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

APR 26 1982

MEMORANDUM FOR: ED HARPER

FROM: ANNELISE ANDERSON Signed

Subject: Administration positions on bills proposing amendments of the Bank Secrecy Act

The Department of the Treasury has submitted for OMB clearance a proposed report supporting legislation (H.R. 5044-H.R. 5048) sponsored by Congressman LaFalce to amend the Bank Secrecy Act for the purpose of strengthening drug enforcement and enhancing the Government's ability to seize drug traffickers' cash before it leaves the country. Justice has submitted a report on S. 1907, a somewhat similar bill, sponsored by Senator Roth and eight others.

The Bank Secrecy Act requires that anyone leaving the United States with more than $5000 file a report in advance with the Customs Service. Failure to file this report, combined with a subsequent taking of the unreported money out of the United States, is a criminal misdemeanor and a felony if committed in furtherance of another crime. Enforcement is difficult, because the offense does not occur until the money has left the jurisdiction of the United States. Nevertheless, Treasury considers this provision of the Act to be an important tool in its efforts to combat drug smuggling, and Justice, Treasury, and LaFalce believe that the existing law needs to be strengthened.

LaFalce's bills would -

- Make it an offense to attempt to take unreported money out of the United States. Treasury says this will allow arrest and prosecution of a suspect once the first overt act towards leaving the country occurs and, thus, will overturn a Federal district court decision holding that no offense occurs under the Bank Secrecy Act until a suspect actually leaves the United States. Justice is appealing this decision, because it makes the law unenforceable.

- Raise the floor on the Bank Secrecy Act's reporting requirements from $5,000 to $10,000. Treasury opposes raising the floor, noting that there appears to be little justification for so doing.

- o Authorize warrantless searches of persons leaving the United States based on findings of "probable cause," "reasonable cause," or "no cause" at all. (The alternative standards are presented in different bills for the committee's consideration.) The Bank Secrecy Act currently requires that exit searches be conducted pursuant to warrants issued upon findings of probable cause. Treasury says that the Act's present search provision is unduly restrictive and impedes its law enforcement efforts unnecessarily. Of the three alternatives, Treasury prefers the "reasonable cause" standard.

- o Authorize the payment of rewards to informers in cases where the information was original and leads directly to the recovery of a criminal fine, a civil penalty, or monetary forfeiture. The reward would not exceed 25% of the net amount of the fine, penalty, or forfeiture, or $250,000, whichever is less, and would be paid out of appropriated funds. Treasury supports this provision on the ground that it will encourage those involved in drug trafficking to provide the information that is needed to make successful drug cases. (Treasury already has similar reward authority to pay up to $25,000 in customs law cases.)

The Justice Department supported a similar draft Treasury legislative proposal last year, which OMB has not cleared. Specifically, Justice strongly supported the attempt and reward provisions and deferred to Treasury on the appropriate standard for the conduct of warrantless exit searches. Justice did conclude that a search provision based upon "reasonable cause" would probably pass constitutional muster.

S. 1907 is similar to the LaFalce legislation, and Justice supports it, as well. S. 1907 would also (1) criminalize attempts under the Bank Secrecy Act, (2) provide for rewards of up to $250,000 to informants, and (3) authorize warrantless exit searches based on findings of reasonable cause. In addition, S. 1907 would:

- -- add currency violations to the definition of "racketeering activity" for purposes of prosecutions under the Racketeer Influenced and Corrupt Organizations (RICO) statute;

- -- add a requirement for a "knowing" violation of the Bank Secrecy Act's reporting requirement to support a civil forfeiture under the Act; and

- -- increase civil and criminal sanctions for violations of the Bank Secrecy Act.

Justice supports each of the proposed changes with the exception of the proposed knowledge requirement, which it says would make prosecutions much more difficult.

I do not object to clearing Treasury positions on the sections of the bills that would (1) make it an offense to attempt to transport unreported money from the United States and (2) raise the floor on the Act's reporting requirements. It is already an offense in most jurisdictions to attempt to commit most offenses, and opposition to raising the floor does not seem unreasonable. Nor do I object to Justice's report on S. 1907, except for its position on warrantless searches and rewards.

Historically, this country has not conducted exit searches of departing persons; and the Bank Secrecy Act's express requirement that such searches may be conducted only pursuant to warrants based upon determinations of probable cause reflects a sound policy. I believe that, absent extraordinary circumstances, exit searches are not and should not be conducted by the government. Perhaps a case can be made for permitting warrantless exit searches based upon the traditional probable cause standard, but such a major departure from the way our government has treated its departing citizens deserves especially close scrutiny.

Similarly, the practice of paying rewards to informants, many of whom are themselves participants in criminal activities, concerns me. Following extensive discussion, we recently cleared a legislative proposal of the Justice Department that would, among other things, establish a limited reward program on a two-year trial basis for information leading to the forfeiture of property used in certain criminal enterprises. We agreed to this provision only after Justice agreed to reduce the cap from $250,000 to $50,000 and to run the program as an experiment. Given our rather reluctant clearance of Justice's forfeiture bill, I do not believe that we can now support the more expansive reward program that LaFalce and S. 1907 proposed. In addition, I strongly believe that the philosophy underlying the payment of rewards to informers by the Federal government should be given some serious rethinking.

The problems that LaFalce is seeking to solve are serious, and I am advised that there is considerable support for his bills in the House. Treasury and Justice are anxious to go on the record. Moreover, Ed Meese has written LaFalce thanking him for his concern and promising Administration positions on his legislation (copy of draft Meese letter attached).

Among the options you may wish to consider are the following:

_____Clear the Treasury and Justice reports supporting (1) the crime of attempt, (2) not raising the threshold for reporting under the Bank Secrecy Act, (3) a $250,000 reward provision, and (4) warrantless exit searches based on "reasonable cause" (Treasury, Justice positions).

_____Clear the reports but require probable cause as the standard for warrantless exit searches and limit rewards to $50,000, on an experimental basis.

_____Clear the reports but continue to require a warrant based on a finding of probable cause prior to conducting an exit search, and limit rewards to $50,000, on an experimental basis.

_____Refer the matter of warrantless exit searches and rewards to the Cabinet Council on Legal Affairs (OMB recommendation).

Copies of the pertinent documents are attached for your review.

Attachment

THE WHITE HOUSE

WASHINGTON

Dear Congressman LaFalce:

Thank you for your letter of January 13, enclosing copies of five bills which you have recently introduced to help curb the illegal flow of currency to finance international narcotic traffic.

The intent of your legislation is laudable. Cutting off the flow of currency that brings illicit drugs into this country and detecting and apprehending the individuals involved in this sordid business is a matter of the utmost importance. Recently, the President has established a task force, under the leadership of the Vice President, to suggest ways in which the federal government might respond more effectively to the growing menace of drug trafficking in the Miami area.

I understand that the Treasury Department is preparing a detailed response to the specifics of your legislative proposals, and of course at an appropriate time Administration officials will be ready to testify in Congressional hearings on the bills.

For the present, I want to thank you for your efforts in this area and indicate that the Administration is willing and ready to assist in a broad effort to frustrate the objectives of those who would profit from narcotics trade.

Sincerely,

Edwin Meese III

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

Dear Mr. LaFalce:

Thank you for extending an opportunity to me to express the position of the Treasury Department on your bills to amend the Bank Secrecy Act. As you know, the Treasury Department is fully committed to detecting and apprehending persons involved in international, narcotics-related financial schemes and seizing the monetary instruments used to finance them.

H.R. 5044 would amend section 231(a)(1) and (a)(2) of the Act by expressly making an attempt to transport unreported monetary instruments across U.S. borders a crime; and, eliminate any reporting requirement except where the amount of the monetary instruments to be transported exceeded $10,000. The Treasury Department fully supports the attempt provision because it is needed to obviate some lower Federal court holdings that have made it virtually impossible, except in certain narrowly prescribed circumstances involving attempted departures by commercial carriers from international sea and airports, to legally apprehend violators and seize unreported monetary instruments before they actually leave the U.S. The proposed amendment is broad enough to cover all attempted departures, particularly by those who leave surreptitiously from small airports, airstrips, and domestic waterways by private aircraft and boats.

The Treasury Department, on the other hand, cannot fully support that portion of the bill which would eliminate the reporting requirement except where the amounts to be transported exceed $10,000. Our reluctance in this regard is based upon an experience factor showing that in a great many seizure cases involving less than $10,000, the individuals apprehended are frequently couriers working for large narcotics trafficking organizations who, subsequent to apprehension, often provide valuable intelligence resulting in further arrests, or needed leads. Illustrative of this is the following case:

> On December 11, 1981, Customs agents were tipped that a flight plan had been filed for a charter Lear jet carrying a single passenger on a one-day round trip between Fort Lauderdale, Florida and Grand Caymans, Bahamas. After

receiving the tip, the Customs agents went to the Fort Lauderdale Executive Airport where they intercepted the aircraft before departure and interviewed the passenger concerning the nature of his trip and possible possession of unreported monetary instruments in excess of $5,000. The passenger stated that he was on a business trip and did not have over $5,000 in monetary instruments.

After his return later that day, he underwent Customs processing. During his processing, he was asked if he was carrying more than $5,000 in monetary instruments, to which he replied, NO. However, a search of his purse and pockets uncovered $5,524 in cash, a package of cocaine and a container containing traces of cocaine. After his arrest, a further search of his person revealed an additional $5,000 concealed in his underwear.

Subsequent investigation, as a result of this arrest, showed that the subject was a money courier for a large international narcotics trafficking organization and on his trip to Grand Cayman had met with a DEA Class I violator.

The point to be made by the foregoing is that if there had only been a reporting requirement for monetary instruments in excess of $10,000 and no cocaine initially found, there would have been little justification for a search of the subject's person and he could have been released without further intensive investigation. As a consequence, valuable intelligence would have been lost.

Accordingly, the Treasury Department believes that there is little justification for eliminating the existing reporting requirement. On the other hand we would not be opposed to a provision giving the Secretary of the Treasury statutory latitude with respect to determining when reports would be required with provision that in no case could the amount be less than the existing $5,000. Such a provision would permit the Secretary to raise the amount upon which a report would be required as circumstances and experience permit.

H.R.'s 5045, 5046 and 5047 are alternative amendments to section 235 relating to search authority. Each would permit warrantless searches for unreported monetary instruments based on suspicion but would differ with respect to the quantum of evidence necessary to support the suspicion. For instance,

H.R. 5045 would require the suspicion be supported by probable cause; H.R. 5046 would require it be supported by reasonable cause; and H.R. 5047 would articulate no standard. While the Treasury Department could support any of the proposed amendments, we would prefer the standard found in H.R. 5046; the authority to conduct a warrantless search when there is reasonable cause to suspect that unreported monetary instruments are in the process of being transported. Our preference for the reasonable cause to suspect standard is based upon the fact that it is identical to the Customs border search authority found in 19 U.S.C. 482.

As you may recall the Treasury Department supported an identical search provision during the 96th Congress. However, questions arose in both Houses concerning the constitutional propriety of Customs officers conducting warrantless exit searches of travellers based merely on a reasonable cause to suspect a violation. It was the Customs position, then supported by the Justice Department, as it is now, that the well established and well recognized Customs border search authority extends equally to exiting as well as incoming travellers. There is ample authority for our position found in U.S. v. Ajlouny, 629 F 2d 830 (2nd Cir. 1980); U.S. v. Swarovski, 592 F.2d 131 (2nd Cir. 1979); U.S. v. Stanley, 545 F.2d 661 (9th Cir. 1979), cert. denied 436 U.S. 917 (1973); and dicta in California Bankers Association v. Schultz, 416 U.S. 21,63 (1974). I have taken the liberty of enclosing a legal memorandum discussing these cases in more detail.

Despite favorable case law supporting broad application of the Customs' border search authority to exiting travellers, agents and inspectors are reluctant to use it in unreported currency cases due to the express probable cause - warrant requirements of section 235 of the Act, and the underlying legislative history of that section. This reluctance is based upon an agent-inspector fear of incurring personal liability if they follow case law and not the statute. Consequently, exiting smugglers carrying large sums of currency to purchase narcotics for resale in the United States have been able to violate the Act's reporting requirements in most cases almost without fear of challenge. Illustrative of this situation is the following incident occurring at Los Angeles International Airport in the summer of 1980:

Customs agents received unverifiable information that a named Peruvian would be departing LA International Airport for Lima, Peru later that day on Braniff Flight No. 921. A query of TECS indicated that the subject was on record with DEA as an alleged cocaine smuggler. Because of the correlation between narcotics smuggling and the outbound transportation of large sums of currency, the agents determined to interview the subject.

After identifying the subject in the terminal, they followed him to the boarding platform area. During the course of their surveillance, he displayed suspicious conduct. For example, he appeared nervous, perspired heavily, and met with an unidentified Latin male who gave him a black plastic bag with unknown contents.

The agents finally intercepted the subject as he attempted to board the aircraft and identified themselves. During the interview, the subject was asked to identify himself and was advised of the reporting requirements of the Currency and Foreign Transactions Reporting Act. The subject stated that he was aware of the requirements and that he was not carrying currency in excess of $5,000.

He was then asked if he would voluntarily consent to an examination of his luggage, which he refused to give. Because probable cause could not be established, he was permitted to board the aircraft.

The report reflects that the agents immediately advised DEA of the occurrence and requested that Peruvian authorities be contacted with respect to their suspicions. The following day, Peruvian Customs authorities reported that they had apprehended the subject on his arrival and had found $95,000 in his luggage.

The point to be made by the foregoing is that if effective enforcement of the currency reporting requirements is to be achieved, the Customs Service should be authorized to conduct a search based on reasonable cause to suspect that unreported monetary instruments are being transported outside the U.S.

It also has been suggested by some that, assuming the legality of such searches, it would be contrary to public policy to permit warrantless searches of exiting travellers. It is our position that there is a more important offsetting public policy requiring the government to take all lawful

steps in protecting the people from proliferating drug trafficking and other illegal enterprises which debilitate our society and nation. Therefore, where it appears that the courts have upheld the constitutionality of exit border searches, there is no valid reason for not seeking statutory articulation of that authority.

H.R. 5048 would add a new section to the Act permitting the compensation of informers in cases where the information provided was original and directly lead to the recovery of a criminal fine, civil penalty or forfeiture exceeding $50,000. Rewards would never exceed 25 percent of the net amount of the fine, penalty or forfeiture of collarteral or $250,000, whichever was less; and Federal, state and local government employees who provided such information in the performance of their official duties would not be eligible to recover. We believe that the reward provision will provide an essential impetus in persuading knowledgeable sources to come forward with needed information. Because the reward could be substantial in certain cases, it provides a needed incentive for those involved in, and knowledgeable about large drug trafficking schemes and other criminal endeavors to come forward despite the personal and financial risk to themselves and their families.

For the reasons stated, the Treasury Department fully supports H.R.'s 5044, 5046 and 5048.

Please contact me if I may be of any further assistance in this matter.

Sincerely,

John M. Walker, Jr.
Assistant Secretary
(Enforcement)

The Honorable
John J. LaFalce
House of Representatives
Washington, D.C 20515

Enclosure

LEGAL ANALYSIS IN SUPPORT OF EXTENDING CUSTOMS BORDER SEARCH AUTHORITY TO EXITING TRAVELERS

Section 2 of the Treasury Department's proposed amendments to the Bank Secrecy Act allows any Customs officer to stop, search and examine any vehicle, vessel, aircraft, envelope or other container, or person entering or departing from the United States on which or whom he shall have reasonable cause to suspect there are monetary instruments for which a report is required under the Act. This proposal has been attacked on the grounds that the Fourth Amendment dictates a probable cause standard for all warrantless searches. This argument falls before an examination of the border search exception to the Fourth Amendment:

The reasonable cause standard is Constitutional for border searches--. The Supreme Court stated in United States v. Ramsey, 431 U.S. 606, 616-17 (1976):

> That searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border, should, by now, require no extended demonstration. The Congress which proposed the Bill of Rights, including the Fourth Amendment, to the state legislatures on September 25, 1789, 1 Stat. 97, had, some two months prior to that proposal, enacted the first customs statute, Act of July 31, 1789, c. 5, 1 Stat. 29. Section 24 of this statute granted Customs officers authority to search "any ship or vessel, in which they shall have reason to suspect any goods, wares or merchandise subject to duty shall be concealed . . . ." This acknowledgment of plenary customs power was differentiated from the more limited power to enter and search "any particular dwelling-house, store, building, or other place . . ." where a warrant upon "cause to suspect" was required. The historical importance of the enactment of this customs statute by the same Congress which proposed the Fourth Amendment is, we think, manifest. This Court so concluded almost a century ago. In Boyd v. United States, 116 U.S. 616, 623 (1886), this Court observed:

> "The seizure of stolen goods is authorized by the common law; and the seizure of goods forfeited for a breach of the revenue laws, or concealed to avoid the duties payable on them, has been authorized by English statutes for at least two centuries past; and the like seizures have been authorized by our own revenue acts from the commencement of the government. The first statute passed by Congress to regulate the collection of duties, the act of July 31, 1789, 1 Stat. 29, 43, contains provisions to this effect. As this act was passed by the same Congress which proposed for adoption the original amendments to the Constitution, it is clear that the members of that body did not regard searches and seizures of this kind as 'unreasonable,' and they are not embraced within the prohibition of the amendment." [Emphasis supplied].

There is no Constitutional difference between incoming and outgoing border searches--. In California Bankers Ass'n v. Shultz, 416 U.S. 21, 62-63 (1973), the Supreme Court upheld currency import/export reporting requirements when it said:

> Of primary importance . . . is the fact that the information required by the foreign reporting requirements pertains only to commercial transactions which take place across national boundaries. Mr. Chief Justice Taft, in his opinion for the Court in Carroll v. United States, 267 U.S. 132 (1925), observed:
>
> > Travellers may be stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in. (Id., at 154).
>
> This settled proposition has been reaffirmed as recently as last term in Almeida-Sanchez v. United States, 413 U.S. 266, 272 (1973). If reporting of income may be required as an aid to enforcement of the federal revenue statutes, and if those entering and leaving the country may be examined as to their belongings and effects, all without violating the Fourth Amendment, we see no reason to invalidate the Secretary's regulations here. The statutory authorization for the regulations was based upon a conclusion by Congress that international currency transactions and foreign financial institutions were being used by residents of the United States to circumvent the enforcement of the laws of the United States. The regulations are sufficiently tailored so as to single out transactions found to have the

> greatest potential for such circumvention and which involve substantial amounts of money. They are therefore reasonable in the light of the statutory purpose, and consistent with the Fourth Amendment. [Emphasis added].

The Second Circuit concisely stated the current judicial position on warrantless departure searches in United States v. Swarovski, 592 F.2d 131, 133 (1979):

> The warrantless searches of appellant's luggage as he was about to depart the country did not violate his Fourth Amendment rights. See United States v. Asbury, 586 F.2d 973, 975 (2d Cir. 1978). Appellant's contention that customs officials can make such a search only when the person whose effects are being searched is entering the United States is not the law. [Emphasis added]. See 22 U.S.C. section 401(a); California Bankers Ass'n v. Shultz, 416 U.S. 21, 63 . . . (1974); United States v. Chabot, 193 F.2d 287, 290 (2d Cir. 1951); United States v. Stanley, 545 F.2d 661, 667 (9th Cir. 1976), cert. denied, 436 U.S. 917 . . . (1978); Samora v. United States, 406 F.2d 1095, 1098-99 (5th Cir. 1969).

oOo

It has been alleged that, notwithstanding Constitutional propriety, there currently exists no statutory authority to conduct warrantless searches of persons and things leaving the country. Anyone who has ever flown out of the country can bear witness to the exercise of such a search authority under 49 U.S.C. 1356 which requires that every single air traveler leaving the United States be subjected to a physical search of person and luggage for weapons without even reasonable cause. In addition:

19 U.S.C. 1581 authorizes "Any [Customs] officer at any time . . . [to] go on board of any vessel or vehicle at any place in the United States or within the customs waters . . . and examine, inspect, and search the vessel or vehicle and every part thereof and any person, trunk, package, or cargo on board . . . .";

21 U.S.C. 953 makes it unlawful for "any person to bring or possess on board any vessel or aircraft, or on board any vehicle or carrier, arriving in or departing from the United States" certain narcotic drugs and controlled substances as proscribed in 21 U.S.C. 953;

22 U.S.C. 401(a) prohibits the attempt to export "any arms or munitions of war or other articles in violation of law . . . " The court in United States v. Marti, 321 F. Supp. 59 (1970), held that 22 U.S.C. 401(a) gives Customs broad authority to conduct

warrantless exit searches in order to enforce the Export Control Act of 1949 (50 U.S.C. App. 2401, et seq.) and upheld a warrantless search and seizure of jewelry from a traveler leaving the United States. See also, 22 U.S.C. 1934 (munitions control), and 22 U.S.C. 2778 (control of arms exports and imports).

The courts have consistently recognized Customs' authority to conduct warrantless border searches to enforce these statutes on travelers entering as well as leaving the country. United States v. Ajlouny, 476 F. Supp. 995 (1979); see cases cited supra.

oOo

Treasury's proposed legislation has been mistakenly labeled a "money control bill". Neither the bill nor the Act which it amends can effect, alter, prohibit or discourage any currency transaction. The bill does not substantively change the purpose of the Act which requires redordkeeping and reporting of certain currency transactions that, eleven years ago, Congress found to have a high degree of usefulness in criminal, tax and regulatory investigations. Recordkeeping can only serve to protect innocent transactions.

oOo

Finally, Treasury's proposed legislation has been attacked for treating all currency as contraband. This is too simplistic. If a Customs officer has a "reasonable cause to suspect", he could search for unreported currency to the same degree he could search for dutiable or undeclared merchandise as well as contraband; there, the similarity ends. Contraband is prohibited on its face. Currency clearly is not. The transportation of monetary instruments is an inherently innocent action. However, Congress has seen fit to declare that the exportation of monetary instruments worth more than $5,000 must be reported. Currency is not illegal, but the refusal to report currency is. As long as the currency transaction is reported, there is no violation of the law.

JOHN J. LAFALCE
39TH DISTRICT, NEW YORK

COMMITTEE ON
BANKING, FINANCE AND
URBAN AFFAIRS

COMMITTEE ON
SMALL BUSINESS

CHAIRMAN:
SUBCOMMITTEE ON
GENERAL OVERSIGHT

Congress of the United States
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January 13, 1982

1. Fowis
2. Stan Key
cc: Walker
memo only

Mr. John Walker
Assistant Secretary for
Enforcement and Operations
Department of the Treasury
4308 Main Treasury Bldg.
15th Street & Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Mr. Walker:

I have recently introduced five bills designed to help curb the illegal flow of currency in violation of the Currency and Foreign Transactions Act (the Bank Secrecy Act). Enclosed please find copies of these bills and the remarks which I made upon their introduction.

These bills, amending the Bank Secrecy Act, are similar to measures which I introduced in the 96th Congress. I am reintroducing these bills because I believe that it is a most propitious time for the existing loopholes in the Act to be closed to give enforcement officials the improved tools which will help them do their most difficult but vitally important jobs in curbing the illegal flow of money wich feeds the international drug trade.

In the 96th Congress these bills enjoyed the full backing of the previous Administration and I worked closely with officials in the U.S. Customs Service, the Treasury Department and the Drug Enforcement Administration as the bills moved through the legislative process. I hope that I can count on your support in encouraging the Congress to act favorably upon these bills.

I was very encouraged that in recent testimony before the Senate Permanent Committee on Investigations the Administration witnesses stressed the importance of cracking down on drug trafficking through the use of financial and currency investigations. I know that you share my interest in stopping the menacing flow of drugs to our country. This task could be greatly aided by more effective use of the Bank Secrecy Act with the amendments which I have proposed.

EO-1-45-82

Your comments on the enclosed bills would be greatly appreciated and I certainly do look forward to working closely with you in an effort to have these measures enacted by the Congress. Please don't hesitate to contact me if I may answer any questions which you might have about the bills. Thank you for your consideration in this matter.

Sincerely,

JOHN J. LaFALCE
Member of Congress

JJL:JK
Enclosures

cc: John Powis
Deputy Assistant Secretary for
Enforcement
Department of the Treasury
4308 Main Treasury Bldg.
Washington, D.C. 20220

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 97th CONGRESS, FIRST SESSION

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House of Representatives

LEGISLATION TO CURB DRUG TRAFFICKING

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

● Mr. LaFALCE. Mr. Speaker, drug abuse in our Nation has reached epidemic proportions. The sheer numbers which are used to describe the extent of drug abuse are so enormous that their significance becomes hard to grasp and put into terms with which we can readily identify.

What tragedy do we really experience when we learn that, according to recent figures, over 10 percent of the graduating students in American high schools use marihuana every day? What anguish can be felt by those of us removed from the human incapacitation which is experienced by nearly half a million daily heroin users? Can we comprehend the impact of the importation into the United States of more than 30 metric tons of cocaine per year? We are assulted with statistics and, not surprisingly, find it difficult to equate those numbers with the human suffering it represents.

In a larger sense, though, the tragedy of drug abuse in our country does not need numbers to be adequately defined. The street corners and schoolyards, the back alleys of ghettos and the backrooms at fashionable parties are the places where the shadow of drug abuse casts its ominous pall. The devastation of health, productive work, and family life, and the spectre of personal and property crime to maintain millions of drug habits is the saddest—and most accurate—description of the human havoc wreaked by this cancer within us.

Why then talk at all about statistics? Because some statistics are meaningful and can be made more readily understandable. If human misery cannot, and should not, be put into cold numerical terms, perhaps the billions of dollars of cash transactions which feed the illegal drug trafficking can be described with raw data.

Recently, the Los Angeles Times reported that some experts estimate that in Dade County, Fla., there may be as much as $7 to $11 billion a year in underground drug-related cash activity. Perhaps, Mr. Speaker, our colleagues recall that when 880 pounds of cocaine was seized in Bogota, Colombia, 2 years ago, over $1.1 million in U.S. currency was also found with the seized dope. Our dollars leave the country at as rapid a pace as the narcotics, which the money buys, come back to our shores.

I am convinced that there is something positive which we can do to crack down on the enormous illegal transfer of money which leaves the country in order to subsidize the international drug trade. Accordingly, today I am introducing a package of five bills designed to help law enforcement officials police the movement of drug-related currency into and out of this country. The bills would amend the Currency and Foreign Transactions Reporting Act—popularly called the Bank Secrecy Act—to fill some serious gaps in the current law which hinders the law enforcement capabilities of U.S. customs agents. These bills are largely the same measures which I introduced in the last Congress after I returned from a factfinding mission to Colombia with the Select Committee on Narcotics. Certain technical and substantive changes have been made to address some of the concerns raised by some Members in the last Congress.

In his state of the Union address in 1979, President Carter stated that it would be the policy of his administration to "stress financial investigations as a means of prosecuting individuals responsible for the drug traffic." The Carter administration, indeed, did commit its wholehearted support for my bills in the 96th Congress, H.R. 6071, 6072, 6073, and the omnibus version combining all three, H.R. 6961, which enjoyed the support of over 50 cosponsors.

At the conclusion of my remarks, Mr. Speaker, I would like to insert in the RECORD letters of support which I received from officials in the previous administration when my bills were under consideration. Notable among these letters are those from the U.S. Department of Justice Drug Enforcement Administration, the Department of Treasury Office for Enforcement and Operations, and the U.S. Customs Service—all providing critiques of my bills and stressing the importance of those measures in combating drug abuse.

Last May, counselor to the President, Edwin Meese, commented that stemming the flow of drug traffic is going to be a priority of the current administration. I am confident that the President and his administration will continue the policy of his predecessor and fully embrace the efforts to use financial investigations as a means of prosecuting individuals responsible for drug traffic.

I would now like to describe the current operation of some of the provisions of the Bank Secrecy Act, and how my bills would address some of the loopholes contained in that law.

Present law makes it illegal to leave the country with more than $5,000 without filing a Customs Service reporting form. However, courts have held that a person cannot be arrested for violating this law until he has actually left the country. But by that time the violator is outside the jurisdiction of the United States and cannot be successfully prosecuted. Tying the hands of our own customs officials in this way is an obvious gaping loophole in the law. Therefore, the first of my five bills would make it illegal to "attempt" to leave the United States with large amounts of currency without filing the reports already required under the Bank Secrecy Act. The bill raises the amount of money being taken out of the country, in order to require a customs report, from $5,000 to $10,000.

The second, third, and fourth bills would allow customs officials to search for unreported amounts of cash—in their presently authorized search for contraband—where cause exists to believe that this currency is leaving the country as a result of illegal activities. Each bill proposes a different standard of cause: First, "reasonable cause"; second, "probable cause"; and third, when the customs official shall "suspect that there are monetary instruments in the process of being transported out of the country" in violation of the Bank Secrecy Act. I encourage the Members who will study these bills at the committee level to help me determine the most appropriate, or, more precisely, the most acceptable standard.

The fifth and final bill would give informants a portion of the recovered currency, thereby giving a further incentive to those who know of cash smuggling to report this to U.S. Government officials. These rewards would prove to be extremely helpful for obtaining information from informants. The Secretary of Treasury would have discretion to determine the amount of award, within a specified ceiling, to be given to informants.

Mr. Speaker, I am encouraged that the Senate is currently involved in a series of hearings to study the international drug trafficking problem. I urge my colleagues in the House to continue and renew their own efforts to combat this pernicious drain on our country, by favorably considering a very simple and very practical series of bills which will help curb the flow of money which is use to feed the drug trade.

The drug abuse problem is one which has permeated our society and, at times, seems totally out of control. My bills will not solve the drug abuse epidemic, nor put a complete halt to the drug trafficking problem. But these bills will help our law enforcement officials to more effectively do their jobs in stopping the flow of money out of the country so that the flood of drugs which comes back to our shores may be abated.

The letters of support for the comparable bills which I introduced in the 96th Congress are inserted in the RECORD at this time.

THE WHITE HOUSE,
Washington, October 22, 1979.

Hon. JOHN J. LAFALCE,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN LAFALCE: I went to express the President's appreciation for your decision to join in leading the effort to pass

(MORE)

the financial privacy bills. We look forward to working with you on these important bills in the coming months.

Sincerely,

STUART E. EIZENSTAT,
Assistant to the President for Domestic Affairs and Policy.

DRUG ENFORCEMENT AGENCY,
Washington, D.C., November 5, 1979.

Hon. JOHN J. LAFALCE,
House of Representatives,
Washington, D.C.

DEAR MR. LAFALCE: I have been monitoring closely the three legislative initiatives you introduced upon your return from Colombia this past May. I refer to H.R. 4071, 4072, and 4073 which still remain pending in the House of Representatives.

As you know, the enactment of these three laws would greatly improve the effectiveness of our law enforcement efforts to curtail the illegal movement of U.S. currency out of the U.S.A. Most of this illegally obtained money is realized as a result of narcotics trafficking. With the enactment of H.R. 4071 there no doubt would be the added incentive for law-abiding citizens to come forward with information relating to currency violations. The impact would greatly improve the effectiveness of the U.S. Customs Service in its enforcement responsibilities.

Present law makes it illegal to leave the country with more than $5,000 without filing a declaration. However, the courts have held that a person cannot be arrested for this violation unless he has actually left the country, thus escaping U.S. jurisdiction. The enactment of H.R. 4072 would remove this loophole by providing that attempting to leave the country is also a violation. This will improve our effectiveness in stemming the flow of illegally obtained currency from leaving the country. H.R. 4073 would give to our brother law enforcement officers of the Customs Service the authority to search for undeclared monetary instruments where reasonable cause exists to believe that these monetary instruments are leaving the country as a result of illegal activities. With today's sophisticated drug trafficking organizations, much of the profits leave the United States for source countries to purchase additional drugs and other smuggling resources.

I understand that the above three legislative initiatives are before the Subcommittee on Financial Institutions and there is a possibility for hearings regarding these measures. As Administrator of the Drug Enforcement Administration, I would welcome the opportunity to participate in these hearings and discuss further with the Subcommittee the importance of this corrective legislation as it relates to effective drug law enforcement.

On behalf of the Drug Enforcement Administration's Special Agents, I thank you for your efforts.

Sincerely,

PETER B. BENSINGER
Administrator.

THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 21, 1980.

Hon. JOHN LAFALCE,
House of Representatives,
Washington, D.C.

DEAR MR. LAFALCE: I would like to express the appreciation of the U.S. Customs Service for your efforts to amend the Currency and Foreign Transactions Act, popularly known as the Bank Secrecy Act of 1970 (31 U.S.C. 1101-1105). With the passage of the three bills you have introduced—H.R. 4071, 4072, and 4073—we believe that the loopholes in the present law will be eliminated and a more effective and productive enforcement of this Act will result. The views of the Department of Treasury on your legislation have previously been set forth in the Department's report of October 5 and 12, 1979.

As you are well aware, the Customs Service has the primary responsibility of enforcing that section of the Act which requires that an individual entering or departing from the United States with over $5,000 must file a report with the Customs Service. While a vast majority of those individuals who are aware of the law do comply with it, we believe that most of the money earmarked for marihuana and other narcotics purchases overseas goes unreported. In fiscal year 1978, we estimate that $2.6 billion was exported from the United States in order to purchase illegal drugs, and that figure represents only the wholesale cost. It is quite apparent that the illegal drug trade is an extremely lucrative one, and we believe one way to cut down on the amount of drugs being smuggled in is to stop the flow of unreported currency going out of the country.

In the first decade of the Bank Secrecy Act, we have found the Act to be a useful tool in the law enforcement effort against drug traffickers as well as other international organized crime ventures. However, the Act has glaring deficiencies which severely restrict its effectiveness. Your legislation would remedy these deficiencies.

H.R. 4071 would add a new section to the Act which, by offering as a reward a percentage of any recovery, would encourage people to supply information to the Government about individuals who are about to enter or depart the United States with large sums of currency or other monetary instruments. Since it is extremely difficult to detect monetary instruments in large amounts—for example, it may be a single check—we must acquire as much reliable information as possible. Your bill should encourage people to come forward with this much needed and extremely valuable information.

H.R. 4072 would close the loophole in the Act which creates the most difficulties for Customs. By including an "attempt" provision in the Act, we will be able to prosecute successfully those individuals who are about to leave the country with unreported funds, but decide to "postpone" their journey when confronted by Customs, only to make another attempt later when Customs officers are not present. This very important amendment will stop the merry-go-round.

H.R. 4073 would authorize Customs officers to search suspected individuals at the border for currency and other monetary instruments without a search warrant and with "reasonable suspicion," rather than probable cause. Several Federal courts of both the District (trial) and Appellate level have reviewed the constitutionality of this standard and approved it. It is crucial that we be able to act quickly when we receive information that an individual is about to leave the country within a short period of time with a large amount of money. Where the quality of this information does not meet the probable cause standard, we are powerless to verify a departing individual's claim that he has no money to report, even though we have a strong indication that he is not being entirely truthful. Once he leaves the United States, our opportunity to enforce the Act is lost forever, regardless of how much information we may subsequently acquire. Your bill would give us the lawful tools we need to enforce the Act effectively.

In closing, I want to assure you that we stand ready to assist you in your efforts to amend the Bank Secrecy Act which should enable us to do a better job in the future.

Sincerely,

R. E. CHASEN,
Commissioner of Customs.

DEPARTMENT OF THE TREASURY,
Washington, D.C., April 1, 1980.

Hon. JOHN J. LAFALCE,
House of Representatives,
Washington, D.C.

DEAR MR. LAFALCE: I have recently been informed that your bill to amend the Currency and Foreign Transactions Reporting Act—H.R. 5961—was unanimously reported out of the House Subcommittee on Financial Institutions Supervision, Regulation and Insurance and was referred to the House Committee on Banking, Financing, and Urban Affairs with a recommendation that expeditious action be taken. On behalf of the Department of the Treasury and the U.S. Customs Service, I wish to thank you for your efforts in this matter.

As you are aware, the Department strongly endorses all of the provisions of your bill. It has come to our attention that one point requires clarification. A question has been raised concerning the applicability of the amended Currency and Foreign Transactions Reporting Act provisions to electronic transfers of currency. The current regulations require that reports must be filed with the Customs Service in accordance with 31 U.S.C. 1101 by each person who "*physically* transports, mails, or ships, or causes to be *physically* transported, mailed, or shipped" monetary instruments in excess of $5,000 into or out of the United States. 31 CFR 103.23(a) (emphasis added). It has been the position of the Department that the intentional use of the adjective "physical" means that electronic fund transfers are not covered by the provisions of the Act which your bill will amend. We assure you now that this position will not change. Therefore, your bill would not grant the Department any additional authority to monitor or intercept any electronic fund transfer. There is another section of the Act, 31 U.S.C. 1121 that currently authorizes the Secretary to issue regulations requiring reports of international transactions including electronic transfers if in the Secretary's opinion such reports are necessary.

If we can be of any further assistance, please contact us again.

Sincerely,

RICHARD J. DAVIS,
Assistant Secretary (Enforcement and Operations).

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice regarding S. 1907, a bill to amend the Currency and Foreign Transaction Reporting Act, 31 U.S.C. 1101, et seq., popularly known as the Bank Secrecy Act of 1970, and 18 U.S.C. 1961(1), the Racketeer Influenced and Corrupt Organizations statute, generally referred to as "RICO."

In essence, the proposed legislation would do the following things: (1) increase civil and criminal sanctions for violations of the Bank Secrecy Act; (2) criminalize the attempted transfer of currency or monetary instruments in excess of $5,000 into or out of the United States without the filing of required reports; (3) limit forfeitures of unreported monetary instruments to those involving "knowing" failures to report; (4) authorize customs officers to conduct warrantless searches of persons, mail, or vehicles entering or leaving the United States where there is reasonable cause to believe monetary instruments are being transported illegally; (5) authorize payment of rewards for information leading to recovery of fines, penalties, or forfeitures and (6) make currency violations RICO predicate offenses. The Justice Department enthusiastically endorses all of these measures except for the "knowledge" requirement of Section (d) which it opposes.

NEED FOR AMENDMENTS

The Department of Justice endorses S. 1907 in its efforts to amend the Currency and Foreign Transaction Reporting Act to create an attempt offense, to authorize the payment of rewards for information leading to successful civil or criminal prosecution of currency violations, and to include currency violations as RICO predicate offenses. These provisions would substantially strengthen the ability of federal law enforcement authorities to stem the illicit flow of currency involved in narcotics trafficking and "money laundering" schemes associated with organized and

white collar crime. Narcotics transactions alone are estimated to generate more than $60 billion per year, much of which goes to foreign suppliers or is "laundered" before being received by high-level traffickers. The magnitude of this law enforcement problem and the deficiency in existing law require expeditious action upon corrective legislation. In fact, these amendments are essential to any meaningful enforcement program under Section 231 of the 1970 law (31 U.S.C. 1101).

THE ATTEMPT PROVISION

With respect to the need for an attempt provision, we would note at the outset that detection and apprehension of individuals violating this statute are extremely difficult -- particularly the exportation of currency and monetary instruments -- due to the ease with which items can be secreted on an individual's person or among his effects. Even where law enforcement officers can detect and apprehend violators, a conviction is uncertain as a result of court decisions holding that an attempt to export unreported money out of the country is not an offense. In summary, the law has been construed by some courts to be that an offense does not occur until an individual has departed the United States with unreported currency or monetary instruments. At that point, of course, federal officials generally have no jurisdiction to make an arrest. This creates an untenable situation which we feel requires prompt remedial action.

The facts of a recent case will illustrate the current state of the law. Federal officers monitoring a court-ordered wiretap of members of a major narcotics trafficking ring learned that a courier would be departing the United States for Bogota, Colombia, carrying a large sum of currency to make a narcotics purchase. In an effort to avoid apprehending the suspect prematurely, Customs agents kept the suspect under suveillance as she entered the airport, checked her luggage, presented her flight ticket, obtained her boarding pass, and received notice of the necessity of reporting the possession of any currency in excess of $5,000. Only as she was preparing to board the aircraft was an arrest made. A search of the luggage and her handbag produced $1.5 million in United States currency. Despite the facts of this case, a conviction was possible only because the United States District Court Judge before whom the case was tried found that the facts here established a completed offense; that finding is currently on appeal. A judge in a very similar case dismissed an indictment holding that no offense occurs until a person actually leaves the United States. United States v. Centeno, No. 75-660-CR-JE (S.D. Fla., March 25, 1976)(unreported).

While the absence of an attempt offense has created difficulty in connection with departures from public airports, this gap in the law is even more disruptive of efforts to control the exportation of currency and monetary instruments through the use of private aircraft flying out of private airports or makeshift

runways in remote areas. Furthermore, we have reason to believe that substantial illicit currency transactions are carried out in this way.

REWARD AUTHORITY

With respect to the need for authority to offer monetary rewards to persons providing information leading to the imposition of fines and forfeitures under currency reporting laws, the nature of the offense is such that only through reports from persons aware of the transactions can we expect to intercept a sufficient number of shipments to achieve a significant deterrent effect. The proposed reward authority would provide a powerful incentive for persons to come forward and report such illicit activities by providing monetary payments of twenty-five percent of fines and forfeitures recovered up to a ceiling of $250,000. While it has been suggested that the amount of rewards which can be paid may be excessive, we would point out that the risk inherent in reporting such crimes -- which usually involve activities of either narcotics trafficking rings or organized crime syndicates noted for their reliance upon violence -- requires a substantial incentive in order to encourage individuals to come forward and provide information to law enforcement officials.

AMENDMENT OF RICO

The proposed legislation would add currency violations to the definitions of "racketeering activity" listed at 18 U.S.C. Section 1961(1), thereby making Title 31 crimes predicate offenses for RICO prosecution. Title 31 offenses are analogous to the offense of interstate travel in aid of racketeering to distribute the proceeds of unlawful activity, 18 U.S.C. 1952, which is currently included within the RICO definition. However, the growing sophistication of organized crime and the proliferation of foreign tax havens has made Section 1952 inadequate to cope with illegal money flow. "Money laundering" has been documented as a condition precedent for organized crime and narcotics trafficking enterprises. Investigations in South Florida have revealed a multi-billion dollar clandestine money market operating offshore. The inclusion of currency violations proscribed by Title 31 as racketeering offenses is necessary to allow a concerted attack upon all aspects of such criminal enterprises. Moreover, this amendment would expedite a unified federal response by facilitating cooperation between Treasury agents from IRS and Customs having enforcement jurisdiction over Title 31 and FBI investigators specializing in racketeering cases under Title 18. The Justice Department's position is that it is ineffective to prosecute racketeers in narcotics offenses without including the currency violations they commit as RICO predicate offenses because, without the proposed amendment, Title 31 violations are now likely to be severed from a RICO case. Moreover, inclusion

of currency violations as RICO predicate offenses would enhance the ability of prosecutors to seek forfeiture of criminal assets by authorizing RICO forfeiture of monies used to violate Title 31. Passage of the proposed amendment is viewed as being essential to an adequate law enforcement response to money laundering by organized crime and narcotics organizations. Enactment of this amendment is strongly recommended.

THE KNOWLEDGE REQUIREMENT

Subsection (d) of the proposed legislation would require a knowing violation of reporting requirements in order to support a civil forfeiture under Section 232(a) of the 1970 law (31 U.S.C. 1102(a)). Due to the nature of this offense, there would virtually never be direct evidence that a failure to file a required report was "knowing." Moreover, we are unaware of cases in which it has been suggested by disinterested persons that a conviction was inequitable because of the absence of a knowledge requirement. In our view there is no basis for complicating prosecutions through this amendment and we therefore strongly urge that it be disapproved.

WARRANTLESS SEARCHES

S. 1907 also authorizes warrantless searches where there is reasonable cause to believe that currency is unlawfully being removed from the country. In this regard, border searches of persons and things entering the United States have been authorized and executed, without requirements of a warrant or probable cause, since the earliest period of our constitutional history. See Act of July 31, 1799, §24, 1st Cong., 1st Sess., 1 Stat. 43 (ships and vessels); Act of March 2, 1799, §46, 5th Cong., 3rd Sess., 1 Stat. 662 (personal baggage). The courts have so noted. United States v. Ramsey, 431 U.S. 606, 616-19 (1977). The issue raised by this proposal, therefore, is whether the border search exception to the Fourth Amendment warrant and probable cause requirements is applicable only to persons and things entering the United States. The only court which has to our knowledge squarely considered this question is the Ninth Circuit Court of Appeals which concluded that the "the similarity of purpose, rationale, and effect between the two types of border searches (outgoing as compared to incoming) compels us to hold that the search here (which was conducted on less than probable cause and without a warrant) was proper." United States v. Stanley, 545 F.2d 661, 667 (9th Cir. 1976), cert. denied, 436 U.S. 917 (1978). Dictum in other cases indicates that searches at the border of outbound traffic are legally indistinguishable from incoming searches for Fourth Amendment purposes. E.g., California Bankers Association v. Shultz, 416 U.S. 21, 63 (1974) and United States v. Asbury, 586 F.2d 973, 975 (2d Cir. 1978).

In short, the Constitution would not appear to require that border searches of outgoing persons or things be supported by the issuance of a warrant or a showing of probable cause. Yet the Currency and Foreign Transaction Reporting Act (31 U.S.C. 1105(a)) requires issuance of a search warrant based upon a showing of probable cause in order to conduct a search related to enforcement of that Act. This requirement is inconsistent with prior law establishing the border search exception. In view of the importance of enforcing the Currency and Foreign Transaction Reporting Act, and considering the ease with which persons departing the United States can conceal currency in their luggage or on their persons, this requirement impedes law enforcement efforts.

S. 1907 would retain the existing search warrant requirement with respect to enforcement of the Currency Transaction and Reporting Act generally, but would authorize warrantless searches upon reasonable cause to believe a person entering or departing the United States is unlawfully transporting a monetary instrument. We understand, therefore, that a showing of objective reasonableness would still be required in keeping with judicial opinions governing border searches. More specifically, we believe searches could only be conducted pursuant to the amendment where there is an objective basis for a reasonable belief that the person or thing searched is unlawfully transporting monetary instruments. Moreover, the search would necessarily be conducted in a reasonable manner. Although we recognize that an analogous revision of a previous bill (H.R. 5961 of the 96th Congress) was the focus of considerable controversy, we believe that critics of the earlier bill may have lacked a full understanding of the law of border searches. Moreover, the standard used in S. 1907 (reasonable cause to believe) is somewhat more demanding than that set out in H.R. 5961 (reasonable cause to suspect). We would hope, therefore, that this provision of S. 1907 can be enacted during the 97th Congress.

For purposes of clarity, we believe that the search provision should specify that warrantless searches are authorized only upon "reasonable cause to believe there are monetary instruments being transported in violation of section 1101 of this title." The language of subsection (b) as presently written would arguably authorize a search even in circumstances where a person has declared all currency in his possession. Further, for stylistic reasons, we suggest substitution of the words "with respect to which or whom" for "on which or on whom".

INCREASED SANCTIONS FOR VIOLATIONS

Because we feel that violations of the Currency and Foreign Transaction Reporting Act are serious matters, and that such violations are often perpetrated in order to mask even more serious offenses such as narcotics trafficking and organized

crime, we believe that the proposed increase in civil penalties from $1,000 to $10,000 and in criminal sanctions from a misdemeanor to a felony are clearly justified.

CONCLUSION

In conclusion, the Department of Justice recommends enactment of the attempt, reward, search, and increased sanction provisions of S. 1907. We recommend against enactment of the knowledge provision. The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

File Bank Secrecy Act

① Florida Trip 5-1-82

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FOR IMMEDIATE RELEASE

REMARKS BY
THE HONORABLE JOHN M. WALKER, JR.
ASSISTANT SECRETARY (ENFORCEMENT AND OPERATIONS)
DEPARTMENT OF THE TREASURY
BEFORE THE
13TH MAJOR DRUG TRAFFICKERS PROSECUTION CONFERENCE
WASHINGTON, D.C.
APRIL 14, 1982

I am deeply honored to address this assembly of professionals -- investigators and prosecutors of major drug traffickers -- in the war against narcotics. As a former narcotics prosecutor myself, I know the challenges you face from the most ruthless element in our society. The theme of this conference, "New Alliances in Federal Drug Prosecutions," underlines the importance of cooperation among the various federal law enforcement agencies engaged in the narcotics war -- both as between themselves and with state and local agencies -- particularly in this era of less resources. Such cooperation is essential; we must constantly strive to have more of it.

At Treasury we are deeply enmeshed in narcotics enforcement -- through Customs' interdiction efforts by air, land and sea, joint DEA-ATF task forces, an important DEA/Customs task force currently operating in Florida which the Vice President spoke to you about yesterday and about which I will speak further, IRS tax examinations of major traffickers and joint IRS-Customs financial investigations. Treasury is not just paying lip service to inter-agency cooperation; we live by it. For, while we take seriously our primary role in narcotics interdiction and tax investigations, we also recognize DEA's primary jurisdiction in drug investigations. This has led to important additional cooperative efforts. Today I will comment on three such efforts: First, Customs/IRS financial investigations of the Greenback type; second, the Vice President's Task Force; and third, ATF's work with DEA in making firearms cases against major drug traffickers. I then would be happy to try to answer your questions.

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At Treasury -- not surprisingly -- we go after the money that drives the narcotics traffic. Behind every narcotics transaction, there is money; behind every major trafficker, there is more money and plenty of it. That money is always there as potentially devastating evidence in a narcotics trial or even as the basis for substantive charges. One of our jobs at Treasury is to find this money for you -- for prosecutors and other enforcement agencies. Today, financial law enforcement has become a powerful weapon in the arsenal against drug trafficking.

As we all know, federal law enforcement agencies for many years have sought to attack racketeers and other major criminals through their financial dealings. Records of financial transactions link persons engaged in criminal conspiracies. Federal income tax laws have long been used to prosecute major organized crime figures, such as, Frank Costello in the 1950's and Al Capone in the 1930's.

But, criminal organizations have come a long way since the 1930's. As the sophistication in organized crime, particularly drug trafficking organizations, has improved, Federal agencies have had to develop the use of modern technology to keep pace with these trends. And progress has accelerated sharply during just the past few years. This progress is due in large part to the Treasury Department's expanded use of the Bank Secrecy Act, administered by the office of the Assistant Secretary. This Act assists law enforcement officials in three important ways.

First, the Act requires banks to keep the records needed to reconstruct financial transactions. Second, the reports that banks and others are required to file often provide valuable information to law enforcement officials. These reports document currency deposits of $10,000 or more, currency movement across the border of $5,000 or more, and foreign bank accounts. And, finally, the failure to file the required reports can be a basis for prosecuting a criminal who has been involved in large currency transactions.

The Bank Secrecy Act was introduced in 1969 after law enforcement officials expressed concern over the difficulties in investigating and documenting the financial aspects of international crimes. During extensive hearings in both the House and the Senate, Government officials described how foreign bank accounts were being used in tax evasion, bribery, securities violations and drug violations. The Act was intended to make transactions related to such criminal activity easier to detect and document.

The unit in the Customs Service assigned to analyze Bank Secrecy Act reports has grown and improved through the years. Recently, its currency capabilities were recognized when we announced the creation of the Financial Law Enforcement Center and doubled the size of the staff. Customs has now developed computerized indices for the currency transaction reports, reports of foreign bank accounts, and the reports of the international transportation of currency and monetary instruments. The Center is able to identify all of the reports pertaining to a specific person or entity in a matter of seconds and to promptly provide this valuable information to other Federal law enforcement agencies. Furthermore, based upon these detailed reports, the center prepares charts depicting the financial flow of drug money - naming traffickers, couriers, and money launderers.

During the past few years, Treasury provided DEA alone with information from more than 7,400 reports, reflecting more than $1.5 billion in currency transactions. We have also provided DEA with thousands of reports of the international transportation of currency. Although some of this data was provided in response to specific requests, the bulk of it was supplied on the basis of general criteria developed by Customs and DEA. For many years, this report information has also been available to Federal prosecutors through the Criminal Division at the Department of Justice, and many U.S. Attorneys have used it to identify possible violators or to provide leads and support for ongoing investigations. I urge those of you professionals personally involved in drug investigations and prosecutions to make certain that you have obtained whatever data FLEC has concerning your subjects. Contact Customs' Office of Investigations at the local or national level to get access. You will be pleased with the results.

"Operation Greenback" in South Florida, as a case study, shows how useful this financial information can be. Let me give you a little history on this operation. In the late 1970's, reports of the Federal Reserve showed a very large and rapidly growing surplus of currency in Florida. This cash was flowing into the Federal Reserve System where the banks were dumping their currency. This was counter to the normal trend of currency outflow from the Fed as currency expands. That surplus reached $4.9 billion in 1979 and $5.9 billion in 1980 - and it wasn't coming from waitresses who were receiving more tips.

Talking points for General use

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We then collected Bank Secrecy Act information identifying the commercial banks that were depositing large amounts of currency into the Federal Reserve offices in Florida. In addition, we analyzed hundreds of currency transaction reports filed by banks in Florida. Those reports clearly identified a large number of individuals and firms that were dealing in extraordinarily large volumes of currency. We then concluded -- and it wasn't too hard to do this -- that the majority of these individuals and firms were illegitimate -- either part of major narcotics trafficking rings or organizations formed to launder money for major drug traffickers.

Our initial strategy for Operation Greenback was based on two concepts. First, an attack would be made through the vulnerability of the traffickers' financial activity. We would enforce the tax laws and the Treasury regulations requiring the reporting of large currency transactions or the international movement of large amounts of currency.

Second, the criminal investigations would be integrated through the grand jury process with special prosecutors coordinating all of the related investigations, including those within the jurisdiction of the FBI, DEA, or ATF as well as Customs and IRS. The grand jury umbrella would permit all of the agents participating in the investigation to pool information, including financial information. This type of sharing across agency lines, which is so essential to the successful investigation of sophisticated criminal activity, was not encouraged by traditional investigative operations. It would be required under Greenback.

Operation Greenback in its two-year history has turned out to be a highly significant coordinated Federal law enforcement effort, and it has had some important accomplishments. As of the end of February, 90 people had been indicted in the Greenback Operation. Currency seizures have exceeded $20 million. Jeopardy tax assessments in the amount of $112 million have been obtained. The scope of the problem in South Florida is so great that now only organizations laundering over $100 million a year are presently being targeted. Even more important than Greenback's successes is its value as a model of a new approach to prosecutions of major money launderers, financial institutions and narcotics trafficking organizations together with forfeiture of their assets. It is not just another Federal effort. It is an innovative combination of target selection techniques across jurisdictional lines. It is a powerful new weapon for Federal law enforcement against organized criminal elements.

The IRS now has 27 agents connected to the Greenback effort; Customs has 10 and DEA has 4. Each organization has in addition a number of support personnel including intelligence analysts, revenue agents, audit aides, managers and clerical support. The cornerstone of the project, however, is the six Federal prosecutors who work closely with the agents advising them and coordinating the combined effort. They are the glue that holds Operation Greenback together. They also determine to a great extent the rate of progress for the entire project. The investigating bureaus can investigate a subject inside out, but only the prosecutor can take the case to indictment and eventually to trial.

Similar joint efforts have been started in a number of cities across the nation -- 18 cities by my latest count. Some of them appear to have been inspired by Operation Greenback, others have a slightly different approach. They all emphasize the use of the Bank Secrecy Act data base that Customs maintains and cooperation between Federal agencies. They are all supported by Federal prosecutors. We expect these financial task forces to flourish and to increase in number - much like expansion teams in baseball. Customs and IRS will continue to provide information as well as the expertise their agents have acquired in Operation Greenback. The IRS recently assigned a seasoned criminal investigator to my staff to assist these expansion teams.

In addressing the theme of this conference which is Federal cooperation in drug prosecutions, I would like to turn to an important development in drug enforcement which is underway in Florida -- the Vice President's Task Force. Alarmed by an overwhelming crime situation in Florida, the key element of which is drug trafficking, the Miami Citizens Against Crime persuaded the President that a special effort was needed by the Federal Government. The Vice President was given the responsibility for this effort, and he established a task force to address all facets of the problem. A significant part of this effort involves the assignment of over 200 Customs personnel (Special Agents, Patrol Officers, intelligence analysts, clerical support and logistical support) to Miami, Tampa and Jacksonville to enhance drug interdiction efforts and to give additional investigative support to those efforts. A combined DEA-Customs task force has been established under the direction of a DEA task force leader with a Customs deputy. This task force has now been operational for one month and is involved in every aspect of the drug problem in Florida. Personnel assigned to the task force are working in a cooperative and harmonious manner, and it involves a significant milestone in the rejuvenation of an old alliance connected with the Federal anti-drug effort.

The Florida task force project also involves intensified air interdiction efforts with full military support. This has resulted in a dramatic drop in illegal drug air traffic over Florida. The price of marijuana and cocaine is decreasing in Colombia and is increasing in Florida. The cost of smuggling has sharply increased. By any measure this interdiction effort is working - the other side is right now afraid to bring the narcotics in.

The Administration is now in the process of asking the Congress to supply supplemental funding to maintain this task force operation for the remainder of the current fiscal year. We will be closely monitoring the accomplishments of the task force and the resources committed to it in an effort to better determine permanent staffing levels in Florida since Florida still remains the gateway for the vast majority of the cocaine and marijuana which enters the U.S.

Finally, I wish to mention the role the Bureau of Alcohol, Tobacco and Firearms which, as part of its responsibility to combat violent crime, has established a national narcotics strategy designed to exploit the vulnerability of narcotics traffickers through the selective application of Federal firearms laws. Law enforcement officials have long recognized the overlap between illegal narcotics and firearms activities. A significant number of narcotics offenders are now routinely armed and use weapons to pursue their illegal conduct. Firearms are rapidly becoming an indispensable element of organized narcotics trafficking activity.

Even more alarming is the fact that ATF investigations are uncovering evidence that some narcotics dealers have also become traffickers in automatic weapons. There has been a widespread proliferation of automatic weapons, silencer equipped firearms and silencers in certain areas of the country, such as South Florida, which are plagued by narcotics problems. In addition, many narcotics traffickers are also associated with the smuggling of firearms to foreign countries where there are significant levels of narcotics production.

On the positive side, narcotics traffickers, due to the repetitive nature of their illegal activities, often fall into categories which are statutorily prohibited from processing firearms such as that of convicted felons. Thus, while these narcotics traffickers may be successful in insulating themselves from arrests and prosecution for narcotics offenses, many are increasingly vulnerable to prosecution for Federal firearms offenses. ATF and DEA have joined forces in a cooperative

intelligence plan designed to address the growing problem of firearms acquisition and use by major narcotics traffickers in the United States.

As a result of the critical sharing of information between these two agencies, the names of over 8,000 narcotics violators have been entered into the Treasury Enforcement Communications System (TECS) and referred to ATF field offices for investigation. As a result of this ATF Narcotics Impact Program, during FY 1981 ATF submitted 465 cases against narcotics traffickers for prosecution. We are anticipating even greater successes in this area in the future.

In closing, I want to wish you the best of luck in your professsion - the investigation and prosecution of major drug traffickers. As you perform this vital public service, you can rely on the full cooperation and support of the Treasury Department and its enforcement bureaus.

I will be pleased to answer questions if time permits.

White House Library
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Research Center
Room 308, OEOB, X7000

5/12

TO: Bill Barr

FROM: Angie Nash

File Bank
Secrecy
Art Audits

97TH CONGRESS
1ST SESSION

H. R. 5044

To amend the Currency and Foreign Transactions Reporting Act to provide for more efficient enforcement of the provisions of such Act by making it illegal to attempt to export or import large amounts of currency without filing certain reports.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 1981

Mr. LAFALCE introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

---

A BILL

To amend the Currency and Foreign Transactions Reporting Act to provide for more efficient enforcement of the provisions of such Act by making it illegal to attempt to export or import large amounts of currency without filing certain reports.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 231(a)(1) of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1101(a)(1)) is amended by inserting ", or attempts to transport or have transported," after "causes to be transported".

(b)(1) Section 231(a)(2) of such Act (31 U.S.C. 1101(a)(2)) is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

(2) The amendment made by paragraph (1) shall take effect on January 1, 1982.

O

97TH CONGRESS
1ST SESSION

H. R. 5045

To amend the Currency and Foreign Transactions Reporting Act to allow United States Customs officials to search for currency in the course of their presently authorized search for contraband articles.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 1981

Mr. LAFALCE introduced the following bill; which was referred jointly to the Committees on Banking, Finance and Urban Affairs and Ways and Means

---

A BILL

To amend the Currency and Foreign Transactions Reporting Act to allow United States Customs officials to search for currency in the course of their presently authorized search for contraband articles.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 235 of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1105) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) Any customs officer may stop, search, and examine, without a search warrant, any vehicle, vessel, aircraft or other conveyance, envelope or other container, or person entering, or departing from, the United States on which or whom he shall have probable cause to suspect there are monetary instruments in the process of being transported for which a report is required under section 231 of this title.".

O

97TH CONGRESS
1ST SESSION

H. R. 5046

To amend the Currency and Foreign Transactions Reporting Act to allow United States Customs officials to search for currency in the course of their presently authorized search for contraband articles.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 1981

Mr. LAFALCE introduced the following bill; which was referred jointly to the Committees on Banking, Finance and Urban Affairs and Ways and Means

---

A BILL

To amend the Currency and Foreign Transactions Reporting Act to allow United States Customs officials to search for currency in the course of their presently authorized search for contraband articles.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 235 of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1105) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) Any customs officer may stop, search, and examine, without a search warrant, any vehicle, vessel, aircraft or other conveyance, envelope or other container, or person entering, or departing from, the United States on which or whom he shall have reasonable cause to suspect there are monetary instruments in the process of being transported for which a report is required under section 231 of this title.".

O

97TH CONGRESS
1ST SESSION

H. R. 5047

To amend the Currency and Foreign Transactions Reporting Act to allow United States Customs officials to search for currency in the course of their presently authorized search for contraband articles.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 1981

Mr. LAFALCE introduced the following bill; which was referred jointly to the Committees on Banking, Finance and Urban Affairs and Ways and Means

---

A BILL

To amend the Currency and Foreign Transactions Reporting Act to allow United States Customs officials to search for currency in the course of their presently authorized search for contraband articles.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 235 of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1105) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) Any customs officer may stop, search, and examine, without a search warrant, any vehicle, vessel, aircraft or other conveyance, envelope or other container, or person entering, or departing from, the United States on which or whom he shall suspect there are monetary instruments in the process of being transported for which a report is required under section 231 of this title.".

O

97TH CONGRESS
1ST SESSION

H. R. 5048

To amend the Currency and Foreign Transactions Reporting Act to authorize the payment of compensation to informers.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 1981

Mr. LAFALCE introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

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A BILL

To amend the Currency and Foreign Transactions Reporting Act to authorize the payment of compensation to informers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 3 of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1101 et seq.) is amended by adding at the end thereof the following new section:

"§ 236. Award of compensation to informants

"(a) The Secretary is authorized to pay a reward to any individual who provides original information which leads to a recovery of a criminal fine, civil penalty, or forfeiture, which

exceeds $50,000, for any violation of this title or any regulation issued pursuant to this title.

"(b) The amount of the reward, if any, is to be determined by the Secretary, but shall not exceed the lesser of $250,000 or 25 percent of the net amount of the criminal fine, civil penalty, or forfeiture collected in a case in which the individual was an informant.

"(c) Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of official duties is not eligible to receive any payment under this section.

"(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.".

(b) The table of sections at the beginning of chapter 3 of such Act is amended by adding after the item relating to section 235 the following new item:

"236. Award of compensation to informants.".

(c) The amendments made by this Act shall take effect on October 1, 1982.

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