

INTERNATIONAL NARCOTICS CONTROL PROGRAMS

HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
INTERNATIONAL OPERATIONS  
OF THE  
COMMITTEE ON FOREIGN RELATIONS  
UNITED STATES SENATE  
NINETY-FIFTH CONGRESS  
SECOND SESSION  
ON  
OVERSIGHT OF THE INTERNATIONAL NARCOTICS  
CONTROL PROGRAMS

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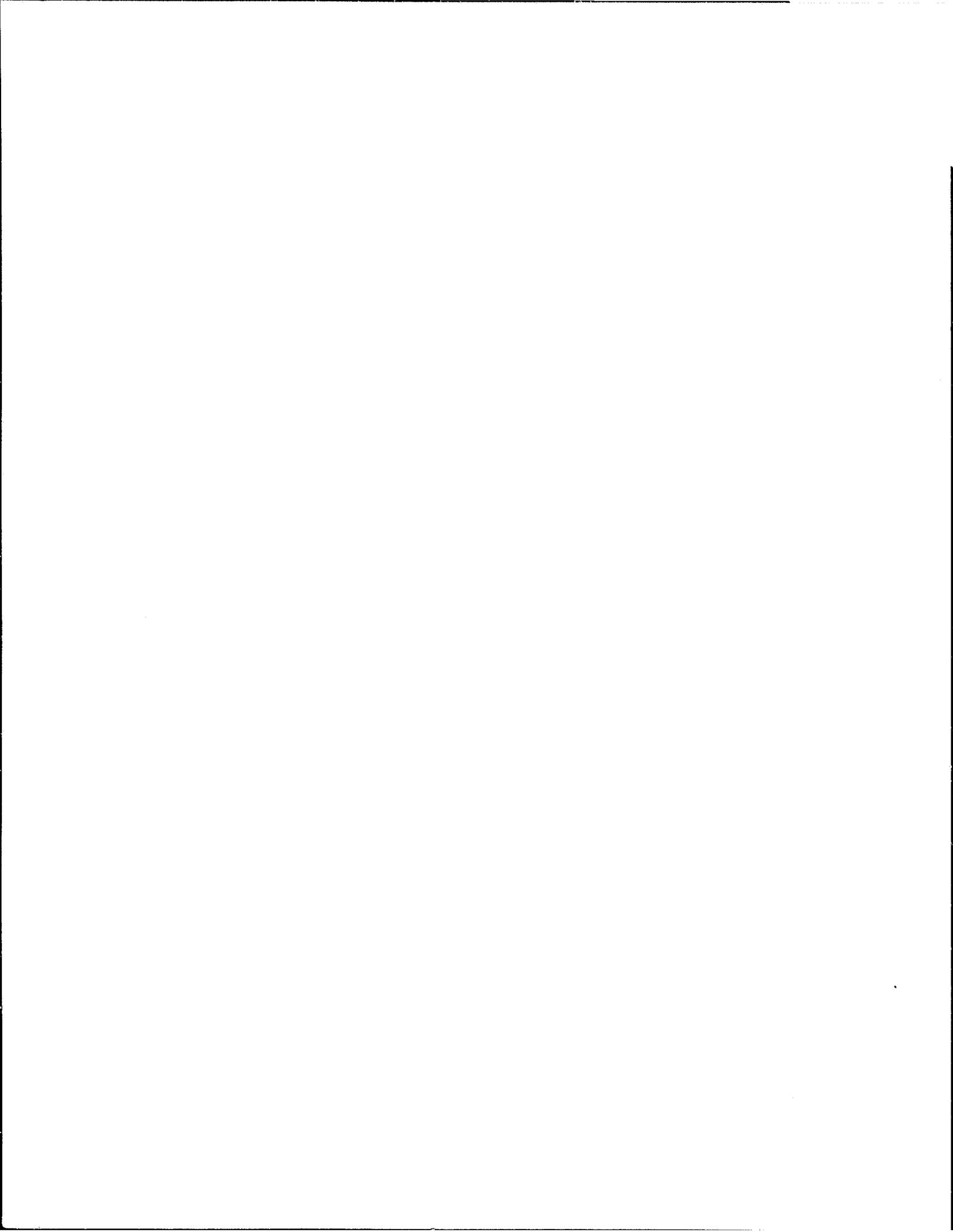
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## INTERNATIONAL NARCOTICS CONTROL PROGRAMS—MEXICO

TUESDAY, MAY 9, 1978

UNITED STATES SENATE,  
SUBCOMMITTEE ON INTERNATIONAL  
OPERATIONS OF THE  
COMMITTEE ON FOREIGN RELATIONS,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 2:30 p.m., in room 4221, Dirksen Senate Office Building, Hon. George McGovern (chairman of the subcommittee) presiding.

Present: Senator McGovern.

Senator MCGOVERN. One of the problems with afternoon hearings is that we sometimes have to compete with Senate rollcalls. We are in the middle of a series. I have already voted on the first two, but there may be a third one shortly. If that happens, we will go until the middle of the rollcall, and then I will have to ask you to wait until I get back.

### OPENING STATEMENT

This afternoon the Subcommittee on International Operations is holding an oversight hearing on the \$40 million-per-year international narcotics control program. Today's hearing will focus on the flow of illicit drugs across the United States-Mexico border and the U.S. Government response and performance in border drug interdiction.

In this connection, there have been a number of reports that Federal agencies responsible for law enforcement along the border operate almost independently, with little coordination and often duplicating each other's activities. In the judgment of many observers, these separate yet similar lines of effort are diluting border coverage and control. If this is true, perhaps we can try to clean up our own acts at our own borders before we start criticizing countries like Mexico for their drug control shortcomings.

Since the late 19th century, this country has invested a considerable amount of energy in the effort to prevent the nonmedical use of narcotics and other dangerous drugs. Beginning in 1870, with the imposition of a duty on the importation of opium, the Federal Government has assumed a progressively larger role in the attempt to deal with this phenomenon. In our own time, and especially during the past decade, that role has expanded considerably, embracing a broad spectrum of activities, both at home and abroad. On the international level, we fund an assistance program to promote the antidrug activities of other nations. In addition, we have

carried our own law enforcement efforts overseas and have established a network of Drug Enforcement Administration (DEA) agents in key drug-producing foreign countries.

#### WITNESSES

This afternoon's hearing, in the form of a panel, will focus on the problem of the management of our own borders as that function relates to the flow of drugs into the United States. Following the panel, the subcommittee will hear from Keith Stroup, executive director, National Organization for the Reform of Marihuana Laws, on the paraquat issue.

The subcommittee is interested in hearing about our border narcotics efforts. To get a balanced picture, we have sought the views of concerned State officials as well as those of the principal Federal agencies involved. I think in this respect we are fortunate in having with us today the attorney general of New Mexico, Mr. Toney Anaya, who has taken a deep interest in this issue and has provided strong and forceful leadership on this subject.

We are also pleased to have with us Dr. Peter Bourne, Special Assistant to the President for Health Issues. From the Federal agencies, we have Mr. William Anderson, Deputy Director, General Government Division, General Accounting Office; Mr. G. R. Dickerson, Deputy Commissioner, Enforcement, Immigration and Naturalization Services; and Mr. Gordon Fink, Assistant Administrator for the Office of Intelligence, Drug Enforcement Administration.

Gentlemen, on behalf of myself and the subcommittee, we want to welcome you here this afternoon. In view of the fact that we have a number of witnesses to be heard, I suggest each one of you open with a brief statement and then we will save more time for the questions.

We will begin with Mr. Anaya.

#### STATEMENT OF HON. TONEY ANAYA, ATTORNEY GENERAL, NEW MEXICO

Mr. ANAYA. Thank you very much, Mr. Chairman.

I greatly appreciate the opportunity to appear before you today and present to you some of the activities the border States themselves have been involved in and why this issue is of great importance to us.

I do have a prepared statement which I would respectfully submit in its entirety for the record, and would attempt to summarize it.

Senator McGOVERN. All right, without objection, all of the prepared statements will be printed in the record and each of you can summarize the highlights of your statement.

Mr. ANAYA. Thank you, Mr. Chairman.

#### EXTENT OF NARCOTICS TRAFFICKING PROBLEM

Most of the remarks I make will pertain to New Mexico, but could easily apply to Arizona, Texas, and California, the four border States bordering Mexico. The problem of narcotics trafficking is a big problem in New Mexico. It is, beyond a doubt, our single biggest crime problem in the State. It is compounded by the

fact that we do border Mexico, and the heavy traffic—we are a conduit, the State of New Mexico is a conduit for the narcotics trafficking from Mexico and other South American countries.

In 1975, by way of emphasizing the extent to the problem, the latest DEA figures we have available show that 89 percent of the heroin reaching us came from poppies grown in Mexico. Of the marihuana coming to the United States, 75 percent originated in Mexico. A third of the Colombian cocaine passed through Mexico, and one-third of the dangerous drugs entered from Mexico.

To the extent that these figures have changed, perhaps some of the other Federal officials might bring us up to date, but it highlights the extent to the problem, Mr. Chairman, that we face with our bordering with Mexico. We have many wide-open spaces with many landing strips for small aircraft. There is no way that our border has been secured to try to keep the heavy volume of aircraft that comes across almost nightly and slips in under what minimal radar there is.

Almost on any given night, at any given place in the State of New Mexico, there are aircraft landings with heavy loads of marihuana. The ports of entry are being used on a daily basis. Individuals are coming across from Mexico on foot or in cars, smuggling in heroin and cocaine. Again, I emphasize that it is undoubtedly the biggest crime problem for the State of New Mexico.

#### ATTEMPTED INITIATIVES AT STATE LEVEL

We have attempted a number of initiatives at the State level, primarily in response to what we perceived at the State level as a lack of Federal attention to the narcotics smuggling problem in the Southwest. Senator DeConcini was one of the leaders before he came to the Senate in originating a strike force in Arizona which has now led to a quad-State project involving the States of Arizona, New Mexico, Colorado, and Utah. In New Mexico, we have recently initiated a State strike force through my office, tied in very closely with the State Police—the State Police being under the Governor's jurisdiction.

We initiated 2 years ago, Mr Chairman, a series of border crime conferences sponsored by the attorneys general of Texas, New Mexico, Arizona, and California. Through this series of conferences—we just finished our third conference, in Albuquerque, and most of the gentlemen here on the panel were also there—we were able to, through this series, establish a better line of communication with the Mexican Government. In fact, the Mexican deputy attorney general, Oscar Flores Sanchez, and his deputy Samuel Alba Leyva, who are in charge of the narcotics eradication project in Mexico, have attended these conferences.

I personally have flown to Mexico and visited with the Mexican attorney general and discussed the mutual problems we have. and I think it is important for the committee to understand that we have the utmost cooperation from the Mexican Government, and for what is viewed in Mexico as a problem for humanity, not necessarily a problem for Mexico or the United States.

## EFFORTS PUT FORWARD BY MEXICAN GOVERNMENT

On the Mexican side, Mr. Chairman, before I briefly outline the problems on the United State side, on the Mexican side, in our conversations with the attorney general of Mexico and his deputy, I have come to greatly respect the efforts put forward by the Mexican Government. They have literally declared war on the narcotics traffickers in Mexico. It is an effort that has been underway for almost 2 years now. I know there is a great deal of controversy over the eradication program but we have got to recognize the heavy volume of traffic coming in from Mexico in narcotics being grown and manufactured in Mexico and the Mexican Government has committed to 100 percent eradication of the various poppy fields and marihuana plants.

Recently, on the trip I made to Mexico City, approximately 1½ months ago, the Mexican Government has committed to a joint effort to try to identify the laboratories in Mexico, and those who are trafficking, not only growing the drugs, but who are also processing and trafficking the narcotics.

Mexico is presently developing, with the assistance of the DEA and State Department, they are developing an intelligence network that should be on line within the next few months. This is very key and should be encouraged, and should be assisted.

The intelligence network will tie into the DEA El Paso Intelligence Center, which in turn will be made accessible to border States and other States on the U.S. side. This network of an intelligence system is very key if we are to really—everyone talks about the heavy trafficking problem, but until recently we have really not taken positive steps, I do not think, to try to identify just who is involved in narcotics trafficking, both on the Mexico side and on the U.S. side. The support that we have received from the Mexican Government, Mr. Chairman, I would not underscore too greatly in terms of the need for it, the need to continue this, and I certainly commend the Mexican Government for the support they have provided.

## PARAQUAT PROBLEM

As an aside, I know that there has been a great deal and the committee will hear today a great deal of controversy about the paraquat problem. I would simply pass on what the attorney general of Mexico has told me personally and, I know, has told other officials in the United States, that they view the eradication program as totally a Mexican-run, Mexican-funded eradication effort, that they are committed to totally eradicating the sources of illegal narcotics, and that regardless of what discussion happens here on this side of the border, regardless of what controversy there may be here, that they feel that any efforts that they wish to undertake they will continue to undertake those efforts.

They recongize that questions have arisen regarding the potential health problems of paraquat, and they are proceeding to take additional steps to try to minimize any health problems which at this point they are not convinced exist, but they are taking additional steps, such as providing a dye in the marihuana that has been sprayed, and other ways of tipping individuals off.

Very simply stated, Mr. Chairman, I think that the Mexican Government has certainly, by having provided all of the resources necessary, by having coordinated all of the resources through one source, the attorney general of Mexico, is far ahead of any effort in the United States either in terms of commitment or in terms of execution.

#### U.S. MULTIAGENCY, MULTIJURISDICTIONAL PROBLEMS

We have, I feel, made tremendous progress on this side of the border in recent months as a result of our pointing out the very serious problems in not only the lack of cooperation among the Federal, State, and local agencies, but the outright competition, Mr. Chairman. We have come up with many, many horror stories where Federal DEA agents and our local State police were actually in competition with each other, undermining each other's cases, crossing each other up, attempting to embarrass each other in an effort to make the other agency look very bad in this whole effort.

With the assistance of Pete Bensinger, director of DEA, we have been able, hopefully, to put an end to this kind of jealousy, this kind of competition, but we have got a long way to go to insure that everyone pulls in the same direction.

We have been very pleased with the support that the administration has been providing to our efforts, which we feel we had to force everybody's attention, but we feel we have been successful in that regard, in Dr. Peter Bourne himself having attended our last conference of the border States in Albuquerque, and every one of the major Federal agencies that deal with the problem were in attendance. I think now everyone is talking. We are communicating. We are coordinating, but I think we still have a long way to go in terms of coming to grips successfully with the problem.

The multiagency, multijurisdictional problems we have are something which I feel Congress will have to address along with the administration, to streamline the Federal attack against narcotics trafficking and the problem along the border. Of course, we have the problem of lack of resources, for example, at the Customs Service. It only has one airplane for the whole United States, one airplane fully equipped with the proper radar equipment.

We have been, with the assistance of Dr. Bourne and others, attempting to try to get additional resources for the Customs Service. One example of great assistance that could be made immediately but has not been forthcoming would be the assignment of Department of Defense aircraft to the Customs Service. We have heard the arguments from the Department of Defense that they do not have the necessary resources to turn loose.

I am highly suspicious as to that argument. I cannot believe that with the literally hundreds of thousands of aircraft that the Defense Department has, that somewhere we could not find a few of them fully equipped to turn over to the Customs Service.

#### RECOMMENDATIONS

Mr. Chairman, in my prepared statement I have made quite a number of recommendations in terms of what I feel needs to be done to improve this. Let me just address one of those several

recommendations that is more directly in line with the committee's hearings.

Mr. Chairman, I think we need to encourage at a Federal level the continued efforts on the Mexican side and other foreign countries, the continued effort to eradicate and deal with the problem of cultivation of illegal narcotics. Mexico is attacking this problem, but realistically they must look at some additional assistance to replace the crops. Obviously, it is a source of great amounts of financing for a country that is extremely poor, and while they have rejected other forms of assistance, I think perhaps a view toward seeking some way to help the Mexican Government find other alternate crops, other means of assisting their economy would certainly go a long way toward getting the population's acceptance of their Mexican Government's eradication efforts.

In this regard, the State Department's international narcotics control program we fully support in the Southwest as an effort that must be continued.

Mr. Chairman, in terms of the laboratories that I mentioned earlier and the intelligence capabilities, we must assist, we must cooperate with the Mexican authorities in terms of insuring that we are able to identify everyone involved in narcotics trafficking. We have, I think, in this country concentrated for too long on busting the individual marihuana user, the individual dope addict, and have not concentrated our efforts on those who have been pushing, those who have been making the profits, the financial institutions both in this country and overseas who are responsible, and many of them knowingly responsible for financing many illegal operations dealing in narcotics trafficking. To the extent that this committee has the jurisdiction of insuring that the resources are made available to our agencies on this side of the border, to the extent that this committee has the jurisdiction to look at the possibility of merging some of those functions, I would certainly encourage it.

With respect to this country's assistance to Mexico and assistance to agencies such as DEA who have agents out in the field, who have agents out in Mexico, we must ensure that we have the necessary resources to attack the problem.

#### IMPORTANCE OF SOLVING NARCOTICS TRAFFICKING PROBLEM

Mr. Chairman, I have tried to skim over very quickly some of the major problems that we have. I again cannot emphasize any to strongly the importance of finding a solution for the narcotics trafficking problem. We view it as a Federal problem because the trafficking is coming in from across and international boundary, and yet we feel that in the past, until very recently, the Federal Government, the administration, the previous administration, and the Congress, had simply not paid enough attention to the problem in the Southwest. Now we are getting some attention. What has been lacking has been congressional attention, and hopefully as a result of these hearings and any followup action from Congress we will be able to declare war on narcotics trafficking, as I feel Mexico has, and that we hold up our commitments on this side of the border as well.

Thank you, Mr. Chairman.

[Mr. Anaya's prepared statement follows:]

PREPARED STATEMENT OF HON. TONEY ANAYA, NEW MEXICO ATTORNEY GENERAL

INTRODUCTION

Mister Chairman, members of the subcommittee, I appreciate the opportunity to appear before you today and convey some of the views on drug enforcement which we have developed in the Southwestern border area of the United States.

As you may know, the four border state Attorneys General have jointly sponsored a series of conferences over the past two years which have dealt with border crime problems. One motivating factor for this joint effort by the four border states was the lack of federal attention to the international crime problems which flow from our border with Mexico. The first conference was hosted by California Attorney General Evelle Younger and was initially designed to focus on the undocumented alien problem and the prisoner exchange treaty with Mexico. I prevailed upon General Younger to include drug enforcement in the agenda due to problems which had come to may attention in New Mexico and throughout the Southwest involving coordination among the different agencies involved in drug enforcement. Attorney General Griffin Bell was present as was his counterpart from Mexico, Attorney General Oscar Flores-Sanchez. The Mexican contingent included several other federal officials and they were all present as observers. The second conference, held in El Paso in October of 1977, was hosted by Texas Attorney General John Hill. General Hill broadened the scope of the role of the Mexican federal authorities and included them as working conference participants. The unique feature of the conference series is its inclusion of both operational and policy level personnel in the working sessions. Attendees include Assistant Treasury Secretary Richard Davis, Customs Commissioner Robert Chasen, DEA Administrator Peter Bensinger, Dr. Peter Bourne, Chairman of the Office of Drug Abuse Policy and Immigration and Naturalization Service Commissioner Leonel Castillo along with the heads of the various state police agencies involved in drug enforcement and the four border state Attorneys General. Both of the first two conferences resulted in resolutions and recommendations in the drug enforcement area. The formation of policy level committees from the involved agencies and the development of task force drug enforcement programs were the most important.

The latest in the series of meetings was held in Albuquerque last month, and as host of that meeting I limited its scope to drug enforcement issues. Well over two hundred federal, state and local police and prosecution officials attended from both the United States and Mexico. As a result of our third conference we are forming interim working committees of state, local and federal authorities to provide input into national policy in the areas of drug enforcement, border management, undocumented aliens and property crimes. I hope the information which I have obtained by personally participating in the conference series as well as other meetings and discussions I have had on a national and international level will be of benefit to you.

BORDER STATES ENFORCEMENT PROBLEM

The peculiar enforcement problem which we face in the Southwest can be split into two major categories, the air smuggling of bulk marijuana from Mexico into the United States and the smuggling of cocaine and heroin through authorized ports of entry. The president has estimated that over eleven million people in this country are regular marijuana users. The major source of marijuana continues to be the fields of the State of Sinaloa, Mexico, and other cultivation areas in that country and in nations farther South. The Drug Enforcement Administration (DEA) estimates that in 1975:

- 89 percent (5.2 metric tons) of the heroin reaching the United States came from poppies grown in Mexico;
  - 75 percent (2,700 tons) of the marijuana coming into the United States originated in Mexico;
  - one-third of Colombian cocaine (4 to 5 tons) passes through Mexico, and
  - one-third of the dangerous drugs (16 million dosage units) entered from Mexico.
- Much of this was believed to represent diversions from U.S. exportations. It is unknown to what extent those figures have changed since 1975.

The ease with which one can obtain bulk quantities of marijuana in Mexico and its low cost there, couple with the demand in this country to produce a market capable of affording a 500% profit or greater in only a few days turnover. The air smugglers consequently can afford to pay their help well to insulate their operations from infiltration; they can afford to bond out of jail and disappear even when

faced with six figure bonds; they can afford the very best in equipment and armaments.

Our State Police in New Mexico, along with the U.S. Customs Service, recently effected the seizure in a marijuana case of a Mitsubishi twin jet turbine powered aircraft, the Rolls-Royce of small planes, worth somewhere in the neighborhood of a half million dollars.

Catron County, New Mexico, an area of over 6,800 square miles, that's in excess of four million acres, has one and a half full time peace officers serving its population of under 2,000. Catron County also has over 100 identified clandestine landing strips. Our state police conducted a raid on a strip there last year with federal authorities participating. They went in on board a borrowed but unarmed national guard helicopter with military markings. Fortunately, the crooks were intimidated by the approach of this aircraft, because their landing strip was guarded by two M-60 machine gun emplacements, giving them more than enough firepower to have knocked the chopper and its passengers out of the air with ease.

While the smugglers have all the latest in equipment, the resources of the enforcement agencies are sadly lacking. For example, the New Mexico State Police Air Detail has no airplanes with which to engage in pursuit or surveillance. The U.S. Customs Service Air Support Branch has only one airplane nationwide which is equipped with the type of radar needed to perform night surveillance. The unit available to us in New Mexico is based in El Paso. The planes there are all old and most are seizures from drug smugglers, a group notorious for avoiding the costly upkeep required to make an airplane safe.

Our radar coverage of the border area in the Southwest is in an equally appalling state. Through the combined efforts of Customs and FAA radar operators we can scan only 30% of the border from Brownsville, Texas to San Diego, California. We're lucky! The coastal radar protection from Brownsville on East to Florida is only 10%. If a fully armed Cuban fighter plane can penetrate this border, it's no small wonder that the bulk marijuana smugglers are doing it on a daily basis and reaping immense profits from their endeavors.

State authorities are actively involved in enforcement efforts against bulk smugglers of marijuana. However, enforcement along the border itself, and especially at the ports of entry, is an area of exclusive federal jurisdiction. Thus, New Mexico plays no role in the interdiction efforts aimed at transportation of the more easily concealed drugs of heroin and cocaine through authorized check points. There has been some indication of air smuggling of these drugs. A half dozen marijuana cases out of forty worked jointly by the State Police and Customs in the last few years also involved amounts of cocaine and heroin. However, the quantities were small in those cases. The lack of bulk heroin and cocaine seizures from either air smuggling cases or unauthorized crossing cases evidences the importation of these drugs through ports of entry concealed either on the person, in vehicles or in packages. Official estimates are that only about 2 to 4% of the heroin being smuggled into the country in this fashion is being stopped.

#### ENFORCEMENT RIVALRIES

Unfortunately, our only enemies are not the crooks. We also have a management problem in the drug enforcement area which impairs our efforts at the state and federal levels. That problem arises as a result of concurrent jurisdiction without communication, differing priorities without direction, and fragmentation of effort without coordination. For example, a violator caught with the goods in Southern New Mexico may find the Las Cruces Police Department, the Dona Ana County Sheriff's Office, the New Mexico State Police, the Metro Narcotics Squad, the U.S. Customs Service and the Drug Enforcement Administration all competing for the collar. I apologize if I have left anyone out. After the arrest he may be prosecuted by the United States Attorney, the Third Judicial District Attorney for New Mexico or the Attorney General of New Mexico, or by some combination of the above.

Until recently, our main problem had been between the New Mexico State Police and DEA. Without attempting to lay the blame at either agency's door, but thereby laying it upon both, let me recount an incident which may bring the situation into focus. Agents of one level of government working in New Mexico began a surveillance on a deserted landing strip, a few ramshackle buildings and an airplane located in southern New Mexico. They had worked on the case for some time, tying the plane into narcotics smuggling flights. It was their wish to catch the crooks in the act and the resulting surveillance was an expensive way of going about it, but also a way which offered a good probability of success. Late one night they observed a group of individuals approach the area, enter the plane, which they knew to be locked, then enter the building nearby and depart. Upon examination they found

that the subjects were agents of another level of government who had slapped a seizure notice on the windshield of the plane right under their noses, putting a premature end to their surveillance.

In another case, agents from two different organizations unwittingly found themselves with drawn guns on opposite ends of a controlled buy, each group having utilized its own snitch to make a case on the other's. It sounds a little bit like the Keystone Cops, but the result could be tragic. Even absent any injury, the real problem is that this parallel but uncoordinated enforcement saps our very scarce resources from within. The costs in effective enforcement are high, and the damage is done before anyone ever gets close to a violator.

Fortunately the situation is changing. DEA Administrator Bensinger, Customs Commissioner Chasen and other high level Federal officials have responded favorably to the states' demands for more cooperation.

Job satisfaction is an elusive commodity in drug enforcement. The agent on the street can hardly be blamed for elbowing his competition out of the way in order to get the drug violator's scalp and hang it from his own belt. We should remember too that each of these people ultimately has to answer to a funding source and the political entity from which he receives his jurisdiction. In the battle of statistics to justify expansion or perhaps only continuation of his job the number of arrests and seizures plays a major role.

The Customs Service finds itself with another area of activity in which it shares related functions with yet another Federal agency. This area involves border patrol and inspection. Both the Immigration and Naturalization Service—a Justice Department agency—and the U.S. Customs Service—a Treasury Department agency—maintain patrol offices along the border and inspection facilities at authorized ports of entry. Although each agency has its own mission they are both essentially involved in processing people. Whether the concern is an undocumented alien or a carrier of heroin, a patrol officer engaged in interdiction along the border is looking for people engaged in unauthorized crossing.

A major problem surfaces in respect to the concept of combining the Customs and I & NS patrol and inspection functions. The First Southwestern States Conference on Crime and the Border in April of 1977 dealt with the flow of undocumented aliens as well as drug enforcement and other border crime issues. A helicopter tour over the border from San Diego to San Ysidro was provided for staff members from the offices of the four border state Attorneys General. The sight they were exposed to was mind boggling. Shortly before dusk some six to eight hundred aliens massed along the border just West of Tijuana. As darkness fell they began their Exodus. Between San Diego and San Ysidro some three thousand aliens attempt a crossing each night. The twenty-six Border Patrol officers assigned to this sector perform a Herculean task in rounding up 1,000 of these undocumented aliens every night. They then release them back into Mexico. If the release occurs early enough in the night the alien can get a second shot at the three to two odds which favor his success in safely crossing. If the Customs Patrol and Border Patrol are combined without a major increase in manpower, the Customs officers might be inundated with this task. If this were to happen, it would leave them no time for any efforts at the interdiction of contraband.

The problem is, of course, lack of resources aimed at interdiction of illegal entry by undocumented aliens. As long as the economic magnet produced by the disparity in employment opportunities on the different sides of the border exist concomitant with a token manning level in the Border Patrol, this flood will continue. There does not appear to be any end in sight. The General Accounting Office's December 1977 characterization of the border as a "revolving door" is certainly accurate today.

#### DESIRED CHANGES

Analytically, the above problems can be approached from two different directions: The first involves changes within existing agencies to address the problems which have been noted. This is an avenue of attack on which state authorities have a particularly good perspective owing to daily contact with the operational arms of the various federal agencies. I will address myself to a number of specific recommendations shortly.

The second approach involves realignment of either whole agencies or particular functions within agencies in order to achieve management economies, increase operational resources and eliminate friction between existing agencies. This concept is the subject of a draft report by the President's Reorganization Project dated December 14, 1977, which dealt with and was titled "Reorganization Options Related to Border Management."

I feel a special and warm regard for the Customs Service because that agency, from the level of Commissioner Robert Chasen down to the air support personnel who work with our local authorities in New Mexico, has a record of eager and capable support, within limited means, for our enforcement efforts. I would be troubled by any consideration that this agency lose any of its border functions, especially air support. I believe that the stronger the Customs Service is in drug enforcement then the stronger we in New Mexico will be. The continuation of the Customs Service's role in drug enforcement has become an essential requirement from the standpoint of state action toward interdiction of air smugglers. Customs Air Support is by definition an organization with the mission of providing resources in support of border interdiction. The priorities of the organization are those connected with smuggling generally, not merely the smuggling of drugs. In order to assess the relative importance of a request for support coming from a state agency, the air branch might weigh the importance of interdiction of bulk marijuana shipments against the interdiction of such items as jewelry and perfume.

On the other hand, DEA is itself actively and exclusively involved on an international scope in a drug enforcement mission. Accordingly, when the state authorities approach DEA with a request for support or cooperation, the competing priorities involve the relative importance of interdiction of large amounts of marijuana as opposed to heroin interdiction. Clearly the latter carries much higher social costs. However, the observation has been made by Dr. Peter Bourne, the Chairman of the Office of Drug Abuse Policy, that enforcement justification in the two areas is in all other respects similar. I recognize the competing considerations involved between heroin and marijuana enforcement. I do not propose the commitment of resources to possession cases of small amounts of marijuana. However, let me stress that we in the Southwest are not prepared to swing wide our gates to bulk air smugglers of marijuana and allow them to add to our drug problem while at the same time filling their coffers with illegal revenues. Given the fact that border control is a federal responsibility I consider it appropriate that we receive the support we need to take this fight to the smugglers. This support can only be forthcoming if the Customs Service continues its air support role with increased resources.

#### RECOMMENDATIONS

I will now move to a number of specific recommendations I have developed over the past two years based on in depth contact both with our local enforcement authorities in New Mexico and also with the policy level officials who control the drug enforcement effort on the federal side in the United States and Mexico.

First: Increase the resources, including personnel, aircraft and technical detection and surveillance equipment, of the U.S. Customs Service Air Support Branch. The drug smugglers have already found how easy it is to move large quantities of controlled substances across our Southwestern border by air. Presently, they are concentrating on marijuana. In the future, once Commissioner Chasen's emphasis on technical detection devices at ports of entry begins to take effect, they will add bulk quantities of heroin and cocaine to their cargoes. Presently we are almost powerless to stop the estimated 4,000 to 6,000 smuggling flights a year. We have to depend almost entirely on snitches and accidents involving the smugglers' aircraft. The resources of the Air Support Branch are so strained that they can only stop twenty-five percent of the smuggling flights they know about due to shortages of manpower and aircraft.

Second: Increase the amount and sophistication of technical narcotics detection devices at our Ports of Entry. Heroin and cocaine are moving through our ports of entry because it is easier than air smuggling and involves no greater risk of apprehension. The development and deployment of technical detection devices will eventually change that. However, we must see to it that "eventually" becomes now. We must place stress in the Customs appropriation on programs which will get the job done as rapidly as possible. We have a great technology in this country. Surely the social costs of heroin abuse alone are sufficient to justify an all out effort to close off the pipeline we ourselves have established at our ports of entry. Putting the emphasis on detection devices will also maximize freedom of travel and result in minimal interference with our commerce and tourism.

We must dedicate ourselves to the proposition that our ports of entry should be very dangerous places for drug smugglers. Only in this way can we take advantage of the border as a control factor in the war on drugs rather than letting it become a shield for the violator and a barrier to our enforcement efforts. Once we close off the channel, we will be able to force the smugglers to alternatives. The first of which leaps into mind is smuggling by air. This is already the standard for the bulk marijuana smuggler in the Southwest. If we accompany an increase in port of entry

technical detection devices with an increase in the air support capability, we will meet the marijuana problem head on now and be ready when the heroin and cocaine traffickers start looking for a new method of importing their insidious cargoes.

The observation was made as part of the draft report on Border Management mentioned above that, "Any effort to make land border enforcement effective without enforcement of the air and sea borders simply invites an increase of smuggling by air and sea." Nothing could be clearer. We must be ready when it happens.

Third: Eliminate duplication of effort between DEA and Customs in the area of automated intelligence. The El Paso Intelligence Center (EPIC) system and the Treasury Enforcement Computer System (TECS) should be combined in order to maximize the information available to enforcement authorities by eliminating storage of identical information in two different locations. I have personally observed demonstrations of both systems wherein the operator summoned information from the storage banks on New Mexico heroin dealers known to me. In both cases the information on the subjects was the same. To whatever extent this overlap exists we should turn it to our advantage by freeing up personnel and storage space involved in its handling and dissemination. This can be done consistent with the unique needs of each agency because each system is already serving those needs and consolidation will simply provide even more resources.

Fourth: Concentrate our resources on targets which offer the greatest probability of success. There are three points in the drug distribution network where the trafficker is most vulnerable. The first is the cultivation area. The second is the drug laboratory or processing point. The third is the point where the drugs cross our border.

I have met with Attorney General Oscar Flores-Sanchez of the Republic of Mexico on several occasions, both in his country and here in the United States. I cannot imagine a more dedicated individual heading up the Mexican campaign against drugs. I would like to repeat for you a thought he expressed at the first Border Crime Conference over a year ago. He told us there in San Diego, with Attorney General Griffin Bell and DEA Administrator Peter Bensinger present along with the border state attorneys general, that the drug smuggling problem is not a Mexican problem. He stated further that the drug smuggling problem is not an American problem. As he said, the simple truth is that trafficking in controlled substances is a problem for all humanity.

The Mexican Federal Judicial Police, under General Flores' control, number only a few hundred agents. The drug enforcement role occupies only 7 percent of the effort of the Office of the Attorney General of Mexico. Yet they are committed to that effort. They have accepted the presence in their country of American agents and American machinery involved in the opium poppy and marijuana eradication program. They have sent their agents out into the mountains of Sinaloa and other remote areas in helicopters and jeeps. Some of these men have sacrificed their lives in the effort to destroy the sources of heroin and marijuana destined for the market we provide. I fully support the State Department's International Narcotics Control Program. We must have an ongoing effort with the commitment of resources to the nations in the world which are the source of the drugs which are sold on our streets. We must in turn seek their cooperation because programs of this nature require their commitment to be truly effective.

The supply of heroin from Turkey was the mainstay of the market in the 1960's. The Turkish government joined the campaign to cut off that supply and today it is reality. The same thing can happen in Mexico, and preliminary indications are that it is happening. The eradication program in Mexico has had a telling effect in this country on the purity of heroin, the cost of heroin (which is a function of its availability), and the number of heroin overdose deaths. For example, in New Mexico the purity of street heroin in a 100 milligram cap dropped from 5 percent in 1973 to less than 2 percent in a 30 milligram cap today.

Mexico is the tap root of the heroin problem in the United States. We must continue our support of Mexican programs to cut that tap root and kill the problem on our side of the border. We may not always be blessed with individuals such as General Flores and President Lopez-Portillo. The same effort must be made in every country which plays a major role in our narcotics network. We will never be able to enlist their support if we have not committed our resources to the battle. Accordingly, I am in favor of continued funding of the International Narcotics Control Program.

The second crucial point in the drug pipeline is the laboratory. Most of the heroin processing laboratories are in Mexico. The establishment of an intelligence link with Mexican federal authorities is a critical element in efforts to destroy the labs. Again, we must depend on cooperation from our Mexican neighbors in this endeavor.

or. I recommend the establishment of an action plan designed to target drug laboratory locations and operators and utilize the intelligence link to bring them down.

The intelligence capability of DEA will have to be expanded, not only in Mexico, but in all of the countries in South America or Asia which are part of the drug trafficking network. Let me stress for a moment the importance of intelligence information in drug enforcement. Viewed from the operational level in this country intelligence is the basis of any successful investigation. Whether the information is obtained from an informant or by surveillance, it leads to probable cause, the basis for search warrants and wire tap warrants. These investigative tools then become the basis for arrests and prosecution under conspiracy statutes, the weapon we must use to involve the kingpins of drug trafficking.

New Mexico joined with Arizona, Colorado and Utah last year to establish a four state automated intelligence sharing organization known as the Quad State Project. The hardware is presently being brought into an operational status and we are very optimistic for the future of the operation. I believe that the development of this intelligence community is the direct result of the perceived need for high quality information on drug traffickers, people who observe no state or international borders in their operations.

The same principle should be extended to the international level. DEA already has the framework in various source or processing nations to build a multi-national intelligence capability. The Attorney General of Mexico, utilizing funding obtained through the State Department's International Narcotics Control Program, has already embarked upon the development of an automated intelligence system linked to the EPIC system in El Paso. Indications are that such a capability can be very fruitful in effecting arrests and prosecutions on both sides of the border. A major blow was recently dealt to the infamous Herrera "family" of heroin traffickers using intelligence information furnished by EPIC to the Mexican authorities. Unfortunately, some of the raids which resulted were unsuccessful, due primarily to a lag in action after transmission of the information. But this problem can be remedied by efforts to bring the system up to peak operational efficiency and coordinating it with the Mexican federal enforcement effort. In my judgment, intelligence on the international level is as important, and it is crucially important, as intelligence on the local level. It is a very simplistic principle. To catch the traffickers we must identify them, their means of operation, their associates and their equipment. The more emphasis we place on this process the more success we will have.

The third important target of our enforcement effort is the point of entry of the controlled substances into the United States. As I have already stated at length, we must beef up our efforts at the ports of entry and in the Air Support Program. Again, we must utilize the border as a weapon in our war and not let it become an obstacle to enforcement.

The first two areas noted above dealt with operations outside the United States. The third dealt with the efforts of the Customs Service to secure our border. There is a fourth area where we must concentrate our state and federal enforcement resources in this country in order to maximize our chances for success. We must pick our targets, selecting the major trafficker and going after him with all the resources we can bring to bear, from whatever agency they may derive. We will have to make our cases, not merely take our cases when a snitch gets into trouble or a uniformed officer makes a bust during a routine traffic stop. In order to do this we must have available to us monetary resources to match those of the smugglers. By far, the most fruitful type of investigation in the narcotics area is the undercover operation. In order to carry such a project off there must be adequate funding of the investigation in terms of buy money and flash rolls.

The major violators never get close to the controlled substances they deal in. They leave this work to their agents and mules. To reach them our undercover officers must have enough funding to set up large transactions—transactions large enough to justify dealing with the man at the top and to cause him concern about trusting the money to his underlings. The major weakness of a drug dealer is his need or greed for money—cash money. At the same time, the major weakness of drug investigators is a lack of that same money. It will take at least four times the amount of currently available buy money to reach the top echelon drug dealer by making successively larger purchases from his subordinates. The resulting arrests would wipe out an entire organization. However, this is possible only with long and deep undercover operations backed with enough money to reach the top dog and make a buy once you get there.

We must go after financial institutions who bankroll smugglers under the guise of legitimate financial transactions. This effort should be concentrated not only on financial institutions here at home, but should extend to institutions abroad. To do

this, more resources are necessary to trace the source of the financing. This effort could pay off tremendous benefits. If you dry up the money sources to the smuggler, you dry up his lifeline.

Fifth: Eliminate unhealthy competition between the various agencies involved in drug enforcement. You might well say, "Easier said than done." This is a problem of long duration. There have been a number of attempts to address it at all levels for many years. In my judgement, whatever cooperation now exists is largely the result of personal relationships which have grown up between various officers over the years.

There is an optimistic note. I believe that the present Administrator of DEA, Mr. Peter Bensinger, is a powerful constructive force toward improved working relations between the state and federal enforcement authorities. At the first Border Crime Conference I came down hard on the lack of cooperation which had been perceived between the DEA and our State Police Narcotics Division. That division, by the way, is the largest narcotics enforcement operation in New Mexico, with a total of forty agents.

I had a very productive meeting with Pete Bensinger in Santa Fe following the San Diego conference. Together we established a council of federal and state investigation and prosecution authorities as a forum for the exchange of information. Following the first meetings of that council a cooperative multi-agency enforcement effort was established with five major air smugglers as targets. A few busts were made, a few seizures, but the relationship deteriorated. I learned a lesson. We must have formal written guidelines which control inter-agency relations and guarantee continuing cooperation. We must avoid the situation which prevailed before our council meeting, where the heads of the major state and federal agencies had not spoken to one another, even over the telephone, for over six months. Accordingly, I have recommended the following procedures to help us attack the problem:

1. Provide for mutual notification at the management level as to all cases actively under investigation.
2. Offer participation in any case to the other major agencies with jurisdiction.
3. Provide for the free exchange of intelligence information between all agencies involved in drug enforcement which can pass a rigid security screening process.
4. Establish formal written guidelines for multi-agency investigation/prosecution efforts which touch at least the following areas:
  - (a) Case control.
  - (b) Arresting agency.
  - (c) Prosecuting agency.
  - (d) Disposition of seizures.
  - (e) Source and utilization of flash rolls and buy money.
  - (f) Sharing of credit and press contacts.

Most of the above items are self-explanatory. The key element in establishing a working relationship with some degree of permanence is that it be arrived at mutually. The provisions of the Agreement must be formalized by a written accord, tantamount to a peace treaty, if you will, in order to guarantee that there is no lack of understanding as to content.

5. Establish a permanent policy level forum for ongoing inter-agency communication with the specific mission of developing the above guidelines and working out any problems as they arise.

The guidelines will necessarily vary from state to state. This is because the complexion of the enforcement problem as well as the composition of the local enforcement effort varies greatly from state to state. For example, in California, New Mexico and Texas the state Attorneys General are involved in drug enforcement. In Arizona the Attorney General is not. In Texas, New Mexico and Arizona there are State Police agencies with narcotics jurisdiction while in California there is not. Each of these states also has its own form of concentrated enforcement effort, be it multi-agency, state-federal, joint investigation-prosecution or otherwise. I think it is important for an initiative to establish a compact under which state and federal authorities will work in the future to come from the state level. Otherwise, there will be a reaction to the attempt based on the feelings of hostility and rivalry which exist historically. In New Mexico we are working on such an agreement. There have been three meetings between the involved agencies and a draft agreement has been produced. I must tell you that it is very rough. It is going to be difficult to solve the problems because they are indeed thorny. Had it been otherwise they would have been resolved long ago. But we will keep hard at it until we produce a document we can all live with and work together under.

## CONCLUSION

My final comments relate to the role of the federal government in drug enforcement. As long as the source of drugs is outside the United States this problem will be primarily a federal one. We in the Southwest stand ready to join with the federal enforcement agencies in order to present a united front in the war against drug trafficking. But first the federal government must commit itself to that war. The leadership in the executive and legislative branches must dedicate resources and cut through red tape to see that those resources are brought to bear on target. As an example of this I can again cite to the inadequate resources in the Customs Air Support Program. Congress must recognize the need to bring that operation up to a level of high efficiency. Funds must be made available now to bring this about. Meanwhile, the resources of other agencies must be turned to the drug war until the legislative solution can come about. I commend the Defense Department for its recent assignment of the AWACS radar training squadron to the Southwestern border surveillance flights. But this is not a permanent solution. Nor does it address other pressing demands that we in the Southwest are facing. The Defense Department should be required to explore every possible method of providing interim support to the Customs air program, including assigning of aircraft fully equipped with the necessary radar detection devices. The impetus for this effort must come from the President and from Congress. If it does, then surely a way will be found.

I believe that the drug problem in the Southwestern Border States has been ignored for too long by Congress and that until only recently, as a result of the initiative by the Border States themselves, had been ignored by the present and previous Administrations. This has probably been due to the distance from Washington, D.C. to the Southwest. However, Congress must recognize that the problem exists, that it is a major law enforcement and social problem for this country, and, that it is a Federal problem with international implications that must be solved with Federal initiatives. We in the Southwest stand ready to do our share. We only ask that the Federal Government recognize its responsibility and act decisively to meet that responsibility.

Again, I thank you for this opportunity and I shall be pleased to try to respond to any questions you may have.

Thank you.

Senator McGOVERN. Thank you very much. I appreciate that statement. I think you have given us an excellent overview of the problem we are looking at today.

## COMMENDATION OF DR. BOURNE

Dr. Peter Bourne is our next witness. He is not only a respected member of the President's staff, but a personal friend. I would like to welcome you, Dr. Bourne, and commend you on the efforts you have been making to bring more of a coordinated effort to our programs in this area.

STATEMENT OF PETER BOURNE, SPECIAL ASSISTANT TO THE  
PRESIDENT FOR HEALTH ISSUES, THE WHITE HOUSE

Mr. BOURNE. Thank you, Mr. Chairman.

I would like first to commend Attorney General Anaya both on his statement and on what he has been doing in New Mexico in the last several years. I think that what has been accomplished there is exactly what we at the Federal level would like to see happening, and that it has dramatically helped our effort along the border both with regard to the border contiguous with New Mexico and with the other border States as well.

I share most of the views that Attorney General Anaya mentioned in his statement. I think it is worth emphasizing a few points.

## BORDER INTERDICTION EFFORT

With regard to the flow of heroin across the border, we are probably in the best shape now in this country that we have been in any time in the last 10 years. The purity of heroin is at a very low level. The number of overdose deaths have declined quite dramatically among heroin users, down about 40 percent in the last year, and we estimate that this situation saved roughly 600 lives that might otherwise have been lost.

Most of the credit for this goes to the vigorous eradication program that the Mexicans have implemented. Their efforts to eradicate opium cultivation, we feel, is the key to the overall strategy to deal with the heroin problem in this country. The strategy that we have implemented, however, is a multifaceted one. We are concerned on the one hand about eradicating the poppy while it is still growing. We are concerned about treating heroin addicts in this country. We are concerned about going after traffickers, particularly major traffickers, and we are particularly concerned with our efforts to strengthen border interdiction.

My office last year conducted a comprehensive interagency study of the entire border management problem. As a result of that study, we made recommendations to the President's reorganization program in OMB—Office of Management and Budget—as to certain reorganizations that we thought would strengthen the whole border effort with regard to not only the drug area but the other functions that those agencies carry out along the border.

We also feel at the same time, however, that the expectations as to what we can do at the border itself in terms of interdicting the flow of drugs should not be raised too high. While border interdiction is an important part of our overall strategy, we are never going to stop the bulk of the drugs once they are in a shipment situation. Our best bet is to put most of our efforts into eradicating these drugs while they are still being cultivated. We do, however, feel that a certain percentage of the drugs can be stopped at the border. We can probably improve the percentage that we can catch and interdict. We feel, also, having a strong and effective border interdiction effort acts as a discouragement to traffickers who might otherwise feel inclined to bring drugs across the border.

I think that perhaps we are approaching somewhat of a transition point in terms of our activities at the border in dealing with drugs; shifting, perhaps, to a greater emphasis on technology rather than on increased manpower. Technology perhaps offers us the best chance to identify drugs that are being brought across the border in the future. I think also there is a limit to what the Federal Government can do, and we feel that a close coordinated partnership with the law enforcement agencies in the border States is really crucial to maximize our efforts in stopping drugs as they come across the border.

## AVAILABILITY OF AIRCRAFT

Finally, I would like to mention the specific issue that the Attorney General and I raised with regard to the aircraft. We have been in rather lengthy discussions with the Department of Defense in terms of making service aircraft available. We have on a pilot basis

looked at the possibility of using the AWACS—Airborne Warning and Control System—aircraft, which are used on training missions along the border, to help identify illegal crossings.

They have, however, been unable to provide any surplus patrol aircraft, as they would like. Apparently, they feel that they haven't any to spare at the present time that could be made available to the Customs Service. We have talked with them at some length about this possibility.

Senator McGOVERN. Thank you very much, Dr. Bourne, for your testimony. Our next witness is Mr. William Anderson, who is the Deputy Director of the General Government Division of the GAO—Government Accounting Office. Mr. Anderson, will you proceed as you see fit?

**STATEMENT OF WILLIAM J. ANDERSON, DEPUTY DIRECTOR,  
GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING  
OFFICE**

Mr. ANDERSON. Thank you, Mr. Chairman.

I am going to be speaking from a report that GAO issued in December of last year, which was the result of a comprehensive review of all of the law enforcement activities at the border as they related both to the illegal entry of drugs and to the illegal entry of people. In a nutshell, what we did in the report was first try to explain the magnitude of the problem facing the law enforcement agencies down there. There is such a large volume of licit traffic, legal traffic back and forth across that border that it creates tremendous problems in trying to not impede the orderly flow of that legal traffic while at the same time trying to provide some proper inspection.

You come away with the impression that it is pretty close to impossible, but what we did find as a result of that was, we were not very successful in interdicting the drugs that were either being produced or transiting through Mexico.

We cite some figures to the effect that in fiscal year 1976 it was estimated that about 5 metric tons of heroin came through Mexico, and that our interdiction efforts accounted for an intercept of about 100 kilograms of that, and that DEA down in the area of the border accounted for another 200 kilograms.

Overall, we succeeded in intercepting about 6 percent of the heroin.

We did speak to the overlap and duplication of functions among the border control agencies, in particular INS—Immigration and Naturalization Service—and the Customs. We also brought out this has been a longstanding problem, and we found it was not a new discovery. In fact, the executive branch itself made note of the problem a couple of years earlier in coming forward with some proposed reorganization plans.

We came away concluding that undoubtedly the efficiency and effectiveness of law enforcement could be improved at the border, were there a mechanism for better coordination of law enforcement efforts there. However, I think we also came away feeling that even with improved coordination—I will echo the words of Dr. Bourne—we would still fall far short of solving the problem at the border. Perhaps more than avoiding overlap and duplication, better

coordination of the agencies would result in an improved strategy, an overall strategy and better definition of exactly what resources we should be devoting to the border.

We point out in the report that there was about a 31-percent increase in the staff, in the manpower applied to law enforcement at the border between 1971 and 1976, a period of time where heroin from Mexico rose from 20 percent of the estimated American consumption to about 90 percent. In testimony earlier this month before Senator Culver, we came away again echoing what others in the executive branch have said, that probably the greatest hope for ultimately getting at the problem lies in eradication and interdiction in foreign countries as opposed to stopping it at the borders.

That concludes my statement, sir.

[Mr. Anderson's prepared statement follows:]

PREPARED STATEMENT OF WILLIAM J. ANDERSON, DEPUTY DIRECTOR, GENERAL  
GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE

Mr. Chairman and members of the subcommittee, you have requested that we discuss today a report of the General Accounting Office of December 2, 1977, dealing with illegal entry at the United States-Mexico border. Control of the border is basically a task of controlling the movement of people, vehicles, aircraft, boats, and goods. There are over 400 Federal laws and regulations governing entry and departure of people and goods across the border. Agencies with a role in controlling the Southwest border include the Federal Bureau of Investigation (FBI); Bureau of Alcohol, Tobacco and Firearms (ATF); Department of Defense; Federal Aviation Administration (FAA); Coast Guard; Department of Agriculture; and Public Health Service. The principal agencies involved in law enforcement are the Customs Service, Immigration and Naturalization Service (INS), and the Drug Enforcement Administration (DEA).

While it is not possible to measure the deterrent effect of the current level of border law enforcement. The available supply of drugs attests to the fact that it has not been a serious impediment to illegal entry. The substantial Federal investment for enforcement at the Southwest border is achieving only a limited measureable impact on the drug problem.

Border forces interdict only a small quantity of the estimated heroin and cocaine entering the United States from Mexico. Most seizures are of marijuana. In fiscal year 1976, Customs and INS seized about 2 percent of the heroin, less than 1 percent of the cocaine, and 10 percent of the marijuana estimated to come from and through Mexico. When DEA's border area seizures are added, these interceptions equal 6 percent of the heroin, 3 percent of the cocaine, and 13 percent of the marijuana. It is fairly obvious that the quantity of drugs being interdicted is not having a significant impact on the drug problem. This is especially true when one considers that these figures presume the drug seizures to be 100-percent pure while the purity at border seizures are generally significantly less—usually below 50-percent purity.

Border apprehensions seldom involve high-level traffickers. The overwhelming majority of persons crossing the border in possession of drugs who are apprehended by Customs and INS are drug users, small-time operators, couriers, or low-level members of drug trafficking organizations. DEA's data shows that less than 2 percent of the interdictions referred from INS and Customs involve major violators, and about three-fourths of these were marijuana violators.

Over the past few years the Congress, the executive branch, and GAO has issued reports identifying problems among Federal border enforcement agencies and containing suggestions for improving their cooperation and coordination. While some recommendations have been implemented and outward appearances have changed as a result of these efforts, the essential characteristics of the problem remain. Separate agencies with different orientations continue to identify the best means to meet their specific missions, with limited consideration for the activity of the others. This has led to the development of separate but similar lines of effort that continue to dilute border coverage and impact. Little consideration is given to overall border security.

There is obviously a need for an integrated Federal strategy and comprehensive border control plan. Assignment of border control responsibilities to a single agency

would be the surest way of achieving this. Pending any decision in this regard, we believe:

The executive branch should provide the Congress, along with its appropriations requests, an overview of law enforcement along the United States-Mexico border. Included in this overview should be an analysis which brings together the budget requests and law enforcement strategies of the various border law enforcement agencies.

The Office of Management and Budget, Office of Drug Abuse Policy, and the principal border agencies should develop an integrated strategy and comprehensive operational plan for border control. This plan should consider the various alternatives to managing border operations ranging from the present management structure to single-agency management.

The President's Reorganization Project has circulated a document containing reorganization options related to border management to various individuals and groups for comment and suggestions. Until agreement is reached on the fundamental question of purpose or mission at the border, the selection of reorganization options would appear to be premature. Ironically, and perhaps predictably, since the current efforts toward reorganization were initiated, the agencies involved in border enforcement have placed an increased emphasis on voluntary cooperative agreements. Similar abortive efforts in the past do not convince us that any lasting good will result.

Some hard decisions remain to be made regarding how this country can best respond to its Southwest border problems. The options range from the extreme of a politically and economically infeasible "Berlin-wall" arrangement that would almost guarantee no illicit intrusion to the loose controls over entry along the Canadian border. Somewhere in between lies an optimum mix of people and resources that should be applied to the border. Development of an overall Federal strategy is the first step that needs to be taken in coming to grips with this major problem.

This concludes my prepared statement, Mr. Chairman. We would be pleased to respond to any question.

Senator McGovern. Thank you very much for your statement, Mr. Anderson. We will move on now to Mr. Dickerson, who is the Deputy Commissioner of Customs, Department of Treasury.

**STATEMENT OF G. R. DICKERSON, DEPUTY COMMISSIONER,  
U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY**

Mr. DICKERSON. Thank you, Mr. Chairman.

I welcome the opportunity to join this distinguished panel and discuss with you today the problems that we have in narcotic law enforcement on the Mexican border. The problem that we face is a tremendous one. I do not know that anyone can say with specificity how much narcotics move across the border. However, the amounts that have been seized are in themselves tremendous.

**MAGNITUDE OF PROBLEM**

Last year, on a nationwide basis, Customs together with Coast Guard and other agencies seized over 1,600,000 pounds of marijuana, 16,000 pounds of hashish, almost 300 pounds of heroin, and 951 pounds of cocaine. Along with this, we seized some 11,000 vehicles, 285 vessels, and 121 aircraft.

I think this is just some indication of the volume and magnitude of the problem we face, a volume which I personally feel probably approaches what we had in the smuggling of liquor during prohibition days. In fact, we estimate that along the southern border every day between 27 and 50 aircraft illicitly penetrate the U.S. border, smuggling narcotics.

The problem which has been mentioned by Mr. Anderson is the endless volume of cargo and people crossing our borders, and the extensive length of the border, some 96,000 miles around the entire

country and some 2,000 to 3,000 miles just between our country and Mexico.

#### EFFORTS TOWARD IMPROVED COOPERATION AND TECHNOLOGY

The solution to dealing with this voluminous narcotics smuggling problem is not an easy one. I think that the two keys, the things we are focusing on are, one, to improve our cooperation with the other agencies also involved in narcotic law enforcement, since the endless area to be covered makes it impossible for any one agency to be independently successful in this area, and, two, we are concentrating our efforts very heavily on improved technology. We are working with devices such as vapor detection devices, X-rays and neutron radiation devices, which will help us to be able to screen the tons of cargos, trucks, and people entering our country, and to discover those who may be involved in this type of activity.

Mr. Anaya and Dr. Bourne have mentioned the problem of air smuggling. We are currently, in this area, also attempting to develop improved technology to improve our air interdiction rate. We currently have agreements with Norad, agreements with FAA—Federal Aviation Agency—for the use of their long-range radar in our air interdiction program, and we have recently signed an agreement with the Air Force for the use of the new Air Force radar AWACS system, when it becomes operational.

We feel that these improved technologies which are made available to us by the military will be very helpful in dealing with this problem. We do have, admittedly, a very serious problem in that a good bit of the air fleet we now operate with can almost be classified as antique. It is surplus military equipment made available to us in 1969, and because of corrosion and airstrip problems today it is practically useless.

We are, however, continuing our efforts with the military to obtain some replacement aircraft for this fleet. Only last week we wrote an additional letter to the Secretary of Defense, and I am very hopeful that we will be able to resolve something which will improve our fleet capabilities.

I echo statements that have been made by others here on the need for improved cooperation among the agencies involved. Currently, we are meeting monthly with the Drug Enforcement Agency and with the Immigration and Naturalization Service to improve our cooperative efforts, and I think very much has been done among these three agencies.

We now have agreements with the Drug Enforcement Administration which clearly cover the areas of exchange of information, most of our operational problems. We have also signed, during the last week, a series of agreements with the Immigration and Naturalization Service which provide for our providing the Immigration Service computer assistance from our nationwide computer lookout network.

We are working together in developing training programs for patrol officers, so they will be more aware of the problems of each other's agencies. We have exchanged radios and developed the capability for improved communication, and only last week appointed a technical task force to look into this area, to insure that

we can improve even more our communications capabilities between the two agencies.

I feel that the actions we have taken have gone a long way to eliminate any duplication that may exist between the two agencies, and to improve our working arrangements.

I might add that in addition to agreements with the DEA/INS, we also have agreements with NORAD, that I mentioned before, with the Coast Guard, with the Air Force, with AWACS, and with a number of the State and local organizations throughout the United States.

We also recognize that one of the things that ties together smuggling of narcotics is the tremendous profits involved, and to this end we have increased our investigative efforts in the tracking of currency involved in organized crime or narcotic movements. We have established a task force in Washington which is accumulating detail on the legal and illicit movement of currency, not only across the Mexican border but throughout the United States. We have established a joint task force, a working operational task force with DEA in several areas of the country specifically devoted to tracking of money, illicit money moving across our borders, and we have had some very spectacular results already as a result of these mutual efforts.

Mr. Chairman, let me end by saying I think this can be very helpful in improving cooperation among the agencies involved, and I would particularly like to give my personal thanks to Attorney General Anaya, not only for what he has done on the southwest border, for taking action to improve cooperation among the many agencies involved down there, but for his personal efforts on our behalf in attempting to improve our air fleet.

Thank you very much, Mr. Chairman.

[Mr. Dickerson's prepared statement follows:]

PREPARED STATEMENT OF G. R. DICKERSON, DEPUTY COMMISSIONER OF CUSTOMS

Mr. Chairman, and members of the Subcommittee, I welcome the opportunity to appear before you today and to be a part of this distinguished panel. I believe that this panel, representing the agencies most involved with our Federal drug interdiction program, can help you understand our varied missions, appreciate the problems each of us faces, and learn how we work together to prevent the importation of contraband into this country.

The Customs Service, since 1789, has been our nation's first line of defense against all forms of smuggling. We are stationed at more than 300 ports of entry, as well as along the land and sea borders of the United States. Because of the broad search authority granted us by the First Congress, and recently reaffirmed by the Supreme Court, we can perform our mission in a versatile and flexible manner.

The drug smuggling problem facing us is a very large one. Although we have no definitive assessment of the quantities of illicit drugs being smuggled into the United States, it is apparent that they are being smuggled in massive quantities. In the past fiscal year, we have alone or together with other agencies such as Coast Guard seized nearly 1.6 million pounds of marihuana, 16,000 pounds of hashish, 278 pounds of heroin, and 951 pounds of cocaine having the total estimated value of \$924 million.

The variety of smuggling modes is endless along our land and sea border which stretches for 96,000 miles. During the 1977 fiscal year, Customs seized 11,000 vehicles, 285 vessels, and 121 aircraft. Despite these figures, we believe that we have merely scratched the surface of drug smuggling.

For Customs effectively to perform its function with respect to the interdiction of drugs, it is necessary to coordinate our efforts with other agencies and to develop methods of deploying our resources in ways which will bring us the greatest return. Simply, we cannot be all places at once.

To carry out our interdiction mission, we apply the principles of systems analysis to develop programs which would provide a balanced enforcement program integrating all Customs resources, as well as enforcement resources available from other agencies which would use Customs unique legal authorities to achieve maximum results.

Our strategy is to deploy an interdiction force between ports—air, land and sea—of sufficient capability to force the smugglers into ports where Customs has greatest control. At the ports, through which significant amounts of heroin are reportedly smuggled, Customs has instituted an intensified screening of personnel, vehicles, and cargo. It is physically impossible for the Customs Service to screen, inspect and search each of the millions of vehicles, tons of cargo, and mountains of mail which arrive in the United States annually. We have identified various modes of smuggling and are applying sampling techniques to try and detect smuggling usage. We couple this with intensified inspection periods where we conduct a very high level of inspection. Cargo containers are sampled based on origin, destination, contents and other criteria.

Passenger inspections are aided by profiles, computer screening and other systems designed to sort out potential smugglers. Interestingly, these screening methods actually speed up passenger clearance while our seizures have increased.

One innovation which has proven extremely successful in coping with the monumental inspection task with which we are confronted in the use of detector dogs. We are using the unique ability of dogs to discriminate between scents to provide an effective search and detection method to locate narcotics and explosives secreted in vehicles, vessels, aircraft, cargo and mail. Dogs are never used to screen people.

Many foreign governments have observed the tremendous success of the Customs Detector Dog Program and we are providing similar training to them under the auspices of our Foreign Customs Assistance Program.

We have a program to develop portable and fixed devices for use at ports and other border areas to detect concealed narcotics and other contraband. We have surveyed current technological efforts of private and public institutions for their possible application to the detection of narcotics and contraband. We are constantly expanding and improving our ground sensor system aimed at detecting illegal vehicle and pedestrian traffic. We have continued the development of detection techniques based on vapor detection, X-rays, neutron radiation and thermal imagery.

Protecting our sea borders against the rising number of small boats and private yachts used for smuggling has proven an exceedingly difficult and complex task. The magnitude of the problem is illustrated by the vast area to be protected. There are 4,993 miles of coastal waters in the contiguous 48 states and 12,393 miles of additional coastal waters for Hawaii and Alaska. Moreover, we must protect the nearly 30,000 miles of improved inland waterways.

A recent smuggling technique has evolved in which large freighters or "mother-ship" laden with contraband hover in international waters as small high speed boats and fishing vessels ferry the illicit merchandise to shore. These mother-ships will cruise from the Caribbean, north along the eastern seaboard, making numerous drops. The ships have ranged from 70 to 300 feet in length, the largest having a capacity to haul in excess of 100,00 pounds of marihuana.

Although many reports are received indicating that cocaine is being smuggled by many boats, there have been few seizures, and these for the most part have consisted of very small amounts. However, there is substantial evidence that cocaine is being smuggled into the United States aboard commercial cargo vessels, many of which operate in the banana trade out of Turbe, Columbia. Late last year, Customs seized 157 pounds of cocaine off the M/V MAYA in Miami. This seizure was exceeded only by 181 pounds seized off the M/V EA in Tampa in 1976. Both vessels were in the banana trade. A successful forfeiture action against the EA, a commercial vessel, was taken and the boat recently was sold at auction—an action which should have a dampening effect on this type of traffic.

In response to the escalating level of smuggling by private aircraft across the nation's border, especially the southern border, the Congress in 1969, authorized the establishment of a Customs Air Support Program.

Initially, Customs acquired assorted light aircraft. These were used to conduct surveillances, but were ineffective for detection, interdiction and tracking of smuggler aircraft.

Technologically, Customs has made enormous strides since acquiring eight surplus military aircraft in 1969. In addition to constant improvements in airborne radar and Forward Looking Infrared (FLIR) capabilities, both used for detecting and tracking suspect aircraft, Customs has developed all-important support systems to assist the air interdiction units. The supporting systems include the Treasury En-

forcement Communications System (TECS), the Private Aircraft Reporting System (PAIRS), and the recent breakthrough in implementing an interagency agreement with the military and the Federal Aviation Administration for long-range radar coverage.

We are also conducting a pilot program with the Air Force regarding the use of the Advance Warning and Control System (AWACS) aircraft to detect aircraft crossing over the Mexican border. By integrating sophisticated radar detection systems with our high performance aircraft, we expect a significant increase in the effectiveness of our air program.

To coordinate these many enforcement methods, Customs has developed a most effective major computer system. This system, called the Treasury Enforcement Communications System (TECS), is a real time network with almost 900 terminals permitting instantaneous access to enforcement data by name, vehicle license number, or vehicle or aircraft number.

TECS is the central nervous system, or backbone if you will, of the entire integrated tactical interdiction effort linking agent, inspector, patrol officers and management. The role of the system as a tactical interdiction tool completes the loop encompassing the full range of Customs enforcement activity. The system has been expanded to serve the needs of the Treasury enforcement community. The Bureau of Alcohol, Tobacco and Firearms (ATF), the enforcement arm of the Internal Revenue Service (IRS), and the National Central Bureau of INTERPOL are major users of TECS service. Outside Treasury, the system is utilized by the Drug Enforcement Administration (DEA). TECS terminals for use by the Coast Guard and the State Department in a joint Federal effort to combat international terrorism have been installed in both agencies. Interfaces exist with the FBI's National Crime Information Center (NCIC), the National Law Enforcement Telecommunications System (NLETS), and the recently established interface to the California Law Enforcement Telecommunications System (CLETS), which significantly increases the capabilities of TECS for users in the state of California.

As an example of the cooperation we have received from other Federal agencies, we have been scheduling regular meetings with INS to discuss new ways of coordinating our activities. Recently, two TECS terminals have been installed at INS Headquarters, one primary (airport) and one secondary. We are examining the possibilities of expanding our joint preclearance operations in Nassua and the Bahamas, experimenting with a one-stop inspection process and using the same radio frequencies along the southern border.

Since the money is the single common denominator to all smuggling activities, we have launched a major effort to enforce the Currency and Foreign Transactions Reporting Act against the unreported importation and exportation of currency and other monetary instruments. Currency investigations conducted to date indicate a high incidence of drug-related activity. During fiscal year 1977, Customs made 461 seizures under the Currency Act involving more than \$7 million.

Since almost all illicit drugs consumed in this country originate outside our borders, we must have programs aimed at eliminating them before they enter the stream of worldwide traffic. To this end, we must have the active cooperation of the international community. One of the problems in securing their cooperation, and that of drug producing nations in particular, however, is to convince the customs services of these nations that it is in their interest to suppress narcotics trafficking. We at Customs are continuing our efforts to secure the participation of other nations in this effort.

Our foreign Customs programs are designed to train foreign enforcement officials in border control activities, emphasizing interdiction techniques, border surveillance, anti-smuggling programs and methods, and search and seizure. Representatives of at least 15 nations have taken part in our training programs in fiscal year 1977. The value of our training programs is evident in the increasing drug seizures made by Customs officers in countries where training has been given.

We have also been involved in working relationships with customs administrations of other nations. While the primary mission of our advisors is to provide technical assistance, the eradication of narcotics production and trafficking has not been included as a stated program objective.

During the past year we have entered into a mutual assistance agreement with Mexico which contains a provision for the exchange of information specifically aimed at offenses involving narcotics.

From all of the above, it is evident that the drug enforcement effort is a multifaceted one.

As you know, a number of studies have been conducted by GAO, ODAP, and OMB on drug law enforcement and border management. It is possible that the present

configuration of some Federal law enforcement agencies and that the scope of their responsibilities will be changed as a result of these studies.

I would like to thank the Committee for inviting me to appear today and to speak about the Customs role in the drug interdiction program. I will be happy to answer any questions at this time.

Thank you.

Senator McGOVERN. Thank you, Mr. Dickerson. We appreciate your statement.

Our next witness is Mr. Charles Sava, the Associate Commissioner for Enforcement of the Immigration and Naturalization Service. Mr. Sava, you may proceed as you see fit.

**STATEMENT OF CHARLES SAVA, ASSOCIATE COMMISSIONER  
FOR ENFORCEMENT, IMMIGRATION AND NATURALIZATION  
SERVICE, DEPARTMENT OF JUSTICE**

Mr. SAVA. Thank you, Mr. Chairman.

We appreciate the opportunity to testify this afternoon. The Immigration and Naturalization Service is a bureau within the Justice Department. It employs about 10,000 people and has a budget of about \$266 million this year. The service has two basic functions, to insure that all persons entering or remaining in the United States are doing so in accordance with law, and to furnish service to the public such as the processing of applications, providing the core support for their naturalization activities.

While the Service has no mandate to enforce narcotics laws, it does incidentally to its other activities encounter people involved in the smuggling of drugs and other contraband materials. In the discharge of our responsibilities at the border, we primarily have two groups of officers involved. The first are immigration inspectors who inspect all persons seeking admission through the ports of entry and border patrol agents who patrol the boundaries between ports of entry.

At the present time, there are slightly over 1,500 immigration inspectors and slightly over 2,200 border patrol agents on duty. The border patrol actually performs both a land and aerial watch of the river land coastal waters along the United States-Mexican border, Canadian border, gulf, and Atlantic coast. The border patrol employs sophisticated electronic equipment, including remotely monitored sensor systems, computer-based vehicle dispatch systems, a communications system linking the entire border, and in support of these we maintain maintenance facilities. While pursuing the primary mission of immigration law enforcement, both our inspectors and border patrol agents apprehend violators of other laws and have intercepted substantial amounts of narcotics, arms, ammunition, and other contraband.

During the past 5-year period, the Service has encountered and arrested almost 7,000 aliens in connection with drug violations. During that same period, the Service officers made 22,000 drug seizures. When unlawful drugs are intercepted at ports of entry, the violator is sent to the Customs secondary inspection. If the arrest and seizure is made between ports of entry, the violator and the contraband are turned over to the Drug Enforcement Agency. The border patrol and the inspectors in their cooperation with the other agencies presently have direct radio communications in 16 of our 21 border patrol sectors, with the Customs Service.

We coordinate closely with the Drug Enforcement Administration in their activities, and we have had operational agreements with DEA since late 1973. Both INS and DEA share operational duties at the El Paso Intelligence Center. The Immigration Service supposedly has 15 employees there, and in addition to that we fund 20 percent of the operating budget of the facility.

PRESIDENT'S RECOMMENDATIONS CONCERNING BORDER  
ENFORCEMENT

In August this past year, the President in his message to the Congress on Immigration Policy gave a high priority to border enforcement. He recommended the following measures, most of which require congressional action, but should have a great impact on border management. He recommended a substantial increase of border enforcement resources and personnel, a shift by the Immigration and Naturalization Service of enforcement personnel to the border areas having the highest rates of illegal entry, the creation of an antismuggling task force, passage of legislation to prohibit the production, and knowing possession of false identity documents, and cooperation with other countries in border enforcement and antismuggling efforts.

The antismuggling entity became operational on February 1 of this year with the creation of an Anti-Smuggling Activities Office in Washington, and the assignment of 120 agents in the field. It is our belief and we have some evidence that points to the fact that those people involved in the smuggling of aliens or people from time to time do get involved incidentally in the smuggling of other contraband.

INS GOALS FOR COMING YEAR

The INS goals for the coming year include, amongst other things, the issuance of a machine-readable alien travel document, and joint planning with the Customs Service on how that agency can benefit from the use of these automated data cards is now under way. The automated screening of applicants, using that card, would allow more time to concentrate on drug interdiction.

That is all I have in the way of comments on my prepared statement, Mr. Chairman.

Senator McGOVERN. Many thanks, Mr. Sava, for your statement.

The final witness we will hear from on the panel is Mr. Gordon Fink, who is the Assistant Administrator for the Office of Intelligence of the DEA, Department of Justice.

Mr. Fink?

STATEMENT OF WILLIAM G. FINK, ASSISTANT ADMINISTRATOR,  
OFFICE OF INTELLIGENCE, DRUG ENFORCEMENT ADMINISTRATION,  
DEPARTMENT OF JUSTICE

Mr. FINK. Thank you very much, Mr. Chairman.

COMMENDATION OF ATTORNEY GENERAL ANAYA

It is a pleasure to be here to represent DEA. I would also like to give Attorney General Anaya credit, and I believe in noting that the trafficking structures that we face are much more than Federal assets alone can handle, and I think I would like to recognize the

efforts of Toney Anaya within the State of New Mexico for focusing the priorities on narcotics and bringing to bear additional resources, and he was very modest in not pointing out that he is forming a task force, pulling together the State resources within that State, and DEA will be assigning an agent full time to that operation to maintain liaison.

The other States have done the same, but it is the efforts of the key State officials, like Toney Anaya, that have brought additional resources to bear, and as has been mentioned earlier, we are embarking on more joint activities with the State and local enforcement operations.

#### SUCCESS IN OVERSEAS EFFORTS

We also, as Dr. Bourne mentioned, have been very successful in some of our overseas efforts, and of 300 personnel that DEA has located overseas, 67 alone are in the country of Mexico, and 10 of those are working in the area of intelligence.

#### EL PASO INTELLIGENCE CENTER

I would like to highlight a couple of areas and maybe give you an example of how we function with State and local governments. Reference has been made to the El Paso Intelligence Center. This was an organization that DEA, along with the assistance of INS, formed in 1964. At that time there were 25 employees. Now there are 85 employees, including Coast Guard, Customs, INS, and DEA, all with very active participants.

In addition, we have representatives of the FAA and ATF, and this in itself acts to coordinate the intelligence and enforcement followthrough activities of the Federal Government. Recently, our Administrator, Peter Bensinger, broadened the availability of that intelligence data base to State and local enforcement organizations, and we have been bringing these narcotics unit commanders into the El Paso Intelligence Center, and describing a relationship which can exist where these States can come into our El Paso Intelligence Center, and we can make available to them on a query by query basis the intelligence we have in the system.

Three of the four border States have effected the relationship, and New Mexico, I am happy to report—I mentioned it to Toney before the hearing today—will be joining us probably in late May or early June, completing the four border States that border Mexico.

This in itself will help bring together Federal, State, and local enforcement activities, and in addition we can put two States together if they happen to be working on the same trafficker. So, we expect to see a lot more benefit come from this relationship, and by the end of this year, we hope to establish a relationship with 25 of the 50 States. We are also providing them a weekly bulletin and other forms of special products that come from that intelligence operation.

We also do a lot of training of foreign law enforcement organizations and officials in intelligence as well as State and local. I pulled some representative statistics. In 4 years, we have trained 1,700 enforcement officers in the four border States, California, New

Mexico, Texas, and Arizona, both in courses that we run in-State as well as having those State officers come into our academy here in Washington.

We have also in the same period trained over 600 Mexican law enforcement officers in the narcotics enforcement field. That is now paying off. We have upgraded their expertise and competence through the additional priority and resources that Toney and I and others have focused for getting financial support to go with the training we have been able to invest.

#### EXAMPLE OF WORKING JOINTLY

Let me highlight one example of many that has occurred on the border to show how we work jointly. In January through April 1977, our Brownsville office located on the Texas-Mexico border asked the Intelligence Office for assistance. We assigned some analysts to go through their files and put together pieces of major organizations they knew were in operation, often with recognition of the locals but still operating a little bit beyond our reach. We used the files. We used what was available in the El Paso Intelligence Center. We got the Texas Department of Public Safety and the Mexican Judicial Police, their MFJP, and also the Texas Attorney General's Office, to form a task force.

We pooled all of our intelligence information and put together 12 major organizations operating in that area. We then formed enforcement groups to move against these particular organizations. In April of 1977, 140 arrests were made jointly by the Texas authorities and also the Mexicans arrested 20 that were operating on their side of the border.

We got several significant sentences, which has been a problem historically in drug law enforcement. Some sentences were up to 45 years, so the judges went with the information we had and we got some good convictions. I think the important thing that this example points out is that no one organization in a case like this can do it on their own, but by pooling the intelligence and then by joint enforcement operations, we can with combined resources immobilize these major trafficking organizations. That is what we hope to be doing more of with the border States and the other States within the United States, and in a similar sense with the countries in which we have major investments of our resources.

Thank you very much.

Senator McGOVERN. Thank you, Mr. Fink, for your statement.

#### PRESENCE OF MR. RICHARD WILLIAMS

Mr. Bourne, maybe we can move again to you in terms of some questions. I want the record to show that Mr. Richard Williams is also here today, the Assistant Director of the Domestic Policy Staff of the White House. Mr. Williams, I hope you will feel free to inject any thoughts you have as the questioning proceeds.

#### INTERAGENCY STUDY ON BORDER MANAGEMENT AND INTERDICTION

Mr. Bourne, as part of the general review of Federal law enforcement agencies ordered by President Carter, you directed an inter-agency study on border management and interdiction, as I under-

stand, and your team submitted this report to the President last fall. Would you briefly summarize the major problems indentified in that report?

Mr. BOURNE. If I may, Mr. Chairman, I would like to ask Mr. Williams to do that, in that he coordinated that study, and he could go into it in more detail than I.

Senator MCGOVERN. We would be glad to hear from you, Mr. Williams.

**STATEMENT OF RICHARD WILLIAMS, ASSISTANT DIRECTOR,  
DOMESTIC POLICY STAFF, THE WHITE HOUSE**

Mr. WILLIAMS. Thank you, sir.

Let me summarize the study for you if I may, sir.

Under Dr. Bourne's direction, we conducted a policy review of the Federal border control activities. We formed an interagency task force of all of the agencies involved in border control. Our study was not restricted to the southwest border. We looked at all the land, sea, and air borders. That is, we looked at airports of entry, land ports of entry, seaports, and the patrolling activities that take place between the ports of entry.

We found the Federal border control efforts to be fragmented in several ways. Probably the most important was fragmentation in the organizational structure. There are eight agencies, representing seven different Cabinet departments, that have personnel on the borders. They all have their own mission. They all have their own policy direction, and they all do their own mission in a relatively independent way.

As we sorted out the functions, we found that there are really two key functions that are critical to control over entry. The first is the inspection at ports of entry. As applies to the southwest border, the principal considerations are the massive workloads that they have to contend with, the dual management structures at ports of entry, and generally a lack of cooperation between the agencies in operating the major ports.

The second key function is the patrolling activity that takes place on the land borders between the ports of entry. We found considerable overlap and duplication of effort, and a very noticeable lack of cooperation between the Immigration and Naturalization Service border patrol activities and the U.S. Customs Service customs patrol activities.

Our team studied the situation, looking for ways to get the greatest effectiveness with the available resources, and particularly for a way that this rather awkward management structure could better handle new priorities and respond more quickly to new problems. Our conclusion, after a 4-month study, was that there really did need to be a better organization which could serve as a foundation for creating further opportunities for improvement. It is necessary to make some basic change in the current system as a first step.

We recommended that a new border management agency be formed by consolidating the Immigration and Naturalization Service from the Justice Department and the U.S. Customs Service from the Treasury Department. The new border management

agency would provide central management over the key border control functions.

One indication that we have had some success is the several references today by members of this panel to the term "border management." The acceptance of this term is, in itself, a significant improvement in that we are looking at the border through broader eyes than just the individual view of each single agency.

We furnished our recommendations to the Office of Management and Budget in September of last year, and they are currently in the process of developing recommendations for the President.

I believe there has been some improvement in the level of cooperation between the Federal agencies, primarily as a result of the attention that Attorney General Anaya, Dr. Bourne, and the congressional committees have placed on border control.

[Mr. Williams' prepared statement follows:]

PREPARED STATEMENT OF RICHARD L. WILLIAMS, ASSISTANT DIRECTOR (DRUG ABUSE POLICY), DOMESTIC POLICY STAFF

Mr. Chairman and Members of the Committee, it is a pleasure to be here today to discuss border management and interdiction. When the President established the Office of Drug Abuse Policy in March of last year, he asked Dr. Peter Bourne, the Director, to assume the lead role in studying the organization and management of Federal drug abuse prevention and control functions. Our report on Border Management represents one of a series of policy reviews conducted by the Office of Drug Abuse Policy of all Federal drug abuse functions.

A major part of the Federal effort to reduce the availability of illegal drugs is directed toward disrupting the supply chain at any point where it may be vulnerable, from overseas sources to domestic interstate drug trafficking networks. The United States border provides a unique opportunity in the chain of drug trafficking to intercept the drugs, arrest the person, and perhaps trace the source or the ultimate destination of the illegal drugs.

U.S. border control is a piecemeal activity with numerous Federal agencies responsible for specific interests and specific functions in the border areas. Several studies of border control have been conducted in recent years. However, each of these studies focused on a specific function or problem rather than taking a comprehensive view of the entire border control effort. As part of the President's goal to achieve greater effectiveness in government operations, our review was directed toward improving overall border control.

The basic assumption of our review is that improved effectiveness of border control will enhance all related programs including drugs, aliens, guns, etc. Further, an improved management structure could serve as the foundation for all border control efforts and would be likely to accomplish far more than a self-limiting study directed at improving control over one particular commodity.

The team focused on the two principal functions of border control: inspection of persons and goods at ports of entry, and patrolling between ports of entry and found significant overlap and duplication of effort in both of these functions.

The Review Team recommended establishing a multi-purpose border management agency which would include all of the existing responsibilities and resources of the Immigration and Naturalization Service and the U.S. Customs Service. By combining the two principal border enforcement agencies, a new agency could provide the basic foundation for a full service organization for control over entry of persons and goods and would also allow consolidation of some support functions.

The President's Reorganization Project in the Office of Management and Budget has the ultimate responsibility for developing reorganization plans in conjunction with its ongoing reorganization study of the entire Federal Government. The Reorganization Project staff has received our report and is developing recommendations for the President regarding border management.

I will be happy to respond to any questions you may have.

REASON FOR ATTORNEY GENERAL ANAYA'S CONTACTS WITH MEXICAN GOVERNMENT

Senator McGOVERN. Thank you, Mr. Williams. Attorney General Anaya, in your statement, you mentioned the fact that you have made several contacts yourself with the Mexican Government. I am wondering if you made those contacts because you felt personally frustrated by the performance of the Federal agencies in border interdiction, as the GAO report states.

Mr. ANAYA. Mr. Chairman, I almost hesitate to answer that question after the plaudits I received a few minutes ago. Initially, the contacts were made for that very reason, because we felt in the Southwest that we simply were not getting the attention from the Federal level that we should be receiving, that the problem was not receiving the attention, and that is when we initiated the series of border conferences, and through those series initiated the contact with the Mexican Government.

The most recent contacts have been as a result of the initial contacts that were made with the Mexican Government, even though in the interim the relationship with the various Federal agencies had improved dramatically, so I think it was really initially a factor that we were not in our judgment in the Southwest, receiving the proper attention from the Federal agencies. The problem was not being addressed, and we felt we had to initiate the contacts with local and Federal Mexican officials.

I think that lack of attention by the Executive has changed considerably, Mr. Chairman.

PROBLEM OF COOPERATION

Senator McGOVERN. Is that also true regarding the lack of cooperation that you referred to between local law enforcement officials and the DEA agent? You indicated there was a problem of cooperation there. Is that in the past tense? Are you still having difficulty?

Mr. ANAYA. I am happy to report that that was meant primarily in the past tense. To the extent that there is still some lack of cooperation or communication, that is also still being worked on, but the situation as recent as 1 year ago was the situation where the agencies were actively plotting against each other instead of narcotics smugglers, and through the leadership of Dr. Bourne, Mr. Bensinger and Robert Chasen, Commissioner of Customs, we have been able to establish coordinating councils. In New Mexico we did set up a coordinating council composed of all the appropriate Federal agencies, my office and other State and local officials. It is directly coordinated out of my office, and this has helped improve the cooperation substantially.

BENEFITS OF NEW BORDER MANAGEMENT AGENCY

Senator McGOVERN. I would like to ask if any members of the panel wish to respond to this next question. If so, do so. What about the new border management agency that the Office of Drug Abuse Policy team has recommended, more specifically the inter-agency study that Dr. Bourne directed? Do you feel that this is really the solution to the problems we have been talking about this afternoon?

Mr. ANAYA. Mr. Chairman?

Senator MCGOVERN. I would like to have comments from any of you if you care to address yourself to that.

Mr. ANAYA. Mr. Chairman, I would offer two brief points. One is mentioned in my earlier remarks. I feel that the success the Mexican Government has had in its fight against narcotics trafficking has been directly attributable to the fact that not only have they declared war on the Federal level, but also because that war is being directed through one entity, one agency, namely, the Federal Attorney General. I feel that that kind of an effort is going to be needed on this side of the border, if we are going to make the same advances I feel we should be making, so to that extent I feel that one agency in this fight would be quite beneficial.

With respect to the specific suggestion of combining INS with Customs, the main concern I feel we would have in the Southwest would be because of the tremendous problem of the undocumented alien, the illegal alien, literally thousands of illegal aliens a week that we have to contend with. I would be concerned that the manpower might be concentrated on dealing with the illegal alien only, or primarily, to the exclusion or detriment of any attempts to interdict narcotics. So I think that while I would certainly recommend the advancement of a plan to unite our efforts, it should have the necessary safeguards to insure that sufficient efforts are directed toward drug interdiction and not be directed exclusively to dealing with the illegal alien problem.

Senator MCGOVERN. Anyone else?

Mr. ANDERSON. Mr. Chairman, I would like to volunteer two benefits that I think we in GAO would see. The first, I would say, would be an opportunity to develop a cohesive, coherent strategy that would consider the problem in its entirety rather than separate agencies considering their little bit of the problem. It would be the first time that we would have someone who would be charged with the responsibility for looking at the border in its entirety, looking at the entire problem and saying, well, is a total of 57 people now being drawn from two or three agencies a solution to the problem, or should it be some other amount?

I would say that would probably be the principal benefit.

#### MORE MANPOWER VERSUS BETTER TECHNOLOGY

Senator MCGOVERN. In that connection, Mr. Anderson, I think I understood Dr. Bourne to say that maybe what you need is, rather than more manpower, better technology. Do you share that view?

Mr. ANDERSON. No, sir. I am really not sure—I know Dr. Bourne on other occasions—

Senator MCGOVERN. Did I quote you accurately?

Mr. BOURNE. It is not an either-or situation, but I think that one of the directions we need to put a great deal of emphasis on, apart from the obvious manpower needs, is a greater emphasis on the development of technology.

Mr. ANDERSON. I am not so sanguine myself, so I would venture to say that even with some greater number of people with some better technology, interdiction at the border is not really going to go very far in solving the problem, and I will repeat some words that Dr. Bourne used earlier. He said that once it is reduced to

powdered form, the opportunities of finding your way through some point on that 96,000 mile border are pretty good, so I really do not see that technology and numbers of people are really going to make much difference.

#### ADVANTAGES OF BORDER MANAGEMENT AGENCY

I would say that another advantage of a border management agency, to get back to my original line of thought, would be elimination of the duplication and overlapping that GAO found and ODAP found in its own study. I would say that practically speaking, even if you eliminated duplication and overlapping, you will probably not make too much of a difference on the overall effectiveness of operations down there. I do not think the loss has been that much, 5, 10 percent probably at the very most, more payoff from the resources you are already investing.

No. 3, I think probably another major advantage would be specification of a single point of accountability and responsibility in the executive below the President. Right now, he is the only person you would look to with total responsibility for all of the things being done down there by any number of agencies in the law enforcement area.

Those would be the benefits as we see it.

#### REASON FOR COORDINATION PROBLEMS

Senator MCGOVERN. The three agencies most responsible in the enforcement field are all here, the Immigration and Naturalization Service, the Customs Service, and the Drug Enforcement Administration. I wonder if each one of those three could give us your own agency point of view as to why there are these coordination problems.

Mr. DICKERSON. Mr. Chairman, I might start off, I might say some of the comments I would make would be personal comments based upon my 27 years of experience with the Customs Service. With regard to the relationship between Customs and Immigration, I think it is unfortunate we use the term "lack of coordination or cooperation" between the two agencies, because in my experience—

Senator MCGOVERN. It was really a term that grew out of the testimony today. It was not something I coined.

Mr. DICKERSON. It is my experience in the years we have been in Customs that we have had a good relationship between the two agencies. We refer to ourselves as sister agencies. We have shared a lot of hardships over the years, and I think that generally we have had good cooperation, but I would have to go on and say that I also feel very strongly that there could be improvements by capability or single management of the resources available on the border for inspection and control purposes.

With two separate agencies, we obviously tend to go toward that function which is most important to us. If you had the single agency which was multipurposed, which could respond to changing priorities as they occur, and they will occur on the border—today it may be narcotics and aliens; tomorrow it might be terrorists and guns, I think the capability for a single agency, a single responsible

point in Government to manage the resources available on the border would result in improved efficiency and improved law enforcement.

NEED FOR CENTRAL POINT OF AUTHORITY

Senator MCGOVERN. You and Mr. Anderson stand in agreement on that point, that below the level of the White House at some point there needs to be a central focus, a central point of authority to handle the whole border management problem.

Mr. DICKERSON. Yes; I do agree with that. It is a step that has been taken by a number of foreign countries. Australia, for example, Canada, for example, have centralized and made responsible one agency for the total border law enforcement, and I believe improved management would come out of that. It would greatly enhance our border and port capability.

I would agree with Mr. Anderson, maybe not as extremely as he would, that this will not solve either our alien or our drug smuggling problem in total. However, I think it would greatly improve our capabilities and I would just add one thing in support of what he said. He said he thinks the efforts along the border are largely ineffective. I do not agree with that. Many of the seizures made on the border do result in followup investigations. Some are very large conspiracies, and ultimate investigative efforts resulting in the most important law enforcement actions against narcotics traffickers have come from border seizures. Admittedly, it is small in connection with where it comes across the border, but I think it is an important contribution. But as an individual, I do support the idea of single management of our border resources.

Thank you.

Senator MCGOVERN. Thank you, Mr. Dickerson.

I understand that Attorney General Anaya has another commitment he has to attend to at this time. So before I call on Mr. Sava, is there any observation you would like to add, Mr. Anaya? If so, we would be glad to hear it.

Mr. ANAYA. Mr. Chairman, I very much appreciate again the opportunity to present the remarks which I did, and my office as well as the other Southwestern States do stand ready to assist the committee with any further development of any facts or programs, and we would welcome the opportunity to assist the committee in any way we can.

Senator MCGOVERN. Thank you very much. We appreciate your presence here today.

Mr. Sava?

Mr. SAVA. Commissioner Castillo has gone on the record as supporting the single direction of the border. While realizing there are some problems involved, we in the Immigration Service are not basically looking for narcotics. We have a different mission. The nature of our work and the place we do it has caused us to come in contact with it quite often.

There are some things there that you have to balance off. In getting back to Dr. Bourne's comments and Mr. Anderson's about the use of more sophisticated technology, I think in the report, if I recollect correctly, of Mr. Anderson's there was a statement that somewhere approaching 90 percent of the narcotics coming into the United States come through ports of entry.

When you look at that and then remember that you have something on the order of 20 seconds to one-half minute to inspect each arriving person, it is going to take more than just manpower. Additional manpower will not do it, because there are not the facilities to physically handle all of the people seeking entry, to facilitate their entry to the extent that you keep them reasonably happy and make a good search for narcotics, and the other things we also look for, documentation and things.

So, that definitely indicates to me that there is a need for better technology. Whether or not that would have a substantial impact on drug interdiction at the ports of entry, I could not really say. Between the borders we find it—I am sure Customs and DEA do—that people smuggle drugs, while we are primarily looking for people. Trying to do our function of patrolling the border, we come across those people who do smuggle drugs. We have no quarrel with the single direction concept, and think it would be a step in the right direction. It would certainly seem to solve a lot of the problems.

Senator MCGOVERN. Thank you. Mr. Fink?

Mr. FINK. Yes, sir, Mr. Chairman.

I would like to make reference to another study that Dr. Bourne's office did in drug law enforcement, because in that study, where they looked at all of the law enforcement organizations in the Federal Government that had some narcotics responsibility, the conclusion reaffirmed the decision made in the Government in 1972, when there was a reorganization that established DEA and eliminated the problems that had existed prior to that along the border, and Dr. Bourne's recent study reaffirmed that there should be a lead agency within the Federal Government, and that DEA should continue to have that responsibility within the United States in the role that we have assisting foreign governments overseas.

We of course do not have a patrol or border function per se, but when Customs, the Coast Guard, or INS comes across a narcotics violation an agreement causes them to refer that to the Drug Enforcement Administration for enforcement followthrough, so that is a fairly important set of relationships, and as a result, the study done by Mr. Williams has no effect on DEA per se. We still have a responsibility to support the organizations involved with intelligence, and we will do that, as we have, for instance, in the program that we started with the Colombian Government working with both Customs and the Coast Guard.

In the last four months we have seized over 1,000 tons of marijuana, so whether we are providing that intelligence to one organization, two or three, we could still provide the intelligence support. Some of the points in this study have merit, but as far as DEA is concerned, it does not affect our role and mission, and we would have one organization versus two that we deal with and be referring the cases to us.

#### PROBLEM OF INTELLIGENCE

Senator MCGOVERN. Mr. Fink, you made reference to intelligence. As you know, one of the recent GAO reports on U.S. cocaine policy in Latin America claims that one of the main problems is

intelligence, and as a matter of fact, they say that the intelligence is bad, and it is bad particularly with regard to your agency.

Mr. FINK. Yes, sir.

Senator MCGOVERN. Since you are involved in that area with DEA, do you accept that criticism with respect to our border interdiction efforts?

Mr. FINK. At the time the study was done, I think that a lot of the findings were in fact true. With respect to the lack of intelligence, the function in DEA was just beginning to get established, to get a sound framework. The El Paso Intelligence Center was just beginning to establish its operational base, and I think, giving credit to GAO, they subsequently acknowledged that progress has been made just in the last 6 months to 1 year, in that we have had some sizeable seizures, 1,700 pounds of cocaine in Colombia, which is more than has been seized at the border in over a year itself. The marihuana seizures I made reference to recently, where we have seized some 40-plus vessels and over 1,000 tons of marihuana, have been based upon intelligence coming not only from Colombia and our own resources, but the Colombian Government's participation in not only collecting intelligence but taking the intelligence we have given them back and taking the enforcement activity within their country.

So at the time I can validate much of their findings but we have made some changes. We recognized it of course at the time it was happening, and I think we have come quite a ways. We still have some distance to go, but I think that GAO accepts the fact we are heading in the right direction and improvements have been made.

#### DEPARTMENTAL LOCATION OF NEW LEAD AGENCY

Senator MCGOVERN. Dr. Bourne, has any further thought been given to the departmental location of the new lead agency that your report recommends?

Mr. BOURNE. Our report did not specifically suggest which department the new border management might be located in.

Senator MCGOVERN. I realize that.

Mr. BOURNE. That is one of the issues currently under consideration by the Office of Management and Budget. There are a number of other concerns they have to take into account over and above the specific border-related issues or narcotic-related issues. Obviously, the two prime candidates are in the Treasury Department and the Department of Justice, but no final decision has been arrived at in that regard.

Senator MCGOVERN. Thank you very much, gentlemen. There is another rollcall in progress; so I think we will wind up our efforts on the border problems. I am grateful to all of you for your testimony and your response to the questions.

[Additional information supplied by Mr. Bourne follows:]

THE WHITE HOUSE,  
Washington, May 10, 1978.

Memorandum to: Senator George S. McGovern, Chairman, Subcommittee on International Operations,

From: Peter G. Bourne, M.D. Special Assistant to the President.

I have attached a copy of the letter I received the day the hearings were scheduled to be held on the Paraquat issue. I would appreciate having the letter included in the record of the hearing held May 9, 1978.

As I am sure you are aware, I have been most willing to appear before Congressional Committees in the past and will continue to be available whenever I can be of assistance.

PETER G. BOURNE.

Attachment.

DEPARTMENT OF JUSTICE,  
Washington, D.C. May 5, 1978.

Hon. PETER G. BOURNE,  
Special Assistant to the President for Health Issues,  
The White House, Washington, D.C.

DEAR MR. BOURNE: As counsel for Federal defendants in the case of *NORML v. Department of State, et al.*, Civil Action No. 78-0428, now pending in the District Court for the District of Columbia, we advise you not to testify in hearings scheduled before Senator McGovern's Subcommittee on International Operations of the Senate Committee on Foreign Relations on May 8, 1978, because your testimony may affect the ongoing litigation.

Sincerely,

SANFORD SAGALKIN,  
Deputy Assistant Attorney General,  
Land and Natural Resources Division.

MAY 5, 1978.

Dr. ROBERT L. DUPONT,  
Director, National Institute on Drug Abuse,  
NIMH, HEW, Rockville, Md.

DEAR DR. DUPONT: As Counsel for Federal defendants in the case of *NORML v. Department of State, et al.*, Civil Action No. 78-0428, now pending in the District Court for the District of Columbia, we advise you not to testify in hearings scheduled before Senator McGovern's Subcommittee on International Operations of the Senate Committee on Foreign Relations on May 8, 1978, because your testimony may affect the ongoing litigation.

Sincerely,

SANFORD SAGALKIN,  
Deputy Assistant Attorney General,  
Land and Natural Resources Division.

MAY 5, 1978

Hon. PETER B. BENSINGER,  
Administrator, Drug Enforcement Administration,  
Department of Justice, Washington, D.C.

DEAR MR. BENSINGER: As Counsel for Federal Defendants in the case of *NORML v. Department of State, et al.*, Civil Action No. 78-0428, now pending in the District Court for the District of Columbia, we advise you not to testify in hearings scheduled before Senator McGovern's Subcommittee on International Operations of the Senate Committee on Foreign Relations on May 8, 1978, because your testimony may affect the ongoing litigation.

Sincerely,

SANFORD SAGALKIN,  
Deputy Assistant Attorney General,  
Land and Natural Resources Division.

MAY 5, 1978

Ms. MATHEA FALCO,  
*Special Assistant to the Secretary, Department of State,*  
*Washington, D.C.*

DEAR Ms. FALCO: As Counsel for Federal Defendants in the case of *NORML v. Department of State, et al.*, Civil Action No. 78-0428, now pending in the District Court for the District of Columbia, we advise you not to testify in hearings scheduled before Senator McGovern's Subcommittee on International Operations of the Senate Committee on Foreign Relations on May 8, 1978, because your testimony may affect the ongoing litigation.

Sincerely,

SANFORD SAGALKIN,  
*Deputy Assistant Attorney General,*  
*Land and Natural Resources Division.*

Senator MCGOVERN. When I come back after this rollcall, we will hear from Mr. Stroup, who will be testifying on behalf of the National Organization for the Reform of Marihuana Laws. Meanwhile, thank you again to each member of the panel for your appearance.

Mr. Stroup, if you will stand by, I will be back in about 10 minutes.

[Whereupon, a brief recess was taken.]

Senator MCGOVERN. My apologies to Mr. Stroup and the other witnesses for the rollcall interruptions, but you will be pleased to know that was the final one for today. Mr. Stroup, if you want to proceed and summarize your statement, I think that might be better. We will print the whole statement in the record. In view of the lateness of the hour and the fact that the full committee is going into session here a little later on the Mideast problem, I would appreciate it if you would give us the highlights and save a little time for questions.

**STATEMENT OF KEITH STROUP, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION FOR THE REFORM OF MARIHUANA LAWS, WASHINGTON, D.C., ACCOMPANIED BY PETER H. MEYERS, CHIEF COUNSEL, NORML, AND ERIC SIRULNIK, PROFESSOR, GEORGE WASHINGTON UNIVERSITY LAW SCHOOL**

Mr. STROUP. Thank you,

It is nice to be here today to have an opportunity to present our views on the herbicide spraying program in Mexico. With me are Peter Meyers, chief counsel of our organization, and Prof. Eric Sirulnik, of George Washington University Law School.

**PRIMARY FOCUS OF NORML**

As you know, Senator, NORML is a nonprofit consumer lobby that tries to represent the perspective of the marihuana smoker or marihuana consumer. Our primary focus is obviously decriminalizing marihuana, and as I think you are aware, there is a growing decriminalization drive in this country. There are now 10 States

that have stopped arresting smokers. There are different versions of decriminalization being adopted, and the one in Alaska is the one we favor.

Because we are a consumer organization, we have always had a good deal of concern about the potential health implications of smoking marihuana. We have had a real concern, not because we want to frighten people, but because those of us who smoke do not want to hurt ourselves. We try to represent those who do smoke, the estimated 15 million people in this country who smoke on some regular basis.

#### NEED FOR RESEARCH CONCERNING MARIHUANA'S POTENTIAL ILL EFFECTS

Basically it is our position that the Government's role in this area should be to continue thorough and exhaustive research concerning the potential ill effects, but to use this information to provide the consumer with good data so that he can make the final decision, well informed. This final decision should be left to the individual and should not be made by the State.

We are convinced from the research, especially the comprehensive annual review of all research by the National Institute on Drug Abuse, that there are no significant risks presented by the casual use of marihuana, and even long-term, heavy use has not yet been documented to be particularly harmful. However, we are equally as convinced that marihuana contaminated with paraquat does present a significant risk to those 15 million regular users.

#### POTENTIAL FOR PARAQUAT POISONING

We want to say at the beginning that it is not the person who smokes contaminated marihuana once or twice that will be suffering irreparable damage, but it is the individual—and there are several million according to the Washington Post story today, apparently about 10 percent of our high school seniors are now daily marihuana smokers—and it is those who are daily users who are in a high risk category concerning the potential for paraquat poisoning.

We find ourselves in a bit of a role reversal, because our organization obviously has been trying to go through the many claims about marihuana's potential for harm and separate the real research from what we perceive as propaganda. We now find the Government—Dr. Bourne at the White House and Mathea Falco at the State Department, and others in the administration—trying to play down the dangers presented by paraquat poisoning, though they are very well documented.

#### U.S. ERADICATION PROGRAM IN MEXICO

This seems to us to represent an outrageous example of tunnel vision and an enormous insensitivity to the millions of U.S. citizens who happen to smoke marihuana. The eradication program about which we are complaining is one that has been going on since 1973. This country has provided in excess of \$50 million in assistance to the Government of Mexico. Since 1975, the program has focused almost entirely on the aerial spraying of herbicides, in particular

the herbicide 2-4-D on poppy plants and the herbicide paraquat on marihuana fields.

To give you an example of the size of the program, in the last 2 years an estimated 30,000 to 40,000 marihuana fields have been destroyed, and 80,000 poppy fields. When the program was set up, it was a legitimate attempt to eradicate marihuana and poppies at their source. No one is claiming it was set up to poison marihuana smokers.

#### PROBLEM OF CONTAMINATED MARIHUANA

However, as State Department consultant John Ford discovered in late 1975, and documented in a memorandum, growers of marihuana quickly learned that if they could harvest the marihuana quickly enough after the spraying they could still harvest it and it would continue to have a high market value. If it were left to stand in the field a day or two with sunlight, it would be destroyed.

Subsequent developments have shown that in fact about 20 percent of the marihuana that comes into this country from Mexico is contaminated with paraquat.

Senator MCGOVERN. How much?

Mr. STROUP. Twenty percent, much of it contaminated at very high levels, some of its as high as 2200 parts per million. The average level is about 450 parts.

I first raised this problem with Dr. Bourne at the White House, and with Ms. Falco at the State Department in early 1977. I raised it because I had heard anecdotal reports from growers about the massive introduction of these herbicides. I was first told by the Carter administration that they expected the herbicide to be so effective that none would reach this country.

After some prodding by Senator Percy in his capacity as ranking minority member of the Permanent Investigation Subcommittee of the Government Operations Committee in the Senate, Dr. Bourne finally convinced the other agencies involved, the State Department, DEA and the National Institute on Drug Abuse, to at least find out if the marihuana seized at the Mexican-U.S. border was in fact contaminated. Contamination during the first sample period was 13 percent, and during the second period it rose to 21 percent. The administration's position then was a fallback. They said, "I guess you are right, marihuana is being contaminated, and it is making it to this country, but we do not think there is any evidence it is harmful."

Senator, there has been research available since at least 1975 showing that paraquat, even in minute traces, causes a condition called fibrosis of the lungs, at least when applied to the lung tissue of test animals. There was no reason to think it would not cause that condition in man. In fact, the Government conceded that it was extremely dangerous to touch paraquat, breathe paraquat, or ingest paraquat, but they made the claim that they thought for some reason if it were smoked, because of the burning process, it was all right, it did not present any kind of a health hazard.

I was not impressed by that argument, nor do I think any of the experts were. To their credit, despite this initial position, the Carter administration did begin some short-term research at the National Institute on Drug Abuse, and the results of that short-term research were reported by Secretary Califano on March 12,

when he issued the Government's first and only serious warning about paraquat's potential for harm.

I will not bother to quote from that, but on page 10 of my statement I summarize the Secretary's warnings. What he said is that the individual who smokes three to five joints a day over a period of a few months is subject to an enormous risk of developing fibrosis, and that perhaps people who use less, who smoke one or two joints a day, may risk similar lung damage. As I indicated, several million people in this country are daily marihuana smokers.

At that point, it appeared that the Carter administration felt that by warning the consumer, they had done everything they needed to do. They made a special point to announce publicly that they were going to continue to use paraquat on marihuana in Mexico, and they have. In fact, they are currently spraying paraquat for the third season in Mexico.

#### DEFENSE THAT MARIHUANA IS ILLEGAL

Their defense at this point is that marihuana is illegal. That apparently translates into a position of "we can poison marihuana smokers if we want to." I have indicated in my statement that we consider this nothing less than cultural genocide. We have conceded all along that the Government has no obligation to provide us with "safe" marihuana. As long as marihuana is classified as an illicit substance, and it is in all areas of this country, with the exception of Alaska, the Government can continue to discourage the growth, distribution, and use of marihuana. But this does not justify their creating a whole new and much more serious risk, which they have done. As Ellen Goodman said in a recent syndicated column attached to our statement, it is as if the Government subsidized brake systems that would fail if you drive your automobile over 55 miles an hour. It is the use of "deadly force" to respond to a "de minimis" offense.

Numerous commissions which have looked at marihuana's potential for harm, from the Marihuana Commission on up to the recent Psychoactive Drug Task Force of the President's Commission on Mental Health, have concluded that marihuana in its organic form poses very little hazard to the user. However, as the recent task force report said, once paraquat has been added, it does present a substantial risk. This task force report, incidentally, called for a moratorium of the further spraying of paraquat in marihuana.

I think it is important for us to question the overriding morality of this program, and what I think is a bit of moral confusion on the part of the Carter administration on this subject. The purpose of our antidrug programs in this country is to help people, not to further inflict damage on them. Yet, it is quite clear that the overall results of the herbicide spraying program in Mexico, at least as it applies to marihuana fields, is to put at risk in a significant way literally millions of U.S. citizens who happen to smoke marihuana

#### SUIT FILED BY NORML

NORML filed suit a few weeks ago asking for a Federal court injunction against further involvement by the U.S. Government in

the spraying program. Judge Joseph Waddy heard oral arguments on this last Thursday, and has taken it under advisement, and we are expecting a decision imminently. I have attached the basic documents from this lawsuit to my testimony. We are hopeful the court will grant the relief we seek. We hope to get an immediate moratorium on the spraying program, and to require the Government to thoroughly go through the steps of the preparation, circulation for outside comments, and consideration of the environmental impact statement as required under the National Environmental Policy Act of 1969. But the courts are not the best forum to determine policy in this regard. Injunctions are never certain, and in addition, the Congress authorized the funding for the program and they should exercise oversight now.

#### WHAT IS ASKED OF COMMITTEE?

We are asking this committee, as you prepare your markup on the Foreign Assistance Act, to put a statutory limitation on the way that money could be used, so that it is no longer at the discretion of the Carter administration as to whether they will continue this program. It should be stopped statutorily by the Congress.

#### RECOMMENDED SWITCH TO 2-4-D

The most recent position of the Carter administration, and they have been inching in our direction, although in small increments, appears to be to concede that there was a mistake in choosing paraquat originally, but now to make the same mistake again with a different herbicide. Dr. Bourne has suggested in a public release from his office that the Government is considering and has recommended to Mexico that they switch to a herbicide called 2-4-D, a herbicide which is already being sprayed on poppies. It is a herbicide considered extremely dangerous. Based upon animal research, it is known to cause birth defects and congenital eye defects. And, it has not been taken through that environmental analyses process required by NEPA.

There are more traditional ways to approach crop eradication. We are not suggesting that this Government or the Government of Mexico should be rendered ineffective in their efforts to go after illicit crops at the source, but there are traditional ways, such as cutting and burning, that accounted for the destruction of 11,000 poppy fields in Mexico in 1975, for example, and that did not threaten the environment of Mexico or the United States, as these spraying programs do.

#### GOVERNMENT'S ATTITUDE TOWARD MARIHUANA SMOKERS QUESTIONED

Those of us who smoke marihuana in this country are not the enemy of the U.S. Government. We are legally in a gray area. Our rights are uncertain and unclear, and at times, such as in this case, we seem to be left almost entirely unprotected. The Government seems to feel that they can take steps they would never take with another section of the population, even with violent criminals.

When the Government arrests violent criminals, they lock them up and give them long periods of incarceration, but they do not

poison them. Poisoning is a form of punishment which we think is constitutionally objectionable as well as morally and legally objectionable.

On August 2 of last year, President Carter issued a statement to Congress in which, if I may quote just a sentence, he said, "Penalties against possession of a drug should not be more damaging to an individual than the use of the drug itself." He went on, I might add, to endorse the concept of decriminalizing minor marihuana offenses.

Applied to the current situation, the Government should not run the risk of poisoning millions of marihuana smokers in an attempt to save us from whatever minimal harm might result from our use of marihuana. This program must be stopped for moral as well as legal reasons, and our Government should be returned to its more noble purpose of protecting the health and welfare of all of its citizens, and that includes those of us who smoke marihuana. Thank you, Senator. That is a summary of my statement.

[Mr. Stroup's prepared statement and attachments follow:]

PREPARED STATEMENT OF KEITH STROUP, NATIONAL DIRECTOR, THE NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS

I am pleased to have the opportunity to appear before this Subcommittee today to discuss the current herbicide spraying program aimed at marijuana and poppy fields in Mexico which is currently supported by the U.S. Government and the Mexican Government. I appear here as the National Director of the National Organization for the Reform of Marijuana Laws, and with me are Peter H. Meyers, Esq., NORML's Chief Counsel, and Prof. Eric Strulnik, of George Washington University Law School, and a member of NORML's National Legal Defense and Amicus Committee.

The National Organization for the Reform of Marijuana Laws (NORML) is a non-profit consumer lobby, incorporated under the laws of the District of Columbia. The purpose of our organization is to attempt to represent effectively the perspective of the estimated 15 million regular marijuana smokers in this country. Our first and primary focus is the elimination altogether of criminal penalties for the possession, use, and cultivation of marijuana on a non-commercial basis. We believe the individual, not the government, should make the decision whether or not to smoke marijuana, and we reject entirely the concept that an otherwise law-abiding individual who happens to smoke marijuana thereby becomes a criminal.

You are undoubtedly aware of the growing drive to decriminalize minor marijuana offenses in this country, following the general recommendations of the National Commission on Marijuana and Drug Abuse, in their excellent 1972 report, Marijuana, A Signal of Misunderstanding. The Commission concluded that continued marijuana prohibition diverted hundreds of millions of dollars annually in

law enforcement resources from other areas where it was truly needed, while unnecessarily criminalizing hundreds of thousands of otherwise productive, contributive citizens.

Ten states, representing one-third of the country's population, have now stopped arresting marijuana smokers, though in all except Alaska the activity remains a de minimis offense, punishable by a citation and a small fine. A similar, modified version of marijuana decriminalization was recently approved overwhelmingly by the U.S. Senate as part of S. 1437, the proposed new federal criminal code. Significantly, President Jimmy Carter, along with such prestigious groups as the American Bar Association and the American Medical Association, has endorsed decriminalization on several occasions, including his August 2, 1977, message to Congress on Drug Policy.

NORML favors the version of marijuana decriminalization which has been adopted in Alaska as a result of a unanimous state Supreme Court decision in 1975 (Ravin v. State, 537 P.2d. 494). Under that system, it is perfectly legal for an individual to grow, possess, and share with friends small amounts of marijuana in private. In Alaska, the \$100 fine is reserved for public marijuana smoking, a distinction which our organization supports. Private cultivation, possession and use is protected against any governmental penalty as part of the constitutionally guaranteed right to privacy. We are hopeful that other state courts, and the U.S. federal courts, will eventually concur.

I should emphasize that it is not the goal of our organization to further encourage recreational drug use of any kind. Rather, we support a continued discouragement policy, but one that distinguishes between use and abuse, and that

utilizes honest information about the potential for harm to the user of all drugs, including alcohol and tobacco as well as marijuana. At the heart of this philosophy is a strong commitment to the belief we should not treat our fellow Americans who do choose to ignore our discouragement policy as common criminals.

As a consumer lobby, NORML has always shared with our political adversaries concern about the reported potential adverse health consequences from marijuana smoking. Since we represent the interest of so many marijuana smokers, we really do want to know if marijuana is dangerous to the user, and if so, to what extent. As with alcohol and tobacco, undoubtedly many marijuana smokers would continue, oblivious of the potential harm regardless of the research results. But it remains important to provide the consumer -- in this instance, the marijuana smoker -- the best health-related information available, and then to allow the individual to make a final, informed decision of whether or not to smoke marijuana. That freedom of choice involving purely personal conduct is basic to the constitutional system of government we all cherish in this country.

Nonetheless, as we have attempted to sort through the many claims of harm associated with marijuana over the years, it is our conclusion that marijuana smoking presents no significant risk of harm to the casual user. It is significant as well that to date there is no convincing evidence of harm to even long-term heavy users. The National Institute on Drug Abuse continues to do a comprehensive review annually of all marijuana research, and their annual report has been of tremendous value to policy-makers at all levels in attempting to separate what often amounts to sheer propaganda from the honest and serious research. You may know that NIDA Director Dr. Robert L. DuPont, though he favors a strong discouragement policy toward marijuana smoking, also has publicly called for the

decriminalization of marijuana possession and cultivation for personal use. Thus it is truly ironic that NORML would now be at the forefront of those urging caution to consumers who might unknowingly smoke marijuana today which has been contaminated with the herbicide paraquat. We fear that some of the estimated 15 million regular marijuana smokers in the U.S. may smoke enough contaminated marijuana over a period of months to suffer fibrosis of the lungs, an irreversible, and debilitating reduction in the ability to absorb oxygen. And we have been vocal in our warnings to consumers to avoid Mexican marijuana altogether, unless it has been tested for possible paraquat poisoning by a licensed laboratory.

In a nearly complete role-reversal, we now find many high level federal drug policy-makers, including Dr. Peter Bourne and Ms. Mathea Falco, clearly trying to minimize the rather well-documented ill-effects associated with paraquat poisoning.

Apparently, even proven man-made dangers, such as paraquat contamination, are not considered as serious in the political arena, as potential harm resulting from organic dangers. In this instance, the distinction is absurd. At the very least, the Carter administration should be working with us to more effectively warn consumers of the dangers of paraquat contamination, and should be providing regional testing centers where consumers could reliably test their marijuana for possible contamination.

In fact, the Carter administration's program of spraying dangerous herbicides on marijuana fields and poppy fields in Mexico without first giving full and complete consideration to all the possible environmental and health related consequences, and without considering all reasonable, and less environmentally

threatening alternatives, is a policy reflecting frightening tunnel-vision, and enormous insensitivity to the welfare of millions of U.S. citizens.

Since 1973, the United States has provided more than \$50 million and has otherwise assisted the government of Mexico to develop, set-up, and operate a program of crop eradication in Mexico. Since late 1975, this program has focused primarily on the use of highly toxic herbicides (paraquat and 2,4-D) applied by helicopter from a spraying apparatus. Since that time, and on an on-going basis, we have provided the aircraft, trained the pilots, and provided highly sophisticated photographic detection equipment to locate the fields. In 1976 and 1977, an estimated 30-40,000 marijuana fields, and approximately 80,000 poppy fields were sprayed with herbicides in Mexico under this program.

One must assume the program was originally expected to completely destroy the affected plants, or to at least render them unmarketable. There is no evidence that anyone at that time was attempting to poison marijuana smokers; rather, paraquat poisoning was not yet recognized as a problem. Since the State Department and others chose to ignore the legal requirements as well as the Congressional mandate to prepare an environmental impact statement before implementing the program, the opportunity to anticipate this problem was lost.

In contrast, as A.I.D. consultant John Ford discovered on a site visit in late 1975, the marijuana growers quickly learned that the defoliants were only effective if the marijuana crop was left standing for one or two days with sunlight. Crops which were immediately harvested after the spraying process had been completed could be packaged and shipped north, and could be sold on the illicit market at full value. In fact, since paraquat, after a time, will cause the marijuana leaves to turn

gold in color, certain Mexican marijuana contaminated with paraquat has reportedly been sold as if it were "good Colombian gold", a more expensive marijuana preferred by connoisseurs. Subsequent developments indicate that around 20% of the marijuana currently entering the market from Mexico is in fact contaminated with dangerously high levels of paraquat.

I first began hearing reports of the massive use of dangerous herbicides on marijuana fields in Mexico during 1976, though the reports were unsubstantiated, anecdotal accounts primarily from growers. In February of 1977, I notified Dr. Peter Bourne at the White House, and thereafter Mathea Falco at the State Department, of my concern that marijuana consumers in this country might be subjecting themselves to substantial health risk by smoking marijuana which had been first sprayed with paraquat. Since paraquat does not leave any unique smell or taste, and any color change may only further confuse the consumer, it is the type of risk which is particularly insidious and dangerous.

At that point, and with the prodding of Sen. Charles Percy, the ranking minority member of the Permanent Investigations Subcommittee, Government Operations Committee, U.S. Senate, the Carter administration established a program to assay confiscated marijuana along the Mexico-U.S. border to see if any of it was contaminated with paraquat. Though Dr. Bourne had said he did not believe contaminated marijuana was likely making it to the U.S., 13% of the first representative sample, and 21% of the second sample came up positive for paraquat. While early samples tended to be contaminated in a low concentration, subsequent samples have been tested at more than 2,200 parts per million (ppm), an extraordinary level of contamination which would pose enormous risk to the consumer in even small doses and over a short period of time. The average level of discovered contamination, around 460 ppm, is also dangerously high.

Although some policy-makers in the federal establishment apparently still wanted to ignore the situation, some studies were then quickly set up under the auspices of the National Institute on Drug Abuse (H.E.W.) to make some preliminary findings as to whether the paraquat might be dangerous to marijuana smokers. Under the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.), a far more comprehensive analysis of this type should have been prepared in advance of the initiation of the spraying program. This is the very purpose of NEPA, and to unexplainably ignore those overlying environmental assessment requirements simply because the program falls under the heading of "drug policy" is foolish and short-sighted, as well as patently illegal.

Marijuana smoking itself may present some minimal risk to the health of the smoker. However, the potential adverse impact of smoking marijuana in no way compares with the significant danger the smoker might now experience from paraquat poisoning. The risk of paraquat poisoning goes not only to the millions of daily marijuana smokers in the U.S. who inadvertently smoke paraquat-contaminated marijuana, but also to the people who live in the West Coast area of Mexico which has been subject to this massive spraying program, and to those both in the United States and Mexico who eat the Mexican fruits and vegetables that may also have accumulated dangerous levels of paraquat contamination. In short, the cure in this instance is far more damaging than the perceived problem it was intended to address.

It is not as if there was no knowledge available concerning paraquat's potential for harm. Animal studies had been completed by 1975 indicating that even small amounts of paraquat applied directly to animal lung tissue caused a condition called fibrosis, permanently lowering the ability to absorb oxygen through

the lungs. While paraquat can be used in limited situations agriculturally in this country, its use is permitted only by licensed applicators, following rigid procedures, and only for particular uses which have been approved in advance by the Environmental Protection Agency. Paraquat has never been approved by EPA for use with marijuana plants. Paraquat is currently on an EPA pre-listing which indicates they will be seeking even more stringent controls over its agricultural use over the coming months.

And even where used, the tolerance level for paraquat on fruits and vegetables, for example, is set at .05 ppm; in comparison, the most highly contaminated samples of marijuana have been in excess of 2,200 ppm, a factor of 40,000 to 1. Obviously, an herbicide that may have safe and useful applications in small dose levels does not necessarily deserve a clean bill of health in concentrated form. That is especially true of paraquat, and this was known to the U.S. Government policy-makers at the time of the selection of this herbicide for use in the spraying program in Mexico. More recent research, available to the present administration, is sufficient to warrant an immediate moratorium on the herbicide program, and a thorough and systematic program re-evaluation, including the preparation of an environmental impact statement.

When it was learned that paraquat contaminated marijuana was coming into the United States, the first defense of Dr. Bourne and others in the administration was to claim that there was, as yet, no proof that individuals who smoked the contaminated marijuana were in danger. Where the federal government has generally taken the cautious position of examining and attempting to replicate research reporting even the most frivolous claims of marijuana-related harm, they suddenly were willing to ignore the rather convincing preliminary evidence arguing

against the inhalation to any degree of paraquat by humans. On December 9, 1977, the White House issued a statement indicating there was some concern about paraquat contamination, but concluding that it was no real problem, apparently hoping to end the matter there.

Because of the administration's refusal to assume what we viewed as a more responsible policy, NORML began collecting the necessary data to prepare a lawsuit, seeking a federal court injunction prohibiting any further U.S. involvement in this program. The day before the suit was filed, the Secretary of Health, Education and Welfare Joseph Califano, Jr., finally released the first serious warnings put out by our government concerning the very real dangers of paraquat ingestion or inhalation. Quoting from the March 12, 1978, release:

HEW Secretary Joseph A. Califano, Jr., today warned that marihuana contaminated with the herbicide Paraquat could lead to permanent lung damage for regular and heavy users of marihuana, and conceivably for other users as well.

The Secretary issued the warning based on preliminary studies conducted by HEW's National Institute on Drug Abuse. . . .

Secretary Califano said, "The report's preliminary findings suggest that if an individual smokes three to five heavily contaminated marihuana cigarettes each day for several months, irreversible lung damage will result. The report cautions, however, that there could also be a risk of lung damage for individuals who use marihuana less often or in smaller amounts. Although these results are preliminary, the report concludes that Paraquat contamination may pose a serious risk to marihuana smokers.

Secretary Califano indicated that a report on the preliminary findings has been sent to the White House Office of Drug Abuse Policy, the Departments of Justice, State, and Agriculture, and the Environmental Protection Agency, to permit these agencies to investigate whether there might be alternative herbicides which might be considered as potential substitutes for Paraquat.

From the public comments of various spokespersons in the Carter administration, it was clear they felt the HEW warning was all that was required, and that

It absolved them of further responsibility for the repercussions of this program which they had set in motion and financed. Administration officials, in their response to NORML's lawsuit designed to enjoin this activity, publicly stated that the spraying program would continue with paraquat. To those who questioned the program, they offered the uniform response that since marijuana is illegal, no responsibility is owed to marijuana smokers. In other words, poisoning marijuana smokers is apparently acceptable, should the government want to do it. I submit that this is nothing less than a form of cultural genocide.

It is true that the government has no obligation to provide "safe" marijuana to the consumer. Marijuana smokers obviously assume whatever health risks are presented by marijuana. Also, as long as marijuana is generally classified as an illicit substance, the government can justify a continuing discouragement policy aimed at the source of supply and distribution. But that does not give our government the right either morally or legally to create a new risk, one which is far more significant than whatever risk may be presented by the use of marijuana, and one which effects literally millions of U.S. citizens who happen to be marijuana smokers, but are otherwise law-abiding citizens. The punishment -- poisoning -- most certainly constitutes violation of the Constitutional protection against cruel and unusual punishment, as well as totally sidestepping the guarantee of due process.

As columnist Ellen Goodman recently analogized, what the government is now doing would be similar to the Department of Transportation subsidizing the manufacture of automobile brakes which fail at speeds in excess of 55 miles per hour, since it is illegal to drive over that limit in this country; the cure is more damaging than the problem. The potential damage to the public health from this

herbicide spraying program greatly exceeds the minimal health repercussions of marijuana smoking.

This assessment of marijuana's rather minimal potential for serious harm to the user has been reaffirmed by a number of recent government reports, including the Marijuana Commission Reports in 1972 and 1973; the Reports of NIDA (Marijuana and Health, 1975, 1976); The White House White Paper on Drug Abuse (1975); and most recently by the Feb. 15, 1978, Report of the President's Commission on Mental Health, Task Panel on Psychoactive Drug Use/Misuse. Further, the Task Force Report briefly discussed the spraying of herbicides in Mexico:

The other recent concern relates to supply reduction efforts. The Mexican Government, with United States support and consent, has been spraying marijuana fields with paraquat and possibly 2,4-D. These herbicides are on special restricted lists of the Environmental Protection Agency for domestic use. The sprayed plants can survive for 3 to 10 days, during which time they are harvested. It is estimated that 20 percent of the marijuana coming across the border into the United States is contaminated. The accepted EPA level for residue on citrus fruits going to the market is .05 parts/million. NIDA has found that in contaminated marijuana samples the paraquat levels range from 50 to 2,200 parts/million. There are reports from animal experimentation and from studies on fieldworkers which indicate fibrotic lung damage resulting from inhalation of paraquat. Thus, there is the possibility that lung damage could be caused by smoking contaminated marijuana. The task panel believes that at the very least such spraying should be stopped until the potential health hazards resulting from this poisoning are investigated. (Emphasis added.) *Id.* at pg. 2118.

What should be questioned by this Subcommittee is the moral confusion which could cause an administration to divert significant resources into a program which has such an obvious and overwhelming potential negative health impact on our own citizens. Drug abuse programs, whether they are law enforcement or health oriented, are purportedly adopted for the purpose of helping people. Yet the current use of dangerous herbicides in Mexico has the opposite result; this program

directly threatens the health of millions of U.S. citizens in a significant manner; and, indirectly, we are all threatened by the wholesale introduction of dangerous herbicides into the environment without first systematically assessing the implications.

#### FEDERAL SUIT PENDING

This past week, Judge Joseph Waddy of the U.S. District Court in the District of Columbia heard oral argument on NORML's motion for an injunction against further U.S. involvement in this program in any manner, until a thorough and complete environmental impact statement has been completed as required under the National Environmental Policy Act. This decision is expected within a few weeks, and we are hopeful that the Court will grant the relief we have requested. I have attached to my statement a copy of our basic documents in that suit, which explain our legal position and details the U.S. government's involvement factually to a much greater extent. In addition, I have provided the Subcommittee staff with one complete set of documents in the case of NORML v. U.S. Department of State et al., Civil Action No. 78-0428.

But injunctive relief is never certain, nor are the courts the best vehicle for setting long-term policy in this regard. The Congress should now act affirmatively to review this aspect of our current drug policy, and specifically to preclude statutorily the future use of U.S. funds, under this or any other assistance program, for programs of crop eradication utilizing any potentially dangerous herbicide, until a complete and thorough environmental assessment, including non-spraying alternatives, has been completed.

The Carter administration, in response to letters and telephone calls from thousands of outraged citizens, has now apparently made a political decision at least to back-off their initial insistence on the use of paraquat on marijuana in Mexico. Unfortunately, as an alternative, they are recommending to Mexico that 2,4-D, another untested, dangerous herbicide, be substituted instead. Also, they are suggesting the possible use of dyes to color whatever herbicide is substituted. In both instances, it appears the administration is opting for a band-aid response, one that will get them out from under the immediate political pressure, but will permit them to continue a program of introducing massive amounts of known dangerous herbicides into the environment without any previous environmental studies, as required by law. And one which continues to threaten the health of millions of U.S. citizens. 2,4-D has been found to produce birth defects, congenital eye defects, and other abnormalities in laboratory animals.

This Subcommittee should specifically limit any further appropriations under the Foreign Assistance Act of 1961 from being used in Mexico or other countries to support these misguided herbicide spraying programs. This can be done in such a manner as to protect our government's valid interest in crop eradication, but which will not permit them to ignore valid and important environmental considerations. There are several more reliable, traditional methods of crop eradication, including cutting and burning, which accounted for the destruction of 11,000 poppy fields in Mexico in 1975. It is not a question of whether or not we will continue an effective drug law enforcement policy in this country and internationally. That program can and will go forward; but it should not be permitted to do so with the use of highly toxic herbicides that have not first been approved for this use, and at the expense of the health of U.S. citizens.

Americans who smoke marijuana are not the enemy of the U.S. government, though their uncertain legal status in society leaves millions of citizens temporarily in a confusing and sometimes unprotected "grey zone".

President Carter, in his August 2, 1977, message to Congress, said "Penalties against possession of a drug should not be more damaging to an individual than the use of the drug itself."

Applied to the current situation, the government should not run the risk of poisoning millions of marijuana smokers in an attempt to save us from whatever minimal harm may result from the use of marijuana. This program must be stopped for moral as well as legal reasons. And our government should be returned to its more noble purpose of protecting the health and welfare of all of its citizens, including those of us who smoke marijuana.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATIONAL ORGANIZATION FOR THE  
REFORM OF MARIJUANA LAWS (NORML),  
Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
STATE, et al.,  
Defendants.

Civil Action No. 73-0428

PLAINTIFF'S REPLY MEMORANDUM

This memorandum is submitted in response to the Defendants' Statement of Points and Authorities in Opposition to Plaintiff's Motion for Preliminary Injunction (hereinafter "Opposition").

Although the Defendants have conceded many of the points raised by NORML in its memorandum in support of the preliminary injunction, the Defendants have raised a number of arguments against the granting of an injunction, including NORML's alleged "unclean hands" and lack of standing.

I. Likelihood of Success on the Merits

The Defendants first argue that there is "no issue of likelihood of success on the merits" left in the case because the State Department has begun to prepare an environmental impact statement and an environmental analysis for the herbicide spraying program in Mexico. See Opposition, at pg. 11.

The actions taken by the State Department are only a partial step, and do not satisfy NEPA's obligations "to the fullest extent possible," as Section 102(2)(C) of NEPA requires. Assuming, arguendo, that the Defendants have brought

themselves into compliance with NEPA, this would indicate that Plaintiff had in fact succeeded on the merits, thereby satisfying the first test from Virginia Petroleum Jobbers for injunctive relief.

Although the Defendants have never acknowledged that an environmental impact statement is required by NEPA, they have now agreed to prepare one for their assistance to the herbicide spraying program in Mexico. The Department of State, acting as the "lead agency," is "starting to prepare" an impact statement on the program's effects in the United States, and is "planning to prepare" an "environmental analysis" of the effects of the program in Mexico. Opposition, pg. 8. The State Department anticipates that the environmental impact statement and environmental analysis will be completed by the fall of this year. Id. No further details about the content or scope of the proposed impact statement or "environmental analysis" are provided, nor have the Defendants given any justification for the preparation of two separate documents.

NEPA requires the State Department to prepare one environmental impact statement which will cover the effects of the program in both the United States and Mexico. This was the procedure followed in Sierra Club v. Coleman, 405 F. Supp. 53 (D.D.C. 1975), and the other cases cited on pgs. 24-25 of NORML's prior memorandum. Because some of the environmental effects of a major federal action are felt in a foreign country is no justification to separate and perhaps slight those effects in relation to an analysis of domestic effects originating from the same program. All effects of the program must be thoroughly analyzed at the same time to ensure a rational decision-making process as contemplated by NEPA.

The Defendants point out that they are conducting an "expedited program," in conjunction with other agencies, to evaluate alternative herbicides to paraquat for the eradication of marijuana fields in Mexico. Opposition, pg. 8. While this testing program is going forward, however, paraquat continues to be sprayed on marijuana plants in Mexico. No modifications are being considered for the spraying of poppy fields. 2,4-D, the herbicide principally sprayed on poppy fields in Mexico, may be an even more dangerous herbicide than paraquat, but its use in Mexico is not being seriously reassessed at the current time.

The Court of Appeals for this Circuit has repeatedly emphasized that:

NEPA was intended to ensure that decisions about federal actions would be made only after responsible decision-makers had fully adverted to the environmental consequences of the actions, and had decided that the public benefits flowing from the actions outweighed their environmental costs.

Jones v. District of Columbia Redevelopment Land Agency, 449 F.2d 502, 512 (D.C. Cir. 1974); Alaska v. Andrus, \_\_\_\_ F.2d \_\_\_\_, 11 E.R.C. 1321, 1327 (D.C. Cir. February 24, 1978).

In light of the serious health hazards now known to be posed by paraquat-contaminated marijuana, the Defendants should cease assisting the herbicide spraying until such time as all other consequences and alternatives have been evaluated. Pending a complete and satisfactory evaluation of all crop eradication alternatives, it would be the sheerest folly to precipitously substitute still another unevaluated herbicide for the paraquat currently being used. Many non-herbicide methods to destroy marijuana and poppies exist which are far less hazardous than herbicides, and which should be considered as an interim step until the impact statement is circulated and considered.

Therefore, because the Defendants have failed to comply with NEPA "to the fullest extent possible" in their current and proposed actions, there is a substantial likelihood that Plaintiff will succeed on the merits.

## II. "Unclean Hands"

The Defendants also argue that NORML has brought this suit with "unclean hands" because NORML has alleged that many of its members use marijuana, an illegal substance. NORML submits that the de minimis offenses its members commit by consuming marijuana are far overshadowed by the "unclean hands" of the Defendants, whose actions have created a serious health hazard to millions of marijuana users, and substantial dangers to other health, environmental, and social

Interests. The Defendants have violated the law since late 1975, in ignoring their obligations under NEPA to seriously assess the consequences of their support to the herbicide spraying program, and to consider less hazardous alternatives to herbicide spraying. The Defendants' actions are far more "culpable," and threaten far more serious injury to the public health, safety, and welfare, than the conduct of Plaintiff's members in consuming marijuana. Plaintiff has attached to this memorandum as an Appendix a number of newspaper editorials and related articles from around the country on the herbicide spraying program, which express outrage at the U.S. Government's conduct.

The doctrine of "unclean hands" is one committed to the discretion of the court, and involves a balancing of the equities on both sides. As stated in Wright and Miller, Federal Practice and Procedures: Civil Sec. 2946, at pgs. 415-16 (1973):

The unclean hands defense is not an automatic or absolute bar to relief; it is only one of the factors the court must consider when deciding whether to exercise its discretion and grant an injunction . . . .

The doctrine of unclean hands also may be relaxed if defendant has been guilty of misconduct that is more unconscionable than that committed by plaintiff. (Footnotes omitted.)

See also, Leo Feist, Inc. v. Young, 138 F.2d. 972 (7th Cir. 1943).

NORML acknowledges that possession of marijuana is still a criminal offense in most states and under federal law. However, as we pointed out in our memorandum in support of the preliminary injunction, ten states had passed laws decriminalizing possession of small amounts, and a similar bill has passed the U.S. Senate. Just last week Nebraska became the eleventh state to decriminalize marijuana. Possession has been legal in the privacy of the home in one state -- Alaska -- since 1975, as a result of a state Supreme Court decision. See Plaintiff's prior memorandum at pg. 31, fn.\*. Even states which have not decriminalized possession of marijuana generally treat it as a very minor offense, and it is rare for a person convicted of simple possession today to be sentenced to prison, even though this still occurs infrequently.

President Carter called for the decriminalization of marijuana in his Message on Drug Abuse which was submitted to Congress on August 2, 1977. See Exhibit C to Defendants' Opposition. In support of his recommendation for marijuana decriminalization, President Carter stated, id., at pg. 1158:

Penalties against possession of a drug should not be more damaging to an individual than the use of the drug itself; and where they are, they should be changed.

The same principle applies to the herbicide spraying program. The dangers which this program creates to the marijuana user and to other health, environmental, and social interests in both the United States and Mexico, far outweigh the asserted benefits of the program. These dangers, which have resulted because the Defendants have violated NEPA, are far more serious than the offenses NORML's members have committed by using marijuana.

A similar balancing of harms was undertaken by the U.S. Supreme Court in Eisenstadt v. Baird, 405 U.S. 438 (1972). In that case the Court ruled unconstitutional a Massachusetts statute permitting married couples to obtain contraceptives to prevent pregnancy, but prohibiting distribution to single persons for that purpose, as a violation of Equal Protection. One suggested rationale for the distinction was to deter unmarried persons from having sex. Such "fornication" is a misdemeanor under Massachusetts law. The Supreme Court rejected this rationale, stating, 405 U.S. at 488:

It would be plainly unreasonable to assume that Massachusetts has proscribed pregnancy and the birth of an unwanted child as punishment for fornication, which is a misdemeanor under Massachusetts General Laws Ann., c. 272 Sec. 18. Aside from the scheme of values that assumption would attribute to the State, it is abundantly clear that the effect of the ban on distribution of contraceptives to unmarried persons has at best a marginal relation to the proffered objective.

Should this Court feel it incumbent to consider Defendants' characterization of the unclean hands doctrine, then certainly the application of any requisite balancing test must result in a favorable decision for Plaintiff. The comparison is between the culpability of a large number of otherwise law-abiding citizens who use marijuana, and that of a calculated and continuing program undertaken by a number of agencies of the U.S. Government aimed at frustrating the mandate of Congress to provide each and every American with a safe and healthy environment.

### III. Standing

The Defendants also argue that NORML lacks standing to bring this suit. There are a number of recent cases, involving standing under NEPA, which clearly demonstrate that NORML does have standing. NORML satisfies the tests established in the following cases: United States v. SCRAP, 412 U.S. 669 (1973); Concerned About Trident v. Rumsfeld, \_\_\_ U.S. App. D.C. \_\_\_, 555 F.2d 817, 822 n. 10 (1977); Atchison, Topeka and Santa Fe Railroad Co. v. Calloway, 431 F. Supp. 722 (D.D.C. 1977); Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission, 156 U.S. App. D.C. 395, 481 F.2d 1079, 1087 (1973).

SCRAP, *supra*, significantly expanded the standing of citizen groups to bring suit under NEPA. In that case, an organization composed of five law students called Students Challenging Regulatory Agency Procedures, challenged an incremental rate increase the Interstate Commerce Commission (ICC) had allowed the nation's railroads to charge for shipping recyclable materials and other freight. The complaint alleged that the ICC had failed to file an impact statement for the rate increase, and that the rate increase on recyclable materials would injure the members of SCRAP by resulting in increased air pollution, increased litter, and depletion of natural resources. The Supreme Court first found that SCRAP, as an organization, could represent its members' interests. The Court then ruled that SCRAP had standing because it had alleged sufficient injury in fact to its members' interests, and these injuries were arguably within the zone of interests protected by NEPA. The Court recognized that "all persons who utilize the scenic resources of the country, and indeed all who breathe its air, could claim harm similar to that alleged" by the group. 412 U.S. at 687.

NORML in this case also alleges sufficient injury in fact to its members' interests. Although the Defendants' standing argument focuses exclusively on the allegations concerning NORML's members who use marijuana, Complaint, para. 3(c), NORML has alleged a number of other injuries resulting from the herbicide spraying program, including: (1) injury to health and recreational interests of NORML's members who travel in Mexico, *id.*; (2) a health risk to NORML's

members in the United States who consume foods produced in the herbicide-spraying areas of Mexico, Id.; and, (3) injury to NORML and its members' Informational interests, because they have been deprived of the information a properly prepared impact statement would contain. Para. 3(b).

Three cases from this Circuit have held that injury to this "informational interest" is sufficient, in and of itself, to confer standing to sue. Scientists Institute for Public Information, supra, 481 F.2d at 1087; Atchison, T. & S.F. R.R. Co., supra, 431 F. Supp. at 730; Jones v. District of Columbia Redevelopment Land Agency, supra 499 F.2d. at 512.

All of the injuries alleged -- health, recreational, and informational -- are clearly within the zone of interests protected by NEPA. Defendants only challenge the health interest relating to marijuana use, arguing that NEPA was not intended to protect illegal acts. The Defendants own actions, however, in preparing an impact statement on the consequences of the spraying program in the United States, and in conducting an "expedited program" to discover an alternative herbicide to paraquat, indicate that the health of marijuana users must be considered under NEPA. To ignore the health of marijuana users because marijuana is illegal, and to subsidize a program which would harm marijuana users, would be analogous to the government subsidizing the manufacture of automobile brake systems that fail when the car goes over 55 miles per hour.

The U.S. District Court for the Southern District of Ohio has specifically ruled that NEPA applies to actions whether they are legal or illegal. The case involved review of a decision approving construction of an interstate highway which authorized the crossing of strip mining equipment. Citizens Organized to Defend Environment, Inc. v. Volpe, 353 F. Supp. 520 (S.D. Ohio 1972). The Court stated, 353 F. Supp. at 541:

The fact that the activity of strip mining is legal in Ohio is of no consequence in relation to the applicability of the NEPA. Many, if not most, environmental effects of federal actions are not forbidden by law; and the NEPA does not prohibit actions which adversely affect the human environment. The NEPA requires consideration of the environmental consequences of all federal actions without regard to their legality or illegality.

See also, Hanly v. Mitchell, 460 F.2d 640 (2nd Cir.), cert. denied, 409 U.S. 990 (1972), where the Second Circuit enjoined further construction of a jail and community treatment center in New York City pending preparation of an adequate impact statement. The Court stated that the "availability of drugs" in urban areas was an "environmental" effect which must be considered under NEPA. 460 F.2d at 647.

#### IV. Injunctive Relief Should be Granted

The Defendants also argue that a balancing of the equities does not support the granting of injunctive relief in this case. Opposition, pgs. 10, 13-15. Before responding to this argument, we would point out that the Defendants' memorandum does not acknowledge or respond to the cases from this and other circuits which have granted preliminary injunctions to vindicate the policy of NEPA, without inquiring into the traditional "equities" for such relief. See our prior memorandum at pg. 29. The Defendants also fail to acknowledge or respond to the dangers the spraying program may create for heroin users or to the other environmental, health and social interests affected by the herbicide spraying program. If the Court balances the equities, it must consider all of the dangers the program creates in the United States and Mexico.

1. The Defendants seriously distort the impact an injunction against their further participation in the herbicide spraying program would have upon the Mexican eradication effort. The Defendants' Opposition states on pg. 7:

(T)he primary interest of the Mexican Government is in the eradication of marijuana. . . . See letter of Attorney General of Mexico Oscar Flores, Attachment E hereto. Because of Mexico's concern about marijuana, therefore, any termination of United States assistance to the narcotics eradication program in Mexico will not result in any reduction in spraying of marijuana, but may well result in reduction or termination of opium poppy eradication there. (Emphasis added.)

This claim is totally unsupported by Attorney General Flores' letter. Nowhere in this letter is marijuana eradication given a higher priority than poppy eradication, and, in fact, the letter generally lumps the two together as "narcotic" plants. In addition, the letter states:

Thus far, the assistance and cooperation of the Government of the United States of America through various bilateral agreements have been a valuable help in our task. However, if socioeconomic conditions, the pressures of the great interests which finance illegal cultivation, a change in the criteria of control, etc. alter the existing balance of cooperation, Mexico's determination to continue combatting crimes against public health will not falter; on the contrary, we will continue our campaign, to the extent of our country's capacities . . . . (*Id.*, at pg. 4.)

It is clear that the Government of Mexico would continue the eradication effort, even if the herbicide spraying program were significantly curtailed or eliminated. The injunction plaintiff seeks would not prohibit Defendants from assisting Mexico in non-herbicide eradication methods, including burning and cutting. These alternatives pose far less environmental dangers, and are a realistic substitute for herbicide spraying. In 1975, using fire and stick eradication methods, 11,000 poppy fields were destroyed in Mexico. Affidavit of Matheo Falco, Exhibit A to Defendants' Opposition, at pg. 6. Mexico now has helicopters and airplanes to transport troops to the previously inaccessible fields, and thus much more widespread fire and stick eradication is now possible. In addition, the Mexican Government is now using more than 10,000 army troops in the eradication effort. Defendants' Opposition, at pg. 5. Mexico has committed substantial resources to eradication, and is certain to continue the effort against marijuana and poppy plants, substituting other methods of eradication if herbicide spraying were to be curtailed or ended.

2. The Defendants cite a variety of statistics in their Opposition -- on the number of fields eradicated in Mexico, on the amount of marijuana and heroin those fields would have produced, and on a number of other questions. Frequently, these statistics are presented in a conclusionary manner, without any indication of their source or significance. In addition, the statistics cited in one part of a memorandum or affidavit are often contradicted by the statistics cited in another part of the same memorandum or affidavit. A good example of this is the number of heroin overdose deaths in this country. The Defendants state on page three of their Opposition that "approximately 1,800 people die from heroin overdoses each year," and on page six that "Heroin overdose deaths have dropped by 70% in 1977, from 1,774 to 540." The Affidavit prepared by Mathea Falco (Exhibit A to

Defendants' Opposition) first states that "between 1,000-1,800 people die from heroin overdoses each year" (pg. 4), but then states that "heroin overdose deaths dropped by 70%, from 1,770 in 1976 to 540 in 1977" (pg. 7). The affidavit prepared by DEA Administrator Peter Bensinger (Attachment C to Defendants' Opposition) does not contain any specific number of heroin deaths, but contains a chart which is extremely difficult to decipher (pg. 6). However, on February 10, 1978, Mr. Bensinger testified before the Senate Subcommittee on Juvenile Delinquency that there had been a 44% drop in heroin deaths in the last year, Statement at pg. 14, and the accompanying chart makes clear that the 540 overdose deaths occurred in just the first half of 1977, not the entire year.

3. Defendants have also cited State of Alaska v. Andrus, 11 ERC 1321 (D.C. Cir. 1978) and Concerned About Trident v. Rumsfeld, 555 F.2d 817 (D.C. Cir. 1977) as authority that a preliminary injunction would be improper in this case because an injunction would not be of any additional aid in preserving an opportunity to choose among alternatives as contemplated by NEPA. These cases are clearly inapplicable here. In both cases, an extensive environmental evaluation had been performed before the defendants initiated their project, defendants had substantially complied with NEPA before making a decision to proceed, and the immediate harm to plaintiffs of continuing the project was slight and speculative. In the instant case, Defendants have never conducted an environmental evaluation of the spraying program, Defendants would still be in violation of NEPA if permitted to continue their assistance to the spraying program without the benefit of an impact statement to aid in the decision-making process, and millions of American citizens will be exposed to substantial irreparable injury to their health if the project is permitted to continue. In addition, while Defendants claim they are not "locked in" to the present spraying program, the only alternative now being investigated is the substitution of one herbicide for another against only marijuana fields. It is this type of tunnel vision decision-making process which NEPA is designed to eliminate.

4. The Defendants also argue that one portion of the relief sought by NORML "raises a nonjusticiable political question," referring to the direction in NORML's proposed order that the Defendants shall use their best efforts to persuade the Government of Mexico to call a moratorium on the herbicide spraying program until the impact statement is prepared and considered. See Opposition, at pg. 15. The Defendants argue that this relief involves a "political question" because it would effect the foreign relations of the United States, which have been committed by the Constitution to the President. *Id.*, at pgs. 15-16.

There have been a long line of Supreme Court cases holding that an issue which involves foreign relations does not automatically become a "political question," and each specific case must be analyzed on its merits. As the Court stated in Baker v. Carr, 396 U.S. 186, 211-12 (1962):

There are sweeping statements to the effect that all questions touching foreign relations are political questions. . . . Yet it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance. Our cases in this field seem invariably to show a discriminating analysis of the particular question posed, in terms of the history of its management by the political branches, of its susceptibility to judicial handling in the light of its nature and posture in the specific case, and of the possible consequences of judicial action. (Footnotes omitted.)

See also, Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952).

The facts of this case fully justify an order that the Defendants shall take affirmative action to fully inform the Government of Mexico of the dangers the spraying program creates, and to attempt to persuade the Government of Mexico to call a moratorium on the spraying. The Defendants must bear a substantial responsibility for the spraying program and its consequences, and in light of the dangers which have now been documented, the Defendants should assume an obligation to attempt to correct or ameliorate these dangers. The protections embodied in NEPA are intended to protect the "human environment," with no exemptions for foreign affairs functions, and the Defendants should attempt to make the policies of NEPA fully effective. NORML's proposed order would insure that Mexico is fully informed of the dangers the spraying program creates, allowing the Government of Mexico to make a more informed decision on what actions it should now take.

The U.S. Court of Appeals for the Fifth Circuit recently directed the Department of State and the Department of Justice to use their "best efforts" to prevent a woman's extradition to Switzerland. Geisser v. United States, \_\_\_ F.2d. \_\_\_, 21 Cr. L. Rep. 2344 (2nd Cir. June 22, 1977). The woman had entered into a plea bargain with the Justice Department under which she agreed to assist in a narcotics prosecution in this country. In return, the U.S. Government agreed to assist in preventing her extradition to Switzerland, an obligation which the Second Circuit in 1975 interpreted as requiring the Government to use its "best efforts" to prevent extradition. Geisser v. United States, 513 F.2d 862 (5th Cir. 1975). After a remand, the case again reached the Fifth Circuit, and the Court ruled that the Government had not satisfied its "best efforts" obligation, and directed the Government to do so on the woman's behalf. Geisser, supra, 21 Cr. L. Rep. at 2344. Similar relief is surely justified in this case, which affects the health of millions of persons.

5. The Defendants also cite in their Opposition the Single Convention on Narcotic Drugs, a treaty to which the United States and Mexico are parties. Opposition, pgs. 4, 14. The Defendants do not assert that the treaty obligates the United States to participate in herbicide spraying programs, or other specific eradication efforts, and the treaty clearly does not require such specific forms of assistance. The Court of Appeals for this Circuit recently discussed in detail the scope of the Single Convention treaty, in NORML v. DEA, 559 F.2d 735 (D.C. Cir. 1977).

#### Conclusion

For all of the above reasons, and for the reasons set forth in Plaintiff's memorandum in support of the preliminary injunction, NORML requests that a preliminary injunction be entered restraining the Defendants from providing any further assistance to the herbicide spraying program in Mexico until they have fully complied with NEPA, and granting the related relief requested in the motion.

Respectfully submitted,

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Certificate of Service

I hereby certify that on this 3rd day of May, 1978, I personally delivered a copy of the foregoing Plaintiff's Reply Memorandum, with Appendices, to attorneys for the Defendants, as follows:

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Respectfully submitted,

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Peter H. Meyers  
Attorney for Plaintiff

[From the New York Times, Mar. 18, 1978]

#### REEFER MADNESS

The Federal Government has finally stumbled on a way to persuade marijuana users that pot is dangerous.

It began several years ago with a Federal program aimed at heroin. The United States gave Mexico \$40 million to buy aircraft and train personnel to spray killer chemicals on the poppy fields, the source of much of the heroin that enters the United States. Apparently on their own initiative, the Mexicans, assisted by American advisers and equipment, went on to spray marijuana fields.

The trouble is, the herbicide the Mexicans chose to use against marijuana is paraquat, a substance so toxic, according to the label, that "one swallow can kill." Paraquat is supposed to break down quickly when it hits the soil and present no long-term danger. But it takes two or three days in bright sunlight to kill the plant. The resourceful Mexican farmers now rush to harvest their crops on the day they are sprayed, with the toxic herbicide still on the leaves. Past Federal warnings of the danger of marijuana have been based on slim evidence. But now the Government has fulfilled its own prophecy: The Department of Health, Education, and Welfare warns that permanent lung damage could result from smoking three to five heavily contaminated cigarettes a day for several months. Thus, a program designed to protect people from the supposedly harmful effects of marijuana has succeeded in putting them at far greater risk.

To demands for an end to this Government-sponsored "poisoning," the State Department responds that the Mexicans control the spray program, buy the herbicides with their own money, and might resent outside interference. Moreover, some State Department officials see no reason to protect Americans who are using a contraband substance. Just the other day, one of them questioned "whether our Administration has a responsibility to provide an illicit drug in clean, completely healthy condition."

But, in fact, the United States is helping to add a poison to the drug. Fortunately, there are signs that the State Department, under pressure from other agencies, Congress and pro-marijuana groups, will communicate the latest health findings to Mexico and perhaps urge the use of other herbicides. Even State would have to admit that this cure has been worse than the disease.

[From the Des Moines Register, Mar. 20, 1978]

#### DEADLY MARIJUANA

Should the U.S. Government support a program that could inflict permanent health damage? Should the government support a program in a foreign country that if proposed in the U.S. would likely never leave the drawing boards?

These are some of the questions raised by the support the U.S. has given to a program to kill thousands of acres of marijuana growing in the mountainous rural regions of western Mexico.

The Department of Health, Education, and Welfare announced that marijuana sprayed with paraquat has been entering the U.S. from Mexico, and that persons using such marijuana on a regular or heavy basis could suffer permanent lung damage.

According to a recent report in Science magazine, the U.S. since 1973 has provided more than \$40 million in direct support for efforts to kill marijuana and opium poppies growing in Mexico. Paraquat is so dangerous that the label on it states, "one swallow can kill." There is no known antidote. Science reports:

"Ingestion or inhalation of one-tenth of an ounce is sufficient to damage major internal organs and result in a painful death after 24 hours."

When sprayed from the air, paraquat sticks to the leaves of marijuana plants. If these leaves are exposed to direct sunlight for a day or two, the plant is destroyed. But if the marijuana crop is harvested on the same day it is sprayed, the deterioration is not completed, and the paraquat remains on the marijuana.

The U.S. Government has not completed a comprehensive analysis of the environmental and health effects this program could have on Mexican and American citizens; such an analysis would have to be undertaken were the program being conducted within U.S. territory.

The program is an example of drug-control gone wild. The U.S. either should insist on the same safeguards it would require if the program were conducted in this country or it should terminate its support.

[From the Chicago Sun-Times, Mar. 29, 1978]

### UNCLE SAM'S "KILLER WEED"

War has bitter ironies, and the U.S. Government's war on marijuana is no exception:

Weed killer may have finally made "killer weed" live up to its deadly nickname. Under a misguided U.S. drug-eradication program, pot-smokers are being exposed to Paraquat, a chemical that can cause severe and irreversible lung damage.

The issue has nothing to do with the decriminalization of marijuana. Rather, it centers on whether the U.S. Government, wittingly or not, is helping poison U.S. citizens.

And the evidence makes it clear: It's past time for the spraying program—and the resultant health peril—to stop.

The problem arises from a \$13-million-a-year heroin and marijuana control effort under which the United States gives the Mexican Government aid in spraying herbicides on drug crops south of the border.

U.S. drug officials have estimated that 30,000 to 40,000 Mexican pot fields were sprayed with the plant-killer Paraquat in 1976 and 1977. But there's a dangerous hitch.

Mexican marijuana farmers, fearing the loss of their cash crop, harvest the plants before the herbicide goes to work. Then they sell it on the usual drug market.

Who buys? One federal study late last year found contamination in 9 of 45 samples of Mexican pot seized in California and Arizona. And the danger appears to be spreading: Recent studies have found as much as 50 per cent of some West Coast shipments tainted.

Drug-testing labs in Chicago have found none of the contaminated weed—so far. Yet concern, sometimes panic, persists. The Health, Education, and Welfare Department has even issued warnings about the danger.

The Government should take one further step: a complete halt to programs that promote the application of highly toxic chemicals to drugs that are likely to end up here. The National Organization for the Reform of Marijuana Laws has taken legal action to force just such a ban.

Citizens concerned about justice—and the long-term effects of chemical poisons—should hope the ban is put into effect.

Discouraging the use of marijuana is one thing; poisoning the supply is another. Consider the analogy: If "revenooers" find a moonshine still, do they secretly add cyanide to its product?

[From the Boston Globe, 1978]

### MARIJUANA OUTRAGE

(By Ellen Goodman)

BOSTON.—Talk about Reefer Madness.

The first issue to stir up the leaden oatmeal of college campus indignation in years is the news of the paraquat poisoning of marijuana.

From Fred Harris' freshman government class at the University of New Mexico to graduate biophysics seminars at M.I.T., the students are angry again. As one jaundiced assistant professor put it: "It's the only thing I've seen them protest in three years—outside of a low grade."

Students everywhere are outraged that "their government" financed the pesticide spraying of Mexican marijuana plants. It has turned into a melting pot (forgive the pun) issue among young people today, into which they've thrown a lot of anger, cynicism and a strong dose of irony.

The irony is simply this: The government that failed over many decades to convince the public that marijuana is dangerous finally has helped to make it dangerous.

In 1975, the Nixon administration gave Mexico \$40 million to buy planes and train people to spray herbicides on poppy fields in order to kill off a major supply of heroin. On their own initiative, the Mexicans went on to more fertile fields and sprayed marijuana with the deadly chemical paraquat.

The idea was that paraquat would kill off the plants, the way it helped defoliate Vietnam. But each season, the enterprising Mexican farmers harvest the stuff before it dies, and ship it north.

Since about 50 to 60 percent of the pot smoked in this country comes from Mexico, it is assumed that for the past two or three years, a large number of the 15

million regular marijuana smokers have inhaled a substance that has a slow, cumulative effect on their lungs. Is there any wonder why the Bumper Sticker of the Moment in California reads: "Buy Colombian"?

The question is now whether the Carter administration, which has taken a stance in favor of decriminalization of marijuana, feels any responsibility about the Mexican program. And the answer is mixed.

On March 12, HEW did issue a warning about paraquat to "consumers." But on March 28, the spraying was begun on the spring crop, with our money.

Dr. Peter Bourne, the president's special assistant on health, states the government's position this way: "People are asking the federal government to protect them in a patently illegal act. If it's against the law, the responsibility of the government to protect its quality doesn't exist."

But no one is actually asking the government to roll up 12 neat joints and put them in an FDA-inspected cellophane package. They are complaining that the Government is poisoning the stuff.

Bourne makes a second analogy, saying that "the whole area is filled with ambiguity; it get into questions like 'Should we offer health care to someone who gets into an accident going over 65 miles an hour?'" But, should we, on the other hand, give government grants to manufacture a brake system that fails at 65 miles an hour?

The National Organization for the Reform of Marijuana Laws (NORML) has filed a suit against the government, and a hearing is scheduled for April 26, although it may be postponed again. In the meantime, the people doing a boffo biz are the ones running test labs on all the vials of marijuana being sent in by all the worried users.

For once, NORML is raising the health issues of smoking marijuana. As George Franham, the assistant director, put it: "This is total role-reversal."

But the fact is that there are currently 45 million Americans who have smoked marijuana. Right now nine states—inhabited by a third of the population—have decriminalized it. Furthermore, in the latest Gallup polls, 70 percent of the population of those under 30 and those with a college education are in favor of decriminalizing it.

Marijuana has become a gray area of the law and an issue of debate on and off the college campus. But who is in favor of poisoning marijuana smokers? This paraquat punishment just doesn't fit the "crime."

[From Science Magazine, Vol. 200, Apr. 28, 1978]

#### POISONED POT BECOMES BURNING ISSUE IN HIGH PLACES

(By R. Jeffrey Smith)

Following a discovery that Mexican marijuana contaminated with the herbicide paraquat constitutes a major health hazard for pot smokers in the United States, the State Department recently sent a delegation to Mexico City to discuss the issue with Mexican attorney general Oscar Florez.

The visit came on the heels of a warning by the U.S. Secretary of Health, Education, and Welfare (HEW) that the herbicide persists in the smoke of a contaminated marijuana cigarette and may be inhaled by the smoker. The paraquat contamination is so serious that those who smoke as few as one to three contaminated cigarettes daily for several months risk irreversible lung damage.

Members of the U.S. delegation did not—as some American critics have sought—ask the Mexican government to cease the herbicide spraying program, which is aimed at eradicating illicitly grown marijuana and heroin. The program is overseen and heavily financed by the U.S. government (*Science*, 28 February). "We just wanted to inform them of the dimensions of this problem in the U.S.," said Richard Arellano, a deputy assistant secretary at the State Department.

A major topic of discussion at the meeting, in addition to the health hazards, was a lawsuit recently brought by the National Organization for the Reform of Marijuana Laws (NORML) to force the State Department to stop funding of the spraying until it files an environmental impact statement. Several well-informed officials told *Science* that the department is extremely nervous about the suit, which is regarded as likely to succeed. If it does, the precedent would destroy the department's claim that projects it funds in other countries are exempt from the impact-statement requirements. "The State Department regards this as the worst case that could come up," said one source, "because the spraying program is having an obvious impact here at home."

At the meeting in Mexico City on 30 March, American officials had a difficult time persuading the Mexicans that the lawsuit could prevent continued U.S. funding for the herbicide program. "The Mexicans couldn't understand how our judicial system could even entertain the suit, considering that marijuana is already an illegal substance," said Arellano.

A team of U.S. scientists is searching for an alternative to paraquat, but the federal court suit will probably be resolved before they are successful. In particular, they have been looking at formulations of the herbicides 2,4-D and glyphosate, but each possibility is said to require additional safety testing that could delay the substitution for months.

Initially, officials of the National Institute on Drug Abuse reported that paraquat posed no particular hazard, because it was thought to be converted entirely into another chemical, bypyridine, when a contaminated cigarette was burned. Bypyridine exists commonly in smoke from a tobacco cigarette and is not considered to be particularly hazardous. Recently, however, scientists at the Research Triangle Institute in North Carolina were able to analyze the smoke from a contaminated marijuana cigarette with a mass spectrometer. They discovered that roughly 5 percent of the paraquat remains in pure form after burning. Coupled with the discovery that recent samples of marijuana entering the United States from Mexico contained a concentration of paraquat as high as 2264 parts per million, this evidence was alarming. Tests showed, for example, that in a cigarette with a contamination of 1000 parts per million, 0.26 microgram of the herbicide is likely to be inhaled by the user.

An estimate of the dangers to humans of inhaling such an amount was extrapolated from laboratory studies with rats, because most cases of paraquat poisoning in humans have been caused by ingestion, not inhalation, of the chemical. The laboratory studies demonstrated that when an exceedingly small amount of the herbicide was placed directly on the rats' lungs, it caused fibrosis, or a scarring that inhibits the ability of the lung to absorb oxygen. At the low doses in contaminated marijuana, the scarring in humans would build up slowly, and it would be some time before the only probable symptom—extreme shortness of breath—would be noticed.

As yet, no instances of fibrosis attributed to the poisoned marijuana have been reported. However, doctors at the Center for Disease Control (CDC) in Atlanta, which is attempting to serve as a clearinghouse for physicians with patients who have been smoking the poisoned pot, have received reports of other ailments that may be related to the contamination. Specifically, physicians in Georgia, Iowa, and California have reported that several of their patients—who apparently had been smoking paraquat-laden marijuana—have experienced uncomfortable breathing and have been spitting up blood. Both the CDC and the doctors themselves are cautious about attributing the symptoms to paraquat, however, apparently because corroborating tests have not been devised.

Whether or not any poisoning has occurred thus far, users of marijuana appear to be increasingly aware of the potential risks. Charles Becker, a physician associated with the Haight-Asbury Free Clinic in San Francisco, told *Science* that the center has received hundreds of calls from smokers reporting adverse effects potentially related to the herbicide. Testing laboratories in Palo Alto, California, and North Miami, Florida, which guarantee anonymity for their clients, have been doing a brisk business in chromatography (contamination) tests of marijuana samples mailed in from all over the country. G. D. Searle, a pharmaceutical manufacturer, recently organized a testing program—the only free one—in Chicago, Illinois, and found that 39 of the first 40 samples tested were contaminated by paraquat. As the entire affair has received wider publication, the backlog of samples at each testing center has become substantial.

Meanwhile, officials in Washington have remained reluctant to express strong concern over the issue. No formal attempts have been made to seek Mexican cooperation in suspending the spraying. Lee Dogoloff, an official in the Office of Drug Abuse Policy in the White House, noted that "the government does feel some responsibility to smokers, but individuals do have some responsibility and choice in the matter—they don't have to smoke." Secretary of State Cyrus Vance, in a letter to Senator Charles Percy (R-Ill.), said that he personally shared Percy's concern about the problem and "will do everything possible to resolve it," but this seems to extend only to notifying the Mexicans of the health hazards and then waiting until a safe alternative to paraquat can be identified.

In a recent statement on the Senate floor, Percy—who has been following the issue closely—expressed his belief that more could be done. "To wait any length of time before [a safer herbicide] is identified—without in the interim doing anything to urge Mexico to suspend its current paraquat spraying program," Percy said,

"could needlessly endanger a large segment of our population." Whichever side is correct will undoubtedly become clear as events continue to unfold.

[From the Pittsburgh Post-Gazette, Apr. 22, 1978]

#### POISONING POT

Advocates of marijuana decriminalization—a group that includes President Carter—have gradually convinced most rational Americans that smoking marijuana should not lead to arrest and criminal penalties. Over at the Department of State, however, some officials apparently believe that jail is too good for marijuana users. Their alternative penalty is a lifetime of serious lung disease.

Lung disease—specifically, fibrosis, a massive hemorrhaging followed by the formation of scar tissue—is what results when a marijuana user smokes pot which has been treated with the herbicide paraquat. Using funds supplied by the United States, and with the aid of American advisers and equipment, the Mexican government has sprayed more than 30,000 marijuana fields with the toxic chemical.

Although the Mexicans apparently hoped to destroy the marijuana crops, Mexican farmers have been harvesting paraquat-sprayed marijuana plants before they die.

Rather than moving to cut off American participation in the Mexican spraying operation, some State Department officials have taken a "so what?" attitude about health hazards to millions of American marijuana smokers. The implication of their unconcern is that marijuana's illegality justifies something very much like germ warfare. It doesn't—and President Carter ought to move quickly to end the American involvement in the Mexican form of reefer madness.

Traces of paraquat, a potentially harmful herbicide used to kill Mexican-grown marijuana, have been found in samples of pot sold and smoked in Pennsylvania, a Centre County drug crisis and information center reports.

On Drugs Inc. of State College says seven of 26 confidentially obtained samples sent to a California testing laboratory were found to be contaminated.

"We believe it's pretty much all over," a center spokesman said. "The samples came from all over the state."

Three were purchased in the State College area, two in Pittsburgh and one in the Lehigh Valley.

[From the Washington Star, Apr. 18, 1978]

#### AGAINST THE GRAIN IN TEXAS

(By James J. Kilpatrick)

AUSTIN, TEX.—At a time when the Carter administration would move the country toward an ever-expanding government, students at the University of Texas have decided to go just the other way.

Last month they voted to abolish their student government. On April 7, the Board of Regents voted to approve their action.

Some other encouraging developments are taking place here in Austin.

The Young Republicans and Young Americans for Freedom rank among the most active groups on a lively campus. One of the YAF'ers is making a name for himself by persistently suing to prevent the Daily Texan from endorsing candidates for political office.

Campus conservatives began working toward overthrow of the student government two years ago. A couple of drama majors, Jay Adkins and Skip Slyfield, announced their candidacies for president and vice president on the Arts and Sausages ticket. Their platform had a beautiful purity at its core: Student government is a farce, they said. So why not elect a couple of clowns? They frolicked to a splendid victory.

Thus inspired, leaders of the revolution (including many students of a liberal bent as well) set about obtaining signatures on a petition to abolish the student government root and branch. By February this year, the effort had succeeded. A Committee to Retire Aspiring Politicos, whose acronym occasioned much applause, led the campaign. The Constructive Abolition Movement, headed by a student who withdrew as a presidential candidate, played a role.

The vote was 2,644 to abolish, 2,458 to preserve. In a student body of 40,000, the turnout was pathetic, but this is the way with student elections generally. Next

year, or the year after, a revival movement can be expected. Meanwhile, the charade is over. No government is better than sham government.

The effort by law student Howard Hickman stems from an equally vigorous defense of principle. In common with most student newspapers, the Daily Texan is mildly subsidized by the parent university. An excellent paper, professionally produced, the Texan operates from a publicly owned building in the heart of the campus. Under the mandatory fee system, every student is required to pay roughly 75 cents a semester toward production costs.

Back in 1976, when a moderate liberal had won election as editor, the Daily Texan endorsed Jimmy Carter for president. Young Hickman is a Republican who had backed Ronald Reagan. He brought suit to enjoin the paper from endorsing candidates for any political office. Thus far, his petition has been rejected by a series of courts, but he still is in there fighting. The present editor, a moderate conservative who also likes Reagan, is urging a rational solution: Give the dissenting students their money back. University authorities have objected that it would take \$1 in accounting costs to refund every 75 cents, and there the matter rests. Let's hear it for Hickman!

It would be pleasant to report that most of the Texas students are wrought up about matters of political philosophy, but they seem to be far more disturbed by some stuff known as paraquat. It appears that the Mexican government, under a grant from the U.S. government, has been spraying fields of marijuana with this poisonous defoliant, and the residue has contaminated the pot the students smoke.

Everywhere a visitor went on campus last week, he was asked for an opinion on this indefensible and abominable trick. Paraquat-contaminated marijuana had been found on campus; its existence had been chemically confirmed; students were learning to test their grass with kits containing vinegar, methyl alcohol and sodium hydroxide. It is one way of learning chemical reactions.

All this arouses envy in the breast of an aging journalist. Forty years ago at the University of Missouri, we found our fun and games in swallowing goldfish. Things are livelier now.

[From the Seattle Times, Mar. 27, 1978]

#### WARNING TO "POT" SMOKERS

When American dollars and technical know-how were sent to Mexico a few years back to help the Mexican government crack down on growers of opium poppies, nobody dreamed the project might cause problems on this side of the border.

Originally, United States officials thought the aerial spraying of highly toxic herbicides would be directed primarily at poppy fields, which supply the raw material for heroin.

The Mexicans on their own initiative evidently added marijuana growers to the target list. Resourceful marijuana farmers quickly learned to harvest crops sprayed with Paraquat and get them to markets (mostly in this country) before the herbicide could ruin the plants completely.

But along with those imports came a dangerous health problem: Smokers of Paraquat-sprayed marijuana are exposing themselves to health hazards—precisely how serious won't be known until more research is completed.

That is why groups like the National Organization for the Reform of Marijuana Laws (NORML) are warning "pot" users and asking that this country persuade Mexican officials to suspend Paraquat spraying of marijuana farms pending completion of studies by the U.S. Department of Health, Education and Welfare. (A fair amount of contaminated Mexican marijuana has been reported here, incidentally.)

The situation is full of irony. While marijuana long since has been recognized as a relatively harmless substance, the Paraquat threat could convert the exaggerated warnings about the "killer weed" in an earlier era into a self-fulfilling prophecy.

"Conducting a program of prevention that subjects people to greater potential for harm than the marijuana itself," said Roger A. Roffman, NORML's Washington State coordinator, "is the ultimate of folly."

[From the Tacoma News Tribune, Apr. 11, 1978]

#### CONTAMINATED MARIJUANA

Smokers of the illegal drug marijuana are being warned their habit may be exposing them to a new danger. There is the possibility the marijuana they use is contaminated with a herbicide that could cause lung damage.

The herbicide is called Paraquat, and it is being used by Mexico to spray marijuana fields in an effort to destroy the crop and thus reduce the drug traffic. But in efforts to salvage their illegal crops, Mexican marijuana growers have been quickly harvesting the sprayed marijuana before the herbicide can do its job.

The result is that much of the marijuana that is being smuggled across the Mexican border, and making its way into Washington state, is contaminated by Paraquat.

No one knows how much of the marijuana used in this area is Paraquat-sprayed, but some have estimated the amount at about 20 percent. It may be more.

Roger A. Roffman, state coordinator for NORML, an organization pushing for decriminalization of the state's marijuana laws, says he knows that "most of the marijuana used here comes from Mexico."

If that is true, then no doubt a large percentage of marijuana smokers here are indeed subjecting themselves to the possible harmful effects of Paraquat.

Roffman and others raise a serious question: Should not the U.S. government persuade the Mexican government to cease the use of Paraquat?

Further, is not the U.S. in its encouragement, financial and otherwise, of Mexico's anti-marijuana campaign at least partially responsible for the health hazard presented by the use of the herbicide?

The seriousness of the questions override the controversies about whether marijuana is safe or unsafe or whether the drug should or should not be "decriminalized."

The fact is there is the strong likelihood that marijuana users may well be exposed to lung damage.

Since it is difficult to determine quickly whether marijuana has been Paraquat-contaminated, the best advice to users of the substance would be to cease smoking the weed.

At the same time, the government should recognize the validity of the questions being raised about its participation, indirect though it may be, in the Mexicans' use of Paraquat. The least that should be done is to alert Mexico to the health dangers and to urge the use of other, less harmful herbicides.

[From the Sacramento Bee, Apr. 2, 1978]

#### PARAQUAT AND MARIJUANA

Most authorities, including the government's own experts, have come to agree that, smoked in moderate amounts, marijuana is a relatively harmless plant. In the past two years, however, the federal government's attempts to curb drug traffic from Mexico have turned marijuana into a truly dangerous substance. The State Department, through its section on International Narcotics Matters, has been encouraging and subsidizing a Mexican spraying program that employs paraquat, a powerful herbicide which, according to a number of studies, can cause irreversible fibrosis and other serious damage to the lungs.

Although the government's own estimates indicate that 20 percent of the Mexican marijuana in this country is paraquat-contaminated; although several cases of marijuana-related lung damage have recently been identified (all of them, incidentally, in California); and although the Department of Health, Education, and Welfare has issued an official health warning about paraquat, the U.S.-supported spraying program continues. The State Department's attitude is that since marijuana is an illegal substance, it has no official responsibility for the damage its program inflicts. In any case, said a State Department official, the United States cannot control the herbicides the Mexican government uses in its spraying program.

The department's fatuous explanation simply ignores the fact that it was the United States which helped inspire the spraying program in the first place, that it provides most of the planes and helicopters which spot the growing plants and spread the chemical, that it provides technical advisers, and that what it supports it can also stop or modify. But what we find more disturbing and irresponsible is the attitude itself. Spraying marijuana with poisonous chemicals is a dangerous, near-

sighted and pernicious practice. The whole point of drug control is to protect health, not to damage it further.

[From the San Francisco Examiner, Apr. 22, 1978]

#### THE SPRAYING OF MEXICO

About 20 percent of the marijuana in the United States is contaminated with paraquat, a defoliant, thanks to a Mexican eradication program sponsored in part by our government.

Scientists disagree over whether smoking the contaminated pot is dangerous. The National Institute on Drug Abuse announced that it is. The National Organization for the Reform of Marijuana Laws agrees, and has filed suit to stop the U.S. government's participation.

We're concerned that the government is helping to make an illegal drug more dangerous. But we're more concerned about what the spraying may be doing to Mexicans and their ecology.

A State Department spokesman said spraying marijuana and poppy plants has been going on for four or five years. (State administers the grant to Mexico for the program.) "Thousands and thousands" of acres have been sprayed, he said. That's a lot of chemicals to pollute the atmosphere.

If, as tests seem to indicate, the chemical is harmful when inhaled on pot, it must be dangerous if breathed directly. Tests seem to show that the paraquat mostly breaks down into a harmless chemical when burned. But what does paraquat do to the people who breathe it as it is sprayed? What does it do to other plants in the area? Paraquat, widely used as a weed killer on California citrus ranches, is under investigation as a probable health hazard to growers and farm workers.

Estrogen, not paraquat, is sprayed on poppy plants. That accelerates their growth so that they die quickly. Paraquat dries up marijuana plants in about 48 hours.

Drug growers have learned that if they harvest pot immediately after the spraying paraquat's effects are retarded. Then they mix the contaminated pot with uncontaminated pot and ship it out.

The State Department says it is concerned primarily with heroin poppies. If it were to ask Mexico not to spray pot with paraquat, the poppy program could be endangered, it said. Mexico considers pot more dangerous to its society than heroin, according to the Department of State.

We don't want to hinder any efforts that can reduce the heroin that enters the country. But we wonder whether that spraying, too, could be dangerous to the ecology. Often chemical effects remain hidden for years—until, as with DDT, people notice that birds can't lay eggs with hard enough shells to survive until they hatch.

Our advice to pot smokers is that they have their stash tested for contamination before smoking.

Our advice to the U.S. government is that it reconsider the questionable contribution it is making to Mexico's environment, not to mention to America's lungs. Whatever the harm of pot-smoking, the pot-spraying may be a cure worse than the disease.

[From the Los Angeles Times, Apr. 30, 1978]

#### PARAQUAT PROGRAM REAPS A SINISTER HARVEST

U.S. HERBICIDE, USED ON MEXICAN MARIJUANA, RAISES PROFOUND ETHICAL QUESTIONS

(By Henry A. Waxman\*)

The federal government spends millions of dollars each year to stop illegal drug trafficking. Why? To protect public health, particularly the health of our teen-ages.

Why then has the United States supported spraying Mexican marijuana with the highly toxic herbicide paraquat, which now exposes millions of Americans to the risk of permanent lung damage?

The paraquat program, now entering its third year, has cost American taxpayers more than \$35 million. The State Department has provided Mexico with 76 aircraft and trained pilots. It has provided technical experts to locate the marijuana fields

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and then run the spraying equipment that is used to defoliate them and thus, presumably, cut down on the importation of marijuana to this country.

But all these efforts made by our government have resulted in a sinister harvest. Now 20 percent of the marijuana crossing the border from Mexico to the United States is contaminated with paraquat. Health, Education, and Welfare Secretary Joseph A. Califano, Jr., warned that U.S. marijuana smokers currently face a serious health threat—permanent lung damage from the chemical. Paraquat poisoning may lead to coughing up blood, difficulty in breathing, or other respiratory discomforts.

The State Department's attitude has been that it has no official responsibility for the lung damage its program inflicts because marijuana is an illegal substance. Yet surely ethical questions must be asked when our government cavalierly disregards the health of 15 million of our people who choose regularly to use this substance. Our own government should never be involved in a program that creates or increases a health risk to American citizens or to citizens of other countries, for that matter.

Federal health policy should be guided by the same Hippocratic Oath that binds physicians—which calls, at the least, for no damage to be done. To substitute for this something as base as an attitude that "it serves pot smokers right," is to ignore the moral questions involved. Impersonal bureaucracies like the State Department need reminding that many of these users are our children.

In effect, the paraquat program shows the United States using taxpayers' money to poison the lungs of some of those very same taxpayers. This is reminiscent of a paradox revealed at hearings on HEW's new antismoking campaign: At least \$70 million in federal monies will go for tobacco subsidies even while \$23 million is allocated to discourage Americans from smoking.

When the federal government knowingly exposes millions of citizens to needless health risks, this leads to deep distrust of our public-health program.

Marijuana users, of course, in common with other smokers, do expose themselves to known health risks associated with inhaling, whether what they inhale is tobacco or "grass." They have chosen to do so. However, the federal government cannot use this to justify the invisible contamination of marijuana, thus exposing users to risks they wouldn't knowingly assume.

It is ironic that the federal government would abandon good sense in an attempt to destroy marijuana just as abundant signs are appearing that marijuana is verging on legitimacy—if not legalization—in the United States. Last November, both the American Bar Assn. and the American Medical Assn. called for liberalizing federal and state marijuana laws. In 10 states, possessors of small amounts of marijuana no longer face criminal charges. Further, the White House has started a major lobbying effort to persuade the National Cancer Institute to make marijuana widely available to alleviate the effects of cancer treatment. (Research during the last three years has shown almost conclusively that marijuana reduces the extreme discomfort caused by chemotherapy in treating cancer.)

An FDA spokesman recently speculated that marijuana will be reclassified as a prescription drug on a par with narcotics such as morphine. Indeed, earlier this month Dr. Peter G. Bourne, President Carter's health adviser, announced that marijuana will be made available to cancer researchers "within weeks."

Why is the federal government supporting the paraquat program at the same time it is considering making marijuana a prescription drug? Put simply, this contradiction suggests a bureaucracy careening through public-health issues without a clear sense of purpose.

To use the jargon of law enforcement, the possession and use of an ounce of common sense is long overdue. When the federal government "pushes" paraquat spraying of marijuana, it undermines public faith in its own ability to govern wisely. When our State Department spends \$35 million in American taxes on paraquat, then turns around and claims that the program is an internal affair of the Mexican government, it is about as credible as a street pusher shrugging and telling a judge "Who me?"

President Carter should call forthwith for a moratorium on any further U.S. support for, or involvement in, toxic herbicide programs in foreign countries. As Carter himself said in his Aug. 2, 1977, message to Congress: "Penalties against possessing a drug should not be more damaging to the individual than the use of the drug itself."

[From The New Republic, Mar. 18, 1978.]

#### POISONED MARIJUANA

Every year more than 2,500 tons of Mexican marijuana finds its way into the United States, accounting for perhaps 70 percent of the total consumed here. In analysing samples of marijuana seized in major drug busts in the southwest since October 1976, the National Institute for Drug Abuse has discovered that more than 20 percent is contaminated by a chemical called paraquat, which is a toxic defoliant.

Where the chemical is coming from is no secret. It is traceable directly to a program jointly conceived by the Mexican government and U.S. drug enforcement advisers under which opium and marijuana fields in Mexico are sprayed from helicopters with paraquat and other agricultural herbicides similar, and in some instances identical, to those used to defoliate the jungle during the Vietnam war. As in Southeast Asia, hidden marijuana and opium fields are located by infrared aerial photography.

The program was originally designed to destroy Mexican opium, which is the source of about 5,000 pounds of heroin each year. According to the State Department, spraying marijuana as well was entirely the idea of the Mexicans. To be sure, the chemical paraquat is highly effective in eradicating marijuana—if the plants are allowed to sit in the sunlight and open air for a day or two after spraying while the herbicide does its work. But the Mexican peasants who cultivate the stuff in inaccessible mountain fields are inspired by a stiff entrepreneurial spirit. After the helicopters depart, they simply hustle out and harvest the freshly sprayed plants, immediately squeezing the leaves into bricks before decomposition can begin. Thus more and more frequently the marijuana that is sold in this country has the poisonous chemical in it.

It's not clear just how harmful marijuana laced with paraquat is. According to the February 24 issue of *Science*, magazine, which has carried the most thorough examination of the problem to date, the paraquat label states that one swallow can kill and there is no known antidote. According to *Science*, "ingestion or inhalation of one-tenth of an ounce is sufficient to damage major internal organs and result in a painful death after 24 hours."

However, NIDA testing of paraquat-laden marijuana—ordered by President Carter's Special Assistant for Health Issues, Peter Bourne—indicated that at the levels of concentration initially found on the imported samples, no hazardous amount was likely to be inhaled as part of the smoke from a marijuana cigarette nor a lethal amount ingested by eating marijuana cookies or brownies. But levels of paraquat concentration have increased dramatically in dope from recent seizures—up from six to 50 parts per million to highs of 2,000 per million. Furthermore, no one really knows whether there is any harmful effect from ingesting amounts too small to make you ill on the spot. The Environmental Protection Agency has warned that the chemical can cause birth defects, and all the concentration of paraquat turned up in the Mexican marijuana greatly exceed the tolerance levels set by that agency.

Dr. Lester Grinspoon of Harvard Medical School, the author of *Marijuana Reconsidered*, points out, "There's no way for a consumer to know that his grass is poisoned or by how much. Nor is there any way to complain about it, because the government is putting the poison in. Whatever needs to be done to reverse this should be done immediately. The Drug Enforcement Agency should move to stop the spraying program."

Peter Bourne of the White House takes a more casual view. "I'm not sure there's any demonstrable health hazard of any consequence," he says. "People who disagree with that do so on a largely emotional basis without any scientific substantiation. I mean, we have nobody coming into hospital emergency rooms with toxic effects."

People also disagree about how much the U.S. government is responsible for the marijuana spraying. The official State Department position is that the entire operation is Mexican and it is important for their local politics that it be perceived to be so. We provide funds only for *opium* eradication. The Mexicans extended it to marijuana on their own, almost as a favor to us, it would seem. "Right now they are spending an inordinate amount of their resources on a project that essentially benefits the U.S.," a State Department official told *Science*. "We don't want to disturb that." State also insists that we have no direct influence over the choice of herbicides used in the program.

On the other hand, over the past five years, the U.S. government has provided \$40 million in direct funding for the program, most of which has gone for the purchase of helicopters and other aircraft for spraying and reconnaissance. We've also trained aviators and mechanics, actually operating the infrared photographic equipment

and advised in the use of chemicals. Drug Enforcement Administration officials often accompany Mexicans on the flights. The State Department has asserted that we allow the Mexicans to use the helicopters to spray marijuana only because we would have to maintain them in the poppy off-season anyway.

Opinions differ about what obligations the U.S. government now has in all this. The National Organization for Reform of Marijuana Laws (NORML) believes that all U.S. involvement should be stopped until it is conclusively proved that the chemicals used in both the poppy and marijuana programs are not putting poisons into grass or heroin consumed in this country. Illinois Senator Charles Percy, who has kept a constant pressure on government drug enforcement authorities for nearly a year takes a similar, if softer, position. Percy says, "The United States government has a responsibility to ensure that its actions do not foreseeably endanger the health and safety of any of its citizens, drug users included."

At the other end of the spectrum, some U.S. drug enforcement officials believe that the government has no obligations whatever: marijuana is illegal and the government has no responsibility to assure that illegal activities are safe. But if there is some danger, it is the direct result of U.S.-supported spraying operations. That much even Peter Bourne is prepared to concede. Does that imply any further obligation? "I don't think so," Bourne says, "If the risk exists the guy still has the option not to smoke the grass to begin with."

As far as the Carter White House is concerned, the little matter of poisonous paraquat on Mexican marijuana is "not a policy question." The U.S. government does not intend to suspend the spraying program, or even to recommend to the Mexicans that safer chemicals be used. It has done little to publicize the potential danger since it was discovered. Bourne says, "It's a health issue comparable to cigarettes, and we have instructed HEW accordingly."

CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, D.C. April 27, 1978.

President JIMMY CARTER,  
The White House, 1600 Pennsylvania Avenue NW, Washington, D.C.

DEAR MR. PRESIDENT: As members of the United States Congress, we urge you to call an immediate moratorium on all U.S. aid and assistance for the use of paraquat and other dangerous herbicides on marijuana fields in Mexico, and to undertake a thorough analysis of the environmental and health-related consequences of this program.

The U.S. government, principally through the Department of State and the Drug Enforcement Administration, has supported the large-scale spraying of paraquat in the program in Mexico since late 1975. To date, the U.S. has supplied the Mexican government more than \$35 million to help pay for the program, including the 76 aircraft involved and the complex technical expertise required in so large an effort.

After two years of spraying, involving more than 30,000 marijuana fields in Mexico, the National Institute on Drug Abuse has released figures showing that more than 20 percent of the Mexican marijuana entering this country is contaminated with paraquat. A preliminary report released by HEW Secretary Califano on March 10, 1978, shows that persons smoking paraquat-contaminated marijuana run the risk of developing fibrosis, an irreversible condition that results from massive hemorrhaging in the lungs, and the subsequent formation of scar tissue.

The United States has a responsibility to protect the health of all its citizens, including even consumers of marijuana, from the unintended consequences of any major federal actions. That is the purpose of the National Environmental Policy Act of 1969, which mandates a thorough environmental impact statement *in advance of the start of the program*. It is unconscionable, now that the potentially serious health implications of the current program are realized, for the spraying of paraquat on Mexican marijuana fields to continue. We urge you to withdraw U.S. support from this program until the proper environmental assessments have been completed.

Sincerely,

George Miller, David E. Bonior, William M. Brodhead, John Burton,  
Phillip Burton, Bob Carr, John Conyers, Jr., Ronald V. Dellums,  
Christopher J. Dodd, Robert F. Drinan, Don Edwards, Donald M.  
Fraser, Mark W. Hannaford, Michael Harrington, Barbara Jordan,  
Martha Keys, William Lehman, Andrew Maguire, Edward J.  
Markey, Abner J. Mikva, Toby Moffett, Richard Nolan, Leon Pan-  
etta, Jerry Patterson, Benjamin S. Rosenthal, Pete Stark, Newton I.

Steers, Jr., Henry A. Waxman, Ted Weiss, William J. Hughes, Peter H. Kostmayer, Patricia Schroeder.

ASSEMBLY, CALIFORNIA LEGISLATURE,  
April 18, 1978.

Hon. JIMMY CARTER,  
The White House,  
Washington, D.C.

DEAR PRESIDENT CARTER: We, the undersigned members of the California State Legislature, call upon you to take all appropriate steps to immediately terminate American funding and support for the spraying of Mexican marijuana fields with paraquat and toxic herbicides. The wide-spread spraying of toxic herbicides on Mexican marijuana fields has raised many serious environmental and health concerns which cast serious doubt on the wisdom of continuing this program.

The purpose of the defoliation program—reducing the flow of illicit drugs into the United States—is an admirable one, especially pertaining to heroin. It appears, however, that the herbicide program as it pertains to marijuana has clearly not accomplished that goal. Rather, the spraying program is responsible for the influx of large quantities of contaminated marijuana into this country, creating an entirely new domestic drug problem which outweighs any positive effects of the herbicide operation. Samples of marijuana seized and analyzed by the U.S. Government as well as samples submitted to the PharmChem Research Foundation in Palo Alto, California, indicate that approximately 20 percent of the marijuana entering this country from Mexico has been contaminated with paraquat. Since 60 percent of the estimated 5,000 tons of marijuana entering the U.S. annually comes from Mexico, the amount that is contaminated is alarming. As a result, millions of Americans may be subjecting themselves to health risks far greater than the casual use of marijuana.

We are worried about the public health implications of the wide-spread use of marijuana contaminated with paraquat, particularly the possibility of long-term lung damage. Indeed, on March 12th, Health, Education, and Welfare Secretary Joseph Califano, Jr., issued a public statement warning that "marijuana contaminated with the herbicide paraquat could lead to permanent lung damage for regular and heavy users of marijuana, and conceivably for other users as well." Though this warning was based on preliminary research, it is disturbing enough to warrant immediate cessation of continued American support for the herbicide program.

We are particularly concerned about the health risks posed to youthful marijuana users. Despite the efforts of those of us in government to discourage the use of marijuana and other drugs, marijuana use is common among minors as well as adults. Many young marijuana users are either unaware of the potential danger posed by paraquat contamination or they do not believe it is real. Illicit drug sellers in California are reported to be representing the marijuana they sell as uncontaminated or "non-Mexican" and youthful consumers have no practical way of testing their marijuana to be sure. One reported effect of the paraquat revelations in California has been the large drop in the price of Mexican marijuana, and as a result young people, along with poor people and minorities in general, are running a greater risk of consuming contaminated marijuana than persons who can afford the more expensive, and presumably pure, marijuana.

Besides the serious health hazards paraquat-contaminated marijuana presents to American marijuana users, we are concerned about the adverse environmental impact the spraying program is having on Mexico. It has been reported, for example, that paraquat and other herbicides are being sprayed at levels in excess of what would be legally permissible in the United States, thereby threatening substantial health and environmental damage to the ecology and people of Mexico. Until environmental and health studies are completed, the U.S. Government should not be assisting and funding the herbicide spraying operation.

Discouraging the use of marijuana is an appropriate public policy; funding a program which subjects marijuana users to greater potential harm than the mere use of marijuana itself is something else altogether. In this instance, it appears that the marijuana spraying program is causing more harm than good and it should be stopped.

Though the Mexican government may be carrying out the spraying program, it was the U.S. Government which initiated it and the responsibility of our government cannot be avoided.

We respectfully urge you to call on the Mexican government to end this misguided program and to cease American funding and support for it. Our federal drug

enforcement efforts should be aimed at more serious problems and priorities than marijuana defoliation. Thank you very much.

Sincerely,

Thomas H. Bates, Member of the Assembly; Senator Alan Sieroty; Assemblyman Bill Lockyer; Assemblyman Mike Gage; Senator David A. Roberti; Assemblyman Vic Fazio; Assemblyman Art Torres; Charles R. Imbrecht, Assemblyman; Assemblyman Willie Brown, Jr.; Assemblyman Mel Levine; Assemblyman Herschel Rosenthal; Assemblyman Michael Wornun; Assemblyman Bruce Young; Assemblyman John Vasconcellos; Senator Peter H. Behr; Assemblyman Mike Roos; Assemblyman Maxine Waters; Senator Bob Wilson; Howard Berman, Majority Floor Leader, Assembly; Julian Dixon, Assemblyman; Assemblyman Art Agnos; Assemblyman Richard Hayden; Assemblyman Peter Chacon; Assemblyman Jim Klyso; Assemblyman Lawrence Kapiloff; Assemblyman Richard Alatorre; Assemblyman Bill McVittie; Assemblyman Richard Lehman; Assemblywoman Marilyn Ryan; Assemblyman Terry Goggin; Assemblyman Richard Robinson; Assemblywoman Leona Egeland; Assemblyman Bruce Nestande; Assemblyman Eugene Gualco; Assemblyman John E. Thurman; Assemblywoman Teresa P. Hughes.

Senator McGOVERN. Thank you very much, Mr. Stroup, for your statement.

#### ADMINISTRATION POSITION THAT PROGRAM IS TOTALLY MEXICAN INITIATIVE

The administration, as you know, has maintained that the marijuana spraying program in Mexico is totally a Mexican initiative. What is your reaction to that position?

Mr. STROUP. It is a program first developed within our own Government agencies. It was exported to Mexico. It has been primarily paid for by U.S. funds. We train the pilots. We provide the aircraft. About the only thing we do not do is provide the paraquat. Mexico happens to buy it directly from England, but obviously we give them \$13 million to \$14 million a year to do that with.

So, to say it is not our program and is Mexico's is to ignore the facts. That is the defense the Government has tried to use on our lawsuit, and I think it is obviously invalid.

#### DETAILS OF PENDING SUIT AND RESULT OF FAVORABLE RULING

Senator McGOVERN. Can you give us the details of the suit which you now have pending, and tell us how a favorable ruling would operate?

Mr. STROUP. Thank you. I will ask Peter Meyers, to respond, NORML's chief counsel, who is in charge of that.

Senator McGOVERN. We had a communication from the Department of State, from the Assistant Secretary for Congressional Relations, Mr. Bennet, saying they did not feel they could testify today at the time this suit was pending. I would like that letter to be made a part of the record.

[The information referred to follows:]

DEPARTMENT OF STATE,  
Washington, D.C., May 8, 1978.

Hon. GEORGE McGOVERN,  
U.S. Senate.

DEAR SENATOR McGOVERN: Last Friday evening, the Department of State discussed with John Holum of your staff postponement of today's hearings on the administration's narcotics program in Mexico. At Mr. Holum's request, I am writing to confirm the reasons underlying our request.

A suit against the Department of State involving that program is pending in the District Court for the District of Columbia. A hearing was held on Thursday, May 4, and the case now has been taken under advisement by the judge.

We are concerned about any public testimony by State Department or other Administration officials touching on the legal and factual issues in this litigation while they are pending before the court. It would be extremely difficult to avoid dealing with such issues in any testimony concerning this program.

If there is an appeal of the District Court's decision, we expect that the issues would be narrowed and clarified sufficiently that witnesses from the Department could testify on a broad range of questions pertaining to the program: unrelated to the issues raised in the appeal.

We appreciate your understanding of our concerns regarding this hearing.

Sincerely,

DOUGLAS J. BENNET, JR.,  
Assistant Secretary for  
Congressional Relations.

Mr. STROUP. Senator, I would suggest that that is merely "stonewalling." There is no reason legally why the Carter administration could not have commented on that suit.

Senator MCGOVERN. That was the opinion of their legal counsel, apparently. He did not feel they were in a position to testify, but in any event, we would be glad to hear your view as to the legal details and the impact of a favorable decision.

Mr. MEYERS. Senator, my name is Peter Meyers, chief counsel of NORML. A brief overview of the suit: The principal relief it seeks is an injunction against any further U.S. aid or participation to the herbicide spraying program in Mexico until the defendants in the suit have fully prepared and considered and circulated an environmental impact statement. The Government has already acknowledged they will prepare the impact statement, not specifically saying that we agree it is the "major Federal action," that would require us to prepare it, but acknowledging that they would prepare it. The Government is not contesting in the lawsuit, Senator, that it is enough of an American program to require an impact statement. That is the main relief, an injunction against any further participation.

We also asked for two other things, first, that the defendants fully inform the Government of Mexico of the court's decision, and of the dangers which the spraying program may cause in the United States as well as in Mexico, and to use our best faith efforts to persuade the Government of Mexico to call a moratorium on herbicide spraying.

The last area of relief would be as a prophylactic matter, beyond just Mexico, to cut off U.S. assistance or aid in other herbicide spraying programs until the environmental impact statement has been prepared. Dr. Bourne has stated in a letter which we cited in our brief that the U.S. Government at the present time is not assisting any other countries besides Mexico in herbicide spraying programs, and it is certainly one of the important questions in our minds.

Are we going to have—are we encouraging other countries now to use this method of eradication when there is such a cloud over it in terms of the Mexican program?

## SUBSTITUTION OF 2-4-D FOR PARAQUAT

Senator MCGOVERN. Suppose we could convince the Mexicans to use 2-4-D, the herbicide that I understand is being used to spray poppies, on the marihuana? Would that be an acceptable solution to your organization?

Mr. STROUP. No, sir, not on a practical level nor legally. We would object for the same reason we object to the massive introduction of paraquat without proper testing in advance. We would also object to the use of 2-4-D specifically. In fact, there are many experts who believe 2-4-D is even more toxic and a more dangerous herbicide than paraquat.

## DECriminalIZATION OF MARIHUANA

Senator MCGOVERN. I do not know what value this observation has, but some 7 years ago, I tried as a national candidate to generate support for the decriminalization of marihuana, apparently without great impact, but nevertheless——

Mr. STROUP. You were accused of being in favor of AAA, as I recall

[General laughter.]

Senator MCGOVERN. We got all kinds of distortion on that, but I still regard it as essentially a conservative and moderate position. In any event, I think in your statement, Mr. Stroup, you anticipated most of the questions I had intended to raise here today. If there are any other observations any of the members of the panel would like to make, I would be glad to have them.

## FACTORS AT CRUX OF ISSUE

Mr. SIRULNIK. Just briefly, I think the Government has glossed over several factors which I believe are at the crux of this issue. First of all, the courts have established that environmental impact statements are in fact required for major Federal actions which affect the human environment, even if those actions take place outside the confines of the borders of the United States. This was held in the *Darien Gap* case which was just affirmed by the U.S. Court of Appeals. The holding requires an environmental impact statement in terms of the Trans-American Highway project in Colombia.

Second, the use of paraquat or any other dangerous herbicide without the requisite environmental impact statement is by itself disturbing, but the Government's repeated justification that such activity and any possible ill effects on marihuana users should not be disturbing, since those who are affected are breaking the law, is to me the most troublesome. I also think it is the most serious defect in the Government's legal case.

What they are saying is that without a trial, without any due process, without any constitutional protections whatsoever, this Government can launder through the Mexican Government the Constitution of the United States if the governmental interest happens to be drug eradication or drug control. I am terribly bothered by that presumption.

Mr. STROUP. Senator, what we are saying is, we believe the same environmental requirements should pertain to this project as pertain to all other governmental projects. There should not be an exception made by the administration simply because it is under the guise of drug law enforcement.

Senator MCGOVERN. Thank you very much, gentlemen.

I appreciate not only your testimony, but your patience with all of the interruptions due to the rollcalls. We will see, Mr. Stroup, that your entire prepared statement as well as your supporting documents are made a part of the record.

I want to also thank Bill Richardson, who has done the staff work for these hearings in organizing the panels. I regret we could not go ahead with the hearings yesterday, but I am grateful for the staff work he has done.

Thank you. The hearing is adjourned.

[Whereupon, at 4:35 p.m., the subcommittee adjourned subject to the call of the Chair.]

**END**