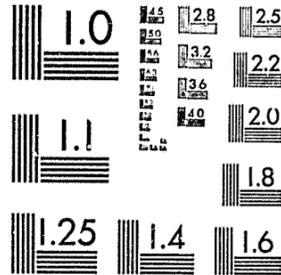


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Department of Justice

STATEMENT

OF

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

BEFORE

THE

SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

PHARMACY ROBBERY

ON

APRIL 7, 1983

Mr. Chairman and Members of the Subcommittee --

I appreciate this opportunity to appear on behalf of the Department of Justice regarding pharmacy robbery legislation including H.R. 1255, the Controlled Substances Robbery Act, authored by Congressman Henry Hyde. We support this legislation, subject to four amendments which I will later describe.

The basis for our support of H.R. 1255 is quite simple. Legitimate manufacturers and distributors of controlled substances -- particularly pharmacists -- are in constant and serious danger of robbery and death because of the nature of the products which they manufacture and dispense. During calendar year 1982, we received reports of 1,037 armed robberies of controlled substances registrants resulting in the diversion of 2,783,220 dosage units. Of these 1,037 robberies, all but 41 were from pharmacies. Despite the undeniable menace to pharmacists and others registered by the Federal Government to manufacture and dispense controlled substances, there is presently no Federal statute clearly making the robbery of registrants a Federal crime. Registrants deserve the best protection that we can reasonably extend when they are the victims of violent crimes directed at securing the controlled substances which they manufacture and dispense in the course of performing their valuable role in the system of health care which we enjoy in this country.

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Legislation like H.R. 1255 is appropriate in light of the Federal Government's pervasive role in the regulation of controlled substances and the broad scope of Federal criminal statutes already on the books pertaining to controlled substances. Just as the Federal role in protecting financial institutions led the Congress to enact a separate bank robbery statute, 18 U.S.C. 2113, so does our role in the controlled substances area justify a discrete statute covering robbery of controlled substances registrants.

Again, we support the thrust of pharmacy robbery bills before the Subcommittee. We do, however, have serious reservations about the effects such legislation could have if inappropriately drafted. It is no secret that the Department of Justice, until last year, opposed legislation like H.R. 1255. The reservations which in the past led to opposition to such legislation have not diminished with the passage of time. Rather, we believe there are ways of addressing these concerns through limiting amendments.

First, we believe it is important to emphasize -- in the bill and in its legislative history -- that Federal prosecution of robberies of controlled substance registrants is to be utilized only in exceptional cases. The bills before the Subcommittee should be modified to state that Federal jurisdiction is only to be exercised in appropriate cases pursuant to guidelines issued by the Attorney General.

The simple fact is that most pharmacy robberies do not involve any element which requires Federal intervention. Although we can make a unique contribution in connection with some types of cases, particularly those involving interstate or organized operations, most pharmacy robberies are indistinguishable from robberies of liquor stores, convenience food outlets, or service stations. State and local authorities are in a better position -- from the standpoint of resources -- to pursue robbery cases than are Federal authorities. As of October 31, 1981, the FBI's Uniform Crime Reports indicated that there were more than 444,000 sworn State and local law enforcement officers in the United States. By comparison, the combined forces of the FBI and DEA totalled approximately 10,000 agents or about 2% of the number of State and local law enforcement officers.

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

The prosecution limitation is also important to avoid needless conflict between Federal prosecutors and their State and local counterparts, many of whom fear "case poaching" by Federal officials.

One formula for such a prosecutorial limitation is the approach taken in the Fugitive Felon Act, 18 U.S.C. 1073, which requires the approval of an Assistant Attorney General prior to any Federal prosecution. Some such limitation upon Federal prosecution should be supplemented with legislative history indicating that Federal prosecution of registrant robbery cases will normally be commenced only upon the request of State or local authorities. This approach would prevent conflict between Federal prosecutors and their State and local counterparts while avoiding the constitutional concerns raised by the approach in the career criminal bill passed by Congress last year which would have given local prosecutors an absolute veto power over Federal prosecution. There is a question whether the exercise of Executive Branch powers can properly be made to depend upon the concurrence of State or local officials. We believe the Washington-approval formulation we suggest will achieve the desired end of deference to State and local prosecution in appropriate cases without raising constitutional questions.

Second, with respect to the specific provisions of some of the bills before the Subcommittee, we believe the penalty grading structure should be conformed to other laws like the bank robbery statute, to wit, not more than 20 years for the basic offense, as in H.R. 1032. It would be strange if the sanctions for pharmacy robbery were more severe than those for robbery of a bank or Federal post office as in H.R. 605. Moreover, we believe the

best approach to any minimum mandatory sentences that may be proposed is to create such sanctions for particular types of activity like use of a firearm during the course of a crime rather than for particular crimes themselves. The President's Comprehensive Crime Control Act of 1983, introduced as H.R. 2151, proposes minimum mandatory prison sentences for use of a firearm during the course of a Federal crime of violence.

Third, we believe that it would be preferable for the bill to directly cover the taking of "controlled substances" from a pharmacy rather than drafting the bill to apply to robberies of "property", which is later defined as limited to controlled substances as H.R. 1255 does. The term "controlled substances" can then be further defined by reference to section 202 of the Controlled Substances Act (21 U.S.C. 812).

Fourth we recommend deletion of Sec. 3 of H.R. 1255 requiring an annual report by the Attorney General. Our experience with such report requirements is that they place a significant burden upon limited Department resources and produce information which is not utilized by the Congress. We always endeavor to respond to requests by Congressional committees for information regarding our activities and regularly do so in reply to letter requests and questions which arise during the course of authorization, appropriations, and other hearings. A statutory annual report, we believe, would be an unnecessary burden upon the Department.

Although H.R. 1255 does not require reports of pharmacy crime as part of the Uniform Crime Reports, compiled and published by the FBI, some other bills, including H.R. 605, have proposed such a requirement. We oppose any such reporting requirement as it would add to the complexity and cost of the Uniform Crime Reports without producing information of significant value to law enforcement agencies. Moreover, DEA presently obtains and compiles reports of crimes against registrants.

We will, of course, be pleased to work with the Subcommittee and Subcommittee staff to develop appropriate language to accomplish these various modifications.

In conclusion we support pharmacy robbery legislation like H.R. 1255 but that support is subject to the important qualification that the bill be amended to clarify the limited nature of the Federal role with respect to registrant robberies. I must say very emphatically that any effort to process H.R. 1255 or other similar measures without such limitations would require us to oppose its enactment vigorously. Any suggestion that Federal authorities should investigate and prosecute registrant robberies on a routine basis, however well motivated, is sorely misguided and would result in a serious misuse of limited Federal resources. It should also be noted that, while we support pharmacy robbery legislation if appropriately drafted, we believe there are significant, major drug-related measures which require

immediate action including asset forfeiture reform, drug penalties reform, diversion control amendments and other proposals incorporated in the Comprehensive Crime Control Act submitted by the President on March 16. We hope, therefore, that action on pharmacy robbery legislation will not delay consideration of other drug-related proposals which would dramatically strengthen the ability of Federal law enforcement officials to deal with the organized drug syndicates which are responsible for the great bulk of illegal drugs pouring into the country.

END