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DEPARTMENT OF THE TREASURY


WASHINGTON, D.C. 20220

*file
Bank Secrecy
Act*

DEPUTY ASSISTANT SECRETARY

MAY 19 1982

MEMORANDUM FOR: Bill Barr
Deputy Assistant Director
Office of Policy Development

FROM: Robert E. Powis 
Deputy Assistant Secretary
(Enforcement)

SUBJECT: Warrantless Search Authority for Monetary
Instruments (LaFalce Bill)

Pursuant to our telephone conversations last week on the above captioned subject, I am forwarding a copy of a memorandum written to me by the Assistant Commissioner, Office of Border Operations, U.S. Customs Service, which I believe makes a good case for Customs' need in this area.

In addition to the information contained in the Customs paper I think it is worth mentioning that almost every day Customs personnel arrest and seize people who are bringing small quantities of drugs into the country. Typically, on May 16, 1982, one defendant was arrested at Miami Airport with 2.14 lbs. of cocaine concealed on her body. Another defendant was arrested the same day with 3.99 lbs. of cocaine concealed in the sides of a brief case. In these cases and in similar cases the "mules" probably leave the country with a quantity of cash sufficient to make the purchase. In the cases cited above the woman probably needed \$25,000 in cash to buy 2.14 lbs. of cocaine in Colombia and the man with the brief case probably needed between \$40,000 and \$50,000 to buy 3.99 lbs. in cocaine. The figures quoted represent rock-bottom prices. The point is that there are large quantities of cash leaving the country daily. Not only do the major drug trafficking organizations move money out by boat and private aircraft in large quantities but large numbers of smaller operators move cash out for drug purchases in smaller quantities ranging from \$10,000 to \$100,000.

If you need any further information please call.

Attachment

Memorandum

DATE: MAY 13 1982

FILE: INV 2-06 B:IV:C

TO : Robert E. Powis
Deputy Assistant Secretary
(Enforcement)

FROM : Assistant Commissioner
Office of Border Operations *J. P. Curran*

SUBJECT: Warrantless Search Authority for Monetary Instruments Based on Reasonable Suspicions

As you are aware, H.R. 5046, introduced by Congressman John J. LaFalce of New York provides for an amendment to the Currency and Foreign Transactions Reporting Act. The bill would allow any Customs officer to 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 when he shall have reasonable suspicion to suspect there are monetary instruments in the process of being transported for which a report is required under the Act.

We at Customs feel the passage of this bill, and ultimately, the amendment of the law, is essential to allow our enforcement personnel to successfully disrupt narcotic trafficking organizations through asset forfeiture.

The following statistics provide insight into our need for outbound search authority:

During calendar years 1980 and 1981, the U.S. Customs Service made approximately 4,595 seizures of currency and monetary instruments transported into the United States in violation of title 31 USC 1101. The total value of these seizures amounted to approximately \$55,740,607. During the same period, Customs conducted approximately 188 seizures of currency and monetary instruments in the process of being transported out of the United States in violation of title 31. The total value of these seizures amounted to approximately \$13,004,169. Thus, over a 2-year period, approximately 3.9 percent of all currency seizures were for outbound transportation, yet these seizures represent approximately 23.3 percent of the total amount seized.

Our relatively low percentage of outbound currency seizures (3.9 percent) is directly attributed to our present lack of outbound search authority. The outbound seizures were generally the result of selective

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

file Bank

DATE: 6/2/82 ACTION/CONCURRENCE/COMMENT DUE BY: 6/10/82
 SUBJECT: Administration positions on bills proposing amendments of the Bank Secrecy Act

	ACTION	FYI		ACTION	FYI
HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	DRUG POLICY	<input type="checkbox"/>	<input type="checkbox"/>
PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	TURNER	<input type="checkbox"/>	<input type="checkbox"/>
BARR	<input type="checkbox"/>	<input type="checkbox"/>	D. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>
BAUER	<input type="checkbox"/>	<input type="checkbox"/>	OFFICE OF POLICY INFORMATION		
BOGGS	<input type="checkbox"/>	<input type="checkbox"/>	GRAY	<input type="checkbox"/>	<input type="checkbox"/>
BRADLEY	<input type="checkbox"/>	<input type="checkbox"/>	HOPKINS	<input type="checkbox"/>	<input type="checkbox"/>
CARLESON	<input type="checkbox"/>	<input type="checkbox"/>	OTHER		
FAIRBANKS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
GUNN	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
HEMEL	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
B. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
MALOLEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
SMITH	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
UHLMANN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
ADMINISTRATION	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

Remarks:

See attached notes on memo.

Please return this tracking sheet with your response.

Edwin L. Harper
 Assistant to the President
 for Policy Development
 (x6515)

THE WHITE HOUSE
WASHINGTON

OFFICE OF
POLICY DEVELOPMENT
1982 MAY 27 P 6:30

May 27, 1982

XC To Mike U

MEMORANDUM FOR EDWIN L. HARPER

FROM: ROGER B. PORTER RBP

SUBJECT: Administration Positions on Proposed Legislation
Amending the Bank Secrecy Act

The OMB memorandum on the Bank Secrecy Act raises four basic issues associated with developing an administration position on the proposed legislation amending the Bank Secrecy Act. I understand that since the Crime package released yesterday does not include these measures that it is now unlikely the Cabinet Council on Legal Policy will consider them.

Should they come up again, I am glad to share with you my first reaction:

Agree
1. I would support the provision to make it an offense to attempt to take unreported money out of the United States. Treasury and Justice apparently both support this position. Justice is appealing a Federal district court decision which this provision would overturn. If the court decision stands that no offense occurs until a suspect actually leaves the country, Justice maintains that the law is unenforceable.

Why we have such a penchant for laws like this and the Foreign Corrupt Practices Act, which are inherently so difficult to enforce, is a mystery to me.

2. I would oppose the provision to raise the floor on the reporting requirement from \$5,000 to \$10,000. I simply see no compelling reason for this change. *What would the level be if in current \$ from date of original law?*

de
3. I would support the provision authorizing warrantless searches of persons leaving the United States based on findings of "reasonable cause." Alternative standards of "probable cause" and "no cause" are suggested in different bills under consideration.

I share Treasury's view that the current situation requiring warrants is too restrictive and am satisfied that abuses are unlikely under authority to conduct warrantless searches under "reasonable cause."

Agree
-2-

4. I am a bit uneasy about the provision authorizing the payment of rewards of up to \$250,000 to informers in cases where the information is original and leads directly to the recovery of a criminal fine, a civil penalty, or monetary forfeiture.

I can understand that this would assist in the government's law enforcement activities and that there is precedent in customs law cases. Perhaps it is the amount — a quarter of a million dollars — that bothers me. If the reward is limited to a smaller figure (\$25,000 or \$50,000) and initiated on an experimental basis, I would feel more comfortable.

OFFICE OF POLICY DEVELOPMENT STAFFING MEMORANDUM

DATE: 4/27/82 ACTION/CONCURRENCE/COMMENT DUE BY: 5/5/82

SUBJECT: Administration positions on bills proposing amendments of the Bank Secrecy

Act

	ACTION	FYI		ACTION	FYI
HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SMITH	<input checked="" type="checkbox"/>	<input type="checkbox"/>
✓ PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	✓ UHLMANN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BANDOW	<input type="checkbox"/>	<input type="checkbox"/>	ADMINISTRATION	<input type="checkbox"/>	<input type="checkbox"/>
BAUER	<input type="checkbox"/>	<input type="checkbox"/>	DRUG POLICY		
BOGGS	<input type="checkbox"/>	<input type="checkbox"/>	TURNER	<input type="checkbox"/>	<input type="checkbox"/>
BRADLEY	<input type="checkbox"/>	<input type="checkbox"/>	D. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>
CARLESON	<input type="checkbox"/>	<input type="checkbox"/>	OFFICE OF POLICY INFORMATION		
FAIRBANKS	<input type="checkbox"/>	<input type="checkbox"/>	GRAY	<input type="checkbox"/>	<input type="checkbox"/>
FRANKUM	<input type="checkbox"/>	<input type="checkbox"/>	HOPKINS	<input type="checkbox"/>	<input type="checkbox"/>
HEMEL	<input type="checkbox"/>	<input type="checkbox"/>	OTHER		
KASS	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
B. LEONARD	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
MALOLEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

Please provide comments on the attached.

1. refer to CCCP
2. rewards to high
3. unmentioned sources

EDWIN L. HARPER
ASSISTANT TO THE PRESIDENT

July 8, 1982

SPECIAL

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of the Treasury

*file
Bank
Secrecy
Act
Amendments*

SUBJECT: Justice testimony on Bank Secrecy Act

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than
10:00AM, Monday, July 12, 1982

Direct your questions to Gregory Jones (395-3802), of this office.

Robert E. Carlstrom / RJC

Robert E. Carlstrom for
Assistant Director for
Legislative Reference

Enclosures

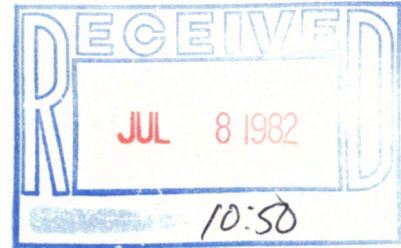
cc: M. Uhlmann

R. Williams

J. Komoroske

A. Curtis

DRAFT



STATEMENT

OF

JOHN C. KEENEY
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

SUBCOMMITTEE ON GENERAL OVERSIGHT
AND RENEGOTIATION
OF THE
COMMITTEE ON
BANKING, FINANCE AND URBAN AFFAIRS

OF THE

HOUSE OF REPRESENTATIVES

CONCERNING

ENFORCEMENT AND UTILIZATION
OF THE BANK SECRECY ACT
IN NARCOTICS CASES

ON

JULY 13, 1982

Mr. Chairman and members of the Subcommittee:

Thank you for the opportunity to appear before you today to testify on behalf of the Department of Justice regarding our utilization of the Bank Secrecy Act in narcotics investigations, particularly in the South Florida area.

At the present time the Criminal Division of the Department is staffing three field operations which examine the inter-relationship between drug-trafficking offenses and Bank Secrecy Act violations. These field operations are primarily organized to conduct investigations into the currency law violations and financial dealings of drug traffickers and money launderers. The first operation, "Operation Greenback I," is located in Miami and began in May 1980 with an assignment of two trial attorneys from the Division's Narcotic and Dangerous Drug Section. In the summer of 1980, one Greenback attorney was reassigned to a suboffice of Greenback I located in Tampa to pursue a grand jury investigation of a marihuana-smuggling organization and to work in conjunction with the United States Attorney's Office for the Middle District of Florida to advance financial investigations in that office. Our most recent endeavor, "Operation Greenback II" (Chicago), commenced with the assignment of a trial attorney to the Northern District of Illinois to work in conjunction with the United States Attorney's Office in that district, as well as with United States Attorneys' offices in surrounding districts, to enhance the techniques of financial investigations in the Midwest.

I. Commencement of Operation Greenback

In the spring of 1980 officials of the Treasury Department met with officials of the Department of Justice to discuss a proposed project whereby certain investigative and prosecutive resources of the respective Departments would be brought to bear against the financial operations of major drug trafficking organizations and their associates operating in the Southern District of Florida. At that time a recently completed study of currency transactions at Federal Reserve Banks throughout the United States had dramatically demonstrated that, whereas the majority of Federal Reserve Banks had found it necessary to add hundreds of millions of dollars to the total currency in circulation in their regions, the Federal Reserve Bank in Florida had surpluses of currency deposits.

With most of the marihuana and cocaine entering the United States being brought through Florida, it was readily apparent that much of the currency surplus which was pouring into the Federal Reserve Bank in Florida was attributable to the financial activities of major drug trafficking organizations either directly or through money-laundering organizations. In March of 1980 a memorandum was prepared for the then-Assistant Attorney General of the Criminal Division recommending a joint project with the participation of the investigative agencies of the Department of the Treasury and the Drug Enforcement Administration and the Federal Bureau of Investigation of the Department of Justice. It would also have the on-site

participation by attorneys from Justice's Criminal and Tax Divisions.

In May of 1980 two staff attorneys from the Narcotic and Dangerous Drug Section went to Miami representing the Criminal Division's commitment to the project. At that time the Operation Greenback Task Force was composed of investigators from the Internal Revenue Service and the United States Customs Service, with liaison with the Bureau of Alcohol, Tobacco and Firearms, the Federal Bureau of Investigation, and the Drug Enforcement Administration. An attorney from the Criminal Section of the Tax Division provided support by reviewing all prospective cases involving Title 26, United States Code, tax violations. As stated in the original proposal, the participation of the Department would be on-site and operational and would be for the purpose of securing two main objectives. The first objective was to work operationally with both Assistant United States Attorneys and Tax Division attorneys in the Southern District of Florida to develop cases utilizing U.S. Code provisions in Title 31 (Bank Secrecy Act), Title 26 (Tax violations), Title 21 (Drug violations), and Title 18 (Racketeering violations), as well as to seek both criminal and civil forfeitures as provided for under those titles. Our second objective was to take the investigative and prosecutive techniques learned in Greenback I and pass them on to other districts by both operational on-site participation and also through seminars and other programs facilitating the exchange of such information.

II. Bank Secrecy Act

The Bank Secrecy Act, which became law in 1970, has been the primary statute utilized by the Operation Greenback Task Force. The reporting requirements under the Act provide two main benefits to our efforts. First, it provides intelligence information which tends to highlight persons involved in other criminal violations. Second, it contains criminal sanctions to deter unlawful activity.

The two reports which have provided most of the underlying foundation for the financial flow investigation techniques are as follows:

1. Form 4789 -- Currency Transaction Report

A. Definitions

Title 31, U.S. Code, Section 1081 (as effectuated by 31 CFR 103.22) requires that bank reports of domestic currency transactions in excess of \$10,000 be filed with the Internal Revenue Service on Form 4789. The law does not require reporting of transactions between banks, transactions between a bank and a regular customer who qualifies for inclusion on an "exemption list," nor transfers that do not involve the actual physical transfer of currency. The form is to be filed by the banks or financial institutions that exchange currency.

B. Criminal Violations

Title 31, U.S. Code, Section 1058 provides for a fine of up to \$1,000 or up to one year imprisonment or both for a willful violation of the reporting requirement. Operation Greenback has

sought to identify both money couriers and corrupt bank officials through undercover operations, surveillance, and traditional grand jury investigation to determine the existence of unreported currency transactions of amounts in excess of \$10,000, or where a series of transactions - each under \$10,000 but aggregating to over \$10,000 - is being utilized solely to subvert the intentions of the reporting requirement.

Title 31, U.S. Code, Section 1059 provides for a fine of not more than \$500,000 and/or five years' imprisonment for a willful violation if it is committed in furtherance of any other federal violation or as part of a pattern of illegal activity involving over \$100,000 worth of transactions in a twelve-month period.

2. Form 4790 -- Currency and Monetary Instruments Report

A. Definitions

Title 31, U.S. Code, Section 1101 (as effectuated by 31 CFR 103.23) requires that reports dealing with the transportation of currency or other monetary instruments into or out of the United States in excess of \$5,000 be filed with the U.S. Customs Service. The form is to be filed by the individual upon entering or leaving the country.

B. Criminal Violations

Title 31, U.S. Code, Section 1058 contains a penalty of up to \$1,000 fine and/or one year imprisonment for failure to file the 4790 form. The reporting statute requires the actual physical transportation of currency or a bearer instrument in

excess of \$5,000 across the United States border. When travelers enter the United States they are given the form which notifies them of the reporting requirement.

Operation Greenback also employs the traditional investigative techniques of surveillance, border checks, and the use of informants, etc., to detect violations of this part of the Bank Secrecy Act.

Title 31, U.S. Code, Section 1059 sets forth the felony provisions for 4790 violations, which are the same as for the previously described 4789 violations.

III. Present Staffing

A. Operation Greenback I (Miami)

Attorneys

At the present time there are four Criminal Division attorneys assigned from the Narcotic and Dangerous Drug Section presently on-site in the Miami Greenback field office working under the auspices of the United States Attorney and located in that office. The attorney staff consists of an attorney in charge and three attorneys. In addition, one I.R.S. attorney is presently "on loan" to Operation Greenback. The Tax Division's Criminal Section has also provided one attorney who is presently involved in the preparation of a Title 26 tax case for prosecution in the Southern District of Florida. Accordingly, we anticipate a minimum of four full-time attorneys assigned to the main project as well as one attorney working on an "as needed" basis for the exclusive prosecution of tax cases which arise out

of the project.

Special Agents

At the present time the Internal Revenue Service has provided twenty-six special agents and seven revenue agents to work on the project. There are also ten U.S. Customs Service special agents and ten special agents of the Drug Enforcement Administration attached to the operation. Liaison is maintained with the FBI, Secret Service, and the Bureau of Alcohol, Tobacco and Firearms.

B. Operation Greenback I (Tampa)

Attorneys

The Criminal Division (Narcotic and Dangerous Drug Section) has provided one attorney to work in conjunction with the Office of the United States Attorney in the Middle District of Florida. This attorney was responsible for the early coordination of an investigation into what had been termed the Walker marihuana and cocaine importation and currency exportation case. The primary subject in this investigation was murdered in April, 1981 - his body was found in a swamp with a garrote around the neck. This is one more example of the violence which is associated with the drug-trafficking business. Various associates of this subject have been indicted and twelve of those were convicted on Title 21 drug violations, Title 31 Bank Secrecy Act violations, and charges of conspiracy and crossing state lines in aid of their racketeering activities under Title 18.

Special Agents

Agent support has been provided by the IRS, U.S. Customs Service, DEA, and the FBI.

C. Operation Greenback II (Chicago)

In October of 1981, one of the attorneys who had initiated Operation Greenback I in 1980 was reassigned to Chicago, Illinois, to work under the auspices of the United States Attorney for the Northern District of Illinois as part of a Major Narcotics-Financial Crimes Task Force in that office. The task force is being supported by special agents and revenue agents from the Internal Revenue Service, as well as special agents of the U.S. Customs Service, Drug Enforcement Administration, and the Federal Bureau of Investigation. The Division attorney is working with the United States Attorney and his Assistants in the development of the financial aspects of major drug trafficking cases. It is expected to be highly successful in discovering and prosecuting violations of Title 31, Title 21, Title 26, and Title 18. It is also anticipated that significant forfeitures will result from this effort.

On a regional scope, this attorney will also provide support to other United States Attorneys' offices in the Midwest so that similar programs can be developed as needed.

IV. Investigative Techniques

In discussing the techniques utilized in Operation Greenback it should first be noted that Operation Greenback I (Miami) is still in a developmental stage. Nevertheless, certain investigative techniques and approaches have proven successful

and resulted in what can be termed inroads into the financial dealings of major drug traffickers and associated money launderers. The techniques utilized and refined in Greenback are both innovative and traditional.

Greenback has had the support of the Office of the Comptroller of the Currency and its related bank examining officials, which, through the refinement of their audit procedures, have been able to uncover suspicious activity and violations of the Bank Secrecy Act. The reporting of these violations to the Treasury Department and the subsequent referral, when warranted, to the Internal Revenue Service for criminal investigation has proven to be an effective use of the Form 4789 reports. As part of the Greenback approach, a joint tax-drug grand jury was instituted so that the four involved titles of the United States Code (18, 21, 26, 31) could be investigated fully at the one time by all affected federal investigative agencies, and with the needed sharing of information. On the more traditional side, where specific accounts were identified as being the conduits for the passage of enormous amounts of currency, subsequent traditional physical surveillance has resulted in the identification of couriers and money launderers. The joint tax-drug grand jury approach has provided the investigators and prosecutors with the ability to immunize underlings and also the coextensive ability to compel testimony under a grant of use immunity. These are some of the types of investigative techniques which are presently being used

in the operation.

V. Financial Law Enforcement Center

On January 11, 1982, the Financial Law Enforcement Center (FLEC) was established within the U.S. Customs Service to examine the financial characteristics of the criminal markets including the illicit drug market. The Center assists in the development of a law enforcement strategy that will exploit the vulnerability of these criminal organizations through the use of appropriate criminal and civil sanctions. Customs intends to enhance the effectiveness of the Center by expanding its resources and intelligence data bases, and through actively soliciting the participation of other federal agencies. Customs' position as the federal government's repository of Bank Secrecy Act financial data is being improved through the employment of computerized indices for Bank Secrecy Act information which will make the information more readily accessible to federal drug agents. Another service which will aid in the prosecution of currency violations is the Center's preparation of detailed money-flow charts to aid juries in following the often complicated transfer of currency by drug-trafficking organizations which expend great amounts of energy to obfuscate the telling financial trail of their highly profitable illegal activity.

U.S. Commissioner of Customs William von Raab has clearly identified the Customs Service's number one priority to be stopping the flood of drugs coming into this country. His commitment to the agency's Bank Secrecy Act role as a major part

of that commitment is witnessed by Mr. von Raab's May 1982 speech to the Bank Leadership Committee of the Florida Bankers Association in which he stressed the need for cooperation between the banks and the involved federal agencies as an integral part of fighting the drug-trafficking and related money-laundering organizations in Florida.

VI. Achievements

A. Operational

Because most of Greenback's indictments are in a process of litigation or pending grand jury action, I am precluded from discussing the evidence or facts of any particular case. However, it can be said generally that the Operation Greenback Task Force in Miami has presented evidence to grand juries which returned true bills of indictment charging currency-related offenses in twenty-five instances against some ninety-seven individuals. Approximately twenty million dollars in cash and two million dollars in property have been seized by Greenback agents during the course of the Operation. Of these assets, approximately five million dollars has been forfeited to the government in two court actions, and the remainder is in the process of being forfeited. In addition to these civil and criminal actions, the Internal Revenue Service has levied jeopardy and termination assessments of \$112,500,467 through its related administrative procedures. In addition, Bank Secrecy Act regulations regarding exemption lists and reporting times have been strengthened. Numerous banks have sought out the Office of

the Comptroller of the Currency and have signed agreements both acknowledging their responsibility under the act and committing themselves to strict adherence to all of the provisions. The filing of Form 4789 reports has increased approximately 400 percent since the inception of Greenback I. Prosecutions have resulted in the convictions of various defendants for violations of Title 21 (Drug violations), Title 31 (Bank Secrecy Act violations), and Title 18 (Conspiracy and interstate travel in aid of racketeering).

B. Information Sharing

To effectuate the second objective of the initial plan - viz. the exchange of information about currency investigations - Greenback attorneys and agents have given lectures on investigative and prosecutive techniques and the law to Assistant United States Attorneys and investigators all over the country, including lecturing at the most recent Major Drug Traffickers Prosecution Conference in which federal and state prosecutors and agents participated to examine how inter-agency and inter-governmental cooperation could maximize nationwide drug enforcement efforts. One of our attorneys has also participated in the production of a videotape prepared by the Internal Revenue Service on the Bank Secrecy Act which will be shared with the Department of Justice for training purposes. A manual on the investigation and prosecution of the illegal laundering and foreign transportation of currency has been prepared by Narcotic Section attorney G. Roger Markley (assigned to Greenback II in

Chicago) and is being made available to prosecutors and agents. A copy of this manual has been appended to my statement for examination by this Subcommittee.

VII. Proposed Bank Secrecy Act Amendments

It is fitting that I come before this legislative body to discuss our proposed amendments to the Bank Secrecy Act as this Subcommittee held similar hearings prior to the passage of the Bank Secrecy Act almost thirteen years ago. It is time to bring the Bank Secrecy Act into the 1980s and to give the courts the ability to impose larger maximum fines on those persons and organizations who would join hands with the drug trafficker in an attempt to circumvent our efforts to remove the financial incentives which motivate this illegal and destructive activity. All of the proposed changes would enhance our efforts under the Bank Secrecy Act.

Several of the needed amendments to Title 31 of the United States Code and related provisions of Titles 18, 21, and 26, are included in H.R. 6497, the House counterpart to S.2572. President Reagan has publicly praised S.2572, and the Department of Justice supports enactment of this legislation - the Violent Crime and Drug Enforcement Improvements Act of 1982. Provisions of the bill relating to the Bank Secrecy Act are located in Title IX, Part I.

A. Increased Penalties

The first subsections of Section 916 in Part I would raise the maximum civil penalty from \$1,000 to \$10,000, and raise the

maximum criminal penalty from \$1,000 and/or imprisonment for up to one year to \$50,000 and/or imprisonment for up to five years. Because violations of the Bank Secrecy Act are serious matters, and such violations are often perpetrated in order to mask even more serious offenses such as narcotics trafficking and organized crime, such increased civil penalties and criminal sanctions are clearly justified.

B. "Attempt" Provision

Subsection (c) (1) would attach an "attempt" provision to the Bank Secrecy Act (31 U.S.C. 1101(a)) such that the attempted violation of the Act would be proscribed. This would make clear Congress's intent that an offense under the Act would occur prior to a person's actually leaving the jurisdiction of the United States. Otherwise, a crime would usually occur only after the ability of the U.S. authorities to enforce the law had ended. Some courts disagree, and have held that an offense does not occur until after a person leaves the United States. While the absence of an attempt offense has created difficulty in connection with departures from public airports, this arguable 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.

C. Increased Reporting Amount

Subsection (c) (2) would raise the minimum reportable amount transported out of the United States from in excess of \$5,000 to

an amount exceeding \$10,000. This upward modification of the minimum reporting figure would reduce the burden on the international traveler yet pare down the forms necessary for the Customs Service to examine to spot the suspicious transactions. The proposed change also recognizes the diminution in the value of the old reporting figure since the passage of the Bank Secrecy Act.

D. Warrantless Searches

Subsection (d) authorizes customs officers to make warrantless searches where there is reasonable cause to believe that a monetary instrument is unlawfully being brought into or taken out of the United States. This provision would make an exception to the search warrant requirement presently contained in the Bank Secrecy Act (31 U.S.C. 1105(a)) such that the general enforcement of the Act would still require a search warrant, but the widely recognized border search exception to the common law requirement for search warrants would also be statutorily recognized. The present requirement is inconsistent with prior law establishing the border search exception and unnecessarily impedes law enforcement efforts, especially considering the ease with which persons can conceal currency or other monetary instruments in their luggage or on their persons.

E. Reward Authority

Subsection (e) provides for the payment of rewards to an individual who provides information leading to the recovery of in excess of \$50,000 in fines, civil penalties, or forfeitures under

the provisions of the Bank Secrecy Act. 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.

F. Violations as RICO Predicate Acts

Section 917 of Part I 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. "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, who have enforcement jurisdiction over Title 31, and FBI investigators specializing in racketeering cases under Title 18. 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.

G. Additional Amendments

Other needed changes that are not contained in S.2572 or H.R. 6497 have been proposed by federal prosecutors and agents who have utilized the Bank Secrecy Act in attacking major drug-trafficking organizations. Three of the major suggestions which have been proposed as possible amendments to the Act are the inclusion of wire transfers and cashier's checks in the

coverage of the Act, addition of Section 1081 violations in the forfeiture provision of 31 U.S.C. 1102, and the inclusion of Bank Secrecy Act offenses in the list of offenses which may give rise to a court-ordered interception of wire or oral communications pursuant to 18 U.S.C. 2516.

All of these proposed changes in the Bank Secrecy Act would better enable the federal agencies involved in drug enforcement to identify and fully examine the scope of suspected money-laundering and drug-trafficking activity, and to link the two in criminal prosecutions.

VIII. Conclusion

Operation Greenback, although still a relatively new program, has demonstrated that it is operationally successful and worthy of duplication in other jurisdictions and that the Bank Secrecy Act is an integral part of targeting and prosecuting major drug-trafficking organizations. Perhaps the most significant lesson that our efforts have taught us is that the most effective way to make inroads into the estimated \$79 billion dollar business of major drug trafficking organizations is through the mutual efforts of all federal law enforcement agencies in unified drug-currency-tax investigations and prosecutions.



Department of Justice

*file
Bank
Secrecy Act*

STATEMENT

OF

JOHN C. KEENEY
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

SUBCOMMITTEE ON GENERAL OVERSIGHT
AND RENEGOTIATION
OF THE
COMMITTEE ON
BANKING, FINANCE AND URBAN AFFAIRS

OF THE

HOUSE OF REPRESENTATIVES

CONCERNING

ENFORCEMENT AND UTILIZATION
OF THE BANK SECRECY ACT
IN NARCOTICS CASES

ON

JULY 13, 1982

Mr. Chairman and members of the Subcommittee:

Thank you for the opportunity to appear before you today to testify on behalf of the Department of Justice regarding our utilization of the Bank Secrecy Act in narcotics investigations, particularly in the South Florida area.

The Bank Secrecy Act has proven to be a very valuable tool in the federal effort to identify and prosecute drug traffickers. It is also proving quite effective in the prosecution of those persons who would profit from illegal drug trafficking by handling and camouflaging the wealth of the drug trafficker.

Although my discussion today will focus primarily on the Criminal Division's efforts in South Florida through Operation Greenback, it should be noted that 18 to 20 United States Attorneys' offices around the nation regularly request Bank Secrecy Act information as a part of their financial task force operations or to assist in the investigation of individual cases. The U.S. Attorney's Office in the Central District of California has been particularly active for many years in utilizing the Bank Secrecy Act to identify major drug traffickers, and has recently prosecuted a case involving a drug-related money-laundering scheme in which a bank president pleaded guilty to violations of the Bank Secrecy Act and income-tax evasion, and the involved bank was fined its entire pre-audited net income for the year in which the violations occurred (\$309,106). Operation Banco, the financial investigating task force which preceded Operation Greenback in South Florida, also utilized Bank Secrecy Act information to convict the notorious "Black Tuna" organization,

a major marihuana importation and distribution enterprise. The lead defendants in that case were convicted of operating a continuing criminal enterprise and were sentenced to 34 years, 31 years, and 22 years in prison, all without the possibility of parole. As this latter case shows, the effectiveness of the Bank Secrecy Act cannot be judged solely by its use as the statutory basis for criminal indictments; its use to identify major narcotics trafficking organizations is of substantial benefit in and of itself. Following my discussion of Operation Greenback, I will address certain proposed amendments to the Bank Secrecy Act which we believe will make the Act even more effective.

At the present time the Criminal Division of the Department is staffing three field operations which examine the inter-relationship between drug-trafficking offenses and Bank Secrecy Act violations. These field operations are primarily organized to conduct investigations into the currency law violations and financial dealings of drug traffickers and money launderers. The first operation, "Operation Greenback I," is located in Miami and began in May 1980. A suboffice of Greenback I is located in Tampa. Our most recent endeavor, "Operation Greenback II," commenced with the assignment of a trial attorney to Chicago who will work with United States Attorneys' offices in the Midwest to enhance the techniques of financial investigations in that area.

I. Commencement of Operation Greenback

In the spring of 1980 officials of the Treasury Department met with officials of the Department of Justice to discuss a proposed project whereby certain investigative and prosecutive

resources of the respective Departments would be brought to bear against the financial operations of major drug trafficking organizations and their associates operating in the Southern District of Florida. At that time a recently completed study of currency transactions at Federal Reserve Banks throughout the United States had dramatically demonstrated that, whereas the majority of Federal Reserve Banks had found it necessary to add hundreds of millions of dollars to the total currency in circulation in their regions, the Federal Reserve Bank in Florida had surpluses of currency deposits.

With most of the marihuana and cocaine entering the United States being brought through Florida, it was readily apparent that much of the currency surplus which was pouring into the Federal Reserve Bank in Florida was attributable to the financial activities of major drug trafficking organizations either directly or through money-laundering organizations. In March of 1980 a memorandum was prepared for the then-Assistant Attorney General of the Criminal Division recommending a joint project with the participation of the investigative agencies of the Department of the Treasury and the Drug Enforcement Administration and the Federal Bureau of Investigation of the Department of Justice. It would also have the on-site participation by attorneys from Justice's Criminal and Tax Divisions.

In May of 1980 two staff attorneys from the Narcotic and Dangerous Drug Section went to Miami representing the Criminal Division's commitment to the project. At that time the Operation

Greenback Task Force was composed of investigators from the Internal Revenue Service and the United States Customs Service, with liaison with the Bureau of Alcohol, Tobacco and Firearms, the Federal Bureau of Investigation, and the Drug Enforcement Administration. An attorney from the Criminal Section of the Tax Division provided support by reviewing all prospective cases involving Title 26, United States Code, tax violations. As stated in the original proposal, the participation of the Criminal Division would be on-site and operational and would be for the purpose of securing two main objectives. The first objective was to work operationally with both Assistant United States Attorneys and Tax Division attorneys in the Southern District of Florida to develop cases utilizing U.S. Code provisions in Title 31 (Bank Secrecy Act), Title 26 (Tax violations), Title 21 (Drug violations), and Title 18 (Racketeering violations), as well as to seek both criminal and civil forfeitures as provided for under those titles. Our second objective was to take the investigative and prosecutive techniques learned in Greenback I and pass them on to other districts by both operational on-site participation and also through seminars and other programs facilitating the exchange of such information.

II. Bank Secrecy Act

The Bank Secrecy Act, which became law in 1970, has been the primary statute utilized by the Operation Greenback Task Force. The reporting requirements under the Act provide two main benefits to our efforts. First, it provides intelligence information which tends to highlight persons involved in other

criminal violations. Second, it contains criminal sanctions to deter unlawful activity.

The two reports which have provided most of the underlying foundation for the financial flow investigation techniques are as follows:

1. Form 4789 -- Currency Transaction Report

A. Definitions

Title 31, U.S. Code, Section 1081 (as effectuated by 31 CFR 103.22) requires that bank reports of domestic currency transactions in excess of \$10,000 be filed with the Internal Revenue Service on Form 4789. The law does not require reporting of transactions between banks, transactions between a bank and a regular customer who qualifies for inclusion on an "exemption list," nor transfers that do not involve the actual physical transfer of currency. The form is to be filed by the banks or financial institutions that exchange currency.

B. Criminal Violations

Title 31, U.S. Code, Section 1058 provides for a fine of up to \$1,000 or up to one year imprisonment or both for a willful violation of the reporting requirement. Operation Greenback has sought to identify both money couriers and corrupt bank officials through undercover operations, surveillance, and traditional grand jury investigation to determine the existence of unreported currency transactions of amounts in excess of \$10,000, or where a series of transactions - each under \$10,000 but aggregating to over \$10,000 - is being utilized solely to subvert the intentions of the reporting requirement.

Title 31, U.S. Code, Section 1059 provides for a fine of not more than \$500,000 and/or five years' imprisonment for a willful violation if it is committed in furtherance of any other federal violation or as part of a pattern of illegal activity involving over \$100,000 worth of transactions in a twelve-month period.

2. Form 4790 -- Currency and Monetary Instruments Report

A. Definitions

Title 31, U.S. Code, Section 1101 (as effectuated by 31 CFR 103.23) requires that reports dealing with the transportation of currency or other monetary instruments into or out of the United States in excess of \$5,000 be filed with the U.S. Customs Service. The form is to be filed by the individual upon entering or leaving the country.

B. Criminal Violations

Title 31, U.S. Code, Section 1058 contains a penalty of up to \$1,000 fine and/or one year imprisonment for failure to file the 4790 form. The reporting statute requires the actual physical transportation of currency or a bearer instrument in excess of \$5,000 across the United States border. When travelers enter the United States they are given the form which notifies them of the reporting requirement.

Operation Greenback also employs the traditional investigative techniques of surveillance, border checks, and the use of informants, etc., to detect violations of this part of the Bank Secrecy Act.

Title 31, U.S. Code, Section 1059 sets forth the felony provisions for 4790 violations, which are the same as for the

previously described 4789 violations.

III. Present Staffing

A. Operation Greenback I (Miami)

Attorneys

At the present time there are four Criminal Division attorneys assigned from the Narcotic and Dangerous Drug Section presently on-site in the Miami Greenback field office working in conjunction with the United States Attorney. The attorney staff consists of an attorney in charge and three other attorneys. In addition, one I.R.S. attorney is presently "on loan" to Operation Greenback. The Tax Division's Criminal Section has also provided one attorney who is presently involved in the preparation of a Title 26 tax case for prosecution in the Southern District of Florida. Accordingly, we anticipate a minimum of four full-time attorneys assigned to the main project as well as one attorney working on an "as needed" basis for the exclusive prosecution of tax cases which arise out of the project.

Special Agents

At the present time the Internal Revenue Service has provided twenty-six special agents and seven revenue agents to work on the project. There are also ten U.S. Customs Service special agents and ten special agents of the Drug Enforcement Administration attached to the operation. Liaison is maintained with the FBI, Secret Service, and the Bureau of Alcohol, Tobacco and Firearms.

B. Operation Greenback I (Tampa)

Attorneys

The Criminal Division (Narcotic and Dangerous Drug Section) has provided one attorney to work in conjunction with the Office of the United States Attorney in the Middle District of Florida. This attorney was responsible for the early coordination of an investigation into what had been termed the Walker marihuana and cocaine importation and currency exportation case. The primary subject in this investigation was murdered in April, 1981 - his body was found in a swamp with a garrote around the neck. This is one more example of the violence which is associated with the drug-trafficking business. Various associates of this subject have been indicted and twelve of those were convicted on Title 21 drug violations, Title 31 Bank Secrecy Act violations, and charges of conspiracy and crossing state lines in aid of their racketeering activities under Title 18.

Special Agents

Agent support has been provided by the IRS, U.S. Customs Service, DEA, and the FBI.

C. Operation Greenback II (Chicago)

In October of 1981, one of the attorneys who had initiated Operation Greenback I in 1980 was reassigned to Chicago, Illinois, to work in conjunction with the United States Attorney for the Northern District of Illinois as part of a Major Narcotics-Financial Crimes Task Force in that office. The task force is being supported by special agents and revenue agents from the Internal Revenue Service, as well as special agents of

the U.S. Customs Service, Drug Enforcement Administration, and the Federal Bureau of Investigation. The Division attorney is working with the United States Attorney and his Assistants in the development of the financial aspects of major drug trafficking cases. It is expected to be highly successful in discovering and prosecuting violations of Title 31, Title 21, Title 26, and Title 18. It is also anticipated that significant forfeitures will result from this effort.

On a regional scope, this attorney will also provide support to other United States Attorneys' offices in the Midwest so that similar programs can be developed as needed.

IV. Investigative Techniques

In discussing the techniques utilized in Operation Greenback it should first be noted that Operation Greenback I (Miami) is still in a developmental stage. Nevertheless, certain investigative techniques and approaches have proven successful and resulted in what can be termed inroads into the financial dealings of major drug traffickers and associated money launderers. The techniques utilized and refined in Greenback are both innovative and traditional.

Greenback has had the support of the Office of the Comptroller of the Currency and its related bank examining officials, which, through the refinement of their audit procedures, have been able to uncover suspicious activity and violations of the Bank Secrecy Act. The reporting of these violations to the Treasury Department and the subsequent referral, when warranted, to the Internal Revenue Service for

criminal investigation has proven to be an effective use of the Form 4789 reports. As part of the Greenback approach, a joint tax-drug grand jury was instituted so that the four involved titles of the United States Code (18, 21, 26, 31) could be investigated fully at the one time by all affected federal investigative agencies, and with the needed sharing of information. On the more traditional side, where specific accounts were identified as being the conduits for the passage of enormous amounts of currency, subsequent traditional physical surveillance has resulted in the identification of couriers and money launderers. The joint tax-drug grand jury approach has provided the investigators and prosecutors with the ability to immunize underlings and also the coextensive ability to compel testimony under a grant of use immunity. These are some of the types of investigative techniques which are presently being used in the operation.

V. Financial Law Enforcement Center

On January 11, 1982, the Financial Law Enforcement Center (FLEC) was established within the U.S. Customs Service to examine the financial characteristics of the criminal markets including the illicit drug market. The Center assists in the development of a law enforcement strategy that will exploit the vulnerability of these criminal organizations through the use of appropriate criminal and civil sanctions. Customs intends to enhance the effectiveness of the Center by expanding its resources and intelligence data bases, and through actively soliciting the participation of other federal agencies. Customs' position as

the federal government's repository of Bank Secrecy Act financial data is being improved through the employment of computerized indices for Bank Secrecy Act information which will make the information more readily accessible to federal drug agents. Another service which will aid in the prosecution of currency violations is the Center's preparation of detailed money-flow charts to aid juries in following the often complicated transfer of currency by drug-trafficking organizations which expend great amounts of energy to obfuscate the telling financial trail of their highly profitable illegal activity.

U.S. Commissioner of Customs William von Raab has clearly identified the Customs Service's number one priority to be stopping the flood of drugs coming into this country. His commitment to the agency's Bank Secrecy Act role as a major part of that commitment is witnessed by Mr. von Raab's May 1982 speech to the Bank Leadership Committee of the Florida Bankers Association in which he stressed the need for cooperation between the banks and the involved federal agencies as an integral part of fighting the drug-trafficking and related money-laundering organizations in Florida.

VI. Achievements

A. Operational

Because most of Greenback's indictments are in a process of litigation or pending grand jury action, I am precluded from discussing the evidence or facts of any particular case. However, it can be said generally that the Operation Greenback Task Force in Miami has presented evidence to grand juries which

returned true bills of indictment charging currency-related offenses in twenty-five instances against some ninety-seven individuals. Of this total, 20 defendants have been convicted since October 1981, and a substantial number of the other defendants - many of whom are foreign nationals - have become fugitives. Approximately twenty million dollars in cash and two million dollars in property have been seized by Greenback agents during the course of the Operation. Of these assets, approximately five million dollars has been forfeited to the government in two court actions, and the remainder is in the process of being forfeited. In addition to these civil and criminal actions, the Internal Revenue Service has levied jeopardy and termination assessments of \$112,500,467 through its related administrative procedures. In addition, Bank Secrecy Act regulations regarding exemption lists and reporting times have been strengthened. When the Office of the Comptroller of the Currency or other bank-regulatory agencies have discovered banks which haven't adopted appropriate procedures or have violated the Bank Secrecy Act, enforcement actions have been instituted to require the offending banks to correct any violations and to adopt procedures to prevent these violations from recurring in the future. The filing of Form 4789 reports has increased approximately 400 percent since the inception of Greenback I. Prosecutions have resulted in the convictions of various defendants for violations of Title 21 (Drug violations), Title 31 (Bank Secrecy Act violations), and Title 18 (Conspiracy and interstate travel in aid of racketeering).

B. Information Sharing

To effectuate the second objective of the initial plan - viz. the exchange of information about currency investigations - Greenback attorneys and agents have given lectures on investigative and prosecutive techniques and the law to Assistant United States Attorneys and investigators all over the country, including lecturing at the most recent Major Drug Traffickers Prosecution Conference in which federal and state prosecutors and agents participated to examine how inter-agency and inter-governmental cooperation could maximize nationwide drug enforcement efforts. One of our attorneys has also participated in the production of a videotape prepared by the Internal Revenue Service on the Bank Secrecy Act which will be shared with the Department of Justice for training purposes. A manual on the investigation and prosecution of the illegal laundering and foreign transportation of currency has been prepared by Narcotic Section attorney G. Roger Markley (assigned to Greenback II in Chicago) and will be made available to prosecutors and agents.

VII. Proposed Bank Secrecy Act Amendments

It is fitting that I come before this legislative body to discuss our proposed amendments to the Bank Secrecy Act as the House Banking Committee held similar hearings prior to the passage of the Bank Secrecy Act almost thirteen years ago. It is time to bring the Bank Secrecy Act into the 1980s and to give the courts the ability to impose larger maximum fines on those persons and organizations who would join hands with the drug trafficker in an attempt to circumvent our efforts to remove the

financial incentives which motivate this illegal and destructive activity. All of the proposed changes would enhance our efforts under the Bank Secrecy Act.

Several of the needed amendments to Title 31 of the United States Code and related provisions of Titles 18, 21, and 26, are included in H.R. 6497, the House counterpart to S.2572. President Reagan has publicly praised S.2572, and the Department of Justice strongly supports enactment of this legislation - the Violent Crime and Drug Enforcement Improvements Act of 1982. Provisions of the bill relating to the Bank Secrecy Act are located in Title IX, Part I.

A. Increased Penalties

The first subsections of Section 916 in Part I would raise the maximum civil penalty from \$1,000 to \$10,000, and raise the maximum criminal penalty from \$1,000 and/or imprisonment for up to one year to \$50,000 and/or imprisonment for up to five years. Because violations of the Bank Secrecy Act are serious matters, and such violations are often perpetrated in order to mask even more serious offenses such as narcotics trafficking and organized crime, such increased civil penalties and criminal sanctions are clearly justified.

B. "Attempt" Provision

Subsection (c) (1) would attach an "attempt" provision to the Bank Secrecy Act (31 U.S.C. 1101(a)) such that the attempted violation of the Act would be proscribed. This would make clear Congress's intent that an offense under the Act would occur prior to a person's actually leaving the jurisdiction of the United

States. Otherwise, a crime would usually occur only after the ability of the U.S. authorities to enforce the law had ended. In one case, a money courier was departing the country with \$1.5 million in currency to make a narcotics purchase in Colombia, and was only stopped as she was preparing to board the aircraft for South America. In this particular case, the district judge found that the facts established a completed offense; a different judge in the same district dismissed a similar case holding that an offense does not occur until after a person leaves the United States. While the absence of an attempt offense has created difficulty in connection with departures from public airports, this arguable 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.

C. Increased Reporting Amount

Subsection (c) (2) would raise the minimum reportable amount transported out of the United States from in excess of \$5,000 to an amount exceeding \$10,000. This upward modification of the minimum reporting figure would reduce the burden on the international traveler yet pare down the forms necessary for the Customs Service to examine to spot the suspicious transactions. The proposed change also recognizes the diminution in the value of the old reporting figure since the passage of the Bank Secrecy Act.

D. Warrantless Searches

Subsection (d) would authorize customs officers to make

warrantless searches where there is reasonable cause to believe that a monetary instrument is unlawfully being brought into or taken out of the United States. This provision would make an exception to the search warrant requirement presently contained in the Bank Secrecy Act (31 U.S.C. 1105(a)). The present requirement unnecessarily impedes law enforcement efforts, especially considering the ease with which persons can conceal currency or other monetary instruments in their luggage or on their persons.

E. Reward Authority

Subsection (e) would provide for the payment of rewards to an individual who provides information leading to the recovery of in excess of \$50,000 in fines, civil penalties, or forfeitures under the provisions of the Bank Secrecy Act. 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.

F. Violations as RICO Predicate Acts

Section 917 of Part I 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. "Money laundering" has been documented as an indispensable vehicle 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 would facilitate a concerted attack upon all aspects of such criminal enterprises.

All of these proposed changes in the Bank Secrecy Act would better enable the federal agencies involved in drug enforcement to identify and fully examine the scope of suspected money-laundering and drug-trafficking activity, and to link the two in criminal prosecutions.

VIII. Conclusion

The Bank Secrecy Act is an integral part of targeting and prosecuting major drug-trafficking organizations. Our substantial commitment to utilization of the Act is demonstrated by our assignment of our most experienced drug prosecutors to investigations involving drug-currency violations. Operation Greenback,

although still a relatively new program, has demonstrated that the most effective way to make inroads into the estimated \$79 billion business of major drug trafficking organizations is through the mutual efforts of all federal law enforcement agencies in unified drug-currency-tax investigations and prosecutions.

Section 879 of Part I would add currency violation definitions of "racketeering activity" listed in 18 U.S.C. Section 1961(1), thereby making Title 31 crimes predicate offenses for RICO prosecution. "Money laundering" has been documented as an indispensable vehicle 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 prescribed by Title 31 as racketeering offenses would facilitate a concerted attack upon all aspects of such criminal enterprises. All of these proposed changes in the Bank Secrecy Act would better enable the federal agencies involved in drug enforcement to identify and fully examine the scope of suspected money-laundering and drug-trafficking activity, and to link the two in criminal prosecutions.

VIII. Conclusion

The Bank Secrecy Act is an integral part of targeting and prosecuting major drug-trafficking organizations. Our substantial commitment to utilization of the Act is demonstrated by our assignment of our most experienced drug prosecutors to investigations involving drug-currency violations. Operation Greenback,

ment adopted in the Merchant Marine and Fisheries Committee. For that reason, we have no objection to this legislation.●

● Mr. BREAUX. Mr. Speaker, H.R. 6626 was sequentially referred to the Merchant Marine and Fisheries Committee for consideration of a section of the bill which provided an exemption from the National Environmental Policy Act for Small Business Administration activities. The Subcommittee on Fisheries and Wildlife Conservation and the Environment, which I chair, investigated this matter and determined that the NEPA exemption for the Small Business Administration was not warranted. The committee subsequently struck the NEPA provision from the legislation. The legislation before us today includes the amendment adopted in the Merchant Marine and Fisheries Committee. For that reason, I support the legislation before the House today.

The NEPA exemption was originally suggested to the Small Business Committee by the Administration. The administration, however, subsequently reconsidered its position and now opposes a NEPA exemption for Small Business Administration activities.

The original justification for the NEPA exemption was that NEPA had imposed unnecessary paperwork burdens on the Small Business Administration. The committee's investigation of the SBA experience with NEPA indicated, however, that the agency is unable to document having prepared any environmental impact statement or even any environmental assessment. Spokesmen for the SBA were unable to explain any justification for the NEPA exemption in light of the existence of the NEPA regulations and the SBA implementing procedures which categorically exclude many SBA activities from any formal environmental review.

On November 29, 1978, the Council on Environmental Quality issued the first set of regulations implementing NEPA. The purpose of these regulations was to streamline the EIS process, eliminate waste, and reduce unnecessary paperwork. Section 1508.4 of these regulations permitted Federal agencies, in their implementing procedures, to designate "categorical exclusions" from the regular NEPA requirements. Categorical exclusions are categories of actions which do not have a significant effect on the human environment and which have been found to have no such effect, and for which neither an environmental assessment nor an environmental impact statement is needed.

Under existing law, no environmental impact statement is required of any Federal agency unless it proposes to take a major Federal action which could possibly have a significant effect on the environment. Typically, the NEPA process is initiated by an environmental assessment, except where a categorical exclusion applies. An environmental assessment is a short document, usually less than a few pages, which discusses whether a full EIS is appropriate.

SBA promulgated its NEPA procedures

on February 1, 1980. The SBA-NEPA procedures categorically exclude many of its actions from the EIS requirement. This means that the agency need not prepare an environmental impact statement or an environmental assessment on many agency actions. We believe that the existence of these categorical exclusions cures whatever problems the Small Business Administration may have with the National Environmental Policy Act in the future.

The NEPA exemption originally proposed in H.R. 6626 was especially inappropriate in light of the substantial efforts undertaken by the Council of Environmental Quality to eliminate unnecessary paperwork and reduce delays in the EIS process. The committee believes that these regulations should be given an opportunity to achieve their stated goals without case-by-case legislative exemptions.●

● Mr. MURPHY of New York. Mr. Speaker, H.R. 6626, a bill to provide the Small Business Administration with additional authority to assist small business concerns in obtaining financing and for other purposes, as reported by the Select Committee on Small Business, contained a provision that would waive the requirements of the National Environmental Policy Act (NEPA) to any agreements to make or guarantee any assistance under the Small Business Act.

Because the Committee on Merchant Marine and Fisheries has jurisdiction over the National Environmental Policy Act, the bill was sequentially referred to the Committee on Merchant Marine and Fisheries for consideration of those provisions of the bill and amendments thereto having to do with NEPA.

NEPA provides that no Federal agency is required to file an environmental impact statement (EIS) unless such agency proposes to take a major Federal action which could possibly have a significant effect on the human environment. In 1978, the Council on Environmental Quality issued regulations implementing NEPA. The purpose of these regulations was to streamline the EIS process, eliminate delays, and reduce unnecessary paperwork. These regulations permitted Federal agencies in their implementing procedures to designate "categorical exclusions" from the NEPA requirements, that is, those categories of actions which are not expected to have a significant effect on the human environment and for which an EIS or an assessment is not needed.

In February of 1980, the SBA promulgated its NEPA procedures which categorically excluded certain agreements to make loans or guarantees for assistance under the SBA Act from the EIS requirements. Although the Select Committee on Small Business indicated the justification for the NEPA exemption in the bill was that NEPA had imposed unnecessary paperwork burdens on the SBA, the investigation of the Committee on Merchant Marine and Fisheries discovered that the SBA was unable to document having ever prepared any EIS or assessment. Furthermore, the SBA was unable to explain any justification for the NEPA exemption in light of the NEPA

regulations and the SBA implementing procedures which categorically exclude many SBA activities.

In light of this discovery, the Committee on Merchant Marine and Fisheries reported an amendment to the bill that deletes all references in the bill to the NEPA exemption.

Mr. Speaker, the Select Committee on Small Business has agreed to this amendment and H.R. 6626, which is before the House for consideration, does not include any exemption to NEPA as it relates to such SBA activities.

I urge the passage of H.R. 6626, as amended.●

Mr. SMITH of Iowa. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Iowa (Mr. SMITH) that the House suspend the rules and pass the bill, H.R. 6626, as amended.

The question was taken; and (two-thirds having voting in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to provide the Small Business Administration with additional authority to assist small business concerns in obtaining financing and for other purposes."

A motion to reconsider was laid on the table.

CURRENCY AND FOREIGN TRANSACTIONS REPORTING ACT AMENDMENTS

Mr. ST GERMAIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5961) to amend the Currency and Foreign Transactions Reporting Act to: First, provide for more efficient enforcement of its provisions by making it illegal to attempt to export or import large amounts of currency without filing the required reports; second, allow U.S. Customs officials to search for currency in the course of their presently authorized search for contraband articles; and third, allow for the payment of compensation to informers, as amended.

The Clerk read as follows:

H.R. 5961

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Currency and Foreign Transactions Reporting Act Amendments of 1980".

SEC. 2. (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 July 1, 1981.

SEC. 3. 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 enter-

ing 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 Act."

Sec. 4. (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 Act or any regulation issued hereunder.

"(b) The amount of the reward, if any, is to be designated by the Secretary, but shall not exceed 25 percent of the net amount of the fine, penalty, or forfeiture collected or \$250,000, whichever is lesser, in a case in which the person 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 contents 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 section shall take effect on October 1, 1980.

Sec. 5. Not later than 18 months after the date of enactment of this act, the Secretary of the Treasury shall transmit a report to the Congress regarding the effectiveness of the amendments made by this Act in assisting the Secretary of the Treasury to carry out the provisions of the Currency and Foreign Transactions Reporting Act.

The SPEAKER pro tempore (Mr. BENNETT). Is a second demanded?

Mr. WYLIE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Rhode Island (Mr. ST GERMAIN) will be recognized for 20 minutes, and the gentleman from Ohio (Mr. WYLIE) will be recognized for 20 minutes.

The Chair recognizes the gentleman from Rhode Island (Mr. ST GERMAIN).

(Mr. ST GERMAIN asked and was given permission to revise and extend his remarks.)

Mr. ST GERMAIN. Mr. Speaker, today the House is considering H.R. 5961, a bill amending the Currency and Foreign Transactions Reporting Act. The bill represents the first substantive changes in the statutory provisions enacted in 1970 to provide law enforcement officials with tools to attack the money flow into and out of the country associated with tax evasion, organized crime and drug trafficking.

The Currency and Foreign Transactions Reporting Act and related provisions in the Bank Secrecy Act require depository institutions to maintain an identification number on accounts, to maintain certain records—like microfilm files of checks, deposits, statements

of the purpose of loan transactions—and to file reports on large currency transactions. In addition, individuals are required to file reports if they are transporting \$5,000 or more in monetary instruments into or out of the country. Monetary instruments are defined as cash, currency, and negotiable instruments like stock certificates. Various penalties for violations of the act were specified and the Treasury Department was given overall responsibility for enforcing the provisions of the act.

Since its passage in 1970 the act has been the subject of extensive oversight hearings by the Banking Committees of the House and Senate, by the House Government Operations Committee, by the House Ways and Means Committee, and by the Select Committee on Narcotics. The Commerce, Consumer and Monetary Affairs Subcommittee of the Government Operations Committee, of which I am a member, conducted a thorough analysis of the implementation of the act over a period of several years. These reviews led to changes in the regulations issued by the Treasury Department and better cooperation between the various agencies using data derived from the reports required by the act.

The House Select Committee on Narcotics Abuse and Control conducted hearings into the money flow which supports the illicit drug trade in the United States. Two major investigations occurred in Chicago and Florida in the 95th Congress. In its report on those investigations, the Select Committee recommended to the Banking, Finance, and Urban Affairs Committee changes in the Currency and Foreign Transactions Reporting Act. These changes are included in the provisions of H.R. 5961.

In 1978 the Justice Department transmitted to the Congress its recommendations for changes in laws related to enforcement efforts related to the drug trade. The Department suggested changes contained in H.R. 5961. Those provisions were initially included in an omnibus drug control bill. However, the Banking Committee was unable to consider those provisions and they were deleted from the final bill which was enacted in the 95th Congress.

The Oversight Subcommittee of the House Banking, Finance and Urban Affairs Committee also conducted oversight on the act and on November 29, 1979 held a hearing on the Patterns of Currency Transactions and their Relationship to Narcotics Traffic. Witnesses at that hearing, including the Honorable JOHN LAFALCE, the Treasury Department, the Drug Enforcement Administration, and the Comptroller of the Currency, testified on the flow of funds supporting illicit drugs—and the need to provide law enforcement agencies, particularly the Customs Department, with additional tools to stop the money flow. Those tools are included in the provisions of H.R. 5961. On January 29, 1980 the Subcommittee on Financial Institutions held a hearing on H.R. 5961 introduced by Mr. LAFALCE and numerous cosponsors. On February 27 the full Banking Committee favorably reported the bill.

H.R. 5961, despite statements to the

contrary, does not impose new reporting requirements on the public. The bill is designed and does improve the tools used by law enforcement agencies in utilizing the existing reporting requirements of the Currency and Foreign Transactions Reporting Act. In fact, the bill will lessen some reporting requirements since the bill raises the minimum amount of currency which has to be reported—from current \$5,000 to \$10,000.

A second change would add to the Currency and Foreign Transactions Reporting Act an explicit reference making it a violation of the act to attempt to export or import currency without filing the required reports. Present law provides violations for causing to be transported or transporting monetary instruments. Thus, law enforcement agents may in the future be able to charge violations for attempts to transport without having to allow suspected violators to leave the country.

Third, the bill authorizes the Treasury Department to pay an informant up to 25 percent of the amount of a fine, penalty, or forfeiture subject to a maximum of \$250,000 if the information leads to a fine, penalty, or forfeiture exceeding \$50,000 for a violation of the act or the regulations implementing the act.

Fourth, the bill provides the Customs Department with search authority for monetary instruments comparable to its authority with respect to contraband merchandise. Presently, Customs officials may conduct warrantless searches if they have reasonable cause to believe that contraband merchandise is being transported. Monetary instruments, as they are defined in the Currency and Foreign Transactions Reporting Act, are not included in the definition of merchandise. H.R. 5961 would authorize a Customs officer to conduct a search without a warrant. The standard for the warrantless search in the Banking Committee bill was "reasonable cause" to suspect that currency is being transported into or out of the country and that a report regarding that currency is required to be filed under the act. The Banking Committee felt that this standard was justifiable since Customs had existing authority for warrantless searches for contraband with the same standard.

The Ways and Means Committee considered the bill and made one change. That committee made the standard for a warrantless search "probable cause." This is a higher standard and its inclusion should alleviate some of the concerns raised by some that the original standard was too loose. The Banking Committee accepts the amendment proposed by the Ways and Means Committee.

Last, the bill provides that the Secretary of the Treasury provide within 18 months of the enactment of the bill a report on the effectiveness of the amendments made by this bill. This is in keeping with the long line of oversight that the Banking and other committees have provided on the Bank Secrecy Act. This mandated report should provide the Congress with ample informa-

tion to determine whether these initiatives truly made the act effective as a law enforcement tool.

In conclusion, I urge your support for this bill. H.R. 5961 will provide law enforcement agencies with more effective and efficient tools to tackle the mounting flow of currency connected with illegal activities like drug trafficking. At this point I would ask unanimous consent to include in the Record at this point a series of articles from the Washington Star about the drug trade in Florida. These articles provide a vivid example of the need for these amendments. The dollar figures in these stories are truly astounding and suggest a real need for this bill.

Mr. Speaker, I insert the following material:

[From the Washington Star, July 21, 1980]
THE COCAINE COWBOYS—MIAMI DRUGS AND TRUGS: TRAFFIC IN DRUGS SPAWNS NEW FLORIDA LAWLESSNESS

(By Mary Thornton)

(They use their favorite weapon, a machine gun that fires 700 rounds a minute, in shootouts on crowded highways and in busy shopping centers. Federal authorities call them Cocaine Cowboys and say that they have brought an open lawlessness to the streets of Miami that rivals the violence in Chicago during the height of prohibition. This is the first of a series of articles that examines drug smuggling in Miami, a \$28 billion network whose violence has claimed more than 100 lives in the past two years.)

MIAMI—Carlos Mercia Fajaro, the rich Colombian owner of a large emerald mine, was coming through U.S. Customs here last month when two Latin American men burst into the room and began spraying machine gun fire.

Miraculously, none of the bystanders was injured, but Fajaro was killed, and the two men—known to be active in the Miami drug underworld—have vanished without a trace. Police don't know exactly why Fajaro was killed, but they believe that somehow either he or another member of his family was involved in the large drug trade that is going on between the United States and Colombia.

By Miami standards, the murder wasn't too impressive.

Not nearly as exciting as the machine gun shootout last summer at the bustling, suburban Dadeland shopping center when a group of Colombians in an armored van opened fire on a liquor store, killing two Colombian drug dealers and injuring a customer and the store clerk, who jumped from car to car in the crowded parking lot to avoid the gunfire.

Not as exciting as the wild gun battles on Highway 1 south of here in which the cars pull even with one another and fire machine guns back and forth as they careen down the highway.

Fajaro's was just one of the many drug-related murders, most of them involving illegal Colombian immigrants, that have swelled the South Florida homicide rate over the past two years and given Miami a reputation as a center for violence and drug trafficking.

The murders and violence have become so commonplace, in fact, that a Miami television station ran a special series this spring warning viewers about steps to take in case they happen to be caught in a shootout: mainly to duck behind parked cars and to keep a low profile.

The scene was an average home in a comfortable, middle-class Northeast Miami neighborhood just before sundown on a spring night. Inside, authorities said, several

young men were working out the details of a \$150,000 deal for two kilograms of cocaine and 25,000 Quaalude tablets with two buyers who happened to be U.S. Drug Enforcement Administration undercover agents.

Outside, four unmarked DEA cars prowled the neighborhood, trying to look inconspicuous. And as the signal was given the cars raced in and nearly 10 agents, guns drawn, rushed into the house to make the arrests.

As the suspects were led away handcuffed, an astonished group of neighbors gathered outside. But the agent who directed the raid said that this was just a small, ordinary case, the kind that goes on nearly every night in Miami.

Several days earlier, DEA agents had made the largest drug seizure in history when they convinced a man they describe as a major South American drug dealer to sell 857 pounds of cocaine, with an eventual street value estimated at more than \$200 million, to several agents posing as rich Miami drug dealers.

That broke a record set only a week earlier when a customs agent searching for illegal Cuban immigrants at a checkpoint on Highway 1 south of Miami found a car trunk filled with 410 pounds of cocaine.

Experts believe that drug-running is the number one industry in South Florida, surpassing even the tourist industry, and producing such a booming economy that most observers believe the state is virtually recession-proof.

Federal authorities estimate that 90 percent of the drug traffic in the United States involves Miami in some way. About 70 percent of the country's \$40 billion annual business in marijuana and cocaine comes directly through Florida on its way to other cities in the United States.

Last year, DEA agents intercepted 284 pounds of cocaine and eight tons of marijuana in Washington, most of it believed to have come through Florida. DEA estimates that they intercept less than 10 percent of the illegal drug flow.

Much of the other traffic involves Miami financially, as the traffickers channel their profits through Miami banks to anonymous accounts and corporations in countries like Cayman Islands, Panama, the Bahamas and the Netherland Antilles.

The drug industry employs not only the suppliers and dealers themselves, but also a whole army of auxiliary personnel: the lawyers and accountants who channel the illegal profits into numbered bank accounts and foreign corporations; the pilots and boat captains who bring the drugs in from Colombia; the craftsmen who modify boats, planes, even suitcases, to hide their true purpose; and the lab workers who process the drugs.

On the Colombian end, police believe there are 3,000 high-level people employed by the drug trade, along with 65,000 lower-level employees, most of them farmers and truck drivers. Colombia itself produces most of the marijuana coming into the United States and serves as the processor and distributor for cocaine, which comes from a number of South American countries, primarily Bolivia, Peru and Brazil.

As the demand for drugs grows and the profits go higher and higher, the violence also has grown.

The murders have become so common—more than 100 in the last two years in South Florida—that law enforcement officers say they now expect an open gun battle at least every couple of weeks.

Although police have had little luck in solving the murders, they know that they are being carried out generally by Colombian drug traffickers who are largely responsible for the U.S. drug trade in cocaine, marijuana and quaaludes, a sedative-type drug.

Federal narcotics intelligence officials be-

lieve eight Colombian families are largely responsible for the drugs coming into Florida.

Historically, the Colombians used Cuban middlemen in Florida, but police say that in recent years as profits have gone up the Colombians have attempted to eliminate the middlemen to increase their own wealth. Police blame this shift at least partially for some of the violence on the streets of Miami.

"We're got open warfare on the streets," said Allan R. Pringle, the DEA agent in charge of the Miami office. "In this country, weapons are easy to come by. Colombian nationals—who are here illegally in most cases—obtain the weapons and use them to assassinate people."

"It may be someone they suspect of being an informant, someone who ripped them off, it may just be a way of moving up in the organization. It occurs right on the street in broad daylight, and any bystander can suffer the consequences, particularly if he was unfortunate enough to have been a witness," he said.

Arthur Nehrass, the agent in charge of the Miami FBI office, compares the open lawlessness in Miami today to Chicago at the height of the Prohibition era.

The weapon used most often is the commando-style Ingram machine gun, nicknamed the MAC-10, which is lightweight, capable of firing 700 rounds a minute and is commonly equipped with a silencer. "It's their favorite weapon," Nehrass said, "and if you don't have a silencer on your machine gun, you're just not considered much of a guy."

But there isn't the public outrage in Miami over the murders that might be expected. Instead, the Colombians are seen by many as romantic figures and nicknamed "Cocaine Cowboys."

Law enforcement officials in Miami readily concede that the drug trafficking problem is out of control.

COCAINE COWBOYS' RUNNING RAMPLANT

Arrests in the cocaine cowboy murders have been almost nonexistent, and there has not yet been a single conviction.

Police say the drug rings are so sophisticated and well-financed—with elaborate equipment and ball funds of \$1 million or more—that it is nearly impossible to keep up with them. The profits are so great that a drug organization can abandon a \$100,000 boat after a single trip.

And with large amounts of cash at their disposal, the drug-smuggling organizations are suspected of being able to corrupt law enforcement agencies, buying secret information even from federal agencies.

Currently, six homicide detectives from the Dade County Public Safety Department are under investigation for allegedly providing protection for Miami drug dealers suspected of a series of gangland-style murders.

Florida's geography and economy make the state a drug smuggler's haven.

Located just 1,100 miles from Barranquilla, Colombia, the exit point for much of the traffic, Florida has a shoreline that extends for 8,426 miles, much of it deserted and remote—and an ideal place for landing cargo away from the watchful eye of the U.S. Customs Service.

There are more than 200,000 private pleasure boats registered in the state, along with more than 9,000 privately registered airplanes. In addition to the 250 registered airports in Florida, many of them small airstrips that are abandoned at night, there are dozens of permanently abandoned and unregistered airstrips that can handle nearly any kind of aircraft the smugglers are bringing in.

South Florida also has become a shopping mecca for South Americans, particularly those interested in protecting their funds

from the unstable economies of their own countries. These shoppers serve as a unwitting smokescreen for the drug smugglers.

Every day nearly 10,000 passengers come into Miami International Airport, most of them from the drug-producing countries of South America—Colombia, Bolivia, Peru and Brazil. And every day at the airport it is possible to see huge boxes of cargo—televisions, stereos and other appliances—on the way to South America.

Like the drug dealers, these tourists deal strictly in cash—buying boats, cars, houses, airplanes, all in cash. At the posh Miami shopping centers, it isn't unusual to see a Latin American family spending thousands of dollars in cash in a single afternoon. Because they are violating their countries' currency regulations, they can't risk using checks, which could be traced.

Most law enforcement officials believe the only way to slow down Miami's drug traffic is to attack the large money flow—following banking transactions that could lead not only to large financial forfeitures but also to the leaders of the drug organizations.

As a result, currency investigations are being conducted now that involve the DEA, FBI and the Treasury Department.

So far, DEA has targeted for investigation 424 major drug traffickers in Florida. Of those, 118 are Latin American, most of them Colombian.

But although these investigations offer some hope, most law enforcement officials feel that because of the great demand and the tremendous profits available, new dealers are likely to go into business faster than authorities can catch the existing ones.

Because of the backlog of drug cases, only the most important violations are prosecuted. Even then, the time delay is often so long that witnesses disappear.

Capt. Marshall Frank of the Dade County Public Safety Department's Homicide Squad says it is almost impossible to catch the Colombians involved in the killings and the drug dealing.

Most of them are illegal aliens with no records—no driver licenses, no Social Security cards. They have no police records nor fingerprints on file. And the business is big enough that if they get into trouble they leave the country and send in another family member.

Even in cases where police do make an arrest, witnesses are reluctant to testify. "I'd be nervous about testifying myself," Capt. Frank of the homicide squad said.

"Most of the time if we do catch someone, it's by accident," he said.

So far, there have been no convictions in the cocaine cowboy murders, but it looks as if there will be one soon—because of one of the "accidents." In that case, Frank said, the defendant, Colombian Edgar Cadibad, who is accused of murdering two Colombians at a Miami apartment building, accidentally shot off his thumb in the process and left it at the scene of the crime.

When he went to a local hospital for treatment, police simply went over to the hospital and matched up the missing thumb.

But most cases don't work out that way. "Each group has millions of dollars ready to make bond. Money means nothing to them," Frank said. "They all will kill. They're all trained with firearms, even the women. Our murder rate is 65 percent higher this year than it was last year. My attitude is that this is just going to keep on happening and we're just going to keep on treading water."

[From the Washington Star, July 22, 1980]

FLORIDA AWASH IN MONEY, BUT NOT EVERYONE'S HAPPY

(By Mary Thornton)

MIAMI—A very large shopping center here was bought for \$9 million by a Netherland

Antilles corporation recently. There are no records on file that disclose the identity of the buyers or where the money came from.

It was the kind of financial deal that is becoming prevalent in South Florida. The corporation is like many others investing here—registered in such foreign tax-shelter countries as the Cayman Islands, Panama and the Netherland Antilles, where the names of company officers and financial information are well-guarded secrets.

But some people here are suspicious. They remember a similar deal not long ago where the corporate buyer of the shopping center suddenly stopped making payments and no one knew who to call. It wasn't until later, after the property had been foreclosed, that people found out the payments had stopped because the owner of the corporation had been murdered by one of his criminal associates.

U.S. Customs officials tell the story about the Lear jet that their agents stopped on a Florida runway for a routine check. When they asked the pilot and passengers to open their bags for inspection, they all cheerfully complied.

But no one would claim the leather briefcase in the back. The briefcase contained \$467,000 in suspected drug money.

One agent shrugs and shakes his head. "They're dealing with amounts of money that you and I can't even imagine. In this business, they don't count their money. They weigh it."

While economists in Washington worry about mortgage interest rates and tightening credit, Florida is booming. The state is awash in a sea of cash that most law enforcement officials attributes at least in part to the illegal trafficking in cocaine, marijuana and quaaludes that have become Florida's number one industry.

It is an economy based on cash sales in cars, boats, airplanes, even condominiums that go for \$300,000 and up. And it is made possible—even encouraged—by the legitimate businessmen who look the other way when a customer comes in carrying a suitcase full of cash and the bankers who accept deposits brought to them in cardboard boxes and grocery bags.

"Banks want the money," said one U.S. Customs official. "It's a way to get millions of dollars at a time. It's a coup to bring in a large depositor. The banker handling it might even get a promotion out of it."

"But I think it's fair to say that although they may not be technically violating a law, they have some idea of what's going on. Most legitimate businesses carry their cash in armored cars. They don't use shopping bags," he said.

Authorities confirm that there is a whole underground real estate network, largely involving homes with easy access to waterways. They say the seller not only can get virtually any price he asks, but he can also get much of the money under the table, listing a lower selling price and avoiding capital gains taxes.

"Your druggers buy houses for cash all the time," said Arthur Nehrass, agent in charge of the Miami FBI office. "A real estate agent would not be shocked if you bought a two or three hundred thousand dollar house and paid in cash."

Law enforcement authorities say that the amounts of money available to the drug organizations are staggering.

"There's so much involved today," said Allan R. Pringle, agent in charge of the Miami office of the Drug Enforcement Administration. "It's not uncommon to see violators who bond out on a million dollars—forefeit a million dollars. That's just pocket money to them. When people routinely carry out of this country \$5 million to \$10 million in suitcases."

"They'll take a \$100,000 sport fisherman, punch a hole in the bottom, and let it sink if they see the Coast Guard coming. Prob-

ably the biggest purchasers of boats and planes today are the dope dealers. The sellers, they're as greedy as the next person: A lot of people profit from the dope traffic in this state."

FAMILIES GIVEN MONEY

Pringle says that when one of the traffickers goes to jail, it's not unusual for his family to receive an annual payment of \$30,000, \$40,000, even \$50,000 or more, depending on his position in the organization.

One man who was formerly involved in a cocaine smuggling operation tried to describe a binge of conspicuous consumption that seems to go on among the leaders of many drug organizations.

"They all become crazy, decide to have airplanes, telephones in their cars. But it doesn't last long . . . it's too much money too soon . . . there's little work to do and they don't know what to do with their time. You lose all reality in life," he said.

"You get the money and don't know how long it will last. You have a lot of cash but you don't know where to put it. You don't want to put it in the bank because they might catch you. You don't want it in your house because someone might kill you for it. People start to steal from you. So you buy things. You buy anything whether you want it or not. It takes over your life."

Nehrass cautions that not all the money in Miami is drug money. "Cash is not unusual here," he said. "Miami is a bilingual town. It is the Spanish-speaking commercial center of the U.S."

"There are tight currency controls in South America. They bring their money here in case of economic problems in their own countries. It's not unusual to go into a local department store and see someone buy \$15,000 in merchandise and have it shipped home. A car in South America costs three times what it costs in Miami. TV sets and appliances are the same," he said.

But the South American trade also supplies a convenient smokescreen for the drug traffic which is moving into Florida, mostly from northern Colombia. The Latin American traffickers have a ready-made community to fade into. And authorities say that the flow of goods between the two continents helps mask the shipments of money and drugs that are going back and forth.

HIGH VOLUME TRAFFIC

Federal authorities say that 90 percent of the drug traffic in the United States involves Miami in some way. About 70 percent of the estimated annual U.S. marijuana and cocaine business come directly through Florida.

A recent currency study by the Treasury Department has found an astounding cash flow into Florida from other parts of the country, and many experts believe that the major part of that cash flow is caused by drug smuggling.

Last year there was a cash surplus of \$4.9 billion in Florida's Federal Reserve banks, while the Federal Reserve System as a whole paid out about \$10 billion more than it took in. Treasury officials feel the surplus this year in Florida may go as high as \$7 billion.

As a result, the Customs Service has started an investigation, code named Operation Greenback, of large cash deposits into Florida's banks.

Using the Currency Transaction Reports that the banks must file for cash transactions of \$10,000 and more, treasury sources say that normally they would have expected to find mostly cash businesses like department stores, grocery stores, racetracks and ballparks on the lists.

Instead, they are finding car, boat and plane dealerships as well as individuals bringing in deposits of hundreds of thousands of dollars in cash at a time.

The investigation is focusing on five Colombian money exchangers, all with links to

suspected drug traffickers, who moved more than \$100 million through Miami banks during an 18-month period in 1977 and 1978.

A joint-DEA-FBI investigation called "Operation Banco" has linked \$629 million in five Miami banks to suspected drug operations. The FBI is conducting a study on its own.

The Banco investigation has found links between specific bank employees and drug violators, as well as bank employees soliciting drug traffickers accounts. It also has found banks transferring large amounts of money to secret foreign bank accounts.

According to a DEA report on Banco, one drug operation they have a targeted brought in \$45 million in a three-month period, and \$35 million of that was profits. "Further investigation uncovered purchases of freighters to be used as mother ships, waterfront property and leases for warehouses located in various areas of the country. It is believed that large amounts of illicit drug profits also were funneled to an offshore banking haven," the report said.

Charles Kimball, a real estate economist who is conducting a long-term study of property investments in South Florida, says that he expects a billion dollars in foreign investments in the Dade County area this year. Although some of the money is legitimate, much of it will be illegal profits being invested by drug smugglers and other criminal operators.

Flipping randomly through a microfilm record of May's property transactions at the Dade County registry of deeds, Kimball points out purchases in a new condominium building where units sell for \$150,000 to \$200,000.

Again and again, he finds that the units are being purchased in cash by corporations based in Panama, the Netherland Antilles, the Cayman Islands, the Bahamas. There are no individual names on most of the transaction records, not even a lawyer's name in most cases.

Because of U.S. banking laws, many criminal organizations are channeling money into tax shelter countries like those, either by physically taking the cash there in suitcases or through bank wires. Once the money reaches the chosen country, it is laundered through a secret corporate account.

Then the property in Miami is purchased under the corporate name. But because of the laws of these countries, it is impossible to find out the names of the corporate officers or to trace the purchased properties back to the original drug dealers.

FOREIGN INVESTORS CITED

Although much of the foreign investment is by reputable, even widely known, corporations, Kimball estimates that half of the foreign investment in South Florida is being done by these secret foreign corporations. He believes that about 80 percent of those investments have some element of illegal money—from drugs or other crimes. He puts the figure for suspicious investments in the Miami area at \$271 million for last year.

"A lot of money is being bid indiscriminately for property. As a result, the normal working person has to pay housing prices that are much higher," he said, adding that he believes that the drug money is driving up all prices and creating an unfairly high inflation rate for the people who aren't involved in drug trafficking.

In spite of all the efforts at investigation, most law enforcement officials believe that the drug organizations are winning.

They complain about a shortage of manpower, funds and expertise and a lack of cooperation among the various federal agencies involved.

There is a significant backlog of cases in the U.S. Attorney's Office, and one Customs official complains, "Today, if you can get a

federal prosecutor to take a marijuana case for less than a ton, you're very lucky."

"They've got more money, better weapons, better electronic equipment," said another official. "We're outmanned. If we get one of them, the profits are so large that there's always another one coming along to take his place."

"And then you keep hearing how cocaine is the drug of the rich, how movie stars and fancy lawyers are using it all the time. It's very difficult for us to combat something like this once it's gained public acceptance. Sometimes I think we'd all be better off if we just tried to regulate it. The way it is now, we're all just playing a big game."

[From Washington Star, July 23, 1980]

"BLACK TUNA'S" DARING TACTICS EARNED RICHES

(By Mary Thornton)

MIAMI.—The Cuban drug dealer figured as his phone began to ring that it was just a business partner announcing the arrival of a new shipment of marijuana. When the unidentified voice on the other end of the line said, "Look out your window," he wasn't sure what to think.

But as he set down the receiver, he began to hear the thump, thump, thump of the rotors. And looking out the window, he could see the clouds of dust and the helicopter hovering nearly motionless over his home, a metal barrel dangling beneath the aircraft.

He returned to the phone and the caller reminded him of a continuing dispute over a missing shipment of 10,000 pounds of marijuana. The barrel was full of gasoline, the voice warned, and if the Cuban dealer was not willing to drop the issue, his house would be turned into an inferno.

Looking around the room at his wife and children, the Cuban quickly agreed.

It was an autumn day in 1978, and the helicopter had been sent by Bobby Platshorn and Robby Meinster, who had just moved their drug operation here from Philadelphia.

The Cuban drug dealer had been threatening them, charging that he hadn't been paid. Platshorn and Meinster claimed that the drugs had not been delivered. The disagreement had threatened to escalate into a full-scale gang war.

The helicopter incident not only resolved that dispute, but also served to introduce the gang, which came to be known as Black Tuna, to the macho world of South Florida drug smuggling, which is dominated by Colombian and Cuban dealers, generally armed with machine guns.

After that, no one was willing to tangle with Black Tuna.

And before long, Meinster and Platshorn were riding around in Mercedes cars and Lear jets, flashing rolls of \$100 bills, living out of an opulent suite at the showy Fountainbleau Hotel and maintaining their own private army of bodyguards equipped with hand grenades and submachine guns. In their spare time they and their wives began collecting antiques, artwork and expensive jewelry.

The two young men who had grown up together in Philadelphia—both from working-class Jewish families, Meinster working at a used car lot, Platshorn selling pots and pans on the boardwalk in Atlantic City—finally believed they had it made.

Whenever one of the employees completed his first successful mission, he was given a reward—a solid gold medallion decorated with the imprint of the Blackfin Tuna that the gang members wore on neck chains.

People who knew Meinster and Platshorn then say that their lives were dominated by their drug smuggling and by cocaine, which they bought for personal use a kilo at a time (at \$55,000 a kilo).

When they weren't having parties and spending their money, Meinster and Platshorn dreamed up big plans for Black Tuna. They were planning to expand their marijuana operation to import large quantities of cocaine and Qualuludes.

Police say they held discussions with organized crime figures about taking over the marijuana market in the Las Vegas-Los Angeles area. They talked about moving into an estate next door to Frank Sinatra.

There was even a plan to steal an Eastern Airlines Boeing 727. A gang member who was once an Eastern pilot planned to take it on one massive drug run, and then ditch it in the Atlantic—after leaping out, D. B. Cooper style.

No one knows for sure when Meinster and Platshorn began to deal in drugs, but the earliest knowledge police have on the Black Tuna organization goes back to 1974, when Meinster, then in his early 30s, was working at a used car lot, filling in part-time at his father's dress shop and apparently doing small-time dealing in marijuana and cocaine.

Platshorn, a long-time friend, was by then travelling around the country selling pots and pans and small appliances at carnivals and fairs. Sometime in August 1974 Platshorn ran into a man named Lucas McLeod at the Milwaukee, Wis., fairground, and the two quickly got into a discussion of drug smuggling.

The two federal undercover agents who worked on the Black Tuna case, Dick Koehler of the FBI and Brent Heath of the Drug Enforcement Administration (their names have been changed), say that Platshorn at that point made a deal to have McLeod ship 2,500 pounds of marijuana to Meinster in Philadelphia.

By the end of 1974, Platshorn and Meinster were accepting million dollar shipments of marijuana transported by McLeod and his assistants from Florida, and during 1975 the two are believed to have brought at least four other major shipments of marijuana into Pennsylvania and New Jersey.

Sometime in mid-1976, Meinster and Platshorn decided to increase their profits and wipe out the middlemen by moving to Miami with their wives. Platshorn traveled to Colombia and entered into a deal with Raul Davila-Jimeno to become the chief marijuana supplier for Black Tuna.

At about the same time, they opened the South Florida Auto Auction, a large used car lot in downtown Miami, to serve as a cover for the smuggling operations. The two couples bought homes, and then in the fall of 1976 Meinster and Platshorn rented the \$300-a-day penthouse suite at the Fountainbleau to do their business entertaining.

Koehler and Heath say they were stunned when they finally saw the suite that Black Tuna had rented for more than a year—until early in 1978.

"You talk about a hotel suite and you think it might be a couple of rooms, but this place was unbelievable. It's the kind of place movie stars would stay in when they were in town," Heath said. "You walked in through a double door and could see a spiral staircase leading up to the bedrooms on the second floor—four of them."

"Downstairs on one side was an oak-paneled room with a pool table. On the left, you stepped down into a living room with a Steinway grand piano, a bar seating six or seven people and then a huge picture window looking out over the ocean. There was a dining area that would seat 20 people. They even had gold fixtures in the bathroom," he said.

"They used it for their entertaining—they had parties there, with cocaine and prostitutes. They worked out their deals there. We had testimony that one day the pool table was covered with cash a foot high."

Black Tuna's first brush with the authorities came on the night on April 28, 1977, when a resident of San Marino Island noticed some strange activities at a neighbor's home. San Marino is a fancy residential area on a tiny island in Biscayne Bay, located on a causeway between Miami and Miami Beach.

He knew that the owner of the home was on vacation and couldn't figure out the procession of vans and the truck—labelled "CineTech—Hollywood, New York, Miami"—that had pulled up outside the house. So he called the Miami Beach Police.

When the police arrived, they found bales of marijuana, wrapped in plastic and burlap, stacked to the ceilings. Eight tons of it.

They arrested four young men trying to swim away, but they figured from the number of half-empty beer cans they found that many others were involved.

Before they left the house that night, police gathered up the beer cans for a fingerprint analysis and a bunch of pieces of paper that appeared to be receipts from a Miami used car lot.

Several weeks afterward, a judge dismissed the charges against the four young men, saying the police had not had "probable cause" to raid the house. But for some reason, no one threw away the fingerprint analyses or the receipts.

Months later, they would find that the fingerprints on those beer cans belonged to members of the Black Tuna gang.

The San Marino raid seemed to Platshorn and Meinster to be nothing more than a temporary nuisance. The police seemed to have closed the case. The loss of the marijuana—worth more than \$4 million on the street—didn't slow them down for long.

Other shipments were coming in and by June 1, Platshorn's wife, Lynne, had ordered an employee to send a case of Pampers to Davila in Colombia via Aero Condor Airlines.

The message: "The baby is ready, send the mother." It was a signal for Davila to dispatch the mother ship loaded with a new shipment of marijuana.

Black Tuna was still flying high. Bobby and Lynne Platshorn had just bought a Spanish-style Miami Beach mansion with a pool and marble floors located on the Indian Creek waterway and worth nearly half a million dollars.

When they weren't in the suite at the Fountainbleau, Meinster and Platshorn were entertaining their customers on the Beam's Post Time, a 70-foot houseboat that Heath described as "gorgeous. It had thick white carpeting, a sunken bar, a built-in stereo even maid's quarters."

By about that time Platshorn was bragging to friends that he already had imported nearly a million pounds of marijuana into South Florida. By most accounts the gang was netting \$600,000 and more every week—with as many as 60 employees on the payroll.

Estimates of Black Tuna's overall earnings were going as high as \$300 million.
[From the Washington Star, July 24, 1980]

HUGE CASH BANK DEPOSITS LED U.S. AGENTS TO BLACK TUNA GANG (By Mary Thornton)

(Black Tuna gang leaders Bobby Platshorn and Robby Meinster were making \$500,000 a week in mid-1977 smuggling marijuana into Florida. The two, in their early 30s, drove Mercedes, lived in expensive mansions and had a fleet of yachts at their disposal. But they wanted more. They were going to branch out—into cocaine and Quaaludes. They didn't know that FBI agent Dick Koehler and Drug Administration agent Brent Heath soon would be on their trail.)

MIAMI.—On Aug. 31, the 90-foot yacht Presidential—one of several that Platshorn and Meinster had kept in the Fontainebleau Hotel Marina—began taking on water off the Island of Great Abaco in the Bahamas.

As it continued to take on water, the captain finally ran it aground to prevent it from sinking. On board was a large load of marijuana.

As the residents along the shore watched the curious goings on over the next few days, they first saw a small plane circle the crippled boat. The next day a helicopter came along and lowered pumping equipment. And finally, a day later, a second boat came along, began unloading square bales from the Presidential, then departed.

Later that day, when the Bahamian police arrived on the scene and took possession of the boat, there were still 31,000 pounds of marijuana on board, but the crew had vanished.

On Sept. 15, a short, stocky man with gold chains flashing from around his neck and a shirt unbuttoned nearly to his waist walked into the Flagship First National Bank of Miami Beach, carrying an attache case containing \$500,000 in cash, which he deposited into an account called "Viomar."

He didn't realize when he left that he was being followed by DEA agents. They had been tipped off by a teller who became suspicious when "H. Roberts" had brought in \$585,000 in cash two weeks earlier on Sept. 2 and refused to produce any personal identification.

For deposits of that size, a customer normally calls ahead to reserve the bank's counting room. The agents had asked the teller to tip them off the next time the mysterious customer called.

At that point, the DEA had never heard of Black Tuna, but huge cash deposits by casually dressed young men with no obvious source for that kind of money tended to raise their suspicions. H. Roberts was employed as a clerk in a local hardware store.

Over the next several months, they would discover that H. Roberts was really Howard Blumin, the man who handled the money and bookkeeping for Black Tuna. They would find that \$10 million had passed through the Viomar account over the past few months, and that Viomar was an account controlled by a South American money exchanger, named after his mother and his mother-in-law, Violeta and Margareta.

For a fee of 10 or 15 percent, the exchanger takes U.S. money from a gang like Black Tuna and either pays the supplier in Colombia, or funnels profits into secret accounts in tax shelter countries like the Cayman Islands.

After picking up Blumin's trail at the Flagship Bank, the DEA set up a surveillance on his house. Eventually, a blue Mercedes 450SL pulled up and a small woman with long, black hair walked up to his front door. The woman was Lynne Platshorn.

They discovered that the car was registered to the South Florida Auto Auction whose owners were listed as Platshorn and Meinster.

AGENT VISITS MIAMI

Within about a week, Brent Heath (not his real name) said, one of the DEA undercover agents working on the case paid a visit to the Miami Beach police to find out if they knew anything about Platshorn, Meinster, Blumin or the South Florida Auto Auction, the front established by Platshorn and Meinster. And one of the officers happened to remember the San Marino raid and the slips of paper from the used car lot.

By December, Black Tuna was again crossing paths with the police—this time in North Carolina.

Some time in mid-1977, George Purvis, the son of a wealthy and politically powerful Fayetteville, N.C., family, had been recruited into the group by Mark Phillips. Phillips was Purvis' old prep school buddy and also a high-level gang member. According to later indictments, he specialized in procuring boats for the Black Tuna organization through his father's boat dealership.

The decision to recruit Purvis was one that Black Tuna would regret.

On December 8 Purvis was piloting a boat off North Carolina in search of the Colombian mothership "Don Elias." Behind him was a second boat also planning to help unload a huge shipment of marijuana.

Directing the operation from the shore were Robby Meinster and Chip Grant, a huge, bushy-haired young man of 23, who was in charge of "Chip's Army," the group in charge of protecting the offloading operations with an arsenal of weapons that included everything from hand grenades to AR-15 submachine guns.

At about 5:30 p.m. Purvis reached the rendezvous co-ordinates and shouted the code word "Black Tuna." A Colombian crewman shouted back "Black Tuna" and the unloading began.

What none of the Black Tuna members realized was that a police informer was piloting the second boat. By early the next morning U.S. Customs and the Coast Guard had wiped out the entire operation, seizing both boats along with the mother ship.

But authorities still had not linked the North Carolina operation to the Black Tuna organization, and the gang members fled as quickly as possible back to Florida.

The operation continued, with shipments coming in both by boat and air. On Jan. 28, Purvis and two other gang members set off for a rendezvous with their supplier at a landing strip on a banana plantation near Santa Marta, Colombia.

The plane had been modified with illegal fuel tanks installed inside the passenger compartment to enable it to make the long journey. By the time they approached the tiny landing strip, the three men were all ankle-deep in aviation fuel, and as they descended, the pilot began to lose control of the plane.

Purvis later recalled preparing himself to eject as the plane crashed into the strip. The first thing he could remember afterward was that he was out of the plane, lying on his back on the landing strip. And a man was standing over him with a silver-plated .357 magnum. That was his first introduction to Raul Davila, the 50-year-old Colombian who was Black Tuna's chief supplier.

NERVOUS PURVIS

Purvis was starting to get nervous. He learned after he was rescued from Colombia that he had been indicted in North Carolina. He later said he was attracted to the gang because he was tired of his life in North Carolina—the alimony payments, the boredom of running his father's car dealership. The idea of smuggling marijuana had sounded exciting, romantic. But this was getting to be more than he had bargained for.

By that time, a DEA investigator had decided to run Platshorn and Meinster through the Florida Crime Information Center computer to see if they had any business interests other than the South Florida Auto Auction.

They discovered the Green Turtle Construction Co., and then they learned that documents in the name of Green Turtle Construction Co. had been found on the Presidential, along with the 31,000 pounds of marijuana.

Shortly afterward, a Customs agent from North Carolina dropped by the Miami DEA office looking for information for his own investigation. He told the agents about the Dec. 9 operation in North Carolina and asked them if they'd ever heard of someone named Chip Grant. They had. Grant had been seen frequently with Meinster.

The customs agent also mentioned George Purvis, who was still unknown to the DEA. Not long afterward, Heath said, one of the DEA agents on the case had a talk with Lucas McLeod, Platshorn's 1974 connection from the Milwaukee Fairgrounds. McLeod had become a DEA informant, and he out-

lined for DEA his early activities with Platshorn and Meinster.

That was the first time, Heath said, that DEA realized they were dealing with a major operator.

From then on, he said, things began to move quickly.

In March, DEA agents picked Purvis up on the street and found that he was anxious to find a way out of Black Tuna. He and his girlfriend Mandy Jackson became informants. And for the next couple of months, Heath met almost daily with Purvis.

With someone on the inside, Heath and Koehler were able not only to find out what was going on, but also to pinpoint the weak links in the organization and pick up new informants.

It was another year until a federal grand jury on April 30, 1979, returned indictments against the leaders of the Black Tuna organization, including charges of racketeering, conspiracy and drug violations.

Last Dec. 6 as the trial was under way, additional indictments were returned against Bobby and Lynne Platshorn, Meinster and several others. The charge was that they had offered a million dollars to Mafia figures in New York to disrupt the trial. Police said the possibilities discussed included murdering U.S. Judge James L. King, Purvis or even federal prosecutor Walter Schroeder.

A separate case involving a bribery of one of the jurors is still going on.

SOME TRIALS CONTINUE

Although some members of the gang are still being tried, most of the major figures have been convicted.

Meinster has been sentenced to 54 years in prison under a law that will make him ineligible for parole for at least 31 years.

Grant is serving a nine-year federal prison term before he begins serving a 10-year sentence in North Carolina.

Blumin, the money man, received immunity in return for his testimony.

George Purvis and Mandy Jackson are living somewhere in the United States under new identities in the federal witness protection program.

His old friend Mark Phillips is still being sought by police, along with Davila, who is presumed to be continuing his drug export business from Colombia.

Lynne Platshorn still is awaiting a separate trial.

Bobby Platshorn recently appeared before King to receive his sentence and made a 90-minute speech in which he charged that the government "invented the Black Tuna Gang" and then conducted "Soviet-style show trials . . . a government grandstand."

King fined Platshorn \$325,000 and sentenced him to 64 years in prison. Platshorn, who is now 37, will be eligible for parole when he is 70.

[From the Washington Star, July 24, 1980]

DRUG SMUGGLING DOESN'T RUFFLE COOL KEY WEST

(By Mary Thornton)

(Fishermen in Key West, the southernmost city in the continental United States, can make more than a year's wages in one night by hauling marijuana. High school students cruise in new cars paid for in cash. Their source of wealth: drug smuggling. A local police department, short on funds and expertise, hasn't been able to prevent the city from becoming a major center in the drug trade.)

KEY WEST.—Dusk falls slowly here as great puffs of clouds gather lazily on the horizon in brilliant pinks and oranges, silhouetted boats slip by in silent procession and people gather on beaches and on the decks of sailboats for the nightly show.

There is no confusing Key West with

mainstream America. This is a town, with a different pace, a different set of values. It is a community that manages to welcome the hordes of tourists who descend each summer and winter, to accept the gay community that has made Key West a kind of Mecca and to tolerate the dropouts and hippies who hang out here in droves.

At 10:30 a.m. on a Saturday, the heat already is heavy and oppressive. The only sign of life in downtown Key West, except for the hound walking slowly down the sidewalk, is in an open-air bar where barechested men are sipping drinks to the rhythmic thump of the fans overhead and a juke box rendition of Jimmy Buffet's "Margaritaville."

Outside on the street, the sweet smell of marijuana wafts across the sidewalk mixing with the scent of rotting flowers that fall from the trees and are crushed underfoot. A jeep roars by sporting the bumper sticker: "How do I spell relief? C-O-L-O-M-B-I-A-N."

Federal and local law enforcement authorities say that over the past decade Key West has become one of the largest drug-smuggling centers in the United States.

It has become a city where a fishing boat captain can earn more in a single night carrying a load of marijuana than he would earn fishing in a whole year, where high school kids ride around in Cadillacs paid for in cash, where some men carry \$20,000 around their necks in the form of gold chains.

Because most law enforcement agencies, both state and federal, are concentrating their activities on the large Miami drug market, Key West has been left to the local police department without the funds or expertise to fight the drug trade.

This is an ideal place for drug smuggling. It is the closest point in the United States to the northern coast of Colombia, the source of most of the marijuana, cocaine and illegal Quaaludes coming into this country. The countless deserted islands and the mangrove swamps provide a perfect place to unload and hide the drugs. And the island is only 154 miles by road from the insatiable Miami drug market.

In addition to the perfect geography, the island has one of the largest commercial fishing fleets in the country, as many as 300 shrimp boats and 150 crawfish boats.

And Monroe County Sheriff William Freeman says, "I'm sure some of those boats have never seen a fish."

Official estimates are that at least 50 percent of the boats have been used to haul "square grouper," the local nickname for the large square bales of marijuana. But fishermen say the actual number probably is much higher.

IRRESISTIBLE DEALS

According to many fishermen, the deals offered by the drug smugglers are almost irresistible. A man can earn \$20,000 or more in a single night, and it is nearly risk-free. If there is any problem, the drug organization provides all the legal fees and replaces the boat if it is confiscated.

One fisherman, who has refused to carry marijuana, said he has stayed away from it partly because he thinks it's wrong and partly because he's afraid of getting involved with the kind of people who deal in drug smuggling. "Every now and then someone's supposed to make a run, and they don't, and then they get beat up pretty bad or their boats get burned."

But he believes most fishermen have been involved at some point.

"I've seen plenty," he said. "Anybody who lives down here can see what's going on. When you see two or three thousand dollars worth of gold around their necks, new Porsches, you know they didn't get it fishing. I know fishermen who only had a wood boat one year. The next year they've got a new boat, a new house all paid for, a new Lincoln.

"You can make \$20,000 in a night. When

you've got to make the \$1,000-a-month payment on your boat, sometimes it gets pretty tempting," he said.

Key West has a reputation for lax law enforcement—with countless stories about the public officials who have been involved in the illegal drug trade and generally have gotten away with it.

Key West Commissioner Richard Heyman tells the story about Fire Chief Bum Farto who was picked up several years ago on charges of selling cocaine at the junior high school. He got out on bond and eventually disappeared before he was to come to trial.

Four days after disappearance, Heyman said, Farto's wife finally reported him missing, and he's never been heard from since. Some people still wear T-shirts asking "Where is Bum Farto?"

A computer study published recently by The Miami Herald concluded that Monroe County State Attorney Jeff Gautier has compiled the state's worst record for prosecuting drug felonies.

Almost every multiton marijuana smuggling case prosecuted by the Monroe County State Attorney's Office since 1976 has been botched and lost or plea-bargained to misdemeanors, according to the newspaper study of court records. In some cases, the Herald said, suspects caught with many tons of marijuana were allowed to plead guilty to possession of less than 20 grams and pay a modest fine.

Last April, Florida Gov. Bob Graham appointed a special prosecutor to investigate the allegations raised in the Herald stories, as well as other public corruption in the Key West area. Gautier has said he welcomes the investigation.

Four members of the Key West police force were convicted in May on charges arising out of an incident in September 1978 when 14 men, including the policemen, were found on a fishing dock . . .

And just this month the head of the Florida Marine Patrol's operations in the Florida Keys was arrested on a charge of accepting a \$50,000 bribe to allow two boatloads of marijuana to land in his area.

"MOCKERY OF THE LAW"

One white-haired woman who has lived on the island for the past 15 years said the drug trafficking has become so pervasive that "it's made a mockery of the law. No one's worried about getting caught because they know everyone's doing it. The police. Everyone. It's like a ball of yarn. The more it turns, the more it gets involved."

She talks about a public official who has been suspended without pay for more than a year for alleged drug involvement. "During that year, he bought a new car, new furniture for his house, and he had a swimming pool built. Now, I wonder where that money's coming from."

The signs of the drug trade are everywhere. Heyman, who believes the drug trade may have surpassed tourism as Key West's number one source of income, says that it isn't unusual for customers to pay in cash—as much as \$4,000 at a time—at his Gingerbread Art Gallery, and he has heard stories of cash purchases involving much more money.

"I immediately rushed to the bank with the \$4,000," he said. "You see (cash) a lot. People with bags of money. I've even heard of cash land purchases. It could just be someone who's flashy, but you always have your suspicions."

Another resident added, "You see a kid bagging in the grocery store. Then you see him driving a Cadillac or a big Olds, and you know it's not his daddy's. They wear big gold chains around their necks. When I was a kid bagging groceries, all I could afford was a St. Christopher's medal that turned my neck green."

But instead of outrage at the drug trade, there is a kind of quiet pride in the island's spirit of lawlessness.

"Kids take pride in the fact that the father may be hauling marijuana," said one resident. "It's romanticized. But just go back a few years to prohibition. How is it any different. Maybe some day this will be looked on as just another era in the county's history. Those that are fighting marijuana legalization most are the Baptists and the drug dealers."

Blackie Valdez, a 59-year-old restaurant owner, said he doesn't approve of the drug traffic, but "this town is real compassionate. It doesn't go in for real harsh treatment unless it's a murder or something."

After all, people here say, Key West has served as home to people like Ernest Hemingway, Tennessee Williams and Thomas McGuane. It can't be all bad. And besides, the island has a history of operating a little outside the law.

The independence and lawlessness is a kind of relic of the island's wild past. Life on Key West has often been tough, dependent on the vagaries of the sea and more recently the whims of the tourist industry. Islanders have had to live by their wits.

In the early 1800s, that took the form of piracy. The history books say that until the 1820s piracy was the number one industry here, employing as many as 20,000 men.

DRUMMING UP BUSINESS

When the piracy was finally put to an end, the islanders turned to salvage work on the ships that foundered on the coral reefs. When business got slow, they simply turned out the lanterns on the lighthouses built to guide the ships safely through the reef.

During that period Key West became one of the wealthiest cities in the country. The federal government now calls it a "distressed city" with a poverty rate 50 percent higher than the national average.

Authorities here say that the drug smuggling started for the most part in the early 1970s when the Navy closed its submarine base here and moved most of its personnel out of the nearby Naval air station.

Many islanders lost their jobs, and the drugs seemed to come along to fill the void.

Freeman, who became county sheriff in 1977, feels he is fighting a battle that is virtually impossible to win.

In his first year in office, his department seized \$200 million worth of marijuana, but he says he is hopelessly undermanned—with only six detectives in Key West, another four in Marathon about 50 miles north, and four others in Plantation Key, still farther north.

He has worked hard to shed the image of corruption that hangs over many other police departments, including the Key West City Police Department. Shortly after taking office, Freeman decided to require annual financial statements from all of his employees, along with a yearly psychological examination and a lie detector test.

He immediately was sued by some of those employees. By the time he won the suit last October, more than 60 percent of his employees had left.

But even with all his precautions one of Freeman's detectives was arrested early this year on marijuana-related charges.

Freeman says that the signs of drug smuggling are everywhere. "All of a sudden you see a man buy a \$300,000 house for cash when he's got no job," he said. "I don't care if you're a Kennedy or a Rockefeller. You write a check. That's what the normal person does."

"You get a smuggler's son who has the T-Bird and the pocket full of money and he's gettin' all the girls. Doesn't set a very good example for the other kids," he said.

Freeman says there's a six-month backlog of drug cases awaiting trial and normally young offenders get off with virtually no punishment. "The kids know nothing will happen to them. We just keep chasing the same people again and again and again."

Freeman says he's asked again and again for federal help. "I got with the feds, tried to get them to open up an office," he said. "We didn't even have a customs office here until 1978. There's still no DEA office and only a one-man FBI office. I attacked the problem as best I could and I asked for help. But I haven't gotten it."

Mr. ST GERMAIN. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey (Mr. MINISH).

(Mr. MINISH asked and was given permission to revise and extend his remarks.)

● Mr. MINISH. Mr. Speaker, I rise in strong support of H.R. 5961.

I have been interested in the subject of this bill, currency transactions and their relationship to narcotics trafficking for some time and am pleased that it is being considered under suspension today by the House.

The Oversight Subcommittee of House Banking, of which I am chairman, held hearings on this subject in November of 1979. We heard testimony from the Department of the Treasury, the U.S. Customs Service, the Drug Enforcement Agency, the Comptroller of the Currency, the General Accounting Office, and from Congressman JOHN LaFALCE, the prime sponsor of legislation dealing with this subject.

Our interest in this area was generated by a Treasury Department study, issued in September of 1979, which reported on currency flows among the various regional branches of the Federal Reserve System. The Treasury report showed unusually large currency flows into several States, especially Florida and Texas. Specifically, the study showed that currency deposits in the Miami and Jacksonville, Fla., offices exceeding payouts by more than \$3.2 billion during 1978. After Miami and Jacksonville, the next largest inflow of cash was found in San Antonio and El Paso, Tex. During this same period, the Federal Reserve System as a whole experienced a net payout of more than \$10 billion. These surprising statistics, together with the assertion by many experts that many of these currency transactions were related to narcotic deals, prompted our subcommittee's investigation. I would like to share with you the findings of our investigation and hearing.

It is true that there is an unusually high volume of crime-related currency transactions both within the United States and between the United States and other nations. Officials of the Drug Enforcement Agency told us that the retail value of illicit drugs imported into the United States in 1977 was about \$45 billion. This included about \$14 billion for cocaine and about \$20 billion for marijuana. The DEA testified that between \$8.9 billion and \$13.6 billion worth of marijuana came from Colombia alone. It estimated that between \$480 and \$730 million was paid out to Colombian traffickers alone. So, as you can see, this is a huge and serious problem.

There are laws already on the books which are designed to help law enforcement agencies prevent illegal currency transactions. The present law requires financial institutions to file reports on

unusual currency transactions in excess of \$10,000. It also requires individuals entering or leaving the United States with \$5,000 or more in currency to disclose that fact.

We found that domestic banks have been lax in enforcing the present reporting requirements. One DEA official asserted that some banks knowingly handle huge sums of drug money and others ignore obviously questionable transactions. We also found that the bank regulatory agencies have been lax in insuring that financial institutions enforce the present reporting requirements. The Department of the Treasury recently came out with new regulations designed to beef-up enforcement of the reporting requirements. However, up to now, we found that their enforcement has been irregular and the data collected has been spotty.

In response to this problem, I have asked the GAO to undertake a major study of the currency transaction reporting requirements which apply to American banks. The GAO investigation, which has been going on for several months, is concentrating on both the enforcement of the reporting requirements and the usefulness of the information that is collected. I believe that the GAO study, once completed, will give us a handle on the problem of illicit currency transactions and the role of financial institutions in them. As I said, the investigation is now in progress and I expect the GAO's report in the early fall.

The second focus of our hearings was on illegal currency transactions which reach outside the United States. We found that customs officials, who are primarily responsible for preventing the illegal import and export of currency, are hampered by some large loopholes in the customs laws. These shortcomings in the present law are addressed by H.R. 5961, originally introduced by Congressman LaFALCE, which I cosponsored and strongly support. I would like to mention two of the highlights of that bill and explain how it closes the loopholes we found in the present law.

One section of H.R. 5961 would amend the Currency and Foreign Transaction Reporting Act by making it a crime to attempt to export or import large amounts of currency without disclosing that fact to customs authorities. This is in response to a Federal court case in which the judge ruled that the present law does not prohibit the attempt to smuggle currency. Under this interpretation, law enforcement authorities cannot arrest someone they suspect of smuggling currency until he has actually left the United States. However, once the smuggler has left the country the United States has no more jurisdiction over him and he cannot be arrested. H.R. 5961 would close this obviously unintended loophole.

Another provision of H.R. 5961, as reported by the Banking Committee, would amend the Currency and Foreign Transaction Reporting Act to permit customs officers to search persons or vehicles entering or leaving the United States when the officer has "reasonable cause" to suspect that monetary instruments worth over \$10,000 are being transported with-

out the filing of the required report. Under present law, when an individual is entering the United States, there is no need for a search warrant or a showing of probable cause prior to search. Instead, reasonable cause standard is applied under the customs statute. A number of Supreme Court cases have affirmed this lower standard for border searches, basing their decisions on the Federal Government's authority to regulate interstate foreign commerce and its sovereign prerogative to protect itself from persons wishing to enter the country. Since customs officers already have authority to do searches without a showing of probable cause on persons entering the United States, the proposed Banking Committee legislation would simply clarify that the examination may include a search for large amounts of unreported currency.

A few of my colleagues have suggested that giving customs officials the right to search based on their reasonable cause to believe that currency is being smuggled is in contravention to the fourth amendment to the Constitution. Although I do not agree, I note that the Ways and Means Committee has decided to specify "probable" cause. I will support this approach in an effort to get this most important measure enacted this year.

H.R. 5961 was reported out by the House Banking Committee on February 27, 1980, and by the Ways and Means Committee on July 1, 1980. I believe that this bill is well thought out, tightly drawn, and very necessary. Although our hearings focused on its usefulness in preventing drug-related currency smuggling, it will be equally important in the Government's attempt to combat various other kinds of organized crime.

Mr. Speaker, I urge an overwhelming vote of approval for H.R. 5961. ●

Mr. ST GERMAIN. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. VANIK).

(Mr. VANIK asked and was given permission to revise and extend his remarks.)

Mr. VANIK. Mr. Speaker, I support this legislation and am pleased the committee adopted the Ways and Means Committee amendment.

Mr. Speaker, the Committee on Ways and Means made one amendment to title II of H.R. 5961 as introduced, which allows warrantless searches for unreported currency by the Customs Service only when probable cause rather than the lower standard of reasonable cause exists to suspect that a violation is occurring.

Although the "border search" exception to the traditional probable cause requirement has been a long established principle from incoming searches, there has never been a statement from the U.S. Supreme Court as to whether exit searches fall within the ambit of the border search doctrine. The chairman of the Judiciary Committee's Subcommittee on Civil and Constitutional Rights urged deletion of this entire provision, stating that—

It would be an unprecedented break from long-established law on the subject and is . . . unconstitutional.

Even the Justice Department, while supporting the bill, stated that this provision "involves a close constitutional question" in authorizing a warrantless exit search based on less than probable cause.

In light of these serious constitutional questions, the committee felt that the use of the more judicially acceptable "probable cause" standard would be preferable to the lesser standard of "reasonable cause."

Mr. WYLIE. Mr. Speaker, I yield myself 3 minutes.

(Mr. WYLIE asked and was given permission to revise and extend his remarks.)

Mr. WYLIE. Mr. Speaker, the gentleman from New York (Mr. LaFALCE) has done a considerable amount of hard work on this bill and has done an excellent job of describing its provisions.

I would just add my own observations. This bill does correct a deficiency, I would say, in the present law.

Present law requires that if a person with \$5,000 cash in his pocket is leaving the country, that person must disclose that fact. But a Florida judge in the Centano Case held that this law could not apply to that person for failure to disclose until that person had reached foreign soil.

Customs officials have found themselves in a Catch-22 situation. They suspect somebody is taking huge amounts of cash out of the country to buy drugs, but they cannot ascertain that until the person gets to a foreign jurisdiction where they have no authority. That sums up the problem we found ourselves in as we listened to the testimony of the various Customs officials who came before our committee.

This state of affairs has allowed drug traffickers to take huge sums of money out of the United States to buy drugs. This bill will increase the amount which can be taken out without disclosure from \$5,000 to \$10,000 cash. That was the result of the Stanton amendment which was adopted in the full Committee on Banking, Finance, and Urban Affairs.

The sum of \$10,000 is not exactly pocket cash. A person carrying \$10,000 in cash has the intention of buying something pretty big. If that person wants to buy a Mercedes, all that person has to do is say, "I want to buy a Mercedes with that cash," and he has complied with the law. I might say that such disclosure is protected under the privacy laws.

I am a former prosecuting attorney and I will say that I get a little tired of protecting criminals against innocent victims, and to me that is the bottom line, all rhetoric aside. We have a problem of such magnitude that it goes to our national welfare and that, to me, is the real constitutional issue.

I listened to the customs officials. We have a problem, as I say, of monumental proportions that we must solve.

Cases were related to us where \$50,000 boats, which were being approached for search, were being sunk so that there could not be a search. We are talking about big money. One way to solve the problem, customs officials tell us, is to be able to trace the money going into the

purchase of these drugs and this bill, to me, provides one way they can do it.

It is beyond my comprehension why a law abiding citizen would not want to help us solve this drug problem. All of us have to help. All we have to do, I think, to know the problem is to visit a college campus or a school yard and we will know that it is a very serious problem.

The bill contains an amendment which I offered in the committee markup to require the Secretary of the Treasury to submit a report to the Congress within 18 months of the enactment of this act on the effectiveness of the amendments made by the act. This amendment will enable Congress to conduct early oversight if there should be any indication that the bill is not working out as well as anticipated. We would be especially concerned if there were substantial evidence that the amendments had resulted in undue inconvenience to the traveling public in relation to the benefits derived by law enforcement authorities. The Treasury Department has stated that it welcomes the opportunity to report its experiences under the bill, and it is clear Treasury is confident the experience will be favorable.

An important amendment was added by the Committee on Ways and Means, which had joint jurisdiction, as a result of the provision to permit warrantless searches upon a showing of "reasonable cause." The Vanik amendment changed the standard for the conduct of a warrantless search from "reasonable" to "probable" cause. It is felt that this amendment will significantly increase the protection afforded to the traveling public against unreasonable searches and seizures, and I endorse it as I think it will help passage of the bill.

I believe that this bill is worthy of support. Most of the Members of this House must be keenly aware of the problems faced by our law enforcement authorities in attempting to control the tremendous flow of contraband into the country, which is frequently accompanied by the flow of cash overseas. Speaking for myself, I would not want to deny the authorities the tools they may need to enforce the law, with due consideration given to the needs and rights of the innocent traveling public.

I believe this bill should be given a chance to work, and I urge my colleagues to support it.

Mr. Speaker, I now yield 2 minutes to a distinguished member of the committee, the gentleman from Ohio (Mr. STANTON).

□ 1430

Mr. STANTON. Mr. Speaker, I appreciate the gentleman yielding.

Mr. Speaker, I rise in support of H.R. 5961, the Currency and Foreign Transactions Reporting Act Amendments of 1980. This bill, which represents the first direct amendment of the so-called Bank Secrecy Act which was passed in 1970, makes it a crime to attempt to export or import large amounts of currency without filing the necessary reports. In addition, the bill amends the act to provide the U.S. Customs Service with search authority for monetary instruments comparable to its

existing authority with respect to contraband merchandise.

Let me say at the outset that no one believes that this bill is the total solution to the problem of sizable money flows which support either the illegal drug trade in the United States or other activities associated with organized crime. This legislation, however, should provide law enforcement authorities, particularly the U.S. Customs Service, with some additional tools to help curb the flow of funds associated with any illegal activity.

Nothing in this legislation is meant to hinder the law-abiding citizen in his or her travels. It should be clear that the majority of individuals who transport monetary instruments across national borders do so for legitimate business or personal reasons.

Because of three important amendments which have been added to this bill, I am able to support H.R. 5961. First, an amendment which I offered in committee raises the reporting threshold from \$5,000 to \$10,000. This amendment should protect the ordinary business and vacation traveler from the inconvenience of having to file a report or submit to a search pursuant to the provision of the act. Because of the continuing inflation in this country, I believe that this is an equitable amendment since that amount has not been changed since 1970.

Second, my colleague on the Banking Committee, CHALMERS WYLIE from my home State of Ohio, is the author of a constructive amendment which requires the Secretary of the Treasury to report to the Congress regarding the effectiveness of the amendments made by this legislation. I know that some of my colleagues have reservations about the new powers that we are granting to law enforcement authorities. With this amendment, however, we will have the necessary followup information to determine whether in fact our actions here today have made law enforcement more effective. To the extent that I am able, I can assure my colleagues that the Banking Committee will hold oversight hearings once this report has been submitted.

Finally, although I have not yet seen the report of the Committee on Ways and Means, it is my understanding that the committee added an amendment which changes the test for conducting a search from that of having just a "reasonable cause" to that of having a "probable cause." This amendment in fact tightens the requirement that a customs official must satisfy if he or she suspects that monetary instruments are in the process of being transported in violation of the Currency and Foreign Transactions Reporting Act.

Mr. WYLIE. Mr. Speaker, I actually think this bill is more protective of individual rights and will help law enforcement officials. I urge its adoption.

I now yield 5 minutes to the distinguished gentleman from Texas (Mr. PAUL).

(Mr. PAUL asked to revise and extend his remarks and include extraneous matter.)

Mr. PAUL. Mr. Speaker, I take issue with the viewpoint that has been so far expressed that this bill has satisfied the greater number of opponents of this legislation. As a matter of fact, if we took a survey we would find hundreds or possibly even thousands of letters have come in to Congress on this issue and I have yet to see one letter supporting this piece of legislation.

Mr. Speaker, not only that, the American Civil Liberties Union is still strongly opposed to this legislation along with the American Bar Association as well as the National Association of Criminal Defense Lawyers. So it is not one of these clearcut and dried issues whereby we are not jeopardizing some of our constitutional freedoms.

Mr. Speaker, let me just recite the fourth amendment for that is what we are here dealing with. I believe instead of this bill being called the drug trafficking bill—and, by the way, it never mentions drugs; it only talks about control of currency, control of people and searching people. This bill could be better known as the act to suspend the fourth amendment under the suspension of the rules.

The fourth amendment says:

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated and no warrant shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the person or things to be seized.

Mr. Speaker, we are not even going to get a warrant let alone describe what we are going to search for.

Mr. Speaker, a few months ago there was a case in California that went to the California Supreme Court as well as the Supreme Court of the United States. In this case an individual had stolen an automobile, placed a suitcase on the back seat of the car. The police opened this suitcase.

It has been ruled by the California Supreme Court as well as by the U.S. Supreme Court that even criminals have a right to privacy.

Mr. Speaker, we are talking about taking away more freedom from an individual passing from this country than we are providing for the convicted or alleged criminal who has stolen an automobile. I do not think we should do this carelessly. I think we should do this with a great deal of concern and realize exactly what we are doing here.

Mr. Speaker, the issue is the fourth amendment. We are not dealing with drugs. I had an amendment in the Committee on Banking and Finance to amend the bill and say that we should suspect individuals of transporting cash for the purchase of drugs before a search could insure. This was rejected outright. The authors do not want to mention drugs in the legislation. They want to control people and they want to control currency.

For 2½ years now there has been investigations of the large amount of cash in the Florida banks. There has been but one case where they related excessive amounts of cash to drug trafficking. This

neither proves nor disapproves why the currency is arriving in the Florida banks.

Mr. Speaker, we might ask ourselves, what good is it to stop a private citizen and search him on the border. How is that going to explain why there is excessive cash in some bank?

Another thing: Why do we not ask ourselves, How do we achieve drug control by making wallets contraband and insinuating that currency is contraband without any proof of the fact that it was involved with crime or even was it suspected to be involved with crime? The same people who want this power cannot detect tons and tons of marijuana coming into the Nation. How can they detect a traveler's check by going through our wallets if they cannot even spot the ships and the planes used to bring in the marijuana. I think it is rather remarkable to think that by giving them this right or this privilege of looking in our wallets and searching our suitcases and for that matter it will probably involve wiretapping as well; will help to curtail the illegal drug trade. Much of the currency is transferred through wire service and, therefore, I believe, and others have agreed, that this legislation could imply that wiretapping would be permitted as well.

Mr. Speaker, the other important thing I think we ought to realize is, there are a lot of dollars showing up in Florida banks for one reason or another. If we pass legislation like this, this will do but one thing if it is involved with drugs and if it is illegal. The point is that money will leave the bank. That money will go underground. It will do you no good at all. To me it would be an asset to know the money is in the bank. You can check and follow it and use these deposits as evidence. But to take away the privilege of an individual leaving this country without a search is a dangerous precedent to establish.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. WYLIE. Mr. Speaker, I yield the gentleman 1 additional minute.

Mr. PAUL. Mr. Speaker, I thank the gentleman.

Mr. Speaker, it has been pointed out this is nothing unusual because we have been looking in suitcases by customs officials for a couple hundred years. However, this is always coming into the country. We have never searched our people as they leave the country. This is a drastic change from what has been traditional and I think we must be very careful not to succumb to the temptation, no matter how well intended, to do something like this.

The ACLU, the American Bar Association, as well as the National Association of Criminal Defense Lawyers, all agree that this legislation is unnecessary and it is not constitutional. The one point that the American Bar Association makes is that if you start to check people leaving the country arbitrarily, it will be definitely different than checking everybody coming into the country because you will be discriminating. There is no indication they intend to search everybody leaving so, therefore, they indicate if you are arbitrary in your

searches it would be that much more unconstitutional.

I would like to further explain my position and express strong opposition to this legislation.

H.R. 5961: A THREAT TO OUR CONSTITUTIONAL FREEDOMS

Today we are asked to amend the Currency and Foreign Transaction Reporting Act, better known as the Bank Secrecy Act of 1970. It has been misnamed "the Drug Trafficking Act." It would be better called "the act to repeal the fourth amendment." The most basic issue involved in this legislation today is whether or not this Congress will respect and uphold the fourth amendment. To refresh our minds, let me read exactly what the fourth amendment says:

The right of the the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the person and things to be seized.

This bill, if passed, will give the Federal authorities permission to search any law-abiding citizen as he leaves the country. This will be the first time that this has ever come about in our 204 year history. The question that we we must answer today is, do law-abiding citizens deserve the same protection from unreasonable search and seizure as hardened criminals?

In this day and age, evidence gathered by the police in criminal cases can never be used in court if it was gathered in violation of the Constitution. So how can we suspend the Constitutional protection of law-abiding citizens in their routine travels out of the country? In a recent case in California, the California Supreme Court held, and the U.S. Supreme Court upheld by refusing to hear, the right of even car thieves to the privacy of concealed contents they place in stolen vehicles. This came from a case where a car thief had his suitcase, found on the back seat of a stolen car, examined without a search warrant. It was upheld that the police could not look in a suitcase even in a stolen vehicle without a proper search warrant. If H.R. 5961 becomes law, it means that the Customs authorities will be able to look in our suitcases, in our wallets, and in our mail, without a search warrant, without even a suspicion that a crime was being committed. All that the authorities must suspect is that one is leaving the country with funds.

H.R. 5961 makes it a crime to transport or even attempt to transport monetary instruments out of the country. A good clear definition of attempting to leave the country is unavailable.

Monetary instruments, as defined in the 1970 Act, mean coin and currency of the United States. In addition, such foreign coin and currency, and travelers' cheques, bearer negotiable instruments, bearer investment securities, bearer securities and stock with title passing upon delivery, or the equivalent thereof, as the Secretary may by regulation specify.

The most serious threat to our constitutional freedom is that this legislation will permit warrantless searches upon

probable cause of all individuals leaving the country.

What we are doing is making monetary instruments equivalent to contraband—a new and strange concept.

It is not necessary that a crime be suspected. Also there need be no suspicion of the concealment of evidence of a crime. Only the fact that an individual may be carrying monetary instruments is required.

This bill also sets up an informer program rewarding neighbors for turning in their neighbors, with a top payment of \$250,000.

This bill will permit the search of any vehicle, vessel, aircraft, envelope, person, or container. With this massive sweeping power, it will not be surprising if wiretapping were permitted as well.

It is stated that the customs authority, provided in the Act of 1789, permits such sweeping power. It must be noted that the fourth amendment was ratified 3 years after the customs authorities received their power. Also, it has been traditional only that individuals, upon entry into the country, were examined for contraband and illegal goods. This will be the first time that individuals leaving the country would be subjected to a search.

One must ask, how will stopping people leaving the country, and opening up their suitcases, explain how large amounts of cash end up in certain banks in Florida. It seems to me that the two are unrelated.

Since our authorities are unable to detect tons of marijuana coming into the country, how is it that these same people will be able to seek out and detect travelers' cheques and other securities?

The United States has used as a qualification for loans an open emigration policy by other nations, and yet, here we are closing our doors and prohibiting emigration under certain circumstances.

The full Banking Committee would have no part of limiting this bill to detecting drug trafficking or other white-collar criminal activity. The open-ended, all-inclusive, sweeping powers is what was desired, and my amendment to limit this bill to drug trafficking was rejected outright.

It is claimed that the dollars showing up in the Miami banks are reflective of drug activity. If this is the case, it seems to me that it would be of great benefit to the authorities to have these bank accounts available for inspection. With this type of legislation, the dollars will be driven underground, and less information will be available to us in detecting the drug trade.

For more than 2 years now, intensive investigation has been underway in trying to correlate the excessive cash in the banks in Florida with the drug trade, and yet there has been only one proven correlation.

If the drug trade is the main motivation for this legislation, why is it that we are again just as concerned about currency in the country as well as out of the country, for were it due to drug trade, we would be concerned about drugs coming in and money going out.

It has been said that attempting to leave the country should be a crime be-

cause attempting to murder someone is also a crime. But this is an incredible comparison, for leaving one's country with one's assets certainly cannot be equivalent to attempting murder. Attempting to leave the country with one's assets should never be assumed to be a crime in a free country. It might be wise for us to remember that point 4 in the Communist manifesto was the confiscation of the property of all emigrants.

This legislation is obviously written for the purpose of international currency control, to limit emigration, and to diminish our freedoms. This is what is going to occur with this legislation, regardless of the good intentions of its authors.

The American Civil Liberties Union, the American Bar Association, and the National Association of Criminal Defense Lawyers are all on record as opposing this legislation.

Let me quote from the statement by Prof. Leon Friedman, who represented the American Civil Liberties Union before both the House Banking Committee and the Ways and Means Committee:

The bill would revolutionize existing laws with respect to international travel, greatly burden and inconvenience innocent citizens, and violate the right to privacy of millions of Americans. It is the position of the ACLU that H.R. 5961 is probably unconstitutional, certainly undesirable and it is absolutely unnecessary in any event.

In *Carol against United States (1925)*, the Supreme Court said:

But those lawfully within the country have a right to free passage without interruption or search, unless there is known to a competent official authorized to search probable cause for believing that their vehicles are carrying contraband or illegal merchandise.

In this case, it is obvious that we must make our wallets and our suitcases equivalent to contraband.

The courts have very definitely over the years made a sharp distinction between examining a person leaving a country versus one coming into the country. In *Kent against Dulles (1958)*, this distinction is made very clear:

In that case, a passport was refused to Rockwell Kent by the Secretary of State on the grounds that he was a Communist and consistently adhered to the Communist Party line. The State Department argued that its right to withhold a passport was necessary to protect the country's internal security. The Supreme Court rejected that argument. . . . The court noted that the right to leave this country and travel throughout the world "is a part of the liberty of which the citizen cannot be deprived without due process of law under the Fifth Amendment . . . Freedom of movement is basic in our scheme of values.

Quoting again from the testimony of Prof. Leon Friedman:

Congress should not take this revolutionary step without a more careful consideration of the desirability of searches. . . . In summary, the ACLU is totally opposed to the provisions of H.R. 5961 permitting a search of American citizens leaving this country.

STATEMENT ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION ON AMENDING THE BANK SECRECY ACT

My name is Leon Friedman and I am a Professor of Law at Hofstra Law School in Hempstead, New York, teaching criminal procedure and constitutional law. I welcome

this opportunity to testify on behalf of the American Civil Liberties Union concerning H.R. 5961. The proposed bill adds various provisions to the Bank Secrecy Act, 31 U.S.C. §§ 1101(a), 1106. Our particular concern is the proposed amendment to Section 1105 which 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.

What the proposed bill would do is to permit every person leaving this country to be physically searched and every piece of luggage or container down to an envelope to be searched without a warrant by any customs officer on his reasonable suspicion that the person or container, might have more than \$5,000 in monetary instruments which were not reported as required by law.

The bill would revolutionize existing laws with respect to international travel, greatly burden and inconvenience innocent citizens and violate the right to privacy of millions of Americans. It is the position of the A.C.L.U. that H.R. 5961 is probably unconstitutional, is certainly undesirable, and it is absolutely unnecessary in any event.

CONSTITUTIONALITY

At present there is no statutory authorization for any search of the physical person of Americans as they leave this country. Section 401(a) of Title 22 permits the seizure of illegal arms or munitions upon a showing of probable cause that the arms are being exported in violation of law. But this section relates to the seizure of goods generally in large containers and not likely to be found on a person leaving the country. Furthermore the law requires probable cause before any seizure can take place. Section 1581 of Title 19 broadly allows customs to search vessels or vehicles violating the navigation or other laws of the United States. Once again there is no reference to the search of persons.

There are laws permitting the search of persons as they enter the United States. Section 482 of Title 19 permits the search of vehicles and persons on which or whom a customs officer has "reasonable cause to suspect there is merchandise which was imported contrary to law." It is this statute which is apparently the model for H.R. 5961.

The difference between a search of a person coming into the country and one leaving the country is crucial to the understanding of the defects in the proposed law. In the leading case on the subject, *Carroll v. United States*, 267 U.S. 132, 153-54 (1925) the Supreme Court said:

"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."

The Court added:

"But those lawfully within the country . . . have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise."

This distinction has been upheld in a long series of Supreme Court cases permitting border searches in a variety of situations. See *United States v. Ramsey*, 431 U.S. 606 (1977) (permitting warrantless search of incoming international letter mail). *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) (roving patrol may stop car near border if reasonable suspicion exists that illegal aliens may be present) (*United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (stop but not search of car at fixed point near border permitted).

But cf. *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973) (roving patrol search of car not permitted).

It is obvious that the national interest in searching incoming travelers is of a different order than searching those departing. Such border searches may be necessary to keep out contraband that might have harmful effects within the country. No nation wants illegal arms or narcotics or other dangerous objects introduced into the nation. Customs laws require duties to be paid on certain merchandise. Each country requires that guests into the country have proper visa documents. Border searches of those coming in is simply an aspect of national self-preservation, as recognized in the *Carroll* case. This government interest weighs heavily when measured against other personal rights. Even here, however, the personal right to travel is protected by the reasonableness requirements of the Fourth Amendment. See *Almeida-Sanchez v. United States*, *supra*.

The government interest in searching travelers leaving the country cannot be justified in the same way. There is no comparable interest in national self-preservation that is served by such a search. Travelers leaving the country are protected by the fullest panoply of constitutional rights and the government interest that is measured against those rights is not as strong.

The Supreme Court decision in *Kent v. Dulles*, 357 U.S. 116 (1958) underscores this distinction. In that case a passport was refused to Rockwell Kent by the Secretary of State on the ground that he was a Communist and consistently adhered "to the Communist Party line." The State Department argued that its right to withhold a passport was necessary to protect the country's internal security. The Supreme Court rejected that argument. It held that the statutory authority granted the Secretary did not permit him to withhold passports on the asserted grounds. The Court noted that the right to leave this country and travel throughout the world "is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment." 357 U.S. at 125. "Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values."

To burden that freedom of movement by permitting searches of millions of Americans who travel abroad on the basis of "reasonable cause" would violate the principles of *Kent v. Dulles*. This is not a situation where customs officials are looking for contraband—narcotics, illegal guns, and the like—or items of commerce for which no duty has been paid. Customs officers will be looking for currency, travellers checks, bank drafts, which every single traveler must have in some quantity. Every American is a potential target for a full body search. On what basis can a customs official decide that one traveler has more or less than \$5,000 in monetary instruments which he has not reported? The standard is impossible to apply in this context without a potential for abuse or enormous proportions.

The Supreme Court has but recently emphasized the importance of proper standards for searches of American citizens. *Ybarra v. Illinois*, 48 U.S.L.W. 4023 (November 28, 1979). In that case the state of Illinois had passed a law permitting a search of anyone on premises being searched pursuant to a search warrant. The defendant was in a bar when the police came in with a search warrant looking for heroin. Each patron of the bar was patted down. When a police officer felt a cigarette pack on one patron, he took it from him and found some heroin in tin-foil packets. The Supreme Court found that

the Illinois law permitting such a search was unconstitutional. The search in that case could not be justified as a Terry search for weapons. *Terry v. Ohio*, 392 U.S. 1 (1968). The Court emphasized that any search on less than probable cause must be carefully scrutinized. "The Terry case created an exception to the requirement of 'probable cause,' an exception whose 'narrow scope' this Court 'has been careful to maintain.'" 48 U.S.L.W. at 4025. Only if a police officer has a reasonable relief or suspicion may a search be made and the search must only be for weapons, not contraband in general; "nothing in Terry can be understood to allow a generalized 'cursory search for weapons' or, indeed, any search whatever for anything but weapons."

In anything except the search for weapons, the normal probable cause standard must be applied. "The 'long prevailing' constitutional standard of probable cause embodies 'the best compromise' that has been found for accommodating the often opposing interests in 'safeguard[ing] citizens from rash and unreasonable interferences with privacy' and in 'seek[ing] to give fair leeway for enforcing the law in the community's protection.'" *Ibid.* at 4026.

In another case, *Dunaway v. New York*, 442 U.S. 200 (1979) the Supreme Court held that custodial questioning of a suspect based on reasonable suspicion—as opposed to probable cause—violated the Fourth Amendment. In that case a defendant was brought to a police station but not arrested. He was questioned about a killing that occurred. After an hour, he confessed to the crime. The state agreed that there was no probable cause to arrest the defendant before his confession. The issue then became whether he could be taken into custody and questioned based only on a reasonable suspicion that he committed the crime. Once again the Supreme Court emphasized the importance of probable cause as a constitutional standard and the limited nature of searches or seizures that could be accomplished under a reasonable suspicion standard. "The central importance of the probable cause requirement to the protection of a citizens' privacy afforded by the Fourth Amendment's guarantees cannot be compromised. . . . Hostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment. . . . The familiar threshold standard of probable cause for Fourth Amendment seizures reflects the benefit of extensive experience . . . and provides the relative simplicity and clarity necessary to the implementation of a workable rule." 442 U.S. at 213. See also *Delaware v. Prouse*, 440 U.S. 648 (1979) (random checks for driver's license and proper vehicle registration not permitted on less than articulable reasonable suspicion).

Last year the Supreme Court, in an unanimous decision written by Chief Justice Burger, declared unconstitutional a Texas law that required a citizen to identify himself when asked to do so by a police officer. *Brown v. Texas*, 443 U.S. — (June 25, 1979). The Court held that even asking for identification was a "seizure" within the meaning of the Fourth Amendment. Although the officer claimed that the defendant looked suspicious, the Court found that objective facts on suspicion were lacking.

DESIRABILITY

Congress must decide whether it wishes to grant customs officials this broad power to search every American leaving this country and every container and piece of luggage with him down to an envelope looking for monetary instruments of \$5000. The statutory standards "reasonable cause to suspect" is so minimal in terms of the search for money that every American is a potential target for a search. The Supreme Court cases

listed above indicate that any standard below probable cause must be narrowly confined to special situations such as the need to protect the physical safety of an officer. Obviously we have nothing like that situation here.

In only one other provision in the U.S. Code does the term "reasonable cause to suspect" exist (besides the customs provision previously mentioned). Section 1357(c) of Title 8 permits a search and seizure when there is reasonable cause to suspect that an illegal alien is about to enter the country. Such searches are of a totally different nature and involve the considerations mentioned in the *Carroll* case. Congress should not take this revolutionary step without a more careful consideration of the desirability of such searches.

NECESSITY

There is no showing made by the government for the need for this kind of change. Unless and until the government can show that serious abuse exists and can be solved in no other way should Congress even think of this type of provision.

In summary the ACLU is totally opposed to the provisions of H.R. 5961 permitting a search of American citizens leaving this country.

AMERICAN BAR ASSOCIATION—REPORT TO THE HOUSE OF DELEGATES

SECTION OF CRIMINAL JUSTICE Recommendation

(This report with recommendations has been approved by the ABA Criminal Justice Section Council, but not by the ABA House of Delegates or Board of Governors. Until approved by the House or Board, it does not constitute ABA Policy.)

The Criminal Justice Section recommends adoption of the following resolutions:

Resolved, That the American Bar Association opposes H.R. 5961 (96th Congress), or similar amendments to the Currency and Foreign Transactions Reporting Act.

Be it further resolved, That the American Bar Association supports legislation similar to the forfeiture provisions for illegal alien smuggling (8 U.S.C. 1324(b)) to protect innocent owners of monetary instruments.

REPORT

Introduction

Legislation has been introduced in the 96th Congress (H.R. 5961) by Congressman John J. LaFalce (D-N.Y.) to amend the Currency and Foreign Transactions Reporting Act (which is part of the Bank Secrecy Act). That Act, passed in 1970, now requires anyone transporting in or out of the U.S. "monetary instruments" in excess of \$5,000 to file a formal declaration (31 U.S.C. 1101(a)). Failure to do so may result in a criminal penalty (31 U.S.C. 1058; one year or \$1,000), a civil penalty (31 U.S.C. 1102, an amount equal to the monetary instruments), and a forfeiture (31 U.S.C. 1102) of all the funds, including that less than \$5,000. *Ivers v. U.S.*, 581 F.2d 1362 (9th Cir. 1978).

These statutes were expressly aimed at narcotics dealers whose funds could be monitored or seized pursuant to these provisions. The broad penal provisions cover any monetary transfer—even though no connection with narcotics is established. The sanctions follow from a failure to disclose. Some courts have required a notice (a sign at the airport would be sufficient). The statute requires notice of the status of the transporter, destination, consignor and consignee, and type of instrument (31 U.S.C. 1101(b)). Failure to file may result in the forfeiture of the funds belonging to innocent third parties, although federal administrators may, in their generosity, grant relief or remission (31 U.S.C. 1104).

H.R. 5961 (copy of which is attached to this report) has three principal components—an "attempt to transport" provision, warrantless searches, and compensation for informants—all of which are deeply troubling to the Section of Criminal Justice. As a result, we urge the American Bar Association to go on record in opposition to the legislation.

STATUS OF THE LEGISLATION

H.R. 5961 was reported out of the House Banking Committee on March 18, 1980, and, as of date of this report, was pending in the House Ways and Means Subcommittee on Trade. Hearings were held by that subcommittee in April, and it is expected that markup will begin shortly. A companion bill, S. 2236, sponsored by Senators William Proxmire (D-Wis.) and Lloyd Bentsen (D-Tex.) is pending in the Senate Banking Committee. The bill has received support from the Departments of Treasury and Justice and the Drug Enforcement Administration. Nonetheless, the Section believes that there are serious deficiencies in the legislation—no matter how worthwhile its objective of reaching narcotics traffickers—which must be addressed, and opposed, by the organized bar.

PROBLEMS IN H.R. 5961

We will separately address the three focuses of H.R. 5961 and point to the problems which we see in each:

(1) *Attempt to transport*: While recognizing the worthwhile law enforcement objectives of the proposed "attempt" provision in H.R. 5961, we believe it is improperly drafted. As such, it would lead to a broad expansion of existing law. The present statute covers the individual who "transports or causes to be transported monetary instruments." 31 U.S.C. 1101(a)(1). The addition of "attempts to transport" is intended to reach the person departing at an airport, for example—for that person is not outside the U.S., but is about to commit the offense. Under the present statute, law enforcement officers must wait until a person has actually left the country before arresting him or her. The proposed attempt provision has not been limited to the immediate departure area, however. The expanded statute could also be applied to a bank messenger in New York City if he had taken one step leading toward delivery outside the U.S. Money or security transactions over \$5,000 are not uncommon. The creation of attempt without limitation to the stated need of reaching narcotics trafficking, and without the limitation to the departure area setting, is unwarranted. As a result, the Section believes this change in current law should be opposed.

(2) *Warrantless searches*: Searches may be conducted without a warrant under current law at ports of entry, the border, or "functional equivalents" of the border. A pat-down (intensive or otherwise) is permitted, but case law interposes some limited restraints (less than probable cause) on a "strip search" ("reasonable suspicion") or a "body cavity search" ("plain suggestion"). For body cavity searches, some believe there should be the intervention of a magistrate (search warrant). Telephonic warrants (F.R.Cr.P. 41(c)) make the judicial officer readily accessible. H.R. 5961's provision would abrogate or eliminate the warrant authorization now contained in 31 U.S.C. 1105(a), which extends to persons. If a search warrant is presently required for a detained locked footlocker (*U.S. v. Chadwick*, 433 U.S. 1 (1977)) or an unlocked suitcase (*Sanders v. Arkansas*, 442 U.S. 753 (1979)), it should also be necessary for detained persons.

The proposed amendment would expand the warrantless search now allowed to departing vehicles and persons. The propriety of such searches at the border has been approved by one Circuit (*U.S. v. Stanley*, 545 F.2d 661 (9th Cir. 1979), cert. denied, 436 U.S.

917 (1978)), but the proposed statutory change in H.R. 5961 does not indicate at what place those warrantless searches would be authorized. This is a major deficiency in the bill which deeply concerns our Section. Further, the opportunity for such warrantless searches would greatly increase with the expansion of the statute to include "attempts" (as described above).

This new warrantless search procedure would authorize a "reverse customs search," permitting searches of all persons and vehicles leaving the U.S. Although a mechanism for the search of all persons under this proposal may not be feasible or sound public policy, searches conducted on a selective basis would be impermissible. *Delaware v. Prouse*, 440 U.S. 648 (1979).

(3) *Compensation of informants*: The legislation would amend the statute by providing large-scale payments (25 percent of the amount seized or not more than \$250,000) for information on non-disclosures that result in seizures of more than \$50,000. The serious danger of providing such payments, however, is not addressed by the sponsors. The undue incentive could lead to manufactured or manipulated violations—which in themselves might be minor or technical—where, we fear, the word of the informant might be treated as sacrosanct. A substantial reward could be obtained for a forfeiture that is in no way connected with a narcotics transaction—or with any criminal misconduct. If a financial incentive is necessary, it should not result in a lifetime windfall. Balancing the need for information against the known dangers of informant testimony, the reward provision should be materially reduced.

Under H.R. 5961, the reward would not be available to an "officer or employee" of the U.S., or of state or local government, yet no bar is made to payments to paid government informants. This is yet another deficiency in the legislation.

NEED FOR LEGISLATION TO PROTECT INNOCENT OWNERS OF MONETARY INSTRUMENTS

In February, 1980, the ABA House of Delegates, at our Section's recommendation, went on record in opposition to amendments to Section 274 of the Immigration and Nationality Act of 1952, since, under that legislation, there were no due process protections for innocent owners when vehicles used in alien smuggling were seized. Similarly, we urge the House of Delegates to support legislation comparable to existing forfeiture provisions for illegal alien smuggling (8 U.S.C. 1324(b) (copy of which is attached) to protect innocent owners of monetary instruments seized under the Currency and Foreign Transactions Reporting Act. As we pointed out in our February report to the House of Delegates, if the owner is innocent, he or she should be restored to the status quo ante. Forfeiture proceedings should not be used as a device to penalize without due process protections.

Respectfully submitted,

RICHARD E. GERSTEIN,
Chairperson.

UNREASONABLE SEARCH? OPPOSITION MOUNTS TO PENDING AMENDMENT TO THE BANK SECRECY ACT

(By Shirley Hobbs Scheibla)

WASHINGTON.—In a highly unusual about-face, Rep. John J. Cavanaugh (D., Neb.) now is opposing a bill he originally sponsored. It's an amendment to the Bank Secrecy Act the Administration is promoting, ostensibly as a means of curbing traffic in drugs. "I figured we should do anything we could to curtail this," says Cavanaugh. "I later learned that we were making necessary and legitimate conduct illegal which in 99 percent of the cases would have nothing to do with drug trafficking."