THE WHITE HOUSE

WASHINGTON

October 7, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Proposed DOJ Bill on Intergovernmental Drug Task Forces

Assistant Attorney General Robert McConnell has submitted to OMB Director Stockman the above-referenced proposed bill and an accompanying proposed letter to the Speaker. The proposed bill would authorize the Attorney General to confer the federal law enforcement powers of DEA officers upon selected state and local law enforcement officers. This would solve a potentially serious problem confronted by those state and local law enforcement officers who participate in DEA task forces with responsibilities beyond the particular jurisdictions of the state and local officers. A local sheriff participating in a state-wide or interstate DEA task force, for example, really has no authority beyond his own county, and may be civilly and even criminally liable for his law enforcement activities in pursuit of the task force's objectives beyond his county. Permitting the Attorney General to confer federal law enforcement powers on such a sheriff would avoid these difficulties.

I have reviewed the proposed bill and proposed Speaker letter, and have no objection. A memorandum to Director Stockman is attached for your review and signature.

Attachment

THE WHITE HOUSE

WASHINGTON

October 7, 1983

MEMORANDUM FOR DAVID A. STOCKMAN
DIRECTOR, OFFICE OF MANAGEMENT
AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed DOJ Bill on Intergovernmental Drug Task Forces

Counsel's Office has reviewed the above-referenced proposed bill submitted by the Department of Justice, and has no objection to it from a legal perspective.

THE WHITE HOUSE

WASHINGTON

November 30, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: "Christian Science Monitor" Questions Regarding Anti-Drugs

David Willis of the Christian Science Monitor has submitted five questions on drug abuse for the President, and we have been asked to comment by 5:00 p.m. November 30 on the draft answers prepared by Carlton Turner's office. The proposed responses to questions 1-3 and 5 are unobjectionable. Question 4 asks if the President sees a communist-inspired effort in Cuba and behind the Iron Curtain to weaken America's youth through drugs. The proposed response is not responsive at all but discusses permissive theories of child-rearing. Turner's theory was probably to make the child-rearing point somewhere, whether the question was asked or not, but making it in response to this question is bizarre and may be misinterpreted as suggesting that certain child psychologists were communists. In addition, DEA Administrator Francis Mullen testified on May 12 that "When we examine the total amount of intelligence and evidence that is available from the 1970's, the Guillot investigation and its follow-up, and new intelligence now being developed, it is difficult not to believe that the Government of Cuba remains cognizant of the movement of drugs through its territory, and may be facilitating this movement." I see no reason for the President not to say as much. The attached draft memorandum for Darman contains a suggested substitute answer to question 4.

Attachment

THE WHITE HOUSE

WASHINGTON

November 30, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: "Christian Science Monitor" Questions Regarding Anti-Drugs

Counsel's Office has reviewed the above-referenced proposed responses to the Christian Science Monitor questions on drug abuse. We consider the bulk of the answer to question four to be nonresponsive. A discussion of theories of child-rearing in response to a specific question concerning communist-inspired efforts to promote drug abuse in the United States could easily be misinterpreted as a comment on the ideological leanings of child psychologists. In addition, evidence does exist to support a more direct response. On May 12, 1983, Francis Mullen, the Administrator of the Drug Enforcement Administration, testified that "When we examine the total amount of intelligence and evidence that is available from the 1970's, the Guillot investigation and its follow-up, and new intelligence now being developed, it is difficult not to believe that the Government of Cuba remains cognizant of the movement of drugs through its territory, and may be facilitating this movement." Unless something has happened in the interim to call this conclusion into question, we see no reason the President should not discuss it.

We suggest the following version of the answer to question four:

> There is evidence that many people in our country and overseas have tried to profit from the illegal drug trade. It is not always easy to tell whether they are motivated purely by greed or have some other purpose as well. Those officials directly involved with our drug enforcement effort have stated that the evidence suggests the Government of Cuba is turning a blind eye to the movement of drugs through its territory and may be facilitating this movement. As a general matter I'm sure those who oppose us are enjoying our frustrating moments as we try to undo the harm that has been done.

FFF:JGR:aea 11/30/83
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

November 30, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: "Christian Science Monitor" Questions Regarding Anti-Drugs

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FFF:JGR:aea 11/30/83
cc: FFFielding/JGRoberts/Subj/Chron

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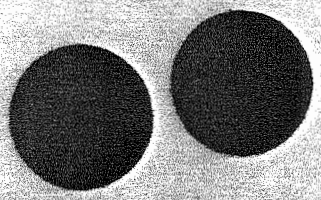
# WHITE HOUSE
# CORRESPONDENCE TRACKING WORKSHEET



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**Name of Correspondent:** Richard G. DARMAN

☐ **MI Mail Report** **User Codes:** (A) _____ (B) _____ (C) _____

**Subject:** Christian Science Monitor Questions re: Re Anti-Drugs

| ROUTE TO: | | ACTION | | DISPOSITION | | |
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| Office/Agency | (Staff Name) | Action Code | Tracking Date YY/MM/DD | Type of Response | Code | Completion Date YY/MM/DD |
| CUHOLL | | ORIGINATOR | 83/11/29 | | | / / |
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ACTION CODES:
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5/81

Document No. _____

# WHITE HOUSE STAFFING MEMORANDUM

DATE: 11/29/83 ACTION/CONCURRENCE/COMMENT DUE BY: 5:00 p.m. TOMORROW, 11/30

SUBJECT: CHRISTIAN SCIENCE MONITOR QUESTIONS RE ~~ANTI-DRUGS~~

| | ACTION | FYI | | ACTION | FYI |
|---|---|---|---|---|---|
| VICE PRESIDENT | ☐ | ☐ | HICKEY | ☐ | ☐ |
| MEESE | ☐ | ☑ | JENKINS | ☐ | ☐ |
| BAKER | ☐ | ☑ | McFARLANE | ☑ | ☐ |
| DEAVER | ☐ | ☑ | McMANUS | ☐ | ☐ |
| STOCKMAN | ☐ | ☐ | MURPHY | ☐ | ☐ |
| DARMAN | ☐P | ☑SS | ROGERS | ☐ | ☐ |
| DUBERSTEIN | ☐ | ☐ | SPEAKES | ☐ | ☑ |
| FELDSTEIN | ☐ | ☐ | SVAHN | ☐ | ☐ |
| FIELDING | ☑ | ☐ | VERSTANDIG | ☐ | ☐ |
| FULLER | ☑ | ☐ | WHITTLESEY | ☐ | ☐ |
| GERGEN | ☑ | ☐ | ROSEBUSH | ☐ | ☑ |
| HERRINGTON | ☐ | ☐ | _____ | ☐ | ☐ |

REMARKS:

Please provide any edits by 5:00 p.m. tomorrow, November 30th.

Thank you.

RESPONSE:

NOV 29 1983

Richard G. Darman
Assistant to the President
Ext. 2702

THE WHITE HOUSE

WASHINGTON

November 25, 1983

MEMORANDUM FOR RICHARD DARMAN

FROM: JACK SVAHN

SUBJECT: Christian Science Monitor questions

In the course of preparing a five-part series on the world-wide fight against drugs, the Christian Science Monitor's David Willis has asked the Drug Abuse Policy Office to get answers from the President and First Lady to specific questions regarding education and prevention that Mr. Willis could not get in person.

The questions were in a letter Mr. Willis sent to Pat McKelvey after visiting Washington and other American cities. Mrs. Reagan's questions and suggested answers have been forwarded to Sheila Tate.

Attached are the Presidential questions and the suggested responses prepared by Carlton Turner's office. On deadline, Mr. Willis has arranged to get the answers from Mr. McKelvey next Thursday, December 1, in a 9:30 a.m. (EST) telephone call from London. Therefore, we need clearance no later than the close of business Wednesday, November 30, 1983.

cc: Carlton Turner

draft statements/RR
for Christian Science Monitor

1. NOW THAT YOUR ANTI-DRUG CAMPAIGN IS WELL UNDER WAY, HOW ENCOURAGED ARE YOU BY RESULTS SO FAR?

We, as a nation, are making progress in fighting drug abuse, but it takes time to erase two decades of false security. All the public polls we've seen, from Gallup to the National Household Survey, tell us that the use of most drugs by Americans under 18 is coming down -- a good sign. But that doesn't mean we can relax our efforts. The most important change is in attitudes; drug use is becoming less acceptable. People are willing to speak out against drug abuse and to get involved in local efforts to stop it. This is most encouraging.

2. WHAT ARE THE BIGGEST REMAINING THREATS -- THE MOST DANGEROUS DRUGS, THE MOST VULNERABLE AGE GROUPS?

The most dangerous threat is the continuing use of alcohol and drugs by our children. I have been informed that cocaine, once thought of as only affordable by the wealthy, is being used by school age youth. That's another tragic example of how widespread the use of drugs has become. Also, I believe that it is a mistake to categorize drugs as "most dangerous." All illicit drugs are dangerous and by expressing an opinion of "most dangerous" we lull people into believing that the other drugs are less dangerous and, therefore, acceptable. This logic trap

contributed to most of our drug problems in the 1970's and we are not going to repeat it. I do not accept a concept of "responsible" or "recreational" drug use, or that some drugs are "hard" and others are "soft." There is nothing recreational about those children whose lives have been lost, whose minds have been ruined. Our children should not be exposed to such unnecessary risks.

3. CAN WE REALLY HOPE TO ACHIEVE A NEW DRUG-FREE GENERATION OF AMERICANS?

I believe we can. We must not accept a goal of anything less. I'm encouraged because teenagers themselves are seeing the effects that drugs, including alcohol, are having on their classmates, neighbors and families. They see the carnage on the highways and the inability of many classmates to learn and to remember things. There was a period when we didn't give young people credit for being able to recognize the obvious; but that, I am happy to say, has changed.

4. DO YOU SEE A COMMUNIST-INSPIRED EFFORT IN CUBA AND BEHIND THE IRON CURTAIN TO WEAKEN AMERICA'S YOUTH THROUGH DRUGS?

There is evidence that many people in our country and overseas have tried to profit from the illegal drug trade. However, the seeds already had been sown by some in our society who once enjoyed respectability as "experts" on rearing children. We've

all heard the pat excuses, such as "it's just a phase they all go through" and "let them do their own thing because they'll have to face the cruel world soon enough." Well, it is ridiculous to believe that mind-altering drugs are a desirable part of growing up. I'm sure those who oppose us are enjoying our frustrating moments as we try to undo the harm that has been done.

5. IS MORE INTERNATIONAL COOPERATION REQUIRED?

We are beginning to get the help we need. There has been a change In the attitude of some countries, especially as they realize that drug abuse -- once considered to be America's problem -- has become a major problem within their countries. They are discovering that we are serious in cracking down on traffickers, dealers and growers. We are serious about stopping the production of illicit drugs, wherever it occurs, and international cooperation is essential to our efforts.

THE WHITE HOUSE

WASHINGTON

February 22, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Subcommittee on Crime Meeting: Comprehensive Drug Abuse Prevention and Control Act of 1970

We have been provided with a copy of testimony to be delivered by an unidentified Justice Department official before the Subcommittee on Crime of the House Judiciary Committee, concerning diversion of legally produced controlled substances into illicit channels. The testimony supports passage of H.R. 4698, an Administration-sponsored bill that would (1) expand the authority of DEA to revoke the registration of those registered to handle controlled substances, (2) authorize DEA to fund and otherwise support state programs designed to reduce diversion of legally produced controlled substances, (3) permit the Attorney General to temporarily "schedule" a drug as a controlled substance on an emergency basis, to respond quickly to the creativity of drug abusers in finding illicit uses for legal drugs, and (4) refine DEA control over the import and export of drugs. The testimony also urges passage of the other parts of the Administration's Comprehensive Crime Control Act of 1983, in particular those provisions increasing penalties for drug offenses.

I have reviewed the testimony and have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

February 22, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: Subcommittee on Crime Meeting: Comprehensive Drug Abuse Prevention and Control Act of 1970

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective.

FFF:JGR:aea 2/22/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 22, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Subcommittee on Crime Meeting: Comprehensive Drug Abuse Prevention and Control Act of 1970

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FFF:JGR:aea 2/22/84
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# WHITE HOUSE
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JR

**Name of Correspondent:** Greg Jones

☐ **MI Mail Report** **User Codes: (A)** _____ **(B)** _____ **(C)** _____

**Subject:** Subcommittee on Crime meeting: Comprehensive Drug Abuse Prevention & Control Act of 1970. Specifically the diversion of legally produced & controlled substances.

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DRAFT

Chairman Hughes and members of the Subcommittee on Crime: It is a pleasure to appear before you again to discuss the diversion of legally produced controlled substances and legislative solutions to this menancing problem. HR 4698 would amend the Controlled Substance Act (CSA) and the Controlled Substances Import and Export Act, both of which are parts of the Comprehensive Drug Abuse Prevention & Control Act of 1970.

Abuse of diverted prescription drugs is a major tragedy for our nation. During the period 1980-1982 between 60 and 70 percent of all controlled substance mentions involving deaths and injuries were attributable to diverted drugs. Statistics compiled by the National Institute on Drug Abuse indicate that millions of young Americans are abusing stimulants, depressants, tranquilizers and analgesics.

Drugs are in our schools and in our businesses. This translates into the loss of lives, increased medical costs and the loss of productivity. Drug abuse among the young places a great strain on the family unit. Drug use in our businesses impacts on productivity and increases injuries and damages due to automobile and industrial accidents.

In previous testimony before this Subcommittee, DEA has provided a detailed account of diversion activities to demonstrate that these are not isolated cases but part of a nationwide problem in the United States. We have documented successes with regard to enforcement actions against the methaqualone distributing stress clinics, diplomatic initiatives that reduced the diversion of methaqualone from international commerce and the substantial reduction of the methaqualone quota. These actions contributed to over 50 percent reduction in methaqualone injuries from 1980 to 1983. Several significant events have recently occurred concerning the diversion and abuse of methaqualone. The most important of which is that the only marketer of methaqualone products in the U.S. ceased distribution of all its methaqualone products effective January 31, 1984. On the international scene, the Government of India announced at this year's United Nations Commission on Narcotic Drugs meeting that India had discontinued the production of methaqualone. This responsible and praiseworthy action resulted from high level discussions in which major cases of methaqualone diversion were reviewed.

Despite our recent successes in controlling methaqualone diversion and our past successes with amphetamines and barbiturates, the abuse of drugs diverted from licit sources continues to be a major problem in the United States. Methaqualone is only one of more than a dozen legally produced controlled drugs that consistently dominate drug abuse injury statistics.

One of the most distressing aspects of this abuse problem is that, for the most part, the United States is the source of the abused substances. Fortunately, however, this also enables us to trace these drugs through the legitimate distribution chain, and therefore offers optimism for legislative solutions to drug diversion. H.R. 4698 provides the basis for a number of new initiatives and for strengthening our current ability to curtail the diversion of legally produced drugs.

I would like to discuss several key issues addressed by HR 4698 in some detail since these legislative changes can serve as the cornerstone of a major initiative to finally win the fight against the diversion and abuse of legally produced drugs. It is noted that this measure represents the Diversion Control Amendments

originally introduced on behalf of the Administration as Title V of S.1762 and Title VII of HR 2151.

Practitioner Registration

One of the key elements of HR 4698 is found in Section 6 which amends Section 303 (f) [21 U.S.C. 823(f)] to provide greater latitude on the part of the Federal government to deny practitioner applications for registration.

Federal authority over the prescribing, administering or dispensing of controlled drugs by practitioners has existed since the Harrison Narcotic Act of 1914 and is an essential element of the Controlled Substances Act (CSA) of 1970. In 1975, the U.S. Supreme Court reaffirmed this objective of the CSA by upholding the conviction of a physician who was prescribing drugs in a manner that was outside legitimate channels (US vs Moore 96 S.Ct.335). In so doing, the Court observed that the intent of the CSA was to strengthen drug law enforcement and that practitioners who violate its provisions are subject to the same penalties as other drug traffickers.

Federal enforcement action against the diversion of legitimate drugs is limited by virtue of the authority DEA has to deny or revoke the registration of practitioners. Under current law, the DEA must register physicians, pharmacies or other practitioners if they are authorized to dispense drugs by the law of the state in which they practice. The only grounds upon which the DEA may deny or revoke such registration are: (1) if the registrant materially falsifies an application, (2) has been convicted of a drug-related felony or (3) has had a state registration suspended, revoked or denied.

As GAO pointed out in their 1978 report "Retail Diversion of Legal Drugs - A Major Problem with no Easy Solution", these limited grounds have contributed to the diversion problem. Many states do not have the capability to effectively take action against violative registrants. This limitation negatively effects DEA's ability to deny or revoke registrant applications on the state registration criteria. The drug felony criteria also has its limitations. Many controlled drug violations involving prescription drugs are not felonies under state law and therefore cannot be used in a DEA revocation action.

H.R. 4698 proposes an additional element pertaining to "consistency with the public interest" be added to the grounds upon which DEA may revoke or deny a registrant application. The criteria for making such a determination would include the recommendation of the appropriate state licensing or disciplinary authority, prior conviction record with respect to controlled substances, compliance with applicable Federal, state and local laws relating to controlled substances and evidence showing that the practitioner's activities constitute a threat to the community. This provision does not require a detailed review of all practitioners, but provides the opportunity for action in the most egregious cases. DEA would have to initiate an action and sustain the burden of proof in an appropriate administrative hearing.

In those cases in which a practitioner's registration is clearly contrary to the public interest, the proposed legislation will permit the Federal government to move surely and swiftly to eliminate the danger to the public safety. This proposed provision retains the Attorney General's current ability to routinely register practitioner applicants with respect to the registration of manufacturers and distributors to determine whether an applicant's registration would be in the

public interest. At the same time, deference would continue to be given to the opinions of the state licensing authorities since their recommendations will be the first of the new factors to be considered in making the public interest determination. The physician's DEA registration, it should be noted, is separate from a physician's state license to practice medicine; therefore, its revocation only precludes the physician from prescribing the drugs specifically controlled under the CSA and does not preclude the prescribing of other prescription drugs nor does it preclude his continued practice of medicine.

State/Local Assistance and Cooperation

Section 11 of HR 4698 addresses the issue of Federal assistance to states in combating the problem of diversion. As in most other areas of law enforcement the State and Federal governments share jurisdiction over most aspects of drug diversion. Since passage of the CSA, the majority of Federal resources against diversion has been directed at the manufacturer/distributor level while most of the burden for combating diversion at the practitioner level has been left to the individual states. Programs to help the states combat diversion are currently limited to cooperative

investigations and various training efforts. While these have proved to be effective on the small scale particularly when concentrated in a single area, a much broader approach to state assistance is necessary.

HR 4698 would enhance DEA's ability to assist state efforts by creating grant authority to fund state programs to curtail practitioner diversion. The assistance would focus on those areas identified by DEA's "Comprehensive Final Report on State Regulatory Agencies and Professional Associations" and related GAO reports, as the major areas which inhibit state action in curtailing practitioner diversion. These problems include legal deficiencies, organizational and resource problems, and inadequate training. Modest grants would be established for a specified term with appropriate matching funds provided by the state. Each grant would be for a specific effort aimed at the diversion problem.

Through the expansion of its ability to assist state efforts, DEA could identify and provide the necessary resources to correct many of these deficiencies. In many cases, the first step in the process would be to establish an Evaluation Task Force to assess existing state capabilities and identify specific needs. Based

on determined needs, funding would then be provided for such projects as the preparation of improved state laws regarding controlled substance handlers; revisions concerning the authority, duties and responsibilities of state regulatory boards; establishing improved systems of controlled substance licensing; and initiation of programs to investigate and adjudicate actions against registrants.

In many states, even where there are adequate legislative provisions and regulatory boards, resources are not adequate to provide effective controls. Regulatory boards often have no investigators or an inadequate investigative staff. Similar situations exist in state and local enforcement agencies where little or none of their staffs are trained to work on the practitioner diversion problem.

The expansion of the state assistance authority of the Attorney General is a significant step in reducing the diversion of legitimately produced controlled substances. The grant-in-aid provision, combined with increased Federal support in the areas of training, intelligence support, legal assistance and cooperative information exchange, will be part of a comprehensive

program aimed at combating practitioner diversion at the state and local level.

The ultimate goal of this Federal assistance would be to have a system of effective state controls at the practitioner level in every state. To accomplish this, an organized system of grants is needed. Coordinated by DEA and directed at the most significant problem areas, this system of grants can have a major impact on the ability of individual states to maintain effective controls against practitioner diversion. Consistent with its legislative mandate, DEA would continue to pursue its mission of immobilizing those high-level practitioner violators where the highly complex and often multi-state operations clearly warrant Federal action.

Emergency Scheduling

Section 3 of HR 4698 adds to Sec. 201 of the CSR (21 U.S.C. 811) an emergency scheduling procedure to be utilized in event of an imminent danger to the public safety. This section adds a new Subsection 21 U.S.C. 811(h) establishing a procedure for the temporary scheduling of any drug or substance, without prior notice or hearing, and without requirements of

Subsection (b) when such action is necessary to avoid an imminent hazard to the public safety.

Subsection (b) of 21 U.S.C. 811 requires that the Attorney General obtain from the Secretary of Health and Human Services (HHS) a scientific and medical evaluation prior to initiating procedures for control. While the statute provides that such evaluation and recommendation be submitted to the Attorney General in a reasonable time, there is no specified response period. Historically, even when given a high priority, such as in the case of rescheduling PCP and the scheduling of its analogs, an action under Subsection (b) takes at least six months, and perhaps a year or more, to complete. During the time between identification of a major problem and the eventual scheduling action, enforcement actions against traffickers of these drugs are severely limited.

Under this provision, a new procedure may be envoked if the Attorney General finds that a temporary rule is necessary to avoid an imminent hazard to the public safety. In making a finding as to the issuance of a temporary rule, only those factors set forth in 21 U.S.C. 811(c)(4), (5) and (6) would be utilized, including, but not limited to, actual abuse, diversion

from legitimate channels and clandestine importation, manufacture or marketing.

The finding of an "imminent hazard to the public safety" as conceived in this provision is not the same as the "imminent hazard to public health" provision of the Food Drug and Cosmetic Act (FDCA) which is invoked to take unsafe drugs off the legitimate market. The public safety issue included in this section is based on the Congressional finding expressed in the CSA that the trafficking and abuse of drugs which have a substantial and detrimental effect on the health and welfare of the American people. It was the intent of the CSA to protect the public from the dangers posed by trafficking and abuse of these substances. The "imminent danger to the public safety" as conceived in HR 4698 refers directly to the trafficking and abuse of a particular drug or substance.

There is also a clear distinction between the authority created in this provision and the review made prior to marketing a drug to determine if it will require control under the CSA. The latter is based upon scientific evaluations and clinical studies. As we saw in the case of methaqualone the popularity of a drug among abusers is not necessarily predictable prior to

marketing. We see this provision as allowing the government to deal primarily with new drugs of abuse that are of clandestine origin but also to deal with unforeseen increases in abuse of drugs that were marketed in an uncontrolled status.

Under the provisions of this section, the Attorney General would transmit a recommendation, simultaneously with the publication in the Federal Register of a notice of proposed rulemaking, to the Secretary of HHS who, within 30 days, must concur or reject the proposal. Consideration by the Secretary will be limited to the factors set forth in the previous paragraph unless the Secretary has currently available evidence relating to the lack of abuse potential of the drug or substance. Rejection of temporary control on the part of the Secretary would be binding on the Attorney General. Control status would become effective 30 days following the publication of a Final Order by the Attorney General providing a full 60 day period between publication of a Notice of Proposed Rulemaking and the effective date of control.

The authority for allowing the Attorney General to make control decisions based on law enforcement criteria is within the scope of Congressional intent in the CSA.

Temporary controls will be limited to those necessary to take enforcement actions against those who pose a threat to the public safety through the diversion, clandestine importation, manufacture, or marketing of abusable drugs. The establishment of registration, recordkeeping requirements, and criminal penalties for trafficking would fall into this category of emergency control and, in an emergency situation, would be available to the Attorney General.

The Congress was acutely aware of the need for two types of determinations to protect the public. The time lag between identifying an abuse problem and obtaining the medical and scientific determination has worked against the public interest. The ability to implement very limited control provisions, based on clear evidence of actual abuse and trafficking, is not intended to replace this balance, but to utilize the recognized differences in the two determinations in the best interest of the public.

Temporary scheduling would be for the term of one year, except that the Attorney General may, during the pendency of proceedings under Section 201(a) 21 U.S.C. 811(a), extend the temporary placement for periods of six months. The temporary rule is vacated upon the

conclusion of a subsequent rulemaking proceeding under 21 U.S.C. 811(a).

During the temporary schedule period, penalty for the illegal manufacturing, distributing, dispensing or possession with intent to manufacture, distribute or dispense would be that provided by 21 U.S.C. 841(b)(1)(B) for Schedule III controlled substances. With respect to the requirements of Title II, Part C of the CSA, only Sections 302 and 307 (21 U.S.C. 822 and 827) will apply during the temporary schedule period.

This new section would provide effective protection for the public safety and, at the same time, would minimize the burden to legitimate users of the temporarily scheduled substance. The majority of controls involving the legitimate industry would not be in effect during the temporary period (i.e., labeling, quotas, order form, prescription, import and export requirements). Registration and records will be required to facilitate the enforcement of the statute. Normal scheduling procedures under 21 U.S.C. 811(a) would be initiated by envoking the temporary scheduling provision.

This section will not be applicable to drugs that are already controlled in one of the five schedules under the CSA nor is it intended to duplicate the review of these drugs' potential for abuse prior to marketing approval. It is intended to bring under limited control those drugs that do not fall under the control of the CSA but whose trafficking and abuse pose a hazard to the public safety.

Extension of Registration Period for Practitioners

Section 5 of HR 4698 amends 21 U.S.C. 822(a) by authorizing the Attorney General to establish a registration period for practitioners that may be up to three years in duration, but not less than one year. Currently, all registrants are required to register annually. Under this provision, manufacturers and distributors will continue to register annually.

This provision will grant the authority to the Attorney General to remove, by regulation, the burden of annual registration for practitioner registrants, which make up 98 percent of all DEA registrants. The time and expense of annually completing and filing of application forms for the approximately 640,000 practitioner registrants can potentially be reduced by two-thirds.

Paperwork reduction will be significant for both the Government and industry.

In addition to the cost and time savings to registrants, an internal DEA study estimates that over $700,000 a year could be saved in processing costs if the registration period were extended to three years. Additionally, reduction in the workload will increase responsiveness to registrant inquiries and avoid delays in the processing of applications.

Import/Export Provisions

Sections 14 through 22 of HR 4698 involve changes in the import and export provisions of the Controlled Substances Import and Export Act. These amendments improve import and export controls and at the same time improve the efficiency of the U.S. import/export system.

Section 14 would allow DEA to authorize the importation of limited quantities of any controlled drug for scientific, analytical or research uses. Situations routinely arise in which researchers need specific substances for comparative studies on foreign developed compounds unique in their manufacture. This new

section would facilitate and accommodate the acquisition of such substances by legitimate researchers or analytical facilities.

Section 15 would provide the Attorney General with the authority to require import permits for any non-narcotic controlled substances in Schedule III. This authority will rectify the inconsistency in the CSA that requires permits for narcotics in Schedule III but not non-narcotics of equal abuse potential. It also allows for greater control over the importation of highly abused Schedule III non-narcotics.

Section 16 would achieve two major objectives. The first provision clarifies that the documentary proof of foreign approval currently required under 21 U.S.C. 953(e)(1) is to be obtained from the country in which the substances are ultimately destined for consumption, not from the country of transshipment. The United States has been a leader in the worldwide effort to curtail diversion of drugs from legitimate commerce. This provision will not only improve our ability to deal with international diversion but will also stimulate other nations to follow our example. The second provision would provide the Attorney General to require export permits for any Schedule III substance. As in

the case with import permits for Schedule III drugs included in Section 15 of HR 4698, this provides the Attorney General with the authority to require permits on a drug by drug basis and does not levy permit requirements on all Schedule III drugs.

Section 21 establishes a new section creating procedures for actions to deny, revoke or suspend a registration to import or export. According to this provision, the Attorney General would have the authority to deny an application or suspend or revoke a registration to import highly abusable Schedule I & II substances if the evidence is such that he cannot make a positive finding that such registration is in the public interest. The burden for denial, suspension or revokation for Schedule III, IV and V drugs would be on the Attorney General to show that such registration was not in the public interest. This section also would give the Attorney General more flexibility to hold hearings on import applications when such hearings are requested by competitors. Requiring a hearing on request has considerably slowed the ability of new applicants to obtain registration.

Other Provisions of HR 4698

While this testimony has detailed some of the major provisions of HR 4698, The DEA supports the entire bill with a few minor technical modifications. Overall, HR 4698 advances a basis for improving drug law enforcement in the area of diversion, improving the ability of the Federal government to assist the states, as well as streamlining the regulatory framework and reducing the regulatory burden involved in implementing the provisions of the CSA.

Other Necessary Legislative Changes

The provisions of HR 4698 are a major step forward in the fight against the diversion and abuse of legitimately produced drugs. However, the effort against trafficking in diverted drugs is only part of the larger effort of this Administration to combat organized crime and drug trafficking. While we support the provisions of HR 4698, we strongly emphasize the importance of all the provisions of the "Comprehensive Crime Control Act of 1983" (S.1762 and HR 2151). The reforms sought in this legislative package are

essential to the successful continuation of our efforts to eliminate drug trafficking in the United States.

In keeping with the subject of this hearing, however, I will limit my specific comments on HR 2151 to the provisions of Title III, Part A - Controlled Substances Penalties. The strengthening of the penalty provisions of the CSA are a key to effective enforcement in the diversion control area. Many of the most highly abused drugs in this country are non-narcotics. Maximum non-narcotic penalties have traditionally been significantly lower than those for narcotics in the same CSA schedule (15 years for narcotics versus 5 years for non-narcotics).

The artificial distinction between narcotics and non-narcotics in the same schedule is inconsistent with the scheduling structure of the CSA. Drugs are grouped into schedules under the CSA based on their potential for abuse. Drugs of similar abuse potential are grouped in the same drug schedule. The difference in penalties are a carryover from a time when the danger of these non-narcotics was not fully understood. Over the last 15 years or so, the dangers of drugs such as PCP, LSD, amphetamines, methaqualone and others have become more apparent.

The distinction between penalties for narcotics and non-narcotics in the same schedule has hindered the enforcement effort by significantly affecting sentences given to non-narcotic drug traffickers. In FY 1983, the average sentences for G-DEP I and II non-narcotic traffickers were over one third lower than those for the same level traffickers in narcotic drugs. The result of this is that non-narcotic traffickers are back on the street and able to return to their illegal endeavors sooner than those who traffic in narcotic substances. Accordingly, increasing the penalty provisions of the CSA non-narcotic drugs offenses to those proposed in the Comprehensive Crime Control Act of 1983, is a necessary part of the increased effort to curtail the diversion and abuse of legally produced drugs.

Proposed Technical Amendments

The following are suggested technical amendments to HR 4698.

Section 1. The term "Dangerous Drug" in the title of the Act does not accurately describe the scope of the Act. The proposals contained within the measure effect the diversion of narcotics and hallucinogens as well as

the group of drugs traditionally known as "dangerous drugs". Perhaps the term "controlled substance" would be more accurate.

Section 2. The new paragraph (14) of Section 102 of the Act refers to the use of the term isomer in Section 202(c) Schedule II(a)(4). However, the sentence including the term isomer has been inadvertently left out. It is recommended that the sentence - "The substances described in this paragraph shall include cocaine, ecgonine, their salts, isomers, derivatives, salts of isomers and derivatives," be added to the end of Section 202(c) Schedule II(a)(4).

Section 4. In drafting the expansion of the important exemption provisions of Section 201(g) [21 U.S.C. 811(g)], the requirement that the Attorney General exclude any non-narcotic substance if it is an over-the-counter drug under the Food Drug & Cosmetic Act was inadvertently deleted. To rectify this, the language used in S.1762 Section 507 (as amended) is recommended.

Section 13. Although the inclusion of drugs which are possessed in violation of the title is necessary, it appears that including it by amending Section 511(a)(1)

[21 U.S.C. 881(a)(1)] may create some difficulties due to cross references with later subparagraphs (specifically 511(a)(3) and (a)(4). Therefore, it is recommended that 511(a)(1) remain unamended and that a new subparagraph 511(a)(7) be added to read "(7) All controlled substances which have been possessed in violation of this title".

Section 18 and 19. Both these sections were meant to simplify the existing statute and avoid unnecessary cross references to other titles. No substantive changes were intended. However, a number of comments have been received since the provision was published that indicate a great deal of confusion and a variety of conflicting interpretations concerning possible substantive changes. It is our opinion that the confusion and the multitude of differing interpretations concerning the provision would more than offset the positive aspects of avoiding cross references between the titles. Therefore, we believe both Section 18 and 19 should be deleted. Since no substantive changes were intended, this would have no negative impact in terms of controlling diversion.

Section 21. While we strongly support all the provisions of Section 21, we are suggesting additional

language for Section 1008(i) (page 18, lines 19-24). The reason we are suggesting this change is to emphasize that while the Attorney General would not be required to hold a hearing, he may hold a hearing if the situation warrants. It is suggested that the following sentence be added to the end of the proposed paragraph 1008(i) - "The Attorney General may, at his discretion, provide the opportunity for a hearing prior to taking final action."

Conclusion

The CSA reflected previous experience involving the changes in drug abuse and trafficking patterns. It is now time to use our experience of the last 13 years to revise our ideas about suppressing diversion of legally produced controlled substances. This is particularly true as it relates to diversion by practitioners and to our relationship with state and local officials who are our partners in the total drug effort.

We are now in the midst of the most extensive efforts against drug trafficking in our nation's history. Because of the magnitude of the diversion problem, the extent of deaths and injuries resulting from diverted

drugs and the pervasive impact on our youth, no major effort against drug abuse can be complete without a major initiative against diversion of legitimately produced drugs.

The individuals who handle controlled substances are, in the overwhelming majority, dedicated professionals who are being given a bad reputation by a relatively small percentage of their profession, however, these unscrupulous presons can have and is having a major impact on this Nation's abuse problem. Everyone involved in the drug abuse effort--Federal and state officials, state regulatory boards, professional and industry associations, concerned citizens--must work together until this problem is brought under control.

This is an aspect of the drug abuse problem where we can exert sufficient control and influence to have a major impact. We have made great strides in the past with existing legislation and resources. The provisions of HR 4698 will greatly increase our future effectiveness. With a comprehensive and dedicated effort we can win this battle and in doing so bring us that much closer to winning the war against drug abuse.

THE WHITE HOUSE

WASHINGTON

February 22, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: World Wide Drug Production Estimates Before the Foreign Affairs Committee Task Force on International Narcotics Control

OMB has asked for comments by 3:00 p.m. today on testimony to be delivered tomorrow before the Task Force on International Narcotics Control of the House Foreign Affairs Committee. The testimony, tentatively to be delivered by the Deputy Assistant Administrator for Intelligence of DEA, concerns the methodology used in compiling the annual illicit drug production estimates. The testimony discusses how the data was compiled, and the obvious difficulties in obtaining accurate information on illicit crop production from around the world. The testimony concludes by noting that it would be more efficient for Congress to require submission of the annual drug production statistics by March 15 rather than February 1. The February 1 deadline does not provide sufficient time for data gathered on a calendar year basis by other governments to be assimilated into the report. I have no objections.

Attachment

THE WHITE HOUSE

WASHINGTON

February 22, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING Orig. signed by FFF
COUNSEL TO THE PRESIDENT

SUBJECT: World Wide Drug Production Estimates Before the Foreign Affairs Committee Task Force on International Narcotics Control

Counsel's Office has reviewed the above-referenced testimony, and finds no objection to it from a legal perspective.

FFF:JGR:aea 2/22/84
cc: FFFielding/JGRoberts/Subj/Chron

THE WHITE HOUSE

WASHINGTON

February 22, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

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cc: FFFielding/JGRoberts/Subj/Chron

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# WHITE HOUSE
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**Subject:** World Wide Drug Production Estimates before the Foreign Affairs Committee Task Force on International Narcotics Control

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5/81

U.S. Department of Justice

Drug Enforcement Administration

*Washington, D.C. 20537*

# DRAFT

STATEMENT

OF

ON

WORLDWIDE DRUG PRODUCTION ESTIMATES

BEFORE

THE FOREIGN AFFAIRS COMMITTEE

TASK FORCE ON INTERNATIONAL NARCOTICS CONTROL

UNITED STATES HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1984

# DRAFT

Mr. Chairman and Members of the House Foreign Affairs Committee Task Force on International Narcotics Control, I appreciate the opportunity to discuss the development of illicit drug production estimates for the International Narcotics Control (INC) Strategy Report. I appear here today in a dual capacity, first as the Deputy Assistant Administrator for Intelligence, Drug Enforcement Administration (DEA), and secondly as the Chairman of the National Narcotics Intelligence Consumers Committee (NNICC). The NNICC has been producing estimates concerning the foreign production of illicit drugs and their movement into the United States since 1978. In addition, the NNICC Subcommittee on Production Estimates actively assisted the Department of State in the development of estimates included in the first INC Strategy Report and will continue to support the development of future reports.

The 1983 INC Strategy Report represents the best estimates available at this time concerning crop cultivation, yield, eradication and other drug removals in each area. The estimates were developed as an extensive cooperative effort by the Department of State, the NNICC, U.S. Embassies and foreign governments. Forty-six embassies submitted reports in response to a questionnaire disseminated by the Department of State Bureau of International Narcotics Matters (INM). The country reports represent a collection of information available at the field

level from all sources, including the host government. In addition, members of the NNICC Production Estimates Subcommittee provided existing estimates and developed independent assessments based upon data supplied by participating agencies. These assessments were then used to cross-check and supplement field reports and to provide INM with data on denied areas such as Iran and Afghanistan where no country input was possible. Finally, the NNICC Production Estimates Subcommittee reviewed all input and recommended the final estimates.

The resulting INC Strategy Report is noteworthy in that it is the first comprehensive collection of data from all drug source countries based upon a consistent timeframe and content. The bulk of the information provided by the U.S. Missions was well-prepared, thoughtful and accurate insofar as data were available. Nevertheless, it should be noted that much of the production data in the report, as noted therein, "should be considered preliminary, some even speculative, and most should be considered as data for which attempts are being made at improvement and refinement." A large part of the problem is inherent in the process of estimating illicit drug activities. Other problems are unique to the INC Strategy Report because of the required reporting schedule.

The INC Strategy Report estimates are based upon many of the same data and methodologies which are used to develop the

Narcotics Intelligence Estimate (NIE), an unclassified national assessment produced by the NNICC on an annual basis. The NIE allows the 11 agencies with an interest in narcotics intelligence to speak with one voice on the production and use of illicit drugs.

DEA has chaired the NNICC and performed a central role in the development of its annual estimates since 1978. Other organizations represented on the NNICC include the Department of State (INM); Department of Defense; Federal Bureau of Investigation (FBI); Internal Revenue Service (IRS); National Institute on Drug Abuse (NIDA); U.S. Customs Service; U.S. Coast Guard; and the White House Drug Abuse Policy Office. The Central Intelligence Agency (CIA) and the National Security Agency (NSA) participate as observers.

Since mid-1981, long-term initiatives have been undertaken to improve both the accuracy of data available to the NNICC estimation process and the quality and balance of the resulting estimates. Of particular importance, the use of advanced technology in 1982 gave us our first reliable estimate of the amount of acreage dedicated to cannabis cultivation in the primary source area, Colombia. Other similar advancements in data collection are being implemented or planned wherever possible. In 1983, the NNICC Production Estimates Subcommittee, representing DEA, INM and CIA, was established to review current production estimates and act as a clearinghouse for new data. In

addition, major refinements continue to be made in the methodology used for the NIE.

Nevertheless, the basic problem with the NIE has been and continues to be an insufficient amount of accurate information in many areas because of the covert and illicit nature of the activities being estimated, denied access or a range of other problems. The estimates developed for the INC Strategy Report are affected by many of the same factors inherent in the NIE. In particular, three obstacles will continue to affect the quality of estimates concerning illicit drug production and trafficking in foreign countries although gradual improvements are continually being made.

First, the validity of the data for our estimates is determined, to a great extent, by the method of collection. Collection resources vary from area to area. For example, the use of human intelligence sources prevailed in Southwest Asia; therefore, estimates depend largely on limited observations in denied areas. In Iran, estimates are dated and probably inaccurate. In Afghanistan, estimates are based upon limited human intelligence samplings and the wide range of the estimate (400 to 575 metric tons) is indicative of our confidence level. We do have reasonable confidence in our estimates concerning production in Pakistan, but at this point Pakistani production

represents less than 10 percent of the total output in the region.

In Southeast Asia, the single weakest point in the reports received from the U.S. Embassies was the estimated number of local drug users. In most cases, estimates of local consumption are based on "official" host government figures. In Asia, as well as other areas, countries tend to minimize their abuse problem and consistently underestimate their abuse population. Burma, for example, lists only 7,500 addicts when realistically the number should probably be much higher, given the proximity to production areas and distribution routes, high availability and low prices. Hong Kong claims only 45,000 to 50,000 addicts, when twice that number are believed to exist.

Second, even with a high priority and a good host government relationship, collection is often extremely difficult in major production areas. Central government authority is weak in many of these locations. In the Golden Triangle, for example, one-half to two-thirds of Burma's production of approximately 600 metric tons of opium occurs in Burmese Communist Party (BCP) controlled areas of the eastern and northern Shan State which lie beyond the Rangoon Government's reach. Moreover, the military stalemate between the Burmese Government and the Communist rebels indicate that opium production in those areas will continue unchecked. Likewise, the heroin refineries in the Golden

Triangle are largely concentrated along the Thailand/Burma border in locations outside governmental control and run by well-armed insurgent forces and trafficking organizations.

Other problems, such as rough terrain, lack of communications systems and inadequacy of host government resources, also limit our collection capabilities. For example, none of the estimates concerning coca cultivation in Peru or Bolivia are based on current, systematic surveys using acceptable statistical sampling techniques or modern aerial technology. The capability exists for conducting such surveys, but they are both time and resource intensive. Both Bolivia and Peru, as well as many other drug source countries have limited resources and funding available to maintain current data on acreage under cultivation.

Third, although past activities can be measured with some degree of success, it is difficult to project future activities with a high degree of certainty. Production, eradication, seizures and arrests are not static from year to year and are significantly affected by changes in government, governmental policy, weather and enforcement emphasis. In Asia, for example, the single most important factor concerning production is the weather. The 1979 and 1980 opium harvests in the Golden Triangle were reduced to approximately 200 metric tons (less than one-third of subsequent harvests) because of drought conditions. Since the drought years, the Golden Triangle has enjoyed three

bumper opium crops. The importance of Southwest Asian heroin on the international market is largely relative to weather conditions in the Golden Triangle.

Traditional weaknesses in data and inconsistency in methodology are exacerbated by the early reporting date required by the ~~Hawkins-Gilman Amendment~~ Public Law 98-164. The requirement for an annual report concerning the previous fiscal year to be submitted to Congress by February 1 is impossible to meet if we are to make full use of all data which are normally used in developing estimates. A major component of the data base, especially as it concerns eradication, arrests and seizures, is derived from host government statistics which are not available by U.S. Government fiscal year but are available by calendar year. Because we must report on a calendar year basis, the February 1 deadline does not allow sufficient time for full collection, transmittal and analysis of year-end data. This problem could largely be corrected by changing the reporting date to March 15 when most calendar year data are available.

In conclusion, I will note that the most significant developments highlighted in the INC Strategy Report are perhaps the increased initiatives being undertaken by governments around the world to reduce their drug abuse and production problems. Many of these initiatives are related to greater awareness by foreign governments of their own internal drug abuse problems, an

awareness which will be heigthened by continued refinement of our knowledge concerning the worldwide drug situation.

Thank you for this opportunity to summarize the key elements involved in the development of intelligence estimates for the INC Strategy Report. We welcome the active involvement of the Congress in the effort to reduce the supply of illicit drugs from foreign sources, and we will continue to do everything possible to provide the information necessary to support the decision making process. I shall be pleased to answer any questions you or other members of the Committee Task Force may have.

DRAFT