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# Department of Justice

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STATEMENT OF

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ALEXANDER H. WILLIAMS, III  
CHIEF, NARCOTIC AND DANGEROUS DRUG SECTION  
CRIMINAL DIVISION

BEFORE THE

SUBCOMMITTEE ON STATE, JUSTICE  
COMMERCE AND THE JUDICIARY  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES SENATE

CONCERNING

GENERAL ACCOUNTING OFFICE REPORT  
ON FEDERAL DRUG CONTROL EFFORTS

NOVEMBER 16, 1979

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Mr. Chairman and distinguished members of this Subcommittee:

I am honored by the opportunity to appear today in behalf of the Attorney General and the Acting Deputy Attorney General to present testimony concerning the General Accounting Office's report entitled "Gains Made in Controlling Illegal Drugs, Yet the Drug Trade Flourishes."

Administrator Bensinger has provided the view of the Drug Enforcement Administration. I am charged with providing the views and comments of the prosecution side of the Department of Justice, including the Criminal Division and the United States Attorneys. It is my understanding, from the Chairman's letter of invitation, that this Committee may at a future date wish separately to seek the views of the Federal Bureau of Investigation and the Immigration and Naturalization Service.

The report includes, at pages 185-205, a letter from the Assistant Attorney General for Administration, dated August 2, 1979, commenting on the then draft of the report. Those comments set forth the overall Departmental view of the report as it then existed, and are a matter of record here. Today, I wish to focus on matters of particular concern to the prosecution community and to provide clarification and updates on relevant points.

I am particularly pleased to be able to address these matters in view of my present and immediately previous responsibilities. As Chief of the Narcotic and Dangerous Drug Section of the Criminal Division, I am responsible for supporting, and where necessary, supplementing the narcotics prosecution efforts of the United States Attorneys. Section Attorneys are in daily contact with prosecutors in all parts of the country. We therefore have knowledge of their problems and their successes.

Before assuming my present position in April of this year, I was for four years an Assistant United States Attorney for the Central District of California in Los Angeles. The bulk of my prosecution caseload during that period of time was narcotics cases. For the last two years of that period, I was Chief of the Controlled Substance Unit in that office. In that capacity, I was responsible for day to day working relations with the Western Regional Office of DEA and with the approximately one hundred special agents and other personnel in the DEA Los Angeles District Office. Additionally, I had frequent contact with supervisors and agents of the FBI, IRS, and Customs Service and with state and local enforcement and prosecution officials having narcotics responsibilities. The United States Attorney and I, along with the Regional Director of DEA, were active participants in the Law Enforcement Organization (LEO) of federal, state and local narcotics enforcement agencies.

When Assistant Attorney General Philip Heymann offered my current position, I came to it with the resolve that the lessons learned by prosecutors in offices and courtrooms around this country should be brought to bear in Washington and have a beneficial systemic impact on the way the federal establishment investigates and prosecutes narcotics violators. It is that same resolve that brings me before this committee today.

As this committee notes in its invitation to the Department to appear today, the GAO Report finds a lack of overall authority and policy direction within the federal Government among the various agencies having responsibilities in the drug control area. We respectfully submit that this conclusion overlooks current structures and growing trends in the federal community at large and in the narcotics prosecution community in particular. This can be best shown by a brief discussion of the role that the Department of Justice plays in the federal effort against illegal drug trafficking.

The Strategy Council on Drug Abuse, of which the Attorney General is a member, is charged by statute with preparing the federal strategy for controlling the availability and use of drugs. The Executive Director of the Council is the Associate Director for Drug Abuse Policy on the White House Domestic Policy Staff. The Strategy Council's annual Federal Strategy Document is reviewed

closely in the Department and serves an important function in the allocation of Departmental enforcement resources.

The Strategy Council is supported by a "Principals Group," which includes the Administrator of the Drug Enforcement Administration and the Assistant Attorney General in charge of the Criminal Division. This arrangement affords continuing high level review of all aspects of federal drug-related activities and problems. The above mentioned Associate Director also chairs this group.

Within the Department of Justice, the Deputy Attorney General is responsible for the Department's criminal law enforcement activities. In the area of drug abuse, these include primarily the operations of the Criminal Division, the United States Attorneys, the Drug Enforcement Administration and, to some extent, the Federal Bureau of Investigation. Administrator Bensinger is here to discuss with you the activities and responsibilities of DEA. I wish to complement his presentation with a discussion of federal prosecution of drug offenses.

The Criminal Division and the United States Attorneys share responsibility for prosecution of criminal offenses under the Controlled Substances Act and similar statutes. The Department is committed to reposing principal responsibility for narcotics prosecutions with the United States Attorneys, who have the insight and sensitivity to best apply federal resources to the criminal problems, including

drug abuse problems, of their particular localities. However, the Criminal Division retains responsibility for the integration of prosecution and enforcement activities in federal courts throughout the United States. With regard to drug trafficking prosecutions, this responsibility lies with the Division's Narcotic and Dangerous Drug Section.

The goal of the Narcotic and Dangerous Drug Section, simply stated, is to enhance the quality and impact of federal narcotics prosecutions. In this regard, the mission of the Section is threefold--operations, policy, and support. Our operational role calls for us to provide attorneys when requested by the United States Attorneys to conduct or assist in major drug trafficker prosecutions. Our capabilities in this regard are limited by our small staff, but we currently have several attorneys involved in investigations and trials in the Southern District of Florida and in several other jurisdictions. Our policy responsibility includes advising the Department on matters of legislation and policy impacting on drug prosecutions.

Our support role is one which we are currently pursuing with great energy. We maintain an overview of the nationwide narcotics prosecution picture. Based upon this overview, we have identified areas of specialized expertise, including

matters of both substance and procedure, in which we should establish ourselves as a source of advice and support for the United States Attorneys. Section personnel are variously developing expertise in such areas as financial investigation, high seas seizures, airport trafficking, clandestine manufacturing laboratories, and evidence gathering overseas. We also recognize that the great bulk of the expertise in the federal prosecutorial establishment lies in the offices of the United States Attorneys. We continually identify sources of information and advice in the field, and make this information available to prosecutors around the country.

A principal vehicle of this communication is the NARCOTICS NEWSLETTER, which the Section commenced publishing in July, 1979. We see this publication as having a unique and integrating impact on the government's narcotics investigation and prosecution efforts. It is published monthly and sent to all United States Attorneys and Organized Crime Strike Forces and to all DEA offices, domestic and foreign. It includes recent developments in the law that affect investigations and prosecutions, because a legal problem for an agent will ultimately be a legal problem for a prosecutor, and it is better to learn the lesson earlier than later. The NEWSLETTER also highlights major prosecutions, particularly those that



feature a unique or innovative investigation or prosecution technique, or a special legal difficulty, the discussion of which may be of value to the prosecution community as a whole. The NEWSLETTER has been well received in the federal enforcement community as a unifying factor in the combined efforts of agents and prosecutors against drug traffickers. The distribution list is steadily growing. We respectfully submit that, within the area of narcotics prosecutions, this is the kind of integrating and coordinating effort that the GAO Report urges.

It should be noted that narcotics cases currently represent approximately 25 percent of the federal criminal caseload. This volume can only be borne by the United States Attorneys. At the same time, this percentage reflects the importance of the mission of the Narcotic Section in support of drug trafficking prosecutions around the country.

We must be broad in our support focus. Trafficking is by definition a mobile activity. Violators often seek parts of the country where their activities are less likely to be detected. Thus we are seeing major drug investigations focus on violators in some of the smaller and more remote districts. It is the duty of the Criminal Division, through the Narcotic and Dangerous Drug Section, to assure that all United States Attorneys have the full benefit of the collective expertise of the Department of Justice when going into court against major drug traffickers.

At the same time, we have a special responsibility to and for the Major Drug Trafficker Prosecution Units (MDTPU's). These units, originally referred to as Controlled Substance Units, were founded by the Department in 1975 to help institutionalize and develop narcotics prosecution expertise in major United States Attorneys' offices. As the GAO report notes, this program has had an uneven development. However, I suggest that much of the report's discussion misses the critical point. What is essential is not what a unit is called, or how it is particularly staffed, but whether the United States Attorney uses the unit to develop and maintain a sophisticated and successful narcotics prosecution program in his or her district. In general, the units are meeting this need. I can state from my personal experience as Chief of the Unit in Los Angeles that the program provides Assistant United States Attorneys with a specialized relationship with the Criminal Division and with DEA that does, when properly implemented, enhance the impact of narcotics prosecutions.

The GAO suggestion that further departmental control be imposed upon the units must be approached carefully. First of all, the approximately 85 prosecutors in the units are Assistant United States Attorneys, each answerable to his or her United States Attorney.

It must be realized that to some extent the United States Attorneys' offices are "laboratories" wherein varying approaches to the criminal justice problems of this country can be devised and implemented. The Criminal Division in Washington does not seek to impose arbitrary formulas upon the United States Attorneys, but learns from their various efforts and provides guidance where appropriate.

We have had recent success in this regard. After attending the most recent major drug trafficker prosecution conference (sponsored in part by NDDS and DEA) in Boston in August, an Assistant United States Attorney from the Eastern District of Virginia persuaded his office to establish a Controlled Substance Unit. We are fostering a particularly creative relationship with that office, and are pleased to see this development.

It should also be noted that we draw upon the units for support in narcotics prosecution matters. Deputy Assistant Attorney General Irvin Nathan has established a Narcotics Advisory Committee to advise the Department in general and the Criminal Division in particular on matters pertaining to narcotics prosecutions. This committee is made up of senior prosecutors from around the country, all of whom have been involved with the Major Drug Trafficker program. In this area as in others, we recognize that there is a wealth of valuable experience in the offices of the

United States Attorneys, and it is our duty to identify it and share it with the prosecution community at large. This theme highlights our approach to the MDTPU's and indeed, to all the United States Attorneys.

The Narcotic and Dangerous Drug Section will continue to support and monitor the units and will recommend any needed action to improve or eliminate those that do not perform well.

Various portions of the GAO report discuss the perceived failure to adequately bring the resources of the Customs Service (and the Bank Secrecy Act for which it bears primary responsibility), the Internal Revenue Service (and the tax laws) and the Federal Bureau of Investigation (and its financial investigative expertise) to bear against narcotics traffickers. Administrator Bensinger can advise you of the efforts DEA has taken to develop better relations with these agencies. I am pleased to report that there have been significant developments toward this goal within the prosecution community.

Two years ago in Minneapolis, the joint efforts of DEA and Customs agents and an Assistant United States Attorney, in an investigation of a hashish smuggling operation out of India, led to the prosecution of narcotics traffickers for narcotics and customs (currency) violations. As a result,

the three principal defendants each received a substantial jail term and a \$500,000 fine (as provided in the Bank Secrecy Act.)

Recently in Los Angeles, a DEA agent, an IRS agent, and an Assistant United States Attorney, after a year of daily collaboration, secured an indictment which included counts alleging narcotics trafficking by several individuals and counts alleging evasion of income tax laws by the principal defendant. The evidence at trial was devastating. The information as to narcotics trafficking supported the charge of tax evasion, in that it showed the illegal source of enormous income. Likewise, the evidence of tax evasion enhanced the impact of the narcotics trafficking evidence. As a result, the defendants were convicted, and the lead defendant was sentenced to seventeen years in prison. Additionally, the combined application of narcotics law and tax law provisions completely deprived the principal defendant of the financial benefits of his years of narcotics trafficking.

Also in Los Angeles, an Assistant United States Attorney (and Chief of the Controlled Substance Unit), when presented with an enormous heroin trafficking organization that DEA had identified and worked on for several years, brought in

Customs and IRS agents and orchestrated a joint investigation that lasted another year. As a consequence, in August of this year, twenty-two persons were indicted and charged variously with violations of federal laws pertaining to narcotics trafficking, currency reporting, and income tax evasion. This investigation, utilizing the combined special talents of the various agencies, established that this conspiracy had derived profits in excess of 27 million dollars from narcotics trafficking over the past several years. All defendants at bar pleaded guilty rather than go to trial against these arrayed Government forces. In the process, the principal defendant admitted violation of the Continuing Criminal Enterprise statute (which carries a mandatory minimum ten year prison sentence), currency violations (of the Bank Secrecy Act) and income tax evasion (alleged in the indictment to pertain to income in excess of \$13 million dollars).

These cases represent landmark developments in narcotics prosecutions. The Narcotic and Dangerous Drug Section is working with DEA to make sure that the lessons learned and techniques developed in these prosecutions are made known to all prosecutors and agents. The cases have been highlighted in the NARCOTICS NEWSLETTER. Attorneys and agents

involved in these cases will participate in the 11th Major Drug Trafficker Prosecution Conference, sponsored jointly by DEA, the Criminal Division and the Executive Office for United States Attorneys, which will be held in Los Angeles in December. The conference will showcase the procedures and techniques utilized in these prosecutions. The conference attendees will include Assistant United States Attorneys and DEA agents from around the country.

This is not to suggest that there are no problems in the area of cooperative investigation. We concur with the GAO recommendation that there be a careful assessment of the extent to which the tax disclosure restrictions might adversely impact upon narcotics investigations and prosecutions. As Comptroller General Staats stated when he appeared before this subcommittee on October 25, it is clear that these restrictions are perceived as impediments to investigations and prosecutions. We offer the examples above to show that, in certain circumstances, with enormous effort consuming much time, agents and prosecutors have been able to develop joint narcotics and tax prosecutions. We intend to maximize this capability, but we do not mean to imply

that there are no problems that might warrant legislative attention.

Mention is also made in the GAO report of the DEA-FBI task forces and other involvements of the FBI in narcotics investigations and prosecutions. I can supplement the information provided in the report and by Administrator Bensinger with evidence of practical cooperation in the prosecutorial arena.

The report notes the participation of two (now three) Narcotic Section Attorneys in a major RICO-CCE prosecution associated with the DEA-FBI BANCO group in Miami. That case is currently in trial. For that reason, my comments must be limited, but we are proud of the extent to which sophisticated joint financial investigation has contributed to this case.

Additionally, a trial is now underway in the Central District of California wherein the defendants are charged with violation of the RICO statute in the operation of a putatively legitimate drug distribution company. The case was developed by the DEA-FBI task force, which is headed by a DEA group supervisor. The principal case agent is an FBI Special Agent. The NARCOTICS NEWSLETTER has already highlighted these cases, including, as is the



practice, the names and telephone numbers of the responsible attorneys and agents. We expect to present them at a future narcotics conspiracy conference.

Important cooperation is also being effected among prosecutors and agencies here in Washington. A Narcotic Section Attorney has been assigned primary responsibility for identifying and developing expertise in financial investigations. He has become a regular participant in meetings at the headquarters of both DEA and the Customs Service. He has travelled at Customs Service invitation and expense to lecture Customs agents on the impact that their financial investigative activities can have on narcotics prosecutions. At the same time, he is a regular participant with and counselor to the DEA financial investigations unit that was recently established by the Administrator. These interagency efforts have already produced two draft documents of guidance to narcotics agents and prosecutors regarding the Bank Secrecy Act and Title 21 forfeitures.

Another example of interagency coordination is in high seas cases. The interception and disposition of a ship carrying a load of marihuana from Colombia, for example, involves the Coast Guard, the Customs Service, the Immigration and Naturalization Service, the State Department, and the

Drug Enforcement Administration. Such efforts require extensive coordination. With this in mind, representatives of DEA and the Narcotic Section are conducting an ongoing series of meetings with representatives of these other agencies, to assure that the best possible evidentiary product is made available for prosecutions in courts of the United States.

The foregoing cases and examples illustrate a critical element in successful major drug prosecutions--the role of the prosecutor. We recognize our obligation to ensure that the efforts put forth by the various investigative agencies, particularly DEA, are supported and assisted by prosecutors who, in turn, have the best support possible from Washington. Moreover, just as a good prosecutor is elemental to the success of a particular case, so also is informed prosecutorial input necessary for a successful nationwide program. The Criminal Division is resolved to provide this input.

With regard to prosecutions abroad, we agree that the Janus Program, whereby DEA has labored to encourage prosecutions in Mexico of Mexican nationals who have committed narcotics offenses impacting upon the United States, should have better support from the prosecution community. We believe that the program can be rendered

more effective with the involvement of prosecutors. Indeed, before this recommendation was made, the Narcotic Section assigned a staff attorney (who is fluent in Spanish) to coordinate with DEA in support of the Janus Program.

Narcotics is an international business; contraband comes from overseas, and evidence, witnesses and money are often located overseas. The importance of gathering evidence abroad in support of domestic prosecutions is becoming increasingly obvious.

The GAO believes that the prospects for improvement in the efforts to seek extradition of drug traffickers and in obtaining evidence from abroad are not encouraging. We do not share this view. Criminal Division attorneys from the Office of International Affairs and the Narcotic Section participated in the negotiation of the recently completed treaties on extradition and mutual assistance with the government of Colombia. The extradition treaty provides that each of the contracting parties will not refuse to extradite its own nationals, in certain cases, if the request for extradition meets the treaty requirements in all respects. We are not unmindful of other hindering factors in the extradition process, but we do believe this to be a positive step and

a good omen for improvement not only with the Government of Colombia but perhaps with other important countries as well.

In the area of mutual assistance treaties, we believe that there are also encouraging prospects. We have recently signed a treaty on mutual assistance and extradition with the Government of Turkey. We have successfully concluded negotiations on a mutual assistance treaty with Colombia and are continuing such negotiations with the Dutch. The proposed texts of these treaties provide for more direct involvement of the Department of Justice. Indeed, the Attorney General will be the cognizant authority to respond to requests made pursuant to the treaties. By thus streamlining the process, the treaties will operate more efficiently and more effectively.

Differences among legal systems around the world assure that there will always be hinderances in the process of evidence gathering abroad. We do believe, however, that the results of these efforts seeking the cooperation of other countries warrant the conclusion that prospects for improvement are quite encouraging.

We are giving increased emphasis to this area of investigative and prosecutive effort. A panel including representatives of DEA Headquarters, the United States Attorneys,

the Narcotic Section and the Office of International Affairs will spearhead a discussion of evidence gathering abroad at the next drug trafficker conference for Assistant United States Attorneys and Special Agents of the Drug Enforcement Administration.

The report calls for a worldwide commitment to the effort to stem the flow of illegal narcotics. The Department of Justice endorses this in principle and practice. Our concerns have been underscored by recent evidence that we are facing a renewed influx of high purity heroin from the Middle East via Europe. The Criminal Division and DEA have resolved to anticipate and address this problem with a high degree of coordination and planning.

There is one area in which I believe the GAO report widely misses the mark. The report concludes that there is insufficient dedication and commitment to the utilization of conspiracy laws to immobilize major drug traffickers. This is simply not the fact. The conspiracy laws of the United States are the preferred prosecutorial vehicle among prosecutors and agents alike. It is universally accepted that we should not prosecute one defendant on substantive counts alone if we can build a conspiracy case.

The figures in the Report at page 18 are not accurate. The Executive Office for United States Attorneys has advised

that, during calendar year 1978, approximately 1800 defendants in 842 cases were charged in federal court with drug conspiracy violations. This is a sizeable number. At the same time, it must be recognized that there is a place in the Federal prosecutorial program for non-conspiracy cases. Simple "buy busts" and importations may be important to prosecute for a number of reasons. The sheer quantity of the controlled substance involved may identify the person as a significant violator. If the defendant receives an appropriate sentence, it matters not which statute was used. Also, simple cases are often the beginning of more complex ones. Defendants in such cases sometimes decide to cooperate with the forces of justice and become witnesses and sources of information. Considerations of economy and efficiency also pertain. Investigation and prosecution resources are limited, and should be focused on a given case only so long as the facts warrant. However, none of this should be seen as a lack of commitment to identifying and immobilizing narcotics conspiracies.

The GAO calls for Governmental action with regard to bail and sentencing in narcotics cases. We concur. On the question of bail, the report stresses the need to prevent individuals arrested for trafficking offenses from continuing to deal in drugs while on bail awaiting trial. This problem

does exist, but a greater problem is the failure of the system to assure that defendants will appear for trial and sentencing. There is a high fugitive rate in narcotics cases. Prosecutors on the Narcotics Advisory Committee report that the present Bail Reform Act provides appropriate factors for judicial consideration, but that sometimes they are not prudently applied. This difficulty, together with the obvious concerns about not improperly restricting the liberty of persons presumed innocent until convicted, causes us to move carefully in this area. Departmental representatives are studying the matter of how to develop legally sound bail provisions that will assure presence at trial.

On the question of sentencing, the Department has consistently supported sentencing guideline legislation. In connection with the proposed new Federal Criminal Code, former Attorney General Bell, Attorney General Civiletti and Assistant Attorney General Heymann have all endorsed sentencing guidelines. Such arrangements would go far to remedy some of the wide disparities in the sentencing of narcotics offenders.

The Department of Justice strongly supports federal-state-local cooperation in narcotics law enforcement. Most controlled substance violations are matters of concurrent

state and federal jurisdiction. Therefore, it is common to find state and local law enforcement officers participating in cases tried in federal court. Conversely, many joint federal and state investigative efforts have contributed to important state prosecutions. Federal prosecutors around the country work closely with their counterparts in the state systems. There are variations among federal and state substantive and procedural provisions of law. This encourages prosecutors on both sides to look for the most appropriate jurisdiction under which to prosecute narcotics traffickers.

One possible approach to cooperation between federal and local authorities is the cross-designation of prosecutors. For example, a local prosecutor may be authorized to try a case in Federal Court; conversely, an Assistant United States Attorney may be designated as a local prosecutor in state court. This system has met with some success in two federal districts. It may enable federal and local prosecutors to pool resources to try significant defendants in a particular community.

On the policy level, the Department encourages United States Attorneys to establish and develop federal-state



law enforcement committees in their jurisdictions. Currently, the Department of Justice, the National District Attorneys Association and the National Association of State Attorneys General are in the process of developing an executive working group which would support the efforts of the law enforcement committees and other forms of inter-governmental cooperation. The proposed bylaws of this executive committee would establish a special panel at the outset to devote itself to the problems posed by the prosecution of controlled substance cases.

The Narcotic and Dangerous Drug Section's monthly NEWSLETTER is sent to the National District Attorneys Association. The Criminal Division assists in securing the extradition of overseas narcotics offenders to stand trial in both state and federal courts. In extraordinary local drug prosecutions, the Department makes available, on a reimbursable basis, the Witness Protection Program, whereby critically important witnesses are provided new identities and safe locations. Last year, there were approximately a dozen such relocations of state and local witnesses.

This year, the Department of Justice Appropriations Act for fiscal 1980 provides for up to five million dollars in funds for state and local organizations which are developing

and sharing information essential to successful drug enforcement efforts.

In short, the common interest which both federal and state authorities have in stemming the flow of dangerous drugs has served as an effective catalyst for a considerable amount of cooperation among federal and state prosecutors and investigators. Problems remain in coordinating these efforts, but we hope to improve this cooperation and to utilize the lessons we have learned from cooperative drug enforcement efforts along a broad range of federal, state and local law enforcement efforts.

In conclusion, I respectfully submit that while the GAO report makes important contributions to the analysis of where we stand and where we should go in our national efforts to address the narcotics trafficking problem, there are important clarifications and significant recent developments that must be taken into account. I hope that I have imparted some sense of these factors today. Reflecting on the title of the report, I suggest that while gains have been made in controlling illegal drugs, and while the trade

does yet flourish, there are also important developments underway in the Department of Justice that represent steps in the right direction and give reason to expect significant improvements in the near future.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions that you may have.