MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 4, 1983

FOR: FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Department of Justice Report on S. 645, the Courts Improvement Act of 1983

Jim Murr from OMB's Legislative Reference shop has provided a copy of the Department of Justice's proposed letter to Chairman Thurmond on the above-referenced bill. Of particular interest is Title VI of the bill, which would establish the temporary Intercircuit Tribunal. Justice's letter simply notes that "[d]ue to the complex policy issues that are presented in title VI, the Department requests permission to submit its comments on this title at a later date." I see no objection to this.

Justice supports titles I, II, III, and V. Title I abolishes the mandatory appellate jurisdiction of the Supreme Court, making the appellate docket entirely discretionary. The Administration has supported this provision in the past. It would eliminate the requirement that the Court decide certain cases on the merits regardless of their general significance, easing the Court's workload.

Title II, also supported by the Administration in the past, eliminates the 50-odd provisions according priority on court dockets to certain types of cases. This is a "good government" reform, since there is generally no rhyme or reason to the priorities, which simply reflect each legislative committee's view that cases under the statutes it drafted are the most important cases in the courts. Indeed, there are about a dozen types of cases which must be given priority on the docket over all other cases. This raises an interesting conundrum when a judge has four different cases, each one of which is to be given priority over all others -- including the other three.

Title III upgrades judicial survivors benefits, to alleviate at least partially the state of affairs captured by former Judge Mulligan's statement that he "could live on his judicial salary, but couldn't die on it."

Title IV would create a State Justice Institute, to fund improvements in state court systems. We have opposed this in the past, primarily on budgetary grounds, and Justice's letter does so again. The letter also appropriately objects to the scheme for appointing members to the contemplated State

Justice Institute Board. Under the bill the President would appoint 7 members from a list of only 14 submitted by the Conference of Chief Justices.

Title V would create a commission to render advice on the jurisdiction of state and federal courts. The commission would have sixteen members, four appointed by the President, President pro tempore of the Senate, the Speaker and the Chief Justice, respectively. Since the commission is only advisory, this raises no appointment clause concerns.

I have drafted a no objection memorandum to Murr for your signature.

Attachment

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 4, 1983

FOR: JAMES MURR
OFFICE OF MANAGEMENT AND BUDGET

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

SUBJECT: Department of Justice Report on S. 645, the Courts Improvement Act of 1983

Counsel's Office has reviewed the proposed report of the Department of Justice on S. 645, and finds no objection to it from a legal perspective.

FFF:JGR:ph 5/4/83
cc: FFFielding
JGRoberts
Subject
Chron.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
ROUTE SLIP

TO		Take necessary action	Approval or signature	Comment	Prepare reply	Discuss with me	For your information	See remarks below
	Mike Uhlmann	☐	☐	☐	☐	☐	☐	☐
✓	Sherrie Cooksey							

FROM Jim Murr TM X4870 DATE 5/2/83

REMARKS

Justice Report -- S. 645, the "Courts Improvement Act of 1983"

There are no substantive agency objections to clearance of the subject report (attached). S. 645 has six titles:

I - Eliminates mandatory jurisdiction of Supreme Court.

II - Eliminates priorities for court review of certain civil cases.

III - Upgrades judicial benefits program.

IV - Establishes State Justice Institute.

V - Establishes a Federal Jurisdiction Revision Commission.

VI - Establishes a temporary Intercircuit Tribunal.

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The DOJ report favors titles I, II, III, and V, and opposes title IV. Justice requests additional time to comment on title V/.

If you have no objections, we are prepared to clear the DOJ report. Please let me have your comments by c.o.b. WEDNESDAY, MAY 4. Thanks.

cc: H. Schreiber
K. Wilson
A. Curtis

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General Washington, D.C. 20530

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice on S. 645, the Courts Improvement Act of 1983. The Department supports the enactment of title I, title II, title III and title V. The Department opposes the enactment of title IV. Due to the complex policy issues that are presented in title VI, the Department requests permission to submit its comments on this title at a later date.

Title I of S. 645 eliminates the mandatory jurisdiction of the Supreme Court. The general effect of this legislation would be to convert the mandatory appellate jurisdiction of the Supreme Court to jurisdiction for review by certiorari, except in connection with review of decisions by three-judge district courts.

We believe that the changes effected by this title are long overdue, and will bring about a substantial improvement in the administration of justice in the federal courts. The essential defect of the current system is that the Supreme Court is required to devote a large portion of its time to deciding, on the merits, cases of no special importance because they happen to fall within the categories which qualify for review by appeal under the current statutes. There is no necessary correlation between the difficulty of the legal questions in a case and its public importance. When the Justices are uncertain concerning the appropriate disposition of a case presented on appeal, they are obliged to devote time and energy to reaching a decision on the merits -- including, in many cases, full briefing and oral argument -- though all may agree that it raises no question of general interest and does not warrant the granting of a writ of certiorari. 1/

1/ See Letter of the Justices, supra, note 3; S. Rep. No. 985, 95th Cong., 2d Sess. 17 (1978) (prefatory remark of Justice Stevens in relation to First Federal Savings and Loan Ass'n of Boston v. Tax Comm'n of Massachusetts, 437 U.S. 255 (1978), and Moorman Manufacturing Co. v. Bair, 437 U.S. 267 (1978)); S. Rep. No. 35, 96th Cong., 1st Sess., 17 (1979) (same).

The present system also interferes with the ability of the Court to select appropriate cases to decide recurrent legal questions of public importance. A particular case may raise an important issue, but the record on it may be unclear. The Court's ability to reach a sound decision with respect to a complex and significant issue may be facilitated by first letting several lower courts explore the ramifications of the problem. 2/ By forcing the Court to decide the merits of dispositive issues whenever they may arise, in a case presented for review by appeal, the current system interferes with the Court's ability to pass on issues at a time and in a context most conducive to the sound development of federal law.

Commentators and commissions that have studied the jurisdiction of the Supreme Court have generally agreed that the categories defined by the existing appeal provisions are essentially arbitrary. Innumerable cases of the greatest significance have been brought under the certiorari jurisdiction of the Supreme Court. 3/ Conversely, the statutory categories qualifying for appeal encompass broad classes of cases of no special importance. This point may be appreciated more fully in the context of a detailed consideration of the principal jurisdictional provisions that would be affected by Title I -- 28 U.S.C. § 1257(1)-(2), 28 U.S.C. § 1254(2), and 28 U.S.C. § 1252:

28 U.S.C. § 1257(1)-(2). 28 U.S.C. § 1257(1) authorizes review by appeal of a decision of the highest state court in which a decision could be had where the validity of a federal law is drawn in question and the decision is against its validity. 28 U.S.C. § 1257(2) provides similarly for review of state court decisions where the validity of "a statute of any state" is drawn in question on federal grounds and the decision is in favor of its validity.

The purpose of authorizing appeal in such cases is apparently to assure that the supremacy and uniformity of federal law will be upheld by requiring Supreme Court review where federal laws are invalidated or federal challenges to state laws are rejected. However, there is no reason at all to believe that the Supreme Court would be derelict in carrying out this responsibility if given discretion to decide which cases warrant review to vindicate federal interests.

2/ See Colorado Springs Amusements, Ltd. v. Rizzo, 428 U.S. 913, 918 (Brennan, J., dissenting from denial of certiorari); Maryland v. Baltimore Radio Show, Inc., 338 U.S. 912, 918 (1950) (opinion of Frankfurter, J., respecting denial of certiorari).

3/ See, e.g., United States v. Nixon, 418 U.S. 683 (1974); Regents of the University of California v. Bakke, 438 U.S. 265 (1978); New York Times Co. v. Sullivan, 376 U.S. 254 (1964); Shelley v. Kraemer, 334 U.S. 1 (1948).

As a practical matter, the categories defined by § 1257 do not restrict appeal to cases of general import or unusual significance. The term "statute of any state," as used in § 1257(2), is not confined to laws of statewide applicability, but includes municipal ordinances 4/ and all administrative rules and orders of a "legislative" character. 5/ In light of the doctrine of Dahnke-Walker Milling Co. v. Bondurant, 6/ qualification for appeal under this provision does not require that a challenge be rejected to challenge the general validity of a state law. It is sufficient, if a claim was rejected, that the application of the state law under the facts of the particular case was barred on federal grounds. Hence, the ability of a litigant to obtain review on appeal depends, to a very large degree, on his attorney's ability to describe the outcome of the case as a rejection of a challenge to the validity of a state law as applied, rather than on any substantive difference between his case and state cases falling under the certiorari jurisdiction of the Supreme Court described in § 1257(3). 7/

28 U.S.C. § 1254(2). 28 U.S.C. § 1254(2) authorizes appeal by a party relying on a state statute held to be invalid on federal grounds by a federal court of appeals. The category specified in this provision also does not define a class of cases of unique importance either to the individual states or to the nation. As in § 1257, the notion of a "statute" in this provision applies to municipal ordinances 8/ and administrative orders, 9/ and it suffices if a state law is held to be invalid as applied. 10/

4/ See, e.g., Coates v. City of Cincinnati, 402 U.S. 611 (1971); Jamison v. Texas, 318 U.S. 413 (1943).

5/ See Lathrop v. Donohue, 367 U.S. 820, 824-27 (1961).

6/ 257 U.S. 282 (1921).

7/ See Hart & Wechsler, The Federal Courts and the Federal System, 631-40 (2d ed., 1973).

8/ See City of New Orleans v. Dukes, 427 U.S. 297, 301 (1976).

9/ See Public Service Comm'n of Indiana v. Batesville Telephone Co., 284 U.S. 6 (1931) (assuming that order of state Public Service Commission invalidated by court of appeals is a "statute," but dismissing appeal on other grounds); Stern & Gressman, Supreme Court Practice, 64 (5th ed., 1978).

10/ See Dutton v. Evans, 400 U.S. 74, 76 note 6 (1970); Stern & Gressman, Supreme Court Practice, 65 (5th ed., 1978).

28 U.S.C. § 1252. 28 U.S.C. § 1252 provides for direct appeal to the Supreme Court of decisions of lower federal courts holding acts of Congress unconstitutional in proceedings in which the United States or its agencies, officers, or employees are parties. Ordinarily, lower federal court decisions invalidating acts of Congress present issues of great public importance warranting Supreme Court review. We doubt, however, that the Supreme Court would frequently refuse to grant a discretionary writ of certiorari in such a case. In addition, in cases in which expedited consideration by the Supreme Court is required, it is possible for the litigants to apply to the Supreme Court for a writ of certiorari before final judgment in the court of appeals, as the government recently did in Dames & Moore v. Regan, No. 80-2078 (July 2, 1981). 11/ Hence, elimination of "direct appeals" under 28 U.S.C. § 1252 need not prove an obstacle to expeditious review in cases of exceptional importance.

The existing grounds of Supreme Court appellate jurisdiction are essentially arbitrary or unnecessary. We also do not believe that alternative broad rules of mandatory review could be devised that would assure consideration of important cases in a principled and consistent way, but would avoid the types of problems that have arisen under the current system.

We do not anticipate that the proposed changes in Title I will present any problems from the perspective of the operations of the Department of Justice. For many years Supreme Court practice has tended to minimize differences between application for appeals as of right and review by certiorari. Parties (including the government) wishing to invoke the Supreme Court's appellate jurisdiction have been required, as a practical matter, to draw up jurisdictional statements similar in character to petitions for certiorari. Hence, the statutory reform that is proposed should not substantially change our practice before the Supreme Court.

It should be noted that title I will entail no costs or expenditures. The effect of title I will only be to allow the Supreme Court to utilize the resources it presently possesses in a more rational manner.

Title II eliminates over 50 different provisions that are scattered throughout the United States Code which require that particular classes of civil cases be given priority by the courts

11/ The same procedure was employed in the Nixon tapes case, United States v. Nixon, 418 U.S. 683 (1974).

over other cases. In lieu of these provisions, the bill requires the courts to expedite the consideration of any action "if good cause therefor is shown." The bill also requires expedition of "any action for temporary or permanent injunctive relief."

This title is an effective response to the problems of judicial administration that have been created by the proliferation of priority provisions throughout the United States Code. Congress has, through the years, enacted a large number of priority provisions in widely varying terms intended to govern actions under a bewildering array of federal statues. These provisions have been enacted in a piecemeal fashion over the years with no attention to their cumulative impact on the courts and no effort to create an integrated, internally consistent set of instructions that can be effectively implemented by the courts. Thus, for instance, there are a number of provisions which require the court to hear particular categories of cases before all others, with no indication of how conflicts between such categorical priorities are to be resolved. The sheer number of cases afforded some kind of priority assures frequent conflict among priorities, and can substantially limit the intended effect of a priority provision.

The various problems presented by civil priorities led the American Bar Association to adopt a resolution calling for the abolition of all civil priorities except habeas corpus. 12/ A particularly serious problem discussed at that time was the delay to non-priority actions caused by these provisions in courts experiencing substantial backlogs. In the late 1970's, for instance, the number of priority civil and criminal cases continually filed in the heavily backlogged Fifth Circuit was so great that for several years the court heard nothing but priority cases. This raised a real fear that non-priority cases might never be heard. Even today, in courts much less heavily backlogged, the priority cases can significantly delay the progress of non-priority cases. Thus, a report of the New York City Bar Association noted that non-priority cases in the Ninth Circuit in 1981 were, on the average, heard 6-8 months after priority cases. 13/

12/ See ABA Special Committee on Coordination of Judicial Improvements, Report of the House of Delegates (Feb. 1977).

13/ New York City Bar Association Committee on Federal Legislation, The Impact of Civil Expediting Provisions on the United States Courts of Appeals (1981).

Existing priority provisions are based on the premise that it is possible for Congress to predict in advance that expeditious resolution of one entire class of cases is more important than it is in other classes of cases. Such generalizations are obviously, extraordinarily difficult. Most existing priority provisions define broad classes of cases in which expeditious treatment is sometimes especially important, but often is not. Though some priority provisions properly allow the court some discretion to distinguish among those cases which do or do not require expedited treatment, most priority provisions can be mechanically invoked. It is, obviously, unfair and a waste of resources to allow a case in which there is no special need for expedition -- but which falls in a broad "priority" class -- to take precedence over other cases in which the need is more compelling but no statutory priority is applicable. That is the frequent effect of the current law.

We believe that the approach taken by Title II to this problem is fundamentally correct. We believe that all but the most clearly necessary and justifiable priority provisions should be revoked and replaced with a single standard which the courts can apply to all cases to determine the need for expedition. The courts are, in general, in the best position to determine the need for expedition in of a particular case, to weigh the relative needs of various cases on their dockets, and to establish an order of hearing that treats all litigants fairly. Litigants who can persuasively assert that there is a special public or private interest in expeditious treatment of their case will be able to use the general expedition provision provided in Title II to the same effect as existing priority provisions.

We would also like to note one additional concern with this title. As it is presently drafted, Title II would require the court to expedite "any action for temporary or permanent injunctive relief." It is clearly desirable to retain existing rules of expedition applicable to certain injunctions under the Federal Rules of Civil Procedure and to require that injunctive actions be expedited "if good cause therefor is shown." As drafted, however, we believe that the title is overly broad. This broad priority for any injunctive action would be subject to manipulation, providing litigants with an incentive to include a claim for injunctive relief simply to obtain expedited consideration. Certainly not all cases in which an injunction can be plausibly claimed have a special need for expedited treatment.

On balance, we believe, however, that Title II represents an important and needed reform to the existing law of civil priorities.

Title III upgrades the judicial benefits program. We are concerned that federal judges are becoming increasingly dissatisfied with the program that provides benefits to the survivors of deceased judges. The Department wholeheartedly supports the proposed changes in this program. These changes will help attract skilled lawyers to the bench and eliminate the concern that judges now serving have for the security of their families.

We would like to offer one amendment that is designed to increase participation by the judges in the benefits program. The attached amendment would allow the judges to borrow against the equity that they have in the benefits fund. This is a feature that is common in most private insurance plans. Given the fact that in 1957, the first year that the program was in operation, 86 percent of the judges joined. In 1982, only 78 percent of the judges were participants. By making this program similar to private insurance plans it is hoped that participation in the benefits program will increase.

Title IV creates a State Justice Institute that would direct a national program of assistance for state court improvements by providing funds to state courts and other appropriate organizations. The Department opposes the enactment of Title IV.

The Institute would be headed by a Board of Directors whose voting members would be six judges, one state court administrator, and four public members. The President would appoint the Board members with the advice and consent of the Senate. The President's choices in nominating the six judges and the state court administrator for membership on the Board would be limited to a list of at least fourteen candidates submitted by the Conference of Chief Justices.

The provisions of Title IV relating to grants and contracts state that Institute funds are to be used primarily for research, demonstrations, innovative projects, and other justice improvement measures, and are not to be employed to support basic court services. Matching funds equal to 25% of the total cost of a grant to, or contract with, a state or local judicial system must normally be provided by the recipient. The Institute is generally barred from involvement in litigation and political activities. The funding authorized for the Institute is $20,000,000 in 1984, $25,000,000 in 1985, and $25,000,000 in 1986.

The goals that the Institute is designed to further are obviously important, and the specific arrangements set out in Title IV seem generally well designed to advance these objectives. However, we have concluded that we cannot support this legislation. The reasons for this conclusion are largely budgetary. The proposal does not bear any of the earmarks of a necessary funding project in this time of austerity. It does not relate specifically to an area that has been made the responsibility of

the federal government by the Constitution or federal law; it does not relate specifically to a stated priority of the Administration or the Department of Justice; and it does not address a problem of national scope that the states are inherently incapable of dealing with on their own. Indeed, it is far from clear to us that the state courts are the element of state justice systems most urgently in need of additional funding. A discussion of these three points follows:

(i) Federal Interest and Responsibility. The proponents of the State Justice Institute have argued that the propriety and desirability of federal funding for state court improvement projects follow from the fact that the state courts are, in a sense, federal courts. The state courts, under the Supremacy Clause, are required to enforce federal law, and a substantial portion of their time and resources is taken up in doing so. The state courts are also required to comply with the constitutional requirements of due process. The costs of discharging both of these responsibilities have increased greatly in recent decades as a result of the decisions of Congress in expanding the scope of federal law and the decisions of the Supreme Court in interpreting the federal Constitution. It is argued that some level of federal funding for state court activities is required as a matter of fairness, or is at least appropriate, given the general federal interest in the adequate administration of federal law, and the burdens which the state courts bear in discharging their federal responsibilities.

These considerations are not without force. However, certain countervailing considerations should also be noted. In forming the United States the individual states made the judgment that the general benefits of national government would outweigh the resulting costs to them. The same judgment was made subsequently by the remaining states in joining the union. The quid pro quo for the burdens resulting from the responsibilities of statehood -- including enforcement and compliance with federal law -- need not take the form of reimbursement to the states for the specific expenditures incurred in discharging these responsibilities, but may be found in the general functions which the federal government carries out, to the benefit of the states, such as national defense and the regulation of interstate commerce.

It may also be noted that the federal courts bear certain burdens which would otherwise be borne by the state courts, though no reimbursement is expected from the states in return for such activities. For example, when jurisdiction is based on diversity of citizenship, the federal courts hear state law cases which would otherwise have to be handled by the state courts. Essentially, the same point can be made in relation to the full range of subjects which are currently regulated by federal laws

whose enforcement is partially or wholly committed to the federal courts. In the absence of the assumption of responsibility by the federal government for regulation and enforcement in these areas -- for example, patents, bankruptcy and antitrust -- the states would need to undertake their own regulation, and the resulting burden of enforcement would fall on the state courts.

Finally, while the federal interest in the adequate administration of federal law does provide some support for the propriety or desirability of federal assistance to state courts in enforcing and complying with federal law, the State Justice Institute Act is not especially designed to further this interest. Title IV does not require that funds disbursed by the Institute be used exclusively or primarily to assist state courts in enforcing or complying with federal law, but authorizes support of projects relating to nearly all aspects of state court improvement.

(ii) Relationship to Administration Priorities. The Administration has identified violent crime as an area of priority and concern. This priority has been reflected in the creation of the Attorney General's Task Force on Violent Crime. The State Justice Institute proposal does have some general relationship to this priority, since many of the projects funded by the Institute would presumably contribute, directly or indirectly, to the improvement of the ability of state courts to deal with violent crime, and crime in general. However, this legislation does not create any presumption in favor of the allocation of Institute funds to projects concerned with violent crime, or any other Administration priority. By design, decisions concerning grants and contracts are left to the Institute's Board of Directors which would operate free of federal control.

(iii) State Competence. The principal functions of the State Justice Institute would be to make decisions concerning the disbursement of federal funds to state court improvement efforts, and to handle the award and monitoring of such grants and contracts. At least in theory, the same type of Institute might be created by all the states, or a group of interested states, with funds contributed by the subscribing states substituting for the federal money authorized in Title IV. Supporters of Title IV have responded to this objection by pointing to the uneven commitment of the various states to providing sufficient support for the operation and improvement of their own court systems, and the difficulty of securing state funding for national organizations -- such as the National Center for State Courts -- which provides important services to the state judiciaries. Problems of this sort may make a state-based alternative less effective than a federally supported State Justice Institute, or perhaps simply unfeasible. However, the proponents of the Institute have only claimed that the states have been unwilling to provide adequate overall support for state court improvement efforts --

not that they are incapable of doing so -- and a statebased system would offer certain advantages over the federal funding approach. In particular, a state-based system would remove all elements of federal influence and control from decisions concerning the allocation of funds to state court systems, and would allow each state to decide whether the benefits to it from participation in the system justify the cost of subscription or membership.

In sum, the Administration opposes Title IV and equivalent proposals for the creation of a federally funded State Justice Institute. 14/

14/ There is a specific feature of Title IV which merits separate comment. As noted earlier, the President's choices for seven of the members of the Board of Directors of the State Justice Institute would be limited to a list of candidates submitted by the Conference of Chief Justices. This provision raises serious constitutional doubts. We recognize that Congress can impose qualifications for the persons whom the President seeks to appoint and define the general class of persons from which the President may make an appointment, including the requirement that appointees to certain offices must be selected from lists submitted by the Conference of Chief Justices. See Myers v. United States, 252 U.S. 52, 265-74 (1926) (Brandeis, J., dissenting). On the other hand, the power of Congress to impose qualifications for appointments does not mean that the President can be compelled to appoint persons whom he considers unsuitable for the position. In other words, the qualification provision of the type in Title IV means that the appointee must be acceptable to the Conference of Chief Justices as well as to the President. A list submitted to the President therefore must contain a sufficient number of candidates to afford the President "ample room for choice." 13 Op. A.G. 516, 525 (1871); see also 29 Op. A.G. 254, 256 (1911); 41 Op. A.G. 291, 292 (1956). A provision for a list containing "at least" fourteen names for seven appointments, i.e., two for each vacancy, does not in our view comply with that requirement, unless it is assumed implicitly, in order to save the constitutionality of the provision, that the President has the right to reject a list which does not contain any acceptable nominees. See § 4(b)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 94 Stat. 2702. This section provides explicitly that under the appointing authority, the Secretary of Energy, "may decline to appoint for any reason a Governor's nominee for a position and shall so notify the Governor. The Governor may thereafter make successive nominations within forty-five days of receipt of such notice until nominees acceptable to the Secretary are appointed for each position."

Title V establishes a Federal Jurisdiction and Revision Commission. The Department supports the enactment of this title. The functions of the Commission would be to study the jurisdiction of State and Federal courts and to report to the President and Congress on any revisions in the Constitution and laws of the United States deemed advisable on the basis of the study. The commission would be composed of sixteen members, four to be appointed by the President, President pro tempore of the Senate, Speaker of the House, and Chief Justice of the United States respectively. Each member would serve a term for the life of the Commission, and vacancies would be filled in the same manner in which the original appointment was made. The Commission would select a Chairman and a Vice Chairman. Within two years after its first meeting, the Commission would be required to transmit to the President and to Congress a final report containing a detailed statement of its findings and conclusions. Ninety days after the submission of its final report to Congress, the Commission would be terminated.

The Commission would be granted a wide range of powers. It would be permitted to hold hearings, administer oaths, and enter into contracts with public and private institutions. The Chairman of the Commission would be authorized to appoint and fix the compensation of an Executive Director and additional staff personnel. The Commission would also be empowered to require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of documentary materials. Members of the Commission would be authorized to sign and serve the subpoenas, which would be enforceable in district court by the Attorney General. At the Commission's request, Executive branch agencies would be required to furnish information, "consistent with applicable provisions of law."

In the Department's view, the proposed Commission would be a useful method of obtaining information and ideas on possible revisions in federal law. The subjects of congressional power over the jurisdiction of the federal and state courts, and the proper exercise of that power, are important and difficult ones that merit careful study. The Department of Justice thus agrees with the basic goals of Title V.

We do not believe that any serious constitutional questions are raised by Title V. Congress is plainly authorized, in furtherance of its legislative function, to create entities performing advisory responsibilities. Since the Commission would not be "exercising significant authority pursuant to the laws of the United States, " Buckley v. Valeo, 424 U.S. 1, 126 (1976), its members would not be "Officers of the United States" within the meaning of the Appointments Clause. U.S. Const. Art. II, § 2, cl. 2. Cf. Buckley v. Valeo, supra, at 125-42. Moreover, the powers granted to the Commission do not intrude upon the Executive's constitutional duty to "take care that the Laws be faith-

fully executed." U.S. Const. Art. II, § 3. The bill expressly provides that the Commission's authority to obtain information and assistance from the Executive branch must be exercised in a manner "consistent with applicable provisions of law," including constitutional law. Title V thus accords the Commission no power to obtain materials protected by Executive privilege. Nor is Congress prohibited from authorizing the Chairman of the Commission to appoint an Executive Director and other staff members.

Finally, we believe that the grant of subpoena power to the Commission is within Congress' authority. In Buckley v. Valeo, supra, the Court stated that any appointee exercising significant authority pursuant to the law of the United States must be appointed in the manner prescribed by the Appointments Clause. Id. at 126. At the same time, the Court stated that with respect to powers "essentially of an investigative and informative nature, falling in the same category as those powers which Congress might delegate to one of its own committees, there can be no question that [a body whose members were not appointed in accordance with the Appointments Clause] may exercise them." Id. at 137. According to the Court, "'A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect . . . . Experience has taught that mere requests for such information often are unavailing . . . .; so some means of compulsion are essential to obtain what is needed.'" Id. at 138, quoting McGrain v. Daugherty, 273 U.S. 135, 175 (1927). The Court thus concluded that the functions "relating to the flow of necessary information -- receipt, dissemination, and investigation," id. at 139, may be vested in a Commission whose members were not officers of the United States, unlike "more substantial powers," such as litigating authority or power to enforce the subpoena in court. Id.

We believe that Buckley stands for the proposition that Congress may delegate its authority to issue subpoenas to an entity whose members are not officers of the United States within the meaning of the Appointments Clause. We conclude, therefore, that the subpoena provisions of the this Title are constitutional.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Attachment

Proposed Amendment to Title III of S. 645

Section 376 of Title 28, United States Code, is amended by adding the following section:

(s)(1) While in office a judicial official may receive an advance of any amount that has been deducted and withheld from his or her salary and credited to Judicial Survivors' Annuities Fund. Provided, That (a) the judicial official submitted a loan agreement that was approved by the Comptroller General of the United States, and (b) all outstanding installment payments have been deducted from the amount advanced.

(2) Interest on the loan shall accrue from day to day at a rate that will be determined by the Comptroller General of the United States and shall constitute an indebtedness to the Judicial Survivors Annuities Fund as and when it accrues. Interest shall be payable on each anniversary of the date of the loan until such loan is repaid, and if such interest is not paid when due it shall be added to and form a part of the loan and bear interest at the same rate. All interest shall be paid into the Survivors' Annuities Fund in accordance with such procedures as may be prescribed by the Comptroller General of the United States.

(3) All or any part of the loan may be repaid, with accrued interest on the amount so repaid, at any time that the judicial official is in office. If the judicial official dies before repaying the loan and accrued interest, this debt will be deducted from the survivors' annuity. If the judicial official retires before repaying the loan and the accrued interest, this debt will be deducted from the "retirement salary".

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 11, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Statement of Francis Mullen on Production and Trafficking of Controlled Substances in Latin America

Bud Mullen proposes to deliver the above-referenced testimony before the Subcommittee on Crime of the House Judiciary Committee tomorrow, May 12. The lengthy statement reviews DEA's international program, with detailed reports on Mexico, Columbia, Peru, Bolivia, Brazil, Jamaica, Belize, and Cuba. The most significant aspect of the testimony in light of recent publicity is likely to be the discussion of the role of the Cuban government in drug trafficking. The discussion centers on the Guillot-Lara investigation, which revealed the involvement of Cuban government officials who were subsequently indicted. Mullen concludes: "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 legal objection.

Attachment

THE WHITE HOUSE

WASHINGTON

May 11, 1983

MEMORANDUM FOR GREGORY JONES
OFFICE OF MANAGEMENT AND BUDGET

FROM: FRED F. FIELDING FFF/RAK
COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Francis Mullen on Production and Trafficking of Controlled Substances in Latin America

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

FFF:JGR:aw 5/11/83

cc: FFFielding
JGRoberts
Subj.
Chron

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U.S. Department of Justice

Assistant Attorney General
Legislative Affairs

5/9/83

IF YOU HAVE ANY COMMENTS PLEASE GIVE THEM TO GREG JONES, OMB, 395-3802.

DRAFT

Statement

of

Francis M. Mullen, Jr.
Acting Administrator

Drug Enforcement Administration
U.S. Department of Justice

on

Production and Trafficking of
Controlled Substances in Latin America

Before the

Committee on the Judiciary
Subcommittee on Crime
U.S. House of Representatives

William J. Hughes, Chairman

May 12, 1983

DRAFT

Chairman Hughes and Members of the Subcommittee on Crime: I am pleased to appear before you to discuss the Drug Enforcement Administration's perspective on the production and trafficking of controlled substances in Latin American countries.

Drug control is clearly an international issue. All the heroin and cocaine and much of the cannabis available in the United States is cultivated and processed from agricultural sources in Southwest Asia, Southeast Asia, South America and the Caribbean.

A pillar of DEA's effort is the interdiction of drugs at their source rather than as they approach or cross United States borders. This results in greater impact being made, because quantities seized at the source are much larger and purer than those seized on the streets of United States cities. Consequently, DEA personnel are stationed in foreign countries to support host country efforts to eliminate cultivation, production and conversion of drugs and to stop shipments of drugs destined for the United States. These efforts include the provision of technical assistance through training and the exchange of intelligence in cooperative investigations. Stopping drugs within the source country or as close to the source as possible has proven to be an effective approach to reducing the supply of illegal drugs.

During 1982, the trend of increasing heroin availability and abuse observed in recent years in the United States continued. Retail purity rose from an average of 3.9 percent in 1981 to 5.1 percent in 1982. Likewise, cocaine was increasingly available in the United States during 1982. Seizures nearly tripled from the previous year while prices remained stable and retail purity levels increased significantly. The use of marihuana and dangerous drugs in the United States also continued at a high level. For all these drugs, the role of Latin American countries as source or transit countries is significant and expanding.

The U.S. Government Role in International Narcotics Control

Last summer President Reagan released the 1982 Federal Strategy for the Prevention of Drug Abuse and Drug Trafficking. The Strategy sets the tone and direction for the United States Government's overall effort to reduce drug abuse during the coming years. DEA is involved in the drug law enforcement and international aspects of this Federal response, which also is directed at education and prevention, treatment, and research.

In the international forum, the United States Government is developing and implementing a long-range, organized effort to work with drug source nations to eliminate illicit drug production and to interdict drugs in transit. Some specific initiatives of the Strategy include:

- o Encouraging and assisting other countries to develop programs to eradicate illicit drugs grown or produced within their borders and to address their own drug problems;

- o Exploring with other governments ways to monitor and to impede the substantial cash flow generated by illicit drug transactions; and

- o Participating in international drug control and enforcement organizations to gain greater cooperation among all nations in which illicit drugs are produced, transited and/or consumed.

Over the past year, the U.S. Government has worked to accomplish many of these objectives. Specifically, DEA has assigned Special Agents and support pesonnel to 62 offices in 41 countries throughout the world. In Latin America, our personnel are assigned to 25 offices in 16 countries. Our staff overseas encourage, advise and assist host countries in the development and implementation of effective measures to control licit drug crops, reduce illicit cultivation and conversion, and interdict illicit drugs at staging areas in-country and along the trafficking routes.

As a result of outstanding cooperation between DEA and our Latin American counterparts, there have been significant advances in coordinated operations with some source and transit countries. This progressive approach has given the United States enhanced operational capabilities, and has been invaluable in the investigation of large-scale cocaine organizations.

Together with the Department of State, DEA supports a regional approach to the cocaine problem. Coca eradication by Colombia has begun. In Peru, a coca eradication campaign conducted in early 1980 proved to be very encouraging and we are working with the Peruvian authorities in continuing this program. The Bolivian government did not appear ready to undertake any eradication measures until the installation of the President Hernan Siles Government last October. Since then, the Government of Bolivia has consulted with the United Nations and other countries with regard to funds to support eradication and enforcement efforts. We are looking forward to specific accomplishments regarding these initiatives.

A number of initiatives have been undertaken against the supply of essential chemicals such as ether and acetone which are used in the cocaine conversion process. For the past several years, Brazil has imposed effective controls on the production of both ether and acetone, which has simplified the process of tracing the chemicals to the users. In January of this year, Colombia also imposed controls on the importation of ether. DEA is now looking for ways to establish a complimentary program which would provide for voluntary compliance in the U.S. pharmaceutical and chemical industries to ensure that essential chemicals for cocaine production do not become available to cocaine traffickers.

Colombia also continues to be our largest marihuana supplier. We support the Colombian Government's campaigns to suppress the production and trafficking of marihuana and other illicit drugs

in their country. We are working with the Colombian Government in a continued campaign against marihuana traffickers. Through these efforts and the intensified interdiction operation being conducted in the Caribbean, we have seen the amount of marihuana entering the United States decline in 1982. I am optimistic that this trend will continue in 1983.

Although Mexico is still a source country for marihuana destined for the United States, its share of the overall illicit United States market has declined in the past three to four years because of the successful use of paraquat by the Mexican Government in its eradication program.

While I believe there has been some progress in the cocaine and marihuana situation in South america, we, in the United States, recognize that fragile economies, political influences and other considerations all serve to hamper crop eradication and control efforts in source and production countries. Although many of the current major marihuana source countries have shown some degree of willingness and ability to eradicate marihuana, they are often hesitant to initiate drug crop eradication programs unless the United States is willing to undertake the same effort.

The United States has embarked on a multi-agency coordinated domestic cannabis eradication and suppression program. DEA is at the forefront of this important effort, and we work closely with state authorities to ensure that this is a national cannabis

eradication program. It has expanded from 5 states in 1981 to 25 states last year, and 40 states will participate in the 1983 campaign. In 1982, over 1600 tons of domestically produced marihuana were eradicated.

Our Ambassadors in Colombia, Peru and the Bahamas all note that the enforcement actions being carried out in the United States are important not only because they reduce the domestic availability of marihuana, but also because they demonstrate to other nations that we do have a domestic problem and that we are willing to take the necessary measures to curtail it. We cannot expect other nations to take steps we are unwilling to take ourselves.

Our relationship with counterpart agencies in Latin American nations was recently enhanced even further by virtue of the first meeting of the International Drug Enforcement Conference (IDEC). This conference, held at Contadora Island, Panama in April, 1983, was a gathering of the Directors of National Police Agencies from 13 countries and other high-level law enforcement officials of Latin American countries responsible for narcotic law enforcement. During this initial meeting, the conferees agreed to focus on three topics -- financial investigations; crop control and eradication; and control of essential chemicals.

IDEC is of particular significance in that it provides a forum for the future discussion and resolution of problems of mutual concern to participating nations. The continuation of the

Conference on an annual basis assures that the activities of narcotic law enforcement agencies in the Western Hemisphere will be coordinated and targeted in a purposeful manner.

Country Reports

An overview of the narcotic situation and enforcement program in selected Latin American countries follows.

Mexico

Mexico is a source country for heroin, marihuana and dangerous drugs for the U.S. market. In addition, cocaine, Colombian marihuana, and methaqualone transit Mexico on the way to the United States.

Approximately 30-35 percent of the heroin available in the United States is of Mexican origin. Mexican heroin has been available in the United States since the late 1940's, but it was the decline of Turkish/French heroin from the U.S. market in 1972 that created the first widespread distribution of Mexican "brown heroin".

By 1975, Mexican heroin was no longer simply a California or Southwest commodity. It had spread eastward and accounted for about 80% of the U.S. market. However, successful efforts in crop eradication and increased enforcement initiatives brought about a significant decrease in Mexican heroin.

During the latter half of 1980, Mexican heroin began a resurgence and by 1982, Mexican heroin had reentered the marketplace in increasing quantity and high quality.

Currently, Mexican heroin is plentiful throughout the West, the Southwest and the Midwest with trafficking organizations and patterns remaining basically the same as during the late 1970's.

Mexico's share of the overall U.S. marihuana market has declined steadily in the past several years, primarily as a result of the vigorous eradication campaign the Mexican Government has waged since 1976. However, Mexico is still a major source country; and the discovery late in 1982 of several large-scale cannabis plantations, located in non-traditional areas suggest that the marihuana industry is rebounding.

Mexico has also played a significant role in the trafficking of dangerous drugs. Currently, Mexico is a major source and transiting country for diverted pharmaceutical products. Frequently illicit shipments of bulk substances such as methaqualone, methamphetamine, secobarbital, or other substances enter Mexico from Europe. Once in Mexico, substances are tableted or repackaged for diversion into the U.S. Certain legitimate drugs like codeine are diverted from licit channels in Mexico and smuggled into the U.S. Others, such as amphetamine and phendimetrazine have been manufactured in Mexico for many years and continue to be a source for the illicit U.S. market.

Mexico and the United States have cooperated in aerial herbicide spraying since the mid-1970's. Although the U.S. assisted program has been directed only against opium poppy cultivation,

Mexico
the authorities on their own have sprayed marihuana fields since the inception of the program.

Additionally, DEA has initiated an effort in Mexico to identify suspect vessels and aircraft; ports and airstrips used for refueling; loading and off-loading sites and land routes for smuggling marihuana. Intelligence developed from this program will enable DEA and Mexican officials to target interdiction efforts in specific areas.

During January 1983, the Operations Division and the Mexican Country Office hosted a conference at San Antonio, Texas attended by Special Agents in Charge of Divisions located along the Mexican border. The conferees drafted a list of recommendations for dealing with the total drug enforcement problem between Mexico and the U.S. Included among these was a recommendation to obtain on-site verification of eradication efforts.

At the present time, we see an increased interest on the part of the Mexican Federal Judicial Police (MFJP) to enter into cooperative enforcement ventures. Our border offices report increased liaison with the MFJP, which is an initial indicator of commitment on the part of President de la Madrid's Administration to effective narcotic enforcement.

Another indicator is the renewed interest in the JANUS program by the Mexican Attorney General's Office recently reported by management of the Mexico Country Office. This program, which was all but discontinued from 1980-1982, allows for the prosecution of Mexican violators in Mexico using evidence obtained in the United States.

Colombia

Colombia plays a major role in the international traffick of cocaine, marihuana, and illicit methaqualone. According to DEA intelligence, it is the source of supply for approximately 75 percent of all cocaine and 50 percent of all marihuana and approximately 50 percent of all methaqualone consumed in the United States.

As both a processing center and a staging area for cocaine smuggling, Colombia is the principal source and major producer of cocaine hydrochloride worldwide. Traditionally, Colombia has processed and distributed cocaine, relying on both coca paste and cocaine base from Bolivia and Peru. Colombian traffickers then refine the base and paste into cocaine hydrochloride for distribution to consumer countries. This remains its most significant function in the traffic.

The distribution of clandestinely-produced cocaine is controlled by approximately 12-15 families who are capable of dealing in lots of over 100 kilograms. These groups often have their own cocaine hydrochloride laboratories, thus eliminating the need for a middle man. Cocaine is smuggled out of the country via private aircraft, commercial aircraft, air cargo shipments, couriers and vessels. Monies received for the sales of cocaine are at times brought back into the country and used to invest in legitimate

business, especially construction, and to purchase real estate. In other instances, the receipts from the illicit trafficking are invested in the same type of businesses in the United States or deposited in foreign safe havens.

To counter the manufacture of cocaine in Colombia, DEA has developed a program to control ether and acetone, the chemicals needed for the conversion of cocaine. In response to DEA's initiative, the Government of Colombia has, for the first time, implemented controls that govern the importers and the amounts of chemicals that are imported. Additionally, DEA is attempting to enlist the assistance of the industrialized countries responsible for making such chemicals available to Colombian trafficking groups. Although Colombian traffickers are known to have stockpiled considerable quantities of essential chemicals, we believe that as these stockpiles are depleted, there may be a significant reduction in their ability to manufacture unlimited quantities of cocaine.

Within the last two to three years, Colombian trafficking organizations have made a concerted effort to cultivate their own coca bushes in order to become self-reliant and not dependent on Peru or Bolivia for raw coca material.

To combat these efforts, DEA is encouraging and supporting State Department initiatives to assist Colombian authorities in eradicating these plantations. Until now, coca eradication has been limited to manual efforts which have not been able to keep

abreast of expanded coca cultivation. We believe that herbicides are the most effective means of eradication and efforts continue to persuade the Colombian Government to use them. Otherwise, vast increases in resources will be needed for a thorough manual eradication program.

Colombia is also known to be a source country for marihuana. Prior to 1982, approximately 75 to 80 percent of the marihuana consumed in the United States was of Colombian origin. While production levels have remained fairly constant, we believe Colombia supplied a little more than 50 percent of the U.S. market in 1982, largely because host country seizures, limited manual eradication efforts and removals during international transit have exacted a heavy toll on the marihuana traffic. In addition, increased competition from U.S. domestic production and expanded activity in Jamaica and Mexico have decreased the market share represented by Colombian marihuana. The country's production capacity and experienced distribution networks, however, remain formidable.

For many years Colombian drug traffickers have been the major suppliers of dangerous drugs, and especially illicitly manufactured Quaaludes (methaqualone) smuggled into the U.S. More recently, Colombia has been identified as a source for other counterfeit drugs of abuse like Dilaudid which do not always contain the drugs they are purported to but a variety of controlled substances.

Large international drug trafficking organizations have established clandestine tableting operations in Colombia. The bulk of controlled substances used to make the counterfeit tablets are ordered from European or Asian sources through one or more brokers and diverted from international commerce. The importation of these substances is facilitated through the free trade zones, even though some have been legally banned from the country.

There has been measurable success in slowing the flow of counterfeit methaqualone tablets from Colombia to the United States. In 1981 and 1982, successful diplomatic initiatives from the United States to foreign governments of source countries such as Hungary, Austria, Federal Republic of Germany and the People's Republic of China coupled with large multi-ton seizures in Colombia ad other countries have contributed to reducing the availability of legitimately produced methaqualone powder for illicit purposes. However, traffickers are now seeking other substances that are not controlled by law or regulation. Experienced and highly organized Colombian drug traffickers are using techniques developed in the course of illicit methaqualone trafficking to capitalize on these and other drugs of abuse.

The Government of Colombia has initiated several actions to increase its capability to control the production and trafficking in illicit drugs. Several of the most significant of these follows:

- The Colombian Government is studying a Mutual Legal Assistance Treaty which provides for the exchange of information and evidence in criminal, civil, and administrative matters with the United States.

- In early 1981, the long-awaited Special Anti-Narcotics Units of the National Police became fully operational and were deployed in all active illicit drug regions. This organization replaced the army as Colombia's primary anti-narcotics agency.

- The 1971 Convention of Psychotropic Substances was signed by the President in January, 1981. This action strengthened Colombia's position in curtailing methaqualone imports.

Because of the extensive illicit narcotic activity in Colombia, DEA has established its largest South American office there with offices in four cities. Much of our activities there involve the day-to-day monitoring of intelligence and the exchange of information - efforts which have resulted in many significant seizures of marihuana and cocaine.

DEA and State Department efforts have led to the development of an extradition treaty with the Colombian Government. For the first time, a civilian Colombian government has agreed to extradite its nationals under specific limited circumstances. We are currently providing a list of fugitive names to be presented to the Colombian Government for extradition to the U.S.

Additionally, we maintain several ongoing intelligence efforts in Colombia. Included among these are an analysis of the movement of marihuana and cocaine out of Colombia, a probe on the importation of cocaine HCL's essential chemicals (most importantly ether) from foreign sources, and a probe on cocaine labs and coca leaf, couriers from Ecuador, Bolivia and Peru.

Peru

Peru is one of the two major producers of coca leaves, the raw material for cocaine. The output available for illicit use from Peru (36,000 metric tons) is roughly equivalent to that of Bolivia the only other major producer of coca leaves. The coca leaves are generally processed into coca paste and cocaine base which are intermediate cocaine products, and then smuggled to Colombia. Peru also produces a significant quantity of cocaine hydrochloride (HCL) for direct transport to the United States and other markets.

Peru is the second most important source of cocaine for the Unite States. High quality cocaine is produced in small amounts. The higher quality and slightly lower price of Peruvian cocaine compared with the Colombian product have encouraed U.S. and European buyers to travel to Lima to make purchases of kilogram quantities for import to their countries.

However, Peruvian traffickers lack competitive strength in major foreign markets. They do not have the business experience of the Colombians and, in general, are not considered reliable suppliers. We do not expect Peruvian traffickers to replace the Colombians.

DEA's efforts in Peru have been better than in most foreign countries because of the generally cooperative efforts on the part of our Peruvian counterparts. We are obviously interested

in effectively pursuing a coca eradication program in Peru. Peru will accept assistance for eradication and crop substitution in certain areas, however, prospects for an effective effort to control coca cultivation are uncertain in view of competing Peruvian Government priorities and political resistance to coca control.

Bolivia

Bolivia is the other major source country for coca leaf. In 1981 it was estimated that in Bolivia 39,000 metroc tons of coca leaf were produced in excess of that grown for legitimate needs.

Coca cultivation has been virtually unrestrained from 1977 to 1981, and our estimates are that, over the four-year period, coca leaf production increased by about 75%.

Coca leaf is processed into coca paste and cocaine base in Bolivia, but very little is converted to the finished product, cocaine hydrochloride. Instead the paste or base ~~are~~ is supplied to Colombia traffickers.

Even though Bolivia is able to sell cocaine more cheaply than Colombia, it does not have ready access to customers or ~~have~~ the business experience of the Colombians, and in general Bolivians are not considered reliable suppliers. Bolivian traffickers are inhibited from expanding cocaine refining operations because of

difficulties in obtaining processing chemicals. This is due to their country's weak industrial base and controls by neighboring Brazil which produces these necessary chemicals. Bolivia does not have the potential to displace Colombia in major cocaine markets.

In the past, DEA's efforts in Bolivia have been largely restricted to intelligence gathering. This situation has changed dramatically in recent months. Foremost among the reasons for this is the Joint Communique between the Government of Bo ivia and the United States issued during the Attorney General's trip to Bolivia in April 1983. In this communique, Bolivia and the U.S. announced their support for increased efforts to eliminate illicit drug traffic. Specif cally, Bolivia will undertake development of substitute crops in coca growing regons, and the U.S. will support this and other efforts designed to stop excessive coca leaf growth.

In another recent accomplishment, DEA worked with the Government of Bolivia to establish a Special Narcotics Unit which will carry out operations against targeted traffickers. This special force will be trained and encouraged by DEA to use advanced investigative techniques in their enforcement operations.

A DEA Special Enforcement Operation directed against high-level Bolivian trafficking figures (as well as other nationalities) was recently successful in indicting 18 persons including the primary target, former Bolivian Minister of the Interior, Colonel Luis Arce-Gomez.

According to the indictment, from March 1980 and continuing for approximately one year, Arce-Gomez used his position to extract protection money from traffickers who were smuggling cocaine to the U.S. Arce-Gomez fled Bolivia late last year after the nation's new democratic government began to purge corrupt military personnel. Bond for Arce-Gomez has been set at two million dollars.

Efforts are now underway to extradite the individuals named in the indictment, which, if successful, could have a substantial impact on reducing the narcotic problem in Bolivia.

Brazil

Although it is largely a victim country, Brazil is, perhaps, our most important ally in the struggle to overcome drug trafficking in South America. Brazil is the primary source counry for acetone and ether, the essential chemicals needed to process Bolivian coca leaf into base or paste. It is also important to recognize that Brazil is a transit country through which cocaine is shipped to U.S. and European markets. Some coca is also grown in Brazil, but only in such remote areas that preclude eradication efforts by the Government.

DEA works closely and has an excellent rapport with Brazilian authorities. For example, we recently helped the Brazilian Police establish an airport control program to interdict cocaine shipped through Brazil from other countries.

Approximately three years ago, at DEA's suggestion, Brazil developed a chemical control program which has been very successful and remains ongoing today. Because of the Bolivian trafficker's dependence on Brazil for essential chemicals, this program is believed responsible for reducing their ability to manufacture unlimited amounts of cocaine HCL.

Although some significant narcotic seizures have been made, our efforts in Brazil are hampered by the size and geography of the country and the adverse economic conditions brought on by the current recession.

Jamaica

By the early 1970's, Jamaica had become an important source country for the U.S. marihuana market. During the past several years there have been indications of increasing interest in Jamaican marihuana in the United States, as evidenced by the rise in air smuggling seizure incidents involving Jamaican marihuana. Jamaica is now believed to account for more than 15 percent of the marihuana available in the United States.

Jamaica's role in drug trafficking, similar to many others in the Caribbean, is primarily that of a transshipment country. The numerous islands and isolated countries in the Caribbean provide a series of stepping stones through which traffickers transit enroute to the United States.

Most of the marihuana coming from the island traditionally has been transported to the United States in small private aircraft capable of carrying loads of 500 to 3,000 pounds. Deliveries were usually made to Florida and to our southern Atlantic seaboard. Due to the increased interdicton effort in South Florida and the Bahamas in 1982, much of the air-lifted Jamaican marihuana is no longer being landed, but rather air-dropped to waiting speed boats which retrieve the floating bales and move them to the Florida coast. This information is supported by intelligence and seizures of marihuana wrapped in waterproof packaging at several Jamaican airstrips.

DEA's primary role in this area is to support the U.S. military, Coast Guard and Customs efforts and to enhance our interdiction capability.

Belize

Some U.S. officials have been increasingly concerned about the role of Belize as a marihuana exporting country. This Central American country is a convenient staging area and transshipment point for Colombian marihuana because it is located about mid-way between Colombia and the United States.

In 1982, there were also increasing reports of marihuana cultivation within the country, especially in remote areas near the Guatemalan and Mexican borders. However, a recent international cooperative effort based on DEA-supplied intelligence

may have all but ended Belize's brief tenure as a marhuana-exporting country. A joint eradication operation coordinated in part by DEA's Guatemala and Mexico Country offices, using Mexican personnel and helicopters to locate and spray marihuana fields in neighboring Belize, was completed in late November 1982. The objective of the operation - to survey all of Belize and destroy the illicit crops found - was achieved, with an estaimated 223 acres of Belizean marihuana destroyed.

A report from Belize indicates that the spraying had an adverse impact on the marihuana cultivation and trafficking areas. Not only were the majority of fields destroyed by the spraying, causing a financial loss to area growers, but also some growers and traffickers were said to be convinced that perennial eradication operations would now be inevitable. As a result, fewer growers were planning to replant their illicit crops, and what had been an escalating pattern of marihuana cultivation appears to have been halted.

Cuba

As early as 1963 and throughout the 1970's, DEA and its predecessor agencies received information alleging a government of Cuba role in drug trafficking.

The first well-documented example of Cuba's involvement in drug trafficking, however, resulted from the inreased pursuit of the Jaime Guillot-Lara investigatioin in late 1981. It was during

this investigation that intelligence was developed indicating that certain officials of the Government of Cuba aided Guillot in the movement of drugs from Colombia, through the Caribbean, into the United States.

The association with Guillot provided a dual benefit to Cuba. First, their facilitation of Guillot's smuggling ventures provided hard currency which Cuba used to support revolutionary activities in Latin America. Second, Cuba was able to utilize the smuggling expertise and capabilities of Guillot by having him transport and deliver arms which were ultimately destined for the Colombian terrorist group, M-19.

On November 5, 1982, a Federal Grand Jury in Miami returned indictments against 14 persons, including four Cuban officials, charging offenses related to the importation of methaqualone tablets and marihuana into the United States from Colombia via Cuba. In February, 1983, five of the defendants were found guilty and sentenced. The four Cuban officials, Guillot, and one other defendant were not tried in absentia and remain fugitives.

The Guillot investigation exemplifies the involvement of Cuba in drug trafficking, the connection between drugs and arms trafficking, and the expanding relationship between terrorist activities and drug trafficking.

Although the Government of Cuba has denounced the indictments, DEA believes that, at the very least, Cuba is guilty of allowing the movement of drugs through its territory. 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.

Conclusion

Mr. Chairman and Members of this Subcommittee, drug trafficking and abuse are truly worldwide problems and the drug problem in the United States is heavily influenced by the activities of traffickers throughout Latin America. Our resolve to solve our own drug problms must be matched by a parallel commitment to work with foreign nations in solving their drug problems. Long term success requires that we work just as hard overseas as we do at home. We must work equally on all fronts - at the local, national and international levels.

We must place particular emphasis on the source countries where illicit drug supplies are most heavily concentraed. The President and the Attorney General have visibly demonstrated this emphasis during their trips last year to Colombia and Southwest Asia during which drug control ranked as a top priority in their bilateral discussions with foreign governments. The Attorney General's recent fact-finding mission through South America again emphasized the importance of international narcotic control programs to this country and led to the extremely important Joint

Communique between Bolivia and the United States discussed in a previous section of this statement. In the coming year, we will continue to seek this high level commitment from foreign governments particularly in the source countries.

I am optimistic that with your support significant inroads are being made and will continue in the year ahead. Thank you for this opportunity to discuss our activities and for your assistance and support.