

we will carry out the very important development effort and we will also have an impact on the production of coca in that region.

I want to emphasize that narcotic controls is an important matter to the Peruvian Government. It is something that the President, the Vice President, the Prime Minister, and other ministers of government spoke frequently about to me as the Ambassador. They realize that they have great institutional problems and the challenge is very great, but I believe that they are very sincere in working on this problem.

At the same time, I would note that among the priorities that they have, it is not their very top priority, and they do have limited resources; but it is something that they are definitely interested in and want to do something about.

The final comment that I would make in my oral remarks is that one of the main things we did in Peru was to make certain that there was a single U.S. Government narcotics control effort to support the Peruvian program, that there was not a number of individual agency programs, but that we are all integrated into the single program. I believe that we have done a very good job in that respect.

Having said that much, and you having my written record, I will stop.

Chairman ROTH. Thank you for your very excellent statement, Ambassador.

You heard me ask earlier, Ambassador Boyatt, the question of what additional tools do you need in this struggle against illegal drug trafficking. I wonder if you have anything to add to what the Ambassador said.

For example, it is my understanding that you have experience not only in South America, but in the ASEAN countries as well.

Would you care to comment on the better coordination and cooperation between countries in this international trafficking? For example, would it be advisable to have some kind of a top level conference involving the ASEAN countries as well as Japan and possibly Hong Kong? I would raise the same question with respect to those countries involved in illegal trafficking in South America. What other recommendation would you care to make?

Mr. CORR. I do believe that that would be very useful. We have, as was noted here earlier, had conferences in the past. I believe on the whole they have been useful and that we should promote such meetings in the future.

Chairman ROTH. Are there any other tools you need generally beyond what Ambassador Boyatt mentioned?

Mr. CORR. I think that you have covered the subject very well. I might try to reinforce a couple of things that have been said. I believe if we were running a business and we were looking at the problem, we definitely would transfer some of the resources that are now directed toward the problem within the United States to try to address the problem abroad. Most of us, if not all of us, who have worked in narcotics control for some time are fully convinced that you get far more for your money the closer you get to the source.

I would reinforce what Tom said about eradication—it is the most important element for a lasting and successful solution. I would emphasize, however, that it is a mix of activities that we need. We do

need to eradicate. We need to have in source countries income substitution, and we need to have enforcement. The mix of the program depends upon the conditions of the country and the drug that we are attempting to eliminate.

Chairman ROTH. I gather that at least where you have a reasonably strong central government, efforts to eradicate the source has been successful. Is that correct?

Mr. CORR. It has been in both Turkey and Mexico. I would say that those programs have been highly successful. In Turkey, there was a mixture of income substitution and enforcement. In Mexico there has been less stress on income substitution. In countries where the government is not as strong, does not exercise as great a control, the income substitution side has to be emphasized more heavily. The central government in these cases does not have the moral authority, legitimacy, and strength to carry out eradication programs without offering something to the producers in return. Countries with very strong central governments can sometimes take measures that even in this country would be difficult to undertake.

Chairman ROTH. How much validity is there to the argument offered against coca eradication in Peru that expresses the so-called traditional use by the native population?

Mr. CORR. I would say first of all that neither in Bolivia nor in Peru has the U.S. Government proposed plans or programs to eliminate the mastication of coca by indigenous peoples. I would note, however, that under the 1961 Single Convention on Narcotics to which both of these countries are parties, they undertook to try to eliminate coca chewing within a 25-year period. Neither country will do that.

It would be impossible within the remaining 4 years, and our programs have not contemplated that. Coca chewing is deeply engrained in the culture, in work, and in the rituals and superstitions of the people. For instance, among the miners it is considered necessary to avoid disasters, et cetera. It would be an impossible task to eliminate coca chewing in any short period. Moreover, the value of doing so might be questionable until we understand better the function of coca chewing to those people.

This makes eradication of illegal coca more difficult because one must permit legal production and control the product. One must assure that there is not leakage and still assure that there is sufficient coca for the traditional chewer. That complicates the problem, but I believe it can be done. There will always be some leakage but I think that there are effective control measures that can be undertaken. The amount of coca required for legal chewing is relatively small in comparison to the amounts being produced. We need to focus on the excess production which goes into the illicit trade.

Chairman ROTH. My time is up. I do want to wish you well in your new assignment. I am sure it is going to be extremely challenging and, hopefully, rewarding.

Senator Nunn?

Senator NUNN. I join the chairman in that good wish. It is a tough job, an important job and takes a good man to do it.

Is interdiction worth the money that we are putting on it?

Mr. CORR. Certainly we have to have interdiction. We have to go after the major traffickers. Interdiction is extremely important. How-

ever, emphasis on eradication of the crop should be the major thrust. In addition, I think financial investigations not only in the United States but also in source countries is extremely important. I think experience reveals that in traditional efforts of enforcement and interdiction normally we do not get the very big traffickers.

We most often get people who are working for them. With respect to interdiction it is extremely important that we make our efforts where the major trafficking is occurring. This is usually in very remote areas. If we are talking about Peru, it is out in the jungle. Police make lots of narcotics arrests in Lima. Most of these arrests involve fairly small amounts of coca, whereas through the jungle region coca is being carried out in boat and airplane loads. Because of that, in Peru we are shifting our interdiction emphasis from the coast to the jungle. It is important to make certain that we are interdicting where the largest volumes of drugs are trafficked.

Senator NUNN. Have you found there to be a link between the narcotics traffic in Peru and terrorist activity, a guerrilla activity?

Mr. CORR. No, sir. I have not. I conclude from an examination of the problem that most narcotics traffickers will avoid guerrilla activity. I can't say this with any certainty—it is an area in which our information is not very good—but narcotics traffickers are not looking for problems or attention. They primarily want to do business. To the extent possible they would avoid association with the guerrillas. In many of these countries traffickers have had quite a bit of freedom. They are not looking for additional problems. In Colombia, where I also served and have some knowledge, I think there has been some evidence of an interrelationship, as Tom pointed out, of some connections, but usually the evidence for such connections, I think, are rather weak.

When we get into the Middle East and some other places, guerrillas often have other sources of financing from governments that are well known to us. Guerrillas therefore do not need to hurt their own cause by association with narcotics traffickers. There would seem to be reasons for both of these groups not to become too closely linked with the other.

In Turkey, there was some evidence that people who were carrying heroin through Turkey up into central Europe were also carrying guns into Turkey. So there have been some links. But in many cases those links are rather tenuous. There is also, it seems to me, a tendency for affected governments to want to link them for political reasons, but I have been looking at the problem for quite some time and the amount of hard evidence that I have seen to establish that linkage has not been very great.

Senator NUNN. Thank you very much.

Chairman ROTH. Senator Cohen?

Senator COHEN. Just one point.

I understand that your home in Lima was a target of a bomb recently?

Mr. CORR. That is right; my home and the chancery.

Senator COHEN. Do you attribute that to pure political terrorism? What do you attribute it to?

Mr. CORR. I attribute that to political terrorism, to a small group of people in Peru who are trying to do damage to a democratic gov-

ernment, trying to discredit it, who are trying to cause investment problems for that country. I think that the actual number of ideologically oriented terrorists in Peru is probably small enough that if the Peruvian Government knew exactly who they are and where they are, that they could be eliminated by the Boy Scouts.

Senator COHEN. Boy Scouts don't make bombs, though.

Mr. CORR. No. They don't. What I meant to say was I think there are not very many terrorists in Peru, but they are dedicated to cause problems to hurt the new democratic Government of Peru.

Chairman ROTH. Thank you, Senator Cohen, and thank you, Ambassador CORR.

Again we wish you well in your new assignment.

Mr. CORR. Thank you.

Chairman ROTH. We look forward to working with you.

Our next witnesses are Mr. Joseph Linnemann, Deputy Assistant Secretary, Bureau of International Narcotics Matters, Department of State, and Richard Weber, Director, Office of South American Affairs, Agency for International Development.

Gentlemen, if you will raise your right hands. Do you swear that the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. LINNEMANN. I do.

Mr. WEBER. I do.

TESTIMONY OF JOSEPH H. LINNEMANN, DEPUTY ASSISTANT SECRETARY, BUREAU FOR INTERNATIONAL NARCOTICS MATTERS, AND RICHARD F. WEBER, DIRECTOR, OFFICE OF SOUTH AMERICAN AFFAIRS, AGENCY FOR INTERNATIONAL DEVELOPMENT

Chairman ROTH. Please be seated.

I would ask that both of you, if you could, because of the lateness of the hour, summarize your statements. Your full statements will be included in the record as if read.¹

Chairman ROTH. Mr. Linnemann.

Mr. LINNEMANN. Thank you, Mr. Chairman. I thought a few benchmarks might be in order to amplify the statement which was submitted for the record.

First, 1 ton of heroin brings a street value in dosage units of approximately \$2.3 billion. One ton of cocaine in dosage units on the street has a value of in excess of \$780 million. One ton of marihuana has a street value of approximately \$1.6 million. These were figures developed last year by the Drug Enforcement Administration. They also estimate, along with the IRS, that the illicit, underground economy in drug trafficking at the retail level is in excess of \$80 billion. That is quite a business. To combat this, the Federal Government—as has been pointed out previously—spends approximately \$900 million to \$1 billion. About 95 percent of that is spent domestically for demand reduction programs such as treatment, rehabilitation, research, and education, and about half of it domestically through law enforcement activities. Overseas we spend approximately 5 percent of that amount.

¹ See p. 539 for the prepared statement of Joseph H. Linnemann.

Yet I believe that our sister agencies and members of this subcommittee and other Senators have always placed the highest anticipation and expectations on the international area.

We believe that through a concerted effort of law enforcement, which is desperately needed overseas, the DEA has done an excellent job. With eradication, income substitution, and pilot demand projects, we can make an impact on the overseas flow.

The key to it is, No. 1, eradication, and having the resources in order to carry out these particular initiatives. But, as importantly, I think, is the perception that we have abroad. Up until this point, I believe that the United States has been seen or perceived to be somewhat ambivalent on drug trafficking and drug abuse. I believe Senator Chiles' State of Florida, is in a state of disarray, given the huge amounts, both money and drugs going into that particular State. But at the same time, the press that the United States has overseas is that we do not eradicate. Sixty Minutes—20-20 have done shows going into the marihuana fields. Yet we do have the Federal Government, along with the State governments doing some eradication, but this word never gets across.

The other problem is paraquat—it is a symbol that the United States is ambivalent. At this time we are precluded by that statute from entering into other eradication programs. Hopefully with the repeal of that particular amendment we will be able to see some movement during 1982. With that I will submit for questions.

Chairman ROTH. First, we will call on Mr. Weber.

Mr. WEBER. Mr. Chairman, I have a very short statement. I will just read the operative parts of it and leave off the material you have already heard from other witnesses. I think it would be the easiest way. Beginning in 1979, a series of studies were carried out in which both AID and INM participated to determine the feasibility of assisting the Government of Peru with an agricultural development program in the Huallaga Valley which could help the farmers in making the transition from coca to other agricultural production which would provide them with a reasonable income. It was recognized from the beginning that there is no other crop which over the medium and long term will produce as much income to the farmer as coca since the traffickers can usually raise the price to the farmer. There are crops, however, that may approximate current prices farmers in the Upper Huallaga receive for coca. If there is an agricultural promotion program in place, these farmers may not suffer significant income loss. However, in order for an agricultural development project to succeed in an area like the Upper Huallaga Valley, it is essential that it be coupled with a vigorous enforcement effort on the part of the government.

Therefore, development of the AID's project has proceeded in parallel with the development of an enforcement project by INM and the Peruvian Government. A formal proposal was approved on September 8, 1981, and shortly thereafter a \$15 million loan agreement was signed with the Peruvian Government. An additional \$3 million in AID grant funds are planned for future years.

The Peruvian Government will contribute the equivalent of approximately \$8.5 million to support the project.

On the eradication side, the project agreement was signed between INM and the Peruvian Government for the amount of \$1 million.

INM plans to spend up to \$17½ million on enforcement and eradication over the next 5 years.

The AID project will cover an area of about 3,400 square miles along a 1,100-mile stretch of the Huallaga Valley, of which only some 8 percent is suited for intensive agriculture.

Mr. WEBER. The estimated 1980 population of the area was about 110,000, up from about 77,000 in 1972. The project will involve a mix of services needed to improve agricultural productivity in the region, including research extension, training, utilizing the staff of the University of the Jungle located in Tingo Maria. And the Peruvian National Research and Promotion Institute. It will provide credit for agricultural inputs. It has components for road maintenance and improvement, marketing improvement, potable water and environmental sanitation and a variety of other services needed to improve productivity.

Present production patterns include rice, corn, plantains, cacao, citrus, coffee, livestock, palm oil, tea, and forest products. Initially we do not expect any dramatic changes in the kinds of food crops being grown. Most of the coca being grown in the valley is not being grown on good agricultural land but on the steep hillsides along the margins of the valley which mostly are not suited to agriculture and should be allowed to go back to bush.

The thrust of the project is to improve the existing agriculture so that the farmers in the good agricultural areas do not find it expedient to grow coca and to provide additional opportunities for employment while the enforcement effort closes down the illegal coca growing and destroys the plants. Land classification studies in the valley have shown that the area has limited potential in terms of agricultural productivity. The services to be provided under the project will assist in maximizing that limited potential.

However, over time it is possible that the research effort may yield results that could show a significantly improved income in the area. The principal risk in a project of this sort is that the agricultural services being provided will only serve to improve the productivity of the illegal crop. For this reason we have made it clear to the Peruvian Government that the continuance of AID assistance depends upon the mobilization and maintenance by the Government of an effective coca eradication program.

In closing I would like to emphasize one more factor which effects the development of AID projects to assist in narcotics suppression activities. AID development projects must meet a number of development tests which may or may not coincide with the optimum project designed for narcotics suppression purposes. For example, development projects must show a positive cost-benefit ratio. They must take into account the environmental impact. They must benefit needy people. We think that in the case of the Upper Huallaga these considerations have been satisfactorily met.

I believe that this is a good example of how in appropriate cases we can work together with the narcotic enforcement objective.

It is not part of the statement, but I would like to emphasize that there has been a lot of discussion about crop substitution here this

morning and I think that we should be very careful about this. I think my statement shows that most of the coca is not being grown on agricultural land. When we talk about crop substitution, we are not talking about these people who are growing coca on these steep hillsides planting some other crop.

What we are talking about is trying to stimulate a viable agricultural economy in this region where it is possible. But in many areas where coca is grown, we are not talking about agricultural substitution because it is not going to be profitable to grow any other crops on those lands. I think one needs to approach this with caution. Indeed, in certain cases such as this, a substitution or agricultural development project can really pay big dividends, but it certainly depends upon the enforcement effort for its viability.

Thank you.

Chairman ROTH. In line with your last comment, assuming that it is impossible to use substitution of another crop, do you see any other way or means that AID could be used to get fuller cooperation?

Mr. WEBER. Basically, what we are talking about, Mr. Chairman, is building a viable economy in an area like this, that provides alternative means of employment to people. If you can get a vigorous economy going, it seems to me a lot of other things come with it.

Public services come with it. Viable municipal government, viable police activity, all of these things over time can make a big difference. In the particular case of the Huallaga Valley, it is very likely that there will be substantial private investment flowing into this area. The cases that are already in evidence are investment in palm oil plantations which should be a viable industry in this area of Peru. There are at least four different groups who are in various stages of moving into the area.

I think once the law and order is established and the reign of the traffickers is destroyed, that there are very definite possibilities.

Chairman ROTH. Long term, I can see the thrust of what you are saying. I am not sure short term that I feel that it will have direct benefit.

Let me ask you, Mr. Linnemann, there has been a great deal of discussion about the effectiveness of crop eradication. Could you give us any rough estimates on how much eradication costs per acre for marihuana, cocaine?

Mr. LINNEMANN. Senator, that is a very difficult question to answer. Going back to what Ambassador Boyatt indicated we have spent approximately \$100 million since about 1973 in Mexico. The total cost of that program was, however, much more. Mexico contributed just for the eradication portion alone and enforcement approximately \$200 to \$300 million in what I call alternative costs, cost of fuel, personnel, etc. They also purchased all the herbicides.

When you move into some of the lesser developed countries, the United States would bear very much more of that cost proportion. So it would be somewhat higher. We still maintain that eradication itself is the most cost beneficial method to stop the drugs from coming into this country. First, I believe my colleagues in the Department of Justice would agree, that enforcement alone cannot do the job. Otherwise, we would have solved the problem here domestically and not have to go overseas.

When you look at the huge amounts of corruption that go on, eradication is a fairly antiseptic, surgical way of dealing with that problem. You kill the plant, the plant cannot bribe, cannot walk away, and cannot corrupt. Also the eradication efforts take on different approaches. For instance, marihuana is very much subject to aerial eradication, particularly in Colombia. The coca bush, however, requires manual eradication where you go in and you cut the coca bush about 3 inches off the ground, dab it with, let's say, 2-4-D which is a herbicide and diesel oil which prohibits the leaf from growing back.

If you just cut it off, you have gone through a gigantic pruning exercise from our research. It answers your question but it doesn't answer your question. We just don't have statistics on exactly what it would cost by acre.

Chairman ROTH. How does INM respond to the displacement theory of eradication? Regardless of what fields are eradicated, growers and traffickers merely move somewhere else.

Mr. LINNEMANN. From our viewpoint it is how you look at the glass, is it half full or half empty? Certainly our current philosophy is following a very disruptive strategy, that is, to disrupt major traffickers, to take areas out of production. Since we have a unlimited supply situation, that production is likely to move somewhere else. But looking back on history, we saw the breaking of the French Connection in the early 1970's, along with the Turkish ban on opium. It took approximately 2 to 3 years for additional production to creep up in Mexico.

By 1975, Mexico represented approximately 90 percent of the heroin supply in this country. With the efforts in Mexico, by that government and our own, we started to see other areas start to crop up particularly in Southwest Asia and in the Golden Triangle.

So following the disruptive strategy it seems to me that it gains you time. It gains you time to solve the problem.

Short of that, we saw no other alternative.

Chairman ROTH. Senator Nunn?

Senator NUNN. Mr. Chairman, we have got a vote on and I have got many questions I would like to ask, but I would like to submit them for the record, particularly to Mr. Linnemann. I would like to have them back because I think your office is one of the most important without any doubt in trying to bring about some changes.

[The questions of Senator Nunn and the answers thereto are submitted for the record as follows:]



DEPARTMENT OF STATE

Washington, D.C. 20520

JAN 8 1982

Dear Mr. Chairman:

Enclosed are responses to the questions submitted in your letter of December 16 to the Bureau of International Narcotics Matters.

The Department appreciates the opportunity to exchange ideas with you and your colleagues concerning international narcotics control efforts. We value highly the spirit of cooperation between your Committee and the State Department in this important endeavor. Continuing contacts with your Members and Staff are welcomed.

Yours sincerely,

Richard Fairbanks
Assistant Secretary for
Congressional Relations

Enclosures:

Responses to written questions.

The Honorable
William V. Roth, Jr.,
Chairman,
Committee on Governmental Affairs,
United States Senate.

Q. We understand that beyond the purely diplomatic sphere, INM personnel also provide advice and technical assistance to foreign narcotics control agencies. Is this correct?

A. In six countries where we have significant narcotics control programs INM has a limited number of personnel assigned to the U.S. Embassies in so-called Narcotics Assistance Units. Their responsibilities revolve primarily around coordinating the development and implementation of narcotics control programs with the host government. In other countries, where we have smaller programs, the liaison and coordinating task is handled by an Embassy staff person designated by the Ambassador to coordinate narcotics affairs in addition to his or her other assigned duties. Periodically, INM staff personnel from Washington or embassies overseas are assigned temporary duty to other countries for program review and/or technical assistance. INM personnel do provide advice and technical assistance to host government officials in the field of narcotics control program development and implementation, particularly in reference to technical support involving aviation and telecommunications. Additionally, INM provides funding for technical training programs conducted both in the U.S. and overseas by the Drug Enforcement Administration and the U.S. Customs Service for foreign government narcotics control personnel.

Q. The mission of INM and DEA overseas seems to overlap. Who is responsible for coordinating and supervising the efforts of the two agencies and who settles disputes, should they occur?

A. As in other areas of foreign relations, the Department of State has overall coordinating responsibility among USG agencies which have anti-narcotics interests and/or activities in foreign countries. In the country itself, the U.S. Ambassador has the overall authority. INM's and DEA's mission's overseas normally do not conflict, but rather complement one another. INM's objectives are to encourage and assist foreign governments to develop a broad spectrum of anti-narcotics activities, ranging from crop substitution through addict treatment and rehabilitation to development and enforcement of narcotics control laws. Toward this end, INM provides advisory services, technical assistance and commodity support. DEA overseas personnel are U.S. Embassy assets in providing advisory services and technical assistance to the host government, primarily on narcotics law enforcement programs which will curtail the flow of illicit drugs into the U.S. A major aspect of the DEA responsibility is to support the host government in arrest and apprehension of illicit traffickers and the seizure of illicit narcotics.

Q. Geographically speaking, what are the areas of priority for INM funding and what rationale is used in arriving at these priorities?

A. Our geographical areas of priority are basically the major narcotics producing areas of the world: Latin America, Southeast Asia and Southwest Asia. Within these areas, a limited number of key countries receive priority funding, based on both their importance as sources of drugs and their willingness to cooperate with the United States in tackling the problem. Among these key countries are Mexico, Colombia, Peru, and Bolivia (pending the political commitment of Bolivia) in Latin America; Burma and Thailand in Southeast Asia; and Pakistan in Southwest Asia.

Q. Considering the degree of isolation of the opium growing areas, particularly Burma, just how effective can we expect crop substitution programs to be?

A. Given limited government control in remote opium growing areas of Burma, crop substitution efforts are clearly a long-term proposition. Combined with successful eradication and anti-insurgent actions, however, such efforts can contribute to expansion of government controlled areas and eventually to significantly reduced opium production.

Q. What type of assistance is available for the Burmese to increase their road building program? Has the State Department discussed this with the Burmese and AID?

A. Non-U.S. donors, such as the Asian Development Bank, have indicated an interest in various road building proposals. AID is prepared to consider road construction as an integral part of specific area development projects, but would prefer to focus its resources on other aspects of development.

- Q. We've heard some complaints from foreign officials charged with narcotics enforcement that over-exuberance of American consular personnel in seeking relief for arrested Americans paints a two-sided picture. On one hand, we condone and encourage strict enforcement in the host country while on the other hand we try to bail out arrested Americans. Can something be done to resolve this inconsistency?
- A. The Department of State has a well-established policy of assistance to, and active participation with foreign nations in combatting international narcotics production and trafficking. The Department of State also has a clear responsibility, dating back to the very inception of our consular service, to provide protection and assistance to private Americans in difficulty abroad, including those under arrest. The Department does not consider our responsibility towards private Americans to be in conflict in any way with our position on narcotics enforcement. When an American citizen is arrested abroad, we have a responsibility to gain immediate consular access to the arrested American; to make certain he understands the legal system of the country in which he finds himself in difficulty; to ensure that he has not been physically or mentally abused by the arresting government, and if he has, to make every effort to prevent further mistreatment. We also have the responsibility of assisting him in locating and obtaining legal representation; of visiting him regularly throughout his incarceration, and of seeing that his case is handled appropriately in accordance with the laws of the host country.

As you can see from the above, our consular officers play an active role in assisting Americans arrested abroad. It is not, however, the responsibility of our consular officer to arbitrarily secure the release of arrested Americans. Our consular officers have no funds with which to pay fines or post bail even on a loan basis and, in fact, are strictly forbidden to unduly interfere with the judicial process of a sovereign nation. In summary we support, and in some ways actively assist, foreign governments in arresting narcotics violators, including U.S. citizens. We do not, however, condone improper treatment of any American during or following such arrest.

- Q. Does the Privacy Act in any way hinder our efforts with respect to the dissemination of information to interested parties regarding Americans arrested overseas for drug violations?
- A. We do not believe that the Privacy Act unduly hinders the dissemination of information to interested law enforcement agencies, either U.S. or foreign, who are involved in international efforts to combat illegal narcotics. The Privacy Act merely requires that this information be disseminated in a way that protects the rights of the American citizen involved. For example, the Act permits a U.S. law enforcement official to review the file of an American arrested abroad. The Act does require that the requesting agency indicate that the file is needed in connection with legitimate law enforcement activity, and further requires that record of such review be entered in the individual's file.

Q. Has the State Department developed a global policy with regard to narcotics matters?

A. The Department has developed the international elements of an Administration strategy for narcotics control, the basic goal of which is to reduce the availability of drugs in the U.S. The most effective way to accomplish this is to reduce the production of illicit narcotics and to interdict trafficking as close to the source as possible. Supply reduction should be a priority item in our bilateral agendas with problem countries. Wherever possible, narcotic crops are to be eradicated, when necessary, with the appropriate assistance of the U.S., other industrialized states, or international organizations. Greater resources should be allocated to provide improved strategic and tactical intelligence collection and dissemination, while interdiction of trafficking should be improved. As well, the vulnerable points of trafficking organizations should be identified and exploited. Demand reduction programs are to be promoted in production and transit countries, as well as in other industrialized societies, in order to encourage their cooperation in international narcotics control.

Q. Has the U.S. embarked on a crop substitution program apart from its interest in the UNFDAC?

A. INM has helped to fund pilot crop substitution/income replacement efforts in Thailand, Bolivia, Peru, Pakistan and Burma. In Thailand these efforts have led to the Mae Chaem Watershed Development Project funded by USAID. This project, with AID funding of \$10 million, aims at self-sufficiency in rice production and increased cash incomes without opium poppy cultivation. In Peru, the INM-funded pilot efforts have led to the AID-funded Upper Huallaga Area Development Project. In FY-81 AID obligated \$18 million for this project which includes marketing infrastructure, credit, extension, and road improvements in an area that has been a major source of coca.

In Burma, Bolivia, and Pakistan INM has funded pilot crop substitution-income replacement projects in areas where illicit narcotic crops are grown. Eventually these efforts may lead to full scale integrated rural development projects.

Q. What is the U.S. contribution to the UNFDAC?

A. During the period 1971-81, the U.S. provided around 60 per cent of the Fund's total contributions, or \$29,420,000 million. In recent years other donors, notably the FRG, Sweden, Norway, Australia, and Japan have increased their contributions to the Fund, and the U.S. share has become relatively less sizeable. The U.S. contribution from FY-81 funds was \$2.15 million.

Q. Why doesn't the U.S. have mutual assistance and extradition treaties with a great number of countries involved in narcotics trafficking?

A. The U.S. has extradition treaties with 99 countries, some of which are important centers for narcotics production and trafficking. In the case of Turkey, we have a recent extradition and mutual legal assistance treaty and the Senate has ratified similar treaties with the Netherlands and Colombia. The Departments of Justice and State have cooperated closely in negotiating such agreements and remain interested in this area. Mutual legal assistance treaties are still few, because this is a new area and considerable time is required for negotiations. Additionally, it is difficult to establish legal linkages between our common law system and the differing legal systems of other countries (e.g., the Napoleonic Code).

Q. What has the State Department done to crack the veil of secrecy that protects the financial affairs of narcotics traffickers in tax haven countries?

A. The Departments of State and Justice have raised the issue of financial secrecy in countries where this has hampered law enforcement efforts, notably in the Caribbean area. In the case of Switzerland, for example, we have a treaty that allows access to financial records if there is evidence that the funds are derived from illegal activities.

Q. Would you provide further details on the meetings which you attended in London concerning ship boarding in the Cayman Islands and the Bahamas and their effect on U.S. law enforcement? What is the factual basis for the view that the Cayman bank secrecy laws are not subject to English law?

A. The London meetings resulted successfully in a recent U.S.-U.K. agreement governing the inspection of British-flag vessels suspected of the smuggling of narcotics. Special instructions have now been distributed to U.S. Coast Guard vessels.

Although the Cayman Islands are a colony of the U.K., the latter state is only responsible for the areas of defense and foreign affairs. The Cayman Islands' banking secrecy laws are the domestic affair of that government.

Q. Has the State Department thought about organizing working groups with DEA and the Department of Justice's International Affairs Division to compose and propose new and innovative mutual assistance treaties?

A. There is no formal working group, but the Departments of Justice and State already cooperate very closely in this area. For example, with funding from INM, a Justice Department official attended a meeting of Latin American Ministers of Justice in Lima, Peru, last July. Some valuable legal suggestions for narcotic-control were included in the resolution passed by the participants.

Q. What role is the State Department playing in trying to expand international cooperation in applying innovative financial techniques to drug cases where the money involved crosses national borders?

A. As noted previously, the Department and other concerned USG agencies have been actively pursuing extradition and mutual legal assistance treaties with various foreign governments. It should be noted, however, that considerable time is required for such negotiations, as many of the issues involved are novel.

Q. Methaqualone is posing a severe problem in the United States.

a) What actions, if any, are being taken by the State Department in the development of acceptable import-export procedures to control the movement of scheduled substances, particularly where the U.S. is seeking stricter controls for foreign manufacturers?

A. Much of the methaqualone that has entered the U.S. market illegally from the Caribbean has originated with licit firms in Europe, notably in the FRG, Hungary, Switzerland, and Austria. DEA and the Department have cooperated closely in diplomatic negotiations with these governments, urging them to control production and close loopholes in their export controls. Department and DEA representatives in Colombia have also worked together in this enterprise, and have assisted Colombian authorities in strengthening their law enforcement actions, notably against clandestine drug labs. These efforts and Colombia's ban on methaqualone imports are expected to reduce the trafficking of this substance through Colombia.

b) What steps is the U.S. taking to obtain international agreements concerning restrictions on the production and distribution of precursor chemicals, such as acetic anhydride and other chemicals used to make illegal drugs?

A. The DEA's voluntary watch program for trade in these precursor chemicals has been described in international fora and a resolution on this subject is under consideration for the February 1982 meeting of the Commission on Narcotic Drugs. Because of the widespread industrial use of such precursors as acetic anhydride, obligatory controls would be very difficult to enforce.

Q. Would you briefly tell this Subcommittee how the State Department took over the narcotic related functions of AID? What has the State Department, Bureau of International Narcotics Matters (INM), been able to accomplish that AID did not when AID had the responsibilities?

A. On October 1, 1978, the Bureau of International Narcotics Matters was created within the Department of State to manage the total policy and program responsibility for the United States government international narcotics control efforts. In the fall of 1973, the responsibility for management of the Foreign Assistance Act expenditures under the International Narcotics control program was transferred from AID to the Department of State.

Between 1973 and 1978, the broad duties of the senior adviser for Narcotics matters in the Department of State included such functions as oversight of Cabinet Committee for International Narcotics Control activities, coordination of narcotics control activities of all involved U.S. agencies, principal liaison and adviser on narcotics for OMB and other U.S. domestic agencies, creator of U.S. policy in narcotics matters and program adviser for ambassadors and foreign government officials. During these years, however, the funds continued to be appropriated in the AID budget and essentially AID retained the responsibility for operating the narcotics program. In other words, there was a bifurcation or a dichotomy between the policy-planning efforts and the implementation-administration of program efforts.

- 2 -

During this same time frame, and largely as a result of the foreign assistance act of 1973, AID was presented with a new mandate to concentrate its resources and efforts on a few major long term problems facing developing nations throughout the world. Congress in effect reemphasized its intent that AID concentrate on "new directions", i.e. agriculture, rural development, nutrition, population planning and health, and education, to assure direct, beneficial impact on the poor majority in the developing nations. During the years 1973 to 1978, AID was encouraged to avoid diversion of its energies and resources from these principal efforts. The result was that the basic authority for the narcotics control program resided in the Department of State with de facto program implementation in AID who, on the other hand, was being instructed to divert resources away from the narcotics area. Essentially the bifurcation of responsibility for the policy and program administration between State and AID inevitably gave rise to administrative tensions between cooperating staffs and led to delays in accomplishment.

Therefore, to avoid administrative tensions, delays in accomplishments, the dichotomy between policy formulation and administration, and diffusion of resources resulting from AID's shifting mandate, the Bureau of International Narcotics Matters was created to be responsible for both policy and

- 3 -

administration of resources appropriated under the Foreign Assistance Act. Since 1978, the Bureau as part of the State Department foreign policy making apparatus, has been successful in institutionalizing the program within the structure of the foreign service and bringing to the attention of the highest levels of the foreign government (both bilaterally and multilaterally) the importance of narcotics control as a U.S. government objective. In effect, the ability to establish effective diplomatic initiatives has been enhanced since the transfer of responsibilities from AID to the State Department and problems of coordination within the State Department policy apparatus have been minimized.

Q. Is the State Department trying to convince more governments to undertake crop destruction?

A. INM believes that the eradication of illicit narcotics crops is the most effective method of reducing the supply of these substances and can be carried out with no unacceptable harm to the environment. INM has provided assistance to the Government of Mexico in its campaign to eradicate opium poppies. Because the Percy amendment, which had prohibited USG assistance to foreign governments with herbicidal marihuana eradication has now been lifted, eradication programs directed against marijuana will now be discussed with certain governments.

Q. U. S. bilateral programs have proved to be an effective means of reducing the amount of illicit narcotics available in the U. S.

a) Will the current funding level of INM be sufficient to maintain our ongoing programs?

b) From 1977-1981 has the INM budget increased or decreased?

A. a) Although high priority on going programs will be maintained at current funding levels, the current appropriation is not sufficient to conduct programs at an optimum level. The bureau has been required to shift nearly 30 percent of funds from our worldwide training program to support higher priority country program efforts, e.g., Mexico. We have also been forced to reduce by approximately one-third our voluntary participation in the United Nations Fund for Drug Abuse (UNFDAC).

b) From 1978 through 1981, the bureau received appropriations of nearly the same level each year. This, in effect, constitutes a budget decrease because we have received no budget considerations for inflationary rises.

Q. We hear that the crop substitution program has a great deal of recidivism and that Far East hill tribes grow opium poppies side-by-side with substitute crops to make eradication more difficult. Is this accurate?

A. Since opium poppies are an annual crop, acreage and production can vary greatly from year to year. Cropping patterns also vary from one area to another. In some areas poppies are grown in close proximity or even intermingled with food crops. This may be for more intensive use of the land, or to mask the presence of the illicit crop.

Q. Do you have any figures on the success or failure of the crop substitution program?

A. We have no reliable figures on the overall success or failure of crop substitution programs. Apart from that successfully accomplished in Turkey, other programs are at too early a stage to evaluate for results. The pilot programs done by UNFDAC in Pakistan and Thailand are now at the point where results are anticipated. Their overall impact will, however, be difficult to measure since in areas and at times when opium production has decreased, it has been in conjunction with enforcement efforts by the authorities, or in direct response to economic factors.

Q. Now that the Posse Comitatus amendment permitting military assistance in narcotics matters is law, what role will the State Department play?

A. The recently enacted Posse Comitatus amendments remove certain restrictions and ambiguities that have hampered cooperation between military authorities and civilian law enforcement officials. These amendments will enable the U.S. armed forces to furnish information, lend equipment and facilities, and provide training and expert advice to civilian law enforcement officials. This cooperation is expected to increase the effectiveness of law enforcement activities, but the role of the Department of State is not expected to be affected significantly.

Q. Does the State Department keep figures dealing with recidivism flowing from its education and medical programs?

A. The Department of State provides direct funding to only one treatment system. This is the Bangkok Metropolitan Health Department (BMHD) system of detoxification clinics. By their very nature, these are short-term detoxification outpatient clinics with a minimum of counseling and aftercare available at present. They represent an attempt to provide some alternative for the addict, but at the time that they were designed it was expected that recidivism rates would be high. It is estimated that approximately 75 percent of the clients in treatment at a given point in time have been in treatment previously. Actual recidivism rates, while not available from statistically-sound followup studies, are probably much higher.

In Malaysia, INM is providing limited technical assistance in the form of training to the Ministry of Social Welfare and to the Prisons Department. The prisons program is undertaking a long-term effort to develop a treatment and aftercare capability for the large numbers of prisoners who have histories of addiction. The ongoing program is not yet underway and we do not yet have estimates of the recidivism for prisons.

Q. Has the State Department done any study to determine the economic effect the narcotics business has on the U.S. economy, our balance of trade, our tax base, or foreign investment in the U.S.?

A. There are reports from some of our embassies about the impact of drug production and trafficking in those nations, which essentially include estimates on flows of funds to this country. The Departments of Treasury and Justice have performed studies of the economic impact of drug trafficking on the domestic economy, but State has not.

Q. In 1971, Congress amended Section 620 of the Foreign Assistance Act which provided for suspension of economic, military and other assistance to any country that fails to take steps to prevent narcotic drugs produced or processed in such country from being illegally shipped to the United States.

- a) Have the provisions of this Act ever been applied?
- b) If not, why not?
- c) Do you think the Act needs to be further modified to include countries that are being utilized as financial havens for narcotics traffickers?
- d) How about those countries that have been identified as "transshipment" countries?

A. (a) and (b): Section 481 (a) of the Foreign Assistance Act of 1961, as amended, provides for the suspension of economic, military and other assistance to any country which fails to take adequate steps to prevent narcotic drugs produced or processed in that country from being illegally shipped to the U.S. While this provision has been informally applied to Bolivia, it has not been specifically invoked against any country for a variety of policy reasons. Some countries that might be considered to have taken inadequate measures to control drug trafficking receive little or no assistance from the United States. At present, such countries include Iran, Afghanistan and Laos. Other producing and transiting countries to which we provide assistance generally conform with international treaties regarding narcotics trafficking and attempt to take the necessary enforcement action within their limited resources to control the problem. Curtailing assistance to countries making good-faith efforts to control narcotics trafficking appears more likely to worsen than to remedy the problem.

- 2 -

(c) and (d): While the Act could be modified to include those countries utilized as financial havens or those identified only as "transshipment" countries, the Department believes, for the reasons cited above, that bilateral cooperation will generally be more effective in curtailing the traffic and production than denial of U.S. economic, military or other assistance.

Q. We have received testimony that the acquisition of C-130 aircraft by the Burmese would be very beneficial in their anti-narcotics program. What is the position of the State Department on this and what, if any, studies have been completed on the matter?

A. The Department has considered the desirability of providing C-130 aircraft to the Burmese. The INM aviation advisor expects to conduct a survey of Burmese Air Force needs and use of aircraft early in 1982, following up on a visit to Rangoon in October, 1981. Provision of C-130's at this time would probably require use of FMS funds, which in turn would require raising the world-wide priority accorded the Burmese Air Force.

Senator NUNN. Just one question: Your budget I understand has 76 professionals; is that right?

Mr. LINNEMANN. Yes, sir; that is professional and clerical staffs.

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

Senator NUNN. How many of those would be professionals?

Mr. LINNEMANN. Approximately three-quarters.

Senator NUNN. There would be about 60 professionals?

Mr. LINNEMANN. Yes, sir.

Senator NUNN. My understanding, I don't have the breakdown on the 60 professionals, there are 40 in headquarters in your overall staff and 35 are out in the field; is that a correct proportion?

Mr. LINNEMANN. It is augmented somewhat, Senator, in that we have much more flexibility in the field by hiring what we call personal services contractors, people with very technical skills, specialized skills, and we augment our professional staff with those individuals in the field as it is required. While you are talking about our budget, I might add I guess the Senate right now will be taking up the President's request for \$36 million for our particular appropriations and the Appropriations Committee will be recommending to the floor a small reduction. So it seems to me it is difficult for us even to protect the small amount of resources that we have for this very serious problem.

Senator NUNN. Do you have any authority when there is a disagreement between agencies or lack of coordination between the CIA and the DEA, between the FBI and DEA, or between any of the agencies involved in drug enforcement, immigration, and so forth? Do you have any broad jurisdiction to try to iron out jurisdictional disputes?

Mr. LINNEMANN. In essence we advise the Ambassador and we have been very active in trying to bring together the various elements of the intelligence community. I think it is fair to say the cooperation you can always use more of. We have been working on the problem and I think the cooperation today is better than it has ever been.

Senator NUNN. What do you think, what would be your personal view of having a White House counselor that would have access to the President to be able to iron out difficulties between the agencies in the drug field?

Mr. LINNEMANN. I would have to think about that. I am not sure that there are that many difficulties between the agencies, sir. I think that in the overseas arena, that the State Department does perform a very active and very effective coordinating role in addition to the programmatic role. Domestically, I think clearly the Department of Justice is the lead agency through DEA in law enforcement activities. Given the cooperation of the principals group, which meets regularly, I am not sure. I just don't see that many jurisdictional disputes.

Senator NUNN. How long have you been in this job?

Mr. LINNEMANN. In the State Department, in 1977 and before that 1974 OMB in Federal drug management.

Senator NUNN. State Department drug management since 1977?

Mr. LINNEMANN. Yes, before that OMB in Federal drug management for policy coordination since 1974.

Senator NUNN. We have run into an awful lot of coordination problems in our investigation for several years. We think that there are very significant problems in this area.

The chairman I am sure is coming back. I would assume he will want you to remain. I guess we can declare a recess for about 5 or 10 minutes and we will be right back.

[Brief recess.]

[Members of the subcommittee present at the time of recess: Senators Cohen and Nunn.]

[Member present after the taking of recess: Senator Roth.]

Mr. WEILAND. Mr. Linnemann, I have one or two questions for you.

The subcommittee has heard evidence relating to the financial aspects of trafficking. My question to you is: Has your office worked with other offices of the State Department in attempting to see if we can do something about the offshore banking situation and the financial aspects of trafficking?

Mr. LINNEMANN. Not only have we worked with other offices within State, but we have worked with the other agencies, including the IRS, FBI, DEA, Comptroller of the Currency, U.S. Customs, and others.

The financial transactions we believe is largely a domestic problem, given the predominance of the transactions taking place in the United States; a report of the \$80 to \$100 billion figure. That money then is either put into legitimate or illegitimate business or goes offshore. We have coordinated and cooperated with the other agencies in trying to determine exactly how that is done, where it goes, and then trying to develop as a result of that a series of mutual assistance treaties, and discussions on a bilateral level with the governments of the countries involved.

Last year, for instance, I had two trips to London and I discussed the banking issue and vessel boarding. We had just concluded treaties with Colombia and the Netherlands on mutual assistance which I believe is before the Senate for ratification.

We have a treaty with the Swiss in the same regard and we are starting negotiations on the same thing with the Italians. It is a very technical field. It is a very tough field to penetrate.

If you look at our own banking laws here, you have bank secrecy laws, and so forth, that are an impediment to the investigators. Other countries have the same types of things. You can essentially move \$1 million in wire transfers around the world on a tickertape without being able to trace it.

In some ways, our own laws are major impediments.

Mr. WEILAND. When you were in London, did you discuss the situation with respect to the Cayman Islands and its bank secrecy laws?

Mr. LINNEMANN. Yes, sir, as well as Nassau, Bahamas.

Mr. WEILAND. Did you receive any indication of willingness to cooperate on the part of the British authorities in attempting to get their colony to loosen its bank secrecy laws?

Mr. LINNEMANN. We had a willingness to cooperate, but it did not go as far as a willingness to change the laws because I believe that in the case of the Grand Caymans they have a somewhat independent process in setting their own bank secrecy laws. They are not subject to English law in that regard; it is up to their own council.

Chairman ROTH. Thank you very much for being here today.

Our final witness is Mr. Walt Sears of DEA.

Please raise your right hand.

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

Mr. SEARS. I do.

TESTIMONY OF WALT SEARS, DEA

Chairman ROTH. Please be seated. I appreciate your waiting. It is late in the morning. For that reason I would ask that you summarize what you have to say.

Please proceed.

Mr. SEARS. Yes, sir.

First, I would like to ask the Senator's indulgence.

I seem to be having some bug in my chest and sinuses, so if I start coughing, be assured that I am not necessarily in the act of expiring. [Laughter.]

Chairman ROTH. You are not alone these days.

Mr. SEARS. Senator, at this point in time, this country is on the leading edge of kind of a horticultural revolution as it applies to marihuana cultivation for commercial purposes.

This manifestation is both in terms of quality of marihuana, and the quantity. From the standpoint of quality, the cultivation process which has produced an extremely high grade marihuana has brought through American knowhow, the United States very much into the commercial cultivation market.

I have here two marihuana stalks, you cannot properly call them a marihuana bush anymore. They are more like a tree. They are not necessary the largest. They would represent plants about 10 feet tall. Through the cultivation process that is used, it will produce somewhere between 3 to 5 pounds of extremely high-grade sinsemilla marihuana.

By high-grade, I am referring to a THC content which is in excess of 6 percent as compared, for example, to the best Colombian marihuana which will seldom reach 3 percent.

Recently, we have had assays run that have confirmed a THC content in excess of 11 percent for sinsemilla marihuana. The quality of the marihuana is not only significant from a commercial merchandising standpoint, but is also significant from the standpoint that in virtually all of the scientific studies that are being conducted, the health hazards or the effects on the body of marihuana abuse are reported as being dose related; that is, the higher the THC content the more dramatic the effects on the body. So, the THC content is an extremely significant manifestation.

In terms of quantity, the commercial cultivation of marihuana, this high-grade product commenced in a large scale in California and Hawaii and has now proliferated throughout the United States. Commencing 2 years ago, DEA entered into a joint program of eradication, and suppression of marihuana growth in California and Hawaii.

That is continuing at the present time. Resources by both DEA and the States are being applied to it.

Additionally commencing this year we took it upon ourselves to try to expand the program to the rest of those States where significant commercial marihuana growth was being experienced.

I think we are on the lead edge of this phenomenon because at this point I don't think we are necessarily behind the power curve as far as trying to get on top of and suppress commercial cultivation in the United States.

We are saying that the domestic product represents somewhere between 7 and 10 percent of the total marihuana consumption here in the United States.

That leads us to believe that we are not as yet inundated by this high-grade product. But we know enough after having conducted surveys this year that unless we get on top of it and move in a very positive fashion, that the potential for proliferation is very great.

To meet this threat, DEA has entered into cooperative programs with a number of States, so far this year, and are programed to do so with a number of other States next year.

The strategy that we have used is, first of all, to attempt to determine where the principal areas of cultivation are in this country. We have found that certainly the Sun Belt States, the Southeastern part of our country, the Midwest and Southwestern part of the country are generally significant in this cultivation.

Our cooperative relationship with the States from a DEA standpoint has been, within our resources, certainly to encourage their efforts and to contribute certain training, funding and certain investigative and air resources to help them to get the job done.

The nature of marihuana cultivation generally is such that it is in rural often economically depressed areas and with our agent force, some 1,900 agents, we have to rely upon a cooperative enterprise with the State and local officials in order to get the manpower necessary to actually go out and fund illicit marihuana fields and bring the resources to bear to destroy them.

We have been training law enforcement officers in aerial observer techniques so they can find marihuana fields, so they can accomplish the necessary legal activities necessary to obtain search warrants in their State and then to conduct raids in order to find and destroy the marihuana crop and to arrest and prosecute those individuals who are identified with it.

To date, in addition to California, Hawaii, and southern Oregon, this year we have cooperative programs going with the States of Kentucky, Missouri, Georgia, and Florida.

Next year, we will see this expanding, assuming the resources are available to us, to a number of other States.

With that, sir, I think I will end my summary and open it up to any questions that you might have.

Chairman ROTH. You mentioned that you spent considerable time trying to identify the States?

Mr. SEARS. Yes, sir.

Chairman ROTH. I wonder if you would submit for the record, written record, those States and estimates of what they are supplying. Is that available?

Mr. SEARS. Yes, sir. It is. We tried not to elaborate too much on exactly which States we have in mind, in order not to give the culti-

vators any more information than we have to. I will be happy to provide whatever information.

Chairman ROTH. That can be kept sealed.

Mr. SEARS. Yes, sir.

[The information referred to was not received by the subcommittee at the time of printing.]

Chairman ROTH. Why aren't the States doing more on their own?

Mr. SEARS. Sir, I think this is a fairly recent phenomenon in terms of their recognition of the problem as it was with our recognition of the problem. The fact is we just didn't realize, and I don't think the States realized exactly what the extent of cultivation was in their States.

In every case, where that knowledge has become known to them, and in many cases they came to that recognition themselves, the response by law enforcement and government officials in those States has been one of extreme concern and one of a desire to get on top of this problem, and do something about it.

Chairman ROTH. It is my understanding that California and Hawaii are the two largest producers?

Mr. SEARS. Historically they have been. For the last 3 years, they have had very aggressive programs going. Looking at the statistics from California this year, I think we are seeing that we may have turned a corner in California and perhaps in Hawaii also. Obviously the desired end is that we want to see this activity decline.

Chairman ROTH. What authority do we have from the Federal level or do we have to rely on States?

Can Federal agents go in and destroy crops?

Mr. SEARS. Yes, sir. We have that authority. But we don't really have the manpower. So this cooperative arrangement has really worked out very advantageously for all of us. The county and the State have the manpower and many of the resources to do the job but in some cases they are just not budgeted to do certain aspects of it. From an investigative standpoint, they sometimes lack certain expertise in that area. Additionally, we often contribute aircraft to help fly over and find the fields.

Chairman ROTH. As a legal matter, if an agent sees marihuana being grown, do you have to go through the courts to destroy that or do you have a right to have the agents themselves go in and destroy it?

Mr. SEARS. It can be destroyed without warrant if it is found. However, it makes it more difficult if you don't get a warrant to then prosecute anyone that you can identify as being associated with that cultivation.

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

Mr. SEARS. Our method of operation is almost invariably to do all the things necessary generating an affidavit, obtaining the warrant, and so on to enter that land fully clothed with all the legal instruments we need.

Chairman ROTH. You mentioned in your testimony that locally grown marihuana, roughly amounts to 10 percent of the total?

Mr. SEARS. Between 8 and 10 percent.

Chairman ROTH. What kind of quantity is that?

Mr. SEARS. Really about all I can say is how much we have seen because we are at this point not very sure of how much there is. This

year there have been in the neighborhood of three-quarters of a million plants seized. Again we are talking about high-grade marihuana, plants producing 3 to 5 pounds that will sell on the market for between \$2,000 and \$4,000 a pound; representing an illegal value of over \$1 billion on the market.

For information, the estimates on the amount of illegal money made by the marihuana trade is between \$19 billion and \$23 billion in a year. That includes that amount which comes in from Colombia. That is the total market.

Certainly, it is a very high money market.

Chairman ROTH. Is it possible to get—what do you have to plant? Do you have seeds or seedlings? How is that distributed?

How can that be so readily available? Wouldn't it be possible to get at the source of the seedlings, the seeds, whatever it is?

Mr. SEARS. The seeds are very readily available, sir, and, generally, what they will do is plant the seeds in a greenhouse early in the year, perhaps in March and then when the plant gets 6 inches high and the weather warms up, they will plant the seedlings out in a field. Very often they will disperse them.

We are also seeing as we become more successful in California and in Hawaii, greater dispersion of the plots of plants. We are seeing them going to greenhouses. We are seeing a greater effort to camouflage. We are seeing boobytraps. Weapons are very, very much associated with the trade. In California this year so far they have seized over 350 weapons associated with this traffic.

Chairman ROTH. Who is distributing the seedlings or seeds?

How is that done and are you able to trace it to organized crime?

Do they have anything to do with it or just very widespread?

What is the distribution network?

Mr. SEARS. We haven't made any positive link between organized crime per se and the domestic marihuana cultivation problem. There appears to be in some cases kind of a loose-knit merchandising organization, say, centered around large cities where a distributor will in some cases set up a person to go into a remote area. They will provide him with the seeds, provide him with a certain amount of money to keep himself going, certain farm equipment and so on. He actually tends that crop for the period of time it takes to grow it.

It is a fairly labor-intensive exercise, growing sinsemilla marihuana.

Chairman ROTH. You mentioned in your earlier statements the high quality of the U.S. marihuana. Was this developed internally within the United States.

Are there those trying to provide a better grade of marihuana? Or is it just circumstance that we produce a high quality?

Mr. SEARS. I have not been able to determine where sinsemilla was first cultivated, but we think it was in Latin America. Sinsemilla is a Mexican word meaning "without seeds" and that refers to the cultivation process that creates the very high THC content.

Sinsemilla cultivation is a combination of three things. It is proper fertilization, pruning, they have a way of pruning so that the plant will bush out creating more flowering tops and thus a higher yield. Then at the critical point, the male plants are removed from the garden resulting in a number of female marihuana plants, who then ex-

eude exhorbitant amounts of rosin which is very highly laced with THC in a desire to become fertilized.

This is where you get the extremely high, potent product.

Chairman ROTH. I understand there has been litigation to prevent surveillance from the air. Are you familiar with that?

Mr. SEARS. Yes. I am.

Chairman ROTH. Would you explain to the subcommittee?

Mr. SEARS. Yes, sir. There is litigation in the district court in Washington at the present time requesting the court to enjoin DEA from destroying marihuana crops through harvesting them. They claim this is in violation of the Environmental Protection Act, that it destroys the soil and so on. They are also trying to enjoin us from looking for marihuana crops by using aircraft or any of the other means that have been used.

Chairman ROTH. Are there any other tools—probably additional funds—but is there anything else that the Congress or this subcommittee could do to help eradication?

Mr. SEARS. I think there is some potential that the posse comitatus Act may be helpful. We haven't come up with any exotic way to find them that beats putting a knowledgeable trained observer in an aircraft, generally fixed wing but in some cases helicopter, visually looking for the fields.

In many remote areas, it is very difficult for law enforcement personnel to get to the fields. It could be very beneficial were military helicopters, for example, made available to provide transportation to law enforcement officials into remote areas for the purpose of destroying marihuana fields.

Chairman ROTH. Senator Nunn?

Senator NUNN. Mr. Sears, do any of the States have spraying programs going on now?

Mr. SEARS. No, sir, not to my knowledge.

Senator NUNN. There is nothing in the law at the Federal level that would preclude that from taking place now; is there?

Mr. SEARS. There is nothing—

Senator NUNN. Domestically?

Mr. SEARS. No; there is nothing that would preclude a State within the constraints of its own environmental protection laws from doing so legally. There is nothing in the Federal law that would preclude it.

Senator NUNN. Are any of them in the process of thinking about that kind of language?

Mr. SEARS. Yes sir, it is under contemplation by certain States.

Senator NUNN. I understand that Hawaii has an eradication, marihuana eradication program. Is that correct?

Mr. SEARS. Yes, sir, it does.

Senator NUNN. Does that involve spraying?

Mr. SEARS. No, sir, it doesn't. Actually, in Hawaii, spraying would really not be very efficient. The terrain in Hawaii is so forbidding and the size of the plots are so small that by the time you find a small plot of this product, it is more efficient to go in and destroy it manually than it would be to use herbicides.

Senator NUNN. Is that what they are doing?

Mr. SEARS. Yes.

Senator NUNN. Is it true they have used the National Guard in that?

Mr. SEARS. Yes; they are using helicopters through the National Guard and I think the State of Hawaii really deserves a lot of credit for the aggressive way that the State government has gone after this problem.

The National Guard provides helicopters, not only to find the marihuana, but also they have developed a way of inserting the personnel from the helicopter into the plot, so that they can destroy it right there.

Again, the terrain in Hawaii where this stuff is grown is very forbidding and even when you find it, unless you can sort of drop down on it, it can take you days or hours to get to it.

Senator NUNN. Any other States have this active a program or would you put Hawaii at the top of the list?

Mr. SEARS. I think Hawaii should go down really as being kind of a forerunner in this effort. Having said that, I would say that the State of California has become extremely active in the last 2 years and we have cooperated in that effort.

I think today the State of California has a very effective program.

Senator NUNN. They are not spraying?

Mr. SEARS. No, sir.

Senator NUNN. Do you believe that the repeal of the Percy amendment will have any effect in the United States on the question of whether we spray here?

Mr. SEARS. Yes, sir, I think so. This certainly will relieve a number of constraints that currently exist within the State governments as to the acceptability of utilizing herbicides to destroy marihuana.

Senator NUNN. Psychological climate rather than really legal, though. Right?

Mr. SEARS. Yes; that is correct.

Senator NUNN. Does the State of Georgia have an eradication program, an effective eradication program?

Mr. SEARS. Yes, sir, they do. We have a program underway with the State of Georgia at the present time that has been very active and very effective. We actually didn't get going in Georgia until mid-year but we look toward next year to be geared up and really produce an effective program.

Senator NUNN. In what way? What is that eradication program?

Mr. SEARS. Essentially it is this—we held a school in Atlanta. Georgia authorities provided the training facility and the students. We provided aircraft and instructors. In this way we trained a number of their officers to act as aerial observers.

We then provided some aircraft to help them go out and find marihuana fields from the air. They then generated raid forces both from State and local county law enforcement authorities who went out and conducted the raids. This essentially is the basic formula that we are using today throughout the country.

Senator NUNN. Thank you, Mr. Chairman. Thank you, Mr. Sears.

Chairman ROTH. We appreciate your aid here. It may be that the subcommittee at a later date will want to hold further hearings on the domestic consideration. I appreciate your very excellent testimony today.

I have a letter just received from the Jamaican Embassy which will be included in the sealed record if there is no objection.

[The document referred to was marked "Exhibit No. 7," for reference and will be retained in the confidential files of the subcommittee.]

Chairman ROTH. With that, we will complete the hearing today. The subcommittee is in recess.

[Whereupon, at 12:45 p.m., the subcommittee was recessed.]

[Members present at the time of recess are Senators Nunn and Roth.]

INTERNATIONAL NARCOTICS TRAFFICKING

TUESDAY, NOVEMBER 17, 1981

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 9:33 a.m., pursuant to recess, in room 3302, Dirksen Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. Warren B. Rudman presiding.

Members of the subcommittee present: Warren B. Rudman, Republican, New Hampshire; Sam Nunn, Democrat, Georgia; and Lawton Chiles, Democrat, Florida.

Members of the professional staff present: S. Cass Weiland, chief counsel; Michael Eberhardt, deputy chief counsel; Marty Steinberg, chief counsel to the minority; and Katherine Bidden, chief clerk.

[Member of the subcommittee present at commencement of hearing: Senator Rudman.]

Senator RUDMAN. The subcommittee will be in order.

[The letter of authority follows:]

U.S. SENATE,
GOVERNMENTAL AFFAIRS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to rule 5 of the rules of procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the chairman, or any member of the subcommittee as designated by the chairman, to conduct open and/or executive hearings without a quorum of two members for the administration of oaths and taking testimony in connection with hearings on international narcotics trafficking on Tuesday, November 10; Thursday, November 12; Friday, November 13; Tuesday, November 17; and Wednesday November 18 1981.

WILLIAM V. ROTH, JR.,
Chairman,
SAM NUNN,
Ranking Minority Member.

Senator RUDMAN. This morning we are going to reconvene hearings begun by the Permanent Subcommittee on Investigations last week involved in an effort to study current patterns of drug trafficking.

Today we will concentrate on the trade's financial aspect. Because of a longstanding prior commitment, I do not believe Senator Roth will be with us this morning.

Our first witness will be Bud Mullen, Acting Director of the Drug Enforcement Administration.

We are delighted to have you here this morning, Mr. Mullen, and hope to gain insights into your expectations for the future.

I want to say at the outset that due to the inexorable movement of the appropriations process and due to a very important markup by the Defense Subcommittee on the Appropriations Committee, on which I serve, we may have to recess this hearing for brief periods this morning. I hope we don't have to recess it for a very long period.

As you probably know, Mr. Mullen, under the procedures of this particular subcommittee, we swear in all witnesses. So if you will please rise, I would like to administer the oath.

Do you swear the testimony you are about to give during the course of this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MULLEN. I do.

Senator RUDMAN. Please state your name, Mr. Mullen, for the record.

TESTIMONY OF FRANCIS M. MULLEN, JR., ACTING ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION

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

Senator RUDMAN. Mr. Mullen, we have your full statement. We understand that you may be able to summarize that and your entire statement will appear in the record at this point.¹

So you may proceed.

Mr. MULLEN. Thank you, Senator.

I do have an executive summary that will take somewhere around 10 and 12 minutes to present.

I am most pleased to be here as DEA's Acting Administrator to review for you several significant international trafficking situations and issues relating to control of this serious problem.

The work of the subcommittee over the past year culminating with these extensive hearings is very important. I hope that the body of work developed in these past 2 weeks will assist the Congress in understanding the enormity and ramifications of the international drug problem.

Drugs must be a part of our foreign policy. In DEA, we want to reverse the accelerating drug trafficking and abuse. We must focus on control of drugs at the source. DEA's mission is to immobilize major international trafficking cartels by insuring that the principals are incarcerated, the drugs seized, and the traffickers' assets removed.

Our goal is to make it prohibitively expensive, both personally and financially, for drug traffickers to operate. Overseas, from where the vast majority of drugs emanate, DEA activities are directed toward developing host country drug enforcement, intelligence, and training systems, so that, ultimately, officials in drug source and transit countries will have the expertise needed to utilize their own resources to suppress illicit drug production and trafficking in their regions.

I would like to take a moment to restate and to highlight some of the most significant trends that were discussed in detail last week

¹ See p. 562 for the prepared statement of Francis M. Mullen, Jr.

by the DEA witnesses. The dynamics of the heroin market are in flux as the Golden Triangle of Southeast Asia once again is becoming a primary source of the opium which support heroin addiction in Southeast Asia, the United States, and in Europe.

For the past several years, as a consequence of a diminished crop because of droughts and increased enforcement actions, there was a noticeable reduction in Southeast Asian heroin in the world market. However, intelligence reports now forecast that the most recent harvest was a bumper crop. Even after taking into account the inevitable stockpiling and internal consumption, it is conceivable that there will be as much as an additional 15 tons of heroin available to the world market.

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

Mr. MULLEN. This is almost four times the volume of heroin consumed annually in the United States. It is expected that this increased heroin will enter and perhaps glut the international traffic and compete with Southwest Asian heroin for the European and North American markets.

Cocaine, marihuana, and dangerous drugs, particularly methaqualone, are also of grave concern to drug law enforcement and health officials. These drugs are generating billions of narco-dollars and are altering the economy in our country and wreaking havoc and undermining the economy and economic stability of South American nations where these drugs are cultivated, processed, and transshipped.

Farmers are planting marihuana and coca crops in place of needed food commodities. Drug cultivation is breeding crime and corruption in these countries. Supplies of these drugs are more than adequate to meet world demand.

The traffickers are continuing to move vast quantities of marihuana, cocaine, and methaqualone by air and by sea.

Our Southeastern States are being bombarded with a seemingly endless dispatch of mother ships, smaller transfer vessels, and aircraft clandestinely crossing our borders, with this harmful contraband.

The Caribbean nations, by way of geography, are caught in the middle between the source and the market and, as a result, suffer, all of the ill effects associated with drug trafficking, increased crime and violence, drug-induced inflation, other economic woes, and a climate conducive to corruption.

One of the most effective ways to control drugs is at the source. Optimally, crop control measures will have the greatest impact. Beyond that, we must try to interdict the drugs before they enter international trade.

This is why it is important for DEA to be overseas in the source countries. It is fortunate for the world community that the drug source nations are recognizing their international commitment to drug control. They are implementing serious control measures and are stepping up enforcement operations within their countries.

In Southeast Asia, the Thai and Burmese authorities are extraordinarily sensitive to the centuries-old tradition of opium cultivation among their peoples and their economic reliance on this crop.

In spite of this, both nations are exploring crop destruction and crop substitution programs.

The Thai and Burmese have also dramatically increased their enforcement campaigns against the heroin producers and traffickers. Following the lead of the United States in pursuing alternatives to immobilizing narcotic cartels, many Southeast Asian nations are modeling forfeiture and bank secrecy transaction laws on U.S. statutes. Depriving traffickers of their assets is an effective tool worldwide.

In the Caribbean and in South America, we have seen demonstrations of positive responses by drug source nations.

For example, they are moving forward with a multidimensional program to drastically reduce and contain coca cultivation. The Upper Huallaga Valley project is an example of international cooperation that recognizes the needs of the people and a commitment to global drug control.

The Colombians have maintained an impressive enforcement pressure in the significant staging area of the Guajira Peninsula.

Countries are also responding with various enforcement and essential chemical control programs.

However, for all of this diligence, it seems most likely that drug availability will not diminish. It is essential that the United States stand behind and support a clear policy of drug control at the source by whatever means are required to support this task.

Our inability to aid source nations with herbicidal eradication minimizes the quality and sincerity of our commitment to drug control.

We need legislation to repeal the existing restriction upon assistance to foreign governments for herbicidal spraying programs.

We also need the legislative authority for Federal offices to conduct and assist the United States in conducting marihuana eradication programs through herbicidal eradication.

Drug enforcement needs to capitalize on all of the resources available to it. Progress is being made involving the Navy in spotting ships and aircraft suspected of smuggling drugs and in obtaining other intelligence and information from them regarding drug trafficking. We anticipate further assistance from the Department of Defense once further exceptions to the Posse Comitatus Act are enacted.

It will be welcomed support.

The President's crime control program also contains provisions that are a clear signal of the United States intent to crack down on drug traffickers.

I believe that it is important to amend the current law to better enable the law enforcement community to seize and forfeit traffickers' profits and proceeds. The bail and sentencing reform proposals are needed measures to correct deficiencies and inequities in the criminal justice system. Amendments to the Freedom of Information Act which would insure nondisclosure of information provided by State, local, and foreign police authorities would be most beneficial, as would other proposed amendments to the act.

Rather than elaborate further, I will be pleased to submit to the subcommittee a summary of the administration's programs and proposals for crime control.

We are working on the development of new strategies to contend with the crime attendant to drug trafficking. By combining the FBI's financial investigation of major distribution networks and DEA's ability to penetrate these networks, we are going to be able to reach higher level narcotic traffickers and move against the complex money flow that finances their lucrative criminal enterprises.

FBI expertise in combating organized criminal groups with productive and sophisticated investigative techniques will be extremely helpful. Already the number of joint DEA and FBI investigations has increased fourfold since July. Drugs are the root of violent crimes we are experiencing in the United States and around the world. If we bring to bear the full resources of the U.S. State Department, the Defense Department, Treasury Department, U.S. Coast Guard, our foreign leaders and their people, we can have an impact on drug production, trafficking, and abuse.

We pledge to do our utmost and, as always, look forward to working with the Congress to develop and move forward with an aggressive strategy to combat this significant probe.

Senator, that concludes my statement.

Senator RUDMAN. Thank you very much, Mr. Mullen. We appreciate your statement.

As we stated earlier, we will have the entire statement incorporated in the record.

Let me start out, I think, with a key question so that we can have your answers at this hearing in proper perspective.

Mr. Mullen, are you in a position this morning to speak for the Department of Justice in this area?

Mr. MULLEN. Yes, Mr. Chairman.

Senator RUDMAN. Very good.

I wonder if we might start out our discussion this morning with the whole area of the budget for your agency.

The Attorney General has been asked to respond recently to a number of inquiries about drug enforcement budgets. I wonder if you can explain to the subcommittee this morning how we might expect greater success in the fight against narcotics by spending less money?

Mr. MULLEN. Yes, Mr. Chairman. Right now we are experiencing some budget difficulties. I think that is very clear. Several factors—reduced budget available, the pay increase we have had to absorb and the continuing resolution all have combined to cause us some difficulty at present.

I hope that this will be resolved around November 20 with either the budget proposal passing or a continuing resolution giving us a higher level of funds.

We are studying several areas, for example, to see what impact the combined resources of the FBI and DEA, as well as other agencies, Customs and IRS, will have in the future on drug enforcement with regard to resources.

For example, I believe DEA has for many years had inadequate resources and it is a matter of what is available by way of budgeting.

We have looked at several areas of the country, for example, Pittsburgh, where we have eight drug enforcement agents in the same Federal building with 118 FBI agents. It is like that in many areas of the

country. We are hopeful that the infusion of FBI resources will assist in mitigating the difficulty we are encountering with the reduced budgets.

We have seen benefits of these joint investigations already throughout the country. I indicated in my prepared statement that the number of joint investigations, DEA and FBI has increased fourfold.

Actually, the increase has been from 10 to 15 to over 70. The FBI has doubled its number of narcotic-related investigations since July 13 from 100 to 200.

I have to say, however, that we are experiencing budget difficulties. I have advised the Associate Attorney General and the Attorney General. We are following it closely. I have been assured that should we arrive at the point where we are not effective, that the Attorney General will go to the President and attempt to remedy the situation.

Senator RUDMAN. I appreciate that answer and I want to get into it a bit.

Let me just ask you to compare for us a moment in general numbers the fiscal year 1982 budget as proposed by the administration as opposed to the prior year.

Mr. MULLEN. I have a listing here of our budget.¹ I won't go back as far as the first year we have available, which is 1969.

Senator RUDMAN. Why don't you compare the last 2 years for us?

Mr. MULLEN. I would like to go back as far as 1980 where we had a budget then of \$203 million. DEA has asked this year for a budget of \$233 million, which I believe would be adequate to fulfill our responsibilities. That was reduced to \$216 million by OMB and then further reduced by 12 percent to \$201 million.

Senator RUDMAN. It would be less with inflation than you had in the prior year.

Mr. MULLEN. In 1980.

Senator RUDMAN. You certainly would not want to testify to this subcommittee that you could do more with less in this area.

Mr. MULLEN. I can not testify to this subcommittee that we can do more with less. I have taken steps within DEA in my short tenure there to cut budgets in some areas I thought perhaps were a little excessive, but you can only go so far at that. I think we have gone as far as we can. Yes, we are hurting a little bit right now.

Senator RUDMAN. You, of course, held a very high position in the Bureau. I am familiar with your background of record. I am also very familiar with the Bureau and what they do. Would you state that prior to July 1 of last year, or let's make it prior to January 1 of last year, that the Bureau was overstaffed for the enormous responsibilities that it has?

Mr. MULLEN. No, I do not believe any of the law enforcement agencies within Justice within the past 5 years have been overstaffed. We always watch our budgets carefully. I think most law enforcement agencies do.

Senator RUDMAN. As a matter of fact, the Bureau, in public statements, has repeatedly said that with its tremendous responsibilities, particularly in the area of domestic intelligence and security—areas

¹ The proposed budget may be found in the Appendix on p. 597 following Mr. Mullen's prepared statement.

not very glamorous as television would have you believe they are, in fact, they were understaffed and their caseload in certain areas such as white-collar crimes and security fraud, is burdensome and, in fact, is causing delays in presenting cases to various U.S. attorneys around the country; isn't that an accurate statement?

Mr. MULLEN. Generally accurate.

I don't know about the delays being caused. I don't have any specific knowledge on that. It is possible, but I am just not certain. Like all agencies, Senator, we have to face the economic realities that budgets are tight now and we have to work within limits.

I think it is obvious to any observer that reduced budgets are going to mean reduced efforts. We try to do the best that we can with what is available to us.

I speak out, I tell the Attorney General, the Associate Attorney General, and others in authority what we need. I know they try their best to get what we need for us. Once a decision is made, this is going to be the budget, why, I will work within that. It is obvious less resources is going to be difficult.

Senator RUDMAN. The point here is this, Mr. Mullen. I don't doubt your devotion to this job and I am sure you will fight for everything you can get. What we are really talking about now is a general policy of this administration. I support the administration, but not this particular policy. The administration is talking about increasing the war on crime and I can tell you from probably as much experience as most, we cannot do it with diminished funds in your area, which is very expensive.

I want to continue this dialog before asking my colleague to carry on with questions. We have in our possession a memo I am sure you are familiar with which concerns your proposed reductions after the 12-percent hit what you were supposed to take. I just want to talk about that for a moment.

Mr. MULLEN. Certainly.

Senator RUDMAN. No. 1, in the proposal that was made which you, of course, were directed to prepare, as you just very properly outlined, you were asked to set forth a budget proposal. No. 1, it showed a reduction of approximately 211 agents; is that correct?

Mr. MULLEN. That is correct, Senator.

Senator RUDMAN. You would have to agree with me that that would be a very severe cutback on the war against narcotics, would you not?

Mr. MULLEN. I don't know if it would be severe, it would have an adverse impact.

Senator RUDMAN. We can argue about adjectives. It certainly would have some effect. I want to read to you from one of the summaries of the memo. Let me just go back a bit; you were going to close offices in Portland, Maine, Concord, N.H.; Jackson, Miss.; Fargo, N. Dak.; Omaha, Nebr.; Wichita, Kans.; Des Moines, Iowa; Sioux Falls, S. Dak.; Cheyenne, Wyo.; and Great Falls—that is a proposal. I make it clear that is not being done. At that time that was a proposal to meet that 12-percent reduction.

Mr. MULLEN. That is correct.

Senator RUDMAN. Had that been carried out, I think you would agree that would have had a rather severe effect on drug enforcement in those areas.

Mr. MULLEN. The U.S. attorneys are meeting currently in Washington and the U.S. attorney from Vermont and U.S. attorneys from New Hampshire and from Maine all approached me during the conference and asked that these reductions not take place. They felt DEA agents were essential in those locations.

Senator RUDMAN. Finally, I read to you from this report prepared under either your direction or your predecessor's direction, and I quote, "It is possible that response time, liaison and overall enforcement effectiveness will be diminished because of the remoteness of these areas."

Would you still agree—

Mr. MULLEN. I agree with that. It was prepared during my tenure.

Senator RUDMAN. Mr. Mullen, can this subcommittee expect you to be an ardent advocate and to fight right down to the last point if this administration tries to cutback your agency beyond what they already have?

Mr. MULLEN. Oh, yes. I believe that as an agency head I have to be heard and set forth the facts as I see them. I will be an ardent advocate of what we need at DEA because I do believe, from my perspective, having supervised all FB investigations, including intelligence, that the worst crime problem facing the country today perhaps is the drug problem.

Senator RUDMAN. I agree with that. If I could summarize your testimony in response to this very brief line of questioning, it would be that, (a) reductions will have some adverse effect; (b) that the FBI, although it can assist, has got quite a bit of work of its own and that (c) reductions of the type last proposed by the administration would have a—maybe a middle range to major effect on your enforcement abilities.

Mr. MULLEN. You summarized it correctly and well, Senator.

Senator RUDMAN. That is good because I intend to continue to tell the administration and to tell the Attorney General, based on my own experience and based on the Appropriations Committee on which I sit, that we don't believe that this is an area where we can afford any cutbacks at all. As a matter of fact, we ought to have increases because the net cost of this drug problem to this country and to places like Florida, where my friend Senator Chiles is from, is just enormous as are the social costs and the other costs that are incurred.

I just think it would be penny wise and pound foolish to reduce this agency.

I think many of us in the Congress are going to work very hard to make sure that does not happen. We may agree with the administration on some things, but I have to very respectfully but rather violently disagree that we ought to have any reduction in this particular area.

Senator Chiles?

Senator CHILES. Thank you, Mr. Chairman. I certainly want to echo the thoughts that you have expressed here. In fact, Mr. Mullen, rather than diminishing the agency, if we are going to do the job that needs to be done, the agency needs to be increased, does it not, the assets increased?

Mr. MULLEN. That would be an optimum or ideal situation, Senator. As I indicated earlier, we have to, like all agencies, face the budget realities. We are in a time of fiscal constraint.

Senator CHILES. I recognize that you are in a hard place here because you are playing two roles. One, you are trying to speak for the agency which you represent and the other, you are trying to be a good team player. I listened to your answers to some of the questions of Senator Rudman as to what these cuts would do. But the cuts we are talking about of 12 percent, they would cripple the agency, would they not?

Mr. MULLEN. I made that statement in the past, it would have an adverse effect, yes, sir.

Senator CHILES. And this is the statement you have expressed in the past to your people, that you felt —

Mr. MULLEN. That is correct.

Senator CHILES. I notice in some of the proposed 1982 reductions, we are talking about cutting intelligence 25 people, 25 positions.

Mr. MULLEN. That is correct, Senator.

Senator CHILES. Intelligence is pretty critical to the operation, is it not?

Mr. MULLEN. It is very important.

Senator CHILES. Is it overstaffed, the intelligence?

Mr. MULLEN. I took a close look at intelligence on my arrival at DEA. It is not overstaffed. If you are going to have an effective enforcement program, you must have an adequate intelligence program to support it. I did find, in my opinion, that the intelligence at DEA was not supporting enforcement to the degree I would like it to.

Senator CHILES. We are not supporting enforcement to the degree—in fact, if you had your druthers, you would rather have more enforcement?

Mr. MULLEN. No, I thought we would balance it, strategic was too heavy, I wanted to get a more even balance there. We made the necessary change.

At present, I believe we do have adequate intelligence programs.

Senator CHILES. One of the ways of doing that, I see you talk about, a 2-week furlough.

Mr. MULLEN. That is correct.

Senator CHILES. You just have everybody quit for 2 weeks?

Mr. MULLEN. From the Administrator on down.

Senator CHILES. From the Administrator on down?

Mr. MULLEN. We would have to stagger that. These are proposals, Senators.

Senator CHILES. I understand that. Does everybody take off for a couple of weeks with no pay?

Mr. MULLEN. With no pay, that is correct. That is the only way we could meet that type—

Senator CHILES. That was your effort, trying not to lay off people, having to RIF people or tear the organization down that way.

We just take a 2-week vacation on our war on crime, and figure the war will still be there when we got back.

Mr. MULLEN. It wouldn't be a 2-week vacation in that manner. It would be a staggered situation whereby a certain number of employees—

Senator CHILES. So you try to keep a few people on the watch?

Mr. MULLEN. That is correct. And knowing the spirit, Senator, of DEA employees, I would venture to say most would show up for work. I found the people to be of that caliber within DEA.

Senator RUDMAN. They may find out on Monday morning.

Senator CHILES. You spoke, Mr. Mullen, about combining the expertise of the FBI and DEA in investigations. I wonder if you would comment on the rumored reorganization of DEA and what its relation to the FBI will be?

We hear a rumor that DEA is going to be merged into the FBI; there is not going to be any DEA. What can you tell us about that?

Mr. MULLEN. The committee established by the Attorney General, which was chaired by Associate Attorney General Giuliani, Peter Bensinger, Mr. Webster, and myself, submitted its report to the Attorney General yesterday. We studied all possibilities of the future relationship between DEA and the FBI from maintaining the status quo to an outright merger. In general, the recommendation to the Attorney General is that DEA remain a separate agency because the drug problem is so serious that at this time it requires a separate focus. But in order to insure cooperation between DEA and the FBI, that we in the future, DEA report to the Attorney General through the Director of the FBI. We have found many areas where DEA and the FBI can cooperate.

As I indicated in my opening statement, the FBI's financial expertise, organized crime expertise, combined with the narcotics investigative ability of DEA, I believe can do wonders in the future. We have seen tremendous successes already.

An excellent example is the recent case down in Georgia where we were able to arrest a judge, sheriff, chief of police, and airport manager. When you have this type of investigation, combining expertise of two agencies, you take out entire networks. I think that is part of the answer to the problem we face.

Senator CHILES. So you are talking about coordination but not a merger?

Mr. MULLEN. That is correct. We are going to mandate cooperation between the agencies. I think we need it. Again, I think it will go a long way toward minimizing the drug problem as we know it today.

Senator CHILES. And you don't see this as affecting your flexibility to move quickly or DEA's flexibility?

Mr. MULLEN. No, I see it as enhancing the ability to move quickly. For example, I cited the number of joint efforts. When DEA has but eight agents in a city like Pittsburgh or Cincinnati or Cleveland, you simply cannot implement and maintain a wiretap, for example, and we can use FBI resources in those areas.

Without being specific, I can state we have used that expertise.

Senator CHILES. I see great benefit in that and I think that certainly could be good. I am just trying to now stretch you out a little bit and find out would you be under the command or control of the FBI? Would you have to have permission from the FBI in order to initiate a mission, in order to initiate a project?

Mr. MULLEN. No, we would not. We would function much as we are operating today; however, it would be under the general policy direction of the FBI, to insure we are not working at cross purposes, that we have identified the targets as organized crime or certain narcotics cartels.

Senator CHILES. You are saying there would be broad policy direction but there would not be a day-to-day control?

Mr. MULLEN. That is correct.

Senator CHILES. It would not be a hands-on-operation where you would have to call and get clearance before you could start a project?

Mr. MULLEN. It would not be a hands on. We would meet frequently. For example, we have taken steps to assign DEA personnel from headquarters, Washington, over to the FBI and vice versa so we can coordinate efforts and access each other computers and available information on organized crime.

Senator CHILES. Your agents overseas would still be under command, control, and direction of DEA?

Mr. MULLEN. Yes.

We looked every closely at that aspect and we believe that the DEA effort overseas, as it is now constituted, is necessary, that it must continue.

I have made but one foreign trip since assuming the position of acting administrator and that was to Europe where I talked to the heads of 25 foreign police agencies and all told me—all—that but for DEA there would be no enforcement overseas.

Senator CHILES. The FBI would not be received right now with that same degree of enthusiasm, would they, overseas, because of the concern they would be an intelligence or espionage operation.

Mr. MULLEN. Some foreign officials expressed that concern, but it was very minimal. I don't see that as a major problem.

What I do see as a problem, DEA is much more involved and has to be much more involved because of the nature of the work overseas. Whereas the FBI legal attachés overseas are more in a liaison capacity and rely almost totally on local authorities to carry out and conduct the investigation. DEA is more involved with training and assisting local authorities overseas.

Senator CHILES. On October 1, the Miami Herald began a series of articles based on a 4-month study of DEA by Herald reporters. The series was entitled "U.S. Drug Enforcement Million Dollar Bust."

Among the major findings in the Herald studies were these: DEA's biggest cases have no lasting effect on the U.S. drug supply; that DEA has been hampered by serious management problems, has been weakened by Civil Service requirements; is subject to cronyism. DEA is, in source countries, represented by few agents with limited roles so that the United States has little success in stopping narcotics at the source; and that—and I am quoting "The best efforts of DEA agents and U.S. prosecutors often result in low bail and light sentences for drug offenders, especially in south Florida."

Without objection, I would like to place in the record the first of the Herald articles together with the Herald editorial dated October 20, 1981.

Senator RUDMAN. Without objection.

[The articles and the editorial referred to follow:]

The Miami Herald

Sunday, October 11, 1981

Why the U.S. is losing the war on drugs

By JIM McGEE
And CARL HIASEN
Herald Staff Writers

On the streets of New York, junkies can score a packet of once-scarce Southwest Asian heroin for \$100. In trendy Los Angeles nightclubs, bootleg Quaalude pills are as plentiful as gumdrops, at \$8 a piece. In Dade County, stockyard of the U.S. dope industry, warehouses packed with Colombian marijuana are available for a mere \$3 million cash.

Eight years after Richard Nixon launched a global narcotics police force called the Drug Enforcement Administration (DEA), the war on drugs is a rout — a lopsided romp for the bad guys.

Marijuana, cocaine, methaqualone and heroin gush into the United States through healthy foreign arteries; overdose deaths are on the rise once again, and so are ad-

U.S. Drug Enforcement: The Billion-Dollar Bust

First of a series

dict-related crimes.

The federal drug effort — expensive, elaborate and well-publicized — has been a multibillion-dollar bust.

Philip Manuel, former investigator for a Senate subcommittee that scrutinized the DEA, asserts that "heroin, cocaine and marijuana are unquestionably more available today than they were on July 1, 1973" — the day the DEA was born.

No one argues the fact. The real question is, what's wrong?

During a four-month study of the federal drug agency, Miami Herald reporters reviewed hitherto secret DEA management evaluations and interviewed past and present DEA officials, street agents, intelligence specialists, confidential informants, prosecutors, judges and police.

The conclusion: Despite notable successes in several major cases, the DEA has singularly failed its mission, failed at all levels to stanch the distribution of illicit drugs, failed to noticeably tip either side of the country's swollen supply-and-demand drug equation:

THE DRUG GLUT: Few of the DEA's most breathlessly publicized cases resulted in the predicted crippling of major trafficking rings. Even those that produced important convictions did not substantially diminish drug supplies.

In New York, for example, DEA agents put heroin mogul Nicky Barnes in prison for life. Today, the distribution network of Barnes' empire remains intact; heroin is peddled on the same Harlem streets.

BUREAUCRACY: The DEA has been plagued by serious management problems that have reduced its efficiency, fostered friction with other police agencies and sometimes jeopardized important drug investigations.

For example, heroin supplies have increased while DEA arrests have declined for two years in the Northeast. Despite scathing evaluations that reached then-Administrator Peter Bensinger, little was done to improve heroin enforcement under Regional Director John Fallon.

Fallon now has announced his retirement. The FBI is investigating charges

against Fallon, including an allegation that he used DEA agents to paint his house on government time.

FOREIGN CONNECTION: Overseas, in "source" countries where illegal narcotics are produced, skeleton crews of U.S. drug agents can operate only at the whim of foreign governments that are often apathetic, corrupt and even hostile.

Last year, for instance, unwelcome DEA agents clandestinely flew into Bolivia to seize 854 pounds of Miami-bound cocaine base. By the time the agents got out, the Bolivian Air Force was hunting their plane.

DISCIPLINE: The drug agency's internal discipline system — a crucial watchdog

Please turn to THE DEA / 26A

THE DEA/From 1A

in a field where temptation and corruption are occupational hazards — is subject to favoritism and nearly impotent against civil service appeals. As a result, the DEA sometimes has punished its agents unfairly, and sometimes with extreme leniency.

One DEA agent who used a government car to take his kids to school got a 30-day suspension, while another agent who drunkenly ran down a pedestrian and fled was given a one-grade demotion.

COURTS: The best efforts of DEA agents and federal prosecutors are often thwarted in the courtroom, where low bail and light sentencing for drug defendants have tamed some of the country's toughest criminal statutes.

A computer survey of drug cases in the Southern District during the last three years shows a 68 per cent conviction rate for the government, relatively high compared to state court. However, only 17 per cent of those defendants received sentences of five years or more.

The scope of the government's failure to enact a successful drug policy is sweeping, numbing — and disputed by almost no one. The government's own forecast through 1983 predicts a smuggler's bonanza at a time when the nation's enforcement and judicial resources already are overwhelmed with drug cases.

"We're flooded," says veteran DEA agent Armando Marin. The official U.S. figures for 1980: Smugglers imported at least 40 metric tons of cocaine, 10,600 tons of marijuana, and up to 4.3 tons of heroin, the DEA's priority drug.

Even under this gloomy scenario, the Reagan Administration has proposed slashing DEA's 1982 budget by \$27 million, prompting one high-ranking DEA official to mutter: "If they do this, then they don't mean what they say about the drug problem. We might as well shut down."

President Reagan, like others before him, says the drug problem is a top priority. And he has decided that the DEA is due for yet another reorganization. Each previous shuffle has been designed to plug the holes in drug enforcement; each has failed.

Some say the new plan — which will, for the first time, throw substantial FBI resources into the battle — is a prescription for success. Others believe it is as doomed as its predecessors.

"I don't care how many agents you put anywhere," says Florida Attorney General Jim Smith. "If we do not develop a policy to go to the source of the drug and eliminate it there, we're just kidding ourselves. We'll never do it."

Critics from congressmen to cops on the beat say the blame is not DEA's alone, but should be spread across the entire fragmented and sometimes schizophrenic \$900-million national drug campaign.

Miserly budget

"We're fooling ourselves if we think that the DEA alone, or the DEA and FBI together can do it," says Associate U.S. Attorney General Rudy Giuliani, a key figure on Reagan's DEA task force. "The biggest problem is ... where do you get the resources?"

Some suggest that the DEA — with a miserly budget that hovers around \$200 million, with 1,923 special agents to combat drug traffic in 50 states and 41 countries, and with only lukewarm support from other branches of government — has always faced an impossible mission.

"The best cases and the best agents in the world cannot stop the avalanche of drugs," concludes former DEA Administrator Bensinger.

But others charge that the agency's management took a tough assignment and made it impossible — stationing agents in remote outposts to placate a congressman, diluting managerial talent among five competitive regional offices, failing to promote its best investigators.

Those interviewed portray DEA as a unique police force with agents who mostly are hard-working and sometimes heroic, with an intelligence network as comprehensive as the government has devised, with laws at its disposal that are as severe and broad as any in the federal code.

It is an agency capable, at the touch of a few computer buttons, of dissecting the life of a suspected smuggler — from license tags and phone numbers to names of bankers, bagmen, friends and mistresses.

But, paradoxically, it is also an agency that regularly runs out of money for buying drugs or paying informants, an agency that must order its surveillance agents to ride two and three to a car to save gas.

It is DEA's structure and strategy — the products of traditional narcotics wisdom and modern political demands — that draw the heaviest fire from police, prosecutors, congressional critics and some veteran DEA agents themselves.

Keeping score

"If there was an adequate drug effort, what's happening today wouldn't be happening. That's obvious," says Francis Mulen, the DEA's Acting Administrator.

Some veteran lawmen suggest that the agency's traditional yardsticks for success — narcotics seizures and the arrests of priority "Class I" or "Class II" drug violators — are almost worthless in measuring the total impact on drug traffic.

Many of them also believe that the effect of proudly trumpeted multi-ton marijuana and multi-kilo cocaine seizures on drug availability is negligible.

"All of us in law enforcement have got to get away from this attitude that our sterling successes involve the number of tons of marijuana and cocaine we can seize," says James York, commissioner of the Florida Department of Law Enforcement. "A ton of cocaine isn't worth a damn. You've got to penetrate the organization."

While DEA officials insist that the agency's resources are aimed at crippling drug rings by means of such complex financial investigations as Miami's ongoing Operation Greenback, street agents interviewed across the country tell a different story.

Agents say that they are still pressured to generate arrest statistics and "put the powder on the table." The result: At the expense of long-range conspiracy efforts, entire groups of agents are tied up for days on relatively small buy-busts that often yield no new intelligence and no new informants.

"Group supervisors live and die by statistics. You've got to get the statistics," says one DEA agent. "You know what they want? They want you to do the big investigations and at the same time knock off a kilo here or a kilo there. It's impossible."

A kilo here and there might boost statistics, but experts agree that it does little to disrupt the long-term supply of drugs. "Not exactly spearheading the international narcotics effort," quips DEA senior agent Barry Carew.

Lenient sentences

And, in Miami, such cases are likely to

result in very light jail time, or probation. The pattern of sentencing is demoralizing for agents, who often risk their lives to make dangerous arrests, and for prosecutors, who say that many drug cases just aren't worth the trouble to take to trial.

"The law says zero to 15 years for almost every crime we work. Zero to 15," sighs DEA agent Mark R. Trouville during a stake-out of a Quaalude mill on Miami Beach. "What I want to know is, how come the average sentence is one-and-a-

This series was reported by staff writers Jim McGee, Andy Rosenblatt and Patrick Riordan. Reporter Carl Hiaasen spent two months riding with DEA agents in South Florida, while correspondents William Long and Guy Gugliotta reported from South America. Assistant City Editor Richard Morin directed the computer studies. The four-month project was coordinated by Investigations Editor James Savage.

half years? If that's the way they feel, then just legalize the stuff and I'll go somewhere else to work."

The DEA was created in 1973 in response to a fractious and futile national drug campaign being waged by U.S. Customs and the corruption-riddled Bureau of Narcotics and Dangerous Drugs.

With much fanfare the Nixon Administration gave its new drug agency more money, more manpower and broad powers at the border — and in doing so gutted the Customs Service of most narcotics responsibility.

The DEA's "mission" was to enforce federal drug laws, attack and prosecute major narcotics organizations and work toward controlling international supplies at their foreign source.

By 1976, the agency was a mess, the target of a disapproving Senate watchdog subcommittee and unflattering reports from the General Accounting Office.

DEA's relations with other federal law enforcement branches had disintegrated in bitter feuding, and many state and local police agencies simply didn't trust DEA at all.

"There was tremendous infighting between DEA and Customs. They would break each other's cases," says Sen. Lawton Chiles (D., Fla.), a member of the Senate subcommittee. "It was very difficult to get DEA to cooperate at all with local law enforcement."

Ties to crime alleged

Internally, controversy tainted the agency's self-discipline system. In the parking lot of a Washington, D.C., nightclub, a policeman who was investigating organized crime discovered DEA Public Affairs Director Vincent Promuto trying on suits from the trunk of a suspect's car.

Later DEA Administrator John Bartels Jr., a close friend of Promuto's, was accused of impeding the DEA investigation of Promuto's alleged friendships with organized crime figures.

Although Bartels denied the allegations, he was fired. Bensinger took his place, and found a police agency enervated by low morale.

"The problem of DEA was, first, to get credibility," Bensinger says, and he set about to thaw icy relations with the Treasury Department, Congress and local police officials.

It took several years, but Bensinger largely succeeded in polishing the DEA's image politically. He upgraded its intelligence operations, beefed up its internal review system and pushed for a successful opium poppy eradication program in Mexico.

"He probably single-handedly saved that agency from Congress," observes critic Philip Manuel.

Reacting to pressure from Capitol Hill, the DEA announced that it would emphasize the quality — not quantity — of arrests, and reward agents commensurately.

"We tried to make them quit going for the body count, and go for the people at the top," explains Chiles.

In fact, DEA arrest statistics declined during the last two years — the result, officials say, of transferring agents off the street into specialized CENTAC tactical units and task forces.

'An acting job'

Meanwhile, street agents were encouraged to go after major violators, who are theoretically classified according to the amount of drugs they distribute and their role in the operation.

Yet Justice Department officials like Associate Attorney General Giuliani say that the DEA's classification system has created "an almost slavish dedication" to Class I arrest statistics — without enduring results.

The problem is that, in the drug business, nobody usually knows exactly how much dope one suspect can deliver.

"The agents have a tendency to paint somebody as being bigger than he actually is. It's an acting job," says lawyer Paul Lazarus, former chief of the narcotics division of the U.S. Attorney's Office in Miami. "Someone who qualifies as a Class I violator in Miami may still be very low down the totem pole."

Says Bensinger: "The people we were going after were more important."

Yet despite the arrest and imprisonment of several of the country's most notorious dopers, drugs are more available today than ever.

Why doesn't the DEA work? Some say it can't.

"They've got to fail, based on what they're doing. The record has got to get worse," says ex-investigator Manuel, who believes enforcement at the street level is hopeless. He advocates a stronger presence at the border to stop bulk drug shipments there.

Others argue for a different shift in DEA strategy. They contend that the agency is still too entrenched with the buy-bust philosophy to commit the time and training to crack the major drug rings.

A recent GAO report criticized DEA for not using U.S. forfeiture laws more often to go after a bad guy's bank accounts, cars, boats and property, as well as his hide. Such seizures come easiest in conspiracy cases. Conspiracy cases take time.

Reporting to FBI

The new plan, which will require the DEA administrator to report to the FBI, is more a "consolidation" than merger.

The goal: to concentrate on major drug conspiracies by utilizing not only the FBI's manpower (four times greater than DEA's), but also its expertise in financial investigations, wiretaps and organized crime probes.

Justice Department officials say the days of racing up drug statistics are over; from now on the DEA will be chasing the paper trail, not just the pushers.

The refrain is familiar, and no one is predicting victory, easy or otherwise, for federal drug agents.

"It's not the answer. It's a holding action," acknowledges David Westrate, chief of DEA's office of enforcement. "The answer is overseas."

"You've got to change some of the scenario," Chiles concurs. "You can't fight it just by adding more DEA agents."

The current drug scenario is more than a crime problem. It is an economic and diplomatic quagmire — huge demands at home, enormous supplies abroad and foreign countries that cannot, or will not, stop the producers.

Many law enforcement officials say that the United States must adopt a drug enforcement policy that does not rely primarily on the lone undercover agent.

Otherwise, the DEA can never succeed, and its threat to the thriving drug business will continue to be that of a wasp on a bear — pesky, annoying, sometimes nasty but never lethal.

Unproductive cases

In a memorandum obtained by The Herald, a veteran narcotics prosecutor in Los Angeles scored the federal drug agency for "wasting time and risking its agents' lives on unproductive street cases."

"Street operations are dangerous, disruptive, labor-intensive, expensive and, frequently unsuccessful," wrote Assistant U.S. Attorney Robert Perry in an April 1980 Justice Department memo.

Perry said that, although street work is essential to gathering intelligence and cultivating informants, arrests emanating from buy-busts usually produce low-level defendants, low bails, and light sentences.

"Agents candidly advise that they are judged primarily on the number of arrests and the type and amount of narcotics seized," said Perry. "DEA consistently fails to acknowledge outstanding conspiracy investigations by agents."

In a sharply worded 11-page rebuttal, DEA officials noted that a Financial Investigations Section had been formed in March 1979, and that scores of agents were being trained to develop federal racketeering and historical conspiracy cases.

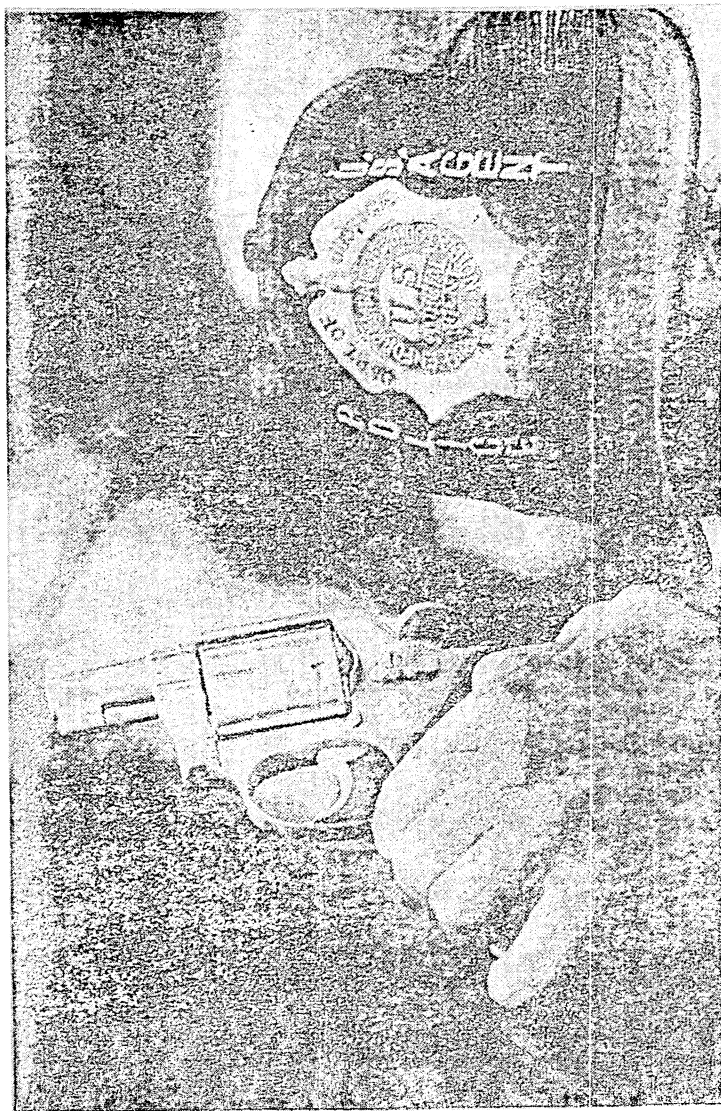
"DEA agents are experts by training and profession in the investigation of drug violations. What is needed as their counterpart," the agency added tartly, "are prosecutors willing to become experts in preparing and prosecuting drug cases."

Despite the agency's assertions of progress, in July the Reagan Administration replaced Bensinger with Francis Mullen, an executive assistant director of the FBI.

The move is seen as a clear signal that, one way or another, the FBI finally is going to get involved in drug enforcement — a notion that the late J. Edgar Hoover had successfully resisted.



DEA agent arrests a suspect during a drug raid at a South Florida home.



BILL FRANKS, WASHINGTON POST

Pistol at ready, a DEA agent takes part in a drug bust.

The Miami Herald

Sunday, October 18, 1981

New battle plan sought for war on drugs

By CARL HAASEN
Herald Staff Writer

If the war on drugs is the Vietnam of law enforcement, then South Florida is its Khe Sanh — isolated, besieged, almost overrun.

Nowhere is the failure of the war on drugs more evident, or the prospects for success any bleaker; nowhere could changes in the federal drug campaign have a greater impact.

"I'm not ready to call it hopeless, but we're approaching that status," says Don Meyer, Regional Director for the U.S. Drug Enforcement Administration (DEA) in Miami.

Within weeks, a Justice Department task force studying the DEA will unveil a new strategy for the government's lead narcotics agency.

For the first time, the FBI will officially join forces with DEA to bolster the drug effort with more manpower and resources. The head of the

U.S. Drug Enforcement: The Billion-Dollar Bust

Last of a Series

drug agency will report to the director of the FBI, officials say, and cross-training of agents will begin soon.

The hoped-for result: far-reaching drug probes that rely not only on DEA undercover penetration, but on FBI accountants, wiretap experts, and language specialists.

"A dramatic change," DEA Acting Administrator Francis Mullen said in an interview.

There will be more coming. A career FBI man

who replaced fired DEA chief Peter Bensinger, Mullen says he will try to remedy some of DEA's chronic problems with FBI-styled reshaping.

For example, to strip away layers of the cumbersome DEA bureaucracy, Mullen has abolished the agency's regional reporting method in the Northeast.

In Pittsburgh, for example, a DEA office working on a big undercover operation now reports directly to Washington — not to a series of DEA offices in between. Mullen says he is considering similar streamlining for the four other DEA regions.

To more efficiently use the DEA's 1,923 agents, Mullen says he plans to uproot agents from the more tranquil offices and reassign them to embattled areas such as South Florida and the upper Gulf Coast region.

"Miami needs a lot of help, and it's going to get it," Mullen promised.

But law enforcement veterans agree that more manpower is not the only answer. In interviews conducted during the last four months, many experts raised serious questions about the U.S. government's drug strategy at all levels, from the street to the State Department.

"The problem has always been, and continues to be, bigger than the DEA as an agency," says former Senate investigator Philip Manuel.

"I don't think DEA was ever given the resources necessary to solve the narcotics problem. I don't think there ever was a total commitment on the part of the federal government," adds Arthur Nehrbaas, former head of the FBI's Miami office and now chief of the Metro Organized Crime Bureau.

Like four presidents before him, President Rea-

Please turn to DEA 16A

gan has sounded the call to stamp out drug trafficking. Unlike the others, however, Reagan also is seeking a \$27-million cut in the DEA's budget — a move that congressmen and lawmakers are calling hypocritical.

"It's absolutely whacko," Sen. Joseph Biden (D., Del.), the ranking Democrat on the Judiciary Committee. "The President goes down to New Orleans and makes a big crime speech about the thin blue line out there. I guess he wants to make it even thinner."

The White House referred questions about the DEA budget cuts to the Office of Management and Budget (OMB). "We faced a budgetary emergency," said OMB spokesman Ed Dale. "The result is a lot of cries of pain."

So, the war on drugs will get less at a time when drug enforcement clamors for more — more agents, more money and more prosecutors.

But even without new funds, there are significant changes that can be made in the federal drug-fighting strategy, changes endorsed by some experts who believe that the old ways have miserably failed.

At the Border

Some experts contend DEA is spending most of its money and manpower where it is least effective, on the streets. There, drugs already have been cut with adulterants; the loads are smaller; the suspects, relatively low in the organization.

These critics argue for a stronger federal presence at the U.S. border, with drug agents concentrating more on the smuggling, less on the street dealers.

"What's easier to defend, 1,200 miles of Florida coastline, or millions of miles of streets? That's the choice," Manuel says.

To beef up the interdiction effort, Sen. Lawton Chiles (D., Fla.) has introduced legislation that would permit the U.S. armed forces to gather and disseminate intelligence on smugglers. The wording of the proposed law is being hammered out now in a conference committee.

Law enforcement officials say its passage is crucial to plug an absurd gap in the federal anti-drug effort. For instance, under current laws, Navy sailors who witness a drug transfer at sea are prohibited from reporting it to the DEA or U.S. Customs.

In the Bank

Confiscating huge drug shipments is not the way to cripple drug rings, experts say. The answer is going after money and assets.

Mullen says that, in the future, the DEA will be conducting more undercover operations like the "reverse stings," which are aimed at large cash seizures of dope profits.

Authorities would like to plow some of these captured drug fortunes directly back into law enforcement. Florida now has such a law, which has benefited local police; the federal government doesn't.

The so-called Biden Amendment, which would allow U.S. drug enforcement to use some of the wealth it seizes, is also tied up in committee. Currently, the millions of dollars seized each year by DEA agents is turned back to the general Treasury.

The DEA says it could use the

money to buy new tires and radios for its agents' cars.

The Big Fish

Justice Department officials believe that the DEA must devise a better method of targeting major drug suspects than the classification system now used.

Currently, for example, a suspect who can deliver 40 kilograms of cocaine per month is labeled a "Class I" violator — the same as a suspect who can deliver only one-tenth that amount.

"If you can arrest and successfully prosecute the leader of a major heroin or marijuana importation ring, that can be worth 50 Class I arrests of just anybody who might fit the criteria," contends U.S. Associate Attorney General Rudy Giuliani.

Some Justice Department analysts have suggested a "super Class I" category to set the truly big-time dopers apart from routine dealers.

In Court

To ensure heavy jail time for large-scale traffickers, lawmakers advocate beefing up federal drug laws with provisions for mandatory sentencing. They also support a Bail Reform Act, now under consideration in Congress, that is aimed at stopping big dopers from posting huge bonds and skipping town.

The Overseas Dilemma

One of the most enigmatic problems facing U.S. drug enforcement is the foreign connection.

Only 10 per cent of the \$900-million annual anti-drug effort is spent in foreign countries, where almost all illegal narcotics come from. Yet, drug seizures made in source countries invariably are larger, and the drugs themselves more pure.

"The best return on investment is overseas," asserts DEA intelligence chief Gordon Fink. "That's where you're most effective."

The problem is, in foreign nations the DEA's activities are strictly limited by law. Doubling or tripling the number of agents in Colombia, for example, would produce more tidbits of intelligence but few more arrests.

Critics say the State Department should do more. They suggest using U.S. aid as a carrot-and-stick to convince foreign governments to wipe out drug crops and crack down on smugglers.

The law allows the United States to curtail foreign aid to nations that do not cooperate with international drug enforcement. That sanction never has been used. State Department officials say "bilateral cooperation" is more effective.

"I think their attitude is they'd rather have smugglers out there than Communists," scoffs James York, head of the Florida Department of Law Enforcement.

Officials for the State Department's Bureau of International Narcotics Management (INM) reply that it's difficult to convince Colombia to spray its marijuana fields with paraquat when the United States refuses to do the same to its

own ever-spreading fields of home-grown pot.

To complicate matters, drug importers faced with crop eradication in one source country have a clever habit of moving their operations to another. When opium poppies were destroyed in Mexico and Turkey, the smugglers turned to Iran, Afghanistan and Laos — countries where U.S. drug agents are not exactly welcomed with open arms.

"What can we do, unless we invade," Giuliani says.

One State Department source, who asked not to be named, acknowledged that U.S.-assisted cocaine and marijuana crop control campaigns abroad have been a flop.

"On the other hand," he said, "can you afford not to try?"

Attitudes

On this point, drug experts and lawmen offer the same tired homily: Without a dramatic reduction in the American public's demand for

illegal drugs, the problem will never go away.

"If you can eliminate the market, you can eradicate the drugs," Mullen said. "Otherwise, we are never going to stop it."

Comparisons between marijuana laws and Prohibition are familiar. Publicly, DEA officials express optimism at surveys showing that pot-smoking is not gaining popularity in high schools. This, they say, is a signal that the public is more aware of marijuana's health haz-

ards.

But domestic demand for grass has never been greater. And police, DEA agents, and some U.S. officials say the market probably will never dry up, laws or no laws.

"I hope it's clear that marijuana enforcement is useless and worthless. It ought to be legalized and taxed," asserts one government analyst who, not surprisingly, demanded anonymity.

That is not likely to happen soon, if it all.

In the meantime, the U.S. government says it will try to win an old war in new ways — with more FBI men, less bickering, longer investigations and a trimmed-down DEA not so obsessed with statistics. "We're coming together, I really believe that," Mullen said.

Others don't. "I've got the answer, but you're not going to like it," says former U.S. drug prosecutor Barry Leibovitz. "The answer is, there is no answer."

And, on the streets, prosperity. "If [DEA agents] weren't out there," says defense lawyer Paul Lazarus, "and the people were not afraid of getting caught, then everybody and his brother would be into it."

Sometimes it seems that way already. In one typical week, a group of DEA agents in South Florida had a chance to buy 30,000 Quaalude pills in Oakland Park, two kilograms of cocaine in Kendall, or an ounce of brown heroin in Carol City. At the same time, some men with \$500,000 were offering to buy a trailerfull of U.S.-owned marijuana.

And that's only what the feds heard about. In one week.

Said ex-DEA chief Peter Bensinger: "We're fighting a pretty lonely battle."



'The President ... makes a big crime speech about the thin blue line I guess he wants to make it even thinner.'

Sen. Joseph Biden



'I think their [State Department] attitude is they'd rather have smugglers out there than Communists.'

James York



'Miami needs a lot of help [in regards to manpower], and it's going to get it.'

William Mullen



'If you can successfully prosecute the leader of a major heroin ring, that can be worth 50 Class I arrests ...'

Rudy Giulio

The Key Findings of Series

Miami Herald reporters spent four months studying the DEA to learn why the government's war on drugs has been a failure. They interviewed agents, prosecutors and DEA officials across the United States, as well as Bolivia, Peru and Colombia. The reporters studied court files, arrest data and confidential DEA evaluations, using The Herald's IBM Series 370 computer to analyze the results.

The key findings:

- The DEA's most celebrated cases have had virtually no lasting impact on drug supplies in major U.S. cities.

- The federal drug agency has been hampered by serious management problems that have reduced its efficiency and sometimes jeopardized important drug investigations.

- The DEA's self-discipline system has been weakened by civil service requirements and is subject to cronyism, resulting in disparate and sometimes unfair punishment of its agents.

- Overseas, in countries where illicit drugs are produced, DEA agents are restricted to small numbers and limited roles as "diplomat cops." Consequently, the United States has had virtually no success in stopping narcotics at the source.

- The best efforts of DEA agents and U.S. prosecutors often result in low bail and light sentences for drug defendants. This is especially true in South Florida, where more than half of those convicted of federal drug crimes during the last three years have received sentences of two years in jail, or less.

The Miami Herald

JOHN S. KNIGHT 1924-1981

JAMES L. KNIGHT Chairman

LEE HILLS Editor, Chairman Emeritus

ALVAN H. CHAPMAN JR. President

JOHN McMULLAN Executive Editor

BEVERLY CARTER General Manager

JIM HAMPTON Editor

HEATH J. MERRITT III Managing Editor

DON SHOENKNEVER Senior Editor

6A

Tuesday, October 20, 1981

EDITORIALS

DEA Requires Overhaul To Fight Its Futile War

THE FAILURE of the U.S. Drug Enforcement Administration (DEA) to stanch the flow of illegal drugs is in some ways akin to the failure of preachers to eradicate sin. Like the church, the DEA must try to conquer the greatest of human failings: the enduring temptation to err for enjoyment and profit.

Millions of otherwise-respectable Americans use marijuana, cocaine, Quaaludes, and other illegal substances for pleasure and escape. They know it's illegal. They know it's unhealthy. They do it anyway, ignoring every preachment and prohibition against it.

This incessant demand sustains the international drug-smuggling business. This pernicious, pervasive enterprise measures its illicit profits in the billions of dollars each year. Its tentacles extend into every hamlet in America. It is better financed than the DEA itself. Its vulturous tradesmen would as soon kill a lawman as bribe him; they have done both and will do both again.

Small wonder, then, that the war on drugs is by its very nature overwhelming. Even if it had unlimited resources, incorruptible agents, efficient organization, and international co-operation, the DEA would face great obstacles even in limiting, much less in shutting off, the flow of illegal drugs.

As *The Herald's* exhaustive, eight-part series on the DEA's anti-drug efforts has documented, however, that agency is beset with problems. Some attended its birth in 1972. Others arrived later. The DEA is underfunded, often inefficient, frequently hamstrung by internal red tape and external obstacles thrown up by corrupt or indifferent officials in the countries from which most illegal drugs come.

Fortunately, some overdue reforms

and reorganization are in the offing. Soon, for example, FBI agents will join DEA agents in tracking the bank dealings and other financial shell games that hide the activities of the biggest drug traffickers.

The State Department has been remiss in not pressuring foreign governments to move resolutely against the growers and processors of marijuana and cocaine. It has not used the foreign-aid law's provision denying assistance to governments that refuse to co-operate in anti-drug efforts. That provision should be invoked when persuasion fails.

President Reagan proposes cutting the DEA's already-inadequate budget by another \$27 million this year. To offset that, the DEA should be permitted to add to its own budget illicit funds confiscated from dope dealers. Those funds now go into the Treasury's general account. If they went instead to the DEA, its success would breed success. The alternative is further impairment of the agency's ability to impede big-time drug dealers.

Finally, the classification and sentencing of drug smugglers and dealers both need revision. The DEA should focus primarily on major dealers, suppliers, and financiers. Congress should stiffen the penalties for drug trafficking, including imposing minimum mandatory sentences.

No reforms will eliminate illegal drugs entirely, because no law of man can repeal the laws of human nature. But until basic reforms are made, the DEA will remain an agency hopelessly outmatched by the forces arrayed against it. Its courageous and dedicated agents, not to say the American values that illegal drugs are eroding, deserve better — much better — than that.

Senator CHILES. I would like to ask Mr. Mullen if he could comment.

Mr. MULLEN. Which one?

Senator CHILES. Do you have any comments?

Mr. MULLEN. I do not agree with all the conclusions of the Miami Herald articles—some. But I think DEA was unfairly singled out in these articles. Yes; there have been difficulties and, yes; we can make changes and become more effective. But the drug problem in this country is not DEA's alone. I think you have the State Department, the Treasury Department, the Congress, I think a lot of people have to answer for the problem and work toward a solution.

Senator CHILES. Would you agree with the thrust of these articles that DEA, regardless of how proficient and efficient it is, is not going to be able to solve the drug problem?

Mr. MULLEN. I believe that under the current policies and given the resources, I do not think we can use the word "solve," but we can minimize the problem, we will never totally eliminate it, as long as you have human beings and drugs are available, but we can make it much less a problem than it is today, given the resources to do the job.

Senator CHILES. I think you could fight it and I think you can win battles, but regardless of how efficient or proficient you are, I don't think you can win the war. I don't think DEA can, and I don't think any single agency can. What we have been missing is the kind of coordinated effort that brings in the State Department. Now we are talking about the sharing of the military and its resources and information and intelligence gathering devices; that we change law and get the courts into the arena of trying to help us, rather than working it conversely, and bail laws have to be changed, and certainly from the very top, the President and the enunciator of our foreign policy, it has to be a cornerstone of our policy with every other country.

Mr. MULLEN. I agree with that, Senator. There needs to be an international thrust involving all agencies of the Federal Government.

As I have indicated, the initiatives underway will address these areas. I believe we can succeed, given the resources.

Senator CHILES. Again, we are talking now some mandated cooperation between DEA and DBI. We look back in the history of this, this has been one of our big problems all the way through. It was DEA and Customs, trying to coordinate and bring the Coast Guard into the act; it was trying to get sharing on a proper basis so it is a two-way street between DEA and the other law enforcement agencies and State and local law enforcement agencies.

It is interfacing with the State Department, interfacing with the military. We have pieces of this that we try to put together, but there is no single coordination that is bringing this.

Mr. MULLEN. The President has designated the Attorney General to head the Inter-Agency Committee on Drug Enforcement. I do meet regularly with Carlton Turner, Dr. Turner in the White House, with Dom DeCarlo from the State Department and other agency heads, the U.S. Coast Guard, and we do have a coordinated policy.

I met with Treasury, with the new leadership over at Treasury. I believe we do have a coordinated effort underway and we are using

the resources available to us. We have an interdiction effort taking place at present near your home State and it involves about five different agencies, and we are working very effectively utilizing each other's resources.

I do believe the national thrust is there. It is still in its developmental stages, but it is coming together very nicely, I believe.

Senator CHILES. Thank you, Mr. Chairman.

Senator RUDMAN. I believe that probably concludes our questioning. I do want to say there have been a number of newspaper articles recently, one very recently about failure to have funds to pay for an agent to go to New York and testify. I am sure you know about that. There are other stories about agents being unable to have enough funds to purchase gasoline for their cars to do some of their work. Are those problems getting straightened out?

Mr. MULLEN. They are. We were given supplemental funds this week of around \$700,000. It has helped alleviate the problem. The story about the agent who did not show up for trial is inaccurate. It was an administrative foulup that we have to take responsibility for, a misunderstanding of instructions. I also heard a story of agents having a bake sale to buy gas. That is not true, Senator. We are working on it.

Senator RUDMAN. We may be in tough shape, but not that tough shape.

Mr. MULLEN. I am hoping that as of November 20, the situation will be alleviated and we will move forward.

Senator RUDMAN. Mr. Mullen, let me say that we appreciate your testimony this morning.

You have been very candid. I think you have to be.

Mr. MULLEN. Yes, sir, I agree.

Senator RUDMAN. We understand that you are on a team, and you have to play with that team. On the other hand, I think it is important that people like yourself tell these committees precisely what your personal views are. I believe it will go a long way actually in getting what you need. Certainly you have the support, I know, of this subcommittee because we have heard enough testimony here on this subject to be convinced we need more efforts, not less, more agents, not less, and more coordinated activities, not less.

We wish you success in your endeavors over there. We thank you for being here.

Mr. MULLEN. Thank you, Senator. We do have some morale problems right now within the drug enforcement effort, but it is heartening to have people like you say the things you have said.

Senator RUDMAN. The next witness will be Mr. Jay Ethington, assistant U.S. attorney, Department of Justice.

If you will remain standing, we will administer the oath.

Do you swear the testimony you are about to give in the course of this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ETHINGTON. I do.

Senator RUDMAN. Would you identify yourself for the record?

**TESTIMONY OF JAY ETHINGTON, ASSISTANT U.S. ATTORNEY,
DEPARTMENT OF JUSTICE**

Mr. ETHINGTON. Senator, my name is Jay Ethington. I am an assistant U.S. attorney for the northern district of Texas.

I have been a prosecutor for 10 years. I have been an assistant U.S. attorney or Federal prosecutor for the last 6 years.

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

Mr. ETHINGTON. I guess I am one of the troops in the trenches rather than one of the policymakers, and I am here today to share some of my personal observations.

Senator RUDMAN. You have a very complete statement. You may either give the complete statement or summarize it at your choice, and you may proceed.¹

Mr. ETHINGTON. Thank you, Senator.

I have prosecuted and dealt with, on a daily basis, approximately 100 different narcotic traffickers. I meet with them during the course of the day. I listen to their problems and negotiate plea bargains with them and assimilate evidence regarding their cases. I concluded the first successful prosecution of a continuing criminal enterprise case about 5 years ago. It resulted in a life sentence without parole, and I just recently completed the prosecution against that same individual for conducting a narcotic trafficking organization while confined in the penitentiary, a Federal penitentiary in Texarkana, Tex. He is now serving a life sentence plus 15 extra years. It really did not mean much to him. It surprised us that he was able to conduct business while being incarcerated in the penitentiary. The jury had no problem in understanding the evidence against him and convicted him.

I have attempted to utilize the RICO statute twice in narcotic prosecutions. I was the first to do so and I will say to the committee, I was unsuccessful. The statute and the court charge were confusing to the jury and they were unable to understand that piece of legislation and I was unable to explain it both to them and the judge adequately.

Whenever possible in our narcotic investigations and prosecutions, I avoid using the Internal Revenue Service as investigative agents. I say that—well, I hesitate to say that but it is true.

Senator CHILES. Is that because they are not good investigators?

Mr. ETHINGTON. To a man, they are very capable, competent, and energetic. They are very good investigators. They are restricted by their regulations and requirements to the extent that they are not of any help to us and, in fact, a hindrance.

Senator CHILES. It is not because of their expertise or their lack of diligence in the job. It is under the orders under which they operate or under restrictions under which they operate, is that what you are saying?

Mr. ETHINGTON. Yes, sir. It makes it impossible for them to be a productive member of a team to investigate and prosecute a case.

Senator NUNN. Could you give us an example of that?

Mr. ETHINGTON. The example we have before us today is the *Harold Oldham* case. I understand Mr. Oldham will testify next. He is a con-

¹ See p. 611 for the prepared statement of Jay Ethington.

victed cocaine distributor. I guess you would say trafficker. Incidentally, I have reviewed his information that he will present to you today and it comports 100 percent with the evidence that was deduced at trial. He is prepared to be open and candid with you, I understand.

Senator RUDMAN. You handled that case, did you not?

Mr. ETHINGTON. Yes.

Senator RUDMAN. Why don't you proceed with that case?

Mr. ETHINGTON. The case is entitled "*United States v. Ray Enstam*." He is a lawyer, or was a lawyer. They haven't taken his law license from him yet. He is incarcerated in a Federal penitentiary. The case began with informant information, as it always does. The informant was a young lady from Iowa that traveled to California seeking her fame and fortune and got wrapped up in the Hollywood narcotics scene for about 6 months and then realized that she had made some mistakes and her life was going downhill, and she contacted DEA and disclosed the knowledge and information that she had. DEA then immediately began a relationship with her where she introduced undercover agents in an investigative capacity and they began their gathering of information. Very quickly they realized that there was significant income that was being produced by the cocaine traffickers and in posing as cocaine traffickers themselves, they presented the concept of needing to launder or wash the money that they had generated in their illicit business.

Harold Oldham, who will testify to you next, assisted the DEA agents, not knowing at the time that they were undercover agents. He assisted them in laundering money that was produced, theoretically, or purported to be produced by narcotics trafficking in the United States, and the DEA agents, realizing that they were now in the area of a financial-type investigation, sought the help of IRS.

Now the only help IRS was able to give them was the \$50,000 in laundered money that they loaned to DEA. Otherwise, it was strictly and completely a one-way street. Information would flow from DEA to Internal Revenue Service agents, but the opposite could not happen. IRS had information regarding this case but they could not disclose it or use it with the DEA agents. DEA agents in an undercover capacity were successful in traveling to the Cayman Islands and going through the money-laundering procedures, and returning to the United States with legitimized funds now and then. After that, a search warrant was executed in the lawyer's office. Other information was gathered, indictments brought, and successful prosecution was had. That was the financial aspect of the investigation.

DEA continued the investigation to determine the source of cocaine in the Miami area. It resulted in an arrest and attempted seizure of about 40 pounds of cocaine. There was so much cocaine in the house that the DEA agents were searching that it clogged up the plumbing facilities while the traffickers were trying to dispose of it.

Successful prosecutions were had in the Miami area. I was not a part of these.

Senator NUNN. Could you tell us why the IRS agents were not able to have information flow from them back to DEA, why it was a one-way communication? Is it the law or is it regulations?

Mr. ETHINGTON. Well, it is both. It is the disclosure restrictions that they have and then their interpretation of the disclosure restrictions.

Senator NUNN. That is the Tax Reform Act of 1976 and the regulations that have issued therefrom?

Mr. ETHINGTON. Yes; that has caused them to be ineffective in this area of investigation.

Senator NUNN. What is the attitude of the IRS agents about these restrictions?

Mr. ETHINGTON. Individually it is frustration to the point of almost giving up the fight.

Senator CHILES. But you say they had information as this case was going along from their own sources, from their tax audit information, and what not, that would have been helpful, but they could not and would not disclose any of that?

Mr. ETHINGTON. The only reason that the *Oldham* case was successful and the only reason that, according to Internal Revenue Service, not my own opinion, but Internal Revenue Service agents, it probably will be the only case of its type that will be successful is because the agents had an excellent cooperative attitude. I won't say there was—well, there was in a sense some on-the-spot interpretation of the regulation that might have been characterized as rule bending. Nothing improper, just the IRS agent was a little less cautious than what his supervisor probably would have liked him to be. We were successful in the prosecution because of that.

Senator CHILES. Without that, you would not have been successful in the case, probably.

Mr. ETHINGTON. That is true.

Senator CHILES. So what you are saying is there are often cases that don't get prosecuted because we haven't had the cooperation of the Internal Revenue Service?

Mr. ETHINGTON. The Internal Revenue agent is very competent and capable. After the successful prosecution, he had been contacted, he told me, by 60 other agents in an identical situation throughout the country that he was in in this case.

In his estimation and the estimation of those other 60 agents, those cases will not be prosecuted or investigated further.

Senator CHILES. Sixty other cases, similar cases.

Mr. ETHINGTON. Senator, if the taxpayers ask us to step up to the plate and take a swing against crime, we are batting 1 for 60 right now.

Senator NUNN. Do you have something in writing on that? Do you have any kind of documentation on that?

Mr. ETHINGTON. It can be supplied to the subcommittee.¹

Senator RUDDMAN. Will you supply that for the record?

Senator NUNN. That will be helpful to have. The other day I testified before Senator Grassley's committee, of the Finance Committee. We passed the Reform Act amendment, the reform of the Tax Reform Act in the Senate, and it got kicked out in conference committee on the big tax bill that went through in the summer. We have the measure pending again and they are having hearings on it. One of the questions that kept coming up were real examples of this. And

¹ The material referred to was not received by the subcommittee at the time of printing.

we have, of course, some examples and we have heard numerous references to other examples. If we can have something in writing on that, I think it will help.

Senator RUDMAN. While we are on the subject of the Internal Revenue Service and since we seem to be asking questions as we go along, let me ask you one.

It is my understanding that you have had some real problems in getting the IRS to agree to indict people who want to plead guilty to tax offenses as part of a plea bargaining working with your office; is that correct?

Mr. ETHINGTON. Oh, yes.

Senator RUDMAN. Why don't you give us an example of that, and of what you went through. You have someone here who is really absent of rights, they want to plea bargain, they want to plead guilty to a tax offense. You supply IRS with all the information and they say, "Well, it is going to take a long time." Why don't you tell us about that?

Mr. ETHINGTON. Many of these traffickers would much rather go to the penitentiary for 6 months, 2 years on a tax offense. A tax offense doesn't have the bad connotation that heroin importation or trafficking does. And the penalty range, 15 years for heroin importation, is greater, so they come to me on a regular basis wanting to plea bargain. Of course, the obvious offense would be a tax evasion case, 5 years or something in the tax realm. I don't have the ability to use that in plea bargaining. We could dispose of—I personally could dispose of 30, 40 cases a year of significant narcotic traffickers with no effort and no added expense on the part of the Government if I had the authority to plea bargain with tax cases.

Senator RUDMAN. And in many cases, I suspect you would get additional information prior to that plea bargain being struck.

Mr. ETHINGTON. Yes, and that opens the door to forfeitures, levies, civil penalties; we could get the IRS civil side in motion and recover some of the proceeds in that fashion. But that alternative is not available to me.

Senator RUDMAN. I ask Senator Nunn and Senator Chiles if they have any questions on the IRS and, if not, we will let him proceed with his statement.

Senator NUNN. Why is that option not available to you? What keeps that from being available?

Mr. ETHINGTON. For me to do that, I would have to go through the Internal Revenue Service levels of authority, then over through the Department of Justice and back down again. It would take maybe a year or so, maybe 2 years.

Senator NUNN. That is internal—that is not a matter of law; that is a matter of practice.

Mr. ETHINGTON. Internal. We have the trafficker ready to plead guilty, and I am in a position of telling him to come back 2 years from now and maybe I will have the authority. During those 2 years, he is going to be back out there.

Senator NUNN. Don't you handle tax offenses when they are brought?

Mr. ETHINGTON. Yes.

Senator NUNN. You are handling them, but there are two different channels under which you get your authority?

Mr. ETHINGTON. I also handle tax cases brought by the Department of the Treasury but I have never, in the time that I have been a prosecutor, handled a tax case and a narcotics case together, except for this *Harold Oldham* case for the reason that a narcotics case happens very quickly. A tax case takes 2 years, maybe 3 years before an indictment can be brought.

Senator NUNN. What you are saying is that if there was some team-up at the top on these narcotics tax cases including a working relationship with Treasury and Justice, you could maybe prosecute both cases at the same time, get the plea bargain, and have the people meet jointly. By getting the authority back down to you, you would greatly accelerate the narcotics tax convictions, you could expedite the judicial process, and you could save the Government a whole lot of money and develop further information and possible civil fines.

Mr. ETHINGTON. Yes, exactly. That would be great.

Senator NUNN. And you are the same man who prosecutes both those cases anyway; are you not?

Mr. ETHINGTON. Yes.

Senator NUNN. So it is not a matter of turning prosecution over to some different group of people, it is a matter of having somebody in Washington work together at the top.

Mr. ETHINGTON. The way it works now is the Drug Enforcement Administration would disclose to an Internal Revenue Service agent information in my office regarding a narcotics trafficker. That information would go up through the channels, back down through the channels, and 2 years later that same IRS agent would come in to me and say, I have this tax case. We already heard about it 2 years ago. It is the same information. It just has to go up through the channels and back down again. It is unworkable. By that time, the narcotics trafficker is in the penitentiary, his assets have been disposed of, and the case is over with.

Senator CHILES. So what you really started off telling us, and now you have explained, is, you just try to stay away from IRS when you start into the prosecution of a case. You don't try to involve them.

Mr. ETHINGTON. I have had situations where an Internal Revenue Service agent is sitting here and a DEA agent sitting there, and they are both working on the same trafficker or violator. If the IRS agent is to tell me anything about the case, the DEA agent must leave the room because IRS cannot disclose to the DEA agent.

In the execution of a search warrant in this case in the lawyer's office, an IRS agent was present and gathered information, evidence, documents in the law office. Simultaneously, a DEA agent was going through the same file cabinet. The IRS agent could not tell the DEA agent what he found.

Senator RUDMAN. You certainly cannot accuse our criminal justice system of not being fair.

Senator NUNN. We are making it a sporting game.

Senator CHILES. Have you had a chance to look at the legislation Senator Nunn was talking about that we put on the tax bill and have introduced separately to try to correct this and allow the Internal Revenue Service to share—

Mr. ETHINGTON. I would be very anxious to see it.

Senator CHILES. You haven't had a chance to study it?

Mr. ETHINGTON. No, sir.

Senator CHILES. We would like to give you a copy of it and we would like to hear your thoughts as to whether you feel this would give you the kind of direction that you need so you can share this information.

Mr. ETHINGTON. We have a provision in the disclosure aspect of the Tax Reform Act that says I can gain the authority to get disclosure from Internal Revenue Service agents by going to a Federal judge and getting a court order, but before I can get that court order, I have to get authority from the Department of Justice. To get that authority, I must disclose the information that the Internal Revenue Service agent has that he is going to give to me but he won't give that to me until we get authority. So we are in a catch 22 situation.

Senator CHILES. IRS has the unique authority, do they not, for asset seizure so that if you did not have to turn away from them for this 2-year period of time as you go to the drug prosecution, IRS could go out there and seize the assets and the property before they disappear.

DEA doesn't have that same seizure authority; do they?

Mr. ETHINGTON. No, they do not. We welcome the help and assistance of the Internal Revenue Service if we could get them to work with us as a team.

Senator CHILES. This would be another very strong reason for having them in the case because they do have the seizure authority.

Mr. ETHINGTON. They could be of great value to us, but at the present time, they are not.

Senator RUDMAN. Mr. Ethington, why don't you now proceed with the rest of your testimony, and we can come back and ask additional questions, although it may well be that by the time you get through we won't have any.

So why don't you proceed?

Mr. ETHINGTON. According to the Internal Revenue Service reports I have received, about \$20 million a week in cash or currency is being laundered through our area of the country into the Cayman Islands banking system and back into the United States. The concepts of this laundering procedure are very simple, but the mechanisms or procedures are as elaborate as the trafficker wants to make them. Anyone in the United States can engage in this money laundering or skimming operation by merely answering an ad in a newspaper and gaining the information on how to do that.

The problems of discovering this and prosecuting and investigating this type of activity are very complex and cumbersome. I was told by an Internal Revenue agent that if this case had not been originated by DEA, but had been originated by the Internal Revenue Service, itself, through audit procedures or even informant information to the IRS, that the case could not have been fully investigated and prosecuted successfully.

The IRS acknowledges to me freely that the only method of making a case like the one before us today is through undercover operations and effective use of informants. They cannot do it. IRS cannot

make these cases through normal audit methods. They are just ineffective in this type of investigation.

What I would like to say, on conclusion, based on my experiences, is that it is my opinion that the efforts to investigate and prosecute participation in this underground economy that we have been stymied. There is no real genuine effort to investigate and prosecute this compared to the amount of traffickers that we have and the amount of money that is flowing outside the United States and then back in a laundered or washed fashion. And I don't really see any hope on the horizon, unless we can have new tools to work with and we can streamline the procedures and methods we labor under. On television, I am told, "60 Minutes" depicted the Internal Revenue agents as a collection of Gestapos. Just the opposite is true. They are eager to help, but restricted and ineffective.

As to the Drug Enforcement Administration agents, at the present time, although I know this is contrary to the presentation given to you just a few minutes ago, my perspective is different. I am down on the very lowest level in the trenches. The morale problem at the Drug Enforcement Administration today is so bad that we are not getting any investigation in the Texas area, in my opinion, at all. I used to have presented to me as many as two very good substantial cases a week. I am not having any presented to me now.

Senator RUDMAN. Why is that?

Mr. ETHINGTON. Without being flippant the DEA agent doesn't know whether to come to the office with wingtips on and look like an FBI agent or wear his cowboy boots and try to work undercover.

They are in a state of limbo right now and they don't have any gasoline, or they didn't have any a couple of days ago.

Senator CHILES. You may be on 2 weeks leave.

Senator RUDMAN. What you are suggesting in a serious vein is that it is important that this administration make a decision in a very forthright fashion about what is going to happen to DEA and whether there is going to be essentially a suspension of any activity because of a moral problem.

Mr. ETHINGTON. We have excellent agents out there that are right now drinking more coffee than they are investigating cases. I am sorry to report that to you.

Senator RUDMAN. You will read about that in tomorrow morning's paper, a statement like that, I can assure you.

Senator NUNN. I have heard the same thing of DEA agents in my State. They are demoralized. They don't know whether they are being punished. One of the most interesting things is that we have reorganized the drug effort in this country about five times. If you look at that and put it up on the board and chart the drug effectiveness and chart the reorganization, you find that everytime the effectiveness of our drug efforts reaches its peak right before the reorganization takes place, then dips down and goes down for about 2 years, 1½ years, 2 years, then it slowly starts coming back up, it gets to the peak again and we reorganize again. It has happened for the last 15 years.

Senator RUDMAN. You would say we could take bipartisan credit for that?

Senator NUNN. It is independent. Democrats or Republicans. It happens every time. I would certainly join with Senator Rudman in saying

that whatever this administration is going to do they ought to do it, do it in the near term and let these DEA agents know and the FBI agents know what is going on.

I really personally think that if you merge the two you are going to have 3 or 4 years before you can sort anything out and have effective drug efforts.

Mr. ETHINGTON. We will have narcotic trafficking in Texas for the next 2 or 3 years like we have never seen it before. That is what we expect. As you pointed out every time the effectiveness level gets high, the reorganization takes place, and that is directly proportional to the number of cases that are presented to us and that are prosecuted. They have a good network of information. At the present time, they are laughing at us. The only thing that can make a trafficker really turn white is when we start talking about seizure and forfeiture of his assets. Putting him in the penitentiary, and I have had this experience many, many times, does not faze him. That is a mere cost of doing business. But if you take his assets, you will turn him as white as that piece of paper. I have done it many times.

Senator NUNN. Is it true that they fear the IRS more than any other agency?

Mr. ETHINGTON. That is the best kept secret. If we can keep that secret, they have nothing to fear of the IRS at the present time but they don't know that. I guess they will know it tomorrow. [Laughter.]

The IRS means a jeopardy of their assets but under the present system our efforts are ineffective.

Senator CHILES. So really we get back to that 60 minute show and I happened to watch that. That show was correct on a level because if it was the businessman who simply couldn't pay his taxes, they are liable to tear him up, close him down. But if it is a narcotics trafficker, he is the one that doesn't seem to have any problem with his assets. It takes 2 years to get around to determine whether they are going to seize him. But they can make that decision just like that if it is a fellow that hasn't paid his taxes.

Mr. ETHINGTON. Yes.

Senator CHILES. Put the lock on the door.

Mr. ETHINGTON. We are talking about an industry of the United States. The IRS is conservative in their estimates, about \$80 billion.

Senator CHILES. \$80 billion. That is the \$80 billion that is going out through the Caymans or somewhere else and coming back in and competing with a legitimate fellow that is trying to pay his taxes, is worried about the IRS putting the lock on the door if he is 2 weeks late. But that \$80 billion that is coming back, no taxes are paid on that.

Mr. ETHINGTON. That is correct.

Senator CHILES. It is pretty easy to compete if you are competing with nontax dollars.

Mr. ETHINGTON. I have Internal Revenue Service cases, that I presently separate from narcotics cases that are in the nature of the mom and pop grocery store.

Senator CHILES. Right.

Mr. ETHINGTON. I have had that experience. It is continuing, yes.

Senator CHILES. You prosecute those cases—the mom and pop.

Mr. ETHINGTON. I am required to. I agree with your estimation and evaluation of it, 100 percent. That is what is happening.

Senator CHILES. So sometime about 1976, the IRS just made the decision it is more important to see whether that mom and pop is paying their money and whether the waitresses are reporting their tips than it is really to devote substantial part of our assets to organized crime and to these major traffickers.

Mr. ETHINGTON. That has been my experience in 6 years of prosecuting.

Senator CHILES. I wanted to ask him if this is sort of similar to the ads that he is talking about. Would somebody hand that to him? I see this as a Caymans Island international tax and investment seminar, November 21 through 23, 1981.

Mr. ETHINGTON. Yes. There are other ads similar to this; advertisements to attend seminars that will educate you on the simple methods of laundering money and the utilization of a tax haven.

Of course, if you are a legitimate businessman and might happen to have a legitimate purpose, fine.

Senator CHILES. But if you are a drug trafficker, you can take advantage of this same thing? Is that what you are saying?

Mr. ETHINGTON. One of the tools that was used by the lawyer that set up the *Oldham* case, that set up the laundering procedures, was written up by him in an American Bar Association article on the Cayman Islands banking laws and methods. He utilized that as his display of expertise.

Senator CHILES. That was his entree to the traffickers.

Mr. ETHINGTON. To the traffickers and they were duly impressed and it was printed by the American Bar Association.

Senator CHILES. This says we have assembled some of the top Government and professional people in the Cayman Islands as well as some of the best known investment advisers in the United States. So you get good advice if you go to one of these seminars.

Mr. ETHINGTON. From the information given to me regarding this case, the Cayman Islands banking people are sensitive of criticism and they have just recently changed part of their laws to allow cooperation with foreign countries if it can be shown directly that their banking procedures are used in criminal activity in another country. That is brand new.

Senator CHILES. That is similar to what we have had with the Swiss for a long time and a number of other countries.

Mr. ETHINGTON. Yes, sir. It is a start in the Cayman Islands. It has not been utilized yet.

Senator CHILES. Mr. Chairman, I would like to ask unanimous consent that that be entered.

Senator RUDMAN. Yes, this will be entered without objection.

[The information referred to follows:]

Bona International, The World Market Perspective and The First Cayman Bank & Trust Co. Present

The Cayman Islands

International Tax and Investment Seminar

November 21-23, 1981



Douglas R. Casey



Diego Veitia

Why the Cayman Islands? The country is undoubtedly one of the leading tax havens in the world.

There is certainly a lot to recommend the country to the foreign investor. A British colony, it is considered the most stable country in the Caribbean. You won't find strikes, demonstrations, racial conflict or crime here! It has a small government with minimal powers — and no political parties.

It levies absolutely no direct taxes whatsoever (except a \$10 a year head tax on residents.) It has what is considered the strictest secrecy law in the world. And, last year, it completely abolished all remaining exchange controls.

Here the foreign investor can operate in an atmosphere of stability and freedom.

So it is no wonder Cayman is booming. Over 300 banks for a population of less than 20,000. More telephones per capita than any other country in the world. And a thriving real estate market, with a large resident population of expatriate workers, investors and retirees.

That's why we chose the Cayman Islands as the site for our First International Tax and Investment Seminar — Investing In and Through the Cayman Islands, November 21-23, 1981.

Investment Opportunities

Despite its size, in the Cayman Islands the opportunities are unlimited. At the seminar, you will learn how to use Cayman Island corporations and trusts to legally reduce or defer your U.S. taxes — current income taxes and future estate taxes.

You'll learn about an alternative to high malpractice insurance premiums used by more and more doctors and other professionals. Again, perfectly legal.

You'll learn how you can take advantage of the banking services offered here: private, discreet and inexpensive. In these ways and more you can use the Cayman Islands in your personal tax planning.

There's more. The Cayman Islands also offer opportunities for the direct investor. There's a booming real estate market here. Some properties have appreciated by as much as 400 percent in the last two years. And there's good reason to believe that Cayman land will continue to produce solid profits. Why? Because the demand is there and it will grow and more turmoil in the world today, it's unlikely to go away.

Looking for an offshore residence? A place where you can spend part of the year, maybe retire

in peace and tranquility? Cayman may be just the place for you. If you like sandy beaches, sunny skies and friendly people, you'll love Cayman. Both the government and people offer a warm welcome to the foreign investor.

What about the rest of the world? You'll hear about that too at our seminar. The U.S. economic outlook. World stock markets. Residence. And much much more.

The Program

For the seminar, we've assembled some of the top government and professional people in the Cayman Islands, as well as some of the best-known investment advisors from the U.S.

Our keynote speaker will be Douglas R. Casey, author of the best-selling *Crisis Investing*. Doug will be summing up the program and "Looking Ahead."

Among the other speakers and topics you'll hear:

The Cayman Islands: *The financial situation*, Hon. Vassil G. Johnson. *Real Estate*, Hon. J.M. Bodden. *Role of trust companies*, Bernard Knights and Colin Whitehead. *Legal aspects*, William S. Walker. *Captive Insurance*, Roger Corbin. *Building your home*, Arak Joseph. *A newspaperman's perspective*, Brian Uzzell.

International Tax planning, Joel Karp. **World stock markets**, Dennis Hardaker. **International investing**, Diego Veitia. **Retiring in the Caribbean**, Peter Dickinson. **The best international opportunities**, Adrian Day. **The economic outlook**, Maryann Aden Harter.



Hon. Vassil Johnson



Adrian Day

Your hosts will be Bernard Knights of the First Cayman Bank & Trust Co., and Diego Veitia of the World Market Perspective Publishing Co., and Bona International.

At the seminar, there will be formal speeches, informal question-and-answer sessions, lively round table sessions, and intensive workshops. There will also be scheduled social functions — where you can meet the speakers personally. And there will be the opportunity for you to schedule personal consultation sessions as well.

Travel Arrangements

The seminar will be held at the Grand Caymanian Holiday Inn, the island's most luxurious resort hotel, right on world-famous Seven Mile Beach.

Less than 10 minutes away is Georgetown — restaurants, souvenir shops, duty-free jewelers, and the financial district — more than 300 banks jammed into one square mile! An incredible sight.

It's easy to register and attend the seminar. The package fee is \$747 for the first attendee, \$697 for the second sharing a room. Your package includes your seminar fee, and your hotel room for seven nights (November 19-26). PLUS a welcome rum swizzle party, coffee breaks, taxis and service charges and round trip airport-hotel transportation.

Airfare is extra. But we've worked out some very special fares for you. For example — from Miami, \$119; from Houston, \$209; from New York, \$266; from Atlanta, \$227. (Prices are round trip fares; they are subject to change.)



Dennis Hardaker



Peter Dickinson

If you prefer you may make your own travel and hotel arrangements, meeting us in Grand Cayman on Saturday, November 21st. The seminar fee alone is \$400 for the first person and \$350 for the second person.

Whether you plan to take advantage of our special hotel and air rates or just attend the seminar, our cooperating travel agency is there to assist you. To reserve space, please send a \$150 deposit (non-refundable after October 8, 1981) to Transair Travel, Dept. C103, 4710 41st St., NW, Washington, DC 20016. Or you may phone in your reservation; call the Cayman Island seminar coordinator, 202-362-6100, ext. C103. The balance will be payable by October 8.

If you have a legitimate business or investment purpose for attending the seminar, and that is your primary purpose for attending, you may deduct all your seminar expenses — hotel, air fare, seminar fee, meals. You should check with your own tax advisor about your personal situation.

We have strictly limited the number of people who can attend this seminar to no more than 150 people in order to allow maximum personal contact between attendees and speakers. We expect this seminar to fill very quickly, owing to the great attractions of the Cayman Islands. Since this is the first major international seminar to be held there, we recommend early registration to avoid disappointment. Why not call or write to register or receive more information today?

Cayman Islands Seminar Coordinator
Transair Travel, Dept. C10311
4710 41st St., NW,
Washington, DC 20016
tel.: 202-362-6100

Senator RUDMAN. Senator Nunn, do you have any further questions of this witness?

Senator NUNN. No, thank you.

Senator RUDMAN. We want to thank you very much. Your candor before the subcommittee is appreciated. I intend to take the last approximately 7 or 8 minutes of your testimony which I think is a rather scathing indictment of the current situation at DEA and send it to the previous witness and also to the Attorney General with the request that they read their testimony because your testimony is untarnished, unsanitized, and I think quite accurate. We appreciate your being here this morning.

Mr. ETHINGTON. Thank you, Senator.

Senator CHILES. Send it to the White House coordinator, too.

Senator RUDMAN. We call as our next witness, Mr. Harold Oldham. Mr. Oldham has agreed to testify before this subcommittee under a grant of immunity. According to subcommittee, it has obtained a court order providing Mr. Oldham with this immunity. The Department of Justice has indicated it has no objection to this procedure.

At this time, I would like to ask Mr. Oldham if he understands that this court order requires him to provide information in response to questions of this subcommittee.

Mr. OLDHAM. Yes, sir, I do.

Senator RUDMAN. Without objection, I will have that court order entered into the record.

[The document referred to was marked "Exhibit No. 8," for reference, and is retained in the confidential files of the subcommittee.]

Senator RUDMAN. Mr. Oldham, if you would rise, I would like to give you the oath required of all witnesses before this subcommittee.

Would you raise your right hand?

Do you swear the testimony you are about to give in the course of this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. OLDHAM. Yes, sir, I do.

TESTIMONY OF HAROLD OLDHAM, PRIVATE CITIZEN (CONVICTED TRAFFICKER)

Senator RUDMAN. I would like to advise the members of the subcommittee that Mr. Oldham has a rather involved testimony and if at all possible we would like to get his summarized statement for the record.

Senator NUNN. Mr. Chairman, that is the nicest way I have ever heard of you telling us not to interrupt. We understand and we will so obey.

Senator CHILES. We certainly will.

Senator RUDMAN. You may proceed.

Mr. OLDHAM. I would like to preface my statement with the fact that I am a bit nervous in this circumstance. So excuse me if I stumble while speaking.

Senator RUDMAN. We appreciate your being here this morning and you really don't have anything to be nervous about. We appreciate your willingness to testify and we are going to be interested in what

you have to say. Your entire statement will be incorporated into the record. You may take your time and summarize it and then we will ask you a few questions.

You may proceed.

Mr. OLDHAM. Mr. Chairman, in December 1977, I was arrested by the U.S. Drug Enforcement Agency and was subsequently convicted and sentenced for narcotics trafficking. I am currently serving my sentence in a Federal penitentiary.

I consider it a real privilege to assist you in fighting this problem of which I was once a part. I am grateful for being able to publicly demonstrate the life-changing effects that Jesus has had on my life and to help right the wrongs that I have done.

It is painful for me to regurgitate this evil in my past, but in doing so I hope it will help to solve this problem. I hope that in the future I will be able to have as much of an impact on the side of good as I had on the side of evil.

I would like to briefly describe how I got into narcotics trafficking and more, particularly how I used Shell companies in the Caymans to launder my profits. I emphasize that this is my story and is not meant to address the activities of others.

In 1970, I had my own ad agency, three cars, a very nice house with a swimming pool, and was making around \$18,000 a year. I was 25 at the time. However, for whatever reasons I was not happy and began looking for a solution. I found that solution, I thought, in marihuana. I began smoking two or more joints an evening. Shortly thereafter I sold my ad agency to a large ad agency and eventually quit working for the ad agency altogether.

In effect, I dropped out. Marihuana did not make me happy but it certainly completely changed my outlook on life. I decided working was not worthwhile and preferred to embark on a life of what I thought was adventure. I traveled to Europe and Morocco for a period of approximately 6 months after I quit work. In Morocco I began using hashish heavily.

I returned to the United States and began traveling throughout the country visiting friends and acquaintances whom I had met while traveling in Europe. As I traveled about visiting these friends I discovered that several of them were drug dealers and among these was a major distributor of mescaline.

At first, I only intended to buy a small quantity but this distributor would not sell anything less than 1,000 doses. I reluctantly agreed to buy a thousand, not sure what I would do with the excess. I soon discovered there was a big demand and I had a source. I found myself returning to my distributor many times eventually buying up to 25,000 pills at a time and often returning two or three times a week for a resupply.

During these many trips between the Midwest and the east coast, I discovered the true profit potential of importing hashish. I discovered that hashish was much in demand in the United States and would wholesale for \$2,000 to \$2,500 per kilogram. I knew that my cost in Morocco would be \$80 a kilogram.

It was a high profit. I therefore planned to start importing hashish from Morocco under the guise of numerous sham importing companies.

I started smuggling in drugs with a capital investment of approximately \$300. Over a period of 3 to 4 years I turned this \$300 into close to \$1 million in earnings.

On returning to Morocco, I took my time learning as much as possible about local customs and business procedures. I eventually engaged in smuggling hashish to this country and to certain European countries. I started small with three kilos and as I developed expertise and confidence, I executed numerous smuggling operations up to 200 kilos at a time.

Once I had determined the ins and outs of exporting hashish from Morocco, I devised methods of importing it into the United States. Basically, I formed separate paper companies for each smuggling operation.

One of my methods of smuggling from Morocco was that I would purchase large quantities of merchandise including clothes, handicrafts, and particularly camel stools.

I would conceal the hashish in several of the camel stools wrapped in several layers of plastic which were laced with black pepper and baby powder to conceal the odor.

Even if my shipment was opened by customs in the United States, the chance of them discovering my hashish in such a large assortment of goods was remote. In fact, they never did.

I would have the shipment picked up in the United States by a Girl Friday, and delivered to me in different locations. The Girl Friday would, of course, be one of my U.S. associates. I would create a cover for her by advertising for a Girl Friday in the local newspaper. She would be one of the many applicants.

If she were arrested with the shipment, she could prove she was an innocent party who had been hired from an advertisement several days previously. She would also have documents, letters, et cetera, from the paper company with appropriately professional logos on them.

In this fashion, I managed to import a significant amount of hashish into the country undetected for several years. In fact, I had so many imports from Morocco that I eventually established several retail outlets to dispose of those goods. Peace River Trading Co. was an umbrella company for these retail outlets of which Mad Hatter Imports, Inc., was one.

My distributors tried to get all of my hashish distributed within 3 weeks. My distributors were primarily in Washington, D.C., though I also had distributors in South Carolina and California. I would move the hashish from my import location to my distributors by various methods including commercial airline courier packages. I also had the sales proceeds sent to me by the same method.

As a result of my numerous smuggling endeavors I had significant amounts of profits which I needed to legitimize. I contacted an attorney and asked him if he knew of any way I could account for this money if challenged.

My primary concern was to hide the fact that the money was narcotics profits. The first scheme we came up with was to set up a phony loan agreement which showed that I had borrowed \$30,000 from Mid-

east Overseas Investment. This was later changed to reflect a capital investment instead of a loan.

My attorney through his various contacts was then introduced to the use of Cayman Island shell companies as a better method to wash funds. During my stay in South America, I had also heard of the Cayman opportunities and my attorney's information corroborated my own information.

As my earnings increased and it was obvious that something needed to be done, my attorney went to the Caymans to see if I could discretely use the services. He spoke with several managers there and selected one. We were surprised to find that the island flourishes on secrecy and they are very happy to accommodate whatever the needs of the clients might be.

Subsequently, we formed Esmeraldes y Mariposas and after being assured by my attorney that there would be no problem I made my first trip down with a briefcase bulging with \$100 bills. I discovered that the Caymanian customs officials provide curtained booths for examined luggage of those who request privacy.

On that flight and several subsequent flights, I speculated that at least half of the aircraft passengers were evading taxes. I made several other trips, laundering my money and also offering a laundering service to a few associates who also needed to disguise their source of income.

I tried to get paid by my distributors as soon as possible. What money I didn't spend on extravagant living, I handcarried to the Caymans for laundering or put into my U.S. bank accounts in less than \$10,000 amounts. During this period I normally carried \$10,000 to \$15,000 in pocket money with me though at times I had up to \$100,000 on me. I never had a problem with the U.S. currency laws.

I continued my hash import business for several years during which and after which I spent an extensive amount of time in South America. I traveled to South America on my company's expense, as I was interested in cocaine and was considering setting up an operation similar to my Moroccan operation.

The minute I got off the plane in South America I was inundated with propositions of cocaine. The busboy wanted to sell me some. The cab driver tried to interest me. Virtually everyone I met wanted to turn me on to cocaine. It got ridiculous. I must have been approached by over 100 people like this in one week. I even attended a division governor's party in Colombia. He had cocaine available. The supply and usage of cocaine in many circles in Colombia is similar to the supply and usage of alcohol in the United States.

While in Colombia it became apparent that a significant number of airline stewardesses and pilots trafficked in cocaine. For instance, I was approached by a pilot in Central America who made it no secret that he wanted to get into the business.

I eventually made a connection with an American in Colombia and set up a deal. I mailed several letters into the United States with small amounts of cocaine in them. These would be mailed to a phony name at a legitimate address. The people at the addresses would not open the letters for several days in case they were suspect. That way

if DEA showed up they could plead ignorance. This by the way, is a very common practice.

It took me weeks of false starts to get my first actual import off the ground. I eventually received a small amount of cocaine that had been brought in by an airfreight pilot. Several weeks later, he was killed in a crash and I basically gave up on smuggling cocaine as it was not only more trouble than it was worth, but was dangerous.

While I was in Morocco, I met a rock star with a major rock group. Through my contact with him I came into constant contact with many of the major rock and pop groups in the United States and Great Britain. My association with these groups led me to the formation of Startrans, a company I set up for the purpose of renting luxury buses to these groups while they were on tour. Startrans was a legitimate U.S. company and business, though it had been capitalized by significant amounts of narcotics money which had been laundered through the Caymans.

I can regretfully state that the use of drugs was pervasive throughout many major music groups during the period I was associated with them—1974–77. Cocaine and other drugs were everywhere, from the musicians to their equipment handlers. During this period, I attended numerous parties in Hollywood and on the road. Most people associate wet bars with organized parties. At these parties, trays of cocaine were as common as wet bars. Rent-a-cops were hired as bouncers but served as insurance against drug raids.

Several of the groups had physicians traveling with them who would liberally distribute pills—controlled substances to anyone in the troop who wished them. It became a common sight on the chartered flights taken by these groups and elsewhere for the physicians to set up shop. As soon as the plane took off, members of the troop would literally line up at his shop for pills.

I might add that heroin, though not as prevalent was readily available from hangers-on within the entourage, and several of the major musicians were heavy addicts.

I mention these incidents, not to be sensational but to show that cocaine and pills are absolutely everywhere.

I have prepared a chronology of events that reflect the significant steps we took during this period to wash funds for both me and my associates. That chronology is attached to my statement.

As the chronology indicates, the Caymanian company we formed washed almost a half a million dollars over a period of several years for my companies and those of my associates. The method we used to do this, though it sounds involved, was really quite simple. If I may refer you to the blue chart and walk you through the system step by step it may make the explanation easier.

The funds that we—excuse me.

The first step was in contacting a manager in the Cayman Islands, one who could establish a company for us there. The companies there, by the way, are secret companies. There is no record of who owns these companies. Once we had the company in the Caymans established, it was a matter of transporting the funds from the United States to the Cayman Islands where the manager would take us around to the

various banks and negotiate with them the percentage that they would charge for accepting large amounts of cash at that particular time.

The system we used was simply to convert cash into cashiers checks and to then bring the cashiers checks back into the United States and deposit them into our corporate accounts.

This substantiated the fact that the funds came from an overseas source and we documented it with loan agreements and correspondence to make it appear that these were very legitimate loans.

In this manner, if we ever were challenged, and the great fear was being challenged by IRS, if we were ever challenged by IRS as to how we came by our assets, we could show substantial documentation to the fact that it had been borrowed by an overseas company. This, of course, the Cayman Islands, is a brick wall, that is impenetrable by IRS. They would have had no choice but to accept our documentation. The funds, when they came back into the United States and were deposited into our bank accounts, were used for various normal purchases: Salary expenses, automobiles, these sorts of things. In some cases, they were used as capitalization for companies, in some cases they went specifically for extravagant living or company expense accounts, these sorts of things.

An integral part of this seemingly elaborate scheme was to insure that the cover correspondence and documents were accurately prepared.

For instance, any correspondence coming from our Cayman contact was actually composed simultaneously along with the entire series of correspondence between the two companies and then his part was prepared by him on Esmeraldesy Mariposas stationery on his typewriter.

Should the IRS ever go to such lengths, we would have been able to supply typewriter exemplars to corroborate the fact that these were actual loans made from the Caymans. Likewise, any correspondence we sent from our company to the Caymans was prepared in our office on our stationery and mailed to the Caymans.

Bear in mind that all of this correspondence might be made up on the same day and even mailed on the same day. Again, if we wished to carry the charade to its extreme we could wait several months between mailings and save the envelopes and appropriate postage marks. Some people may feel that all this is necessary but hindsight tends to indicate that it is not necessary at all.

It is interesting to note in retrospect that we were absolutely paranoid of the Internal Revenue Service. I assumed that they had every single plane going in and out of the Caymans monitored and that they had undercover agents everywhere in the Caymans, in Florida, and in Texas, watching the various flights. I also assumed that they would minutely inspect every piece of paper revolving around any of these transactions. For these reasons we seemed to perhaps go to extremes in our documentation and in our efforts to wash these funds. Knowing what I know now, I could say that much of what we did was probably unnecessary.

Once the money gets to the Caymans, it is apparently completely lost to the IRS and only minimal documentation would be necessary to erect the brick wall that exists in the Caymans.

Later in my dealings, I set up accounts with the Cayman branches of Barclays Bank and the Bank of Nova Scotia. Both of these ac-

counts were in the name of Esmeraldes y Mariposas, though the pass-book I received had only an account number on it.

Thus, even if I made a large deposit into the U.S. branch of these banks any currency form filled out would reflect only a number, and not the company name or my name.

It does not take a very sophisticated person to open up a company like this in the Caymans or to wash funds through the Caymans. Esmeraldes y Mariposas consisted of a stack of stationery and a file folder in our Caymanian representatives office. He had several hundred such file folders representing several hundred such companies at the time we were doing business with him.

I would assume that his business has grown since then. Our Caymanian contact told us of numerous U.S. citizens with whom he did business, though he named no names. He also mentioned that he serviced several major U.S. corporations.

I might add that he stated in his opinion and in his experience, virtually all the money transiting the Cayman Islands is doing so for tax evasion purposes. His clients were certainly not exclusively narcotics people but also major entertainers, professional people and multinational companies, et cetera, and the same he felt held true of clients of his fellow Caymanian corporate representatives.

Our Caymanian contact did not hesitate to state that the Caymans were inundated with drug money, organized crime money, money skimmed off legitimate businesses, including large corporations and other illegally gotten gains. The banks even complained of the problems associated with handling large amounts of cash.

In closing I would like to make several recommendations:

It is my belief that attacking drugs in the United States, going after the distributors, large or small, may not be the most efficient way of stemming the drug flow. Distributors are a dime a dozen and are quickly replaced, as it is easy to become a distributor. You know someone who knows someone, et cetera.

Becoming a successful smuggler is much more difficult; at least for hashish and cocaine. It took me months to become proficient at smuggling hashish. I know several people who were caught during the learning process. The only place I felt truly vulnerable was in Morocco. There I stood out as did most other smugglers. I could pick them out in a crowd and so could DEA if they were there.

If you take one smuggler out, it destroys his entire network, including his many distributors.

In fact, I felt so vulnerable in South America that I never really got into large scale cocaine business. Thus, it is my opinion that smuggling operations should be attacked primarily at the source, overseas, where the smugglers are most vulnerable.

Second, I think this country's present sentencing practices with respect to nonviolent criminals make more criminals than they reform. I would take the nonviolent first offenders and sentence them to 3 months in a medium security prison with the balance of their term dedicated to community service with them on a short leash and a big hammer—threat of extended incarceration.

I would let them know at sentencing that if they were ever convicted again they would be facing years of hard time with no parole.

This would give them 3 months to consider whether or not their future activities would be worth spending a lot of years doing hard time.

I think this would scare the nonviolent first offender enough to keep him away for good, yet wouldn't expose him to the prison university that tends to make hardened criminals.

While I was a drug user, I was enveloped in the fog of illusion and delusion—I really thought many drugs were not harmful and I advocated their use. Having now gotten away from drug usage and being able to see clearly I realize how devastating they really are. I am firmly opposed to them and feel that an education program is necessary for those who are now caught up in drug use. A program that would teach the truth about the harmful effects of all drugs.

In summary, I would hope that our country will turn from the "new morality" and I pray that the United States will return to being a country "under God."

Senator RUDMAN. Thank you, very much, Mr. Oldham.

We have some questions for you. Maybe you would like to take a drink of that water before we start.

One of the things that interests me about your testimony is the freedom of movement that you seem to have in and out of the country, Caymans and so forth, South America, particularly in terms of the U.S. Customs.

Were you ever challenged by U.S. Customs when you came back into the country?

Mr. OLDHAM. In that regard, from the Cayman Islands, no, sir. However, I think I may have been identified as a suspected narcotics trafficker in the Customs computers. Therefore, they would examine my luggage heavily and this sort of thing, coming back into the country. But I was never challenged going or coming to or from the Cayman Islands.

Senator RUDMAN. When you left this country, did you ever go to the Caymans when you were carrying large amounts of cash?

Mr. OLDHAM. Yes.

Senator RUDMAN. Was there ever questioning by anyone.

Mr. OLDHAM. No, sir. At that time the primary access to the Caymans was through Miami Airport and the flights to the Caymans left out of gate No. 1. Gate No. 1 was the only gate at the Miami Airport and to my knowledge almost any airport in the United States that did not have metal detecting devices or any security of any kind. Gate No. 1 was before you would walk through the inspection area. I cannot explain this. I only know that at that time it was easy just to walk from the ticket counter onto the aircraft without any examination of any kind.

Senator NUNN. That was Miami?

Mr. OLDHAM. That was at Miami Airport. Again, this was from 1974 to 1977.

Senator RUDMAN. You went to great lengths in attempting to launder funds, in fact and you set it up fairly easily.

Did you have any financial background or accounting, legal background yourself?

Mr. OLDHAM. No, sir. I was concerned. I had a fear of the Internal Revenue Service and wanted to have, I wanted to be able to say where the funds came from if challenged.

I did not have any expertise and it doesn't require any sophistication or expertise to do this. It is simply a matter of going to the Caymans and contacting a corporate representative there who for approximately \$600 will form a secret company for you and explain the ropes or of course you could go to one of these seminars and learn the same thing. It is quite simple.

Senator RUDMAN. I understand that you really didn't have a Cayman bank account, that the money really traveled to the Caymans and back almost in one smooth movement; is that correct?

Mr. OLDHAM. I initially did not have a bank account. I would fly down in the morning with cash. The corporate representative would meet me at the airport and take me to his office. We would contact the various banks to find out what their going rate was that day to convert U.S. currency into cashier's checks and we would bring the money to the bank and convert it to a cashier's check.

I would then fly back the same day with the cashiers check. I took the money down but I brought it back in another form the same day. I did not leave my money there. Many people do. But I did not.

Senator RUDMAN. How much money did you launder in all?

Mr. OLDHAM. Roughly half a million dollars.

Senator RUDMAN. Over a period of how long?

Mr. OLDHAM. Over a period of about 2 years, I believe.

Senator RUDMAN. Prior to your arrest in 1977, had you been audited by the Internal Revenue Service in any way—any corporations ever audited?

Mr. OLDHAM. No, sir.

Senator RUDMAN. You testified you knew you were in the Customs Immigration computer as a suspect. How did you learn that?

Mr. OLDHAM. Because I made many many trips. I probably had something like 40 to 50 entries into the United States a year. I did a great deal of extensive travel. When they punch your name and number, date of birth or passport number into the computer, their reaction is such that you know you are being detained slightly and they sort of ring a bell, call somebody over to go through your luggage more thoroughly than normal.

Senator RUDMAN. But when you shipped goods back from Morocco and other places, in whose name were those goods shipped?

Mr. OLDHAM. Because I knew that I was in the computer, at least I never used my name or any company with which I had been associated because I feared that there might be some kind of alert. Rather, I always just made up a legitimate sounding company name and used that name on all the shipping documents. There was no previous association or subsequent association to tie me to that name.

Senator RUDMAN. What would you use for an address?

Mr. OLDHAM. I made up the address, in whatever city I wanted to send it to.

Senator RUDMAN. How would you eventually collect those goods?

Mr. OLDHAM. Sir, I had contacts with, for example, in the advertising agency business; I had contacts with graphics designers who would do complete corporate graphics, including logos, stationery, business cards—all sorts of things to substantiate a legitimate company. This graphic designer did not know that he was doing something illegally.

He thought I was representing, you know, a new company in a new area. But I would have elaborate stationery printed up and letters, letterheads, and so on, and use this on contact customs clearance brokers. I would then have a representative function as an employee of that company, working with the customs clearance houses to retrieve the goods from customs.

Senator RUDMAN. The goods would be coming into customs, they would be at customs, your representative would go down, clear them with the customs agents down there through the broker and simply take them to wherever you were.

Mr. OLDHAM. Yes; that is right.

Senator RUDMAN. In your recommendations at the end of your statement, you make a point which I think most of us agree with here—that the distributors are just too numerous to effectively stamp out.

One of your suggestions is that perhaps we could do more about smuggling and if we could essentially stamp out the source, we might do a much more effective job. As one who did it rather successfully over a long period of time, would you like to make some suggestions to us this morning as to how you could have been stopped more effectively considering the means that you used which I assume were not that unique.

I assume they were used by many people.

Mr. OLDHAM. Yes, sir. Once I was back in the United States, for example, having people clear goods through customs or whatever, I was well insulated and felt that my goods were protected and safe. The only place that I really felt vulnerable, sir, was at the source, going there to make a buy, and arranging the shipment on that end.

I know from observation there, that I kind of stood out like a weed in a flowerbed, if you know what I mean. I really didn't belong there. There is no other reason to be at those places. I personally observed many other people who were in the same business. I think if DEA agents were working in these countries, they could spot these weeds in the flowerbed as it were, and institute investigations as to how they might be shipping their goods back and intercept them in this manner.

Senator RUDMAN. So what you are saying is, it is your belief having done this successfully that had DEA had such people on site in these various overseas locations that it would not have taken that much investigation to in fact determine what you were doing?

Mr. OLDHAM. Yes, sir; that is correct. It would have been—that was the place that I felt most vulnerable, the place that I really stood out. Once back in the United States, I blended in—but there I stood out and it was obvious.

Senator RUDMAN. Senator Nunn.

Senator NUNN. Did you use the mails primarily? It sounds as if you used the mails in order to get your narcotics into this country?

Mr. OLDHAM. No, sir. I used the mail a little bit. I mentioned that, particularly small quantities of cocaine, but as far as the hashish trade from Morocco, I used primarily air freight for large quantities of merchandise. And these came by air and were cleared through customs.

Senator NUNN. Do you believe that would be the normal vehicle through which most hashish comes into this country?

Mr. OLDHAM. That is certainly one method. Other methods are using automobiles, for example, or motor homes, those sorts of things, con-

cealing hashish in them, shipping these vehicles back. I knew of other methods at that time, of people using yachts and private airplanes.

Senator NUNN. Did you ever use any kind of boats to come in, separate boats to come in and bring goods?

Mr. OLDHAM. Yes, sir; I cooperated in some efforts of that nature.

Senator NUNN. Would a law allowing the military to furnish intelligence on boats and planes coming in to domestic law enforcement have any appreciable effect in your view?

Mr. OLDHAM. I can't really speak to it directly because I was only a small cog in another organization, as far as the yachts were concerned. I am not familiar with exactly what problems are encountered with aviation and nautical detection. But I know personally that there are many, many yachts and airplanes that come in certainly weekly and probably daily full of all kinds of commodities. They are not being detected now. I don't know what it takes to detect them but I know they are getting through.

Senator NUNN. Where were you arrested?

Mr. OLDHAM. I was arrested in Miami.

Senator NUNN. What was the charge?

Mr. OLDHAM. The charge was conspiracy to distribute cocaine and defrauding the U.S. Government—a couple of other charges related to those. Defrauding the U.S. Government was involving the Cayman Islands.

Senator NUNN. Who made the arrest, not the name of the individual, but what law enforcement agency?

Mr. OLDHAM. DEA.

Senator NUNN. How did they go about finally detecting your scheme? What was the breakthrough?

Mr. OLDHAM. Sir, as the previous witness testified a female informant brought the DEA in and they introduced themselves to me. I did not know they were DEA agents and they developed a friendship with me over a period of 1½ years, 2 years, establishing confidence and trying to get me to involve myself with them or them with me. During this period of time they discussed with me the fact that they had a problem, they had large amounts of cash that they did not know how to legitimize. This is how they came to infiltrate the Cayman situation because as friends I provided a laundry service for them.

Senator NUNN. Did you have to post bail, did you get out on bail?

Mr. OLDHAM. Yes, sir.

Senator NUNN. What was the bail the first time you were arrested?

Mr. OLDHAM. It was much higher, originally, but I was actually released on a \$70,000 bail.

Senator NUNN. Did you have any trouble posting that?

Mr. OLDHAM. No, sir. I used a bail bondsman.

Senator NUNN. Did you comply with the conditions of the bail? Did you appear for trial?

Mr. OLDHAM. No, sir. I did not. I subsequently fled the country 2 or 3 months later but prior to sentencing.

Senator NUNN. Was this after the trial but prior to sentencing?

Mr. OLDHAM. No.

Senator NUNN. Before trial?

Mr. OLDHAM. Before trial. Yes.

Senator NUNN. You fled the country?

Mr. OLDHAM. Yes.

Senator NUNN. You left your bail bondsman with a \$70,000—

Mr. OLDHAM. No, sir. Two points there. At a subsequent hearing my bond was reduced from \$70,000 down to \$10,000. I was out on bail but it was further reduced. At that point, I put up \$10,000 in cash and retired the bail bondsman from the situation. Quite frankly I was very much afraid of having the bail bondsman looking for me as well as the U.S. Government.

Senator CHILES. You are more afraid of the bail bondsman than the U.S. Government?

Mr. OLDHAM. That is true. However, in my particular situation I had been making a lot of money and in riding the crest of that wave as it were, I felt it would never end. I squandered most of my money as it came in. At the time of the arrest, with the attorneys' costs and the \$10,000 and so on, I really am not a typical case in that I had squandered most of my money, really did not have that much in assets.

Senator RUDMAN. You went through the million dollars in roughly 4 years?

Mr. OLDHAM. Yes, sir.

Senator NUNN. Do you believe that our bail laws on narcotics violators needs some revision?

Mr. OLDHAM. Yes, sir. I do.

Senator NUNN. Do you think they are too light?

Mr. OLDHAM. I think they need to be considered on an individual basis, certainly in my case it was too light. Yes, sir.

Senator NUNN. You mentioned about nonviolent convicted felons not being put into the penitentiary on the first conviction but rather in some work program with strong penalties if they breach the conditions of their probation, so to speak. Do you include in the term nonviolent major drug dealers?

Mr. OLDHAM. I think there should perhaps be a redefinition of "major," meaning the true involvement of the people. No, sir. I would not necessarily include major—I would not include what I would call major narcotic traffickers.

Senator NUNN. Would you include, for instance, yourself in that category? Do you think that justice would have been better served, there would have been less chance of repetition of crime if you had not been sent to the penitentiary?

Mr. OLDHAM. It is a very difficult question to address. And my recommendation of course was primarily toward people in a less involved situation than mine. I feel that I definitely needed incarceration for a period of time. I think actually that if I had had exposure, as a first-time offender, if I had exposure to a very severe prison situation, in effect scared straight and released on what I called a short leash, this would be close supervision, and involvement to try to be constructive toward society, in my particular case I know it would have worked although I am not saying that I would necessarily, I am not trying to qualify a person in my position.

Senator NUNN. What is your sentence?

Mr. OLDHAM. I received a 10-year sentence.

Senator NUNN. How long have you served?

Mr. OLDHAM. I have served 2 years.

Senator NUNN. You testify here that you have taken a real interest in religion since you have been in the penitentiary?

Mr. OLDHAM. Yes.

Senator NUNN. Is that what has changed your life more than anything else?

Mr. OLDHAM. Absolutely, sir. It is not a question of rehabilitation because, to my mind, rehabilitation means to make you what you were before and it is kind of what the prison system does, only it makes people better criminals than when they came in.

I went through a rejuvenation where I truly became a new individual inside.

Senator NUNN. Without getting into all the details of that, what led you to make that decision?

Mr. OLDHAM. A desire to straighten my life out. Without getting into the details, I would say that during all of this involvement, you noticed that when I started my statement out I had a degree of success as a young businessman. I wasn't happy. I sort of had been promised there would be some sort of fulfillment when I achieved financial success. It wasn't there. I later discovered what I was missing was the spiritual fulfillment, a relationship with God, as it were. That was missing. This sort of caused me to run desperately trying to find fulfillment in other things, which involved drugs, seeking adventure, this sort of thing.

Senator NUNN. When you were taking cash out of the country, did you believe that that was one of your points of maximum exposure?

Mr. OLDHAM. I was not concerned—it was a point of exposure, yes, sir. I was very concerned about the agents monitoring who was on the flights out, that sort of thing.

Senator NUNN. But you were never searched going out of the country?

Mr. OLDHAM. No; but I don't believe that they were not compiling a dossier on people going out. I was very careful initially in that I really didn't want to go down, expose myself. I had an attorney going down as a cover for me.

Senator NUNN. With the money?

Mr. OLDHAM. No, sir. I subsequently took the money down after he made the trip and assured me there were just no checks or detection of any kind.

Senator RUDMAN. You have been sentenced to 10 years and you served 2. When will you be eligible for parole?

Mr. OLDHAM. I will be eligible in 2 years, roughly 22 more months. If I may just speak a little bit, I have seen a lot of people while I have been in prison for 2 years. Obviously that has been my only association. I have seen an awful lot of people come in on relatively minor offenses, not speaking of major narcotics traffickers but relatively minor offenses doing a year, 18 months. They have a degree of remorse. They come into prison. They are put into a very lenient situation—camps, this sort of things. Through exposure to repeat offenders, they begin to learn other types of crime, things that they have never been exposed to and they began to hear how easy it is to get away with things. I think this is a mistake, that it would be better to put

these sorts of offenders for a short period of time in a real prison situation, where they really see how bad it can be and then give them an opportunity to set their life right. I think that the prisons now have very little rehabilitation. I frankly wish there were more emphasis on spiritual development in this country, and in the prison system.

I think this is the only answer. In our education systems and so on, we dwell on physical fitness, education, and intelligence growth, but we seem to be restricting a great deal of religion.

Senator NUNN. Do you believe on the currency situation, that most of the narcotics profits that accumulate at the higher levels are taken out of the country in the form of cash and brought back in another form or do you think a large portion of that cash simply never leaves this country?

Mr. OLDHAM. I think a large part of it goes out of the country, some of it stays out of the country in a number of bank accounts and so on, overseas. Many of the major traffickers are resident of several countries and own residences in many places and jet about quite freely. Many of their assets would be in other countries.

Senator NUNN. Did you fear the IRS more than any other branch of enforcement?

Mr. OLDHAM. I certainly feared them, yes sir. I felt I had more exposure to IRS than any other.

Senator NUNN. You took more elaborate precautions to guard against IRS than any other?

Mr. OLDHAM. I took very elaborate precautions to guard against U.S. Customs and DEA also.

Senator NUNN. Don't you feel nervous when you are carrying a briefcase full of money out of this country? It seems to me that would be a point of great exposure?

Mr. OLDHAM. Because I have been assured by my attorney that there was no exposure when I went the first time, I was a little bit worried, but on subsequent trips, I realized that there was nothing to it. No, sir, I did not really fear that.

Senator NUNN. Thank you.

Senator RUDMAN. Senator Chiles.

Senator CHILES. Even though your final distribution sites were in Washington, D.C., South Carolina, and California; south Florida seems to be a major point of entry? You end up getting arrested. Why is south Florida so vulnerable and what if anything can be done to discourage this? Why is all of the action taking place in south Florida?

Mr. OLDHAM. I suppose probably because of the proximity to South America. Most of the activities in Florida, of course, flow from South America, cocaine, marihuana. Because of the proximity to Florida, I would say, but I think this is a problem that is also moving, if enforcement is stepped up in Florida, activities are going to increase along the other parts of the gulf coast.

Senator RUDMAN. Senator Chiles, if I might interrupt, I will ask Senator Nunn to take over the chair. I have to go down to an Appropriations markup and will return.

Senator NUNN [presiding]. Your time is up. [Laughter.]

Senator CHILES. You have become very confident in the secrecy of the Cayman Islands banking operations. What changed your confidence and did anyone—tell me that? What would it have taken to change that?

Mr. OLDHAM. Sir, I would think that the only effective way would be through new legislation that would enable a lot closer look at individuals using the Cayman Islands. For example, individuals like myself or my companies, had they been audited and had documents to prove loans or capitalization from a Caymanian company that couldn't be checked out; that should wave a big red flag and cause some kind of microscopic examination.

Senator CHILES. Did anyone over in the Caymans that you came into contact with have any concern about the United States getting tough on the offshore banking operations?

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

Mr. OLDHAM. No, sir, the emphasis there was to me that there are no tax laws in the Cayman Islands other than a \$10 per head individual tax. There are no tax laws there. Therefore, they don't recognize tax laws in any other country as being valid. They say that they will not change those attitudes. In other words, I am not sure I am answering your question.

Senator CHILES. I just wondered if they had any concern that we might—obviously they like the way the operation is going. It must be something that they figure is very profitable for them.

Mr. OLDHAM. It is a major industry in the country obviously. They have no intention, very emphatically, no intention of loosening their secrecy laws. This was their attitude when I was there.

Senator CHILES. That is all. Thank you.

Mr. OLDHAM. I would just like to add that I happen to deal with the Cayman Islands. There are a number of other offshore tax havens that are very similar.

Senator NUNN. Could you tell us what those are as far as your knowledge of them?

Mr. OLDHAM. I don't have personal experience with them, but just exposure to advertisements and so on. I know of course that there are a number, Liechtenstein, the Bahamas. I am sure actually you would be more familiar than I am with them. I don't have first-hand knowledge. But I just don't see the Caymans as the only place in the world doing this.

Senator NUNN. Mr. Oldham, we appreciate very much your cooperation.

Senator CHILES. The testimony is very helpful.

Senator NUNN. We know it is difficult to come forward and be frank and candid like this. But we wish you well and we hope that you will indeed repay society in the future some of the things you detailed here and you certainly display an attitude that reflects a determination to do just that.

We thank you for your cooperation with the subcommittee.

Mr. OLDHAM. Thank you, Senator.

Senator NUNN. Our next witness is Deputy Chief David McKeon, Narcotics Division and Dangerous Drugs Section, Criminal Division, U.S. Department of Justice.

We swear in all witnesses before this subcommittee.

Do you swear the testimony you give before this subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. McKEON. I do.

Senator NUNN. I understand you have a statement. Why don't you proceed.

TESTIMONY OF DAVID J. McKEON, DEPUTY CHIEF, NARCOTICS SECTION, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. McKEON. Good morning, Senators, Mr. Chairman, members of the subcommittee. My name is David J. McKeon. I am the Deputy Chief of the Narcotics Section which is a section of the Criminal Division of the Department of Justice. I have submitted my statement to you so that I will not read it. Nevertheless, I will try and give you a brief synopsis of the statement and certain portions of it.

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

Mr. McKEON. I was asked to testify before you to discuss in a general overview way what has been termed Operation Greenback. Operation Greenback is essentially a composite task force utilizing prosecutorial resources of the Department, and investigative resources of the Department of Justice and the Department of Treasury. We commenced approximately a little over a year ago, the spring of last year, in Miami. The predicate for the creation of the task force was the Treasury Department study which indicated tremendous amounts of currency flowing into the Federal Reserve bank in that area. That, coupled with the apparent and obvious information that Florida was one of the preeminent geographical areas for trafficking in marihuana and cocaine coming into the United States and a conclusion that it was an operational base for not only drug traffickers in the sense of cocaine and marihuana but also the money launderers who are facilitating their operations, was the basis for the creation of the task force which began, as I indicated, in the spring of last year.

Since that time, we have had an expansion. We presently have another attorney now in the Tampa area who has recently completed a case, and we have taken one of the early attorneys who commenced in the task force and sent him to the Midwest, specifically Chicago, to work in conjunction with the U.S. attorney's office in that area.

The statute which perhaps could be considered the foundation for some of the investigative techniques and for certain prosecutions was the Bank Secrecy Act, which was passed in 1970 and, I believe is common knowledge, was not used very extensively at all. When it was proposed that we create a task force to use it, specifically in this pilot project, we cited Miami as the most appropriate place for the utilization.

The two reporting requirements of the Bank Secrecy Act which have been utilized for the most part to generate information and intelligence regarding the flow of currency have been the 4789 report, which is utilized by banks in reporting currency transactions, and the 4790 report, which relates to the international movement, international in the sense of into or out of the United States of America, of currency and negotiable instruments.

Senator NUNN. Exactly what does that law provide, that you can't take \$5,000 in cash out without reporting it?

Mr. McKEON. That's correct, Senator, or in.

Senator NUNN. Either in or out?

Mr. McKEON. Either way.

Senator NUNN. Who are the enforcement authorities for that, strictly customs?

Mr. McKEON. The U.S. Customs Service. The task force is composed actually—so you understand—we have provided as of today four Criminal Division attorneys with grand jury authorization. We convened at initiation of the project what is known as the tax-drug grand jury. The grand jury is authorized to investigate violations of title 26 and in addition thereto the traditional title 18 criminal statutes, title 31, which encompasses the Bank Secrecy Act and title 21 which contains the drug violations.

As to the makeup of the task force, the U.S. Customs Service, primarily because of their jurisdiction regarding the questions just posed by the Senator, have provided a squad, I believe of approximately 10 or 12 special agents, to work on the task force. The Internal Revenue Service which has the collateral jurisdiction regarding the 4789 reporting requirements of the banks, provided essentially 26 special agents, at least on board right at the moment, and revenue agents to assist them in the project.

The Drug Enforcement Administration also has a group with a supervisor in the makeup, and there is liaison and information-sharing with the Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms and, to a lesser extent, with the U.S. Secret Service.

During the course of some perhaps 15 or 16 months, working with a grand jury in the southern district of Florida, the prosecutors and the agents have been able to present evidence to that grand jury which has resulted in something in the neighborhood of I believe 12 or 13 indictments in that jurisdiction against approximately 50 defendants. We have also been able to return, to seek and have grand juries to return indictments, in the middle district of Florida, basically through our attorney working in conjunction with the U.S. attorney's office in the Tampa area.

And most recently we are commencing yet our third project.

Because of grand jury secrecy, because most of our investigations which have resulted in indictments are pending litigation and to protect the constitutional rights of the accused, I cannot go into any particular detail of any particular investigation. It is ongoing. We anticipate it continuing for some period of time and the grand jury is still in session hearing yet further evidence which relates generally to the money laundering aspects of major drug traffickers.

The perspective is basically there, in utilization of financial institutions to move their currency.

I have alluded generally to certain investigative techniques and without relating them to any particular investigation or to any particular case, I can say generally that this project began as a pilot program. It was a learning exercise. We had certain raw data which in-

licated a tremendous amount of currency flowing through commercial banks into the Federal Reserve. By scrutinizing and collating the reporting forms, the 4789 forms, and by audits which were conducted by the Office of the Comptroller and subsidiary organizations, we were able to identify various significant accounts where the money which went through was simply phenomenal. Currency deposits of in excess of \$500,000 on Tuesday followed by another half of a million dollars on Thursday, so forth and so on.

The Comptroller of the Currency and those agencies in their civil audit authority began to identify what would be Bank Secrecy Act violations, failure to report transactions, transactions reported but the form not properly filled out or filled out in possibly fictitious names and other types of methods attempting to get around this requirement.

This type of information was then brought to the attention of the Treasury Department which has the authority to turn that investigation over to the Internal Revenue Service for a criminal investigation, which was done. That is one technique. The other techniques have been the more traditional. We found out that in any type of good criminal investigation, you need live witnesses. And we have been able to come up with live witnesses in different instances. We have been able to use the grand jury process whereby we can immunize the so-called lesser capable person in order to compel his testimony against the more culpable person.

We have used traditional physical surveillance techniques by surveilling money couriers from banks to specific money-laundering individuals who were actually the lead characters, so to speak. These are some of the techniques which we have used. The pilot project is still a pilot project. We are learning things every day. We are expanding it. We have had attorneys participate in lectures regarding the Bank Secrecy Act and various investigative techniques utilized in Texas, in Illinois, and at Operation Greenback in Miami, Fla., with the purpose of advising other investigators and assistant U.S. attorneys in the various procedures and techniques which we have used.

I think generally in the area of operations, we have had certain successes. I have alluded to the fact that we have returned what I believe to be significant indictments. Seizures have been made. We have seized airplanes, we have seized cash which was attempted to be brought out of the country in significant amounts, and we have seized certain moneys which have been identified in suspicious accounts. I believe the total amount seized in the duration of the pilot program has exceeded some \$20 million.

And although we recognize that this is not a significant amount in the context of being compared with the overall billions which are related to major drug trafficking, we believe we are reaching a point where we are making inroads into the financial operations of the major drug traffickers.

That basically, Senator, is an overview of my prepared statement and I will be happy to answer any questions that I can.

Senator NUNN. Thank you, Mr. McKeon. We appreciate your summarizing your statement. We will put your whole statement into the record, without objection.¹

¹ See p. 615 for the prepared statement of Mr. McKeon.

Senator NUNN. Mr. McKeon, we heard testimony this morning that field prosecutors in the narcotics area are hampered by Justice Department regulations which restrict their ability to indict or negotiate pleas in tax cases without the approval of the tax division. In your experience in narcotics matters in the Justice Department, do you feel that more authority in tax cases should be delegated to the discretion of the prosecutor?

Mr. McKEON. Senator, I am not sure I agree with the premise of the question frankly. Let me preface my answer by saying I am in a section of the criminal division, which is separate and distinct from the tax division. In Operation Greenback, we have not had any difficulty. As a matter of fact, as I indicated in my prepared statement, we essentially commenced our task force investigation by utilizing a tax-drug criminal grand jury.

Senator NUNN. I understand that. I am not talking about Operation Greenback. I am speaking in general because testimony this morning from one of the prosecutors was if he did not have to wait a year or so to get approval from the tax division when he is handling a narcotics case, that he could join those two together and be much more effective in expediting and disposing of many cases plus securing more civil forfeitures and also more information.

I was not referring to Operation Greenback because as you indicated, this is a unique pilot project but rather speaking in general.

Mr. McKEON. Generally, Senator, I can't answer that. I don't know. I don't know that there is a general delay of anything of a year in that type of prosecution.

Senator NUNN. Could you get the tax division—we will submit it for the record, and ask that we get the appropriate people in the Department of Justice to answer that question.

Mr. McKEON. Yes, sir.

Senator NUNN. And give their comments on the testimony we heard this morning on that.¹

You mentioned that one of Greenback's objective was to pursue both criminal and civil forfeitures. How successful have you been in the Greenback operation in the forfeiture area?

Mr. McKEON. The seizures, as I had indicated, have been in excess of \$20 million in a project. At the present time, they are subject to litigation and, as such, I believe it is inappropriate for me to comment on these seizures.

Senator NUNN. I am not asking about the individual cases, just in general, have the forfeiture laws worked in Operation Greenback successfully or do we need to make changes in the laws or do you prefer to wait on that until conclusion?

Mr. McKEON. Well, I can say this, it is not in direct response to your question, but at the present time, the Department has recognized a need for a more uniform criminal forfeiture legislation and as I sit here now, I do know that there is a proposed bill which is still being studied which the Department, I anticipate, will be submitting to Congress before the end of the month.

Senator NUNN. On the forfeiture?

¹ The material to be supplied for the record was not received at the time for printing.

Mr. McKEON. That's correct, on criminal forfeiture, yes, sir.

Senator NUNN. Is it true that Greenback's success has forced traffickers to result more frequently to physically moving their profits from the country?

Mr. McKEON. The cause and effect I could not say yes and prove it beyond a reasonable doubt, but that is my opinion.

Senator NUNN. Is that good or bad?

Mr. McKEON. I think that's good because, frankly, it's a hell of a lot tougher to take two big suitcases containing a million bucks in your private airplane and run the risks of interdiction, run the risks of, frankly, being robbed yourself. I think there is a myriad of problems which face the major drug trafficker if he is attempting to do it physically as opposed to securing himself some type of check or something else and doing it through banking circles.

Senator NUNN. Mr. McKeon, we have a vote up there so I am going to have to leave in a moment. What are the major drawbacks that you have run into with Greenback in terms of things that Congress should be alerted to?

Mr. McKEON. Well, I think one recognized problem in the area, and I believe this is going to be addressed, is that we have encountered certain difficulties in the Bank Secrecy Act regarding the 4790 reporting requirement, that is, the customs reporting requirement, whereby there is at least an issue, there being no attempt provision in the statute; we have had differences among the judiciary as to whether or not a certain set of circumstances has met the criteria for the accomplishment of a particular crime.

Senator NUNN. In other words, I believe what we have heard before is a situation that would entail customs agents finding a large amount of money in a briefcase about to leave the airport. In those cases, the law itself may be interpreted to say that unless it has already left the country, there is no violation.

Mr. McKEON. That is correct, Senator.

Senator NUNN. That is why you need an attempt statute, isn't it?

Mr. McKEON. That is my personal opinion and I believe the Department supports that.

Senator NUNN. What luck are you having in terms of mutual assistance treaties? Has the Justice Department got any list of treaties you are in the process of trying to negotiate or is this something that is not of great urgency?

Mr. McKEON. I don't know if there is a list, Senator. My responsibilities do not include that aspect of the work regarding treaties. I do know that our section worked on both the extradition and the mutual assistance treaty with Colombia which I understand has been before the Foreign Relations Committee of the Senate, and I would anticipate it coming forward very quickly. And I, from a personal quasi-prosecutive point of view, think that is going to be an excellent treaty. And I think in a general sense the more mutual assistance treaties we can have, the better we will be, recognizing that they seem to take an inordinate amount of time to accomplish.

Without going into the factors, we worked on the treaty with Colombian authorities for a very, very considerably long period of time. I think it is going to come—and I think frankly it will help Greenback. We have many fugitives who are Colombian citizens.

Senator NUNN. Is there any effective way to monitor wire transfers of narcotics money?

Mr. McKEON. I am sorry.

Senator NUNN. Is there any effective way to monitor wire transfers of narcotics money?

Mr. McKEON. I suppose I would have to simply say I am not sure. My understanding is that the banking business, the financial world in general, utilizes just a tremendous amount of wire transfers in legitimate enterprises. To effectively monitor that, I think, would be a very, very difficult undertaking and I am not really sure to what end.

Senator NUNN. Thank you very much, Mr. McKeon. We have a vote up there. We appreciate your testimony. We may have other questions for the record.

Mr. McKEON. Thank you, Senator.

Senator NUNN. Counsel will announce the next hearing.

Mr. WEILAND. Senator, we are going to reconvene tomorrow morning. I think it is best since we only have a brief staff statement left that we adjourn for the day.

Senator NUNN. We will adjourn then until tomorrow morning to continue the hearings.

Thank you, Mr. McKeon.

[Whereupon, at 11:55 a.m. the hearing adjourned, to reconvene at 9:30 a.m., Wednesday, November 18, 1981.]

INTERNATIONAL NARCOTICS TRAFFICKING

WEDNESDAY, NOVEMBER 18, 1981

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met at 9:43 a.m., in room 3302, Dirksen Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. William V. Roth, Jr. (chairman) presiding.

Members of the subcommittee present: William V. Roth, Jr., Republican, Delaware; Warren B. Rudman, Republican, New Hampshire; and Sam Nunn, Democrat, Georgia.

Members of the professional staff present: S. Cass Weiland, chief counsel; Michael Eberhardt, deputy chief counsel; Marty Steinberg, chief counsel to the minority; and Katherine Bidden, chief clerk.

[Members present at commencement of hearing: Senators Roth and Nunn.]

Chairman ROTH. The subcommittee will be in order.

This morning we convene the final day of the current hearings into narcotics trafficking and the law enforcement response thereto. We have over the course of the last several days heard testimony indicating that this country's war on drugs has not been successful and may, in fact, present the country with an increasingly grave situation.

Today we are fortunate to have the former Administrator of the Drug Enforcement Administration, Peter Bensinger. He will be followed by a panel of witnesses to include the Commissioner of the Internal Revenue Service, Roscoe Egger, Deputy Assistant Secretary of the Treasury, Robert Powis, and George Corcoran of the Customs Service.

Finally, we are very pleased indeed to have this morning Dr. Carlton Turner, the White House Adviser on Narcotics. He will be making his first appearance before a congressional subcommittee.

At the conclusion of today's hearings, we expect to present a series of recommendations which several members of the subcommittee have arrived at after listening to testimony over the last 2 weeks and digesting some of the reams of material which are available on this subject.

Mr. Bensinger, would you please come forward?

Raise your right hand.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BENSINGER. I do.

Chairman ROTH. Please be seated. Again, it will be the practice of the subcommittee to include the total statement as if read. Where practical, I would invite the witnesses to summarize their statements, but I leave that up to your individual choices.

Mr. Bensinger?

**TESTIMONY OF PETER BENSINGER, FORMER ADMINISTRATOR,
DRUG ENFORCEMENT ADMINISTRATION**

Mr. BENSINGER. Chairman Roth, Senator Nunn, I am very appreciative of the opportunity of appearing before you.

I will try to summarize my remarks. I commend the subcommittee for holding these extensive hearings at this time because there is critical legislation pending in both Houses of Congress.

There are severe, difficult budget cuts being imposed on law enforcement agencies that will greatly constrain our effectiveness; and administrative realignment is also under review. So your hearings could not come at a more important time and your participation, I think, over the years that I have testified as administrator has been most helpful. This subcommittee, the Permanent Subcommittee in the Senate has been in the lead on narcotic legislation sponsored and you, Mr. Chairman, appropriately commented on the Tax Reform Act of 1976 as a drug dealer's relief act. That is just one item of interest this subcommittee has focused on. It ranges from bail and sentencing to the posse comitatus assistance which I understand passed the House last night.

There is a great deal that still needs to be done. And one of the most important issues is the question of resources. I would like to cover today briefly that issue, comment on the international implications of what we are doing overseas and what this means domestically, touch on executive direction and leave to others really to focus on public awareness.

I am familiar with your legislative agenda and I think you are familiar with the one I proposed.

Let me start first on the issue of resources and I want to indicate that I fully support President Reagan's efforts to reduce Government spending.

I understand that the President believes, as I think the American people do, that we have to reduce the deficits and the spending that the Federal Government has over the years developed a pattern of just more spending than is appropriate.

But I am not here as a budget analyst. I am not here as Chairman of the Council of Economic Advisers. I am here as the former administrator who has had the job of directing the Drug Enforcement Administration for 5½ years. The drug enforcement area is not the area to hit with massive budget cuts. DEA, the FBI and the Customs Service have had a reduction in total agent deployment over the last 3 years of in excess of 10 percent. There are 10 percent fewer agents today in the field for the Customs Service, for the FBI, and for the DEA than there were in 1976.

The Attorney General's Task Force on Violent Crime, cochaired by former Attorney General Griffin Bell and Illinois Governor Thompson made a number of important recommendations. I believe they were on target.

One of the most important recommendations was the recommendation for increased resources for investigative and prosecutorial law enforcement agencies. And Judge Bell tells the story that there is one Federal employee in the Department of Agriculture for every eight farmers.

In 1978, there were a total of 40 million victim offenses in the United States. In that same year, 600,000 offenses were committed with firearms. So our ratio from the criminal justice standpoint does not come close to the Department of Agriculture.

In terms of the Drug Enforcement Administration, I do not think this agency can afford to be turned into a 9 to 5 workplace. And the present Continuing Resolution, and you heard from Bud Mullen yesterday about the budgetary restraints, is, I think, creating the possibility that that could happen.

Narcotic agents have got to be flexible to move at 3 a.m. in the morning, at midnight, on weekends, to be able to leave their State, even leave the country to meet drug dealers. That is how the most important conspiracies can be put together. And a limitation on the number of vehicles available, the amount of travel funds, operational funds that would deny the opportunity to be seized when you can make an important undercover meeting is something that we should worry about, that you should worry about, and I am sure Mr. Mullen has worried about it.

It goes beyond just making an important undercover discussion. It could be recorded on a cassette tape, it could be videotaped. It goes to the safety of the agents themselves. In an undercover situation, you need to have the appropriate number of vehicles, appropriate number of agents, the appropriate amount of equipment to protect the safety of the agents involved.

I am sure that DEA does not want to compromise that safety factor.

With a reduction in resources, one of two things will happen. You will have reduced operational activity or reduced informant development or both. And informants are a key in the narcotic trafficking investigative work. I do not have an accurate number on whether the informant development is up or down in the last several months since I have left DEA, but I would suspect with a significant reduction in funds for operations, purchase of evidence and for informant development, that would be the case.

State and local task forces are essential. They provide good continuing communication between local law enforcement and the Federal Establishment. They leverage the Federal dollar by utilizing State and local law enforcement presence and they can move a variety of individuals between jurisdictions.

I am told the task forces presently are at a standstill with respect to operational funding and the purchase of evidence and information accounts. Probably where I think you get the best return on investments in overseas, both in terms of DEA presence as agents and intelligence collectors and in terms of a State Department, government-wide, coordinated crop destruction, eradication program, as was the case in Mexico.

The present appropriation for the State Department's Narcotics Bureau of some \$35 million is not going to do the job. When the Government of Mexico and the United States embarked on a long-range crop destruction program, considerable assistance was given to the Government of Mexico. That assistance, by the way, was not the major share of the money spent on that program. Mexico spent several times

what the U.S. Government did to destroy poppy fields, but the program worked.

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

Mr. BENSINGER. The Government will have to do more than create new reporting structures and will have to do more than just cross-train agents or provide additional opportunities for investigation. You will need a real effort at the source country to turn off the source of supply and you will need the prosecutorial resources to try the cases and to write the indictments.

When I first appeared before this subcommittee some 5½ years ago, DEA had 2,000 fugitives. Now we have 3,000 fugitives and the lack of a deterrent, meaningful deterrent is hurting the drug enforcement effort, not only throughout this country, but throughout the world. We are losing the respect of our associates in foreign countries who see us making arrests and the traffickers continuing to be free on bail and then disappearing, perhaps returning to the country of source.

President Ford and members of this subcommittee in 1976 submitted legislation that would provide for judges to deny bail after a full hearing in which the Government would have to prove that an individual would flee the jurisdiction of the court, compromise a witness, jeopardize evidence or continue to conduct criminal activity. It is a sad commentary that 5 years later we still haven't got legislation in this regard, although it has passed the Senate.

Mr. Chairman, Senator Nunn, Senator Rudman have talked about the Tax Reform Act, but candidly, this is another area that needs close attention and I am pleased that Commissioner Egger will be following my testimony with a dialog with you on that important subject.

Domestic marihuana cultivation—a tremendous job, generally in the past, left to the States but today every State in the union has some domestic cultivation of marihuana.

The Federal Government will have to, I think, work in concert with the States to address this growing problem but will have to address it in some fashion that provides more than just a pattern on paper.

Last year's budget request had a small but important model provision of about \$1,300,000 for the Drug Enforcement Administration to work with the States to identify fields, to facilitate the identification of the owners, to look for asset seizures, to develop intelligence and to give the kind of seed initiative that a meaningful local program should have.

I am hopeful the Congress will, with the administration, reconsider this issue.

Now, one way we could, in my opinion, improve drug enforcement effectiveness would be to use the assets of the traffickers to help fund this effort. This is a suggestion that comes from experience. The 881.A.6 provision is a forfeiture provision that was adopted a little less than 3 years ago, and it enabled the Drug Enforcement Administration to seize, subject to a court's review, assets derived from, intended to be used for, or traceable to, a violation of the Controlled Substances Act. Next year that provision should enable the Government to recoup in time about a quarter of a billion dollars worth of assets, in cash, real estate, stocks and bonds, boats, ships, and vehicles.

If we had an opportunity to turn this potential inventory of trafficker assets to work against the traffickers themselves, I think it would

be a very worthwhile procedure. The illicit crop destruction program needs to be monitored in Colombia. It is going to cost money; it is going to cost the U.S. Government and the taxpayers money, but I think it would be a good investment. I think Colombia is looking for assistance.

They have 100,000 acres of marihuana growing on the north coast.

That marihuana can be destroyed, should be destroyed. It is not for me to tell the Government of Colombia what program to use. I think Paraquat would work very effectively. But they should be the ones to decide what type of herbicide is used. I am pleased that the Foreign Assistance Act will now, it appears, at least remove from the U.S. Government the obligation to decide what is to be used.

The coca-growing areas of Peru, Bolivia, and Colombia need to be inspected, controlled, and enforcement of crop destruction authorized. AID generally has gotten into the crop substitution program area, and you heard from Ambassador Ed Corr and Ambassador Tom Boyett. They are excellent Ambassadors, in my personal opinion. I think they will do the U.S. Government a great service in their countries. I would hope their AID programs would not have to be dropped out of the bureaucracy in Washington like wisdom teeth out of a patient in a dentist's chair. My experience over the past several years has been that those programs are very difficult to get in place—a great deal of program justification, review, interagency shuffling goes on. I think with Ambassadors like that you can get a crop substitution program launched.

I think the new AID Administrator, Peter McPherson, who I believe is aware of this problem, will bring a new perspective. You have that opportunity. When we are talking about those countries in particular, we are talking about three-quarters of the illegal drug traffic and money in this country, 70 percent of the marihuana, 90 percent of the cocaine.

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

Mr. BENSINGER. With a bilateral program, we have had success. In Turkey, in Mexico, with cooperation of the Congress, leadership from the Ford administration for Mexico which the Carter administration continued funding for \$15 million a year to Mexico. We saw heroin availability drop, fewer addicts, fewer injuries, fewer overdose deaths. The essence of that success depended on strong State Department funding and continuing multiyear commitments, good intelligence, and, I think, effective DEA presence in countries working cooperatively with the Government of Mexico but never imposing U.S. laws, U.S. perspective, or, in fact, embarking upon enforcement operations that are the proper province of the host country.

The posse comitatus legislation I just want to make one comment on. I think it is needed, I supported it. Someone is going to have to pay for those military flights. The question I would hope the Congress would address is who is going to do it and is it in this year's budget.

When the U.S. Coast Guard and U.S. Customs Service ask the military commander to send up an EC-2 or EC-3 or to get additional planes in the air to provide needed reconnaissance, the issue of the payment of that service is critical.

It is great to have the program but if you do not have the tools to get it done, I would be worried. I am encouraged that we have got

the legislation, encouraged we have the opportunity to really have impact.

I am not sure the dollars are in the budget. I would hope the Defense Department would, with its large resources, be able to carry on these reconnaissance flights in the country's best interest, but the Assistant Commissioner of Customs and the Coast Guard and Treasury officials will have to describe their relationships and their budgetary provisions to handle that kind of an ongoing program.

I won't go into the legislative initiatives. I will be happy to answer questions. I would make one new recommendation legislatively, and this is perhaps a surprise to this committee and some of my colleagues sitting behind me, but I am suggesting, Chairman Roth, Senator Rudman, that we use the 881.A.6 civil forfeiture provision by which Government investigative agencies can seize assets derived from, traceable to, or intended to be used for a violation of a crime for the FBI, for IRS, for the Immigration Service, for ATF. Today's Wall Street Journal, Wednesday the 18th, you don't have to turn the page, it is right there staring you in the face:

Peddling drugs has its deductions, Jeffrey Edmondson of Minneapolis was self-employed in the trade or business of selling drugs. He got 1.1 million amphetamine tablets, 100 pounds of marihuana, 13 ounces of cocaine on consignment. His income was \$128,500. He kept no records, but he reconstructed his deal and applied for an IRS tax jeopardy assessment. The IRS rejected all the expenses. The Tax Court Judge Goffe found Edmondson's testimony honest, forthright and candid and accepted \$105,000 out of \$128,000 as costs of goods sold. He was denied a deduction for an airfare trip and entertainment to San Diego.

But the \$128,000 the man admitted was drug money the IRS could not confiscate. If they had an 881.A.6 seizure provision, or if the FBI did in an organized crime case where there was murder for contract or labor racketeering or extortion, and that agency or other agencies had the preponderance of evidence responsibility to go to the court and say, look, this individual organization's, or person's assets were derived from a violation of the law, we are responsible for investigating, we are going to seize that property, this would be a tremendous benefit to the investigative agencies, it would be billions of dollars of assets taken away from the criminals and it would help our financial picture and our budget constraints. I would suggest, Chairman Roth, you might consider, Congress might consider, setting up a trust fund of trafficker assets which would reach the \$4 and \$5 billion mark in several years to help law enforcement if we are not going to get assistance from the OMB budgetary review process.

I have discussed this with several officials of other agencies. The 881.A.6 provision has been judged to be appropriate in several courts in this country. It was used with considerable success by the Drug Enforcement Administration last year. I think our seizures exceeded \$150 million. There is a test case in McAllen, Tex., with the Montemayor family that involves the seizure of assets without a criminal arrest being made.

And the advantages in a civil procedure is that you have the preponderance of the evidence rather than proof beyond a reasonable doubt. I think it is not asking too much to let the individuals on trial prove where they got the money if it was not from an illegal drug deal or contract for hire or extortion deal and let the judge determine

if there was enough evidence after proper judicial review that that was the case.

I think Federal investigative agencies would be able to collectively make an impact on crime. It would help control drug traffic. You say what does that have to do with drugs? Because the trafficking in weapons, the trafficking in illegal aliens, the trafficking in counterfeiting, the trafficking in organized crime directly or indirectly affects the narcotics traffic. They are interwoven. So I would recommend other investigative agencies consider that as well as the Congress. If we hit the criminals in the pocketbooks with this attack, we do not have to worry about the number of courtrooms, the number of prisons. We will be able to take away the profits and let a judge decide if they were, in fact, derived illegally.

I would add that I think we will need manpower commitments for drugs from the investigative agencies from the IRS and from the FBI. The IRS has done an excellent job in coordinating, co-operating on a number of investigative assignments with DEA and a great deal of progress has been made. But candidly, I think they would be well served to even devote more effort on drug traffickers where the tax evasion is in the billions and respond to the 97th Congress direction which did indicate that some \$20 million would be allocated.

The FBI has been brought into drug enforcement. You heard from Bud Mullen. He will need the resources to do the job as an acting administrator. He will need more than cross designation. He will need more than the opportunity to change personnel or policies.

Eventually, it will boil down to somebody going out in the street and making an arrest and that criminal being brought to trial and sent to prison. Today in Miami, we have 1,000 individuals not in prison simply because we do not have a criminal justice system that can try them. There will have to be prioritization within Congress, within the Department of Justice, and within the administration as to how important drug enforcement really is.

I would add that prevention is very important and I have not addressed it. Public awareness is very important and I have not addressed this, but I do want to recognize Mrs. Reagan for the work she has already done in a short period of time in this field. It has been visible; it has been serious. It has involved multiple briefings from law enforcement and health officials and then personal presence in a variety of communities and her talking with parent groups.

I think Mrs. Reagan's commitment to this area is important. I think it sets a tone not only as the First Lady but for parents who have got involved in this fight, and so does private industry and private citizens. Volunteerism is going to be an important ingredient and Ross Perot's effort in Texas is one excellent example. Another is the National Federation of Parents for Drug Free Youth.

Those organizations will have impact but it is one thing to talk about a problem and another thing to report a crime. It is not the same as making an arrest and prosecuting a case. One cannot substitute for the other. We need both. And I don't think we have enough of the latter.

This subcommittee has heard a great deal of testimony and it is very familiar with the subject. You have an excellent staff, Chairman Roth. You have excellent members on your Senate committee, but I am concerned that our domestic marihuana trend is still up, that the cocaine tide is a flood, that Latin America has received little in the way of a long-term promise of aid, the Mexican program has not been replicated, no crop destruction programs initiated despite increased efforts that have been cited to do more overseas; the funds have not been provided and neither have the prosecutors. And the number of agents budgeted to be assigned is short of what is required.

If the U.S. Government does not fund adequate prosecutorial resources, adequate international long-term program initiatives, and unless the augmentation of the effort that could be promised by FBI agents' investigative ability is translated into real meaningful man years, more agents and more prosecutors, the promise of increased drug control is a very thin one.

Mr. Chairman, I appreciate the opportunity of appearing. I will be happy to answer any questions you, Senator Rudman, or members of the staff may have.

Chairman ROTH. First, let me express my appreciation to you, Mr. Bensinger, for being here today and for the very splendid service I think you have given this country in this area. This subcommittee wants to continue to draw on your expertise in this area.

I might say your suggestion in the area of assets seizure is a very interesting one which I am going to ask my staff to sit down with you and explore both the plusses and minuses. Obviously, that kind of approach means you have to build in safeguards as well so that the authority is not misused.

Like you, I am concerned about the availability of adequate resources.

Let me ask you, first, on the basis of your expertise and background what might be considered a threshold question; namely, whether or not in your opinion you think narcotics trafficking and abuse can be significantly controlled or decreased at all.

Mr. BENSINGER. I do.

Chairman ROTH. Why are you so optimistic?

One of my great concerns is what appears to be the increasing acceptability on the part of responsible segments of our society as to not only the use of marihuana but the use of other types of drugs. I like your optimism, don't misunderstand me.

Mr. BENSINGER. I can give you the reasons for it, Mr. Chairman.

First, if you looked at that heroin supply chart, and while I am no longer the administrator of DEA, maybe one of my associates could hoist it, you would see a substantial reduction from 1977 to 1980.

If you had an overdose death chart, it would go from 2,000 deaths a year to 600.

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

Mr. BENSINGER. In metric tons, it is 4.5. If they went back to 1976, it would be $6\frac{1}{2}$ to 7 and 1975 would be higher than that. Heroin was reduced and it was a top priority because the Government sentenced heroin dealers to long terms in jail, because the Government put up money and agents and presence in Mexico and had a meaningful bilateral program. Also because, as you suggested, Senator Roth, the

public attitude toward heroin was pretty clear. It wasn't debatable. Nobody kind of thought heroin was acceptable.

My second sense of why this problem can be controlled, perhaps never eliminated to zero, but controlled, is because the number of high school seniors smoking marihuana in the last 2 years have gone down. That alone doesn't solve the problem, but it indicates an awareness on the part of that part of the population that this is a health hazard.

In fact, if you look at the high school survey from NIDA, almost every drug was judged by the seniors to be more difficult to obtain with the exception of cocaine and some metamphetamines.

My other reason for optimism, guardedly, is because people like Pat Burch and Ross Perot are people who are going to wage this battle and others, with you, to see the necessary laws get passed and I hope the resources are provided.

I don't think the drug war is going to be solved, though, unless you provide the agencies with the resources. I don't think it is going to cost a lot of money and I propose you use the criminal's assets to fund the effort.

Chairman ROTH. As I mentioned, we will ask the staff to discuss further that approach. It may well be advisable to have a specific hearing on that approach.

I agree with you that probably the most effective way of attacking the problem is the eradication at source. And, yet, the problem is such a tremendous one both abroad and even here at home. So, again, can I ask you, is this something that can practically be done?

Mr. BENSINGER. It depends on the level of political will. Cocaine and marihuana are the two biggest problems facing us and they are enormous problems. They are complex because there is division of thinking about the health hazards, there has been misinformation in the past.

People still think of marihuana as an unharmful drug without realizing the chemical element THC has gone from 1 percent to 5 percent in the past 3 years. I think it can be controlled but in the case of cocaine first, the key source countries are going to have to be shown that the United States means business and is willing to invest in that program.

I think with Ambassadors like Ed Corr and Tom Boyatt, they can effectively reduce the raw material. If 10 years ago we had this conversation, or 7 years ago and you had said, could we reduce the marihuana from Mexico of 90 percent of the U.S. crop to 10 percent and heroin from 90 to 10, you would have been very skeptical, yet it happened.

You had a Government that was committed, you had a U.S. Government that was committed and you had money put into the program. Domestic marihuana is going to be a very tough problem, but you have got to start. You have got to start with sentencing, you have got to start with crop destruction, you have got to start with consistency and enough resources to deal with the traffickers.

Today, marihuana and cocaine traffickers can post a half a million dollars bail, \$1 million bail and laugh at the U.S. Government and take their money somewhere else. The posse comitatus legislation will help, the tax reform legislation will help, asset seizures will help, the work overseas will help.

I don't think the battle is hopeless. I think in those two drugs, you are dealing with large quantities, lots of money and some confusion in the mind of the public.

Chairman ROTH. I agree with you, the two Ambassadors we had appear before this subcommittee are indeed an excellent example of the kind of leadership we need in this area.

Did you experience the same kind of cooperation and leadership, particularly in the Far East and other areas?

Mr. BENSINGER. I think it is uneven.

Chairman ROTH. What can we do to strengthen that?

Mr. BENSINGER. You are asking me an open-ended question. I am going to take advantage of it. I would have the President and the Secretary of State and the Assistant Secretary of State from each of the bureaus meet with the Ambassadors from the key countries and have everybody there—have Mr. Stockman there as well—to show how important this is and then take the signals from there and the AID Director.

If the program is Thailand or if the program is Colombia or if the program is Peru, Bolivia, let's find out what percentage of the budget, the resources, and the Ambassadors' agenda it is going to fall on.

Is it going to be the first thing that the Ambassador talks to the President or the Prime Minister about or is it going to be an afterthought at the end of a meeting?

Chairman ROTH. You mentioned the role the First Lady was playing. Perhaps she could be helpful.

Mr. BENSINGER. She already has been, and so has President Reagan, make no mistake about it. He has spoken out about drugs, he gave an excellent message in New Orleans.

I would like to see the resources for that put into the overall program.

Chairman ROTH. I would think this subcommittee could be of some help in this area, that we could take up the matter both with the White House and particularly with the State Department to secure their cooperation in giving greater emphasis to this problem at the Ambassador level.

My 10 minutes are up, so I will yield to Sam Nunn who has been a leader, as you well know, in this area. He is former chairman of the subcommittee.

Senator Nunn?

Senator NUNN. Thank you, Mr. Chairman.

Mr. Bensinger, you mentioned the forfeiture provisions. About 3 years ago you mentioned the forfeiture provision we passed in the Senate and became law. That ties forfeiture to a criminal indictment, is that right?

Mr. BENSINGER. Not necessarily, Senator Nunn. There is a civil process which it can precede from without having a criminal arrest made.

Senator NUNN. What is it you are advocating at this time in addition to that?

Mr. BENSINGER. I would advocate that other investigative agencies such as the FBI or the IRS or Customs Service or Immigration Service have in their principal statutory investigative authority, the authority to seize assets from, derived from, intended to be used for or traceable to a violation of customs law, immigration law, bank fraud, contract for hire, organized crime. So that you get an opportunity to seize the assets of criminal organizations without going through a racketeered influence corrupt organization procedure, which is very lengthy, as far as a criminal indictment.

You would still need to have a Federal law enforcement officer determine on a preponderance of the evidence that these assets or these funds came from a violation of the law. And there would be a hearing and the judge would determine if the money that bought a \$4 million house and real estate, an airport, was derived from a violation of the immigration statutes just like it was of the drug statutes, the criminal organization would lose that asset.

Senator NUNN. That is already provided in the RICO statute, there is a provision for civil forfeiture in the RICO statute short of criminal indictment; is that right?

Mr. BENSINGER. Senator, the RICO statute, I believe, does—I would have to check counsel on that specifically. But the RICO statute generally has to document a business starting from the beginning through the end over a long period of time.

Government would have to prove the only purpose this group was in business for was, in fact, to violate the law.

In the case of 881, you don't have to tie the individual organizations—

Senator NUNN. 881 is the specific one on narcotics?

Mr. BENSINGER. Yes, sir. You don't have to tie the complete life and length of those particular assets, all of the business entities that organization or individual is dealing with.

All the Government needs to do is go and say that plane, that house, those shares of stock, or that cash came out of this illegal drug deal.

Senator NUNN. So you are saying what other agencies need is some similar authority to what narcotics agents have on 881?

Mr. BENSINGER. Exactly.

Senator NUNN. You are not saying that in the area of narcotics, per se, you need to expand that civil forfeiture statute. You think that one is broad enough.

Mr. BENSINGER. Right on target.

Senator NUNN. It passed 3 years ago. What has been the holdup in more vigorous enforcement of it?

Mr. BENSINGER. I think it was difficult to train both the prosecutors and agents initially. The first year seizures were about \$13 million. The next year were \$90 million. This year they did over \$150 million and I would be surprised if they don't do close to \$300 million next year.

The limitation will be now on resources available to make the seizures. Initially it was on the training, orientation, and availability of expertise when the case got put together.

Senator NUNN. You were the one who first advocated that provision; of course, I sponsored the bill that got it through.

What do you believe—could you just give us an example of how that would work?

Give us a hypothetical.

Mr. BENSINGER. Let's say the very case in the Wall Street Journal, with the IRS, in which an individual admitted he received \$128,000 from clearly a violation of Federal law. If there was a forfeiture statute, which there is in the case of drugs, this person may not lose the money to IRS; but DEA can go in with an 881, and probably already has, and take that money.

If it wasn't a violation of the drugs laws but say it was a bank, a person robbed a bank, he is in business to rob banks, he has robbed a bank, it wasn't a RICO statute but a one-time deal and he had \$350 to, let's say, a \$1,500,000, and he bought a home, had some money, put it in stocks and bonds, and he had some cash.

The FBI, theoretically, would be able to, if they had the same type of provision, go in and prove that those assets were derived from a bank robbery.

Senator NUNN. Where does the money go under 881 now if you recover it?

Mr. BENSINGER. It goes to the U.S. Treasury. It doesn't all go the day we seize it. It has to go through a court process and adjudication. So there will be a lag time between the actual seizure of the assets and the U.S. Treasury actually getting cash.

But the Government, U.S. Treasury gets it. It does not go to the investigative agency.

Senator NUNN. How much did the Government get in the most recent year you have statistics for from that 881?

Mr. BENSINGER. The value of assets seized in fiscal year 1981 are in excess of \$150 million.

Senator NUNN. How much of that ended up in the Treasury; what was the net?

Mr. BENSINGER. I would say it was several millions of dollars, perhaps \$10 or \$15, I am not sure. I don't have the specifics.

Senator NUNN. What happens to the difference between the gross and the net?

Mr. BENSINGER. The GSA and Marshal Service have auctions of boats, there is an airport that hasn't been sold, there is an airport building, the discotheque in the Omni Hotel in Miami.

Senator NUNN. It is a matter of cash flow, a lot of that is going to come in later on. There is not that much experience in administering it.

Mr. BENSINGER. That is right.

Senator NUNN. What would you estimate the total net the Treasury is going to get in the future, give us a ballpark estimate on a recurring basis, what kind of yearly figure?

Mr. BENSINGER. I think in drug trafficking alone, you will be in the billions of dollars.

Senator NUNN. Net to the Treasury?

Mr. BENSINGER. Yes.

Senator NUNN. Per year?

Mr. BENSINGER. Yes.

Senator NUNN. You believe that will come in, say, in 2 or 3 years?

Mr. BENSINGER. Three, perhaps. It depends on how many agents or prosecutors you have to take these cases to court.

Senator NUNN. What is the total DEA budget in a year?

Mr. BENSINGER. We asked for \$242 million when I was Administrator. I don't think we are close to that now.

Senator NUNN. So you are talking about more money coming in than the total cost of running DEA potentially?

Mr. BENSINGER. I think in 3 years a criminal asset forfeiture program under 881 could set up a trust fund in the billions of dollars that would fund not only DEA but the State Department's narcotics enforcement program and probably several other agencies as well.

Senator NUNN. What would you think about setting up the trust fund in law so that the money that went into these forfeitures were put into a law enforcement pool, and of course would be subject to some form of appropriations but would be designated for law enforcement purposes?

Mr. BENSINGER. I would certainly support it. The city of Jacksonville, Fla., today does not tax any of their citizens for law enforcement. We have talked with the State of Florida and local municipalities since you went ahead and authored this bill in the Senate. We got it passed. We talked to other States. Jacksonville now runs their entire law enforcement operation out of forfeitures.

Senator NUNN. They have similar forfeiture statutes at the State level?

Mr. BENSINGER. Yes.

Senator NUNN. Does this mean we might be able to set up a revolving fund with existing law just by setting up a trust fund, actually having the narcotics forfeitures and in effect, narcotic dealers, paying for law enforcement?

Mr. BENSINGER. That would be certainly my suggestion. I think the chairman and you have made important comments and staff study of this with the appropriate legal authorities could focus and develop the program like that. I think it would be interesting.

Senator NUNN. Is there a question of possible abuse here because the law enforcement agencies may be given too much incentive?

Mr. BENSINGER. I think you have to look at the level of professionalism and expertise in the agencies and when you have a police officer who is out making an arrest, when he has reason to believe someone has committed a crime, the actual agencies that I am talking about, DEA is asking for no more authority than what present law enforcement officers discharge every day on traffic duty, on homicide assignments, on criminal investigations, or on other law enforcement matters. They have to determine there is a probable cause for an arrest.

If they believe there is a probable cause they can initiate a seizure. Then they have to go to court and prove on a preponderance of evidence basis that there was a violation of the law.

Senator NUNN. So the legal procedures on this kind of forfeiture are already well established in the law. We would not be making any substantive change. We would simply be charting where the money was going to go?

Mr. BENSINGER. That is exactly right. You are not going to ask the Federal agencies to do anything different than they do now. That is to determine there is probable cause to make an arrest. If they determine that is what they are talking about, that is the same provision.

Senator NUNN. Thank you, Mr. Bensinger. I want to again express my appreciation to you for a superb job for the people of the United States. We wish you well in your future.

Mr. BENSINGER. I appreciate that.

Chairman ROTH. Senator Rudman.

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

Mr. Bensinger, you are an old friend and I am glad to see you sitting here this morning although frankly I wish you were still sitting back where you were. I said so at the time that I think the administration

made one of their mistakes in not retaining you in your position. How long did you serve in that position?

Mr. BENSINGER. Five and a half years.

Senator RUDMAN. Your testimony and the testimony of all of the witnesses that we have had at these, I think, very useful hearings in the last few days have really addressed three major topics. You have talked about all three this morning. We have had other witnesses who expanded more on a particular area that they were familiar with, but essentially what we heard were the following three arguments: No. 1, we ought to have more effective bilateral agreements in terms of stamping out these drugs at the source; second, we need tougher laws, be they laws such as the type that you and Senator Nunn have been discussing in your dialog or other laws that have to do with bail and privacy under the Internal Revenue Code and so forth.

Finally, we have the question of resources. I want to talk about resources with you this morning because I think that your testimony could be very useful in our record, not only in this hearing, but in other matters that are soon coming before the various appropriating committees of the Congress.

Mr. Mullen testified yesterday, and of course he is under some constraints as you were when you served in that position. You, I take it, are under no such constraints this morning. Mr. Mullen stated that the administration's position was that the cuts proposed to the DEA budget would be in some way supplemented by cooperative efforts with the FBI. In testimony with him yesterday he finally did state that the FBI had quite a bit to do on its own, and he ought to know; he held a very high position in the FBI. In terms of getting any real additional help from the FBI I think his testimony could be summarized to say that that was probably unlikely in terms of the total efforts of increasing the battle against the entire problem that we are facing in this country.

What was your budget when you left the agency?

Mr. BENSINGER. Our budget request was for \$242 million and the preceding year's appropriation was \$216 million without adjusting for supplementals or the pay raise.

Senator RUDMAN. What did the budget finally come down to, to the best of your knowledge?

Mr. BENSINGER. My most recent understanding is that the continuing resolution level and here the people from DEA and their comptroller should correct my record, was slightly over \$200 million and that the House-Senate conference committee is looking at \$230 or \$231 million but that the pay raise and the other add-on charges would have to be assumed within that \$231. So you are not going to get a major increase from \$216 to \$230.

Senator RUDMAN. So obviously with an annual inflation rate of whatever it is this year, combined with the fact that you are absorbing that agency's other expenses, including the pay raise, the fact of the matter is that there will be a substantially smaller sum of money available to DEA during this fiscal year than there was last year for its enforcement action.

Mr. BENSINGER. That is my understanding and that is unfortunate, more than unfortunate.

Senator RUDMAN. The second question is this. If you were given a mandate and if you were still sitting in that position, and keeping in mind what you were saying, Mr. Bensinger that we have financial problems in this country and we have to be very careful with the money we use, what do you need, to do the kind of things that you have testified about here and heretofore? What would be the budgetary figure that you would like as an administrator of that Agency to really do this job and do it right in all of the areas that you have addressed this morning?

Mr. BENSINGER. In the source country area, I think the State Department's appropriation—they would be best in the position to answer this—should be anywhere from two to three times the present level of \$35 million, perhaps \$100 million would be an initial figure. I don't think it needs to exceed that, Senator Rudman, because I think you are talking about principally major commitments in Latin America. They are not all going to be phased in at once. You would have to tailor the program and you may get additional assistance from other countries.

I am sure of it, as Germany was helping Turkey. In terms of the FBI, I am disturbed about what you reported here. If the FBI's additional weight does not translate into man years that can investigate criminal activity, that would be a problem. I can see benefit in the FBI having the opportunity to assist DEA. If they are not going to be able to contribute man years then you are not talking about really being able to turn out that much more effective investigation.

Senator RUDMAN. Unless of course they neglect other responsibilities which is a possibility.

Mr. BENSINGER. Exactly. I think that is exactly what the State Department and maybe the FBI and other agencies, even the Justice Department needs to do. If you have got 3,900 prosecutors, how many are going to be devoted to narcotics prosecution? So you may not have \$100 million new dollars at stake.

You may just need to tell the AID Director instead of having a narcotic program of x dollars you have X plus Y and instead of the FBI devoting its resources in this percentage you put more into narcotics traffic, the same thing with the Justice Department's prosecutors. But I sense with the 12-percent reduction at DEA and a 6-percent reduction at the FBI and some real constraints on those agencies these prioritizations are going to end up in very difficult decisions and probably some loss of services somewhere in the Government.

With respect finally to the other areas, Coast Guard, Customs, IRS, I would certainly feel the effort with the provision of the posse comitatus would need to be considerably increased. I don't know whether the military has agreed to perform these flights at no charge to those agencies or not. But if not—

Senator NUNN. The answer is no, they have not. They are being dragged reluctantly into the fields against their will. So they haven't agreed to anything. There is going to be a real battle every time they commit resources for a while as to whether or not DEA is going to have to pay for it out of their budget. That would be the initial ploy of those who are opposed to this effort. Only the President's intervention is going to smooth that sort of situation out. I think that intervention is going to be required.

Excuse me, Senator Rudman, for interrupting.

Mr. BENSINGER. The DEA source budget of \$242 million I would think would be an effort that would include initial domestic marihuana, assistance program for the States, voice privacy for the agents to protect them so the traffickers couldn't listen in on their transmission, it would include task force funding for State and local law enforcement and continuation of, I think, an appropriate level of agents and intelligence.

That would not provide for Senator Nunn's and your comments on the posse comitatus.

Senator RUDMAN. The fact of the matter is this—it has been my experience in this field, and you and I have discussed this privately, that the most effective way in terms of controlling it within this country is with people. You need people. We can talk theory. But you need flesh and blood agents who are out there either undercover or overtly and are moving in this area, and that takes money. Am I correct?

Mr. BENSINGER. Absolutely on target.

Senator RUDMAN. You need more agents?

Mr. BENSINGER. Unquestionably.

Senator RUDMAN. Approximately how many agents actually in the field, and I am not talking administrative, I am talking people out in the trenches, does DEA presently have?

Mr. BENSINGER. I would say less than 1,400.

Senator RUDMAN. For the entire country?

Mr. BENSINGER. Yes, sir.

Senator RUDMAN. Certainly the suggestion that you could use twice that number would not be an unusual suggestion?

Mr. BENSINGER. Particularly if there were enough prosecutors to handle the case load. That is one item that we have to bear in mind. The justice system, by one part of it you make a strong fence or strong chain. The traffickers are hitting at the weakest link all along the line, not enough prosecutors. It is almost impossible to go to trial in the United States today, not at the Federal level, but at city level. You agree to a plea and it is reduced.

Senator RUDMAN. My time is nearly up. I just want to say to you that I am going to continue to support increased funding for this agency. It seems to me that when we talk about our national defense which is important as we have to raise huge amounts of money for our national defense, what some people in this administration are obviously overlooking is that the defense of this country could very well be lost if enough young people become destroyed and lives and families become destroyed by drugs.

I think one need only see it up close and personally to understand what it does to people. I hope that you get the support you need for what you believe in and I again commend you for what you do in the service of this country.

Thank you.

Mr. BENSINGER. Senator Rudman, I want to thank you for your commitment, your experience as a prosecutor and your presence on this subcommittee. I know the converse is that ultimately you will have to decide the appropriation level, but I am hopeful that your subcommittee will have an influence. I am sure it will in your voice.

Chairman ROTH. Thank you, Senator Rudman.

One thing in all condor bothers me very much, in a way what I call the numbers game, how many people do we need for the job? I share the concern expressed by my colleague that we don't have adequate resources. At the same time I am bothered by the fact that in the area of immigration the number of illegal aliens that are able to enter this country so that I have some trouble in my own mind making sure whether we add another few hundred, while it will help, whether it will really be able to realistically reduce the amount of illegal drugs entering this country.

I guess I am saying why can't we stop illegal aliens from entering the country?

Mr. BENSINGER. My response would be that I would prefer to do some herbicide spraying on the poppy marihuana and cocaine bushes and we probably aren't going to do that with populations and people. I think you have got a little different problem where you have got a raw material that is planted and if you can get it before it is harvested you are home free. In the illegal alien problem, you are forced with a different set of circumstances.

You have got the geography problem, you have got the port problem, you have got the resource problem, but you don't have the opportunity really to shut it off at the source. So I would say with drugs you would have a better shot at it. It has been proved. We have got an example in Turkey and in Mexico and in this decade or the last decade that have worked.

Chairman ROTH. Wasn't that primarily by getting at the source?

Mr. BENSINGER. Yes.

Chairman ROTH. Rather than the interdiction?

Mr. BENSINGER. That is right. I think interdiction is important. You will have some experts that know all about it. We need it. We also need to know if we are going to facilitate people through customs in Miami to help tourism or inspect all of the bags. You get into this business with a lot of those conflicting objectives. A person like myself and those that will follow me will want very firm inspection and those that have hotels in Miami and want people to get off those airplanes in a hurry will not.

Chairman ROTH. That is correct. I again want to thank you for being here. As I indicated earlier, I think your suggestion of using the seizure of illegal assets for helping out the financing of these activities merits a great deal more thought and care on the part of this subcommittee. We will be in contact with you and I will hope that we will hold some hearings on that specific topic.

Mr. BENSINGER. Thank you very much, Mr. Chairman. I think you and your subcommittee have given a very valuable morale lift to a lot of people around this country. While I am no longer in that battle in behalf of the Government I know it is appreciated.

Chairman ROTH. Thank you very much.

At this time I would like to call forward Mr. Egger, who is the Commissioner of the IRS, Mr. Powis, Deputy Assistant Secretary for Enforcement of the Department of the Treasury, Mr. George Corcoran, Assistant Commissioner of Customs.

Gentlemen, if you would please rise and raise your right hands?

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Commissioner EGGER. I do.

Mr. POWIS. I do.

Mr. CORCORAN. I do.

TESTIMONY OF ROSCOE L. EGGER, JR., COMMISSIONER, INTERNAL REVENUE SERVICE; ROBERT E. POWIS, DEPUTY ASSISTANT SECRETARY FOR ENFORCEMENT, DEPARTMENT OF THE TREASURY; GEORGE C. CORCORAN, JR., ASSISTANT COMMISSIONER, OFFICE OF BORDER OPERATIONS, U.S. CUSTOMS SERVICE; ROBERT RUWE, DIRECTOR, CRIMINAL TAX DIVISION, OFFICE OF CHIEF COUNSEL, INTERNAL REVENUE SERVICE; AND THOMAS CLANCY, DIRECTOR, CRIMINAL INVESTIGATION DIVISION, INTERNAL REVENUE SERVICE

Chairman ROTH. Please be seated.

I welcome each and every one of you here today. I think maybe we might start out—we have got five individuals here, if each one of you would introduce yourself and what position you hold in Government. That would be helpful.

Mr. RUWE. I am Robert Ruwe, Director of the Criminal Tax Division for the Office of the Chief Counsel, Internal Revenue Service.

Mr. CLANCY. I am Thomas Clancy, Director of the Criminal Investigation Division for the Internal Revenue Service.

Commissioner EGGER. I am Roscoe Egger, Commissioner, Internal Revenue Service.

Mr. POWIS. I am Robert E. Powis, Deputy Assistant Secretary for Enforcement, Department of the Treasury.

Mr. CORCORAN. I am George C. Corcoran, Assistant Commissioner for Border Operations in the U.S. Customs Service.

Chairman ROTH. Mr. Egger, would you like to start out with your statement?

Commissioner EGGER. Mr. Chairman, members of the subcommittee, I am very pleased to appear before the subcommittee today to discuss the Service's role in investigating high-level narcotics traffickers.

We at the Internal Revenue Service believe that devoting substantial resources to the investigation of narcotics trafficking is appropriate not only because of the significant amount of unreported income involved but also to maintain public confidence in our tax system—confidence that we will administer the tax laws fairly and evenhandedly.

The Service is strongly committed to participation in the concerted Federal antinarcotics campaign because those who profit from illegal narcotics trafficking undoubtedly receive substantial income on which no tax is paid. We make every effort to investigate and prosecute those guilty of tax crimes. But when that is coupled with other, perhaps more sinister crimes against society, there is a clear-cut obligation on our part to combine our resources with those of other agencies to identify and prosecute the perpetrator.

Notwithstanding our commitment here, I should point out that significant resources must also be expended on other programs which

have equally compelling requirements for enforcement action. For example, programs involving the examination and investigation of tax shelters having no economic substance other than to avoid tax obligations, cases where taxable income goes unreported in the subterranean economy area, and our illegal tax protesters program require the allocation of Service resources in order to maintain a balanced enforcement program.

The Service is particularly concerned over the continuing increase in the number of illegal tax protesters. Although progress has been made, the number of tax returns and related documents used by protesters claiming a vow of poverty, fifth amendment rights not to furnish information on which to compute tax due, et cetera, has escalated from 7,127 in calendar year 1978 to 21,180 in 1981 to September 30. Our Examination Division currently has 16,620 cases in inventory involving illegal tax protesters.

In the criminal enforcement area, the Service has concentrated on leaders of the tax protest movement. For example, the leaders of the Flint, Mich., protest who espoused the filing of false W-4 withholding forms have been prosecuted, convicted, and sentenced. In our view, illegal tax protesters present a threat to the Government's voluntary tax system and the Service must continue to devote adequate resources to address this program.

Before discussing our enforcement programs aimed at narcotics trafficking, I would like to begin by outlining briefly the Service's overall efforts to deal with criminal violations of our tax laws. The IRS Criminal Investigation Division [CID] allocates resources to two areas, a general enforcement program [GEP] and a special enforcement program [SEP]. Our general program is aimed at those individuals and businesses deriving their income from legal activities but attempting to illegally shield that income from tax collection. For example, illegal tax protesters and promoters of fraudulent tax shelters are included in the general program.

Our special program deals with those individuals and organizations deriving substantial income from illegal activities, most of which also is not reported to the IRS. Such illegal activities include narcotics trafficking, gambling, labor racketeering, organized crime, and other activities.

During fiscal year 1982 the Service plans to devote approximately 45 percent of its criminal investigation direct investigative time to the special enforcement program. This is a substantial increase over the 29 percent the program received in fiscal year 1980, and reflects our continued belief that the enormous profits reaped by organized crime must not be allowed to escape taxation.

The Criminal Investigation Division's total case inventory, as of September 30, 1981, consists of 5,582 criminal investigations, of which 3,514 are general enforcement program cases and 2,068 or 37 percent involve cases related to illegal activities under the special enforcement program. Our overall commitment of resources to this program has continually increased over the past 5 years, up more than 40 percent this past fiscal year.

An important part of the Service's special program involves close coordination with other law enforcement agencies. These efforts include our participation in the Department of Justice Strike Force

program, as well as our program to investigate high-level drug traffickers and financiers with assistance from Customs and the Drug Enforcement Administration, such as participation in the Florida cash flow project [Operation Greenback].

Recently we have also increased our participation in grand jury investigations. Our inventory of such cases has more than doubled over the past year. This increase is in part due to revisions in our procedures that streamlined the approval process for such investigations. In so doing, timeframes were established for each level of managerial approval—10 workdays for the Chief of the District's Criminal Investigation Division, 5 workdays for the District Director, 5 workdays for the Regional Commissioner, and 10 workdays for the Regional Counsel.

Approval authority for grand jury requests was delegated to our Regional Commissioners, who may redelegate that authority to the Assistant Regional Commissioners, Criminal Investigation. These approvals must receive the concurrence of the regional counsel. Expansions of existing grand jury authorizations now may be approved by District Directors with the concurrence of the Deputy Regional Counsel, Criminal Tax. Currently, we are considering additional revisions that would further enhance our participation in these proceedings.

On occasion, when working on a grand jury investigation, the evidence gathered for a tax case can also be used by the Government attorney to help support a racketeer influenced and corrupt organization [RICO] charge. Our agents, albeit on rare occasions, may complete a RICO investigation at the request of the Government attorney. This happens when we cannot proceed with the tax case but, due to the case knowledge possessed by our agents, the case is pursued in accordance with the IRS/DOJ agreement. Again, this is an example of our continuing cooperation with other law enforcement agencies.

To further enhance this cooperation as well as our capability to share information with other Federal law enforcement agencies, the Service has taken certain positive steps in working within the present disclosure statute. Internal Revenue Code section 6103 procedures covering disclosures for nontax criminal prosecution or investigation have been coordinated with the Criminal Division of the Department of Justice, and the Service assisted in the preparation of a manual for U.S. attorneys for their guidance in obtaining returns and return information. We have trained our employees and created disclosure officer positions in each district, region and service center to administer disclosure activities.

As our experience with the statute has grown, we have also undertaken numerous administrative changes to streamline the disclosure process. In particular, we have decentralized the approval and processing procedures for disclosure in order to be more responsive to requests for returns and return information. I have attached to my statement a summary listing the actions the Service has taken to decentralize.

With this perspective, I would now like to go into specifically what the Service has been doing nationally to investigate drug traffickers and later touch upon our participation in Operation Greenback in Florida. In increasing our special program resources, we have simi-

larly placed a greater emphasis on criminal investigation of narcotics cases. For example, our inventory of narcotics cases under criminal investigation has continued to increase from 431 cases at the close of the fiscal year 1980 to 838 cases as of September 1981.

The number of investigations resulting in prosecution recommendations also increased substantially, from 49 in fiscal year 1980, to 170 in fiscal year 1981. In the civil area, the number of examinations in inventory increased from 2,102 at the close of fiscal year 1980 to 2,452 as of September 1981. Our Criminal Investigation Division has more than doubled its expenditure of special agent resources for narcotics investigations, from 232 staff years in fiscal year 1980 to 532 staff years in fiscal year 1981.

During fiscal year 1980, taxes totaling \$81.2 million were assessed as a result of our narcotics traffickers program. During fiscal year 1981, \$122.2 million has been assessed. Termination and jeopardy assessments have been important tools for quick attachment of funds on deposit. These particular actions are used when there has been a determination, or a reason to believe, collection of tax liability would be jeopardized if regular assessment procedures were followed.

A jeopardy assessment involves an immediate assessment and demand for immediate payment generally based on financial information covering a complete taxable year. A termination of taxable period assessment involves immediate assessment and demand for payment but is generally based on financial information covering less than the complete taxable year. I will submit for the hearing record our manual guidelines which discuss these enforcement actions in detail.

[The information referred to follows:]

INSERT - Pg. 50
Line- 15

4584 (2-9-79)

Jeopardy and Quick Assessments

4584.1 (9-25-81)

General

4584.11 (9-25-81)

Definitions

(1) The assessment of a deficiency or an additional tax (except in bankruptcy and receivership proceedings) will fall within the following categories:

(a) Quick Assessment—a quick assessment is made where the statutory period for assessing an additional tax or an agreed deficiency is about to expire.

(b) Jeopardy Assessment—jeopardy assessments are made in situations where prior to the assessment of a deficiency or tax, it is determined that collection of such deficiency or tax, would be endangered if regular assessment and collection procedures are followed. There are two IRC sections authorizing jeopardy assessments:

1 IRC 6861 grants the Service the authority for making jeopardy assessments where the collection of a deficiency involving an income, estate or gift tax is endangered. The jeopardy assessment in this situation would be proper where the due date for filing such returns (determined with regard to extension) has expired.

2 IRC 6862 grants the Service the authority for making jeopardy assessments where any tax other than an income, estate or gift tax is jeopardized. The assessment can be made even where the due date for filing such tax return has not expired.

(c) Termination Assessment—a termination assessment is made when it is found that a taxpayer designs to do an act which would tend to prejudice, or to render wholly or partially ineffectual, the collection of income taxes for a current or immediately preceding taxable year, unless collection proceedings are brought without delay. Under IRC 6851, a termination assessment with respect to an income tax, can be made any time prior to the expiring of the due date for filing such return (determined with regard to extensions).

(d) Regular Assessment—a regular assessment includes all assessments not processed as either (a), (b), or (c) above.

(2) Bankruptcy cases commenced prior to October 1, 1979, will be assessed as "quick" assessments. (see IRM 4583.1). For procedures regarding bankruptcy case commenced October 1, 1979, and subsequently see IRM 4583.2.

4584.12 (9-25-81)

Recommendation Procedures for Quick Assessments

(1) Quick assessments may be requested using Form 2859 (Request for Quick or Prompt Assessment). Form 2859 is usually prepared in quadruplicate. Original and one copy are sent to the service center, one copy is retained by preparer, and in bankruptcy cases one copy is sent to Special Procedures function. (See IRM 4583.1)

(2) Telephone requests for quick assessments may be made to the service center when warranted. (See ADP Handbook 3(17)(46)3 for service center procedure.) Such telephone requests must be followed promptly with properly approved Form 2859. The following information must be furnished when requesting a quick assessment by telephone:

(a) name, address, and EIN or SSN of taxpayer;

(b) type of tax;

(c) taxable period;

(d) amount of tax, penalty, and interest to be assessed;

(e) amount of payment, if any, and balance due; and,

(f) to provide the information necessary for an automatic recomputation of tax rebate on quick assessments for the return period of 7412 through 7511, the following information, in addition to (a) through (e) above must be furnished:

1 A statement whether the assessment is for a return not yet processed or an adjustment to a return previously processed. This becomes particularly relevant for telephonic requests for which the service center has no documents from which to make a determination.

a If for a return not yet processed, the tax to be assessed must be the total correct income and self-employment taxes and the total correct adjusted gross income.

b If an adjustment, the amounts must be the adjusting amounts, i.e., the increase or decrease in tax (total income and self-employment), and adjusted gross income.

4583.2(10)

MT 4500-351

4584.2 (9-25-81)**Jeopardy Assessments**

(1) All jeopardy assessments have the common characteristic that prior to assessment it is determined that collection will be endangered if regular assessment and collection procedures are followed. Jeopardy assessments are made under IRC 6861 or 6862 and include deficiencies, and additional and delinquent taxes. In determining whether a jeopardy assessment will be made, at least one of the following conditions contained in policy statement P-4-88 must exist. The conditions are:

(a) the taxpayer is or appears to be designing quickly to depart from the United States or to conceal himself/herself;

(b) the taxpayer is or appears to be designing quickly to place his/her or its property beyond the reach of the Government either by removing it from the United States, by concealing it, by dissipating it, or by transferring it to other persons;

(c) the taxpayer's financial solvency is or appears to be imperiled. (This does not include cases where the taxpayer becomes insolvent by virtue of the accrual of the proposed assessment of tax, penalty and interest.)

(2) Jeopardy assessments should be used sparingly and care should be taken to avoid excessive and unreasonable assessments. However, where the conditions described above exist, serious consideration should be given to their use in order to protect the government's interest. The assessment should be limited to an amount which reasonably can be expected to equal the liability due.

(3) It is incumbent upon all examiners to be alert for conditions, as set forth in Policy Statement P-4-88, where a jeopardy assessment may be necessary to protect the government's interest. Areas where a jeopardy condition may arise include, but are not limited to the following:

(a) Narcotic Cases

(b) Cases involving Taxpayers engaged in organized crime (SEP 1)

(c) Wagering Cases (SEP 2)

(d) Strike Force Cases (SEP 3)

(e) Cases involving taxpayers who are reasonably believed to be receiving income from an illegal activity (SEP 4) (See IRM 4566 for a detailed definition of SEP Cases).

(f) Cases involving taxpayers known or suspected of having plans for leaving the United States without making provisions for payment of their taxes (i.e., aliens generally considered as border hoppers).

(4) It is important to note, that the conditions set forth in Policy Statement P-4-88, and mentioned in (1) above, must exist for a jeopardy assessment to be considered. The mere fact that a taxpayer is the subject of a SEP investigation, is not sufficient grounds for a jeopardy assessment.

4584.3 (9-25-81)**Approval Prior to Jeopardy Assessment**

(1) All jeopardy assessments must be personally approved by the District Director or the Director of International Operations. A District Director or the Director of International Operations may request advice in any case relative to the three conditions in IRM 4584.2:(1). These requests for advice should be directed to the Regional Commissioner for the attention of the Assistant Regional Commissioner (Examination). This official may, at his/hor discretion refer the matter to the National Office Examination Division, (CP:E:S:S) for consideration and coordination with the Director, Collection Division. (See Policy Statement P-4-88).

(2) Notwithstanding the existence of one or more of the above-cited conditions, in any case which might cause serious inconvenience to the general public, a jeopardy assessment should not be made without prior notification of the appropriate Regional Commissioner. If necessary, the Regional Commissioner will notify the Deputy Commissioner. Examples of such cases include banks, newspapers, insurance companies, hospitals, and public utility companies. (See Policy Statement P-4-88).

4584.4 (9-25-81)**Potential Criminal Cases**

(1) After the referral of a case to Criminal Investigation, or during the joint investigation, it shall be the continued responsibility of the Examination and Criminal Investigation functions to make periodic reviews of the facts and circumstances involved in the case to assure that the government's interests are adequately protected.

(2) If the facts and circumstances indicate that the collection of a deficiency, or additional tax is in jeopardy, the provisions of Policy Statement P-4-84 must first be considered.

(3) Where the Criminal Investigation function does not concur with the Examination Function proposal that a jeopardy assessment should be made, the District Director should be advised of the facts and circumstances in the case. The District Director will make any necessary decision, and he or she may request the advice of District Counsel.

4584.5 (9-25-81)**Recommendation Procedures for Jeopardy Assessments**

(1) When it is determined that collection will be jeopardized by delay if regular assessment and collection procedures are followed, a recommendation for jeopardy assessment will be made by the responsible division as provided in IRM 4584.6. Form 2644 (Recommendation for Jeopardy Assessment/Recommendation for Termination Assessment) is provided for this purpose. A separate Form 2644 in triplicate will be prepared for each taxpayer in cases involving transferor-transferee liability or assessment of 100 percent penalty as provided in IRC 6672. In addition, Form 2645 (List of Property Belonging to Taxpayer) should be prepared to the extent practicable, setting forth the property of the taxpayer.

(2) The recommendation for jeopardy assessment is accompanied by a report showing reasons for the belief that collection of the tax is in jeopardy, and a computation of tax. (See Section 4584.7 for report requirements.)

(3) The responsible division shall refer the complete file relating to the proposed jeopardy assessment for concurrence or comment to the Chief of the Collection function; to the Chief, Examination Division; Chief, Quality Review Staff and, if time permits, to District Counsel prior to referral to the District Director for personal approval. The Office of District Counsel will review the recommendation to determine whether there is sufficient basis in fact to defend any lawsuit which may be brought challenging whether the jeopardy assessment action was warranted and whether the amount to

be assessed or demanded as a result of the proposed action is appropriate under the circumstances. The tax will be assessed after the District Director's approval of the action. If time does not permit prereview by District Counsel, a copy of the file with copies of Form 2644, computation of the tax and Notice of Jeopardy Assessment (Pattern Letter 1584(P) (Rev 8-81) will be sent to District Counsel after assessment. (Exhibit 4580-4)

(4) The review by Collection function will ensure that the most qualified people will determine whether collection of the tax is in jeopardy. Because of the urgency usually involved in jeopardy assessment cases, the file will be given the highest priority of handling within and between the various divisions.

(5) If a recommendation for a jeopardy assessment is received from another organizational unit of the Service, the Treasury Department or Justice Department, the recommendation will be transmitted to the Chief, Examination Division, who will ascertain the status of the case. If the information shown on the recommendation is too general and vague to support a jeopardy assessment, the recommendation will be assigned to a revenue agent or special agent, as the case may be, to develop as expeditiously as possible the facts necessary for approval or disapproval. Any such oral recommendation received must be confirmed in writing prior to referral to the District Director for approval or disapproval.

(6) If the recommendation is approved by the District Director, the file will be transmitted to the Accounting Branch in the Computer Services and Accounting Division in the service center, for jeopardy assessment. After assessment has been accomplished, the service center returns the file with the two copies of Form 2644 to the Quality Review Staff for further administrative action. The original Forms 2644 and 2645 are retained by the service center.

(7) Telephone requests for jeopardy assessments may be made to the service center when warranted. (See ADP Handbook 3(17)(46)3 for service center procedure.) Such telephone requests must be followed promptly with transmittal of the properly approved Form 2644. When a jeopardy assessment is requested by telephone, the following information must be furnished:

- (a) affirmative statement that the District Director has approved Form 2644;
- (b) name, address, and EIN or SSN of taxpayer;
- (c) type of tax;
- (d) taxable period;

(e) amount of tax, penalty, and interest to be assessed;

(f) amount of payment, if any, and balance due;

(g) to provide the information necessary for an automatic recomputation of tax rebate on jeopardy assessments for the return period of 7412 through 7511, the following information, in addition to (a) through (f) above must be furnished.

1 A statement whether the assessment is for a return not yet processed or an adjustment to a return previously processed. This becomes particularly relevant for telephonic requests for which the service center has no documents from which to make a determination.

a If for a return not yet processed, the tax to be assessed must be the total correct income and self-employment taxes and the total correct adjusted gross income.

b If an adjustment, the amounts must be the adjusting amounts, i.e., the increase or decrease in tax (total income and self-employment), and adjusted gross income.

4584.6 (2-9-79)

Responsibility for Recommending Jeopardy Assessments

(1) The Examination function is responsible for recommending jeopardy assessments in cases under active consideration in Examination. (See IRM 4581.)

(2) The Criminal Investigation function is responsible for recommending jeopardy assessments in cases under active consideration by Criminal Investigation and for jeopardy assessments in cases under joint active consideration by Criminal Investigation and Examination.

(3) Collection function is responsible for recommending jeopardy assessments in any case in which collection of the tax would be jeopardized by delay, except those cases under active consideration by Examination or Criminal Investigation. If Collection function receives or develops information on cases under active consideration by Examination and Criminal Investigation indicating that collection will be jeopardized by delay, the Chief, Collection function, furnishes a report thereof to the appropriate function.

(4) If, during Appeals consideration of a case, it is determined that a jeopardy assessment may be advisable, a memorandum setting forth the facts in the case is forwarded to Examination. In these cases the responsibility for rec-

ommending jeopardy assessments lies with Examination. (See IRM 4584.(11).)

(5) Although the basic responsibility for recommending jeopardy assessments will be as provided herein, this does not preclude any other function from submitting pertinent information regarding the matter to the responsible function for its consideration.

4584.7 (9-25-81)

Examiners' Reports

(1) Evidence indicating jeopardy and information regarding the taxpayer's financial condition should be developed to the maximum extent so that all possible information which should be considered in determining whether a jeopardy assessment is proper under the circumstances will be available for technical review of the case before referral to the District Director for approval.

(2) Due to the many conditions and factors having a bearing upon recommendations for jeopardy assessments, the establishment of specific guidelines for preparing reports in support thereof, in every case, is difficult. However, in establishing the applicability of any one or all of the conditions for making a jeopardy assessment, per Policy Statement P-4-88, the following areas should be explored with regard to those conditions:

(a) Factors establishing flight

1 Is there any evidence which would indicate that if the taxpayer were free on bond, he/she would flee the United States or conceal himself/herself?

2 What is the taxpayer's citizenship status? A resident alien? A non resident alien temporarily in the United States? An illegal alien? If the taxpayer is an alien legally in the United States, would his/her conviction on a specific offense result in his/her deportation?

3 Does the taxpayer have a passport? If so, is it in his/her name or the name of an alias?

4 Does the taxpayer have any previous convictions for offenses that would indicate a proclivity toward flight?

5 Is the taxpayer wanted by the police as a fugitive from another jurisdiction?

6 Is there any indication that the taxpayer was about to leave the country, such as airline tickets seized from his/her person at the time of arrest?

(b) Factors establishing concealment or transfer of assets:

1 Does the taxpayer own any fixed assets, or does he/she deal solely in cash?

2 If the taxpayer drives a car, is the car registered in his/her name or is he/she using a nominee?

3 What are the circumstances concerning the taxpayer's residence? If he/she lives in leased premises, are they leased to him/her or to someone acting as a nominee? If the taxpayer was residing in a single family house, was the title held in his/her name or in the name of a nominee?

4 If the taxpayer was arrested with a large sum of money on his/her person, what are the circumstances concerning this money? Were there indications that the money belonged to him/her?

5 Has the taxpayer ever used an alias to conceal his/her identity?

6 At the time of a taxpayer's arrest, was there an attempt, by the taxpayer, to destroy evidence?

(c) *Factors establishing insolvency*

1 Are there any TDA's open with respect to the taxpayer under his/her name, or any alias he/she may have used in the past?

2 Did a search of the local Courts reveal any outstanding judgments against the taxpayer?

3 Has the taxpayer ever been adjudicated a bankrupt?

(d) The above lists of factors are not all inclusive, and where time is of the essence, should be explored to the extent practicable.

(3) Case files recommending jeopardy assessments should contain the following information to extent practicable:

(a) Name, address, EIN or SSN of taxpayer;

(b) A complete computation of taxable income;

(c) Tax and penalty to be assessed by years, quarters or period;

(d) The nature of the taxpayer's business or activity;

(e) The taxpayer's present financial condition;

(f) Information regarding the taxpayer's activity giving rise to the recommendation, such as transfer of assets without consideration; pending damage, libel or slander suits, etc.;

(g) Records with respect to continuing business or personal losses;

(h) The taxpayer's record for resisting payment of taxes in the past, if known;

(i) The nature and location of the taxpayer's assets and the source of income;

(j) Filing record of taxpayer;

(k) Any other information having a bearing upon the taxpayer's financial condition, future prospects for losses, etc.

(4) The report should contain sufficient information upon which to base a recommendation. A statement that a taxpayer is converting assets into cash would generally not be sufficient to support a recommendation for a jeopardy assessment, unless such a statement is accompanied by reference to evidence that may indicate intention of the taxpayer to leave the country, dispose of assets at a loss, dissipate assets, invest assets in an illegal enterprise, or any other activity which might jeopardize the revenue.

(5) Computations of income, estate and gift tax deficiencies and delinquent or additional employment or excise tax, and computation of collected taxes subject to the 100 percent penalty must be reasonable and not excessive, arbitrary or capricious. *The resulting assessment should be that which equals or can be expected to equal the ultimate liability due.*

4584.8 (9-25-81)

Procedures After Assessment

(1) IRC 7429(a) provides for administrative review of jeopardy and termination assessments. Within five days after the day on which an assessment is made the taxpayer shall be provided a written statement of the information upon which the Service relies in making such assessment. The written statement must meet Code requirements for citing reason(s) the District Director or Director of International Operations believes collection of the tax would be jeopardized and providing a computation of the tax Pattern Letter 1584(P) (Rev. 8-81) meets such requirements. See Exhibit 4580-4.

(2) The Notice of Jeopardy Assessment and Right of Appeal must state the specific facts and reasons the District Director relies upon in making the assessment. The information available at the time of the assessment and subsequently developed will be used by the Service to prove that the action taken is reasonable under the circumstances. At least one of the conditions contained in Policy Statement P-4-88 must be found to exist. See IRM 4584.2.(1). A computation of the tax determined due for assessments under IRC 6861, or a copy of the computation of additional tax or any delinquent tax for assessments under IRC 6862, will be

attached to the Notice. The last two paragraphs of Pattern Letter 1584(P) (Rev. 8-81) explain taxpayer appeal rights when merits of the liability cannot be settled within the Service. The second to the last paragraph of the Pattern Letter relates to IRC 6861 assessments and the last paragraph relates to IRC 6862 assessments.

(3) Policy Statement P-1-190, Identity of Confidential Informants to be Protected, provides that: "Releases of information . . . may not contain any information or leads as to the identity of an informant." Accordingly, when showing the reason(s) the District Director believes collection of the tax would be jeopardized if normal assessment and collection procedures were followed, no information which would identify or tend to identify a confidential informant should be revealed. In some cases proper adherence to the principle of Policy Statement P-1-190 will require that the Service completely forego the making of a jeopardy or termination assessment in order to protect the informant.

(4) The Notice of Jeopardy Assessment and Right of Appeal and Notice and Demand to pay the tax should be presented to the taxpayer. A Form 3552 (Prompt Assessment Billing Assembly) may be used for Notice and Demand. It is preferable that a revenue officer personally deliver all necessary documents to the taxpayer. In all cases, a diligent effort should be made to make personal delivery. If the taxpayer's location is unknown, or if the taxpayer cannot be contacted, the documents should be mailed by U.S. Certified Mail (Registered Mail if outside the U.S.), return receipt requested, to the last known address of the taxpayer. The case file will be annotated to show why mail delivery was used. The Notice must be provided as soon as possible after assessment and within five days after assessment to avoid loss of time in which the Service may review its case prior to taxpayer's request for review. District Directors usually designate authority to an officer or employee under their supervision to issue and sign the District Director's name to the Notice.

(5) The taxpayer may file a written request for review of the assessment action within 30 days after delivery of the notice, or within 30 days after the last day of the period within which the notice is required to be furnished. The Appeals Office will consider the taxpayer's request for administrative review. When feasible,

a conference will be granted immediately and a decision rendered within 15 days after the request is filed. The Appeals Officer will give full consideration as to whether or not:

(a) the making of the assessment is reasonable under the circumstances, and

(b) the amount so assessed or demanded as a result of the action taken is appropriate under the circumstances.

(6) The file will be forwarded immediately to the Appeals Office so that a conference can be held and a determination rendered prior to the 16th day after the request for administrative review was made when the taxpayer may bring civil action in the U.S. District Court.

(7) The Appeals Office will consider the items in (5) above, and will make a determination based on the protest and any additional information furnished by the taxpayer. If the taxpayer provides new information or documentation to the Appeals Officer, the District Director may be requested to comment on the new evidence. However, Appeals will retain jurisdiction over the case.

(8) Appeals' determination will result in one of the following actions:

(a) district action sustained in full (the action and the amount of tax are correct);

(b) district action sustained in part (the amount of tax is redetermined);

(c) a decision that the action was *not* warranted; (i.e., the collection of the tax was *not* in jeopardy); or

(d) taxpayer agreement with the action taken and the amount assessed in full or in part.

(9) If the district's decision is sustained in full and the taxpayer does not agree with this determination, the taxpayer will be informed of rights for judicial review and the file will be returned to the district office. If the district's proposal is sustained in part and the taxpayer does not agree, Appeals will promptly notify the district office so appropriate action can be taken to abate the excessive assessment. In the event the taxpayer and Appeals reach an agreement concerning the amount of tax, the taxpayer will be requested to pay the tax. The district will be notified to abate any excessive tax assessed as determined by Appeals. If it is determined that the action was *not* warranted, the district will be notified by Appeals to abate the entire amount of the assessment, release liens and any levies, as appropriate, and effect appropriate refund or credit.

(10) IRC 7429(b)(1) authorizes taxpayers to initiate judicial review of jeopardy assessments if they first have requested the District Director for an administrative review. This civil suit against the United States must be commenced only in the U.S. District Court for the judicial district in which the taxpayer resides or in which the taxpayer's principal office is located. The taxpayer may bring the suit within 30 days after the earlier of:

(a) the day the Service notifies the taxpayer of the determination of the administrative appeal, or

(b) the 16th day after filing a request for administrative review. Saturday, Sunday, or a legal holiday in the District of Columbia shall not be counted as the last day of any period.

(11) The Court shall determine the reasonableness of making the assessment under the circumstances and the appropriateness of the amount assessed or demanded under the circumstances. The burden of proof shall be upon the Service in respect to the issue of reasonableness of making the assessment. The burden of proof shall be upon the taxpayer in respect to the issue of the appropriateness of the amount assessed or demanded. Any determination made by a district court under IRC 7429 shall be final and conclusive and shall not be reviewed by any other court.

(12) Under IRC 6861(b), a notice of deficiency must be issued within 60 days after the jeopardy assessment is made under IRC 6861(a) if no such notice relative to the jeopardy assessment was issued prior to the assessment. It shall be for the amount assessed or the determined reduced amount if it is not issued before determination in appeals under IRC 7429. The merits of the liability are appealable under the usual procedures. Strict controls must be established by the office having jurisdiction of the case to assure time for District Counsel review before issuance. (See Exhibit 4580-3.)

(13) District Directors will establish a liaison system in their districts to ensure that jeopardy and termination assessment and collection procedures are properly administered through the period the taxpayer can petition the District Court or Tax Court. This liaison is necessary to protect both the Government's and the taxpayer's interest. Under IRC 6863 new restrictions are placed on the type of collection action which can be pursued. The Chief of the Special Procedures function or Chief, Technical and Office Compliance Branch Group (TOC) has overall responsibility for necessary liaison between the Examination, Collection and Criminal

Investigation functions, the Appeals Office and District Counsel. Responsible Service employees must keep the Chief, of the Special Procedures function or TOC, informed of the status of the case. Copies of the assessment files (Form 2644 and attachments and Notice of Jeopardy Assessment and Right of Appeal) and taxpayer's request for administrative appeal will be supplied. The Chief's responsibility is strictly liaison and the responsibility for taking necessary actions on any case remains with the organization having jurisdiction for taking the required actions.

(14) If the taxpayer commences a proceeding in the District Court to review the action taken by the Service, the Chief of the Special Procedures function or TOC, will notify District Counsel. All of the file, including the request for administrative appeal and information developed in reviews, should be gathered and transmitted by SP function or TOC to District Counsel within one working day. Administrative hearings will be suspended pending court action. However, a copy of the file will be retained to issue a notice of deficiency within 60 days after the assessment.

(15) The Chief of the Special Procedures function or TOC, will be kept informed of efforts of the taxpayer to post bond to stay collection or to make other arrangements, such as an escrow agreement, to assure payment of the tax or otherwise provide proof that the tax was not in jeopardy. (See IRC 6863.)

4584.9 (8-22-80)

Processing Abatements

(1) During administrative and judicial reviews of the assessment action provided under IRC 7429, there will be some determinations that the jeopardy assessment has been improperly made or that the amount assessed was excessive. To effect such abatements for cases open in Examination, Form 5344 (Examination Closing Record) will be prepared to decrease tax, penalty and interest as determined in Appeals or the District Court. Form 3870 (Assessment Adjustment Document) will be used in other cases. A copy of all documents will be forwarded to the Chief, SPS or TOC, as provided in 4584.8:(13). The Chief, SPS or TOC, will relay this information to the Chief, Collection Division, to advise him/her of the redetermined

liability, of any restrictions on the collection action which may be pursued, or of a final decision of the District Court which may permit sale of seized property.

(2) If the District Director believes an assessment under IRC 6851 or 6861 is excessive in amount, or if it is shown to the satisfaction of the District Director that jeopardy does not exist, he/she may abate the assessment in whole or in part under provisions of IRC 6861(g). Abatement may not be made after a decision of the Tax Court in respect of the deficiency has been rendered or, if no petition is filed with the court, after expiration of the period for filing such petition. (Reg. 301.6861-1(f).) Regulations presently providing requests for abatements of jeopardy assessments now are considered to refer to taxpayers' requests for administrative review of jeopardy assessments. However some jeopardy assessments may be abated in whole or in part by the District Director if he/she finds, without taxpayer's written request for review, an error in fact, judgment or computation. Such abatements are to be approved by the District Director and processed with Form 5344 or Form 3870. (Reg. 301.6861-1(e).)

(3) A copy of the statement of reasons for granting an abatement not resulting from request for administrative review or later court action shall be forwarded promptly to the office of the Assistant Regional Commissioner (Examination) for review. ARC (Examination) disagreement with the action taken should be communicated to the District Director immediately. Copies of the District Director's statement of reasons and the Assistant Regional Commissioner (Examination)'s comments also will be included in the file of any jeopardy case forwarded or previously forwarded to the National Office for review.

(4) When a jeopardy assessment previously made has been abated, proceedings should, of course, be begun to assess and collect any deficiency or additional tax in the regular manner.

4584.(10) (8-22-80)

Immediate Review and Issuance of 90-day Letters

(1) Immediately after assessment and delivery of Notice of Jeopardy Assessment and Right of Appeal to the taxpayer, copies of the case files, including Forms 2644 and 2645, ex-

aminer's report and the Notice with computation of tax, will be forwarded to the office of the Assistant Regional Commissioner (Examination) for review and analysis. This review will be given highest priority and performed in accordance with IRM 4877. The case file will be retained by the District or Appeals for cases under their jurisdiction and monitored for issuance of the notice of deficiency required by IRC 6861(b) within 60 days from the date of the assessment if none had been issued prior to assessment.

(2) Copies of taxpayer requests for administrative review and reports of reconsideration by Appeals Office will be sent to the ARC (Examination) to be analyzed, recorded and associated with the retained copies of the assessment files. Information concerning district court determinations and orders also will be forwarded to the ARC (Examination).

(3) Except in cases pending in Appeals, the district Examination function is responsible for issuing notices of deficiency in jeopardy assessment cases. Copies of such notices will be forwarded to ARC (Examination) for review and association with the jeopardy case file. District Counsel will prereview the notice as directed in IRM 4469. If it is determined before the notice is issued that the deficiency for any year covered is either greater or less than the corresponding jeopardy assessment, the notice should reflect such determined deficiency. If the jeopardy assessment exceeds the corresponding deficiency, necessary steps should be taken forthwith to abate any portion of the excess remaining unpaid. If all or any part of such excess has been paid, no refund should be made until the case is closed.

(4) Jeopardy assessments made by the Office of International Operations will be immediately reviewed by the Assistant Regional Commissioner (Examination), Mid-Atlantic Region. Notice of deficiency will be prepared, then prereviewed by the Mid-Atlantic Region's District Counsel's Office if time permits. Copies of files, as in district office cases, will be transmitted to the National Office Examination Division (CP:E:S:S) for post review in accordance with IRM 4877.

(5) For regional review of jeopardy assessment cases, see IRM 4877.

4584.(11) (2-9-79)
Cases Pending Before Appeals

(1) The district Examination function occasionally investigates a case referred to it by the Appeals Office to determine the need for a jeopardy assessment (see IRM 4584.6). Examination will limit its investigation to a determination as to whether collection of the currently proposed deficiency is endangered by any circumstance that might affect adversely the taxpayer's ability to pay or the Government's ability to collect. Responsibility for making the final determination of the tax liability in controversy remains with Appeals.

(2) If, in a case referred by Appeals to Examination for such an investigation, it is found that a jeopardy assessment is not in order, the District Director promptly will return the case with a notice to that effect to the Appeals Office from which it was received.

(3) If it is determined that a jeopardy assessment should be made, such assessment will be made as provided in IRM 4584.5. The case and the jeopardy assessment file will be returned to the Appeals Office from which it was received.

(4) The District Director will retain copies of the jeopardy assessment file for receipt of any request for administrative review of the assessment action and the amount assessed. The file will be *immediately* forwarded to the Appeals Office that requested the jeopardy assessment.

(5) Complete liaison with the Chief, Special Procedures Staff or TOC, including furnishing files for civil action in the district court, will be the responsibility of Examination and Appeals. Examination function will provide a copy of the jeopardy assessment file and reports of redeterminations to the Assistant Regional Commissioner (Examination) for immediate review of the findings as to jeopardy as provided in IRM 4584.(10). In income, estate and gift tax cases Appeals' action will include issuance of any notice of deficiency required by IRC 6861(b).

(6) Any abatement of all or a part of a jeopardy assessment will be effected as provided in IRM 4584.9:(4).

4585 (2-9-79)
**Termination Assessments of
Income Tax Under IRC 6851****4585.1 (9-25-81)**
Statutory Basis

(1) Under IRC 6851, when the District Director finds that a taxpayer is designing to do an act (including in the case of corporations distributing all or part of its assets in liquidation or otherwise) tending to prejudice, or to render wholly or partially ineffectual proceedings to collect the income tax for the current, or immediately preceding taxable year unless collection is begun without delay, he/she can make a termination assessment. The income tax will become immediately due and payable. Therefore, a termination assessment with respect to an income tax, can be made any time prior to the expiring of the due date for filing such return (determined with regard to extensions).

(a) *Example* (Assume an individual calendar year taxpayer) On May 1, 1981, the District Director determines that the collection of income tax for the current taxable year (1981) is in jeopardy. He/she can make a termination assessment, and collect the income tax for the short period of January 1, 1981 through May 1, 1981.

(b) *Example* (Assume an individual calendar year taxpayer) In January of 1982, The District Director determines that the collection of income tax for the immediately preceding tax year (calendar 1981) is in jeopardy. He/she can make a termination assessment as of December 31, 1981, and collect the income tax for the entire preceding year. If he/she had made the above determination on April 16, 1982, assuming no extensions, a jeopardy assessment under IRC 6861 would be made.

(2) Termination assessments of income tax under IRC 6851 are based on conditions similar to those found in jeopardy assessments under IRC 6861.

(3) It is incumbent upon all examiners to be alert for conditions, as set forth in Policy Statement P-4-89, where a termination assessment may be necessary to protect the government's interest. Areas where the conditions in P-4-89 may exist include but are not limited to the following:

(a) Narcotic cases;

(b) Cases involving Taxpayers engaged in organized crime (SEP 1);

(c) Wagering cases (SEP 2);

(d) Strike Force cases (SEP 3);

(e) Cases involving taxpayers who are reasonably believed to be receiving income from an illegal activity (SEP 4) (See IRM 4566 for a detailed definition of SEP cases);

(f) Cases involving taxpayers known, or suspected of having plans for leaving the United States, without making provisions for payment of their taxes. (i.e., aliens generally considered as border hoppers).

(4) It is important to note that the conditions set forth in Policy Statement P-4-89, and mentioned in IRM 4585.2 must exist for a termination assessment to be considered. The mere fact that a taxpayer is the subject of a SEP investigation is not sufficient grounds for a termination assessment.

(5) Under IRC 6851, provision is made for assessment of the amount of tax so determined together with interest, additional amounts, and additions to the tax provided by law. Also, in the case of a current taxable year the tax for the period beginning on the first day of such current taxable year and ending on the date of the determination shall be determined as though such period were a taxable year of the taxpayer. Any prior determinations (termination assessments) with respect to the current taxable year shall be taken into account when computing tax for subsequent termination assessments in such current taxable year.

(6) A notice of deficiency is required under IRC 6851(b) for the taxpayer's full taxable year. See IRM 4585.(11):(6). Also, IRC 6861(f), relating to collection of unpaid amounts; and IRC 6861(g), relating to abatement if jeopardy does not exist, apply in termination assessments. See IRM 4585.9.

(7) IRC 7429, Review of Jeopardy Assessment Procedures, applies in termination assessments as well as jeopardy assessments under IRC 6861 and 6862. See IRM 4585.6.

4585.2 (9-25-81)

Responsibility for Recommending and Approving Termination Assessments

(1) Termination assessments under IRC 6851 will be made after the District Director or the Director of International Operations personally approves the recommendation of person-

nel of the Examination and Criminal Investigation functions. See Policy Statement P-4-89. Collection activity personnel will not initiate termination assessment recommendations.

(2) Termination assessments of income tax should be used sparingly and care should be taken to avoid excessive and unreasonable assessments. However, where the conditions listed below exist, serious consideration should be given to their use. Assessments should be limited to amounts reasonably determined to be the taxpayer's liability for the period in question based on information available at the time. A termination assessment will be made if collection is determined to be in jeopardy because at least one of the conditions contained in Policy Statement P-4-89 exists. These conditions are:

(a) the taxpayer is or appears to be designing quickly to depart from the United States or to conceal himself/herself;

(b) the taxpayer is or appears to be designing quickly to place his/her or its property beyond the reach of the Government either by removing it from the United States, by concealing it, by dissipating it, or by transferring it to other persons;

(c) the taxpayer's financial solvency is or appears to be imperiled. (This does not include cases where the taxpayer becomes insolvent by virtue of the accrual of the proposed assessment of tax, penalty and interest.)

(3) A District Director or the Director of International Operations may request advice in any case relative to the above conditions. Requests for advice should be directed to the Regional Commissioner for the attention of the Assistant Regional Commissioner (Examination). This official may at his/her discretion, refer the matter to the National Office Examination Division and for consideration and coordination with the Director, Collection Division. See P-4-89.

(4) Notwithstanding the existence of one or more of the above-cited conditions, in any case which might cause serious inconvenience to the general public, a termination assessment should not be made without prior notification of the appropriate Regional Commissioner. If necessary, the Regional Commissioner will notify the Deputy Commissioner. Examples of such cases include banks, newspapers, insurance companies, hospitals, and public utility companies. See P-4-89.

4585.3 (9-25-81)**Potential Criminal Cases**

(1) After the referral of a case to Criminal Investigation, or during the joint investigation, it shall be the continued responsibility of the Examination and Criminal Investigation functions to make periodic reviews of the facts, and circumstances involved in the case to assure that the government's interests are adequately protected.

(2) If the facts and circumstances indicate that the collection of a deficiency, or additional tax is in jeopardy, the provisions of Policy Statement P-4-84 must first be considered.

(3) Where the Criminal Investigation function does not concur with the Examination function proposal that a termination assessment should be made, the District Director should be advised of the facts and circumstances in the case. The District Director will make any necessary decision, and he or she may request the advice of District Counsel.

4585.4 (9-25-81)**Examination Procedures for Termination Assessments**

(1) Most potential subjects for possible income tax violations come to the attention of the Service after arrests or criminal charges are placed against them. Gains or profit from their activities may be a principal source of income and such income is usually not reported on income tax returns. Some subjects are identified by normal audit of returns, some by other law enforcement agencies, some by informants, and some through other sources.

(2) Frequently persons arrested by the local police, Secret Service, Drug Enforcement Administration, Immigration and Naturalization Service, etc., have sizeable amounts of cash in their possession. A liaison should be developed whereby the arresting agency holds the seized money and immediately notifies Internal Revenue Service, the routing being to the Examination function through the Criminal Investigation function so that an assessment if warranted can be made against which the seized money will be applied. It is obvious that the person arrested will do his/her utmost to repossess his/her money, therefore, it is imperative that this type of activity be handled expeditiously.

(3) If information on hand indicates one of the conditions of Policy Statement P-4-89, cited in IRM 4585.2(2), exists a report thereon must support and accompany Form 2644 (fac-

tors establishing the applicability of those conditions are similar to those found in IRM 4584.7(2)(a), (b), and (c) relating to jeopardy assessments). The following information should be submitted in all cases to the extent practicable:

(a) name, address and social security number of employer identification number of taxpayer;

(b) a complete computation of taxable income;

(c) tax and penalty to be assessed;

(d) the nature of the taxpayer's business or activity;

(e) the taxpayer's present financial condition;

(f) information regarding the taxpayer's activity giving rise to the recommendation, such as transfer of assets without consideration;

(g) record with respect to continuing business or personal losses;

(h) filing record of taxpayer;

(i) the taxpayer's record for resisting payment of taxes in the past (collection delays and unpaid taxes);

(j) the nature and location of the taxpayer's assets and the source of his/her income;

(k) any other information having a bearing upon the taxpayer's financial condition, involvement in criminal activities, engagement in illegal enterprises or other activities generally regarded as illegal, future prospects for losses, etc. (See IRM 4585.6(2) concerning the handling and reporting of information that might identify informants.)

(4) A termination assessment must be based on a reasonable computation of tax liability. An assessment equal to the amount of money or other valuable property held by a person at the time of arrest is not considered a reasonable computation unless supported by other facts. See IRM 4585.6(2) for requirements for Notice of Termination Assessment of Income Tax, Pattern Letter 1583(P) (Rev. 8-81). See Exhibit 4580-1.

(5) The basis on which the adjusted gross income was computed will be stated. This will be an acceptable legal basis (for example, a source and application of funds statement or net worth computation). All known assets, liabilities, income and expenses will be considered. A reasonable estimate will be made of expenses, if appropriate. Also:

(a) Efforts should be made to locate and examine books and records, if any, of the tax-

(2) Regulations 301.6201 authorize assessments by District Directors and Service Center Directors. In certain situations, it may be advisable to assess the tax in the district office. Such procedure will be coordinated with the appropriate service center. However, assessment may be made by telephone call to the service center, Computer Services and Accounting Division. (See ADP Handbook 3(17)(46)3 for service center procedure.) The following information should be submitted in all cases to the extent practicable:

(a) affirmative statement that the District Director or the Director of International Operations has approved the termination assessment;

(b) name, address and SSN or EIN of taxpayer;

(c) type of tax;

(d) taxable year(s);

(e) amount of tax and penalty to be assessed under IRC 6851;

(f) amount of payment, if any, and balance due.

(3) The service center will process the assessment and notify the district of the Document Locator Number (DLN) and Form 23C (Certificate of Assessment) data. This information will be placed on Form 2644. Form 2644 and attachments will be forwarded promptly to the service center using Special Handling Notice (Form 3198) noted "Telephone Assessment." Form 3198 will be prepared as follows:

(a) under Expedite check "Other" and insert "Termination Assessment of Income Tax;"

(b) under "Special Handling" check "Process;"

(c) on last line check block "Other" and insert "Assessment (requested and) obtained by telephone. Do not make refund or post full year return."

(4) To prevent premature processing of any documents filed by the taxpayer, the Chief, Examination Division will request control over the Master File through use of transaction code TC 914. The top portion of Form 4135 (Criminal Investigation Control Notice) original and three copies, submitted for the signature of Chief, Criminal Investigation Division, will initiate the control. The Remarks section of Form 4135 will contain the following instructions, "This is a termination assessment of income tax. Do not post full year return. Send any returns received to Chief, Examination Division, _____ District." Copies of the file with Form 4135 will be sent to the service center, and Collection function or

Centralized Services function, as appropriate, to assure input of TC 914 by way of IDRS.

(5) Coordinating with the Chief, Criminal Investigation Division, the Examination function will be responsible for making a quarterly review of outstanding TC 914 accounts to determine if they are still needed. The Examination function will be responsible for terminating the control due to abatements or other actions, including disposals by final court decisions on merits of the liability.

(6) Form 2363 (Master File Entity Change) will be prepared and forwarded with the file to the appropriate service center to eliminate filing requirement. An assessment establishes filing requirements for a taxpayer. Form 2363 removes the filing requirements until the liability is determined. A return package for the current year will not be sent from the service center. The taxpayer should be instructed to file a return plus a copy of Pattern Letter 1583(P) with the District Director of the district in which he/she resides.

4585.6 (9-25-81)

Procedures After Assessment

(1) IRC 7429(a)(1) requires the Service to provide the taxpayer with a written statement of the information relied upon in making the assessment. The statement must be provided as soon as possible after assessment but within 5 days after the day on which the assessment is made. The taxpayer may, under IRC 7429(a)(2), request administrative review of the action taken within 30 days after the day on which the statement is provided or within 30 days after the last day of the period within which the statement is required to be furnished. The request for review may be made as early as the sixth day after the day on which the assessment was made.

(2) Pattern Letter 1583(P) (Rev. 8-81), Exhibit 4580-1, is used to state the reason(s) the District Director finds collection of the tax would be jeopardized if normal assessment and collection procedures were followed. This Notice of Termination Assessment of Income Tax must state the specific facts and reasons the District Director relies upon in making the assessment. The information available at the time of the assessment and subsequently developed will be used by the Service to prove that the action taken is reasonable under the cir-

circumstances. At least one of the conditions contained in Policy Statement P-4-89 must be found to exist. See IRM 4585.2(2). However, information that may reveal the identity of an informant will be kept confidential. (See 520(4) of IRM 428(10), Report Writing Guide for Income Tax Examiners.) Enclosed with the Notice, the taxpayer receives a computation of income and tax with a statement as to the basis on which income is computed. The Notice informs the taxpayer of appeal rights concerning the assessment. In completing Pattern Letter P-49, the date of the current taxable year or the preceding taxable year will be inserted as appropriate; that is, for a termination assessment made July 1, 1978, the year "1978" will be inserted under the heading "taxable year" if the taxpayer is a calendar year return filer.

(3) The Notice should be prepared in an original with four copies. All should be dated as of the date presented or mailed to the taxpayer. The District Director usually designates an employee to issue and sign his/her name to the Notice. It is usually prepared by the Quality Review staff, Examination Division, and the original and one copy with computation is given to the Chief, of the Special Procedures function or TOC for personal delivery with a Notice and Demand to pay the tax. Form 3552 (Prompt Assessment Billing Assembly) may be used. If personal delivery cannot be made, these documents should be mailed immediately by U.S. Certified Mail (Registered Mail if addressed outside the U.S.), return receipt requested, to the last known address of the taxpayer. (See also IRM 4585.8, Liaison, and IRM 4585.10, Regional Review of Termination Assessments.) An additional copy of the Notice with a tax computation schedule should be sent to Appeals Office. This will provide the person who would handle a protest ample time to review the file prior to assignment.

4585.7 (9-25-81)

Provisions for Administrative and Judicial Review

(1) The provisions of IRC 7429(a) and (b) are outlined in Pattern Letter 1583(P) (Rev. 8-81) which is delivered to the taxpayer as soon as possible after assessment. A written request for administrative review may be filed as early as the day following the day a written statement (Notice) is furnished or required to be furnished.

The taxpayer must file such a request if a civil action in the U.S. District Court is contemplated. IRC 7429(a)(2) provides the taxpayer a remedy for delays in delivery. If the statement (Notice) is not delivered within five days after assessment, the taxpayer may still file a request for review within 30 days after the date the Notice is required to be furnished. A request for review may be filed as early as the sixth day after assessment, and a suit brought 16 days after such request. IRC 7429(d) states that Saturday, Sunday, or a legal holiday in the District of Columbia shall not be counted as the last day of any period. Exhibit 4580-2 should be helpful in determining Code provisions and computation of days.

(2) On receipt of the taxpayer's request for redetermination, or review of the action taken, it will be reviewed and associated with the administrative file and immediately forwarded to Appeals Office. When feasible, a conference will be granted immediately and a decision rendered within 15 days after the request is filed. The Appeals Officer will give full consideration as to whether:

(a) the termination assessment action is reasonable under the circumstances, (i.e., whether the collection of the tax was in jeopardy), and

(b) the amount assessed or demanded is appropriate under the circumstances.

(3) A determination should be rendered prior to the earliest date the taxpayer may bring civil action in the U.S. District Court, that is the 16th day after filing the protest with the District Director. Similarly, the Code provides time periods within which actions may be taken by the taxpayer. If the taxpayer fails to observe the limits provided, the Court would not have jurisdiction over the action. Therefore, it would be advisable to apprise the taxpayer of the latest date on which civil suit may be filed or brought.

(4) If the taxpayer provides new information or documentation to the Appeals Officer, the District Director may be requested to comment on the new evidence. However, Appeals will retain jurisdiction over the case. (See Delegation Order No. 160, as revised).

(5) Appeals' determination will result in one of the following actions:

(a) district action sustained in full (the action and the amount of tax are correct);

(b) district action sustained in part (the amount of tax is redetermined);

(c) a decision that termination action was not warranted (i.e., the collection of the tax was not in jeopardy);

(d) taxpayer agreement with the action taken and the amount assessed in full or in part.

(6) If the district's action is sustained in full and the taxpayer does not agree with this determination, the taxpayer will be informed of his/her rights for judicial review and the file will be returned to the district office. If the district's proposal is sustained in part and the taxpayer does not agree, Appeals will promptly notify the district office so appropriate action can be taken to abate the excessive assessment. In the event the taxpayer and Appeals reach an agreement concerning the amount of tax for the termination assessment, the taxpayer will be asked to pay the tax. The district will be notified to abate any excessive tax assessed as determined by Appeals. If it is determined that the termination action was not warranted, the district will be notified by Appeals to abate the entire amount of the assessment, release liens and any levies, as appropriate, and effect appropriate refund or credit. Upon disposition, the Appeals Office will return the file with a report in duplicate to the district Examination function.

(7) If the taxpayer files a civil suit at any time prior to conclusion of the administrative appeals, the Chief of the Special Procedures function or TOC, will gather the entire file, including the request for administrative review and information developed in conferences, and transmit it to District Counsel within one working day. Administrative hearings will be suspended pending Court Action. However, a copy of the file will be retained to issue a notice of deficiency within the required period for issuance, within 60 days after the later of the date the taxpayer files a return for the full taxable year or the due date of the return as extended. The 60 days does not commence to run until a return for the taxpayer's annual accounting period is filed. However, an audit of the full taxable year and normal deficiency procedures may be required.

(8) If the issue concerning the reasonableness of the termination assessment is ruled in favor of the taxpayer or the amount assessed was determined unreasonable, the file should be reviewed for development under normal deficiency procedures. This may require an audit for the full taxable year and requesting the taxpayer to file a return and/or preparing a "substitute for return" if none was filed, or if taxpayer refused to file. See IRM 4562.4 for procedures. A notice of deficiency would follow. If it is again found collection of the tax would be in jeopardy if normal procedures were followed, a recommendation for jeopardy assessment under procedures in IRM 4584 would not be precluded.

4585.8 (2-9-79)

Liaison

(1) For effective administration of jeopardy and termination assessment actions and collection procedures, District Directors will establish a liaison system in their districts. IRC 7429 establishes taxpayers' appeal rights by law and

sets strict time tables on Service and taxpayer actions. Also, certain restrictions on the type of collection action which can be pursued have been incorporated in IRC 6863. During the period of making or hearing an appeal, the sale of seized property is generally prohibited. This liaison is necessary to protect both the Government's and the taxpayer's interest. The Chief, Special Procedures Staff (SPS) or (TOC) should have overall responsibility for necessary liaison between the Examination, Collection and Criminal Investigation functions, the Appeals Office, and District Counsel.

(2) Responsible Service employees must keep the Chief, SPS or TOC, informed of the status of the case from the time a copy of the assessment files are furnished. The Chief's responsibility is strictly liaison, therefore, the responsibility for taking necessary actions on a termination case remains with the organization having jurisdiction for taking the required actions. In addition, the Chief, SPS or TOC, should be kept informed at all times of what action is being taken with respect to a protest by the taxpayer.

(3) In the event the taxpayer commences a proceeding in the District Court to review the action taken by the Service, District Counsel will be notified by the Chief, SPS or TOC. The person performing the liaison function shall be responsible for transmitting the administrative file or files, including the report or findings of the Appeals Office to the District Counsel's office. The files will be provided within one work day. The commencement of a proceeding in District Court suspends any administrative review of the taxpayer's protest.

4585.9 (11-21-80)

Abatement Procedures

(1) The termination assessment of income tax may be abated in whole or in part under the provisions of IRC 6861(g). During administrative reviews a determination may be made that the assessment action was improper or excessive in amount. Also, the district court may determine that the making of the assessment is unreasonable or that the amount assessed is inappropriate and order the District Director to abate the assessment or to redetermine the amount assessed.

(2) An abatement of all or a part of the tax should be supported by the report of findings and a new computation of tax. An original and four copies should be prepared in order to supply a copy to the taxpayer; the Chief of the Special Procedures function; the ARC (Examination); and the service center. The case file will be routed as quickly as possible using Form 3870 (Assessment Adjustment Document), through the Chief, Quality Review Staff, of the originating district or Prime District servicing the originating district.

MT 4500-351

4585.9

IR Manual

(3) District Court orders to abate all or a part of the tax should be related by District Counsel to the Chief of the Special Procedures function, who will return any files to the appropriate Chief, Quality Review Staff, for immediate processing of the abatement. If a part of the assessment remains, collection action may be resumed for the balance due. If an excess collection has been made, the service center should refund such excess. The file should reflect any address changes.

(4) When a termination assessment previously made has been abated in whole or in part because it was determined that the making of the assessment was unreasonable or that the amount of the assessment was inappropriate, the determination should be reviewed with the file to ascertain what follow-up action should be taken. The merits of the liability may be reconsidered in succeeding termination action for the current year or upon the taxpayer's filing of the return for the current year. When the district court order is based on a determination that the making of the assessment was unreasonable; that is, collection of the tax was not in jeopardy, Form 2363 (Master File Entity Change) will be prepared in Quality Review Staff to reestablish the taxpayer's filing requirement and Form 5346 (Examination Information Report) will be prepared to ensure examination of the taxpayer's current year return.

4585.(10) (8-22-80)

Regional Review of Termination Assessment Cases

(1) Immediately after assessment and delivery of Notice of Termination Assessment of Income Tax to the taxpayer, copies of case files including Forms 2644 (Recommendation for Jeopardy Assessment/Recommendation for Termination Assessment) and 2645 (List of Property Belonging to Taxpayer), examiner's report, and the Notice with computation of tax, will be forwarded to the office of the Assistant Regional Commissioner (Examination) for review and analysis. This review will be performed in accordance with IRM 4877.

(2) Copies of taxpayer requests for administrative review and reports of reconsideration by the Appeals Office will be sent to the ARC (Examination) to be analyzed, recorded and associated with the retained copies of the assessment files. Information concerning district court determinations and orders also will be forwarded to the ARC (Examination). Copies of notices of deficiency issued after examination of returns filed by the taxpayer for the year in

which termination assessments were made will be forwarded to the ARC (Examination) for regional review.

(3) Termination assessments made by the Office of International Operations will be immediately reviewed by the Assistant Regional Commissioner (Examination), Mid-Atlantic Region. Notice of deficiency will be prepared, then prereviewed by the Mid-Atlantic Region's District Counsel's Office if time permits. Copies of files, as in district office cases, will be transmitted to the National Office Examination Division (CP:E:S:S), for post review in accordance with IRM 4877.

4585.(11) (9-25-81)

Followup Procedures and Notice of Deficiency

(1) IRC 6091(b) requires persons with respect to whom a termination assessment was made to file their full taxable year return with the office designated by regulations. Section 301.7429-1 of the Regulations incorporates the filing requirements contained in Pattern Letter 1583(P) (Rev. 8-81) (Notice of Termination Assessment of Income Tax). Individual taxpayers are directed to file the returns for their usual annual accounting period with the office of the District Director in which they reside. Corporate taxpayers are directed to file in the district in which their principal office is located. Such place of filing is directed to provide early receipt and time for necessary examination and issuing the Notice of Deficiency within the period, 60 days after filing, required by IRC 6851(b). This provision of the Code is expressly designed to afford taxpayers opportunity to appeal the merits of the liability to the Tax Court as early as possible. Due to the mobility of persons and their probable filing in a district other than in the one initiating termination action or with a service center, the Notice directs that a copy of it accompany the return. Returns not identified in time to issue a Notice of Deficiency within the 60 days after filing, should be examined.

(2) Controls of termination assessment files must be established to determine whether or not the taxpayer files a full year's return or the location of the filing. A systematic search of filing records should be required. Examination function has primary responsibility for doing this. The Returns Program Manager will maintain a file on all taxpayers subject to a termination assessment. Information received from all sources will be consolidated for followup. If the taxpayer fails to file by the due date of the return, an examination for the entire year should be initiated. If a return is not secured, the "substitute for return" procedures should be fol-

lowed. See IRM 4585.(11):7 below. If a taxpayer does file a return, but does not file it with his/her District Director as instructed in the Notice of Termination Assessment, Service personnel have the responsibility to identify and process these returns as quickly as possible. Returns hand carried or mailed to district offices should be sorted daily to spot those filed with Notice of Termination Assessment attached or inside and those claiming substantial refunds but not containing payment documents. These returns should not be forwarded to the service center for processing along with the usual shipment before inquiry of the Returns Program Manager or the Chief of the Special Procedures function or Technical and Office Compliance Group (TOC). The Returns Program Manager should have information on all termination assessments made during the current and prior years. The Chief of the Special Procedures function or TOC, would have copies of files and may have information from the Collection function as to the current address of these taxpayers. Collection function may have need for a current address. Also, requests by taxpayers subjected to termination assessments for extension of time to file returns should be related to these Service persons to permit followup or preparation of a proposed Notice of Deficiency on the information available.

(3) IRC 6212(a) and (b) require mailing of a Notice of Deficiency by certified or registered mail to the last known address of the taxpayer. The Notice of Deficiency required by IRC 6851(b) for the taxpayer's full taxable year (determined without regard to termination assessment(s) made) with respect to which such termination assessment(s) was made shall be mailed within 60 days after the later of the due date of the taxpayer's return for such taxable year (determined with regard to any extensions), or the date such taxpayer files such return. This provides little time to locate a return and issue a Notice, particularly when a return is filed with a different district office than the district which processed the termination assessment, or with a service center. The Master File will have a freeze code, TC 914, to prevent posting of any return or other document; however, to provide ample time in which to issue the Notice, it appears advisable to prepare a preliminary draft on the basis of information available. This procedure would be particularly appropriate when a termination assessment involved or included a preceding taxable year.

(4) The statutory deficiency may be in an amount greater or less than the termination assessment(s). If the assessment exceeds the corresponding deficiency, necessary steps should be taken forthwith to abate any portion of the excess remaining unpaid. If all or any part of the excess has been paid, no refund should be made until the case is closed.

(5) Notice of deficiency for the full taxable year in which a termination assessment of income tax was made, or in which more than one termination assessment was made, shall include such income or subsequent determination of income plus any other income and/or deductions determined by examination to be properly taken into account for such taxable year. Any amounts collected as a result of termination assessment(s) shall be treated as a payment of tax for such taxable year. IRC 6211(b)(1) relating to rules for application of the term deficiency, provides the tax shall be computed without regard to any credits resulting from the collection of amounts assessed under IRC 6851 (relating to termination assessments). The Chief of the Special Procedures function or TOC, should be kept informed of actions taken because of the restrictions in IRC 6863 concerning sale of seized property.

(6) Under IRC 6851(b), effective for terminations prior to March 1, 1977, a terminated taxable period was reopened each time a taxpayer was found to have received income within the current taxable year. IRC 6851(a)(2) as amended provides similar treatment by requiring the Service to take into account any prior determination with respect to such current taxable year so that the tax determined shall be for the period beginning on the first day of the current taxable year and ending on the date of the determination, as though such period were the taxable year of the taxpayer. IRC 6851(a)(3) provides that any amounts collected as a result of any termination assessments shall be treated as a payment of tax for such taxable year. When a prior determination in a current taxable year is included in a subsequent determination in the current taxable year, District Counsel should be consulted for advice.

(7) Upon filing of the full year return by the taxpayer subject to a termination assessment, the correct tax liability will be determined and, if a deficiency exists, a notice of deficiency will be issued in an amount reflecting the difference between the amount shown on the return and

the amount determined to be the correct liability. The deficiency may be in an amount greater or less than the termination assessment(s). See (4) above. Therefore, where the tax reflected on the full year's return equals the termination assessment, and an examination of the full year's return results in no additional tax or over-assessment, the Notice of Deficiency, required by IRC 6851(b), need not be issued. However, where the taxpayer reports on his/her return an amount of tax that is less than the termination assessment, the Notice of Deficiency must be issued. If the taxpayer does not file a return at the end of the full year on or before the proper due date, the "substitute for return" procedures in IRM 4562.4 should be followed and a notice of deficiency issued. Since no return was filed by the taxpayer, the notice of deficiency will be issued in an amount determined to be the correct tax liability for the year.

(8) If the taxpayer files a petition with the Tax Court the procedures in IRM 4461.5 will be followed. In Tax Court cases appealed to a higher court, the procedures in IRM 4482.5 will be followed. If the correct liability, as finally deter-

mined for the full taxable year, is greater than the tax previously assessed for both the short period and the full taxable year, the difference will be assessed under IRC 6215.

(9) If an overpayment is determined by the Tax Court for the full taxable year, such overpayment may be credited, within the applicable period of limitations, under IRC 6402 against any outstanding liability of the taxpayer. Any remaining balance shall be refunded.

(10) Interest is allowed on a refund or credit from date of payment on assessment for the terminated period. After completing necessary action, Examination function will forward all the documents necessary for the service center to complete processing.

(11) Regional review procedures under IRM 4877 are applicable to all termination assessment files. IRM 4944, Double-Sealed Mailing, applies to most jeopardy and all termination files.

9263 (1-11-79)

Jeopardy or Termination Assessments

(1) The Criminal Investigation Division is responsible for recommending jeopardy or termination assessments in cases under active consideration by Criminal Investigation and in cases under joint active consideration with Examination or Collection.

(2) Jeopardy assessments authorized by IRC 6861 apply whenever the collection of a deficiency of income, estate and gift tax is in jeopardy after a taxable year or period has passed and the period for filing the required return and the payment of tax has passed. Jeopardy assessments authorized by IRC 6862 apply whenever the collection of a tax, other than income, estate, and gift tax, is in jeopardy; whether or not the time for filing the required return and the payment of tax has passed.

(3) Termination assessments, authorized by IRC 6851, apply whenever the collection of tax is in jeopardy before the end of a taxpayer's normal year or before the statutory date the taxpayer is required to file a return and pay the tax.

(4) IRM 9329 and 9634 should be reviewed prior to preparing or processing a report recommending a jeopardy or termination assessment.

(5) IRM 9320 and 9540 should be reviewed prior to preparation or processing a report recommending a jeopardy assessment.

9329 (1-11-79)

Jeopardy Situations

(1) Under a normal assessment, there is generally a considerable lapse of time between a taxpayer's first notice that the Service is seeking to collect taxes and the actual enforced collection of those taxes. On the other hand, when there is a sufficient indication that the collection of a tax may be in jeopardy, the Service may immediately assess and collect the tax. For this purpose, there are two basic types of special assessments—jeopardy assessments and termination assessments. Both types have the common characteristic that prior to assessment it is determined that collection will be endangered if regular assessment and collection procedures are followed.

(2) Jeopardy assessments are authorized by IRC 6861 and 6862. IRC 6861 applies to income, estate, gift and certain excise taxes when the due date for filing and paying the tax returns has expired. IRC 6862 applies to taxes other than income, estate, gift and certain excise taxes whether or not the due date for filing and paying the tax has expired. For example, IRC 6862 provides the authority for making a jeopardy assessment on an employment tax return whether or not the return due date has expired.

(3) Termination assessments, which are authorized by IRC 6851, may only be made on income tax liabilities. IRC 6851 specifically applies when the taxable year of a taxpayer has not ended, or when the taxable year has ended but the due date for filing the return, or the due date as extended, has not arrived.

(4) Jeopardy and termination assessments should be used sparingly and care should be taken to avoid excessive and unreasonable assessments. They should be limited to amounts which reasonably can be expected to protect the Government, and they must receive the personal approval of the District Director (for OIO, the Director of International Operations).

(5) A jeopardy or termination assessment will be made by the Service if collection is determined to be in jeopardy because at least one of the following conditions exists:

(a) The taxpayer is or appears to be designing quickly to depart from the United States or to conceal himself/herself.

(b) The taxpayer is or appears to be designing quickly to place his/her or its property beyond the reach of the Government either by removing it from the United States, by concealing it, by dissipating it, or by transferring it to other persons.

(c) The taxpayer's financial solvency is or appears to be imperiled. (This does not include cases where the taxpayer becomes insolvent by virtue of the accrual of the proposed assessment of tax, penalty and interest.)

(6) Notwithstanding the existence of one or more of the above-cited conditions, in any case which might cause serious inconvenience to the general public, a jeopardy or termination assessment should not be made without prior notification to the appropriate Regional Commissioner. If necessary, the Regional Commissioner will notify the Deputy Commissioner. Examples of such cases include banks, newspapers, insurance companies, hospitals and public utility companies.

(7) The Criminal Investigation Division is responsible for recommending jeopardy or termination assessments in cases under active consideration by Criminal Investigation and in cases under joint active consideration with Examination or Collection. In other instances, special agents should be alert for information indicating the possible existence of jeopardy situations and should report such information by memorandum to the affected division. Recommendations should be prepared on Forms 2644 (Recommendation for Jeopardy/Termination Assessment) and 2645 (List of Property Belonging to Taxpayer). See IRM 9634.3. Recommendations will be referred for concurrence or comment to the Chief, Collection Division; to the Chief, Examination Division; to the Chief, Special Procedures Staff; and, if time permits, to District Counsel prior to referral to the District Director for personal approval. In all reports originating in the Criminal Investigation Division regarding the assertion of a jeopardy or termination assessment, the Chief shall inform the District Director, in writing, whether it appears likely that criminal prosecution will be recommended in the case and also whether the assertion would imperil the successful investigation of the case if a prosecution recommendation is likely.

(8) Jeopardy assessment will be withheld in potential criminal tax cases to the extent necessary to avoid imperiling successful investigation or prosecution of such cases. On the other hand, when such action is warranted in those cases, it must be taken whenever it is feasible to do so. The District Director is responsible for this practice when jeopardy assessment recommendations are submitted to him/her for approval. See Policy Statement P-4-84.

(9) The Chief, Criminal Investigation Division, should coordinate with District Counsel any recommendation for jeopardy or termination assessment which affects pending prosecution cases. In cases pending with the Department of Justice, its views will be coordinated with District Counsel. In cases pending with the United States Attorney, his/her views should be obtained by the Chief. Telephone authorizations, although normally not desirable, can be obtained in exigent situations. Should the office which has jurisdiction over the case conclude that the assessment would imperil successful criminal prosecution, such assessment shall not be made until all the criminal features of the case which may be imperiled by the action, including appeals, have been completed. The recommendation for assessment may, however, be renewed if new circumstances make such action appropriate.

(10) IRC 7429, added by the Tax Reform Act of 1976, provides an expedited review of jeopardy and termination assessments. Within five days after the assessment, the Service must give the taxpayer a written statement of the information relied upon in making the assessment. Pattern Letter P-49 (Rev. 5-78) is used for this purpose and includes as an enclosure a computation of income and tax. The taxpayer may request administrative review of the assessment within thirty days after the day the statement is provided or within thirty days after the last day of the period during which the statement is required to be furnished. The Service has fifteen days to complete its administrative review. If the Service finds the assessment is inappropriate or excessive in amount, it may abate the assessment in whole or in part. If the administrative review is not satisfactory to him/her, the taxpayer may, within thirty days after the IRS review determination or the sixteenth day after the request for review, if earlier, bring action in the U.S. District Court for the district in which he/she resides. Within twenty days after the taxpayer begins the action, the District Court is to make new, independent determinations regarding the reasonableness of the jeopardy or termination assessment and the appropriateness of the amount assessed. The Commissioner has the burden of proving whether the making of the jeopardy assessment or termination assessment is reasonable under the circumstances, but the taxpayer has the burden as to the reasonableness of the amount assessed. The twenty day period may be extended by the court for up to forty additional days, but only on the request of the taxpayer. The court can order the IRS to abate the assessment or to redetermine the amount assessed in whole or in part. Any determination made by the court shall not be reviewed by any other court. A determination under IRC 7429 has no effect upon the determination of correct tax liability in a later proceeding.

9416 (8-1-78)

Jeopardy Assessments in SEP Cases

All Criminal Investigation personnel connected with SEP should be alert to situations where a jeopardy or immediate assessment of a delinquency may be appropriate. In addition, the need for collection action to secure assets should be considered during all SEP examinations and investigations. Although criminal sanctions generally take precedence over the civil tax aspects (policy statement P-4-84), exceptions may be made on a case-by-case basis to protect the best interest of the Government.

9634.3 (1-1-79)

Jeopardy and Termination Assessment Reports

(1) Form 2644, Recommendation Jeopardy/Termination Assessment, should be used for jeopardy or termination assessment reports. Special agents should also utilize Form 2645, List of Property Belonging to Taxpayer. Emergency situations may be handled orally and later documented by written reports.

(2) The following information should be submitted in all cases to the extent practicable:

- (a) name, address and EIN or SSN of taxpayer;

- (b) tax, penalty and interest to be assessed by periods;

- (c) the nature of the taxpayer's business or activity;

- (d) the taxpayer's present financial condition;

- (e) information regarding the taxpayer's activity giving rise to the recommendation, such as transfer of assets without consideration;

- (f) records or statements with respect to continuing business or personal losses;

- (g) filing record of taxpayer;

- (h) the taxpayer's record for resisting payment of taxes in the past (collection delays and unpaid taxes);

- (i) the nature and location of the taxpayer's assets and the source(s) of his/her income;

- (j) a statement as to the factual basis for the determination of taxable income and a schedule showing how the tax was computed;

- (k) any other information having a bearing upon the taxpayer's financial condition, future anticipation of losses, etc. and

- (l) information showing whether the case is, or has been, the subject of a joint investigation and whether criminal prosecution has been, or is likely to be, recommended.

(3) The following clearances will be secured:

- (a) Group Manager, Branch Chief, and Assistant Chief (if applicable);

- (b) Chief, Criminal Investigation Division;

- (c) Chief, Special Procedures Staff;

- (d) Chief, Collection Division;

- (e) Chief, Examination Division;

- (f) District Counsel (if time permits); and

- (g) the District Director (or OIC, the Director of International Operations). Only the Director or Acting Director is authorized to sign Form 2644.

(4) If the recommendation for a jeopardy assessment involves a case pending in the office of the Chief, whether or not prosecution is to be recommended, one copy of the report recommending the jeopardy assessment, together with information as to the final action taken thereon in the district, will be forwarded by the Chief to the ARC (Criminal Investigation or Compliance). In such cases, complete information relative to the recommendation for a jeopardy assessment and the action taken thereon will be incorporated in the special agent's final report when it is submitted.

(5) If the recommendation for a Jeopardy assessment involves a case in which prosecution has been recommended and the case is no longer pending in the office of the Chief, an original and eight copies of the special agent's report recommending the jeopardy assessment will be prepared. Seven of the copies will be distributed in the same manner as the copies of the final report at the time advice is requested as to whether a jeopardy assessment would be prejudicial to the criminal case. The eighth copy, which would normally become part of the file transmitted to Examination in the district at the conclusion of the criminal features of the case, will be held by the Chief for transmittal to district Examination after the assessment has been made in order that district Examination may issue the statutory notice.

(6) The original of the special agent's report recommending a jeopardy assessment will be forwarded, together with a transmittal memorandum from the Chief, to the District Director for appropriate action. If it was necessary to obtain the comments of other officials as provided in IRM 9329, the transmittal memorandum will recite their views regarding the proposed jeopardy assessment. In such cases, the transmittal memorandum will be prepared in an original and eight copies and, other than the original, distributed in the same manner as the jeopardy assessment report. Prior to distribution of the copies of the transmittal memorandum, a summary of the assessment action taken shall be made thereon.

(7) When the Department of Justice or the United States Attorney does not concur in a jeopardy assessment recommendation in any case within their jurisdiction and the recommendation for jeopardy assessment has been renewed, reports of the new circumstances and a request for review of the prior recommendation will be processed in the same manner as set forth above for the original jeopardy assessment report.

9822.9 (8-2-80)

Use of Civil Enforcement Measures

(1) Predicated on the new forfeiture provision under the Controlled Substances Act, 21 USC 881(a)(6), DEA will seize and forfeit funds identifiable with and traceable to drug violations. Any such funds and assets are generally subject to forfeiture to the U.S. in their entirety and thus would not be an available source for satisfaction of any tax liability. However, the local IRS office will be contacted so that a tax levy on seized funds can be instituted on the chance that the forfeiture proceeding may be unsuccessful.

(2) Jeopardy assessments and terminations of taxable years will be made only in accordance with the provisions of the Internal Revenue Code and with IRS policy and procedure.

(3) Jeopardy assessments and terminations of taxable years will be used sparingly and only to protect the revenue when collection thereof is in doubt. Either type of assessment must receive the personal approval of the District Director. Before authorizing the use of IRC 6851 or 6861, See Exhibit 9820-3, it must be established that the taxpayer intends to perform one of the acts which will prejudice collection of the income tax unless collection action is begun without delay, and the taxpayer realized taxable income in the period or taxable year under consideration. Care must be taken to avoid excessive and unreasonable assessments. See policy statements P-4-88 and P-4-89 and IRM 9263, 9329, and 9634.3 for more specific instructions.

552 (1-18-80) 9781

Jeopardy Assessments

552.1 (1-18-80) 9781

References

The text of the law relating to jeopardy assessments is set forth in IRC 6851, 6862, and 6863 and IRM 9263, 9329, and 9534.3.

552.2 (1-18-80) 9781

Criminal Investigation Division Responsibility

The Criminal Investigation Division is responsible for recommending jeopardy or termination assessments in cases under active consideration by Criminal Investigation and in cases under joint active consideration with Examination or Collection. In other instances, special agents should be alert for information indicating the possible existence of jeopardy situations and should report such information by memorandum to the affected division. Recommendations should be prepared on Forms 2644 (Recommendation for Jeopardy/Termination Assessment) and 2645 (List of Property Belonging to Taxpayer). See IRM 9634.3. Recommendations will be referred for concurrence or comment to the Chief, Collection Division; to the Chief, Examination Division; to the Chief, Special Procedures Staff; and, if time permits, to District Counsel prior to referral to the District Director for personal approval.

552.3 (1-18-80) 9781

Jeopardy Situations

(1) A jeopardy assessment is recommended when it appears that collection of tax will be endangered if regular assessment and collection procedures are followed.

(2) In determining whether a jeopardy assessment may be made at least one of the following three conditions must exist:

(a) The taxpayer is, or appears to be, designing quickly to depart from the United States or to conceal himself/herself.

(b) The taxpayer is, or appears to be, designing quickly to place property beyond the reach of the Government by removing it from the United States, concealing it, dissipating it, or transferring it to other persons.

(c) The taxpayer's financial solvency is or appears to be imperiled. However, the taxpayer should not be considered to be insolvent by virtue of the accrual of the proposed deficiencies of tax, penalty, and interest.

(3) The jeopardy assessment procedure is a drastic exception to the normally accepted method of assessment and collection of taxes and should not be used as an additional penalty or for any other improper purpose. It should be used sparingly and care should be taken to avoid excessive and unreasonable assessments. It should be limited to amounts which reasonably can be expected to protect the Government and must be personally approved by the District Director.

(4) Notwithstanding the existence of one or more of the above-cited conditions, in any case which might cause serious inconvenience to the general public, a jeopardy or termination assessment should not be made without prior notification to the appropriate Regional Com-

missioner. If necessary, the Regional Commissioner will notify the Deputy Commissioner. Examples of such cases include banks, newspapers, insurance companies, hospitals and public utility companies.

(5) Jeopardy assessment will be withheld in potential criminal tax cases to the extent necessary to avoid imperiling successful investigation or prosecution of such cases. On the other hand, when such action is warranted in those cases, it must be taken whenever it is feasible to do so. The District Director is responsible for this practice when jeopardy assessment recommendations are submitted to him/her for approval. See Policy Statement P-4-84.

552.4 (1-18-80) 9781

Investigation of Jeopardy Assessment Cases

(1) Upon the receipt or discovery of information indicating the presence of any one of the three jeopardy situations enumerated in 552.3(2), the special agent should obtain all available facts and evidence which will either establish or refute the existence of a jeopardy situation. Promptness and discretion is of the essence in this type of investigation, since it could work to the serious disadvantage of the Government if the taxpayer should discover that such an investigation or inquiry is being made. Surveillance may be necessary in some cases.

(2) The special agent should make every effort to locate all assets belonging to the taxpayer and list them in the report recommending a jeopardy assessment. However, to avoid unnecessary expenses and embarrassment to the Government through levying upon property in which, although title stands in taxpayer's name, his/her actual equity has no marketable value, the special agent should endeavor to ascertain if practicable, the nature and conditions of any existent liens and encumbrances on the assets. The agent should include this information in the report, together with any other information that should be considered in determining the advisability of making a jeopardy assessment.

(3) The mere levy of a jeopardy assessment, in the absence of a showing by a defendant that the defense of the criminal case was thereby hampered, was insufficient to preclude trial of an indictment for tax evasion. [Summers v. U.S.; O'Connor, Kenneth A. v. U.S.] On the other hand, a motion to postpone a criminal trial until conclusion of civil proceedings in Tax Court was granted on the theory that freezing the defendant's assets might prevent the retaining of counsel and accountants to help defend a net worth tax case and thus depriving the defendant of a fair trial. [U.S. v. Brodson]

553 (1-18-80) 9781

Termination Assessments

553.1 (1-18-80) 9781

References

The text of the law relating to termination assessments is set forth in IRC 6851. Manual references are in IRM 9263, 9329, and 9534.3.

553.2 (1-18-80) 9781

Introduction

(1) Another type of immediate assessment action is the termination assessment of income tax under IRC 6851. It may be made only on income tax liabilities. It specifically applies when the taxable year of a taxpayer has not ended, or when the taxable year has ended but the due date for filing the return, or the due date as extended, has not arrived.

(2) Criminal Investigation Division responsibility for termination assessments is stated in Text 552.2. Termination assessments may be made only if at least one of the three conditions found in Text 552.3 exists.

553.3 (1-18-80) 9781

Requirements

(1) Termination assessments must be used sparingly and care taken to avoid excessive and unreasonable assessments. They should be limited to amounts which reasonably can be expected to equal the ultimate tax liability.

(2) The District Director or, for cases in International Operations, the Director, OIO, must approve termination and jeopardy assessments.

(3) An assessment made as a result of termination of taxable period must be based on a reasonable computation of tax liability. An assessment equal to the amount of money or other valuable property held by a person at the time of arrest is not considered a reasonable computation unless supported by other facts.

(4) The basis used in arriving at adjusted gross income in terminations of taxable periods will be stated. The computation will be determined using an acceptable legal basis such as a source and application of funds statement or a net worth computation. The following information illustrates the types of items that may have to be considered in order to arrive at an adjusted gross income computation:

(a) Cost of living expenses should include professional estimates by a narcotics agent (or other expert) as to the "Cost of Habit" for a narcotics addict.

(b) Estimates of income from the sale of narcotics should be supported, if possible, by testimony from a narcotics agent (or other expert) who may have knowledge of the subject's activities.

(c) Estimates of income from illegal gambling, including "gross take" and "payouts" may be supported by testimony of law enforcement officers who are familiar with the gambler's operations. Efforts should be made to obtain similar testimony in cases involving other illegal activities.

(d) The taxpayer should be interviewed, if feasible, preferably before assessment is made, in order to afford him/her an opportunity to explain questioned assets, liabilities, income or expenses, filing history, etc. Such an interview may also be of value in revealing previously unknown assets, liabilities, income or expenses.

(e) Efforts should be made to locate and examine books and records, if any, of the taxpayer to the extent possible in the available time.

POLICY STATEMENT - P-4-88

P-4-88 (Approved 8-29-77)

Jeopardy assessments to be used sparingly and assessment to be reasonable in amount
Jeopardy assessments should be used sparingly and care should be taken to avoid excessive and unreasonable assessments. They should be limited to amounts which reasonably can be expected to protect the Government. Each jeopardy assessment must receive the personal approval of the District Director, or the Director of International Operations.

(Policy statement P-4-84, concerning evaluation of the overall interests of enforcement of the law where both criminal and civil aspects of cases are involved, will be followed.)

Conditions under which jeopardy assessments will be made

A jeopardy assessment will be made by the Service if collection is determined to be jeopardy because at least one of the following conditions exists.

(1) The taxpayer is or appears to be designing quickly to depart from the United States or to conceal himself/herself.

(2) The taxpayer is or appears to be designing quickly to place his/her or its property beyond the reach of the Government either by removing it from the United States, by concealing it, by dissipating it, or by transferring it to other persons.

(3) The taxpayer's financial solvency is or appears to be imperiled. (This does not include cases where the taxpayer becomes insolvent by virtue of the accrual of the proposed assessment tax, penalty and interest.)

Prior National Office notification required in certain cases

Notwithstanding the existence of one or more of the above-cited conditions, in any case which might cause serious inconvenience to the general public, a jeopardy assessment should not be made without prior notification of the appropriate Regional Commissioner. If necessary, the Regional Commissioner will notify the Deputy Commissioner.

Examples of such cases include banks, newspapers, insurance companies, hospitals, and public utility companies.

Taxpayer's request for administrative review of jeopardy assessment actions will be expedited

A taxpayer's written request for administrative review of the Director's decision that collection of the tax was in jeopardy, or that the amount of the assessment was excessive, will be considered immediately.

Administrative review provided

The Appeals Office will provide the administrative review requested by a taxpayer. If a case is unagreed, a taxpayer may request a conference with Appeals. The review will be conducted expeditiously. Action to abate all or a part of the tax or to issue a statutory notice of deficiency, if necessary, will be initiated by the office having jurisdiction over the merits of the tax liability.

Jeopardy assessments involving alcohol, tobacco and firearms taxes

Jeopardy assessments involving alcohol, tobacco and firearms taxes will be processed by service centers when requested by a regional director of the Bureau of Alcohol, Tobacco and Firearms.

P-4-89 (Approved 8-29-77)**Termination assessment of income tax to be used sparingly and assessment to be reasonable in amount**

Termination assessment of income tax should be used sparingly and care should be taken to avoid excessive and unreasonable assessments. Assessments should be limited to amounts reasonably determined to be the taxpayer's liability for the period in question based on information available at the time. Each termination assessment must receive the personal approval of the District Director, or the District of International Operations.

(Policy statement P-4-84, concerning evaluation of the overall interests of enforcement of the law where both criminal and civil aspects of cases are involved, will be followed.)

Conditions under which termination assessment will be made

A termination assessment will be made if collection is determined to be in jeopardy because at least one of the following conditions exists.

(1) The taxpayer is or appears to be designing quickly to depart from the United States or to conceal himself/herself.

(2) The taxpayer is or appears to be designing quickly to place his/her or its property beyond the reach of the Government either by removing it from the United States, by concealing it, by dissipating it, or by transferring it to other persons.

(3) The taxpayer's financial solvency is or appears to be imperiled. (This does not include cases where the taxpayer becomes insolvent by virtue of the accrual of the proposed assessment of tax, and penalty, if any.)

Prior National Office notification required in certain cases

Notwithstanding the existence of one or more of the above-cited conditions, in any case which might cause serious inconvenience to the general public, a termination assessment should not be made without prior notification of the appropriate Regional Commissioner. If necessary, the Regional Commissioner will notify the Deputy Commissioner.

Examples of such cases include banks, newspapers, insurance companies, hospitals, and public utility companies.

Taxpayer's request for administrative review of termination assessment actions will be expedited

A taxpayer's written request for administrative review of the Director's decision that termination assessment action was necessary because collection of the tax was in jeopardy, or that the amount of the assessment was excessive, will be considered immediately.

Administrative review provided

The Appeals Office will provide the administrative review requested by a taxpayer. The review will be conducted expeditiously. Action to abate all or a part of the tax will be initiated by the office responsible for the final determination.

Currency already laundered and placed beyond the reach of IRS is obviously not subject to seizure by our collection division. It should also be noted that jeopardy and termination assessments are subject to adjustments resulting from subsequent filing of returns, tax court litigation, et cetera. I will go into this subject further at a later point when I discuss problems associated with our narcotics tax program.

Another tool used by the Service in narcotics investigation involves our responsibilities under the Bank Secrecy Act. IRS has limited jurisdiction under the act and our activities focus on the record-keeping and reporting requirements of secondary financial institutions and money-laundering specialists. However, our criminal investigation division, at the request of the Assistant Secretary (enforcement and operations) has conducted criminal investigations of major financial institutions for violations of the Bank Secrecy Act.

The Service has also initiated other programs to utilize reports required under the Bank Secrecy Act. For example:

In addition to our use of currency transaction reports (forms 4789) for criminal purposes, all such forms for the tax year 1979 and 1980 are being transcribed and entered into the information return selection system (IRSS) file by the IRS. This means that all 1979 and 1980 forms 4789 data contained on IRSS will be associated with related individual returns that are selected for examination.

In 1980, the currency reporting provisions were amended, form 4789 was revised, and a report perfection procedure developed and implemented by IRS at our Ogden Service Center. These were major steps forward in the refining of the information being entered into the Bank Secrecy Act data base. As Treasury makes the financial community more fully aware of the changes, the data will become even more valuable to the IRS, customs, and other law enforcement agencies.

IRS mailed a Bank Secrecy Act "Compliance Package" to all federally insured banks and savings and loan associations. This mailing furnished financial institutions with material that can be used to alert their employees to the filing requirements.

From 1974 through 1981, IRS initiated 433 criminal investigations based on currency transaction report information. Since 1977, 11 additional criminal cases have been initiated as a result of data from the forms 4790 (report of international transportation of currency or monetary instruments).

The IRS Collection Division is testing the usefulness of the currency transaction report (form 4789), report of international transportation of currency or monetary instruments (form 4790) and report of foreign bank and financial accounts (form 90-22.1) in four large districts with significant customs activity over a 6-month period.

The IRS Examination Division has developed a plan to canvass all regions and extract report data on cases under examination. The canvass will include between 3,000 and 4,000 open special enforcement program (SEP) cases (that is, narcotics traffickers, labor racketeers, organized crime subjects, et cetera). It is anticipated that the Collection Division test and the canvass will establish a basis for evaluating the usefulness of currency transaction report information in these areas.

The currency reports, generated as a result of the Bank Secrecy Act reporting requirements, are being used to help identify and convict narcotics traffickers in all parts of the country. The reports help identify bank accounts and specific transactions which are needed to complete the financial investigations. Also by identifying bank accounts, any ultimate seizures of assets can, at times, be enhanced.

The most significant single law enforcement effort developed to date from the Bank Secrecy Act reporting requirements has been "Operation Greenback." The Service, as a major contributor of resources to this effort, currently has 26 special agent criminal investigators assigned to the project and an additional 7 revenue agents are assigned to assist in grand jury investigations encompassing title 31, title 26, and related offenses. Through September 1981, the Service has initiated 78 criminal investigations in this project that involve the laundering of illegally generated profits, substantially from narcotics trafficking.

It should be noted that of the 838 narcotics program cases in inventory nationwide, 399 or 48 percent are being investigated in conjunction with Federal grand jury proceedings. Most of the 399 grand jury cases are being conducted jointly with DEA and/or customs. DEA and customs investigate narcotics aspects, IRS pursues tax violations. By combining the two areas of expertise, evidence of the source of funds can be coupled with the accumulation of assets, thus improving the chances for successful prosecution.

Multiagency financial investigative forces, similar to "Operation Greenback" in Florida and under the guidance of the U.S. attorneys' offices via grand juries have been developed to identify narcotics traffickers. These teams, which are primarily in our western region, are utilizing Bank Secrecy Act reports to a great extent. One case which benefited from this approach was the *Araujo* case in Los Angeles which involved \$32 million in income from narcotics sales over a 3-year period and generated indictments of 22 members of the Araujo narcotics organization.

The profits generated by major narcotics organizations are enormous. Successfully addressing the drug trafficking problem requires more than prosecution of the leaders and others involved in generating these profits. It requires a combined multiagency effort to use the legal mechanisms available to seize currency and other assets acquired through the sale of narcotics.

Although the Service is generally in the position of being able to identify these assets, certain limitations prevent us from fully addressing this problem. There are four specific areas which inhibit our efforts.

The first area involves foreign tax haven countries which act as repositories for unreported income. In situations where the Service has a tax treaty with the particular country, we can pursue investigations, securing appropriate financial information. However, when we do not have such treaties, we often run into a blank wall; the bank secrecy laws of the haven country preclude us from pursuing the international aspects of the case.

The second area concerns rule 6(e) of the Federal Rules of Criminal Procedure. Rule 6(e) imposes a secrecy requirement on information gathered during the course of a grand jury investigation. Before

any information covered by rule 6(e) may be disclosed and used for civil tax purposes such as jeopardy and termination assessments, a court order must be obtained from the district court supervising the grand jury.

One requirement for obtaining such an order is that the information to be obtained must be requested preliminary to or in connection with a judicial proceeding. Recent court decisions have held that a civil tax examination is not preliminary to a judicial proceeding and, accordingly, have not permitted the Service to use the information developed by our own agents. This trend has been particularly evident in the fifth circuit. Fifth circuit case law will be controlling precedent in the new 11th circuit, which encompasses the State of Florida and where much of the narcotics activity is located. Unless the Supreme Court or the Congress resolves the problem associated with rule 6(e), the Service may not be able to obtain grand jury information in order to determine and collect the civil tax liability of an alleged drug trafficker.

Senator CHILES. Have you made that recommendation? Is that part of any of the package of bills now that the Attorney General has recommended, 6(e) change?

Commissioner EGGER. The administration's bill seeks to alleviate this difficulty with rule 6(e) by amending the Internal Revenue Code to state that civil tax examinations are preliminary to a judicial proceeding. No amendments to the actual rule have been proposed by the administration at this time.

Senator CHILES. I know that we had it in the mob violence bill, some provisions on a change of 6(e) in regard to information made available to the State and local things, but I didn't know if we specifically hit on this tax thing. We do have that in there?

Commissioner EGGER. Yes. As I just noted, although no specific amendment to rule 6(e) has been proposed, the administration's bill does deal with this problem.

The third area where our efforts are constrained involves difficulties the Service faces in trying to seize the enormous amounts of currency being laundered. Our Criminal Investigation Division has found that in the "Operation Greenback" investigations alone, hundreds of millions of dollars have been laundered through banks in the Miami and Tampa areas.

As I have noted, many of our efforts in seizing such funds have been stymied. One difficulty is the short length of time that funds remain in a bank. Once funds are deposited, they are frequently wired to secret foreign bank accounts in tax-haven countries, often within a few hours. Not only are the funds safe from seizure attempts in these accounts, as I have already noted, we are also unable to even identify the owner of the funds because of bank secrecy laws in the tax-haven countries.

Also, the funds may be transferred into domestic investments through layers of fictitious entities, or simply converted into less suspicious forms, such as cashier's checks or certificates of deposit.

Reports of the currency deposits are not required to be filed until 15 days after the transaction. As outlined above, the initial stages of the laundering process are ordinarily completed within a few days.

By the time the currency reports are filed and the Service becomes aware of the deposits, the funds have been put beyond our reach.

Another difficulty can arise even when we are aware of a large deposit in an account. Frequently only a small percentage of those funds actually belong to the money launderers conducting the currency transaction. The IRS lacks the authority to seize the remaining funds because it does not know the true owner or whether that person has a tax liability. In such a situation, even where the funds are apparently derived from an illegal business activity, we cannot make an assumption as to the ownership of the funds or whether the funds represent gross income, that is, we are not allowed to make "John Doe" assessments.

The fourth area which has been inhibiting to our narcotics enforcement efforts concerns the summons provisions of Internal Revenue Code section 7609. This section has resulted often in a great delay in our obtaining access to records essential to an investigation when they are in the possession of a third-party recordkeeper. When a summons is issued, the bank or other third-party recordkeeper is required to notify the person whose records are requested of our summons. If that person, for any reason, notifies the bank—et cetera—not to comply, we must go into court to enforce the summons.

Since by definition the term "third-party recordkeeper" includes banks, savings and loan institutions, consumer reporting agencies, extenders of credit through the use of credit cards, stockbrokers, and attorneys or accountants, a narcotics trafficker may seriously hamper an investigation through delaying tactics.

Mr. Chairman, this concludes my testimony. I would now be pleased to respond to any questions the subcommittee may have.

Chairman ROTH. Thank you. We will continue with the testimony of other members of the panel.

I am going to ask if you gentlemen would summarize your statements because of the passage of time. I want to have as much time available as possible for the question and answer period. Your statements will of course be included in the record in their entirety.

Mr. Powis?

Mr. Powis. Mr. Chairman, members of the subcommittee, I am here today on behalf of Assistant Secretary John Walker who unfortunately became ill and who was hospitalized. I will attempt to summarize my statement.

I welcome the opportunity to appear before this subcommittee today to discuss the strategy and activities of the Treasury Department on international narcotics trafficking issues. The devastating and debilitating effects of drug trafficking and drug abuse on our society needs no further elaboration here. President Reagan, in his address on crime to the International Association of Chiefs of Police on September 28, 1981, stated that "The incredible impact of drug addiction on the crime rate continues. Studies of prison inmates have found that at least half admitted to using drugs in the month prior to their arrest, and it is still estimated that 50 to 60 percent of property crimes are drug related." Other witnesses before this subcommittee have or will provide you with additional statistics and further details to reinforce the President's assessment of this country's deplorable drug abuse situation.

The Office of Enforcement and Operations at the Treasury Department is responsible for administering the Customs Service, the Secret Service, the Bureau of Alcohol, Tobacco, and Firearms, the Federal Law Enforcement Training Center, and the Office of Foreign Assets Control. While our office has no administrative authority over the Internal Revenue Service, we have a responsibility for coordinating Treasury Department law enforcement policy with IRS which, of course, includes the investigations of the illicit financial assets of drug traffickers. Let me say at this point that the IRS is a valuable and indispensable resource in our financial investigations program which I will discuss later.

[At this point, Senators Roth and Rudman withdrew from the hearing room.]

Mr. Powrs. Together with the Justice Department, this office is responsible for helping to develop national law enforcement policies and priorities. From my perspective, nowhere is this role more important and active than in the area of law enforcement against major drug traffickers and drug trafficking syndicates. The Treasury Department's contribution to the overall Federal drug law enforcement effort is primarily in (1) interdiction of contraband drugs smuggled into the United States through our borders and ports of entry; and (2) financial investigations—such as Operation Greenback in south Florida—of major drug traffickers and their syndicates so as to attack their financial base where they are most vulnerable.

These two high priority programs absorb a substantial portion of the time and attention of myself and members of our staff. The Customs Service alone dedicates \$182 million or approximately 36 percent of its fiscal year 1982 budget to antidrug operations. While only a small percentage of the total IRS budget is devoted to antidrug activities it must be noted that the IRS is heavily involved in title 31, Bank Secrecy Act, financial investigations in a number of areas in the country. In the south Florida Operation Greenback, IRS has allocated 26 special agents and 7 revenue agents to the project. This exceeds the personnel commitment of any other participating Federal investigative bureau.

The IRS also concentrates on narcotics traffickers in connection with its own internal tax evasion investigations.

With regard to the status of our land, sea, and air interdiction program, while interdiction seizures of illicit drugs, especially marihuana seizures, has improved somewhat in the past year, we are in fact seizing only a small percentage of heroin and cocaine smuggled into the United States and most of these seizures result from cold hits rather than from any prior intelligence.

Commissioner Corcoran will expound on this area further.

Operation Greenback, developed early in 1980 by the Treasury Department in cooperation with the Justice Department from currency transaction reports filed by banks in Florida, is one of our most successful Federal drug-related financial initiatives to date. The task force is made up of special agents from the Customs Service, Internal Revenue Service, and the Drug Enforcement Administration under the umbrella of the U.S. Attorney's office, and the Department of Justice.

It has succeeded in uncovering and seizing multimillion dollar illicit cash flows associated with major drug traffickers and their syndicates.

Since its inception, Operation Greenback has been responsible for 68 indictments, the seizure of more than \$20 million in monetary instruments, jeopardy tax assessments in the amounts of \$25 million, the seizure of property valued at \$3,905,000 and civil penalties in the amount of \$10 million.

Recently, Greenback has expanded to other areas of Florida including Tampa and Jacksonville. There are currently 45 cases awaiting indictment.

Operation Greenback is based on two enforcement concepts. First, the attack on drug trafficking and other illegal activity should be made through the vulnerability of the financial operations of the violators—not only the income tax laws but the Bank Secrecy Act, which requires the reporting of large currency transactions or the international movement of large amounts of currency. Both laws are within Treasury's investigative jurisdiction.

Second, the integration of the criminal investigations should be achieved through the grand jury process with special prosecutors coordinating all of the related criminal investigations including those involving Customs, IRS, DEA BATF, FBI, or Secret Service.

The use of a grand jury permits all of the Federal agents participating in the investigation to pool information, including tax or other financial information.

This type of sharing is not permitted under the procedures governing administrative investigations.

In addition to the criminal investigations that have been publicized, Greenback included intensive investigative activity by Federal bank supervisory agencies. Several bank examinations disclosed questionable activities that were referred for criminal investigation. The IRS was also encouraged to undertake civil tax examinations of those persons involved in the large currency transactions.

While we recognize that the situation in Florida is unique because it is the favorite meeting place for the "Colombian Connection," Customs, IRS, DEA, and various local U.S. attorneys have established financial task forces in other regions of the country to identify drug violators or to prosecute suspected drug violators for related illegal financial activities. These groups are active, for example, in California, Texas, and Illinois.

As an active participant in Operation Greenback, the IRS conducts drug-related criminal cash flow investigations. As of September 30, 1981, the IRS has completed 49 of 78 active investigations. Of the 49 completed, 25 have been indicted.

While Operation Greenback has grown in size and complexity as I have indicated earlier, other similar financial investigative task forces have been established in other areas of the country. There are presently 10 such task forces and there is a need for additional task forces in other areas.

We are now in the process of establishing a Financial Investigative Center in the Office of Enforcement and Operations. This special unit will monitor, coordinate, and provide investigative, technical, and legal support and guidance to the various task forces working on title 31 cases. It will coordinate the Treasury Department's attack on the fi-

nancial assets of narcotics traffickers through the aggressive application of the Bank Secrecy Act and all other criminal and civil forfeiture statutes.

With regard to pending legislation on the Bank Secrecy Act first, the Treasury Department is reviewing changes to the Bank Secrecy Act such as those in S. 2236 to improve Customs' effectiveness in combating the unreported, international transportation of currency by drug traffickers and other criminals.

With specific reference to the search provision contained in S. 2236, questions arose in both Houses concerning the constitutional propriety of Customs' officers conducting warrantless exit searches of travelers based merely upon a reasonable cause to suspect a violation. However, it was the Treasury Department's position, then supported by the Justice Department as it is now, that the well-established and well-recognized Customs border search authority extends equally to existing as well as incoming travelers. There is ample authority for our position and there are cases cited in my formal statement.

Despite favorable case law supporting broad application of the Customs' border search authority to exiting travelers, agents and inspectors are reluctant to use it in unreported currency cases due to the express probable cause—warrant requirements of section 235 of the act, and the underlying legislative history, of that section.

This reluctance is based upon an agent-inspector fear of incurring personal liability if they follow case law and not the statute.

There is an illustration of a case that points up this problem in my formal statement.

With regard to S. 732, Senator Nunn's bill to amend the Tax Reform Act of 1978, recently Assistant Secretary John Walker had the opportunity to testify along with Commissioner Egger of IRS and Deputy Attorney General Schmultz of the Justice Department in support of early passage of the administration's proposed tax disclosure amendments to section 6103 of the Tax Reform Act of 1976. These amendments, to the Internal Revenue Code, as you know, track closely the provisions of S. 732 introduced earlier this session.

The administration's position is that early passage of these modest changes will permit Federal and State law enforcement more timely access to needed tax information for non-tax-related crimes, while still providing substantial safeguards or individual taxpayers.

Treasury also fully supports the conference compromise bill found in chapter 18 of the Defense Appropriations Act on posse comitatus.

In conclusion, the Treasury Department's antidrug strategy consists of two main thrusts—interdiction and financial investigations of major drug traffickers and their syndicates. Interdiction operations, while somewhat improved, will continue to be limited by lack of prior intelligence on drug smuggling into the United States, especially of heroin and cocaine. This subject is still under discussion with the Justice Department.

With regard to financial investigations, I believe the Treasury Department strategy is sound and is working well.

I thank you for the opportunity to appear before this subcommittee and I welcome any questions you may have.

Chairman ROTH. Mr. Corcoran.

Mr. CORCORAN. Thank you, Mr. Chairman, members of the subcommittee. I appreciate this opportunity to appear before the Permanent

Subcommittee on Investigations regarding the role of the U.S. Customs Service in interdicting and investigating drug smuggling.

As you know, this administration is very concerned with the rising incidence of violent crime in this country. Drug abuse is directly related to this phenomena. In the recently published National Indicators System report, "Violent crime in the United States," it was determined that over 50 percent of all jail and prison inmates in this country regularly used drugs prior to their incarceration.

The havoc raised by this drug menace to our society, to our economy, and most importantly, to our youth is well documented. In this context, the subcommittee's investigation of this matter is not only timely, but necessary.

We know that the traditional response of massively increased law enforcement resources will not, by itself, reverse this trend. During the period 1971 through 1979 Federal, State, and local law enforcement expenditures increased by 147 percent. At the same time, all violent crime rose over 45 percent. Moreover, increasing Federal criminal justice resources may not have the desired effect since they only represent 13 percent of total criminal justice expenditures in this country.

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

Mr. CORCORAN. Given this background, how can the Federal law enforcement effort address the immediate issue of drug smuggling/trafficking and resulting violent crime? It is my belief, which I am sure is shared by many of the subcommittee members, that the Federal Government is in a strategic position to break the link between drug abuse and violent crime since the bulk of the drugs used in this country are imported across our borders.

The large-scale disruption of the smuggling network which supplies the drugs can have a significant impact on drug abuse and the violent crime it fathers.

It is here where the traditional enforcement mission of the Customs Service and its expertise in intercepting the introduction of contraband across our borders define the customs role in a Federal law enforcement crackdown on the drug smugglers. This customs role will be characterized this year by a concerted effort to put the drug smugglers on the defensive. In fiscal year 1982, customs will devote 36 percent of its total budget to counter the drug-smuggling threat. Supporting this enforcement effort are: 4,400 inspectors; 1,300 patrol officers; 100 drug detector dog teams; 25 special enforcement teams; and the currency task forces which I will talk about later.

Using a variety of tactics and sophisticated technology, including tracker and chase aircraft on vessels, these customs professionals will seize the contraband and its conveyance and arrest the smugglers at the border.

A recent example of our success occurred on November 9, 1981, when 369 pounds of cocaine was seized aboard a private aircraft near DeFuniak Springs, Fla. The smuggler had been picked up in customs radar, identified and tracked, and seized by customs aircraft.

At the same time, customs will continue to use another enforcement tool at its disposal to disrupt and seize the financial base of the smugglers which supports their smuggling operations.

Utilizing provisions of the Bank Secrecy Act, customs' special agents will conduct financial investigations of major narcotics trafficking and

organized crime organizations. This approach, pioneered in the Joint Customs/Internal Revenue Service/Drug Enforcement Administration operation Greenback, has the potential to deal a crippling blow to narcotics smugglers.

Greenback, alone, has accounted for 57 arrests, the seizure of over \$20 million in monetary instruments, jeopardy tax assessments of \$25 million, and the issuance of \$10 million in civil penalties.

All of this is the result of one operation over a 21-month period. There are still 45 targets awaiting indictment.

This dual strategy, not only to meet the smugglers on the beach but also to hit them in their pocketbooks, is consistent with customs' traditional enforcement mission and represents the role I feel the Customs Service should and can play in meeting the drug threat.

I should like to bring to the subcommittee's attention some of customs' current drug interdiction activities which build on this definition of customs' role: Redevelopment of air/land/marine patrol resources intensified in the gulf and southeastern United States to meet high drug smuggling threats; launching of special narcotics interdiction operations directed principally against heroin smuggling, code named Operation Horse; the expansion of the special enforcement team concept which in the first 6 months of fiscal year 1981 accounted for 90 percent of the hashish and 50 percent of the heroin seized by all of customs; the replication of the highly successful air module concept throughout customs' air patrol interdiction program; and the extension of Greenback-type financial investigative techniques throughout the service, code named Operation El Dorado.

It is my belief that these and other initiatives will enable customs to improve on its record of drug interdiction in fiscal year 1981.

I would like to submit the statistics on our seizures for the record as follows: Almost 24,000 arrests and over 22,000 narcotics seizures made by customs officers; the seizure of 233 pounds of heroin, \$142.8 million, domestic value; 3,725 pounds of cocaine, \$1.1 billion; 18,283 pounds of hashish, \$29.3 million; over 5 million pounds of marihuana, \$3.7 billion, in cooperation with the U.S. Coast Guard; almost 39 million tablets of other narcotics and dangerous drugs, \$131.6 million; total customs narcotics seizures are approximately \$5.2 billion; and over 4,200 vehicles, 270 aircraft, and 565 vessels in smuggling-related incidents, \$63.3 million.

We think these figures are impressive, but we believe customs can and must do much better. Central to this improvement effort is an area where the Commissioner feels he can personally be of assistance. It is his impression that the substantial and valuable law enforcement role played by customs, by and large, has been overlooked, diminishing its deterrence value.

In any law enforcement operation, there exists a certain deterrence factor. This deterrence capability is a function of the effectiveness of the law enforcement operations and the knowledge of that effectiveness by potential smugglers.

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

Mr. CORCORAN. He feels the Customs Service has a fine record in the interdiction of drug smuggling and intends to make it well known that not only are we going to continue that tradition, but also give it the high priority that it demands.

In addition, if the Commissioner feels a current customs enforcement initiative can be enhanced by the dedication of additional non-enforcement customs' resources, those resources will be so channeled. To do less in these perilous times would not represent responsible and responsive law enforcement.

Although customs has made and continues to make progress in the fight against drug smuggling, there are areas that are impediments to our effort. In a case involving a joint DEA/customs investigation of members of a hashish and currency smuggling organization, a judge held that Reorganization Plan No. 2 of 1973, which created the Drug Enforcement Administration transferred intelligence, investigative, and law enforcement functions, "which relate to the suppression of illicit narcotics" to DEA, thereby removing customs' authority to obtain search warrants involving domestic narcotics enforcement efforts. The judge held that evidence of a major drug conspiracy must be suppressed because the Federal law enforcement officer who obtained the warrant, which the judge held was solely a narcotics warrant, was a customs agent rather than a DEA agent. The judge found that the search warrant was based on probable cause and undoubtedly would have upheld its issuance had the affidavit been signed by a DEA agent.

The entire investigation was based on a joint DEA/customs effort under the direction of the U.S. attorney's office.

Additional impediments to customs ability to meet the drug smuggling threat successfully include:

Ability to rapidly realine custom patrol resources to meet the ever-shifting drug smuggling threats;

Obstacles in the seizure and forfeiture process available to customs to upgrade and replace its aircraft, vessels, and vehicles;

Sometimes ineffective criminal and civil penalties for drug smuggling which offer little or no deterrent value in the face of the enormous profits possible from international narcotics trafficking;

The sheer volume of passengers and cargo crossing our borders and requiring customs review—in fiscal year 1981, more than 300 million passengers and about \$200 billion worth of cargo crossed our borders; and

Surveillance of the Nation's perimeters because of their vastness.

Customs is pursuing the following actions:

We are reviewing our allocation of drug interdiction resources in relation to the distribution of the smuggling threat nationally. We are continuing to provide the results of our studies to Members of Congress.

Customs is finalizing details to utilize the exchange/sale provisions in Federal procurement regulations whereby seized and forfeited equipment, not necessarily suitable for customs needs, may be exchanged for the required equipment. We are optimistic that this will go a long way toward resolving our problems with our vessel fleet. However, use of these provisions to acquire aircraft requires a case-by-case waiver of General Services Administration regulations.

The facilitation of passengers and cargo crossing our borders requires customs to utilize the principal of selectivity in its enforcement operations. This means concentrating on high-risk passengers and cargoes at high-risk locations. With respect to air passengers, customs

is developing uniform air passenger inspection standards. From these efforts, we will be providing recommendations on customs inspection mode to the Congress.

Surveillance of this Nation's vast borders can be significantly enhanced through assistance from the military. To this end, customs supports certain proposed legislative changes permitting limited Department of Defense support and assistance to civilian law enforcement.

We do wish to point out that the Defense Department in the past has provided us with significant assistance in such areas as training, loan of equipment, and use of their facilities.

In conclusion, I would like to state that the Customs Service fully recognizes its responsibilities in the drug war. We feel that cooperation among all levels of law enforcement has improved over the years, and will continue to improve.

We believe you will see a much more aggressive customs enforcement program under our new Commissioner. His commitment to an emphasis on customs enforcement program is already improving our operations.

Thank you again for this opportunity and I will be happy to respond to any questions, Mr. Chairman.

Chairman ROTH. Thank you.

I would like to go back to a statement made by you, Mr. Powis, where you were saying that "we are in fact seizing only a small percentage of heroin and cocaine smuggled into the United States and most of these seizures resulted from cold hits rather than from any prior intelligence." What is wrong with our intelligence? Why aren't we better able to anticipate where it is coming in so we are more effective?

Mr. Powis. Senator Roth, I think we need better intelligence on smuggling operations, per se. We do get some intelligence, but I think we need better intelligence on the types of operations that are going on, the types of carriers and means that are being used and the individuals who are involved.

Chairman ROTH. Who has primary responsibility for intelligence? How is that accomplished within the Federal Government?

Mr. Powis. The intelligence responsibility rests with the Drug Enforcement Administration.

Chairman ROTH. With whom?

Mr. Powis. With the Drug Enforcement Administration.

Chairman ROTH. I would like to go back to a question I raised earlier. To go to the customs, I think you mentioned you have 4,400 inspectors at the port of entry, 1,300 patrol officers in land and sea and air on narcotics. Is it really practical to restrain illegal entry of drugs into this country? Would that require a vast increase in personnel and mean that every individual that entered the country would have to be pretty carefully inspected, his luggage inspected?

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

Mr. CORCORAN. We do not think so, Mr. Chairman.

I think after at least my career, 24 years in law enforcement, we find increasing numbers is not the answer. I think it is a question of tactics; it is a question of deploying to meet the threat.

Right now, as you know, the Southeast is the area where we are getting the greatest threat, particularly in cocaine and marihuana.

We are trying to adjust to that.

We are trying to redeploy within our own Service. We are also a fairly large organization where we have a lot of nonenforcement people that we can, we feel—and our present Commissioner is in the process of reprograming, redeploying those people. It is a matter of tactics.

Chairman ROTH. Let me ask, we just had testimony that our intelligence is not that adequate.

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

Chairman ROTH. How are we able to deploy what personnel we have effectively if we do not have any advance knowledge as to where the material is being brought in?

Mr. CORCORAN. We are responding to our seizures, our current seizures. The volume of 5 million pounds of marihuana, obviously, in places like Los Angeles, which used to see 80 percent of the marihuana, we have a larger commitment of patrol.

It makes commonsense to redeploy the patrol from the Los Angeles area to the Florida area. This would help tactical operations more so than the addition of people. Where we look, what mode, what pattern, what routes are the smugglers using has to be identified. This is what Mr. Powis addressed.

Chairman ROTH. Could you tell me what percentage of your planes, boats, and vehicles were seized and forfeited?

Mr. CORCORAN. I don't have that figure, but we can get it for the record.

Chairman ROTH. I would appreciate it if you would submit that for the record.

[The information to be furnished follows:]



DEPARTMENT OF THE TREASURY

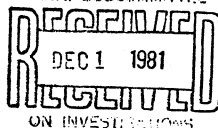
U.S. CUSTOMS SERVICE
WASHINGTON

NOV 25 1981

REFER TO

MAN-6-13-B:PA:N WAW

PERM. SUBCOMMITTEE



The Honorable
William V. Roth, Jr., Chairman
Permanent Subcommittee on
Investigations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you again for the opportunity to share with the Subcommittee the views of the U.S. Customs Service on the role of Federal law enforcement in interdicting and investigating drug smugglers. As you requested, the following information is submitted for the record in response to your inquiry as to what percentage of Customs aircraft, vessels, and vehicles have been acquired through forfeiture as of November 20, 1981:

<u>Item</u>	<u>Total Number in Inventory</u>	<u>Number Acquired through forfeiture</u>	<u>Percent by Forfeiture</u>
Aircraft	63	25	40%
Vessels	93	59	63%
Vehicles ^{1/}	2,400	310	13%

^{1/} Includes all Customs-owned land motorized vehicles (snowmobiles, jeeps, motorcycles, and sedans), as well as those vehicles awaiting disposition through auction.

If you require additional information on this subject, please do not hesitate to contact me.

Sincerely,

George C. Corcoran, Jr.
Assistant Commissioner
Office of Border Operations

Chairman ROTH. What kind of assistance does customs now receive from the Department of Defense for narcotics interdiction?

Mr. CORCORAN. We currently have 12 aircraft on loan. They provide facilities for us. They give some of our aircraft and maintenance people training. They also provide some of the expertise and also parts on some occasions; we receive quite extensive support by the Department of Defense.

Chairman ROTH. Have you ever had a program, for example, that utilized AWAC aircraft for drug interdiction efforts?

Mr. CORCORAN. Yes. We used the AWAC's until they had other commitments by Defense in the Southwest border area. It was a very effective weapon for detecting and tracking the initial intrusion of the aircraft.

Chairman ROTH. Is that program still in effect?

Mr. CORCORAN. No, it is not right now.

Chairman ROTH. Do you know why it isn't?

Mr. CORCORAN. I believe it is because of Defense's utilization of AWAC's in other areas of defense. We only received that assistance when the military wasn't using it for other purposes. Right now they are using it in other areas.

Mr. POWIS. We should mention we do have an ongoing operation. I think it would be counterproductive to discuss it here, but we could discuss it in executive session with you, involving military.

Chairman ROTH. Very good.

What does customs do with evidence of domestic violations it uncovers during its interdiction work?

Mr. CORCORAN. We provide that information to the Drug Enforcement Administration.

Chairman ROTH. Is the Treasury considering the question of getting back into investigation of drug trafficking?

Mr. POWIS. Senator, this is an issue which is being discussed within the Administration. We have had ongoing discussions with the Justice Department in this area for some period of time, and that is our recommendation.

Chairman ROTH. When do you think a decision will be made on that?

Mr. POWIS. We are hopeful that one will be made in the near future. I cannot say exactly when that will be, but we are hopeful that a decision will be made soon.

Chairman ROTH. Are there any restrictions against Customs' using an informant who has been involved in violations in the past?

Mr. CORCORAN. In narcotics, yes. We can use the informants for interdiction purposes, but we would be required to advise DEA and follow their direction on strategy of investigation or any followup.

Chairman ROTH. Is that steadily forthcoming, that permission or support?

Mr. CORCORAN. They would literally run the case and direct the case, and we would assist them as needed, but they would direct any investigative followup activity. That is their role.

Chairman ROTH. Senator Rudman.

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

I believe we are going to have a vote in just a very few minutes, so I will try to shorten my questioning here. I want to ask Commissioner Egger just a few questions. We have had a number of witnesses at this

hearing, this series of hearings, and other hearings which gave us the strong indication that all is not well in terms of cooperation between IRS and other law enforcement agencies, not necessarily because of any intention but in many cases because of regulations, because of laws the Congress has passed, and so forth. The Privacy Act is one in particular that we have been talking about.

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

Senator RUDMAN. Let me just give you a flavor of the kind of thing they have been talking about.

I would like to hear your response as to what you are doing because although many of the things in your statement certainly should be done, and I applaud you for doing them, there are some other things that are out there, if you will, in the trenches, where U.S. attorneys are prosecuting.

Let me just see if I can cover a few of those from yesterday's transcript.

Our witness yesterday was an assistant U.S. attorney from Texas. His name was Ethington. He has been in this business for a long time, prosecuting all kinds of cases, both DEA cases and IRS cases. Let me just give you some of his testimony to get a flavor of what he said.

He said, in response to a question from Senator Nunn:

I also handle tax cases brought by the Department of Treasury, but I have never in the time I have been a prosecutor handled a tax case and a narcotics case together, except for the *Harold Oldham* case for the reason that a narcotics case happens very quickly. A tax case takes several years, maybe three before indictments are brought.

Senator Nunn asked him:

What you are saying is, if there was some team-up at the top of these narcotics-tax cases, that had a working relationship with Treasury and Justice and you could maybe prosecute both cases at the same time and get the plea bargain, have the people meet jointly, then you could probably expedite the judicial process, save the government a lot of money and develop further information and possibly civil fines.

Let me go on to a few other parts of his testimony.

Mr. Ethington said, "Yes, exactly. That would be great."

Let me go on to a few other parts of his testimony.

On page 37 of yesterday's transcript, Senator Nunn asked the question, "Could you tell us why the IRS agents were not able to have information flow from them back to DEA? Why is it a one-way street? Is it the law or is it regulations?"

Mr. Ethington said, "It is both, the disclosure restrictions they have and their own interpretations of the disclosure restrictions."

Then on page 38, Senator Chiles asked the question, "But you say they had information as this case was going along from their own sources"—meaning the IRS—"from their own tax audit information," and Mr. Ethington replied:

The only reason this case was successful, the only reason it probably, according to IRS, not in my opinion, but their opinion, the only reason it will be the only case of its type, that it will be successful is because the agents had an excellent cooperative attitude. I won't say there was some on-the-spot interpretation of regulations that might have been characterized as rule-bending, nothing improper, just the IRS agent was a little less cautious than probably what his supervisor would have liked him to be and we were successful because of that. This is a very interesting prosecution.

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

[The letter of authority follows:]

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct open and/or executive hearings without a quorum of two members for the administration of oaths and taking testimony in connection with hearings on International Narcotics Trafficking on Tuesday, November 10; Thursday, November 12; Friday, November 13; Tuesday, November 17; and Wednesday, November 18, 1981.

WILLIAM V. ROTH, Jr.,
Chairman.

SAM NUNN,
Ranking Minority Member.

Senator RUDMAN. Finally, there is a page here that I think is very interesting, page 42. Let me just summarize it for you. What they essentially told us was, when they had discussions between the U.S. attorney, the DEA, and the IRS, there were occasions when the IRS agent would not speak freely in front of the DEA agent. They would have to leave the room.

It became almost absurd.

You know what these problems are, Mr. Commissioner, because you are very familiar with them. You know of the efforts here to confront them in the Congress.

What are you doing about this problem, which we have heard over and over again?

Mr. EGGER. Well, to begin with, some of the allegations that I understand—I was traveling until 1 a.m. this morning so I really didn't have a chance to review that testimony, but as I understand it, some of the allegations that he made gave every indication of uncooperation. I just don't believe that is true. First of all, if he had those kinds of problems, it would have been great if he had come and discussed it with us. But second, we have had, I have had, since I came into office, letter after letter from U.S. attorneys praising our agents for the fine work they have done, saying they couldn't possibly have brought the case off without their help, giving us every indication of a high degree, high spirit of cooperation in most of the U.S. attorneys offices.

I believe we have, as I said in my testimony here, made a genuine effort to try to decentralize, to speed up the flow of information that we can legally and properly give. It is true that because of the 1976 act, there are severe restrictions on the kind of information and the individuals to whom that information can be disclosed. We have had lawsuits brought against our people for making inadvertent statements which constituted disclosure, and so on. So we respect that law and we are certainly going to follow it, not necessarily with a fetish, but we are not about to violate it as a matter of policy.

So, No. 1, I believe that our record of cooperation with the Department of Justice and the U.S. attorney's offices is a lot better than that testimony, as I understand it, would indicate. Second, it is true that there probably are some things that need to be changed about section 6103. I have testified in favor of the kind of legislation recommended by Senator Nunn, as well as the administration's proposed legislation

and still support it. I would like to see it passed, would like to find ways to streamline. A lot of this is the levels of review that some of this information has to go to.

Mr. Clancy here is very familiar with the case you refer to and I would like him to comment on it because I suggest it was not successful solely because somebody bent the rules. I sort of doubt that.

Senator RUDMAN. Before we hear from him, let just tell you—because you were not here and you have had some reports from people from your office that were—that I did not find Mr. Ethington a witness who was in any way accusing the Internal Revenue Service of anything in the way of negligence or lack of cooperation. That was not the sense of his testimony.

Mr. EGGER. Yes.

Senator RUDMAN. I don't believe that was his testimony. I believe a fair reading of the transcript would dictate otherwise.

I think what he was saying was that the agents were competent, they were dedicated, and they wanted to cooperate, but they were very cautious and in his view overly cautious essentially because of the way their supervisors interpreted the regulations and the laws which you refer to.

I can tell you, Mr. Commissioner, from my own personal experience as the attorney general of the State of New Hampshire, about finding Internal Revenue Service agents that in my view went way beyond what the law required in failing to share information with State law enforcement agencies because of a fear that if they violated a regulation that was rather broadly drawn, they would jeopardize their positions. That is understandable. I guess what I am asking you is this: Do you intend, taking the law as it is—as obviously only the Congress can change it—to take a long, hard look at the practice of the supervisors in the field within the ambit of these particular rules, regulations, and statutes, and try to at least encourage them to take what latitude you think they legally can? That is my point, and I think it is Mr. Ethington's point.

Mr. EGGER. I have no problem with that, Senator Rudman. In fact, we had many, many discussions about that. Mr. Clancy, as I said, knows full well it is a matter of policy, at least during my administration of the Internal Revenue Service, we want to make every effort to cooperate with all of the enforcement agencies, including the Drug Enforcement Administration and the Justice Department in general. It certainly is our intention to use every possible legal means to see to it that these enforcement individuals and particularly the U.S. attorneys have as much information as we can properly give to them.

Senator RUDMAN. Well, that is encouraging. I hope you will do that. As a matter of fact, I think as far as the American people are concerned, in regard to complaining about Government, they would feel the IRS and your agents are very efficient, generally speaking.

I am going to have a short recess here until our chairman can return. I believe I better get over to the floor and vote. We have one vote that counts for nine votes on some treaties.

I don't want to miss that. We will stand in a short recess.

[Brief recess.]

[Senator present at time of recess: Senator Rudman.]

[Member present after the taking of recess: Senator Roth.]

Chairman ROTH. The subcommittee will reconvene.

I apologize to you, gentlemen, but, unfortunately, we had votes on the floor, one of which counted nine, so it was rather important everybody be there.

I would like to ask you, Mr. Corcoran, do you really believe that interdiction is a question of tactics and not greater numbers?

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

Chairman ROTH. For example, how can you interdict along coastlines such as Maine or Oregon where I understand you only have a handful of officers?

Mr. CORCORAN. I think that goes right to my point, Mr. Chairman. I think without information and tactical operations to be in the right place at the right time most often, we cannot be effective, we cannot cover all our borders. We have to have the information to be in the right place. We have to have the intelligence to be there. We couldn't possibly try to cover every mile of our borders with just manpower alone.

Chairman ROTH. Senator Chiles is now here.

Senator CHILES. Thank you, Mr. Chairman.

I was interested, Mr. Commissioner, in the amount of resources that the Internal Revenue Service is now applying and trying to compare that back to 1973-74, before there was the cutback.

At that time, I think you had about 900 and something man-hours that were being applied?

Mr. EGGER. I assume, Senator Chiles, you are talking about the resources committed to the narcotics program.

Senator CHILES. That is right.

Mr. EGGER. I have the numbers for the last 3 fiscal years, 1978, 1980, and 1981. In those years, 1979, in total we had average positions around 324 at the cost of about \$91½ million. By fiscal year 1980, that number went up to 448 average positions at a cost of \$14½ million, and in fiscal year 1981 it is up to 924 average positions.

Now that breaks down this way: The bulk of it is in tax fraud investigation, with 251 average positions in 1979, jumping all the way to 820 positions in fiscal year 1981.

I do not have the figures as far back as 1974, but I will be happy to supply them for the record.

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

Senator CHILES. I think what I was looking at was the criminal investigation division.

Mr. EGGER. I have just given you the numbers that would apply to criminal investigation. These others are to examination, collection, and legal services, and so on.

Senator CHILES. The testimony that we had at an earlier hearing was that we had about 927 staff years, total staff years in 1974, and that had been reduced, but now you are saying you are up to that level again.

Mr. EGGER. Let me do this, Senator Chiles.

I don't want to compare apples and oranges here and staff years is a different number than average positions.

The figures I have with me today are expressed in terms of average positions, and so I would prefer to submit them for the record and we will take it all the way back to 1974 and bring it up to date.

[The information follows:]

STAFF YEARS COMMITTED TO THE NARCOTICS PROGRAM, FISCAL YEARS 1974-81¹

	1974	1975	1976	1977	1978	1979	1980	1981
Tax fraud.....	544	327	219	163	227	251	358	820
Examination.....	369	269	93	69	65	65	76	89
Legal services.....			8	8	6	3	9	10
Appeals.....					4	3	3	2
Collection.....	26	5	24	24	3	2	2	3
Total.....	939	601	344	264	305	324	448	924

¹ Staffing figures include direct investigative, examination, and collection time, etc., expended (special agent, revenue agent, revenue officer, etc.) and related support time.

Senator CHILES. All right, sir. We heard testimony during our hearings that the Department of Justice policy which refuses to delegate authority in tax cases to the field prosecutor has hampered and inhibited effective prosecution of tax cases.

Have you found this to be true in seeking the prosecution of criminal tax cases?

Mr. EGGER. The matter that you are speaking of was the direct referral, I believe, to the U.S. attorneys from our district counsel and regional counsel. And at one time prior to the latter part of 1980, we were able, in particularly single issue cases, to make a direct referral to the U.S. attorney so as to speed up considerably the prosecution process.

The Assistant Attorney General of the tax division issued a directive in the latter part of 1980 to stop that on the basis, I believe, that in one case some place it proved to be a problem.

We are currently discussing with the newly nominated Assistant Attorney General the possible reinstatement of that procedure.

Senator CHILES. That is what I wanted to ask you.

Would you recommend to the Justice Department that they delegate more authority to the field prosecutors, such as the authority to indict, to include tax counts and in other criminal cases, to engage in plea negotiations in tax cases.

Mr. EGGER. We are discussing those points with the Justice Department right now. We believe that there are many ways in which the tax case prosecutions can be speeded up considerably.

Senator CHILES. Mr. Corcoran, you were discussing the problem that you had in your testimony in a search warrant case on the basis of the reorganization and the removing of the intelligence provisions from Customs, a Federal judge had knocked out your search warrant.

Are you appealing that case?

Mr. CORCORAN. We have requested that it be appealed and it is my understanding that the criminal division in Justice has supported that appeal. I think they are in the process of appealing it now, sir.

Senator CHILES. In addition to that, requesting that appeal and I would like to know for the record if it is for sure you are appealing that, are you doing anything to see this is cleared up in the reorganization itself so we won't run into this in the future?

Certainly there is nothing in the organization wanting to prevent Customs from wanting to seek a search warrant.

Mr. CORCORAN. We are attempting, as Mr. Powis said, to work with Justice to try to clarify that type of working relationship.

I think we also have to be careful in our investigations, this was a task force, it was a joint DEA-Customs operation.

When it is not directly related to smuggling, who signs the warrant and who signs the affidavit is important.

It seems clear, until this case is settled—it might be quite a while—we will have a lot of people appealing cases when a Customs agent signs the warrant in this type of case.

Senator CHILES. What I am saying is, why should we give them that, that doesn't really go to what is attempting to be done in the reorganization in separating intelligence functions and separating the other things, so why don't we just change or put something in the reorganization that says, it retains the power to enter into a search warrant so no defendants can be able to use that.

Mr. CORCORAN. I certainly agree with that, sir.

Mr. POWIS. I would also, Senator.

Senator CHILES. Is that being done? Are we going to do that?

Mr. POWIS. Yes, sir, we are talking to Justice. We have every assurance from them that there will be an appeal in this particular case. There is another case in another district that is coming right on point within the next few weeks and if there is any indication of a nonappeal, we will proceed with Justice in an effort to get it changed and this is linked into discussions we are having with Justice anyhow about the ability to deploy additional resources from Customs into the drug area.

Senator CHILES. Part of my concern is, we get your testimony and each of you cite some kind of problems that we are running into. If those problems relate to us and it's a legislative change, I would like that spelled out because this committee has been very interested in trying to provide the vehicles to provide those legislative changes. If those problems are something in regard to a reorganization, something that is in-house, why in the world can't we get the Attorney General's task force to look at those things and iron out so that we don't run into those problems?

Mr. POWIS. Senator Chiles, I will assure you that in our talks with Justice, if we see and feel there has to be a legislative change, we will certainly communicate that to this subcommittee.

Senator CHILES. Commissioner, it is our understanding—Mr. Ben-singer just gave us an example where despite high profits by drug traffickers, the IRS gave those traffickers credit in the form of deductions for the cost of doing business to reduce the traffickers' tax liability. Why shouldn't deductions be limited to legitimate business costs and not allowing expenses incurred for an illegal business?

Commissioner EGGER. Senator Chiles, I think the case you are referring to is the one that was in the press. That was a Tax Court decision, not something that we did necessarily as an administrative move.

Senator CHILES. Then would you flag that as something we need to do in the Congress, to provide a change to say business deductions have to be legitimate business deductions, that they cannot be—or can you do that in your regulations?

Commissioner EGGER. We cannot do it by regulations.

Senator CHILES. You can't?

Commissioner EGGER. No.

Senator CHILES. Cannot?

Commissioner EGGER. Cannot.

Senator CHILES. Well then I would certainly think that is something we ought to be—

Commissioner EGGER. I do not have all the details of the case that was the subject of that comment. I will pass it along to the Treasury where the tax policy people certainly should take a look at it.

Senator CHILES. Would that include under that tax court decision, would it follow that the cost of drugs or bribes to judges, all of those things would be legitimate business deductions for the illegal trafficker?

Commissioner EGGER. Well, certainly not some of them. As I understand, they did give this individual the cost of goods sold as a deduction. Certainly not bribery, because that is contrary to public policy and clearly prohibited under the Internal Revenue Code.

Chairman ROTH. I just have a couple more questions. Time is moving on. We will leave the record open for any questions the panel may want to submit in writing. I ask you gentlemen to respond in writing.

I would like to go back to my question to you earlier. I am still bothered about interdiction and to what degree it is effective. We had some traffickers before our subcommittee last week. The thrust of their testimony was that it is really pretty easy to bring drugs in. What bothers me is that, not that we should give up the fight, don't misunderstand me, but if our intelligence isn't that good, how are we ever really going to be able to stop it? Do you agree with the traffickers' statement that it is extremely easy to bring drugs in?

Mr. CORCORAN. I think to some degree that is true. I think we find in hard drugs particularly, our efforts have not been good against it—if you consider the statistics indicating about 4 tons of heroin smuggled into the country and 35 tons of cocaine annually, there is no question that intelligence and the proper tactics are the only way we are going to combat it. I think that is what Mr. Powis is talking about in our discussions with Justice. We feel strongly that we can enhance and compliment the intelligence gathering and the investigative capability at the border.

We feel this is an area that Customs can contribute more than we are doing at the present.

Chairman ROTH. I have one further question. There has been a lot of talk about securing more Defense assistance in this area. Assuming that the Congress does agree on its approach, which I think is highly desirable, the question comes, how is it going to be paid for? I wonder, has this been determined or are there discussions underway on this matter at the present time?

Mr. Powis. Senator Roth, under present arrangements, it's a reimbursable situation where we are reimbursing Defense. There is no question about it, continuation of this kind of thing will put some severe strains on the Customs' budget situation. It is something we intend to continue talking to Defense about and certainly if we can get an arrangement whereby they will cover that cost, it would be beneficial, we think, for everybody concerned.

Chairman ROTH. I must say, it bothers me very much that these DC-7's are able to come in undetected, as I said last week. They could just as well have a terrorist bomb as marihuana. It does seem to me

the Department of Defense ought to be somewhat concerned about this problem as well.

I would hope that you aggressively pursue this because under the present practices as I see it, the Department of Defense is not going to be very much help. If there is any way of being effective in interdiction in some of these large hauls, it seems to me this is a problem that ought to be resolved.

Mr. POWIS. We certainly will pursue it, Senator.

Chairman ROTH. Senator Rudman.

Senator RUDMAN. Mr. Powis, I just have one brief line of questioning for you. I think it is generally known in this country today that south Florida is really a crisis area in regard to the whole problem of narcotics traffic—cocaine, marihuana, and whatever else is up for sale. Recent publicity on the flow of money in south Florida is extraordinary. Time magazine which came out today has an excellent story detailing the drug traffic in south Florida and other parts of the country.

Here is one paragraph. Let me read it to you. It says:

Most, if not all, of Miami's 250 banks have drug money in their accounts. As many as 40 banks still neglect to report cash deposits of \$10,000 or more as required by law, and at least four banks, according to law enforcement officials, are controlled by drug dealers. Treasury Department investigators have long suspected that some smaller banks, and so forth, were simply formed to launder money.

I don't think there is much disagreement as to the crisis in south Florida, and that effects all law enforcement agencies. It seems to me, though, that the Treasury Department and all of the other agencies, the Comptroller, and so forth, really have to get together in a massive effort to get at these funds and to aid the DEA and Customs and others in what they are doing.

My question is simply this: Has there been any focus within the Department of the Treasury on this south Florida problem regarding this huge amount of money which is essentially going for illicit purposes?

Mr. POWIS. Senator Rudman, there certainly has been. Treasury was the initiator, if you will, of Operation Greenback which really does focus on this problem. It is an effort to get at the major drug trafficker and his money launderer through the Bank Secrecy Act and the requirements that the Bank Secrecy Act imposes on banks and on individuals, the reporting requirements.

I feel that we really are focusing in this area. I am aware of a number of investigations that are going on involving banks and bankers. I also hit that issue with some caution in terms of the fact that we do not see it as an across-the-board thing involving bankers. We certainly see some banks and we see a lot of big banks with some employees who are doing things that are illegal and improper. But there is a focus and we are closely working with the bank supervisory agencies, Customs, DEA, and the Internal Revenue Service.

We have quarterly meetings to make sure we are all on the same track up in Treasury. Myself and Assistant Secretary Walker have been down to Florida on several occasions dealing with the Greenback people. It certainly is an area of focus for us.

Senator RUDMAN. Do you believe you have sufficient resources within the Treasury to deal with this problem in south Florida?

Mr. POWIS. Within Treasury in Operation Greenback, we feel we definitely do.

Senator RUDMAN. Thank you, Mr. Chairman.

Chairman ROTH. Senator CHILES.

Senator CHILES. I want to applaud Operation Greenback. I think it is the greatest success story we have going. Especially it proves out, when you put the resources together and the combination and bring the Internal Revenue Service people into the fight, what can be done. That is something we have been seeking for a long time and in this subcommittee. The proof of it is very much there in those indictments. I question whether the resources are there given the kind of indictments that you have been able to turn up with the people that you have there, given the kind of money seizures, the rings you have interrupted, the laundering you have interrupted. It seems like to me more resources—it's out there. You are just touching the surface of what is there.

With 26 special agents and 5 other agents from the Internal Revenue Service—they are doing a hell of a job, but I don't agree that that is sufficient resources that you are mining all of the field that is out here because I think you are just touching the surface.

Mr. POWIS. Senator, let me comment on that. We do have 12 customs agents full time in this project. There is a squad of DEA agents. I certainly would agree with you that there is a lot more there.

Senator CHILES. While I was talking with some of these people down there, when the operation was first starting, they were telling me of the problems they were having even trying to do their paperwork because of other regulations that had come down and cut out secretaries and cut out staff people and cut out travel allowances and they were not able to get people back and forth from Washington. They were not able to just get their paperwork done because of the cutbacks that were taking place.

Mr. POWIS. Senator, in June of this year, we found some of that to be the case and our office, in conjunction with the IRS and Customs, has seen to it that some of these clerical and support resources have been made available. I think we are doing much better in that effort right now.

Senator CHILES. We have the additional problem that as we are making these indictments, we have not the assistant U.S. attorneys down there with not sufficient trial help to prosecute the cases that we now have given the other caseload that they have got. We are indicting a lot of people and we are not able to put them through the other end of the net, to prosecute them because of shortages we have got.

Mr. POWIS. We are somewhat aware of that and have been talking to Justice about that.

Senator CHILES. I listened to the testimony of Customs as well and talking about the interdiction and I think back to the period last year, and I guess some of it this year, when your planes were grounded because unless they had a specific target and preintelligence on a specific target, they didn't have the fuel to go up there and patrol the choke

points where they have got some of the radar on the planes and we were able to get a couple new planes down here with some of the new radar, but they didn't have the fuel to actually go up and routinely patrol the area. Is that changed? Do we still have that situation going?

Mr. CORCORAN. No; I don't think so. We had to make some adjustments. We had some military aircraft, which we found were gobbling up a lot of fuel and were not that effective because they didn't have the range and radar capability.

Senator CHILES. I am talking about the Falcons grounded with the FLR radar?

Mr. CORCORAN. I think that was a temporary local problem we did correct. I don't think that problem exists today. I do recall when that happened and it was brought to my personal attention. We did correct the restrictions on their operations that should not have been done at the time, particularly in the Miami area.

Senator CHILES. Commissioner Egger, former IRS Commissioner Donald Alexander stated, and I quote from him:

Selective enforcement of tax laws designed to come down hard on drug dealers and syndicated crime may be applauded in some quarters, but it promotes the tax system as a tool to be wielded for policy purposes and not an impartial component of the democratic mechanism which applies equally to all. The overall emphasis on our criminal enforcement activities has been shifted away from the special enforcement programs, such as narcotics trafficking programs and the strike force, and is aimed more directly at the taxpaying public.

How would that sit with your philosophy as the Commissioner of the Internal Revenue Service?

Commissioner EGGER. I think I said in the testimony here that so far as I am concerned, and so far as this administration is concerned, the criminal violation of tax laws is of immediate and direct interest to us regardless of where it takes place, but when you couple it with these other crimes against society, then in our opinion it becomes doubly bad and needs to get very high priority and it is getting that kind of priority in the Internal Revenue Service today.

Senator CHILES. During the subcommittee's hearings on illegal narcotics profits, it was recommended that an Assistant Commissioner of Enforcement position be created in the IRS, the position the subcommittee felt was needed in order that the Commissioner of IRS would be able to get critical input from the Criminal Investigations Division. What are your views on that recommendation? IRS has an Assistant Commissioner for Compliance. Why not an Assistant Commissioner for Enforcement?

Commissioner EGGER. At the moment, I am looking at the organizational structure in the national office, and that is one area. I will say that with my ready access to the Director of Criminal Investigation Division, Tom Clancy, who is with me here today, as well as to Phil Coates, who is Assistant Commissioner for Compliance, I do not feel any lack of ready input—

Senator CHILES. I appreciate that you don't, and I just want to extend this one more minute. Sometimes it is necessary to send a signal to the troops and when the troops have been sent the signals from 1974 on, 1975 on, that we are downgrading the enforcement division, and that was certainly readily apparent. They were at one time sort of an elite division and we see their toys were taken away from them, the

intelligence gathering devices were taken away from, the agents were pushed out. Everybody got the message clearly.

We began to see that and we still get the feedback from Assistant U.S. attorneys and U.S. attorneys who come up and say IRS agents don't want to do anything with us, or they are so handicapped, their head is down, we have to send some signals to those people out in the field that you look on this differently. This may be one of the ways to send the signals. I hope you will think of other ways to send signals.

Commissioner EGGER. I am doing just that. In each of my visits to the districts and to the regions, it goes without saying that I have a meeting with the department heads, including the Criminal Investigation Division. A great deal of our discussion, and in fact as late as yesterday we had a special briefing in the Southwest on problems we are having with illegal tax protestors and the drug trafficking problems we are having in the Southwest. This was a special briefing dealing only with the activities of the criminal investigation division in that district. This is very much on my mind and it is getting attention.

Chairman ROTH. Thank you very much, gentlemen. We appreciate your being here today. I might say that I very strongly support what Senator Chiles just said. I think it is important that this message be gotten across to the people who are actually at the working level. Thank you very much.

I would at this time call our last witness, Dr. Carlton E. Turner, who is the senior drug policy adviser, Office of Policy Development. Would you please raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. TURNER. I do.

Chairman ROTH. Please be seated. I want to apologize for the long delay in getting to you. We appreciate very much your being here. I believe you come forth with a distinguished background that can provide us with a new perspective of the problems. I realize that you have only been in your present position a relative short time, but there is no question but what your position is one of, if not the key, position in this administration on the attack on the illicit use of illicit drugs.

Senator RUDMAN. Might I just say to this witness that I am sorry I have to leave. I will read his testimony and will have several questions for him I would like answered for the record. I have another engagement I must be at.

Chairman ROTH. Thank you, Senator Rudman, for your participation. Please proceed.

TESTIMONY OF DR. CARLTON TURNER, SENIOR DRUG POLICY ADVISER, OFFICE OF POLICY DEVELOPMENT, THE WHITE HOUSE

Mr. TURNER. Mr. Chairman, distinguished members of the committee, it is a pleasure to appear before you today. The assistance and guidance that this committee has provided in the past is appreciated and I look forward to continuing that relationship.

I will confine my remarks to a brief discussion of the scope of drug problems, the goals and objectives of this administration and five major elements of our comprehensive approach.

Mr. Chairman, drug abuse does not concern just one drug. Nor, does it create problems for just one group of people. Drug abuse involves a variety of drugs, afflicts people from all walks of life, and knows no geographic nor political boundaries. The problems created by drug abuse effect the vitality of our Nation, our communities, our families, and most of all, the users themselves—especially young people.

The number and amount of abusable drugs available today and the pervasiveness of drug abuse among broad segments of society is staggering. We have approximately 23 million youngsters between the ages of 12 and 17 in this country. In this age group, at least 37 percent are currently using drugs and alcohol.

Conservative estimates based on the 1979 National Survey on Drug Abuse and on census data indicate that 8.6 million young people consume alcohol monthly, 4 million use marihuana monthly, and 2.8 million consume tobacco on a monthly basis. Estimates for other current drug use by youths are: Cocaine, 330,000; other stimulants, 270,000; inhalants, 480,000; hallucinogens, 500,000; sedatives, 260,000 and tranquilizers, 140,000. The number of youngsters in the 12 to 17 age group who use heroin are few.

While a drug abuser is likely to use several drugs rather than just one and therefore be included in more than one category, the total numbers should cause grave concern.

The use of drugs by all American youngsters between 12 and 17 creates at least 104,000 acute, drug-related visits to medical facilities each year. Of these 104,000 young people, 60,000 require treatment for problems related to marihuana or marihuana in combination with other drugs. Less than 1,000 youngsters under 18 seek treatment for heroin use each year.

According to the latest report from the Surgeon General on health promotion and disease prevention, young people between the ages of 15 and 24 now have a higher death rate than 20 years ago. While health for all age groups is considerably better than 75 years ago, there is one startling difference: Adolescents and young adults, between 15 and 24, have not kept pace with the overall increase in national health.

The Surgeon General lists alcohol and drug abuse among the more common health-related problems for this age group.

The report based on the national survey on drug abuse also indicates that among young adults between the ages of 18 and 25, over one-third or 11.2 million are current marihuana users. Almost 3 million currently use cocaine. The numbers of young adults who use heroin are so small that they are considered statistically insignificant by the report.

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

Mr. TURNER. For persons 26 and older, 7.4 million currently use marihuana, and 1 million use cocaine. The numbers of adults who use heroin are too small to be reported.

Mr. Chairman, I am not trying to downplay the problems of opiate use. Current estimates suggest that there are approximately 400,000 opiate addicts in America. What I am trying to do is to put drug problems in perspective and share with you the overall scope of the problem.

Even though we continue to be deeply disturbed by the problems of opiate use, I believe we must be equally concerned about the use of

other drugs. The numbers of people affected dictates that we broaden our efforts. Our drug problems will never be solved by continuing to concentrate our efforts on any one drug or class of drugs.

For the past decade, much of our effort has been focused on the opiate problem. However, we are now seeing the effects of the widespread use of other drugs. These drugs, once considered soft and less dangerous, are now creating acute and chronic problems for the well-being of our people.

Today's problems now involve many drugs. In order to understand the problems, we must use all available data. The data systems that have been used to tell us what our drug problems are were developed in the mid-1970's. I believe that we should face the known methodological problems associated with gathering and analysis of data and review the systems now in use.

Although we are concerned about various problems with the national data systems, we must continue to use these data. They are all that we have at the moment. For example, while we appreciate the value of the survey of high school seniors, often these data do not present the total picture.

Twenty-five percent of students across the Nation do not graduate from high school. School dropouts are probably the highest drug-using group. Therefore, the high school seniors survey only reports drug use information about the survivors—those young people who have stayed in school.

Mr. Chairman, drug abuse is a problem that affects all citizens, from all socioeconomic groups and in all age categories. Through the work of this committee and other congressional committees, as a result of the work of previous administrations and because of the increased concern of our citizens, the problem of drug abuse is sizable, but it not as bad as it could be.

I should note that even though approximately 37 percent of our Nation's youth currently use drugs and alcohol monthly, 63 percent do not. We have recognized the rights of a nonsmoker to eat or enjoy air travel in a smoke-free atmosphere. Likewise, the nondrug using population has a right to be protected from any consequence of drug use caused by the users.

A 1981 Washington Post/ABC News poll showed striking differences between the public's and school principals' perceptions of school problems and drug use. Three hundred and three school principals were asked about major school problems. Twelve percent said that drug use in school was a major problem and 13 percent said that alcohol use in school was a major problem. However, 1,501 adults perceived the problem in another way. Sixty-six percent of the public said that they thought that drug use in school was a major problem and alcohol use in school was cited as a major problem by 49 percent of these people.

Mr. Chairman, I have talked with many young people across this country and I can tell you that they have many misconceptions about drugs. Part of this is our fault. Young people have been led to believe that there are soft drugs, hard drugs, and dangerous drugs. The notion is that soft drugs do little or no harm: that they do not cause dependence of any kind. Therefore, they can be used with impunity. On the other hand, young people have heard that hard drugs and dangerous

drugs are extremely harmful and will cause physical and psychological dependence.

These beliefs have created a situation in which young people associate soft drugs with soft drinks. There is no basis for such an association. Our young people deserve a clearer message from us.

Perhaps this is the reason Dr. Mel J. Riddle expressed alarm at a hearing of the Senate Subcommittee on Alcoholism and Drug Abuse on October 21 of this year. Testifying as a representative of the National Association of Secondary School Principals, Dr. Riddle said:

Teachers, counselors, and administrators must recognize and prevent drug use by students or face the prospects of a progressive deterioration of student behavior. The school staff must deal effectively with the most negative student behavior or accept the fact that that behavior may become a standard by which all other behavior is compared.

Just as we are finding that school behavior problems are associated with drug use, crime has been associated with opiate use. Although the data do not permit us to directly link numbers of crimes to numbers of opiate addicts, we know that opiate users engage in more criminal activity than any other population of criminal offenders.

This is indeed something to be concerned about. But, I would also like to draw your attention to the fact that crimes are committed by people who use all types of drugs and most of these people were involved in crime before their drug use began. In addition, we must be concerned with crimes that are committed by drug traffickers who are not themselves drug users.

Mr. Chairman, I am certainly not here to propose a quick fix. Just as serious diseases sometimes develop slowly and fester over many years, the drug problem in America has not happened overnight. It has been growing in spite of the efforts of recent administrations and the yeoman efforts of many congressional committees.

I believe that one reason for the growth is that we have tended to view the drug problem too narrowly. What we need is a broader and more balanced perspective so that our prevention and control efforts can take full advantage of the vast Federal, State, local, and voluntary resources that can be brought to bear.

This administration intends to mobilize four major components of society to capitalize on the existing mechanisms and resources that Americans have traditionally used to solve national problems. These are the Federal Government, State and local governments, the business community, and the force of the volunteerism.

Our objectives for these four areas are:

To integrate and make use of all Federal resources in the effort to prevent and control drug abuse.

To provide national goals and information to assist State and local governments in making informed decisions about mobilizing their resources to address drug abuse prevention and control at the local level.

To encourage the use of the resources of the business community to convey the drug prevention and control message and to encourage business to make their efforts consistent with our goals and with the voluntary efforts of our citizens.

To capitalize on the tremendous potential of voluntary citizen efforts to prevent and control drug abuse.

By broadening the availability of existing Federal resources which previously have not been focused on drug problems, we will be able to capitalize on existing resources and will integrate drug issues into the functions of many Federal agencies.

To assist State and local governments in making informed decisions about how they can best address drug problems in their localities, the Federal Government will provide data and national goals. In this way, control should remain at the local level—the best place to address local problems.

The business community must make drug problems part of their concern. We will encourage the establishment of employment and rehabilitation programs that are useful both to business and to the victims of drug abuse. By using the financial resources of business to educate Americans about drug problems, we can reduce the demand for drugs and thereby improve productivity.

We expect drug manufacturers, colleges and universities, and the general health care establishment to play a major role in prevention activities.

By capitalizing on the tremendous potential of voluntary citizen efforts, of individuals and organized groups, including the religious community, we will tap the most important natural resource of this country—the citizens themselves.

We will rely heavily on the force of volunteerism for a significant part of our prevention program. I believe that many citizens, especially parents of school-aged children, stand ready to undertake such an effort. This administration will support their efforts by publicly taking an unequivocal and united stand against drug use.

The President indicated, on March 6, that it was his belief “that the answer to the drug problem comes through winning over the users to the point that we take the customers away from the drugs.” The President emphasized that while we must not let up on enforcement, “it is far more effective if you take the customers away than if you try to take the drugs away from those who want to be customers.”

By mobilizing existing resources of the Federal Government, State and local governments, the business community, and the voluntary efforts of citizens, we will help too:

Reduce the spread of drug abuse by diminishing the demand for and reducing the supply of drugs.

Reduce the drain on productivity caused by drugs and drug trafficking.

Improve the mental and physical health of our communities.

Support the role of the family as the primary socializing mechanism of society.

Bolster the moral character of the individual, the community, and the Nation.

Our drug effort will encompass five major areas: Research, detoxification and treatment, prevention and education, international cooperation, and drug law enforcement.

RESEARCH

I am here today as the senior drug policy adviser for the administration. I am also calling upon my 15 years in the research field, with

over 10 of those years as the director of large, multidisciplinary research programs. I know very well the great value in research. But I am also aware of many of the problems.

We intend to reexamine how research data is used, what we decide to research, and how those directions are made.

We consider it extremely important that basic research findings be transferred in a timely and understandable way for use by health care professionals and the public. I strongly support the smooth transition of information from research from use in the field of education.

One of the highest priorities of drug research should be the development of antagonists. These are substances that will nullify, render unpleasant, or otherwise change the expected action of a drug. They could be used to reduce the time a person spends in treatment and could lessen the drain on resources required for long-term maintenance treatment.

We will encourage the pharmaceutical manufacturing community, colleges and universities, and professional health care organizations, when appropriate, to undertake more drug research. In this connection, one pharmaceutical firm has already filed a new drug application [NDA] with the Food and Drug Administration to market a narcotic antagonist for the purpose of treating addicts.

We will encourage longitudinal and epidemiological research to accurately gauge drug problems.

Research, wisely undertaken and carefully planned, will buttress all of our efforts to prevent, treat, and control drug problems.

DETOXIFICATION AND TREATMENT

Although the direct involvement of the Federal Government in funding and managing treatment facilities has diminished, that does not mean, however, that treatment services are of a lesser concern to us. The block grant program for alcohol, drug abuse, and mental health will allow States to decide what types of treatment modalities they will support, and will enable States to design appropriate treatment responses to the drug problems of their local communities.

I commend the work of the drug treatment communities. I believe that they have achieved sufficient stature to allow them to effectively deal with States and with other funding sources for continuing support.

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

Mr. TURNER. This administration considers the appropriate Federal role in the support of treatment for drug abusers to be to provide information and guidance to enable the responsible State agencies to make fully informed decisions about the uses of their block-grant funds.

For example, we do not believe that it is in the best interest of the patient or the community to substitute one drug for another over an extended period of time. Therefore, we will encourage States to continue detoxification and treatment programs that will reduce the length of time a person spends in treatment and will work toward the detoxification of patients from all drugs.

In keeping with our efforts to involve all sectors of society, we will encourage the integration of drug abuse services into the general health care system, especially the mental health system.

We will urge the business community to work with State agencies and private facilities to undertake employment and rehabilitation programs that will enhance and complement all treatment efforts.

PREVENTION AND EDUCATION

Probably the greatest opportunity to reduce the demand for drugs and solve many of our drug problems, lies in a comprehensive, long-term national drug abuse prevention campaign. Combined with a strong enforcement policy, a campaign that unequivocally states the clear and present dangers of drug abuse and alcoholism must be directed to our young people. It will also be of tremendous support to parents and school officials in making a united effort to prevent the spread of drugs and reduce the magnitude of the drug problem.

It is necessary that such a campaign be considered long term. An occasional shot for 3 or 4 weeks on television and radio is just not enough.

The basis of this long-term effort is the mobilization of organized and individual voluntary citizen efforts. People will carry the message to their children, brothers, sisters, neighbors, and public officials.

We will call upon the National Parent/Teacher Association and other similar organizations to place a high priority on drug abuse prevention in the schools.

We expect the support and active involvement of the business community and labor.

Naturally, we will expect participation from all Federal and State agencies with responsibility for drug issues.

A strong and comprehensive prevention and education campaign will encourage the expansion of the parent group concept and will support the family at the primary socializing mechanism of society.

Our long-term approach in prevention and education will not only be a positive message for individual families and communities, but will also be reflected in schools, the workplace and our military.

INTERNATIONAL COOPERATION

On September 28, President Reagan spoke about crime control before the International Association of Chiefs of Police. The President said: "One of the single most important steps that can lead to a significant reduction in crime is an effective attack on drug traffic."

He added that he would establish "a foreign policy that vigorously seeks to interdict and eradicate illicit drugs, wherever cultivated, processed, or transported. This includes the responsible use of herbicides."

Thus, our international drug policy will be the development and implementation of a long-range effort to eliminate drugs at their source and to interdict drugs in transit.

If we are to be successful, the prohibition against the use of herbicides to eradicate cannabis must be repealed. We must be able to allow foreign assistance money to be used in eradication programs.

I should note that Senator Chiles, Senator Nunn, other members of this committee, and other Members of the Senate have been strong supporters of this proposal.

We will also continue our support to producing and transiting countries in the form of technical training, advice, and equipment.

We support the proposal in section 126 of the Foreign Assistance Act to include drug considerations in the Agency for International Development's development programs. It is also of utmost importance that drug issues are integrated into international agreements where appropriate.

We must reach greater understanding between ourselves and drug-producing nations. There are frequent misconceptions in the international community about our commitment to drug traffic control.

Why should they make a strong effort to eradicate drugs produced in their countries if we do not make the same effort here to control domestic production of illegal drugs?

We must control the spread of domestic cultivation and production of drugs.

Our international drug policy must include active participation at the highest levels of international drug control organizations such as the U.N. We strongly support this country's involvement in the program planning activities of agencies such as the United Nations Fund for Drug Abuse Control. We also support worldwide drug control strategy objectives for all nations as put forth by the United States.

DRUG LAW ENFORCEMENT

I have saved this subject for the last part of my testimony. Mr. Chairman, because I believe that with appropriate changes and improved coordination and cooperation, we can substantially reduce the availability on drugs. I also consider enforcement initiatives to be an integral part of a comprehensive prevention program.

This administration has several enforcement initiatives. Some were set forth in President Reagan's September 28 speech on crime control. Some have been presented to the Senate Judiciary Subcommittee on October 23 by the Attorney General. Others are in the legislative process.

We are on record as favoring the use of appropriate military resources to assist in the interdiction of drug trafficking.

We support the exception to posse comitatus now in the final stages of congressional approval. This exception will permit the sharing of intelligence and use of military equipment to stop the flow of illegal drugs into our country. An exception to posse comitatus will, as the President has stated, "improve detection and interception of illegal drug imports."

I should note that Senator Roth, Senator Nunn, members of this subcommittee and other Members of the Senate have been strong supporters of this proposal and have been instrumental in obtaining Senate approval.

We also believe that States could make greater use of the National Guard organizations to assist in drug enforcement efforts. Operation Green Harvest is an example of National Guard cooperation with law enforcement agencies in domestic eradication efforts. We will seek ways to tap this resource.

In addition, our efforts to stop drugs from coming into this country must include all Federal agencies with border jurisdiction.

We will suggest revisions in drug regulatory mechanisms to simplify registration.

We will seek to improve the quality of drug intelligence by increasing the priorities and improving the quality of analysis. We see this effort as one of improved international cooperation as well as better organization of our domestic intelligence operations.

We believe that the integration of all law enforcement resources into the enforcement of drug laws is our most effective, economical and efficient approach. We will pursue the development of a domestic policy that will more effectively coordinate efforts among Federal agencies as well as between these agencies and those at the State and local level.

For example, progress has already been made by improving cooperation between the FBI and the DEA and between the State drug — enforcement alliance and these agencies.

Mr. Chairman, in a time of limited government funds, we are aware that we must include agencies that have not been considered major drug enforcement resources.

For example, the U.S. Marshal Service is currently apprehending fugitives. In fiscal 1980, the U.S. Marshal Service apprehended 18,750 fugitive felons. Of these, approximately 47 percent had been involved in drug trafficking. As recently as Friday, November 13, the Marshal Service apprehended 76 fugitives in the Miami area. Forty of them were drug fugitives.

Additionally, the U.S. Marshal Service spends slightly more than \$500 per arrest, compared to other Federal agencies averaging as much as \$14,000 per fugitive.

The last portion of my testimony, Mr. Chairman, describes how the President's program to control crime applies to domestic drug enforcement.

We can make more efficient use of limited court resources by increasing the use of concurrent jurisdiction in investigations and prosecutions. This will provide greater flexibility in the indictment and sentencing of violators of our drug laws.

We intend to expand the use of financial and currency investigations as a primary enforcement tool. To this end, we support tax law reform to strengthen the ability of agencies responsible for financial matters to participate in the drug enforcement effort. Tax law reform will allow us to use information from the Internal Revenue Service to develop drug cases.

For enforcement to be effective against drug trafficking, we must be able to deprive drug conspirators of their economic base. We support legislation to broaden and expedite criminal forfeiture of money and property obtained in smuggling and trafficking activities.

This administration's legislative reform proposals place a high priority on the new bail law. These proposals are designed to protect the community by keeping people who are a danger to society in custody and detaining those who are likely to flee after being arrested on major charges.

Many traffickers consider bail costs to be part of their overhead expenses and tend to continue to traffic in drugs while they are out on bail.

We cannot afford to allow this to continue. We must be able to interrupt this illegal business and keep drug traffickers behind bars until trial.

Another legislative proposal of importance calls for changes in the exclusionary rule. The President has said this rule "rests on the absurd proposition that a law enforcement error, no matter how technical, can be used to justify throwing an entire case out of court, no matter how guilty the defendant or how heinous the crime."

The administration's proposal calls for modifying the rule so that evidence cannot be excluded from a criminal proceeding if it has been obtained by an officer acting in the reasonable, good faith belief that it was in conformity with the fourth amendment.

The Attorney General has already directed Federal prosecutors to make certain that recommendations for adequate prison sentences are firmly and clearly made to the court. We also support an increase in the penalties for drug traffickers and inclusion of mandatory minimum sentences for all drug traffickers regardless of the drug.

Mr. Chairman, these initiatives are by no means comprehensive. They represent initial steps by this administration to effectively limit the supply of and demand for drugs in the United States. I welcome your advice and suggestions.

In conclusion, we must make every effort to prevent the spread of drug abuse among our people—especially among young people for they are the future of our country.

As a very great American has said,

A child is a person who is going to carry on what you have started. He is going to sit where you are sitting and when you are gone, attend to those things you think are important. You may adopt all of the policies you please, but how they are carried out depends on him. He will assume control of your cities, States, and nations. He is going to move in and take over your churches, schools, universities, and corporations, the fate of humanity is in his hands.

The author of that comment was Abraham Lincoln. What he said is as true today as it was then; perhaps with more urgency.

I know that you will agree with me, Mr. Chairman, that we must make the fight against drug abuse of the highest priority in order to preserve the vitality of our people and insure our Nation's future.

I would like to leave you with a remark made by William Faulkner when he accepted the Nobel Prize for Literature. At that time, there was widespread concern about the survival of mankind. Faulkner said, "I decline to accept the end of man—I believe that man will not merely endure: He will prevail."

Just as Faulkner would not give up on mankind, I refuse to give up on the possibility that we will have a society free of drug abuse. I believe that with proper guidance from people such as yourself, young people and all Americans will prevail in reducing drug use.

Thank you for giving me the opportunity to appear before you.

I will be happy to handle any questions.

Chairman ROTH. Thank you, Dr. Turner, for your statement.

I believe that every administration, recent administration, has been very serious about their efforts to wage war on drugs and yet I have to state that as I listen to the various witnesses we have had during these hearings, I have come to the continued conclusion that we are indeed losing this war.

Where do you think the others have gone wrong and this administration will be able to go right?

Mr. TURNER. Mr. Chairman, this administration views the drug problem as one that must be integrated into all levels of society. We

are looking at a broad program that covers everything from enforcement to prevention. I think, in the past, several administrations would concentrate on treatment or enforcement.

Other administrations would concentrate on a short-term prevention program. We believe strongly that with a long-term education-prevention program; adequate enforcement with the proper international initiatives; continuation of the treatment that we have available and research, we can make inroads into the problem with a comprehensive program that other administrations have not been able to do.

Chairman ROTH. Well, certainly one side of the problem is the so-called demand. Last week, when we had a group of convicted traffickers before the subcommittee, they all made it very clear that as long as there is a demand, there will be a supply as well. So I strongly support and agree with the idea of trying to change the acceptability of drugs in our society. I wonder, in talking about coordination and cooperation, are you working with the Department of Education and the local school people to see what can be done to provide a better preventive program to disabuse the young in particular, but all segments of our society, of the problems of drug use.

Mr. TURNER. Mr. Chairman, we want to take the prevention program down to the grassroots levels, involving the parents, involve the people on the local level, involve the officials on the local level and involve the local organizations. We mentioned the Parent-Teachers Association. They have agreed to help.

We want to go to the elected officials and concentrate on the local communities.

I talked to Mr. Milton, the mayor of Celeste, Tex., recently. He said:

The Celeste Parent Awareness Group has helped us decrease drug use. They were a big help. We had a terrible problem until they became involved. They have been very helpful and have educated the city, on different types of drugs. They have been at least 90 percent effective in their efforts. They have also educated our area and as a result that has helped considerably.

That quote was from the mayor. He was involved with the school officials and local officials and we believe strongly this is the area to which we must go.

Chairman ROTH. How are you going to change the attitude when you have got a lot of people, including some doctors and others, drug enforcement people, that say the only way to cope with marihuana is to legalize it?

What is your answer to that?

Mr. TURNER. Mr. Chairman, that is no solution; 104,000 young people require attention at hospital facilities each year because of drugs, and 60,000 of those then going into treatment because of marihuana. Legalization is not going to solve any of these problems.

Legalization is going to create more problems. I would hate to see us go down the same road as we have gone down with alcohol and some of the other drugs on the market.

Chairman ROTH. There are some who feel this administration is providing inadequate resources for this war on drugs. In fact, they take it as a reason for saying that the administration is not serious.

We have had many witnesses, some of them here today, that state they believe it is essential to have additional resources.

How does the administration answer that charge? I must say I am concerned, personally concerned, as to whether or not we have adequate resources. There has been talk about using the military, a concept and idea which I support.

Are you dealing with the question of how to pay for this assistance from the military? I don't know whether you were here earlier today when the former head of DEA made the suggestion that we might finance these activities by some kind of a trust fund which would be formed with the assets seized, illegal assets of the traffickers.

Have you given any thought to that?

Mr. TURNER. Mr. Chairman, the President's position is that we want to use all resources available and not to exclude any of those resources. And some of those suggestions bear further consideration.

Chairman ROTH. I think it is important that this question of how we are going to finance the utilization of military be faced promptly if it is going to become an effective tool.

Congress, as you know, is removing the limitations in this area. I would say to you that we plan—at least in our present thinking—to hold some hearings later about this idea of what should be done in this area of seizure of assets and how it might be utilized on the war on drugs.

So I would urge that your office give some thought to this because it is something we will be following through on.

Going back to the consultation and coordination of all the various groups at every level, do you—and again I appreciate and understand you have only been in the office briefly—will you, as the adviser in the White House in this area, be calling together, for example, people from the State Department who have a very important role particularly with respect to our efforts overseas, the DEA, the IRS—how will we really achieve this coordination in an effective way?

I will be blunt with you. One of my problems is that the executive branch is always coordinating and meeting but nothing ever happens. And we cannot afford to have that be the case here.

Mr. TURNER. Mr. Chairman, I share your concern there. The organization I headed before I came to Washington in July was a complex organization and coordination was always a problem.

I learned a few things from the mistakes I made there and one of the things I learned is, if you make a group a rigid group, you lose flexibility. So the first thing we did was to review the coordination mechanism and try to add flexibility into that under the concept of Cabinet government.

We have the oversight working group or oversight committee which meets on a monthly basis. That committee is currently comprised, subject to change, of the Assistant Secretary for State for Narcotic Matters, the Acting Administrator of the Drug Enforcement Administration, the Director of the National Institute on Drug Abuse, the Commissioner of U.S. Customs Service, and the Deputy Assistant Secretary of Defense for Drug Abuse.

We have the Narcotics Division of the Department of Justice, and we are also looking into the availability of bringing in other people as necessary and appropriate.

We will address issues in this that are of coordination efforts and try to make this a much better coordinated group than the previous group.

Chairman ROTH. Many people feel, of course, the IRS can play a much more effective role. There has been a great deal of criticism about the lack of cooperation and aggressiveness from IRS.

I gather from what you said there is no representation at least at this stage from IRS.

Mr. TURNER. I think I probably left out the Coast Guard which I should correct. The Commandant of the Coast Guard is included in the oversight working group. We are looking at a proper way to include the IRS. There are several mechanisms we can use. There is also the Veterans' Administration, their programs could be useful and appropriate.

Perhaps a better mechanism would be to look at a working group under a Cabinet council, to change the composition of that group to address more issues.

Chairman ROTH. I would also just make mention you would want to bring, it would seem to me to be highly desirable to get the Department of Defense involved in this too if we are going to utilize their services.

Again, my concern and I applaud you for your background and success, but one of the big fights you have here in coordination is the turf fights, nobody wanting another agency or department—I thought I saw a little bit of that today.

Frankly, we shall be following this aspect. I do think working effectively, getting some kind of a strike force is an area of special responsibility in this committee which oversees reorganization, which brings me to my next question.

There has been a lot of talk going on about another reorganization of DEA.

Have you had any input into the decision on how DEA will work with the FBI and when is the final word of that going to be forthcoming?

Mr. TURNER. Mr. Chairman, my office is not involved in those considerations. I think those considerations are best handled within the Department of Justice.

Recommendations have been sent to the Attorney General and I think the Attorney General will make his recommendation in the near future.

Chairman ROTH. Are they consulting with you in any way?

Mr. TURNER. We are always in contact with the people at certain departments.

Chairman ROTH. I would urge you to make sure they review these so you are confident we are proceeding in the proper direction.

One of my concerns is that the degree of cooperation we get from abroad apparently has been hurt by the feeling abroad that we are not serious in our war with drugs. They point to the decriminalization of marihuana, they point to the acceptability on the part of at least part of our society, they point to the fact that marihuana in particular is growing in increasing amounts.

How can we change that so that the cooperation from abroad will be forthcoming? Should we make greater use of foreign aid from the

standpoint of substitute programs for those who now raise drugs or possibly as a threat?

Is this something your organization or advisee group is talking about?

Mr. TURNER. Mr. Chairman, in that connection, I have met recently with a delegation from Colombia, some from Sweden, Canada, and several other countries. They perceived an attitude coming out of Washington that is not conducive to getting them dynamically involved in the drug area.

We have stated to them that we will quit sending ambiguous messages. We will concentrate on the international level just as we have on the other areas.

As far as setting a good example, I think our domestic eradication program, underway for several years, is probably the best kept secret in this country.

I think once they begin to realize our dedication to this, we will get greater cooperation. In regard to that, we are seeking ways to make certain that when appropriate, that international agreements include drug considerations.

Chairman ROTH. On the point that the domestic eradication is the best kept secret, I gained the impression from some of our prior witnesses that we really are not making that kind of headway. They see a very substantial increase in a major part of the illegal drug market being supplied by domestic sources.

Are you saying you feel it is adequate today?

I am not sure I am able to reconcile what you are saying to what some of the other witnesses said.

Mr. TURNER. Mr. Chairman, I am not saying it is adequate at all. We have known domestic cultivation was increasing since the early 1970's and yet we did not concentrate any effort at all in those areas.

It is one of those situations that has festered and gotten out of control. However, I mentioned the State Drug Enforcement Alliance. They are diligently working with the DEA, FBI, and other agencies and have initiated eradication programs. We have eradication programs in California, Florida, Georgia, Kentucky, Missouri, and an eradication program in Mississippi and other States. These are usually not headline-types of operations. But, they are there and they have been having some very good successes.

Chairman ROTH. I guess the bottom line is, do you see the domestic supply increasing now or decreasing?

Mr. TURNER. Mr. Chairman, the domestic supply of drugs I think fluctuates from region to region within the United States, but overall it is probably increasing and has been gradually increasing.

I remember the first sample we saw of domestically cultivated marihuana was in 1973. we consistently brought that to the attention of the Federal authorities.

Chairman ROTH. What are your views concerning a Cabinet-level position for narcotics?

Mr. TURNER. Mr. Chairman, within concept of Cabinet council government, I think you have many mechanisms to get each individual item that is of interest in the narcotics area, worked through the system that will in effect give you Cabinet-level discussions because each Cabinet council contains Cabinet members.

I don't see the need for a Cabinet-level position with the integrated framework of Cabinet council government that we have today.

Chairman ROTH. Dr. Turner, the hour is growing late and I know Senator Rudman in particular and I am sure Senator Nunn and others may have some questions. So we will leave the written record open for a week to enable them to submit any questions they may have.

I appreciate you being here today and I must say you have, in my judgment, one of the most important and most challenging jobs in the world. I wish you well in your efforts.

Mr. TURNER. Thank you, Mr. Chairman.

Chairman ROTH. Thank you, Doctor.

Mr. WEILAND. Senator, for the record, if I may just offer certain exhibits before we close, I would like to offer a newspaper article dated March 12 on Operation Greenback.

Chairman ROTH. Without objection.

[The document referred to was marked "Exhibit No. 9," for reference, and follows:]

EXHIBIT No. 9

[From the Wall Street Journal]

FEDS CRACK DOWN ON "LAUNDERING" OF NARCOTICS MONEY

FLORIDA INDICTMENTS GIVE LIFT TO "OPERATION GREENBACK"; EFFECT OF REAGAN CUTBACKS

(By Jim Montgomery)

PLANTATION, FLA.—Ordinarily, nothing pleases a banker more than a steady inflow of cash. Last summer, however, Arthur Griffin decided that he had seen too much of a good thing at the Landmark First National Bank branch that he manages here.

"I never saw so much money in my life," the senior vice president recalls. "and I hope I never do again. It was coming in in boxes. In one week, we received a little more than \$10 million." One afternoon, he recalls, 12 tellers worked from three o'clock to 5:30, and six more stayed another two hours to count \$1.2 million in \$20, \$50 and \$100 bills.

In late October, the bank called a halt. Mr. Griffin, who had been told that the cash belonged to wealthy Salvadorans trying to get their money into a politically safe country, said the huge deposits had to stop because they were causing staffing problems at the bank.

A few months later, federal agents—whom Mr. Griffin had contacted—descended on the bank, slapped handcuffs on Dolores "Lolita" Eirin, a new business officer, and led her away. Indictments in a federal court in Miami now charge that she was knowingly helping some prosperous new depositors, including a pair of brothers known to lawmen as the "bad guys of Colombia," to "launder" more than \$70 million through the Landmark branch last year. Mrs. Eirin and the brothers deny the charges against them.

FIRST BIG BREAKTHROUGH

The indictments marked the first big breakthrough for "Operation Greenback," a multi-agency federal campaign started last summer to slow the runaway \$7-billion-a-year flow of illegal narcotics through southeast Florida by pursuing the banking trail of cash proceeds and disrupting their transfer out of the country.

Drug traffickers seek to "launder" their enormous cash take through financial institutions rather than simply carry it out of the country in suitcases—to avoid various dangers, including holdups, federal officials explain. Besides, they say, simply too much drug cash is generated every day for anyone to carry it away physically.

With the sums involved, even "laundering" is risky. Last month, for example, an alleged drug money courier walked into a suburban Miami bank and asked

a guard to help him carry about \$750,000 in from the parking lot. While waiting for the guard, the courier glanced out the window and saw a "320-pound Latin male enter the car with keys and drive it off," according to an affidavit filed in the Miami court by Operation Greenback agents. The courier then "refused to report the theft to police, called a taxi and left the bank," the affidavit adds.

Late last month, Operation Greenback began to pick up speed as agents from the Internal Revenue Service, Drug Enforcement Administration and Customs staged daylight raids on two Miami banks—Bank of Miami and Great American Bank of Dade County—suspected of being used to launder more than \$60 million in drug profits in 1980 and this year. Greenback officials say the initial indictments cover only a handful of the alleged traffickers and bank accomplices whom they expect to nail this year, despite what they cite as a major handicap—the recent hiring freeze imposed by President Reagan at a time when they had planned to ask for more help.

MANY BANKS SUSPECTED

Still, "an awful lot of banks are under investigation," says Atlee W. Wampler III, who, as the U.S. attorney in Miami, is the chief federal law-enforcement officer for southern Florida. And G. Roger Markley, one of four federal prosecutors assigned to Greenback, notes "other cases where we strongly believe much higher-level bank officials took kickbacks to let this sort of activity go on." The corruption, he contends, involves top management in "more than one" other Miami-area banks.

However, middle- to lower-level bank employees are the most attractive accomplices for drug millionaires because, as Mr. Wampler observes, "they're usually not paid very well." Two Landmark employees, Alan Campbell and Gary Dodson, who were implicated in the alleged scheme with Mrs. Eirin but pleaded guilty to a misdemeanor violation of accepting gratuities, were earning less than \$15,000 a year. So was Mrs. Eirin.

Thus, if what the government alleges is true, it was a pretty heady inducement when Hernan Botero walked into the Landmark branch and offered, in effect, to pay each of the three bank employees \$1,000 a day tax-free to run large amounts of cash through the bank without reporting it to the IRS. (Such reports are required for cash transactions exceeding \$10,000.)

The federal indictments and complaints in the Landmark case describe these commission arrangements and may offer a typical case of just how a drug-money laundering operation works.

Prosecutors contend that Mr. Botero agreed to pay the three bank employees a commission of 0.75 percent on the \$400,000 a day that he told them he would deposit in five accounts that he opened under five different names. To explain the flood of new cash into the bank, they allegedly concocted the El Salvador story, which isn't implausible in Miami, the flight-capital center of the Western Hemisphere.

To further allay management suspicions, the bank employees, prosecutors say, faithfully filled in the required IRS Form 4789S on most of the Botero deposits, carefully put a copy of the form in the bank's records and just as carefully sent the IRS copy through the bank's paper shredder.

The deposits didn't stay with Landmark long. The money quickly moved to other banks by wire transfer or by cashier's checks sent through the mail. Because such transfers are exempt from IRS reporting requirements, the money thereby became clean.

Last spring, a government affidavit says, the deposits began to shrink a bit because, an alleged Botero runner explained at the time, the Florida Straits were so choked with Cuban refugee traffic that Mr. Botero was having a hard time getting his shipments from Colombia.

INFLUX RESUMED

But the flow of money resumed with such force last summer that in August Mr. Griffin grew uneasy and called an FBI agent whom he knew to report "something strange going on." Despite his subordinates' reassurances, Mr. Griffin says he "didn't believe anyone could get that much money out of El Salvador."

By early November, federal agents confirmed his suspicions that his bank had become a laundry, and Messrs. Campbell and Dodson and two tellers resigned. Mrs. Eirin wasn't charged until this year.

The indictments charge Mrs. Eirin, Hernan Botero and his brother, Roberto, and other alleged runners and traffickers with importation of cocaine, conspiracy to defraud the government, making false statements to the IRS, failure to make proper currency reports and mail fraud. Attorneys for Mrs. Eirin and the Boteros say they deny all charges and will plead innocent.

Even more shocking to the Miami banking community, however, were the sudden raids on Bank of Miami and Great American Bank. In the raids, federal agents seized bundles of bank records involving numerous accounts of an alleged kingpin of Miami money-launderers. The bank officials were stunned, and an attorney for Great American says the agents "descended . . . en masse like storm troopers." He brands the raids a publicity stunt.

CHARGES REBUTTED

Mr. Wampler, the U.S. attorney, calls such charges "without foundation" and says the search warrants were issued on the basis of affidavits alleging "serious felony violations."

He says the searches were related to the recent arrests of Isaac Kattan, a Colombian, and several associates by the Drug Enforcement Administration. The men were linked to a Miami apartment that contained, among other things, several high-speed money counting machines and stacks of uncounted currency. Mr. Wampler says Mr. Kattan is "believed to be the biggest money-launderer for major narcotics organizations" anywhere. He adds that the Kattan organization laundered \$60 million through Great American in the past year—\$7 million of it a couple of weeks ago—and millions more through Bank of Miami.

Mr. Kattan was arrested at his car, in which agents found a small bag of cocaine; on his person, agents found about \$250,000 in negotiable checks and cash. On the same day, DEA agents stopped a white Jaguar driven by a Kattan associate and found 21 one-kilogram packages of cocaine. The driver said he was carrying the drugs for Mr. Kattan, according to affidavits filed by federal agents in a federal court in Miami.

On another occasion last month, according to another affidavit by a federal agent, Mr. Kattan, one of his couriers and a bank employee entered Great American Bank together. One of them was said to be carrying a brown suitcase. A federal agent in the bank overheard Mr. Kattan say to the bank employee, "I told them not to bring the money like that." The bank employee allegedly replied: "Well, don't worry, the main thing now is to count the money and, by the way, don't worry about it; from now on I'll take care of all your cash transactions."

INFORMANT QUOTED

One of the federal agents' affidavits quotes a confidential informant as stating that "over the past year, large amounts of cash have been brought into the (Great American) bank on an almost daily basis in cardboard boxes and in suitcases by Latin males." Federal agents said the statement was corroborated by a bank-regulatory-agency report and by "surveillance at the bank by (federal) agents."

Federal affidavits also say the Kattan group sent millions of dollars to Switzerland and elsewhere through the Miami office of Donaldson, Lufkin & Jenrette Securities Corp. In January alone, prosecutors say Kattan associates brought \$11.7 million of cash into the brokerage firm's offices. (Prosecutors praise the firm for cooperating with the investigation.) Mr. Kattan and two associates have been indicted on narcotics charges in a federal court in Miami and have pleaded innocent.

Miami bankers generally laud the goal of Operation Greenback, but some question its tactics, especially the raids during banking hours. A raid is "a most unusual procedure," complains William B. Roman, vice president and general counsel of Pan American Bancshares Inc., a large bank-holding company. "It could create a run on the bank. . . . They could have done it in a back room (of the bank) without telling the customers."

Alexander Wolfe Jr., who heads Miami's largest bank, Southeast First National, says "we've got a monitoring team that's intense" to prevent a laundering operation. But he adds, "I can't tell you for sure" that one or two employees "in some remote corner" somewhere aren't laundering something. "I don't think there's any banker in the country who can tell you that," he says, especially if, like Southeast, they have "general-ledger transactions of \$6.9 billion a day, including \$2.2 billion and 138,000 transactions in checks, cash and wire transfers. It's staggering."

MOSTLY SMALLER BANKS

But court documents filed thus far indicate that the alleged laundering involves mostly smaller banks. Although Landmark Banking Corp. of Florida is a \$1 billion institution, its Plantation office has deposits of only about \$65 million; Bank of Miami, the lead bank of Popular Bancshares Inc., has about \$230 million of deposits, and the North Miami unit of Great American Banks Inc. has about \$105 million. During or after laundering, federal investigators believe, the drug proceeds are flowing through most banks in the area.

U.S. Attorney Wampler says he expects criticism of Operation Greenback, such as the charge of publicity stunting, because, he says, "We're going after a portion of society that's been untouched (in past drug investigations). The banking community isn't used to being faced with (such) law enforcement. . . . After all, he says, last month was "the first time federal agents have conducted raid-and-search operations on banking institutions in southern Florida in the fight against major narcotics-trafficking organizations."

Southeast Banking's Mr. Wolfe says he doesn't know whether Greenback has been effective in slowing the drug traffic. But he vows in his role as civic leader to "seek more federal resources" that will focus on nabbing traffickers on the water, in the air, on land and, if necessary, in the banks. "This isn't a local problem," he says. "It's a national problem."

Mr. WEILAND. Yesterday we had substantial testimony regarding a case of the *United States v. Enstam and Oldham*.

I would like to offer for the record, but not for publication or reprinting, a copy of the search warrant from that case. I would like to offer my staff statement¹ regarding the visit that we had to the Cayman Islands and our meetings with all of the top government officials there and stress for the record, Mr. Chairman, that the staff's concern about offshore banking havens and the use of such for the laundering of narcotics profits extend beyond the Cayman Islands. And the record should not reflect a total preoccupation with that country and its system alone.

As additions to that staff statement, we have a list of banks and trust companies which are licensed to operate in the Caymans, a copy of the bank secrecy law from the Caymans, a letter from me to the Honorable D. H. Foster, chief secretary of the Caymans dated October 16 soliciting any input he or his government might wish to make and finally an article dated October 18 from the Dallas Morning News regarding the use of Cayman banks.

Chairman ROTH. Without objection.

[The documents referred to were marked "Exhibit Nos. 10A, 10B, 10C, and 10D" for reference; Exhibits 10A and 10B are retained in the files of the subcommittee. Exhibits 10C and 10D follow:]

EXHIBIT No. 10C

U.S. SENATE,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C., October 16, 1981.

Hon. D. H. FOSTER, M.B.E., J.P.,
Chief Secretary, Governor's Office,
Grand Cayman, British West Indies.

DEAR MR. SECRETARY: The Subcommittee's public hearing on international narcotics trafficking has been scheduled for November 10, 12, 13, 17, and 18, 1981. Although the major focus will be on interdiction efforts and narcotics source country efforts to curb supply, there will be testimony pertaining to the laundering of narcotics profits and U.S. law enforcement financial investigations. As you are aware, the visit which Howard Shapiro and I recently made to Grand Cayman was designed to gather information about the movement of narcotics profits

¹ See p. 626 for the prepared statement of S. Cass Weiland.

and the role of offshore banks, and staff testimony concerning our visit is likely. Other witnesses who have actually participated in narcotics trafficking are expected to appear and may refer to Cayman during their testimony.

The Subcommittee is also interested in exploring the possibility of receiving either public testimony from a suitable representative of the Caymanian government and/or a written statement which can be inserted in the hearing record. If you have any questions concerning the upcoming hearing or wish to discuss further the possibility of Caymanian input, please contact me or Howard by phone (202/224-3721) or mail (101 Russell Senate Office Building, Washington, D.C. 20510).

Sincerely,

S. CASS WEILAND,
Chief Counsel.

EXHIBIT No. 10D

[From the Dallas Morning News, Oct. 18, 1981]

TEXANS STASH CASH ON ISLE, AGENTS SUSPECT

(By Bill Deener)

Federal investigators have identified about 2,000 Texas businessmen, common and couriers who they suspect are using the tiny Caribbean country of the Cayman Islands to hide or launder money illegally and to evade U.S. income taxes.

Gathering the intelligence information is a prelude to an all-out assault on Texans using the Caymans as illegal tax havens, said a source with the Internal Revenue Service.

U.S. Customs Service and IRS officials said they expect the Justice Department to form a strike force soon to combat the money laundering schemes. The force is expected to be similar to the Operation Greenback strike force in Florida.

"There is a lot of work and a lot of time involved in this. We are talking about hundreds of investigations," the IRS source said. "You're probably counting between 2,000 and 3,000 leads we have to look into." Each lead represents one person, he said.

Texas has become at least one conduit for the flow of "dirty money" to the Caymans primarily because people can make airline connections to the tri-island country from Houston, said Frank Chadwick of the U.S. Customs office in Houston.

"I've got a flight that runs three times a week to Grand Cayman Island, so we look very, very closely at people who make repeated trips down there," he said. "When we find a bevy of CPAs or attorneys making the trip, we get very interested."

Miami is the only other U.S. city offering flights to the Caymans. Legitimate reasons for visiting the Cayman Islands exist, he said—snorkeling being one of them—but the country thrives because it is a tax haven, offering banking secrecy unmatched anywhere in the world, including Switzerland.

People can hide money there with no questions asked, Chadwick said.

"Anybody who is smart enough understands that they can hide it (money) in a Cayman Island bank account with no trouble. That's why they go there," he said.

Money earned through narcotics, fraudulent land schemes, stock manipulations, skimming profits from a company and gambling proceeds are hidden, then "laundered" through the Caymans, he said.

No one would even estimate how much. One Dallas IRS agent said: "Tons and tons of it leave Texas every year."

Laundering schemes vary, but many involve taking the "dirty" money to the Caymans and returning with a loan from one of the 350 banks chartered there for the same amount.

U.S. Atty. Jay Ethington of Dallas, who prosecuted the only money laundering case in the state last year, offers this example.

The courier, carrying a suitcase full of cash, flies by commercial airline to the Cayman Islands. The money is given to a representative of the company there, say Worldwide Enterprises Ltd., then deposited in a bank account under that company's name. The company representative then returns the money to the courier in the form of loan—a \$100,000 cashier's check, for example.

The courier returns to the United States and deposits the cashier's check in his account. The money is "clean" now.

If the IRS examined the banking records in the United States, the money would appear as a loan. The IRS is not permitted to examine the records of Cayman banks. The Cayman representative also provides phony loan documentation letters.

Because the money seems to be a loan, it seems as if the principal and interest are being repaid. Thus, payments are made on the "loan" and put into other Cayman accounts, thereby hiding that money from the U.S. government.

A Dallas man, who is familiar with the Caymans, said the islands are popular with Americans because English is spoken there, the political situation is stable politically and the IRS cannot crack the bank secrecy laws.

"You don't want your money in a place where they are going to have a revolution next week," he said. "You can take money down there, deposit it just like in a Swiss bank and transfer it to the U.S. as loans, payments, salaries, whatever."

Another Dallas man, who has laundered money through the Caymans, said: "The basis of the country is banking and tax avoidance. The general concept is that people who go there do it for a purpose, and that purpose is to avoid taxes. It's standard practice to provide this service."

The Caymans are small, flat islands of less than 100 square miles and 17,000 residents located 200 miles south of Cuba. Round-trip airfare from Houston costs \$306.

The islands—Grand Cayman, Little Cayman and Cayman Brac—are a British colony but free of British taxes. It is a pure tax haven with only one direct tax—a \$10 a year individual tax on residents, Ethington said. Income, capital gains, dividends and inheritance is not taxed. Since the country has no taxes, it has no tax treaties with other countries. So tax evasion in

"A banking officer can be jailed for telling us if someone even has an account there and our subpoenas aren't worth a thing," Ethington said.

Curiously in the midst of this tainted banking community, many of the most prestigious U.S. banks have chosen to establish Cayman branches. Ten Texas banks currently have branches in the Caymans, but federal authorities quickly point out that these banks operate legally and duplicate records of Cayman transactions are kept in the home offices.

Or as Ethington said: "If you are going to launder money, you don't deposit money in U.S. branches there because we can get at those records."

Texas banks with branches in the Caymans include First National Bank in Dallas, National Bank of Commerce of Dallas, Mercantile National Bank in Dallas, First International Bank in Houston and Fort Worth National Bank. Also, Continental National Bank of Fort Worth and American National Bank of Austin have branches in the Caymans.

An official of First National in Dallas, who asked that his name not be used, said the Cayman branch was chartered in 1973 "to finance international trade." He said the bank might loan money to a corporation in Brazil that needs funds for expansion.

"We deal with large multinational companies. We're dealing in very large amounts (of cash). We don't deal in under \$100,000," the official said to point out that the bank does not do business with those trying to launder money.

James Gardner, president of Mercantile, said earnings of a foreign-based subsidiary of an American company remain in banks outside of the United States.

"So as long as those earnings are maintained outside the United States, then they aren't subject to U.S. income tax as long as they meet a long list of (federal requirements)," Gardner said.

"So if I'm a contractor in Dallas and I've got a subsidiary building buildings in South America, I might want to maintain the cash that resulted from the profits I've made outside the United States for as long as I'm doing business out there so I can continue to use it for additional working capital to make more money."

These transactions are legal and are monitored by the federal Comptroller of the Currency office in Washington, D.C.

The problems in the Caymans originate with non-U.S. banks, said Bob Serino, director of enforcement and compliance, for the Comptroller of the Currency.

Although no estimates are available for how much money was exported illegally from Texas last year, the nationwide estimate is \$500 million yearly, according to the U.S. Customs Service in Miami.

The law requires that if someone takes out more than \$5,000, he is required to file a form with Customs. Failure to comply with the law can result in a felony conviction.

Mr. WEILAND. Just a couple of other items, Mr. Chairman.

We have a report for the year 1980 from the Caymans which I would offer as an exhibit but not for reprinting.

We have a copy of a letter from a customs patrol officer. We also have some correspondence with the Customs Service wherein we sought their responses to certain questions.

[The documents referred to were marked "Exhibit Nos. 11A, 11B, and 11C," for reference; Exhibits 11A and 11B are retained in the files of the subcommittee. Exhibit 11C follows:]

EXHIBIT No. 11C

COMMISSIONER OF CUSTOMS,
Washington, D.C., November 13, 1981.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Permanent Subcommittee on Investigations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of October 27, 1981. I regret that a previous commitment precludes my attendance at the hearings on November 18, 1981. However, George C. Corcoran, Jr., Assistant Commissioner, Office of Border Operations, will represent the U.S. Customs Service in these very important hearings on the role of Federal law enforcement agencies in interdicting and investigating drug smuggling.

Enclosed are our responses to the questions posed by your staff. The statement of the Customs Service will be provided under separate cover. If additional information is required, please do not hesitate to contact me.

Thank you again for this opportunity to share with the Subcommittee the views of the U.S. Customs Service on this very important issue.

Yours faithfully,

WILLIAM VON RAAB.

Enclosure.

RESPONSES OF THE U.S. CUSTOMS SERVICE TO QUESTIONS OF THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Question. Customs directive MT 3400-04 dated June 23, 1978, restricts the participation of Customs officers in investigations involving domestic drugs. Does the Service intend to adjust this directive? Does the 1978 directive bar Customs personnel from taking part in multi-agency task force operations without the approval of Customs headquarters and of DEA? Does it preclude Customs officers from working cooperatively with local narcotics enforcement officials who often can provide information and other assistance?

Answer. The U.S. Customs Service has no plans to amend this policy statement. The restrictions on Customs Patrol Officers working domestic narcotics violations stem from Customs lack of statutory authority in this area. The diversion of Customs Patrol resources to domestic cases diminishes Patrol's ability to carry out its primary narcotics mission of interdiction at the border.

This 1978 directive does require Customs Headquarters approval of Patrol Officer participation in multi-agency task forces. Approval authority rests solely within the Customs Service and does not require DEA approval. Once again, the rationale for this activity is to insure Patrol resources are dedicated to its prime mission of interdiction at the border.

This directive does not preclude Customs Patrol Officers from working cooperatively with local narcotics enforcement officials in narcotics interdiction cases. The policy of Customs has always been one of cooperation with local officials in matters of mutual concern. The directive does, however, restrict Patrol's participation in domestic cooperative efforts for the reasons stated above.

Question. We understand that Customs' "Internal Working Relationships Circular," dated February 4, 1976, requires approval by the Customs Office of Investigations and/or DEA prior to using informants or participating in undercover operations. Is this circular still in effect? If so, how many requests for such

approval were received and of these how many were approved—by category and by region—during fiscal year 1980 and fiscal year 1981? What was the average length of time between request and approval or disapproval during each year?

Answer. The circular in question requires the approval of and coordination with DEA when Customs Patrol utilizes a participating informant. A participating informant is described as one who, at the direction of the case officer, actively participates in the crime in order to obtain intelligence or evidence. This requirement remains in effect.

Because of the decentralized organizational structure of Patrol, there is no central record depository from which to extract the statistics requested on using informants.

With regards Patrol Officer participation in undercover operations, approval authority was delegated to the Director, Office of Patrol, by the Assistant Commissioner, Office of Border Operations, in December of 1980. At that time, the Office of Patrol instituted a record keeping system from which the following statistics have been extracted.

Fiscal year 1980: Seven requests for undercover operations. All responded to the same date of the request. Six were approved, one disapproved.

Fiscal year 1981: Five requests. Four responded to same date of request. One responded to the next day. All were approved.

Question. Is the Memorandum of Understanding dated December 11, 1975, between Customs and DEA still in effect? If the Memorandum is still in effect, does the Service intend to seek a revision?

Answer. The Memorandum of Understanding, dated December 11, 1975, between the U.S. Customs Service and the DEA is still in effect. In accordance with this Memorandum, DEA is responsible for conducting all investigations relating to narcotics. However, DEA often lacks the resources to pursue these investigations. In these cases and with DEA concurrence, Customs frequently continues the investigation to the point of interdiction of smuggled narcotics. Additionally, the U.S. Customs Service has aggressively enforced the provisions of the Currency and Foreign Transactions Reporting Act, commonly called the Bank Secrecy Act. In each instance, where a financial investigation has revealed a major narcotics organization, DEA has been requested to join in a joint investigative effort. This working relationship has manifested itself throughout the United States, most spectacularly in southern Florida, southern California, and New York. The Memorandum of Understanding is, as the name implies, an understanding between the agencies in the conduct of narcotic investigations. With a closer working relationship, the Memorandum will have to be modified to reflect the increasing importance of financial investigations in disrupting international narcotic organizations and to accurately reflect the new investigative relationship between the U.S. Customs Service and DEA.

Question. During fiscal years 1979, 1980, and 1981, what has been the turnover rate for active duty patrol officers? How many patrol officers have left Customs or transferred to other Customs jobs for reasons other than disability, retirement or any cutbacks in force? Is this rate considered high or low?

Answer. From October 1, 1978 to September 30, 1981, (fiscal years 1979, 1980, and 1981) the staffing level for Customs Patrol has declined from 1,550 to 1,347, a 13 percent change. A survey conducted in fiscal year 1980 determined that the average annual attrition rate for Customs Patrol is about 6 percent, independent of any hiring freezes. As you know, a "one for two" hiring freeze was imposed by the previous Administration in fiscal year 1979-80. A "hard freeze" on hiring was imposed from November 1980 until April 1981. In this context, the 13 percent decline in Customs Patrol staffing levels can be considered a moderate change.

The few Customs Patrol Officers that have left the Service for other than disability or normal retirement have done so principally for career advancement. There has been no Customs Patrol Officer whose employment has been terminated because of reductions-in-force.

Admittedly, the Customs Patrol force has shrunk over the past several years. As a result, Customs is redeploying Patrol Officers to those areas of the country where the drug smuggling threat is the greatest—the Gulf and Southeastern United States. This action, scheduled for completion by January 24, 1982, will enable Customs to utilize its Patrol force more effectively to meet the smuggling threat facing this country.

Question. Are Customs Patrol Officers permitted to provide information to the IRS about suspected drug traffickers? If they are not permitted to do so,

what is the justification for this policy? Are there any plans to change it and, if so, how?

Answer. There are no Customs policies prohibiting Customs Patrol Officers from providing information on suspected drug traffickers to the Internal Revenue Service. There are no current or planned restrictions on this activity. Of course, there are restrictions on IRS providing such information to law enforcement agencies.

Question. Is it true that in some Customs regions Patrol Officers may work in plainclothes certain days a week but must be in uniform the other days? If this is the case, (a) how long has such a policy been in effect; (b) how does it affect undercover work, relationships with informants and similar work usually associated with plainclothes duty; and (c) are there plans to change such a policy?

Answer. Manual Transmittal 4100-15, dated April 10, 1981, established the policy that Customs Patrol Officers need wear uniforms only commensurate with the nature of their assignment, lifting a former requirement mandating the wearing of uniforms. Currently, 80 to 90 percent of the Customs Patrol force work in plainclothes. This facilitates their carrying out many Patrol functions, such as information gathering, surveillances, and meeting with informants.

Question. Are Patrol Officers required to travel in marked or unmarked cars? How long has this policy been in effect? Are there any plans to change this?

Answer. Manual Transmittal 4100-13, dated February 9, 1981 (attached), lifted previous requirements that Customs Patrol use marked vehicles, vessels, and aircraft in carrying out its mission. Although no fixed ratio of marked to unmarked conveyances was mandated in this policy statement, it was suggested that Customs Regional Commissioners utilize a ratio of 25 percent marked to 75 percent unmarked. This policy change reflects recognition of the fact that many Customs Patrol functions, such as information gathering, surveillances, and meeting with informants, can best be performed utilizing unmarked conveyances (vehicles, vessels, and aircraft).

Question. The following questions are based on data contained in the U.S. Customs Patrol fiscal year 1980 Regional Study:

(a) Some Customs regions appear to have made a large number of marijuana seizures with a low overall value whereas other regions made fewer seizures with a much greater value. How does Customs account for these disparities?

(b) Similar disparities among regions in terms of numbers of seizures and value of seizures seem to exist with respect to cocaine. What accounts for these disparities? Is it true that the Chicago region made no cocaine seizures during fiscal year 1979 and fiscal year 1980 and why does it continue to have the lowest amount of seizure value return for the dollar investment in resources?

(c) Do the disparities cited above in marijuana and cocaine seizures indicate a misallocation of resources? In other words, would Customs receive a greater return in value of drugs seized per dollar invested if personnel were transferred from areas of low return, like Chicago, to those of high return, like Miami?

Answer. (a) Individual seizure events may involve large or small amounts of contraband. If, for example, a mothership is seized with 20 tons of marijuana, that counts as one seizure with a value of \$29,040,000 (marijuana street value of \$726 per pound times 20 tons or 40,000 pounds). Conversely, if an individual is arrested at an airport with 2 pounds of marijuana, that counts as one seizure event with a value of \$1,452 (\$726 per pound times 2 pounds). The U.S. Customs Patrol fiscal year 1980 Regional Study shows that although some regions are making significant numbers of seizures, the seizures with the high value and amount of contraband seized are occurring in those Customs regions covering the Gulf and Southeast United States.

(b) The same explanation for the regional differences in number of seizures and value of seizures offered for marijuana also pertains to cocaine. Although Customs Chicago Region made no cocaine seizures within that region in fiscal year 1979 and fiscal year 1980, Patrol in that Region does provide information to other Customs regions which can lead to seizures in those other regions. Nevertheless, the costs of Customs Patrol enforcement effort in the Chicago Region in light of the value of the contraband seized there does not compare favorably with other regions. This reflects and supports Customs intelligence estimates that the magnitude of the drug smuggling threat and the pattern of international drug trafficking in the Chicago Region differ greatly with the Gulf and the Southeast United States.

(c) It is the position of Customs that such disparities in seizure and arrest statistics are excellent historical indicators of the changing smuggling threat. Analysis of these statistics and current narcotics intelligence assessments in light of Customs enforcement posture has led to the decision to redeploy some Customs Patrol Officers from low productivity and low threat areas to high threat areas. This process is well underway and will be completed by January 24, 1982.

Question. How many personnel changes have been made or proposed since the new budget cuts became effective on October 1, 1981? Where are personnel cuts being made and how deep will they be? Can the cuts be absorbed, possibly by a more effective reallocation of resources, without lowering effectiveness?

Answer. The U.S. Customs Service is currently operating under a continuing resolution. While there have been no increases in personnel, neither have there been any planned decreases. However, after carefully studying Service-wide Patrol enforcement results, it was determined that Patrol Officers should be shifted from areas with little enforcement opportunity or results to higher threat areas in closer proximity to the drug source countries of Latin America. Therefore, steps have been initiated to redeploy 103 Patrol Officer positions from the Boston, New York, Baltimore, Los Angeles, San Francisco, and Chicago Regions to smuggling penetration points along the south Atlantic and Gulf coasts. While no increases in resources for additional enforcement positions are anticipated, Customs will seek to shift some of its nonenforcement resources to assist the total Customs enforcement effort. This redeployment of Patrol positions and use of Customs nonenforcement resources will enhance our enforcement capabilities and antismuggling effectiveness. In addition, the absorption of potential fiscal year 1981 personnel cuts in Customs nonenforcement areas is under active review.

MANUAL TRANSMITTAL—MARKING OF PATROL VEHICLES, VESSELS AND AIRCRAFT

Purpose.—To transmit Policy Statement No. 4100-10.

Background.—When the Patrol Division was established, it was determined that it would be a highly visible enforcement element of the Customs Service. It was therefore appropriate that most operations be conducted in marked vehicles, vessels and aircraft. Since that time, experience and changing strategies have dictated that many Patrol functions such as information gathering, surveillances and meeting with informants must be performed using unmarked conveyances.

Nature of this Issuance.—Policy Statement 4100-10 establishes Customs policy concerning the marking of Patrol vehicles, vessels and aircraft.

Effect on Other Documents.—This issuance replaces Manual Transmittal 5200-01 and Policy Statement 5200-01, which are superseded.

Removal and Insertion of Page.—Remove: Policy Statement 5200-01; Insert: Policy Statement 4100-10 in a binder marked Policies of the U.S. Customs Service.

Authentication.—

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

POLICY STATEMENT—MARKING OF PATROL VEHICLES, VESSELS AND AIRCRAFT

Henceforth, Regional Commissioner will be responsible for determining the ratio of unmarked to marked vehicles, vessels and aircraft in Patrol units assigned to their regions. In making this determination, consideration should be given to the mode of operations of the Patrol elements in the region.

No specific percentage of marked or unmarked conveyances is necessary. However, for many Patrol operations a ratio of 25 percent marked to 75 percent unmarked may be appropriate.

And, finally, Mr. Chairman, a letter from the current U.S. attorney in Miami, Atlee W. Wampler to the Attorney General dated March 5, 1981, regarding his views of what might be accomplished in the south Florida area.

Chairman ROTH. Without objection.

[The document referred to was marked "Exhibit No. 12," for reference, and follows:]

EXHIBIT No. 12

U.S. ATTORNEY SOUTHERN DISTRICT OF FLORIDA,
Miami, Fla., March 5, 1981.

Hon. WILLIAM FRENCH SMITH,
Attorney General for the United States,
U.S. Department of Justice, Washington, D.C.

DEAR MR. SMITH: I hereby submit my recommendations on how to combat the national narcotics problem in South Florida. I offer these recommendations for consideration as part of the Reagan Administration's policy and program to control the narcotics problem in this country.

I was recently asked by Joan McMullan, the Executive Editor of the Miami Herald newspaper, to address the question of how can the narcotics problem in South Florida be controlled. I understand that my response is likely to appear on the opinion and editorial page of the Herald on Sunday, March 8, 1981.

I wanted to share my proposals with you before they appear in the press. These recommendations are ones which I have made on numerous occasions over the last six years.

Can the national narcotics problem in South Florida be controlled? My answer is yes. The method is to eliminate or drastically reduce the incentive to import, distribute or facilitate trafficking in narcotics.

Currently, a first time offender associated with ton quantities of marihuana, kilogram quantities of cocaine or tens of thousands of methaqualone tablets expects: not to be arrested; if arrested, to be immediately set free on bail pending trial; if tried to have representation by the best lawyers that money can buy; if convicted, to remain free on bail pending appeals, all the way to the Supreme Court; if eventually sentenced, to receive a sentence of two, to three years and to serve less than 10 months in "a clean, well-lighted place" (perhaps even receive probation); and, when released after a few months in prison, to have millions of dollars in narcotics profits waiting.

This instant narcotics-derived wealth perverts our national work ethic and system of values as otherwise law abiding members of our society are attracted to the possibility of similar riches for themselves. These persons are then ensnared into the narcotics web.

One action to reduce the incentive to participate in the narcotics business is to increase the risk of arrest and conviction through executive action. We need to provide a national commitment of federal law enforcement resources in South Florida, where 70 percent of the nation's marijuana, cocaine and methaqualone tablets are imported, distributed and financed. This commitment must include investigators, prosecutors and judges. The United States Attorney's Office needs to be allowed to reach its authorized strength of sixty-three attorneys, and to obtain an additional twenty-six attorneys plus support personnel. The Federal Judiciary needs four additional Federal Judges. A finite increase of Coast Guard resources has been determined, but not authorized, which would accomplish detection and interdiction of all sea and air narcotics traffic from South America.

I recognize that this action will require reallocation of existing federal resources to support these law enforcement activities. President Reagan has expressed his support for strong law enforcement action. You, as Attorney General, have announced that a priority of the Department of Justice will be combatting violent crime. As the narcotics crisis is directly responsible for an overwhelming proportion of our violent crime, particularly here in South Florida, I fully expect that requests for additional resources to deal with the crisis in South Florida will receive favorable action from this Administration.

Legislative action is also needed to provide certainty of immediate and long-term incarceration for narcotics traffickers. This is direct action which can be taken to reduce the incentive to traffic in narcotics, requires no reallocation or new funds, and can be accomplished as follows:

1. The pretrial bail statute must be changed to provide that upon arrest and pending trial, someone who is a "danger to the community" shall not be released on bail. A danger to the community must be defined in the statute to include a major narcotics trafficker: one who deals, conspires to deal, or facilitates dealing in 1,000 pound quantities of marijuana, one pound quantities of cocaine and heroin, or methaqualone in excess of 1,000 tablets or equivalent powder.

Chief Justice Burger, in a recent speech, suggested changes to the bail statute which included requiring the defendant to prove he is not a danger to the community, and requiring a judge to make a specific finding on the record that the

defendant is not a danger to the community before a defendant could be released on bail prior to trial. The Chief Justice's recommendations should be integrated with my own proposal.

2. The post-trial bail statutes must be altered to require that bail shall not be granted for a defendant who is "a danger to the community" further defined as including a major narcotics trafficker as defined above.

3. The sentencing statutes must be changed to provide for minimum mandatory sentences including sentences of 8 to 15 years for major narcotics traffickers.

4. The whole system of sentencing must be changed so that the time sentenced is the actual time served. An 8 year minimum mandatory sentence must result in 8 years of actual incarceration.

These bail and sentencing changes would require anyone who would be attracted by the possibility of narcotics-derived riches to weigh such possibility against a certainty that upon arrest and conviction he would not see the light of day outside a jail cell for at least eight years. In my view, these legislative changes will provide a sufficient disincentive to stop individuals from participating in narcotics trafficking.

Finally, there are several fine tuning changes to existing federal laws which would be helpful, such as: providing rewards to persons giving information about narcotics trafficking based upon a percentage of the narcotics profits seized through such information; partial reductions of sentences to persons who testify truthfully and with corroboration against the hierarchy of narcotics trafficking organizations; removing legislative prohibitions against the destruction of narcotics in the country of origin; the Posse Comitatus Act should be amended to allow the use of military surveillance resources; require countries of foreign flag boats carrying narcotics on the high seas to prosecute foreign defendants under existing international narcotic treaties when such defendants can not be prosecuted in the United States; and increasing the penalty for carrying large quantities of marijuana on the high seas to 15 years.

By reallocating federal law enforcement resources to provide additional resources to South Florida, by taking legislative action to insure certainty of immediate and long-term incarceration for narcotics traffickers, and by fine tuning existing federal laws, we can control the national narcotics problem.

I urge this proposal be adopted as part of the Reagan Administration's policy and program to control the narcotics problem in the United States.

Sincerely,

ATLEE W. WAMPLER III,
U.S. Attorney, Southern District of Florida.

Mr. WEILAND. Thank you, Mr. Chairman.

Chairman ROTH. This brings to a close our 5 days of comprehensive hearings by the Subcommittee on International Narcotics Trafficking, hearings that I believe have been illuminating and I want to congratulate both the majority and minority staff for the good work they have done in preparing for these hearings.

I must confess that I think the testimony on the whole is largely depressing. When we began these hearings, I expressed the fear that we were losing the war on drugs. There is little in the record in these 5 days that serves to allay that fear.

In fact, most of it merely validates it. We will be having a number of recommendations to make in the very near future.

Senator Nunn and I in a bipartisan effort will be introducing a bill to tighten up some existing loopholes, what we see as existing loopholes, in the currency and Foreign Transactions Reporting Act.

It will increase the criminal and civil penalties for violation of the act, improve the enforcement authority of the Customs Service and will bring a violation of the act within the purview of the Racketeer Influenced and Corrupt Organizations Act.

I want to strongly urge—I think one of the principal conclusions is that we must develop a clear and cohesive policy regarding narcotics trafficking.

I think one of the problems is that past policies have been fragmented and the recommended policy must encompass foreign as well as domestic efforts to strike a realistic balance between resources allocated for both supply and demand.

As I said, the subcommittee will be issuing its recommendations as a result of these 5 days of hearings.

Undoubtedly, we will be continuing next year with a followup.

[Whereupon, at 1:37 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.]

APPENDIX

PREPARED STATEMENT OF ELEANORE J. HILL, ASSISTANT COUNSEL TO THE MINORITY,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

(393)

I N T R O D U C T I O N

Over the last year, the Minority staff of the Senate Permanent Subcommittee on Investigations has conducted an extensive inquiry on the trafficking of narcotics into the United States from Southeast Asia. Our emphasis on the Southeast Asian region is in direct response to those trends and factors which, by all indications, will largely shape and determine the course of international heroin trafficking in the 1980's.

The narcotics trade, like any other agriculturally-based business, is dependent to some degree upon the fortunes of nature for success. In determining the supply of narcotic-generating crops, natural events simultaneously determine to some degree the patterns of international drug trafficking.

Southeast Asia provides an excellent case on point. The area known as the "Golden Triangle," encompassing Burma, Thailand, and Laos, has routinely produced an annual opium crop of approximately 500 tons. Serious droughts in both 1978 and 1979 severely diminished the area's crop to somewhere between 160 and 170 tons and 225 and 250 tons for each of those years. Confronted by an obviously scarce supply of Southeast Asian opium and heroin, the attention of both narcotics traffickers and law enforcement authorities shifted to the Golden Crescent area of Southwest Asia, namely Afghanistan, Iran, and Pakistan, as a growing center of opium and heroin production.

Forecasts for international heroin trafficking in the 1980's, however, reflect law enforcement's belief that opium production will once again focus on the Golden Triangle. The

drought which plagued the region in the late 1970's has apparently ended: the 1980-1981 growing season witnessed the return of a "normal" rainy season. Stimulated by good weather and drought-induced high opium prices, opium farmers in the region have reportedly now seeded up to four times the growing areas devoted to the crop last year. With continuing prospects for good weather, law enforcement authorities now believe that the 1981 Southeast Asian opium crop could well exceed 600 tons.

A "bumper" crop of opium of those proportions will inevitably result in a sizeable shift in heroin trafficking to the Southeast Asia area. Moreover, the increasing presence of political instability in Southwest Asia will undoubtedly make Golden Triangle opium all the more attractive to organized traffickers. Lastly, it seems likely that a burgeoning Southeast Asian heroin trade will center on routes less available to Southwest Asian traffickers: in short, those leading from Southeast Asia into the Western United States.

All these facts have resulted in a growing realization among American law enforcement circles that a major shift in heroin trafficking is about to occur. Moreover, given the stress on Southwest Asian opium production in recent years, it is likely that law enforcement as well as the public will, in many areas, be largely unprepared for the expected flood of Southeast Asian heroin in the American narcotics market. The potential effect of Southeast Asia's "bumper" crop on the domestic heroin problem in the United States is frightening, at the least.

It was in the context of these concerns that the Subcommittee staff set out to identify both the causes of and solutions for the problem of Southeast Asian heroin.

Based on the assumption that the narcotics situation is all too often treated within the context of domestic parameters only, our investigation was designed to also explore those aspects of the problem which are unmistakably tied to a far broader international arena. The trafficking of narcotics is a phenomenon which, by its very nature, can be only fully understood and dealt with in the context of political, economic, and cultural factors on an international, and not solely domestic, level. With that in mind, the Subcommittee staff sought an understanding of the narcotics problem based on in depth interviews with domestic, as well as, international sources. Senator Nunn, as Ranking Minority Member, as well as Minority Chief Counsel Marty Steinberg, Assistant Minority Counsel Eleanore Hill and Chief Minority Investigator Jack Key, personally visited the Southeast Asian region, including Japan, Korea, Thailand, Burma, Malaysia, Singapore, Indonesia, and Hong Kong, discussing international narcotics enforcement with local government officials as well as representatives of the United States Drug Enforcement Administration (DEA). In addition to the international aspects of the investigation, the staff explored the influx of Southeast Asian narcotics within the context of American law enforcement, including direct contact with authorities in both Hawaii and California.