treatment, but subsequent research by Simpson, Savage, and Sells (35) found that outpatient drug-free treatment could be effective for both opioid addicts and abusers of other drugs. The impact of the outpatient drug-free modality has been described by Kleber and Slobetz (15). In general, treatment followup studies focusing exclusively on this modality appear to be relatively scarce in the literature. Such studies are far more frequently found as a part of multimodality evaluations. Consequently, the reader will find this modality addressed at some length in the section "Studies Involving More Than One Modality."

Detoxification

Detoxification by inpatient or outpatient treatment for up to 21 days, using methadone or other medication has proved highly successful in eliminating physiological dependence on narcotics. Detoxification, as previously stated, offers a humane method to wean addicts from narcotics and thus to provide a respite from the hazards and stresses of drug-abusing lifestyles. However, the relapse rate of clients who undergo detoxification only is high (in one followup study, 54 percent returned to daily opioid use during the first year after treatment, and 68 percent returned to some opioid use (34)). Thus, it is appropriate to attempt recruitment of detoxification clients into longer-term treatment and rehabilitation programs. In addition to offering humane, generally short-term relief to the individual, detoxification can be useful in recruiting otherwise unreachable addicts and introducing them to longer term treatment (25). However, of all the clients who left NIDA-funded outpatient detoxification treatment during 1979, the reason for discharge for only 12 percent was given as "transferred/referred" to other treatment.

Studies Involving More Than One Modality

The material in this section covers studies of different groups of clients undergoing different types of drug abuse treatment. The results of such studies offer some opportunity to assess the effectiveness of different types of treatment.

37-763 O - 85 - 7

Bale et al. (1) investigated the effectiveness of therapeutic communities and methadone maintenance in a study involving 585 heroin addicted male veterans. Treatment facilities for the study were connected with the Palo Alto Veterans Administration Hospital. Each of the 585 subjects was admitted during an 18-month period in 1972-73. All subjects were using heroin daily upon entering a detoxification ward, and only about 20 percent were working or in school.

Of the 585 clients, 128 indicated that they were not interested in treatment other than detoxification at that time. These "detoxification only" clients were retained in the study as a comparison group. The remaining 457 clients were assigned to methadone maintenance or one of three therapeutic community programs at the V.A. hospital using random assignment of eligible clients. However, of the 457 clients available for this study, only 244 were eligible under Food and Drug Administration regulations for methadone maintenance, and thus the only possible random assignment for the remainder of the clients was to one of the three therapeutic community programs at the hospital. The 244 clients who were eligible for methadone maintenance were randomly assigned to either the methadone maintenance unit or one of the three therapeutic communities. Over time, about 10 percent of the clients who were not originally eligible for methadone maintenance relapsed, became eligible, and entered the methadone maintenance program.

Of the 457 assigned clients, 113 left and enrolled in community-based treatment programs outside the V.A. system. Of the clients assigned to methadone maintenance, only about 30 percent remained in the V.A. methadone maintenance program, while some 21 percent enrolled in one of the therapeutic communities at the V.A. hospital. Of those assigned to therapeutic communities, about 12 percent entered methadone maintenance. Overall, some 35 percent of the clients entered the treatment modality to which they were assigned. Retention at 1-year followup for therapeutic communities was the same as that experienced by the methadone maintenance program. Thus, the intent to randomize clients into treatment conditions for comparison of outcomes was undermined by (1) ineligibility of about half the 457 available clients for methadone maintenance, (2) the decision by about one-fourth of the 457 clients to leave the V.A. treatment program, (3) the fact that only about 35 percent of the clients who were randomly assigned to therapeutic community or methadone maintenance programs entered the modality to which they were assigned, and (4) the high attrition and crossover rates experienced by the two modalities.

Among other measures, Bale et al. computed a composite score for each subject at 1-year followup. The score included 1 point each for having used no heroin in the previous month (prior to followup interview), having used no other illegal drugs during the previous month, having no convictions during the year, and being in school or working at 1 year. On this basis, the maximum possible composite score was 4.

The composite scores indicated that subjects who had spent less than 50 days in a therapeutic community were doing no better at 1 year than the no-treatment ("detoxification only") comparison group. However, the methadone maintenance and longer term (50 days or more) therapeutic community groups had significantly higher composite scores than the no-treatment comparison group. More than half of the methadone maintenance group and more than 60 percent of the longer term therapeutic community group had scores of 3 or the maximum of 4. Preliminary results from a later 2-year followup (2) showed that the methadone maintenance and longer term therapeutic community groups were doing about the same in terms of composite scores, and that both were doing significantly better than the no-treatment group. Thus, while the design of the study was flawed by selective factors, clients in the longer-term modalities did appear to experience significantly greater improvement than the no-treatment comparison groups.

Burt Associates, Inc., (4) assessed the experiences of subjects who had contact with and/or received drug abuse treatment from programs of the Addiction Services Agency (ASA) in New York City and the Narcotics Treatment Administration (NTA) in Washington, D.C. The study of the Addiction Services Agency involved persons who had been enrolled in or had entered treatment during the latter half of 1971. Interviews were conducted with 462 subjects: 142 from 3 methadone maintenance programs; 185 from 4 residential therapeutic communities; and 135 from 7

outpatient drug-free counseling programs. A comparison group comprised 118 subjects who had been in treatment 5 days or less. The interviews were conducted from August 1974 through April 1975. By then, all interviewees had been out of their original programs more than 3 years.

The study of the Narcotics Treatment Administration involved persons who had entered and left treatment during 1971-73. Interviews were conducted with 189 subjects: 93 from methadone maintenance programs and 96 from "abstinence" programs. The latter were defined to include methadone detoxification as well as drug-free regimens, but the great majority of abstinence subjects were from prolonged (in excess of 21 days) methadone detoxification programs. The comparison group was made up of 100 individuals who had left treatment within 5 days of admission. Interviews were conducted from August 1974 through January 1975. Clients had been out of treatment from 1 to 3 years at the time of interview.

Both the ASA and NTA studies involved comparisons of subjects' performance during the 2 months before entering treatment, the 2 months immediately following treatment, and the 2 months prior to the followup interview. A subject was defined as fully recovered if, during the 2 months before interview, he or she was using no illicit drugs except marijuana; had not been arrested or incarcerated; and was employed, keeping house, in school, or in vocational training. Failures were defined as subjects who were using an illicit drug daily or were incarcerated. Between these extremes of success and failure were seven levels of partial and marginal recovery.

Of the ASA subjects, 49 percent were fully recovered, 7 percent were failures, and 44 percent were either partially or marginally recovered. About 82 percent achieved either full or partial recovery. There were no meaningful differences in degree of recovery between the therapeutic community, methadone maintenance, and comparison groups.

Of the NTA subjects, 22 percent were fully recovered, 20 percent were failures, and 58 percent were either partially or marginally recovered. Some 57 percent achieved full or partial recovery. There were no significant differences in degree of recovery among the methadone maintenance, abstinence, and comparison groups.

The improvements in behavior found in these two studies were relatively large. Moreover, they seemed to be unrelated to the background or other characteristics of the subjects or, indeed, to type of treatment, including essentially no treatment in the case of the comparison groups. The fact that the comparison group also experienced significant improvements in outcomes may reflect the significant extent of reentry into treatment (about 50 percent) after initially dropping out. This is always a risk with "untreated" comparison groups constituted from clients who left treatment early. The comparison groups, therefore, were not truly minimum treatment groups.

Burt Associates also considered the possibility that maturation might have been at least partially responsible for the relatively large improvements in behavior found among all groups in the study. However, the ASA data provided no way to test such a hypothesis of maturation, and the NTA data did not appear to support it.

Burt Associates' results clearly suggest that some drug abusers are able to experience remission without formal treatment. While the Burt study demonstrates significant improvement with regard to drug use and other measures of outcome, the fact that those in the comparison group experienced improvement points up the complexity of the problem. Subsequent research under the Drug Abuse Reporting Program (DARP), which will be presented later in this report, used larger samples and found significant differences in the degree of improvement experienced by treated clients compared to untreated clients.

Results of a study of drug abuse treatment of veterans were reported by the Veterans Administration (37) which assessed the performance of more than 2,600 drug abusers admitted to 49 of its treatment centers between July and December 1973. Followup data were obtained at 11 months and at 44 months after admission to treatment for 1,182 subjects and at 44 months only for 1,471.

Treatment received was characterized primarily in terms of its duration. The median duration of treatment for the 44-month followup was 6.6 months. One quarter of the 44-month subjects were in treatment at followup, and half had undergone treatment more than once during the 44 months. Self-reported types of treatment were: detoxification, 92 percent; methadone

maintenance, 54 percent; therapeutic community, 35 percent; outpatient drug free, 28 percent; and outpatient on medication other than methadone, 14 percent. Many of the respondents had entered more than one modality. At the 44-month followup, 75 percent of the subjects were using no nonprescribed drug other than marijuana or alcohol to intoxication; 65 percent were self-supporting; 97 percent had stable living arrangements; and 76 percent had not been arrested in the 6 months immediately prior to followup. Compared with status at admission, use of heroin had declined substantially at the 44-month followup, and use of a number of other drugs had declined significantly. The proportion of clients who were self-supporting had risen 20 percent. No sizable change had occurred in the percentages of subjects using marijuana or alcohol to intoxication.

The Veterans Administration found that the improvements in drug use and self-support had occurred largely between admission and 11-month followup. However, average number of arrests, stability of living conditions, medical problems, and interpersonal difficulties, which had changed little by 11-month followup, improved significantly by 44-month followup. These results were presented for the treatment sample as a whole and were not presented by treatment modality.

The largest national drug abuse treatment followup survey conducted to date has been carried out by the Texas Christian University's Institute of Behavioral Research, using a treatment population of some 44,000 clients admitted to the Drug Abuse Reporting Program (DARP) during 1969-73. The Drug Abuse Reporting Program is a client information and tracking system which was established under the sponsorship of the National Institute of Mental Health in 1968 and later transferred to the National Institute on Drug Abuse. The DARP system included data on clients treated in 52 programs throughout the United States, including an intake interview, and periodic client status reports. Four major modalities--methadone maintenance, therapeutic community, outpatient drug-free treatment and outpatient detoxification were included, as well as a category of clients termed "intake only" (individuals who were interviewed at intake but never actually reported for treatment). The "intake only" group was retained in the DARP population to provide for a minimum treatment comparison group in later followup studies. The concept, methodology, and distribution of client characteristics are contained in a series of books and other publications (23 through 35).

A series of treatment outcome studies were conducted using followup samples drawn from the DARP population. Representative samples of clients were obtained and interviewed some 4 to 6 years after leaving treatment. The samples included the four treatment modalities previously mentioned and the "intake only" comparison group.

A total of 3,131 clients admitted to DARP treatment during 1969 through mid-1972 were interviewed and data on drug use, employment, and arrests analyzed. The sample included both black and white clients as well as males and females. Data on drug use were obtained for the 2 months immediately prior to intake, data on employment obtained for the same 2-month period, and lifetime arrest data (in terms of whether the individual had ever been arrested) from admission records; followup data for each year of the followup period were obtained retrospectively from interview data.

Among 1,483 methadone maintenance clients, the percent using opioids daily declined from 88 percent at admission to 36 percent during the first year after leaving treatment, and declined further to 23 percent during the third year after leaving treatment. Of 845 therapeutic community clients. the percentage using opioids daily declined from 61 percent at admission to 30 percent during the first year after treatment and to 18 percent during the third year after treatment termination. Among 414 outpatient drug-free treatment clients, the percent using opioids daily declined from 43 percent at admission to 27 percent during the first year after leaving treatment and 18 percent during the third year. For 230 outpatient detoxification clients, the percent using opioids daily declined from 80 percent at admission to 54 percent during the first year after leaving treatment and 28 percent during the third year after treatment. For the same client sample, 95 percent* of methadone

* This apparent discrepancy (i.e., less than 100 percent using opioids at admission) is thought by the authors to reflect a small percentage of eligible methadone maintenance clients who were not using opioids during the 2 months prior to admission because they were hospitalized, incarcerated, or enrolled in another treatment program during the pre-DARP admission period.

maintenance clients were using any opioids at admission compared to 53 percent during the first year after treatment. Among therapeutic community clients, 83 percent were using any opioids at admission compared to 49 percent during the first year after treatment. Among drug free outpatient clients using any opioids, the percentage declined from 61 percent at admission to 47 percent during the first year after treatment. Among detoxification clients, the percentage using any opioids declined from 92 percent at admission to 68 percent during the first year after treatment.

The percent of these clients using any nonopioid drugs (except marijuana) was also examined. Among methadone maintenance clients, the percentage declined from 50 percent at admission to 34 percent during the first year after treatment; among therapeutic community clients, the percentage declined from 65 percent at admission to 39 percent during the first year after treatment; among outpatient drug-free clients, the percentage declined from 62 percent at admission to 44 percent during the first year after treatment; and for outpatient detoxification, the percentage declined from 54 percent at admission to 47 percent during the first year after treatment.

Among methadone maintenance clients, 82 percent had been arrested at some time prior to admission compared to 19 percent during the first year after leaving treatment; among therapeutic community clients, 88 percent had been arrested at some time prior to admission compared to 22 percent during the first year after leaving treatment; of the outpatient drug-free clients, 74 percent had been arrested sometime prior to admission compared to 19 percent during the first year after treatment; and of the outpatient detoxification clients, 77 percent had been arrested at some time prior to admission compared to 29 percent during the first year after leaving treatment.

Regarding employment, the following comparisons were noted. Among methadone maintenance clients, 39 percent were employed at admission compared to 62 percent during the first year after leaving treatment; among therapeutic community clients, 34 percent were employed at admission compared to 75 percent during the first year after leaving treatment; of outpatient drug-free clients, 37 percent were employed at admission compared to 68 percent during the first year after treatment termination; and among outpatient detoxification clients, 38 percent were employed at admission compared to 57 percent during the first year after treatment (34).

The data presented above shows dramatic improvement in the drug use patterns and social functioning of a large national sample of clients treated in community-based drug abuse programs. Especially in the treatment modalities of longer duration--methadone maintenance, therapeutic community, and outpatient drug free--it is highly plausible that a large part of the improvement resulted from treatment received. That is, the improvement was so striking that the prudent individual would find it difficult to believe that an untreated control group of drug dependent persons could do nearly as well, and that the improvement therefore is unlikely to result merely from the normal course of events.

Using the data on the sample of 1,496 clients admitted to treatment during 1972-73, Simpson examined patterns of treatment outcome in relation to time in treatment (32). He used an overall outcome score based on drug use (opioid and nonopioid), employment, and criminal behavior, and found that among clients spending more than 90 days in treatment, the outcomes improved directly with increasing time in treatment. In other words, there was a linear relationship between time in treatment and favorability of treatment outcomes. This was true regardless of the modality in which the client was enrolled, and regardless of the client's type of drug use (i.e., opioid or nonopioid). In addition, clients who were judged to have completed treatment had better outcomes than those who spent the same length of time in treatment but were discharged for reasons other than treatment completion.

CONCLUSION

This report has presented some of the major findings of drug abuse treatment effectiveness research. Generally, the findings tend to support the contention that community-based drug abuse treatment in the principal three modalities--methadone maintenance, therapeutic community and outpatient drug-free programs--has been instrumental in the rehabilitation of significant numbers of drug dependent

individuals and the helping of drug dependent persons to undertake useful and productive lives. The effectiveness of drug abuse treatment is seen in post-treatment cessation/reduction of illicit drug use, improvement in employment status, and curtailment of criminal behavior by drug abusers. While the usefulness of detoxification programs is recognized in terms of providing a humane avenue for relieving physiological dependence on drugs, this modality is not considered generally effective over the longer term and, therefore, efforts to recruit detoxification clients into other modalities should be given proper attention.

For the reader's convenience, major findings of studies presented in the "Contemporary Findings" section of this report are briefly presented in figure 1.

Figure 1

MAJOR FINDINGS OF SELECTED TREATMENT OUTCOME STUDIES

Researchers	Major Findings
Collier and Hijazi (1974)	84% completing therapeutic community treatment abstinent from drugs; 46% of those not completing treatment but in the program for at least 6 months were abstinent at followup.
Pin, Martin, and Walsh (1976)	70% of therapeutic community clients abstinent at followup.
DeLeon (1979)	2-year followup: 68% of those completing therapeutic community treatment had favorable outcome scores; 39% of those not completing treatment had favorable outcome scores. 5-year followup: 90% of those completing therapeutic community treatment had favorable outcome scores; more than 1/3 of those not completing treatment had favorable outcome scores.
Gearing, D'Amico, and Thompson (1975)	Dramatic improvement in employment and arrest rates for clients in methadone maintenance.
Dole and Joseph (1978)	Dramatic improvements in arrest rates and virtually no serious use of illicit opioids among clients remaining continuously in methadone maintenance.
Maddux and McDonald (1973)	85% of clients remaining in methadone maintenance for 1 year: had fewer than 5 drug positive (weekly) urine specimens; dramatic increase in employment rates; and 20% decline in arrests rates.
Stimmel et al. (1978)	57% of clients completing methadone maintenance remained abstinent for the entire followup period (average 31 months) after treatment.
Bale et al. (1980)	More than half those in methadone maintenance or long-term therapeutic community programs had favorable scores on outcome index.
Burt Associates, Inc. (1977)	New York clients: 49% were "fully recovered" and 44% either "marginally or partially recovered." Washington, D.C. clients: 22% were "fully recovered" while 58% were either "partially or marginally recovered."
Veterans Administration (1979)	44 months after admission to treatment, 75% were using no illicit drugs, and 65% were self-supporting.
Simpson, Savage, and Sells (1978)	Dramatic reductions from pretreatment to posttreatment in percentages using opioid or nonopioid drugs among methadone maintenance, therapeutic community, and outpatient drug-free clients; less dramatic reduction in drug use among outpatient detoxification clients. About 80% of methadone maintenance, therapeutic community and outpatient drug-free clients were not arrested during the first year after leaving treatment compared to 71% of outpatient detoxification clients. Percentage of methadone maintenance, therapeutic community and outpatient drug-free clients employed rose from about 35% pretreatment to 70% posttreatment. Less spectacular gains among outpatient detoxification clients.

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The New York Times - Monday, April 11, 1983

From the Drug Dealers, to Their Nemesis

To the Editor:

It is heartening that The Times feels forfeiture legislation "can be a useful tool in the drug war, if used with care" [editorial April 2]. But we are perplexed by your apparent reluctance to see this potent weapon deployed widely along the front lines.

As you acknowledge, something more than prison is now essential to deter the big-time drug dealer. That is why most of us in the drug-abuse prevention and treatment field are supporting legislation to permit confiscation of the traffickers' cash and other assets. We welcome your support of new state law to make this possible.

But we don't agree that "earmarking seized assets for law-enforcement agencies is . . . unwise" because "the pursuit of these assets could distort law-enforcement priorities." The connection between the illicit drug trade and violent crime in America is as obvious as it is menacing. An effective attack on the drug dealers is an equally effective attack on the kind of crime people fear most. Is that a distortion of law-enforcement priorities?

We don't think so. And we were dismayed that you have taken no stand on another potentially great benefit of forfeiture legislation: allocating a share of the seized assets to prevention and treatment programs. Our agencies, critically hurt by reductions of up to 33 percent in Federal aid in recent years, represent another severe economic threat to the drug dealers: everyone we help is one less customer for them.

That is significant at a time when the state's Division of Substance Abuse Services is reporting that more elementary-school children are exposed to drugs than ever before. They deserve all the additional protection we can give them. Use of forfeited assets for increased law-enforcement efforts and for prevention and treatment services is a practical way to provide it.

RICHARD PRUSS
President
Therapeutic Communities of America
Forest Hills, N.Y., April 3, 1983

STATE OF NEW YORK

3308--A

1983-1984 Regular Sessions

IN SENATE

February 28, 1983

Introduced by Sens. PADAVAN, BOGUES, FARLEY, FLYNN, GOODHUE, JOHNSON, KEHOE, KNORR, LACK, LAVALLE, LEVY, NOLAN, PISANI, ROLISON, SCHERMERHORN, TRUNZO, TULLY, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee and committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law and the state finance law, in relation to seizure and civil forfeiture of assets used in or derived from the illegal use, unlawful sale, manufacture or distribution of controlled substances, and repealing section thirty-three hundred eighty-eight of the public health law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section thirty-three hundred eighty-eight of the public health law is REPEALED and a new section thirty-three hundred eighty-eight is added to read as follows:

§ 3388. Seizure and forfeiture of assets derived from or used in violation of this article; disposition. 1. Except as authorized in this article, it shall be unlawful to:

(a) transport, carry or convey any controlled substance in, upon, or by means of any vehicle, vessel or aircraft; or

(b) conceal, or possess any controlled substance in or upon any vehicle, vessel or aircraft, or upon the person of anyone in or upon any vehicle, vessel or aircraft; or

(c) use any vehicle, vessel or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase or sale of any controlled substance; and any vehicle, vessel or aircraft which has been or is being used in violation of this subdivision and in

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD08185-03-3

connection with acts or conduct which would constitute a felony pursuant to article two hundred twenty of the penal law, except a vehicle, vessel or aircraft used by any person as a common carrier in the transaction of business as such common carrier, shall be subject to forfeiture as provided in this section and no property right shall exist in them.

2. In addition to assets described in subdivision one of this section, any other assets, which shall include, but not be limited to, money, securities, interest, property, profits and proceeds, regardless of the form in which held, that are acquired, derived, used, maintained or intended to be used or maintained in connection with, or are traceable to, any act or conduct which constitutes a felony pursuant to article two hundred twenty of the penal law shall be subject to forfeiture and no property right shall exist in them.

3. Any money that is found in close proximity to any assets that are subject to forfeiture under subdivision two, shall be presumed to be subject to forfeiture under this subdivision. This presumption may be rebutted by a preponderance of the evidence.

4. Any assets subject to forfeiture pursuant to this section may be seized by the attorney general of the state of New York or the district attorney of the county in which the assets are located upon process issued by the supreme court having jurisdiction over the property; however, seizure without process may be made in any of the following cases: (a) the seizure is incident to an arrest or a search pursuant to a search warrant; (b) the assets seized are the subject of a prior judgment in favor of the state; (c) there is probable cause to believe that the assets are directly or indirectly dangerous to public health or safety; or (d) there is probable cause to believe that the assets are to be imminently removed from the jurisdiction of the state or are in imminent danger of being altered or destroyed. In case of seizure pursuant to paragraph (c) or (d) of this subdivision, forfeiture proceedings under subdivision five of this section shall be instituted within thirty days.

5. The attorney general or the district attorney of the county in which the assets are located, shall promptly proceed against the assets seized pursuant to this section by an order to show cause in the supreme court. Such show cause order shall describe the assets, state the county, place and date of seizure and state the name of the law enforcement agency holding the seized assets. If the owner of the assets seized is known to the seizing agency at the time of the seizure, or if the seized assets are subject to a perfected security interest in accordance with the uniform commercial code, the seizing agency shall personally serve such show cause order upon such individual, individuals or entity. If the owner of the assets seized is not known to the seizing agency, and after diligent search and inquiry the seizing agency is unable to ascertain such owner, then the order to show cause may be served by publication in a manner consistent with the civil practice law and rules. The supreme court in which such forfeiture action is brought shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any assets subject to forfeiture under this section. The final order of forfeiture by the court shall perfect the state's right and interest in and title to such assets.

6. Forfeiture shall not be adjudged to the extent of the interest of an owner who establishes by a preponderance of the evidence that the use or control of the assets in violation of this article was without his knowledge, permission or intent. This defense shall not be available where it can be shown that the owner should have reasonably concluded or known that the assets were being or were to be used in, or were the result of a violation of this article. As a matter of right, a jury trial shall be available to any person or entity asserting this defense.

7. No suit or action under this section for wrongful seizure shall be instituted unless such suit or action is commenced within two years after the time when the property was seized.

8. Any assets forfeited which are harmful to the public shall be disposed of according to applicable laws. All other assets forfeited pursuant to this section shall, after public notice of at least five days, be sold at public auction to the highest bidder without appraisal. Proceeds from such sale, or money seized, shall be placed in the general fund under the jurisdiction of the chief fiscal officer of the county except in the cities of New York and Buffalo where such proceeds shall be placed in the general funds of such cities. These funds shall be used to enhance drug law enforcement efforts. After deducting all proper expenses of the proceedings for the forfeiture and sale including expenses of maintenance of custody, advertising and court costs, such fiscal officer shall cause fifty-five percent of the remaining moneys to be deposited with the state comptroller, five percent of which shall be dedicated to funding New York State Police drug law enforcement efforts, the balance to be deposited in the special fund established by section ninety-seven-v of the state finance law.

§ 2. The state finance law is amended by adding a new section ninety-seven-v to read as follows:

§ 97-v. Substance abuse service fund. 1. There is hereby established in the custody of the state comptroller a special fund to be known as the substance abuse service fund.

2. Such fund shall consist of all moneys appropriated for the purpose of such fund, all moneys transferred to such fund pursuant to law and all moneys required by the provisions of this section or any other law to be paid into or credited to this fund.

3. Moneys of the fund, when allocated, shall be available to the director of the division of substance abuse services and shall be used to provide support for funded agencies approved by the New York state division of substance abuse services, and local school-based and community programs which provide drug abuse prevention and education services. Consideration shall be given to innovative approaches to providing substance abuse services.

4. Notwithstanding the provisions of any general or special law, no moneys shall be available from such substance abuse service fund until a certificate of allocation and a schedule of amounts to be available therefor shall have been issued by the director of the budget, upon the recommendation of the director of the division of substance abuse services, and a copy of such certificate filed with the comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such certificate may be amended from time to time by the director of the budget, upon the recommendation of the director of the division of substance abuse services, and a copy of such amendment shall be filed with the comptroller, the chairman of the senate finance committee and the chairman of the assembly ways and means committee.

5. The moneys when allocated, shall be paid out of the fund on the audit and warrant of the comptroller on vouchers certified or approved by the director of the division of substance abuse services, or by an officer or employee of the division of substance abuse services designated by the director.

6. The director of the division of substance abuse services shall promulgate rules and regulations pertaining to the allocation of moneys from this fund.

§ 3. This act shall take effect immediately.

Mr. SMITH. I don't think it will be necessary—if there are any questions, we might submit them, and any answers you might want to give, you can do that in writing.

Mr. Shaw.

Mr. SHAW. The only question that I have is that I would like the record to show from today's hearing, and the gentleman from Fort Lauderdale can submit this in written form, I think the record should show the type of investments that a typical city as Fort Lauderdale have made with the proceeds from confiscated property.

I know some of the things that we have been able to accomplish in Fort Lauderdale, but I think the record should include those, and perhaps if you would just give us a summary and we will see that it is placed in the record.

[The information follows:]

SUMMARY OF ACCOMPLISHMENTS FROM FORFEITURE FUNDS

1. A totally secure communications system (Digital Voice Protection) for our Narcotics, Vice and Intelligence investigators.
2. A new city jail, the opening of which virtually eliminated our visible street-walker prostitution problem.
3. Eight Canine dogs imported from Germany. These animals were highly trained when received and will form the nucleus of a breeding stock for our department and other agencies.
4. Informant Fund.
5. Specialized vehicles for tactical patrol work.
6. Sophisticated training for Organized Crime Division investigators.
7. Numerous vehicles and vessels that were forfeited have been put into use by undercover investigators and staff personnel.

There are additionally a number of proposed expenditures which include: Take home police radios for patrol officers; establishment of an equestrian unit; and building of a breath-alcohol testing facility.

NOTRE DAME LAW SCHOOL,
Notre Dame, IN, June 28, 1983.

Re RICO forfeiture.

Hon. William J. Hughes,
Subcommittee on Crime,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN HUGHES: I understand that your Subcommittee held hearings on forfeiture under RICO, 18 U.S.C. § 1961 et seq. on June 23, 1983.

I also understand that the Criminal Justice Section of the American Bar Association presented in testimony a Report, but that its representatives did not indicate that the Section's Report had filed against its minority views.

Enclosed is a copy of those minority views for inclusion in your record at an appropriate place.

Enclosed too, is a copy of a law review article (58 Notre Dame Law Rev. 237) that places in context a number of issues under RICO; it would be appreciated if it could also be included in your record.

If you hold additional hearings on RICO, I would like the opportunity to appear and testify.

Thank you.

Respectfully,

G. ROBERT BLAKEY, *Professor of Law.*

Enclosure.

NOTRE DAME LAW SCHOOL

To: The Council, Criminal Justice Section, American Bar Association.
From: G. Robert Blakey, member, Subcommittee Prosecution and Defense of RICO cases.
RE Proposed amendments to the forfeiture provisions of RICO, 18 U.S.C. § 1963, and proposed testimony before Congress.
Date: May 16, 1983.

By a Report dated April 29, 1983, a copy of which was not furnished to me until May 12, 1983, the Subcommittee on Prosecution and Defense of RICO cases has requested permission to testify on RICO forfeiture amendments before the Congress, representing the American Bar Association.

I dissent from that Report.

I do not believe that the Report reflects the mature views of the Section on Criminal Justice, or of the Association, taken as a whole, nor do I believe that the Report reflects the public interest. Accordingly, it ought be made the subject of public testimony by the Association.

I am deeply concerned that the RICO Subcommittee has proceeded in unseemingly haste to produce a Report negative in tone and captious in content that ultimately will not be of assistance to the Congress and will be an embarrassment to the Association on legal and policy grounds, as well as, inconsistent with other Association positions, which were the product of more deliberate analysis and broad based input.

I urge that permission not be given to the RICO Subcommittee to testify before the Congress on the basis of the Report as it is presently written.

If permission is given, I request that my minority views be circulated to other members of the RICO Subcommittee for concurrence and that they then be incorporated into the majority Report as a dissent and that I be given permission to present the minority views to the Congress at the same time that the majority views are presented.

I

The participation of the American Bar Association in the development of the legislation that was ultimately enacted as the Organized Crime Control Act of 1970 was in the finest tradition of public service by the bar. That participation was comprehensively reviewed in 1970 in the testimony of President-Elect Edward L. Wright before the House Judiciary Committee.[1] It need not be repeated in detail here. The participation began with a special A.B.A. Commission on Organized Crime set up in 1950 at the request of Senator Estes Kefauver and it culminated in President Wright's testimony in behalf of the Association that it gave "unqualified * * * support" to the 1970 Act.[2] To be sure, the House of Delegates, at the urging of the Criminal Justice Section, but over the strong objections of the Department of Justice, has now recommended that certain amendments to RICO be adopted. Accordingly, those recommendations alter the Association's general position of unqualified support for the 1970 Act. Those suggested amendments, too, may be said to reflect other than the public interest. After a full presentation of all views—and on mature reflection—I am confident that the House will be led to reconsider its judgment in recommending those amendments. Here, however, the point to be made is solely that those mistakes need not be compounded by similar hasty and ill advised action. If the Association is to reverse itself again in its wise support of the 1970 act, let it be after full deliberation and not as a result of this inadequately considered and one-sided Report.

II

The Report of the RICO Subcommittee is essentially negative. While it acknowledges the serious issues that face the Congress in curtailing the flow of funds into the hands those who have grasped them by crime, the acknowledgement is little more than polite and obligatory lip service. Accordingly, something more needs to be said of the magnitude of that illicit money flow.

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[1] "Organized Crime Control," Hearings before the Subcommittee No. 5, Committee on the Judiciary, House of Representatives, 91st Congress 2d Sess. 539-40, 544 (1970).

[2] *Id.* at 538. While the Association's support was "unqualified," it urged "prompt consideration" of seven specific amendments to the bill. *Id.* at 547. Acceptance of the amendments, however, was not made a condition of the Association support. *Id.* at 551 ("[If the amendments were not adopted the Association's position] would not be changed. It would support [the bill].")

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That the flow of illicit funds in the area of drugs is more than 79 billion dollars,[3] that the flow of illicit funds in the area of theft and fencing is more than 40 billion dollars,[4] that the flow of illicit funds in the area of professional gambling is at least 5 billion dollars.[5]

Other estimates of illicit dollar flow could be provided; the point has been made.

These figures, too, need to be placed in context. The drug traffic at 79 billion dollars, for example, ranks in our economy between banking (44) and medical and other health services (99).[6] The difference between a million and a billion dollars, moreover, is more than a "b" and a "m." A stack of $1,000 bills four inches high would equal a million dollars; a billion dollars would be 333.3 feet high, more than half as high as the Washington Monument. No sane society can long continue to permit such large sums to be acquired by criminal means and hope to maintain its basic integrity.

The Subcommittee expresses concern that RICO reaches beyond the activities of organized crime—even though Congress clearly so intended in 1970 [7]—in the classic mobster sense to "commercial behavior." The Subcommittee fails to point out, however, the scope of white collar fraud in our modern society: 44 to 100 billion dollars each year, as much or more than, the drug traffic itself.[8]

Bankruptcy fraud, bribery, kickbacks, payoffs, consumer fraud, embezzlement, insurance fraud, and securities theft and fraud ought to be of major concern to anyone who cares about the integrity of our free enterprise system. They, too deserve Congress' attention in 1983, as they received it in the passage of the 1970 Act.[9] When the Subcommittee ignores these data and is ignorant of the studies that the Association itself has done in the past,[10] its voice calling for delay does not deserve to be heard in Congress. Appropriately, Congress is ready to act; it is the Subcommittee that needs to do more study. Suggesting more study to a body that has already done its homework is the same as opposition or obstruction. Neither position is worthy of the Association—or in the public interest.

Studies undertaken by the Congress not only document the scope of the illicit asset problem, but focus on the particulars. The testimony of Irvin Nathan, then Deputy Assistant Attorney General, now a member of the Subcommittee by virture of this status on the White Collar Committee, but a member who played no significant role in the drafting or passage of the Report, before the Subcommittee on Criminal Justice in the Senate in 1980 is illustrative:

"We think it is important to take away the asset base of large narcotic 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. * * * [S]ubstantial difficulties . . . are [, however,] involved in forfeiture. . . .

"First, of course, is trying to find . . . the assets * * *.

"[Second is] * * * establish[ing] a nexus between those assets and * * * criminal activities * * *.

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[3] New York Times, Oct. 15, 1982, at 11 col. 6 (1980 estimate).

[4] The 1972 estimate was 20 billion. Blakey and Goldsmith, "Criminal Redistribution of Stolen Property: The Need for Law Reform," 74 Mich. Law Rev. 1511, 1517 (1976). Inflation has, of course, doubled that in the last decade. For example, more than 1.1 million cars are today stolen each year, "many of * * * [which are] * * * quickly disassembled in "chop shops" and sold as spare parts." N.Y. Times, June 13, 1982, at 33 col. 1. The traffic in stolen cars, in fact, represents a 4 billion dollar loss to individuals, only 3 billion of which is covered by insurance, and since insurance companies must take in $1.25 for each dollar they pay out, policy holders—all of us—are taken for $3.75 billion in insurance related losses. Blakey, "The RICO Civil Fraud Action in Context: Reflections on *Bennett* v. *Berg*," 58 Notre Dame Law Rev. 345 n. 235 (1983) (hereinafter *RICO Civil*).

[5] *Id.* at 303 n. 169.

[6] "The World Almanac and Book of Facts 1983" at 119.

[7] The legislative history and judicial decisions are reviewed in *RICO Civil* at 280–85.

[8] *RICO Civil* at 343 n. 226.

[9] Data on and the impact of white collar fraud, including political corruption and fraud against the government, are reviewed in *RICO Civil* at 341–49.

[10] In 1977, the Section on Criminal Justice did a study of resources devoted to white collar crime control. The conclusions were disturbing. The Section found that the "total federal effort against economic crime [was] * * * underfunded, undirected, and uncoordinated * * *. "White Collar Crime: 1978," Hearing before the Subcommittee on Crime, Committee on the Judiciary, House of Representatives, 95th Cong. 2d Sess. 264 (1978) (reprinting Section report). "[A]vailable resources [were] . . . unequal to the task of combatting economic crime" *Id.* The implications of that study are that there is a need to strengthening the law available to public and private parties to vindicate the public interest, a result hardly contemplated by the Subcommittee's Report.

"This is * * * even more difficult * * * where the assets are in someone's else's hands.

"Third * * * is the dissipation of assets.[11]

Mr. Nathan also noted that young and inexperienced Justice Department prosecutors have to face "sophisticated criminals who have access to the best lawyers and accountants money can buy."[12] What is true in the drug traffic is, of course, true in the other areas covered by RICO, including various forms of commercial fraud.

As I read the proposed legislation, it represents, with one principal exception, a thoughtful and excellent start at meeting those problems. There are amendments that could, of course, strengthen or clarify it, but no need for further study exists. Passage of the legislation now—duly amended—is what is the public interest, and it is what the Association ought to support.

As I read the suggestions by the Subcommittee for amendment, however, they represent, little more than an unwise effort to strenthen the hand of the lawyers who defend against assent forfeiture.[13] They hardly reflect the public interest.

III

The subcommittee suggests that the criminal ought to be able—at least in the "white collar" crime area—to conduct his "legitimate" expenses in determining the amount of his "illicit" income. Nonsense. RICO presently authorizes case by case mitigation and remission, where a compelling showing can be made that forfeiture would work hardship. 18 U.S.C. § 1963(c). This process was sensibly centered by the Congress in 1970 in the Department of Justice, where a uniform and principled policy could be established and administered for the nation. There is no documented need to alter that policy judgment today. The law in this area needs to be, in an appropriate combination, swift, sure, and severe, if the fruits of cime are to lose their beguiling lure.[14] We do not need to make it slow, uncertain, or mild by the introduction of cost accounting principles for the benefit of the criminal. Recall that the government must secure an indictment and convince a judge and jury beyond a reasonable doubt of the facts to secure a criminal forfeiture. Complexity will only defeat the remedy.[15]

Similarly, I see no compelling reason for unduly complication—to the benefit of the defense lawyers, but the detriment of the court, the jurors, and the witnesses—the forfeiture question by making it possible for defense counsel to get two bites out of the trial apple. No sound public policy justification exists for requiring, in effect, the government to try the case twice to obtain a judgment of liability and forfeiture. I sympathize with the criminal defendant who must defend both his liberty and his property in one proceeding. To be sure, it is hard on him, but, as the Supreme Court rightly observed in *Barnes* v. *United States,* 412 U.S. 837, 847 (1973):

"Introduction of any evidence, direct or circumstantial, tending to implicate the defendant in the alleged crime increases the pressure on him to testify.

"[But the] mere massing of evidence against a defendant cannot be regarded as a violation of his privilege against self-incrimination."

The Subcommittee objects to the efforts of the proposed legislation to codify the "relation back" doctrine, terming it a "new concept" and its presentation as "simply inaccurate." Nonsense. It is the history and analysis of the Subcommittee that are "simply inaccurate."

The Subcommittee wrongly suggests that the "relation back" doctrine was solely a feature of in rem rather than in personam forfeiture at common law. The Subcom-

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[11] "Forfeiture of Narcotics Proceeds," hearings before the Subcommittee on Criminal Justice, Committee on the Judiciary United States Senate 96th Cong. 2d Sess. 96-97 (1980). The testimony is attached hereto as an exhibit. See also "Asset Forfeiting—A Seldom Used Tool in Combatting Drug Trafficking, Report of Comptroller General of the United States 30-44 (1981) (problems are: uncertain status of assets, third party holdings, and dissipation).

[12] *Id.* at 114.

[13] Recall the insightful words of Alexander Hamilton in "The Federalist" No. 1 at 35 (W. Kendall and G. Carey edition): "[A] dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidding appearance of zeal for the firmness and efficiency of government."

[14] See generally, P. Posner, "Economic Analysis of Law" § 7.2 (2d ed. 1977)

[15] The Subcommittee also captiously objects to the introduction of the concept "derived from" in setting the forfeiture standard. Current law uses the phrase "acquired or maintained," which has been rightly read to be limited to tracing the illicit funds. See, e.g. *United States* v. *Zang.* No. 80-227 (10th Cir. June 7, 1982) (available on Lexis, GenFed Libraray Cir. File). Contrary to the Subcommittee's Report, I see no reason why "derived from" will not be given a similar construction.

mittee displays a distressing and an embarrassing ignorance of legal history.[16] It should have read its Blackstone before it pontificated. Blackstone clearly outlined the concept of forfeiture that existed at common law following a criminal conviction for a felony.[17] The concept is unfamiliar to the untutored, but it may be, at least on the question of relation back, easily summarized: the forfeiture of personality and realty related back to the time of the offense to defeat efforts to avoid the impact of the consequences of the offender's criminal conduct. Blackstone observed: [18]

"The forfeiture of lands has relation to the time of the fact committed, so as to avoid all subsequent sales and incumbrances; but the forfeiture of goods and chattels has no relation back words; so that those only which a man has at the time of conviction shall be forfeited.* * * Yet if they be collusively and not bona fide parted with, merely to defraud the crown, the law * * * will reach them * * *."

In 1970, Congress knew full well that it was drawing on this "ancient doctrine of criminal forfeiture," [19] when it passed the forfeiture provisions of RICO. Indeed, the relation back concept—which was a feature of in rem and in personam forfeiture—and which was applicable to personal and real property—was aptly described as "settled doctrine" by the Supreme Court in *United States* v. *Stowell* [20] as long ago as 1890.

RICO, however, modified the traditional rule in in rem forfeitures in a key fashion. While the offender forfeits his interest in the criminal action, the execution of the criminal judgment was made subject to the "rights of innocent persons" under 18 U.S.C. § 1963(c).[21] Accordingly, the rights of third parties—victims or bonafide purchasers for full consideration—are not cut off, as indeed they could not be in a proceeding as to which they were not a party under basic concepts of due process.[22] Had the Subcommittee done its homework, it would not have offered such a distorted view of either history or current law.[23]

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[16] The history and law are ably traced in Note, "Bane of American Forfeiture Law—Banished at Last," 62 Cornell Law Rev. 768 (1977).

[17] "IV W. Blackstone, Commentaries on the Laws of England," 374–81 (1769). The status of Blackstone in the Colonies was noted by Edmund Burke in a 1775 speech on conciliation with the Mother Country. "A.E. Dick Howard, The Road From Runnymede" at 131–32 (1968).

[18] *Id.* at 380–81.

[19] S. Rep. No. 91–617, 91st Cong. 1st Sess. 78–80 (1969).

[20] 133 U.S. 1, 16–17 (1890) (forfeiture of personal and real property) (forfeiture takes place "immediately upon the commission" of the offense and the right to the property then vests in the government, although it is not "perfected" until a judicial decree so declares.)

[21] To be sure, "innocent persons" is not defined in RICO. In light of its liberal construction clause, 84 Stat. 947, it is not difficult, however, to see how it should be read to implement the "remedial purpose" of the Act. RICO was designed to help not harm, victims. Nothing in it, moreover, can be said to have been designed to make victims out of third parties who purchase property innocently from those whom they do not know to be corrupt. Accordingly, the construction of the phrase in the text—victim or bonafide purchasers—is eminently reasonable.

It is all the more ironic, too, that the Criminal Justice Section—and now the House of Delegates—has suggested that the liberal construction clause be repealed. As such, the Association has gone on record as opposing one of most progressive reforms of the past one hundred and fifty years. The common law rule of strict construction was first attacked by no less than Edward Livington in the farsighted reform code he drafted for Louisiana in between 1820 and 1825. "I Livingston, Complete Works on Criminal Jurisprudence" at 231 (1873 ed) and II, *id.* 14 ("All penal laws whatever are to be construed according to the plain import of their words. * * *"). Livingston's suggestion for Louisiana was followed by David Dudley Field in his influential draft codes of penal law and criminal procedure for New York. "The Code of Penal Law" at 5 (Commissioners on Practice and Pleading 1865) ("fair import"); "The Code of Criminal Procedure" at 470–71 (Commissioners on Practice and Pleadings 1850) ("liberal construction"). Field went beyond the abolition of strict construction and the adoption of "fair import" construction in the penal code and advocated "liberal construction" for the code of criminal procedure, noting that the old rule had no support in any "principle of substantial justice, and . . . [its] highest aim, practically considered, seem[ed] to be, to render that law inconsistent with its spirit and as a consequence, absurd and ridiculous" *Id.* In fact, a majority of state statutes today has abolished the common law rule either by expressly aborgating it or adopting some variation of "fair import" or "liberal construction." The statutes are collected in *Civil RICO* at 245 n. 25. It is embarrassing that the Bar Association has now been induced to turn its back on this laudable reform.

[22] *Zenith Radio Corp.*, v. *Hazeltime Research, Inc.*, 395 U.S. 100, 110 (1969) ("It is elementary that one is not bound by a judgment in personam resulting from litigation in which he is not designated as a party or to which he has not been made a party by service of process.")

[23] The Subcommittee's objection that the time of forfeiture in relation back is unclear is captious. It takes but a glance in light of policy to see that RICO "begins" with the first act, "is completed" with the second act, and "ends" with the last act. Accordingly, the time of relation back would be to the first act, but since no offense would be committed by one act alone, relation back would not be an issue until the second act occurred.

The Subcommittee also raises due process objections to provisions in the proposed legislation that are designed to prevent the dissipation of assets upon the beginning of a criminal investigation. It terms its view "beyond debate." Nonsense. The Subcommittee, once again, has not done its homework. It relies for its pre-restraint "adversary proceedings" position on *Fuentes* v. *Shevin,*[24] and related cases. Can it really be that it has not read *Gernstein* v. *Pugh?* [25]

In *Gerstein,* the Supreme Court faced a constitutional challenge to Florida's practice of initiating criminal proceedings by a prosecutive information, on which the defendant could be required to post bail or held in custody, even though the law did not require a preliminary hearing before a judicial officer for as long as 30 days. The lower federal courts struck down the practice and required a "full panoply of adversary safeguards—counsel, confrontation, cross examination and compulsory process for witnesses." [26] The Supreme Court, however, reversed, finding that the issue of the probable cause to hold for trial could be "determined reliably without an adversary hearing." [27] "[H]earsay and written testimony" was found not to be objectionable.[28] The Court observed:

"Criminal justice is already overburdened by the volume of cases and the complexities of our system. * * * A constitutional doctrine requiring adversary hearings for all persons detained pending trial could exacerbate the problem of pretrial delay." [29]

Significantly, the Court cites with approval the Uniform Rules of Criminal Procedure (Proposed Final Draft 1974) and the American Bar Association Project on Standards for Criminal Justice, Pretrial Release (1974), neither of which requires full adversary hearings in connection with bail hearings. The Court also specifically rejected the analogy to prejudgment procedures in civil cases, the issue involved in *Fuentes.* The Court observed:

"Here we deal with the complex procedures of a criminal case * * *. The historical basis of the probable cause requirement is quite different from the relatively recent application of variable procedural due process in debtor-creditor disputes * * *. The relatively simple civil procedures * * * are inapposite and irrelevant in the wholly different context of the criminal justice system." [30]

The Court also recognized that "a grand jury's judgment [could] substitute for that of a neutral and detached magistrate * * *." [31] Because the Subcommittee has misstated or misunderstood the constitutional demands here, its voice ought not be heard with the official sanction of the Association.

The Subcommittee also misstates the position of the Association, when it observes that it "is already on record in favor of forcing the government to establish more than the return of an indictment in order to obtain a restraining order." Apparently, it refers to Recommendation No. 12 in reference to RICO that the House of Delegate approved in August 1982. That recommendation, however, only suggests that Rule 65 of the Federal Rules of Civil Procedure be followed in issuing pretrial restraining orders under 18 U.S.C. § 1963(b). Nowhere in the text of the Recommendation or its Commentary is there anything about what must be shown in the contemplated hearing or how it must be shown. Rule 65 itself only requires notice for a preliminary injuction; it also only specifies the procedure obtaining temporary re-

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[24] 407 U.S. 67 (1971).

[25] 420 U.S. 103 (1975).

[26] *Id.* at 119.

[27] *Id.* at 120.

[28] *Id.* at 120–21.

[29] *Id.* at 122 n. 23.

[30] *Id.* at 125 n. 27.

[31] *Id.* at 117 n. 19. The Subcommittee also captiously objects to the concept of substitutional forfeiture where tracing is not possible. In fact, the concept is little more than the traditional notion of an equitable lien to recover wrongfully taken property or to secure full recovery. The idea is forward looking and ought to be codified in the statute.

Under present law, I think the government has the following options in a post-conviction hearing under 18 U.S.C. § 1963(c), where the jury returns a forfeiture verdict:

"1. To seize the specie forfeited,

"2. To trace, under principles analogous to the enforcement of a constructive trust, the specie into any of its current forms and to seize them as so transformed, or

"3. To execute against the defendant's other property an equivalent money judgment, for which it would have, in effect, an equitable lien."

Obviously, such options would have to be exercised with due regard for the rights of innocent persons. 18 U.S.C. § 1963(c). As such, I do not view the proposed legislation as doing more than codifying current law, although I recognize that its scope in dispute. For a discussion, but not a resolution, of the issues, see *United States* v. *Martino,* 681 F.2d 952, 960–61 (5th Cir.) cert. granted on other grounds sub nom, *Rosello* v. *United States.* 51 U.S.L.W. 3497 (U.S. Jan. 11, 1983).

straining orders without notice—"clear appearance" of need based on "affidavit" or "verified complaint", security (except by the United States), and a sound reason for proceeding without notice for period of not to exceed 10 days. Nothing in Rule 65 says what must be shown or how it must be shown.[32]

As the issues in the preliminary restraint hearing concerning property are substantially the same as those in a bail hearing—neither goes behind the charge, one make sure that the defendant himself is available for sanction—no reason exists to treat them in substantially different fashion.[33] As the indictment establishes personal guilt for the limited purposes of setting bail, so, too, should the forfeiture specification of the indictment be a sufficient predicate for requiring the posting, for example, of a performance bond. 18 U.S.C. § 1963(b) ("enter such restraining orders * * * or * * * the acceptance of satisfactory performance bonds"). In bail hearings, the only question before the court is securing the presence of the defendant for trial; they may proceed information.[34] Such, too, reflects the Association's Standards on Pretrial Release § 10-5.9.[35]

To the degree that the Subcommittee's Report argues for a different approach, it is inconsistent with the Association's Pre-Trial Release Standard and, more importantly, it adopts the indefensible position of according more protection to property than to liberty! It would, moreover, undermine the salutary policy of limited pretrial discovery reflected in Rule 16 of the Federal Rules of Criminal Procedure. It ought to be, therefore, rejected.

The Subcommittee has taken a defensible position in only in major area—the rights of third parties. I fully agree here that nothing in the criminal forfeiture proceedings can prejudice their rights.[36] Far from having to petition the attorney general to vindicate their rights, the attorney general should have to bring a quiet title action to cut them off. Accordingly, it would be appropriate to recommend that 28 U.S.C. § 2409 be amended to apply to personal as well as real property and that it—or a similar quiet title proceeding—be provided for both the attorney general or private parties potentially agrrieved by the criminal judgment in reference to the defendant.[37]

Finally, I agree that if 18 U.S.C. § 1963(c) does not already protect the rights of victims, the statute should be amended to assure that a victim has a superior property right to any property obtained by the government by forfeiture.[38]

I have filed this dissent only reluctantly. It would have been better if more time could have been devoted to working out the Subcommittee's views and reflecting them in the majority report. Nevertheless, if the Subcommittee wishes to rush to judgment, it must accept the responsibility for its errors of history, law, and policy. But there is no reason why the Association ought to present them publicly to the Congress as their own.

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[32] See generally, 11 C. Wright and A. Miller, Federal Practice and Procedure § 2949 pp. 470–83 (1973). Wright and Miller observe: "[As a] preliminary injunction only has the effect of maintaining the positions of the parties until trial [, trial type standards should not apply.]" *Id.* at 470.

[33] I fully recognized that the developing case law stands against this argument. See, e.g., *United States* v. *Spilotro,* 680 F.2d 612 (9th Cir. 1982); *United States* v. *Veon,* 538 F.Supp. 237 (E.D. Cal. 1982). I can only say that these cases are wrongly decided, and Congress should, as the proposed legislation will, change the law. I do not see how forfeiture can realize its objective if it unnecessarily becomes a remedy too procedurally complicated and onerous to use.

[34] See Bail Reform Act of 1966, 18 U.S.C. § 3146, particularly (f) ("need not conform to the rules" of evidence); *United States* v. *Grawe,* 689 F.2d 54, 56–58 (6th cir. 1982) (pretrial bail denied based on hearsay showing of danger to witness in RICO prosecution).

[35] The Standards on release nowhere require the prosecution to justify the charge. The hearing need only focus on "safety to the community, the integrity of the judicial process [and] the defendants reappearance." Standard § 10-5.9(c) Subdivision (V) also provides that the "Rules respecting the presentation and admissibility of evidence of pretrial should be the same as those governing other preliminary proceedings * * *."

[36] See supra n. 22.

[37] Such a procedure should, of course, protect the defendant's constitutional right to a jury trial. *Cf. United States* v. *One 1976 Mercedes Benz,* 618 F.2d 453 (7th Cir. 1980) (in rem forfeiture of personality seized on land requires jury trial).

[38] See, e.g., Fla. Stat. Ann. § 895.04(7)(b) (Supp. 1982) ("Any injured person shall have a right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds.")

ADPA,
Washington, DC, July 6, 1983.

Hon. WILLIAM J. HUGHES,
Chairman, Subcommittee on Crime, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR REPRESENTATIVE HUGHES: On behalf of the membership of the Alcohol and Drug Problems Association (ADPA), I am submitting for consideration by your subcommittee the enclosed statement concerning H.R. 3299, the Comprehensive Drug Penalty Act of 1983. ADPA supports the provisions regarding civil forfeiture and encourages the extension of funding to include drug abuse treatment services.

Please contact us if you wish additional information.

Sincerely,

ROGER F. STEVENSON, *Executive Director.*

STATEMENT OF ALCOHOL AND DRUG PROBLEMS ASSOCIATION

The Alcohol and Drug Problems Association, ADPA, feels well qualified to comment on this proposed legislation: We are a membership organization composed exclusively of programs and individual professionals who provide a broad range of alcohol and drug abuse services to the population at large and especially to those suffering from addiction to these substances. Many person believe that addictions and addiction-related diseases and handicaps are America's most serious public health problem.

ADPA endorses the concept that assets and profits derived from illegal drug trafficking should be utilized, in part, to support activities in the area of drug enforcement.

We would encourage the subcommittee to amend the proposed legislation to allow for the direct funding of additional drug abuse treatment capacity. Arresting and incarcerating chronic drug abusers engaged in criminal activities is only part of the solution to the problem. We would suggest that a better approach for many such persons involve effective treatment so as to restore them to productive roles within society. For many, unfortunately, the prison system does not provide the adequate level of rehabilitative services which are needed.

Treatment for the drug-addicted criminal offender has been shown to be an effective approach. A report from the National Institute on Drug Abuse, for example, has indicated a "sharp decline in arrests" among participants in long-term treatment programs. Data provided by ADPA member programs supports this finding.

Cost-benefit research has shown that the cost of treatment for drug addiction is less expensive and more effective as regards recidivism than is incarceration. A Pennsylvania study, for example, demonstrated a savings to the state of more than $9 million dollars by using this alternative.

Treatment programs for drug-addicted persons lacking private or third party means to cover costs must rely heavily on public support. However, federal support for drug addiction treatment has fallen by one-third since 1980. Many states, too, have been forced to reduce their levels of support.

It is crucial that this trend be reversed so that the treatment community can function as an effective partner to the law enforcement community by getting assistance to those who will benefit from it.

To conclude: ADPA strongly urges that H.R. 3299 include a provision to channel funds realized as a result of the civil forfeiture of illicit drug related or procured assets into providing additional treatment capacity for drug-addicted criminal offenders.

Mr. SMITH. Thank you. Gentlemen, I also want to thank you. Mr. Pruss, I apologize. This happens all the time, but those of us that have been in this fight for a long time, like you have, are very concerned about that, as well as my staff and I.

Your name and address are here on record and we will be working further with that as far as the possibility of doing something about sharing of that.

Lieutenant Hedlund, and Sergeant Haas, I appreciate your efforts. As a member of the Organized Crime Council in Florida for a

number of years, I worked very closely with FIU and was very involved in getting the intelligence gathering, intelligence collection.

I was one of those who was trying to get a State fund to pay for the cost of what FIU was taking out of local law enforcement agencies. So we would like to thank you both for coming and for the work that you have done in that area and the work that you continue to do, and I know that notwithstanding the battle that you have on your hands constantly, you are doing a great job.

We appreciate it very much. Thank you.

The hearing is adjourned.

[Whereupon, at 3:15 p.m., the subcommittee adjourned subject to the call of the Chair.]

COMPREHENSIVE DRUG PENALTY ACT

FRIDAY, OCTOBER 14, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 9:05 a.m., in the Broward County Commission Chambers, Broward County Court House, Fort Lauderdale, FL, Hon. William J. Hughes (chairman of the subcommittee) presiding.

Present: Representatives Hughes, Smith, Sawyer, and Shaw.

Staff present: Hayden Gregory, counsel; Edward O'Connell, assistant counsel; and Charlene Vanlier, associate counsel.

Mr. HUGHES. The Subcommittee on Crime will come to order.

Good morning and welcome to the subcommittee's hearing this morning. The Chair has received a request to cover this hearing in whole or in part by television broadcast, radio broadcast, still photography, or by other similar methods. In accordance with committee rule 5(a), permission will be granted unless there is objection. Is there objection?

Hearing none, it is so ordered.

Today we are looking at a subject of much significance, the Comprehensive Drug Penalty Act of 1983 [H.R. 3299], and at problems involved in the management and disposition of seized criminal assets. Some of the problems are legal, and may be alleviated by this legislation. Others are human or systemic in origin, and they must be corrected by the persons who run our criminal justice system.

As a matter of general background, at the present time we are faced with the ridiculous situation where drug dealers have been able to accumulate huge fortunes as a result of their illegal activities and the sad truth is that the financial penalties for drug dealing are frequently seen by dealers as only a small cost of doing business. For example, under current law the maximum fine for many serious drug offenses is only $25,000.

The Comprehensive Drug Penalty Act of 1983 will substantially reform these fines and bolster forfeiture procedures. H.R. 3299 would increase tenfold and more the fines for major drug trafficking offenses and empower the courts to impose an alternative fine of up to twice the gross profits of the criminal enterprise. The bill also provides, for the first time, criminal forfeiture provisions for all Federal felony drug cases.

Additionally, the measure would create a presumption that all property acquired by major traffickers during the period of the

criminal enterprise are the fruits of drug-related crime, if no legitimate source for the property exists. The courts would also be granted greater power to forefeit the fruits of drug-related crime, including land and buildings, and authorizes them to restrain the transfer of property which might be subject to forfeiture pending the outcome of the trial.

However, it is not only our responsibility as Members of Congress to give law enforcement new tools such as H.R. 3299 in our fight against the cancer of drugs, but we must also ensure that law enforcement is doing the best job possible with tools that are available. In doing so, we must be able to learn from analogous successes at the State and local levels, which have valuable experiences to share, and we will do this today.

In this connection, a recent GAO report found that the Government may have incurred losses of as much as $28 million by neglecting boats, planes, cars, and other items seized from drug traffickers under present law. While it is clear that we must increase the Government's ability to seize drug-related assets, it also makes sense to make certain that valuable boats, planes and cars are not left to rust, rot, decay, or be vandalized subsequent to their seizure.

I might say that the problem, as we sense it, and I think that our visit to some of the storage areas yesterday pointed it out, is overwhelming. It is often beyond the ability of the law enforcement agencies to actually attempt to protect and store the property under present law.

If, as we propose in H.R. 3299, we greatly increase forfeiture and other economic attacks on drug trafficking, we must endeavor to ensure that there are efficient administrative and judicial procedures along with improved Federal and State relations in place prior to its passage to facilitate its eventual execution.

In this regard, I would hope the witnesses, along with their written testimony, could address the following questions:

One, what is wrong with the present forfeiture process?

Two, what administrative or executive changes could be made, without legislation, to solve some of these problems?

Three, what improvements can be made in the administrative procedures of H.R. 3299?

The witnesses have already shared with us copies of their statements, and I hope that they will be able to summarize their statemen, so that we can get right into the questions on some of the problems and experiences which they have had here in south Florida. I look forward to hearing from the witnesses.

I hope that this hearing will enable us to do an even better job in trying to provide the kinds of tools that are needed and perhaps provide the kind of oversight that this committee needs to make sure that the process is working effectively.

At this time I would like to recognize the ranking Republican member of the subcommittee, Hal Sawyer of Michigan, who has been basically my partner for some 3 years. He is a former prosecutor in the Grand Rapids, MI, area, a very fine lawyer, and I think has developed in the years that he has been in the Congress a great deal of credibility in this whole area of law enforcement. He is indeed a lawyer's lawyer. Hal.

Mr. SAWYER. Thank you very much, Mr. Chairman, for your kind words.

The purpose of the hearing, as the chairman has stated, is to study and see what we can learn from the new Florida laws which apparently are far more streamlined than our Federal laws are in the nature of forfeiture. Since basically smuggling and trafficking is an economic crime, people are entering into it to make money, it is only suitable that some of those assets and moneys that are derived from them be turned around to be used in the prosecution and bringing to justice of the people that are doing it. It has kind of a nice ring to it to be able to do that, and the forfeiture laws are potentially one great way of doing this.

The Federal laws are woefully inadequate. In order to forfeit anything over $10,000 we have to go to court to do it. The average time is in excess of 18 months, even if it is prosecuted vigorously. We have an administrative forfeiture procedure, but that is limited to what can be done very rapidly, in 6 to 8 months. But that is limited to items under $10,000. Of course, it is relatively useless with respect to planes or boats, which are the big normal conveyances.

Also we have no way for the agency that did the seizing to recover its costs of maintenance or preservation during the period pending disposition, unless it can make a sale during the same fiscal year that it accomplished the seizure, and unless there is a surplus or a profit in the situation, they get more out of the asset than they spent taking care of it, and there is no way that they can transfer over on a loss on one asset to take it out of a profit of another asset. So what we need is a fund, because obviously there is no incentive on the part of the agency to take out of its own operating funds moneys that it may never get back. Consequently, the values of the property are going down.

We saw on the one hand a group of newly seized airplanes here at Fort Lauderdale under the state law, where they anticipate that those that aren't released to legitimate claimants in a reasonable period could perhaps be converted as quickly as some 90 days, and perhaps in the worst case maybe up to 6 months.

On the other hand, we went down and spent most of yesterday looking at rotting boats and deteriorating boats, a number, some 479 of them that the Feds have seized. Some of them have been there for as long as 8 or 9 years and obviously they are greatly losing their value. So, obviously, we have to do something with the Federal law. Florida, at least for the moment, appears to provide a good model, and maybe we can plagiarize some of it and improve the Federal law.

I also just want to thank Clay Shaw for his work in organizing these hearings and bringing us down to see what is happening here with the accumulation of planes, boats, and everything else. It is certainly an eye opener to come and see it. I don't think this hearings can give you the full impact as going and having a look at it.

Thank you very much.

Mr. HUGHES. Thank you.

Our colleague, Larry Smith, is a new Member of Congress. As you know, this is his home, representing the 16th District in the Congress. In the short time that Larry has been in the Congress, he has distinguished himself as an expert on the criminal justice

system. He spent a number of years, as you well know, in the Florida Legislature, where he chaired the criminal justice subcommittee and was, in fact, the author of the forfeiture legislation that has been so effective in Florida, and which has been the model for other States, and indeed the Federal Government to follow.

Larry, we recognize you for such comments as you want to make, and thank you also for your efforts in bringing us here.

Mr. SMITH. Thank you, Bill.

I want to thank the subcommittee for taking the time to come down on behalf of Congressman Shaw and myself as well as for the United States of America, because I think it is very important that people realize that what we have here is nothing more than just a gigantic pile of deteriorating assets that could be turned around and used against the people who have in fact been causing us this terrible grief.

The money that is being spent by them on these assets for use in drug running, drug smuggling, and the sale of drugs could be effectively turned around as a weapon used by law enforcement at the Federal level, like it is at the State and local levels, in combating those very people from whom the assets were seized.

Yesterday I heard testimony before the Select Committee on Narcotics, in West Palm Beach, about what we could do with some of the money we seize from contraband, from the sale of contraband or from cash that is seized, by way of funding programs for drug abuse education and substance abuse education in the schools, trying to curb the demand, as well as like right here in Broward County, where the sheriff's department, Fort Lauderdale and Hollywood Police Department and all the others are using planes, boats, and cars which have been seized by virtue of the department's continuing effort against drug smugglers. That is now being used to help enhance their efforts.

Many times, unfortunately, the drug smugglers, the people creating the problem, are in fact better equipped than the law enforcement agencies. Their boats are faster and more numerous. Their planes are better equipped with better radar and communication devices. They have the fastest cars. Just in general, even such things as ultra, whatever they call those nightscopes, where literally they can operate by looking through things and seeing everybody in totally blacked out settings, which our own police agencies don't have.

So I think that it is extremely important that we follow the lead at the Federal level of what has been happening certainly here in Florida and in other places around the country, and get to the point where we can have these assets converted to our use. I think it is very important. Literally millions of dollars, as many of you saw yesterday and I had seen previously, millions of dollars are rotting away, just sitting there unused because of the lack of manpower in that there aren't enough judges and there aren't enough prosecutors to file the petitions, have the hearings, take title to these in the Government's name, and then use them or sell them off.

The really sad part is that most of these hearings would be defaults. There isn't anybody coming in to complain once the boat is seized. They don't ask for it back. They just sit there. If we did this

in an expeditious manner, certainly our law enforcement agents would have a tremendous amount of additional assets to work with.

I am happy that the subcommittee and you as chairman are here. I commend you for the work that you have done. I want you to know that I will continue to support your efforts. As I just indicated to you, almost every bill you have filed I am a cosponsor of and I will continue to do that.

Mr. HUGHES. I appreciate that.

The Chair now recognizes the distinguished Member of Congress from the 15th Congressional District. Clay Shaw joined our subcommittee this year, although he has been on the Judiciary Committee since coming to the Congress. I really did not get to know Clay Shaw on a personal one-to-one basis until we were getting ready to go to the floor on the posse comitatus bill. Clay took a tremendous interest in that legislation. He and Charlie Bennett of Florida, as a matter of fact, provided invaluable assistance to the subcommittee, both on the floor of the House and in the conference committee to ensure that we would pass a strong bill.

It is a bill that is now heralded as one of the major landmark measures that assist law enforcement in attempting to curb drug trafficking. In the time that he has been a member of the Subcommittee on Crime, he has been of invaluable assistance to us, as has Larry Smith, Charlie Bennett, Bill Lehman, and others of the Florida delegation such as—Claude Pepper, Dante Fascell—the all have been of invaluable assistance in moving legislation through the Rules Committee to the floor of the House that bears upon the problems of the law enforcement community.

We are delighted to be in Florida with you today, Clay, We thank you for making this hearing possible, and the Chair recognizes you for such remarks as you want to make.

Mr. SHAW. Thank you, Mr. Chairman.

I would like to add my welcome to Larry's, your coming to Broward County. We are extraordinarily proud of our county, and I want to thank the county commissioners for the hospitality they have shown us not only in using these chambers, but yesterday in providing us with transportation down to, I think, what developed into an extraordinary day in the city of Miami.

I would also like to thank Sgt. Mike White and the Fort Lauderdale Police Department for their assistance yesterday in viewing the aircraft and giving us a summary of Florida law and the procedures going about in the seizure of those particular aircraft.

Yesterday the U.S. Customs I think really did provide us with an absolutely extraordinary view of how not to do things. Mr. Sawyer mentioned in his opening remarks, we are presently holding just in the southern district of Florida approximately 479 vessels, which range from small boats to ships, which are doing nothing but rusting away. We saw many boats yesterday that have already incurred dockage fees in excess of $50,000, and I am talking about boats now that have a value of probably less than $10,000, and that value actually decreases at this time.

Our laws are archaic. I want to congratulate the chairman and Mr. Sawyer for the leadership role that they have given in trying to make some change in the Federal law.

Bill, you mentioned the changes in the posse comitatus. One thing I have learned since moving to Washington and taking over the job of the congressman from this district, having come from the position of being mayor of the city of Fort Lauderdale, change does not come easy at the Federal level. In the years and days that we have been working on the posse comitatus, we found great resistance from many chambers and resistance has melted away, which has resulted, I think, now in a new sense of pride that the Defense Department has in what they are doing in order to try to help us with our situation.

We believe that Florida does create a good example, one that the Federal Government could well duplicate in our efforts. I am extremely proud of the meaning of southern hospitality which Broward County, Fort Lauderdale and its citizens have shown to this committee. It makes me very proud to be home.

We are also very grateful to you, Mr. Chairman, for bringing this committee down to Broward County. Thank you.

Mr. HUGHES. Thank you.

Our first witness this morning is Ronald F. Lauve, who is a Senior Associate Director in the General Government Division of the General Accounting Office. He is responsible for the overall planning and direction of GAO's work in the law enforcement and administration of justice area. This area encompasses the activities of the Department of Justice, elements of the Department of the Treasury, and the Federal courts system. He holds a bachelor of business administration degree from Lamar University in Beaumont, TX.

Accompanying Mr. Lauve is Everette Orr and Jeffery Jacobson, also from GAO.

Gentlemen, welcome once again before the subcommittee. We appreciate your taking the time from your own busy schedules to be with us this morning. We have your statement which, without objection, will be made a part of the record in full. You may proceed as you see fit.

As I indicated, I hope the witnesses today can assist us by summarizing, so that we can get into the specific questions that members have. Thank you. Welcome, Mr. Lauve.

TESTIMONY OF RONALD LAUVE, SENIOR ASSOCIATE DIRECTOR, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY EVERETTE ORR AND JEFFERY JACOBSON

Mr. LAUVE. Thank you, Mr. Chairman. I think what I would like to do based on the comments that have been made thus far, rather than repeat a number of things, a number of areas that have already been covered, is just to run quickly through the statements, emphasizing some basic things toward the end of it. Certainly as we pointed out in our report, we found about four or five issues that needed some corrective action.

You already covered the fact that conveyances devalue substantially between the time they are seized and forfeiture occurs and the time conveyances can be sold. There are large differences in the value of all three of the items, planes, boats, and cars.

You have also covered the fact that the conveyances valued over $10,000 require forfeitures in the courts. We would like to point out that raising that $10,000 limit would require the Congress to pass legislation.

The third part of our report deals with caring for and protecting seized conveyances. Some discussion has already pointed out that need.

The Congress could improve the current funding process by changing the current item-by-item arrangement to a group basis, by creating a special fund or funds from the sales proceeds of all forfeited conveyances, which could be used to cover the storage and maintenance cost of all seized items.

The fourth point in the report points out the need for more congressional oversight over those conveyances that are used by law enforcement agencies. Along those lines we believe that the Congress has little control over the agencies' use of forfeited conveyances or new acquisitions, such as those made through Custom's program of sale and exchange, because these are basically outside the congressional authorization and appropriation process. And a use of a special fund, which the Congress would create through legislation that could be passed to purchase the needed conveyances should be subject to congressional approval. We believe this would eliminate some of the assets not well suited for law enforcement agency needs but which are seized and put into use.

There is also another point that more and better information is needed by all the law enforcement agencies on exactly what is happening with their seizure activities, the kinds of assets that are being seized, how many, locations and values, and processes that the agencies go through.

We made several recommendations to Treasury and Justice to improve their management of seized conveyances. They have agreed. They have advised us that they will be implemented. But we also believe that legislation is needed to alleviate the basic causes of the major problems.

We recommended in our report that Congress raise or remove the administrative forfeiture limit to shorten the forfeiture time and thus reduce storage and depreciation expenses. To improve the funding mechanism for storage and maintenance and for the purchases of needed conveyances, we recommended the creation of special funds from the sales proceeds of forfeited items.

We also recommended that the agencies report to the Congress the number and value of forfeited items that they utilize so these acquisitions can be easily monitored by the Congress.

The proposed bills, H.R. 3299 and H.R. 3725, which you are considering, are generally consistent with the recommendations in our report. However, some differences exist. For example, H.R. 3299 does not include the proceeds from INS forfeitures in the special fund for Justice. We believe INS should not be ignored. Also, it would not allow the agencies to use the special funds to purchase new conveyances, whereas we believe that the proceeds in all the special funds should be available in the manner specifically provided for in annual appropriation acts for the acquisition of new conveyances by law enforcement agencies. Allowing the agencies to acquire new, efficient, and often less expensive vehicles, boats, and

planes would discourage the continued use of less efficient and often luxurious ones.

To reiterate for a moment, the value of conveyances decrease dramatically before they are sold. The time it takes for the Government to acquire title through the forfeiture process is lengthy.

The agencies have little incentive to properly care for the conveyances, and the Congress has insufficient oversight of the agencies' seizure operations and use of forfeited conveyances. Mr. Chairman, that is a quick summary or highlights of the statement. We will be pleased to answer any questions.

[The statement of Mr. Lauve follows:]

U.S. GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
EXPECTED AT 9:00 a.m.
Friday, October 14, 1983

STATEMENT OF

RONALD F. LAUVE,

SENIOR ASSOCIATE DIRECTOR

GENERAL GOVERNMENT DIVISION

BEFORE THE

SUBCOMMITTEE ON CRIME

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

ON

THE CARE AND DISPOSAL OF

FORFEITED CONVEYANCES

BY LAW ENFORCEMENT AGENCIES

Mr. Chairman and Members of the Subcommittee:

I welcome this opportunity to appear before you today to discuss our recent report on the care and disposal of cars, boats, and planes seized by Federal agencies in their efforts to enforce the law.

As you know, the Customs Service, the Immigration and Naturalization Service (INS), and the Drug Enforcement Administration (DEA) are constantly involved in the increasingly more difficult struggle against the importation and transportation of illegal aliens, narcotics, and various other forms of contraband. These agencies nearly doubled the number of conveyances

37-763 O - 85 - 9

seized from fiscal year 1979 to 1980. As of April 1982, we identified over 4,500 conveyances, valued at $82.1 million, that were held by seven law enforcement agencies. This included 3,665 vehicles, 692 vessels, and 161 aircraft.

As discussed in our report, we found several problems. Specifically:

--the value of the conveyances decreases dramatically before they are sold;

--the time it takes for the Government to acquire title is lengthy;

--agencies have little incentive to properly care for the conveyances; and

--the Congress has insufficient oversight of the agencies' seizure operations and use of forfeited conveyances.

In the remainder of my statement I will briefly touch on each of these areas.

CONVEYANCES DEVALUE DURING THE FORFEITURE PROCESS

Our first point is that seized conveyances devalue substantially from aging, lack of care, inadequate storage, and other factors while awaiting forfeiture. Frequently, engines freeze, batteries die, seals shrink and leak oil, boats sink, salt air and water corrode metal surfaces, barnacles accumulate on boat hulls, and windows crack from heat. Also, on occasion, vandals steal or seriously damage conveyances.

The average difference between value at the time of seizure and sales price for conveyances sold in fiscal year 1981 for the four regions that we reviewed was $800 for vehicles, $37,800 for

boats, and $42,700 for aircraft. These differences might be partly attributable to other factors, such as changing market conditions. However, we believe the poor condition of the conveyances at the time of sale compared to their condition at seizure, and ineffective sales practices such as selling conveyances that need repairing, cleaning, or minor maintenance, are the major contributors to this large disparity. The net proceeds from these sales are further diminished because the Government pays storage costs for long periods.

THE FORFEITURE PROCESS SHOULD BE ENHANCED

Our second point deals with the time-consuming forfeiture process. Currently, the courts must forfeit all conveyances valued over $10,000, while some law enforcement agencies can administratively forfeit conveyances valued at $10,000 or less. Almost half of the forfeiture cases involving conveyances valued over $10,000 are not contested by the owners in courts. The process for uncontested judicial forfeitures averages 18 months compared to an average of 8 months for administrative forfeitures. If the $10,000 limit on administrative forfeitures was raised or removed, agencies could forfeit higher valued seized conveyances more quickly. Consequently, depreciation and storage costs would be less and the workload of the courts and U.S. attorneys would be reduced.

Revising or removing the $10,000 limit would require the Congress to revise existing legislation. Justice and Treasury officials believe, and GAO agrees, that the current $10,000 limit can be raised or removed without harming the owners'

rights, as long as the owners have relatively easy access to the courts. At present, the only barrier for contesting a forfeiture in court is to post a $250 bond. Furthermore, this requirement must be waived for individuals who cannot afford it. As long as a reasonable bond is set, the owners' rights to contest the forfeiture and obtain judicial review are protected.

IMPROVING THE FUNDING PROCESS FOR CARE AND PROTECTION OF CONVEYANCES

Our third point deals with the process of funding the cost of caring for and protecting seized conveyances. Seized property should be properly preserved not only to maximize sales proceeds to the Government, but also in the event conveyances are returned to the owners. For example, a seized conveyance might have been stolen or loaned to another party without the owner's knowledge that it would be used to transport contraband. Yet, the current funding process for the care and protection of seized conveyances is difficult to administer and encourages agency personnel to spend the least amount possible even though better care is often cost-effective.

Under current procedures, agencies must pay storage and maintenance costs with appropriated funds in advance of receiving reimbursement from sales proceeds. If sales proceeds exceed storage and maintenance costs, the excess amount must be deposited in the Treasury. A problem arises when sales proceeds do not cover costs. Another problem arises when expenses cover more than 1 fiscal year because only the expenses for the fiscal year in which the conveyance is sold can be recouped. Again, in these cases, the remaining sales proceeds are sent to the

Treasury. Presently, costs and reimbursements are accounted for on an item-by-item basis which means that sales proceeds from a forfeited conveyance can cover only those expenses applicable to that conveyance.

Projecting the amount of appropriations needed to operate under this process is difficult. The agencies must predict storage and maintenance costs for future seizures and must estimate sales proceeds from conveyances, some of which have not yet been seized, in order to calculate the amount needed to cover storage and maintenance costs. The Congress could improve the current funding process by changing the current "item-by-item" arrangement to a "group" basis by creating a special fund, or funds, from the sales proceeds of all forfeited conveyances which could be used to cover the storage and maintenance costs of all seized conveyances. Such funds would simplify the appropriations process since the agencies would not have to estimate the annual differential between expenditures and reimbursements from sales proceeds. Rather, a pool of money would be available for the care and protection of seized conveyances and agencies would not have to divert resources from law enforcement activities for these purposes.

MORE CONGRESSIONAL OVERSIGHT NEEDED OVER AGENCIES' ACTIVITIES

In fiscal year 1981, Federal agencies acquired 473 forfeited conveyances, valued at $6.2 million, for their own use. These assets are attractive to the agencies because they can acquire the conveyances by paying only the storage and maintenance costs--generally a small fraction of the conveyances' value.

However, in many cases the seized conveyances do not precisely meet the agencies' needs. Nevertheless, they are often "forcefitted" into service. Also, these conveyances often require high restoration and continual repair costs. Rather than "forcefit" forfeited conveyances into its fleet, the Customs Service uses an exchange/sale program. Under this program, Customs trades forfeited conveyances for new conveyances or buys new conveyances from the sales proceeds of forfeited conveyances. However, the program is often difficult to administer because of its many restrictions.

In addition, the Congress has little control over agencies' use of forfeited conveyances or new acquisitions, such as those made through Customs' program because they are outside the congressional authorization and appropriation processes. Use of the proposed special fund, or funds, to purchase needed conveyances, subject to congressional approval, would eliminate the need to forcefit forfeited conveyances and would provide the Congress control over the number and types of conveyances purchased through the fund.

BETTER MANAGEMENT INFORMATION IS NEEDED

Mr. Chairman, one last point pertains to the need for better information on agencies' seizure activities. Because most agencies maintain files on seizures only in the region or district field office where a seizure occurs, the total number of conveyances seized and stored, the aggregate storage costs, the number of conveyances disposed of every year, the amount of sales proceeds, and the extent to which property devalues while

in storage are unknown. Most agencies rely on manual records and do not have the capability to consolidate the data from these records. We believe that comprehensive information on seizures is vital if the agencies are to improve their management of seized conveyances.

RECOMMENDATIONS

We made several recommendations to Treasury and Justice to improve their management of seized conveyances. They agreed with our recommendations and have advised us that they will be implemented.

However, we also believe that legislation is needed to alleviate the basic causes of the major problems with seized conveyances. We recommended in our report that Congress raise or remove the administrative forfeiture limit to shorten the forfeiture time, and thus reduce the storage expenses and depreciation for seized conveyances. To improve the funding mechanism for better storage and maintenance and for the purchase of needed conveyances, we recommended the creation of special funds from the sales proceeds of forfeited conveyances. We also recommended that the agencies report to the Congress the number and value of forfeited conveyances that they utilize so these acquisitions can be easily monitored by the Congress.

The proposed bills, H.R. 3299 and H.R. 3725, which you are considering, are generally consistent with the recommendations in our report. However, some differences exist. For example, H.R. 3725 would include the proceeds from INS forfeitures in the

special fund for Justice but H.R. 3299 does not. INS seizes and stores a large share of conveyances seized by Justice agencies. Also, neither bill would allow the agencies to use the special funds to purchase new conveyances.

We believe that proceeds from INS forfeitures should be included in a special fund. Further, we believe that the proceeds in all the special funds should be available, in the manner specifically provided for in annual appropriation acts, for the acquisition of new conveyances by law enforcement agencies. Allowing the agencies to acquire new conveyances would discourage the continued use of less efficient and often luxurious conveyances in favor of more efficient and often less expensive ones.

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Mr. Chairman, that concludes my statement. We will be pleased to respond to questions at this time.

Mr. HUGHES. Mr. Lauve, in your statement on page 4 you observe that the only barrier for contesting a forfeiture in court is to post a $250 bond. Is it your view that the $250 bond is too low or just right? What is your perception? One of the criticisms I have heard of existing law was that the bond really permits anybody to contest.

Mr. LAUVE. I think that is a fair statement, that it does. The $250 goes far back in history. We have found this in a number of areas in law enforcement in general. That legislation is very, very old, and needs to be updated in view of the changing circumstances and the changing times. My direct answer is that it is too low, and it should be increased. The exact value could be negotiated or certainly decided as a congressional policy matter, but in essence it is too low.

Mr. HUGHES. Do you think it should be tied to a percentage, for instance, of the value of the item?

Mr. LAUVE. Yes, sir, it could well be tied to a percentage, and even then there may be some minimums or maximums that you might want to impose in the legislation.

Mr. HUGHES. Do you have any recommendations in that regard, or is that something that basically would be beyond the scope of the General Accounting Office?

Mr. LAUVE. I believe we would rather leave that to congressional policymakers.

Mr. HUGHES. Let me ask you a question on your observation on page 5 of your prepared statement, that one of the problems is that the agencies, Customs and other agencies, in processing of forfeitures, are required to approach the items on an item-by-item basis, as opposed to grouping them for purposes of reimbursement for costs. My question is, to change this procedure, does that require congressional approval or is that something that can be done administratively?

Mr. LAUVE. It is my understanding that legislation is needed for that, Mr. Chairman. In addition, what that would do is give the law enforcement agencies a great deal more flexibility. For example, now certain items can be replaced only on a one-for-one basis. Also, the Customs sale exchange program cannot be used for aircraft. Legislation would allow the agencies a great deal more flexibility in the use of the special funds.

Mr. HUGHES. I understand that the present procedure is for the Customs Service, when a vessel is brought into port, to at that point take possession and begin to administer it and process it through the various regulatory rules that have to be applied, and to work with the marshal and U.S. attorney's office in pursuing the forfeiture.

At one time, however, I understand that the Coast Guard would often bring a vessel in, store it at their facility for a while, incurring whatever storage expenses might be involved and then transfer it to Customs. Often Customs would hold it for a while and in turn would transfer it to the U.S. marshal. Quite often a vessel would go through three different custodians, three different storage areas.

Did you look at that issue to see whether or not we have improved our management techniques, so that we don't have that

type of duplication, with three different custodians, perhaps three different storage areas, three different problems often with the vessel?

Mr. ORR. Yes; we did look at that, Mr. Chairman. As you described, the Customs Service holds the vessel until it goes to court. At the time it goes to court, then the marshal moves it to another location. This involves an additional cost of breaking a lease at one storage location to move it to another location, and an additional towing and transportation cost to move it to another place.

That was also true of DEA and INS, and Justice is trying to simplify this process now. The way they have handled it in the Customs Service is to basically use substitute custodians in place of the marshals, so the Customs Service now is holding it, in many locations, for the entire duration of the process, even when it goes to court, so it only has one holding agency.

In the case of Justice, they have a little more ambitious long-range plan, to have the Marshals Service literally take it over very early so it isn't moved again.

Mr. HUGHES. I understand from Customs, who really did a superb job of walking us through the process yesterday, that the Customs Service now is deputized as U.S. marshals for purposes of being custodians of the property. Is that your understanding?

Mr. ORR. That is my understanding also.

Mr. HUGHES. Why don't you do this for us if you would. Why don't you walk us through the process. We heard about it yesterday but there were a lot of interruptions. For instance a vessel is seized off south Florida in one of the straits and it is carrying marijuana. What is the process from there on?

Mr. ORR. It can be several possibilities, but generally it will transfer from the Coast Guard over to the Customs Service for responsibility for the care and maintenance. That may mean that they have to tow it to another storage location, either here in Fort Lauderdale or further north.

Mr. HUGHES. Let me back you up a bit. If the Coast Guard is a day and a half out to sea, they have to bring the vessel into port?

Mr. ORR. Yes.

Mr. HUGHES. The Coast Guard provides that. They then turn it over to the Customs Service?

Mr. ORR. They then turn it over to the Customs Service, and at that point then the Customs Service moves it from a holding area to a more permanent storage location. Then they begin an investigation of the case. Customs almost immediately tries to notify the owners that Customs has seized their vessel, and is in the process of forfeiting it.

If it is valued over $10,000, it has to go through the court system. Customs has several processes that are somewhat longer than the other agencies. They give the owners, for example, 60 days to respond and request a mitigation or remission.

The other agencies basically have a 30-day period. Customs is currently reconsidering shortening that process.

Customs also has several review layers, which are unlike the other agencies. If an item currently is over $25,000, it is investigated first at the district level. Then it goes to Customs headquarters. If it is between $25,000 and $100,000, it must come back from Customs headquarters for referral to the U.S. attorney. If it is valued over $100,000, it goes through the Department of the Treasury for a decision on remission or mitigation or referral to the U.S. attorney.

At that point it can be referred to the U.S. attorney. The U.S. attorney in the past would have the Marshals Service, through the courts, seize the property. The marshal would often move it to its own storage location. Sometimes in our process of tracking down the inventory of these things we would go to a location and Customs wouldn't even be aware that the item was gone, so we would be asking for a piece of property that the marshal had already taken. It was a confusing process.

Mr. HUGHES. How much time is consumed by the various reviews within Customs?

Mr. ORR. It can be lengthy. The Customs forfeiture period is considerably longer than either the DEA or the INS process. They are, again, currently in the process of reviewing their levels of review. They have got an experiment underway right now in Miami where the decision for remission, mitigation, or referral to the U.S. attorney will be made at the district level for items valued up to $100,000.

Mr. HUGHES. So the U.S. attorney really doesn't come in until that stage?

Mr. ORR. Right.

Mr. HUGHES. Until you reach a point where a determination has been made to return the item to the owner or claimant?

Mr. ORR. If it is returned to the owner, the agency can do that. The issue is, are they going to return it to the owner or are they going to refer it to the U.S. attorney. Then the U.S. attorney goes through another investigative process to determine the facts and the surrounding evidence.

At that point it can be contested, and about 50 percent of them are contested and about 50 percent are not contested. At the time that we did our study and our review, there was virtually no time differential between contested and uncontested, which is roughly 18 months for forfeiture.

I have since talked with the assistant U.S. attorney that handled forfeiture cases in Miami, and he tells me that it is now considerably shorter. The time period in which we were reviewing records was fiscal year 1981, he says they can turn them around much faster in uncontested cases now.

Mr. HUGHES. What is the average time that is taken once the Customs takes custody of the property for them to review it within its agency?

Mr. ORR. I have some figures on that; 551 days for the entire judicial process for Customs seizures, of which 143 days takes place within the Customs Service.

Mr. HUGHES. So you are talking in terms of two-thirds to three-quarters of the year?

Mr. ORR. Yes.

Mr. HUGHES. You are talking 9 months, roughly?

Mr. ORR. That would be it.

Mr. HUGHES. How about the U.S. attorney? Once the U.S. attorney receives the matter, from Customs, how long does it take the

U.S. attorney to process, to make a determination as to whether to file for forfeiture or to return a vessel as to a decision?

Mr. ORR. I don't have those figures with me, Mr. Chairman. I would be glad to provide it.

Mr. HUGHES. Will you supply that for the record?

Mr. ORR. Yes, sir.

[The information follows:]

THE AVERAGE NUMBER OF DAYS BETWEEN SEIZURE AND VARIOUS FORFEITURE PROCEDURES FOR CONVEYANCES SEIZED BY THE CUSTOMS SERVICE [1]

Procedure	Cumulative days after seizure	
	Administrative forfeiture	Judicial forfeiture
Notification of seizure to owner/leinholder	27	26
First public advertisement	176	279
Petition from owner/lienholder	88	89
Administrative forfeiture	207	NA
Agency notification to U.S. attorney	NA	143
U.S. attorney initiates forfeiture proceedings in court	NA	268
U.S. marshal takes possession of the property	NA	255
Judicial forfeiture	NA	410
Sale, use, or transfer of property	343	551

[1] This analysis reflects forfeiture located in the Atlanta, Chicago, Dallas, and Los Angeles GAO regions for conveyances disposed of in fiscal year 1981.

Mr. HUGHES. The gentleman from Michigan.

Mr. SAWYER. I want to compliment the General Accounting Office on this book that has been very informative and helpful to me, dated July 15, 1983, on "Better Care and Disposal of Seized Cars, Boats and Planes Should Save Money and Benefit Law Enforcement." I think it is very comprehensive and very helpful in dealing with forfeiture.

Do you have any opinion that it is necessary to take this length of time in Customs to make a decision that is going to be subsequently checked in other places before anything happens?

Mr. LAUVE. No, sir, we don't think that should take that long. And as Mr. Orr explained, some of the steps are different in Customs than they are from the other law enforcement agencies, and Customs is now reexamining some of their policies and procedures for that.

Mr. SAWYER. You know, I could see if they were making a final determination to forfeit the property there might be some reason for it, but since it is then going to go to the U.S. attorney who is going to apparently kind of re-hoe the same furrows to some degree, it seems to me that there is just a horrendous waste of time in the procedure, and all to the detriment of either the owner or the Government or whoever ends up with the asset, because of deterioration and expenses.

Mr. LAUVE. That is true. In any case in which the length of time is too long, somebody is hurt, either the Federal Government will not get back the amount of proceeds that it could, or the owner of the property will get a piece of property back that is not as good as the time it was seized. When that happens, the Government is also open to lawsuits from the property owner.

Mr. SAWYER. I just noted here—I have got a list, obviously just a partial list, but a large number of automobiles that have been seized. I notice, just looking down the list, that a number of quite valuable automobiles they have been holding, this was dated as of September 1 of this year, but some were seized over 2 years ago. In addition to running monthly storage of about $60 apiece, we all know enough about automobiles to know that just adding the 2 years of age to the automobile has to significantly diminish its value.

Mr. LAUVE. That is correct. The same is true in the case of boats and planes.

Mr. SAWYER. I am more familiar with buying automobiles than I am boats and planes. Thank you. That is all I have.

Mr. HUGHES. The gentleman from Florida, Mr. Smith, is recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

First of all, I am intrigued by your remark that you made about having to pay some costs in terms of breaking leases. Do some of the agencies involved rent space on a leased basis, or do they store individual boats and planes on a lease rather than on a month-to-month basis?

Mr. ORR. It is on a month-to-month basis. For example, if they move it in the middle of the month, Customs would have to pay through the end of the month even though the boat wasn't there.

Mr. SMITH. But you are not talking about long term, because most of everything is done here on a month-to-month basis?

Mr. ORR. Yes.

Mr. SMITH. I am curious. In the State of Florida our forfeiture law provides that all assets seized are treated in exactly the same fashion whether it is a $5,000 car or a $500,000 plane. Do you see any reason for any artificial distinction remaining at the Federal level, except for an administrative forfeiture which you might want to place at some level, $10,000, $15,000, or $20,000?

Beyond that, do you see any need to make these artificial distinctions? Couldn't all property be treated exactly the same, thrown into the one basic pot, as a matter of fact not only from agency to agency but across the board, all agencies, all seized property be put into one seized property agency of some kind, which would then run all that property, do all of the checks for owners, and liens, and then work directly with the U.S. Attorney's Office to get all those petitions filed? Do you see any reason why that couldn't happen?

Mr. LAUVE. Are you talking about a totally separate agency?

Mr. SMITH. Whether you did it from agency to agency, whether DEA or Customs, etcetera, kept their own, had people assigned directly to putting all of the seized property into one basket, aside from administrative low level, but beyond that, everything in one basket. They would then take the serial numbers, the registration and track them back through State agencies.

Our own State and local law enforcement do this, so obviously the Feds can do the same, whether it is a boat registered in Tallahassee or cars registered to the DMV in this area or any other place in the United States, and have a completely separate portion of either an agency or one main administrative center for all agen-

cies in every given area, dealing directly with all those assets at one level? Why do we need all these levels that are referred from one agency to another agency? Is there any reason for that?

Mr. LAUVE. I don't have any objection. I don't think GAO would take the position that it could not be done. In fact, it is very consistent with some of the things that we have been saying all along about cooperation and coordination of the Federal law enforcement agencies.

Now in our report we talk about special funds, which would be a means of financing this kind of an operation. We have not taken a position on how many funds would be needed, whether it would be one, two, four, or five, but certainly in concept the idea sounds like a good one. I would ask Mr. Jacobson, from the legal point of view, if he has any questions or any observations on that, and also Mr. Orr, if he would like to contribute.

Mr. SMITH. In other words, you don't have any problems about having a $50,000 boat and a $500,000 airplane treated exactly the same, in the same timeframe, with the same owners search, and then put into that pot directly to be either sold and the cash utilized or to be forfeited and used by the agency?

Mr. LAUVE. What needs to be done is to speed up the process, regardless of whether one agency does it or all the agencies. But I again refer to Mr. Jacobson for any legal positions.

Mr. JACOBSON. In concept, I don't see any problem with it. There are, of course, a couple of things that would have to be addressed. Right now each individual agency, when it seizes property, can retain the property for their own use. If you had a separate agency responsible for doing all the types of things you are talking about, the seizing agency that is to that piece of property over, of course, may be reluctant to do so, if it isn't assured once it is forfeited——

Mr. SMITH. Let's not get hung up on a separate agency. That is another matter I would like to explore at a different point in time. Let's assume each agency kept its own forfeited items as they are doing now. Aside from administrative low-level forfeitures, beyond that is there any legal or responsibility problem that you foresee in terms of taking all of those items, having that agency responsible for what it seized, but treating all of them exactly the same whether it is a $25,000 car or a $500,000 boat or plane, putting them all in the pot, having that agency have the records searched for lien holders and owners, and then immediately beginning the forfeiture proceedings?

Mr. JACOBSON. I personally can't see a reason why one agency would need to have a lot of different bureaucratic processes for a piece of property solely on the basis of cost.

Mr. SMITH. And is there any reason why that agency then can't without having to be marshals, without having to be deputized, or cross-sworn by other agencies, make a decision to hold their own auctions, and based upon what would hopefully be GAO-instructed guidelines as to whoever in the Federal Government had to hold auctions and what fair market price would be, have those things sold off at auctions like we do around here every day with regularity? Is there any reason why that can't be done?

Mr. JACOBSON. There is certainly not a legal reason why it can't be done. I personally can't think of a policy reason why it cannot be done.

Mr. LAUVE. The special fund mechanism that we talk about in our report, again, as I mentioned, would be a means of supporting, financing that kind of an operation.

Mr. SMITH. I understand we have to start some kind of a revolving fund into which we would place the initial start-up funds and after the first sales start to move them out until they can sustain themselves. I am just asking you whether or not there is any impediment, from what you have testified in the last 15 minutes. It is a horrendous maze of paths that one piece of property has to take in order to wind up on the auction block, at a time when its value has been severely reduced, or in fact diminished to the point where it is almost worthless.

Reading the report and seeing what has gone on not only about the reduction in values of properties after all the time has gone by, but also in the amounts of money that are being received for items that are still saleable, because of ineptitude or a lack of understanding of the value of properties or whatever, so much money is being wasted it is unbelievable.

I am hopeful that we would be able to give the agency, and maybe worrying about a separate agency which would do all of this work for all of the agencies and keep it straight, certainly on the books you could keep it separate as they come in and decide when the forfeiture and title was passed, whether they want to have the cash themselves by sale or get the property back to use in that agency. That concept could be looked at along the way, but there is no basic reason why that concept of one level, one layer, can't work all the way through. Correct? There is no reason at all.

Mr. JACOBSON. Just one thing. Mr. Orr went through and showed that there were a lot of different levels of review that the agencies use. Level that I think an agency might develop with some justification. If Congress decides to establish a monetary distinction between those items that an agency is going to forfeit administratively and those that are going to have to go through the court, the seizing agency may establish a layer of review for deciding whether it is going to send something to the U.S. attorney or not. The threshold for that layer of review may be based on a monetary distinction such as that established by Congress.

I don't think having that one distinction would create the kinds of problems that we have now, but I think you might see agencies do that.

Mr. SMITH. Thank you. Thank you, Mr. Chairman.

Mr. HUGHES. The gentleman from Florida, Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman.

In reviewing the list of automobiles that was supplied to us by the DEA, and that was earlier referred to by Congressman Sawyer, it is interesting to note the expense, and it is on a very miniscale, that these items are costing us to store.

An average automobile, I think, is probably held at least a minimum of 1 year before it is sold. It would run up a storage charge of about $720 right there, plus, of course, the model year change, and that is in excess of $1,000. So you can see that the Federal Govern-

ment right off the bat spends or loses approximately $2,000 just simply by its own redtape.

Of course, the other side of that—and Mr. Jacobson, I would like for you to comment on that, if you would—is the concern for liability. There is nothing unique about an automobile. There is nothing unique, really, about most of these boats that we saw. In fact, they were quite similar. I would describe them all as rust buckets, just about. We seem to be spending a lot of money and a lot of time and effort on our concern for liability.

It would appear to me that if we sold some of these vessels, rather than holding on to them, that everybody would be better off, even the true owner, in a situation where after litigation it was found that there isn't the liability, or that the taking was wrong or that there is a lien holder that has particular rights.

If we could set up a streamlined administrative procedure whereby these personal assets could be sold, and then go in and try the case later. Would you care to comment on that, Mr. Jacobson?

Mr. JACOBSON. Yes, Mr. Shaw. When we were working on our report, as far back as last fall, and trying to develop the type of statutory scheme that we were going to include in our report, we gave a lot of thought to the very types of concerns that you outlined. We did a lot of research to see if there was any guidance out there, and we found, for example, that Puerto Rico has a statute that basically allows for unlimited administrative forfeiture.

A particular case dealing with the Puerto Rico statutes for example, they didn't know who the owner was, and they put notices in the newspapers. After the process basically had run its course, the owner popped up and said, "I didn't know about this." The forfeiture was upheld. As long as the Government takes reasonable steps to identify who the owners are, and allow them an opportunity to come forward, the Government doesn't have to insure that that is going to actually occur.

All it has to do is take reasonable steps, and I don't think that a justification for holding a piece of property 2 years is that the owner hasn't been found yet, or the agency is waiting for somebody to come forward. I think reasonableness is all that is really demanded of the Government.

Mr. SHAW. I think in the situation that you are referring to now, everybody loses when you hold the asset for 2 years. If the owner hasn't shown up, he gets there and his asset is 2 years older. It is deteriorating considerably. In the instance of a boat, it may be frozen up and its engines are useless.

Mr. JACOBSON. That is right, except in the most unusual cases, where the item has some other intrinsic value, he in fact is going to be better off if the property is sold and a high percentage of its value is initially recovered. Then if in fact he should be getting something back, giving him the value is better for him than returning the item which has sat there and, as you say, basically become useless by the time the person eventually does come forward.

Mr. SHAW. We learned of a case yesterday where a vessel, a boat with the name of *Snowflake,* I would guess quite appropriately so, was seized by the Coast Guard and was saved by the Coast Guard from sinking after its crew tried to scuttle it. It was towed in and

within a couple of months the Federal Government had run up a bill on this one vessel of some $70,000. That was just in the first few months that it was held. The vessel itself was almost worthless. We have many of these types of boats that are being towed in at great expense to the U.S. Government.

It would appear that some of these might be better off as being on a reef and I think certainly would serve the people of south Florida better than they are serving them in their present capacity. What problems other than the obvious problems of liability would you see, if we had a law that provided that vessels of this type, and of marginal or no value, provided that they are outside of shipping channels and would not in any way be a hindrance to navigation, that the Coast Guard, the Federal Government would allow them to sink, or maybe encourage them to sink in some instances?

Of course, the obvious point that you have is, well, you can do the check by radio very quickly to see if there are lien holders or property rights that should be protected, but a judgment could be made right out in the streets, and rather than having to tow these vessels back thousands of miles at a cost of tens of thousands of dollars to the taxpayers, when the vessel itself is almost useless, that it would be more cost efficient for the Federal Government to allow these vessels to become reefs where they are, and if there is a liability later go ahead and take care of these liabilities as they come. Of course, I am, talking about taking appropriate care to protect the lives and property that can easily be saved, because obviously you would certainly want to do this. What would be your comment to that?

Mr. JACOBSON. I guess I would suggest you ask the Customs officials whether they want their people making those kinds of decisions. Also, I am not sure that they know, except in some cases, what the value is going to be until they get the boat in, and whether the long-term benefits of doing that are going to outweigh whatever the detriments are. I personally see some practical problems with doing that, although I am sympathetic to the thrust of your question.

Mr. SHAW. I can appreciate your answer, and probably agree with it. However, it is continuously frustrating to me to be talking to people of the Coast Guard and knowing what their duties are, and getting out of the sensitive areas of drug shipment in order to tow some rust-bucket back that is going to be nothing more than a liability to everybody involved. I think I can say this with some authority. I would guess that the question of bringing these vessels back is much more expensive than the money realized from it, and that is almost the rule, not the exception.

Mr. JACOBSON. There are a couple of things I would like to add, though. I don't think there is any question that on an item-by-item basis some of the situations that you allude to are going to occur with a net loss to the Government on that particular item. That is why I think the idea contained in our proposal and the chairman's to create the funds is sound. Things can be managed on an aggegate basis, where the profits that you realize on many items is going to take care of the shortfall that occurs on others, so that the

37-763 O - 85 - 10

net from all the activities won't end up costing the Government what it now does.

Right now if the agency takes in two boats, and they make a big profit on one, and they have the situation you are talking about, where they lose on the other, the profit on the first one goes to the Treasury, and the loss on the second comes out of their pockets. I think that is what creates the real problem.

Mr. SHAW. Let me ask you one last question and then I will yield back the balance of my time. In your study, did you find that the towing cost and the cost to the Coast Guard or other agencies, did you have those figures in your figures, or did you just determine the cost of storage, sale and maintenance after the vessels—I am speaking now specifically of boats that are brought back into safe harbor.

Mr. ORR. It was after the point they came back into harbor.

Mr. SHAW. So probably the real story to be told is one of extraordinary expense even beyond the very vivid and graphic story that you have laid out in your report?

Mr. ORR. Yes.

Mr. SHAW. It is probably worse than you say it is?

Mr. ORR. Yes; because we did not include Coast Guard expenditures, which is what you are referring to.

Mr. SHAW. Which is very, very big.

Thank you, Mr. Chairman.

Mr. HUGHES. Let me just, follow up on, a line of questioning that has occurred to a number of us, which arises out of different agencies having overlapping jurisdiction and taking seized vessels and storing them. How many different agencies besides Customs at the Federal level are now storing vessels and putting through this forfeiture process?

Mr. LAUVE. There are three major ones that we set out in our report, Customs, INS and DEA. We allude to four others, FBI, BATF, Secret Service, and the IRS. Those are the only law enforcement agencies. Exactly how many other agencies, I am not sure we can answer that, but certainly of the seven, the three, DEA, INS, and Customs account for the overwhelming majority, 90 percent plus.

Mr. HUGHES. They are the major processors of seized items. So you have seven different agencies, all with their own procedures, I suspect, all working separately with the U.S. attorney in attempting to process forfeited items?

Mr. LAUVE. That is correct.

Mr. HUGHES. Following up again on that line of questions, right now the Marshals Service goes through their deputization process to, in effect formally take possession of seized items, but they deputize the Customs Service to actually store the goods. I gather from your testimony that it would make sense for us to look at a process where we would have one agency, be it the Marshals Service, with its responsibilities to courts and other agencies, or some other lead agency, in order to take that process and develop a uniform process for seized assets?

Mr. LAUVE. I think that is a sound concept, yes.

Mr. HUGHES. One of the things that impressed me yesterday, and the field visit yesterday I think was extremely worthwhile because

we saw first hand some of the problems that exist, is that the Customs Service and other agencies, are overwhelmed by the forfeiture process.

Who would ever have dreamed a few years ago that we would have 460 vessels in storage? The agencies are scrambling around just trying to find storage space, notwithstanding other problems such as hurricanes that might hit the area. Problems with the elements, worries about the disparate type of care that is being provided, having to provide towing when in fact it doesn't work out, custodial problems with a myriad of properties dealing with lien holders, claimants, and what have you are just the tip of the iceberg in these situations.

We saw, for instance, a seized vessel which was a 1969, 48-foot Norseman. It was called the *Sandlefoot* and has been in storage since 1981. The vessel has an appraised value, as I understood it, of about $300,000. I don't know what kind of equipment was on it, but I am told now that we wouldn't get any more than $5,000 or $10,000 for it.

In another situation, we were informed that an owner has retaken possession of a vessel—since it is in litigation I won't name the vessel—but the United States has had it for a number of years. The vessel was worth probably about $500,000 to $600,000 when it was seized. It is now worth about half of that. The Government lost the case in litigation to the claimant, the owner, and now the Government is being sued for not just the loss because of deterioration of the vessel during the period of storage but also for the loss of the use of the vessel. The Government could end up actually being responsible for more than we would have received probably if we had sold the vessel at the outset.

Now I suggest we develop a system where we have a business manager, basically, with attorneys who are specialists in forfeiture law, that would do several things when a vessel comes in. No. 1, begin an appraisal to determine what the value of it is.

The law enforcement community by that time would have endeavored to find out if in fact they had all the evidence that they needed at that point, to process the case against the owner or anyone else that is criminally responsible for any acts in carrying contraband, whatever it be. At the same time, have that same agency process through, as Larry has indicated, an investigation to determine ownership.

If we determine, as we found yesterday, that the owner is registered to a fictitious city in California, to a name in a graveyard, we know in all probability they are not going to come forward, and that is a fit subject for immediate forfeiture, it would seem to me, whether the value of the vessel is $10,000 or $600,000. That should be something that right away is subject to that type of a process.

I can't imagine why it should take more than 2 or 3 months to process such an item. If it turns out that there is a claimant, and it is a bank who has a lien on the vessel, and it is a legitimate lien, that is a fit subject for some type of negotiation with the bank. If in fact there is some question about what we should be doing with the vessel, at the very least it seems to me we should be making arrangements either to have the bank take possession and post bond or whatever we need to secure the Government's claim and

return it to the lien holder or owner if there is some question of the owner's complicity. If there is some question about it, it is going to be litigated, what is wrong with trying to agree upon, first of all, the owner can put up a bond for the cost. Why should we be storing it for him?

Mr. LAUVE. I think all of that can be worked out. One thing I would like to make sure that is understood about the GAO report is the fact that we have a lot of examples showing bad situations and bad circumstances. It is not intended so much to criticize the law enforcement agencies as to point out the crying need to do something to help those people move these assets, get them turned around, get them sold so that everybody is better off in the long run.

Mr. HUGHES. We could develop a comprehensive, unified process. We can say to an agency, for instance Customs, or whatever becomes the lead agency, it is a matter of bookkeeping entry if an agency makes a seizure and we have a $10 million revolving fund for expenses. We can do a magnificent job of keeping track of what agency has what part of the pie and maintaining the asset.

If there are two agencies involved in the seizure, that can be again a bookkeeping entry that would determine what portion of that $10 million revolving fund that we have set up in the bill belongs to Customs, how much belongs to Coast Guard, what amount goes to DEA, what amount goes to FBI, Internal Revenue Service, what amount goes to whatever agency happens to be entitled to it. If in fact we also may be fortunate enough to include sharing with local law enforcement agencies that often have a very important role to play, we could allocate appropriate costs to them.

Isn't that something that we can do very simply?

Mr. LAUVE. I haven't heard a thing that has been said that couldn't be worked out. It just needs to be thought through, and this whole operation needs to be run in a more businesslike fashion.

Mr. SMITH. Will the gentleman yield?

Mr. HUGHES. I will be happy to.

Mr. SMITH. I thank the gentleman for yielding.

I think one of the problems which the agencies are involved in right now are mostly law enforcement agencies. Their personnel are not in the business beyond the seizure of, storaging, and managing.

Mr. HUGHES. And they don't want to be.

Mr. SMITH. And they don't want to be. And it takes away from the person on the street capable of doing the mission that they are charged with in the first place. It seems to me that one agency, which we already have, even if it is GSA, by expanding some particular role that they may be able to fit in could be chargeable specifically with that, computerized, et cetera, and I think it would be an excellent idea.

Again, it is not the agencies themselves right now so much as the structure of the agency having to deal with a situation which is so new to them based upon the lack of personnel which they have.

Mr. HUGHES. It makes a lot of good sense. That is probably what is wrong with it. The gentleman from Michigan.

Mr. SAWYER. Just one question. On these vessels that are obviously junkers and aren't going to even bail out the cost to keep while the thing is processed, I wonder when the Coast Guard took them in if they couldn't get two qualified appraisers to put a value on it, make that judgment, and if that is the judgment, take them out and sink them without even worrying about who owned them. In any case, you wouldn't have any damages, even if they proved that you shouldn't have sunk it. If there was some lien holder, the thing would be a zero value. Couldn't they just wash them that way?

Mr. LAUVE. I suppose they could. I think there are ramifications, and that is what we were talking about earlier and that is what Mr. Jacobson had said earlier. You might ask the Customs people, Coast Guard and so forth, what they feel.

Mr. ORR. In the case of items that are ready to sink, for example, they can get judgments now for interlocutory sales and sell it fairly immediately. The problem is that generally both parties have to agree to that, the owner and the Government and you don't always have the owner agreeing to it.

Mr. SHAW. Would you yield to me?

Mr. HUGHES. Certainly.

Mr. SHAW. That brings up a point, though, the problem that we have in south Florida. Any time you are talking about a court order, you are talking about months.

Mr. ORR. Yes.

Mr. SHAW. As long as these Federal courts are involved in south Florida, and as long as they are bottled up the way they are, we are going to continue to see the nightmare, no matter what we do in Washington with regard to changing the law. As long as the courts are involved in south Florida, we are going to have delay after delay after delay.

I would like to make another observation with regard to the existing law which no doubt has a direct effect upon the changes that we have put in the law. It would seem to make sense at first blush that perhaps you would want to treat property different of an extraordinary value than that of lesser value, but when you really think about it, when you talk about boats, when you talk about automobiles, when you talk about airplanes, the expense and the loss per month is far greater as the value of the asset goes up, so it becomes more important to expedite the sale of the more important asset than it does the less expensive one, simply because everybody loses by time.

And with the passage of time the taxpayers lose and the lien holder loses, and if the property is ultimately adjudged to go back to the original owner he loses because he then has to come back in court and try to recoup his damages from the Federal Government. So to me it makes absolutely no sense at all to have a law that encourages and actually requires, through circumstance, the Federal Government to hold on to this property for year after year after year.

Thank you, Mr. Chairman.

Mr. HUGHES. I wonder if you will submit to the committee—we will keep the record open for it—some information on the length of time it takes the process. You have indicated to us what it is for

Customs. I would like to know what it is with other agencies, as well as through the U.S. Attorney's Office. We are going to hear from the U.S. attorney, but I would like to know what your figures show also.

Mr. LAUVE. We will be glad to do that, Mr. Chairman.

[The information follows:]

THE AVERAGE NUMBER OF DAYS BETWEEN SEIZURE AND VARIOUS FORFEITURE PROCEDURES FOR CONVEYANCES SEIZED BY INS AND DEA [1]

Procedure	Cumulative days after seizure			
	Administrative forfeiture		Judicial forfeiture	
	INS	DEA	INS	DEA
Notification of seizure to owner/lienholder	5	24	20	22
First public advertisement	15	39	6	115
Petition from owner/lienholder	29	61	14	50
Administrative forfeiture	72	124	NA	NA
Agency notification to U.S. attorney	NA	NA	NA	32
U.S. attorney initiates forfeiture	NA	NA	52	137
U.S. marshal takes possession of the peroperty	NA	NA	100	163
Judicial forfeiture	NA	NA	270	396
Sale, use, or transfer of property	234	242	394	461

[1] This analysis reflects forfeiture cases located in the Atlanta, Chicago, Dallas, and Los Angeles GAO regions for conveyances disposed of in fiscal year 1981.

Mr. HUGHES. Thank you very much. You have been of immense help to me and we appreciate your testimony once again, Mr. Lauve and gentlemen. Thank you.

Mr. LAUVE. Thank you.

Mr. HUGHES. Our first panel this morning is Capt. Coley Campbell, Citrus County Sheriff's Department; Nick Strippoli, Palm Beach County Sheriff's Office; Jeffery Hochman, Fort Lauderdale Police Department.

Gentlemen, we welcome you to the subcommittee this morning.

We have your statement which, without objection, will be made a part of the record. We hope you can summarize for us.

TESTIMONY OF CAPT. COLEY CAMPBELL, CITRUS COUNTY SHERIFF'S DEPARTMENT; NICK STRIPPOLI, PALM BEACH COUNTY SHERIFF'S OFFICE; AND JEFFERY HOCHMAN, FORT LAUDERDALE POLICE DEPARTMENT

Mr. HUGHES. Captain Campbell.

Mr. CAMPBELL. Thank you, Mr. Chairman. On behalf of Sheriff Dean, we appreciate the opportunity to be here. I think the Citrus County Sheriff's Department is a little bit different from what you have been discussing earlier in that we are concerned with the relationship between local law enforcement agencies and Federal law enforcement agencies.

As you said, you have read our statement. Just briefly to summarize, we initiated an investigation in our county and we realized the extensiveness of it. We contacted the Customs Service.

Mr. HUGHES. Is that Operation Black Star?

Mr. CAMPBELL. Yes, sir, that was it. We realized that it went outside our jurisdiction and it went over quite a bit of Florida, met primarily in south Florida, so we did contact Customs, the drug

intervention task force, some of the other local agencies, and some of the county sheriff's departments got involved.

Basically what happened as a result of the investigation that we started in Citrus County, the Customs Service was able to make many arrests. They seized several pieces of equipment.

What our interest is, we believe when a local law enforcement agency initiates an investigation, and it is of a large magnitude and we can't handle it ourselves, we don't have the resources to follow it through; we don't have the jurisdiction to follow it through, but it begins with us. There are several agencies involved. We believe there should be some procedure within the Federal law or administrative procedures, whatever the situation may be, to where the proceeds are divided up between the agencies.

The Florida law has such a process as that now. We feel like it would be a great asset to the local law enforcement agencies because many times when an investigation begins like this it begins at the local level.

We get the initial information. We realize the extensiveness of it and we pass it along. We still cooperate throughout the total investigation of the entire operation. We continue to supply them with information. They would come to our county, plan the operation and disperse from there, and, through our intelligence and resources and all, we are able to continue supplying them with basic information.

That is basically our position at this point in time. It is a big concern of ours and we appreciate your interest.

[The letter of Sheriff Charles S. Dean follows:]

EMERGENCY PHONE
(904) 726-1121

Sheriff

ADMINISTRATION PHONE
(904) 726-4488

SHERIFF'S OFFICE
CITRUS COUNTY STATE OF FLORIDA
CHARLES S. DEAN, Sheriff
108 E. MAIN ST. – INVERNESS, FLORIDA 32650

October 7, 1983

Honorable Bill Hughes, Chairman
House Select Committee on Crime
207 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Hughes:

I have been advised that your committee will be meeting in the Broward County Commission room of the Broward County Courthouse, Ft. Lauderdale, Florida, on Friday, October 14, 1983.

By letter of introduction, I would like to introduce my personal representative Captain Coley Campbell, Administrative Assistant to the Sheriff, Citrus County, Florida.

The reason for this letter is that I would like to place into your committe's records an account of an operation named "Operation Blackstar" by the Citrus County Sheriff's Department that involved not only my Sheriff's Department but Florida Department of Law Enforcement, Sumter County Sheriff's Department, and representatives of the Federal Drug Intervention Task Force. We began our operation in April, 1982 and a combination of the activities resulting in arrests around October 1982. To make this report brief and to the point, my department was conducting intelligence surveillance on some persons that lived in Citrus County. As a result of that intelligence we began to build a file on those person activities that led to other counties in the state of Florida. My investigators went to south Florida specifically the Everglades City area, the Ft. Myers area and Collier County.

Shortly after we began our operation I was introduced to two representatives, one which was Mr. Nick Richards, U.S. Customs Agent, Tampa, Florida. I do not recall the other gentlemans name. He was a representative of the new Task Force group to be working on the upper west coast of Florida, including Citrus County. We had a discussion

about the Task Force intentions to assist with interdiction in drug importation cases. I specifically had conversation with those two men about a local law enforcement agency such as Citrus County Sheriff's Department getting involved and assisting and providing information, what would be the results of the arrests and forfeiture of equipment, monies etc. in such a case. They said they would have to get a direct determination from their supervisor and they would get back in touch with me. They returned shortly, within about a week. We had further discussion about my participating with the Task Force and trying to help them. They assured me the following: 1. Cases begun by the Task Force would be federal forfeitures. 2. Cases begun by local agencies would be local forfeitures. 3. Cases begun by locals and resulting some where else, their cooperation in splitting forfeitures. That being satisfactory with me in my determination I began to provide them with the information about our "Operation Blackstar".

For the next many months those representatives of the Task Force along with two of my deputies, Mike Imperial and Les Cross, began to work and do surveillance on these individuals.

In order to keep this report in brevity I would like to refer the committee members to check with my Congressman Buddy McKay as I have filed a copy of my "Operation Blackstar" report with him.

After many months of investigative work, an aircraft which was used as a spotter aircraft as well as transport aircraft, (N1052V) purchased by Mr. Michael Wells one of the suspects, was placed at the Crystal River Airport where we observed it continually. Later, under court order we were able to put a transponder aboard that aircraft for tracking purposes.

After the end of this investigation a number of suspects were arrested in a raid by the Task Force and/or Customs below Everglades City, Florida where these suspects were arrested. One aircraft a twin engine aircraft was forced down in Homestead Air Force Base and N1052V was abandonded in Ft. Myers. We had provided information to Customs that the Aircraft was back up because we had the transponder still on the aircraft. Subsequent to all of these events, I corresponded with the supervisor in the Miami office and advising him of my intention that I would like to file appropriate and proper forfeiture proceedings for N1052V. Later, I received a reply from a supervisor by letter to Florida Sheriff's

Association attorney which I had gone through to assist me in this matter, that the interdiction off the coast of Florida was a "cold hit" and had nothing to do with Sheriff Dean or Citrus County Sheriff's Department.

Please consider the following. How did I get a court order from my judge to put their electronic transponder on N1052V? Since the Federal Aviation Authority notified us everytime the aircraft was up and flying how could it become a cold hit interdiction? Where did the basic investigation begin and how can I account for hundreds of man hours and dollars spent on this operation with their agency without their knowledge of my department being involved?

As I have stated to members of my Congressional Delegation and to my U.S. Senator my dissatisfaction with this whole procedure, I feel it was very unfair and that those materials outside of making a public display for television to show some great big swoop down by Federal Forces are sitting down their waisting when a small county like ours needs an aircraft. We have numerous miles of coast lines as well as the lakes and woodlands and rivers that we cannot properly survey without an aircraft. This would greatly enhance our capacity and ability to do a better job. But yet the same aircraft is sitting aboard an airbase in moth balls at this time. This really makes it difficult for me to take the word of people I should trust.

Sincerely,

Charles S. Dean, Sheriff
Citrus County

CSD:sb

Mr. HUGHES. So that we can expedite, we will leave the questioning until all the witnesses on the panel have testified.

Mr. Strippoli, welcome.

Mr. STRIPPOLI. Thank you for inviting me on behalf of Sheriff Wille.

You gentlemen have read my proposal. I think, to summarize it, that the proposal that I have submitted to you for your review was made to permit the law enforcement agencies to obtain aircraft that were forfeited to the Federal Government.

Under current law, forfeitures to the Government must be sold or retained for use by Federal agencies. Right now there are no current provisions in the Federal Property Administrative Services Act to permit the General Services Administration——

Mr. HUGHES. Mr. Strippoli, why don't you bring that mike forward a little bit because I think some of the folks in the back are having a hard time hearing you.

Mr. STRIPPOLI. I apologize for that. Shall I start over again, do you think?

Mr. HUGHES. If you can, pick up where you left off. That would be fine.

Mr. STRIPPOLI. Right now there are no current provisions in the Federal Property Administrative Services Act to permit the General Services Administration to donate surplus and useful forfeited property to local agencies, and there is a need in the law enforcement community for aircraft to combat the drug problem in the southeast Florida area.

As you are all aware, the acquisition cost of aircraft is very high and the tax dollars used for law enforcement represents an area that we all could benefit from.

The obvious savings we have all heard before, storage fees, disposal fees and the loss in vandalism and repair costs in order to sell some things.

The proposal that I have submitted and you have reviewed would give us at the local enforcement level the opportunity to secure an appraisal on a craft when it is forfeited, utilize that craft, dispose of it, and just take the costs for making it airworthy again and put it in use for a year or so and then return to the Federal Government the excess dollars.

The Federal Government level saves all the way through. I know you gentlemen have seen some of the boats down there and I have taken some pictures of the craft that are stored at Homestead Air Force Base. It is amazing to see, and I will be glad to pass these around. I don't know if you can see them, but there is one aircraft right there, while in storage they stole the propeller off of it. That happens to be a Cessna 210, a possibly $40,000 aircraft. I don't think any one of us would attempt to use that aircraft.

I have other pictures right here. Here they have taken the spinner off. This particular craft here is a twin-engine Navajo. That is probably a $60,000 aircraft. That is just rotting away literally. I have got some close-ups here. These pictures emphasize all of that.

One of the pictures here, this is a twin-engine plane, they have taken the entire tail section. They stole it while it was in storage. The battery for that aircraft is probably worth $1,000, in that area.

That is gone. They don't care when they take the battery out what other damage they do in order to get that battery out.

Mr. HUGHES. What is the status of those forfeitures? Have they been forfeited?

Mr. STRIPPOLI. Yes; some of those aircraft at present have been forfeited. An interesting point is that some of them have been forfeited as much as 24 months ago and are still stored and standing exposed down there.

I would like to have that in my agency put to use to combat crime in the area. I would be glad to pass these out if you gentlemen would like to see these.

Mr. HUGHES. Thank you. Yes, we would.

[The Palm Beach County Sheriff's Office information follows:]

SHERIFF
PALM BEACH COUNTY

RICHARD P. WILLE
PALM BEACH COUNTY SHERIFF'S OFFICE
3228 GUN CLUB ROAD
WEST PALM BEACH, FL. 33406
P. O. BOX 670
WEST PALM BEACH, FL. 33402
(305) 471-2000

The Proposal that has been submitted for your review was made to permit Law Enforcement agencies to obtain aircraft that were forfeited to the Federal Government.

I understand that under current law, forfeitures to the Government must be sold or retained for use by Federal Agencies. There are no current provisions in the "Federal Property and Administrative Services Act," to permit the General Services Administration to donate surplus and/or forfeited property to local agencies.

There is a need in the law enforcement community for aircraft to combat the drug problem in the South East Florida area.

As you are all aware, the acquisition cost of aircraft is very high. The tax dollars used for law enforcement, represents an area that we all could benefit from, if we are permitted the use of forfeited aircraft. What could be a better use of a confiscated aircraft than to use it to further reduce crime.

The obvious savings of tax dollars is readily apparent in several areas. To list a few:

1. Storage fees
2. Disposal fees
3. Vandalism and repair costs

If you would consider my proposal as a pilot or test program, and permit us to maintain the records and usage of some confiscated aircraft, I feel confident that we at the Palm Beach County Sheriff's Office could prove that it is a viable program.

We have the pilots for both fixed and rotary wing aircraft. We have a full-time mechanic on duty and have space for the aircraft. We are also building a new hangar which would further our program. Our pilots are on duty 24 hours a day and are doing great work in aerial law enforcement.

I have been corresponding with Congressman Jack Brooks, Congressman Daniel Mica and Congressman Tom Lewis. These Legislators have agreed that the concept of my proposal is sound.

What I need from you gentlemen is your assistance in putting through the proposal in a timely fashion.

Thank you for permitting me to speak today. If there are any questions, I will try to answer them.

OFFICES

CIVIL	NORTH	HEADQUARTERS	SOUTH	WEST
300 No. Dixie	3188 P.G.A. Blvd.	3228 Gun Club Rd.	345 So. Congress	2996 SR 15
837-2760	626-6900	471-2000	278-2644	996-4141
837-2761	471-2000		278-7711	471-2000

Proposal for Federal Government to Permit
Counties to Use Confiscated Aircraft

Once an aircraft has been awarded to a federal agency by court action, as a result of being used in an illegal transaction, this aircraft should be made available for use by the County Sheriff or Police Units.

Storage sites for confiscated aircraft should be made available for initial inspection by county units. If an aircraft appears to be of a type that can be used by a local agency, the aircraft should then be made available for closer mechanical inspection, by certified aircraft mechanics.

If final inspection indicates that aircraft has the potential to be utilized, we would do the following:

A. Secure appraisal on aircraft in present condition
B. Give copy to Federal Agency with agreement for use of aircraft for at least 1 year, (could be extended to 2 years, depending on age, condition, cost of repairs, etc.)
C. Using agency to make needed repairs to bring aircraft up to current FAA air directives.
D. Cost of these repairs to be documented and filed with using agency, and paid for on a timely basis.
E. Normal and routine maintenance costs and repairs to aircraft during lease time would be paid for by using agency.
F. At end of lease time, appraisal of aircraft would be obtained in current condition.
G. Using agency, with concurrence of Federal Agency, would arrange for sale by public auction.
H. Proceeeds of sale, minus costs, to be forwarded to Federal Agency. Costs to be:
    1. Appraisal charges
    2. Parts and labor to bring aircraft to FAA standards
    3. Operational charges, but not including fuel, pilot salary and insurance
    4. Auctioneer fee and costs for advertising

By using this method, net proceeds to the Federal Agency should be far greater than the GAO Report that states aircraft de-value $43,500.00, while sitting unused in storage.

The overall benefit to local Police Agencies, Federal Agencies, and reduced costs to taxpayers is very obvious.

Mr. HUGHES. Mr. Hochman, welcome.

I want to tell you we really appreciate the Fort Lauderdale Police Department's courtesy yesterday in providing us with the tour. It was invaluable and we thank you.

Mr. HOCHMAN. It was our pleasure, Congressman.

I would like to thank all of you for having a representative of the city of Fort Lauderdale here this morning. I think it is important for all of us to realize, and I guess that is why this subcommittee has been formed, the underlying problem we have not only in south Florida and the State of Florida, but countrywide with the drug problem that is occurring, and I think is really getting at the fiber of our society.

I have lived here my whole life and I have seen south Florida change to such a degree it is frightening. I brought along with me a couple of newspaper reports.

The Miami Herald, August 29, 1983, and I am just going to read the first paragraph:

"Despite massive and highly publicized drug enforcement efforts, south Florida today is beseiged by the worst cocaine storm in its history according to local and Federal drug officials."

Miami Herald, October 4, 1983:

"Miami lawyer pleads guilty to laundering drug profits."

Fort Lauderdale News, June 6:

"Police confiscate $5 million worth of marijuana."

June 11, Miami Herald:

"One thousand pounds of cocaine seized at airport."

August 20, 1983, Miami Herald:

"Six thousand pounds seized."

The list is endless. I am glad to see that the Federal Government is at this time realizing that the only thing that people that deal in this kind of business understand is two things in life: They understand minimum mandatory jail sentences, which in Florida I think you all know, Florida laws are pretty tough these days dealing with drug traffickers, as far as going to jail, and the other thing they understand—people who commit crimes for economic benefit—is taking away the economic incentive for them to commit the crime in the first place, and I think that is what part of this subcommittee is all about.

The city of Fort Lauderdale, when Florida's Forfeiture Act was amended in July of 1980, had the foresight to realize what was on the horizon, and because the city of Fort Lauderdale realized what was on the horizon, it proceeded to set up a system in which forfeited items or items can be seized and forfeited, in light of the fact of the problem that I have just mentioned we are having, and I am sure we are all aware of, and through trial and error we have come up with a system which I think has been very successful.

The number of vehicles, boats, aircraft, money, you name it, that we have seized, is mind-boggling, and it is increasing every day, and I don't know what the answer is as far as maybe the drug problem is in this country, but I think the city of Fort Lauderdale might be able to provide, even though, of course, it is a smaller based operation than the U.S. Government, some answers as to how maybe the Federal Government would be able to improve its system.

I think first and foremost listening to the first panel that was up here from the General Accounting Office, and from the questions that were posed by the committee members, that forfeiture needs to be treated like a business, with the ever-minding thoughts that due process must be provided for all persons' property that is seized.

If you don't treat it like a business, you are going to run into a lot of problems.

When we seize a car or a boat or an airplane, we do some of the following things.

First of all, we have an investigative staff and I am sure you have read my statement; we have an investigative staff that goes out and makes a preliminary viewing of the item seized. We take photographs of it. We have under independent contract a surveyor for expensive airplanes or for any airplane and for boats, and for unusual cars that are very expensive; the foreign-type cars we have.

Someone comes out from, let's say, a Porsche dealership, and looks at the car, and we get a preliminary statement as to the worth and the condition, because we want to protect ourselves.

In case we lose a forfeiture case, we might get sued for loss of use, but we are not going to get sued for damages.

I know you mentioned that before, Mr. Chairman. I believe you did, that the U.S. Government sometimes will have a forfeiture that ends up having the property turned back and gets sued for more than they would have gotten in the first place.

I think we are in the business of going forth and prosecuting, not falling back and defending lawsuits, and in order to do it properly, as I said, you have to treat it as a business.

You get surveys; you have proper insurance on the property seized; and basically you take care of it.

One, it eliminates the loss of damages if you lose, and, two, and maybe more importantly, when you do this and you sell the property, it is worth more to the seizing agency.

We have, for the expensive cars we seize, for example, a warehouse where we keep all the expensive vehicles, and we maintain them and take care of them from the elements.

We are under contract with a marina in which we have all of our boats that we seize maintained and cleaned and whatever is necessary to maintain their value.

As you saw at our airport yesterday, when we seize airplanes, we make arrangements to have another independent contractor take care of them and I think that is what is needed.

I imagine that there are some more problems doing it on a nationwide basis possibly than on a local level, but I think if the correct attitude is there, and you want to do it, I don't see any problem in doing it on a nationwide basis.

As far as a proposal to make it work, it would seem that possibly—and I know task force is a popular term used these days in law enforcement, but maybe some sort of a task force that had a sufficient number of lawyers, investigators, secretarial staff on a nationwide basis setup, the incoming funds that are seized in reverse Sting operations in which law enforcement is allegedly selling drugs and getting money, and taking care of all the property on

a nationwide basis so some agency could control what is going on, and there wouldn't be any in-house squabbling as to what agency gets what, that type of thing.

Also, I might add that there is a lot of money seized, I know, at the local level, and I am sure there is a lot seized on the national level. For example, in the city of Fort Lauderdale, we have established, in cooperation with the local State attorney's office here, an interest-bearing trust account for the money seized. We put that money in and right now I think we are getting upwards of $1,000 a day in interest just on the money seized that is sitting there while it is pending in litigation.

If we have to return it one day and we lose the case, we return it, but at least it is gaining interest and we won't get sued for interest.

Then if they are going to sue us for interest, maybe we will fight them on it in any case because they didn't have the money; they were giving the money up to begin with. We try to look at every angle in this forfeiture area. I think we have been successful and I think if the Federal Government has the correct attitude you will be successful also.

Just this past month, in September of 1983, there was a case that came out; it is a short blush; I don't have all the facts, but before I mention this case I want you to know I have some friends that are defense counsel around here in south Florida, and they say when they have a case against the Federal Government in forfeiture, they know the chances of winning usually aren't too good, so the No. 1 defense is to sit back and wait, and they wait and they wait, and sometimes they wait a year and then they file a motion, for a motion for return of property.

From what they tell me, and I don't know all the Federal procedures, a lot of times they get it back because the courts find that the due process violation is a substantial one, and that people that have given up or had their money taken have not had the opportunity to go to court.

Here is a case, and then I will end my statement and go on to questions, the delay of 13 months from the time the currency was seized in connection with a lawful drug-related arrest until the complaint for forfeiture was filed precluded forfeiture of the currency. The Government waited 6 months with no explanation of any kind and no excuse before it notified the claimant that it was undertaking to establish forfeiture. The deprivation of a substantial sum of money was a significant burden. The money was returned. It was $23,000, not a large sum, but I think the principle behind the case is there.

Now, some courts ruled, I believe, that the Federal Government has a longer amount of time to do it, but in a case like this, if it is a good lawful arrest and it is related to drugs, usually you are going to win.

Mr. HUGHES. What were the circumstances in that case?

Mr. HOCHMAN. This is put out by Federal Case Law News. I keep this up every week. *United States* v. *$23,407.69 in U.S. currency.* It was out of the Circuit Court of Appeals, the Fifth Circuit, and the case number was 81-1231, September 19, 1983, Jerre S. Williams was the judge.

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I think this type of a thing could be prevented, if it is addressed properly.

Thank you very much.

[The memorandum of Mr. Hochman follows:]

TO: The Subcommittee on Crime of the House Committee on the Judiciary

FROM: Jeffrey J. Hochman, Special Counsel, Police Legal Unit

RE: Forfeiture Procedures in the City of Fort Lauderdale

DATE: October 10, 1983

The City of Fort Lauderdale began its forfeiture program in October, 1980, after the state statutory forfeiture laws were drastically amended in July, 1980. (Exhibit A). The first monthly award under the "new" Florida Contraband Forfeiture Act, Section 932.701-932.704 Florida Statutes (1981) was in October, 1980, for $183.00. Currently, the City of Fort Lauderdale is averaging on a monthly basis, $140,229.86 worth of cash and property being awarded to the Law Enforcement Trust Fund. The current figures up to and including September, 1983 are as follows:

TOTAL AWARDS TO DATE

No. of Items		Value to City
Vehicles	129	$ 564,500.00
Vessels	28	$ 1,878,000.00
Airplanes	2	$ 65,000.00
Cash	322	$ 2,519,225.00
Other	31	$ 21,550.00
TOTAL	512	$ 5,048,275.00

* These figures do not include interest earned on monies deposited.

The obvious question, why has the City of Fort Lauderdale been so successful? The success of the City's program depends upon three fundamental factors: attitude, investigation, and the forfeiture law itself.

ATTITUDE

The attitude of a seizing agency that is invoking a statutory forfeiture provision is of utmost importance. The seizing agency must be committed. "Commitment" means having the proper resources which include,

a) A competent legal staff (with the necessary secretarial support) that works solely for the government agency.

b) A competent investigative staff.

c) A training program for the officers in the field with periodic review update seminars as to the latest case law and statutory changes.

d) A structural program for property control. This includes a strict policy concerning the maintenance, warehousing and insurance of all seized property.

The attitude of the seizing agency when dealing with forfeiture must be one of total dedication and should not be readily concerned with the parallel criminal prosecution. The seizing agency must treat forfeiture litigation as a business, i.e., be cost effective.

Furthermore, in order to continue the excellence in the field, it is important that the seizing agency's attitude look toward "re-investing" the proceeds into the various departments that bring in the property.

INVESTIGATION

The investigative part of any forfeiture case is critical. It is known that organized crime figures, drug traffickers and other high-level criminals try to hide their assets by putting the title of the property into corporate-type entities, other persons or launder the liquid assets they accumulate. Without a doubt, in order to trace the true owners, the seizing agency must be willing to invest the time, effort, manpower and money necessary for such background investigations. A competent legal staff is worth nothing without the necessary investigative resources to complete a case file for trial. It must be remembered that a person who commits a crime for economic benefit, will go to great lengths in order to protect that benefit. It should be noted that the City's budget for the forfeiture program which includes investigation, is approximately $250,000.00 per year.

THE LAW

The State of Florida, because of its terrible crime problem, has taken a severe position when dealing with the assets of criminals. The amended forfeiture act, supra, includes the seizure of property for the commission of "any felony". The City of Fort Lauderdale has been successful in the seizure of property for purposes of forfeiture in the following types of crimes:

1. Narcotics - buying, selling, possession
2. Burglary - business and residence
3. Forgery
4. Robbery and armed robbery
5. Hit and run accidents
6. Carrying concealed firearms in vehicles
7. Pornography
8. Aggravated assault
9. Aggravated battery
10. Extortion
11. Grand theft
12. Dealing in stolen property
13. Solicitation to commit murder in the first degree
14. Living off earnings of prostitute
15. Untaxed cigarettes
16. Gambling
17. Lewd act on child under 14 years of age
18. Bolita
19. Insurance scams

CONCLUSIONS

To summarize, in order to have a successful forfeiture program, the seizing agency must have the correct perception of what it takes to be successful before the first piece of property is seized. It must have the correct attitude, provide adequately for investigations and have at their disposal, the statutory tools necessary for implementing the first two ingredients. Each factor is equally important to be successful in forfeiture. The forfeiture laws can be one of the most effective law enforcement tools, if taken seriously.

Jeffrey T. Hochman
Special Counsel, Police Legal Unit
City of Fort Lauderdale

to a court of this county providing criminal trial by jury.

I agree to appear in the court to which my case is transferred on ___ the ____ day of ____ 19____.

(Signature of petitioner)

(Attorney for petitioner)

ORDER OF TRANSFER

This cause is hereby transferred to the ____ court at ____, Florida.

DONE AND ORDERED this ____ day of ____ 19____

(Judge)

AGREEMENT OF BAIL BONDSMAN TO TRANSFER BOND TO COURT PROVIDING TRIAL BY JURY

I, ____, a duly licensed bail bondsman agree to the transfer of that certain bond ____ to ____ Court at ____, Florida.

(Signature of bail bondsman)

History.—s. 1, ch. 70-372.

932.701 Short title; definition of "contraband article".—

(1) Sections 932.701-932.704 shall be known and may be cited as the "Florida Contraband Forfeiture Act."

(2) As used in ss. 932.701-932.704, "contraband article" means:

(a) Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange which has been, is being, or is intended to be used in violation of any provision of chapter 893.

(b) Any gambling paraphernalia, lottery tickets, money, and currency used or intended to be used in the violation of the gambling laws of the state.

(c) Any equipment, liquid or solid, which is being used or intended to be used in violation of the beverage or tobacco laws of the state.

(d) Any motor fuel upon which the motor fuel tax has not been paid as required by law.

(e) Any personal property, including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, or currency, which has been or is actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony.

History.—ss. 1, 2, ch. 74-385; s. 1, ch. 80-68.
Note.—Former s. 943.41.

932.702 Unlawful to transport, conceal, or possess contraband articles; use of vessel, motor vehicle, or aircraft.—It is unlawful:

(1) To transport, carry, or convey any contraband article in, upon, or by means of any vessel, motor vehicle, or aircraft.

(2) To conceal or possess any contraband article in or upon any vessel, motor vehicle, or aircraft.

(3) To use any vessel, motor vehicle, or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article.

(4) To conceal or possess any contraband article.

History.—s. 2, ch. 74-385; s. 2, ch. 80-68.
Note.—Former s. 943.42.

932.703 Forfeiture of vessel, motor vehicle, aircraft, other personal property, or contraband article; exceptions.—

(1) Any vessel, motor vehicle, aircraft, and other personal property which has been or is being used in violation of any provision of s. 932.702 or in, upon, or by means of which, any violation of said section has taken or is taking place, as well as any contraband article involved in the violation, shall be seized. All rights and interest in and title to contraband articles or contraband property used in violation of s. 932.702 shall immediately vest in the state upon seizure by a law enforcement agency, subject only to perfection of title, rights, and interests in accordance with this act. Neither replevin nor any other action to recover any interest in such property shall be maintained in any court, except as provided in this act. In any incident in which possession of any contraband article defined in s. 932.701(2)(a)-(d) constitutes a felony, the vessel, motor vehicle, aircraft, or personal property in or on which such contraband article is located at the time of seizure shall be contraband subject to forfeiture. It shall be presumed in the manner provided in s. 90.302(2) that the vessel, motor vehicle, aircraft, or personal property, in or on which such contraband article is located at the time of seizure, is being used or was intended to be used in a manner to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of a contraband article defined in s. 932.701(2)(a)-(d).

(2) No property shall be forfeited under the provisions of ss. 932.701-932.704 if the owner of such property establishes that he neither knew nor should have known after a reasonable inquiry that such property was being employed or was likely to be employed in criminal activity.

(3) No bona fide lienholder's interest shall be forfeited under the provisions of ss. 932.701-932.704 if such lienholder establishes that he neither knew nor should have known after a reasonable inquiry that such property was being used or was likely to be used for illegal activity, that such use was without his consent, express or implied, and that the lien had been perfected in the manner prescribed by law prior to such seizure. If it appears to the satisfaction of the court that a lienholder's interest satisfies the above requirements for exemption, such lienholder's interest shall be preserved by the court by ordering the lienholder's interest to be paid from such proceeds of the sale as provided in s. 932.704(3)(a).

History.—s. 3, ch. 74-385; s. 3, ch. 80-68; s. 496, ch. 81-259.
Note.—Former s. 943.43.

932.704 Forfeiture proceedings.—

(1) The state attorney within whose jurisdiction the contraband article, vessel, motor vehicle, aircraft, or other personal property has been seized because of its use or attempted use in violation of any provisions of law dealing with contraband, or such attorney as may be employed by the seizing agency, shall promptly proceed against the contraband article, vessel, motor vehicle, aircraft, or other personal property by rule to show cause in the circuit court within the jurisdiction in which the seizure or the offense occurred and may have such contraband article, vessel, motor vehicle, aircraft, or other personal property forfeited to the use of, or to be sold by, the law enforcement agency making the seizure, upon producing due proof that the contraband article, vessel, motor vehicle, aircraft, or other personal property was being used in violation of the provisions of such law. The final order of forfeiture by the court shall perfect the state's right and interest in and title to such property and shall relate back to the date of seizure.

(2) If the property is of a type for which title or registration is required by law, or if the owner of the property is known in fact to the seizing agency at the time of seizure, or if the seized property is subject to a perfected security interest in accordance with the Uniform Commercial Code, chapter 679, the state attorney, or such attorney as may be employed by the seizing agency, shall give notice of the forfeiture proceedings by registered mail, return receipt requested, to each person having such security interest in the property and shall publish, in accordance with chapter 50, notice of the forfeiture proceeding once each week for 2 consecutive weeks in a newspaper of general circulation, as defined in s. 165.031, in the county where the seizure occurred. The notice shall be mailed and first published at least 4 weeks prior to filing the rule to show cause and shall describe the property; state the county, place, and date of seizure; state the name of the law enforcement agency holding the seized property; and state the name of the court in which the proceeding will be filed and the anticipated date for filing the rule to show cause. However, the seizing agency shall be obligated only to make diligent search and inquiry as to the owner of the subject property, and if, after such diligent search and inquiry, the seizing agency is unable to ascertain such owner, the above actual notice requirements by mail with respect to perfected security interests shall not be applicable.

(3)(a) Whenever the head of the law enforcement agency effecting the forfeiture deems it necessary or expedient to sell the property forfeited rather than to retain it for the use of the law enforcement agency, or if the property is subject to a lien which has been preserved by the court, he shall cause a notice of the sale to be made by publication as provided by law and thereafter shall dispose of the property at public auction to the highest bidder for cash without appraisal. In lieu of the sale of the property, the head of the law enforcement agency, whenever he deems it necessary or expedient, may salvage the property or transfer the property to any public or nonprofit organization, provided such property is not subject to a lien preserved by the court as provided in s. 932.703(3). The proceeds of sale shall be applied: first, to payment of the balance due on any lien preserved by the court in the forfeiture proceedings; second, to payment of the cost incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property; third, to payment of the costs incurred by the state attorney; and fourth, to payment of costs incurred by the court. The remaining proceeds shall be deposited in a special law enforcement trust fund established by the board of county commissioners or the governing body of the municipality and shall be used for law enforcement purposes only. These funds may be expended only upon appropriation to the sheriff's office or police department, by the board of county commissioners or the governing body of the municipality, to defray the costs of protracted or complex investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or for such other law enforcement purposes as the board of county commissioners or governing body of the municipality deems appropriate and shall not be considered a source of revenue to meet normal operating needs. In the event that the seizing law enforcement agency is a state agency, all remaining proceeds shall be deposited into the state General Revenue Fund.

(b) If more than one law enforcement agency was substantially involved in effecting the forfeiture, the court having jurisdiction over the forfeiture proceeding shall equitably distribute the property among the seizing agencies. Any forfeited money or currency, or any proceeds remaining after the sale of the property, shall be equitably distributed to the board of county commissioners or the governing body of the municipality having budgetary control over the seizing law enforcement agencies for deposit into the law enforcement trust fund established pursuant to paragraph (a). In the event that the seizing law enforcement agency is a state agency, the court shall direct that all forfeited money or currency and all proceeds be forwarded to the Treasurer for deposit into the state General Revenue Fund.

(4) Upon the sale of any vessel, motor vehicle, or aircraft, the state shall issue a title certificate to the purchaser. Upon the request of any law enforcement agency which elects to retain titled property after forfeiture, the state shall issue a title certificate for such property to the agency.

(5) Any law enforcement agency receiving forfeited property or proceeds from the sale of forfeited property in accordance with this act shall submit a quarterly report to the entity which has budgetary authority over such agency, which report shall specify, for such period, the type and approximate value of the property received and the amount of any proceeds received. Neither the law enforcement agency nor the entity having budgetary control shall anticipate future forfeitures or proceeds therefrom in the adoption and approval of the budget for the law enforcement agency.

History.—s. 4, ch. 74-385; s. 4, ch. 80-68.
Note.—Former s. 943.44.

Mr. HUGHES. Thank you. Obviously each of your departments have a great deal of experience that you can share with us, so that we can bring the Federal Government's policies into the 20th century. I think that you have put your finger right on it when you say that you have to manage these resources in a business-like fashion, and we have not done that.

Captain Campbell, how many man hours did your folks have in the Operation Black Star?

Mr. CAMPBELL. I don't know exactly the total number of man hours or anything. We started back in April of 1982, and at any given time we had a minimum of two investigators working on that case full time. We are not a large agency and to have two people working on that one investigation full time, that took its toll on our manpower available so I would like to say they didn't only work in just Citrus County. They would work with Customs, come down in south Florida wherever it was needed, over in the Fort Myers area or wherever. Since April of 1982 we have had two people working on it full time.

Mr. HUGHES. I want to tell you I feel very badly that it occurred. I think that it was inexcusable if in fact circumstances are as you outlined, and I have no doubt——

Mr. CAMPBELL. Well, when we first brought Customs into it, and I don't mean to make Customs a whipping boy or anything like that, we just feel like there should be a process; there should be a system worked out within the Federal guidelines, administrative procedure and Federal law to where, when there are local agencies involved in an investigation with Federal agencies, that they get some of the spoils, so to speak, and we were assured at the onset that this would occur.

I think the sheriff's letter indicates exactly what happened.

Mr. HUGHES. Yes; I know your congressman is Buddy MacKay.

Mr. CAMPBELL. Yes, sir.

Mr. HUGHES. He is very much aware and very concerned and upset over what occurred and he rightly should be. I can tell you that we are going to work with Buddy MacKay and others——

Mr. CAMPBELL. We appreciate it.

Mr. HUGHES [continuing]. To see if we can't perhaps avert what occurred.

Mr. CAMPBELL. We are not asking for everything they got. We have a coastline. We are on the other side of the State, up in the central part of the State. Manpower speaking, we are a relatively small county. All we are asking for is the one airplane. We were involved when they first started using the airplane. We put the transponder on it. It was a Customs transponder that we borrowed. It was on our court order that it was placed on. This is the only piece of equipment——

Mr. HUGHES. I understand the transponder was still on board when in fact Customs seized the vessel.

Mr. CAMPBELL. Yes, sir.

Mr. HUGHES. Let me ask you, Is this an isolated instance?

Mr. CAMPBELL. No, sir.

Mr. HUGHES. Or is this a sign of the lack of cooperation that you see in this area of law enforcement?

Mr. CAMPBELL. The only other situation that comes readily to mind is a neighboring county of ours. It is an even smaller county than ours relatively speaking. It is Sumter County. They were working another case with a Federal agency and I am not sure whether that was Customs or which agency it was, and there was an airplane involved in that with Sumter which Sumter County wanted and they haven't received it.

Mr. HUGHES. You understand, of course, we have some of the same turf problems among Federal agencies?

Mr. CAMPBELL. Yes, sir.

Mr. HUGHES. It is not an isolated instance.

Mr. CAMPBELL. Yes, sir.

Mr. HUGHES. I must say, however, things are improving.

Mr. CAMPBELL. Local agencies have the same problems sometimes.

Mr. HUGHES. We are working to see if we can't improve this situation at the Federal level. In fact, the members of the subcommittee are all prime sponsors of the so-called drug czar which will endeavor to try to bring more coordination in our efforts in combating drug abuse.

Suffice it to say that the institutional barriers are exacerbated because of the rules by which they have to live. For instance, under existing law, as you know, we are not permitted to give, Mr. Strippoli's sheriff's office assets even though you could use the assets under existing law.

I know, speaking for this subcommittee, we would like to change that but we have had problems in doing so. We tried to make changes in the last Congress so we could share the proceeds of the seizure with local law enforcement agencies who are invaluable to the effort. I believe we have got to work together in order that the resources can be maximized, and that requires cooperation among all levels of law enforcement.

The one question I have is, How would you deal with the situation where you have, let's say, three agencies particpating in a seizure in which all participated?

You put a transponder in the aircraft. It is seized by Drug Enforcement and Customs officials. How would you deal with that type of a seizure in your proposal?

Mr. CAMPBELL. The easiest way to do it would be to auction the stuff and just divvy up the money evenly. If there is some equipment involved, like the present situation is, it becomes much more difficult, obviously, because there are some airplanes, there are some boats, and there is some other equipment involved. We want the airplane. Somebody else may want the airplane too, so then you get into——

Mr. HUGHES. It sounds like you need an arbitrator already.

Mr. CAMPBELL. Yes, sir, so probably the simplest way would be to sell it and then divvy up the money equally somehow.

Mr. HUGHES. How do you deal with the situation raised by the General Accounting Office—and I have seen it and I am sure you have—a Chevrolet would suffice for law enforcement purposes, but we have seized a Mercedes or a 1980 Cadillac that gets 7 miles to the gallon. How do you avoid the sharing of assets that really are more than the law enforcement agency needs and it really isn't

very cost effective if you look at the maintenance and operation aspect of the asset.

Mr. CAMPBELL. Again, probably about the only thing you do is sell it.

Now, practically speaking from our agency, we don't want the Mercedes or the Cadillac. We will stand down.

Mr. HUGHES. You are an exception. Most folks like Mercedes and Cadillacs.

Mr. CAMPBELL. Right. You know, it is not very practical if you go in to use it. When we get a vehicle like that, we use it to continue drug investigations because it sort of blends in and you want one that will blend in. If they are all driving Mercedes, then a Mercedes will blend in.

Mr. HUGHES. I must confess I saw a few boats yesterday that brought a gleam into my eye.

Mr. CAMPBELL. To bring up something positive not to be totally negative, we were investigated in a sheriff's department, I believe it was a Federal agency. I don't remember whether it is DEA or Customs, and I don't know the procedures that the Federal agencies used. We didn't make any local charges ourselves, but it all occurred in our particular county.

It initiated in Alachua County and again we have the coast out there, and we are not able to give it the type of patrol they need to prevent this sort of thing from happening.

They used a boat to bring in some marijuana into the county and, like I said, it started in Alachua County and it came down to our county. They developed the information. The Federal agency got involved. They didn't do anything on the equipment that was involved. They made all the charges and they left that up between us and Alachua County, like I mentioned earlier.

Florida law does have a procedure involved, or in their statute, to where, when there are two or more agencies involved in something like that where it can be properly distributed, they didn't want the equipment.

We are in the process of forfeiting that equipment now. When we do get it, we are going to sell it and we are going to divvy up the money. I don't know the process that was used on the Federal level in order to be able to do that where they didn't take the equipment. I have no idea.

Mr. HUGHES. Thank you.

The gentleman from Michigan.

Mr. SAWYER. I read the letter from the sheriff about the transponder and the clean hit and so forth. Do you have anybody that could fly a plane if you got one?

Mr. CAMPBELL. Yes, sir, we have some pilots in our department.

Mr. SAWYER. It just seemed to me sufficiently unclear as to a specific commitment.

I will check into it when we get back.

Mr. CAMPBELL. Thank you.

Mr. SAWYER. I don't promise anything. I have enjoyed your testimony. I totally agree with you. Having spent some time with State law enforcement and recognizing probably the bulk of law enforcement is done by State, county, local, and city authorities as opposed to the Federal Government, it certainly seems there should be

some way if we can streamline this forfeiture and converting it into money in a reasonably rapid fashion, there is no reason, it appears to me, why the State and locals, where they have participated in the situation, ought not to also participate in the fruits of the effort.

I think the chairman agrees with me. We will take a look at that.

Mr. CAMPBELL. Thank you.

Mr. HUGHES. The gentleman from Florida, Mr. Smith. You are recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman. I am certainly very happy that you gentlemen are here today to testify as to the value and the working merits of the law which I had something to do with.

I am very happy to note from the testimony, Mr. Hochman, that the city of Fort Lauderdale is well over $5 million already in total forfeitures and seizures and returns since 1980.

Mr. HOCHMAN. That is correct.

Mr. SMITH. I think that is just the city of Fort Lauderdale alone, $5 million.

The city of Hollywood is in the range of $2.5 to $3 million; the Broward Sheriff's Office is beyond $5 million. The Broward Sheriff's Office is using planes, vans, boats, et cetera, that have been seized, and instead of being sold are in service right now, and so it is working very well.

The captain alluded to the ability to split assets between agencies where the court has jurisdiction overall, although the jurisdictions themselves generally agree as to what split they are going to have and so it is working very well in that regard.

My question is, If you had to offer any advice right now to the Federal Government, if you have any idea of how they are operating, putting aside for a second the problems you have in any specific instance, if you had to offer any advice to the Federal Government as to how they deal with the assets that they seize, what advice would you offer? Any of you?

Mr. HOCHMAN. What advice? As to how to use the item or what to do with it?

Mr. SMITH. No; how, administratively, would you tell them that they are not doing what you think they ought to be doing in terms of arriving at the end of the road, where the item is either cashed out or put into service?

Mr. HOCHMAN. I think from what I have seen on TV reports, and from what I have heard here, the Federal Government has not taken the effort necessary to ensure that they get the most for the effort they are putting in.

The boats in the Miami River, the airplanes at Homestead Air Force Base, or wherever they are kept, and if you treat it like a business and you go after it and don't let up, you are going to have it more than pay for itself.

Our budget every year, for example, in the city of Fort Lauderdale for the forfeiture department is about a quarter of a million dollars. That includes salaries, court reporter fees, anything you can imagine.

Mr. SMITH. A quarter of a million dollars a year?

Mr. HOCHMAN. Yes.

Mr. SMITH. So in 3 years you have generated about $750,000 in actual expense that is administrative expense, and you have generated 5 million dollars' worth of seized forfeiture?

Mr. HOCHMAN. That is about correct; yes, sir.

Mr. SMITH. What is the cost of the overhead as to maintenance of those items?

Mr. HOCHMAN. That is inclusive of everything, all our maintenance, salaries, my salary, everything you could think of, approximately a quarter of a million dollars a year.

Mr. SMITH. So you spent $1 and got back $7 for every dollar you spent?

Mr. HOCHMAN. Approximately.

Mr. SMITH. That is pretty cost effective.

Mr. HOCHMAN. And that doesn't include the interest we have earned on the money that has been seized.

Mr. SMITH. Mr. Strippoli, you have an interesting concept for using these items.

Would you feel that that is capable—and it is an interesting concept, but I am not sure that it is capable—of being done within the framework by which we are now handling at the Federal level these assets.

Would you believe that it is capable of being done prior to the time that title is received, and that these assets could be used while they are awaiting title forfeiture proceedings?

Mr. STRIPPOLI. I would feel that we could, if the Federal Government, and I am not a lawyer, if they can use this as a pilot or test program, a codicil that says you can't do it, but as a test program only, I feel that we could administer that program in a manner, and bring up the points that have been brought up here.

We can secure the appraisal, make sure that your assets are protected. In our particular case we have 24-hour-a-day pilots on board. We have our own full-time aircraft, both fixed and rotary wing, on board in place. We have a hangar facility that we are leasing presently, and the bids have been let for our new hangar.

We are ready to go and we can utilize any aircraft we can get. If we can get any other equipment, we will utilize it.

We also have a very low cost for auctioning off any of these vehicles, whether it be boats—our costs are far lower. Somebody can correct me if I am wrong. I understand the Federal Government is at about a 10-percent factor for auctions. We are at far less than that; in the 2-percent range.

Mr. SMITH. Do you do your own auctioning or do you bring in outside auctioneers?

Mr. STRIPPOLI. We have outside auctioneers that come in and do it for us. We advertise, pay for radio, we follow all of those procedures, and we have a good turnover.

Mr. SMITH. Mr. Hochman, do you bring in outside auctioneers or do you use your own?

Mr. HOCHMAN. No; we bring in outside also and he gets a percentage.

Mr. SMITH. In fact, I attended one of the city of Fort Lauderdale's auctions——

Mr. SHAW. Will the gentleman yield for an observation?

Mr. SMITH. Sure.

Mr. SHAW. I remember back when I was mayor, the Fort Lauderdale Boat Show was going on at the same time as one of the city boat auctions and the people at the boat show were very concerned that it would compete with the boat show.

Mr. HOCHMAN. We are having our auction this year in February, right before the boat show.

Mr. SMITH. Of course, most of the boats sold at that boat show wind up in somebody's seized storage property area. That is the problem. That is how we turn them around.

Mr. HOCHMAN. Sometimes the people have the boats seized by them back at the auction.

Mr. SMITH. Absolutely.

Mr. HOCHMAN. And the game starts all over again.

Mr. SMITH. I didn't want to get into that Pandora's box, but that is a reality. The law enforcement agencies literally know that the people who have been seized by themselves or with surrogates go back and rebuy the same pieces of equipment for use all over again.

They know, which is even funnier, at the local level it is first of all going to be taken care of, and it is going to be rapid, rapid, so when they buy it back they know it is in fairly good condition and they can't say that about the Federal Government.

Captain, I don't know, maybe Mr. Hochman as well, and certainly Mr. Strippoli, any one of you can answer this, but your own municipalities or counties, do you know in talking with the other counties in the State or at any level, the National Association of Counties, the National League of Cities, about lobbying Federal Government for having a share of forfeited assets that are realized by the Federal Government when your departments, when your municipalities, when your local agencies are involved in the process of these seizures, when you have started the seizure through your bringing them information about original investigations originating in your jurisdictions?

I mean just don't tell me what your own departments are doing. Are you aware that there is further lobbying up the line where frankly you are going to need to do some lobbying?

I think a number of us are sympathetic to sharing, although at this moment there isn't any pot that we can give you any money out of. We are not doing a very good job.

We ought to suck you in and ask you to face some of the overhead costs that we are facing, but, assuming that we are able to change this, are your people lobbying now to get a share of the profits when you are entitled to them because you participated in the whole process?

Mr. CAMPBELL. I believe that the Florida sheriff's organization is involved in that. I know we have gotten them involved in our particular situation here. I believe they are. I don't know how extensive it is but I believe they are.

Mr. HOCHMAN. I can say for the city of Fort Lauderdale, we haven't done any lobbying on a national level to get a piece of the action, so to speak.

We work very closely with the local Customs people, and before the task force came to town, or even after the task force came to town—the Federal task force—a lot of the items they turned over

to us with permission from their superiors because they knew that we could get through it faster, so we have gotten a lot of boats from the U.S. Government and we thank them profusely all the time when they do it.

We take it through with them, and in fact when we go out and patrol the inner coastal or the shore, we a lot of times, have Customs personnel on our boats, and we are on their boats, so we try to work very cooperatively with them.

Mr. SMITH. They have given you assets that they have seized. You haven't returned any of the proceeds to them?

Mr. HOCHMAN. No; they said we could have it because we have so many boats in the Miami River we don't know what to do with them anyway, so we give it to them.

Mr. SMITH. You may be sorry you told us that. Frankly, I think it is a good idea at the moment, but at this moment the Federal Government is not very capable of doing what needs to be done with them, so at least they certainly are being utilized by you much better than we could, but hopefully, if we get to the stage where we won't be able to give you any because we are getting rid of them or using them as fast as they come in.

Thank you very much, Mr. Chairman.

Mr. HUGHES. The gentleman from Florida, Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman.

Mr. Strippoli, I want to further a line of questioning on your direct testimony. You stated that some of these planes that we are looking at, and I am speaking of the pictures that you have supplied to us, are being held 2 years after forfeiture.

Mr. STRIPPOLI. Yes, sir.

Mr. SHAW. How are you defining forfeiture?

Mr. STRIPPOLI. A case in point, sir.

I took a list of five registration numbers from the planes there and we got the case numbers. This goes back approximately 6 months ago. We got the case numbers. We went to the specific agencies, whether it be Customs or U.S. marshals and asked for the adjudication on those specific planes, and at that point in time they indicated those five aircraft, and I have their numbers here, had already been awarded to the Federal Government.

As of Sunday three of those five aircraft are still on board or sitting on the grass down there at Homestead Air Force Base.

Mr. SHAW. Do you mean that the case law, the case has provided an order of sale and the Federal Government still, after 2 years after that order, was allowing the planes to stay there, continuing to decay, and being used for bird nests and other things?

Mr. STRIPPOLI. Yes, sir, that is the information.

Mr. SHAW. I would appreciate your supplying me with those case numbers.

Mr. STRIPPOLI. I can, sir. If I may——

Mr. HUGHES. The record will remain open for that.

Mr. STRIPPOLI. If I may, I have supplied case numbers to Congressman Jack Brooks, Congressman Dan Mica, and Congressman Tom Lewis. I have supplied them and this proposal to them. They have it. One of the aircraft has been there since October 21, 1981. That is the oldest. That is 24 months.

October 3, 1982; that is 12 months; and January 8, 1983, 10 months.

They are still sitting there, but they have been awarded as of those dates. They have been awarded to whatever agency that had them at that time.

Mr. SMITH. Will the gentleman yield?

May I inquire, is this Customs? The agency to which the forfeiture was awarded, was that Customs?

Mr. STRIPPOLI. There are several agencies. Some the U.S. Marshal's Service has, some Customs has.

Mr. SMITH. Thank you.

Mr. SHAW. Mr. Chairman, I would suggest that perhaps if the subcommittee, in examining the existing legislation, that perhaps there is a certain amount of oversight that we can look into and see how the existing law is being utilized, and I would suggest that perhaps we have our staff look into these particular cases and examine the orders that have been granted, and supply them to all members of the subcommittee, so if indeed we have situations such as you outlined, I think that there are a lot of questions that should be asked and perhaps that should be the subject of a separate hearing in Washington.

I thank you. I yield back.

Mr. HUGHES. Thank you. We are indebted to you for your testimony. You have been very helpful. We think that hopefully we can draft legislation so we can address many of your concerns.

It sounds to me like some of the procedures being utilized, that there is a lot of unnecessary loss, and so obviously it bears further scrutiny.

Thank you very much.

Mr. CAMPBELL. Thank you.

Mr. HUGHES. Our first witness on the next panel is Stanley Marcus, who is the U.S. attorney for the Southern District of Florida.

Prior to his present position, he held positions in the Organized Crime and Racketeering Section of the Department of Justice and as an assistant U.S. attorney in the Eastern District of New York.

Mr. Marcus has also engaged in private practice and has served as a law clerk for U.S. District Court Judge John Bartels. He is a graduate of the City University of New York with a B.A. degree and a J.D. degree from Harvard Law School.

Our next witness on the panel is Mr. Robert Christman, who is the acting U.S. marshal for the Southern District of Florida. Mr. Christman joined the U.S. Marshals Service in 1965 at Rochester, NY. Subsequently he served as chief deputy in San Antonio, TX, and Seattle, WA, before being appointed to his present position.

Mr. Christman is accompanied by Mr. Thomas C. Kupferer, Chief Inspector, Enforcement Division in Washington, DC.

The third member of this panel is Mr. William Lenck, who is the forfeiture counsel for the Drug Enforcement Administration in Washington.

Mr. Lenck received his B.S. and LL.B. from the University of Maryland and has held numerous responsible positions in Federal law enforcement since 1960 with particular emphasis on narcotics

trafficking. Mr. Lenck is accompanied by the special agent in charge of the DEA Office in Miami, Mr. Peter Gruden.

Our last member of the panel is Mr. Bruce Plaskett, who currently serves as Coordinator for Anti-Smuggling in the Southern Regional Office of the Immigration and Naturalization Service located in Dallas, TX.

Mr. Plaskett entered the Immigration Service as a Border Patrol agent in Yuma, AZ, in July 1966 and has served with the Border Patrol since that time in various positions and locations.

In 1981, Mr. Plaskett was selected for his present position.

Welcome, gentlemen, on behalf of the Subcommittee on Crime. We have your prepared statements which will be made a part of the hearing record, without objection, and you may proceed as you see fit.

We hope that you can summarize for us so we can get into some of the questions that your statements raise and some of the things that concern the subcommittee.

TESTIMONY OF STANLEY MARCUS, U.S. ATTORNEY, SOUTHERN DISTRICT OF FLORIDA; ROBERT CHRISTMAN, ACTING U.S. MARSHAL, SOUTHERN DISTRICT OF FLORIDA, ACCOMPANIED BY THOMAS C. KUPFERER, CHIEF INSPECTOR, ENFORCEMENT DIVISION, WASHINGTON, DC; WILLIAM LENCK, FORFEITURE COUNSEL, DRUG ENFORCEMENT ADMINISTRATION, WASHINGTON, DC, ACCOMPANIED BY PETER GRUDEN, SPECIAL AGENT IN CHARGE, DEA OFFICE, MIAMI, FL; BRUCE PLASKETT, COORDINATOR FOR ANTI-SMUGGLING, SOUTHERN REGIONAL OFFICE, IMMIGRATION AND NATURALIZATION SERVICE, DALLAS, TX

Mr. HUGHES. Why don't we begin with you, Mr. Marcus.

Mr. MARCUS. Thank you very much.

I do want to thank the chairman of the subcommittee for inviting me to appear today and to be permitted to testify regarding pending legislation to improve the civil and criminal forfeiture laws, and also to strengthen the penalties for drug offenses.

I am also grateful for this subcommittee's interest and its willingness to come down here to south Florida and hear from some of us who have been involved on the line for some time with these problems.

I bring a perspective, perhaps a comparative perspective to this issue, having served as a Federal prosecutor in New York and Detroit before having come to south Florida. I do think I can safely say that south Florida is faced with a crime problem that is truly unique.

I have indicated that there are elements of these problems elsewhere, but collectively the problem here in many ways is unique.

Upon becoming the U.S. attorney in this district some 19 months or so ago I pointed out that which is obvious to everybody in this room, and surely to this subcommittee. That is, that far and away the most serious crime problem in south Florida is the drug problem. Over an extended period of time, perhaps as much as 10 years or more, south Florida had become the main point of entry for perhaps three-quarters of all of the marijuana and three-quarters of all of the cocaine and three-quarters of all of the methaqualone imported into the United States.

Many of the wholesale transactions had taken place here.

The nature of the national crisis is staggering, and again I appreciate the opportunity provided by this subcommittee to be able to focus on this problem in this region. It is clear that Colombia remains the largest foreign supplier of narcotics to the United States, and, indeed, to this region, with our intelligence reports suggesting that as much as 75 percent of all of the cocaine, marijuana, and methaqualone consumed in the United States is entering through here from Colombia.

It is perfectly clear that the real cost of drug smuggling and drug addiction in this country is staggering in human life and human suffering. The cash exchanges generated by the illicit narcotics business runs into the tens and tens of billions of dollars, much of which is flushed through our institutions of finance and commerce in this region.

The administration's response to what I think is fairly described as a unique and staggering problem has been a massive buildup in personnel and resources, both investigative and prosecutive, in the last 20 months, roughly, in this district.

Since early 1982, the South Florida Task Force has operated under the personal supervision of the Vice President. It has involved bringing together a number of resources, agencies and departments of the Federal Government, including Justice, State, Treasury, Transportation, and Defense.

Hundreds of new agents have been introduced. Enormously increased numbers and amounts of hardware, as well, have been deployed, including new ships from the Coast Guard, and the new involvement of the U.S. Navy in the Caribbean in the effort to interdict the flow of narcotics.

At the same time the Justice Department has substantially increased prosecutive resources. Again I think it will bear on some of the issues that directly concern this subcommittee, and we have stepped up our investigation and prosecution of, first, the major cartels and international money launderers.

Second, we face a problem of violent crime, and we have increased enormously our emphasis on the violent crime problem and its link to narcotics addiction and narcotics trafficking in this district.

In addition to that, we have placed increased emphasis on the forfeiture of assets, I think an area of real importance, and one that had been overlooked for far too long.

The results are interesting statistically, and I think they bear directly upon the issues raised by this subcommittee, and, indeed, by the questions raised by each of the Congressmen this morning.

First, criminal filings, and it bears directly and immediately on the issue of forfeitures, I believe—criminal filings in the southern district of Florida are up and up dramatically during the life of these task forces. For the 12-month period ending June 30, 1982, roughly 850 criminal indictments, felony filings, occurred. If you compare that with 1983, you will see that the figures are up almost 50 percent, more than 1,231 filings, the overwhelming bulk of which are indictments of felony force.

Based on improved cooperation with law enforcement authorities on a State and local level, we now have a shared situation where the prosecutor in Dade County handles a substantial percentage of the smaller criminal filings, particularly the marijuana cases that occur at the airports.

The lowest percentage or amounts in those cases are out of the Federal system altogether, so the cases I am talking about are almost all very serious kinds of charges.

Mr. HUGHES. What is the declination policy?

Mr. MARCUS. I would prefer not to disclose the declination policy in open forum, and indeed, it will vary, but essentially beneath 10 pounds——

Mr. HUGHES. Is there some secret about that?

Mr. MARCUS. Yes; there is a secret about which cases we will handle and which cases we won't, because the pattern may shift.

Mr. HUGHES. I can't understand that, because the local law enforcement agencies must know it. It must be public knowledge when you decline a case.

At one time it was 2 tons of marijuana, as I recall.

Mr. MARCUS. We prosecute amounts of marijuana far beneath that. Indeed, between 1 and 10 pounds of marijuana is prosecuted in this district, and by agreement with the Dade County State Attorney, they handle everything beneath 10 pounds made at the airport.

It had been, more than 1 year ago, a process whereby we handled those cases. Many of them handled essentially as misdemeanors rather than felonies, but the filings I am talking about are essentially felonies.

The amounts and the quantities of the filings have increased in a statistical sense enormously in this district. As I said, in the last 12 months ending June 30, 1983, there were roughly 1,231 criminal cases filed. That included roughly 2,318 criminal defendants.

By way of comparison, the number of charges filed in this district, in the southern district of Florida, were greater than those filed in any other district in the United States, including districts with substantially greater population regions, such as New York, Chicago, and Los Angeles.

Indeed, the number of defendants that I am talking about involved in the filings in the last year, ending June 30, 1983, that is 2,318, is more than the number of defendants charged in the southern district of New York, Manhattan, and in the northern district of Illinois, Chicago, combined.

Beyond the enormous increase in the filing of cases, there has been an enormous increase in the seizures, again largely a product of the increased efforts in the Caribbean and in this region.

In the 16-month period ending June 30, 1983, there have been more than 1,300 seizures effected, which amount to the greatest amounts of narcotics and controlled substances ever seized in any region at any time in this country.

It included more than 11,000 pounds of pure cocaine, almost 3 million pounds of marijuana, and almost 10 million dosage units of methaqualone.

In the area of forfeiture, we have, and I have in particular placed a substantial emphasis on it, really for two reasons, both of which

this committee has alluded to at length this morning; one, because it is the centerpiece of our focus to attempt to take as many of the assets as we can away from the major cartels and criminal narcotics organizations, and two, because it is a revenue-generating operation.

If you compare statisticaly, I am not just talking about the southern district of Florida——

I am now talking about the southern district of Florida—one of 94 Federal jurisdiction districts in the United States, comparing 1981, 1982, and 1983, in 1981 the total seizures, the total forfeitures where we actually obtained judgments in the courts, was somewhere in the neighborhood of $4 million.

I am now talking about the aggregate of cash and conveyances, the aggregate of cash, cars, boats, planes, and real property.

Mr. SMITH. How much of that was cash, Mr. Marcus?

Mr. MARCUS. I believe that we have been running better than half being cash, and I think in fact in a statistical sense, but I can get this subcommittee those exact figures in this district, the greatest seizures in the narcotics business have been, are and will be cash, far beyond the enormous values, and they are enormous, of the cars, the boats and the aircraft involved.

In 1982, the seizures, the forfeited amounts to the United States grew to roughly $13 million in cash, dollars in cash and in assets, representing what was an increase of almost 300 percent from 1981.

If you go to 1983, the figures have increased still further; from $13 million we have increased the figure to $20 million, an increase that is quite substantial; more than 50 percent.

Mr. HUGHES. During what period?

Mr. MARCUS. Again, this would be the 12-month period involving fiscal year 1983, so it would end really at the end of September of 1983.

Mr. SMITH. Just for that period?

Mr. MARCUS. Yes, sir, so 1981 fiscal year, $4 million; 1982 fiscal year, $13 million; 1983 fiscal year, $20 million. So you are talking about, really, a 500-percent increase just over that period.

Mr. HUGHES. The proportion of cash to assets is about the same, about 50 percent?

Mr. MARCUS. It may have changed a little bit, but I would say now we are running substantially better than half being cash. Maybe the figure is closer to 60 percent. That would be my best estimate, but I think we can get you those exact figures if they would be of any help.

The forfeitures we are talking about are overwhelmingly drug related. The efforts that we have been involved in have included a variety of pieces. As I said, one was interdiction. Second was an effort to increase substantially the identification and the penetration and the prosecution of the major cartels and narcotics organizations, principally foreign, Colombian, Bolivian, Peruvian, Ecuadoran, Caribbean.

Three, we have increased our firepower as much as we could in the area of violent crime, with a link at least in this region between violent crime and narcotics which is so great. Indeed, we have estimated that one in four homicides in Dade County are nar-

cotics-related, and we have increased our efforts enormously in that area, including the creation of joint homicide task forces with the local and the State prosecutors.

We have also recognized, however, that in the area of narcotics there are two key sides to this drug coin. One side, the narcotics and the physical movement of the narcotics in this country.

The second side, the flip side, in our view is the removal of the illicit profit, the illicit proceeds, the illicit cash out of the United States.

We have undertaken what amounts to an unparalleled effort to attempt to check off the flow of money out every bit as much as the flow of dope in because in many ways the money side of the coin may bear more fruit than the dope side of the coin.

Specifically in that regard, we have found that there are major cartels, many foreign cartels operating in this region and elsewhere in the country that remove billions of dollars in cash from the United States.

They don't file the requisite forms with the Treasury Department, and that provides us with one real approach to attempting to identify the principals in the narcotics organizations.

Lastly, we come again to the central area of concern to this subcommittee, and that is the area of forfeiture. It is our intention and our effort and our expectation to hit these criminals in the pocketbook, to drive up the cost of doing business, to take away assets from wherever we can, and I should emphasize that I think there are two sides to this forfeiture coin, one of which was discussed this morning, one of which I think has not yet been fully focused upon.

The first side is from my perspective, from the prosecutor's perspective, is to present that the forfeiture provisions are punitive in nature. They are from our view designed and intended to kick up the cost of doing business to narcotics cartels. To the extent we can take their assets away, however they are disposed of, we add to that effort.

The second part and equally important is the proper management and preservation of those assets. We have proceeded in the courts aggressively in terms of civil forfeiture under the Bank Secrecy Act and under the drug forfeiture laws as well as the RICO statute and the CCE statute, as well.

Indeed, in the past 18 months we have moved into the area of common carriers. We have found in two instances by way of example, the movement of more than 2 tons of pure cocaine in 18 months on one common carrier, a Colombian-based airline with an aggregate value of more than $1.4 billion.

One shipment carried more than 1½ tons of cocaine. The second shipment carried roughly 800 pounds.

We have proceeded to forfeit or attempt to forfeit and are involved in extended litigation in the courts with regard to the airplanes.

We believe that forfeiture can play an enormously significant role, and, indeed, an enormously significant role in this district. It is for this reason that I heartily support this subcommittee's interest and support for legislation to strengthen the forfeiture laws as well as to increase the penalties asssociated with drug trafficking.

There are a couple of particular points that I would like to highlight if I could, but the general point that I should like to make both now and as we go along is that the legislation being proposed in H.R. 3299 and elsewhere is important; it ought to be endorsed and passed as quickly as is possible.

Particularly I should like to focus on these issues, if I might. Right now we are able to seize the cash, the real property where we can trace the cash into it from a narcotics transactions, the boat, the car and the plane that may be used to actually transport the dope.

We are not, however, able to seize the real property itself where the drugs are stored there, commonly referred to as the stash house, or the facilities in which the laboratories are used to process cocaine, or where they may be housed.

H.R. 3299 would rectify that, and we fully endorse it.

One area not covered that I should like to at least briefly allude to, however, is the land on which the marijuana may be grown and actually cultivated.

While H.R. 3299 would permit the forfeiture of the stash house itself, and would permit the forfeiture of the laboratory, it does not address the issue of the forfeiture of the land itself.

We think that it is illogical not to seize all of the real property associated with the production and distribution of drugs when we can seize all of the other assets in the chain, and we would recommend that the subcommittee consider including within its proposals a legislative reform which would permit in appropriate cases the actual seizure of the land on which the marijuana would grow.

Mr. HUGHES. I think you will find that the legislation does embrace the criminal forfeiture of land. You are talking about civil forfeiture?

Mr. MARCUS. Yes, sir.

The second area I should like to briefly allude to is the area of RICO criminal forfeitures where I have had some experience both in this district and perhaps even more in the Midwest in Michigan with a variety of organized crime cases where the RICO statute was used to seize a variety of business enterprises and institutions.

I believe that H.R. 3299 should also be strengthened by including the forfeiture of the profits of the racketeering activity. Specifically my reference is to cash, which may be charged as forfeitable in a criminal indictment.

Right now, the law is somewhat unclear on the matter and the issue, as this committee well knows, is pending before the Supreme Court.

Third, with regard to just TRO's, with regard to RICO's, we think that the current law is defective to the extent that it does not explicitly empower courts to grant the TRO, the temporary restraining order, prior to indictment in the RICO case as well as in the other side of the coin, and we would urge that consideration upon this subcommittee as well.

I think the bill now pending, H.R. 3299, properly focuses the attention on such areas as creating a mechanism for the funding and maintenance and upkeep of seized assets, seized boats and planes—as this subcommittee well and amply alluded to this morning—rapidly deteriorate when they are waiting ultimately to be forfeited

and for putting items of property into Government service if they are appropriate for such use.

A great deal of money may be required to repair them, or indeed, if they are sold at auction, the Government may receive far less than it otherwise would cost for upkeep.

In a sense, the problem is the result of the increased attention and success in the area of utilizing the forfeiture laws. The truth is, the seizures and forfeiture have simply outpaced the ability, in my view, of the agencies to deal with the seized assets.

The Department of Justice is in the process now of establishing a consolidated forfeiture management office within the Marshal's Service, to oversee the storage and disposition of those seized assets, and Mr. Kupferer from the Marshal's Service is here to address that issue for this subcommittee.

However, to keep pace with the ever-growing costs associated with the seized assets, we would support fully the thrust of those provisions of both H.R. 3299 and 3725, which would establish special funds into which proceeds of forfeitures would be deposited, and out of which forfeiture expenses would come.

The creation of these sound organizations would, in my view, not cost the taxpayer ultimately a single dime.

I must also tell you that perhaps the most important, from our perspective in the field, of legislative change embodied in the proposed legislation would be the proposal to increase the administrative forfeiture level from $10,000 to $100,000, and the elimination of any limit on administrative forfeitures of conveyances.

I think these changes are well needed because of the enormous volume and backlog that we are now presented with.

We now have, by way of statistical example, roughly 300 forfeiture cases pending in the Federal Court in the southern district of Florida, in a district where I said the criminal caseload is the most staggering in this country.

The last area of forfeiture reform that I would like to briefly address is our inability perhaps to cooperate as fully as we would like to with State and local authorities.

In this regard, we continue to favor the provisions of the President's initiative and the Senate bill 1762, which would authorize the Attorney General and the Secretary of the Treasury in an appropriate case to transfer forfeited assets or property to State or local law enforcement agencies which participated in the seizure or the investigation itself.

In this district in particular, it is not an infrequent phenomenon to have a circumstance where the Federal and the local law enforcement agencies are proceeding together. A classic example of that is an operation referred to as Operation Everglades on the west coast of this State where the investigation was conducted jointly by the sheriff of Collier County here in southern Florida, and by DEA and other arms of the Federal Government.

Before the indictments were actually filed, elaborate agreements were worked out as to the split on certain property and some 14 boats were turned over or allocated to the local sheriff in order to seize.

We think, however, that some change in the bill here would be of assistance where we actually seize and forfeit assets, and then are

prevented from turning those assets over to State and local authorities.

We think that would help a good deal not only the Federal Government in its relations with the locals, but also local authorities.

Finally, the fines. The issue of fines presently provided for violations of the drug laws are in my view wholly inadequate to meet the issues and the problems of major megabucks in the narcotics business in 1983.

With the enormous profits associated with drug trafficking, fines of $50,000 or $100,000 will often be completely insufficient, and do not, I think, more than amount to a small cost of doing business for a cartel that might do $100 million in a quarter in the United States.

The proposals in H.R. 3299 to increase the fines and to provide an alternative fine amounting to a maximum of twice the gross profits of the drug transaction are in my view important improvements, and ought to be codified quickly.

The alternate fine, in my view, insures that the monetary penalty is a real penalty, and a real deterrence for an illegal business that may be earning tens and tens and tens of millions of dollars.

In summary then, I think that strengthening the forfeiture laws and also raising the criminal penalties involved in the narcotics business will be of great assistance in our continuing efforts in the fight against drug trafficking.

I am again grateful to the subcommittee for giving me the opportunity to speak, and I am again grateful to this subcommittee for coming down to south Florida in order to obtain our views, and I would be happy to endeavor at whatever time this subcommittee would be considering appropriate, to answer your question.

[The statement of Mr. Marcus follows:]

STATEMENT

OF

STANLEY MARCUS
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA

BEFORE

THE

SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ON

OCTOBER 14, 1983

SUMMARY OF TESTIMONY

South Florida is the main point of entry into the United States for cocaine, marijuana and methaqualone, and is a wholesale center for American trade in these drugs, a trade which generates a cash exchange of billions of dollars annually. The primary source country for this illegal importation is Colombia. In addition to the illegal drug trade itself, up to one-half of many other kinds of crime, especially violent crime, is drug related. Thus, South Florida has a crime problem unique in the nation, if not the world.

The Administration's response to this national problem centered in South Florida has been a massive deployment of personnel and resources, including components of the Defense Department, under the aegis of the South Florida Task Force and the personal supervision of the Vice-President of the United States. At the same time, the Department of Justice, at the direction of the Attorney General, has substantially increased prosecutive and investigative resources in South Florida.

The results to date have been an unprecedented increase of almost 50 percent in one year in federal criminal charges, charges against more defendants in a year than in any other federal judicial district and more than in New York and Chicago combined. These prosecutions have targeted major international and domestic narcotics organizations, foreign officials involved in drug importation, narcotics-related corruption and violent crime, and the laundering of narcotics proceeds. Prosecutions have been accompanied by record seizures of contraband in the past 16 months: 11,570 pounds of cocaine, over 2.9 million pounds of marijuana; and almost 10 million dosage units of methaqualone.

Criminal and civil forfeitures play a substantial role in the fight against drugs. In fiscal year 1982 we seized and forfeited over 13 million in cash and assets in this judicial district, more than a 300 percent increase over the prior year and almost 50 percent of the total for the entire country. Over 20 million dollars was forfeited in fiscal year 1983, a further increase of 53 percent from fiscal 1982.

Because of the importance of forfeiture, we endorse the thrust of the forfeiture reform bills before this Subcommittee. We strongly support the following legislative improvements:

- Authority to forfeit properties where drugs are stored ("stash houses"), properties wherein laboratories are housed, and land on which marijuana is grown.

- Clarification that RICO forfeiture encompasses profits of racketeering enterprises.

- Express authorization for pre-indictment TRO's for property subject to criminal forfeiture under RICO and Continuing Criminal Enterprise (CCE) statutes.

- A "substitute assets" provision for criminal forfeitures to allow a judgment to be satisfied by defendant's other property when the property subject to forfeiture is no longer available by reason of concealment or transfer.

- Establishment of a forfeiture fund into which proceeds of forfeiture would be deposited and out of which storage and maintenance expenses for seized assets would be reimbursed.

- Increase in the administrative forfeiture level from $10,000 to $100,000 and removal of any limit for administrative forfeiture of conveyances.

- Authority to share forfeited assets with participating state and local law enforcement agencies.

We also support increases in criminal penalties for drug law violations, particularly the "alternative fine" equal to twice the gross profits or proceeds. Present fines are inadequate and often no more than a cost of doing business.

Strengthening the forfeiture laws and increasing criminal penalties will be of great assistance in our continuing efforts against drug trafficking.

Mr. Chairman and members of the Subcommittee:

I want to thank you for inviting me to testify at this hearing regarding pending legislation to improve civil and criminal forfeiture laws and to strengthen penalties for drug offenses. I am grateful for this subcommittee's interest.

South Florida is faced with a crime problem that is, I believe, truly unique. There are elements of the problem which can be found in the crime profile of other large metropolitan areas inside and outside the United States, but collectively the elements in South Florida add up to a crime problem perhaps unique in all the world.

Upon becoming United States Attorney for the Southern District of Florida about 19 months ago, I pointed out that far and away the most serious federal crime problem in this district was the drug problem. Over the last ten years or so Miami had become the point of entry for perhaps 75 percent of all the cocaine and marijuana and methaqualone smuggled into the United States. It was in South Florida that the criminal wholesale transactions of the American drug trade were taking place. Much of that trade continues in South Florida today.

The nature of the problem is staggering. Let me give you some idea of the dimensions of this national crisis. More than 12,000 metric tons of marijuana enter the United States annually.

Between 40 and 48 metric tons of cocaine enter the United States annually. About four metric tons of heroin enter the United States annually.

Colombia continues to be our largest foreign supplier of marijuana. Indeed, according to intelligence reports Colombia is the source of supply for approximately 75 percent of all cocaine, 50 percent of all marijuana and 50 percent of all methaqualone consumed in the United States. Colombia remains both the central processing center and staging area for smuggling cocaine hydrochloride into this country.

The brutally serious nature of the drug problem in this country is evidenced by these crime statistics: it is estimated that one half of all jail and prison inmates regularly used drugs before committing their offenses. Some statistics indicate that 50 to 60 percent of all property crimes are drug related. Indeed, it has been estimated that one in four homicides in Miami is drug related.

It is, in short, perfectly clear that the real cost of drug smuggling and addiction in this country is staggering in human life and human suffering. It is equally clear that South Florida has been and continues to be a main arena in the battle against drugs.

The estimated cash exchange generated last year by illicit wholesale drug transactions runs into billions of dollars;

billions that must be laundered through various institutions or converted into non-cash assets. In either case, some businesses are drawn into collaboration with or outright domination by the drug moguls.

The Administration's response to this unique and staggering national problem centered in South Florida has been a massive build-up in the deployment of personnel and other resources, both investigative and prosecutive, over the last 20 months.

Since early 1982, the South Florida Task Force, under the personal supervision of the Vice President of the United States, has brought together the resources of a number of departments and agencies of the United States including: the Justice Department, Treasury Department, Transportation Department, State Department and Defense Department. Increased numbers of federal agents have been introduced into the battle. Hundreds of new agents from DEA, U.S. Customs Service and Bureau of Alcohol, Tobacco and Firearms, among others, have been deployed in this region. Numerous Coast Guard ships have been reassigned to South Florida and Caribbean waters to combat drug smuggling. Vessels of the United States Navy have joined the effort. To intercept low flying planes that carry drugs to countless airfields, the South Florida Task Force has assigned helicopters and radar planes capable of keeping pace with and tracking these aircraft until they land.

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2 OF 4

At the same time, the Department of Justice, at the direction of the Attorney General, has substantially increased prosecutive resources and has stepped up the investigation and prosecution of major international and domestic narcotics cartels, increased the focus on the laundering of billions of dollars in narcotics proceeds, placed added emphasis on the forfeiture of assets connected with drug trafficking and addressed directly the critical problem of violent crime linked so closely to the dope trade.

Now, let me turn to the results to date.

Criminal case filings in the Southern District of Florida have increased dramatically. For the 12-month period ending June 30, 1982, 842 cases were filed. For the year ending June 30, 1983, there were 1231 filings, a gain of almost 50 percent, and representing more criminal charges than were filed in any other federal district in the United States, including districts with substantially greater populations than South Florida, such as New York, Chicago or Los Angeles. Indeed, criminal filings in this district have more than doubled since 1979 when less than 600 cases were filed.

The magnitude of the problem in South Florida is perhaps best seen in the number of defendants charged in the 1231 cases filed in the year ending June 30, 1983. Charges were brought against over 2318 defendants for that period, more than the

number charged in the Southern District of New York (Manhattan) and the Northern District of Illinois (Chicago) combined.

The results of the increased federal committment also can be seen in the seizures of contraband since the creation of the South Florida Task Force in February 1982. In the 16-month period ending June 30, 1983, over 1300 seizures were effected. The quantities of cocaine, marijuana and methaqualone seized far exceed those in any other region at any time: 11,570 pounds of cocaine; over 2.9 million pounds of marijuana and almost 10 million dosage units of methaqualone. These staggering quantities of seized drugs have been matched by the dollar value of cash, cars, boats, planes and other assets seized from drug traffickers and forfeited to the treasury of the United States. The details on total DEA seizures, by type of asset, will be provided by a DEA witness, Mr. William Lenck.

For fiscal year 1982, Justice Department records indicate that the U.S. Attorney's Office in the Southern District of Florida forfeited to the United States in excess of 13 million dollars in cash and assets, representing an increase of more than 300 percent from the prior fiscal year. Moreover, this figure represents nearly 50 percent of all forfeitures in the United States for that fiscal year. Additionally, for fiscal year 1983, our records indicate that this district forfeited more than 20 million dollars in cash and assets, representing an increase of

more than 53 percent from fiscal 1982. These forfeitures are overwhelmingly drug-related.

The massive and intensified federal law enforcement response to the staggering, multi-faceted drug problem in this region has involved a number of interlocking parts: a new and expanded interdiction effort; increased efforts to identify, penetrate and prosecute major international and domestic narcotics organizations; increased investigation and prosecution of foreign officials from source countries involved in the international chain of drug smuggling; intensified prosecutive effort in the area of violent crime inextricably tied to narcotics; increased investigation and prosecution of official and political corruption, especially where tied to narcotics traffic.

Finally, we have recognized that there are two sides to the drug smuggling coin -- one side is the physical movement of drugs. The flip side is the movement of the illicit proceeds of drug trafficking. We have undertaken an increased and unparalleled effort to target, penetrate and prosecute the major money laundering enterprises which enable foreign cartels to launder and remove billions of dollars from this country.

However, we have also recognized that simply utilizing the criminal laws to put people behind bars is not enough. In order to successfully attack drug smuggling, it is equally important to hit these criminals in the pocketbook and to take their assets

away from them whenever we can. Thus, we have aggressively gone after narcotics assets through civil forfeiture, both under Title 31, the Bank Secrecy Act, and under the Title 21 drug forfeiture laws, and criminal forfeiture under the RICO and Continuing Criminal Enterprise (CCE) statutes.

Recent intelligence indicates that our successes in forfeiture have had an impact on the way drug trafficking is being conducted. For example, we are finding that the Colombian drug cartels are shipping cocaine more and more through common carriers rather than private planes, hoping to avoid seziure of an expensive conveyance or put the risk of seizure on others.

In the past 18 months we have seized more than two tons of cocaine shipped on <u>one</u> common carrier -- a Colombian based airline. One shipment carried more than a ton and a half of cocaine and the second carried more than 800 pounds. These seizures, with a street value of more than 1.4 billion dollars, are the largest recorded combined seizures ever. We have seized and are seeking to forfeit the planes (or their cash value).

In summary, forfeiture can play, and in this district has played, a substantial role in the fight against drugs. It is for this reason that I heartily support this Subcommitte's interest and support for legislation to strenthen the forfeiture laws , as well as to increase the penalties associated with drug trafficking.

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Deputy Assistant Attorney General James I. K. Knapp has testified before the Subcommittee at length regarding the differences between H.R. 3299 and the President's Comprehensive Crime Control Act proposals. As Mr. Knapp noted, we are in essential agreement on the major concepts of this proposed legislation. However, I would like to touch on three areas where we feel H.R. 3299 could be further strengthened: real property forfeiture provisions; RICO; and substitute assets.

Right now we are able to seize the boats, cars and planes used to transport drugs as well as the cash used to pay for the drugs. We are not, however, able to seize the real property where the drugs are stored (commonly called "stash houses"), the facilities in which laboratories used to process cocaine are housed, or land on which marijuana is grown. H.R. 3299 would permit the forfeiture of "stash houses" and laboratories; it would not, however, provide for forfeiture of the land on which marijuana is grown.

It is illogical, in our view, not to be able to seize all the real property associated with the production and distribution of drugs when we can seize all other assets in the drug chain. Senate Bill 1762, which embodies in large measure the President's Comprehensive Crime Control Act proposals, provides for the seizure and forfeiture of land on which marijuana is grown as well as "stash houses" and laboratories.

Statutory authorization to seize land on which marijuana is grown, would, in our view provide an extremely effective deterrent. We would, therefore, urge that H.R. 3299 be broadened to include the Administration's proposal.

RICO criminal forfeiture provisions, a subject not addressed by H.R. 3299, require improvement in two areas: the forfeiture of profits of racketeering and the government's ability to prevent dissipation of assets prior to indictment.

Whether a RICO forfeiture may reach profits of the racketeering enterprises is an issue presently before the Supreme Court (Russello v. United States, No. 87-472, cert granted, Jan. 10, 1983). The ability to reach the ill-gotten gains of racketeering clearly is of immense importance to our war on organized crime, and legislative clarification on this point is needed. We think H.R. 3299 would be strengthened by including this change.

The current law does not explicitly empower courts to grant temporary restraining orders (TRO's) prior to indictment where property is subject to criminal forfeiture under the RICO and Continuing Criminal Enterprise (CCE) statutes. Without such a restraining order, property may be transferred prior to indictment and the ultimate jury verdict become a pyrrhic victory because no assets are left to forfeit.

The Administration's proposals and Senate Bill 1762 expressly authorize pre-indictment TRO's for both RICO and CCE forfeitures. H.R. 3299, however, limits the availability of pre-indictment TRO's to CCE cases. We believe this additional authority should apply to RICO cases as well.

The final area of concern in comparing H.R. 3299 to the Administration's proposals is the absence in H.R. 3299 of a "substitute assets" provision for criminal forfeiture.

In civil forfeiture, the proceeding is against the property itself and, absent the defendant's consent, other property may not be substituted for that which is subject to forfeiture. However, in criminal forfeiture the proceeding is against an individual and his property is subject to forfeiture as a punitive sanction for the way in which the specified property was used or obtained. A "substitute assets" provision would allow the judgment of forfeiture to be satisfied by other property of the defendant when the property subject to forfeiture is no longer available by reason of concealment or transfer. This is, of course, particularly important in attacking drug trafficking and organized crime where concealment of assets is a common practice.

I would now like to turn to an Administration proposal addressed by the pending House bills: a mechanism for funding the maintenance and upkeep of seized assets.

Seized boats and planes rapidly deteriorate, so that when they are ultimately forfeited and put into government service, a great deal of money is needed for repairs or, if sold at auction, the government receives far less than it otherwise would. In a sense the problem is a result of our increased success in utilizing existing forfeiture laws. Our seizures and forfeitures have simply outpaced the ability of agencies to deal with seized assets.

The Department of Justice is in the process of establishing a consolidated forfeiture management office within the Marshals Service to oversee the storage and disposition of seized assets. This will provide greater efficiency in the management of seized property. However, to keep pace with the ever growing costs associated with seized assets, we support the thrust of those provisions of H.R. 3299 and H.R. 3725 which would establish special funds into which proceeds of forfeitures would be deposited and out of which forfeiture expenses would be reimbursed. I view the creation of such funding as a sound business proposition. It will not cost the taxpayers a single dime, and the improved maintenance and upkeep will provide the government a greater return. Another aspect of the forfeiture fund proposals which we endorse is the expansion of the Department of Justice fund to encompass the proceeds of INS and other Justice agency forfeitures.

I also must tell you that our attorneys would particularly welcome the proposed increase in the administrative forfeiture level from $10,000 to $100,000 and the elimination of any limit on administrative forfeiture of conveyances. These changes are needed because of our success in utilizing the forfeiture statutes to attack drug trafficking. We have presently some 300 forfeiture cases pending in court in this district. The court for the Southern District of Florida has an overwhelming criminal caseload, the heaviest in the United States. The Speedy Trial Act requires that these criminal cases receive priority, resulting in the delay of civil cases. The administrative forfeiture of all conveyances and other assets with a value of not more than $100,000 will alleviate a great burden on our attorneys and the court system. Equally important, this change would expedite the disposition of seized assets, keeping maintenance costs and depreciation to a minimum.

The last area of forfeiture reform I would like to address is our inability to cooperate as fully as we would like with state and local authorities. In this regard, we continue to favor the provision of the President's initiative and Senate Bill 1762 which would authorize the Attorney General and Secretary of the Treasury, in appropriate cases, to transfer forfeited property to state or local law enforcement agencies which participated in the seizure or investigation resulting in a forfeiture. Not infrequently, state and local agencies have a compelling need for a particular forfeited asset such as a vehicle or vessel, and the

proposed change would thus improve our ability to coordinate efforts with our fellow state and local agencies.

Finally, the fines presently provided for violations of the drug laws are inadequate. With the enormous profits associated with drug trafficking, fines of $50,000 or $100,000 will often be insufficient and amount to nothing more than a small cost of doing business. The proposals in H.R. 3299 to increase the fines and to provide an "alternative fine" amounting to a maximum of twice the gross profits or proceeds of drug transactions is a substantial improvement over current law and consistent with this Administration's goal of raising the penalties associated with drug trafficking. The "alternative fine" ensures that the monetary penalty is a real penalty and a real deterrent for an illegal business earning millions of dollars.

In summary, strengthening the forfeiture laws and raising the criminal penalties will be of great assistance in our continuing efforts against drug trafficking. We are grateful that the subcommittee has taken the time to come to South Florida to obtain our views. We hope that, in a small way, we have contributed to your deliberations and that we will have the improved tools of which I have spoken at an early date.

Thank you again for your invitation to appear today.

Mr. HUGHES. Thank you. I think we will follow the procedure we have used today, if that is all right, and hear from all the witnesses and then get into questions.

Mr. Christman, welcome.

Mr. CHRISTMAN. Mr. Chairman, I don't have a prepared statement. However, I do believe you have a statement from Mr. Kupferer on the forfeiture seizure program that Justice is initiating. I am happy to be here and am willing to answer whatever questions I can that you might have.

Mr. HUGHES. Mr. Kupferer.

Mr. KUPFERER. Thank you for inviting us. I represent William E. Hall, Director of the U.S. Marshals Service.

The Department and the U.S. Marshals Service has recognized for some time now inequities in the problems that have arisen in the maintenance, custody, storage, and disposal of seized property.

In light of the General Accounting Office report, and in addition the Justice Management Division's evaluation or staff study, prompted the Department and the U.S. Marshals Service to respond with what we have now termed the National Asset Seizure and Forfeiture Program.

The last fiscal year, about 2 months prior to the close of the year, the Congress appropriated $2,002,000 in startup money and authorized 45 positions to the U.S. Marshals Service to initiate this program. I would just like to briefly give you an overview of where we are, as my prepared statement explains what we hope to do.

We are currently evaluating applications for the positions that were announced 1 month ago. We hope to have the administrative officers that will work in the Enforcement Division on board within 2 weeks.

In addition, the 13 locations that have been identified for the NASAV locations will be parallel to the OCD task forces with the inclusion of Miami and Seattle.

Those positions will consist of a property manager, an investigator and a data entry technician.

The startup program is an initial program to identify the needs that we are not aware of, to develop the software for the automated data system that is required, and to inventory the existing seized property and to properly address the techniques that we hope to employ as far as brokering, the term we use, brokering the responsibilities for the maintenance of those properties.

We have identified the fact, and, as you well now, as expressed by other people here this morning, that there is no single person who has expertise in managing all of the types of properties that are seized, in the efforts to combat crime and narcotics trafficking in particular.

We intend to look to the private sector, to broker that activity out, to maintain those properties in a fashion that will prevent deterioration, and to dispose of those properties ultimately when the judicial aspects have been completed, in a manner that will bring the best return to the U.S. Treasury as support of this legislation and additional legislation is being considered is ultimately the key to the issue.

If we don't have the legislation, the Congress is going to have to continue to support us with supplemental funds, to continue the program.

The special account or the year-to-year account, revolving account, the determination to be made is critical for the continuing support, so that the taxpayer doesn't ultimately pay for what is necessary to cure the problem.

Our position now chronologically is that hopefully we will be on line by January 30, the conclusion of the first month in the calendar year, at least from the initial stage.

We are in the process of conducting a national inventory at this time. We are starting with two test districts to assist in the development of the software that will be necessary to ease the burden of the maintenance of this program.

Thank you.

Mr. HUGHES. Thank you.

[The prepared statement of Mr. Kupferer follows:]

The Federal Asset Seizure and Forfeiture Problem and the Marshals Service

Historically, the Marshals Service has been the agency most frequently appointed by the federal courts to maintain custody of seized property and to handle forfeiture proceedings resulting from litigation brought by federal agencies in both criminal and civil cases. These appointments are most often requested ex parte by U.S. Attorneys on behalf of client agencies. The Marshals Service has become increasingly concerned over trends effecting seized and forfeitable asset activities. A funding deficiency increases each year in handling the oftentimes unpredictable costs in property seizures. The many legislative proposals made to correct this deficiency have not been successful.

Recent developments have made the requirement to address this problem more critical. For example:

-- The Administration's posture on fighting crime has led to the creation of twelve task forces dedicated to investigate narcotic trafficking and organized crime. Millions of dollars of assets for forfeiture are inherent in these types of investigations. These task forces will soon become fully operational and the asset seizures are expected to be extraordinary.

-- Legislation is pending to institute a viable assault on organized crime and narcotics trafficking through seizure of assets. While making seizures easier for prosecutors to effect through the courts, this legislation will also allow the FBI/DEA to conduct a two year pilot program utilizing 25% of the moneys realized from seizures for payment to persons who provide information to aid in criminal prosecutions. These new incentives should produce an unprecedented number and value of seized assets.

-- On February 3, 1983 the Comptroller General ruled that the Marshals Service can no longer expect or require other federal agencies to reimburse in rem actions by the Marshals Service except where the monies can be recovered from private parties or sales. Even when the court may grant "substitute custodianship" to another agency, the Marshals Service must bear that agency's costs in holding properties when the other agency is not budgeted or prepared to pay for such costs. The decision, although recent, is expected to have a dramatic adverse impact on the budgeted resources of the Marshals Service.

In December 1982, a Department of Justice evaluation team published a report entitled "Asset Seizures and Forfeitures: A Joint Study Team's Perspective on the Problems." The findings of this report were comprehensive and the study team identified the problems more than adequately. Basically, the report focused on seizures as a result of federal criminal investigations and supported a centralized forfeitable assets program housed within the Marshals Service. The program would be supported by additional positions and a fully automated information network. The recommendations would also have a beneficial effect on the management of seizures and forfeitures resulting from civil actions such as those brought by federal regulatory agencies. The study team also recommended special funding for the program.

The principle intent of asset seizures and forfeitures is to punish criminals, especially those who manage to place large amounts of illegally obtained revenue in legal enterprises and holdings. The government must be effective in identifying, seizing and disposing of these assets. The study team's concept of a national program within the Marshals Service to handle forfeitable assets is supported by this agency. However, adequate funding is imperative to ensure the effectiveness of the mission for which the program is intended.

Very few, if any, agencies are able to identify the expenditures involved in forfeiture activity. In this respect, future costs cannot be determined, especially in view of anticipated trends. An extraordinary rate of seizures annually could be expected. Currently, the Marshals Service is spending an estimated two million dollars per year to support its seized property activities. This amount does not even include related costs incurred when other agencies are involved.

A "no year" funding account has been proposed for sustaining a national program. Unfortunately, this type of funding would not adequately cover the unpredictable activity of asset seizures and forfeitures. Supplemental funding requests would be necessary creating an additional burden on the program.

A viable seized and forfeitable assets program will keep pace with criminal activity, government investigations of criminal activity and prosecutions. A fully self supporting program is critical to effect the government's case through to a successful conclusion. With legislative approval the Department of Justice could be granted the authority to retain the fees, commissions and other related costs resulting from forfeitures in a national escrow account. This account would serve as a "revolving fund" to sustain the forfeiture program. Of course, an initial appropriation for the first

year of operation is required; however, with the ability to retain fees, commissions and costs, the program will support itself with no requirement to seek additional funding.

The Marshals Service, a neutral authority, would be billed by federal investigative agencies for their costs incurred relating to seizures. All moneys collected in excess of the program's requirements would be deposited to the General Treasury. In this respect, the resources for this program would be enhanced whenever special emphasis or efforts are initiated by law enforcement or regulatory agencies which cannot be predicted.

UNITED STATES GOVERNMENT

memorandum

DATE: October 12, 1983

REPLY TO ATTN OF: MOE

SUBJECT: Summary of Seized Property

TO: Thomas C. Kupferer
Chief, Enforcement Division

The following is a summary of seized property in the custody of the U.S. Marshal, Southern District of Florida. A detailed report will be available for the House Judiciary Committee upon their arrival in Miami.

SOUTHERN FLORIDA

Type of Property	Value at Seizure
88 Vessels	$5,630,987.00
58 Vehicles	705, 673.00
16 Aircraft	3,157,661.00
162 Total	$9,494,321.00

Storage Costs

Vessels =	$62,848.02
Vehicles =	4,750.25
Aircraft =	53,955.90
	$121,554.17

Roger W. Arechiga

ROGER W. ARECHIGA
Inspector

NNFLO
0002 12:13:53 10/11/83

RR AA DOADM .

0039 12:17:25 10/11/83
FM: USM, NORTHERN/FLORIDA, PENSACOLA
TO: MOE - THOMAS KUPFERER

RE: LIST OF CRIMINAL & CIVIL SEIZED PROPERTY THROUGH 9-1-83

CIVIL-VESSELS

NAME & CASE #	WHEN SEIZED	WHERE SEIZED	VALUE	DISPOSITION
"GOLDEN COUGAR" MCA 82-0259	10-19-82	PANAMA CITY, FL STORAGE COST (1,548.00)	330,000	SOLD 1-5-83 PER COURT ORDER
"MARTHA ENVOY" PCA 83-4007	1-13-83	PENSACOLA,FL STORAGE COST (980.00)	1.5 MILLION	RELEASED TO MASTER PER ORDER ON NOTICE OF DISMISSAL 1-17-83
"CAPTAIN KNOT" PCA 83-4038	2-28-83	PENSACOLA, FL STORAGE COST (300.00)	200,000	RELEASE PER CONSENT ORDER 3-1-83
"SMOOTH STROKER" PCA 83-4065	4-1-83	NICEVILLE, FL NO STORAGE COST RELEASED TO SUBSTITUTE CUSTODIAN UPON SEIZURE	150,000	SOLD 9-9-83 PER COURT ORDER
"HELEN S." PCA 83-4075	4-13-83	FREEPORT, FL STORAGE COST (4,620.00)	70,000	SOLD 8-22-83 PER COURT ORDER
"SHOOTER" PCA 83-4107	5-17-83	PENSACOLA, FL NO STORAGE COST	225,000	RELEASED TO SUBSTITUTE CUSTODIAN 5-21-83
"INLAND I, II, IV" PCA 83-4[illegible]	6-16-83	PENSACOLA, FL NO STORAGE COST	1.5 MILLION	RELEASED TO SUBSTITUTE CUSTODIAN 6-[illegible]-83
"NORTHWESTER" PCA 83-7044	7-21-83	APALACHICOLA,FL NO STORAGE COST	50,000	RELEASED TO SUBSTITUTE CUSTODIAN 7-21-83

CIVIL VEHICLES

1980 CHEVROLET CORVETT	3-23-83	TALLAHASSEE,FL STORAGE COST (350.00)	20,000	RELEASED TO DEA PER COURT ORDER 10-[illegible]-83

NO CRIMINAL PROPERTY SEIZURES

NNNN
0039 12:17:51 10/11/83

Mr. Lenck, welcome.

Mr. HUGHES. Mr. Lenck, welcome.

Mr. LENCK. Thank you, Mr. Chairman.

DEA appreciates the opportunity to appear before you today and hopefully supply some insight to the problems we have been talking about.

The Drug Enforcement Administration and its predecessor agencies have been seizing conveyances for drug violations since 1939. I have been involved in one position or another in this activity since 1962, and I have been doing it exclusively since July 1982, for roughly the past 15 months.

DEA basically has a three-step process in administratively forfeiting seized conveyances, and this process can in a typical case be completed within 60 days. I think it is important to delineate exactly what happens in that 60-day period, and then what happens after that, if I might.

The first step is that we send a notice of seizure to the parties, and if the system is working correctly, and I say in 75 percent of the cases it does, the notice to those parties—and that is the registered owner and the license holder—is sent roughly within 2 weeks of a seizure.

That letter advises the persons in interest that they have 20 days to file a claim in bond, if they desire to do so, to place the matter in the U.S. District Court, and we tell them basically for the issue of contesting probable cause procedure, because that is really the only basic issue before the court in a case like that.

We also tell them they have 30 days from the date of the receipt of the letter to file a petition for remission in mitigation, which is a separate administrative proceeding.

We further attach to that notice a copy of the DEA regulations, the Department of Justice regulations, and a copy of the proposed publication.

We have a number of court decisions that say that notice by DEA is adequate, it is proper, in that type of forfeiture, and once it is completed, it is just as valid as a judicial forfeiture.

The next step in the process will be to run the publication, the proposed newspaper ad, for 3 consecutive weeks in a newspaper of general circulation in that area.

The technical statutes then apply, and there are customs statutes in 19 U.S.C. 1605 through 1618 that if no one files a claim in bond within 20 days of the first date of publication, the property is in fact forfeited.

The Government now owns the property.

Our field official, in this case Mr. Gruden, at that point in time, once that 20 days has run, executes what we call a declaration of forfeiture, and at that point the property is forfeited to the Federal Government, and that is where we say we can have a forfeiture in 60 days.

The collateral thing that can happen at that point is that an interested party during that 30-day period can file a petition for remission or mitigation of that forfeiture. We then, the seizing agency, investigate that petition and that petition, if it is an administrative forfeiture, is ruled on by myself in DEA headquarters.

If it is over $10,000, it goes to the representative of the Attorney General through the U.S. attorney's Office for a ruling, so that

might extend my 60-day period that I gave you perhaps to 90 or 100 days, if we have a petition investigation and in turn a ruling, but if no petition is filed, and let's assume none is filed, and they are filed in about half the cases, DEA then makes the decision either to place the property in official use or sell it and, if the system is working correctly, it is referred to GSA in what we call a Form 126 for sale, and then we are placed in the timeframe of whatever the GSA sale time is.

At best, we can have a GSA sale in a month to 45 days. At the worst, we could be 8 or 9 months waiting for such a sale. This is one of the reasons that DEA strongly supports the Marshals Service initiative to take over that activity, sell that property in a timely fashion with property managers and we strongly support that initiative.

To give you an idea of the volume of property that we are talking about in the system, DEA typically seizes about 1,400 conveyances a year. Not necessarily out of that 1,400, but in the same year DEA would place in use—and this last year is typical—365 vehicles in use, 5 aircraft and 5 vessels.

These conveyances consist of roughly 20 percent of what DEA seizes totally. In the last complete year of fiscal year 1982, DEA seized about $100 million worth of property; $20 million of that is composed of conveyances.

Another roughly $20 million is cash, currency or similar negotiable instruments.

We do—and I would like to add this as far as the five aircraft that we put in use are concerned, DEA does have the flexibility, and Homestead Air Force base was mentioned; we did have an aircraft down at Homestead; we have had a couple that were valued in roughly the quarter of a million dollar category; because Homestead is out in the salt air and blowing, we recognize it is not a good place to keep an aircraft, and we removed the aircraft.

We obtained a court order to remove it to an air base at Addison, Texas. An inside hangar; it takes a court order to move it; it is not difficult. We have done it in many cases. We move the property to protect it and we move it to another area, so we are aware of that property and we do take action to implement it.

Another policy that DEA uses, again to protect innocent people, and innocent lienholders, and hopefully avoid some of these delays, is what we call an impound release procedure.

We look at it in two stages.

The first is the field official, Mr. Gruden's agency supervisors, who look at the case and find out if we have an innocent actual owner of this property. Typically it is a family-type situation, husband, wife, father, mother. If you have an innocent owner, we release the property on a hold harmless agreement within a week of seizure. It is a procedure in law of forfeiture.

If we have a guilty registered owner, and in at least two-thirds of the cases we do, or 75 percent, we do, the next level is, we look to see if we have a substantial lienholder. If we have a substantial lienholder, and that by definition is where the appraised value of the vehicle and the equity of the lienholder is within $1,000, we then go to the lienholder again within a week and say if you will take this property, pay the costs, give DEA a hold harmless agreement to protect us, you can have the property today and they come in, they sign the hold harmless and we do that.

We release roughly I would say between 700 and 800 conveyances a year through the impoundment release policy. We have been encouraging, we continue to encourage, other Treasury agencies, particularly Customs and other Justice Department agencies, to do that type of impound release.

We have a 1980 order from the Attorney General that authorizes us to do that type of activity and we encourage it.

The other little technical point that we have, and it has been alluded to here, is DEA functions differently than Customs, and when we refer property to the U.S. attorney, DEA reads the statutes in 19 U.S.C. 1605 and following that we should have an immediate timely referral to the U.S. attorney.

We should not in a judicial case go through the determination whether we are going to grant a petition for remission; in mitigation we should refer immediately and DEA does just that.

If we decide not to release impounded property again within 2 weeks' time, we refer the case to the U.S. attorney in a typical case. That is not to say we don't have cases where things fall through the cracks. We have some. We have had months of delay in referring to the U.S. attorney in some cases. Those are stories and we have them.

I think it is also important that the subcommittee be advised of DEA's relationship with other agencies who are involved in seizure and forfeiture activity.

For roughly the last year, DEA has been training FBI agents, FBI agent attorneys in Washington and in Glencoe, GA, to get the FBI directly involved, and to process their own administrative and judicial forfeitures.

We have been doing that roughly for the past year. DEA has been processing the FBI's forfeitures for them.

As of October 1, 1983, the FBI has taken their forfeitures and they are now doing their own from that date on, the date of seizure is the determining date, so from August 1 on the FBI does their own.

The other, I think, very important point for this subcommittee, particularly with the boats in the Miami River, is that those boats are not DEA seizures, and the reason is in 1975, 2 years after the creation of DEA, there was a DEA-Customs agreement and one of the things that was adopted in that agreement to avoid any possible conflict between DEA and FBI—I am sorry, a Freudian slip—DEA and Customs, was that there is a specific paragraph that says that in any joint case where DEA and Customs are working together, Customs will process the vehicle, vessel or aircraft, and complete the forfeiture, so there is no question if we have a dual agency relationship that there can't be a conflict because everyone knows Customs takes it.

The reason for that is they have more experience in the facilities of the water and airports and interdiction and so they do that and that is why Customs has those and DEA does not.

Typically DEA seizes perhaps—the whole country—30 aircraft and maybe 40 boats a year. That is why we have that number.

37-763 O - 85 - 14

The other liaison point, again that has been alluded to, is the relationship between DEA and State and local agencies, and typically if the system is working correctly, whether or not the Federal Government is going to proceed with a forfeiture is determined exactly as if the Federal Government is going to proceed with the human defendant, and the same consideration should go into that.

In other words, what is the manpower of the State and locals? Whose money has been spent? Whose informant is it? What is the situation with the prosecutors involved?

What are the agencies involved? What are their positions, and you make a call on who is going to take this property, proceed under State forfeiture proceedings, and we have no problem with them doing a State forfeiture.

The technical problem with that is that the State CSA's, which were adopted in many States shortly after 1970, do not have a forfeiture violation for simple possession, so you could have a violator in a major case arrested with a small amount of drugs on a yacht or airplane, and the State not be able to forfeit it, so you have that laying behind us here.

In January of 1981, DEA, at the request of the White House, prepared a model asset act and recommended it to the States to avoid that problem and other problems, and also move and mirror the 1978 Federal law on assets.

We recommended a model State asset act to the States. At this point 11 States have adopted some form of asset legislation.

The ones that are fairly identical to what the DEA recommended are, of the 11 that have them, Arkansas, Hawaii, Illinois, Maine, and California.

The other States which have asset acts with some features of the recommended act, but not identical, are Florida, Maryland, Michigan, Missouri, Texas, and Washington, so we have this situation that in some States the States can proceed against the property and in some States they can't, and I think the example of the 14 vessels in the operation here at Collier County shows that all the vessels virtually went to the State and local agencies.

They had the authority to forfeit and we were happy to——

Mr. SMITH. Mr. Chairman, could I stop him for a second because I have a question on that. Those are 11 out of the 50 States; correct?

Mr. LENCK. Yes.

Mr. SMITH. So there are 39 States that still do not have asset forfeiture statutes?

Mr. LENCK. Yes.

Mr. SMITH. The DEA model that you suggest some of the states in fact did adopt, and the one that you suggested, is that patterned along the Federal seizure?

Mr. LENCK. Under the Federal 881 through 86; yes.

Mr. SMITH. At this moment would you please, if you want to venture an opinion as to whose statutes work better, the ones who adopted the DEA guidelines or the ones who did not?

Mr. LENCK. I couldn't answer that, Mr. Smith.

Mr. SMITH. Thank you.

Mr. LENCK. We have a hard enough time keeping track at headquarters level frankly of who passes what.

In other words, just to find out what they have and the backlay, I have seen the article which is an excellent article in the Police Chief Bulletin on the Fort Lauderdale system which spins out onto the Florida system, and that is an excellent procedure. I have seen that, but as far as any input of statistics, it is the only State article I have ever seen, frankly.

Mr. SMITH. Perhaps, Mr. Chairman, we might be able to ask some of those States to provide us with comparative information on how under the Federal model they are doing and how under the State models they are doing.

Mr. HUGHES. That would be helpful.

Mr. LENCK. I would be happy to leave with you, Mr. Chairman, the exact act I am speaking of, which has the statutory cites on it at the bottom, the ones that are passed and exactly what it is.

Mr. HUGHES. Without objection, it will be made a part of the record.

Mr. LENCK. DEA strongly supports the various legislative initiatives that are before the subcommittee. Particularly, we strongly support the raising of the administrative level from $10,000. We strongly support the creation of the central fund. We also strongly support the ability of the Federal Government to transfer property to State and local authorities.

It is not a situation where we wouldn't love to get property, vehicles, et cetera., that are not exactly perfect for our use to a task force operation that is right next door and helping us.

We would love to do it. We just need the authority to do that, and the legislation would certainly do it and we would like very much to have it.

There would also be a benefit in the central fund system to lienholders. Now, a lienholder has to wait until the property is sold. If we had the central fund, the lienholder could be paid immediately after the decision on remission or mitigation is made, either in the administrative agency or in the department.

We could take it out of the fund and it could be paid so it would be of benefit to them.

DEA has also started a pilot project, Mr. Chairman, to centralize the control over seized assets, and we call it our pilot computer project. It has been going on for roughly the last 6 months in our Washington field office, and it has recently been started in our Miami field office, and we are looking, if it functions as we think it is going to function, as of a year from now in October of 1984, to start it nationwide, and basically the system consists of a computer input at the field via our pathfinder terminals of seizure data which then comes into a headquarters central asset control office.

The report there prints out, and the central Washington office then sends the notice to parties I alluded to, the publication to the newspaper, the letter to the U.S. attorney; the whole thing is done from headquarters.

You have a central control there and the best part of the system is, you have an immediate retrieval by the system of what you have under seizure, and the statute, the statistics involved on numbers, where they are, and we have a great deal of confidence in the system, and hopefully it will work very nicely.

In closing I would like to sort of take a plea, Mr. Chairman, and that is that many times when congressional committees ask for data and information, the agencies get a feeling like we have now been burdened again; we have got better things to do and what-have-you, and the field has to gather this information, but I would say that the information you asked us to gather for this hearing will not only be of value to the committee, it will be of value to DEA because the way the information comes down, we can look down the sheet and we can see how long the property is sitting in a particular status, and particularly cases where the expenses on our hand outshow pending administrative forfeiture proceeds.

A period of a year or 18 months that should not be. There are cases in there that frankly are lost souls. We have a few in there. They have dropped through the cracks. We are not only going to correct those in this area, we are going to go through that and get to finding out what you think that is, a pending administrative forfeiture. Our file doesn't show that. It should be referred to GSA and what-have-you.

I would like to flag that to the subcommittee and say it has not been a burden; it is going to be something useful for DEA to use and to do that.

I appreciate the interest of the subcommittee.

Mr. HUGHES. Thank you for an excellent presentation.

[The statement of Mr. Lenck follows:]

Statement of

William M. Lenck
Forfeiture Counsel

Drug Enforcement Administration
United States Department of Justice

on

Seized Conveyances

Subcommittee on Crime
United States House of Representatives

William J. Hughes, Chairman
Ft. Lauderdale, Florida

October 14, 1983

The Drug Enforcement Administration (DEA), and its predecessor agencies, have been involved in the seizure of conveyances used in violation of the Federal drug laws since 1939. From 1939 to 1970 the statutory basis for such seizure was contained in the Contraband Transportation Act, U.S.C. § 781-788. From 1970 to date, DEA has used the forfeiture provisions of the Controlled Substances Act (CSA), codified as 21 U.S.C. § 881, to forfeit property including currency and other assets which are traceable to drug exchanges or which are used to facilitate drug activities. Since the scope of this hearing is concentrating on conveyance seizures, I will generally limit this statement to conveyance seizures. I have been involved in these drug forfeiture matters since 1962, and have been engaged exclusively in such activities since July of 1982 as Forfeiture Counsel of DEA.

The great majority of the forfeiture matters handled by DEA are civil actions in rem against the property under 21 U.S.C. § 881, while lesser number of forfeitures are processed by DEA as criminal forfeitures under the Continuing Criminal Enterprise Section of CSA (21 U.S.C. § 848). The civil forfeitures processed by DEA are of two types - administrative and judicial. Administrative forfeitures involve property valued at $10,000 or less at time of seizure, while judicial forfeitures involve property valued at more than $10,000 at time of seizure, or where claim and bond is filed to convert an administrative forfeiture into a judicial forfeiture.

In a typical administrative forfeiture, the forfeiture can be completed by DEA within 60 days of seizure. Within 60 days the seized property will either be returned to an innocent party or lienholder, placed in official Government service, or referred to the General Services Administration for sale. In Fiscal Year 1983, DEA placed 365 vehicles, 5 aircraft and 5 vessels in official use.

The procedure applicable in administrative forfeitures are:

(1) publication in a newspaper of general circulation in the place of seizure for three consecutives weeks advising that in order to contest the probable cause for forfeiture a claim and bond must be filed within 20 days of the first date of publication;

(2) a notice to parties from DEA that is sent by registered mail/return receipt advising that petitions for remission or mitigation of forfeiture should be filed within 30 days of the receipt of the letter. This notice from DEA also encloses copies of Justice Department regulations in 21 CFR 9 and DEA/FBI regulations in 21 CFR 1316.71-1316.81, as well as a copy of proposed publication. As a result, all registered owners and lienholders are fully advised as to their possible judicial and administrative remedies regarding the seizure and forfeiture;

(3) if no claim and bond are filed within the required

20 day period, the agent in charge of the DEA office involved executes a Declaration of Forfeiture to forfeit the property.

Approximately one-half of the petitions submitted by owners and lienholders are granted in drug cases under the remission procedures in 28 CFR 9. No hearings are held on administrative petitions and parties have a period of ten days to request reconsideration of DEA petition denial. Such requests must be based on evidence recently developed or not previously considered.

DEA also uses a "quick release" procedure on some conveyances in lieu of proceeding with a formal forfeiture. This procedure allows for the "quick release" of conveyances to innocent parties or substantial lienholders and results in substantial savings in storage costs, agents' time and prosecutors' time. DEA has been using a "quick release" policy since 1972, when the Coin & Currency case from the Supreme Court resulted in the Justice Department remission policy being amended to only deny lienholder's petitions when actual knowledge of drug record or reputation is present. The authority for DEA to "quick release" property is contained in 28 CFR 0.101 (c). DEA currently uses a policy of returning conveyances to lienholders when the lienholders equity is within $1,000 of the appraised value of the property. In a typical case, conveyances are "quick released" by DEA field officials within a week of seizure providing the person

receiving the property pays costs and will execute a hold-harmless agreement to protect DEA.

In judicial forfeiture cases, the property is referred by DEA to the U.S. Attorney's office in the place of seizure. These judicial forfeitures necessarily take longer than administrative forfeitures, and if an answer is filed to the Government's Complaint for Forfeiture, the case may not come up for civil trial in the U.S. District Court for a year or more. When such forfeitures are completed forfeited conveyances will either be placed in official Government service or sold by the U.S. Marshal.

DEA strongly supports the various legislative proposals before the Congress which would reform and add various features to the drug forfeiture statutes. Particularly, the proposal to raise the line between administrative and judicial forfeiture from its current level of $10,000, to an unlimited level for conveyances, and a level of $100,000 for all other property, would result in most forfeiture actions being completed within a 60 day period. Once forfeiture action is completed the property would either be placed in official use or referred to GSA for sale. The obvious savings in storage costs, recordkeeping, prosecutors time and court time would be of great advantage to all concerned. Also, the legislative proposal to create a central fund in the Justice and Treasury Departments to collect forfeiture proceeds and to use the collections to pay costs of forfeiture, liens, and awards to

persons furnishing information leading to forfeitures, would greatly assist law enforcement efforts. This is particularly true as far as awards in forfeiture matters under the CSA are concerned since DEA lost such award authority in 1979 when the CSA was erroneously amended to delete such award authority during an effort to amend the award authority to prevent the payment of awards based on the value of seized contraband drugs.

In addition to benefiting DEA, the proposals to create such central funds would also benefit lienholders since they could be paid their liens shortly after forfeiture from the central fund, rather than waiting for many months for the property to be sold at public auction.

The proposed legislation which would allow the transfer of forfeited property to state and local agencies that assist in Federal drug enforcement matters would also materially assist DEA in its enforcement activities which often require close coordination with local authorities.

Beginning in February of 1983, DEA sought to streamline its forfeiture process and provide for meaningful and accurate data reporting by means of a centralized, computerized automatic data processing system. The program, now completing its final test stages, provides for electronic data transfer of seizure information from the responsible seizing office to headquarters

within 48 hours of the seizures. From that point in time, one unit within DEA headquarters handles all aspects of the forfeiture process up to the point of disposition, including notice to all parties, public notice by way of newspaper advertisement or letters to U.S. Attorneys, petitions for remission or mitigation of forfeiture and assignment of the asset to the proper entity responsible for disposition or use. Initial evaluation of the program has shown it to appreciably expedite routine forfeiture actions, thereby reducing agency storage costs and reducing asset depreciation, and allowing for a reduction in waiting periods prior to an asset being utilized for the benefit of the government. The program has also proved to be capable of producing a nearly perfect accounting of asset inventory, costs attendant to each forfeiture and net amounts transferred to the Treasury. It is now projected that the computerized assets forfeiture program will be implemented on a national basis within the following fiscal year.

Attached are seizure statistics which reflect DEA seizures for FY 82 and about one-half of FY 83.

Thank you for the opportunity to discuss our program and our procedures to process seized conveyances. I will be happy to respond to any questions you may have at this time.

FY 83* DEA Seizures by Type of Asset

Vehicles	$ 5,011,825	#(637)
Vessels	2,657,250	(25)
Aircraft	4,310,000	(22)
Other Conveyances	17,850	(15)
Currency	17,602,599	(741)
Financial Instruments	4,200,233	(99)
Real Property	6,986,381	(55)
Equipment - Chemicals	236,836	(106)
Regulatory	6,617	(2)
Other	1,865,664	(330)
TOTAL DEA SEIZURES	$ 43,150,405	(2,032)
S/L TASK FORCE SEIZURES	$ 13,900,000	

FY 82 DEA Seizures by Type of Asset

Vehicles	$ 10,080,317	(1,269)
Vessels	4,028,500	(55)
Aircraft	4,548,922	(31)
Other Conveyances	20,275	(15)
Currency	23,945,309	(1,259)
Financial Instruments	2,306,315	(69)
Real Property	31,909,298	(73)
Equipment - Chemicals	669,449	(288)
Regulatory	2,000	(1)
Other	25,991,352	(414)
TOTAL DEA SEIZURES	$103,501,737	(3,474)

Total DEA Seizures**FY 80 through FY 83

FY 80	$ 39,381,705
FY 81	64,657,278
FY 82	103,501,737
FY 83	43,150,405
	(through May 19, 1983)

*As of May 19, 1983
**Does not include other agency cooperative seizures.

Mr. HUGHES. Mr. Gruden.

Mr. GRUDEN. Mr. Chairman, I appreciate the opportunity to be here today. I have not prepared a formal statement and therefore I have no summary to present to you.

I am here to represent DEA at the local level and to assist Mr. Lenck if he should have any questions as to the local level, and, indeed, assist the subcommittee members here, should they have any questions as to what is happening at the local level with respect to DEA.

I thank you very much for the opportunity to appear here.

Mr. HUGHES. Thank you. We are delighted to have had you with us.

Mr. Plaskett, welcome.

Mr. PLASKETT. Mr. Chairman and members of the subcommittee, I am pleased to have this opportunity to testify in behalf of the Immigration and Naturalization Service concerning the seizure and forfeitures of conveyances used to smuggle illegal aliens into and within the United States.

Basically the procedure that the Immigration and Naturalization Service has is similar and almost identical to the procedures followed by DEA.

During last year the Immigration Service in the southern region seized 2,910 conveyances used to smuggle illegal aliens into or within the United States. The Service on a whole seized approximately 7,500 conveyances used to smuggle aliens into or within the United States.

In conjunction with the prepared statement the Immigration and Naturalization Service supports two initial concepts that have been widely discussed and accepted by the panel members on the subcommittee.

Basically the first item is to remove the administrative forfeiture level of $10,000 of conveyances transporting illegal aliens into the United States.

The second portion of that would discuss the cost and claim bond which is currently set at $250. This cost and claim bond should be increased to ten percent of the value of the seized conveyance or $5,000, whichever is lower. Such provisions would increase the number of seized conveyances that could be forfeited administratively and considerably shorten the time from seizure to forfeiture.

The second major issue that the U.S. Immigration and Naturalization Service strongly supports is establishment of a forfeiture fund as provided by the bills which are before this subcommittee.

This should include not only the expenditures incurred by the seizing agencies, but to provide for salaries of administrative people to administratively conduct the seizure and forfeiting process for the agency.

In summary, the forfeiture proceedings of the U.S. Immigration and Naturalization Service are an effective means for deterring alien smuggling in southern Florida. Those recommendations contained in the written statement and briefly discussed by myself would facilitate the administration by the U.S. Immigration and Naturalization Service.

I appreciate the opportunity to discuss the U.S. Immigration and Naturalization's forfeiture program with the subcommittee today. I will be happy to answer any questions.

[The statement of Mr. Plaskett follows:]

United States Department of Justice

Immigration and Naturalization Service

Washington, D.C. 20536

TESTIMONY BY

BRUCE PLASKETT
COORDINATOR FOR ANTI-SMUGGLING
SOUTHERN REGION
IMMIGRATION AND NATURALIZATION SERVICE

ON OCTOBER 14, 1983

ON THE COMPREHENSIVE DRUG PENALTY ACT OF 1983

H.R. 3299

BEFORE THE

SUBCOMMITTEE ON CRIME OF THE HOUSE COMMITTEE

ON THE JUDICIARY

Mr. Chairman and Members of the Subcommittee, I am pleased to have this opportunity to testify on behalf of the Immigration and Naturalization Service (INS) concerning the seizure and forfeiture of conveyances used to smuggle illegal aliens into or within the United States.

SUMMARY OF THE LAW SEIZURE AND FORFEITURE

The INS was provided authority to seize and forfeit conveyances in November 1978, by P.L. 95-582, 8 U.S.C. 1324(b). That law provided that INS could seize without warrant, any conveyance as to which there was probable cause that a violation of section 274(a) of the INA, 8 U.S.C. 1324(a), had occurred. The 1978 law prohibited the seizure of any conveyance when (A) the owner or person in charge was not a consenting party or privy to the illegal act; or (B) the conveyance was in the illegal possession of another. The 1978 law also provided that conveyance not subject to seizure were to be returned at no cost to innocent parties; and that third party or lienholder interests were to be satisfied at no cost to the interestholder on seized and forfeited conveyances.

These requirements, prohibiting seizure of conveyances of innocent owners, and providing for payments of costs by INS, were not placed on other law enforcement agencies with seizure and forfeiture authority. In 1981, P.L. 97-116 was enacted. Section 12 of that Act eliminated the restrictions described above, and brought INS seizure and forfeiture authority to a level commensurate with that of other law enforcement agencies.

FORFEITURE PROCEDURES

Forfeitures of seized conveyances may be conducted administratively by INS or by judicial handling in the U.S. Courts.

Administrative forfeiture generally require approximately 90 days to complete, and involve property appraised at $10,000 or less. Under law, INS is authorized to use the forfeiture procedures of the Customs Service, as applicable. Judicial civil forfeitures are pursued against conveyances appraised at more than $10,000 and conveyances which were removed from administrative handling through the filing by claimants of cost and claim bonds of $250.00. Depending upon the jurisdiction in which the cases are filed, judicial forfeiture may require between one and two years to complete.

Judicial forfeiture actions tie up already strained United States Attorney's Offices and court resources. Many of these actions involve conveyances valued at or below $10,000 which, but for the posting of a cost and claim bond, could be disposed of administratively. The amount of the bond presently required ($250) is relatively easy to post, resulting in an inordinate number of transfers of administrative forfeitures to the District Courts. The number of these additional judicial forfeitures is straining the resources of most United States Attorney's Offices.

37-763 O - 85 - 15

RECOMMENDATION

Legislation should be enacted which would remove the administrative forfeiture limit for conveyances transporting illegal narcotics and increase the administrative forfeiture limit for other property from $10,000 to $100,000. The amount of the cost and claim bond should be increased to ten percent of the value of the seized conveyance or $5,000, whichever is lower. Such legislation would increase the number of seized conveyances that could be forfeited administratively and considerably shorten the time from seizure to forfeiture.

REIMBURSEMENT PROCEDURES

Current Service procedures permit for the reimbursement to the agency of expenditures for storage, maintenance, and preparation for sale of forfeited conveyances from the proceeds of the sale of the conveyances. The remaining funds of the proceeds of the sale of the conveyance are transferred to the Treasury Department rather then being available for other expenses attending the seizure/forfeiture program.

As of September 30, 1983, the Southern Region received $147,820 as reimbursable funds from the proceeds of conveyance sales with the remaining total of $1,047,683 of sale proceeds being transferred to the Treasury Department.

RECOMMENDATION

The Immigration and Naturalization Service strongly supports the establishment of a forfeiture fund as provided by the bills which are before this subcommittee. However, this forfeiture fund should be expanded to include seizures and forfeitures made under the authority of the Immigration and Nationality Act.

Forfeitures are powerful tools for depriving smugglers of the means and fruits of their crimes. They reduce both the ability to break the law and the incentives for doing so. Funds generated from these forfeitures should be maximally available to cover expenses arising from seizure and forfeiture programs.

SOUTHERN FLORIDA ENFORCEMENT

Historically, southern Florida has been affected by smuggling of aliens who are fleeing the political turmoil and economicaly depressed areas of the Caribbean islands, Central and South America. Enforcement of seizure statutes for south Florida are tha jurisdictional responsibilities of both the Miami Border Patrol Sector and the Miami District Office.

From April 21, 1980, through September 25, 1980, southern Florida was flooded with Cuban refugees from Cuba. The Cuban Flotilla resulted in the entry of 125,081 Cuban nationals and the seizure of 155 vessels. The forfeiture of the 155 vessels was achieved through both administrative and

judicial procedures, depending on the value of the vessel seized. On September 27, 1982, a total of 100 vessels were sold for $267,150 at a GSA auction in Key West, Florida. As of September 1, 1983, there are nine (9) remaining Cuban vessels at Key West, Florida, which are scheduled for sale on November 15, 1983.

After the influx of Cuban refugees, southern Florida was flooded with smuggling of Haitians aliens. In order to limit the flow of smuggled Haitian aliens by vessels to southern Florida, in November 1981, INS, State Department and U.S. Coast Guard introduced an interdiction program which consisted of Coast Guard vessels intercepting suspected Haitian vessels destined for the United States.

The Vice President's Task Force was established in February 1982 which included a sea interdiction program to combat smuggling of narcotics by sea and air to the southern Florida area. The two interdiction programs appear to have greatly limited the ability of smugglers to smuggle aliens by vessels into southern Florida.

With the presence of the two interdiction programs and increased resources for the Miami Border Patrol Sector, the southern Florida seizure program has been expanded to encompass the seizure of conveyances used to transport illegal aliens into the central and southern Florida areas. A total of eight conveyances used in smuggling of illegal aliens to southern Florida were seized during FY 82. During the first eleven months of FY 83, a total of 88 conveyances were seized which is a 1000 percent increase over FY 82.

In summary, the forfeiture provisions of the Immigration and Nationality Act are an effective means for deterring alien smuggling in Southern Florida. The recommendations made above would facilitate their administration by INS.

I appreciate the opportunity to discuss the INS forfeiture program with the Subcommittee today and would be happy to answer any questions.

Mr. HUGHES. Thank you.

Mr. Plaskett, first we thank you for your testimony and your appearance here today. I want to tell you that we have received some correspondence from Chairman Mazzoli of the Subcommittee on Immigration, Refugee and International Law, which in essence supports the position you have taken that immigration should be included in the legislation.

Let me explain something because it bears on something that Mr. Marcus commented on. That is, this subcommittee doesn't have jurisdiction over all aspects of testimony that we have elicited today. We operate a rather nebulous kind of jurisdiction but Mr. Mazzoli, of course, has very clear jurisdiction over immigration matters. That is another subcommittee of Judiciary.

With his cooperation, we can certainly address—and I would support and I am sure the rest of the committee would agree, that we should address any problems that Immigration has with administrative forfeiture and forfeiture generally.

I just want to explain that that is part of the problem.

We have a similar problem with regard to transferring assets to local units of Government. Conceptually we support that but we need concurrence from another committee before we move in this area.

Mr. Sawyer and I, in the 97th Congress, worked very hard to try to persuade the committee that does have jurisdiction to permit us to include this transfer authority, but there was opposition in the committee that had jurisdiction, over this issue so we excluded it from this bill lest the whole bill be defeated.

We do not have direct jurisdiction over that transfer issue. Speaking for myself, I support that. I think it is important that we do share resources and have the direct authority to do so with local law enforcement agencies, and not have to depend upon an informal one-to-one relationship with the agency where you say you take the seizure.

I quite agree with you that this is a problem, and I will attempt to discuss this further with the appropriate committee in this Congress.

Let me, if I may, briefly take you back, Mr. Marcus, to something that you said earlier that concerns me.

I am not going to press you about the declination policy. I have dealt with declination policy for a number of years. I served 10 years in law enforcement, dealt with a federal declination policy which they spelled out for us, but I never totally understood their rationale.

Cocaine and marijuana, quaaludes and what-have-you, coming into the country doesn't generally originate domestically. It comes from outside the borders of Florida and the other States.

Mr. MARCUS. I think that is correct, sir. The overwhelming bulk would come from South America. We are talking about Colombia and Bolivia principally.

Mr. HUGHES. "Declination" is just another way of saying "were not going to take jurisdiction." Essentially it doesn't fall within legislative policy guidelines, but is governed in practice by whatever happens to be the guidelines of the U.S. attorney in that particular district.

My question is, is the declination policy such that anything that comes in, let's say by ship, that we identify on particular vessels, is subject to prosecution by your office, within your district.

Mr. MARCUS. We have policies relating to the amounts that we are talking about and between the relationships we have with the State attorneys and ourselves, we pretty much cover the waterfront.

Example: As I began with, if you plugged into this question 2 years ago and asked my predecessor how do you handle marijuana coming from the Caribbean where a customs officer picks up the marijuana at the airport, small quantities, 10 pounds or less, that might have a street value of $2,500 or $3,500 maximum, how do you handle that case?

Basically the local authorities said, we are so overburdened with homicides and so on that we can't take those cases, and we both had jurisdiction. That has since changed, and we now cover all of those cases except that the way it works is the CPO, the customs officer, will turn the case over to Dade County principally, the largest bulk of our cases, and they will be handled.

If the amount is above that threshold amount, it will automatically be triggered into the Federal system. It won't bring in——

Mr. HUGHES. The point I am trying to make, we are not talking about specifics, but basically what concerns me is that I have the perception, not just here in Florida, but throughout the country, that we are absolutely lousy partners to local law enforcement.

We are declining cases that are absolutely national in scope and "declination" is just another way, in many districts, of saying, "We are dumping it on the local law enforcement agencies who are up to their eyeballs themselves in prosecuting cases."

I realize it is a resource problem. It is a manpower problem. Your office is probably seeing the same kind of increase that you described in the case increase. What is the size of your office now?

Mr. MARCUS. We have 84 or 85 prosecutors, full time.

Mr. HUGHES. How about support persons?

Mr. MARCUS. Support personnel would range between 80 and 90 depending on whether you would include paralegals, legal technicians and so on.

In addition to that, we have had an additional 10 prosecutors on loan from other districts in the United States.

I should say, Congressman, in that regard that in this district at least, in the southern part of this district at least, our coordination relationship today with State and local authorities is sufficiently full and complete so that we think we are pretty much able to cover the waterfront every which way through arrangements that we reach with the state attorneys.

An example of that is in the area of homicides we have taken the unorthodox step of taking Federal prosecutors and moving them into State court to prosecute State murder cases pursuant to State law, where we are talking about first degree murder cases involving illegal or undocumented aliens.

Upon conviction, we take those defendants out of the State system altogether, house them in the Federal Bureau of Prisons at Federal expense. It is a very, very expensive program, but from my

view a very valuable one in terms of the relationships with the local counties.

Mr. HUGHES. And it is the right decision, for the simple reason that it is basically our responsibility since narcotics trafficking as we know it today is a national problem, and it is beyond the ability of the local law enforcement agencies to address the problems.

What was the size of your staff in 1980–81?

Mr. MARCUS. When I took over as U.S. attorney in March 1982, there were 61 full-time assistant U.S. attorneys in the southern district of Florida. I have hired roughly 38 or 39 prosecutors. There has been some turnover in the supervisory personnel. We have been operating in the mid-eighties plus what we call a bucket brigade of roughly 10 prosecutors, which would put us up about 30 to 35 prosecutors.

Mr. HUGHES. Then you have 10 temporary on loan from other offices?

Mr. MARCUS. Yes, sir, I do. We have had them. We did for the first 14 months of the task force, as we increased the permanent size of our staff.

Mr. HUGHES. How many more would you need to really move your case load?

Mr. MARCUS. The cases are moving—I am sorry?

Mr. HUGHES. What would you need to move the caseload, as you and the court wants you to move the caseload.

Mr. MARCUS. The criminal cases all move because by law they either move or they get thrown out.

Mr. HUGHES. I understand that, but what I am asking is, Do you have enough personnel?

Mr. MARCUS. I think that we have had what amounts to a very massive buildup in resources.

Mr. HUGHES. I didn't ask you that. I know you have.

Mr. MARCUS. I think you can always use more, Congressman, but I think we are doing pretty well with the resources we have. The biggest problem we face is that, given the increase we have, if I doubled the number of cases in this district, and I probably couldn't do that, but I probably could increase it by 20 or 30 percent, the district court is so woefully understaffed they have only 12 district judges, that we would be in a situation where it would make it extremely difficult for them—I am just talking now about the criminal case, no less an enormous civil backlog. There is a point at which the demand becomes inelastic. That is what I am saying in essence.

Mr. HUGHES. I understand. So what you are saying is that you are doing as well as you can do, given the constraints under which you are operating, the court personnel and the court time that you are allotted, the size of the Marshals Service, in attempting to process matters.

You feel that you are operating at maximum effectiveness at the present time.

Mr. MARCUS. I think we are doing pretty well. I think we can always do better, but, yes, I think we are doing pretty well.

Mr. HUGHES. Of course, you know what has happened. We have been sending a lot of DEA and other personnel here from other of-

fices, and that leaves it short in other parts of the country to try to address the serious problems that exist here in southern Florida.

It just points up a shortfall in personnel in the criminal justice system. We are operating in the margin. I fully expect, and I have no doubt that you are operating as well as you can, given the constraints under which you are operating with the system.

Let me ask something specific about forfeitures, since that is what we are basically interested in.

How long has it taken you to process civil forfeiture cases in the district court here in southern Florida?

Mr. MARCUS. I think the range of time would fall into a couple of different categories. Generally now our turnaround time from the time we receive the referral—now, we are just talking about those cases that are referred to us for court action, whether it be DEA or the Customs Service or the FBI or the INS, I would say we are looking at roughly 6 to 8 weeks turnaround from the time we will get the referral; we will file that complaint with the district court, the in rem action against the property, within 6 to 8 weeks.

We have found that once the complaint is filed in the district court, the time frame involved to have filed court adjudication and resolution just at the district court level can take anywhere from 120 days to 2 years and, of course, it will turn on how valuable the asset is.

As the value of the asset increases, the likelihood of a hotly contested battle, of course, will rise as well.

When you are in those situations, and you have any number of those, the litigation could take a full 18 months or 2 years before we actually get a resolution in the district court, and even then it would go up to the 11th Circuit Court of Appeals.

On the other hand, from the forfeiture of an asset that is not contested or defaulted, after all the notices are provided, after the complaint is filed, et cetera., we may notice somebody through deposition who we can't find, move for default judgment before the district court; it could take you 6 months, maybe a little longer, maybe a little shorter, but I would say your range would be 6 months roughly to 2 years just on the district court level.

On the lengthy ones, it could go an extra year beyond that once you build in the appellate process.

Mr. HUGHES. Why is that? Is that because you just can't get the court time?

Mr. MARCUS. I think that there are at least two reasons for that. Reason No. 1 is that we have a district court with 12 district judges who have a higher volume of criminal felony indictment in this district than anywhere else in the United States, and they are required by law to try the case within 70 days of the indictment, and, if you don't, the defendant walks out the door, and so it is critically important that they do that.

As part of that, I should say that the other unusual quirk that we found in south Florida is cases aren't disposed of, criminal cases, by plea. Everything goes to trial here.

Nationwide, 17 out of 100 defendants charged with felonies take their case to trial and the other 83 on the average are disposed of; in this district the numbers are between 40 and 50 percent, so it isn't just the gross caseload. It is the fact that within that caseload

so many cases go to trial basically because they are narcotics cases; they are very serious; we don't plead them out, and because the number of foreign nationals is so great.

Mr. HUGHES. So the bottom line is, You can't get court time?

Mr. MARCUS. I would say the bottom line is the courts have trouble getting to it. That is the first point.

Mr. HUGHES. Let me just walk you through your office that handles forfeiture. Of what does it consist? I understand you have now set up a special section that deals with forfeiture.

Mr. MARCUS. Yes, sir.

Mr. HUGHES. Tell us a little bit about that section.

Mr. MARCUS. When we took over, it was increasingly important to us to move these forfeiture cases as best we could. We had really only a lawyer or a lawyer and a half assigned full-time to the forfeiture area. It is housed in the Civil Division of our office, and we at this point have full-time between five and six attorneys working on forfeiture activities. That amounts to roughly a third of the whole civil division of the U.S. Attorney's Office, an enormous allocation of the resources where we are also responsible for all civil litigation where any U.S. agency or officer or employee may be a party to a lawsuit, whether plaintiff or defendant.

Those lawyers have as their particular—and they report directly to the Chief of the Civil Division who reports to the executive assistant and to me about the forfeiture cases, and take the referrals from all of the agencies in question; they operate under the problems that you have, I think, well alluded to and summarized today. Their functions include not only moving the cases that we get, but prioritizing those cases in terms of the dollar value and where we think we can maximize the best bang for our buck, and obviously those cases that involve greater assets we will push far more vigorously than those with lesser assets.

One case with $6 million in cash will be worth 500 or 1,000 cars and conveyances, and so the resources will reflect the dollar value involved.

Beyond the civil allocation of the cases, they work closely with the Criminal Division attorneys because what we have tried to do is, when we move forward on criminal indictments involving dope cases, involving narcotics, and where we know their major assets, we will simultaneously, wherever we can, file the indictments, and the seizure warrants for the civil seizures at the same time so we can get our maximum exposure and make it clear that we are going after the defendants not only criminally but civilly.

One example will highlight the point and also underscore some of the difficulties. We had an operation called Swordfish. It is an undercover DEA operation designed and intended to penetrate money launderers. There were many assets involved at the same time. We went with a score of indictments involving about 80 or 90 defendants, and at the same time our civil division attorneys were assigned to file with the district court, really with the magistrate, what amounted to seizure warrants against bank accounts. We wanted to seize the assets where we felt we had probable cause to show that the dollars were tied to the dope business, so the lawyers in short in the Civil Division, one, handled the referrals and, two, on selected projects where we are going with a major organization

or a major undertaking, work with the Criminal Division attorneys on proceeding on a simultaneously orchestrated track where we can do that.

Sometimes it works better, sometimes it doesn't work as well.

Mr. HUGHES. That makes abundant good sense, but what I don't understand is why it would take 5 or 6 weeks to process, in that forfeiture unit, cases that are by and large, it would seem, routine. For instance, the complaint that you would file would be almost identical, filling in the different types of aircraft, the parties, the circumstances may be somewhat different, but basically it is just standard complaint material that you could probably repeat in 90 percent of the cases, if not higher.

Insofar as trying to assess priorities, I suspect that I could sit down with Customs—in a day and do a pretty good job of going through their inventory and, with discussions with them—we could identify what problems they have with it, what boats in fact should be priorities, what leaky tickies they have. There are obviously loss leaders, and I suspect in a day I could probably go through an inventory of vessels and do a pretty good job of prioritizing.

You might make a few errors, but it seems it wouldn't take 5 or 6 weeks to do anything like that. I don't understand why we lose so much time on this situation.

I understand the lack of court time, and I suspect that a lot of the loss of time and the loss that we are seeing in inventory is because you are not getting enough court time. We can provide you with tools, but that is not going to provide you with the resources to use those tools.

You have to build across the criminal justice system. If you have a bottleneck anywhere, you are going to have the snags that we now see; deplorable, unacceptable situations where we see vessels sitting around for 2 or 3 years years, deteriorating, ending up in many instances with the Government being sued for the loss, which is happening under the present scenario. That, to me, is unacceptable.

Mr. MARCUS. I think you have raised a number of key issues here.

The first issue is turnaround time when a referral actually takes place.

The second issue and a distinct issue is the preservation of assets, again perhaps an equally important one.

Let me make perhaps two or three observations for you in connection with the first issue, the turnaround time, the time when we get the referral from Customs or DEA or what-have-you.

We think 5 to weeks turnaround time is lightning quick, especially in relationship to the totality of time that it takes to push the case through.

In some instances it will be done more quickly.

Mr. HUGHES. This is a case that has already been worked up. Customs has already done a pretty good job of doing the basic investigation. You have got a total investigation at that point of all of the circumstances. In fact, you know the lien holders at that point, and so they have already done the legwork basically at that point.

The determination then is one of prioritizing and determining whether to file a complaint or to review a policy of whether to remit or not remit. Those reviews, I would think, could be done fairly expeditiously.

Mr. MARCUS. As I said, when we started 20 months ago, I would say the lag time was three, four, or five times that, turnaround time from the date of the referral to the time when the actual filing has taken place. Those numbers have shrunk enormously through the period of time that I have enumerated for this subcommittee and, indeed, in relationship to the amount of time that it takes to move a case through the judicial process, it is an extraordinarily small period of time.

In some instances, in addition to that, the ownership of the property, especially the more valuable property, a boat perhaps 60 feet or more, may be a very, very complicated proposition. There may be a facial owner and there may be a beneficial owner, and they may differ.

The facial ownership may change in any number of instances as well, and so the nature of the case in many instances will dictate the length of time and the nature of the investigative process that will go into the actual filing of the complaint.

Mr. HUGHES. You are going to have a situation that is unique, but much of the inventory that I have seen and talked about were fairly routine matters that should not have taken 2 or 3 years.

The gentleman from Michigan.

Mr. SAWYER. Of course, it is probably true that the turnaround time, as you call it, is relatively small compared to the court time, but it is added to the court time because I presume the court time doesn't start to run until you have gotten the complaint filed.

Mr. MARCUS. That would be correct. The court time would run from the moment the in rem complaint would be filed in the district court.

Mr. SAWYER. With respect to DEA, you mentioned you forfeited some $100 million worth of assets, as I recall it.

Mr. LENCK. Seizure.

Mr. SAWYER. Some $20 million being cash and $20 million conveyances.

What is the other $60 million?

Mr. LENCK. The attachment at the end of my statement, Mr. Congressman, carries vehicles roughly $10 million, vessels $4 million, aircraft $4 million, other conveyances $20,000, currency $2 million, financial instruments $2 million, real property $31 million, equipment, chemicals $669,000; regulatory, $2,000; other $25 million. Others include everything else not enumerated: fur coats, Persian rugs, jewelry, diamonds, paintings. We had one case with over $2 million worth of paintings that were seized, so you have a vast array of property which ultimately must be sold——

Mr. SMITH. Would the gentleman inquire as to where that stuff is now?

Mr. SAWYER. Where is the stuff now?

Mr. LENCK. All I can tell you, it was seized in fiscal year 1982 and probably since we are only a year away from that the bulk of those cases with the paintings which, if I recall correctly, is up in New York, probably pending in the civil court docket, Mr. Smith.

Mr. SAWYER. When you were, Mr. Marcus, in the Eastern District of Michigan, were you in the U.S. attorney's office there or the task force?

Mr. MARCUS. I was the Chief of the organized Crime Strike Force.

Mr. SAWYER. Did you succeed Ozur?

Mr. MARCUS. No, there were two or three attorneys; Anderson and then Paul Coffey was there for 2 or 3 years, and I succeeded Coffey in the late 1970's.

Mr. SAWYER. You mentioned that you process these forfeitures rather rapidly. I looked over this inventory list of DEA's as of September 1, 1983, and there are quite a number of just automobiles within the range of the present administrative forfeiture that are well over 1 year old.

Mr. LENCK. If you notice also, Mr. Congressman, a lot of those are over in the GSA sale column, and that is what we are waiting. If the x's are in the administrative column, those are the ones I have alluded to that something is wrong with the system. Something has broken down. Either somebody forgot to place it in use, somebody forgot to refer it for sale. We have lost paperwork on a petition. We have a hidden lienholder. We have all sorts of things that jump up in some cases.

Mr. HUGHES. That is just one on the GSA list.

Mr. SAWYER. There was only one in GSA according to my list.

Mr. LENCK. I thought you were looking at—we have a national—we supplied you a national list of the whole country. There are many more for sale in GSA.

Mr. SAWYER. This I presume is the Florida area as of September 1, 1983, and on that one alone there are 15 or 18 or thereabouts that have been there upward of a year, and that are within the $10,000 limit, and they are not pending GSA sale.

Mr. LENCK. I think if you look closely, some of those are also in the judicial side, although they were less than $10,000 when seized. Somebody has filed a claim and bond to make them judicial.

The first column carries the ones judicial, those where claimant bonds have been availed and/or petitions. We could have either. We could be awaiting a court process and/or petition in justice at headquarters.

Mr. SAWYER. Quite a number are actions pending administrative forfeiture.

Mr. LENCK. Yes.

Mr. SAWYER. Quite a number are actions pending administrative forfeiture.

Mr. LENCK. Yes.

Mr. SAWYER. The time on those doesn't comport with your statement.

Mr. LENCK. If you recall, I also said at the end of my statement there were a few cars here that fell through the cracks, and particularly on the original one; there are two which have been pending for more than a year that did just that.

Mr. SAWYER. There are a lot more than two on my list that have been pending for more than a year.

I did not count the ones that were over $10,000.

Mr. LENCK. Some of them involve petitions. The ones that have been pending longer, the ones in the 1981 time frame are the ones that got lost, that is true.

Mr. SAWYER. These airplanes that we heard about that are sitting out at the field there, as somebody said, being used for birds' nests or whatever, are any of those DEA's, where the forfeiture has been completed and they are just sitting there?

Mr. LENCK. Not to my knowledge.

Mr. SAWYER. A couple of them were said to be from the Marshals Service.

Mr. LENCK. Yes.

Mr. SAWYER. Would those get to the Marshals Service?

Mr. LENCK. The aircraft invariably are valued at more than $10,000, and the sale there would be a marshal's sale and not a GSA sale.

Mr. SAWYER. But these were apparently, according to the gentleman who testified, apparently forfeiture had been completed a couple of years ago. The adjudication had been done and they are sitting there kind of rotting.

Mr. LENCK. I can't speak to that. I don't think those are DEA aircraft, no, sir.

Mr. SAWYER. Does the Marshals Service know anything about those?

Mr. KUPFERER. That particular aircraft that was cited by a prior witness?

Mr. SAWYER. I think there were two of them.

Mr. KUPFERER. Do we have a location on those?

Mr. SAWYER. Homestead.

Mr. CHRISTMAN. The only thing it could be, Mr. Sawyer, the district court case has been settled and the aircraft forfeited or something ordered done with the aircraft and an appeal case filed, in which case we still have to maintain the asset.

We still have a pending judicial case.

Mr. LENCK. Every aircraft that DEA has, which is one of the last sheets, is pending judicial forfeiture. We have nothing that has been completed. That sheet, if you will notice, is all aircraft, Mr. Sawyer. They are all pending judicial.

Mr. KUPFERER. Mr. Sawyer, was there a name given on that aircraft at Homestead, so we could check that out further?

Mr. SAWYER. All I heard is what the gentleman testified to.

Mr. SMITH. He submitted that information to three or four congressmen already, Congressman Mica and Congressman Lewis all have that information.

Mr. SAWYER. We will have those case numbers and I have already asked that the cases be sent up to us so we could go through them and take a look at it and see exactly what is involved. I can assure you that——

Mr. HUGHES. Will the gentleman yield?

Why don't we leave the record open? I think what we should do is try to identify by aircraft and case history to find out just exactly what has happened to them, who is responsible for the aircraft.

We will supply the information to you and we will see if we can't determine what has happened to those planes.

Mr. SAWYER. I yield back.

Mr. HUGHES. The gentleman from Florida, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Marcus, you said that right now you have about one to one and a half people working in the civil——

Mr. MARCUS. No, what I said is that I increased the allocation 500 percent. When I started 20 months ago, there was somewhere between 1 and 1½ people working full time.

I now have in the Civil Division between five and six lawyers fulltime in forfeitures, about a third of the Civil Division.

Mr. SMITH. Would you say it was an accurate statement or fairly accurate that at least half or more of the cases which are filed for civil forfeiture by your office are already known to be default cases?

Mr. MARCUS. I would say what ultimately becomes a default case would be about half. That would be my best guess.

Mr. SMITH. Wouldn't you have some very strong indication at the time that you file, which is well down the road from the time the asset has been seized, and after all the basic legwork has been done by the agencies, that that would probably be a default case?

Mr. MARCUS. Sometimes you will and sometimes you won't.

Mr. SMITH. From the time you filed that default case until the time you get an order signed by the judge, an order of forfeiture, how long does the average case take when you know it is a default?

Let's keep aside the ones that are going to be contested. Certainly you know it is going to be contested because, after you survey it, if it does go beyond the time frame for response and answer to the complaint or petition and there isn't any answer, so you know 20 or 30 days later that you are going to have a default, how long does it take?

Mr. MARCUS. We have had instances where, and indeed in one or two instances that were pulled by the counsel of this subcommittee for us to check, where the final judgment we won was by way of default, and it occurred really 2 years later because there was a real question as to whether the party making the claim had a real interest in the asset or not, but on the average I would say you are talking a minimum of 6 months, perhaps up to 9, maybe 10 months.

Mr. SMITH. Thirty days and a default should be entered. Why does it take 9 months?

Mr. MARCUS. It may take an extended period of time for the court to give us a judgment on the case. Motion may be pending for defaults filed Monday, January 1, 1983, and we may not get a judgment of default entered until March of——

Mr. SMITH. This is a disgrace. This is an absolute, positive disgrace. Thirty days should be the default time. It takes 5 minutes to schedule a final hearing and 2 minutes to go before the judge, have the case called and have a default entered and the order signed right there and then.

Mr. Hughes alluded to the kind of boilerplate complaints, petitions which could be drawn, and I have been in practice for 19 years like many of the other people on this panel. We know for a fact it is boilerplate and you are going to fill in the blank spaces when it gets spit out of the computer. I don't know what it is that we can do, but my own request, Mr. Marcus, is for you to indicate

to this committee, if you want to, in writing and the record is going to remain open, just what you think could be done to help you expedite getting these forfeitures, especially the defaulted ones, but even if they are not.

Many of the original contest petitions too are shams. You know that. They fall away along the line.

What can we do to help get this pushed through immediately? We are wasting millions of dollars in lost value of assets. We are spending money on assets which ultimately wind up being given back. There has to be a way of minimizing the drain and maximizing the intake of dollars to the Government.

Somewhere along the line somebody is screwing up badly. The agencies are not getting to you the petitions for the case work for forfeiture in the timeframe that it should be done. Your office, according to you anyway, may be in fact doing it within the appropriate timeframe. You claim you have enough people working there. The courts obviously are not giving you the hearings within the appropriate timeframe, especially when 30 days away from the service of the petition you know that you have got to be able to know if there is a default or not.

We are dragging this beyond the realm of even logical delay for no earthly reason whatsoever. If it is assets or manpower or whatever, just tell us where you think and how many it would take and what would happen.

I can't conceive of a judge not wanting to accommodate a U.S. attorney by staying one night for an hour and hearing 50 petitions that are all defaults.

There has got to be 1 judge out of the 12 down there that would be, if asked personally by Stanley Marcus, willing to sit for 1 hour past the end of the night and do nothing but defaults and signing orders of forfeiture.

All he has to do: you call the case, you say default and he stamps the order. You call the next case; you say default and he signs the order. We do it here all the time. There is nothing in the Federal law which prohibits that.

There has got to be a way of making everybody try to bring this thing together. It is really very discouraging to sit here and listen to Mr. Lenck testifying about all of these that have the x's in the columns, and if I take your sheets, most of them are blank.

There are x's in about one-fifth, whether it is the administrative forfeiture column or the GSA column. Most of them are in the pending judicial forfeiture column; most in the Southern District of Florida. I assume those are filed cases.

At that point we are sitting here just looking at a gigantic array of assets costing the Government monthly and no resolutions, no assets being sold, no assets being distributed, no assets being used by the Federal Government. This is a terrible, terrible situation and I would suggest that somebody needs to help us correct this problem.

I know you are all concerned about it. Nobody is doing this on purpose; that is obvious. I mean nobody is trying to delay process, but, boy, this is really a case where we have just allowed a situation to drag.

Do you get many complaints, Mr. Marcus, from the DEA or Customs or INS or anyone else in terms of where are my orders? I want that property. I can use it tomorrow.

Where are my forfeiture orders? Where is my title? Where are my assets?

Mr. MARCUS. I would say we get a variety of discussions and discussions and conversations from a variety of agencies.

One other observation I would make in response to the question you put.

Mr. SMITH. You are moving away. I want to pursue that line because I have a reason for asking.

Do you get many complaints from the agencies in this area that they are not getting their forfeitures?

Mr. MARCUS. I say we get many inquiries what is the status of a case? Where is it in the court? What is the process? How long will it take? And so on and so forth.

Mr. SMITH. Mr. Lenck, when you make that inquiry, Mr. Marcus gives you the answer, "We filed it, but it is just sitting there," what do you do, or whoever it is in your agency or in Customs. What do you do? Do you call Washington and say, "What the hell is going on here? I have got 50 planes, 20 boats, 10 million dollars' worth of stuff sitting there."

I can't get help from anybody because—and I am going to tell you the reason for my question—I have yet to hear from anybody in DEA or Customs say, when they came in for their budgetary request this year they didn't ask for any help in getting this money shoehorned out to you.

It is Mr. Hughes' bill and Mr. Sawyer's bill that are our response to what we know as the problem. Nobody asked for them. I don't know what is going on in your agency.

Mr. LENCK. I do it two ways. If the problem has been laying there too long, we have calls why don't we have a forfeiture, why don't we have a sale. The bad thing in conjunction with what you say is that you may have an innocent lineholder who has a half value in the property, but we have got to get rid of the registered owner via forfeiture so we can sell it and get the lienholder's money.

Meanwhile, the profit quote to the Government is going down.

Mr. SMITH. You are giving me the standard answer, Mr. Lenck. Don't move away.

Mr. LENCK. I am not moving away. I am just telling you what you are saying is true and it is compounded. I do two things. I would call the field office, Mr. Gruden, or Mr. Harrison, and depending on the U.S. Attorney's Office involved and what our relationship is, I will tell them, send them a status letter, and they send them a status letter and some of them are very responsive, and they come back and they say, here is the status, here it is. Some of them they don't answer.

Mr. SMITH. I am assuming that you do all the right things.

Mr. Marcus is doing all the right things. It is all stuck in the pipe. Everybody is doing their job.

Mr. LENCK. We ask for status. Some give it to us, some don't.

The other thing—depending on the offices, I send an agent over to talk to the system, take the file with them, say this thing is hung up, can't we move it.

I think the success of personal contact, why can't we move this, let's get a default, in my experience that works just as well as the others, so we have two approaches, a formal letter or a personal approach to the assistant. Maybe it has dropped through the crack.

Mr. SMITH. You are telling me you are going laterally. You are not going up the ladder.

Mr. LENCK. That is true.

Mr. SMITH. DEA works with the FBI. FBI to the Justice Department. Has anybody gone to the top making somebody understand there are millions of dollars sitting there? Everybody is doing their job and it is still sitting there.

Mr. LENCK. I am not convinced it is the latter.

Mr. SAWYER. If you will yield, I can just make an observation on that.

This administration, since it is my administration, but it applied equally to the administration before it, and that is the OMB or somebody up the line on approving budget says this is the word and they come in as loyal soldiers and won't admit that they are not getting what they need.

I have been watching it now for 7 years operate that way. You can't even get the answer from the agency heads when they appear on budgetary authorization hearings because OMB or something has said this is all you are going to be given and you are going to get, and they won't open their mouths to even admit to the contrary, that there is anything that they could use the money for.

Mr. HUGHES. Would the gentleman yield to me?

Mr. SAWYER. Yes, sir.

Mr. HUGHES. I really can't blame them for not owning up to what they need.

Mr. SMITH. Just one final question quickly. I made a point before about all of these artificial barriers in terms of the dollar amounts and the values of the property, whether it goes to GSA or whether it goes here, to the Marshals Office or stays with you. Do you have any problems, and you who are working on this problem including Mr. Marcus, about making everything worth the same except for the level of administrative forfeiture, beyond that all equipment, whether it is a value of $600,000 or $60,000, will all go in the same pot can be treated exactly the same way?

Is there any reason now that you can see any logic for these artificial barriers and different treatments? Don't you have a problem about getting it to one agency to be sold and then returned to you either as cash or the item given back to you for use in your agency?

Mr. LENCK. We support having the central disposition sale agency very strongly, but you still have to have a forfeiture. The property has to be forfeitured.

Mr. SMITH. I am assuming that.

Mr. LENCK. After forfeiture?

Mr. SMITH. It doesn't make any difference if it is worth half a million dollars to you or $50,000, it is the same procedure. Why give it to every different agency, whether it happens to be the U.S.

marshal? Is that something that you would find is helpful to you at this moment?

Mr. LENCK. We have no option. If it is in the court, the marshal is the selling entity.

Mr. SMITH. Mr. Lenck, I know that. What I am asking you is the way it is right now, is it so good that you would like that made additionally the requirement, even by having a single fund, for instance, who is going to sell the property, DEA directly, GSA, or the Marshals Service?

Mr. LENCK. We strongly support the single selling disposition agency and the central fund.

Mr. SMITH. So you don't basically like the way it is now?

Mr. LENCK. No.

Mr. HUGHES. The gentleman from Florida, Mr. Shaw.

Mr. SHAW. Mr. Marcus, I would like to go back to the line of questioning that Mr. Smith started with regard to default. Obviously the hearing is more than this. Would you tell us just exactly what transpires at a hearing.

Mr. MARCUS. I would like the opportunity to indicate what happens in the period of time from the time that the refusal is made by the agency to the time that the *in rem* complaint may be filed with the court, and then from then the timeframe, some of the things that might happen in the intervening period of time, until a final default judgment may be entered.

Once the case is referred—and I said the turnaround time may be now 5, perhaps 6 weeks, perhaps a little less in some instances, perhaps a little bit more in some instances, but basically that—a lawyer in our office must review each complaint, and is required by law, by the Federal rules of civil procedure, before the filing certifying as to the validity of complaint. That requires some time, and we are ethically required to do so. Indeed, it frequently requires a lawyer bringing in an agent into the office, questioning him and satisfying himself about the nature and extent of the particular complaint. Sometimes the agents are available, sometimes they are busy on other missions and they may not be available on the first day of the first week.

In any event, the timeframe may be roughly 5 or 6 weeks. In addition to that, there may be some difference in the procedures if the referral is coming from DEA or from the Customs Service, where review may be much more extensive.

In any event, once the filing occurs in the court, there may be a variety of legal issues that will occur. Remember this is a court litigation. There will be someone in there frequently who will litigate even though he will lose a default judgment. A deposition will be taken. Frequently there will be an effort to depose the Government agent, say the lead special agent from DEA or the FBI, because it may relate not only to the civil procedure but it may be a way of increasing the discovery process in a criminal case, so there may be any number of depositions or efforts to depose a Federal agent.

Conversely, we may frequently attempt to depose various witnesses in our own right, depending on the nature and extent of the case. In some instances there may be notices to the court to rule on depositions, to quash depositions, to hold the depositions in abeyance pending the resolution of a criminal case.

There may then be a motion for summary judgment which another side may answer, and you may get a final disposition 4 or 5 months later. It may be quicker, it may be longer. It will depend on the extent of the litigation, who is on the other side, and what it is that they are seeking to establish. If there is no one there, period, it is one thing. If there is someone there who has no right to be there, the procedure may be far more lengthy.

Mr. SHAW. Let me ask you then to clarify a statement you made earlier. When you spoke about 50 percent approximately of your cases going by default, are those cases where you are speaking of a default where there may be somebody there?

Mr. MARCUS. Yes. I am talking about the aggregate of 50 percent would include cases where there is no one there, and where there are people on the other side who are going to litigate and ultimately lose and we get a default judgment. But I don't have the exact figures breaking the two down.

Mr. SHAW. I am having problems with terminology here. I would think of that as a summary judgment rather than a default judgment.

Mr. MARCUS. There will be instances where—let me give you an example. There was a case involving an *AMC Hatteras, United States* v. *One ASMC Hatteras*. It was one of the cases that this committee raised and asked us about.

Mr. HUGHES. Is that the 57-foot——

Mr. MARCUS. I am not sure. I believe it was.

Mr. HUGHES. We have a 57-foot *Hatteras* on our list here.

Mr. MARCUS. The point that I want to make there was the title was the central question that was litigated in that case. We won by default judgment in that case, but only after a litigation that took some 2 years to resolve, because the central issue that the court had to face there was whether the claimant, who held, purportedly had the right to this property, represented himself as the true beneficial owner of the property.

The property changed hands any number of times. We claimed there was a real beneficial owner who was the drug dealer from the beginning to the end. Other folks came in and said, "Oh, no, we are the real title holder. Title changed." We finally got a default judgment in that case from the district court.

In fact, it was handled, because of the brutal caseload, by one of four visiting judges who were down here for roughly a 1-year period of time, but that was a default judgment that was heavily litigated and took an extensive period of time just to establish who was the real claimant to the case.

Mr. SHAW. I think what Mr. Smith's line of questioning was alluding to was simply cases when he was thinking of using the word default, where there was absolutely no one on the other side, where a default was entered, and I know in the State court we can certainly solve it with affidavits, sending them in and getting a default final judgment.

The procedure is not too undifferent at the Federal level, but I think when you talk about 50 percent of them are defaults, you are still litigating. I don't think that is what this panel is interested in.

Mr. MARCUS. In many instances there is an act of litigation. In other instances there isn't, but the mere fact that it is default

doesn't mean that it is uncontested. It just means at the end of the rainbow we have one and the court said, "Right, that asset ought to be defaulted to the United States." So what I am saying is the 50 percent would include both kinds, the kind that Chairman Hughes is referring to and also the kind I am referring to in the case of the *Hatteras*.

Mr. SHAW. I am certainly glad that I corrected the record, because we were not talking about default judgments in the terms that we would consider default where no one showed up. You are talking about default in that when the property is defaulted to the Government, and that can be extensive litigation.

Let me ask you this, though. How far are we from actually getting a default judgment? I am talking about not a judgment of default but a default where there is no one on the other side, absolutely no one to litigate, there is no litigation, the thing goes down just by virtue of the calendar being turned.

Mr. MARCUS. My best estimate would be on the average we are talking roughly 6 months.

Mr. SHAW. Why is that?

Mr. MARCUS. Say from the time the complaint is filed.

Mr. SHAW. From the day the complaint is filed. I guess you are serving a lot of these things by publication and what not. What is the timespan in there?

Mr. MARCUS. There will be 20 or 30 days' notice and so on. We will file a notice, we will publish it properly according to the local rules. You may file a motion for the judgment of default after we can't take the deposition of a particular party who disappears or may be actually a fugitive from justice.

It may sit 30 days, 60 days, 90 days with the district court, and when you add the whole timeframe up you might be talking roughly 6 months from the opening bell, the opening bell, the time you file the actual complaint.

Mr. SHAW. That is not so horrifying. Are you finding that the judges are cooperating?

Mr. MARCUS. Yes. We are finding that they are, and an essential point that we have found in this district is that there simply are not enough Federal district judges. That is the central message that I want to basically reiterate this morning before this committee. We have 12 district judges; we handle more criminal cases, more criminal defendants and more criminal trials than in any other district in the United States, including districts where the population may be two or three times or more as great as the population is in this district, and those criminal cases must be addressed by law first.

We have 70 days from the date of the indictment to take that case to trial, and if that case isn't tried or there isn't some other excludable period of time, the defendant will walk out the door free.

In addition to that, the number of cases that go to trial in this district is simply staggering. The bottom line is that we have a district court that sits far more as a criminal court than as a full district court, and indeed the forfeitures, all in all, move pretty well in relationship to the other civil cases. But if you look at the other civil cases, commercial dispute between A and B, and he wants to

be heard in Federal court and he files his action in Federal court, it maybe takes as much as 3 or 4 or 5 years for the civil lawsuit, not involving the United States as a party, not involving forfeiture cases, to actually be resolved.

The central problem, or at least one central problem that I can easily underscore for this committee, is the desperate need for additional judicial resources in the southern district of Florida.

Mr. SHAW. Do you find that the judges are willing to work overtime, stay past hours in your case?

Mr. MARCUS. The answer to your question is yes, sir. We find that judges will start a trial on Monday, finish it by Wednesay night, pick a new jury by Thursday morning, and run through Saturday, start agian on Sunday or Monday and repeat the process.

In addition to that, because the nature of the case is changing, because we are filing far more complex protracted criminal cases, money-laundering cases and things like that, we are finding that we may knock a judge out of the box completely for 3 months. We have 6, 8, 10, 12 defendants, 1 judge who will be trying that case for 90 days night and day, and during that time he can hear motions in the afternoon or in the evening or early in the morning, and so on. But for the bulk of the time of that district judge he is knocked out of commission for an enormous calendar.

When you multiply that by a caseload involving almost 2,500 defendants and 1,250 criminal charges and you have only 12 judges, you can see that the simple problem, the simple mathematics are not there. The system is as strong as that weakest link, and that link is the fact that we don't have enough judges. They are working hard in my judgment across the board.

Some work quicker than others. Some are more efficient than others, but I think on a personal note I could say that the district judges in the southern district of Florida work harder than any bench I have ever been personally familiar with. Certainly the caseload is far more staggering than it was in the Federal court in New York, where I practiced for a number of years, and surely far harder than they did in the eastern district of Michigan, which was basically Detroit, where I practiced for 4½ years.

Mr. SHAW. How many more judges would we need in order to bring us up to the standard you feel will be acceptable?

Mr. MARCUS. There is a bill pending, and it has been pending in Congress for some time, to add three additional judges in the southern district of Florida. I see that as a bare minimum. I think that is insufficient. By way of example, when the task force started in the spring of 1982, it was recognized that we could bring in all the agents in the world and all the prosecutors in the world, if there weren't judges to try the case and handle it the system would break down.

The administration made a request of the Chief Justice of the Supreme Court that on loan he assign additional judges to the southern district of Florida. They assigned four judges on a rotating program increasing the firepower to 15 or 16 judges, depending on the time that you plugged in on. The caseload was still extremely substantial. The civil backlog is still enormous, and the 15 or 16 just barely kept up with the volume, and the 12 are keeping up with the volume, although basically the criminal volume.

I would say you would probably need in the neighborhood of 18 judges. That would mean an addition of roughly six Federal district judges.

Mr. SHAW. Does your shop keep up with a case after the judgment of default is entered?

Mr. MARCUS. Let me be quite specific. If that is the end of the litigation, if it doesn't go to the court of appeals on review, the answer would be no. The particular agent, the custodian of the asset would handle it at that point, make the referral, and so on and so forth. So our litigation role would end pretty much at the point where there was a final judgment, unless it went up on appeal.

Mr. SHAW. Assuming no appeal is granted by law, how soon after the final judgment can you have a sale?

Mr. MARCUS. Perhaps the marshal can give you a more precise answer than that.

Mr. CHRISTMAN. The advertising and sale is at least 30 days' advertisement prior to the sale after default judgment. We have to advertise the sale.

Mr. SHAW. How quickly do you move?

Mr. CHRISTMAN. Within the week that I get the default judgment the advertisement is sent to the local paper.

Mr. SHAW. The what?

Mr. CHRISTMAN. The advertisement is sent to the local papers within the week that I get the default judgment, and we set a sale date within that week.

Mr. SHAW. So it is safe to say that from the time you get the default judgment within 90 days——

Mr. CHRISTMAN. The property is gone.

Mr. SHAW. The property is gone, paid for, whatever has happened to it?

Mr. CHRISTMAN. Yes.

Mr. SHAW. Do you find any exceptions to that?

Mr. CHRISTMAN. Only if there is a problem with—no, not with defaults.

Mr. SHAW. Do you have any comment on the situation that an earlier witness referred to as a forfeiture, 2 years after forfeiture the airplane was still sitting on the ground? Do you have any knowledge of any such case as that?

Mr. CHRISTMAN. I don't have any personal knowledge of any specific case, no, but I certainly would like to know what case he was referring to. The only thing I can imagine is some kind of appeal after default.

Mr. SHAW. One more question on another level, and again to Mr. Marcus. When you go through litigation and damages are assessed against the Government, do you get an offset for any of our expenses? I am referring basically to three types of expenses. One would be maintenance of a vessel, the second would be the storage of the vessel, and the third would be perhaps a towing charge by the Coast Guard that towed the vessel into Florida.

Mr. MARCUS. Congressman, I don't know off the top of my head of a single case where damages have actually been assessed against the Government. I can check that issue for you. The percentage of cases that we lost is very small. It may be 3, 4, 5 percent tops, once

we finally get to the end of the rainbow. But I just don't know of any instances of that.

Mr. SHAW. It is not necessary that you supply that information to me. I would just suggest to you as a matter of practice that even if we were found to wrongfully have seized and possessed a vessel I think we would be entitled to a towing charge, certain charges for maintenance of the vessels.

I yield back. Thank you, Mr. Chairman.

Mr. HUGHES. Thank you very much.

There are some additional questions but the time is getting rather late. We would like to submit some questions to you for the record. I think it has been a good exercise. I think the Justice Department discovered that it didn't have a very good hand on these assets. In fact, to date I haven't received a list of all the assets that I asked of the Justice Department.

I asked that it be supplied before this hearing, and it has not been supplied and I suspect it is because they don't have such a list. So I think the exercise has been productive. They have discovered a lot of assets that have slipped through the cracks. I don't think anybody suggested that the law enforcement isn't doing a good job—given what has happened to the law enforcement community and the courts in this part of the country. It is amazing what they have been able to do under the circumstances.

It has just been overhelming. The only thing I suggest, Mr. Marcus, is that Larry Smith is right. Hal Sawyer and myself and Larry have practiced for a number of years, and we know how long it takes. We know what attorneys have to certify to. I have run in rem foreclosures through by the mountain, and it doesn't take long to get it done. It can't take more than a couple of minutes in court to run individual default judgments through.

There is no contest whatsoever, and I would just ask you—and I am going to communicate it to the Administrative Office of the Court—that we take another look particularly at the default process and see whether or not we just can't move them through a little more expeditiously.

Thank you very much. You have been very helpful to us.

[Recess.]

Mr. HUGHES. First, I would like to welcome John Simpson, who is Director of the Office of Regulations and Rulings in the U.S. Customs Service. Mr. Simpson has held this position since February 1982, and prior to that held other positions in the Departments of Treasury, Agriculture, and Commerce. He is a member of the District of Columbia Bar. Accompanying Mr. Simpson today is Mr. Robert Battard, Regional Commissioner, and Mr. Richard Friedland, the Regional Counsel, of the U.S. Customs Service

Mr. SIMPSON. We do not have Mr. Battard with us today.

Mr HUGHES. I want to thank you for the excellent tour you provided on inspection of some of the vessels in your custody. We have your statement, which is very thorough, comprehensive, and without objection we will make it a part of the record. I hope you can summarize for us.

TESTIMONY OF JOHN SIMPSON, DIRECTOR, OFFICE OF REGULATIONS AND RULINGS, U.S. CUSTOMS SERVICE, ACCOMPANIED BY RICHARD FRIEDLAND, REGIONAL COUNSEL, U.S. CUSTOMS SERVICE

Mr. SIMPSON. I think the previous panel has given the committee a good overview of the Federal enforcement effort in this area. Let me say that seizures are increasingly being used as the most effective enforcement tool available to us. In the last fiscal year, fiscal year 1982 I should say, Customs seized almost 6,000 vessels, over 200 aircraft, and together with the Coast Guard about 500 vessels, so we support the changes that are being made by title II, which is the title of the bill that is of most interest to the Treasury Department.

Specifically, we think the increase from $10,000 to $100,000 of the limit on uncontested administrative forfeitures will take a burden off the courts. We believe that the Customs forfeiture fund, with its provision for group funding of maintenance costs rather than item-by-item funding, will enable us to better maintain seized property.

We do support the transfer of seized properties by State and local governments, but I would point out that under the provision as drafted now, the transfer would really take place by virtue of discontinuance of Federal forfeiture proceedings in favor of State forfeiture proceedings. If there are States which have no forfeiture laws themselves, the current provision would be of no benefit to them, so we would recommend that the provision be amended to allow for Federal forfeiture to occur and for transfer of the property to take place subsequent to forfeiture when it is in the interests of law enforcement.

We have for almost 14 years now supported expanded arrest authority for customs officers. We would recommend—and this is a technical change—that in the several places in the bill where the bill discusses violations which take place under customs law, that these be rephrased to describe violations of laws which are enforced or administered by the Customs Service. We enforce about 400 laws for some 40 agencies of the Government.

Let me mention an administrative matter—and I think our inability to provide the committee with good information has illuminated our deficiencies in this area: our inability to track the inventory of seized conveyances which we have, our inability to account for the costs of maintaining those conveyances.

And so we are implementing what I am going to call the SPAS, the Seized Property Accounting System, which will enable us, if we ever have to have hearings like this again, and I hope we don't, we shall at least be able to give you better information with which to interrogate us.

I think, Mr. Chairman, that concludes the remarks I would like to make.

[The statement of Mr. Simpson follows:]

STATEMENT OF JOHN P. SIMPSON, DIRECTOR, OFFICE OF REGULATIONS AND RULINGS, U.S. CUSTOMS SERVICE

Mr. Chairman and members of the Subcommittee

Thank you for allowing Customs an opportunity to appear before the Subcommittee today to discuss H.R. 3299 and how it would help to relieve our problems in handling seized property.

During recent years, law enforcement agencies such as Customs, the Coast Guard, and the Drug Enforcement Administration have been using civil statutes to hit smugglers hard and where it hurts—the pocket book. Seizures of drug related assets and conveyances—particularly vessels and aircraft—have increased. During fiscal year 1982, Customs officials seized 5,951 vehicles, 206 aircraft, and 32.7 million dollars in currency and monetary instruments. Customs and Coast Guard officers seized 500 vessels during the same period of time. In many ~~respects~~ these civil forfeitures are more effective than criminal prosecution, because of the ability to seize immediately articles used in illegal acts, and to obtain forfeiture on a lesser showing than that needed under the criminal laws. Unfortunately, in many cases, these seized assets are "strangling" the very agencies which seized them.

Problems Under Current Law

When an agency seizes a conveyance, forfeiture proceedings must be instituted to perfect title in the Federal Government. After these proceedings, the items may be retained for official use by the seizing agency or another Federal agency, or they may be sold at public auction or transferred to qualified eleemosynary institutions. Articles valued at $10,000 or less may be forfeited through a relatively brief and inexpensive administrative (non-judicial) forfeiture proceeding, unless a claimant chooses to contest the forfeiture by posting a $250 bond to obtain a judicial forfeiture.

Items valued in excess of $10,000 must go through a more formal and time-consuming judicial forfeiture proceeding. Since criminal cases have preference on the court dockets, and these forfeiture proceedings are civil in nature, there are delays in having forfeiture cases heard by courts. Even uncontested cases involving assets valued over $10,000 (such as "mother-ships") must be judicially forfeited. This is inefficient and creates a burden on court dockets and agency budgets. In Miami, these uncontested judicial forfeitures can take anywhere from 12 to 18 months. During the forfeiture proceedings, the seizing agency or the U.S. Marshals Service (depending on the district) must store, maintain, and protect the property. When a forfeiture decree is ultimately entered, the property has frequently deteriorated in condition and depreciated tremendously in value, and the storage costs have reached amounts in some cases exceeding the value of the article. The big losers are the taxpayers and the agency maintaining custody. Instead of recovering costs and being able to use the vessel or aircraft, or to deposit substantial sales proceeds in the Federal treasury, the seizing agencies must use appropriated funds to offset the increased expenses owing to the time delays. The vessels or aircraft may have depreciated or been vandalized so that if sold, they do not bring as much as when seized. If the agency wanted to retain the item for official use, it is now unable to do so because of the deteriorated condition of the conveyance. In addition, innocent third parties (such as lien holders) may also suffer because proceeds may be insufficient to cover their interests.

H.R. 3299 - Increase in Administrative Forfeiture Limit

Title II of H.R. 3299, entitled the Comprehensive Drug Penalty Act of 1983, seeks to remedy this situation. Most importantly, Title II would raise the value of property subject to administrative forfeiture from $10,000 to $100,000, thus removing from lengthy court proceedings many uncontested seizures of drug conveyances. Of course, persons wishing to contest the forfeiture of seized items valued under $100,000 could do so by posting a claim and cost bond. The bond amount would, however, be raised from $250, an amount first contained in the Act of April 2, 1844, when

administrative forfeiture was limited to property valued at $100 or less, to a more realistic $2,500 or 10 percent of the value, whichever is less but not less than $250. Raising the bond to $5,000, as provided by H.R. 2151, might even be preferable, to discourage frivolous claims from being filed. Naturally, persons unable to afford to post the bond may have this bond fee waived under existing administrative procedures.

Another provision very important to Customs is a new section 613a, which would establish a special Customs Forfeiture Fund. The special fund would change the "item-by-item" funding mechanism for maintaining seized conveyances to a "group" funding method. This would enable the sales proceeds of all forfeited conveyances to be pooled to pay for the expenses of all conveyances in storage. Since current sales proceeds, on an overall basis, exceed expenses by a ratio of more than $3 to $1, existence of such funds should relieve law enforcement agencies' concern over having to pay for storing and maintaining seized conveyances without drawing resources from other enforcement functions.

Transfer of Seized Property to State and Local Authorities

The new section 616 is intended to support the law enforcement efforts of state and local governments by authorizing the Secretary of the Treasury or the Attorney General, as appropriate, to discontinue Federal forfeiture proceedings where state or local forfeiture proceedings are being considered. Many seizures involve cooperative efforts between Federal, state, and local governments, but present laws do not seem to permit the Federal Government to discontinue forfeiture proceedings to allow similar proceedings in state courts even though, in many cases, the companion criminal trials are held in state courts. We would however, suggest that the section be modified to permit items seized and forfeited under Federal law to be conveyed to state and local agencies which participated in the seizure. This would allow cooperating agencies in states without a forfeiture law to benefit from the seizure. Several years ago Congress had to enact a private bill to enable the Coos Bay Sheriff's Department to obtain forfeited amphibious vehicles which were seized by a joint Federal/state task force. There is no guarantee under present GSA regulations that seized property will end up with, or even in the same state as, that in which the local agency participated in the seizure.

Expanded Arrest Authority

The Customs Service strongly endorses section 210 of the bill which contains expanded arrest authority for Customs officers. This provision has been endorsed by every administration since the early 1970's. Present Customs authority is limited to arrests with a warrant for any Federal offenses and warrantless arrests for narcotics, marijuana (26 U.S.C. 7606), navigation, seizure, and revenue offenses (19 U.S.C. 1581) and a variety of

conservation, wildlife and pollution laws (16 U.S.C. 3605, 33 U.S.C. 413). In order to assist INS in enforcing the alien laws, many Customs officers are designated as immigration officers. In order to assist in the 1980 Mariel boatlift, many were designated as Special Deputy U.S. Marshals. In our export enforcement and arrests for assaults on fellow Customs officers, as well as for arrest for other Federal crimes in our presence (theft from interstate shipments) our arrest authority depends on 50 individual state laws—many of which deem Federal officers to have only so-called "citizens" arrest authority. This situation is, to say the least confusing, and at odds with the arrest authority of other Federal officials such as: the Bureau of Alcohol, Tobacco and Firearms; Drug Enforcement Administration; Federal Bureau of Investigation; Coast Guard; and Postal Inspectors.

In addition to the foregoing, I would like to suggest inclusion in H.R. 3299 of two minor amendments to the Tariff Act: an updated Section 644 and a new Section 600 to cover situations, such as the currency reporting laws, where forfeiture procedures are not specified. Without the latter change, uncontested administrative forfeitures of seized currency and monetary instruments will not be possible. We shall be happy to provide language for your consideration.

Maintenance and Inventory Control of Seized Property

Beyond the proposed legislation, Customs is making certain administrative improvements to its handling of seized property, which I would like to discuss briefly. These administrative changes were suggested by the July 1983, General Accounting Office Department (GAO/PLRD-83-94) entitled "Better Care and Disposal of Seized Cars, Boats, and Planes Should Save Money and Benefit Law Enforcement."

First, implementation of a Customs Seized Property Automated Management Information and Operational Processing System (SPAS) will provide a means for the efficient and effective management, processing, and tracking of seized property cases on a national basis, while at the time, placing Customs in the position of being able to process projected workload increases without the usual corresponding staff increases.

Recent events have made this new system absolutely necessary. The U.S. Customs Service has significantly increased seizures of conveyances - cars, boats, and airplanes - as a means to fight the importation and transportation of illegal narcotics and other forms of contraband. The magnitude of the seizure effort and the lengthy judicial forfeiture process require prolonged storage of seized property, thus causing major problems for those responsible for storing, maintaining, controlling, and disposing of the property. These problems could become more extensive as the use of

seizure means of taking the profit out of crime. Because of the increasing number of seizures, as well as the problems associated with their care, security, storage, maintenance, administrative processing, and final disposition, the Congress and Executive Branch have shown increased interest in their management.

In addition to the internal need for information regarding seizures, Customs receives numerous Congressional and public requests for information on seized property. This information cannot be obtained in a manner which allows us to responsed timely to the many inquiries received. The lack of a good information system to track processing, accountability, storage, transportation, and maintenance costs, etc., often results in the government not being able to recapture associated operational expenditures at the time of disposition of the property. Capturing cost data will result in more adequate reimbursement from the proceeds of sales, thus reducing loss of revenue to the government. In addition to facilitating operational requirements, the automated system we are implementing will permit managers at district, region, and headquarters levels to respond to developing backlogs before they become problems, and to identify cases in jeopardy of being lost because of the expiration of statute of limitations.

Processing of Seizure Cases

Customs is also considering significant changes to its handling of seizure cases. Under current procedures, the registered owner and the lien holder of a seized conveyance value over $10,000 may petition to the district director of Customs for its release. In some cases, the owner and lien holder may petition to Customs Headquarters or even to the Treasury Department. Only after these petitions are investigated, considered, and denied would the conveyance be turned over to a U.S. Attorney for forfeiture. In many cases, even though the forfeiture action is in rem, as to the innocence of the owner the court merely rehears arguments and evidence which were considered in the administrative process. In the meantime, the conveyance is in Customs' custody and must be maintained and protected at public expense.

Under a proposed procedure which we are now discussing with the Treasury Department and concerned U.S. Attorneys, seizure cases in which there is not a clearly innocent owner or lien holder, that it, cases in which innocence or culpability would have to be established through the administrative petitioning process, would be referred immediately to a U.S. Attorney for commencement of judicial proceedings. This procedure would avoid delay and unnecessary expense attending two hearings - one administrative and the other judicial - on the same issues of law and fact.

I would again like to express my appreciation and that of Customs for this opportunity to express our views. If you have any questions, I would be happy to answer them now.

FEDERAL BUREAU OF INVESTIGATION

Field Office	Type of Property	Date Seized	Place Seized	Storage	Appraised Value	Status
Butte	1979 Pontiac Firebird	8/16/83	Havre, MT	$5 @ day	$ 3,100	QR
Butte	1979 Ford Pickup	8/16/83	Havre, MT	$5 @ day	$ 2,500	Admin.
Butte	1983 Subaru	8/16/83	Billings, MT	0	$ 8,742	Admin.
Butte	1973 Cadillac DeVille	8/17/83	Billings, MT	0	$ 1,535	Admin.
Columbia	1974 Pontiac Firebird	8/16/83	Greenville, SC	0	$ 1,680	Admin.
Detroit	1979 Pontiac	8/2/83	Southfield, MI	$1 @ day	$ 4,200	Admin.
Detroit	1979 Chevrolet Camaro	8/2/83	Detroit, MI	$1 @ day	$ 3,725	Admin.
Detroit	1983 Cadillac Seville	8/25/83	Detroit, MI		$22,325	Jud.
Kansas City	1978 Cadillac Coupe De Ville	8/9/83	Wichita, KC	$1 @ day	$ 5,375	Admin.
Memphis	1975 Cadillac Coupe De Ville	8/18/83	Memphis, TN	0	$ 1,200	QR
Memphis	1974 Chevrolet Cheyenne/10	8/18/83	Memphis, TN	0	$ 1,300	QR
Miami	1981 Ford F-100	8/4/83	Miami, FL	0	$ 5,475	Admin.
Miami	1973 Mercedes-Benz	7/21/83	Miami, FL	$50 @ month	$10,000	Admin.
Miami	1979 Chevrolet Blazer	7/21/83	St. Lucie, FL	$50 @ month	$ 3,525	Admin.
Miami	1978 Chevrolet C-20	4/5/83	S. Miami, FL	0	$ 4,350	Admin.

Field Office	Type of Property	Date Seized	Place Seized	Storage	Appraised Value	Status
New York	1978 Chevrolet Blazer	8/23/83	Northport, NY	0	$ 5,775	Admin.
New York	1979 Chevrolet Caprice	8/30/83	Queens, NY	0	$ 4,600	Admin.
Norfolk	1983 Topaz Marine	8/30/83	Va. Beach, VA	$145	$182,000	Jud.
Philadelphia	1981 Pontiac Bonneville	8/24/83	Nottingham, PA	0	$ 7,925	Admin.
Washington	1977 Toyota Celica	8/18/83	Washington, DC	0	$ 3,410	Admin.

NOTE: The FBI assumed forfeiture functions for itself from DEA on 8/1/83. Seizures reported here are for the period 8/1/83 through 9/1/83. Prior seizures of the FBI, but processed by the DEA, will be reflected in their submission.

INVENTORY OF SEIZED CONVEYANCES
As of September 1, 1983

DESCRIPTION	APPRAISED VALUE AT TIME OF SEIZURE	DATE OF SEIZURE	PLACE OF SEIZURE	MONTHLY STORAGE COST	PENDING JUDICIAL FORFEITURE	PENDING ADMIN. FORFEITURE	PENDING GSA SALE
1979 AMC Hatteras	600,000.00	09-03-80	Coral Gables, Florida	366.00	S. D. of Florida		
1962 Burger Yacht	600,000.00	06-10-83	Ft. Lauderdale, Florida	500.00	S. D. of Florida		
1979 Concorde	47,000.00	12-01-82	Ft. Lauderdale, Florida	225.00	S. D. of Florida		
1982 Y and G Boat	100,000.00	06-28-83	Marathon, Key, Florida	385.00	S. D. of Florida		
1978 Trawler Vessel	300,000.00	02-05-81	Port Canaveral, Florida	no charge(1)	M. D. of Florida		
Seabird Boat	3,800.00	02-05-81	Port Canaveral, Florida	no charge	M. D. of Florida		

INVENTORY OF SEIZED CONVEYANCES
As of September 1, 1983

DESCRIPTION	APPRAISED VALUE AT TIME OF SEIZURE	DATE OF SEIZURE	PLACE OF SEIZURE	MONTHLY STORAGE COST	PENDING JUDICIAL FORFEITURE	PENDING ADMIN. FORFEITURE	PENDING GSA SALE
Convair 340/440 Twin	90,000.00	05-11-83	Miami, Florida	450.00	S. D. of Florida		
Douglas DC-6B	150,000.00	03-22-83	Ft. Lauderdale, Florida	300.00	S. D. of Florida		
1975 Mitsubishi MU2	300,000.00	07-28-83	Ft. Lauderdale, Florida	100.00	S. D. of Florida		
Lockheed P2V5	200,000.00	07-28-83	Ft. Lauderdale, Florida	100.00	S. D. of Florida		
1966 Beechcraft Queen Air	50,000.00	04-15-83	Sebring, Florida	25.00	S. D. of Florida		
1956 Cessna 182	20,000.00	04-14-82	Ft. Lauderdale, Florida	50.00	S. D. of Florida		
1973 Bell Jet Helicopter	300,000.00	04-01-80	Orlando, Florida	50.00	S. D. of Florida		
1969 Piper Aztec	50,000.00	08-08-83	Ft. Lauderdale, Florida	no charge	N. D. of Florida		
1979 Piper Aerostar	150,000.00	08-04-83	Ft. Lauderdale, Florida	no charge	N. D. of Florida		
1978 Cessna 210	58,000.00	01-16-83	Lake County, Florida	no charge	M. D. of Florida		
1964 Piper Aztec	20,000.00	12-20-82	Sugarloaf Key, Florida	50.00	S. D. of Florida		

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1981 Cadillac El Dorado	17,500.00	02-18-82	Windley Key, Florida	60.00	S. D. of Florida		
1977 Plymouth RV Van	4,825.00	08-17-82	Opa Locka, Florida	60.00	S. D. of Florida		
1978 Chevrolet Corvette	12,500.00	10-23-82	Pompano Beach, Florida	60.00	S. D. of Florida		
1980 Chevrolet Corvette	13,050.00	10-25-82	Coral Springs, Florida	60.00	S. D. of Florida		
1979 Lincoln Continental	8,750.00	03-16-83	Ft. Lauderdale, Florida	60.00	S. D. of Florida		
1979 Ford Econoline	2,500.00	03-04-83	Miami, Florida	60.00		X	
1979 Chevrolet Monte Carlo	4,000.00	03-04-83	Ft. Lauderdale, Florida	60.00		X	
1982 Buick Riviera	14,222.00	10-15-82	Altonaca, Florida	no charge	M. D. of Florida		

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1979 Chevrolet Pick Up Truck	5,375.00	11-20-82	Henry County, Florida	77.50	S. D. of Florida		
1977 Ford LTD	2,025.00	04-28-83	Ft. Lauderdale, Florida	no charge		X	
1980 Datsun 280ZX	9,575.00	04-28-83	Ft. Lauderdale, Florida	no charge		X	
1978 Lincoln Mark V	5,175.00	04-28-83	Ft. Lauderdale, Florida	no charge	S. D. of Florida		
1980 Chevrolet Corvette	11,900.00	03-23-83	Tallahassee, Florida	no charge	N. D. of Florida		
1977 Pontiac Grand Prix	2,000.00	04-07-83	Jacksonville, Florida	46.50	M. D. of Florida		
1982 Chevrolet El Camino	10,500.00	01-10-83	St. Augustine, Florida	46.50	M. D. of Florida		
1981 Buick Regal	5,500.00	03-19-83	Jacksonville, Florida	46.50	M. D. of Florida		
1980 Pontiac Grand Prix	6,000.00	03-22-83	Gainesville, Florida	46.50	M. D. of Florida		
1982 Mercedes Benz 300	35,000.00	01-12-83	Ocala, Florida	no charge	M. D. of Florida		
1981 Chevrolet Camaro	14,639.26	01-10-83	Ocala, Florida	no charge	M. D. of Florida		
1981 Buick Park Avenue	9,600.00	07-22-83	Puerto Rico	30.00		X	
1976 Mercedes Benz	9,900.00	07-26-83	Puerto Rico	30.00	J. D. of P. R.		
1978 Ford Thunderbird	3,800.00	02-10-82	North Miami, Florida	60.00		X	
1981 Datsun 280ZX	8,000.00	07-11-83	Marathon Key, Florida	60.00	S. D. of Florida		
1982 Cadillac	6,450.00	04-26-83	St. Petersburg, Florida	47.50	M. D. of Florida		
1982 BMW 528e	25,000.00	08-20-82	Miami, Florida	60.00	S. D. of Florida		
1975 Pontiac Grand Prix	1,000.00	07-27-82	Miami, Florida	60.00			X
1973 Volks Wagon Beetle	2,000.00	06-02-83	Miami, Florida	60.00		X	
1974 Stutz Blackhawk	38,000.00	07-11-83	Miami, Florida	60.00	S. D. of Florida		
1975 Lincoln Continental	1,000.00	07-11-83	Miami, Florida	60.00		X	

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1983 Honda Accord	9,700.00	12-30-82	Miami, Florida	60.00	S. D. of Florida		
1968 Mercedes Benz	8,700.00	09-17-82	Davie, Florida	60.00	S. D. of Florida		
1976 Porshe	16,000.00	03-11-83	Ft. Lauderdale, Florida	60.00	S. D. of Florida		
1977 Porshe	16,000.00	01-27-83	Ft. Lauderdale, Florida	60.00	S. D. of Florida		
1979 Datsun	5,500.00	02-28-83	Davie, Florida	60.00		X	
1977 Mercedes Benz	24,000.00	06-09-83	Hollywood, Florida	60.00	S. D. of Florida		
1983 BMW	27,000.00	05-26-83	Miami, Florida	60.00	S. D. of Florida		
1982 Toyota Celica	9,300.00	07-21-83	Ft. Lauderdale, Florida	60.00		X	
1982 BMW 320I	13,000.00	05-17-83	Plantation, Florida	60.00	S. D. of Florida		
1979 Ford LTD	2,700.00	06-09-83	Ft. Lauderdale, Florida	60.00	S. D. of Florida		
1978 Chevrolet Corvette	9,575.00	09-21-82	Davie, Florida	60.00	S. D. of Florida		
1980 Chevrolet Malibu	5,300.00	03-01-83	Ft. Lauderdale, Florida	60.00		X	
1979 Chevrolet Malibu	6,000.00	03-02-83	Ft. Lauderdale, Florida	60.00	S. D. of Florida		
1977 Oldsmobile Cutlass	1,800.00	12-30-82	Miami, Florida	60.00		X	
1976 Cadillac Coupe de Ville	4,300.00	05-25-83	Ft. Lauderdale, Florida	60.00		X	
1977 Pontiac Grand Prix	3,800.00	09-17-82	Davie, Florida	60.00	S. D. of Florida		
1983 Cadillac Sedan de Ville	19,000.00	05-27-83	Ft. Lauderdale, Florida	60.00	S. D. of Florida		
1981 Cadillac Deville	11,000.00	06-08-83	Pompano Beach, Florida	60.00	S. D. of Florida		
1977 Lincoln Limosine	8,000.00	09-17-83	Davie, Florida	60.00	S. D. of Florida		
1978 GMC Pick Up Truck	4,375.00	11-20-82	Collier County, Florida	77.50	S. D. of Florida		
1984 Ford Pick Up Truck	6,225.00	11-20-82	Collier County, Florida	77.50	S. D. of Florida		

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1977 Cadillac Coupe de Ville	5,000.00	08-02-83	Miami, Florida	60.00		X	
1981 Chevrolet Corvette	13,000.00	08-10-83	Miami, Florida	60.00	S. D. of Florida		
1978 Ferrari	35,000.00	05-24-83	Miami, Florida	60.00	S. D. of Florida		
1982 Ford Granada	9,500.00	10-15-82	Miami, Florida	60.00			X
1977 Chevrolet Van	1,950.00	10-29-82	Ft. Lauderdale, Florida	60.00		X	
1979 Dodge Van	5,000.00	09-13-82	Pembroke Pines, Florida	60.00	S. D. of Florida		
1977 Ford Ranger	3,900.00	08-12-82	Ft. Lauderdale, Florida	60.00	S. D. of Florida		
1979 Pontiac Grand Prix	5,000.00	08-02-83	Ft. Lauderdale, Florida			X	
1976 Ford Econoline	2,600.00	12-07-82	Pompano Beach, Florida	60.00	S. D. of Florida		
1973 Dodge Van	1,275.00	11-03-81	Miami, Florida	60.00		X	
1969 Porshe 914	9,100.00	05-12-83	Ft. Lauderdale, Florida	60.00		X	
1978 Cadillac Seville	8,500.00	06-08-83	Ft. Lauderdale, Florida	60.00		X	
1972 Chevrolet Monte Carlo	2,200.00	11-10-81	Ft. Lauderdale, Florida	60.00		X	
1974 Cadillac Deville	2,000.00	11-16-82	Miami, Florida	60.00		X	
1969 Maserati	9,800.00	09-17-82	Davie, Florida	60.00	S. D. of Florida		
1978 Mercury Cougar	4,300.00	05-25-83	Boca Raton, Florida	60.00		X	
1977 Cadillac Deville	5,450.00	08-07-81	Ft. Lauderdale, Florida	60.00	S. D. of Florida		
1969 Chevrolet Crovette	5,400.00	09-17-82	Davie, Florida	60.00	S. D. of Florida		
1977 Chrysler Cordoba	3,000.00	06-02-80	Ft. Lauderdale, Florida	60.00	S. D. of Florida		
1979 Porshe Speedster	9,000.00	08-21-83	Ft. Lauderdale, Florida	60.00		X	
1983 Toyota Cressida	9,500.00	02-24-83	Ft. Lauderdale, Florida	60.00	S. D. of Florida		

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1980 Oldsmobile Cutlass	5,725.00	03-08-83	Miami, Florida	60.00	S. D. of Florida		
1979 Cadillac El Dorado	10,000.00	06-15-83	Miami, Florida	60.00		X	
1977 Cadillac Coupe de Ville	4,200.00	06-15-83	Miami, Florida	60.00		X	
1982 Oldsmobile C/Ciera	13,241.00	04-14-83	Miami, Florida	60.00	S. D. of Florida		
1979 BMW 528I	14,000.00	04-28-83	Miami, Florida	60.00	S. D. of Florida		
1983 Buick Regal	10,000.00	04-28-83	Miami, Florida	60.00		X	
1979 Chevrolet Monte Carlo	2,500.00	04-25-83	Miami, Florida	60.00		X	
1980 Datsun 200SX	5,200.00	04-25-83	Miami, Florida	60.00		X	
1981 Pontiac Grand Prix	7,500.00	08-18-83	Miami, Florida	60.00		X	
1983 Lincoln Continental Mark VI	20,495.00	08-18-83	Miami, Florida	60.00	S. D. of Florida		
1980 Chevrolet Monza	4,075.00	05-05-83	Hialeah, Florida	60.00			X
1983 Datsun 280ZX	12,425.00	05-13-83	Miami, Florida	60.00	S. D. of Florida		
1974 Ford Torino	425.00	06-07-83	Miami, Florida	60.00		X	
1973 Volks Wagon Van	1,000.00	06-09-83	Miami, Florida	60.00			X
1978 Cadillac Sedan de Ville	4,500.00	06-15-83	Miami, Florida	60.00		X	
1981 Audi 5000	9,275.00	06-16-83	Miami Beach, Florida	60.00		X	
1982 Volvo DL	9,400.00	06-16-83	Miami, Florida	60.00		X	
1981 BMW	30,000.00	06-22-83	Key Biscayne, Florida	60.00	S. D. of Florida		
1980 Honda Civic	3,175.00	07-27-83	Miami, Florida	60.00		X	
1983 Ford LTD	11,600.00	07-27-83	Miami, Florida	60.00	S. D. of Florida		
1980 Ford Pick Up	4,775.00	07-19-83	Miami, Florida	60.00		X	

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1980 Ford Thunderbird	7,300.00	03-22-83	Miami, Florida	60.00	S. D. of Florida		
1980 BMW	20,000.00	03-21-83	Miami, Florida	60.00	S. D. of Florida		
1978 Chevrolet Corvette	15,725.00	11-23-81	Miami, Florida	60.00	S. D. of Florida		
1978 Volvo 262C	5,800.00	03-22-83	Miami, Florida	60.00	S. D. of Florida		
1979 Cadillac Seville	11,250.00	04-30-82	Plantation, Florida	60.00	S. D. of Florida		
1982 Mercedes Benz 300TD	30,000.00	03-22-83	Miami, Florida	60.00	S. D. of Florida		
1979 Lincoln Mark	8,000.00	03-22-83	Hollywood, Florida	60.00		X	
1982 Toyota Supra	10,000.00	03-22-83	Miami, Florida	60.00	S. D. of Florida		
1980 Alfa Romeo	8,800.00	03-22-82	Miami, Florida	60.00	S. D. of Florida		
1981 Chevrolet Monte Carlo	7,500.00	10-15-82	Miami, Florida	60.00	S. D. of Florida		
1981 Ford Ranger	8,250.00	11-13-82	Miami, Florida	60.00	S. D. of Florida		
1982 Oldsmobile C/Ciera	9,670.00	11-13-82	Miami, Florida	60.00	S. D. of Florida		
1976 Rolls Royce	45,000.00	03-06083	Miami, Florida	60.00	S. D. of Florida		
1974 Cadillac Coupe de Ville	2,000.00	02-11-83	Miami, Florida	60.00		X	
1979 Ford Econoline	4,600.00	02-01-83	West Palm Beach, Florida	60.00		X	
1981 Cadillac El Dorado	14,400.00	02-01-83	West Palm Beach, Florida	60.00	S. D. of Florida		
1983 Cadillac Deville	15,970.00	07-28-83	Ft. Lauderdale, Florida	60.00	S. D. of Florida		
1979 Cehvrolet El Camino	2,500.00	07-28-83	Ft. Lauderdale, Florida	60.00	S. D. of Florida		
1976 Ford Thunderbird	2,425.00	07-28-83	Hialeah, Florida	60.00		X	
1981 Oldsmobile Regency	9,850.00	01-22-83	Miami, Florida	60.00	S. D. of Florida		
1981 Buick Regal	7,225.00	02-17-83	Miami, Florida	60.00	S. D. of Florida		

Mr. SHAW. He has obviously testified before.

Mr. HUGHES. I just have a couple of questions for the record. If I understand it correctly, if in fact you are given the additional authority proposed in H.R. 3299 it will increase the ceiling from $10,000 to $100,000 and exempt entirely conveyances from the restrictions on asset value under the administrative forfeiture proceedings that will insure what percentage of assets under these circumstances would be in default if nobody appears and therefore could be addressed adminstratively at that point?

In other words, how much of your inventory—let's take your existing inventory—how much of your inventory would be addressed adminstratively if we increased the limits to $100,000 and open-ended conveyances?

Mr. SIMPSON. I am going to have to make a guess, Mr. Chairman. I would say well over three-quarters. Most of the conveyances we have are automobiles. They are very often valued at over $10,000 but almost never valued at over $100,000, so it would cover a very great many of the forfeitures which we currently have to take care of judicially.

Mr. FRIEDLAND. I would think locally that may be closer to 60 percent because we have vessels and aircraft here that we are concerned with in this area, and those would not be included.

Mr. SAWYER. If I can just interrupt. The chairman's question, as I understand it, was no limit on conveyances.

Mr. HUGHES. No limit on conveyances.

Mr. SAWYER. No percent then? You are all including conveyances within the $100,000 limit?

Mr. SIMPSON. That is correct. I believe my impression is that the bill provides for a $100,000 limit which applies to conveyances as well.

Mr. HUGHES. No.

Mr. SIMPSON. Is that not correct?

Mr. HUGHES. Unlimited with conveyances. If in fact an aircraft or a vessel is carrying contraband, there is no limit on the value.

Mr. SIMPSON. Then I guess the obvious answer is 100 percent of the cases in which we seize conveyances. That is, if there is no limit on our ability to forfeiture seized conveyances administratively, no dollar limit.

Mr. HUGHES. How much of the assets that are presently seized? I trust that not all the conveyances contain contraband?

Mr. SIMPSON. We will have to supply that information for the record. Many of the conveyances we seize are for violations other than for transportation of contraband, so let us supply that for the record.

[The information follows:]

The Customs Service does not maintain current data which would identify conveyances seized for transportation of contraband. However, Customs personnel involved in processing conveyance seizures agree that 90 to 95 percent of all conveyance seizures result from transportation of contraband.

Mr. HUGHES. If you would, please. That is all I have.

The gentleman from Michigan, do you have any questions?

Mr. SAWYER. I have no questions.

Mr. HUGHES. The gentleman from Florida, Mr. Smith.

Mr. SMITH. We discussed previously the problem peculiar to south Florida in terms of the importation of flowers. Most of the flowers are coming into this area from Colombia and I think unfortunately the flower importers are being used by the drug importers. There is a growing concern that the flowers, which have a lifespan of 3 or 4 days, are going to wind up being stuck at the airport for that long or longer, which will totally destroy the importation of flowers into the United States in central Florida.

I don't want to take the time of the committee now, but as quickly as you can get it for me, some correspondence from you that would detail how you are going to attack this problem to ensure that the product that you are examining for carrying of drugs, won't be destroyed in the process. Manually, I am not worried. You have done it well. You have destroyed the flowers that way; I mean, the length of time alone should be enough. There must be a way of refrigerating this in a central area. That is what I am concerned about.

At that point I think the flower importers would be very happy to continue to cooperate as they have, but it is a big industry, and I hate to see anything that in order to discharge your duties properly that the whole industry is going to be put at risk. It's just not fair to either side.

I would like to find out from you how we can work that out. Thank you.

Mr. HUGHES. Mr. Shaw.

Mr. SHAW. In following up on Mr. Smith's statements, I think flower growers have contacted every congressional office in south Florida, so evidently there is somewhat of a scare and great concern being expressed. I would request that you supply that to my office also, and would suggest respectfully that you might want to supply the other congressional offices with it.

Mr. HUGHES. You might as well supply it to us, too, because we will probably be getting some letters on that.

Mr. SHAW. I want to thank you people for your assistance yesterday, and your candor and great effort and hospitality shown to this committee in showing us what the problems are, the frustrations of the problem. I think there are 479 boats; you are certainly above your ankles in boats in south Florida, just in this particular district.

I think the tremendous waste of personnel and money, Federal money, taxpayers' money that continues to go on just because of delays and needs for change in law, I can't think of anything the committee could have done to better use its time than to have seen the actual impact of the tremendous amount of assets rusting away in the sun and the salt water.

It was certainly eye-opening, and I can assure you that you gentlemen and the people working with you in the Miami office who assisted us yesterday can take personal credit for much of the speed and dedication that this committee is going to give to the bills that we are having hearings on today. There is nothing better than going to actually see the problem. I want to thank you.

Thank you, Mr. Chairman.

Mr. HUGHES. I, too, just want to echo the gentleman's sentiment, and I want to thank particularly the gentleman from Florida, Mr.

Smith, and particularly Mr. Shaw, who set up these hearings and made the request for our hearing here. It is invaluable to see the dimension of the problem. We are indebted to you and your staffs. I think the staffs have done a good job, the staffs of the Judiciary Committee as well as the personal staffs, and we thank you.

Clay, we thank you particularly for assisting us in setting up and structuring the hearing. It has been very beneficial. Thank you very much, gentlemen.

Mr. SHAW. I thank my staff.

Mr. HUGHES. We appreciate your testimony.

The committee stands adjourned.

[Whereupon, at 1 p.m., the subcommittee adjourned.]

Committee on the Judiciary
House of Representatives

Referred to Sub. on Crime
Chairman, Hon. William J. Hughes
Counsel, Hayden W. Gregory ✓

Date - 6/15/83

I

98TH CONGRESS
1ST SESSION

H. R. 3272

To amend the Controlled Substances Act and the Controlled Substances Import and Export Act to improve forfeiture provisions and strengthen penalties for controlled substances offenses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 1983

Mr. HUGHES (for himself, Mr. FISH, Mr. SAWYER, and Mr. SENSENBRENNER) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Energy and Commerce

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A BILL

To amend the Controlled Substances Act and the Controlled Substances Import and Export Act to improve forfeiture provisions and strengthen penalties for controlled substances offenses, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Comprehensive Drug Penalty Act of 1983".

SEC. 2. (a) Section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a)) is amended by adding at the end the following new paragraph:

"(7) All land and buildings used, or intended for use, for holding or storage of property described in paragraph (1) or (2), if the offense involved is a felony, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.".

(b) Section 511(d) of the Controlled Substances Act (21 U.S.C. 881(d)) is amended—

(1) by inserting "(1)" before "The provisions of law"; and

(2) by adding at the end the following new paragraph:

"(2) In addition to the venue provided for in section 1395 of title 28, United States Code, or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.".

(c) Subsection (e) of section 511 of the Controlled Substances Act (21 U.S.C. 881(e)) is amended by striking out "used to pay" in the sentence beginning "The proceeds

from" and all that follows through the end of the subsection and inserting in lieu thereof the following: "deposited in accordance with subsection (h) of this section.".

SEC. 3. (a) Section 511 of the Controlled Substances Act (21 U.S.C. 881) is amended by adding at the end the following new subsections:

"(h)(1) There is established in the United States Treasury a fund to be known as the Drug Enforcement Fund (hereinafter in this subsection referred to as the 'fund') which shall be available to the Attorney General, with respect to this title, title III, and section 1963(c) of title 18, United States Code, without fiscal year limitation in such amounts as may be specified in appropriation Acts for—

"(A) payment of expenses of forfeiture and sale, including expenses of seizure and detention;

"(B) payment of rewards for information resulting in a conviction or forfeiture;

"(C) payment of liens against forfeited property; and

"(D) payment of amounts with respect to remission and mitigation.

"(2) Any reward paid from the fund shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay a reward of $10,000 or more shall not be delegated to any person other than the Director of the

Federal Bureau of Investigation or the Administrator of the Drug Enforcement Administration. Any reward for such information shall not exceed $250,000, except that a reward paid for information resulting in a forfeiture, shall not exceed the lesser of $250,000 or one quarter of the amount realized by the United States from the property forfeited.

"(3) There shall be deposited in the fund during the period beginning on October 1, 1983, and ending on September 30, 1985, as a reimbursement to the appropriation for the fund—

"(A) all proceeds from forfeiture under this title and title III; and

"(B) all proceeds from forfeiture under section 1963(c) of title 18, United States Code, in any case in which the racketeering activity consists of a narcotic or other dangerous drug offense referred to in section 1961(1)(A) of such title.

"(4) Amounts in the fund which are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

"(5) Not later than four months after the end of each fiscal year, the Attorney General shall transmit to the Congress a detailed report on receipts and disbursements with respect to the fund for such year.

"(6) There are authorized to be appropriated from the fund for fiscal year 1984 and fiscal year 1985 such sums as may be necessary for expenses of payments under paragraph (1) of this subsection, of which not more than $10,000,000 may be appropriated for each such fiscal year for unreimbursed expenses. At the end of the last fiscal year for which appropriations from the fund are authorized by this Act, the fund shall cease to exist and any amount then remaining in the fund shall be deposited in the general fund.

"(i) The filing of an indictment or information alleging a violation of this title or title III that is related to a civil forfeiture proceeding under this section shall, upon motion of the United States or a claimant in that proceeding, and for good cause shown, stay the civil forfeiture proceeding.".

SEC. 4. (a) A reference in this section to a section or other provision is a reference to a section or other provision of the Controlled Substances Act (21 U.S.C. 801 et seq.).

(b) Section 401(b)(1)(A) (21 U.S.C. 841(b)(1)(A)) is amended—

(1) in the sentence beginning "In the case of", by striking out "$25,000, or both" and inserting in lieu thereof "$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual"; and

(2) in the sentence beginning "If any person", by striking out "$50,000, or both" and inserting in lieu thereof "$500,000, or both if such person is an individual, or to a fine of not more than $2,000,000 if such person is other than an individual".

(c) Section 401(b)(1)(B) (21 U.S.C. 841(b)(1)(B)) is amended—

(1) in the sentence beginning "In the case of", by striking out "$15,000, or both" and inserting in lieu thereof "$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual"; and

(2) in the sentence beginning "If any person", by striking out "$30,000, or both" and inserting in lieu thereof "$500,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual".

(d) Section 401(b)(2) (21 U.S.C. 841(b)(2)) is amended—

(1) in the sentence beginning "In the case of", by striking out "$10,000, or both" and inserting in lieu thereof "$100,000, or both if such person is an individual, or to a fine of not more than $250,000 if such person is other than an individual"; and

(2) in the sentence beginning "If any person", by striking out "$20,000, or both" and inserting in lieu thereof "$250,000, or both if such person is an individual, or to a fine of not more than $500,000 if such person is other than an individual".

(e) Section 401(b)(3) (21 U.S.C. 841(b)(3)) is amended—

(1) in the sentence beginning "In the case of", by striking out "$5,000, or both" and inserting in lieu thereof "$10,000, or both if such person is an individual, or to a fine of not more than $25,000 if such person is other than an individual"; and

(2) in the sentence beginning "If any person", by striking out "$10,000, or both" and inserting in lieu thereof "$25,000, or both if such person is an individual, or to a fine of not more than $50,000 if such person is other than an individual".

(f) Section 401(b)(5) (21 U.S.C. 841(b)(5)) is amended—

(1) in the sentence beginning "Notwithstanding paragraph (1)(B)", by striking out "$25,000, or both" and inserting in lieu thereof "$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual"; and

(2) in the sentence beginning "If any person", by striking out "$50,000, or both" and inserting in lieu

thereof "$500,000, or both if such person is an individual, or to a fine of not more than $2,000,000 if such person is other than an individual".

(g) Section 401(b)(6) (21 U.S.C. 841(b)(6)) is amended—

(1) in the sentence beginning "In the case of", by striking out "and in addition, may be fined not more than $125,000" and inserting in lieu thereof "a fine of not more than $250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual"; and

(2) in the sentence beginning "If any person", by striking out "and in addition, may be fined not more than $250,000" and inserting in lieu thereof "a fine of not more than $500,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual".

(h) Section 401(d) (21 U.S.C. 841(d)) is amended by striking out "$15,000, or both" and inserting in lieu thereof "$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual".

(i) Section 402(c)(2)(A) (21 U.S.C. 842(c)(2)(A)) is amended by striking out "$25,000, or both" and inserting in lieu thereof "$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual".

(j) Section 402(c)(2)(B) (21 U.S.C. 842(c)(2)(B)) is amended by striking out "$50,000, or both" and inserting in lieu thereof "$500,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual".

(k) Section 403(c) (21 U.S.C. 843(c)) is amended—

(1) by striking out "$30,000, or both" and inserting in lieu thereof "$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual"; and

(2) by striking out "$60,000, or both" and inserting in lieu thereof "$500,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual."

(l) Section 408(a)(1) (21 U.S.C. 848(a)(1)) is amended—

(1) by striking out "$100,000" and inserting in lieu thereof "$500,000 if such person is an individual, or a fine of not more than $1,000,000 if such person is other than an individual"; and

(2) by striking out "$200,000" and inserting in lieu thereof "$1,000,000 if such person is an individual, or a fine of not more than $2,000,000 if such person is other than an individual".

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(m) Part D is amended by adding at the end the following new sections:

"ALTERNATIVE FINE

"SEC. 413. In lieu of a fine authorized by this part, a defendant who derives profits or other proceeds directly from the offense may be fined not more than twice the gross profits or other proceeds so derived, if such amount is greater than the fine so authorized.

"GENERAL PROVISIONS RELATING TO FINES

"SEC. 414. (a) In determining whether to impose a fine under this part, and the amount, time for payment, and method of payment of a fine, the court shall—

"(1) consider the defendant's income (regardless of source), earning capacity, and financial resources, including the nature of the burden that the fine will impose on the defendant and on any person who is legally or financially dependent upon the defendant;

"(2) consider the proof received at trial or as a result of a plea of guilty or nolo contendere concerning any profits or other proceeds derived by the defendant;

"(3) consider any other pertinent equitable consideration; and

"(4) give primary consideration to the need to deprive the defendant of illegally obtained profits or other proceeds from the offense.

"(b) As a condition of a fine, the court may require that payment be made in specified installments or within a specified period of time, but such period shall not be greater than the maximum applicable term of probation or imprisonment, whichever is greater. If not otherwise required by such a condition, payment of a fine shall be due immediately.

"(c) If a fine under this part is imposed on an organization, it is the duty of each individual authorized to make disbursement of the assets of the organization to pay the fine from assets of the organization.

"(d)(1) A defendant who has been sentenced to pay a fine, and who has paid part but not all of such fine, may petition the court for extension of the time for payment, modification of the method of payment, or remission of all or part of the unpaid portion.

"(2) The court may enter an appropriate order under this subsection, if it finds that—

"(A) the circumstances that warranted imposition of the fine in the amount imposed, or payment by the time or method specified, no longer exist; or

"(B) it is otherwise unjust to require payment of the fine in the amount imposed or by the time or method specified.

37-763 O - 85 - 19

"CRIMINAL FORFEITURE

"SEC. 415. (a) Any person who is convicted of a violation of this title or title III that is punishable by imprisonment for more than one year shall forfeit to the United States—

"(1) any property constituting or derived from gross profits or other proceeds obtained as a result of such violation;

"(2) any property used, or intended to be used, to commit such violation; and

"(3) in the case of a person convicted under section 408 of this title, in addition to the property described in paragraphs (1) and (2), any interest in, claim against, or property or contractual right of any kind affording a source of control over, the continuing criminal enterprise.

"(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper.

"(c)(1) Upon filing of an indictment or information alleging that any property is subject to forfeiture under this section, the United States may request an order for seizure of such property in the same manner as provided for a search warrant. The court shall enter an order for seizure upon determining that—

"(A) there is probable cause to believe that the property to be seized is subject to forfeiture; and

"(B) an order restraining transfer of the property is not sufficient to ensure availability of the property for a forfeiture proceeding under this section.

"(2) The court shall enter an order of forfeiture of any property referred to in subsection (a) (1), (2), or (3) if the trier of fact determines that the United States has established beyond a reasonable doubt that such property is subject to forfeiture under this section.

"(3) The United States shall, to the maximum extent practicable, identify all persons with an alleged interest in property that is the subject of an order under paragraph (2) and shall provide to such persons notice of the order and the relief available under paragraph (4).

"(4)(A) Not later than sixty days (or such longer period as the court may order for good cause shown) after the date of an order under paragraph (2), any person with an alleged interest in the property may petition the Attorney General for remission or mitigation of the forfeiture—

"(i) on the ground that when acquiring the interest for value, such person did not know or have reason to know of the violation of law on which the order of forfeiture is based or of any existing order restraining transfer of the property; or

"(ii) on other equitable grounds that justify remission or mitigation.

A petition under this paragraph shall be verified and shall set forth the nature and extent of the petitioner's interest in the property, the time and circumstances of the petitioner's acquisition of interest in the property, any additional facts and circumstances supporting remission or mitigation, and the relief sought.

"(B) In the case of a petition under subparagraph (A)(ii), not later than ninety days (or such longer period as the court may order for good cause shown) after the end of the period specified in subparagraph (A), the Attorney General shall issue a decision with respect to the petition. The property shall be disposed of pursuant to such decision, which shall not be subject to review of any kind.

"(C) In the case of a petition under subparagraph (A)(i), not later than ninety days (or such longer period as the court may order for good cause shown) after the end of the period specified in subparagraph (A), the Attorney General shall provide the relief sought or submit to the court a written

recommendation for other disposition of the property. Except as provided in subparagraph (D), the court shall order disposition of the property in accordance with a recommendation made under the preceding sentence.

"(D) The court shall provide notice of the recommendation and opportunity for a hearing to any petitioner under subparagraph (A)(i). If, at such hearing, a petitioner establishes, by a preponderance of the evidence, that such petitioner's interest was acquired for value without actual or constructive knowledge of the violation of law on which the order of forfeiture is based, or of any order restraining transfer of the property, the court shall grant appropriate relief that does equity to that interest.

"(5)(A) Except as provided in subparagraph (B), the provisions of the customs laws relating to disposition of forfeited property shall apply to dispositions of property forfeited under this chapter, to the extent that such provisions are not inconsistent with this chapter.

"(B) The duties of the Secretary of the Treasury with respect to dispositions of forfeited property under the customs laws shall be performed under subparagraph (A) by the Attorney General, except to the extent that such duties arise from forfeitures effected under the customs laws.

"(d) The United States shall promptly dispose of all property forfeited under this section through commercial

means or as otherwise permitted by law, making due provision for the rights of innocent persons, but the United States shall take such action as may be required to prevent any convicted person from purchasing or otherwise acquiring property forfeited as a result of such conviction. Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize forfeited property under such reasonable conditions as the court may impose. If a forfeited property right is not exercisable or transferable for value by the United States, it shall expire and shall not revert to the convicted person.

"(e)(1) In addition to any order authorized by subsection (b), the court may, before the filing of an indictment or information, enter an order restraining the transfer of property that is or may be subject to forfeiture under subsection (a) of this section.

"(2) An order shall be entered under this subsection if the court determines that—

"(A) there is a substantial probability that the United States will prevail on the issue of forfeiture;

"(B) there is a substantial probability that failure to enter the order will result in unavailability of the property for forfeiture; and

"(C) the need to assure availability of the property outweighs the hardship on any party against whom the order is to be entered.

"(3)(A) Except as provided in subparagraph (B), an order under this subsection shall be entered only after notice to persons appearing to have an interest in the property and opportunity for a hearing.

"(B) A temporary order under this subsection may be entered upon application of the United States, without notice or opportunity for a hearing, if an information or indictment has not been filed with respect to the property and the United States demonstrates that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, except that the effective period of the order may be extended by the court for not more than ten days for good cause shown and for a longer period with the consent of all parties affected by the order.

"(f) There may be a rebuttable presumption at trial that any property of a person convicted of a felony under this title or title III is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that—

"(1) such property was acquired by such person during the period of the violation of this title or title III or within a reasonable time after such period; and

"(2) there was no likely source for such property other than the violation of this title or title III.

"(g) The findings of the trier of fact with respect to property subject to forfeiture shall be set forth in a special verdict.".

SEC. 5. (a) Section 1010(b)(1) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)) is amended in the sentence beginning "In the case of" by striking out "$25,000, or both" and inserting in lieu thereof "$500,000, or both if such person is an individual, or shall be fined not more than $1,000,000 if such person is other than an individual".

(b) Section 1010(b)(2) of such Act (21 U.S.C. 960(b)(2)) is amended in the sentence beginning "In the case of" by striking out "$15,000, or both" and inserting in lieu thereof "$500,000, or both if such person is an individual, or shall be fined not more than $1,000,000 if such person is other than an individual".

(c) Section 1010(b) of such Act (21 U.S.C. 960(b)) is amended by adding at the end the following new paragraph:

"(3) In the case of a violation under subsection (a) involving more than one thousand pounds of marihuana, the

person committing such violation shall be imprisoned not more than fifteen years, or fined not more than $250,000, or both if such person is an individual, or shall be fined not more than $1,000,000 if such person is other than an individual.".

(d) Section 1011(2) of such Act (21 U.S.C. 961(2)) is amended by striking out "$25,000" and inserting in lieu thereof "$50,000".

(e) Part A of such Act is amended by adding at the end the following new section:

"APPLICABILITY OF SECTION 413 AND SECTION 414

"SEC. 1017. Sections 413 and 414 shall apply with respect to fines under this part to the same extent that such sections apply with respect to fines under part D of title II. For purposes of such application, any reference in such section 413 or 414 to 'this part' shall be deemed to be a reference to part A of title III.".

SEC. 6. Section 408 of the Controlled Substances Act (21 U.S.C. 848), as amended by section 4(l) of this Act, is further amended—

(1) in subsection (a)—

(A) by striking out "SEC. 408. (a)(1)" and inserting in lieu thereof "SEC. 408. (a)";

(B) by striking out "paragraph (2)" each place it appears and inserting in lieu thereof "section 415"; and

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

(2) by striking out subsection (d).

SEC. 7. (a) The table of contents for part D of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 412 the following new items:

"Sec. 413. Alternative fine.
"Sec. 414. General provisions relating to fines.
"Sec. 415. Criminal forfeiture.".

(b) The table of contents for part A of title III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 1016 the following new item:

"Sec. 1017. Applicability of section 413 and section 414.".

SEC. 8. This Act and the amendments made by this Act shall take effect on October 1, 1983.

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98TH CONGRESS
1ST SESSION

H. R. 3299

To amend the Controlled Substances Act, the Controlled Substances Import and Export Act, and the Tariff Act of 1930 to improve forfeiture provisions and strengthen penalties for controlled substances offenses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 1983

Mr. HUGHES (for himself, Mr. FISH, Mr. SAWYER, and Mr. SENSENBRENNER) introduced the following bill; which was referred jointly to the Committees on the Judiciary, Energy and Commerce, and Ways and Means

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A BILL

To amend the Controlled Substances Act, the Controlled Substances Import and Export Act, and the Tariff Act of 1930 to improve forfeiture provisions and strengthen penalties for controlled substances offenses, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

SEC. 101. This title may be cited as the "Comprehensive Drug Penalty Act of 1983".

SEC. 102. (a) Section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a)) is amended by adding at the end the following new paragraph:

"(7) All land and buildings used, or intended for use, for holding or storage of property described in paragraph (1) or (2), if the offense involved is a felony, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.".

(b) Section 511(d) of the Controlled Substances Act (21 U.S.C. 881(d)) is amended—

(1) by inserting "(1)" before "The provisions of law"; and

(2) by adding at the end the following new paragraph:

"(2) In addition to the venue provided for in section 1395 of title 28, United States Code, or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.".

(c) Subsection (e) of section 511 of the Controlled Substances Act (21 U.S.C. 881(e)) is amended by striking out "used to pay" in the sentence beginning "The proceeds from" and all that follows through the end of the subsection and inserting in lieu thereof the following: "deposited in accordance with subsection (h) of this section.".

SEC. 103. Section 511 of the Controlled Substances Act (21 U.S.C. 881) is amended by adding at the end the following new subsections:

"(h)(1) There is established in the United States Treasury a fund to be known as the Drug Enforcement Fund (hereinafter in this subsection referred to as the 'fund') which shall be available to the Attorney General, with respect to this title, title III, and section 1963(c) of title 18, United States Code, without fiscal year limitation in such amounts as may be specified in appropriation Acts for—

"(A) payment of expenses of forfeiture and sale, including expenses of seizure and detention;

"(B) payment of rewards for information resulting in a conviction or forfeiture;

"(C) payment of liens against forfeited property; and

"(D) payment of amounts with respect to remission and mitigation.

"(2) Any reward paid from the fund shall be paid at the discretion of the Attorney General or his delegate, except that the authority to pay a reward of $10,000 or more shall not be delegated to any person other than the Director of the Federal Bureau of Investigation or the Administrator of the Drug Enforcement Administration. Any reward for such information shall not exceed $250,000, except that a reward paid for information resulting in a forfeiture, shall not exceed the lesser of $250,000 or one quarter of the amount realized by the United States from the property forfeited.

"(3) There shall be deposited in the fund during the period beginning on October 1, 1983, and ending on September 30, 1985, as a reimbursement to the appropriation for the fund—

"(A) all proceeds from forfeiture under this title and title III; and

"(B) all proceeds from forfeiture under section 1963(c) of title 18, United States Code, in any case in which the racketeering activity consists of a narcotic or other dangerous drug offense referred to in section 1961(1)(A) of such title.

"(4) Amounts in the fund which are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

"(5) Not later than four months after the end of each fiscal year, the Attorney General shall transmit to the Congress a detailed report on receipts and disbursements with respect to the fund for such year.

"(6) There are authorized to be appropriated from the fund for fiscal year 1984 and fiscal year 1985 such sums as may be necessary for expenses of payments under paragraph (1) of this subsection, of which not more than $10,000,000 may be appropriated for each such fiscal year for unreimbursed expenses. At the end of the last fiscal year for which appropriations from the fund are authorized by this Act, the fund shall cease to exist and any amount then remaining in the fund shall be deposited in the general fund.

"(i) The filing of an indictment or information alleging a violation of this title or title III that is related to a civil forfeiture proceeding under this section shall, upon motion of the United States or a claimant in that proceeding, and for good cause shown, stay the civil forfeiture proceeding.".

SEC. 104. (a) A reference in this section to a section or other provision is a reference to a section or other provision of the Controlled Substances Act (21 U.S.C. 801 et seq.).

(b) Section 401(b)(1)(A) (21 U.S.C. 841(b)(1)(A)) is amended—

(1) in the sentence beginning "In the case of", by striking out "$25,000, or both" and inserting in lieu

thereof "$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual"; and

(2) in the sentence beginning "If any person", by striking out "$50,000, or both" and inserting in lieu thereof "$500,000, or both if such person is an individual, or to a fine of not more than $2,000,000 if such person is other than an individual".

(c) Section 401(b)(1)(B) (21 U.S.C. 841(b)(1)(B)) is amended—

(1) in the sentence beginning "In the case of", by striking out "$15,000, or both" and inserting in lieu thereof "$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual"; and

(2) in the sentence beginning "If any person", by striking out "$30,000, or both" and inserting in lieu thereof "$500,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual".

(d) Section 401(b)(2) (21 U.S.C. 841(b)(2)) is amended—

(1) in the sentence beginning "In the case of", by striking out "$10,000, or both" and inserting in lieu thereof "$100,000, or both if such person is an individual, or to a fine of not more than $250,000 if such person is other than an individual"; and

(2) in the sentence beginning "If any person", by striking out "$20,000, or both" and inserting in lieu thereof "$250,000, or both if such person is an individual, or to a fine of not more than $500,000 if such person is other than an individual".

(e) Section 401(b)(3) (21 U.S.C. 841(b)(3)) is amended—

(1) in the sentence beginning "In the case of", by striking out "$5,000, or both" and inserting in lieu thereof "$10,000, or both if such person is an individual, or to a fine of not more than $25,000 if such person is other than an individual"; and

(2) in the sentence beginning "If any person", by striking out "$10,000, or both" and inserting in lieu thereof "$25,000, or both if such person is an individual, or to a fine of not more than $50,000 if such person is other than an individual".

(f) Section 401(b)(5) (21 U.S.C. 841(b)(5)) is amended—

(1) in the sentence beginning "Notwithstanding paragraph (1)(B)", by striking out "$25,000, or both" and inserting in lieu thereof "$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual"; and

37-763 O - 85 - 20

(2) in the sentence beginning "If any person", by striking out "$50,000, or both" and inserting in lieu thereof "$500,000, or both if such person is an individual, or to a fine of not more than $2,000,000 if such person is other than an individual".

(g) Section 401(b)(6) (21 U.S.C. 841(b)(6)) is amended—

(1) in the sentence beginning "In the case of", by striking out "and in addition, may be fined not more than $125,000" and inserting in lieu thereof "a fine of not more than $250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual"; and

(2) in the sentence beginning "If any person", by striking out "and in addition, may be fined not more than $250,000" and inserting in lieu thereof "a fine of not more than $500,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual".

(h) Section 401(d) (21 U.S.C. 841(d)) is amended by striking out "$15,000, or both" and inserting in lieu thereof "$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual".

(i) Section 402(c)(2)(A) (21 U.S.C. 842(c)(2)(A)) is amended by striking out "$25,000, or both" and inserting in lieu thereof "$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual".

(j) Section 402(c)(2)(B) (21 U.S.C. 842(c)(2)(B)) is amended by striking out "$50,000, or both" and inserting in lieu thereof "$500,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual".

(k) Section 403(c) (21 U.S.C. 843(c)) is amended—

(1) by striking out "$30,000, or both" and inserting in lieu thereof "$250,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual"; and

(2) by striking out "$60,000, or both" and inserting in lieu thereof "$500,000, or both if such person is an individual, or to a fine of not more than $1,000,000 if such person is other than an individual."

(l) Section 408(a)(1) (21 U.S.C. 848(a)(1)) is amended—

(1) by striking out "$100,000" and inserting in lieu thereof "$500,000 if such person is an individual, or a fine of not more than $1,000,000 if such person is other than an individual"; and

(2) by striking out "$200,000" and inserting in lieu thereof "$1,000,000 if such person is an individual, or a fine of not more than $2,000,000 if such person is other than an individual".

(m) Part D is amended by adding at the end the following new sections:

"ALTERNATIVE FINE

"SEC. 413. In lieu of a fine authorized by this part, a defendant who derives profits or other proceeds directly from the offense may be fined not more than twice the gross profits or other proceeds so derived, if such amount is greater than the fine so authorized.

"GENERAL PROVISIONS RELATING TO FINES

"SEC. 414. (a) In determining whether to impose a fine under this part, and the amount, time for payment, and method of payment of a fine, the court shall—

"(1) consider the defendant's income (regardless of source), earning capacity, and financial resources, including the nature of the burden that the fine will impose on the defendant and on any person who is legally or financially dependent upon the defendant;

"(2) consider the proof received at trial or as a result of a plea of guilty or nolo contendere concerning any profits or other proceeds derived by the defendant;

"(3) consider any other pertinent equitable consideration; and

"(4) give primary consideration to the need to deprive the defendant of illegally obtained profits or other proceeds from the offense.

"(b) As a condition of a fine, the court may require that payment be made in specified installments or within a specified period of time, but such period shall not be greater than the maximum applicable term of probation or imprisonment, whichever is greater. If not otherwise required by such a condition, payment of a fine shall be due immediately.

"(c) If a fine under this part is imposed on an organization, it is the duty of each individual authorized to make disbursement of the assets of the organization to pay the fine from assets of the organization.

"(d)(1) A defendant who has been sentenced to pay a fine, and who has paid part but not all of such fine, may petition the court for extension of the time for payment, modification of the method of payment, or remission of all or part of the unpaid portion.

"(2) The court may enter an appropriate order under this subsection, if it finds that—

"(A) the circumstances that warranted imposition of the fine in the amount imposed, or payment by the time or method specified, no longer exist; or

"(B) it is otherwise unjust to require payment of the fine in the amount imposed or by the time or method specified.

"CRIMINAL FORFEITURE

"SEC. 415. (a) Any person who is convicted of a violation of this title or title III that is punishable by imprisonment for more than one year shall forfeit to the United States—

"(1) any property constituting or derived from gross profits or other proceeds obtained as a result of such violation;

"(2) any property used, or intended to be used, to commit such violation; and

"(3) in the case of a person convicted under section 408 of this title, in addition to the property described in paragraphs (1) and (2), any interest in, claim against, or property or contractual right of any kind affording a source of control over, the continuing criminal enterprise.

"(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection

with any property or other interest subject to forfeiture under this section, as it shall deem proper.

"(c)(1) Upon filing of an indictment or information alleging that any property is subject to forfeiture under this section, the United States may request an order for seizure of such property in the same manner as provided for a search warrant. The court shall enter an order for seizure upon determining that—

"(A) there is probable cause to believe that the property to be seized is subject to forfeiture; and

"(B) an order restraining transfer of the property is not sufficient to ensure availability of the property for a forfeiture proceeding under this section.

"(2) The court shall enter an order of forfeiture of any property referred to in subsection (a) (1), (2), or (3) if the trier of fact determines that the United States has established beyond a reasonable doubt that such property is subject to forfeiture under this section.

"(3) The United States shall, to the maximum extent practicable, identify all persons with an alleged interest in property that is the subject of an order under paragraph (2) and shall provide to such persons notice of the order and the relief available under paragraph (4).

"(4)(A) Not later than sixty days (or such longer period as the court may order for good cause shown) after the date

of an order under paragraph (2), any person with an alleged interest in the property may petition the Attorney General for remission or mitigation of the forfeiture—

"(i) on the ground that when acquiring the interest for value, such person did not know or have reason to know of the violation of law on which the order of forfeiture is based or of any existing order restraining transfer of the property; or

"(ii) on other equitable grounds that justify remission or mitigation.

A petition under this paragraph shall be verified and shall set forth the nature and extent of the petitioner's interest in the property, the time and circumstances of the petitioner's acquisition of interest in the property, any additional facts and circumstances supporting remission or mitigation, and the relief sought.

"(B) In the case of a petition under subparagraph (A)(ii), not later than ninety days (or such longer period as the court may order for good cause shown) after the end of the period specified in subparagraph (A), the Attorney General shall issue a decision with respect to the petition. The property shall be disposed of pursuant to such decision, which shall not be subject to review of any kind.

"(C) In the case of a petition under subparagraph (A)(i), not later than ninety days (or such longer period as the court

may order for good cause shown) after the end of the period specified in subparagraph (A), the Attorney General shall provide the relief sought or submit to the court a written recommendation for other disposition of the property. Except as provided in subparagraph (D), the court shall order disposition of the property in accordance with a recommendation made under the preceding sentence.

"(D) The court shall provide notice of the recommendation and opportunity for a hearing to any petitioner under subparagraph (A)(i). If, at such hearing, a petitioner establishes, by a preponderance of the evidence, that such petitioner's interest was acquired for value without actual or constructive knowledge of the violation of law on which the order of forfeiture is based, or of any order restraining transfer of the property, the court shall grant appropriate relief that does equity to that interest.

"(5)(A) Except as provided in subparagraph (B), the provisions of the customs laws relating to disposition of forfeited property shall apply to dispositions of property forfeited under this chapter, to the extent that such provisions are not inconsistent with this chapter.

"(B) The duties of the Secretary of the Treasury with respect to dispositions of forfeited property under the customs laws shall be performed under subparagraph (A) by the At-

torney General, except to the extent that such duties arise from forfeitures effected under the customs laws.

"(d) The United States shall promptly dispose of all property forfeited under this section through commercial means or as otherwise permitted by law, making due provision for the rights of innocent persons, but the United States shall take such action as may be required to prevent any convicted person from purchasing or otherwise acquiring property forfeited as a result of such conviction. Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize forfeited property under such reasonable conditions as the court may impose. If a forfeited property right is not exercisable or transferable for value by the United States, it shall expire and shall not revert to the convicted person.

"(e)(1) In addition to any order authorized by subsection (b), the court may, before the filing of an indictment or information, enter an order restraining the transfer of property that is or may be subject to forfeiture under subsection (a) of this section.

"(2) An order shall be entered under this subsection if the court determines that—

"(A) there is a substantial probability that the United States will prevail on the issue of forfeiture;

"(B) there is a substantial probability that failure to enter the order will result in unavailability of the property for forfeiture; and

"(C) the need to assure availability of the property outweighs the hardship on any party against whom the order is to be entered.

"(3)(A) Except as provided in subparagraph (B), an order under this subsection shall be entered only after notice to persons appearing to have an interest in the property and opportunity for a hearing.

"(B) A temporary order under this subsection may be entered upon application of the United States, without notice or opportunity for a hearing, if an information or indictment has not been filed with respect to the property and the United States demonstrates that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, except that the effective period of the order may be extended by the court for not more than ten days for good cause shown and for a longer period with the consent of all parties affected by the order.

"(f) There may be a rebuttable presumption at trial that any property of a person convicted of a felony under this title or title III is subject to forfeiture under this section if the

United States establishes by a preponderance of the evidence that—

"(1) such property was acquired by such person during the period of the violation of this title or title III or within a reasonable time after such period; and

"(2) there was no likely source for such property other than the violation of this title or title III.

"(g) The findings of the trier of fact with respect to property subject to forfeiture shall be set forth in a special verdict.".

SEC. 105. (a) Section 1010(b)(1) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)) is amended in the sentence beginning "In the case of" by striking out "$25,000, or both" and inserting in lieu thereof "$500,000, or both if such person is an individual, or shall be fined not more than $1,000,000 if such person is other than an individual".

(b) Section 1010(b)(2) of such Act (21 U.S.C. 960(b)(2)) is amended in the sentence beginning "In the case of" by striking out "$15,000, or both" and inserting in lieu thereof "$500,000, or both if such person is an individual, or shall be fined not more than $1,000,000 if such person is other than an individual".

(c) Section 1010(b) of such Act (21 U.S.C. 960(b)) is amended by adding at the end the following new paragraph:

"(3) In the case of a violation under subsection (a) involving more than 1,000 pounds of marihuana, the person committing such violation shall be imprisoned not more than fifteen years, or fined not more than $250,000, or both if such person is an individual, or shall be fined not more than $1,000,000 if such person is other than an individual.".

(d) Section 1011(2) of such Act (21 U.S.C. 961(2)) is amended by striking out "$25,000" and inserting in lieu thereof "$50,000".

(e) Part A of such Act is amended by adding at the end the following new section:

"APPLICABILITY OF SECTION 413 AND SECTION 414

"SEC. 1017. Sections 413 and 414 shall apply with respect to fines under this part to the same extent that such sections apply with respect to fines under part D of title II. For purposes of such application, any reference in such section 413 or 414 to 'this part' shall be deemed to be a reference to part A of title III.".

SEC. 106. Section 408 of the Controlled Substances Act (21 U.S.C. 848), as amended by section 4(l) of this Act, is further amended—

(1) in subsection (a)—

(A) by striking out "SEC. 408. (a)(1)" and inserting in lieu thereof "SEC. 408. (a)";

(B) by striking out "paragraph (2)" each place it appears and inserting in lieu thereof "section 415"; and

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

(2) by striking out subsection (d).

SEC. 107. (a) The table of contents for part D of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 412 the following new items:

"Sec. 413. Alternative fine.
"Sec. 414. General provisions relating to fines.
"Sec. 415. Criminal forfeiture.".

(b) The table of contents for part A of title III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 1016 the following new item:

"Sec. 1017. Applicability of section 413 and section 414.".

TITLE II

SEC. 201. Section 607 of the Tariff Act of 1930 (19 U.S.C. 1607) is amended to read as follows:

"SEC. 607. SEIZURE; VALUE $100,000 OR LESS, PROHIBITED MERCHANDISE, TRANSPORTING CONVEYANCES.

"(a) If—

"(1) the value of such seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed $100,000;

"(2) such seized merchandise is merchandise the importation of which is prohibited; or

"(3) such seized vessel, vehicle, or aircraft was used to import, export, transport, or store any controlled substance;

the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

"(b) As used in this section, the term 'controlled substance' has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802).".

SEC. 202. Section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended in the second sentence by inserting after "penal sum of" the following: "$2,500 or 10 percent of the value of the claimed property, whichever is lower, but not less than".

SEC. 203. Section 609 of the Tariff Act of 1930 (19 U.S.C. 1609) is amended by striking out ", after deducting the actual expenses of seizure, publication and sale, in the

Treasury of the United States." and inserting in lieu thereof "in the Customs Forfeiture Fund.".

SEC. 204. Section 610 of the Tariff Act of 1930 (19 U.S.C. 1610) is amended by striking out "If the value of any vessel, vehicle, merchandise, or baggage so seized is greater than $10,000," and inserting in lieu thereof "If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 607 of this Act,".

SEC. 205. Section 612 of the Tariff Act of 1930 (19 U.S.C. 1612) is amended—

(1) by inserting "aircraft," after "vehicle," each place it appears;

(2) by striking out "and the value of such vessel, vehicle, merchandise, or baggage as determined under section 606 of this Act, does not exceed $10,000," in the first sentence and inserting in lieu thereof "and the article is subject to section 607 of this Act,"; and

(3) by striking out "If such value of such vessel, vehicle, merchandise, or baggage exceeds $10,000" in the second sentence and inserting in lieu thereof "If the article is not subject to section 607 of this Act,".

SEC. 206. (a) The last sentence of section 613(a) of the Tariff Act of 1930 (19 U.S.C. 1613(a)) is amended—

(1) by inserting after "proceeds of sale" the following: "shall be deposited in the Customs Forfeiture

Fund, except that in the case of an application of this subsection to a law other than a customs law, the proceeds of sale"; and

(2) in paragraph (3), by striking out "with the Treasurer of the United States as a customs or navigation fine" and inserting in lieu thereof the following: "in the general fund of the Treasury of the United States".

(b) Section 613(b) of the Tariff Act of 1930 (19 U.S.C. 1613(b)) is amended by striking out "(a) (1) and (2) of this section" and inserting in lieu thereof "(a)(3) of section 613A of this Act".

SEC. 207. Part V of title IV of the Tariff Act of 1930 (19 U.S.C. 1581 et seq.) is amended by adding after section 613 the following new section:

"SEC. 613A. CUSTOMS FORFEITURE FUND.

"(a) There is established in the Treasury of the United States a fund to be known as the Customs Forfeiture Fund (hereinafter in this section referred to as the 'fund') which shall be available to the United States Customs Service without fiscal year limitation in such amounts as may be specified in appropriation Acts for—

"(1) payment of expenses of forfeiture and sale, including expenses of seizure and detention;

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24

"(2) payment of awards of compensation to informers under section 619 of this Act;

"(3) payment for satisfaction of—

"(A) liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and

"(B) other liens against forfeited property; and

"(4) payment of amounts authorized by law with respect to remission and mitigation.

"(b) Payment under paragraphs (3) and (4) of subsection (a) of this section shall not exceed the net proceeds of the sale or, if the property is retained or transferred for official use, the appraised value less all applicable expenses.

"(c)(1) There shall be deposited in the fund during the period beginning on October 1, 1983, and ending on September 30, 1985, as a reimbursement to the appropriation for the fund, all proceeds from forfeiture under the customs laws.

"(d) Amounts in the fund which are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

"(e) Not later than four months after the end of each fiscal year, the Commissioner of Customs shall transmit to

25

the Congress a report on receipts and disbursements with respect to the fund for such year.

"(f) There are authorized to be appropriated from the fund for fiscal year 1984 and fiscal year 1985 such sums as may be necessary for expenses of payments under subsection (a) of this section, of which not more than $10,000,000 may be appropriated for each such fiscal year for unreimbursed expenses. At the end of the last fiscal year for which appropriations from the fund are authorized by this Act, the fund shall cease to exist and any amount then remaining in the fund shall be deposited in the general fund of the Treasury of the United States.".

SEC. 208. Part V of title IV of the Tariff Act of 1930 (19 U.S.C. 1581) is further amended by adding after section 615 the following new section:

"SEC. 616. TRANSFER OF FORFEITED PROPERTY.

"(a) The Secretary of the Treasury may order the discontinuance of forfeiture proceedings under this Act in favor of forfeiture under State law. After the filing of a complaint for forfeiture under this Act, the Attorney General may seek dismissal of the complaint in favor of forfeiture under State law.

"(b) If forfeiture proceedings are discontinued or dismissed under this section—

"(1) the United States may transfer the seized property to the appropriate State or local official; and

"(2) notice of the discontinuance or dismissal shall be provided to all known interested parties.

"(c) The United States shall not be liable in any action arising out of seizure, detention, or transfer of property transferred under this section.".

SEC. 209. Section 619 of the Tariff Act of 1930 (19 U.S.C. 1619) is amended by striking out "$50,000" each place it appears and inserting in lieu thereof "$250,000".

SEC. 210. (a) Part V of title IV of the Tariff Act of 1930 (19 U.S.C. 1581 et seq.) is further amended by adding after section 588 the following new section:

"SEC. 589. ENFORCEMENT AUTHORITY OF CUSTOMS OFFICERS.

"Subject to the direction of the Secretary of the Treasury, an officer of the customs may—

"(1) carry a firearm;

"(2) execute and serve any order, warrant, subpena, summons, or other process issued under the authority of the United States;

"(3) make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States committed outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and

"(4) perform any other law enforcement duty that the Secretary of the Treasury may designate.".

(b)(1) Section 7607 of the Internal Revenue Code of 1954 (26 U.S.C. 7607) is repealed.

(2) The table of sections for subchapter A of chapter 78 of the Internal Revenue Code of 1954 is amended by striking out the item relating to section 7607.

SEC. 211. Sections 602, 605, 606, 608, 609, 611, 613, 614, 615, 618, and 619 (19 U.S.C. 1602, 1605, 1606, 1608, 1609, 1611, 1613, 1614, 1615, 1618, and 1619) of the Tariff Act of 1930 are each amended—

(1) by inserting "aircraft," after "vehicle," each place it appears; and

(2) by inserting "aircraft" after "vehicles," each place it appears.

TITLE III

SEC. 301. This Act and the amendments made by this Act shall take effect on October 1, 1983.

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Committee on the Judiciary
House of Representatives

Referred to Sub. on Crime
Chairman, Hon. William J. Hughes
Counsel, Hayden W. Gregory

Date 8/5/83

98TH CONGRESS
1ST SESSION

H. R. 3725

To amend title 28, United States Code, the Controlled Substances Act, the Tariff Act of 1930, and the Immigration and Nationality Act to establish special funds for vessels, vehicles, and aircraft seized by certain Federal law enforcement agencies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 1983

Mr. BROOKS introduced the following bill; which was referred jointly to the Committees on the Judiciary, Ways and Means, and Energy and Commerce

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A BILL

To amend title 28, United States Code, the Controlled Substances Act, the Tariff Act of 1930, and the Immigration and Nationality Act to establish special funds for vessels, vehicles, and aircraft seized by certain Federal law enforcement agencies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Forfeited Conveyance Disposal Improvements Act".

TITLE I—AMENDMENTS TO CONTROLLED SUBSTANCES ACT, IMMIGRATION AND NATIONALITY ACT, AND TITLE 28, UNITED STATES CODE

SEC. 101. Section 511(e) of the Controlled Substances Act (21 U.S.C. 881(e)) is amended in the sentence beginning "The Attorney General" by inserting after "expenses" the following: ", except that, during the period beginning on the date of the enactment of the Forfeited Conveyance Disposal Improvements Act, and ending on September 30, 1984, such proceeds (after expenses) from the sale under paragraph (2) or paragraph (3) of any vessel, vehicle, or aircraft shall be deposited in the Department of Justice Forfeited Conveyances Fund".

SEC. 102. Section 511 of the Controlled Substances Act (21 U.S.C. 881) is amended by adding at the end the following new subsection:

"(h) Not later than four months after the end of each fiscal year, the Attorney General shall transmit to the Congress a report showing, with respect to such year, the number, types, and value of vessels, vehicles, and aircraft retained under subsection (e)(1).".

SEC. 103. Section 274(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1324(b)(3)) is amended by adding at the end the following new sentence: "Notwithstanding any

other provision of this paragraph, during the period beginning on the date of the enactment of the Forfeited Conveyance Disposal Improvements Act and ending on September 30, 1984, the proceeds from the sale of any forfeited conveyance, after payment of expenses under paragraph (4)(B) and payment of expenses of any sale by the General Services Administration under paragraph (4)(C), shall be deposited in the Department of Justice Forfeited Conveyances Fund.".

SEC. 104. Section 274(b) of the Immigration and Nationality Act (8 U.S.C. 1324(b)) is amended by adding at the end the following new paragraph:

"(6) Not later than four months after the end of each fiscal year, the Attorney General shall transmit to the Congress a report showing, with respect to such year, the number, types, and value of conveyances retained under paragraph (4)(A).".

SEC. 105. (a) Chapter 31 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 530. **Establishment of Department of Justice Forfeited Conveyances Fund**

"(a)(1) There is established in the Treasury a fund to be known as the Department of Justice Forfeited Conveyances Fund (hereinafter in this subsection referred to as the 'fund') which, subject to appropriation, shall be available to the At-

torney General, during the period beginning on October 1, 1984, and ending on September 30, 1987, for the purposes specified in paragraph (2).

"(2) The purposes referred to in paragraph (1) are the following payments with respect to seized vessels, vehicles, and aircraft for which the Federal Bureau of Investigation, the Drug Enforcement Administration, the United States Marshals Service, or the Immigration and Naturalization Service has primary responsibility for storage and maintenance:

"(A) Payment of liens.

"(B) Payment of amounts with respect to remission and mitigation.

"(C) Payment of expenses of forfeiture and sale, including expenses of seizure and detention.

"(D) Payment for equipping for law enforcement functions of vessels, vehicles, and aircraft retained as provided by law for official use by the Federal Bureau of Investigation, the Drug Enforcement Administration, or the Immigration and Naturalization Service.

"(3) Amounts in the fund which are not currently needed for the purposes of this subsection shall be invested in obligations of, or guaranteed by, the United States.

"(4) Not later than four months after the end of each fiscal year, the Attorney General shall transmit to the Con-

gress a report on receipts and disbursements with respect to the fund for such year.

"(5) There shall be deposited in the fund during the period beginning on October 1, 1984, and ending on September 30, 1987—

"(A) notwithstanding any provision of section 511(e) of the Controlled Substances Act (21 U.S.C. 881(e)) or section 274(b)(4) (B) or (C) of the Immigration and Nationality Act (8 U.S.C. 1324(b)(4) (B) or (C)) with respect to any vessel, vehicle, or aircraft forfeited under the Controlled Substances Act (21 U.S.C. 801 et seq.) or any conveyance forfeited under section 274 of the Immigration and Nationality Act (8 U.S.C. 1324), the total proceeds from any sale under each such section;

"(B) earnings on amounts invested under paragraph (3); and

"(C) reimbursements for expenses with respect to seizure of any vessel, vehicle, or aircraft seized under the Controlled Substances Act (21 U.S.C. 801 et seq.) or any conveyance seized under section 274 of the Immigration and Nationality Act (8 U.S.C. 1324).

"(6) There are authorized to be appropriated from the fund to carry out this section $10,000,000 for each of fiscal years 1985, 1986, and 1987. At the end of each quarter of

each fiscal year, any amount remaining in the fund in excess of $10,000,000 shall be transferred to the general fund of the Treasury. At the end of the last fiscal year for which appropriations from the fund are authorized by this section, the fund shall cease to exist and any amount then remaining in the fund shall be transferred to the general fund of the Treasury.

"(b) With respect to any vessel, vehicle, aircraft, or conveyance written notice of any fine or penalty incurred under this section as well as any liability to forfeiture shall be given to each party that the facts of record indicate has an interest in the seized property. The notice shall also inform each interested party of the right to apply for relief under any applicable provision of law authorizing mitigation of penalties or remission of forfeitures and shall provide any other appropriate information.

"(c) Upon satisfactory proof of financial inability to post a bond with respect to any vessel, vehicle, aircraft, or conveyance seized under this section, the appropriate official shall waive the bond requirement for any person who claims an interest in the seized property.".

(b) The table of sections for chapter 31 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"530. Establishment of Department of Justice Forfeited Conveyances Fund.".

TITLE II—AMENDMENTS TO TARIFF ACT OF 1930

SEC. 201. Section 607 of the Tariff Act of 1930 (19 U.S.C. 1607) is amended—

(1) by striking out "$10,000" each place it appears and inserting in lieu thereof "$100,000"; and

(2) by inserting "aircraft," after "vehicle,".

SEC. 202. The sentence beginning "Upon the filing" in section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended by striking out "$250" and inserting in lieu thereof "$500".

SEC. 203. Section 609 of the Tariff Act of 1930 (19 U.S.C. 1609) is amended by inserting after "Treasury of the United States" the following: ", except that, during the period beginning on the date of the enactment of the Forfeited Conveyance Disposal Improvements Act and ending on September 30, 1984, such proceeds from the sale (after such deductions) of any vessel, vehicle, or aircraft shall be deposited in the Customs Service Forfeited Conveyances Fund".

SEC. 204. Section 610 of the Tariff Act of 1930 (19 U.S.C. 1610) is amended—

(1) by striking out "$10,000" each place it appears and inserting in lieu thereof "$100,000"; and

(2) by inserting "aircraft," after "vehicle,".

SEC. 205. Section 612 of the Tariff Act of 1930 (19 U.S.C. 1612) is amended—

(1) by inserting "aircraft," after "vehicle," each place it appears; and

(2) by striking out "$10,000" each place it appears and inserting in lieu thereof "$100,000".

SEC. 206. Section 613(a) of the Tariff Act of 1930 is amended in paragraph (3) by inserting after "navigation fine" the following: ", except that, during the period beginning on the date of the enactment of the Forfeited Conveyance Disposal Improvements Act and ending on September 30, 1984, the residue from sale of any vessel, vehicle, or aircraft shall be deposited in the Customs Service Forfeited Conveyances Fund".

SEC. 207. Part V of title IV of the Tariff Act of 1930 (19 U.S.C. 1581 et seq.) is amended by adding after section 613 the following new sections:

"SEC. 613A. CUSTOMS SERVICE FORFEITED CONVEYANCES FUND.

"(a) There is established in the Treasury of the United States a fund to be known as the Customs Service Forfeited Conveyances Fund (hereinafter in this subsection referred to as the 'fund') which, subject to appropriation, shall be available to the United States Customs Service, during the period beginning on October 1, 1984, and ending on September 30, 1987, for the purposes specified in subsection (b).

"(b) The purposes referred to in subsection (a) are the following payments with respect to seized vessels, vehicles, and aircraft for which the United States Customs Service has primary responsibility for storage and maintenance:

"(1) Payment of liens.

"(2) Payment of amounts with respect to remission and mitigation.

"(3) Payment of expenses of forfeiture and sale, including expenses of seizure and detention.

"(4) Payment for equipping for law enforcement functions of vessels, vehicles, and aircraft retained as provided by law for official use by the United States Customs Service.

"(c) Amounts in the fund which are not currently needed for the purposes of this section shall be invested in obligations of, or guaranteed by, the United States.

"(d) Not later than four months after the end of each fiscal year, the Commissioner of Customs shall transmit to the Congress a report on receipts and disbursements with respect to the fund for such year.

"(e) There shall be deposited in the fund during the period beginning on October 1, 1984 and ending on September 30, 1987—

"(1) notwithstanding any provision of section 609 or section 613(a), with respect to any vessel, vehicle,

or aircraft to which such sections apply, the total proceeds from any sale under such sections;

"(2) earnings on amounts invested under subsection (c); and

"(3) reimbursements for expenses of seizure of any vessel, vehicle, or aircraft seized under this Act.

"(f) There are authorized to be appropriated from the fund to carry out this section $10,000,000 for each of fiscal years 1985, 1986, and 1987. At the end of each quarter of each fiscal year, any amount remaining in the fund in excess of $10,000,000 shall be transferred to the general fund of the Treasury of the United States. At the end of the last fiscal year for which appropriations from the fund are authorized by this subsection, the fund shall cease to exist and any amount then remaining in the fund shall be transferred to the general fund of the Treasury of the United States.

"SEC. 613B. WRITTEN NOTICE AND INABILITY TO POST BOND.

"(a) With respect to any vessel, vehicle, or aircraft, written notice of any fine or penalty incurred under this Act as well as any liability to forfeiture shall be given to each party that the facts of record indicate has an interest in the seized property. The notice shall also inform each interested party of the right to apply for relief under any applicable provision of law authorizing mitigation of penalties or remis-

sion of forfeitures and shall provide any other appropriate information.

"(b) Upon satisfactory proof of financial inability to post a bond with respect to any vessel, vehicle, or aircraft seized under this Act, the appropriate official shall waive the bond requirement for any person who claims an interest in the seized property.

"SEC. 613C. REPORT ON RETAINED VESSELS, VEHICLES, AND AIRCRAFT.

"Not later than four months after the end of each fiscal year, the Commissioner of Customs shall transmit to the Congress a report showing, with respect to such year, the number, types, and value of forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the United States Customs Service.".

SEC. 208. Sections 602, 605, 606, 608, 609, 611, 613, 614, 615, 618, and 619 (19 U.S.C. 1602, 1605, 1606, 1608, 1609, 1611, 1613, 1614, 1615, 1618, and 1619) of the Tariff Act of 1930 are each amended—

(1) by inserting "aircraft," after "vehicle," each place it appears; and

(2) by inserting "aircraft" after "vehicles," each place it appears.

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