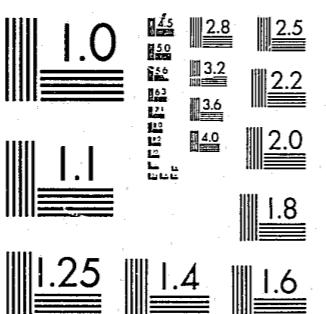


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RUDOLPH GIULIANI
ASSOCIATE ATTORNEY GENERAL

BEFORE

THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME
HOUSE OF REPRESENTATIVES

CONCERNING

NARCOTICS ENFORCEMENT

ON

DECEMBER 10, 1981

NCJRS
JAN 4 1982
ACQUISITION

Mr. Chairman, members of the Committee, I appreciate very much the opportunity to appear before you today to discuss the Administration's strategy for drug law enforcement.

As the President has stated, an effective attack on drug trafficking is one of the most important steps we can take to reduce crime in the United States. In explaining the Administration's crime program before this Committee and before the Judiciary Committee of the Senate, the Attorney General reiterated the Administration's position that narcotics trafficking is perhaps the most harmful of all crimes committed in our society.

This Committee, and other Committees of the House and Senate, have heard from federal, state and local law enforcement officials who have described narcotics-related problems ranging from corruption in Florida to drug abuse in the military. Testimony before the House Select Committee on Narcotics Abuse and Control has also focused on the deleterious effects of the use of drugs on the youth in our society. In my testimony I will address the law enforcement aspects of this grave national problem.

This Administration will attack drug trafficking in three distinct areas: first, in the source countries, where illicit narcotic crops flourish; second, at the borders of the United States and on the high seas, where stepped-up

drug interdiction efforts are essential; and third, domestically, where enforcement of the drug laws and other relevant laws must be made more effective.

I. INTERNATIONAL INITIATIVES

A. Crop Eradication

Let me turn first to the initiatives we will pursue in the international arena. The most efficient and effective way to control narcotics is by eradicating them at their source. Unfortunately, this is also the method least within the control of the Department of Justice. The Department of Justice supports initiatives of the Department of State to bring about the eradication of illicit drugs in the countries where they are cultivated. Therefore, the Department of Justice has already proposed that Congress repeal existing restrictions upon assistance to foreign governments for herbicide spraying programs.

Of course, crop eradication programs will succeed only if the Department of State and its diplomatic personnel make drug-crop eradication a major priority in critical drug producing countries. The Attorney General and the entire Department of Justice will continue to work with the Secretary of State and his aides to assure that drug enforcement, and specifically, crop eradication, receive the level of attention they require.

Our crop eradication efforts will be directed against those crops which are used in processing the two most dangerous drugs entering our country, heroin and cocaine. Without doubt, these two drugs yield within our own nation the most human misery and the most related crime. Crime related to heroin and cocaine is frequently and increasingly violent. In the case of heroin, a staggering amount of violent crime is committed by addicts seeking money to sustain their habits. Similarly, in the case of cocaine, a great deal of crime is committed by drug trafficking groups competing for the lucrative drug trade. Thus, emphasis on eradication programs affecting these drugs is appropriate.

Our efforts will also be directed against marihuana which, in some parts of the country, particularly Florida and the Southeast, presents a problem of even larger dimensions than heroin. With respect to marihuana, source eradication is possible through the use of herbicides such as paraquat, a product widely used to suppress weeds in connection with the production of agricultural crops. Although paraquat has been thoroughly tested and approved as safe for use as a herbicide, considerable controversy has developed regarding the potential health impact should paraquat-treated marihuana be ingested.

We appreciate the health concerns surrounding herbicide use. However, herbicides destroy marihuana crops within a

matter of days, thereby making it unlikely that any significant volume of treated marihuana will find its way to consumers. More to the point, we believe that the long-term health effects of marihuana use, particularly the effects on young people, are sufficiently serious to justify paraquat use as a means of curbing the marihuana problem.

At the same time, the Department has also asked Congress for legislation authorizing federal officials to conduct, and to assist the states in conducting, eradication programs for the domestic marihuana crops. Such crops are becoming a serious problem in certain areas of the country. Foreign nations cannot help but doubt our sincerity and our commitment to effective drug enforcement if we permit these crops to flourish domestically. For consistency in our national position, and because domestic marihuana presents a serious problem of its own, we must pursue eradication programs as vigorously here as abroad.

As I have noted, crop eradication efforts cannot be carried on by the Department of Justice acting unilaterally. Here, as in many areas of drug enforcement, the Department of Justice must work with other Departments of the government, particularly the Department of State. The Attorney General intends to use the interagency committee on drug enforcement as the forum in which to coordinate these activities. This committee, the formation of which the

President recently announced, will be chaired by the Attorney General. Its membership will include the Secretaries of State, Defense, Treasury, Transportation and others. This committee will be the focal point for coordinating those drug enforcement efforts which, given their international or inter-departmental character, cannot be conducted by the Department of Justice alone.

B. Treaties

We have also worked closely with the Department of State to pursue the negotiation of treaties with foreign nations. On December 2, 1981, the United States Senate ratified treaties on Extradition and Mutual Legal Assistance with the Republic of Colombia and the Kingdom of the Netherlands. These treaties reflect the priority we have accorded to this aspect of drug enforcement. Through such treaties we can obtain valuable assistance in obtaining evidence from abroad and in extraditing those who traffic in drugs in violation of our laws. Lawyers from the Departments of Justice and State are actively negotiating with the governments of other countries to reach similar agreements, particularly in the area of mutual legal assistance.

We have also been successful in reaching ad hoc agreements with other nations to permit vessels registered under their flags to be boarded and searched where the

vessel is suspected of transporting drugs destined for the United States.

II. EFFORTS AT THE BORDERS OF THE UNITED STATES AND ON THE HIGH SEAS

An important step in improving our interdiction efforts on the seas and at our borders is the recent enactment of Public Law 97-86, which amended the Posse Comitatus Act. This Administration supported the efforts to remove limitations on Army and Air Force assistance to drug enforcement. The new legislation should also remove the analogous restraints previously imposed upon the Navy and Marine Corps by regulation.

In the past, Posse Comitatus restricted appropriate forms of military assistance to civilian law enforcement. For example, military radar and related communications equipment are constantly monitoring the airspace and seas surrounding the United States to detect hostile aircraft and ships. Information derived from such monitoring would greatly assist civilian agencies in detecting and interdicting aircraft and vessels smuggling illicit drugs, other contraband, and illegal aliens into the United States. We anticipate that such assistance will be available under the new legislation.

The United States Navy, of course, has never been bound by the restrictions of the Posse Comitatus Act. Accordingly, the Department of Justice, in response to recommendations of the Attorney General's Task Force on Violent Crime, has for several months sought Naval assistance in spotting ships and aircraft suspected of attempting to bring narcotics into the United States. We hope that we will soon have the use of naval intelligence and radar information on suspected drug traffickers. This experience with the Navy could then serve as a prototype for more extensive cooperation with the military.

I have mentioned our support for the efforts to enter special arrangements with foreign governments to interdict vessels on the high seas. The United States Coast Guard has interdicted significant shipments of drugs, particularly marihuana, destined for the United States. Since the enactment by Congress of the high seas legislation which became law in September of 1980, American and foreign national crewmen are now clearly subject to prosecution in the federal courts. The United States Customs Service has made major cases against drug trafficking organizations at critical points of entry, particularly in Florida, New York, California and Texas.

III. DOMESTIC ENFORCEMENT OF DRUG LAWS

A. FBI - DEA Coordination

Chief among our efforts to improve domestic drug enforcement is our ongoing effort to achieve a more active drug enforcement role for the Federal Bureau of Investigation and to achieve better coordination between the FBI and the Drug Enforcement Administration. The FBI, of course, has long been involved in investigations affecting drug enforcement, including investigations of organized crime and the money-laundering which invariably accompanies drug trafficking. Further, the FBI enjoys wide deployment in more than 500 locations nationally. It has substantial agent forces in some areas -- even some critical drug areas -- in which DEA has only minimal presence. By coordinating the work of the FBI and DEA, we can add to the resources available for drug enforcement.

Further, there can be no doubt that drug trafficking is a very sophisticated, very organized criminal business. In many instances, drug trafficking has been linked to traditional organized crime groups. We believe we can more effectively deal with the large-scale trafficking groups by coordinating DEA's street-level, undercover expertise with the FBI's ability to combat large criminal enterprises. The FBI's 20-year experience in combatting organized crime will also prove critical to drug enforcement. Coordination of

this kind is essential if our national response to drug trafficking is to be as organized as the trafficking groups we fight.

The Attorney General appointed a committee to study completely and to report to him concerning the many issues raised by the proposed coordination of DEA and the FBI. The Committee has completed its work and I have reported its recommendations, which are currently under study. His decision on these recommendations will be made shortly.

The Department of Justice, of course, has kept the members of this and other Congressional committees fully apprised of its work on this matter. The Attorney General is at present reviewing in detail the committee's report and this entire matter. No final decision has yet been made, so at this time it would be best if I confine myself to a description of the general thrust of the recommendations made by the committee. Under the Committee's recommendations:

- The FBI and DEA would have concurrent jurisdiction over drug offenses.
- FBI expertise in organized crime and financial investigations would be fully available in drug enforcement work.
- Greater resources would be brought to bear against drug trafficking. The FBI has as many as 70 or 80

agents in some cities where DEA now has only four or five. In some locales, DEA would for the first time have the ability to utilize sophisticated investigative techniques, such as court-authorized electronic surveillance, by calling upon FBI resources.

-- DEA would continue to give the drug problem the kind of focus it needs. But at the same time, the drug enforcement effort will benefit from an infusion of FBI resources and expertise.

In my view, improved coordination between DEA and the FBI is essential to effective domestic drug enforcement. The Department of Justice will be pleased to keep the members of this and other Committees apprised of our continuing efforts in this regard.

B. Enforcement Priorities

In recent months, the Department has analyzed its relative enforcement priorities among heroin, cocaine and marihuana. As a result of that analysis, the Department has sought to redirect enforcement priorities toward heroin, in areas where emphasis on heroin is appropriate. We have done so because heroin is without question the most dangerous and damaging illicit drug confronting our nation today. Heroin causes more human misery than marihuana and cocaine. It also creates vast amounts of crime -- by addicts who must commit robberies, burglaries, assaults and

the like to obtain the money necessary to support a heroin habit, and by large criminal enterprises competing for the drug trade.

This does not mean, of course, that heroin investigations should be pursued to the relative exclusion of investigations involving other drugs. Nor does it mean that heroin investigations should be accorded some nationwide priority. In some locales, such as Southern Florida, organizations trafficking in cocaine and marihuana commit and are otherwise responsible for vast amounts of crime. Much of it is violent, as competing traffickers assault or murder each other and, unfortunately, innocent victims as well. Further, much marihuana- and cocaine-related crime is financial in nature, as drug traffickers launder their illicit gains and reinvest them in illegal enterprises, legitimate businesses, real estate and the like.

The varying drug problem from one locale to another requires that our national enforcement priorities be flexible. Therefore, while we intend to place renewed emphasis on heroin cases where appropriate, the law enforcement leaders in a given locale must decide the enforcement priorities in their own communities and districts. The Attorney General has directed every United States Attorney to establish a Law Enforcement Coordinating Committee in his district. Through these committees, the

federal, state and local law enforcement leaders will plan a strategy for combatting their own crime problems in the order of priority important to that community. This principle will extend to drug enforcement.

In sum, we regard heroin as the most serious drug problem facing our nation. That priority will be reflected in our law enforcement activities. Nevertheless, our enforcement strategies and priorities may and should vary with the jurisdiction. While in New York, for example, heroin investigations should be accorded a high priority, cocaine and marihuana might receive a similar priority in, for example, the Gulf Coast region. The response of the Department of Justice will be flexible and will be planned and executed in varying ways around the country in accordance with local needs.

C. Legislative Proposals

The Department has made several legislative proposals which will aid our drug enforcement efforts.

1. Bail Reform

The first such proposal deals with bail reform. At present, federal bail laws fail to give our courts the authority to make responsible release determinations with respect to drug offenders. Under present law, of course, the only issue a judge may consider in setting pretrial release conditions is whether the defendant will appear for

trial. Drug defendants, however, have access to such large amounts of money that they can afford routinely to post and to forfeit even staggeringly high amounts of bail. This is viewed merely as a cost of doing business: it makes better sense for them to forfeit such sums and stay in the drug business. As a result, the current system of bail frustrates successful law enforcement work. Indeed, right now, the number of drug fugitives exceeds the number of drug agents by about 50%. One further example of the frustration we face is the recent successful United States Marshals Service operation in South Florida where 76 federal and state fugitives were arrested. Almost immediately, over fifteen percent of those arrested were released once again on bail.

Fifteen years of experience with the Bail Reform Act of 1966 demonstrate that the Act does not give the courts authority to make appropriate bail determinations. This Administration agrees with many in the Congress, the Judiciary, the law enforcement community and the public, that there is an urgent need for legislation to improve federal bail laws.

Our bail reform proposals are extensive and I will not outline all of them here. However, I will highlight those proposals which relate to drug enforcement.

- Congress should codify existing case law defining the authority of the courts to detain defendants as to whom no conditions of release will assure appearance at trial. Thus, in the case of drug defendants who, as noted above, can afford to post and forfeit the highest amounts of bail, a court would be empowered simply to deny bail.
- We should reverse the current standard presumptively favoring release of convicted persons awaiting imposition or execution of sentence or appealing their convictions. The current standard is at odds with the fact that a conviction is presumptively valid, a principle borne out by the extremely low reversal rate of federal criminal convictions. Further, the release of a convicted narcotics trafficker undermines the deterrent effect of a conviction.
- The government should be given statutory authority to appeal decisions releasing defendants correlative to the defendant's right to appeal. The government should be able to challenge decisions that provide a defendant with an opportunity to flee the jurisdiction or to commit further crimes while on release.
- We should provide adequate deterrence to flight to avoid prosecution by making the present penalties for bail jumping more closely proportionate to the penalties for the offense with which the defendant was charged when released.
- Courts should be given specific statutory authority to inquire into the source of money or other property offered to fulfill financial conditions of release and to refuse to accept money or property if it appears that it has an unlawful source or will not reasonably assure the appearance of the defendant at trial. Often the proceeds of crime are used to finance the bond and forfeiture is in fact accepted by the defendant as the cost of avoiding prosecution.

There are now on the Senate floor two bills, S.1554 and S.1630, which accomplish the kind of comprehensive reform of our bail laws that we believe necessary. In the House, Congressman Sawyer has introduced H.R.4362 which comes the closest to accomplishing the kind of reform which would be achieved by the Senate bills. The Department urges prompt action by the House on Congressman Sawyer's bill so that this much needed reform can take place as early as possible.

2. Criminal Forfeitures

The Department has also proposed amendments and extensons of the laws relating to criminal forfeitures. We must have the means to deprive organized crime figures and narcotics traffickers of their vast sources of economic power. Ultimately, this will provide the greatest impact on organized drug trafficking in this country. Presently, both the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. 1961-1968) and the Continuing Criminal Enterprise statute (21 U.S.C. 848) punish those who conduct drug trafficking organizations and permit criminal forfeiture in addition to the traditional sanctions of fine and imprisonment.

It is now the policy of the Department of Justice to seek criminal forfeiture in every RICO and Continuing Criminal Enterprise case where substantial forfeitures are available. However, present criminal forfeiture statutes have not proven as effective as we had hoped in combatting organized crime and drug trafficking. Few major narcotics trafficking cases present the elements necessary for conviction under the Continuing Criminal Enterprise statute. In routine cases, criminal forfeiture is not available, even where the government possesses evidence that defendants have reaped enormous profits in their drug activities.

The effectiveness of the RICO forfeiture statute has also been limited. While the statute permits forfeiture of "enterprises" conducted or acquired by organized crime, it is questionable whether the statute permits forfeiture of the profits produced by these "enterprises." Furthermore, neither statute gives us the authority to address the practical problems which arise in attempting to achieve forfeiture of drug-related assets, particularly where defendants have concealed or removed such property or transferred it to third parties in an attempt to defeat forfeiture. This problem is particularly acute when dealing with traditional and other organized crime groups who invest the profits from drug transactions in legitimate businesses.

Many bills have been introduced in this session of Congress which would address some of these problems. However, none has incorporated the range of improvements which we believe necessary to make criminal forfeiture a fully effective tool in combatting organized crime and drug trafficking. Therefore, the Department will propose comprehensive legislation to facilitate criminal forfeiture in RICO and narcotics trafficking cases.

This legislation would improve the current criminal forfeiture statutes by:

- Providing specific authority for the forfeiture of the proceeds of an "enterprise" acquired or maintained in violation of the RICO statute;

- Making criminal forfeiture an available sanction in all major trafficking cases;

- Permitting forfeiture of substitute assets of the defendant where property specifically subject to forfeiture cannot be located or identified, or has been transferred to third parties;

- Providing clear authority, in appropriate cases, for the forfeiture of property which a defendant has transferred to a third party;

- Permitting the government to obtain, prior to arrest or indictment, a protective order that would preserve the government's ability to obtain forfeiture of property;

- Providing clear authority for the government to obtain a stay of civil forfeiture proceedings pending the disposition of criminal charges.

We urge support for these changes which would make criminal forfeiture a truly powerful weapon against organized crime and drug trafficking.

3. Tax Reform

The Department is also seeking amendments to the tax laws to enable the Internal Revenue Service to render

appropriate assistance to drug enforcement. In the past, the Internal Revenue Service has been an effective adjunct to law enforcement. However, the Tax Reform Act of 1976 created a chasm between the IRS and other enforcement agencies and placed needless restrictions on federal agents and prosecutors. The Administration is proposing reasonable steps to give investigative personnel the tools they need to successfully attack complex conspiracies and other crimes. We support the enactment of S.1891, which has been introduced by Senators Roth, Chiles and others, and which would amend the Tax Reform Act of 1976 to permit the limited use of IRS records and information by other law enforcement agencies.

4. Exclusionary Rule

Still another legislative proposal of great importance calls for changes in the exclusionary rule. Legislation in this area would be of substantial assistance in drug cases, where the exclusionary rule has worked much of its mischief. Perhaps justice would best be served by abolition of the rule. At the very least, Congress should modify the rule so that evidence would not be excluded from a criminal proceeding if it has been obtained by an officer acting in the reasonable and good faith belief that his conduct was in conformity with the Fourth Amendment. This modification was recommended by the Attorney General's Task Force on Violent

Crime. It is based on the decision of the United States Court of Appeals for the Fifth Circuit in United States v. Williams, 622 F.2d 830 (5th Cir. 1980) (en banc), cert. denied, 449 U.S. 1127 (1981), and, therefore, is already the law in the Southeastern part of the country. We believe it strikes an appropriate balance between the mandate of the Fourth Amendment and the search for truth in criminal trials.

Conclusion

We are pursuing initiatives to deal with the enormous problems caused by illicit drug trafficking. We intend to have an impact at each of the points at which a greater impact is essential. Our policy in dealing with source countries must be stronger and more effective. Our efforts in detecting and interdicting drugs destined for the United States must be improved, with the assistance of the Department of Defense. Greater resources and better coordination among all domestic federal agencies involved in this effort are necessary.

As I have stated, there is no crime problem more important than drug trafficking and drug abuse. At the same time, there is no more challenging problem facing criminal law enforcement. Improved drug enforcement will not be easy. It will require greater cooperation among all agencies - federal, state, and local - to have an impact on

drug traffickers who continue to violate the laws of the United States. We look forward to working with you in this effort.

I wish to express my appreciation to this Committee for its continued interest and assistance in meeting this challenge. I stand ready to answer any questions you may have.

END