THE WHITE HOUSE

WASHINGTON

February 8, 1984

John - Nice job!

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Statement of William Bradford Reynolds Regarding Civil Rights of Institutionalized Persons Act (CRIPA) on February 8, 1984

OMB has asked for our immediate comments on a revised version of Brad Reynolds's proposed testimony on enforcement of the Civil Rights of Institutionalized Persons Act. You will recall that we found the earlier version too defensive, and that we objected to the attribution of Machiavellian motives to certain litigators in the area. I am happy to report that the revised version is vastly improved: more positive in tone, with the entire discussion of the motives of deinstitutionalization litigators omitted.

In light of the imminent deadline for comments -- the testimony is to be delivered today -- I have advised OMB that we have no objections to the revised version.

Attachment

THE WHITE HOUSE

WASHINGTON

February 7, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Statement of William Bradford Reynolds Regarding Civil Rights of Institutionalized Persons Act (CRIPA) on February 8, 1984

OMB has asked for any comments on the attached testimony, which Brad Reynolds proposes to deliver tomorrow before a joint hearing of the Subcommittee on Courts and the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee. The testimony concerns enforcement of the Civil Rights of Institutionalized Persons Act by the Civil Rights Division.

The testimony begins by stressing the virtues of the Division's emphasis on negotiations with states to achieve institutional reform, rather than immediate resort to hostile litigation. Reynolds then reviews the statistics on investigations (31 initiated by this Administration) and cites several examples of successful negotiations with states.

The testimony concludes with a lengthy discussion of the reasons the Division refuses to take a position on the "deinstitutionalization/revitalization" debate. That debate is between those who favor deinstitutionalization -- placing the retarded not in institutions but in smaller settings integrated with the community -- and those who favor upgrading the quality of the institutions. Reynolds contends that litigators who favor deinstitutionalization sue institutions not to bring them into line with constitutional standards but rather as part of a grand strategy to force them to close. The Division, according to the testimony, will not pursue this tactic, and will not seek to enlist the courts on either side of this public policy debate, which should be resolved by democratic processes.

The testimony strikes me as very defensive in tone throughout, although there is little that can be done about that at this point. I have no legal objections (other than a minor point noted in the attached memorandum), although it should be recognized that Reynolds' attribution of somewhat Machiavellian motives to litigators in this area may generate some controversy.

THE WHITE HOUSE

WASHINGTON

February 7, 1984

MEMORANDUM FOR JAMES C. MURR
CHIEF, ECONOMICS-SCIENCE-GENERAL
GOVERNMENT SECTION, OMB

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

SUBJECT: Statement of William Bradford Reynolds Regarding Civil Rights of Institutionalized Persons Act (CRIPA) on February 8, 1984

Counsel's Office has reviewed the above-referenced proposed testimony. On page 7, line 3, it seems that "negotiations" should be changed to "consent decrees" -- otherwise the sentence makes no sense. While we have no legal objections, the testimony strikes us as overly defensive throughout. Perhaps this tone could be moderated somewhat if there remains time for revisions. It might also be desirable to soften the attribution of Machiavellian motives to deinstitutionalization litigators on pages 12-14.

FFF:JGR:aea 2/7/84
cc: FFFielding/JGRoberts/Subj/Chron

ID # _____ CU

JR

WHITE HOUSE
CORRESPONDENCE TRACKING WORKSHEET

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Subject: Statement of Wm. Bradford Reynolds re: Civil Rights of Institutionalized Persons Act (CRIPA) on February 8, 1984

ROUTE TO:		ACTION		DISPOSITION		
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5/81

DRAFT

STATEMENT

OF

WM. BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE

THE

SUBCOMMITTEE ON COURTS

AND THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT (CRIPA)

ON

FEBRUARY 8, 1984

DRAFT

Mr. Chairmen and members of the subcommittee, it is a pleasure to present my testimony to your joint hearing on the enforcement by the Department of Justice of the Civil Rights of Institutionalized Persons Act (CRIPA).

Enacted by Congress in 1980, CRIPA is one of the many civil rights statutes enforced by the Civil Rights Division of the Department of Justice. It is, nonetheless, a particularly important statute because it provides procedures for protecting the constitutional rights of institutionalized persons, a group whose liberty interests are, by definition, subjected to significant governmental restraints. While some restraints on the liberty interests of many institutionalized persons are legitimate, the mere fact of institutionalization does not, by itself, justify any additional infringement of their civil rights. Because institutionalized persons are at a disadvantage in protecting their civil rights, CRIPA establishes procedures whereby the federal government may assist in protecting their rights under the Constitution.

It is precisely because of the relative disadvantages of institutionalized persons that I take pride in the very positive work of the Civil Rights Division on their behalf since CRIPA was enacted in 1980. At the same time, I take pride in knowing that during my tenure as Assistant Attorney General, the Division's efforts have been undertaken in the spirit of federal-state cooperation intended by Congress. Many critics,

however, have complained that instead of adopting a cooperative approach to enforcing CRIPA, the Division should be undertaking a more hostile, litigious approach. They would have the Division file more lawsuits and are unimpressed by the negotiated and informally achieved improvements that we have obtained at many institutions across the country.

When I testified about CRIPA last November 17 before a Senate subcommittee, I provided a lengthy explanation of why I believe CRIPA requires federal-state cooperation in the enforcement of the Act. Rather than repeating that explanation here, I have attached my prior testimony and respectfully request that it be made a part of this hearing record. In addition, I have attached the appendices to that statement which provide a point-by-point rebuttal of specific criticisms of some of our enforcement activities. I respectfully request that the appendices also be made part of this hearing record.

In my statement today, I will offer further explanation of why we have refused to yield to our critics' demands for more hostile and litigious enforcement of CRIPA. I will explain how the cooperative approach has enabled us to compile a solid record of improvements at institutions across the country. I will also explain how our approach has avoided practical disadvantages of a more litigious approach and how our adopting a hostile, litigious approach to enforcing CRIPA might be viewed as improperly taking sides in a policy dispute

that should not be resolved by the federal courts under the pretense of enforcing the Constitution.

First, I shall review how our cooperative enforcement approach has resulted in a solid record of accomplishments. Out of a total of 42 investigations initiated since the effective date of CRIPA, the Administration has initiated 31, and has completed 11 investigations. The Division is currently in some 31 ongoing cases affecting institutions in 25 States. The vast majority of those 31 cases are in the negotiation stage and the remainder are in the investigation stage. We have found it necessary to file only one lawsuit and as a result of cooperative negotiations with states have already obtained two consent decrees. In other ongoing litigation as many as 52 substantive orders have been entered in cases in which we have been involved. We have also filed, intervened in, or participated in eight cases brought under other statutes in this area.

These statistics demonstrate that the Division has indeed followed CRIPA's mandate that litigation be a tool of last resort and that cooperative investigations and negotiations be the preferred means of remedying constitutional deficiencies in state institutions. Of course, our critics immediately lambast this record since their test of our efforts is the number of cases filed rather than the improvements achieved in the institutions. When measured by

DRAFT

the number of constitutionally intolerable situations that have been remedied, however, it becomes clear that our enforcement approach has produced an excellent record.

In several States our investigations alone have caused States to respond with remediation programs, plans or other steps to eliminate constitutional deficiencies.

For example, in Illinois, State officials have decided to close two facilities -- Dixon Developmental Center, a mental retardation facility, and Manteno Mental Health Center, a mental hospital -- following initiation of CRIPA investigations. Dixon residents were transferred to superior facilities elsewhere in the State. Manteno will be closed by 1986 and we will act to insure that its patients receive constitutionally adequate care and conditions of confinement.

Similarly, following the initiation of an investigation, Louisiana State officials removed patients from several buildings of the Louisiana State Hospital and undertook a program to improve care and conditions at the remaining buildings. Also following initiation of an investigation, Louisiana State officials removed all residents from Jackson Special Hospital, a site whose conditions gave rise to very serious allegations of grossly inadequate medical care for prison inmates.

South Florida State Hospital has adopted a master plan to remedy institutional problems. Reports indicate progress. Officials have implemented treatment programs, modified

institutional policies and practices where warranted, and committed themselves to reducing the patient population by developing alternative programs.

Arkansas State officials have renovated or constructed new buildings at the Benton Services Center, thereby creating a new facility. Moreover, these officials have committed themselves to upgrading patient care and implementing new treatment programs.

In Oklahoma, State officials report improvements at both Enid and Paul's Valley State schools. Specifically, State officials have hired additional staff, increased staff training, begun renovation of various living units, closed one building and pursuant to the leadership of a new State director committed themselves to significant improvements at each mental retardation facility. Moreover, State officials have committed themselves to evaluating residents for placement in alternative programs which they seek to establish in various Oklahoma communities.

With respect to the Cornwell Heights Youth Development Center, Bensalem, Pennsylvania, progress reports have assured us that State officials have taken sufficient steps to increase safety and security, and improve the physical plant and medical services to satisfy our concerns. Among other things, State officials have ameliorated services for youths identified

as having emotional disturbances leading to acute behavioral disturbances. Pennsylvania similarly took steps to improve conditions at the Western State Correctional Facility, Harrisburg, Pennsylvania. State officials increased medical staffing and otherwise took steps to improve both medical and mental health services.

In Maryland, State officials have submitted their plan to improve conditions at Rosewood, a mental retardation institution. A new facility director has been hired and a commitment made to place as many as 400 residents in alternative programs in Maryland communities consistent with the professional judgments of institutional officials.

In Indiana our recent investigations of Central State Hospital and Logansport State Hospital have caused Indiana's Governor to make a commitment to improve conditions in all Indiana's mental health facilities so that they will achieve accreditation consistent with nationally recognized psychiatric standards.

I think that the willingness of states to respond to our investigations with such significant remedial actions demonstrates that in many cases, litigation simply is not necessary. It also gives lie to the assumption by some of our critics that state governments are irresponsible partners in the federal system and must be disciplined constantly in the federal courts.

Of course, there have been and will continue to be cases in which we can secure guarantees of remedial actions only through negotiations in addition to investigations. The consent decrees we have obtained in Michigan and Louisiana result from our efforts to secure remedial actions through negotiation.

On January 18, 1984, Division lawyers and Michigan State officials concluded lengthy negotiations resulting in a consent decree which vindicates the federal constitutional rights of some 7,500 inmates housed in three Michigan prisons. The consent decree addresses several areas of constitutional violations and references a comprehensive State plan to reduce violence, afford fire safety, improve medical and other health care, maintain minimum levels of sanitation, afford meaningful access to the courts and achieve other much-needed improvements. The consent decree is a legally binding and enforceable commitment to afford constitutional conditions while fixing responsibility with the State. It reflects the State's need for a cost-conscious plan, for limited federal intrusion, for maintenance of broad discretion by State officials, as well as the need for federal assurance of State compliance with constitutional requirements.

Similarly, in a private action into which we intervened pursuant to CRIPA, we recently entered into a consent decree with Louisiana State officials by which State officials have agreed to make necessary improvements at the Feliciana Forensic

Facility in Jackson, Louisiana. Among other things, responsible State officials have agreed to take those steps necessary to bring the facility into compliance with national standards covering every aspect of mental health care.

In reporting these measures to you today, I do not mean to imply that all the problems we have identified have been solved, or even that every constitutional violation has been cured. I am saying, however, that concrete steps have been taken or that plans or programs have been put in place which hold promise for remediation. How we have proceeded has been governed by how serious ascertained deficiencies have been and by how cooperative and committed to remedying deficiencies State officials have been.

When our efforts meet with resistance, we resort to litigation after complying with CRIPA's requirement of attempted cooperation and negotiation. Several jurisdictions have, in fact, denied us meaningful access to facilities or failed to negotiate in good faith toward a satisfactory settlement. As you are aware, Division attorneys sued the State of Hawaii when State officials repeatedly refused to grant us access to Hawaii prisons. While the initial suit was dismissed for failing to comply fully with CRIPA's requirement of attempted cooperation and negotiation, State officials subsequently granted access. When negotiations failed in our efforts to cure flagrant and egregious conditions at the Newark City Jail, we filed suit.

When appropriate, the Division uses stronger litigation tools to assure compliance with constitutional guarantees. In cases involving the Willowbrook facility in New York, the Forest Haven facility near Washington, D.C., and the San Antonio, Texas jail, our attorneys urged contempt citations for officials failing to comply with previously entered consent decrees covering those facilities. In litigation involving the Pennhurst Center in Pennsylvania, our attorneys secured criminal indictments of several employees for physically abusing mentally retarded residents at the facility.

While we are willing to use strong measures when necessary, it continues to be my view that meaningful improvements in our public institutions will be obtained most readily on a cooperative basis. High-profile, hostile lawsuits might attract more attention, but I believe they would have produced fewer reforms in the institutions than our cooperative approach.

In addition to securing a better record of improvements in the institutions, I believe our approach avoids the problem of misallocation of resources that can result from the hostile litigious approach that our critics would have us use in enforcing CRIPA. A misallocation of resources can result from a non-cooperative approach to CRIPA enforcement because money available for a state's institutions is usually limited to a fund established by the state legislature. The limitation of the total funds available to institutions and the pressures

of public scrutiny and court-ordered remedies often combine to force state officials to shift attention and resources away from institutions that are not being investigated or sued, in order to remedy problems at the institutions that have been targeted by an investigation or lawsuit. While conditions at the targeted institution may improve as long as it is in the limelight, conditions at the non-targeted institutions may begin to decline because their funds have been shifted away. State officials are acutely aware of this problem, but are often helpless to do anything about it because the public and the state legislature are unwilling to increase the total fund for institutions, and because the public is completely absorbed by the targeted institution in the limelight and is therefore oblivious to the problems being created at other institutions in the state.

Court-ordered remedies can exacerbate this problem of misallocated resources if the spirit of federal-state cooperation is ignored. Other than CRIPA's mandate for cooperation with the states, nothing in the litigation process requires plaintiffs or courts to take into account how the remedies at the targeted institutions might affect the non-targeted institutions. Responsible officials who truly care about the needs of all institutionalized persons will therefore heed CRIPA's mandate for cooperation with the

states, since that cooperative approach to enforcing CRIPA will minimize the problem of misallocation of resources.

Finally, in the context of institutions for mentally retarded persons, our cooperative approach avoids the problems that would arise if we yielded to the demands of some critics who would have us use our CRIPA enforcement powers to assist advocates of deinstitutionalization in their long-running policy dispute with advocates favoring revitalization of institutions. Let me explain briefly why we refuse to take sides in this policy dispute over deinstitutionalization.

Deinstitutionalization is the practice of community placement of mentally retarded persons in intermediate care facilities (ICF/MRs), group homes or foster care homes. As a general matter, advocates for less severely retarded persons tend to favor the policy of deinstitutionalization. Less severely retarded persons include persons with Down's Syndrome who can learn to function adequately in the environment of an ICF/MR, group home, or foster home. In contrast, advocates for severely retarded or profoundly retarded persons tend to support the continued maintenance and upgrading of institutions rather than deinstitutionalization. By definition, severely or profoundly retarded persons are unable to engage in basic self-care functions and advocates for institutionalization therefore argue that they would not fare well outside an institution.

In the last two decades, advocates for deinstitutionalization seized on a technique for achieving their policy goals through litigation rather than through normal, democratic processes. At first, the concept of a right to treatment was promoted as a way of achieving better care for institutionalized mentally retarded persons. This process was described by Richard Levine in a recent law review article:

> A legally enforceable right to treatment was first advocated by Dr. Morton Birnbaum in 1960 for the involuntarily confined mentally ill. He hoped that judicial intervention which integrated a medical model of treatment with the tenets of due process would spur legislative activity to promulgate standards and appropriate monies to adequately care for the involuntarily confined mentally ill.
>
> Birnbaum predicted a span of time between judicial recognition of the proposed right and its eventual implementation. He envisioned that the courts would first be burdened with an onslaught of litigation and eventually respond with the establishment of objective standards for institutional treatment.
>
> * * *
>
> This radical but appealing concept received immediate acclaim and was heralded by the prestigious American Bar Association as significant a doctrine as Marbury v. Madison and Rylands v. Fletcher. Public interest litigators and progressive jurists have since nourished the doctrine in the areas of mental health and juvenile justice as the primary vehicle of reform.

"Disaffirmance of the Right to Treatment Doctrine: A New Juncture in Juvenile Justice," 41 U. Pitt. L. Rev. 159, 160 (1980).

Later, the right to treatment and its corollary, the right to treatment in the least restrictive alternate setting, became convenient legal entrees to other broader issues such as deinstitutionalization. Let me elaborate by quoting from Levine's description of the process as it was implemented in the context of juvenile correction facilities.

> While some litigators have pursued right to treatment cases in hopes of dismantling large institutions. Others have apparently adopted the rehabilitative model and the concepts of treatment and individualization. However, knowledgeable litigators have pursued deinstitutionalization under the rubric of rehabilitation employing essentially two related litigation strategies. First, is the "crisis tactic," which seeks to disrupt power enclaves within the institution in hopes of rendering it inoperable. It is maintained that the necessity of up-grading institutions will drive the costs so high that the institutional populations will be reduced as a result of economic chaos. However, the results of the crises [sic] tactic remain under scrutiny. The second related approach is the "noble lie." This tactic concludes that judges will never decide in favor of plaintiffs if the case is presented as a step towards closing the institution. This theory assumes that courts will be less likely to intervene if the concept of rehabilitation is characterized as a farce. Hence, the noble lie has been preached, although deinstitutionalization remains the primary target of most informed and seasoned litigators.

Id. at 182-83. Mr. Levine's surprising view of right to treatment litigation is shared by other lawyers working in the field of civil rights for institutionalized persons and I have seen much evidence supporting the validity of Mr. Levine's view.

The litigation tactics described should not and will not be adopted by the Civil Rights Division, no matter how loudly our critics may call for judicial activism to assist them in achieving their policy goal of deinstitutionalization. The Division's mission is not to assist any side in a dispute over public policy -- it is instead to enforce the Constitution and the federal laws. Moreover, the Constitution is not an empty vessel into which competing political groups pour trendy policies to suit their particular interests. Instead, the Constitution is the fundamental legal document of our federal government which establishes basic limitations on governmental powers.

In the context of institutionalized persons, the Supreme Court in Youngberg v. Romeo declared that the Constitution prohibits government from denying institutionalized persons the right (a) to adequate food, clothes, shelter and medical care; (b) to personal safety; (c) to be free from unreasonable bodily restraints; and (d) to the degree of training as is reasonable in light of such liberty interests. 457 U.S. 307 (1982). By so limiting judicial review of challenges to conditions in state institutions, the Supreme Court minimized the interference by the federal judiciary with the internal operations of institutions for mentally retarded persons. Youngberg's limitations on the scope of judicial review is premised on the belief that courts should not second-guess expert administrators and should not unduly

burden the legitimate efforts of states to deal with difficult social problems. Because of the Supreme Court's decision in Youngberg, it is clear that the policy dispute between groups supporting and opposing deinstitutionalization should be resolved through the legislative process, not through judicial proceedings under the pretense that the Constitution somehow addresses the issues in the deinstitutionalization debate.

The Supreme Court's recent decision in Pennhurst also underscores the need to respect the policy-making prerogatives of the State. Pennhurst State School and Hospital v. Halderman, ___ U.S. ___, 52 U.S.L.W. 4155 (Jan. 23, 1984). In Pennhurst the Supreme Court ruled that the Third Circuit Court of Appeals had overstepped its authority when it used a state law to uphold a U.S. District Court's orders calling for the transfers of hundreds of residents out of the Pennhurst facility and into the less restrictive environment of group homes. The District Court had ruled that the individual defendants in the case had "acted in the utmost good faith . . . within the sphere of their official responsibilities," and were therefore entitled to immunity from damages, but the District Court was unwilling to recognize that under the Eleventh Amendment the state was immune from injunctive relief based on state law. The Supreme Court, in contrast, did recognize the state's immunity from such injunctive relief and emphasized that "Article III confers no jurisdiction on this Court to strip

[the Eleventh Amendment] of its substantive meaning." Id. at 4160 n. 17.

Youngberg and Pennhurst together mean that the federal judidicary is not empowered by the Constitution to resolve the dispute over deinstitutionalization. I submit that the Civil Rights Division is therefore acting properly in refusing to misuse the Constitution in an attempt to favor one side or the other in that policy dispute. You may rest assured, however, that the Division will continue to enforce the constitutional guarantees established by the Supreme Court in Youngberg.

I have reviewed our enforcement record for the purpose of demonstrating that our cooperative approach is not only required by CRIPA, but also the best means of remedying constitutional deficiencies in state institutions. I have also explained how our approach avoids the problem of misallocation of resources and the problem of taking sides in a policy dispute. If you have any questions, I would be pleased to answer them.

THE WHITE HOUSE

WASHINGTON

February 13, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Draft Testimony of the General Services Administration on Presidential Libraries

OMB has asked for our views by close of business February 16 on the attached testimony, which Archivist Robert Warner proposes to deliver on February 23 before the Subcommittee on Government Information, Justice and Agriculture of the House Committee on Government Operations. The testimony is directed at three bills pending in the House that would, in varying degrees, prohibit the Government from spending money to maintain new Presidential libraries. Typically, the bills provide that private donations must not only fund construction of the proposed Presidential library (as is now the case) but must also establish an endowment to fund operation of the library.

In his proposed testimony Archivist Warner opposes these bills. His basic position is that Presidential records are government property -- either through deeds or, since 1981, under the Presidential Records Act -- and that the Government has certain responsibilities with respect to that property, including preservation, processing, and making the records available in a form that is useful to scholars and the general public. Warner argues that the discharge of these basic responsibilities cannot be made dependent upon private funding.

I have no objections to Warner's position that the Government should remain in the business of preserving, processing, and making Presidential records available to the public. He is correct that such records are, under the Presidential Records Act, the property of the United States. 44 U.S.C. § 2202. While we may at some point want to challenge specific provisions of that Act, such as the 12-year maximum limit on restrictions on disclosure, see 44 U.S.C. § 2204(a), I do not foresee any need to challenge the basic statement in § 2202 that "[t]he United States shall reserve and retain complete ownership, possession, and control of Presidential records."

Attachment

THE WHITE HOUSE

WASHINGTON

February 13, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS JGR

SUBJECT: Draft Testimony of the General Services Administration on Presidential Libraries

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I have no objections to Warner's position that the Government should remain in the business of preserving, processing, and making Presidential records available to the public. He is correct that such records are, under the Presidential Records Act, the property of the United States. 44 U.S.C. § 2202. While we may at some point want to challenge specific provisions of that Act, such as the 12-year maximum limit on restrictions on disclosure, see 44 U.S.C. § 2204(a), I do not foresee any need to challenge the basic statement in § 2202 that "[t]he United States shall reserve and retain complete ownership, possession, and control of Presidential records."

damn right!

Attachment

John Shouldn't we hit this now? (to set stage) (previous memo)?

THE WHITE HOUSE

WASHINGTON

February 13, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

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

SUBJECT: Draft Testimony of the General Services Administration on Presidential Libraries

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

FFF:JGR;aea 2/13/84
cc: FFFielding/JGRoberts/Subj/Chron

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SPECIAL

February 10, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: DEPARTMENT OF JUSTICE

SUBJECT: Draft testimony of the General Services Administration on Presidential libraries

The Office of Management and Budget requests the views of your agency on the enclosed testimony before advising on its relationship to the program of the President, in accordance with OMB Circular No. A-19.

Please provide your views no later than cob Thursday, February 16, 1984.

Direct your questions to Gregory Jones (395-3856), of this office.

James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: John Roberts Stuart Smith Jim Jordan Frank Reeder

DRAFT

Statement of
Dr. Robert M. Warner
Archivist of the United States
Before the
Subcommittee on
Government Information, Justice and Agriculture
of the
Committee on Government Operations
U. S. House of Representatives

February 23, 1984

FEB 1 0

Three bills pending in the House seek to alter the nature of Government support for Presidential libraries. All three proposals have a worthy goal, namely to reduce costs to the Government. However, all three proposals have the major limitation of not recognizing the Federal Government's obligation to maintain presidential historical materials, which are Federal property, in an appropriate fashion.

The National Archives certainly supports the object of lowering the cost to the Government of maintaining presidential materials and library buildings. Our position is that economies can be achieved without evading the fundamental responsibility of caring for and providing access to presidential materials, which are the property of the Federal government either by deeds accepted from the Presidents or, since 1981, under the Presidential Records Act of 1978.

Funding responsibilities for Presidential libraries exist on a continuum. On one end of the continuum is the

Government's absolute responsibility for core activities of processing and making available the historical record of the Presidency. On the other end of the continuum is the responsibility of library donor organizations to provide the physical facility to house a library. In the center are responsibilities for some ongoing programs which can appropriately be funded from Government or private sources, or a mix of the two.

The Federal Government must continue to fund the libraries' core functions, which include archival programs and basic museum programs. The Government has a fundamental responsibility to preserve the papers, objects, audiovisual records, and machine-readable information which constitute the historical record of the Presidency. These materials are only useful if they are made available to the public. They are made available in two ways: (1) Through the libraries' research rooms to scholars, the news media, and Federal agencies, and (2) through museum programs for students and the general public. Activities in direct support of the core functions include preservation work; maintenance and operation of buildings as they relate to core functions (including temperature and humidity control); purchase of supplies and equipment related to core functions; reference service; review, arrangement and description of materials; maintenance of museum exhibits; acquisition of related historical materials; training of staff, administration, and

the salaries related to these functions.

Providing the facility to house a library is the absolute reponsibility of private or other non-Federal organizations. This responsibility includes provision of land and the finished building, including equipment, furnishings, landscaping, and initial museum exhibits.

Other functions, while appropriate for Federal funding, might be also properly funded by private sources: oral history projects, including equipment, travel, and staff; development and installation of initial exhibits; major museum renovations and traveling exhibits; purchase of special equipment and furnishings; publications programs; conferences and symposia; and grants in aid of research.

Also appropriate for private funding are nominal core activities expanded beyond the basic level which is the Government's responsibility as the owner of the Presidential materials. For instance, the Government should retain the responsibility for providing the general public with a means to learn about the historical record of the Presidency without engaging in scholarly research. The most effective means to provide this general access has been through the libraries basic museum program of exhibiting the historical materials. However, should a private, non-profit support organization (which contributes the initial exhibit) wish to

pursue a more ambitious museum program, through larger exhibits or extensive public programs, that organization should fund the expanded level of activity, including funding for additional personnel, building space, and building operating costs.

Cost saving measures can be applied to the whole range of library activities. NARS has taken a number of measures which will result in lower costs to the Government:

-- NARS has developed guidelines for library buildings which specify necessary space requirements for each of the programs of the library. NARS works with donors and architects to assure that buildings comply with the guidelines. The guidelines were ~~first~~ employed in planning the Carter library. This has resulted in a building that will be compact and efficient.

-- NARS has made it a requirement for acceptance of a library building that the building be fully equipped by the donor. The donation of the building and grounds must now include security and telephone systems and some storage equipment which were previously considered to be the Government's responsibility.

-- NARS has the policy that energy efficiency is a prime criterion for an acceptable library building.

This and other architectural specifications aimed at operating economy would have more force if they were subjects of law or regulation.

-- NARS has underway an extensive study on the possible uses of automation in the administration of archives. It is expected that within the next few years implementation of automated systems will result in savings of personnel costs.

-- NARS has assumed responsibility for operating the Library buildings on an actual cost basis, which is resulting in economies through tighter, directly interested management.

-- NARS has taken advantage of new photographic technology to lower preservation costs for still photos from over 15 dollars per image to about 70 cents. This has resulted in a several million dollar cost avoidance.

Private funding mechanisms already in place help the Government in holding down library costs. Each library has an associated foundation or other non-profit organization which provides support by funding oral history programs, museum exhibits, conferences and other special events, and grants in aid of research. Several of these organizations

are currently conducting campaigns to increase their endowments in order to strengthen their support for the libraries.

Private support for Presidential libraries is necessary and welcome. It makes the libraries possible and expands the range of their programs and their service to the public. We acknowledge the value of this support and encourage its increase. However, we must guard against relying on donations to carry out Government responsibilities. It would be irresponsible to require private support to maintain Government property. It would be dangerous to yield the control over this property, particularly the historical record, that comes with holding the purse strings. Even the appearance of bias in administration of these national historical treasures would be intolerable. The Congress recognized this after thorough study by the Public Documents Commission and by the consequent passage of the Presidential Records Act in 1978. This act charges us with the stewardship of the invaluable historical record of our nation's highest and most visible office. To rely on others to carry out this responsibility would be to betray that trust.

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

FROM: JOHN G. ROBERTS
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Statement of James I.K. Knapp Concerning H.R. 3974 and H.R. 2944 -- Pharmacy Robbery, February 22, 1984

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

ID # 206914 CU

JV

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Subject: Statement of James I.K. Knapp concerning H.R. 3974 and H.R. 2944 - Pharmacy Robbery, Feb 2284

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206914

STATEMENT

OF

JAMES I. K. KNAPP
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

SUBCOMMITTEE ON HEALTH AND THE ENVIRONMENT
COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 3974 AND H.R. 2944 - PHARMACY ROBBERY

ON

FEBRUARY 22, 1984

Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to appear on behalf of the Department of Justice regarding H.R. 2944 and H.R. 3974, bills providing for Federal jurisdiction over pharmacy robberies and burglaries. We support legislation of this type but I will be suggesting several areas in which these bills should be modified both to facilitate prosecution and to limit properly the Federal role in this area.

The basis for our support of a limited Federal role in the investigation of robberies and burglaries of pharmacies is quite simple. Legitimate manufacturers and distributors of controlled substances -- particularly pharmacists -- are in constant and serious danger of robbery and death because of the nature of the products which they manufacture and dispense. During calendar year 1982 -- the last full year for which statistics are available -- we received reports of 1,037 armed robberies of controlled substances registrants resulting in the diversion of 2,783,220 dosage units. Of these 1,037 robberies, all but 41 were from pharmacies. Despite the undeniable menace to pharmacists and others registered by the Federal Government to manufacture and dispense controlled substances, there is presently no Federal statute clearly making the robbery of registrants a Federal crime. Registrants deserve the best protection that we can reasonably extend when they are the victims of violent crimes directed at securing the controlled

substances which they manufacture and dispense in the course of performing their valuable role in the system of health care which we enjoy in this country.

Legislation like H.R. 2944 and H.R. 3974 is appropriate in light of the Federal Government's pervasive role in the regulation of controlled substances and the broad scope of Federal criminal statutes already on the books pertaining to controlled substances. Just as the Federal role in protecting financial institutions led the Congress to enact a separate bank robbery statute, 18 U.S.C. 2113, so does our role in the controlled substances area justify a discrete statute covering robbery and burglary of controlled substances registrants.

Therefore, we support the thrust of these pharmacy crime bills before the Subcommittee. We do, however, have serious reservations about the effects such legislation could have if inappropriately drafted. It is no secret that the Department of Justice, until last year, opposed legislation of this type. The reservations which in the past led to such opposition have not diminished with the passage of time. Rather, we believe there are ways of addressing these concerns through limiting amendments.

First, we believe it is important to emphasize -- in the bill and in its legislative history -- that Federal prosecution of robberies of controlled substance registrants is to be utilized only in exceptional cases. The bills before the Subcommittee should be modified to state that violations of the

newly created offense may only be prosecuted upon approval of the Attorney General, the Deputy Attorney General, the Associate Attorney General or a designated Assistant Attorney General unless assistance is requested by an appropriate State or local prosecutor. In this connection, we note that H.R. 3974 provides that pharmacy robbery and burglary prosecutions must be approved by the Attorney General, an Assistant Attorney General, or a United States Attorney to whom such authority has been delegated. We recommend that the right to delegate such authority to United States Attorneys be eliminated as a way of keeping some degree of centralized control over the types of pharmacy crimes that require Federal involvement. Moreover, requiring approval from a high-level Justice Department official before Federal jurisdiction is asserted (except in cases where Federal assistance is required by a State prosecutors) will avoid the possibility of conflict between Federal prosecutors and their state counterparts, many of whom fear "case poaching" by Federal officials.

Our position that in the usual case high-level Department of Justice authorization should be obtained before the Justice Department's investigative and prosecutive resources are used in responding to pharmacy robberies and burglaries reflects the fact that most of these crimes do not involve any element which requires Federal intervention. Although we can make a unique contribution in connection with some types of cases, particularly those involving interstate or organized operations, most pharmacy crimes are indistinguishable from robberies or burglaries of

liquor stores, convenience food outlets, or service stations. State and local authorities are in a better position -- from the standpoint of resources -- to pursue the vast majority of these cases than are Federal authorities. As of October 31, 1982, the FBI's Uniform Crime Reports indicated that there were more than 448,000 sworn State and local law enforcement officers in the United States. By comparison, the combined forces of the FBI and DEA totalled approximately 10,000 agents or about 2% of the number of State and local law enforcement officers.

Federal authorities can, of course, be helpful in some pharmacy robbery and burglary cases, particularly those involving interstate travel, organized or sophisticated crime activity, diversions to facilitate major drug trafficking or other aggravating factors. It is in cases of this type, which will not require additional resources, where we foresee some exercise of Federal jurisdiction.

With regard to the penalty structure for pharmacy robbery or burglary, we believe it should be conformed to other laws like the bank robbery statute, to wit, not more than 20 years for the basic offense with a provision for enhanced sentences for defendants who assault anyone during the course of the offense or who use a dangerous weapon or device. Still greater punishment of any term of years or life imprisonment should be authorized for anyone who kills a person in the course of one of these offenses. In this regard, I note that both H.R. 2944 and H.R. 3974 contain minimum mandatory sentence provisions.

H.R. 2944 provides for a minimum sentence of two years' imprisonment for the basic offense of pharmacy robbery or burglary and for higher mandatory sentences for persons who commit these crimes while armed or who kill or maim another persons during their commission. H.R. 3974 contains a mandatory minimum sentence provision for persons who commit pharmacy robbery or burglary while armed, or by assaulting any other person, or by jeopardizing the life of another person by the use of a dangerous weapon. In our view, the best approach to any mandatory minimum sentence that may be proposed is to create such sanctions for particular types of activity with respect to crimes generally, such as the use of a firearm in a crime, rather than for particular crimes themselves or for certain ways of committing a particular crime.

The pharmacy robbery and burglary provision which comes the closest to setting out the appropriately graded penalty structure is Part N of Title X of S. 1762, the Comprehensive Crime Control Act of 1984, which the Administration strongly supports and which passed the Senate 91-1 on February 2, 1984.[1]

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[1] S. 1762 provides for punishment or up to twenty years' imprisonment and a $25,000 fine for the basic offenses of pharmacy robbery and burglary; up to twenty-five years imprisonment and a $10,000 fine for pharmacy robbery or burglary involving an assault or the use of a dangerous weapon; and up to life imprisonment for pharmacy robbery or burglary resulting in death. Obviously, the fine for pharmacy and burglary accomplished by means of a dangerous weapon or by an assault should be more than the fine for the basic offense, and a fine should be authorized for these crimes resulting in death. These inconsistencies should be addressed by this Subcommittee.

We also strongly recommend that legislation in this area cover robberies and burglaries not only of pharmacies, but also of manufacturers and distributors of controlled substances. Our experience has shown that offenses against these businesses usually result in much greater losses of controlled substances than do crimes directed at retail pharmacies. In short, we believe that the coverage should be of any robbery or burglary resulting in a loss of controlled substances from "any pharmacy or a person registered with the Drug Enforcement Administration under Section 302 of the Controlled Substances Act, (21 U.S.C. 822)." I would also note that the new provision should be added as section 413 of the Controlled Substances Act, not as Section 412 as is done in H.R. 2944. There is an existing section 412 (21 U.S.C. 852) added in 1978. Here again, the provisions in Part N of Title X of S. 1762 set out this language as part of an appropriately drafted robbery and burglary statute.[2]

Finally, we are opposed to the requirement in H.R. 2974 that the Department of Justice include in its annual report to Congress information on the number of indictments and convictions obtained pursuant to the new section and that the FBI include information concerning pharmacy robbery and burglary in its annual Uniform Crime Reports. The UCR reporting requirement would add to the complexity and cost of the Uniform Crime Reports

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[2] It should be noted, however, that this provision of S. 1762 contains an apparent typographical error in the robbery subsection in that it refers to persons registered under section 202 of the Controlled Substances Act. The correct citation is to section 302.

without producing information of significant value to law enforcement agencies. Moreover, the DEA presently obtains and compiles reports of crimes against registrants.

As for the requirement that the Department's annual report contain statistics concerning pharmacy crime indictments and convictions, we believe that it would be anomalous to require such information about what is expected to be an offense of limited significance for Federal authorities without requiring a similar report of prosecutions under major statutes such as the Racketeer Influenced and Corrupt Organizations (RICO) statute, 18 U.S.C. 1961 et. seq. or the offenses involving sale or importation of controlled substances. Moreover, it has been our experience that the effort required to set out information of the type that would be required by H.R. 3974 in the annual report is not justified by its value to the Congress. In any event, we could expeditiously provide statistics on indictments and convictions under the new statute when requested by the Congress or a committee staff at any time of the year that would be more current and at far less cost than by setting them out in the annual report.

If, however, the Committee believes that regular reports are necessary, we would recommend that their submission be limited to a trial period, preferably three years as is done in S. 1762, at which time their usefulness could be evaluated. We would, of

course, be happy to work with the Subcommittee and its staff to prepare the appropriate language for this and the other modifications I have suggested to the bills.

Mr. Chairman, that includes my prepared statement and I would be pleased to answer any questions the Subcommittee may have.

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS

SUBJECT: Statement of Francis M. Mullen, Jr. Regarding Cuban Government Involvement in Drug Trafficking, February 21, 1984

We have been provided with a copy of testimony DEA Administrator Bud Mullen proposes to deliver on February 21 before the Task Force on International Narcotics Control of the House Foreign Affairs Committee. Mullen cites several instances indicating a Cuban role in facilitating drug smuggling into the United States, although he does note that the overall effect of any such assistance is small. He concludes that "the Cuban Government still sanctions the use of Cuba as a transit point for drugs destined for the United States."

I have no objection.

Attachment

THE WHITE HOUSE

WASHINGTON

February 16, 1984

MEMORANDUM FOR GREGORY JONES
LEGISLATIVE ATTORNEY
OFFICE OF MANAGEMENT AND BUDGET

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

SUBJECT: Statement of Francis M. Mullen, Jr.
Regarding Cuban Government Involvement
in Drug Trafficking, February 21, 1984

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

FFF:JGR:aea 2/16/84
cc: FFFielding/JGRoberts/Subj/Chron

ID # 106915 CU

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STATEMENT

OF

FRANCIS M. MULLEN, JR.
ADMINISTRATOR

DRUG ENFORCEMENT ADMINISTRATION
U.S. DEPARTMENT OF JUSTICE

ON

CUBAN GOVERNMENT INVOLVEMENT
IN DRUG TRAFFICKING

BEFORE THE

COMMITTEE ON FOREIGN AFFAIRS

TASK FORCE ON INTERNATIONAL
NARCOTICS CONTROL

HOUSE OF REPRESENTATIVES

EDWARD F. FEIGHAN, CHAIRMAN

FEBRUARY 21, 1984

DRAFT

MR. CHAIRMAN, MEMBERS OF THE TASK FORCE, I AM PLEASED TO APPEAR AGAIN BEFORE A COMMITTEE OF THE UNITED STATES CONGRESS TO GIVE TESTIMONY ON CUBAN GOVERNMENT INVOLVEMENT IN DRUG TRAFFICKING. IT IS A SUBJECT DESERVING OF BOTH NATIONAL AND INTERNATIONAL ATTENTION.

WHEN I SPOKE ON THIS SUBJECT IN MIAMI ON APRIL 30, 1983, BEFORE A JOINT SENATE HEARING OF THE SUBCOMMITTEE ON SECURITY AND TERRORISM, THE SUBCOMMITTEE ON WESTERN HEMISPHERE AFFAIRS AND THE SENATE DRUG ENFORCEMENT CAUCUS, I BASED MY TESTIMONY PRIMARILY ON THE INVESTIGATION BY THE DRUG ENFORCEMENT ADMINISTRATION OF JAIME GUILLOT-LARA, A MAJOR COLOMBIAN DRUG TRAFFICKER.

GUILLOT CONSPIRED WITH HIGH RANKING OFFICIALS IN THE CUBAN GOVERNMENT TO USE CUBA AS A SAFE HAVEN AND TRANSIT POINT FOR HIS COCAINE, MARIJUANA, AND METHAQUALONE CARGOES EN ROUTE FROM COLOMBIA TO THE UNITED STATES. GUILLOT, FOUR HIGH RANKING CUBAN GOVERNMENT OFFICIALS, AND NINE OTHERS WERE INDICTED IN NOVEMBER 1982 BY A GRAND JURY IN MIAMI FOR VIOLATIONS OF FEDERAL NARCOTICS LAWS. THE CASE WAS SUCCESSFULLY PROSECUTED IN FEBRUARY 1983; GUILLOT AND THE FOUR CUBAN OFFICIALS WERE NOT TRIED IN ABSCENTIA AND REMAIN FUGITIVES. WE HAVE RECEIVED UNCONFIRMED REPORTS OF GUILLOT BEING IN CUBA OR COLOMBIA.

IT HAS BEEN A YEAR SINCE THE PROSECUTION OF THE GUILLOT CASE. DEA CONTINUES TO RECEIVE INFORMATION WHICH INDICATES THAT ALTHOUGH CUBA HAS BEEN AFFECTED BY THE NEGATIVE PUBLICITY GENERATED BY THE GUILLOT INVESTIGATION, AND HAS SINCE BECOME MORE CAUTIOUS, IT STILL PERMITS DRUG TRAFFICKERS TO USE THE ISLAND AS A TRANSIT POINT FOR DRUG SHIPMENTS TO THE UNITED STATES. I WOULD LIKE TO CITE TWO EXAMPLES OF THE TYPE OF INFORMATION WE HAVE RECEIVED SINCE THE PROSECUTION OF THE GUILLOT CASE:

1. IN MARCH 1983, A SAILING VESSEL WAS SEIZED IN FLORIDA WITH APPROXIMATELY 750 POUNDS OF MARIJUANA SECRETED ON BOARD. A SEARCH OF THE VESSEL REVEALED A DIARY WITH AN ITINERARY OF FLORIDA - BAHAMAS - HAITI- CUBA - JAMAICA - CUBA - BAHAMAS - AND FLORIDA LOGGED INSIDE.

2. IN SEPTEMBER 1983, AN AIRCRAFT CRASHED IN THE FLORIDA KEYS KILLING THE PILOT AND SERIOUSLY INJURING THE PASSENGER. EVIDENCE FOUND AT THE SCENE INDICATES THAT THE FLIGHT ORIGINATED IN JAMAICA AND THAT THE

AIRCRAFT WAS INVOLVED IN DRUG ACTIVITY AT THE TIME OF THE CRASH. ONE OF THE ITEMS FOUND IN THE WRECKAGE WAS A LET DOWN CHART FOR VARADERO, CUBA. A LET DOWN CHART IS MORE THAN A DESTINATION MARKED ON A MAP. IT IS AN APPROACH PLAN THAT REFERENCES INSTRUMENT FLIGHT RULE INFORMATION FOR AIRPORTS WITH WHICH THE PILOT IS NOT FAMILIAR. AN ANALYSIS OF THE FUEL TAKEN FROM THE WRECKAGE SHOWED IT TO HAVE A DIFFERENT OCTANE AND LEAD CONTENT THAN AIRCRAFT FUELS COMMERCIALLY AVAILABLE IN THE UNITED STATES AND JAMAICA. THERE IS A STRONG POSSIBILITY THAT THE FUEL WAS PROCURED IN CUBA. THE PILOT WAS OBSERVED IN JAMAICA JUST A FEW HOURS BEFORE THE CRASH. THE TIME ELAPSED BETWEEN THIS OBSERVATION AND THE CRASH WAS NOT SUFFICIENT FOR THE PILOT TO HAVE FLOWN AROUND CUBA. THERE WAS, HOWEVER, SUFFICIENT TIME FOR THE PILOT TO HAVE FLOWN TO CUBA, TO LAND, AND TO CONTINUE HIS JOURNEY TO FLORIDA.

DEA FREQUENTLY RECEIVES INFORMATION ALLEGING THAT TRAFFICKERS FLY AIRCRAFT OVER CUBA DURING THEIR DRUG SMUGGLING OPERATIONS. NO PREVIOUS ARRANGEMENTS ARE NECESSARY. THE AIRCRAFT ENTER A COMMERCIAL FLIGHT CORRIDOR OVER CUBA WITHOUT BEING CHALLENGED BY CUBAN AUTHORITIES. THIS IS REPORTEDLY A COMMON AND POPULAR TECHNIQUE.

CUBA IS NOT OPEN TO ANY AND ALL SMUGGLERS WHO WISH TO USE THE ISLAND. THE CUBANS APPARENTLY DEAL ONLY WITH THOSE DRUG SMUGGLERS THEY TRUST OR THOSE WHO CAN PROVIDE SOME BENEFIT OR SERVICE TO CUBA SUCH AS SMUGGLING WEAPONS, ILLUSTRATED IN THE GUILLOT INVESTIGATION. CUBA CONTINUES TO SEIZE VESSELS AND AIRCRAFT THAT CARRY DRUG CARGOES INTO ITS TERRITORY AND THAT DO NOT HAVE THE NECESSARY OFFICIAL CONTACTS IN CUBA. INDIVIDUALS ARRESTED IN CUBA FOR TRAFFICKING IN DRUGS CONTINUE TO FACE SEVERE PENALTIES.

THE DRUG ENFORCEMENT ADMINISTRATION CONSIDERS CUBAN INVOLVEMENT IN DRUG TRAFFICKING TO BE A PRIORITY ISSUE AND IS AGGRESSIVELY ISOLATING, IDENTIFYING, INVESTIGATING, AND ANALYZING INSTANCES WHERE THE CUBAN GOVERNMENT MAY BE INVOLVED. WE ARE TRACKING ALL DEA INVESTIGATIONS THAT MAY HAVE SOME ELEMENT OF OFFICIAL CUBAN INVOLVEMENT AND ARE LENDING HEADQUARTERS SUPPORT TO FIELD OFFICES THAT MAY BE PURSUING ONE OF THESE CASES. DEA CONTINUES TO EXCHANGE INFORMATION ON CUBA WITH OTHER STATE, LOCAL AND FEDERAL AGENCIES. SOME OF THE REPORTING ON DRUG TRAFFICKING THROUGH CUBA COMES TO US FROM OTHER FEDERAL AGENCIES, SUCH AS THE U.S. CUSTOMS SERVICE AND THE COAST GUARD, VIA THE EL PASO INTELLIGENCE CENTER.

THROUGH INFORMATION GATHERED IN THE COURSE OF OUR DRUG INVESTIGATIONS, WE HAVE NOT BEEN ABLE TO PROVE THAT SOME OF THE MARIEL REFUGEES ARE AGENTS OF THE CUBAN GOVERNMENT INFILTRATED INTO THE UNITED STATES TO TRAFFIC DRUGS. INFORMATION THAT WE DEVELOP RELATED TO CUBAN AGENTS IN THE U.S. IS PASSED TO THE FBI AS IT IS UNDER THE JURISDICTION OF THEIR FOREIGN COUNTERINTELLIGENCE RESPONSIBILITIES. WE DO KNOW THAT MANY MARIELITOS ARE DRUG TRAFFICKERS.

DEA CANNOT DEVELOP AN ACCURATE ESTIMATE OF THE AMOUNT OF DRUGS ENTERING THE UNITED STATES AS A RESULT OF CUBAN GOVERNMENT COMPLICITY. THE CLOSED SOCIETY OF CUBA AND CLANDESTINE METHODS USED TO CONCEAL THEIR INVOLVEMENT IN DRUGS MAKE IT IMPOSSIBLE TO QUANTIFY THE AMOUNT OF DRUGS PASSING THROUGH THE ISLAND.

ALTHOUGH THE CUBAN ASSISTANCE GIVEN TO DRUG SMUGGLERS IS ALARMING, THE OVERALL EFFECT MUST BE KEPT IN PERSPECTIVE. ONLY A VERY SMALL PORTION OF THE COCAINE, MARIJUANA, AND METHAQUALONE TRANSITING THE CARIBBEAN IS BELIEVED TO PASS THROUGH CUBA. IF CUBA WERE COMPLETELY NEUTRALIZED AS A TRANSIT POINT, THE EFFECT ON DRUG AVAILABILITY IN THE UNITED STATES WOULD BE MINIMAL. ON THE OTHER HAND, IF THE GOVERNMENTS OF CUBA AND THE UNITED STATES WERE TO INITIATE ON AGGRESSIVE INTERDICTION PROGRAM IN THE YUCATAN CHANNEL AND THE WINDWARD PASSAGE, AN IMPACT COULD BE MADE ON THE DRUG TRAFFIC.

WHILE THE INFORMATION I HAVE PRESENTED IN MY TESTIMONY TODAY IS NOT AS STARTLING AS THE REVELATIONS CONCERNING THE JAIME GUILLOT-LARA CASE, IT HIGHLIGHTS SOME OF THE FACTORS THAT LEAD US TO BELIEVE THE CUBAN GOVERNMENT STILL SANCTIONS THE USE OF CUBA AS A TRANSIT POINT FOR DRUGS DESTINED FOR THE UNITED STATES.

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE. I WOULD BE GLAD TO ADDRESS ANY QUESTIONS.