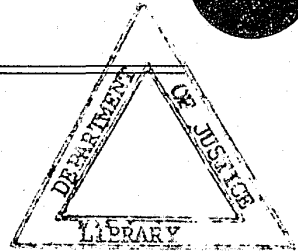


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**DRUG ENFORCEMENT ADMINISTRATION
AUTHORIZATION**



**HEARING
BEFORE THE
SUBCOMMITTEE ON
HEALTH AND THE ENVIRONMENT
OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
NINETY-SIXTH CONGRESS**

**FIRST SESSION
ON**

H.R. 3036

**A BILL TO EXTEND FOR THREE FISCAL YEARS THE AUTHOR-
IZATION OF APPROPRIATIONS FOR THE ADMINISTRATION OF
THE CONTROLLED SUBSTANCES ACT**

MARCH 21, 1979

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CONTENTS

Text of—	Page
H.R. 3060.....	2
Statement of Justice Department, Peter B. Bensinger, Administrator, Drug Enforcement Administration	3
Additional material submitted for the record by—	
Justice Department:	
Attachment to Mr. Bensinger's prepared statement, the heroin situation, 1973-78	27
Coordinated medicaid investigations with HEW.....	47
Questions to and answers submitted by Justice Department	50

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153236

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DRUG ENFORCEMENT ADMINISTRATION AUTHORIZATION

WEDNESDAY, MARCH 21, 1979

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
SUBCOMMITTEE ON HEALTH AND THE ENVIRONMENT,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2218, Rayburn House Office Building, Hon. Henry A. Waxman, chairman, presiding.

Mr. WAXMAN. The subcommittee will please come to order.

Today the Subcommittee on Health and the Environment is conducting hearings on the drug abuse law enforcement and regulatory program under the Controlled Substances Act and on legislation to extend the authorization of appropriations for the Drug Enforcement Administration. This legislation, H.R. 3036, which Dr. Carter and other members of the subcommittee have sponsored with me, will provide slightly increased authorizations for each of the next 3 fiscal years.

In enacting the Controlled Substances Act in 1970, Congress found that there were many drugs with a useful and legitimate medical purpose which were necessary to the American people but which were also subject to abuse. Congress also found that the illegal importation, manufacture, distribution, possession and use of those drugs as well as other substances with no useful medical purpose had substantial and detrimental effect on the health and general welfare of the American people. Congress resolved in 1970 that we must have an effective drug abuse law enforcement and regulatory program. I believe that resolve has not diminished.

While we have had some encouraging results from our efforts to control the use of narcotics, psychotropics, and other abusable substances, we must constantly reassess our efforts and search for better methods to carry out drug abuse activities.

I am pleased that we will be receiving testimony today from Dr. Peter Bensinger, the Administrator of the Drug Enforcement Administration, about the current activities of the DEA and the progress DEA is making in enforcing our drug laws.

Without objection, the text of H.R. 3036 will be printed at this point in the record.

96TH CONGRESS
1ST SESSION

H. R. 3036

To extend for three fiscal years the authorization of appropriations for the administration of the Controlled Substances Act.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 1979

Mr. WAXMAN (for himself, Mr. SATTERFIELD, Mr. PREYER, Mr. WALGREN, Mr. LELAND, Mr. CARTER, and Mr. STOCKMAN), introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To extend for three fiscal years the authorization of appropriations for the administration of the Controlled Substances Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 709(a) of the Controlled Substances Act (21
4 U.S.C. 904) is amended (1) by striking out "and" after
5 "1978," and (2) by inserting after "1979," the following:
6 "\$215,000,000 for the fiscal year ending September 30,
7 1980, \$225,000,000 for the fiscal year ending September 30,
8 1981, and \$235,000,000 for the fiscal year ending Septem-
9 ber 30, 1982,".

Mr. WAXMAN. Dr. Carter?

Mr. CARTER. Mr. Chairman, I am particularly pleased to join in welcoming the Administrator of the Drug Enforcement Administration, Mr. Peter Bensinger, to these hearings. Under his leadership, several steps have been taken to insure that DEA's activities adhere to the highest professional standards. And, as a result, much progress has occurred in reducing the flow of illicit drugs to those who would abuse them.

Mr. Chairman, on several occasions testimony before this subcommittee has indicated that the best way to combat drug abuse is to cut off the supply of dangerous drugs. I submit that the DEA has done an effective job in this area, but the problems caused by the abuse of drugs will not go away. We must maintain a strong, effective deterrent to the distribution or manufacture of illicit substances as well as the diversion of licit drugs into illicit channels.

Because of my concern with this problem, I want to make sure that our drug abuse law enforcement effort has the tools it needs to do the job we want it to do. I want to make sure that there is sufficient manpower and funding, as well as making sure that the criminal justice system has the authority to deal with violators in an appropriate fashion.

Thank you, Mr. Chairman.

Mr. WAXMAN. Thank you, Dr. Carter.

Dr. Bensinger, we have your prepared statement which will, without objection by any members of the committee, be inserted in its entirety in the record.

I would like to ask you to summarize your statement in 10 minutes so that we can get to questions the members may have.

STATEMENT OF PETER B. BENSINGER, ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE

Mr. BENSINGER. Thank you very much, Chairman Waxman. I am pleased to appear before you today. I would welcome the comments that both you made at the outset with respect to the Controlled Substance Act and those of Dr. Carter.

The only area I feel we have perhaps fallen short of is in my own representation to you. I cannot represent that I am a doctor, but I have received one honorary degree, but not from medical school, sir. Anyway, Mr. Chairman, I am pleased to be here. I would want to record to reflect that I did get a Bachelor of Arts from Yale some 20 years ago.

Mr. WAXMAN. While I may have a habit of calling the witnesses doctors, there is no requirement to testify before the committee of having a medical degree or Ph. D.

Mr. BENSINGER. Thank you, sir.

I will summarize my statement, if I can. I am pleased that the total commentary has been included for the record, including some of the statistics that reflect a significant decrease in the number of overdose deaths and injuries from here within.

I might just start, Mr. Chairman, with bringing to your attention the significant reduction in availability of that which we consider the most serious drug, heroin, that has taken place in the United States.

The role of the subcommittee in bringing the health issues into focus is a challenging one. Drug abuse prevention and control and treatment are serious health concerns. I wanted to thank you and other members that have cosponsored H.R. 3036. The Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91-513, included an appropriation authorization for the drug control activities of the Department of Justice which have been delegated to the Drug Enforcement Administration.

This authorization has been extended through fiscal year 1979 through Public Law 95-137. Fiscal year 1979's specific authorizing language was included in the Appropriation Act for DEA and was also included in Public Law 95-624, the Department of Justice appropriation authorization. In the fiscal year 1980 appropriation request for DEA, certain of the provisions previously carried in the appropriation act are being deleted and will henceforth appear as language in the appropriation authorization act.

The specific authorization relating to the use of DEA's authorization to be included in this authorization are being finalized by members of your staff with our staff. But our mandate is clear, to enforce the drug laws of the United States and to bring to justice those individuals and organizations that violate the law.

DEA will continue its efforts to encourage destruction of narcotics at the source, such as the opium eradication effort of the Government of Mexico; we will focus on the Southeast Asian and Middle Eastern heroin threat and the possible resurgence of heroin trafficking to the United States; we will focus attention on the bulk flow of cocaine and marijuana from Colombia and the Caribbean; and we will focus on the increase in clandestine manufacture and trafficking of phencyclidine, PCP.

We will focus our efforts on major traffickers and major criminal networks responsible for drug traffic in and into the United States.

Heroin availability in this country has reached its lowest level in this decade. This success, Mr. Chairman, has been due in part to, I think, more effective identification of major organizations and consistent deterrents through sentencing and a continued determination of the Government of Mexico to destroy opium poppies in the field in that country. If the poppy is destroyed before the gum can be extracted and converted to a morphine base and then in turn converted into heroin, the effort is far more effective.

On September 29 the U.S. Government entered into an agreement with the Government of Colombia which committed the United States to an intensified interdiction for the Caribbean in collaboration with the Government of Colombia and I am pleased to see substantial increases in the effectiveness of our interdiction and enforcement efforts, both in the Caribbean and the United States.

I think, Mr. Chairman, Federal interagency cooperation has been improved. We are working much more closely with the Coast Guard, the U.S. Customs Service, the FBI, and the IRS and State and local law enforcement.

Recently enacted legislation, Public Law 95-637, amended the 21 United States Code 881 and provides our agency with the authority to investigate and present to the court for seizure of assets, bank accounts, real estate from stocks, bonds and other property derived

from illicit narcotic transactions. We do not think this will be a panacea to stop drug abuse, but it will be an increasingly effective tool to hurt the traffickers and their pocketbook.

I would also conclude my statement with recognition of the efforts that Congress extended last year to increase the control of phencyclidine, PCP, and our laboratory investigations recently have doubled for this drug. This particular hallucinogenic now has a 10-year penalty as a maximum. It was 5 up until last year.

We will continue to work closely with legitimate manufacturers of scheduled narcotics. I am pleased to be able to report that we feel the diversion of barbiturates has continued to be restricted. For your information, sir, over the last 10 years the total production of amphetamines has been reduced from some 7,700 pounds to less than 1,000 for legitimate purposes.

We feel that the Drug Enforcement Administration's responsibility in this area to work closely with pharmacists, manufacturers, and the pharmaceutical industry must continue. We have some 226 compliance investigators in the field that are working in this area.

Two other programs designed to assist State and local needs include a pharmacy theft prevention program and voluntary compliance program. We feel, Mr. Chairman, that the drug abuse effort in terms of enforcement controls is an ongoing one and we very much appreciate this committee's resolution and recommendation that our agency be funded at the levels that were introduced in your resolutions.

[Testimony resumes on p. 35.]

[Mr. Bensinger's prepared statement and attachment follow:]

PREPARED STATEMENT OF PETER B. BENSINGER

Good day, Chairman Waxman, Members of this distinguished Subcommittee. It is indeed a pleasure to be here today, for the first time in the 96th Congress, to discuss with you the Drug Enforcement Administration appropriation-authorization and DEA's responsibilities, recent accomplishments and goals for the future.

The role of the Subcommittee on Health and Environment in bringing the health issues facing this country into focus is a challenging one. Drug abuse prevention, control and treatment are serious health concerns and they merit the attention of this Subcommittee.

The request which you have before you represents the FY-1980 appropriation as approved by the President. The specific authorities for DEA, to be included in this authorization, are being finalized by members of our respective staffs. These specific authorities relate to the use of DEA's appropriation.

As an agency, DEA has been in existence for only five and one-half years. We trace our origins to:

Reorganization Plan No. 1 of 1968, which established the Bureau of Narcotics and Dangerous Drugs by combining the Federal Bureau of Narcotics from the Department of Treasury and the Bureau of Drug Abuse Control from the Department of Health, Education and Welfare. Reorganization Plan No. 2 of 1973 established the DEA by combining the Bureau of Narcotics and Dangerous Drugs (BNDD), the Office of National Narcotics Intelligence (ONNI), and the Office of Drug Abuse Law Enforcement (ODALE) and elements of LEAA from the Department of Justice, and elements of the U.S. Customs Service from the Department of the Treasury.

The Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513) included an appropriation-authorization for the drug control activities of the Department of Justice, which have been delegated to DEA. This authorization has been extended through FY 1979 (P.L. 95-137).

Our mandate is clear. It is our job to enforce the drug laws of the United States and to bring to justice those individuals and organizations that violate those laws. Important components of the DEA operation are the enforcement, regulatory and support programs.

I am here today with guarded optimism. Traditionally, because it represents the greatest drug threat to society, we--the Congress and the Executive Branch--have accorded heroin a top priority. And in this respect I have good news to relay to you today.

Heroin availability in this country is at its lowest level in this decade. Price and purity trends reflect this decrease in availability. And more specifically, the overdose death rate in the United States from heroin has decreased from 150 deaths per month in 1976 to less than 30 heroin overdose deaths at the present time. Heroin injuries have likewise decreased from 1,600 injuries per month two years ago to 700 at this time. The purity of retail heroin has decreased from 6.6 per cent in March of 1976 to 3.5 per cent for the last reporting period in 1978--a 47 per cent decrease in heroin purity within two years. Availability has been cut to the point where not only heroin traffickers have shifted to other drugs, but heroin users and addicts have shifted as well.

However, the abuse and trafficking in cocaine and marihuana

is a cause for concern. Simply put, the supply is satisfying the demand and the demand is increasing. Although the health-related dangers from these substances have not been determined to be as severe as those from heroin, the involvement of highly organized and sophisticated trafficking networks in the distribution of cocaine and marihuana merits the immediate attention of DEA and the international law enforcement community.

Foreign Cooperative Investigations Program

We know that supply reduction efforts are most effective at the point closest to the source. In other words, the drug control problem becomes increasingly less manageable the further the drugs move from the growing stages in foreign countries to the importing and distribution stages here in the United States. Because the heroin, cocaine, and 90-95 per cent of the marihuana consumed in the United States emanates from foreign countries, the international program is the foundation of our work.

A worldwide commitment is essential. Consequently, an integral part of our overseas operation is to motivate and assist source, transit and victim countries in the development and maintenance of programs to reduce the supply of illicit drugs. To effect this aspect of our mission we maintain three Regional and 57 Districts offices abroad, presently staffed with 303 permanent positions.

We have witnessed the success of these international efforts. A fitting example is the Mexican opium poppy eradication program. Initiated in November 1975 with DEA's guidance, the Government of Mexican began to systematically eradicate opium poppies. Since then, the amount of Mexican heroin entering the United States has decreased dramatically from 6.5 metric tons in Calendar Year 1975 to less than 3.1 metric tons in 1977--the last year for which complete data is available. Further decreases in Mexican heroin importation are anticipated for 1978.

Despite the encouraging progress in Mexico, we must remain

concerned that illicit opium production continues in other regions of the world: the Golden Triangle of Southeast Asia and the Middle Eastern countries of Afghanistan and Pakistan.

Optimally, we will continue to encourage growth control of the opium poppy, by crop substitution, eradication, income assistance, and so on. Additionally, DEA will continue to collect and disseminate operational and strategic intelligence to foreign governments, continue joint investigations and prosecutions of international traffickers and maintain pressure on foreign staging areas and smuggling channels.

In the past two years, we have witnessed a decline in availability of not only Mexican heroin, but also in Mexican marihuana. Colombia is now the primary source for marihuana destined for the U.S. market, as well as the primary transshipment point for cocaine.

Thus, it is critical for us to work closely with our

South American neighbors. The initiatives being undertaken by the Colombian Government are highly commendable and encouraging. President Turbay is committed to a military drug control interdiction effort in the Guajira Peninsula, the principal staging area in Colombia for marihuana destined for the United States. The military has established roadblocks on primary marihuana transporting routes, as well as initiating strict control of the sea as well as Colombian air space. This Colombian campaign has resulted in the seizure of 4,500 tons of marihuana, 76 ocean vessels and 31 aircraft. To aid them in this effort, DEA is providing intelligence to the Colombian military regarding suspect vessels and aircraft and we have increased our enforcement resources in the Southeastern U.S. and Caribbean.

Domestic Enforcement Program

Although we need to distinguish between overseas and domestic enforcement operations, the two are interdependent and mutually supportive. The coordination of both domestic and foreign intelligence results in major drug investigations both in this country and abroad. For example:

DEA agents in New York arrested the leader of an international organization in April 1978. As a result of this arrest, officers from Thailand's Police Narcotic Suppression Center were able to conclude the Bangkok portion of the case, seizing 90 pounds of morphine base and No. 3 heroin and an operating laboratory. Also arrested were the chemist and the laboratory owner.

Our domestic enforcement programs are directed, as in the last example, at the uppermost echelons of organizations trafficking in the priority drugs of abuse. By targeting top-level traffickers and criminal financiers, DEA maximizes the deployment of its resources and at the same time has the greatest impact on illicit traffic.

Two of our most successful enforcement programs are the Mobile Task Forces and CENTACS (Central Tactical Units). The goal of DEA's CENTAC operations is the immobilization of trafficking networks--from the insulated financiers and primary sources of supply, through the distribution chain--by the utilization of conspiracy prosecutions.

The CENTAC approach is very successful; over 520 defendants have been indicted since May 1977. One example will

clearly demonstrate for you the impact of a CENTAC operation:

CENTAC 19 focused on the Herrera organization, one of the largest heroin producing and distributing networks based in Mexico with operating elements in several U.S. cities. This organization had a significant impact on heroin availability in Boston, New York, Miami, Dallas, Chicago and Los Angeles.

The leader of this organization, the number one trafficker in Mexican heroin, Jaime HERRERA-NAVAREZ, was arrested this past September in Mexico. On March 12, 1979, in Durango, Mexico he was sentenced to five years, three months imprisonment. Two of the key distributors in this country are now serving long sentences. Approximately 86 pounds of heroin were seized as was the major clandestine laboratory. The investigation continues.

The recently-implemented CENTAC 20 has targeted a sophisticated group of cocaine and marihuana traffickers who use complex money-laundering techniques to conceal and disguise their enormous profits. I expect that this CENTAC operation will also result in significant conspiracy prosecutions.

Another enforcement technique designed to reach the most significant violators, the Class I offenders, is the

money-flow investigation. Since November 1977, Operation BANCO, a Mobile Task Force based in Miami, comprised of DEA and FBI personnel, has been investigating the financial aspects of drug trafficking. At the present time, Operation BANCO is conducting eight major investigations, at varying stages of completion. We anticipate that a significant number of major violators will be indicted in the near future.

The Internal Revenue Service is working closely with us on DEA's financial investigations. IRS agents have been detailed to the DEA Office of Intelligence and several field offices to assist with CENTAC investigations. We are also providing IRS with approximately 800 names of major violators for potential IRS action.

DEA continues to work with the FBI on joint task forces in New York, Los Angeles, and Chicago. Additionally, narcotics coordinators have been established in 59 FBI field offices. As a result of DEA/FBI coordinated efforts, for example, a major narcotics trafficking auto theft ring with cross-

country organized crime connections was broken up. The arrests of five of the principals this past summer in Arizona is expected to have a significant impact on organized crime there and in New York.

While these joint Federal task forces are important and merit specific comment, I cannot overemphasize the importance of the every-day and continually expanding interaction among the entire law enforcement community. The enhanced dialogue regarding policy within the Executive Branch, under the direction of Mr. Lee I. Dogoloff, Associate Director for Drug Abuse Policy, Domestic Policy Staff, has had an impact at the operational level. Increasingly, there are more and more joint Federal cases. Levels of participation with State and local enforcement agencies have also accelerated.

A case in point is the informal interagency working group tasked with coordinating the Federal Response to drug trafficking in the Southeastern United States. In July 1978, representatives from DEA, the U.S. Customs Service, the U.S. Coast Guard and the State Department first met to

develop a coordinated plan to address the burgeoning cocaine and marihuana traffic to and through Florida and other Eastern coastal States. As a result of the initiatives developed, Federal law enforcement activity in this area has increased significantly; for example, the number of smuggling vessels seized during the period July-December 1978 exceeded the total seizures during all of FY 1973 - FY 1977. All the participants deserve credit for the successes of these initiatives.

DEA has also directed its attention to another domestic drug problem--the abuse of phencyclidine, better known as PCP. I noted last year that this abuse had reached epidemic proportions and that directed enforcement actions would be required. Consequently, in addition to other responses such as rescheduling PCP analogs, the DEA Office of Enforcement established the Special Action Office/PCP. All projected goals for the initial phase of SAO/PCP were met and surpassed:

- 96 cases were initiated
- 149 were arrested, (35 per cent of violators were Class I or Class II)
- 23 clandestine labs were seized
- more than 5.1 million dosage units of PCP were removed

We have had the support of the Congress. In recognition of the serious abuse of PCP in this country, the 95th Congress passed new legislation doubling the penalties for trafficking in PCP and providing for the reporting of piperidine distribution, the chemical necessary for PCP's manufacture.

#

As you may be aware, in an effort to more efficiently utilize our existing resources, approximately six months ago, DEA reorganized the structure of its domestic regions, consolidating 12 regional offices into five. This new regional configuration aligns the regions with the major drug trafficking patterns. The regional offices are now

in New York, Miami, Chicago, Dallas and Los Angeles. (A map of the new regional structure is appended.) There are 111 District and Resident Offices in the United States.

Although it is really too soon to accurately assess the full impact of this reorganization, I believe it is having the desired effect. That is:

- Two-way communication from Headquarters and the regions has improved.
- There has been a more consistent interpretation and application of policy.
- Regional management concentrates on region-wide activities, rather than day to day operations in the city where the region is located.
- The workload is more evenly distributed.
- Supervisory overhead has been reduced.

Compliance and Regulatory Affairs

DEA's statutory authority mandates that we regulate the legal trade in narcotics and dangerous drugs in order to control and reduce their diversion. To do so, upon HEW's recommendation, DEA schedules and classifies controlled

drugs. DEA also establishes import and export manufacturing quotas; registers manufacturers, handlers and dispensers; and investigates diversion of drugs into the illicit market.

The Drug Abuse Warning Network (DAWN) provides us with a quantitative and qualitative measurement of the magnitude and scope of the drug abuse phenomena by analyzing drug-related death and injury reports from hospital centers around the country. These trend indicators better enable us to adjust our priorities. For example, in response to increasing reports of abuse of fast-acting barbiturates, DEA tripled its investigations of manufacturers, wholesalers and retailers of legally-produced barbiturates. A 23 per cent decrease in reported abuse of barbiturates and a number of administrative and legal actions followed.

I am also pleased to report that diversion of legally-manufactured Schedule II and Schedule III drugs from U.S. manufacturers and wholesalers has been substantially eliminated. At the retail level, DEA has established the

Diversion Investigative Unit (DIU) program to enable individual States to suppress practitioner level diversion. This program is showing good results, and we expect higher benefits in the future.

In FY 1978, four new DIU's were instituted in Hawaii, Maine, Washington and the District of Columbia, bringing the total number of ongoing DIU's to 16. A total of 494 individuals, including 137 registrants and practitioners were arrested by DIU's in 1978; and a total amount of 821,437 dosage units of stimulants, depressants and legitimate narcotics was seized.

Two other programs designed to assist State and local needs, the Pharmacy Theft Prevention Program (PTP), and the Voluntary Compliance Program, also expanded their efforts.

Intelligence Program

DEA's Intelligence program supports DEA and other Federal, State, local and foreign governments' efforts to interdict

and suppress the illicit movement of drugs by collecting, analyzing and disseminating intelligence data. This information enables DEA and the other law enforcement agencies to plan a systematic approach and to effectively utilize limited resources by targeting key trafficking organizations and by anticipating changes in trafficking patterns at the broadest levels.

Cooperation in drug enforcement intelligence continues to improve with the increased participation in the DEA-managed El Paso Intelligence Center (EPIC). In addition to the DEA staff, representatives from Immigration and Naturalization Service (INS), Bureau of Alcohol, Tobacco and Firearms (ATF), U.S. Customs Service, Federal Aviation Administration (FAA), and the U.S. Coast Guard all participate in EPIC operations. At the present time, we have signed intelligence exchange agreements with 27 states and one multi-State agency. I believe that by 1980 there will be a total of 40 states participating at EPIC.

The demand for EPIC's services grows; in 1978, the watch activity processed over 12,000 transactions per month with a 30 per cent positive response rate. In the past year, State and local enforcement agencies dramatically increased their usage of EPIC and the Southeastern United States vessel interdiction program relied heavily on EPIC support.

A major objective of our intelligence program in the upcoming year is to provide and upgrade the analytical quality of a wide range of tactical/operational and strategic intelligence services and products for the narcotics intelligence and enforcement community.

Training

The training DEA has provided State, local and foreign law enforcement personnel has assisted DEA by increasing the number of officers equipped to face the challenges of drug abuse control. Changing strategies, such as increasing emphasis on the development of conspiracy investigations, require specialized training. We have recently instituted

training programs on the following topics:

- Financial analysis concepts and tracing money-flow
- Analytical investigative methods for in-depth drug and conspiracy investigations
- Theoretical and practical training in the utilization of technical investigative aids.

Our emphasis on training has been of great importance in maintaining our momentum during a time of decreasing personnel and financial resources.

Freedom of Information

DEA has, as do all Executive Branch agencies, a Freedom of Information Unit to process requests for information pursuant to P.L. 93-579, the Freedom of Information and Privacy Act of 1974. The demands on this group are unrelenting. Although the incoming requests received in 1978 increased 70 per cent from the prior year, the total number of personnel in our Freedom of Information Division increased by only four, bringing the total staff to 21.

Additional positions were urgently needed and as a result, four more were provided in early 1979. Nine staff positions, including the Chief of the Division and a supervisor are filled by Criminal Investigators (1811 series).

Despite our best efforts, our backlog of pending requests continues to mount. Consequently, twice a year five additional Special Agents are brought to Headquarters from the field for a two-month temporary assignment. This added support is vital if we are to meet statutory requirements and Departmental standards for timely responses to requests. Because these Special Agents already have the expertise to handle criminal investigative files, they require minimal training to work in the Freedom of Information group. On the other hand, professional non-Special Agent personnel require much more extensive training, sometimes taking as long as a year to become proficient in the FOI tasks. It is hoped that when the backlog becomes manageable, the extra Special Agents can return to the field to be replaced by a permanent staffing of FOI Specialists.

I believe that DEA's overall plan is a good one. Our availability indicators, particularly for heroin as I noted a few moments ago, demonstrate that we are moving in the right direction. The integration of all the individual components of our operation--domestic enforcement, foreign cooperation, compliance and regulatory affairs, intelligence, training--have led to measurable accomplishments. I have appended these program statistics to my formal statement.

In the past year we have seen the dimensions of the drug abuse and enforcement situation change and we have adjusted our approaches and techniques to keep pace. I believe that by capitalizing on our assets we will be able to continue to move effectively against the major international trafficking organizations. We intend to do what we can to further the cooperation and support of the entire law enforcement community. The total commitment of all parties is needed.

THE HEROIN SITUATION

1973 - 1978

YEAR	SUPPLY AND ABUSE INDICATORS				
	HEROIN RETAIL PURITY (%)	HEROIN RETAIL PRICE (\$/mg)	HEROIN-RELATED DEATHS* (#)	HEROIN-RELATED INJURIES* (#)	
73, 3Q	5.0	1.20	300	1662	1973 Heroin availability reaches lowest point due to Turkish opium poppy ban.
4Q	5.2	1.15	335	2387	
74, 1Q	5.9	1.09	345	2486	1974 Gradual increase in heroin availability and abuse due to influx of Mexican heroin; Turkish-source heroin no longer available.
2Q	5.8	1.12	360	3038	
3Q	5.9	1.14	346	3731	
4Q	5.7	1.23	414	3605	
75, 1Q	6.3	1.23	412	4024	1975 Mexican heroin accounts for over 75% of illicit market; availability and abuse increase more rapidly.
2Q	5.9	1.20	461	4274	
3Q	5.9	1.30	470	5018	
4Q	6.3	1.15	446	4626	
76, 1Q	6.6	1.26	458	4336	1976 Heroin availability and abuse at high point at beginning of year; gradual tapering off, during Fall-Winter 1976, due to opium crop eradication in Mexico.
2Q	6.4	1.26	492	4874	
3Q	6.2	1.28	343	5209	
4Q	6.1	1.40	304	4157	
77, 1Q	5.8	1.39	156	3021	1977 Significant reduction in heroin availability and abuse due to drought and successful U.S./Mexican cooperative action in enforcement and opium crop control.
2Q	5.1	1.65	162	2885	
3Q	5.0	1.69	154	2964	
4Q	5.1	1.59	124	2698	
78, 1Q	4.9	1.66	158	2290	1978 Heroin availability continues to decline and is at the lowest recorded level since 1971.
2Q	4.9	1.69	86	2139	
3Q	4.2	1.96		2279	
4Q	3.5	2.19		1978	

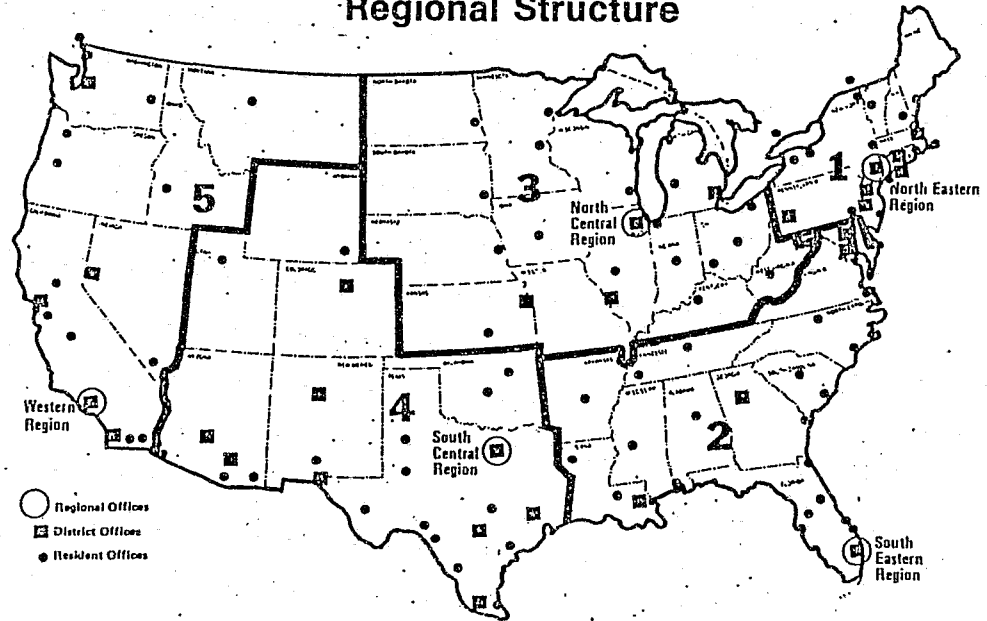
*Heroin-related death and injury data based upon Medical Examiner and Emergency Room reports from 21 metropolitan areas. Most recent three quarters are subject to update.



U.S. Department of Justice Drug Enforcement Administration



Regional Structure



Program Anticipated Accomplishments and Outputs

FOREIGN COOPERATIVE INVESTIGATIONS PROGRAM

Anticipated Accomplishments in FY 1980:

- * Continue advice, assistance, and technical support in source country interdiction and eradication efforts.
- * Continue joint investigations and prosecutions of international violators.
- * Continue to collect and disseminate international tactical/operational and strategic intelligence.
- * Continue to upgrade the drug enforcement capabilities of foreign police and regulatory officials through appropriate training programs.

Program Outputs Including the Following:

	<u>1978 Actual</u>	<u>1979 Estimate</u>	<u>1980 Estimate</u>
Foreign cooperative arrests.....	1,194	1,000	1,000
Trafficking networks developed.....	31	40	35
Trafficker profiles completed.....	215	265	265
Enforcement targets identified.....	2,555	3,000	3,000
Trainee-days.....	18,650	15,000	18,000

DOMESTIC ENFORCEMENT PROGRAM

Anticipated Accomplishments in FY 1980:

- * Maintain recruitment and utilization of knowledgeable informants and the use of innovative undercover approaches.
- * Continue development of conspiracy cases and immobilization of major traffickers insulated from routine trafficking operations.
- * Continue the intensive use of task forces combining the knowledge of DEA and other law enforcement organizations.
- * Continue to provide other Federal agencies with information on non-drug violators of Federal statutes to facilitate prosecution and immobilization of major drug traffickers less vulnerable to prosecution under drug statutes.

Program Outputs Include the Following:

	<u>1978 Actual</u>	<u>1979 Estimate</u>	<u>1980 Estimate</u>
DEA initiated arrests...	5,594	5,850	5,850
Other Federal referral arrests.....	1,456	1,700	1,700

TASK FORCE PROGRAM

Anticipated Accomplishment in FY 1980:

- * Increase expertise of State and local participants through rotation and training.

Program Outputs Include the Following:

	<u>1978 Actual</u>	<u>1979 Estimate</u>	<u>1980 Estimate</u>
State and local initiated arrests.....	1,661	1,650	1,650

COMPLIANCE AND REGULATORY AFFAIRS

Anticipated Accomplishments in FY 1980:

- * Continue to control record/information data.
- * Continue timely destruction of seized and forfeited drugs and controlled substances.
- * Continue the upgrading process of State regulatory effectiveness at the doctor/pharmacy level and develop further the Pharmacy Theft Prevention Program by adding five new target cities.
- * Tighten manufacturer/distributor accountability for controlled substances.
- * Continue automation of UN/Import-Export/Quota reporting systems.
- * Reduce backlog in scheduling of drugs, registration order form processing, and import/export permits.
- * Continue international drug control efforts and develop regulatory programs in Mexico and Western Europe.

Program Outputs Include the Following:

	<u>1978 Actual</u>	<u>1979 Estimate</u>	<u>1980 Estimate</u>
INVESTIGATION			
Regulatory.....	929	1,395	1,440
Complaint.....	314	525	525
Pre-registrant.....	51,075	70,000	70,000

Diversion Investigative Unit (DIU) Program

Anticipated Accomplishments in FY 1980:

- * Establish new DIU's in two states.
- * Maintain the level of activity in existing units through coordinated national program.

Program Outputs (July 1977 - June 1978) Include the Following:

ARRESTS	
Registrant Related.....	137
Non-Registrant Related.....	<u>357</u>
	494

Amount of legitimate drugs removed from illicit traffic:

Stimulants.....	542,808 dosage units
Depressants.....	199,299 dosage units
Narcotics (leg.).....	<u>79,330 dosage units</u>
Total	821,437 dosage units

INTELLIGENCE

Anticipated Accomplishments in FY 1980:

- * Weekly and quarterly reports of value to customers including State and local agencies.
- * On-going intelligence exchange and support to State and local law enforcement agencies.
- * Development of intelligence leading to conspiracy cases.
- * Intelligence support to special emphasis areas such as financial analysis; organized crime; Mexico and Southeast Asia heroin trafficking; dangerous drugs and cocaine problems.
- * Timely tactical intelligence support to enforcement and interdiction operations by EPIC.
- * Special studies on drug origin, trafficking routes and smuggling methods in response to tasking by the National Narcotics Intelligence Consumers Committees.
- * Intelligence collection through Special Field Intelligence Programs.
- * Continue to develop the automated system (PATHFINDER).
- * Support to special operations such as SAO/SEA, CENTACS.

Program Outputs Include the Following:

	<u>1978 Actual</u>	1979 Estimate	<u>1980 Estimate</u>
Trafficking networks developed.....	129	150	145
Trafficker profiles completed.....	2,045	2,245	2,145
Enforcement targets identified.....	29,690	34,000	33,000
El Paso Intelligence Center (EPIC) watch transactions.....	120,000	200,000	250,000

TRAINING

Anticipated Accomplishments in FY 1980:

- * The Training Program will train 180 in entry level Special Agent, Compliance Investigator, Intelligence Analyst, and Chemist schools; produce 10 videotape and/or sound/slide In-Service training programs; train 70 in Foreign Language and Foreign Service Orientation programs; train 100 in Supervisory and Mid-level Management schools; and train 260 in Advanced and Special Skills programs.
- * Continue to provide necessary entry level training for DEA personnel.
- * Continue foreign language and foreign service orientation for personnel assigned overseas.
- * Continue to provide employee development training in technical, clerical, EEO, upward mobility, and other areas.
- * Continue to provide necessary supervisory, mid-level management, and executive training to enhance management skills.
- * Continue to provide advanced investigative and technical skills to promote effective and efficient drug law enforcement.

Program Outputs Include the Following:

	<u>1978 Actual</u>	<u>1979 Estimate</u>	<u>1980 Estimate</u>
Trainee days.....	17,300	16,500	16,000

Drug Law Enforcement Training Program*

	<u>1978 Actual</u>	<u>1979 Estimate</u>	<u>1980 Estimate</u>
Drug Enforcement Officers Academy (10 Weeks).....	90	50	80
Law Enforcement Training School (2 Weeks).....	3,367	3,000	3,700
Forensic Chemist Seminar (1 Week).....	47	100	50
Other Training Seminars (1-5 Days).....	987	800	700

* Number of Students

Mr. WAXMAN. Thank you very much.

If appropriations were made at the level requested by the President with no increase in fiscal year 1980, what actions would you have to take to keep your program cost within that budget?

Mr. BENSINGER. We would be able, Mr. Chairman, to effectively maintain our current ongoing programs. While there is a decrease in certain budget program areas, basically the funds that we would not be receiving are for positions that have not been filled, but which have been funded. Our program initiatives in the investigative field, in the compliance field, in the intelligence field will be able to continue as before.

We expect by the end of September, in fact, to have, perhaps 100 additional employees on board than we do have at the present time, due to a freeze and ceiling control which has recently been lifted.

Mr. WAXMAN. You mention in your testimony that you are having success using conspiracy prosecutions, conspiracy as the basis for prosecutions. Could you describe your recent efforts along these lines and I am particularly interested in whether you have adequate resources to carry through with such complex investigations.

Mr. BENSINGER. Yes, Mr. Chairman. I think the conspiracy technique of investigation is particularly important for narcotic transactions because the head of the criminal organization very rarely gets involved in selling drugs at the street level. Our investigators work not on trying to make the most number of arrests, but rather on the most significant cases.

As a consequence, our total arrests over the last 3 years have decreased from some 7,000 to about 5,500, but by utilizing a conspiracy statute we can develop information, testimony and evidence linking the head of the organization who may never be present during a drug transaction to individual couriers, retailers, distributors and wholesalers.

Through testimony and defendant information as well as specific surveillance of individuals by our agents and testimony, we are able to build a conspiracy with the U.S. attorney's offices throughout the country linking individuals such as Nicky Barnes in New York, to major international heroin distribution rings.

In that case, the principal never engaged in the distribution of narcotics; but his lieutenants oversaw the importation and the acquisition of raw materials and the development of glassine envelopes, the distribution of heroin into the streets of New York, the funding and depositing of large sums of money.

Conspiracy statutes are such that an individual who conspired to cause these illegal acts to happen is as guilty as the person, in fact, selling the heroin.

We believe the conspiracy cases that have been made have had an impact on the heroin traffic. Some examples also of conspiracy linking with continuing criminal enterprise have enabled the Justice Department to make major cases against Jose Valenzuela, Los Angeles; LeRoy Nicky Barnes in New York, many members of the Herrera organization in Chicago, and to take total networks out of the drug traffic instead of just eliminating one courier or one drug selling at one time.

Mr. WAXMAN. Would you describe for us the experience to date with States with mandatory minimum sentences for violations of drug abuse laws? Are they working and what has your experience been with them?

Mr. BENSINGER. It is a mixed reaction, sir. I am most familiar with New York, which has had what is termed the Rockefeller laws which provide for mandatory sentences. There has been a mixed report on the results of that.

One of the problems has been in talking with the actual enforcement officials and people that have to work with the law. Many times the actual law does not get an opportunity to take effect because the individuals that have been arrested don't get indicted for felonies and brought into trial having to face the mandatory amendments.

Many of the State court jurisdictions, and this was true in a county where I spent a number of years as both executive director of the Chicago Crime Commission and also from the perspective of director of corrections and head of the crime victims program in that State, most of the cases never get to trial.

I would say generally in the U.S. criminal justice systems, anywhere from 7 to 80 percent of the actual offenses get resolved at the court of first instance or on an agreed plea. So in many cases where you have got the mandatory minimums and you don't end up either with a formal trial situation, the prosecutor and the defendant, generally does not face that mandatory sentence.

I feel that strong sentence is an important deterrent. We have seen where we have averaged 10 years, for example, in Federal courts for the average heroin case, traffickers moving to switch to marihuana or cocaine where there is a much lighter sentence in large-scale operations. The advisability of a mandatory minimum would require, I think, a commitment by the State and the county to have the whole system work so that, in fact, the intent of the legislature could be implemented. In some cases this is not true—

You just don't have the courtrooms to handle the trials. You don't have the prosecutorial resources to insure that everybody that commits one of these mandatory offenses gets not only charged with it but, in fact, convicted of it. When you are charged with it and then convicted of a lesser offense, sometimes a mandatory minimum does not apply.

It is a complex field, but one that I think, candidly, has a dramatic impact on our enforcement efforts, the resources of our prosecutors, the ability of the courts to bring people to trial as compared to just allowing them to plead to a lesser offense.

Mr. WAXMAN. Would it be fair to say then that these mandatory minimum sentences really have no deterrent value because they are so infrequently or actually applied to an individual that is found guilty of the crime?

Mr. BENSINGER. I don't think I would say that, Mr. Chairman, but I would say that the application of mandatory minimums requires a commitment on the part of the prosecutors and the State to insure that the intent is carried out. In Louisiana, the sentence for heroin offenses is very, very severe. In that State there is a minimum of heroin traffic. If you go into New Orleans, if you go

into other parts of Louisiana you will not see the distribution of heroin that you see in other States with far less severe penalties.

I think there is an awareness in many States by traffickers of the potential penalties they face and I think there is a value to it.

Mr. WAXMAN. I want to explore with you some of the effective changes in the Psychotropic Substances Act of 1978. Prior to that act, we were experiencing an increase in the use of PCP. Have the 1978 amendments that require reporting of manufacturing and distribution and use of phencyclidine had any effect on the incidence of PCP use?

Mr. BENSINGER. I think they have been helpful, Mr. Chairman. Since the passage of that act we have been able to make two specific cases, which I could report in detail to you by separate submission, which would not have been made had this legislation not passed.

We are able to get information that individuals obviously were buying this raw material, prerequisite to PCP manufacture, and that led us to these laboratories which were operating completely illegally. In fact, the principal initial manufacture of PCP for veterinary medicine has, I am advised, stopped production of the one legitimate use of that drug now in the United States.

The psychotropic convention amendments were helpful to enable DEA to make some cases that would not have been made. Our PCP laboratory seizures have reflected this increased investigative ability, based on this information.

Mr. WAXMAN. Are there any psychotropic substances entering the market which have comparable potential for abuse as PCP?

Mr. BENSINGER. In terms of comparable, I would not report that to you this morning, Mr. Chairman. There is a substance which has been scheduled Talwin. Its effects are not like PCP and I would not report to you that they are, but when mixed with pyrobenzamine it can be an abusive combination that has led to a number of injuries. There is an increasing concern in many major metropolitan cities about this abuse.

A hearing on this was held in Chicago last year. Very large, millions of dosage of units, of this drug were distributed through only two pharmaceutical outlets, obviously not for medical purposes. The impact of this combination is not the same as PCP. PCP's effect, from the information I receive from the National Institute of Drug Abuse, Dr. Besteman, and others, is that PCP is a very unpredictable hallucinogenic that has caused very erratic behavior.

It is very dangerous. I don't think I could report this morning that there are other comparable entities or substances now being made available illicitly or diverted from licit traffic that would be comparable to that. I think it was a special situation that the Congress, I was glad, addressed itself to.

Mr. WAXMAN. Dr. Carter, do you have some questions?

Mr. CARTER. Thank you, Mr. Chairman, yes, sir, I do.

Mr. BENSINGER, could you relate the experience of DEA in assisting in the prosecution of traffickers in large amounts of marijuana and do you believe the present penalties in section 401 of the Controlled Substances Act are adequate in regard to marijuana traffickers, that is these large ones?

Mr. BENSINGER. Dr. Carter, we have seen an increase in the involvement of large criminal organizations in the marihuana traffic.

Mr. CARTER. Yes, sir.

Mr. BENSINGER. We have seen a recognition on the part of these traffickers that a sentence for the sale of tonnage quantities of marihuana generally would be a 3rd or 4th or maybe a 10th of a sentence that could be meted out for heroin. We have seen an average of 3½ years in Federal court given to large-scale marihuana traffic.

These are individuals bringing in tonnage quantities. I would represent to you, sir, that we have had organizations, trafficking in marihuana, who have maintained members of their organization on their payrolls in the Federal penitentiary because the sentencing is basically 1 or 1½ years.

If you get a 3½-year sentence, which is 42 months, you are eligible for parole in one-third plus good time, and with the amount of money involved, the trafficking organizations can afford to have somebody sent to prison for 1½ years and still carry on their traffic and trade. I don't think the present provisions and sentence is adequate.

Mr. CARTER. You would look well upon a mandatory 5-year sentence, something of that nature, for traffickers in tonnage quantities?

Mr. BENSINGER. I would certainly welcome, as the Attorney General has indicated sentencing guidelines, I think we ought to have up to a 15-year sentence for the large amount of marihuana traffic. The people here are in this for money, tonnage amounts they are not—

Mr. CARTER. How do they pay for it? I hate to interrupt, but there is an unusual method of payment, which I have heard about.

Mr. BENSINGER. By going right to the source, you would perhaps be able to buy a pound of marihuana for \$65 in Colombia.

Mr. CARTER. But when the tonnage is delivered and the money is paid for it, do they count that money or is there some other method?

Mr. BENSINGER. No, as a matter of fact, Mr. Chairman, we have seen some organizations that deal in so much money that they weigh it instead of counting it. When you are talking about buying it for \$65 a pound and selling it at wholesale for \$250 to \$300 a pound, and you are dealing in 5 tons, you are talking about a \$2 million payoff at the wholesale level, never mind the retail level. If you are dealing in 50 tons, you are talking about not \$2 million, you are talking about \$20 million.

Mr. CARTER. So instead of counting out the \$20 million you just weigh it? That is the way the dealers consummate their business, is that correct?

Mr. BENSINGER. There is one organization, Mr. Chairman, I can report to you and Dr. Carter, that has this down to a science of weighing their cash receipts. It takes too much to count it.

Mr. CARTER. I am a little bit alarmed. I know that you have done an excellent job on heroin and that you have perhaps diminished the traffic in this substance to the users in the country, but I note

that the number of people that you have on your staff is going to diminish according to the budget that the administration proposes.

I would like to see that budget increased. Of course, I know that you are part of the administration and you cannot say much about it, but I think an increase is appropriate. I understand that you are seeking authority to hire and acquire law enforcement and passenger motor vehicles. Could you explain that request?

Mr. BENSINGER. We do have the authority, the authorization language to acquire vehicles. In next year's budget we are not planning to purchase any vehicles.

Mr. CARTER. Yes, sir.

Mr. BENSINGER. We are requesting of your committee, however, the authorization should conditions exist that we need or had the opportunity to purchase vehicles to proceed with it without going back to Congress. Every year there has been a provision in our authorization bill for the acquisition of vehicles.

Mr. CARTER. And you would like to pay in advance for special tests and studies by contract? You want that included as an authorization, is that correct?

Mr. BENSINGER. Perhaps I can turn to my—I believe so, sir. That is correct. Mr. Albright is my associate, Drug Enforcement Administration's Comptroller, and is nodding his head that that requirement would be useful.

I would just like to comment, sir, before proceeding that we will be, through the backing of the administration and the personal involvement of Deputy Attorney General Civiletti and Judge Bell, authorized to hire between now and September additional personnel. So we will not be having, when we go into next year's budget, fewer people than we have on board now.

Mr. CARTER. Yes, sir. Are many of the same people who bring in marihuana into this country also involved in bringing in cocaine?

Mr. BENSINGER. Yes.

Mr. CARTER. The two are associated then?

Mr. BENSINGER. Well, they are often trafficking organizations that deal in both. Some trafficking organizations dealing with marihuana deal with quaaludes as well.

Mr. CARTER. Yes, sir, quaaludes. And while you have been successful in diminishing the traffic in heroin, in marihuana and cocaine perhaps your efforts have not been so successful, is that correct?

Mr. BENSINGER. I would say that is well put, sir. I think in part the difficulty lies in that all three substances come from overseas. Heroin, cocaine, and marihuana distributed in the United States are not of U.S. origin. Marihuana, perhaps 5 to 10 percent of the domestic consumption, would be grown in all of the 50 States; 95 percent is imported. Cocaine is all imported. Heroin is all imported.

But in the case of cocaine and marihuana, of course, we have seen the trafficking organizations switching over to those drugs because there is less of a penalty, less of a risk, and in the countries themselves, less control.

Mr. CARTER. Yes, sir. I want to thank you for your testimony. Certainly I assure you of strong support on my part. I will try to be of help to you.

Thank you, Mr. Chairman.

Mr. WAXMAN. Thank you, Dr. Carter.

Mr. Luken?

Mr. LUKEN. I am sorry I wasn't here for your testimony, the bulk of it.

I would just like to inquire a little bit about the structure. I am new on the committee so please bear with me.

You are the Drug Enforcement Administration, DEA, which is an agency?

Mr. BENSINGER. Yes, sir. It is a part of the Justice Department. We are one of several—

Mr. LUKEN. I take it you are a part, but separate?

Mr. BENSINGER. I hope we are very much a vital part of the Department of Justice.

Mr. LUKEN. But you are not an Assistant Attorney General?

Mr. BENSINGER. No, I am not sir. I am an administrator appointed by the President and confirmed by the Senate.

Mr. LUKEN. You are not an Assistant Attorney General, so you are somewhat apart from the regular structure of the Justice Department?

Mr. BENSINGER. As would be the head of the Marshal Service, or the director of the Bureau of Prisons or the head of Immigration, Naturalization and so forth.

Mr. LUKEN. Do you direct the prosecution of drug cases that U.S. attorneys prosecute?

Mr. BENSINGER. No, sir, we conduct the investigation that determines a crime has been committed; develop the evidence; and present it to the U.S. attorney in any one of 94 special U.S. attorneys offices. The U.S. attorney then takes that evidence and tries the case.

Mr. LUKEN. I see. What has been your experience—do you prosecute cases like the FBI?

Mr. BENSINGER. Yes, sir; that is investigate cases like the FBI.

Mr. LUKEN. Yes. That is investigate. That is a correction. What is your experience with U.S. attorneys offices around the country? Is it even or uneven?

Mr. BENSINGER. I think it has been good. I think we have had some outstanding U.S. attorneys offices where the prosecutors, the experts in this field, have made the most significant cases, made them effectively, been able to work very closely with our agents, and I think that is increasing. The Department has scheduled regular meetings of agents and prosecutors. The last one was held in Phoenix and Deputy Attorney General Civiletti attended that personally as did I.

We met with the lead narcotic prosecutors from the U.S. attorneys' offices in major narcotic areas in major cities and some of the other areas throughout the country, bringing together our agents and the prosecutors, to talk about the type of questions that Chairman Waxman asked, conspiracy cases, complex investigations, other issues, changes in the law. I think the work of the U.S. attorneys offices has been very good in the field of narcotics enforcement.

Mr. LUKEN. There used to be a narcotics bureau in the Treasury, didn't there?

Mr. BENSINGER. There was a Federal Bureau of Narcotics in the Treasury. Then there was a Bureau of Narcotics and Dangerous Drugs in Justice and in 1973—the BNDD, the Bureau of Narcotics and Dangerous Drugs. Certain agents from the Customs Service, the Office of Drug Abuse, Law Enforcement—

Mr. LUKEN. Do any of these still exist?

Mr. BENSINGER. No. They were merged and consolidated into one agency which is the Drug Enforcement Administration which has been in existence for 5½ years.

Mr. LUKEN. Do you have regional narcotics units? How general are they in the country?

Mr. BENSINGER. We have offices in most of the principal cities and in all 50 States in the country. We have five regional offices. We have district offices throughout the United States and offices overseas and 41 foreign countries. We have some 2,000 agents that perform the basic criminal investigative work. They work closely with State and local law enforcement and work closely with the U.S. attorneys offices.

They are well trained and do, I think, probably the most difficult, dangerous job we ask anybody to do in this country.

Mr. LUKEN. You are responding to your particular offices around the country. Aren't there regional narcotic enforcement agencies, combinations of local law enforcement, specifically directed to handle drug enforcement? Do you find that around the country generally?

Mr. BENSINGER. There are two characteristics. Yes, I do. I see what you are driving at, Congressman Luken. They are MEG groups, Metropolitan Enforcement Groups.

Mr. LUKEN. We call it RENU in Cincinnati, Regional Enforcement Narcotic Unit.

Mr. BENSINGER. That makes sense to pool intelligence and resources, particularly when you have so many different State and local law enforcement agencies in any one county. Some counties have up to 100 different police departments. In a major metropolitan area, the sheriff, the chief of police, certain other major law enforcement entities have gathered together and formed a task force or regional enforcement group or metropolitan enforcement group and they will look at a variety of type of criminal offenses, narcotics, organized crime.

We have task forces, sir, in 21 cities where we have DEA agents and State and local law enforcement agents working as a team investigating joint cases, sharing information. Those programs have worked effectively. They are included in this budget. They are directed by a Federal narcotic enforcement officer. They have the full benefit of the intelligence and enforcement and resources of all of the various units who participate.

Mr. LUKEN. I take it a part of your work is also research?

Mr. BENSINGER. Yes, sir, it is.

Mr. LUKEN. What part? Could you break it down? Maybe you have, I missed your testimony. I haven't had a chance to read it yet.

Mr. BENSINGER. Our budget reflects that on research we spend perhaps \$1½ million. That involves the development of protective

equipment. We have a flak vest, for example, that weighs 2½ pounds. It could be worn under my shirt, if I chose to wear one.

Agents working undercover are in great danger. That type of protective apparel is very important. It has been developed with our research unit. Another type of device would be useful on surveillance, where we may want to look at a PCP laboratory one-half mile away and need to have a camera and a video tape that can reach out that far and record exactly what is going on without obviously identifying that there are Federal narcotic officers watching the illicit PCP lab.

We are working with Customs on joint research now and are pooling more and more of our research efforts with other Federal agencies, so we are not all researching what could be similar efforts. There is a great deal more combined research.

Mr. LUKEN. Not in research, in prevention?

Mr. BENSINGER. That is not our specific field. That is the National Institute of Drug Abuse, but I think it is vital. I think the prevention and education on the problems of drug abuse are essential in this country and I think probably the parents and teachers need to hear more particularly about it.

Mr. LUKEN. Thank you very much.

Thank you, Mr. Chairman.

Mr. WAXMAN. Mr. Lee.

Mr. LEE. Thank you, Mr. Chairman.

Mr. Bensinger, you mentioned that the availability of heroin is at the lowest level in this decade. What criteria do you utilize to make that kind of a measurement and against what kind of a base period? Do we know in the 1950's or the 1960's what the availability was?

Mr. BENSINGER. We know a number of factors, Mr. Lee. The first, the basic level I am comparing to is the last 8 years. Included in my statement you will find the heroin situation in the last—starting in 1973. Basically, the way we would report that to you is to look at the purity of heroin that is available on the street that is bought by the heroin addict or user. That purity today is running at 3.5 percent. [See p. 27.]

Three years ago it was 6.6 percent. It has decreased steadily since mid-1976. We look at heroin injuries. The number of individuals reported by hospital rooms, emergency clinics, and other treatment centers. The number of heroin episodes reported by this large network of hospital and emergency rooms has decreased from 1,700 a month to 700 a month.

The number of deaths have gone down from 150 a month to 30 a month. And the number of addicts reported by the National Institute of Drug Abuse in their estimated annual survey is 450,000 as compared to perhaps 550,000 or 600,000, 20 years ago.

The number of addicts are down. The number of overdose deaths are down. The purity is down. The price is up. We estimate that 2 tons less heroin are coming in from Mexico. Those are the bases by which we make that report to you.

I can tell you I have talked with the chiefs of police of most of the major cities and checked with them and said, "Look, do you see a reduction in heroin?" They say, we sure do. The stuff on the streets now is very low in purity.

Mr. LEE. So it is only in recent years that we have been able to establish the sophistication to measure the availability? It would be foolish to look at the 1950's or 1960's. We don't have the base data?

Mr. BENSINGER. I certainly don't, sir. Since 1971 we have kept the same base type measuring system. We have not changed the method, so the type of statistics we are reporting to you is based on the same basic information type gathering.

Mr. LEE. Many States have been moving to decriminalize small amounts of marihuana. My own State unfortunately did that recently. There is some advocacy, I understand, in this Congress to do the same. What is your attitude toward that.

Mr. BENSINGER. It is mixed. The need to have a prison penalty for a user, it seems to me, is questionable. I think in this area law enforcement does not see a benefit from putting users of small amounts of marihuana, of drugs, in jail. What we see is a need to have people selling and selling for business put in prison and for a significant period of time to act as a deterrent.

In Maine, there was a provision and a very interesting series of laws passed several years ago, not all that many, that basically decriminalized possession and also took the penalty out of the sale. It was a misdemeanor. What has happened in the last year or so is that the traffickers have gone up to the coast of Maine with mother ships and tremendous amounts of marihuana and brought it into the State. The Governor called a special session. The legislature passed a law that made a 5 to 12 year penalty for the sale of major amounts of marihuana, much as Dr. Carter and I were talking about earlier, for large amounts. They felt that looking at marihuana with respect to sale or use in a nonfelony environment was hurting their State, their beaches, their communities and that type of business. They wanted it stopped.

So they changed that structure.

The Federal Government is not indicating to any one State what it should do.

Mr. LEE. I have one last question. On the arrests, what has been the conviction rate?

Mr. BENSINGER. Our conviction rate has exceeded 88 percent.

Mr. LEE. That is good. Thank you.

Thank you, Mr. Chairman.

Mr. WAXMAN. Thank you.

For my information and for the benefit of the committee, do you see, aside from the Maine example you gave, any changes in distribution patterns in marihuana in those States where the penalties have been lessened? Is there more distribution going on in some of those states?

Mr. BENSINGER. The States where marihuana is basically entering the United States are Florida, and up the coast, to some extent New York, Long Island, we have seen some recent seizures, up as far as Maine, Rhode Island.

I think it would have been the case in Maine because it coincided with the movement in the State to decriminalize its law. I think in part you have got to deal with geography though.

The marihuana is coming from Colombia generally. Previously it was from Mexico. There is just great advantages to going to States with a very long coastline and with a variety of harbors and nooks

and crannies or very flat land where planes can land without detection.

Mr. WAXMAN. This pattern of distribution that you are describing was probably the same pattern of distribution before New York and California changed their laws, is that correct?

Mr. BENSINGER. Well, there were two other factors. Two or three years ago a lot of the marihuana was coming across from Mexico and would have gone across States that both relatively strong laws and some not so strong. What I would like to do, Mr. Chairman, is to ask our office, if I could, to study the decriminalized marihuana States with traffic patterns and get that record back to you and the committee, if I could, after further survey so I can just look at these individual states.

We have seen not a great deal of reduction in marihuana to the United States. In some part it has been determined by the geography. I would like to get back to you further on just the analysis, State by State, of which ones have decriminalized or not.

Mr. WAXMAN. I would not want to put you to that trouble. It seems to me the answer you are giving to the question is that factors such as geography have much more of a role as entry points than to do State laws dealing with the substance.

Mr. BENSINGER. I would have to add though the observation that a State like Louisiana, which has very strong patterns of sentencing, does not have the importation of all kinds of drugs that States like Florida or Maine has which are not as strong in the area of deterrents. So if I could, we will make that report to you.

Mr. WAXMAN. If we had decriminalization of marihuana nationally, would your job be any different or would you find that those people who are trafficking in marihuana are most often also trafficking in other substances prohibited by law?

Mr. BENSINGER. It is a speculative question. I suspect that if the decriminalization took place nationally and you still had Federal penalties for sale but nonfelony penalties for small use you would have more demand. I would suspect our enforcement problems would go up because you would have a substance that is illegal to sell and which we have signed treaties with 108 countries to control.

Our job is to stop, with the U.S. Customs and Coast Guard Service, the importation of illicit drugs. I think that would be an increased problem.

As far as our investigations, that would be more reflective of the major importation than use because we are not after users or retailers. We do not make those kinds of investigations or arrests.

Mr. WAXMAN. Thank you.

Ms. Mikulski.

Ms. MIKULSKI. Thank you, Mr. Chairman.

Mr. BENSINGER. I would like to compliment your position. I have a master's degree in social work. The early part of my career was spent in a ghetto in Baltimore where I was very much involved with drug users. Over the decade since I was literally in the streets trying to do something about the problem, I have noted a decline in the supply.

I think it has been, No. 1 because of the results of your Agency, the rather innovative efforts of local cooperative and local strike

forces. I am particularly pleased to see that you are working now on areas with domestically produced drugs like PCP.

But that leads me to another issue, really, kind of a jurisdiction question of whether you have enforcement over this. We usually think of the drug dealer as a seedy looking character oddling this dung in school yards or whatever, but we don't think of it as the white collar pusher, in some ways our own doctors and the way they handle valium, the Medicaid fraud and the way drugs are distributed, the lack of policing and the manufacturing of drugs and the way that it is sent across State lines to be peddled, uppers, downers, sideways, whatever is the current pharmaceutical fad.

I just wonder, if in fact, that is your jurisdiction? And No. 2, what efforts are being made to really deal with what I call the white collar drug market?

Mr. BENSINGER. I think you have asked some very important questions. I want to associate myself with your perspective.

Ms. MIKULSKI. We were both associated with that same crowd out on the streets.

Mr. BENSINGER. I think that is right. And the crowd is changing. You are absolutely right.

The idea that the drug pushers and the drug business is dominated by individuals dealing in back alleys from a limited economic or education level is passé. We recently made an enforcement series of arrests on the Board of Operations Exchange, the Board of Trade in Chicago.

We are dealing with people who are lawyers, doctors, professionals, and we have investigated them in terms of white collar crime. Some of these individuals in the drug business in professional communities, I think, have turned their back on their code of ethics.

Our Agency's responsibility is twofold. First, with respect to manufacturers, we get quotas based on recommendations we get from the FDA on the consumption of licit narcotic drugs, scheduled drugs. We review and audit all manufacturers of those pharmaceutical controlled substances to see that there is no diversion.

When there is diversion we will either proceed with a civilian or a criminal suit if we feel there is negligence and a specific attempt to defraud the public on the part of the manufacturers. We have had fines as large as a \$250,000 returned against companies, individuals that have been presidents of pharmaceutical firms have been sent to prison for 15 years.

If we see a physician who repetitively violates his trust and just writes script without seeing the patients, he may become the subject of a DEA investigation. But generally, at the retail level, the retail pharmacist and the physician are dealt with through the State medical boards and State law enforcement.

We have designed a program called a DIU program where we assign one of our criminal investigators to a State with a Federal grant of funds to work with those State investigators. They develop what is called diversion investigative unit, looking for the type of street distribution that you are talking about, the uppers and the downers and the sideways, the drugs that are being made, methamphetamines and amphetamines, the quaaludes, the barbiturates,

that are being distributed illegally to people who want to escape from reality and people who want to make money.

Those efforts at the State level are, I think, enhanced by training which is provided by the DEA to compliance investigators and by the presence of one of our own employees in those States. This year's appropriation request provides for two additional States. We have 15 DIU's at the present time.

We expect hopefully, within the next several years, to have most and eventually all of the States in the United States with a level of competence in the medical boards and reviewing as well as the—about that, let me rephrase that, pharmaceutical review boards and the medical review boards looking at doctors who violate their trust and their Hippocratic oath.

Ms. MIKULSKI. First of all, I am very pleased to hear that. When we talk about the retail level and this, Mr. Chairman is my last question—do you then coordinate your efforts, for example, with the medicaid fraud unit because the level to which you have no jurisdiction seems to me to come under the medicaid fraud bit, and if both of you at different levels would form a rather coordinated effort from both the producer down to the illicit street peddler or, really, the pharmaceutical—

Mr. BENSINGER. Yes, we do. We, within the last 6 months, have been part of a strike force that HEW on medicaid fraud has developed. Our Office of Compliance and Regulatory Affairs, Ken Durrin, our Director, is here. I have had discussions with top level officials at HEW and Justice to make sure we are working in tandem with those teams.

There have been a number of cases made where Medicaid-supported pharmacists have basically been distributing controlled substances illegally. We have jointly with that Medicaid fraud team unit been able to make some very good investigations.

We can supply you the details if you would like them.

[The following information was received for the record:]

COORDINATED MEDICAID INVESTIGATIONS WITH HEW

The Office of Compliance and Regulatory Affairs (CR) is the organizational unit within DEA that is responsible for the regulation and control of legitimately manufactured drugs in the distribution system of registered handlers (i.e., manufacturers, distributors, practitioners, and pharmacies).

The Office of Compliance and Regulatory Affairs has worked with the Office of the Inspector General, HEW, to evaluate the degree of overlap between drug diversion cases and Medicaid fraud cases, and to agree to a mutual exchange of information. DEA held several meetings in October of 1978 with HEW's Director, Division of Law Enforcement Coordination and Data Collection, of the Office of the Inspector General and other HEW officials, including the Chief Medical Officer. These meetings culminated in the referral of a list of practitioners convicted in drug diversion cases conducted by DEA's state Diversion Investigation Units to the Office of the Inspection General.

Diversion Investigation Units (DIU's) are state operated units, which are established through seed grants from DEA, that are responsible for investigating diversion of controlled substances at the retail level. The list is to be cross-checked with Medicaid records and files in order that a reasonable estimate can be made as to the extent and the type of cooperation that will be needed. Currently, a force consisting of the FBI, HEW/IG, DEA, and numerous state fraud control units are working together on various aspects of this problem.

It should be noted that since the thrust of the Medicaid fraud investigations is at the practitioner level, DEA's investigative role must be a limited one as it falls primarily within the purview of the states. It is for this reason that DEA's assistance has been primarily aimed at assisting HEW by offering training for its personnel, providing investigative leads from the DIU's, providing drug purchase information from DEA's automated data systems, and providing technical assistance as needed. In most cases, direct investigative assistance by DEA personnel would be primarily intended to provide training for HEW personnel where state/local support is not available.

There have been investigations where DEA has worked directly with the FBI and/or HEW where both drug diversion and Medicaid fraud existed. One such case involved a conspiracy between two pharmacies and two nursing homes concerning transfers between the pharmacies and the nursing homes to cover diversion of controlled substances, with Medicaid being billed for the drugs involved. This case, which was a DEA/FBI joint venture, ultimately resulted in indictment under violations of Federal drug laws and mail fraud, not Medicaid fraud. Other cases have involved what might be called a typical example of Medicaid fraud involving controlled substances. This consists of a drug dealer obtaining a prescription from a doctor, which is not for a legitimate medical purpose, and filling the prescription in a drug store which is often involved with the doctor. The doctor bills for the visit, the pharmacist bills for the prescription and the drug dealer sells the controlled substances obtained for inflated street prices. In these cases, the doctor often bills for procedures not performed. These combined violations have shown up infrequently, and there is still no evidence of any large scale overlapping of these distinct types of violations. The most fruitful type of cooperation appears to be in the area of providing training and drug purchase information, which has been done in various parts of the country.

In summary, DEA is studying the extent of overlap between drug diversion and Medicaid fraud cases, making available training to Medicaid fraud investigators, providing investigative leads through the DIU Program, making available drug purchase information when requested, and providing technical expertise. DEA will continue to work with HEW as outlined, periodically reassessing the violations occurring to determine whether there is need for further initiatives.

Ms. MIKULSKI. I would like them very much. Of course, that ties in with the waste and the fraud and what it does to people.

Mr. Chairman, I have no other questions. Thank you.

Mr. LUKEN. Mr. Chairman?

Mr. WAXMAN. Mr. Luken?

Mr. LUKEN. If I could pursue the point I started with a little bit ago, in my community, we have a regional enforcement narcotic unit which is a metropolitan enforcement unit, a combined State and local operation. It has been organized through an LEAA grant which is another agency of the Justice Department, correct?

Mr. BENSINGER. That is correct.

Mr. LUKEN. Now, this is—what do you call that grant that slips off into—reduced?

Mr. BENSINGER. Is that 3-year terms?

Mr. LUKEN. What is the technical term for it? Anyway, the grant phased out in 5 years for this one and therefore RENU is about to slip into oblivion and we no longer will have the enforcement team. The question I am asking you is, Isn't there a problem with jurisdiction here since you, with your enforcement organization are working with the local law enforcement people, shouldn't your organization be the one to handle the grants?

Frankly we went through a lot of pain, a lot of contacts back and forth between our office and the State LEAA unit, the regional narcotics unit and the Government unit, and even with the national LEAA organization in an effort to keep some continuous funding. We finally, I think, accomplished the purpose. This took quite a number of months. It seems to me it would have been much easier to deal with your organization, which is right on the scene, in handling grants of this kind.

I don't think this directly applies to this authorization, but I wondered if you have any thoughts on that?

Mr. BENSINGER. Well, I have a response. The seed money approach which has been taken by LEAA to generate innovative law enforcement, dealing in this field that I know of, has put together units that will more effectively, more efficiently deal with the problem.

Hopefully, maybe the State and local jurisdictions then will pick up the funding and continue the effort.

Mr. LUKEN. We know that is a loser.

Mr. BENSINGER. That is the theory behind the initial start seed money grants. As far as our Agency getting a grant and doling out the dollars, I am reluctant to get involved in that type of—there is a word here that I don't want misinterpreted, but paperwork transaction activity because, I think, DEA's talents and resources can most effectively be used by utilizing our people to do the investigative work in the local jurisdictions.

If we just gave grants where we have no—

Mr. LUKEN. If I could interrupt—but if that local enforcement team breaks up, you have nobody to coordinate with. That is what happened.

Mr. BENSINGER. I think that is a problem and it is a serious one.

Mr. LUKEN. It seems to me that DEA could be the link there whereas LEAA is off somewhere in never-never land sometimes,

and are kind of a cumbersome organization. They don't zero in the way you could.

It seems to me that DEA could be the link that could be effective. Frankly if somebody had not worked on our situation, this very effective regional narcotic unit would have disappeared. Not your people, but the local officials which you need to work with. Isn't that absolutely essential?

Mr. BENSINGER. Those local metropolitan enforcement groups provide a resource to the community and the metropolitan and suburban areas.

Mr. LUKEN. But not every metropolitan area has them, do they?

Mr. BENSINGER. That is correct. Many of them don't. Some that should, perhaps don't, and some that maybe should not have one that could have been better used elsewhere.

In response to your line of inquiry, I certainly will contact our Cincinnati office to see if there is any greater coordination that we could provide. As far as funding, I don't see that as our role.

Mr. LUKEN. We will think about it.

Thank you, Mr. Chairman.

Mr. WAXMAN. We will reserve a place in the record for answers to additional questions that our staff will be submitting.

[Testimony resumes on p. 81.]

[Answers to questions submitted by the subcommittee staff follow:]

QUESTIONS TO AND ANSWERS SUBMITTED BY JUSTICE DEPARTMENT

1. In your statement you noted several indicators of reduced availability of heroin. Would you please briefly describe the current drug use patterns you foresee in our country, and the changes you foresee in the next several years? Also, would you describe what DEA is doing to prepare for those changes?

Answer

The use of heroin, as measured by all available indicators, such as overdose deaths, injuries, treatment admissions, etc., has been declining for approximately three years. This trend is a consequence of widespread shortages of retail heroin, resulting from the opium eradication program in Mexico. That heroin which is available in most major cities is of poor quality, and in many cases lacks sufficient potency to sustain physiological addiction.

Presently, the trend among narcotics addicts is to seek heroin substitutes, such as the narcotic Dilaudid, or analgesics, such as Darvon and Talwin. In addition, some addicts appear to have abandoned heroin entirely and have opted instead for PCP, cocaine and amphetamines.

The greatest current and future narcotics enforcement threat is the resurgence of the illicit heroin supply via Western Europe. There is currently some evidence that the traffickers on the East Coast are attempting to re-establish a European connection to make up for the loss of Mexican supplies. The heroin in this case would be processed from Middle Eastern opium, primarily from Pakistan and Afghanistan. DEA is monitoring the situation closely and is attempting to increase the level of cooperation with foreign authorities, particularly in Afghanistan.

Domestically, poly-drug abuse is likely to remain the dominant problem for the next several years. In this regard, the substantial growth in the use and trafficking of the hallucinogen PCP, is of particular concern. Record levels of abuse, as measured by emergency room admissions, were reported during 1978. Illicit laboratories, varying widely in sophistication, are operating in numerous metropolitan areas.

In order to combat the PCP problem, DEA has increased the enforcement priorities oriented towards the detection and immobilization of illicit PCP laboratories. In addition, legislation was enacted placing the chemical precursor piperidine under Federal control and scrutiny. Increased surveillance of piperidine sales and deliveries are aimed at inhibiting the ease with which PCP can be synthesized.

Long-range trends suggest that the abuse of cocaine and amphetamines is likely to continue to grow. Because of the willingness of drug abusers to interchange use patterns freely, it is necessary for DEA to maintain a balanced enforcement and regulatory program in all geographic areas in order to suppress the further diversification of the illicit drug trade.

Drug abuse trends are monitored by the Drug Abuse Warning Network (DAWN). This is not specifically a nationwide reporting system, but rather a selected universe representing 26 Standard Metropolitan Statistical Areas (SMSA).

Those specific SMSA's reflecting significant drug abuse patterns are listed separately based on data obtained from DAWN panels of consistently reporting hospital emergency room facilities covering the time frame November 1977 through December 1978.

NEW YORK CITY SMSA CONSISTENTLY REPORTING EMERGENCY ROOMS
 HEROIN
 NOVEMBER 1977 TO DECEMBER 1978

	200	I													
H	190	I													
U	180	I													
M	170	I													
B	160	I													
E	150	I													
R	140	I													
	130	I													
O	120	I		***											
F	110	I	**	**											
	100	I	**	**	**	**	**	**	**	**	**	**	**	**	**
M	90	I	**	**	**	**	**	**	**	**	**	**	**	**	**
E	80	I	**	**	**	**	**	**	**	**	**	**	**	**	**
N	70	I	**	**	**	**	**	**	**	**	**	**	**	**	**
T	60	I	**	**	**	**	**	**	**	**	**	**	**	**	**
I	50	I	**	**	**	**	**	**	**	**	**	**	**	**	**
O	40	I	**	**	**	**	**	**	**	**	**	**	**	**	**
N	30	I	**	**	**	**	**	**	**	**	**	**	**	**	**
S	20	I	**	**	**	**	**	**	**	**	**	**	**	**	**
	10	I	**	**	**	**	**	**	**	**	**	**	**	**	**
COUNT	113	125	100	99	107	97	105	92	74	105	85	89	103	82	
	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	

MIAMI

The Miami metropolitan area indicated statistically significant downward emergency room abuse episodes involving heroin, marihuana, barbiturates, and, to a lesser degree, amphetamines. Overall, a monthly average of 44 heroin abuse episodes were reported with an average decline of more than two visits per month; 35 marihuana related visits with a decline of two visits per month; 62 barbiturate related visits per month; and 11 amphetamine related visits with a decline of less than one visit per month. These trends are shown on the accompanying graphs.

MIAMI SUSA CONSISTENTLY REPORTING EMERGENCY ROOMS
HEROIN
NOVEMBER 1977 TO DECEMBER 1978

	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
100 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
95 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
90 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
85 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
80 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
75 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
70 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
65 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
60 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
55 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
50 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
45 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
40 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
35 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
30 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
25 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
20 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
15 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
10 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
5 I	###	###	###	###	###	###	###	###	###	###	###	###	###	###
COUNT	52	61	47	54	55	46	46	43	54	44	40	34	17	26

MIAMI SMSA CONSISTENTLY REPORTING EMERGENCY ROOMS
 -AMPHETAMINES
 NOVEMBER 1977 TO DECEMBER 1978

	20	I	***															
H	19	I	***					***										
H	18	I	***					***										
M	17	I	***				***	***										
B	16	I	***				***	***										
E	15	I	***			***	***	***										
R	14	I	***			***	***	***										***
	13	I	***			***	***	***										***
O	12	I	***			***	***	***										***
F	11	I	***			***	***	***	***									***
	10	I	***	***	***	***	***	***	***									***
M	9	I	***	***	***	***	***	***	***									***
E	8	I	***	***	***	***	***	***	***	***			***					***
M	7	I	***	***	***	***	***	***	***	***			***					***
T	6	I	***	***	***	***	***	***	***	***			***	***				***
T	5	I	***	***	***	***	***	***	***	***			***	***				***
O	4	I	***	***	***	***	***	***	***	***	***		***	***				***
M	3	I	***	***	***	***	***	***	***	***	***		***	***				***
S	2	I	***	***	***	***	***	***	***	***	***	***	***	***	***			***
	1	I	***	***	***	***	***	***	***	***	***	***	***	***	***	***		***

COUNT	20	10	15	17	19	11	7	8	4	6	8	3	14	12
	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

MIAMI SMSA CONSISTENTLY REPORTING EMERGENCY ROOMS
 HOSPITALIZATIONS
 NOVEMBER 1977 TO DECEMBER 1978

	100	I													
N	95	I													
U	90	I													
M	85	I													
R	80	I													
E	75	I				***	***	***							
R	70	I	***			***	***	***	***						
	65	I	***	***		***	***	***	***	***	***				
O	60	I	***	***		***	***	***	***	***	***	***			
F	55	I	***	***	***	***	***	***	***	***	***	***			
	50	I	***	***	***	***	***	***	***	***	***	***	***		
V	45	I	***	***	***	***	***	***	***	***	***	***	***	***	
F	40	I	***	***	***	***	***	***	***	***	***	***	***	***	***
N	35	I	***	***	***	***	***	***	***	***	***	***	***	***	***
T	30	I	***	***	***	***	***	***	***	***	***	***	***	***	***
I	25	I	***	***	***	***	***	***	***	***	***	***	***	***	***
O	20	I	***	***	***	***	***	***	***	***	***	***	***	***	***
N	15	I	***	***	***	***	***	***	***	***	***	***	***	***	***
S	10	I	***	***	***	***	***	***	***	***	***	***	***	***	***
	5	I	***	***	***	***	***	***	***	***	***	***	***	***	***
CONFIT	66	73	56	75	77	77	67	74	69	53	54	49	43	31	
	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	

MIAMI SMSA CONSISTENTLY REPORTING EMERGENCY ROOMS
MARIJUANA
NOVEMBER 1977 TO DECEMBER 1978

	100	I														
H	95	I														
U	90	I														
H	85	I														
B	80	I														
E	75	I														
R	70	I														
	65	I														
O	60	I			***											
F	55	I			***											
	50	I			***											
H	45	I		**	**	**	**									
E	40	I		**	**	**	**	**	**							
N	35	I		**	**	**	**	**	**	**						
T	30	I	**	**	**	**	**	**	**	**	**	**	**			
I	25	I	**	**	**	**	**	**	**	**	**	**	**	**		
O	20	I	**	**	**	**	**	**	**	**	**	**	**	**	**	
N	15	I	**	**	**	**	**	**	**	**	**	**	**	**	**	
S	10	I	**	**	**	**	**	**	**	**	**	**	**	**	**	
	5	I	**	**	**	**	**	**	**	**	**	**	**	**	**	
COUNT			34	48	61	42	46	33	43	32	30	24	31	30	19	23
			NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

LOS ANGELES

The greater Los Angeles area indicated statistically significant decreases in the monthly number of emergency room abuse episodes involving heroin and barbiturates. An average of 36 heroin related visits per month was reported during this time period with an average decline of less than two visits per month. Meanwhile, a monthly average of 111 barbiturate abuse episodes was reported during the period with an average decrease of nearly five episodes per month.

LOS ANGELES SMSA CONSISTENTLY REPORTING EMERGENCY ROOM'S
LENGTH
NOVEMBER 1977 TO DECEMBER 1978

		39	42	45	47	49	36	41	26	31	35	36	30	31	11
U	100 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	95 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	90 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	85 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	80 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	75 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	70 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	65 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	60 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	55 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	50 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	45 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	40 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	35 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	30 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	25 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	20 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	15 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	10 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	5 I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
U	COUNT	39	42	45	47	49	36	41	26	31	35	36	30	31	11
		NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

LOS ANGELES SWSA CONSISTENTLY REPORTING EMERGENCY ROOMS
 BARRITIPATES
 NOVEMBER 1977 TO DECEMBER 1978

	200	I														
N	190	I														
U	180	I						***								
M	170	I						***								
B	160	I						***								
E	150	I						***								
R	140	I				***		***								
	130	I	***		***			***								
O	120	I		***	***			***								
F	110	I	***	***	***	***	***	***			***					
	100	I	***	***	***	***	***	***	***		***					
H	90	I	***	***	***	***	***	***	***	***	***	***				
E	80	I	***	***	***	***	***	***	***	***	***	***	***			
N	70	I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
T	60	I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
I	50	I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
O	40	I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
H	30	I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
S	20	I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
	10	I	***	***	***	***	***	***	***	***	***	***	***	***	***	***
COUNT	119		132	145	119	182	101	117	88	97	117	97	73	88	76	
			NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

DETROIT SMSA CONSISTENTLY REPORTING EMERGENCY ROOM
BARTHURATES
NOVEMBER 1977 TO DECEMBER 1978

100	I														
H	95	I													
U	90	I													
H	85	I													
B	80	I													
E	75	I													
R	70	I													
	65	I													
O	60	I													
F	55	I													
	50	I													
"	45	I	***				***								
E	40	I	***	***			***	***	***						
H	35	I	***	***	***	***	***	***	***	***	***	***	***	***	***
T	30	I	***	***	***	***	***	***	***	***	***	***	***	***	***
I	25	I	***	***	***	***	***	***	***	***	***	***	***	***	***
O	20	I	***	***	***	***	***	***	***	***	***	***	***	***	***
N	15	I	***	***	***	***	***	***	***	***	***	***	***	***	***
S	10	I	***	***	***	***	***	***	***	***	***	***	***	***	***
	5	I	***	***	***	***	***	***	***	***	***	***	***	***	***
COUNT		46	40	38	38	39	41	47	36	42	29	37	33	30	31
		NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

The Detroit metropolitan area indicated a statistically significant decrease and a statistically significant increase in the monthly number of emergency room abuse episodes involving barbiturates and marihuana, respectively. An average of 38 barbiturate related visits per month was reported during this time period with an average decline of less than one visit per month. Meanwhile, a monthly average of 42 marihuana related visits was reported during the period with an average increase of more than one visit per month.

DETROIT

CHICAGO

The Chicago metropolitan area indicated a statistically significant decrease and a statistically significant increase in the monthly number of emergency room abuse episodes involving barbiturates and PCP respectively. An average of twenty-nine barbiturate related visits per month was reported during this time period with an average decline of approximately one visit per month. Meanwhile, a monthly average of fifty-one PCP abuse episodes was reported during the period with an average increase of between one and two visits per month.

CHICAGO SUSA CONSISTENTLY REPORTING EMERGENCY ROOM'S
BARBITURATES
NOVEMBER 1977 TO DECEMBER 1978

	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
100 I														
95 I														
90 I														
85 I														
80 I														
75 I														
70 I														
65 I														
60 I														
55 I														
50 I														
45 I														
40 I														
35 I														
30 I														
25 I														
20 I														
15 I														
10 I														
5 I														
COUNT	45	37	28	26	40	27	27	29	32	26	27	24	29	26

CHICAGO SUSA CONSISTENTLY REPORTING EMERGENCY ROOMS
 PCP&PCP COMBINATIONS
 NOVEMBER 1977 TO DECEMBER 1978

	100	I														
N	95	I														
U	90	I														
M	85	I														
B	80	I														
E	75	I														
R	70	I								***						
.	65	I								***						
O	60	I								***	***		***		***	
F	55	I	***							***	***		***		***	
	50	I	***					***		***	***		***		***	
M	45	I	***			***		***		***	***		***		***	
E	40	I	***	***		***		***		***	***		***		***	
I	35	I	***	***	***	***	***	***	***	***	***	***	***	***	***	
T	30	I	***	***	***	***	***	***	***	***	***	***	***	***	***	
L	25	I	***	***	***	***	***	***	***	***	***	***	***	***	***	
O	20	I	***	***	***	***	***	***	***	***	***	***	***	***	***	
M	15	I	***	***	***	***	***	***	***	***	***	***	***	***	***	
S	10	I	***	***	***	***	***	***	***	***	***	***	***	***	***	
	5	I	***	***	***	***	***	***	***	***	***	***	***	***	***	
COUNT			56	43	35	47	35	51	38	52	64	71	53	62	50	60
			NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

2. There is increasing concern that prescription drugs such as Darvon are being inappropriately prescribed and used. What is DEA's position on the current utilization patterns of such prescription drugs?

Answer

DEA believes that this question is best answered by the Department of Health, Education and Welfare. As such and in deference to them, we have not prepared a formal response.

3. Do we need to control any other chemical, in addition to piperidine, which is used in the manufacture of substances similar to PCP?

Answer

No, not at this time. As we gain experience in piperidine reporting, we will be in a better position to evaluate the feasibility of the inclusion of other precursor chemicals. DEA will continue with its highly successful voluntary precursor control program.

4. In addition to permitting forfeiture of aircraft, vessels and vehicles used in illegal drug traffic, the Psychotropic Substances Amendments also permit forfeiture of all proceeds of illegal drug traffic. Have you developed guidelines for the use of this provision? Have you used it in any prosecutions yet?

Answer

DEA's Office of Chief Counsel, with the approval of the Criminal Division of the Department of Justice, has written a 13 page guide to the new forfeiture law. Four thousand copies of this guide are now being distributed by DEA. In addition, DEA's Chief Counsel has outlined a series of policy issues which should be resolved if the law is to be vigorously enforced. These issues are being studied by both the Criminal Division and DEA's Office of Enforcement.

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Many seizures involving hundreds of thousands of dollars have been made under the new law. Civil forfeiture actions have been initiated but, due to the large backlog of civil cases on the dockets of United States District Courts, no seizure has, as yet, resulted in court ordered forfeiture.



UNITED STATES DEPARTMENT OF JUSTICE
 DRUG ENFORCEMENT ADMINISTRATION
 Washington, D.C. 20537

OFFICE OF CHIEF COUNSEL

Legal Comment No. 17

November 20, 1978

FORFEITURE OF CURRENCY & PROCEEDS

On Friday, November 10th the President signed the Psychotropic Substances Act of 1978 into law (P.L. 95-633). Title III of the Act subjects the profits of illegal drug transactions to forfeiture. Title III became effective the day it was signed.

The new law extends the principal forfeiture section of the Controlled Substances Act (21 U.S.C. 881) to include the following property:

- i) "All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of . . . (the Controlled Substances Act or the Controlled Substances Import and Export Act) . . .,"
- ii) "all proceeds traceable to such an exchange, and"
- iii) "All moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of . . . (the Controlled Substances Act or the Controlled Substances Import and Export Act) . . ."
- iv) "except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established

by the owner, to have been committed or omitted without the knowledge or consent of that owner".

The purpose of this comment is to outline the kinds of property seizable and forfeitable under the new law. Questions concerning the content of this Legal Comment should be addressed to Harry L. Myers of the Office of Chief Counsel, FTS 633-1404.

I. ANYTHING EXCHANGED ILLEGALLY FOR CONTROLLED SUBSTANCES

The Act provides for the forfeiture of anything of value furnished, or intended to be furnished, illegally in exchange for controlled substances. The Act specifically refers to:

- A. Moneys
"Moneys" means officially issued coin and currency of the United States or any foreign country.
- B. Negotiable Instruments
"Negotiable Instruments" means documents, containing an unconditional promise to pay a sum of money, which can be legally transferred to another party by endorsement or delivery (e.g., a bank check).
- C. Securities
"Securities" means any stocks, bonds, notes, or other evidences of debt or of property.

Although these three forms of property are specifically mentioned in the Act, the new law is not limited to them. It applies to:

- D. Anything of Value
that is exchanged, or that is intended to be exchanged illegally for controlled substances.

Examples

1. A uses \$2,000 in U.S. currency to buy an ounce of cocaine from B. Both the cocaine and the \$2,000 are seizable and forfeitable under 21 U.S.C. 881. The currency is money

exchanged for a controlled substance in violation of the Controlled Substances Act.

2. A is a major supplier of Thai heroin. B negotiates with A to buy a large shipment of the drug. A gives B a small sample. B shows A an account passbook showing a balance of \$200,000, and a check made out to A in the same amount. The check, the passbook, and the money in the account are seizable and forfeitable under 21 U.S.C. 881(a)(6). They are negotiable instruments, money, and other things of value intended to be furnished in exchange for a controlled substance in violation of the Controlled Substances Act.

3. A is a resident of Mexico. A agrees to deliver a large quantity of heroin to B within the U.S., in exchange for a shipment of weapons stored in a warehouse in Southern California. The weapons are seizable and forfeitable under 21 U.S.C. 881(a)(6). They are things of value intended to be furnished in exchange for a controlled substance in violation of both the Controlled Substances Act and the Controlled Substances Import and Export Act.

The key to this first section of the new law is the exchange, or the intent to exchange, something of value for a controlled substance.

II. ALL PROCEEDS TRACEABLE TO SUCH AN EXCHANGE

If an illegal exchange of drugs actually occurs, the proceeds of the exchange are seizable and forfeitable.

A. Proceeds

"Proceeds" means whatever is received when an object is sold, exchanged, or otherwise disposed of.

Proceeds can be a bank account. It can be real property, such as a house. It can be personal property, such as a car or a mink coat. Proceeds does not necessarily mean money.

If drugs are actually exchanged, everything received from the exchange is proceeds.

The most important point about the term "proceeds" is that it includes the ultimate product of an exchange even if the product changes form. Proceeds applies not only to property received immediately from an exchange, called "direct proceeds," but also to property subsequently acquired through the sale, exchange or disposition of the direct proceeds. In other words, proceeds of proceeds are considered proceeds.

Examples

4. A uses \$10,000 in U.S. currency to buy five ounces of cocaine from B. The \$10,000 in B's possession is "direct proceeds" of the illegal exchange.
5. B takes the \$10,000 in "direct proceeds," which he received in Example 4, and opens a new bank account. The account is proceeds of the illegal drug exchange (proceeds of proceeds). As such, the account is seizable and forfeitable under 21 U.S.C. 881(a)(6).
6. B withdraws the \$10,000 from his account in Example 5, and buys a new sports car. The new car is seizable and forfeitable under 21 U.S.C. 881(a)(6) as proceeds of the illegal drug exchange (proceeds of proceeds of proceeds).

Congress has given DEA this power to follow and seize the proceeds of drug traffickers to prevent them from easily hiding their income by changing its form.

B. The Need to Trace Proceeds

There is no limit on the number of subsequent transactions that can take place, nor is there any restriction on the forms the proceeds take. The only requirement is that the "chain" of transactions be traced, and that the final proceeds or product be identified with reasonable accuracy.

If the proceeds of an illegal drug exchange cannot be traced, in whole or in part, into some identifiable account or property, there is nothing to seize and forfeit.

Examples

7. A receives \$5,000 from B in exchange for several ounces of heroin. A bets the \$5,000 on a horse race and loses. There is nothing to seize and forfeit. The proceeds have been lost by A.
8. A receives \$5,000 from B in exchange for several ounces of heroin. A gives the \$5,000 to a creditor to pay off a debt. There is nothing to seize and forfeit. A has dissipated the proceeds.
9. A receives \$200,000 from B in exchange for a major shipment of heroin. You feel sure that A has hidden the money in some way, but you are unable to trace the money to an identifiable account or to any of A's property (his home, yacht, car, etc.). There is nothing to seize and forfeit. The new law requires that the proceeds be traceable before they can be seized.

C. Mingling

Proceeds are frequently mingled with non-proceeds. Mingling does not destroy DEA's right to seize the mingled fund or mingled property, and to forfeit that part of it which is proceeds.

Example

10. A receives \$500 from B in exchange for a suitcase containing marihuana. A puts the \$500 in his pocket. He is immediately arrested. In A's pocket you find \$1,000 in small bills. Money has no "earmarks," so it is impossible to identify which bills were exchanged for the marihuana. Nevertheless, DEA has the right under 21 U.S.C. 881(a)(6) to seize and forfeit \$500 of the money found

in A's pocket. The need to trace proceeds is satisfied when DEA can identify a particular fund or property into which the proceeds have been mingled.

Unfortunately, most instances of mingling are not as simple as this last Example. Proceeds are often mingled in bank accounts and in other property. Drug violators normally make many additions to, and withdrawals from, the mingled funds. They might comingle the funds with the money of an innocent third party, such as a wife or child. They might use part of the comingled funds to buy stocks, houses, or some other property. The fund might earn interest or the property might increase or decrease sharply in value.

The legal and accounting problems involved in identifying, seizing, and forfeiting that part which is "proceeds" can be extremely complex. If you encounter complex mingling problems, you should contact DEA Headquarters.

D. Bona Fide Purchasers

Money or property loses its status as proceeds if it is transferred to a Bona Fide Purchaser (BFP). DEA cannot seize or forfeit proceeds which have been transferred to a BFP.

A BFP is an innocent third party who:

- i) gives something valuable in exchange for the proceeds,
- and
- ii) has no knowledge that what he is acquiring is connected to illegal drug trafficking.

Examples

- 11. B uses \$10,000 of forfeitable proceeds to buy an expensive new car from Dealer X (see Examples 4 to 6). Dealer X does not

know that the \$10,000 is the proceeds of an illegal drug exchange. Dealer X is a BFP of the \$10,000. DEA cannot seize the money from Dealer X. It is no longer considered to be proceeds. On the other hand, DEA can seize the car from B. It is forfeitable as proceeds (see Example 6).

12. B is a convicted felon with a reputation in his community as a drug trafficker. B uses \$10,000 of forfeitable proceeds to buy a mink coat as a gift for Miss C, his girlfriend. Miss C is not a BFP. She has not given anything of legal value in return for the mink. And, she is on notice that B is a drug trafficker whose income is derived from illegal drug transactions. Therefore, the mink coat continues to be proceeds. It can be seized from Miss C.

The important point to remember is that proceeds transferred to a BFP are not seizable - they are no longer considered to be proceeds.

III. FACILITATION

All moneys, negotiable instruments, and securities used, or intended to be used to facilitate any violation of the Controlled Substances Act, or of the Controlled Substances Import and Export Act, are forfeitable under 21 U.S.C. 881(a)(6).

A. Only Moneys, Negotiable Instruments and Securities are Forfeitable

This facilitation provision is strictly limited to "moneys," "negotiable instruments," and "securities" as defined earlier in this Comment. Other things of value are not forfeitable under this "facilitation" subsection.

B. Substantially Connected to Any Violation

The mere fact that moneys, negotiable instruments, or securities are possessed by a drug violator does not subject them to forfeiture for facilitation. To be forfeitable for facilitation

they must have some substantial connection to, or be instrumental in, the commission of a drug law violation.

Conspiracy, attempt, manufacture, distribution, possession, and every other violation defined in the Controlled Substances Act, and in the Controlled Substances Import and Export Act, is included within this facilitation subsection. The "proceeds" and "exchange" subsections of 21 U.S.C. 881(a)(6) are tied to drug distributions. The "facilitation" subsection applies to any offense.

Examples

13. A and B are illegally manufacturing PCP in their basement. They have large amounts of chemical ingredients and laboratory equipment. They also have a \$5,000 fund, which they use as "petty cash" to operate the lab. The chemicals and equipment are forfeitable under 21 U.S.C. 881(a)(2). The \$5,000 is forfeitable under 881(a)(6) for facilitating the manufacture of PCP in violation of 21 U.S.C. 841(a)(1).
14. A, B and C each contribute \$5,000 in cash to establish a fund to finance the illegal importation of marihuana. They intend to use the \$15,000 to rent an airplane, hire a pilot, bribe certain foreign officials, and to cover odd expenses. The money is forfeitable under 21 U.S.C. 881(a)(6), because it is intended for use to facilitate the importation of marihuana, in violation of 21 U.S.C. 952 and 963.
15. A uses "clean," non-forfeitable money to buy a secluded house on the shoreline of the Florida Keys. A guts the interior, and boards up the windows and doors. He uses the house as a "stash" for large shipments of smuggled marihuana. Although the house is clearly being used to facilitate major violations of the Controlled Substances Act and the Controlled Substances Import

and Export Act, it is not subject to seizure and forfeiture under 21 U.S.C. 881(a)(6). The facilitation subsection of 881(a)(6) applies only to moneys, negotiable instruments, and securities -- not to real property. Moreover, the house is not "proceeds."

IV. INNOCENT THIRD PARTIES

Property owned by an innocent third party is subject to seizure if it falls within the categories of property forfeitable under 21 U.S.C. 881(a)(6). The seizure, however, does not necessarily mean that the property will be forfeited.

An innocent owner of seized property is protected from forfeiture under 881(a)(6), if he can establish his ignorance of the illegal activity that resulted in the seizure.

A. Owner

Congress intended the term "owner" to be broadly interpreted to include any person with a recognizable legal or equitable interest in the seized property. This protects the interests of all innocent parties.

At the same time, a party cannot protect what he does not own. Therefore, innocent owners are protected only to the extent of their interests. If they own less than the entire seized property, they cannot prevent the forfeiture of what remains.

B. Burden of Proof

The last clause of 881(a)(6) makes clear that an owner is protected only if he can establish that he did not know of the illegal activities that led to the seizure. Once property is lawfully seized under 881(a)(6), the burden is on the owner to present evidence tending to show:

- i) he did not know his property was furnished, or was intended to be

- furnished, in exchange for drugs; or
- ii) he did not know at the time he acquired the property that it was proceeds of an illegal drug exchange; or
 - iii) he did not know his property was used, or was intended for use, to facilitate a drug violation.

Examples

16. H and W are married and live in a community property state. H is a major drug violator. H uses forfeitable proceeds to buy a house in his own name. The house is seizable (attachable) as proceeds under 21 U.S.C. 881(a)(6). Although W is not a BFP (she gave nothing of value for the house), she is an owner under 881(a)(6). The community property laws of her state give her a vested one-half interest in all property acquired by her spouse during their marriage. As a result, if W can offer enough evidence to establish that she was unaware of H's drug activities, her half of the house will not be forfeited. If she cannot offer such evidence, the entire house will be forfeited.
17. T is arrested after buying two ounces of cocaine for \$4,000. The money is seizable under 881(a)(6). T admits to stealing the money from a bank where he works as a teller. The bank acknowledges the recent theft, but disclaims any knowledge of T's involvement with drugs. The money is not forfeitable under 881(a)(6). It must be returned to the bank.

This right of an innocent party to prevent forfeiture applies only to seizures made under 881(a)(6).

V. CIVIL FORFEITURE

Forfeiture proceedings are civil in nature. No arrests are required. No criminal charges need be filed. Forfeiture is totally independent of any criminal action that might be brought against the owner or others.

A. Probable Cause to Seize

The only requirement to start forfeiture proceedings under Section 881 is the existence of probable cause to believe that the property is subject to forfeiture. Once probable cause exists, the property can be seized and the proceedings begun. The burden then shifts to the owner to defend against the forfeiture.

Of course, probable cause to seize for forfeiture must be something more than mere suspicions. And, the evidence used to establish probable cause must not be gathered in violation of Fourth and Fifth Amendment rights.

Example

18. A DEA agent is told by FAA security searchers that Mr. W, a passenger, has just entered the boarding area for a flight to San Diego, carrying an attache case containing \$50,000 in small bills. The agent finds W and asks about the money. W will only say that he is transporting it for a friend. The money cannot be seized for forfeiture. DEA must have facts and circumstances sufficient in themselves to justify a reasonable belief that the money is forfeitable under 881(a)(6). Mere suspicion, however strong it might be, is not enough to justify a seizure.

B. Seizure Warrants

Until recently, the law has been well established that when an agent has probable cause to believe that property has been used in violation of a forfeiture statute, he can seize that property without obtaining a warrant. Since 1974, however, at least three Federal Circuit Courts (First, Fifth and Ninth), and a large number of state courts,

have abandoned this traditional rule. The trend is to require a warrant to seize property for forfeiture, whenever it is practical to obtain one.

While this new trend has a limited impact upon the seizure of vehicles under 881(a)(4), it is extremely important to seizures under 881(a)(6). With the exception of seizures incident to arrest, all seizures of property pursuant to 881(a)(6) should be made with a warrant, or with a writ of attachment, as provided for by 21 U.S.C. 881(b) and the Supplemental Rules for Certain Admiralty and Maritime Claims, 28 U.S.C. Appx. 28.

Do not plan to make warrantless seizures of property under 881(a)(6).

C. Pigeonholing

Prior to this new law, property was forfeitable under 21 U.S.C. 881 strictly by its character. Books and records could only be forfeited under 881(a)(5). If they did not meet the requirements of that section, they could not be forfeited. Vehicles could only be forfeited under 881(a)(4). No other sections applied to vehicles. Containers were forfeitable only under 881(a)(3), and so forth.

In this way, the law created a series of pigeonholes for the forfeiture of certain types of property. Property which did not "fit" squarely into the proper "hole" escaped forfeiture.

Section 881(a)(6) has made changes to this system. The possibility now exists that property can be forfeitable under two or more subsections of the law. The three new categories of property forfeitable under 881(a)(6) can overlap with each other and with subsections (1) through (5) of 881. Each subsection now provides an independent basis for possible forfeiture. Property, which does not fit into one, might fit into one of the others.

Example

19. A uses \$10,000 of forfeitable proceeds to buy a new car from Dealer X (see Examples 4 to 6). A gives the car as a gift to his younger brother. His brother is totally unaware of A's involvement in drug trafficking. A borrows the car from his brother and uses it to deliver a package of heroin. The car can be seized under 881(a)(4) and 881(a)(6). If the innocent brother can establish his ignorance of A's activities, the car will escape forfeiture under 881(a)(6); but it will not escape forfeiture under 881(a)(4). The younger brother is limited to filing a petition for remission or mitigation of the forfeiture.

Always consider each section and subsection of 881(a) as a possible basis of forfeiture.

5. Briefly describe your domestic data gathering programs and how they compare with those of the National Institute on Drug Abuse.

Answer

The DEA Office of Compliance and Regulatory Affairs is responsible for the maintenance of three major programs which collect drug distribution and abuse statistics.

1) Project DAWN (Drug Abuse Warning Network) is a Federal program initiated by the Drug Enforcement Administration (DEA) to identify and evaluate the scope and extent of drug abuse in the United States. DAWN, jointly funded with the National Institute on Drug Abuse (NIDA) includes over 900 different facilities which supply data to the program.

NIDA has no ongoing specific drug abuse data gathering system of the size and scope of Project DAWN. Their CODAP system collects data on broad categories of drugs (not totally drug specific) from drug treatment personnel.

2) ARCOS is a computerized system which provides for the monitoring of drug transactions of selected controlled substances. These transactions are reported by approximately 1,500 manufacturers, distributors, importers and exporters. The system provides a government capability to monitor the selected controlled substances from point of import or manufacture to point of export or distribution to the dispensing level.

NIDA has no comparable system.

3) Project Label represents the only computerized listing of drug products containing controlled substances. The information contained therein is supplied by approximately 900 labelers and consists of approximately 12,000 products and is updated on a continuous basis.

NIDA has no comparable system.

4) In addition to the above, the DEA Office of Compliance and Regulatory Affairs uses computers at the National Library of Medicine to extract information stored in the MEDLINE, TOXLINE, CHEMLINE, CANCERLINE, CANCERPROJ and EPILEPSYLINE files. This information is used primarily in support of the drug control decision making process and for ad hoc reports.

NIDA could also avail themselves of this service.

6. What are your most significant enforcement problems today?

Answer

Reduced heroin availability in the United States is DEA's top priority and we are pleased to report that the heroin availability situation has greatly improved. In addition, we have seen the international community take a renewed interest and make a renewed commitment to work together in an effort to reduce illicit drug trafficking. This commitment is critical to the success of any program that we might undertake. DEA views the heroin availability problem as one of great concern and one to which all countries and international organizations must devote increased attention and increased resources.

Of growing concern are the hundreds of tons of opium being produced in the traditional growing areas of Afghanistan and Pakistan. The Drug Enforcement Administration is closely monitoring this situation, because there is evidence of heroin conversion laboratories in both Pakistan, Afghanistan, and also in East Turkey. Additionally, Southeast Asia represents a major source of illicit opium and finished narcotics. There is a substantial amount of Southeast Asian heroin available for the world marketplace.

A serious situation facing the Federal law enforcement community is the recent surge of drug trafficking by maritime smugglers. There has been a rapid expansion in both number of and sophistication of "mother ship" operations, especially between Colombia and the East Coast and Gulf Coast of the United States. DEA expects that the growth in vessel traffic will continue. We anticipate the law enforcement pressure will displace the traffic to some extent, forcing it to the Colombian Pacific Coast, or causing the "mother ships" to divert eastward around the island chains in order to avoid the three passages where the U.S. Coast Guard has concentrated its efforts. Expanded use of aircraft for smuggling is anticipated. In addition, traffickers are using a variety of electronic gear and sophisticated equipment to counteract or neutralize law enforcement efforts both on shore and at sea.

Another alarming trend is that trafficking organizations are becoming well versed in the laws of the United States and understand how to circumvent them, avoiding prosecution. For example, "mother ships" are of foreign registry and are manned by foreign nationals. As long as the vessel remains beyond the twelve-mile limit, no representative of the U.S. Government can board that vessel without permission from the government where the vessel is registered. In addition, the Comprehensive Drug Abuse Prevention and Control Act of 1970 omitted the prohibition against possession of controlled substances on vessels engaged on a foreign voyage. Based on intelligence and interdiction data, we believe that drug smuggling on the high seas is escalating and shows no signs of abating.

7. It has been suggested that pharmacy thefts be made a Federal crime. What results are States having with pharmacy theft prevention programs? Is there a need for Federal legislation?

Answer

Several cities and states have recognized that even though the nationwide pharmacy thefts are continuing to increase, the statistics for the current Pharmacy Theft Program (PTP) cities continue to show a decline. The latest DEA statistics show that pharmacy thefts are up nationwide by 14 per cent, from the last half of 1977 through the first half of 1978 (from 3,677 to 4,175).

The following chart reflects the statistics over the same period, for the 12 PTP cities, which indicates an overall 22 per cent decrease. These figures show that eight of the 12 PTP cities experienced a decrease, while one city remained the same. It is disturbing that the remaining three cities show a definite increase, which to date the PTP committees in these areas have not been able to explain. One possibility offered by the Nashville Program was that during the reporting period, armed robberies far exceeded the night break-ins and burglaries. The PTP program is primarily directed toward burglary rather than robberies, but does provide instruction to the pharmacist in the appropriate procedures to follow in the event of an armed robbery.

The comparative statistics for the PTP cities are:

<u>City</u>	<u>06/77-12/77</u>	<u>01/78-06/78</u>	<u>Percent</u>
Waterbury, Conn.	7	2	71-
Buffalo, NY	23	12	49-
Philadelphia, PA	33	28	15-
Miami, FL	44	30	32-
Cleveland, OH	36	18	50-
Milwaukee, WS	7	6	14-
Nashville, TN	10	24	140+
Johnson City, KS	5	2	60-
Dallas, TX	13	26	100+
Denver, CO	31	31	0-
Seattle, WS	33	6	82-
San Diego, CA	8	11	38+
Total	250	196	22-

The statistics for the State of Rhode Island, maintained by the PTP committee, reflect that during the period July-September 1978, there was a 68 per cent decline in pharmacy thefts and a 43 per cent decline in the amount of controlled substances stolen. These statistics were compared with the statistics from the preceding three months. It is interesting to note that this PTP program only became operational in June 1978 and the PTP committee has directly attributed this decline to their program.

Based upon studies of the nature of pharmacy thefts which the DEA Office of Compliance and Regulatory Affairs has reviewed and participated in over the past two years, we feel that a legislative proposal to make pharmacy theft a Federal crime fails to take into account the following:

- (1) In more than half of the incidents of pharmacy crime in a study in St. Louis, no drugs are taken; thus there is some other motivation for the crime. Since the majority of pharmacy crimes involve money or merchandise, rather than drugs, the increase in crimes against pharmacies is probably a function of our economic times. Convenience groceries, gasoline stations, liquor stores, and many other small businesses are experiencing similar (and sometimes larger) increases in crime.
- (2) In all probability, pharmacies have become a popular target for both armed robbery and burglary due to the combination of low risk and high reward for the criminal. There is a low risk of apprehension due to the notoriously poor security found in pharmacies. The majority of pharmacists are loath to improve their security due to the costs of such improvements. The rewards available to the criminal include a broad spectrum of controlled drugs which the criminal may later sell with ease, and high-value merchandise such as watches and cameras which may be "fenced" or turned into cash immediately. The possibility of substantial gain with little risk of getting caught are certainly attractive to any criminal, whether he himself uses drugs or not.
- (3) The fact that crimes against banks are Federal violations is often cited by proponents. However, nationwide crime statistics are up in nearly every category including bank robberies.

- (4) Federal court calendars are just as crowded as the calendars in state courts, and with the coming into force of the "Speedy Trial Act," any additional federal jurisdiction will bog down the federal courts even more.
- (5) There is no evidence to support the idea that federal sentences for offenders would be any stiffer than those meted out by state courts. Further, providing concurrent sentences for multiple offenders is a common practice throughout the judicial system.
- (6) Every known enforcement statistics indicates that successful burglary/holdup arrests are directly related to the time it takes to respond to the initial alarm. A study by the Los Angeles Police Department of burglary and holdup calls and alarms resulted in the following estimates and apprehension rates in relation to response time:

<u>Response Time</u>	<u>Apprehension Time</u>
30 sec or less	100%
1 minute	90%
2 minutes	75%
4 minutes	50%
10 minutes	20%

- (7) The primary enforcement authority responding to a drugstore robbery or burglary must always of necessity be local law enforcement because of the need for immediate action. With over 50,000 pharmacies spread across the country in localities large and small, the local police would still have the only capability for fast response. Moreover, an overlapping federal capability would create an additional taxpayer burden.
- (8) Robbery and burglary are crimes committed against many types of businesses as well as against individuals. Since these crimes constitute a substantial part of their workload, local police have developed expertise to deal with them. Federal intervention into this area could have the effect of the states and cities slackening their efforts.
- (9) Some have suggested that the mere existence of a federal statute would deter potential violators. The existing caseloads in every federal enforcement agency do not support this contention.
- (10) Chief Counsel advised that it is not necessary to hypothesize on the judicial or prosecutorial impact of Federal jurisdiction over pharmacy thefts, since it can safely be said that any such impact would be negligible. The hard fact of life is that none of these pharmacy theft cases would be accepted for prosecution by the various U.S. Attorneys throughout the country. History has demonstrated that the "small" narcotic case is generally declined by Federal prosecutors in favor of local prosecutions. With the emphasis now on developing and prosecuting major conspiracies, which require earlier and greater intervention by Assistant U.S. Attorneys, Federal prosecutors will be far more reluctant to accept smaller cases.

DEA is not unsympathetic to the plight of retail pharmacists. However, we continue to believe that a community action program coupled with increased pharmacy security is the best answer.

Also, it is standard practice within DEA to "check out" pharmacies which have frequent or large/unusual thefts or to follow up on pharmacy theft patterns. This includes contact with the local

police and review of pharmacy security practices to determine the reason for the pattern or for the large stock at the pharmacy (i.e., was it staged to cover diversion). This is not direct theft investigation as such, but assistance and follow-up to eliminate any possible large source of diversion. This standard and appropriate practice will continue, but primary theft enforcement remains with local jurisdiction.

8. Is HEW cooperative and responsive in making recommendations to DEA regarding the scheduling of drugs?

Answer

To a large extent, the Food and Drug Administration of the Department of Health, Education and Welfare has been cooperative and responsive in making recommendations to DEA regarding the scheduling of drugs. The FDA recommendations on potential abuse of drugs would be more effective, however, were they received in a timely manner. For example, pentazocine (Talwin), an analgesic, was first recommended for control in Schedule IV of the CSA in a July 1974 DEA request for a medical and scientific evaluation. In January 1976, the Department of HEW formally answered and recommended against control, claiming abuse was not "sufficiently defined." The FDA did, however, recommend that DEA continue to monitor trends in pentazocine abuse. Following a period of continued surveillance, DEA once more submitted additional data on abuse (February 1978) and again recommended Schedule IV control of pentazocine. In March 1978, HEW finally advised DEA that Schedule IV controls were justified. After publication in the Federal Register, pentazocine was controlled under the CSA (February 9, 1979) four and one-half years after the initial DEA recommendation. During this time period, the drug had already been placed under control by several state regulatory and legislative bodies.

Mr. WAXMAN. We will hold the record open for 7 days for any additional information anyone wishes to submit on this issue.

Mr. CARTER. Mr. Chairman, I would like to ask a question, if I may. Would you tell me what impact the Freedom of Information Act has had on your Agency?

Mr. BENSINGER. Well, it has been, Dr. Carter, certainly an administrative responsibility requiring the full-time assignment of some in excess of 20 individuals, many of them criminal investigators. It has reflected that over half of the requests, 58 percent, have come from individuals convicted of crimes. The effect it has had in terms of our working relationship with other Federal and State and local entities would be difficult to precisely assess.

It does put a chill on the exchange of information. We do not feel at DEA now that it has prevented us from carrying out our duties and responsibilities. It has been an additional administrative responsibility that, candidly, has, in many respects, made it more difficult to effectively devote ourselves to the principal responsibilities we were mandated to carry out.

I think that Judge Griffin Bell, our Attorney General, was wise in requesting that the law enforcement officials, the Commissioners and Directors of the Federal law enforcement agencies make an assessment of what the Freedom of Information Act means to their own respective agencies and we replied to the Attorney General generally along the lines that I have responded to you.

Mr. CARTER. Do you believe that either the Coast Guard or DEA should have the authority to stop and board ships outside the territorial waters of the United States to search for illegal drugs?

Mr. BENSINGER. I think this is a very important question, one that both the International Law of the Sea Conference hopefully will take up, and I know Jack Hayes, the Commandant of the Coast Guard, has directed communications to Ambassador Richardson on this matter. It represents a problem for the Coast Guard.

You get these big mother ships moving up the coast, 200, 250 miles offshore. They are U.S. vessels, the law is clear. It has been upheld at the appellate level that the Coast Guard can board any vessel anywhere within our territorial waters or outside.

If it is a foreign flag, the Coast Guard contacts the State Department who contacts the country of the flag, who contacts the State Department, who contacts the Coast Guard to get authority to board the vessel. It is a lengthy procedure. Generally it has been agreed to by foreign flags, but there are provisions which, even with that agreement, individuals breaking the laws, nationals of another country, simply get brought into a U.S. port and deported, after being given a night and some expenses in Miami, back to their country of origin.

We are seeing the same couriers arrested and rearrested time and time again.

I think there should be a need to look at the criminal violations, obviously that were intended to be made in the United States but took place outside of our territorial jurisdiction.

Mr. CARTER. Yes, sir. We have these mother ships off of our coast practically all of the time, loaded with either marihuana or cocaine or both, is that correct?

Mr. BENSINGER. Hardly a day goes by when one is not in such a position.

Mr. CARTER. And to these States which have lax laws against sellers, even of large amounts, and particularly with long coastlines, they concentrate in shipping the marihuana or cocaine into those States, is that correct?

Mr. BENSINGER. There has been, as I indicated to the chairman and to your associate, I would like to review just those State parallels, but certainly the traffickers know where their risks are highest, and they know where their risks are lowest. I think my testimony reflected my increasing concern that the form of the drug traffic in the United States has taken.

Mr. CARTER. It is your idea that for large traffickers of marihuana, say 50 kilos or more, that they should have a mandatory sentence of how much?

Mr. BENSINGER. I feel, sir, that their sentence would follow a sentencing guideline of 5 to 15 years.

Mr. CARTER. Yes, sir.

Mr. BENSINGER. And I think the present, which is zero to 5, is not getting the job done.

Mr. CARTER. Yes, sir. Thank you very kindly, Mr. Bensinger. Thank you, Mr. Chairman.

Mr. WAXMAN. Mr. Lee, do you have any other questions?

Mr. LEE. No, sir.

Mr. WAXMAN. Thank you very much for your testimony. We appreciate hearing it. For those of us who are new to the responsibilities of this committee it was a good opportunity for us to hear from you and to get to be more familiar with the program.

Thank you.

Mr. BENSINGER. Thank you very much.

Mr. WAXMAN. The committee stands adjourned.

[Whereupon, at 11 a.m. the hearing was adjourned.]