5/16/82

Bill -

I think we had best act on this. Let's discuss.

Jim.

DOCUMENT No. 071802PD

OFFICE OF POLICY DEVELOPMENT STAFFING MEMORANDUM

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

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

	ACTION	FYI		ACTION	FYI
HARPER	☒	☐	SMITH	☐	☐
PORTER	☐	☐	✓ UHLMANN	☒	☐
BANDOW	☐	☐	ADMINISTRATION	☐	☐
BAUER	☐	☐	DRUG POLICY		
BOGGS	☐	☐	TURNER	☐	☐
BRADLEY	☐	☐	D. LEONARD	☐	☐
CARLESON	☐	☐	OFFICE OF POLICY INFORMATION		
FAIRBANKS	☐	☐	GRAY	☐	☐
FRANKUM	☐	☐	HOPKINS	☐	☐
HEMEL	☐	☐	OTHER		
KASS	☐	☐	_____	☐	☐
B. LEONARD	☐	☐	_____	☐	☐
MALOLEY	☐	☐	_____	☐	☐

REMARKS:

Please provide comments on the attached.

EDWIN L. HARPER
ASSISTANT TO THE PRESIDENT
FOR POLICY DEVELOPMENT

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 26 1982

MEMORANDUM FOR: ED HARPER

FROM: ANNELISE ANDERSON Signed

Subject: Administration positions on bills proposing amendments of the Bank Secrecy Act

The Department of the Treasury has submitted for OMB clearance a proposed report supporting legislation (H.R. 5044-H.R. 5048) sponsored by Congressman LaFalce to amend the Bank Secrecy Act for the purpose of strengthening drug enforcement and enhancing the Government's ability to seize drug traffickers' cash before it leaves the country. Justice has submitted a report on S. 1907, a somewhat similar bill, sponsored by Senator Roth and eight others.

The Bank Secrecy Act requires that anyone leaving the United States with more than $5000 file a report in advance with the Customs Service. Failure to file this report, combined with a subsequent taking of the unreported money out of the United States, is a criminal misdemeanor and a felony if committed in furtherance of another crime. Enforcement is difficult, because the offense does not occur until the money has left the jurisdiction of the United States. Nevertheless, Treasury considers this provision of the Act to be an important tool in its efforts to combat drug smuggling, and Justice, Treasury, and LaFalce believe that the existing law needs to be strengthened.

LaFalce's bills would -

- Make it an offense to attempt to take unreported money out of the United States. Treasury says this will allow arrest and prosecution of a suspect once the first overt act towards leaving the country occurs and, thus, will overturn a Federal district court decision holding that no offense occurs under the Bank Secrecy Act until a suspect actually leaves the United States. Justice is appealing this decision, because it makes the law unenforceable.

- Raise the floor on the Bank Secrecy Act's reporting requirements from $5,000 to $10,000. Treasury opposes raising the floor, noting that there appears to be little justification for so doing.

- Authorize warrantless searches of persons leaving the United States based on findings of "probable cause," "reasonable cause," or "no cause" at all. (The alternative standards are presented in different bills for the committee's consideration.) The Bank Secrecy Act currently requires that exit searches be conducted pursuant to warrants issued upon findings of probable cause. Treasury says that the Act's present search provision is unduly restrictive and impedes its law enforcement efforts unnecessarily. Of the three alternatives, Treasury prefers the "reasonable cause" standard.

- Authorize the payment of rewards to informers in cases where the information was original and leads directly to the recovery of a criminal fine, a civil penalty, or monetary forfeiture. The reward would not exceed 25% of the net amount of the fine, penalty, or forfeiture, or $250,000, whichever is less, and would be paid out of appropriated funds. Treasury supports this provision on the ground that it will encourage those involved in drug trafficking to provide the information that is needed to make successful drug cases. (Treasury already has similar reward authority to pay up to $25,000 in customs law cases.)

The Justice Department supported a similar draft Treasury legislative proposal last year, which OMB has not cleared. Specifically, Justice strongly supported the attempt and reward provisions and deferred to Treasury on the appropriate standard for the conduct of warrantless exit searches. Justice did conclude that a search provision based upon "reasonable cause" would probably pass constitutional muster.

S. 1907 is similar to the LaFalce legislation, and Justice supports it, as well. S. 1907 would also (1) criminalize attempts under the Bank Secrecy Act, (2) provide for rewards of up to $250,000 to informants, and (3) authorize warrantless exit searches based on findings of reasonable cause. In addition, S. 1907 would:

-- add currency violations to the definition of "racketeering activity" for purposes of prosecutions under the Racketeer Influenced and Corrupt Organizations (RICO) statute;

-- add a requirement for a "knowing" violation of the Bank Secrecy Act's reporting requirement to support a civil forfeiture under the Act; and

-- increase civil and criminal sanctions for violations of the Bank Secrecy Act.

Justice supports each of the proposed changes with the exception of the proposed knowledge requirement, which it says would make prosecutions much more difficult.

I do not object to clearing Treasury positions on the sections of the bills that would (1) make it an offense to attempt to transport unreported money from the United States and (2) raise the floor on the Act's reporting requirements. It is already an offense in most jurisdictions to attempt to commit most offenses, and opposition to raising the floor does not seem unreasonable. Nor do I object to Justice's report on S. 1907, except for its position on warrantless searches and rewards.

Historically, this country has not conducted exit searches of departing persons; and the Bank Secrecy Act's express requirement that such searches may be conducted only pursuant to warrants based upon determinations of probable cause reflects a sound policy. I believe that, absent extraordinary circumstances, exit searches are not and should not be conducted by the government. Perhaps a case can be made for permitting warrantless exit searches based upon the traditional probable cause standard, but such a major departure from the way our government has treated its departing citizens deserves especially close scrutiny.

Similarly, the practice of paying rewards to informants, many of whom are themselves participants in criminal activities, concerns me. Following extensive discussion, we recently cleared a legislative proposal of the Justice Department that would, among other things, establish a limited reward program on a two-year trial basis for information leading to the forfeiture of property used in certain criminal enterprises. We agreed to this provision only after Justice agreed to reduce the cap from $250,000 to $50,000 and to run the program as an experiment. Given our rather reluctant clearance of Justice's forfeiture bill, I do not believe that we can now support the more expansive reward program that LaFalce and S. 1907 proposed. In addition, I strongly believe that the philosophy underlying the payment of rewards to informers by the Federal government should be given some serious rethinking.

The problems that LaFalce is seeking to solve are serious, and I am advised that there is considerable support for his bills in the House. Treasury and Justice are anxious to go on the record. Moreover, Ed Meese has written LaFalce thanking him for his concern and promising Administration positions on his legislation (copy of draft Meese letter attached).

Among the options you may wish to consider are the following:

_____Clear the Treasury and Justice reports supporting (1) the crime of attempt, (2) not raising the threshold for reporting under the Bank Secrecy Act, (3) a $250,000 reward provision, and (4) warrantless exit searches based on "reasonable cause" (Treasury, Justice positions).

_____Clear the reports but require probable cause as the standard for warrantless exit searches and limit rewards to $50,000, on an experimental basis.

_____Clear the reports but continue to require a warrant based on a finding of probable cause prior to conducting an exit search, and limit rewards to $50,000, on an experimental basis.

_____Refer the matter of warrantless exit searches and rewards to the Cabinet Council on Legal Affairs (OMB recommendation).

Copies of the pertinent documents are attached for your review.

Attachment

THE WHITE HOUSE

WASHINGTON

Dear Congressman LaFalce:

Thank you for your letter of January 13, enclosing copies of five bills which you have recently introduced to help curb the illegal flow of currency to finance international narcotic traffic.

The intent of your legislation is laudable. Cutting off the flow of currency that brings illicit drugs into this country and detecting and apprehending the individuals involved in this sordid business is a matter of the utmost importance. Recently, the President has established a task force, under the leadership of the Vice President, to suggest ways in which the federal government might respond more effectively to the growing menace of drug trafficking in the Miami area.

I understand that the Treasury Department is preparing a detailed response to the specifics of your legislative proposals, and of course at an appropriate time Administration officials will be ready to testify in Congressional hearings on the bills.

For the present, I want to thank you for your efforts in this area and indicate that the Administration is willing and ready to assist in a broad effort to frustrate the objectives of those who would profit from narcotics trade.

Sincerely,

Edwin Meese III

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

Dear Mr. LaFalce:

Thank you for extending an opportunity to me to express the position of the Treasury Department on your bills to amend the Bank Secrecy Act. As you know, the Treasury Department is fully committed to detecting and apprehending persons involved in international, narcotics-related financial schemes and seizing the monetary instruments used to finance them.

H.R. 5044 would amend section 231(a)(1) and (a)(2) of the Act by expressly making an attempt to transport unreported monetary instruments across U.S. borders a crime; and, eliminate any reporting requirement except where the amount of the monetary instruments to be transported exceeded $10,000. The Treasury Department fully supports the attempt provision because it is needed to obviate some lower Federal court holdings that have made it virtually impossible, except in certain narrowly prescribed circumstances involving attempted departures by commercial carriers from international sea and airports, to legally apprehend violators and seize unreported monetary instruments before they actually leave the U.S. The proposed amendment is broad enough to cover all attempted departures, particularly by those who leave surreptitiously from small airports, airstrips, and domestic waterways by private aircraft and boats.

The Treasury Department, on the other hand, cannot fully support that portion of the bill which would eliminate the reporting requirement except where the amounts to be transported exceed $10,000. Our reluctance in this regard is based upon an experience factor showing that in a great many seizure cases involving less than $10,000, the individuals apprehended are frequently couriers working for large narcotics trafficking organizations who, subsequent to apprehension, often provide valuable intelligence resulting in further arrests, or needed leads. Illustrative of this is the following case:

> On December 11, 1981, Customs agents were tipped that a flight plan had been filed for a charter Lear jet carrying a single passenger on a one-day round trip between Fort Lauderdale, Florida and Grand Caymans, Bahamas. After

receiving the tip, the Customs agents went to the Fort Lauderdale Executive Airport where they intercepted the aircraft before departure and interviewed the passenger concerning the nature of his trip and possible possession of unreported monetary instruments in excess of $5,000. The passenger stated that he was on a business trip and did not have over $5,000 in monetary instruments.

After his return later that day, he underwent Customs processing. During his processing, he was asked if he was carrying more than $5,000 in monetary instruments, to which he replied, NO. However, a search of his purse and pockets uncovered $5,524 in cash, a package of cocaine and a container containing traces of cocaine. After his arrest, a further search of his person revealed an additional $5,000 concealed in his underwear.

Subsequent investigation, as a result of this arrest, showed that the subject was a money courier for a large international narcotics trafficking organization and on his trip to Grand Cayman had met with a DEA Class I violator.

The point to be made by the foregoing is that if there had only been a reporting requirement for monetary instruments in excess of $10,000 and no cocaine initially found, there would have been little justification for a search of the subject's person and he could have been released without further intensive investigation. As a consequence, valuable intelligence would have been lost.

Accordingly, the Treasury Department believes that there is little justification for eliminating the existing reporting requirement. On the other hand we would not be opposed to a provision giving the Secretary of the Treasury statutory latitude with respect to determining when reports would be required with provision that in no case could the amount be less than the existing $5,000. Such a provision would permit the Secretary to raise the amount upon which a report would be required as circumstances and experience permit.

H.R.'s 5045, 5046 and 5047 are alternative amendments to section 235 relating to search authority. Each would permit warrantless searches for unreported monetary instruments based on suspicion but would differ with respect to the quantum of evidence necessary to support the suspicion. For instance,

H.R. 5045 would require the suspicion be supported by probable cause; H.R. 5046 would require it be supported by reasonable cause; and H.R. 5047 would articulate no standard. While the Treasury Department could support any of the proposed amendments, we would prefer the standard found in H.R. 5046; the authority to conduct a warrantless search when there is reasonable cause to suspect that unreported monetary instruments are in the process of being transported. Our preference for the reasonable cause to suspect standard is based upon the fact that it is identical to the Customs border search authority found in 19 U.S.C. 482.

As you may recall the Treasury Department supported an identical search provision during the 96th Congress. However, questions arose in both Houses concerning the constitutional propriety of Customs officers conducting warrantless exit searches of travellers based merely on a reasonable cause to suspect a violation. It was the Customs position, then supported by the Justice Department, as it is now, that the well established and well recognized Customs border search authority extends equally to exiting as well as incoming travellers. There is ample authority for our position found in U.S. v. Ajlouny, 629 F 2d 830 (2nd Cir. 1980); U.S. v. Swarovski, 592 F.2d 131 (2nd Cir. 1979); U.S. v. Stanley, 545 F.2d 661 (9th Cir. 1979), cert. denied 436 U.S. 917 (1973); and dicta in California Bankers Association v. Schultz, 416 U.S. 21,63 (1974). I have taken the liberty of enclosing a legal memorandum discussing these cases in more detail.

Despite favorable case law supporting broad application of the Customs' border search authority to exiting travellers, agents and inspectors are reluctant to use it in unreported currency cases due to the express probable cause - warrant requirements of section 235 of the Act, and the underlying legislative history of that section. This reluctance is based upon an agent-inspector fear of incurring personal liability if they follow case law and not the statute. Consequently, exiting smugglers carrying large sums of currency to purchase narcotics for resale in the United States have been able to violate the Act's reporting requirements in most cases almost without fear of challenge. Illustrative of this situation is the following incident occurring at Los Angeles International Airport in the summer of 1980:

Customs agents received unverifiable information that a named Peruvian would be departing LA International Airport for Lima, Peru later that day on Braniff Flight No. 921. A query of TECS indicated that the subject was on record with DEA as an alleged cocaine smuggler. Because of the correlation between narcotics smuggling and the outbound transportation of large sums of currency, the agents determined to interview the subject.

After identifying the subject in the terminal, they followed him to the boarding platform area. During the course of their surveillance, he displayed suspicious conduct. For example, he appeared nervous, perspired heavily, and met with an unidentified Latin male who gave him a black plastic bag with unknown contents.

The agents finally intercepted the subject as he attempted to board the aircraft and identified themselves. During the interview, the subject was asked to identify himself and was advised of the reporting requirements of the Currency and Foreign Transactions Reporting Act. The subject stated that he was aware of the requirements and that he was not carrying currency in excess of $5,000.

He was then asked if he would voluntarily consent to an examination of his luggage, which he refused to give. Because probable cause could not be established, he was permitted to board the aircraft.

The report reflects that the agents immediately advised DEA of the occurrence and requested that Peruvian authorities be contacted with respect to their suspicions. The following day, Peruvian Customs authorities reported that they had apprehended the subject on his arrival and had found $95,000 in his luggage.

The point to be made by the foregoing is that if effective enforcement of the currency reporting requirements is to be achieved, the Customs Service should be authorized to conduct a search based on reasonable cause to suspect that unreported monetary instruments are being transported outside the U.S.

It also has been suggested by some that, assuming the legality of such searches, it would be contrary to public policy to permit warrantless searches of exiting travellers. It is our position that there is a more important offsetting public policy requiring the government to take all lawful

steps in protecting the people from proliferating drug trafficking and other illegal enterprises which debilitate our society and nation. Therefore, where it appears that the courts have upheld the constitutionality of exit border searches, there is no valid reason for not seeking statutory articulation of that authority.

H.R. 5048 would add a new section to the Act permitting the compensation of informers in cases where the information provided was original and directly lead to the recovery of a criminal fine, civil penalty or forfeiture exceeding $50,000. Rewards would never exceed 25 percent of the net amount of the fine, penalty or forfeiture of collarteral or $250,000, whichever was less; and Federal, state and local government employees who provided such information in the performance of their official duties would not be eligible to recover. We believe that the reward provision will provide an essential impetus in persuading knowledgeable sources to come forward with needed information. Because the reward could be substantial in certain cases, it provides a needed incentive for those involved in, and knowledgeable about large drug trafficking schemes and other criminal endeavors to come forward despite the personal and financial risk to themselves and their families.

For the reasons stated, the Treasury Department fully supports H.R.'s 5044, 5046 and 5048.

Please contact me if I may be of any further assistance in this matter.

Sincerely,

John M. Walker, Jr.
Assistant Secretary
(Enforcement)

The Honorable
John J. LaFalce
House of Representatives
Washington, D.C 20515

Enclosure

LEGAL ANALYSIS IN SUPPORT OF EXTENDING CUSTOMS BORDER SEARCH AUTHORITY TO EXITING TRAVELERS

Section 2 of the Treasury Department's proposed amendments to the Bank Secrecy Act allows any Customs officer to stop, search and examine any vehicle, vessel, aircraft, envelope or other container, or person entering or departing from the United States on which or whom he shall have reasonable cause to suspect there are monetary instruments for which a report is required under the Act. This proposal has been attacked on the grounds that the Fourth Amendment dictates a probable cause standard for all warrantless searches. This argument falls before an examination of the border search exception to the Fourth Amendment:

The reasonable cause standard is Constitutional for border searches--. The Supreme Court stated in United States v. Ramsey, 431 U.S. 606, 616-17 (1976):

> That searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border, should, by now, require no extended demonstration. The Congress which proposed the Bill of Rights, including the Fourth Amendment, to the state legislatures on September 25, 1789, 1 Stat. 97, had, some two months prior to that proposal, enacted the first customs statute, Act of July 31, 1789, c. 5, 1 Stat. 29. Section 24 of this statute granted Customs officers authority to search "any ship or vessel, in which they shall have reason to suspect any goods, wares or merchandise subject to duty shall be concealed . . . ." This acknowledgment of plenary customs power was differentiated from the more limited power to enter and search "any particular dwelling-house, store, building, or other place . . ." where a warrant upon "cause to suspect" was required. The historical importance of the enactment of this customs statute by the same Congress which proposed the Fourth Amendment is, we think, manifest. This Court so concluded almost a century ago. In Boyd v. United States, 116 U.S. 616, 623 (1886), this Court observed:

> "The seizure of stolen goods is authorized by the common law; and the seizure of goods forfeited for a breach of the revenue laws, or concealed to avoid the duties payable on them, has been authorized by English statutes for at least two centuries past; and the like seizures have been authorized by our own revenue acts from the commencement of the government. The first statute passed by Congress to regulate the collection of duties, the act of July 31, 1789, 1 Stat. 29, 43, contains provisions to this effect. As this act was passed by the same Congress which proposed for adoption the original amendments to the Constitution, it is clear that the members of that body did not regard searches and seizures of this kind as 'unreasonable,' and they are not embraced within the prohibition of the amendment." [Emphasis supplied].

There is no Constitutional difference between incoming and outgoing border searches--. In California Bankers Ass'n v. Shultz, 416 U.S. 21, 62-63 (1973), the Supreme Court upheld currency import/export reporting requirements when it said:

> Of primary importance . . . is the fact that the information required by the foreign reporting requirements pertains only to commercial transactions which take place across national boundaries. Mr. Chief Justice Taft, in his opinion for the Court in Carroll v. United States, 267 U.S. 132 (1925), observed:
>
> > Travellers may be stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in. (Id., at 154).
>
> This settled proposition has been reaffirmed as recently as last term in Almeida-Sanchez v. United States, 413 U.S. 266, 272 (1973). If reporting of income may be required as an aid to enforcement of the federal revenue statutes, and if those entering and leaving the country may be examined as to their belongings and effects, all without violating the Fourth Amendment, we see no reason to invalidate the Secretary's regulations here. The statutory authorization for the regulations was based upon a conclusion by Congress that international currency transactions and foreign financial institutions were being used by residents of the United States to circumvent the enforcement of the laws of the United States. The regulations are sufficiently tailored so as to single out transactions found to have the

> greatest potential for such circumvention and which involve substantial amounts of money. They are therefore reasonable in the light of the statutory purpose, and consistent with the Fourth Amendment. [Emphasis added].

The Second Circuit concisely stated the current judicial position on warrantless departure searches in United States v. Swarovski, 592 F.2d 131, 133 (1979):

> The warrantless searches of appellant's luggage as he was about to depart the country did not violate his Fourth Amendment rights. See United States v. Asbury, 586 F.2d 973, 975 (2d Cir. 1978). Appellant's contention that customs officials can make such a search only when the person whose effects are being searched is entering the United States is not the law. [Emphasis added]. See 22 U.S.C. section 401(a); California Bankers Ass'n v. Shultz, 416 U.S. 21, 63 . . . (1974); United States v. Chabot, 193 F.2d 287, 290 (2d Cir. 1951); United States v. Stanley, 545 F.2d 661, 667 (9th Cir. 1976), cert. denied, 436 U.S. 917 . . . (1978); Samora v. United States, 406 F.2d 1095, 1098-99 (5th Cir. 1969).

oOo

It has been alleged that, notwithstanding Constitutional propriety, there currently exists no statutory authority to conduct warrantless searches of persons and things leaving the country. Anyone who has ever flown out of the country can bear witness to the exercise of such a search authority under 49 U.S.C. 1356 which requires that every single air traveler leaving the United States be subjected to a physical search of person and luggage for weapons without even reasonable cause. In addition:

19 U.S.C. 1581 authorizes "Any [Customs] officer at any time . . . [to] go on board of any vessel or vehicle at any place in the United States or within the customs waters . . . and examine, inspect, and search the vessel or vehicle and every part thereof and any person, trunk, package, or cargo on board . . . .";

21 U.S.C. 953 makes it unlawful for "any person to bring or possess on board any vessel or aircraft, or on board any vehicle or carrier, arriving in or departing from the United States" certain narcotic drugs and controlled substances as proscribed in 21 U.S.C. 953;

22 U.S.C. 401(a) prohibits the attempt to export "any arms or munitions of war or other articles in violation of law . . . " The court in United States v. Marti, 321 F. Supp. 59 (1970), held that 22 U.S.C. 401(a) gives Customs broad authority to conduct

warrantless exit searches in order to enforce the Export Control Act of 1949 (50 U.S.C. App. 2401, et seq.) and upheld a warrantless search and seizure of jewelry from a traveler leaving the United States. See also, 22 U.S.C. 1934 (munitions control), and 22 U.S.C. 2778 (control of arms exports and imports).

The courts have consistently recognized Customs' authority to conduct warrantless border searches to enforce these statutes on travelers entering as well as leaving the country. United States v. Ajlouny, 476 F. Supp. 995 (1979); see cases cited supra.

oOo

Treasury's proposed legislation has been mistakenly labeled a "money control bill". Neither the bill nor the Act which it amends can effect, alter, prohibit or discourage any currency transaction. The bill does not substantively change the purpose of the Act which requires redordkeeping and reporting of certain currency transactions that, eleven years ago, Congress found to have a high degree of usefulness in criminal, tax and regulatory investigations. Recordkeeping can only serve to protect innocent transactions.

oOo

Finally, Treasury's proposed legislation has been attacked for treating all currency as contraband. This is too simplistic. If a Customs officer has a "reasonable cause to suspect", he could search for unreported currency to the same degree he could search for dutiable or undeclared merchandise as well as contraband; there, the similarity ends. Contraband is prohibited on its face. Currency clearly is not. The transportation of monetary instruments is an inherently innocent action. However, Congress has seen fit to declare that the exportation of monetary instruments worth more than $5,000 must be reported. Currency is not illegal, but the refusal to report currency is. As long as the currency transaction is reported, there is no violation of the law.

JOHN J. LAFALCE
39TH DISTRICT, NEW YORK

COMMITTEE ON
BANKING, FINANCE AND
URBAN AFFAIRS

COMMITTEE ON
SMALL BUSINESS

CHAIRMAN:
SUBCOMMITTEE ON
GENERAL OVERSIGHT

Congress of the United States
House of Representatives
Washington, D.C. 20515

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1. Powis
2. Stan Key
cc: Walker
memo only

January 13, 1982

Mr. John Walker
Assistant Secretary for
Enforcement and Operations
Department of the Treasury
4308 Main Treasury Bldg.
15th Street & Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Mr. Walker:

I have recently introduced five bills designed to help curb the illegal flow of currency in violation of the Currency and Foreign Transactions Act (the Bank Secrecy Act). Enclosed please find copies of these bills and the remarks which I made upon their introduction.

These bills, amending the Bank Secrecy Act, are similar to measures which I introduced in the 96th Congress. I am reintroducing these bills because I believe that it is a most propitious time for the existing loopholes in the Act to be closed to give enforcement officials the improved tools which will help them do their most difficult but vitally important jobs in curbing the illegal flow of money wich feeds the international drug trade.

In the 96th Congress these bills enjoyed the full backing of the previous Administration and I worked closely with officials in the U.S. Customs Service, the Treasury Department and the Drug Enforcement Administration as the bills moved through the legislative process. I hope that I can count on your support in encouraging the Congress to act favorably upon these bills.

I was very encouraged that in recent testimony before the Senate Permanent Committee on Investigations the Administration witnesses stressed the importance of cracking down on drug trafficking through the use of financial and currency investigations. I know that you share my interest in stopping the menacing flow of drugs to our country. This task could be greatly aided by more effective use of the Bank Secrecy Act with the amendments which I have proposed.

EO-1-45-82

Your comments on the enclosed bills would be greatly appreciated and I certainly do look forward to working closely with you in an effort to have these measures enacted by the Congress. Please don't hesitate to contact me if I may answer any questions which you might have about the bills. Thank you for your consideration in this matter.

Sincerely,

JOHN J. LaFALCE
Member of Congress

JJL:JK
Enclosures

cc: John Powis
Deputy Assistant Secretary for
Enforcement
Department of the Treasury
4308 Main Treasury Bldg.
Washington, D.C. 20220

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 97th CONGRESS, FIRST SESSION

Vol. 127 WASHINGTON, THURSDAY, NOVEMBER 19, 1981 No. 170

House of Representatives

LEGISLATION TO CURB DRUG TRAFFICKING

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

● Mr. LAFALCE. Mr. Speaker, drug abuse in our Nation has reached epidemic proportions. The sheer numbers which are used to describe the extent of drug abuse are so enormous that their significance becomes hard to grasp and put into terms with which we can readily identify.

What tragedy do we really experience when we learn that, according to recent figures, over 10 percent of the graduating students in American high schools use marihuana every day? What anguish can be felt by those of us removed from the human incapacitation which is experienced by nearly half a million daily heroin users? Can we comprehend the impact of the importation into the United States of more than 30 metric tons of cocaine per year? We are assulted with statistics and, not surprisingly, find it difficult to equate those numbers with the human suffering it represents.

In a larger sense, though, the tragedy of drug abuse in our country does not need numbers to be adequately defined. The street corners and schoolyards, the back alleys of ghettos and the backrooms at fashionable parties are the places where the shadow of drug abuse casts its ominous pall. The devastation of health, productive work, and family life, and the spectre of personal and property crime to maintain millions of drug habits is the saddest—and most accurate—description of the human havoc wreaked by this cancer within us.

Why then talk at all about statistics? Because some statistics are meaningful and can be made more readily understandable. If human misery cannot, and should not, be put into cold numerical terms, perhaps the billions of dollars of cash transactions which feed the illegal drug trafficking can be described with raw data.

Recently, the Los Angeles Times reported that some experts estimate that in Dade County, Fla., there may be as much as $7 to $11 billion a year in underground drug-related cash activity. Perhaps, Mr. Speaker, our colleagues recall that when 880 pounds of cocaine was seized in Bogota, Colombia, 2 years ago, over $1.1 million in U.S. currency was also found with the seized dope. Our dollars leave the country at as rapid a pace as the narcotics, which the money buys, come back to our shores.

I am convinced that there is something positive which we can do to crack down on the enormous illegal transfer of money which leaves the country in order to subsidize the international drug trade. Accordingly, today I am introducing a package of five bills designed to help law enforcement officials police the movement of drug-related currency into and out of this country. The bills would amend the Currency and Foreign Transactions Reporting Act—popularly called the Bank Secrecy Act—to fill some serious gaps in the current law which hinders the law enforcement capabilities of U.S. customs agents. These bills are largely the same measures which I introduced in the last Congress after I returned from a factfinding mission to Colombia with the Select Committee on Narcotics. Certain technical and substantive changes have been made to address some of the concerns raised by some Members in the last Congress.

In his state of the Union address in 1979, President Carter stated that it would be the policy of his administration to "stress financial investigations as a means of prosecuting individuals responsible for the drug traffic." The Carter administration, indeed, did commit its wholehearted support for my bills in the 96th Congress, H.R. 4071, 4072, 4073, and the omnibus version combining all three, H.R. 5961, which enjoyed the support of over 50 cosponsors.

At the conclusion of my remarks, Mr. Speaker, I would like to insert in the RECORD letters of support which I received from officials in the previous administration when my bills were under consideration. Notable among these letters are those from the U.S. Department of Justice Drug Enforcement Administration, the Department of Treasury Office for Enforcement and Operations, and the U.S. Customs Service—all providing critiques of my bills and stressing the importance of those measures in combating drug abuse.

Last May, counselor to the President, Edwin Meese, commented that stemming the flow of drug traffic is going to be a priority of the current administration. I am confident that the President and his administration will continue the policy of his predecessor and fully embrace the efforts to use financial investigations as a means of prosecuting individuals responsible for drug traffic.

I would now like to describe the current operation of some of the provisions of the Bank Secrecy Act, and how my bills would address some of the loopholes contained in that law.

Present law makes it illegal to leave the country with more than $5,000 without filing a Customs Service reporting form. However, courts have held that a person cannot be arrested for violating this law until he has actually left the country. But by that time the violator is outside the jurisdiction of the United States and cannot be successfully prosecuted. Tying the hands of our own customs officials in this way is an obvious gaping loophole in the law. Therefore, the first of my five bills would make it illegal to "attempt" to leave the United States with large amounts of currency without filing the reports already required under the Bank Secrecy Act. The bill raises the amount of money being taken out of the country, in order to require a customs report, from $5,000 to $10,000.

The second, third, and fourth bills would allow customs officials to search for unreported amounts of cash—in their presently authorized search for contraband—where cause exists to believe that this currency is leaving the country as a result of illegal activities. Each bill proposes a different standard of cause: First, "reasonable cause"; second, "probable cause"; and third, when the customs official shall "suspect that there are monetary instruments in the process of being transported out of the country" in violation of the Bank Secrecy Act. I encourage the Members who will study these bills at the committee level to help me determine the most appropriate, or, more precisely, the most acceptable standard.

The fifth and final bill would give informants a portion of the recovered currency, thereby giving a further incentive to those who know of cash smuggling to report this to U.S. Government officials. These rewards would prove to be extremely helpful for obtaining information from informants. The Secretary of Treasury would have discretion to determine the amount of award, within a specified ceiling, to be given to informants.

Mr. Speaker, I am encouraged that the Senate is currently involved in a series of hearings to study the international drug trafficking problem. I urge my colleagues in the House to continue and renew their own efforts to combat this pernicious drain on our country, by favorably considering a very simple and very practical series of bills which will help curb the flow of money which is use to feed the drug trade.

The drug abuse problem is one which has permeated our society and, at times, seems totally out of control. My bills will not solve the drug abuse epidemic, nor put a complete halt to the drug trafficking problem. But these bills will help our law enforcement officials to more effectively do their jobs in stopping the flow of money out of the country so that the flood of drugs which comes back to our shores may be abated.

The letters of support for the comparable bills which I introduced in the 96th Congress are inserted in the RECORD at this time.

THE WHITE HOUSE,
Washington, October 12, 1979.

HON. JOHN J. LAFALCE,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN LAFALCE: I WENT to express the President's appreciation for your decision to join in leading the effort to pass

(MORE)

the financial privacy bills. We look forward to working with you on these important bills in the coming months.

Sincerely,

STUART E. EIZENSTAT,
Assistant to the President for Domestic Affairs and Policy.

DRUG ENFORCEMENT AGENCY,
Washington, D.C., November 5, 1979.

Hon. JOHN J. LAFALCE,
House of Representatives,
Washington, D.C.

DEAR MR. LAFALCE: I have been monitoring closely the three legislative initiatives you introduced upon your return from Colombia this past May. I refer to H.R. 4071, 4072, and 4073 which still remain pending in the House of Representatives.

As you know, the enactment of these three laws would greatly improve the effectiveness of our law enforcement efforts to curtail the illegal movement of U.S. currency out of the U.S.A. Most of this illegally obtained money is realized as a result of narcotics trafficking. With the enactment of H.R. 4071 there no doubt would be the added incentive for law-abiding citizens to come forward with information relating to currency violations. The impact would greatly improve the effectiveness of the U.S. Customs Service in its enforcement responsibilities.

Present law makes it illegal to leave the country with more than $5,000 without filing a declaration. However, the courts have held that a person cannot be arrested for this violation unless he has actually left the country, thus escaping U.S. jurisdiction. The enactment of H.R. 4072 would remove this loophole by providing that attempting to leave the country is also a violation. This will improve our effectiveness in stemming the flow of illegally obtained currency from leaving the country. H.R. 4073 would give to our brother law enforcement officers of the Customs Service the authority to search for undeclared monetary instruments where reasonable cause exists to believe that these monetary instruments are leaving the country as a result of illegal activities. With today's sophisticated drug trafficking organizations, much of the profits leave the United States for source countries to purchase additional drugs and other smuggling resources.

I understand that the above three legislative initiatives are before the Subcommittee on Financial Institutions and there is a possibility for hearings regarding these measures. As Administrator of the Drug Enforcement Administration, I would welcome the opportunity to participate in these hearings and discuss further with the Subcommittee the importance of this corrective legislation as it relates to effective drug law enforcement.

On behalf of the Drug Enforcement Administration's Special Agents, I thank you for your efforts.

Sincerely,

PETER B. BENSINGER
Administrator.

THE COMMISSIONER OF CUSTOMS,
Washington, D.C., January 21, 1980.

Hon. JOHN LAFALCE,
House of Representatives,
Washington, D.C.

DEAR MR. LAFALCE: I would like to express the appreciation of the U.S. Customs Service for your efforts to amend the Currency and Foreign Transactions Act, popularly known as the Bank Secrecy Act of 1970 (31 U.S.C. 1101-1105). With the passage of the three bills you have introduced—H.R. 4071, 4072, and 4073—we believe that the loopholes in the present law will be eliminated and a more effective and productive enforcement of this Act will result. The views of the Department of Treasury on your legislation have previously been set forth in the Department's report of October 5 and 12, 1979.

As you are well aware, the Customs Service has the primary responsiblity of enforcing that section of the Act which requires that an individual entering or departing from the United States with over $5,000 must file a report with the Customs Service. While a vast majority of those individuals who are aware of the law do comply with it, we believe that most of the money earmarked for marihuana and other narcotics purchases overseas goes unreported. In fiscal year 1978, we estimate that $2.6 billion was exported from the United States in order to purchase illegal drugs, and that figure represents only the wholesale cost. It is quite apparent that the illegal drug trade is an extremely lucrative one, and we believe one way to cut down on the amount of drugs being smuggled in is to stop the flow of unreported currency going out of the country.

In the first decade of the Bank Secrecy Act, we have found the Act to be a useful tool in the law enforcement effort against drug traffickers as well as other international organized crime ventures. However, the Act has glaring deficiencies which severely restrict its effectiveness. Your legislation would remedy these deficiencies.

H.R. 4071 would add a new section to the Act which, by offering as a reward a percentage of any recovery, would encourage people to supply information to the Government about individuals who are about to enter or depart the United States with large sums of currency or other monetary instruments. Since it is extremely difficult to detect monetary instruments in large amounts—for example, it may be a single check—we must acquire as much reliable information as possible. Your bill should encourage people to come forward with this much needed and extremely valuable information.

H.R. 4072 would close the loophole in the Act which creates the most difficulties for Customs. By including an "attempt" provision in the Act, we will be able to prosecute successfully those individuals who are about to leave the country with unreported funds, but decide to "postpone" their journey when confronted by Customs, only to make another attempt later when Customs officers are not present. This very important amendment will stop the merry-go-round.

H.R. 4073 would authorize Customs officers to search suspected individuals at the border for currency and other monetary instruments without a search warrant and with "reasonable suspicion," rather than probable cause. Several Federal courts of both the District (trial) and Appellate level have reviewed the constitutionality of this standard and approved it. It is crucial that we be able to act quickly when we receive information that an individual is about to leave the country within a short period of time with a large amount of money. Where the quality of this information does not meet the probable cause standard, we are powerless to verify a departing individual's claim that he has no money to report, even though we have a strong indication that he is not being entirely truthful. Once he leaves the United States, our opportunity to enforce the Act is lost forever, regardless of how much information we may subsequently acquire. Your bill would give us the lawful tools we need to enforce the Act effectively.

In closing, I want to assure you that we stand ready to assist you in your efforts to amend the Bank Secrecy Act which should enable us to do a better job in the future.

Sincerely,

R. E. CHASEN,
Commissioner of Customs.

DEPARTMENT OF THE TREASURY,
Washington, D.C., April 1, 1980.

Hon. JOHN J. LAFALCE,
House of Representatives,
Washington, D.C.

DEAR MR. LAFALCE: I have recently been informed that your bill to amend the Currency and Foreign Transactions Reporting Act—H.R. 5961—was unanimously reported out of the House Subcommittee on Financial Institutions Supervision, Regulation and Insurance and was referred to the House Committee on Banking, Financing, and Urban Affairs with a recommendation that expeditious action be taken. On behalf of the Department of the Treasury and the U.S. Customs Service, I wish to thank you for your efforts in this matter.

As you are aware, the Department strongly endorses all of the provisions of your bill. It has come to our attention that one point requires clarification. A question has been raised concerning the applicability of the amended Currency and Foreign Transactions Reporting Act provisions to electronic transfers of currency. The current regulations require that reports must be filed with the Customs Service in accordance with 31 U.S.C. 1101 by each person who "*physically* transports, mails, or ships, or causes to be *physically* transported, mailed, or shipped" monetary instruments in excess of $5,000 into or out of the United States. 31 CFR 103.23(a) (emphasis added). It has been the position of the Department that the intentional use of the adjective "physical" means that electronic fund transfers are not covered by the provisions of the Act which your bill will amend. We assure you now that this position will not change. Therefore, your bill would not grant the Department any additional authority to monitor or intercept any electronic fund transfer. There is another section of the Act, 31 U.S.C. 1121 that currently authorizes the Secretary to issue regulations requiring reports of international transactions including electronic transfers if in the Secretary's opinion such reports are necessary.

If we can be of any further assistance, please contact us again.

Sincerely,

RICHARD J. DAVIS,
Assistant Secretary
(Enforcement and Operations).●

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General Washington, D.C. 20530

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice regarding S. 1907, a bill to amend the Currency and Foreign Transaction Reporting Act, 31 U.S.C. 1101, et seq., popularly known as the Bank Secrecy Act of 1970, and 18 U.S.C. 1961(1), the Racketeer Influenced and Corrupt Organizations statute, generally referred to as "RICO."

In essence, the proposed legislation would do the following things: (1) increase civil and criminal sanctions for violations of the Bank Secrecy Act; (2) criminalize the attempted transfer of currency or monetary instruments in excess of $5,000 into or out of the United States without the filing of required reports; (3) limit forfeitures of unreported monetary instruments to those involving "knowing" failures to report; (4) authorize customs officers to conduct warrantless searches of persons, mail, or vehicles entering or leaving the United States where there is reasonable cause to believe monetary instruments are being transported illegally; (5) authorize payment of rewards for information leading to recovery of fines, penalties, or forfeitures and (6) make currency violations RICO predicate offenses. The Justice Department enthusiastically endorses all of these measures except for the "knowledge" requirement of Section (d) which it opposes.

NEED FOR AMENDMENTS

The Department of Justice endorses S. 1907 in its efforts to amend the Currency and Foreign Transaction Reporting Act to create an attempt offense, to authorize the payment of rewards for information leading to successful civil or criminal prosecution of currency violations, and to include currency violations as RICO predicate offenses. These provisions would substantially strengthen the ability of federal law enforcement authorities to stem the illicit flow of currency involved in narcotics trafficking and "money laundering" schemes associated with organized and

white collar crime. Narcotics transactions alone are estimated to generate more than $60 billion per year, much of which goes to foreign suppliers or is "laundered" before being received by high-level traffickers. The magnitude of this law enforcement problem and the deficiency in existing law require expeditious action upon corrective legislation. In fact, these amendments are essential to any meaningful enforcement program under Section 231 of the 1970 law (31 U.S.C. 1101).

THE ATTEMPT PROVISION

With respect to the need for an attempt provision, we would note at the outset that detection and apprehension of individuals violating this statute are extremely difficult -- particularly the exportation of currency and monetary instruments -- due to the ease with which items can be secreted on an individual's person or among his effects. Even where law enforcement officers can detect and apprehend violators, a conviction is uncertain as a result of court decisions holding that an attempt to export unreported money out of the country is not an offense. In summary, the law has been construed by some courts to be that an offense does not occur until an individual has departed the United States with unreported currency or monetary instruments. At that point, of course, federal officials generally have no jurisdiction to make an arrest. This creates an untenable situation which we feel requires prompt remedial action.

The facts of a recent case will illustrate the current state of the law. Federal officers monitoring a court-ordered wiretap of members of a major narcotics trafficking ring learned that a courier would be departing the United States for Bogota, Colombia, carrying a large sum of currency to make a narcotics purchase. In an effort to avoid apprehending the suspect prematurely, Customs agents kept the suspect under suveillance as she entered the airport, checked her luggage, presented her flight ticket, obtained her boarding pass, and received notice of the necessity of reporting the possession of any currency in excess of $5,000. Only as she was preparing to board the aircraft was an arrest made. A search of the luggage and her handbag produced $1.5 million in United States currency. Despite the facts of this case, a conviction was possible only because the United States District Court Judge before whom the case was tried found that the facts here established a completed offense; that finding is currently on appeal. A judge in a very similar case dismissed an indictment holding that no offense occurs until a person actually leaves the United States. United States v. Centeno, No. 75-660-CR-JE (S.D. Fla., March 25, 1976)(unreported).

While the absence of an attempt offense has created difficulty in connection with departures from public airports, this gap in the law is even more disruptive of efforts to control the exportation of currency and monetary instruments through the use of private aircraft flying out of private airports or makeshift

runways in remote areas. Furthermore, we have reason to believe that substantial illicit currency transactions are carried out in this way.

REWARD AUTHORITY

With respect to the need for authority to offer monetary rewards to persons providing information leading to the imposition of fines and forfeitures under currency reporting laws, the nature of the offense is such that only through reports from persons aware of the transactions can we expect to intercept a sufficient number of shipments to achieve a significant deterrent effect. The proposed reward authority would provide a powerful incentive for persons to come forward and report such illicit activities by providing monetary payments of twenty-five percent of fines and forfeitures recovered up to a ceiling of $250,000. While it has been suggested that the amount of rewards which can be paid may be excessive, we would point out that the risk inherent in reporting such crimes -- which usually involve activities of either narcotics trafficking rings or organized crime syndicates noted for their reliance upon violence -- requires a substantial incentive in order to encourage individuals to come forward and provide information to law enforcement officials.

AMENDMENT OF RICO

The proposed legislation would add currency violations to the definitions of "racketeering activity" listed at 18 U.S.C. Section 1961(1), thereby making Title 31 crimes predicate offenses for RICO prosecution. Title 31 offenses are analogous to the offense of interstate travel in aid of racketeering to distribute the proceeds of unlawful activity, 18 U.S.C. 1952, which is currently included within the RICO definition. However, the growing sophistication of organized crime and the proliferation of foreign tax havens has made Section 1952 inadequate to cope with illegal money flow. "Money laundering" has been documented as a condition precedent for organized crime and narcotics trafficking enterprises. Investigations in South Florida have revealed a multi-billion dollar clandestine money market operating offshore. The inclusion of currency violations proscribed by Title 31 as racketeering offenses is necessary to allow a concerted attack upon all aspects of such criminal enterprises. Moreover, this amendment would expedite a unified federal response by facilitating cooperation between Treasury agents from IRS and Customs having enforcement jurisdiction over Title 31 and FBI investigators specializing in racketeering cases under Title 18. The Justice Department's position is that it is ineffective to prosecute racketeers in narcotics offenses without including the currency violations they commit as RICO predicate offenses because, without the proposed amendment, Title 31 violations are now likely to be severed from a RICO case. Moreover, inclusion

of currency violations as RICO predicate offenses would enhance the ability of prosecutors to seek forfeiture of criminal assets by authorizing RICO forfeiture of monies used to violate Title 31. Passage of the proposed amendment is viewed as being essential to an adequate law enforcement response to money laundering by organized crime and narcotics organizations. Enactment of this amendment is strongly recommended.

THE KNOWLEDGE REQUIREMENT

Subsection (d) of the proposed legislation would require a knowing violation of reporting requirements in order to support a civil forfeiture under Section 232(a) of the 1970 law (31 U.S.C. 1102(a)). Due to the nature of this offense, there would virtually never be direct evidence that a failure to file a required report was "knowing." Moreover, we are unaware of cases in which it has been suggested by disinterested persons that a conviction was inequitable because of the absence of a knowledge requirement. In our view there is no basis for complicating prosecutions through this amendment and we therefore strongly urge that it be disapproved.

WARRANTLESS SEARCHES

S. 1907 also authorizes warrantless searches where there is reasonable cause to believe that currency is unlawfully being removed from the country. In this regard, border searches of persons and things entering the United States have been authorized and executed, without requirements of a warrant or probable cause, since the earliest period of our constitutional history. See Act of July 31, 1799, §24, 1st Cong., 1st Sess., 1 Stat. 43 (ships and vessels); Act of March 2, 1799, §46, 5th Cong., 3rd Sess., 1 Stat. 662 (personal baggage). The courts have so noted. United States v. Ramsey, 431 U.S. 606, 616-19 (1977). The issue raised by this proposal, therefore, is whether the border search exception to the Fourth Amendment warrant and probable cause requirements is applicable only to persons and things entering the United States. The only court which has to our knowledge squarely considered this question is the Ninth Circuit Court of Appeals which concluded that the "the similarity of purpose, rationale, and effect between the two types of border searches (outgoing as compared to incoming) compels us to hold that the search here (which was conducted on less than probable cause and without a warrant) was proper." United States v. Stanley, 545 F.2d 661, 667 (9th Cir. 1976), cert. denied, 436 U.S. 917 (1978). Dictum in other cases indicates that searches at the border of outbound traffic are legally indistinguishable from incoming searches for Fourth Amendment purposes. E.g., California Bankers Association v. Shultz, 416 U.S. 21, 63 (1974) and United States v. Asbury, 586 F.2d 973, 975 (2d Cir. 1978).

In short, the Constitution would not appear to require that border searches of outgoing persons or things be supported by the issuance of a warrant or a showing of probable cause. Yet the Currency and Foreign Transaction Reporting Act (31 U.S.C. 1105(a)) requires issuance of a search warrant based upon a showing of probable cause in order to conduct a search related to enforcement of that Act. This requirement is inconsistent with prior law establishing the border search exception. In view of the importance of enforcing the Currency and Foreign Transaction Reporting Act, and considering the ease with which persons departing the United States can conceal currency in their luggage or on their persons, this requirement impedes law enforcement efforts.

S. 1907 would retain the existing search warrant requirement with respect to enforcement of the Currency Transaction and Reporting Act generally, but would authorize warrantless searches upon reasonable cause to believe a person entering or departing the United States is unlawfully transporting a monetary instrument. We understand, therefore, that a showing of objective reasonableness would still be required in keeping with judicial opinions governing border searches. More specifically, we believe searches could only be conducted pursuant to the amendment where there is an objective basis for a reasonable belief that the person or thing searched is unlawfully transporting monetary instruments. Moreover, the search would necessarily be conducted in a reasonable manner. Although we recognize that an analogous revision of a previous bill (H.R. 5961 of the 96th Congress) was the focus of considerable controversy, we believe that critics of the earlier bill may have lacked a full understanding of the law of border searches. Moreover, the standard used in S. 1907 (reasonable cause to believe) is somewhat more demanding than that set out in H.R. 5961 (reasonable cause to suspect). We would hope, therefore, that this provision of S. 1907 can be enacted during the 97th Congress.

For purposes of clarity, we believe that the search provision should specify that warrantless searches are authorized only upon "reasonable cause to believe there are monetary instruments being transported in violation of section 1101 of this title." The language of subsection (b) as presently written would arguably authorize a search even in circumstances where a person has declared all currency in his possession. Further, for stylistic reasons, we suggest substitution of the words "with respect to which or whom" for "on which or on whom".

INCREASED SANCTIONS FOR VIOLATIONS

Because we feel that violations of the Currency and Foreign Transaction Reporting Act are serious matters, and that such violations are often perpetrated in order to mask even more serious offenses such as narcotics trafficking and organized

crime, we believe that the proposed increase in civil penalties from $1,000 to $10,000 and in criminal sanctions from a misdemeanor to a felony are clearly justified.

CONCLUSION

In conclusion, the Department of Justice recommends enactment of the attempt, reward, search, and increased sanction provisions of S. 1907. We recommend against enactment of the knowledge provision. The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 18, 1982

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Bank Secrecy Act Amendments

Sen. Roth and Rep. LaFalce have introduced "Bank Secrecy Act Amendments", designed to enhance the Government's ability to seize drug traffickers' cash before it leaves the country.

The legislation would (1) make it an offense to attempt to leave the country carrying unreported currency in excess of $5,000; (2) authorize warrantless searches of persons leaving the country where there is reasonable cause to believe these persons are illegally transporting unreported currency; and (3) authorize rewards to informants.

The Treasury and Justice Departments strongly support the legislation. OMB opposes the warrantless search and reward provisions of the legislation on philosophical grounds.

The Justice Department and the Senate Judiciary Committee have tentatively agreed to include at least the attempt provision of this legislation in the Alternative Law Enforcement Package.

Early next week, the entire package is being taken up by the CCLP. At that time, the Council will have the opportunity to consider objections which OMB may have to any elements of the package, including the Bank Secrecy Act Amendments.

(If you would like more background on the issue, see the attached memorandum.)

cc: Roger Porter

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 18, 1982

MEMORANDUM FOR THE FILE

FROM: WILLIAM P. BARR

SUBJECT: Bank Secrecy Act Amendments

Overview

Treasury and Justice strongly support legislation introduced by Senator Roth (S. 1907) and Rep. LaFalce (H.R. 5044-48), which would enhance the Government's ability to seize drug traffickers' cash before it leaves the country by:

-- making it an offense to attempt to take unreported currency out of the U.S.;

-- authorizing warrantless searches of persons leaving the country based on either probable cause or reasonable cause to believe such persons are illegally transporting unreported currency; and

-- authorizing payment of rewards to informants.

OMB does not object to the attempt provision but opposes the warrantless search and reward provision on philosophical grounds.

The Justice Department has concluded that the warrantless search provision is "probably constitutional".

Similar legislation was supported by the Carter administration; but, during the 96th Congress, a motion to suspend the rules to consider the bill was defeated in the House by an yea-and-nay vote, with debate centering on the constitutional propriety of the warrantless search provision.

Justice and Senate Judiciary Committee negotiations have tentatively agreed to include the legislation in the Alternative Law Enforcement Package.

Background

The sheer volume of cash generated by drug-trafficking and other organized crime activities is awesome. For example, sale of 1 ton of cocaine can produce 4 tons of cash. Disposal of these massive amounts of cash has become a major problem for

Basically, the criminals have two choices: (1) deposit the money in domestic institutions; (2) take the cash out of the country for offshore laundering. The first option has been obstructed by recently-enacted laws which require filing of reports when large domestic deposits are made. There is evidence that organized crime is increasingly resorting to the second option. Law enforcement officials would like to catch organized crime in a squeeze by blocking their efforts to export currency.

Current Law

- Requires filing of reports if transporting more than $5,000 out of country.

- Person transporting currency without filing report faces:

  -- forfeiture of money
  -- civil penalty of $1,000
  -- misdemeanor.

- Some courts have held that no offense occurs until person actually departs U.S.

- Authorizes searches pursuant to warrant based on probable cause.

Proposed Amendments

Sen. Roth's and Rep. LaFalce's bills would amend existing law to:

- Make it an offense to attempt to take unreported money out of the country. (S.1907 and H.R. 5044).

- Authorize warrantless exit searches based on "reasonable cause" (S. 1907 and H.R. 5046) or, alternatively, on "probable cause" (H.R. 5045) or on "suspicion" (H.R. 5047).

  -- Treasury prefers "reasonable cause".
  -- Justice defers to Treasury.

- Authorize payment of rewards to informers in illicit currency transportation cases where the information leads to a forfeiture, fine or penalty. (Reward would not exceed 25% of fine, penalty or forfeiture, or $250,000, whichever is less.) (S. 1907 and H.R. 5048).

- Raise the reporting threshold from $5,000 to

- o Raise the reporting threshold from $5,000 to $10,000 (H.R. 5044).

  -- Treasury opposes this.

- o Add currency violations to definition of "racketeering activity" for purposes of RICO (Only S. 1907).

- o Increase civil penalties ($1,000 to $10,000) and criminal penalties (1 year to 5 years, $1,000 to $50,000) (Only S. 1907).

- o Add requirement for "knowing" violation to support civil forfeiture (Only S. 1907).

  -- Justice opposes this.

OMB's Position

OMB objections to the bill's warrantless search provision is basically philosophical:

> "I believe that, absent extraordinary circumstances, exit searches are not and should not be conducted by the government. Perhaps a case can be made for permitting warrantless exit searches based upon the traditional probable cause standard, but such a major departure from the way our government has treated its departing citizens deserves especially close scrutiny."

OMB's objection to the reward provision likewise appears philosophical:

> "[T]he practice of paying rewards to informants, many of whom are themselves participants in criminal activities, concerns me."

OMB has recommended setting this matter down for CCLP consideration.

required to file a report under this chapter [31 USCS §§ 1081 et seq.] with respect to a transaction with a domestic financial institution shall file the report with that institution, except that (1) if the institution is not designated under subsection (a), the report shall be filed as the Secretary shall prescribe, and (2) any such person may, at his election and in lieu of filing the report in the manner hereinabove prescribed, file the report with the Secretary. Domestic financial institutions designated under subsection (a) shall transmit reports filed with them, and shall file their own reports, as the Secretary shall prescribe.

(Oct. 26, 1970, P. L. 91-508, Title II, ch 2, § 223, 84 Stat. 1122.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act," referred to in this section, probably should read "this Title," which Title is Title II of Act Oct. 26, 1970, P. L. 91-508, 84 Stat. 1114, which Title is popularly known as the Currency and Foreign Transactions Reporting Act, and appears generally as 31 USCS §§ 1051 et seq. For full classification of this Title, consult USCS Tables volumes.

Effective date of section:

For the effective date of this section, see the Other provisions note to 31 USCS § 1051.

CODE OF FEDERAL REGULATIONS

Financial recordkeeping and reporting of currency and foreign transactions, 31 CFR Part 103.

INTERPRETIVE NOTES AND DECISIONS

Fourth Amendment rights of banks are not abridged by domestic reporting provisions of Bank Secrecy Act of 1970 (31 USCS §§ 1081–1083), and regulations thereunder. California Bankers Asso. v Shultz (1974) 416 US 21, 39 L Ed 2d 812, 94 S Ct 1494.

REPORTS OF EXPORTS AND IMPORTS OF MONETARY INSTRUMENTS

§ 1101. Reports

(a) Persons required to file. Except as provided in subsection (c) of this section, whoever, whether as principal, agent, or bailee, or by an agent or bailee, knowingly—

(1) transports or causes to be transported monetary instruments—

(A) from any place within the United States to or through any place outside the United States, or

(B) to any place within the United States from or through any place outside the United States, or

(2) receives n
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(2) receives monetary instruments at the termination of their transportation to the United States from or through any place outside the United States

in an amount exceeding $5,000 on any one occasion shall file a report or reports in accordance with subsection (b) of this section.

(b) Contents of filed report. Reports required under this section shall be filed at such times and places, and may contain such of the following information and any additional information, in such form and in such detail, as the Secretary may require:

(1) The legal capacity in which the person filing the report is acting with respect to the monetary instruments transported.

(2) The origin, destination, and route of the transportation.

(3) Where the monetary instruments are not legally and beneficially owned by the person transporting the same, or are transported for any purpose than the use in his own behalf of the person transporting the same, the identities of the person from whom the monetary instruments are received, or to whom they are to be delivered, or both.

(4) The amounts and types of monetary instruments transported.

(c) Common carriers. Subsection (a) does not apply to any common carrier of passengers in respect of monetary instruments in the possession of its passengers, nor to any common carrier of goods in respect of shipments of monetary instruments not declared to be such by the shipper.

(Oct. 26, 1970, P. L. 91-508, Title II, ch 3, § 231, 84 Stat. 1122.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

For the effective date of this section, see the Other provisions note to 31 USCS § 1051.

CROSS REFERENCES

This section is referred to in 31 USCS §§ 1102, 1103, 1105.

RESEARCH GUIDE

Am Jur:

10 Am Jur 2d, Banks § 18.5.

32 Am Jur 2d, False Pretenses § 86.

Law Review Articles:

McLaughlin, The Criminalization of Questionable Foreign Payments by Corporations: A Comparative Legal Systems Analysis, 46 Fordham L Rev 1071, May, 1978.

INTERPRETIVE NOTES AND DECISIONS

I. IN GENERAL

1. Purpose
2. Scope
3. Willfulness requirement

II. CONSTITUTIONALITY

4. Generally
5. First Amendment
6. Fourth Amendment
7. Fifth Amendment

I. IN GENERAL

1. Purpose

Provision in 31 USCS § 1101 providing that amounts not exceeding $5,000 need not be reported was obviously meant to avoid creating problems of enforcement and imposing unnecessary inconveniences on travelers which would result were reporting obligations extended to small or insignificant amounts of money. Ivers v United States (1978, CA9 Cal) 581 F2d 1362.

Underlying purposes of Congress in promulgating foreign reporting requirements of 31 USCS § 1101 were fundamentally prosecutorial, not essentially regulatory, since stated objective of Bank Secrecy Act was to acquire information which would have high degree of usefulness in criminal investigations and proceedings. United States v San Juan (1975, DC Vt) 405 F Supp 686.

2. Scope

31 USCS § 1101 determines when travelers and others must report transportations of monetary instruments, and once transportation falls within its scope, entire amount transported must be reported. Ivers v United States (1978, CA9 Cal) 581 F2d 1362.

3. Willfulness requirement

31 USCS § 1101 punishes not transportation of money, but willful failure to file report. United States v Gomez Londono (1977, CA2 NY) 553 F2d 805.

Term "knowingly" as used in 31 USCS § 1101 requires proof of defendant's knowledge of reporting requirement and his specific intent to commit crime; Congress, by adding this term, took this regulatory statute out of ranks of strict liability type crimes; in case involving alleged violations of § 1101, proper instruction to jury would include some discussion of defendant's ignorance of law since defendant's alleged ignorance of reporting requirement goes to heart of his or her denial of specific intent necessary to commit crime, and failure of defendant to have benefit of this instruction was plain error; isolated act of bringing money in excess of $5,000 into country is not illegal or even immoral, since what is required is merely filing of proper form, and proof of requisite knowledge and willfulness, therefore, is almost impossible unless affirmative steps are taken by government to make laws' requirement known. United States v Granda (1978, CA5 Fla) 565 F2d 922.

II. CONSTITUTIONALITY

4. Generally

Portion of Currency and Foreign Transctions Reporting Act (31 USCS §§ 1051 et seq.) dealing with export and import of monetary instruments and with foreign monetary interests or accounts (§§ 1101–1105), does not violate Forth Amendment. California Bankers Assn. v Shultz (1974) 416 US 21, 39 L Ed 2d 812, 94 S Ct 1494.

31 USCS §§ 1101–1105 did not violate defendant's First, Fourth, and Fifth Amendment rights and should not be declared unconstitutional. United States v Fitzgibbon (1978, CA10 Colo) 576 F2d 279, cert den (US) 58 L Ed 2d 256, 99 S Ct 279.

5. First Amendment

On defendant's motion to dismiss information, in which she was charged with willful failure to file reports required by 31 USCS § 1101 in connection with her transportation of $77,500 in cash from Canada to United States, compulsory disclosure of information sought from defendant on reporting form would not have deterent or detrimental affect upon her freedom to enter into associations or to participate in organizations as allowed by USCS Constitution Amend. 1. United States v San Juan (1975, DC Vt) 405 F Supp 686.

6. Fourth Amendment

Neither domestic nor foreign transactions reporting requirements of Title II of Bank Secrecy Act of 1970 (31 USCS §§ 1081–1122), and regulations pursuant thereto, violate Fourth Amendment rights of banks. California Bankers Asso. v Shultz (1974) 416 US 21, 39 L Ed 2d 812, 94 S Ct 1494.

7. Fifth Amendment

Fifth Amendment self-incrimination claims of bank depositor plaintiffs against foreign reporting requirements of Bank Secrecy Act of 1970 (31 USCS §§ 1101–1122) are premature where depositor plaintiffs allege that they intend to engage in foreign currency transactions or dealings with foreign banks which Treasury Regulations

will require them to report, but they make no additional allegation that any of information required by regulations will tend to incriminate them. California Bankers Asso. v Shultz (1974) 416 US 21, 39 L Ed 2d 812, 94 S Ct 1494.

Reporting requirements of 31 USCS § 1101 do not violate USCS Constitution Amend. 5; in spite of underlying prosecutorial purposes, reporting requirements created only possibility of incrimination which was insufficient to require validation, and while disclosures demanded on reporting form could lead to inquiry that could later lead to criminal liability, compliance with requirement did not by itself implicate defendant in criminal conduct, where defendant was charged with failure to file reports in connection with her transportation of $77,500 in cash from Canada to United States, and compelling disclosures did not undermine accusatorial system of criminal justice which privilege against self-incrimination was designed to protect. United States v San Juan (1975, DC Vt) 405 F Supp 686.

§ 1102. Forfeiture

(a) Any monetary instruments which are in the process of any transportation with respect to which any report required to be filed under section 231(1) either has not been filed or contains material omissions or misstatements are subject to seizure and forfeiture to the United States.

(b) For the purpose of this section, monetary instruments transported by mail, by any common carrier, or by any messenger or bailee, are in process of transportation from the time they are delivered into the possession of the postal service, common carrier, messenger, or bailee until the time they are delivered into or retained in the possession of the addressee or intended recipient or any agent of the addressee or intended recipient for purposes other than further transportation within, or across any border of, the United States.

(Oct. 26, 1970, P. L. 91-508, Title II, ch 3, § 232, 84 Stat. 1123.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"Section 231(1)," referred to in this section, probably should be "section 231(a) of Act Oct. 26, 1970, P. L. 91-508, Title II, ch 3," which appears as 31 USCS § 1101(a).

Effective date of section:

For the effective date of this section, see the Other provisions note to 31 USCS § 1051.

CROSS REFERENCES

This section is referred to in 31 USCS § 1103.

INTERPRETIVE NOTES AND DECISIONS

1. Generally
2. Relation to customs laws
3. Standing
4. Delay in forfeiture proceedings
5. Amount of forfeiture

1. Generally

In prosecution of defendant for willful failure to file reports required by 31 USCS § 1101 in connection with transportation of approximately $77,500 in cash from Canada to United States, defendant could not legitimately object to seizure of money she was carrying; forfeiture was proper under 31 USCS § 1102(a) since defendant failed to fill out form 4790, and letters and other documents in packages were properly seized as

evidence of alleged violation of statute. United States v San Juan (1975, DC Vt) 405 F Supp 686.

Jurisdiction of District Court in forfeiture proceeding is limited to determining whether all elements of alleged violation have been proved, since 31 USCS § 1102 subjects any money imported in violation of § 1101 to forfeiture. Ivers v United States (1975, DC Cal) 413 F Supp 394, affd in part and revd in part on other grounds (CA9 Cal) 581 F2d 1362.

Currency which has been brought into United States from a place outside country is subject to forfeiture to United States under 31 USCS § 1102 where required report has not been filed under 31 USCS § 1101 and where claimants lacked any valid affirmative defense. United States v Eleven Thousand Five Hundred & Eighty Dollars ($11580) in United States Currency (1978, DC Fla) 454 F Supp 376.

2. Relation to customs laws

19 USCS §§ 1602 et seq., which are applicable to proceedings in conjunction with seizures and forfeitures under customs laws, do not govern proceedings under 31 USCS § 1102. United States v One 1964 MG (1976, DC Wash) 408 F Supp 1025, revd on other grounds (CA9 Wash) 584 F2d 889; Ivers v United States (1975, DC Cal) 413 F Supp 394, affd in part and revd in part on other grounds (CA9 Cal) 581 F2d 1362.

3. Standing

Where one claimant pleaded guilty to charge of transporting unreported monetary instruments and another claimant was not in actual or constructive possession of currency at time it was seized, they have no standing to object to forfeiture of automobile and cash in forfeiture proceeding pursuant to 31 USCS § 1102. United States v One 1964 MG (1976, DC Wash) 408 F Supp 1025, revd on other grounds (CA9 Wash) 584 F2d 889.

4. Delay in forfeiture proceedings

In civil action by which United States sought forfeiture against automobile and sum of $17,883 in United States and Canadian currency under authority of 19 USCS § 1595a and 31 USCS § 1102, where claimants of currency raised affirmative defenses challenging constitutionality of statutes on their faces and as applied because of government delay between seizure and filing of complaint, and where claimants by counterclaim sought return of currency and damages, government's motion for summary judgment was granted; unlike 19 USCS § 1305, which requires that forfeiture proceedings be instituted within fourteen days of seizure and that district court take no more than sixty days to dispose of action, 31 USCS § 1102 provides for administrative determination on claimant's petition for remission, distinction being based upon fact that § 1305 deals with materials which might properly be subject to First Amendment protection; it was therefore unrealistic to use same time limits imposed under 19 USCS § 1305 in proceeding brought under § 1102 where latter statute permits administrative determination on question of remission. United States v One 1964 MG (1976, DC Wash) 408 F Supp 1025, revd on other grounds (CA9 Wash) 584 F2d 889.

Ordinarily Constitution demands that person not be deprived of property without previously having been afforded notice of proposed action and opportunity to be heard, but extraordinary situation may justify departure from mandate and permit postponement of notice and opportunity for hearing; seizure of property for forfeiture to government is such situation and post-seizure notice and hearing are justified by facts that seizure is necessary to secure important government interest and there is special need for prompt action and seizure is initiated by government official responsible for determining under standards of narrowly drawn statute as found in 31 USCS § 1102; due process, however, requires proceedings be commenced with some promptitude; proceedings under 31 USCS § 1102 are governed by Customs Service's general regulations on subject. Ivers v United States (1975, DC Cal) 413 F Supp 394, affd in part and revd in part on other grounds (CA9 Cal) 581 F2d 1362.

5. Amount of forfeiture

Entire amount of currency is subject to forfeiture under 31 USCS § 1102 despite provision in 31 USCS § 1101 providing that persons transporting monetary instruments in amounts exceeding $5,000 file reports; $5,000 amount merely triggers reporting requirement and once triggered all amounts transported are required to be reported, and since entire amount should have been reported and was not, entire amount is subject to forfeiture. United States v One 1964 MG (1978, CA9 Wash) 584 F2d 889.

§ 1103. Civil liability

The Secretary may assess a civil penalty upon any person who fails to file any report required under section 231 [31 USCS § 1101], or who files such a report containing any material omission or misstatement. The amount of the penalty shall not exceed the amount of the monetary instruments with respect to whose transportation the report was required to be filed. The liabilities imposed by this chapter [31 USCS §§ 1101 et seq.] are in addition to any other liabilities, civil or criminal, except that the liability under this section shall be reduced by any amount actually forfeited under section 232 [31 USCS § 1102].

(Oct. 26, 1970, P. L. 91-508, Title II, ch 3, § 233, 84 Stat. 1123.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

For the effective date of this section, see the Other provisions note to 31 USCS § 1051.

CROSS REFERENCES

Civil penalty for violation of Bank Secrecy Act, 12 USCS § 1955; 31 USCS § 1056.

INTERPRETIVE NOTES AND DECISIONS

Civil and criminal penalties of Bank Secrecy Act of 1970 (12 USCS §§ 1730d, 1829b, 1951–1959, and 31 USCS §§ 1051–1122) attach only upon violation of regulations promulgated by Secretary of Treasury; if Secretary were to do nothing, Act would impose no penalties on anyone. California Bankers Asso. v Shultz (1974) 416 US 21, 39 L Ed 2d 812, 94 S Ct 1494.

§ 1104. Remission of forfeiture or penalty

The Secretary may in his discretion remit any forfeiture or penalty under this chapter [31 USCS §§ 1101 et seq.] in whole or in part upon such terms and conditions as he deems reasonable and just.

(Oct. 26, 1970, P. L. 91-508, Title II, ch 3, § 234, 84 Stat. 1123.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

For the effective date of this section, see the Other provisions note to 31 USCS § 1051.

INTERPRETIVE NOTES AND DECISIONS

Administrative consideration of claimant's petition for remission is not governed by any statutory or regulatory requirement of promptitude but it does afford claimant full panoply of due process rights inherent in judicial proceeding; remission being matter of legislative grace, exercise of Secretary's discretion is not reviewable by court; mere filing of petition for remission under 31 USCS § 1104 does not excuse government from obligation to commence prompt judicial proceedings until petition is decided, but parties are not precluded from agreeing that judicial action should be postponed pending resolution of administrative claim as it simply pre-

vents unilateral adoption of that course by government. Ivers v United States (1978, CA9 Cal) 581 F2d 1362.

Administrative claim for remission of seized property should be completed before Government, if there is no remission, files civil claim seeking forfeiture under 31 USCS § 1102, though this does not mean that remission decision can be made at any pace. United States v One 1964 MG (1976, DC Wash) 408 F Supp 1025, revd on other grounds (CA9 Wash) 584 F2d 889.

§ 1105. Enforcement authority

(a) If the Secretary has reason to believe that monetary instruments are in the process of transportation and with respect to which a report required under section 231 [31 USCS § 1101] has not been filed or contains material omissions or misstatements, he may apply to any court of competent jurisdiction for a search warrant. Upon a showing of probable cause, the court may issue a warrant authorizing the search of any or all of the following:

(1) One or more designated persons.

(2) One or more designated or described places or premises.

(3) One or more designated or described letters, parcels, packages, or other physical objects.

(4) One or more designated or described vehicles.

Any application for a search warrant pursuant to this section shall be accompanied by allegations of fact supporting the application.

(b) This section is not in derogation of the authority of the Secretary under any other law.

(Oct. 26, 1970, P. L. 91-508, Title II, ch 3, § 235, 84 Stat. 1123.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

For the effective date of this section, see the Other provisions note to 31 USCS § 1051.

RESEARCH GUIDE

Am Jur:

10 Am Jur 2d, Banks § 18.5.

INTERPRETIVE NOTES AND DECISIONS

Where customs officer viewed crewman emerge from vessel with something in hands, walk over to automobile, depart from area and proceed up gangway without sack or bundle he had upon departure from vessel and disappear into ship at which point automobile sped away from area, such circumstances gave customs officers probable cause to stop suspected auto and seize currency; customs officers and Tampa Police Department officers had requisite reasonable suspicion to believe that contraband or dutiable item had been introduced into United States and had exercised valid search and seizure pursuant to Customs "border search" authority. United States v Eleven Thousand Five Hundred & Eighty Dollars ($11580) in United States Currency (1978, DC Fla) 454 F Supp 376.

FOREIGN TRANSACTIONS

§ 1121. Records and reports

(a) The Secretary of the Treasury, having due regard for the need to avoid impeding or controlling the export or import of currency or other monetary instruments and having due regard also for the need to avoid burdening unreasonably persons who legitimately engage in transactions with foreign financial agencies, shall by regulation require any resident or citizen of the United States, or person in the United States and doing business therein, who engages in any transaction or maintains any relationship, directly or indirectly, on behalf of himself or another, with a foreign financial agency to maintain records or to file reports, or both, setting forth such of the following information, in such form and in such detail, as the Secretary may require:

(1) The identities and addresses of the parties to the transaction or relationship.

(2) The legal capacities in which the parties to the transactions or relationship are acting, and the identities of the real parties in interest if one or more of the parties are not acting solely as principals.

(3) A description of the transaction or relationship including the amounts of money, credit, or other property involved.

(b) No person required to maintain records under this section shall be required to produce or otherwise disclose the contents of the records except in compliance with a subpena or summons duly authorized and issued or as may otherwise be required by law.

(Oct. 26, 1970, P. L. 91-508, Title II, ch 4, § 241, 84 Stat. 1124.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

For the effective date of this section, see the Other provisions note to 31 USCS § 1051.

CROSS REFERENCES

Financial recordkeeping under Bank Secrecy Act, 12 USCS §§ 1951 et seq.

This section is referred to in 31 USCS § 1122.

RESEARCH GUIDE

Am Jur:

10 Am Jur 2d, Banks § 18.5.

INTERPRETIVE NOTES AND DECISIONS

1. Constitutionality, First Amendment

No concrete controversy is presented for adjudication by ACLU's claim that Bank Secrecy Act's reporting requirements with respect to foreign and domestic transactions (31 USCS

§§ 1051–1122) invade its associational interests protected by First Amendment where there is no showing that reporting requirements contained in Treasury Regulations would require reporting of information with respect to organization's financial activities. California Bankers Asso. v Shultz (1974) 416 US 21, 39 L Ed 2d 812, 94 S Ct 1494.

2. —Fourth Amendment

Neither domestic nor foreign transactions reporting requirements of Title II of Bank Secrecy Act of 1970 (31 USCS §§ 1081–1122), and regulations pursuant thereto, violate Fourth Amendment rights of banks. California Bankers Asso. v Shultz (1974) 416 US 21, 39 L Ed 2d 812, 94 S Ct 1494.

3. —Fifth Amendment

Fifth Amendment self-incrimination claims of bank depositor plaintiffs against foreign reporting requirements of Bank Secrecy Act of 1970 (31 USCS §§ 1101–1122) are premature where depositor plaintiffs allege that they intend to engage in foreign currency transactions or dealings with foreign banks which Treasury Regulations will require them to report, but they make no additional allegation that any of information required by regulations will tend to incriminate them. California Bankers Asso. v Shultz (1974) 416 US 21, 39 L Ed 2d 812, 94 S Ct 1494.

§ 1122. Classifications and requirements

The Secretary may prescribe:

(1) Any reasonable classification of persons subject to or exempt from any requirement imposed under section 241 [31 USCS § 1121].

(2) The foreign country or countries as to which any requirement imposed under section 241 [31 USCS § 1121] applies or does not apply if, in the judgment of the Secretary, uniform applicability of any such requirement to all foreign countries is unnecessary or undesirable.

(3) The magnitude of transactions subject to any requirement imposed under section 241 [31 USCS § 1121].

(4) Types of transactions subject to or exempt from any requirement imposed under section 241 [31 USCS § 1121].

(5) Such other matters as he may deem necessary to the application of this chapter [31 USCS §§ 1121 et seq].

(Oct. 26, 1970, P. L. 91-508, Title II, ch 4, § 242, 84 Stat. 1124.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

For the effective date of this section, see the Other provisions note to 31 USCS § 1051.

RESEARCH GUIDE

Am Jur:

10 Am Jur 2d, Banks § 18.5.

FOREIGN CURRENCY REPORTS

HISTORY; ANCILLARY LAWS AND DIRECTIVES

This subchapter was enacted as a part of Act Sept. 21, 1973, and not as a part of the Currency and Foreign Transactions Reporting Act,

which generally comprises the first four subchapters of this chapter. It formerly was classified to Chapter 22.

§ 1141. Congressional statement of findings

The Congress finds that—

(1) movements of mobile capital can have a significant impact on the proper functioning of the international monetary system;

(2) it is important to have as complete and current data as feasible on the nature and source of these capital flows, including transactions by large United States business enterprises and their foreign affiliates;

(3) it is desirable to emphasize this objective by supplementing existing legal authority for the collection of data on capital flows contained in section 5(b) of the Emergency Banking Act of 1933 (12 U.S.C. 95a) [12 USCS § 95a] and section 8 of the Bretton Woods Agreements Act of 1945 (22 U.S.C. 286f) [22 USCS § 286f].

(Sept. 21, 1973, P. L. 93-110, Title II, § 201, 87 Stat. 353.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

This section was not enacted as a part of the Currency and Foreign Transactions Reporting Act, which generally comprises subchapters this Chapter.

CROSS REFERENCES

This section is referred to in 31 USCS § 1142.

CODE OF FEDERAL REGULATIONS

Transactions in foreign exchange, transfers of credit, and export of coin and currency, 31 CFR Part 128.

§ 1142. Regulations

(a) General requirements. The Secretary of the Treasury (hereafter referred to as the "Secretary") is authorized and directed, under the authority of this title and any other authority conferred by law, to supplement regulations requiring the submission of reports on foreign currency transactions consistent with the statement of findings under section 201 [31 USCS § 1141]. Regulations prescribed under this title shall require that such reports contain such information and be submitted in such manner and at such times, with reasonable exceptions and classifications, as may be necessary to carry out the policy of this title.

(b) Foreign currency transactions of United States person and controlled foreign person. Reports required under this title shall cover foreign currency transactions conducted by any United States person and by any foreign person controlled by a United States person as such terms are

defined in section 7(f)(2)(A) and 7(f)(2)(C) of the Securities Exchange Act of 1934 [15 USCS § 78g(f)(2)(A), (C)].
(Sept. 21, 1973, P. L. 93-110, Title II, § 202, 87 Stat. 353.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:
"This title," referred to in this section, is Title II of Act Sept. 21, 1973, P. L. 93-110, 87 Stat. 352, and appears as 31 USCS §§ 1141 et seq.

Explanatory notes:
This section was not enacted as a part of the Currency and Foreign Transactions Reporting Act, which generally comprises this chapter.

CODE OF FEDERAL REGULATIONS

Transactions in foreign exchange, transfers of credit, and export of coin and currency, 31 CFR Part 128.

§ 1143. Enforcement

(a) Penalty. Whoever fails to submit a report required under any rule or regulation issued under this title may be assessed a civil penalty not exceeding $10,000 in a proceeding brought under subsection (b) of this section.

(b) Injunction; jurisdiction; relief granted; bond; penalty. Whenever it appears to the Secretary that any person has failed to submit a report required under any rule or regulation issued under this title or has violated any rule or regulation issued hereunder, the Secretary may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, seeking a mandatory injunction commanding such person to comply with such rule or regulation, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond, and additionally the sanction provided for failure to submit a report under subsection (a).
(Sept. 21, 1973, P. L. 93-110, Title II, § 203, 87 Stat. 353.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:
"This title," referred to in this section, is Title II of Act Sept. 21, 1973, P. L. 93-110, 87 Stat. 352, and appears as 31 USCS §§ 1141 et seq.

Explanatory notes:
This section was not enacted as a part of the Currency and Foreign Transactions Reporting Act, which generally comprises this chapter.

CODE OF FEDERAL REGULATIONS

Transactions in foreign exchange, transfers of credit, and export of coin and currency, 31 CFR Part 128.

suspend and disbar any person representing claimants from further practice before the Treasury Department. 50 ALR Fed 817.

CHAPTER 21. REPORTS OF CURRENCY AND FOREIGN TRANSACTIONS

§ 1058. Criminal penalty

INTERPRETIVE NOTES AND DECISIONS

2. Willfulness requirement

Defendant's conviction must be reversed where, although evidence was sufficient to establish that defendant knew she was carrying more than $15,000 into country, evidence that defendant knew she must file report was woefully insufficient. United States v Chen (1979, CA9 Wash) 605 F2d 433.

§ 1059. Additional criminal penalty in certain cases

INTERPRETIVE NOTES AND DECISIONS

Series of currency transfers which, by themselves, constitute only misdemeanors, may also constitute felonious activity if they show pattern of illegal activity and exceed $100,000 over 12-month period; therefore, series of misdemeanor violations may, by themselves, call forth increased penalties of 31 USCS § 1059(2). United States v Beusch (1979, CA9 Cal) 596 F2d 871.

Prosecution under 31 USCS § 1059 is not unconstitutionally vague on grounds that terms "transaction" and "currency trends action" are nowhere defined because statute and regulations as defined did not fail to afford defendant fair notice of what constitutes "transaction in currency of more than $10,000." United States v Thompson (1979, CA5 Tex) 603 F2d 1200.

§ 1081. Reports

INTERPRETIVE NOTES AND DECISIONS

1. Scope

It is no defense to criminal prosecution that defendant structured single loan transaction in currency as multiple loans, thus avoiding obligation to report pursuant to 31 USCS § 1081, where decision to structure $45,000 transaction in currency as five $9,000 loans was done with intent to annul reporting requirements. United States v Thompson (1979, CA5 Tex) 603 F2d 1200.

§ 1101. Reports

INTERPRETIVE NOTES AND DECISIONS

3. Willfulness requirement

Form distributed by airline clearly warned traveler of penalties for false reporting or failure to report accurately any monetary instruments in excess of $5,000, and government satisfied burden of proving notification of reporting requirement as well as defendant's knowing and willful violation of such requirement. United States v Rodriguez (1979, CA9 Wash) 592 F2d 553.

Although defendants left United States without passing through any regular border checkpoints, the statutory terms "knowingly" and "willfully" applied to ingress and egress of currency alike, and nowhere does statute distinguish between ways in which border is crossed so that government must prove that travelers were on notice of currency reporting requirement. United States v Warren (1980, CA5 Fla) 612 F2d 887.

7. Fifth Amendment

Disclosure requirements of 31 USC § 1101 do not violate USCS Constitution Amendment 5. US v Dichne (1979 CA2) 612 F2d 632.

§ 1102. Forfeiture

INTERPRETIVE NOTES AND DECISIONS

1. Generally

Since forfeiture under 31 USCS § 1102 is permissive only, doctrine of relation back does not apply because statute provides only for possibility of subsequent forfeiture. United States v Currency Totalling $48318.08 (1980, CA5 Tex) 609 F2d 210.

5. Amount in forfeiture

Entire amount of currency is subject to forfeiture under 31 USCS § 1102 despite provision in 31 USCS § 1101 providing that persons transporting monetary instruments in amounts exceeding $5,000 file reports; $5,000 amount merely triggers reporting requirement and once triggered all amounts transported are required to be reported, and since entire amount should have been reported and was not, entire amount is subject to forfeiture. United States v One 1964 MG (1978, CA9 Wash) 584 F2d 889.

97TH CONGRESS
1ST SESSION

S. 1907

To amend the Currency and Foreign Transactions Reporting Act and section 1961(1) of title 18, United States Code, to improve enforcement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 3 (legislative day, NOVEMBER 30), 1981

Mr. ROTH (for himself, Mr. RUDMAN, Mr. COHEN, Mr. NUNN, and Mr. CHILES) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend the Currency and Foreign Transactions Reporting Act and section 1961(1) of title 18, United States Code, to improve enforcement, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 207(a) of the Currency and Foreign Transactions Reporting Act (31 U.S.C. 1056(a)) is amended by striking out "a civil penalty not exceeding $1,000" and inserting in lieu thereof "a civil penalty not exceeding $10,000".

(b) Section 209 of such Act (31 U.S.C. 1058) is amended by striking out "$1,000, or imprisonment not more than one year, or both" and inserting in lieu thereof "$50,000, or imprisonment not more than five years, or both".

(c) Section 231(a) of such Act (31 U.S.C. 1101(a)) is amended—

(1) by inserting ", or attempts to transport or cause to be transported," after "transports or causes to be transported" in paragraph (1); and

(2) by striking out "in an amount exceeding $5,000" and inserting in lieu thereof "in an amount exceeding $10,000".

(d) Section 232(a) of such Act (31 U.S.C. 1102(a)) is amended by inserting before the period at the end thereof the following: ", except that in the case of a failure to file a required report, this subsection shall apply only if the person required to file the report knowingly fails to file the report".

(e) Section 235 of such Act (31 U.S.C. 1105) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting the following new subsection after subsection (a):

"(b) A customs officer may stop and search, without a search warrant, a vehicle, vessel, aircraft, or other convey-

(2) The table of contents of such chapter is amended by adding the following new item after the item relating to section 213:

"214. Rewards for informants.".

SEC. 2. Section 1961(1) of title 18, United States Code, is amended—

(1) by striking out "or" after "(relating to embezzlement from union funds),"; and

(2) by inserting before the semicolon at the end thereof the following: ", or (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act".

O