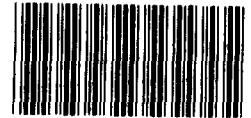


2/24/81 117181

U.S. General Accounting Office
Washington, D.C. 20548



117181

SUMMARY STATEMENT

- * The development of a comprehensive, cohesive Federal narcotics enforcement policy is a complex and multi-faceted undertaking. The strategy must involve all aspects of the criminal justice system-- investigation, prosecution, adjudication, conviction, and sentencing--and must be on an international as well as a national level.
- * Through the years, a general strategy has evolved. For example, it is the Federal Government's strategy to allocate resources to combat the most dangerous drugs of abuse, to go after high-level traffickers, to seek convictions under the statutes that provide longer periods of incarceration and forfeiture of criminal assets, and to have those Federal agencies concerned with drugs working together.
- * Although this strategy may need fine-tuning, it can serve as an adequate foundation for implementing the Federal Government's narcotics enforcement policy. The drug enforcement problem lies not in formulating but in implementing the strategy.
- * Unfortunately, for example, prison terms do not seem to be all they should be, efforts to achieve forfeiture of criminal assets have not always been aggressive, drug investigations have not always been directed at the largest trafficking organizations, and the many involved Federal agencies do not always work together.
- * This is not to say that there has been no progress. There has. But if further significant advances are to be made in the fight against drugs, then some means must be found to ensure that a sound strategy is accompanied by effective implementation.

019831

20413

United States General Accounting Office
Washington, D.C. 20548

FOR RELEASE ON DELIVERY
EXPECTED AT 10:00 a.m.
DECEMBER 10, 1981

STATEMENT OF
RONALD F. LAUVE, SENIOR ASSOCIATE DIRECTOR
GENERAL GOVERNMENT DIVISION
BEFORE THE
SUBCOMMITTEE ON CRIME
HOUSE COMMITTEE ON THE JUDICIARY
ON
NARCOTICS ENFORCEMENT POLICY

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here, at your request, to participate in hearings on the Federal narcotics enforcement policy. The development of a comprehensive, cohesive Federal narcotics enforcement policy is a complex and multi-faceted undertaking. Hard decisions will have to be made concerning the relative importance of various theoretical approaches on how to best combat the ever-increasing narcotics problem. We applaud this Subcommittee's interest and efforts to stimulate the development of an effective Federal narcotics enforcement policy.

Our testimony today will deal with several recently issued GAO reports dealing with implementation of several elements of the overall Federal narcotics enforcement policy contained in the 1979 Federal Strategy for Drug Abuse and Drug Traffic Prevention. Specifically, our reports address

--A need to effectively implement the Federal supply reduction strategy;

--A need to crackdown on clandestine laboratories manufacturing dangerous drugs; and

--A need to increase the efforts to obtain the forfeiture of assets obtained through criminal activities.

We will also offer comments on a proposal for legislation to improve forfeiture provisions.

THE FEDERAL STRATEGY FOR DRUG
ABUSE AND DRUG TRAFFIC PREVENTION

The most current published document setting forth Federal drug policy and priorities is the Federal Strategy for Drug Abuse and Drug Traffic Prevention. Formulated in 1979 by the Strategy Council on Drug Abuse--composed of seven cabinet officers and six public members--the current Federal strategy employs a comprehensive and progressive program to address the Nation's drug abuse problem and serves as the foundation from which the Federal Government attempts to reduce the serious effects of drug abuse in this country.

The Strategy has historically involved three major program elements: domestic treatment and rehabilitation; domestic drug law enforcement; and international narcotics control. Prevention is emerging as a fourth major program element. The Strategy recognizes the need for coordination of these elements so that they are complimentary to each other within the broad, consistent framework of a Federal narcotics enforcement policy. Another important consideration of the Strategy is to maintain a flexible response involving a wide variety of approaches.

EFFECTIVE STRATEGY IMPLEMENTATION
NEEDED TO CONTROL FLOW OF ILLEGAL DRUGS

In October 1979, we addressed the Federal Government's drug enforcement and supply control efforts during the last 10 years.

While we noted that specific hard-won successes had been attained in carrying out the Federal supply reduction strategy, our report 1/ showed that Federal drug supply reduction efforts were not well-integrated, balanced, and truly coordinated. The problems which we discussed still exist today. We found that:

--There is no comprehensive border control plan, and Federal efforts at the border have not been a serious impediment to the illegal entry of drugs. The availability of drugs in the United States attests to the fact that our border has not been a major hinderance to illegal entry. In recent years the smuggling of drugs by air and sea from South America has become a major business in the Southeastern United States, particularly in Florida. Marijuana from Colombia arrives by the tonload, while hundreds of pounds of cocaine flow into the area for distribution across the country. Many enforcement officials in South Florida believe the situation is completely out of control. Federal, State, and local agencies have been overwhelmed by the amount of smuggling activity.

In our report we expressed the opinion that the executive branch should provide the Congress, along with its appropriations requests, an overview of law enforcement along the U.S. borders. 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. Also, we stated that the Office of

1/"Gains Made In Controlling Illegal Drugs, Yet the Drug Trade Flourishes" (GGD-80-4, Oct. 25, 1979).

Management and Budget, the Domestic Policy Staff (now the Office of Policy Development) and the principal border agencies should develop an integrated strategy and comprehensive operational plan for border control.

--The Federal Government has had only limited success in immobilizing high-level traffickers and their organizations through conspiracy and financial investigations. The Federal Government's approach relies on a close, complementary relationship and effective interaction among a variety of investigative, interdictive, regulatory, and prosecutive agencies. However, legal obstacles, lack of direction, and changing priorities have all limited Federal agencies' success in immobilizing major drug traffickers and their organizations.

These conditions are in a state of change. Solutions to the legal problems have been proposed, agencies are attempting to work together more closely and there has been some recent notable successes in attacking large trafficking organizations.

--Bail and sentencing practices in Federal courts throughout the country have further weakened efforts to immobilize drug traffickers. However, as you know, the Attorney General's Task Force on Violent Crime and the proposed criminal code reform legislation are directed at these problems.

--Jurisdictional and financial realities make it virtually impossible to mobilize State and local enforcement resources in a coordinated nationwide attack on drug trafficking.

The Federal strategy places increased reliance on State and local drug enforcement efforts in order to focus Federal activities against leaders of national and international trafficking networks. Although the Federal Government has developed numerous programs to assist and cooperate with State and local agencies, the enormous number of jurisdictions, coupled with financial problems, makes it virtually impossible to mount a unified attack. In our report we stated that the Attorney General must establish a clear, realistic policy on what can reasonably be expected from State and local governments and what the Federal Government should do to elicit their support.

--The United States, if it is to be successful at reducing drug availability, must receive a high degree of international support. The United States has been the prime force in efforts to control illicit drug production worldwide, but increased commitment of developed countries is needed in order to have a greater impact on the problem. Even with increased international support, it is unlikely that the long-term nature of the problem will be overcome within the foreseeable future.

--There needs to be a centralized focal point within the executive branch to establish drug policy and be accountable for its effective implementation. The success of the Federal strategy and present organizational structure relies on an effective interaction and a close, complementary relationship among various Federal agencies, State and local

agencies, key foreign governments, and international institutions. Since the early 1970s, several reviews of the overall drug control efforts initiated by the executive branch, the Congress, and GAO have pointed to a continuing need for high-level policy and program oversight of the rapidly expanding drug abuse effort.

The Congress has long recognized the Federal Government's continuing failure to provide a central mechanism to establish drug policy and be accountable for its effective implementation. If any improvement is to be made in coordinating Federal drug control efforts, someone must be given a clear delegation of authority from the President to monitor activities and demand corrective actions. The presence of a tough and consistent stance will go a long way in demonstrating within the United States and to other countries the strong commitment our Nation is making in combatting the drug abuse problem.

STRONGER CRACKDOWN NEEDED ON CLANDESTINE
LABORATORIES MANUFACTURING DANGEROUS DRUGS

In our recently issued report on illicitly manufactured dangerous drugs, 1/ we made recommendations concerning DEA's use of investigative resources and the maximum penalties for trafficking in certain nonnarcotic drugs. Both of these recommendations are consistent with the Federal Strategy for Drug Abuse and Drug Traffic Prevention.

1/"Stronger Crackdown Needed on Clandestine Laboratories Manufacturing Dangerous Drugs," (GGD-82-6, Nov. 6, 1981).

Resources Committed to Combat
Dangerous Drugs Disproportionate
to the High Enforcement Priority

The Federal Strategy notes that "domestic supply reduction efforts rank drugs * * * according to their potential for harm, particularly in causing death and injuries, and assign priorities to them accordingly." For example, the Strategy states that "heroin is a primary drug of concern because of its likelihood to cause severe health and social consequences."

In keeping with the Federal Strategy, DEA--designated as the lead agency for Federal drug law enforcement--has established drug priorities which are intended to, in its words, "* * * ensure the proper allocation of investigative resources * * *." DEA policy provides, however, that these priorities be flexible enough to allow field offices to deal with local drug problems that might not conform to the national priorities. Although we agree with the need for such flexibility, it is our opinion that if the drug priority system has merit, the resources utilized nationally should be consistent with the priority system.

However, although DEA has designated dangerous drugs as its second highest enforcement priority--exceeded only by heroin--overall the agency is not committing resources to dangerous drugs commensurate with their high priority ranking. For example, our analysis of DEA's use of its enforcement resources revealed that:

--Nationally, DEA used about 20 percent of its enforcement resources pursuing dangerous drugs investigations during fiscal years 1978-80, compared to 34 percent for heroin investigations and 31 percent for cocaine investigations.

--Each of these years, the resources expended pursuing cocaine investigations, a lower priority drug, far exceeded resources used on dangerous drugs investigations.

--Twenty-one of DEA's 29 district offices devoted more resources to cocaine and/or cannabis investigations, both lower priority drugs, than to dangerous drugs investigations in fiscal year 1980.

We, therefore, recommended that the Attorney General direct the Administrator, DEA, to analyze field offices' use of investigative resources that deviate from the high enforcement priority ranking assigned to dangerous drugs and, where deviations are not justified, formulate plans to allocate investigative resources commensurate with the severity of the problem.

Although the Department of Justice did not disagree with our recommendation, it considered the gross comparison of investigative workhours with enforcement priority rankings too simplistic an approach for evaluating resource utilization. The Department stated that other factors such as the volume of drugs being trafficked, the complexity of the investigation, and the importance of the trafficking organization involved should dictate resource utilization in addition to the danger of the drugs.

We do not disagree that these and other factors should influence the allocation of resources. However, given (1) the drug priorities established by DEA; (2) the general availability of all categories of drugs; and (3) the existence of major traffickers in all categories of drugs, it seems reasonable to us that, overall, DEA's utilization of resources for investigations of particular

drugs should generally coincide with the danger of the drugs being trafficked as reflected by their priority rankings. Recognizing that deviations from that general relationship may be justified sometimes, our recommendation allows for differences where appropriate.

Dangerous Drugs Traffickers
Spend Little Time in Jail

The Federal Strategy for Drug Abuse and Drug Traffic Prevention states that one of the major objectives of drug law enforcement is:

"* * * to achieve the highest possible level of risk for drug trafficking by investigating major drug trafficking organizations and securing sufficient evidence so that successful prosecutions can be brought which will lead to prison terms for the violators and forfeiture of their assets * * *."

However, the highest level of risk to drug traffickers is not being achieved because manufacturers and distributors convicted of trafficking illicit dangerous drugs often spend little or no time in prison.

For example, we reviewed all (68) closed clandestine laboratory cases at 13 DEA field offices. These cases involved 153 violators convicted in Federal court for trafficking dangerous drugs in violation of the Controlled Substances Act during fiscal years 1978-80. Of these 153 offenders, 44, or 29 percent, were not sentenced to prison but were placed on probation, had their sentences suspended, or were fined, and 56, or 37 percent, received prison sentences of 3 years or less. Thus, 100, or 66

percent, of the 153 convicted traffickers received either a nonprison sentence or a prison sentence of 3 years or less.

We also found that, whereas high-level heroin traffickers received prison sentences averaging almost 10 years, sentences given to high-level dangerous drugs traffickers averaged less than 5 years. We found the disparity to be congruous with the penalty provisions of the Controlled Substances Act, the basic U.S. drug control law. The act currently allows a maximum penalty of only 5 years imprisonment for traffickers in certain nonnarcotic drugs (i.e. dangerous drugs) as opposed to a 15-year maximum imprisonment for traffickers in certain narcotic drugs such as heroin. To better achieve the Federal strategy of making dangerous drugs trafficking a high-risk operation, we recommended that the maximum penalties for trafficking in certain nonnarcotic drugs be increased to a level equal to the maximum penalties for trafficking in certain narcotic drugs.

There is a precedent which indicates that longer sentences and, consequently, more risk to traffickers, would result. Responding to the alarming increase in the availability and abuse of PCP, the Congress enacted the Psychotropic Substances Act of 1978 (P.L. 95-633) which amended the Controlled Substances Act to increase the maximum penalty for PCP trafficking from 5 to 10 years imprisonment. DEA statistics show that Federal prison sentences given to PCP traffickers increased from an average of about 2 years in 1977 to almost 6 years in 1979, the first year after the act was passed, with the trend of longer sentences continuing through the first half of 1980 (the latest period for which data was available). Furthermore, a joint House-Senate explanation regarding the PCP

amendment recognized the need to increase other penalties under the Controlled Substances Act for most dangerous drugs from 5 to 15 years imprisonment.

The Department of Justice generally agreed with our conclusion that prison sentences given to dangerous drugs traffickers are normally too lenient and the level of risk must be raised to provide a more meaningful deterrent. However, the Department prefers a recodification of the entire Controlled Substances Act, rather than individual amendments, to correct problems in addition to those involving dangerous drugs.

ASSET FORFEITURE--A SELDOM USED
TOOL IN COMBATting DRUG TRAFFICKING

As noted earlier, a major objective of drug law enforcement, as defined in the Federal Strategy, is the immobilization of major trafficking organizations not only through appropriate prison sentences, but also through the forfeiture of traffickers' assets.

We addressed the Department of Justice's asset forfeiture program in two recent reports 1/ and in testimony before this Subcommittee on September 10, 1981. We reported that neither the dollar value nor the type of assets forfeited to the Federal Government had been impressive compared to the billions of dollars generated annually through organized crime including drug trafficking.

Relatively little has been accomplished in the forfeiture area for several reasons. One of the key problems, we believe, has been the lack of leadership by the Department of Justice. Even though attacking criminal finances has been a primary objective of law enforcement for several years, until recently, forfeiture has received

1/"Asset Forfeiture--A Seldom Used Tool in Combatting Drug Trafficking," (GGD-81-51, Apr. 10, 1981) and "Stronger Federal Efforts Needed in Fight Against Organized Crime," (GGD-82-2, Dec. 7, 1981).

scant attention. Also, investigators and prosecutors did not have the expertise or incentive to pursue asset forfeiture. The Department of Justice has taken some steps to strengthen its forfeiture program, but these initial efforts must be continued and implementation monitored if the Government is going to improve its efforts to obtain forfeiture of assets acquired through criminal activities.

In addition to management improvements, legislative changes to the Racketeer Influenced and Corrupt Organization (RICO) and Continuing Criminal Enterprise (CCE) forfeiture authorizations also are needed. In our April 1981 report, we recommended that the Congress clarify and broaden the scope of the criminal forfeiture statutes. Subsequently, S. 1126 and H.R. 4110 were introduced. These bills, which contain the legislative package that we recommended, would

- Make explicit provision for the forfeiture of any profits and proceeds that are acquired or derived as a result of a RICO violation.
- Clarify that "interests" forfeitable under RICO include assets illicitly acquired that are held or owned by a member of an illegal enterprise.
- Authorize forfeiture of substitute assets when the illegal profits or interests cannot be located.
- Clarify that assets forfeitable under CCE include the gross proceeds of controlled substance transactions.

We continue to endorse this pending legislation.

As you know, we were asked to comment on a draft bill, entitled the "Comprehensive Drug Penalty Act of 1981," which would amend the forfeiture provisions of the RICO and CCE statutes. We endorse the thrust of the draft bill insofar as it enhances the ability of

the Department of Justice to effectively use forfeiture. The draft bill is responsive to a number of our previous recommendations. However, we would like to call to your attention several provisions of the bill which we believe warrant additional consideration.

--Section 3 of the draft bill authorizes the Attorney General to request seizure of property upon the filing of an indictment or information alleging that such property is subject to forfeiture. However, the bill does not provide any criteria for granting a seizure order. We suggest that the Subcommittee consider including such criteria in the legislation. However, this provision, as written, raises a bigger issue--the seizure of one's property prior to conviction. We believe that such a position would be challenged from a constitutionality standpoint.

--Sections 3 and 4 of the draft bill introduce the concept of "preponderance of evidence." Section 3 provides for the court to enter an order of forfeiture upon its finding, based on a preponderance of evidence, that the property to be forfeited is found to be subject to forfeiture by a special jury verdict. Section 4 provides for a standard of preponderance of the evidence and also establishes a presumption that, in cases involving certain drug violations, all property of the defendant automatically will be subject to forfeiture under certain conditions. Criminal judgments generally subject the prosecution to a standard of proof beyond reasonable doubt. We do not know how the concepts

of presumption and preponderance of evidence will fare with the courts in the context of criminal forfeiture.

--Section 4 also provides that transfers of property shall be void upon an order of forfeiture if, at the time of the transfer, the transferee knew or had reason to know that the property was subject to forfeiture. To the extent that this would apply to property which already was specifically identified in an indictment or was the subject of a restraining order, this provision seems to codify existing case law. However, it is not clear if this provision is meant to be so broad as to reach property transferred before the issuance of an indictment. We would anticipate legal challenges to attempts to forfeit property of a third party who received the property before any indictment is returned for the defendant--the transferor. We believe a partial solution to the problem Section 4 attempts to address is provided in our recommendation to authorize forfeiture of a defendant's other assets to the extent of his ill-gotten gains.

We also noted that other provisions of the draft bill provide authority to the Attorney General to take actions authorized by the Federal Rules of Criminal Procedure or existing legislation. Specifically, these actions pertain to (1) special jury verdicts concerning property alleged in the indictment to be forfeitable, and (2) the court entering restraining orders to prohibit defendants from transferring assets which might be deemed forfeited upon conviction.

- - - - -

In closing Mr. Chairman, I would suggest that perhaps the greatest contribution to an effective narcotics enforcement policy lies not so much in what the strategy should be, but rather, how the strategy should be implemented. Through the years, various elements of a drug strategy have been proposed and, in some instances, adopted. For example, it is the Federal Government's strategy to allocate resources to the most dangerous drugs of abuse, to pursue the high-level trafficker, to seek convictions under the statutes that provide for long periods of incarceration and forfeiture of criminal assets, and to have those Federal agencies concerned with drugs working together. Certainly the need to balance our international and national strategy to combat the drug problem has been recognized.

But, Mr. Chairman, as I have noted in my discussions of our selected reports, various aspects of the strategy have not been effectively implemented. Unfortunately, for example, prison terms do not seem to be all that they should be, criminal assets have not always been forfeited, drug investigations have not always been directed at the large trafficking organizations, and the Federal agencies involved do not always work together.

This is not to say that there has been no progress. There has. But if further significant advances are to be made in the fight against drugs, then some means must be found to ensure that a sound strategy is accompanied by effective implementation.

That concludes my statement Mr. Chairman. We will be happy to answer any questions for you or other members of the Subcommittee.