THE WHITE HOUSE

WASHINGTON

May 17, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Testimony of Assistant Attorney General Reynolds Before the House Subcommittees on Post-Secondary Education and Civil and Constitutional Rights

The above-referenced testimony is scheduled to be delivered tomorrow, partly in response to a letter from the subcommittees raising specific questions on civil rights enforcement with respect to higher education. The testimony reviews the enforcement authorities available to the Department of Justice, including Title VI (race), Title IX (gender), and section 504 (handicap). It discusses consent decrees and negotiation efforts to correct the existence of predominantly black and white institutions in the college systems of Louisiana, Mississippi, and North Carolina, noting that the Department relies on enhancing the quality of education at predominantly black institutions and out-reach programs at the white institutions, rather than admissions quotas. In the gender area the testimony discusses the determination not to appeal the University of Richmond v. Bell decision, and the direction to the Department of Education (based on the North Haven decision) that it may only investigate specific programs receiving federal financial assistance. In the handicap area the testimony notes that efforts to revise 504 regulations for federally assisted programs have been abandoned, but that the Department has sent federal agencies prototype regulations for federally conducted programs, and expects the different agencies to issue such regulations soon.

The subjects covered by the testimony are always controversial, but there is nothing new in this testimony. I see no legal objections.

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U.S. Department of Justice

Assistant Attorney General
Legislative Affairs

IF YOU HAVE ANY COMMENTS

CONTACT JIM MURR, 395-4870

OMB.

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Department of Justice DRAFT

TESTIMONY OF

WM. BRADFORD REYNOLDS

ASSISTANT ATTORNEY GENERAL

CIVIL RIGHTS DIVISION

before the

SUBCOMMITTEE ON POST-SECONDARY EDUCATION

COMMITTEE ON EDUCATION AND LABOR

and

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

on the

DEPARTMENT OF JUSTICE ENFORCEMENT OF

CIVIL RIGHTS LAWS WITH RESPECT TO

INSTITUTIONS OF HIGHER LEARNING

May 18, 1983

Mr. Chairman and Members of the Subcommittees, I welcome the opportunity to discuss with you the efforts of this Administration to enforce civil rights statutes in the area of higher education.

The Department of Justice has several responsibilities under laws banning discrimination by institutions of higher learning. The Department has independent litigating authority under two statutes, Titles IV and VII of the 1964 Civil Rights Act, 42 U.S.C. 2000d and 2000e. Title IV authorizes the Attorney General to bring suit, in certain instances, to remedy discrimination based on race, color, religion, national origin or sex in public educational institutions. The Department has used this statute both to attack vestiges of racial discrimination which remain in some higher education systems and to attack sex discrimination. Title VII prohibits discrimination in employment based on race, color, national origin or sex. The Department of Justice has jurisdiction under Title VII over public employers, and has used this jurisdiction to attack discriminatory employment practices by institutions of higher learning. In addition, we have authority under Title IX of the 1964 Civil Rights Act, 42 U.S.C. 2000h-2, to intervene in cases presenting allegations of Equal Protection Clause violations based on race, color, religion, sex, or national origin, and have done so in two cases alleging sex discrimination by colleges.

The Department also has important enforcement authority tied to federal financial assistance. Title VI of the 1964 Civil Rights Act, 42 U.S.C. 2000c, Title IX of the Education Amendment of 1972, 20 U.S.C. 1681, and Section 504 of the Rehabilitation Act of 1974, 29 U.S.C. 794, all prohibit various forms of discrimination in federally assisted programs or activities. Funding agencies enforce these statutes by negotiation, administrative fund termination proceedings, and by referral to the Department of Justice for commencement of a suit for injunctive relief.

While the agencies which extend federal assistance are primarily responsible for insuring that the recipients of that assistance honor the prohibitions of Titles VI and IX and Section 504, the Department of Justice also has an important role to play. First, we represent the agencies in court challenges to their enforcement of these statutes. Such challenges include appeals from fund termination proceedings, injunctive suits by recipients, and suits by other interested parties. Second, Executive Order 12250 commissions us to coordinate all agencies' efforts to enforce civil rights statutes tied to federal assistance. Third, as mentioned above, we have authority to sue recipients of federal funds when federal agencies refer cases to us.

As my testimony will indicate, the Department has done much under these several statutes. We have attacked the vestiges of racial discrimination which exist in the higher education systems

of several states. We have vigorously defended the Department of Education's efforts to investigate sex discrimination in the employment practices of several institutions of higher learning. And, while it has been determined that the antidiscrimination funding statutes do not give the Government the authority always to address the entire range of practices of recipients of federal assistance, they plainly do provide the Government with the ability to reach and eliminate unlawful discrimination in all federally assisted programs or activities. To that end, both through litigation and our coordination efforts under E.O. 12250, the Justice Department has been, and continues to be, a strong ally in the Federal agencies' persistent efforts to remove discrimination from all funded programs.

Since the categories under which we have jurisdiction are easily severable, I will discuss each separately, and will address the specific questions you raised in your letter as I address each subject.

1. Title VI. As you know, Title VI states:

> No person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

The Department of Education administers most federal assistance to colleges and universities, and so our litigation in this area depends primarily on actions of that agency.

When this Administration first took office, the Department of Justice had Title VI litigation pending against the higher education systems of two states, Louisiana and Mississippi. Both had been referred to us by HEW some years ago. Each case alleged that the states had established dual systems of higher education by discriminatorily creating segregated colleges and maintaining them as predominantly white and predominantly black institutions even after Brown v. Board of Education. Since such systemic discrimination in the admissions practices, as well as all other phases of college administration, necessarily segregates students on the basis of race in all federally funded campus activities, elimination of discrimination in each federally assisted "program or activity" requires systemwide relief.

In enforcing Title VI we seek to ensure quality desegregated higher education. Our goals are twofold: First, to enhance educational offerings at historically black institutions which have suffered terribly from the discriminatory allocation of public resources. Second, to attract both to traditionally black and traditionally white institutions students of the other race. In this endeavor, we envision enhanced education and desegregation as laudable and complementary aims.

In September of 1981, we entered into a consent decree settling the Louisiana higher education case. This decree, copies of which I have previously provided the Committees, embodies the

goals just mentioned. For example, at Grambling State University the decree provides for a new school of nursing; for joint degree programs with the LSU Medical Center in the fields of physical therapy, rehabilitation counseling, and medical technology; for masters degree programs in public administration, teaching, social work and criminal justice; and for an M.B.A. degree program in cooperation with Louisiana Tech. Similarly wideranging curriculum enhancements were required for the New Orleans and Baton Rouge campuses of Southern University.

The decree also includes a faculty development program designed to improve the quality of instruction at Grambling and Southern. Improvements in existing facilities and the construction of certain new facilities at those predominantly black institutions is mandated under the decree as well. In order to ensure funding adequate to meet the operating needs of Grambling and Southern, the decree provides for a review of the state appropriations formula and a special appropriation of $1 million to be used for the general enhancement of those institutions.

Under the decree predominantly white institutions employ a variety of techniques to increase other-race enrollments. Considerable emphasis has been placed on programs designed to inform students of available educational opportunities and to recruit other-race students. Developmental or remedial educational programs have been utilized to reduce black attrition rates. Cooperative efforts

between geographically proximate institutions is required, including faculty and student exchanges and joint decree programs. These and other measures that we have adopted help to ensure equal access for all students, regardless of race, to a quality educational institution of their own choosing.

We have declined, however, to impose racial quotas for students or faculty. As in every field, the goal of nondiscrimination in higher education is paramount. Each individual has a right under the Constitution to be judged on the basis of his or her qualifications, background, skills and talents, and not merely as a member of a particular racial group. Quotas are fundamentally inconsistent with this principle, and, as a matter of both law and policy, they deserve no place among the arsenal of weapons used to fight the very evil they perpetuate.

We are presently negotiating with Mississippi officials in an effort to settle that longstanding litigation. Last year the Department of Education requested us to take enforcement action under Title VI against the Alabama and Ohio systems of public higher education. Pursuant to Congress' express policy preferring voluntary compliance, we have been actively negotiating with those systems in an effort to remedy constitutional violations.

Adams v. Bell, cited in your request, is a suit against the Department of Education. The court's decision requires the Department of Education to enforce Title VI by negotiating with

specified states -- including Kentucky and Virginia -- concerning their higher education systems. The Department of Education can better respond to inquiries about the status of these negotiations.

Four attorneys from the Civil Division are assigned to represent the Department of Education in the Adams litigation. The number of attorneys the Civil Rights Division assigns to Title VI higher education cases varies with the complexity of the litigation or negotiations. While on occasion as many as ten attorneys may work on a higher education case, routinely about five attorneys are assigned to them.

Finally, your letter asks about the status of "the consent decree[] in North Carolina (pursuant to P.E. Bazemore, et al. and United States of America, et al. v. Friday)." The Bazemore case is not a higher education case. It addresses employment discrimination by North Carolina's agricultural extension service. Officials of the North Carolina State University were named only because the agricultural extension service is tangentially connected to the state's land grant college program. In any event, while the district court ruled against the Government at the trial level, we are presently pursuing an appeal in the United States Court of Appeals for the Fourth Circuit.

The Department's litigation with the North Carolina higher education system is styled North Carolina v. HEW. A few years

ago North Carolina sued HEW to enjoin administrative proceedings the agency had initiated. Following extended negotiations, a comprehensive settlement was reached between the state, its colleges and universities and the Department of Education. While the Department of Education is plainly better suited to discuss details of that settlement with you, I should note in passing that the North Carolina settlement served in many respects as the model for our higher education settlement in Louisiana and contained a number of the same features I described earlier in connection with the Louisiana consent decree. You should also know that the North Carolina federal district court approved the settlement involving that State's higher education institutions. However, a separate challenge filed by the NAACP Legal Defense Fund in the D.C. federal courts -- which was unsuccessful in the district court -- is presently pending in the United States Court of Appeals for the D.C. Circuit.

2. Title IX. Title IX of the Education Amendments of 1972 states:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

As with Title VI, our enforcement activity under this provision is necessarily conducted in close cooperation with the

Department of Education. The principal issue we have addressed is the legal one involving the question of the statute's coverage.

The first major effort of this Administration under Title IX was the North Haven v. Bell case. Although the case did not deal directly with higher education, it was a significant Title IX case with direct impact on institutions of higher education. In that case, we argued before the Supreme Court that Congress intended to prohibit sex discrimination in employment in any federally assisted education program or activity, whether or not the primary purpose of funding was to aid in the employment of personnel for the financially assisted program. The Court ruled along the lines of our brief, thereby significantly enhancing Title IX as a vehicle for addressing sex discrimination in employment in institutions of higher education -- as well as other areas affected by Title IX. In fact, prior to the decision in North Haven, we had sought Supreme Court review of two higher education cases in which courts enjoined federal administrative action against Seattle University and the Junior College District of St. Louis. After North Haven, the injunctions were lifted.

We have also broadly construed the types of assistance which may subject a recipient to Title IX review. We recently filed briefs with the Supreme Court in Grove City College v. Bell, No. 82-792, and Hillsdale College v. Department of Education, No. 82-1538. In both cases, the colleges contend that

because the only federal aid they receive is student aid, the institutions are not "recipients" of federal aid and therefore are not subject in any way to Title IX. We argued successfully in the lower federal courts in both cases that the college's receipt of federal student aid put the college in the position of receiving a form of federal financial assistance within the meaning of Title IX. Supreme Court review was sought and the Court granted the college's petition for a writ of certiorari in the Grove City case; briefs are due to be filed by the parties this summer.

In addition to discussing the coverage of Title IX over employment practices, the North Haven decision confirmed that Title IX enforcement activities must be "program specific" -- that is, they must address discrimination occurring in the specific programs or activities receiving federal assistance. As a result of that directive from the High Court, the Departments of Education and Justice have worked together to bring the enforcement efforts in this area in line with the program-specific requirement. Department of Education's Assurance of Compliance regulation, for example, no longer is construed as having application to an institution as a whole, but only to those federally assisted programs at the institution. Moreover, as part of the Justice Department's coordination role under the federal funding statutes, we are independently analyzing Title VI and Section 504 coverage in light of North Haven and the circuit court decisions both before and after North Haven that have interpreted the statutes as being program-specific.

In this regard, you have asked that I discuss University of Richmond v. Bell. There, the University sued the Secretary of Education to enjoin the Department from investigating allegations that the University discriminated against women in its intercollegiate athletic program. The government counterclaimed that the University's failure to turn over requested information violated Title IX and the University's own assurances of compliance that it signed when it received federal assistance. The district court enjoined the investigation, holding that no allegation had been made, nor any evidence introduced, to indicate the University's intercollegiate athletic program did in fact receive direct federal financial assistance, and therefore the federal government had no authority under Title IX to investigate the allegation of sex discrimination.

Both the Justice Department and the Department of Education carefully reviewed the district court decision and decided not to appeal. As the court noted, the University received only federal student aid and a federal library grant. Totally absent from the case was proof, or even a suggestion, that the alleged discrimination affected any specific programs which received federal financial assistance. This deficiency, in our view, made federal investigation in this case improper under the standard established in North Haven requiring that federal enforcement of Title IX be program specific.

In this connection, it should be noted that Congress did not, in enacting Title IX, give the Government unrestricted authority to investigate sex discrimination in educational institutions generally. The plain language of the statute makes this clear. A comparison of Section 901 and Section 904 shows that the latter provision is institution-wide in scope, in contrast to the program-specific nature of section 901. The Supreme Court relied on this very comparison in its North Haven ruling. Moreover, the legislative history of Title IX reveals that the program-specific limitation was needed in the statute in order to secure passage. The intent of Congress was that the Government assure itself that the action it seeks to investigate under Title IX occurs in a federally assisted program or activity before the investigation is undertaken.

As you may know, after the Government decided not to appeal the Richmond decision, Clarence Pendleton, Jr., Chairman of the Civil Rights Commission, and I exchanged letters discussing the case. In these letters I explained to Mr. Pendleton the basis, in some detail, for the Government's decision not to appeal the Richmond case. This determination was, of course, based on the particulars of the litigation and the specific court ruling. It in no way signalled a relaxation of our enforcement commitment under the anti-discrimination statutes covering federally assisted programs or activities. I have furnished to the Committees my correspondence with Chairman Pendleton.

In addition, earlier this year, at the request of Secretary Bell, the Civil Rights Division of the Department of Justice, following discussions with the Secretary and members of his staff, and an exchange of enforcement information, prepared a memorandum discussing the impact of North Haven on the scope of an agency's investigatory authority under Title VI, Title IX, and Section 504. This memorandum undertakes to deal with the practical implications of the "program specific" limitation in these statutes in some detail. Rather than repeat the contents of the memorandum, I have attached a copy to this testimony.

Another sex discrimination case which was pending when we took office was United States v. Massachusetts Maritime Acadamy. That case, in which we alleged that the school refused to admit women as cadets, was filed under Title IV of the 1964 Civil Rights Act, 42 U.S.C. 2000c-6. After we put on our case in the summer of 1982, the court denied defendant's motion to dismiss the case. The court recessed the trial, and has scheduled it to resume on May 31.

3. Section 504. Section 504 states:

> No otherwise qualified handicapped individual in the United States as defined in section 706(7) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

The issues presented in the enforcement of 504 are similar, but not always identical, to those presented in a Title VI or Title IX case. As the statute is drafted, additional questions have frequently arisen regarding, for example, whether a handicapped person is "otherwise qualified" for a particular federally assisted program or activity, or the extent to which the program in question should undergo needed alteration in order to accommodate handicapped participants. Whenever such issues are presented, the Government's responsibility is to see to it that handicapped individuals are afforded the maximum benefit and consideration required by law.

In this regard, our enforcement of Section 504 is necessarily shaped in large measure by court decisions interpreting the statute. The lead case is, of course, Southeastern Community College v. Davis, involving the Supreme Court's only extensive discussion of 504. That unanimous decision offers substantial and binding guidance on the manner in which the statute should be enforced. Since the case involved a post-secondary institution, its effect on the enforcement of 504 in those institutions is apparent. Moreover, certain of the Court's language plainly has broader implications. Its characterization of Section 504 as a nondiscrimination, not an "affirmative action", statute (442 U.S. at 411) clearly has general applicability. So, too, does the Court's acknowledgement that a recipient's obligation to accomodate handicapped interests

may well not demand program alterations of such magnitude that they would result in an "undue financial and administrative hardship" to the recipient (442 U.S. at 412).

It is, of course, one thing to state the general principle; it is quite another to insure its proper application in different factual settings. Our litigation effort has attempted to strike the proper balance that is fully sensitive to the interest of the handicapped complainants, on the one hand, and faithful to the intended reach of the statute, on the other hand. To this end, we argued in Nelson v. Thornburgh, that Section 504 required the provision of a reader for a blind welfare case worker by the State of Pennsylvania. In another case, Peck v. County of Alameda, we supported reimbursement to a deaf juror of the costs of a sign language interpreter used during the trial in which the juror participated. And more recently, in Georgia Association of Retarded Citizens v. McDaniel, we advised a federal appeals court that, contrary to some lower court decisions, Davis did not require invalidation of the Department of Education's Section 504 regulations dealing with procedural safeguards available to handicapped children receiving an elementary and secondary public education.

On another front, we also filed an amicus brief in the Supreme Court in University of Texas v. Camenisch, No. 80-318, giving implicit recognition to a private right of action under Section 504. In addressing the issue in that case - whether

a deaf college student was entitled under 504 to an interpreter - this Administration set out its view that complying with 504 may indeed require expenditures by the recipient of federal assistance, and that interpreter's services are the type of auxiliary needs which colleges covered by 504 could well, in proper circumstances, be compelled to provide. The precise "line drawing" that must take place under Section 504 in such cases will invariably turn on the facts of particular cases, and general pronouncements in this area are thus of little value. We will continue to look primarily to the courts for guidance in shaping Section 504 enforcement, participating where appropriate in an effort to assist the judiciary in making these difficult decision of statutory interpretation.

You also asked specifically about our coordination activities under Executive Order 12250. Those activities span the spectrum of federal assistance statutes, including more than 50 code provisions in addition to Titles VI and IX and Section 504. In light of this wide-ranging responsibility, our enforcement plans plainly cannot be directed only at institutions of higher learning, but must respond to civil rights offenses of whatever kind or variety in all programs or activities receiving federal financial assistance.

It is true that our regulatory review efforts have since 1981 concentrated most heavily on Section 504. During the past 18 months, we have approved 10 different agency regulations

addressing the requirements of 504 in federally assisted programs. We also undertook an extensive study of the 504 coordination regulations for federally assisted programs, at the conclusion of which it was decided not to issue a notice of proposed rule-making soliciting comments on proposed regulatory revisions, but rather to leave in place the existing coordination regulations and seek, where necessary, to obtain clarification through the courts. At the same time, we have sent to all federal agencies a prototype regulation for enforcing Section 504 in federally conducted programs. We have previously provided the Committees a copy of the prototype. Such guidance was desperately needed since most agencies have yet to issue any regulations in this area, despite the fact that the "federally conducted" amendment to Section 504 was added in 1978. Our hope, and expectation, is that, with the prototype regulation, most executive agencies will be able to publish their own 504 NPRM for federal programs in the very near future.

This canvass of our enforcement activities is obviously not intended to be exhaustive. It is, however, representative of the kinds of things we are doing under the several civil rights statutes I have mentioned. As my testimony of a little over one week ago before the Subcommittee on Civil and Constitutional Rights substantiated, our record is an impressive one of which we can be proud. It demonstrates an unflagging commitment

to ferret out and eliminate unlawful discrimination in all of its ugly forms, wherever it might be found. That is the battle for all of us to fight -- together, not separately -- if we are to prevail.

Thank you. I will be happy to answer any questions.

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 15, 1983

The Honorable T. H. Bell
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D. C. 20202

Dear Mr. Secretary:

Enclosed is the Memorandum we discussed concerning investigatory activities of the Department of Education under Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). I would be pleased to discuss this matter with you further if you have additional questions following review of the enclosure.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Daniel Oliver
Harry Singleton

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 15, 1983

MEMORANDUM

The civil rights statutes, Title VI (42 U.S.C. 2000d), Title IX (20 U.S.C. 1681), and Section 504 (29 U.S.C. 794), provide the Department of Education (hereinafter the "Department") with authority to regulate and investigate recipients of financial aid from the Department on a program-specific basis. Based on the Department's descriptions of its financial assistance programs, it appears that the Department's funding statutes fall into three broad categories: (1) assistance to a specific program of a recipient, as determined by the statute's particularized purpose(s) and the use of the Federal financial assistance by the recipient; (2) general assistance to recipients; and (3) assistance for the construction of facilities. The purpose of this memorandum is to explore programmatic enforcement procedures within each of these categories.

Investigatory Responsibilities

The obvious starting point in the Department's investigatory process is with receipt of an allegation of discrimination, or upon submission of evidence giving rise to a reasonable belief that discrimination is occurring at an institution. In the normal course, it is presumed that the Department can ascertain from its own funding records whether financial assistance is being provided to the purportedly offending institution, and, if so, under what funding program or programs. The enforcement experience of the Civil Rights Division under the various Federal assistance statutes confirms that this basic record information is readily available in most instances and easily ascertainable.

If the challenged institution is not one receiving Federal financial assistance under a Department program, the alleged discriminatory behavior cannot be investigated by the Department's Office of Civil Rights (OCR). This conclusion does not foreclose a private action by the complainant, nor does it immunize the institution from possible investigation by another Federal agency (e.g., Office of Revenue Sharing) if that agency is providing financial assistance.

Assuming Department funding under one or more of its financial assistance programs, OCR's investigatory authority is shaped by the nature, purpose and use of the particular kind of assistance provided to the recipient. It is in this connection that the several categories of funding statutes become important.

A. Specific Assistance Programs. A recipient receiving Federal financial assistance under specific, particularized assistance programs of the Department may, under the above civil rights statutes, only be regulated and investigated in those programs. 1/

Examples of the proper approach to enforcement of civil rights protections under these statutes include: a recipient which receives only adult education assistance (20 U.S.C. 1203) may only be regulated and investigated in the operation of its adult education program; a recipient which receives assistance only for its library (e.g. under the College library resources program (20 U.S.C. 1022-24) or the public library services program (20 U.S.C. 352054)) may only be regulated and investigated in the operation of its library; a recipient which receives assistance for its bilingual vocational education program (20 U.S.C. 2411-21) may only be regulated and investigated in the operation of its bilingual vocational education program; a recipient which receives only work study funds (42 U.S.C. 2753) or Pell grant funds (20 U.S.C. 1070a) may only be regulated and investigated in its student financial aid activities. 2/

1/ A recipient receiving Federal financial assistance under more than one program administered by the Department may be regulated and investigated in all such programs.

2/ For a listing of additional specific assistance statutes, see Appendix A, infra.

A small number of the specific assistance statutes administered by the Department, while not constituting a general grant in aid to the recipient, do encompass multiple programs or activities of the recipient. In such case, the recipient's application should delineate the specific programs for which Department assistance is being requested, and a presumption thus attaches that all programs so identified in the application do indeed receive federal aid. Unless the Department has independent knowledge that only certain of these programs are receiving Departmental assistance, or a showing is made by the recipient that a listed program is nonfunded -- which would in either event rebut the presumption -- the Department may regulate and investigate all such programs. 3/

B. General Aid Programs. When the Federal financial assistance that the Department provides is in the form of a general grant or general aid that is not earmarked for particularized programs, all the programs and activities of the recipient fulfilling the broad purposes of the assistance statute are presumed to be covered by the applicable civil rights laws. In order for a recipient in such circumstances to avoid Department investigation of any of its programs, evidence sufficient to rebut the presumption as to that particular program(s) must be forthcoming. Once the Department is satisfied that the identified program(s) does not in fact receive any of the Federal financial assistance going to the recipient in the form of general aid, further investigation in that area is foreclosed as being outside the coverage of the civil rights statutes.

3/ An example of a multiple program assistance statute is 20 U.S.C. 3231, which provides for bilingual education assistance to a school district that may be used for, inter alia, elementary and secondary bilingual education programs, adult bilingual education programs, and preschool bilingual education programs, and requires the recipient to list the activities for which it wishes to receive assistance. If a school district lists in its application only elementary and secondary bilingual education programs, the presumption is that they alone receive Federal funds and are subject to Department scrutiny. If, on the other hand, the adult and preschool bilingual education programs are listed on the application as well, then all the listed programs are presumed to be within the coverage of the civil rights statutes, subject to rebuttal only to the extent it can be shown that those programs are in fact not receiving federal funds.

For example, if the Department determines that a local educational agency receives impact aid funds (20 U.S.C. 236-44), the Department may presume that all of the elementary and secondary programs and activities of the school district receive Federal financial assistance. 4/ Therefore, it may regulate and investigate all such programs and activities except to the extent that the recipient demonstrates some of its programs do not receive such funds. A similar analysis obtains for recipients of Federal financial assistance for developing institutions (20 U.S.C. 1051, see 20 U.S.C. 1052(a)(1)(D)). The Department may assert jurisdiction over all academic, administrative, and student service activities of such a recipient under the same rebuttable presumption mentioned above. 5/

C. Construction Programs. The Department also provides construction funds to institutions to assist in the building or renovating of school facilities. In such circumstances, the civil rights Federal funding laws permit the Department to reach discrimination in all of the programs and activities conducted within the wholly or partially funded buildings, whether they were built for athletics or philosophy. The Department administers a number of such construction assistance statutes including those under the federal impact aid program (20 U.S.C. 631; id. 646); Higher Education Act (20 U.S.C. 1132c); and Library Services and Construction Act (20 US.C. 355a).

CONCLUSION

Congress undertook through Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973 to reach discrimination based on race, sex and handicap, respectively,

4/ Other programs conducted by the local educational agency beyond the scope of the broad purposes of the impact aid statute would not be covered.

It should also be noted that Congress did not intend that the termination of Federal financial assistance under general aid programs be wholesale in nature. Only the portion of the general federal aid used in the part of the recipient's programs where discrimination has occurred may be cut-off. This may involve a pro-rata termination of Federal financial assistance if the precise amount of Federal financial assistance involved cannot be determined.

5/ For a listing of other general assistance statutes, see Appendix B, infra.

in any program or activity receiving Federal financial assistance. The Supreme Court held in North Haven Board of Education v. Bell, 50 U.S.L.W. 4501, 4507 (1982), that the program-specific nature of those crosscutting discrimination statutes must be faithfully observed in their implementation and enforcement. 6/

Thus, where, as the court held in University of Richmond v. Bell, 543 F. Supp. 321 (E.D. Va., 1982), the desired investigation involves a program (i.e., athletics) other than the one (i.e., student financial aid) receiving Federal funds under a specific assistance statute (i.e., Pell Grants), the Department cannot conduct such an investigation without first establishing that the challenged program (i.e., athletics) receives Federal funding. It is only when the institution receives a general Federal grant that the Department can indulge the presumption of comprehensive programmatic coverage for investigatory purposes, subject of course to rebuttal by the recipient as to any program not actually receiving Federal assistance.

One important caveat needs to be added. In the educational arena, particularly, discrimination in an institution's admissions' policy necessarily infects all programs and activities of the college or university. In view of this reality, claims of discrimination in the student admissions area, if reasonably grounded, provide adequate basis for the Department to investigate the admissions program even when it is not funded, so long as any of the institution's other programs or activities receives Federal financial assistance.

6/ To similar effect are: Dougherty County School System v. Bell, No. 78-3384 (11th Cir., Dec. 20, 1982); Hillsdale College v. HEW, No. 80-3207 (6th Cir., Dec. 16, 1982); Rice v. President and Fellows of Harvard College, 663 F.2d 336 (1st Cir., 1981); Brown v. Sibley, 650 F.2d 760 (5th Cir., 1981); Board of Public Instruction of Taylor County v. Finch, 414 F.2d 1068 (5th Cir., 1969); Othen v. Ann Arbor School Board, 507 F. Supp. 1376, 1383 (E.D. Mich. 1981), aff'd on other grounds, No. 81-1259 (6th Cir., Feb. 2, 1983); Mandel v. HEW, 411 F. Supp. 542 (D. Md. 1976), aff'd en banc by an equally divided court, 511 F.2d 1273 (4th Cir.), cert. denied. 439 U.S. 862 (1978).

We would not expect this analysis to occasion much change in the Department's current investigation practices. To the extent it becomes necessary to better tailor future investigatory efforts to discrete funded programs -- rather than launching a broad-based inquiry of the institution as a whole -- that is a statutory mandate recognized by the U.S. Supreme Court, and we can hardly afford to ignore it.

William Bradford Reynolds
Assistant Attorney General
Civil Rights Division

APPENDIX A

Other specific assistance statutes administered by the Department of Education include: grants for the disadvantaged including those going to local educational agencies (20 U.S.C. 2711; id. 3803(a)(1)(A)), state agency program for migrants 20 U.S.C. 3803(a)(2)(A)), handicapped (20 U.S.C. 3803(a) (2)(B)), neglected and delinquent (20 U.S.C. 3803(a)(2)(C)), state administration (20 U.S.C. 2844), evaluation and studies (20 U.S.C. 1226b); migrant education (20 U.S.C. 2561); state grants pursuant to 20 U.S.C. 3811 et seq., Secretary's discretionary fund (20 U.S.C. 3851), inexpensive book distribution (20 U.S.C. 3851(b)(1)), arts in education (20 U.S.C. 3851(b)(2)), alcohol and drug abuse education (20 U.S.C. 3851(b)(3)), law-related education (20 U.S.C. 3001-03), discretionary projects (20 U.S.C. 3851(a)); training and advisory services (42 U.S.C. 2000c-3), Follow Through (Part B, Headstart Follow-Through Act), Ellender Fellowships; women's educational equity programs (20 U.S.C. 3341-48), bilingual education training grants (20 U.S.C. 3261), bilingual desegregation grants (20 U.S.C. 3261); individual Indian education programs (20 U.S.C. 241aa; id. 3385; id. 1211a), individual education for the handicapped programs (20 U.S.C. 1411; id. 1419; id. 1422; id. 1421; id. 1424; id. 1423; id. 1424a; id. 1451-52; id. 1433; id. 631; id. 632; id. 634; id. 1431; id. 1432; id. 1434; id. 1418); individual rehabilitation services and handicapped research programs (29 U.S.C. 720(b)(1); id. 730; id. 770; id. 780; id. 796; id. 711(c); id. 774; id. 776); individual vocational and adult education programs (20 U.S.C. 2330-34; id. 2350-56; id. 2303, id. at 2401-02; id. 2370; id. at 2380; id. at 2305; id. 2302(d); id. 11; id. 1203); individual student financial assistance programs (20 U.S.C. 1070b) id. 1987aa; id. 1070c); individual higher and continuing education programs (20 U.S.C. 1070d; id. 1070e1; id. 20 U.S.C. 1221e-1(b)(2); id. 20 U.S.C. 1133; id. 1121; id. 1130; id. 1134d; id. 1134; id. 1134L; id. 1134n; id. 1135a-3); libraries and learning resources (20 U.S.C. 355e; id. 1022-24; id. 1031-34; id. 1041-46).

APPENDIX B

Other general aid programs include certain assistance to new community colleges under the Fund for the Improvement of Postsecondary Education program (20 U.S.C. 1135a-2) and aid to land grant colleges (7 U.S.C. 321-2a).

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 20, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Statement on Implementation of the Federal Strategy for Prevention of Drug Abuse and Drug Trafficking - 1982

The Department of Justice has submitted the above-referenced testimony, which is to be delivered by DEA Acting Administrator Francis Mullen on May 24 before the House Select Committee on Narcotics Abuse and Control. The somewhat laborious statement begins with an overview of the drug trafficking and abuse situation, discussing heroin, cocaine, amphetamines, methaqualone, and marihuana. The next portion of the testimony reviews the involvement of organized crime -- both traditional (Mafia) and non-traditional (motorcycle gangs, prison gangs, South American syndicates) -- in narcotics trafficking. The remainder of the testimony surveys DEA efforts to combat the problem, focusing on international control efforts (eradicating drugs in source countries such as Pakistan and Thailand) as well as domestic law enforcement. In the latter category Mullen discusses the new FBI/DEA arrangement, the Vice President's South Florida Task Force, the new Organized Crime Drug Enforcement Task Force Program, and the new National Narcotics Border Interdiction System.

I see no legal objections. There is nothing new in this testimony. Mullen notes at several points that international eradication efforts are only a long-term proposition, and that domestic law enforcement must be the primary focus. This simply reflects the well-known tension between DEA and Dom DiCarlo's Bureau of International Narcotics Matters at the State Department. There is no need for us to comment.

U.S. Department of Justice

Assistant Attorney General
Legislative Affairs

IF YOU HAVE ANY COMMENTS PLEASE CONTACT GREG JONES, OMB, AT 395-3802.

ID # _____ CU

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DRAFT

Statement

of

Francis M. Mullen, Jr.
Acting Administrator

Drug Enforcement Administration
U. S. Department of Justice

on

Implementation
of the Federal Strategy
for Prevention of Drug Abuse
and Drug Trafficking - 1982

Before the

Select Committee on
Narcotics Abuse and Control
U. S. House of Representatives

Charles B. Rangel, Chairman

May 24, 1983

DRAFT

Chairman Rangel and distinguished members of the Select Committee:

I am pleased to have the opportunity to appear before this Committee today to discuss the Drug Enforcement Administration's role in the implementation of the 1982 Federal Strategy for Prevention of Drug Abuse and Drug Trafficking.

Mr. Chairman, I know that you and the other members of the Committee join me in being encouraged by recent evidence that certain elements of drug abuse in the U. S. have abated somewhat: marihuana use among teenagers appears to be down slightly, the sharp increase in PCP abuse experienced during the past decade is tapering off, and we have seen a significant reduction in abuse of methaqualone in the past year. However, Our optimism over these specific positive trends, must be tempered by the hard realization that the seriousness of the drug abuse problem overall remains with us.

National trends project that major drugs of abuse will continue to be abundant at least through 1985, and our drug abuse problems will remain as long as there is a world glut in narcotics and dangerous drugs.

Drug trafficking is the most serious crime problem confronting America today. It is inextricably tied to organized crime, which seeks to exploit the more vulnerable in our population through patterns of violence, public corruption, and illegal profiteering that combine to threaten each person and institution in our society. It is a particularly difficult problem because these organizations are secretive, self-perpetuating criminal enterprises whose vast financial resources and involvement in a myriad of business activities -- both legitimate and illegitimate -- make them less susceptible to penetration by law enforcement.

The goal of DEA is to stabilize and then minimize the drug problem by vigorous law enforcement actions designed to disrupt criminal drug trafficking organizations. Through the apprehension, conviction, and punishment of drug traffickers, through the removal of their drugs from the illegal market, and through assuring the certain loss of their accumulated profits and proceeds, DEA seeks to immobilize this world-wide criminal enterprise. In combination with strong drug abuse prevention and education efforts and a committed international narcotics control program, drug law enforcement can have a significant impact on reducing drug abuse and the crime, violence, and corruption associated with it.

It is in pursuit of this goal that the 1982 Federal Strategy and the activities of DEA are directed. Before detailing the specific programs and efforts DEA has undertaken, I would like to provide the Committee with an overview of the current drug trafficking situation.

ASSESMENT OF THE DRUG TRAFFICKING SITUATION

HEROIN

The increase in heroin availability and abuse in the United States is largely attributable to the growing availability of Southeast Asian heroin. On the west coast, it has a 10 percent share of the national market. An influx of higher-purity Mexican heroin which provides about 36 percent of theheroin in the United States. Mexico continues to provide the majority of the heroid in the midwest and west. Southwest Asian heroin continues to account for more than half of the United States heroin supply, and tends to be dominant in the eastern part of the country.

Iran, Afghanistan, and Pakistan are the major producers of opium in Southwest Asia, with the majority originating in Pakistan and moving overland through Europe to the United States. Southeast Asian heroin from the Golden Triangle (Burma, Thailand, and Laos) enters the United States primarily on a direct route from Thailand to the western states. Mexican heroin continues to enter the United States overland.

Heroin will remain available for the forseeable future because of extensive opium cultivation and expanding heroin conversion capabilities. Southwest Asian producers have ample opium stockpiles that assure a sustained supply. The prospect for effective suppression in Iran and Afghanistan are not good because of their critical domestic problems. Record opium harvests in the Golden Triangle of Southeast Asia may motivate traffickers in that area to accelerate their activities. Finally, Mexico's current economic distress may tend to induce more people to assume greater risks in cultivating opium and smuggling heroin across the U. S. border, working in opposition to the Mexican government's opium eradication efforts.

COCAINE

Colombia is the principal processor of cocaine hydrochloride in South America, and provides the majority of the cocaine sold in the U. S.. Bolivia and Peru are the most important sources of coca leaf. Colombian cocaine reaches the U. S. by a variety of means, most notably vessel and private aircraft entering Florida.

Cocaine availability and abuse are expected to continue in the U. S. is because of several factors: the high profit margin realized by drug traffickers, the presence of highly organized Colombian trafficking networks using sophisticated smuggling techniques, the broad geographic

and sociological appeal of cocaine in this country, sophistication in smuggling techniques, and the fact that coca cultivation is expanding. The health cpnsequences of cocaine abuse are expected to become more and more severe as alternative dangerous means of administering the drug, such as "freebasing" and "speedballing", become more popular. Enforcement efforts in South Florida may be expected to continue to influence the use of alternative trafficking routes.

AMPHETAMINE

The primary source of illicit methamphetamine in this country remains domestic clandestine laboratories, augmented by some smuggling from Mexico. Our intelligence indicates heavy trafficking of methamphetamine by West Coast motorcycle groups, both in the west and in other parts of the United States. In addition, various motorcycle gangs control virtually all illicit manufacture and distribution in Texas, where one-third of the clandestine laboratory seizures were made in 1982. Most of these Texas gangs maintain links in other states and in Canada.

METHAQUALONE

Vigorous diplomatic efforts aimed at curtailing the diversion of bulk methaqualone from legitimate international commerce have caused a reduction in methaqualone availability and abuse in the United States. In addition, enforcement activities have resulted in numerous major seizures of the drug, arrests of

high-level traffickers, and several clandestine laboratory seizures.

The primary source of counterfeit Quaalude tablets is clandestine tableting operations located in South America, which utilize bulk powder diverted from a variety of sources worldwide. Diversion from domestic sources -- including "stress clinics" and other means of prescription fraud -- account for a much smaller but significant portion of the illicit supply. Methaqualone is trafficked primarily from Colombia to Florida, where smuggling of the drug is frequently carried out by cocaine and marihuana trafficking organizations.

International cooperative efforts should continue to restrict the supply of bulk methaqualone to the illicit market in the United States. As the supply of methaqualone declines, however. trafficking in counterfeit methaqualone, containing dangerous amounts of diazepam (Valium) and other substances, will continue to increase. The People's Republic of China, which has recently been a major source of bulk methaqualone powder, has agreed to place restrictions on the export, sale, and distribution of methaqualone powder, further limiting traffickers' access to the raw material.

OTHER DANGEROUS DRUGS

The abuse of non-amphetamine stimulants such as Preludin and Ritalin, and anorectic drugs such as phendimetrazine is

increasing gradually. These substances reach the illicit market primarily through prescription fraud, theft, and other forms of diversion. There is some evidence that certain stimulants are being smuggled into the United States from Canada. There is also evidence that phenyl-2-proponal (P2P), a methamphetamine precursor in Schedule II of the Controlled Substances Act, is being smuggled from Canada by motorcycle gang trafficking groups.

Abuse of barbiturates and diazepam is declining. For the most part, abused barbiturates are legitimately manufactured or smuggled into the United States; there is little clandestine manufacturing. The decline in barbiturate use in recent years is most likely a consequence of rescheduling, public awareness of the dangers of barbiturate use, and the availability of other depressants, such as methaqualone and diazepam. Although diazepam, a non-barbiturate sedative, has consistently had the most frequent incidence of reported abuse, in 50 percent of abuse episodes the source for the diazepam was legal prescriptions. The balance of abuse episodes was accounted for by diversion from licit channels, an activity that is expected to continue because the relatively low price of diazepam tablets.

During the last three years, the widespread use of pharmaceutical narcotic substitutes for heroin has become common among heroin users and addicts in some cities. The combination of Talwin,

n analgesic, and pyribenzamine, an antihistamine under the street name "T's and Blues", appears to be supplanting heroin in some cities. Through a cooperative effort involving the manufacturer of Talwin, the Food and Drug Administration and the DEA, a new Talwin formulation has been introduced into the market to replace the current product. This new formulation may prove to be less susceptible to abuse than the earlier form. Additionally, during the past year a codeine and glutethimide combination has been reported under the street name "Fours and Doors". Dilaudid abuse in the United States has increased substantially in the last two years.

During the past several years, the wholesale vending of "look-alike" drugs has become a major drug abuse problem. Look-alikes are tablets or capsules that are manufactured to resemble controlled substances, but that contain non-controlled over-the-counter drugs. The user who consistently ingests five or six of these pills is exposed to great danger when he inadvertently does the same thing with real controlled drugs such as amphetamine. In addition, incidents of overdosing on look-alikes have been reported.

MARIHUANA

Despite a continuation of the decline in popularity among high school students, marihuana abuse and availability

continue to be widespread nationally.

Colombia continues to be the major cultivator and exporter of marihuana to the United States, and despite high levels of enforcement pressure, the Caribbean area, is expected to continue to supply about one-half of the marihuana consumed in the United States. Marihuana is smuggled in multi-ton shipments by vessel and by private and general aviation aircraft.

Colombian marihuana smuggling is highly organized. A few large multi-drug organizations operating in the northern coastal cities of the country arrange and supervise most of the smuggling operations. These organizations deal easily in multi-ton quantities and often work together to arrange large deliveries to the United States, where their U. S. members control off-loading and distribution.

Following Colombia, Mexico and Jamaica are the major exporters of marihuana to the U. S. Due to the success of the Mexican Government's vigorous eradication campaign, which has been in effect since 1976, Mexico's share of the overall U. S. marihuana market has declined steadily in the past several years. By contrast, Jamaica is becoming a more important source country.

DOMESTIC MARIHUANA PRODUCTION

Drug law enforcement in the United States is facing a new challenge: the burgeoning cultivation of high-potency cannabis

r own borders.

ed crop control and enforcement efforts aimed at
arihuana took hold, U. S. users began to look for
ırces. This situation has led to cannabis cultivation
ercial purposes in almost every state. Sinsemilla
ı, a potent and expensive variety first developed in
ıd California, is now being grown in other states and
able around the country.

d local authorities reported to DEA that they
d in excess of 2.5 million cannabis plants during
season. Based on accepted estimates for domestic
ıa production in 1981, it appears that more cannabis
ıicated in 1982 than was previously believed to exist.

tion in the United States appears to be generally
ized and diverse; growers range from former moon-
to unemployed lumberjacks, from legitimate farmers
individual user growing his own supply. Generally,
produce and sell independently. Certain outlaw
cle gangs are involved in the domestic marihuana
, but at this time we have not seen a single group
trol of a significant part of this market. There have
cidents of violence associated with domestic production
growers and thieves, between growers and law enforce-
ficers, and against innocent citizens.

ORGANIZED CRIME

Worldwide drug trafficking enterprises have become increasingly organized and sophisticated. Organized crime -- motivated by greed and fed by enormous profits -- has found in the illicit drug trade a vehicle for perpetuating and enhancing its wide range of lucrative criminal activities.

DEA records indicate that during Fiscal Year 1982, 1,337 Class I violators were arrested. This classification represents individuals occupying positions in the drug distribution hierarchy at the very highest levels, including heads of criminal organizations and financiers. This is still a small percentage of the leading figures behind the billions of dollars in retail drug sales in the United States each year. Drug trafficking and the myriad of other crimes associated with it have a devastating effect on our society and economy.

Organized criminal groups are involved across the whole drug trafficking spectrum. They obtain illicit substances overseas, arrange for importation into the United States, and establish elaborate enterprises for cutting the imported drugs and distributing them throughout the country. Drug money is laundered through seemingly legitimate businesses specifically

set up as "fronts" for drug dealers. Profits are reinvested in the drug business much like a legitimate corporate enterprise. Profits from drug trafficking are also being invested in legitimate businesses.

In the United States, there are numerous complex criminal organizations associated with each other in what is variously known as the Mafia, Syndicate, or La Cosa Nostra. These organized crime "families" are bound together by blood, tradition, and philosophy. The popular notion that these traditional organized crime families are not involved in the drug traffic is not true. Many traditional organized crime groups are involved in drug trafficking in one way or another, and many operate extensive, sophisticated, and powerful drug trafficking networks.

The problem of organized crime today is not limited to traditional organized crime. In the past twenty years, we have witnessed the emergence of new organized criminal enterprises dealing not only in drugs, but also in other criminal activities traditionally controlled by the "Syndicate".

Over the past decade, hundreds of chapters of outlaw motorcycle gangs have developed around the United States and in foreign countries. Prison gangs, first established as a

result of associations developed in the California prison system, today operate both inside and outside prison, and are spreading across the country. Other emergenging organizations, such as Southeast Asian groups, the violent Colombian groups known as "Cocaine Cowboys", the "Dixie Mafia", and other drug cartels derive their primary source of revenue from drug trafficking.

The involvement of organized crime with the illegal drug trade is only part of the problem. Organized groups of criminals assault and murder, not only each other, but innocent bystanders as well. Public officials at all levels are being corrupted by drug money. We have reports of rural sheriffs and police officers accepting payments of $50,000 or more merely to "look the other way" while traffickers make a single landing at a makeshift airstrip. Clearly, the violence and corruption attending the illicit drug business threaten the very foundations of our system of law and order.

UNITED STATES GOVERNMENT STRATEGY

On October 4, 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 is also directed at education and prevention, treatment and research.

INTERNATIONAL NARCOTICS CONTROL

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 this aspect of the Strategy include:

- Encouraging and assisting other countries to develop programs to eradicate illicit drugs grown or produced within their borders, and to address their internal drug problems;
- Exploring with other governments ways to monitor and to impede the substantial cash generated by illicit drug transactions; and

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

At the core of DEA's international activities is support for source country efforts to interdict drugs before they enter international commerce. This strategy has a substantial impact on the drug traffic because the quantities of drugs seized at the source are much larger and purer than those seized on the streets of United States cities. Toward meeting this objective, DEA provides technical assistance through training and exchanges of intelligence in cooperative investigations. DEA personnel stationed overseas also work with the State Department and our diplomatic missions in support of host country efforts to eliminate cultivation, production, and conversion of drugs.

DEA has assigned approximately 275 individuals to 62 offices in 41 countries through the world. Our country attaches, agents, intelligence analysts, and support personnel oversee, 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 drug shipments at staging areas in-country and along trafficking routes. As a result

outstanding cooperation between DEA and our host country counterparts, there have been significant advances in coordinated operations with some source and transit countries. This progressive approach to cooperative international narcotics control has given the United States enhanced operational capabilities, and has been invaluable in the investigation of major drug trafficking organizations.

Mr. Chairman, although DEA's first priority in the fight against drug abuse is vigorous law enforcement action, we are firm in our commitment to the United States' international programs, and we are proud of our contributions to the international drug control effort. If you will permit me, I would like to give you and the other members of the Committee a few recent examples of how DEA's international role has assisted in this effort.

Of the three opium producing countries in Southwest Asia, Pakistan is the only country in which DEA maintains a presence. It is also the only country in the region to remain largely unaffected by changes in government during the past four years. DEA enjoys a good relationship with the Pakistan Narcotics Control Board (PNCB) and has assisted the PNCB in the identification of trafficking organizations and the location of heroin processing laboratories. Unfortunately, the tribal area of the Northwest Frontier Provinces (NWFP) of Pakistan, the principal opium growing area of the country, is an area over which the Government of

Pakistan has difficulty exerting influence, and in which narcotics traffickers freely smuggle opium and convert it to heroin. The Government of Pakistan must be extremely cautious in taking any measures that could upset the delicate relationship it maintains with the Pathan tribes of the NWFP. The Soviet presence in Afghanistan has heightened this sensitivity, making it even more difficult for the Government of Pakistan to take steps that might antagonize these fiercely independent tribes. Despite these difficulties, DEA is working vigorously with law enforcement counterparts to eliminate heroin laboratories in this area.

DEA is providing the PNCB with intelligence that has led and will continue to lead to major seizures and the identification and immobilization of heroin conversion laboratories and the major trafficking organizations that operate them. Since 1980, we have assisted the PNCB and Pakistan Customs in providing basic and advanced narcotics enforcement training to more than 750 Pakistan enforcement officials.

The consequences of increased supplies of Southwest Asian heroin are being experienced in several Western European nations as well as the United States. DEA's timely and active support to European nations has helped to contain this problem. The international enforcement community, with DEA participation,

has had significant success in penetrating several drug trafficking networks and disabling heroin conversion laboratories in Italy and Southwest Asia.

In Southeast Asia last year, the Government of Thailand launched several major suppression operations against the Shan United Army (SUA), which controls most of the narcotics activity along the Thai/Burma border. Despite these efforts, opium continues to be plentiful in the area.

DEA is working with Thai authorities to develop intelligence on trafficking organizations operating along the Thai/Burma border to enhance the Thai government's ability to suppress operations and reduce the amount of opium grown and converted into heroin. In addition, DEA personnel in Southeast Asia are supporting our domestic investigations of Thai nationals trafficking in Southeast Asian heroin in Los Angeles and New York.

The diversion of legitimately produced pharmaceuticals from international commerce is a major problem affecting the United States. Methaqualone, a powerful sedative-hypnotic trafficked to the United States from European and Asian sources, had been this country's fastest growing drug problem until a series of diplomatic initiatives were undertaken to limit the manufacture and exportation of methaqualone to meet minimal legitimate medical needs.

Through the efforts of the U. S. diplomatic community supported by DEA's International Diversion Program, Germany, Austria, Hungary, and the People's Republic of China have all agreed to reduce or cease methaqualone production and to place strict controls on its exportation. As a result, seizures of methaqualone between 1981 and 1982 decreased by more than 80 percent and drug injuries have been reduced by 40 percent since 1980.

If we are to have any significant reduction in the availability of illicit drugs in the United States, then we and the governments of other nations must work together to eliminate the cultivation and production of illicit drugs in the source countries where supplies are most heavily concentrated. I believe we must be aware, however, that our government's international drug control activities are long-range diplomatic efforts over which we have limited control, and that the effective elimination of drugs at their foreign sources may be several years off. In the interim, we must accelerate our efforts in those areas over which we do have control -- domestic law enforcement and drug education.

DOMESTIC DRUG LAW ENFORCEMENT

A primary goal of the 1982 Strategy is to bring to bear the full range of Federal, State, and local government resources against drug trafficking organizations in the United States. This goal emphasizes the arrest and conviction of high-level drug traffickers, the forfeiture of their assets, and the removal of drugs from the illicit market. Specific objectives of the domestic drug law enforcement aspect of the Strategy include:

- Increasing the capabilities of Federal drug law enforcement through improved management, broadened involvement, and enhanced cooperation and coordination among Federal agencies;
- Improving cooperation and coordination among Federal, State, and local law enforcement agencies, and encouraging state and local efforts to eradicate illicit drug production and cultivation; and
- Targeting investigative resources on the range of key criminal activities associated with trafficking organizations.

In pursuit of these objectives, a number of initiatives and programs have been undertaken to supplement DEA's ongoing enforcement activities.

In January 1982, the Attorney General assigned the FBI concurrent jurisdiction with DEA over Federal drug investigations and announced that the Administrator of DEA

would function under the general supervision of the Director of the FBI. Both agencies, working together, developed operating guidelines for drug investigations. They provide that DEA continues as the principal Federal drug law enforcement agency responsible for enforcing the Controlled Substances Act, the diversion control progam, drug intelligence analysis, and publication of appropriate strategic assessments; and that the FBI continues as the principal Federal investigative agency attacking organized crime.

These guidelines place strong emphasis on major distributors and organizations involved in the manufacture, distribution and financing of illicit controlled substances. High-level conspiracy investigations are the foundation of all joint DEA/FBI investigative efforts.

In granting concurrent jurisdiction to the FBI, the Attorney General added to the nation's drug enforcement law effort the support of 7,700 FBI agents in more than 500 offices around the country. Since the new DEA/FBI alliance was formed, working together, we have more than 450 major joint investigations directed at the upper echelon of the drug trafficking networks.

As part of our joint efforts, we are cross-training DEA and FBI agents to enhance interagency understanding and make each agency's expertise available to the other.

FBI Special Agent accountants bring valuable expertise to the financial aspects of drug investigations. The FBI's network of informants and its investigative expertise in the area of organized crime are all important tools brought into the Federal drug law enforcement partnership.

In addition, we are coordinating utilization of each agency's scientific laboratories to make the special capabilities of each available. Intelligence personnel from both agencies are working together to ensure that all criminal intelligence data bases are searched to provide specific targeting information to agents in the field.

Three other Administration initiatives have addressed forcefully and directly the 1982 Strategy's call for broadened Federal coordination: the Vice President's South Florida Task Force, the Organized Crime Drug Enforcement Task Force Program (OCDETF) and the newly created National Narcotic Border Interdiction System (NNBIS).

In March 1982, Vice President Bush announced the formation of the South Florida Task Force to address the severe drug trafficking and other related crimes in that part of the country. The Task Force consists of personnel from DEA, U. S. Customs, the Bureau of Alcohol, Tobacco, and Firearms,

the Department of Defense, and the U. S. Coast Guard.

DEA and Customs participate in this program under a Joint Task Group currently consisting of 54 Customs Special Agents and Patrol Officers and 21 DEA Special Agents. This group, directed by a DEA Task Force leader and a Customs Deputy Task Force leader, conducts both pre- and post-drug smuggling investigations, as well as financial investigations throughout the State of Florida. As this Committee is well aware, DEA and Customs have a long history of cooperation both within and beyond South Florida. This cooperation includes the exchange of information at both the Headquarters and field levels, and joint participation in various investigative operations.

As a result of our cooperative effort in South Florida, nearly 1,300 violators have been arrested and seizures totalling more than 780 tons of marihuana and more than 3,000 pounds of cocaine have been made during the 13 months of the initiative's operation.

Another crucially important component of the cooperative Federal effort in South Florida is the implementation of increased military assistance now available under new amendments to the posse comitatus statute. These amendments permit appropriate use of military resources in interdicting drug shipments. They are provided through intelligence and tracking

by military aircraft and vessels of ships or airplanes suspected of carrying drugs to the United States. The contribution of the military has been invaluable in helping to reduce the drug flow into Florida and other states adjoining the Gulf of Mexico and the Caribbean.

To accomplish our initiatives in South Florida, law enforcement resources were shifted from other areas of the country, and drug traffickers began to shift their routes toward those areas. Clearly, a national approach to the drug trafficking situation was needed, and the Administration began drafting new initiatives to address this need.

A third major initiative has recently commenced. Last October, the President announced an eight-point program to combat organized crime and drug trafficking. The Organized Crime Drug Enforcement Task Force Program (OCDETF) established 12 new regional task forces across the country, a Presidential Commission on Organized Crime and Drug Trafficking, and a special Governor's Project to enlist the 50 state governors in a united campaign against drug trafficking and organized crime.

The 12 Task Foces,headquartered in Boston, New York, Baltimore, Atlanta, Houston, St. Louis, Chicago, Detroit, Denver, Los Angeles, San Francisco, and San Diego, operate

under the direction of the Attorney General and also work with state and local law enforcement officials. These Task Forces are utilizing the law enforcement resources of the Federal government including DEA, the FBI, the Internal Revenue Service, ATF, Immigration and Naturalization Service, the U. S. Marshals Service, U. S. Customs, and the Coast Guard. In those regions of the country where it will be effective, Department of Defense tracking and pursuit capabilities are available to support Task Force efforts.

Recognizing the increased involvement of organized crime in drug trafficking, these Task Forces are targeting and pursuing the highest levels of organized criminal enterprises trafficking in drugs. Their focus is on those who direct, supervise, and finance the illicit drug trade, levels of involvement that are appropriate to the Federal role.

The Task Forces complement existing Federal enforcement efforts against drugs and organized crime through the application of additional resources. Last December, the Congress appropriated $127.5 million for the

Program for the remainder of the fiscal year. This funding permits creation of over 1,100 investigative and prosecutorial positions. For its part, DEA has already committed 270 senior Special Agents to the program and the increased resources are allowing us to restaff their former positions.

This commitment allows us to further an intensive and coordinated campaign against international and domestic drug trafficking and other organized criminal enterprises. We are making full use of financial investigative techniques, including tax law enforcement and forfeiture actions, to identify and convict high-level traffickers and enable the Government to seize assets and profits derived from drug trafficking. Meeting these objectives will also result in the seizure of large quantities of illegal drugs, and the disruption of sophisticated drug trafficking organizations.

Less than two months ago, President Reagan announced the implementation of a fourth major initiative: the formation of the National Narcotics Border Interdiction System (NNBIS). NNBIS is designed to coordinate the work of those Federal agencies with existing responsibilities and capabilities for interdiction of sea-borne, air-borne, and cross-border importation of drugs. This program will complement the work of the regional Organized Crime Drug

Enforcement Task Forces, and, based on lessons learned in South Florida, will expand the interdiction concept to all borders of the country.

NNBIS will monitor suspected smuggling activity and coordinate the various Federal agencies' seizures of contraband and arrests of illegal drug importers. Headed by Vice President Bush, NNBIS will operate under the direction of an Executive Board composed of the Secretaries of State, Treasury, Defense and Transportation, the Attorney General, the Counselor to the President, the Director of Central Intelligence Agency, and the Director of the White House Drug Abuse Policy Office.

Mr. Chairman, I thus far have spoken about four major Federal Government initiatives in which DEA plays a central role. I should like also to outline for you some of the more significant ongoing DEA operations and programs that support the objectives of the 1982 Federal Strategy.

DEA has been successful in its efforts to minimize diversion of legitimate controlled substances from the pharmaceutical industry. We continue to maintain a strong cyclic investigation program and other domestic programs.

In recent years, DEA has redoubled its efforts to attack the growing problem of practitioner-level diversion. The Targeted

Registrant Investigation Program (TRIP) was developed in 1980 to direct available investigative resources toward the highest level of practitioner violators. During 1982, DEA initiated more than 300 cases involving willful diversion by practioners.

The investigation of so-called "stress clinics" and "store front clinics", which act as prescription mills for controlled drugs is a good example of this effort. In the Detroit area alone, we estimate that these clinics distributed between six and seven million dosage units of highly abused drugs over a two year period. Twenty-nine indictments were returned in one case against two physicians, seven pharmacists, and six corporations on a range of charges, including illegal distribution, conspiracy and continuing criminal enterprise.

In addition to its criminal diversion activities, DEA continues to promote the self-policing efforts of the pharmaceutical industry through its diversion prevention efforts. The quantities of controlled drugs prevented from entering the illicit distribution channels by informed and highly-motivated manufacturers and distributor registrants cannot be measured, but the response from industry over the past ten years has been positive and has shown other tangible results. For example, the amount of time required for cyclic investigations has been greatly reduced, allowing more

investigative resources to be channelled into the TRIP program.

Also, DEA has been working with the American Medical Association on a program to aid the states in identifying the nature, magnitude, and source of prescription drug diversion and abuse within their jurisdictions.

Another domestic program important to the 1982 Federal Strategy involves the production of marihuana within our own borders.

In 1982, DEA's Domestic Marihuana Eradication Program was expanded to include 25 states -- 18 more states than participated in the 1981 program. DEA's role in this cooperative venture is to encourage state efforts and to contribute funding, training, and investigative and aerial support to state and local law enforcement agencies engaged in domestic marihuana eradication and suppression.

Last year, DEA provided the states with nearly $1 million to help defray the expenses of their program. The DEA Airwing flew 481 missions for a total of 1,332 flying hours in support of the eradication effort. By all measures, the Domestic Marihuana Eradication Program was extremely successful. More than two million marihuana plants were eradicated, over 2,500 violators were arrested, and 785 weapons were seized. Operational relationships and procedures have become more established, an intelligence data base has been developed, an an additional 15 states have asked to participate in the 1983 program.

Adequate, timely, and reliable intelligence is important to the entire 1982 Strategy. The El Paso Intelligence Center (EPIC) continues to grow as a full-service intelligence center, providing 24-hour tactical intelligence to Federal and state law enforcement agencies. In the past year, EPIC supported intensified air and maritime operations in the Caribbean - Central America - South America area, serving as the primary clearinghouse for intelligence data.

Its contribution to increased information exchange with the military under the posse comitatus amendments have been invaluable. During 1982, the Internal Revenue Service became the eighth permanent Federal agency represented at EPIC, and 45 states and two U. S. territories now participate formally in the program or through their membership in multistate regional intelligence networks. A fourth domestic program, the DEA/State and Local Task Force Program, has proven itself an effective complement to the Federal drug enforcement effort. These Task Forces increase the effectiveness of State and local drug enforcement activities aimed at the mid-level violator, the link between supplier and consumer. In 1982, the Task Forces continued to elevate the level of cases in which they were involved. The overall conviction rate for Task Force cases ranges from 95 to 98 percent in Federal and state courts.

DEA continues to focus ongoing efforts on financial investigations

involving international money flows and the drug traffickers' assets. These investigations, which involve close cooperation among DEA, Customs, IRS, and the FBI, are generally aimed at isolated violators who direct, control, and profit from the drug traffic. These investigations also target re-investible profits for forfeiture, which contributes significantly to the immobilization of major trafficking organizations. During 1981, DEA, in cooperation with other agencies, was responsible for the seizure of drug related cash and property valued at $161 million; in 1982, this figure rose to $188 million.

Mr. Chairman, these are some examples of how DEA has participated in the Administration's strategy for the prevention of drug trafficking. There are a few points I would like to make in conclusion. While DEA's commitment to the international aspect of the drug control effort is firm, I believe we must recognize that controlling the drug problem from source countries is a long-term proposition. For the present, it cannot be our primary solution. The wide-spread availability of drugs and the involvement of organized criminal enterprises dealing in violence and corruption pose real and immediate dangers to our society. For the present, I believe that we must accelerate our efforts toward achieving those elements of the drug control Strategy within our grasp. Our most immediate need is for

continued vigorous pursuit of a strong law enforcement program. Furthermore, we must lend our fullest possible efforts toward the education of our citizens about the hazards of drug use.

I strongly endorse the drug abuse prevention efforts of Mrs. Reagan and the many programs with which she works. I am encouraged, too, that professional associations and parent groups such as Pharmacists Against Drug Abuse and the National Federation of Parents for a Drug Free Youth are becoming involved in the education effort. The continued interest and participation of the various elements of our society, both inside and outside the government, is our strongest weapon against the drug abuse problem.

The President has said that the campaign against drug abuse in the United States is a campaign we cannot afford to lose. Mr. Chairman, I am optimistic that the significant inroads we have made in limiting the availability of illicit drugs in this country will continue, and that we will reach a point where we see broad reductions, not only in the availability of drugs, but also in the demand for them by our citizens. DEA is proud of its role in this campaign and pledges its full dedication to the goals of the Federal Strategy.

Thank you for this opportunity to discuss our role in the implementation of the 1982 Federal Strategy and for your assistance and support.