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**PENAL TREATIES WITH MEXICO AND CANADA**

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**HEARINGS**

*U. S. Congress. Senate.* BEFORE THE  
**COMMITTEE ON FOREIGN RELATIONS.**

**UNITED STATES SENATE**

**NINETY-FIFTH CONGRESS**

**FIRST SESSION**

**ON**

**EX. D, 95TH CONG., 1ST SESS.**

**A TREATY BETWEEN THE UNITED STATES OF AMERICA  
AND THE UNITED MEXICAN STATES ON THE EXECUTION  
OF PENAL SENTENCES WHICH WAS SIGNED IN MEXICO  
CITY ON NOVEMBER 25, 1976**

**AND**

**EX. H, 95TH CONG., 1ST SESS.**

**THE TREATY BETWEEN THE UNITED STATES OF AMERICA  
AND CANADA ON THE EXECUTION OF PENAL SENTENCES  
WHICH WAS SIGNED AT WASHINGTON ON MARCH 3, 1977**

**JUNE 15 AND 16, 1977**



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sleep. Unfortunately, the hardship extends beyond the prisoners, themselves, to family and friends in the United States who must provide large amounts of survival money.

The Mexican Government has now proposed a partial solution to the problems I have outlined today—a bilateral treaty through which prisoners may be transferred to their home country to serve out sentences. I commend the Mexican Government for taking this initiative but, at best, it is only a halfway measure.

A review of the proposed Treaty reveals several deficiencies which concern me: The Treaty falls short of addressing the most serious abuses of human rights Americans experience when arrested in Mexico. Ignoring the many instances of physical and emotional abuse we have brought to the attention of Mexican and U.S. officials, the Treaty does not include any agreement or method to put an end to the torture and beatings of Americans in Mexico.

The Treaty before us does not safeguard the rights of due process for Mexicans and Americans arrested outside their own country. In fact, the Treaty disregards the questions we have raised about legal procedures. It fails to guarantee even the right to counsel or a fair judicial process which does not rely upon confessions obtained under duress, and the arrestee's ignorance of the national language.

According to the present terms of the Treaty, only some of the prisoners in foreign jails are eligible for transfer. Thus, the Treaty is inequitable, positively affecting certain types of offenders, while completely ignoring other groups of prisoners.

Because the Treaty specifies that prisoner transfers would not take place until sentencing has occurred and the time allowed for appeal procedures has elapsed, U.S. citizens would not be eligible for transfer for a full two years after arrest. Considering our track record to date, in securing legal and human rights for U.S. citizens arrested in Mexico, two years is a long time.

Finally, the Treaty raises serious constitutional questions involving the process by which each nation would recognize and enforce a sentence imposed by a foreign court. As I understand it, the constitutionality of this Treaty hinges precariously on the "voluntary" and express consent of the transferring individual. Frankly, I am not comfortable with the notion of any form of consent through which a citizen agrees to waive his or her constitutional rights. I understand that legal experts disagree widely on the constitutional aspects of this Treaty. Unfortunately, its uniqueness leaves us with little precedent to fall back on. Obviously, if the Senate ratifies this Treaty, test cases will soon create new precedents. I would suggest, however, that a judicial, rather than a legislative or executive setting, might be the proper forum for resolution of such fine constitutional disputes.

If Mexico and the United States cannot agree to provide due process to foreign nationals, we could, presumably, devise a method for circumventing situations in which abuse is likely to occur. In hearings last year, I suggested that we might take responsibility for our foreign nationals before they become a source of international contention—at the time of arrest, for example. Indeed, for years we have pursued a similar policy when members of our military forces are arrested abroad. Unfortunately, however, this is not the case in the Treaty under discussion.

Despite these serious deficiencies, the Treaty does recommend itself for one overriding reason. It provides an important option to some prisoners. Also,

It will improve our bilateral relations, lessening what has been a considerable source of tension between Mexico and the United States for several years now.

It will reunite families in both Mexico and in our own country. Parents, husbands, wives, and children will no longer have to travel so far, or at such great cost to see their loved ones.

It will reduce one of the greatest problems with Mexican prison conditions. As you know, Mexico and the United States have rather different approaches to health care. For both our citizens with ordinary health problems and those with special medical conditions requiring attention on a regular basis, health care is inadequate in the Mexican jails, even under the crudest of standards.

It will offer citizens of both the United States and Mexico an alternative to the unfamiliar prison systems and inevitable prejudice imposed on them in foreign jails.

Most importantly, it will provide relief to Americans arrested in Mexico who, when transferred, will receive the benefits of U.S. parole regulations. Cur-

rently, Mexico denies parole to any person convicted of a narcotics violation. Some of the prisoners in Mexico are now serving terms of several years for crimes considered misdemeanors in their own country. Since our own government's determined efforts to control drug traffic are at least partially responsible for these arrests in Mexico, it seems unfair to impose sentences which are extremely harsh by American standards on some, but not all of our drug offenders.

Mr. Chairman, in concluding my remarks today I find myself on the horns of a dilemma. I have serious reservations about the Treaty's effectiveness because of so many of the deplorable abuses of human and legal rights which occur when Americans are arrested in Mexico fall outside of the Treaty's jurisdiction.

On the other hand, I must support its ratification, if for no other reason than that in even its small way, this Treaty is a step towards alleviating some of the suffering now imposed on United States prisoners in Mexico, their families, and friends. Despite the Treaty's many shortcomings, I urge the Committee to move swiftly and positively towards its ratification.

As one mother of an American prisoner in Mexico described the Treaty, "It's like table scraps. But when you're starving, table scraps are welcome."

The CHAIRMAN. The next witness is Congressman Benjamin A. Gilman of New York.

**STATEMENT OF HON. BENJAMIN A. GILMAN, U.S. REPRESENTATIVE IN CONGRESS FROM THE 26TH DISTRICT OF NEW YORK**

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

Mr. Chairman, I am a member of the House Select Committee on Narcotics and I have served as a Delegate to the Interparliamentary Conference between Mexico and the United States at both the Sixteenth Conference and the Seventeenth Conference, which just completed its work last month.

I welcome the opportunity to appear before this distinguished body as it begins consideration of the treaty between the United States of America and the United Mexican States on the Execution of Penal Sentences.

I will summarize my remarks and request that the full text of my statement appear in the record.

The CHAIRMAN. It will be printed in the record in its entirety.

Mr. GILMAN. Thank you, Mr. Chairman.

**PROBLEM CREATED BY SUCCESSFUL COMBATING OF NARCOTICS TRAFFIC**

One of the most critical issues confronting the bilateral relationships between Mexico and the United States is the significant illicit traffic of narcotics that has been crossing our border, a border that extends for some 2,000 miles. The success of the joint efforts of our two nations in combating this problem has unfortunately helped create yet another.

As of May 15, 1977, there were 379 U.S. nationals incarcerated in Mexican jails. These prisoners, of which about 80 percent are drug violators, have been subjected to alien justice and the hardships of cultural and language barriers that have led to severe strains on our bilateral relations.

In January of last year, I had an opportunity to visit the Lecumberri Federal Prison in Mexico City, where I talked to most of the 70 American inmates at that institution. I heard many complaints from them concerning their problems in understanding and receiving advice

concerning their rights under the Mexican legal system. They told of their frustrations and hardships caused by corruption behind prison walls, of a lack of and inadequate counsel, exorbitant legal fees, of being held incommunicado, of being tortured, and of being forced to sign confessions written in Spanish without the aid of any interpreter.

In February 1976, I had the privilege of addressing the Sixteenth Mexico-United States Interparliamentary Conference. At that time I stressed the need for our two nations to work together to relieve the growing tensions resulting from increased enforcement of our drug laws.

#### MEXICAN CONCERN ABOUT PRISON CONDITIONS

Both of our nations certainly require more attention to the problems of prison reform. I am pleased to note that there have been a number of indications that there is a growing awareness and concern within Mexico about the need to improve their prison conditions.

One of the noteworthy examples of this concern was the reform of the administration of Lecumberri Prison. The abuses and corruption at that prison had reached a level where the Mexican Government demanded rectification. Almost every complaint that I had registered with the Mexican Government following my visit was addressed.

The reforms at Lecumberri have been welcomed by all as an indication of a new awareness and a sincere attitude for reform by Mexican officials. Lecumberri Prison itself ceased to operate as a prison as of August 26, 1976. We hope that with its passing, we have seen the end of a pattern of extortion and brutality which became its trademark.

In other areas, there have also been significant improvements in both the living conditions of many Americans and the prospects for their early release as a result of the Mexican Government's initiatives with regard to parole and transfer of sanctions. These actions should further help resolve aspects of the overall problem.

On the 27th of last month, Mr. Chairman, I had the privilege of addressing my fellow legislators from Mexico at the Seventeenth Mexican-United States Interparliamentary Conference held in Hermosillo, Sonora. While addressing the need to seek a solution to the problems raised by Americans in Mexican jails, I sought to open a two-way street for mutual concern about all prisoners. I stated at that time:

For our part we must not ignore the hundreds of Mexican nationals who are imprisoned in U.S. jails. Just as we seek to insure the full protections of the human rights for the U.S. prisoners abroad, we urge the other nations to become concerned about the human rights of their citizens abroad. We are committed to preventing the violation of basic human rights of any person in any country.

While attending the Interparliamentary Conference in Hermosillo, I took advantage of the opportunity to visit the Sonora State Prison and to talk with some of the American prisoners there.

In stark contrast to the Federal Lecumberri Prison in Mexico City that I visited a year earlier, I found a modern, clean penal facility. I talked at length with nine Americans who were being held at that institution. Unlike the horror stories of the past at Lecumberri, there were no complaints at this prison of discrimination, prejudice, or extortion. The complaints that the prisoners did have were allotted to

their early stages of arrest and to the difficulties in dealing with the Mexican legal system.

There are still tales of torture at the time of arrest, of being held incommunicado, without the opportunity of access by Embassy officials:

#### RATIFICATION OF TREATY BEFORE US

The Government of Mexico has acted quickly to complete needed actions to ratify the treaty before us. This action, completed in little more than a month after the initial agreement, demonstrated the sincere dedication of the leaders of that country to help resolve this source of friction that exists between our two nations.

It is hoped that the consummation of this treaty will help relieve some of the special hardships which fall upon prisoners incarcerated far from home.

In addition, it will help remove some of the strains on the diplomatic and law enforcement relations between our two countries that have surfaced as a result of the imprisonment of large numbers of each other's citizens.

While ratification of this treaty will not alone solve the many problems we face, it will provide some relief to the strain that the imprisonment of Americans in a foreign land has caused.

The Mexican Government and people have responded to our cries for help. In turn, we should respond with the same show of sincerity and conviction to seek every opportunity to resolve the problems that we both share.

Accordingly, Mr. Chairman, I urge the members of this committee and the entire Senate to support the ratification of this treaty between the United States and the United Mexican States on the execution of penal sentences.

Of course, the Americans in prison in Mexico are anxiously awaiting treaty approval. As a matter of fact, they have prepared a film and have shown that film to the American delegates that attended the last conference, appealing to us, as Members of Congress, to urge upon the Senate the early execution of this treaty.

So, too, is the Mexican Government awaiting approval of the treaty, as was expressed by the Mexican members of Congress who attended the Interparliamentary Conference, believing that the adoption of the treaty will help alleviate some of the pressures and tensions which now exist between our two nations.

Thank you, Mr. Chairman.  
[Representative Gilman's prepared statement follows:]

#### PREPARED STATEMENT OF REPRESENTATIVE BENJAMIN A. GILMAN

##### ON THE MEXICAN TREATY OF THE EXECUTION OF PENAL SENTENCES

Mr. Chairman: I welcome this opportunity for appearing before this distinguished body as it begins consideration of the Treaty between the United States of America and the United Mexican States of the Execution of Penal Sentences. One of the most critical issues confronting the bilateral relationship between Mexico and the United States is the significant traffic of narcotics crossing our border. After the success of the closing of the French connection and the elimination of the Turkish heroin supplies, Mexico has become the source and transit country for more than 80 percent of all illicit drugs entering this country. The

success of the joint efforts of Mexico and the United States in combating this problem has unfortunately helped create yet another.

As of May 15, 1977 there were 379 U.S. nationals incarcerated in Mexican jails. These prisoners, of which about 80 percent are drug violators, have been subjected to alien justice and the hardship of cultural and language barriers that have led to severe strains on our bilateral relations.

It was with this understanding in mind that former Secretary of State Henry Kissinger presented the treaty before you in his Letter of Submittal to the President on January 17, 1977 stating:

The Treaty is intended both to relieve the special hardships which fall upon prisoners incarcerated far from home and to make their rehabilitation more feasible, and also to relieve diplomatic and law enforcement relations between the two countries of the strains that arise from the imprisonment of large numbers of each country's nationals in the institution of the other. It constitutes part of an ongoing effort to improve relations between the two countries. It is also part of various efforts to establish closer international cooperation in law enforcement activities.

I would like to make it very clear that in no way are my remarks intended to criticize the stringent enforcement or harsh penalties imposed upon drug traffickers in Mexico, but are intended to focus our attention upon some problems of human rights that have caused our nation concern. As was stated last year by Administrator Walentynowicz of the Bureau of Security and Consumer Affairs of the Department of State:

Successful drug interdiction, far from being in conflict with the guarantee of rights to prisoners, is in fact dependent upon such guarantees. Thorough law enforcement is ultimately dependent upon wholehearted cooperation of the public, and people will cooperate only when they are confident that their human rights are not threatened by the enforcement procedures. Unless there is public confidence in just treatment, law enforcement becomes difficult and even ultimately impossible.

Fundamentally a strong policy for the fair and decent treatment of prisoners leading to social rehabilitation of offenders is fully consistent with a strong, successful program of drug interdiction.

In January of last year, while in Mexico discussing the narcotics situation, I took the opportunity to visit the Lecumberri Federal Prison in Mexico City and talked to most of the 70 American inmates of that institution. During that visit, I heard many complaints concerning their problems in understanding and receiving advice concerning their rights under the Mexican legal system. They told of the frustrations and hardships of corruption behind prison walls, of a lack of and inadequate Counsel, exorbitant legal fees, of being held incommunicado, of being tortured, and being forced to sign confessions written in Spanish, without the aid of any interpreter.

My visit to Lecumberri Prison substantiated prior criticisms of the Mexican penal system. Unfortunately, it was also printed out that those Mexicans imprisoned in Lecumberri were often treated with more severity, as they were assumed to understand the consequences of their acts.

I discussed these problems at great length with Mexico's Attorney General, with high-ranking members of the Mexican armed forces and with members of the Mexican Congress. During two separate meetings with President Echeverria, I expressed concern that abuses of civil rights might lead to a cleavage in our joint efforts of seeking to prevent the use and abuse of narcotics in the United States and Mexico.

In February of 1976, I had the privilege of addressing the 16th Mexico-U.S. Interparliamentary Conference held in Atlanta. At that time I shared with the Mexican legislators my experiences resulting from my visit to Lecumberri Prison and the conclusions emanating from the congressional hearings on this issue. In stressing the need for our two nations to work together to relieve the growing tensions resulting from increased enforcement of drug laws, I stated that:

We must not allow the long friendships of our two nations and the success of our many joint endeavors, including international narcotics controls to be placed in jeopardy by this issue . . . an issue that can be resolved by signifying the importance that we attach to the protection of the human rights of all peoples. The protection of civil rights is not inconsistent with the proper enforcement of the laws regulating drug traffic and drug abuse. The proper enforcement of the law does not obviate the necessity for respecting the law and making certain

that civil rights—basic human rights are not violated . . . and in preventing the mistreatment and physical abuse of prisoners.

Both of our nations need to give more attention to prison reform. I am pleased to note that there is a growing awareness and concern within Mexico for improving prison conditions. One of the noteworthy examples of that concern is the reform of the administration of Lecumberri Prison. The abuses and corruption at that prison had reached a level where the Mexican Government demanded rectification. Almost every complaint I registered following my visit was addressed.

The Commandant was removed and the Chief of Guards imprisoned on charges of corrupt practices. The "Mayor" system of prisoner hierarchy has been abolished. Prisoners are no longer required to pay rent for their cells or for the retention of commissioned jobs. All of these reforms were accomplished by marked improvements in cooperation between the new administrators and our consular officers. The reforms at Lecumberri have been welcomed by all as an indication of a new awareness and a sincere attitude for reform by Mexican officials. Lecumberri itself ceased to operate as a prison as of August 26, 1976. Its inmates have been dispersed to more modern facilities. We hope that with its passing we have seen the end of the pattern of extortion and brutality which became its trademark. [See attached New York Times report of June 30, 1976, appendix A.]

There have also been significant improvements in both the living conditions of many Americans and the prospects for their early release, as the result of the Mexican government's initiatives in regard to parole and transfer of sanctions.

The adoption of new legislation in Mexico to extend parole to drug offenders on the same basis as other convicts has the potential of helping to remove some of the tensions that have generated from this issue. While such a bill failed to pass before their Congressional adjournment in December, it is hoped that favorable action may take place when the Mexican Congress reconvenes in September.

Recent reports have indicated that Attorney General Oscar Flores has eliminated another source of irritation with the decision of the Mexican Government not to press charges against persons found possessing small amounts of narcotics that are clearly intended for personal use. This decision could result in the release of a substantial number of Americans now being held on charges of such possession. In the future this action will help prevent abuses as the number of Americans arrested declines under the new guidelines. (See Washington Post article of April 16, 1977, appendix B.)

All of these actions should further help resolve aspects of the overall problem. Relief from current trends will continue to be welcomed as the arrests of Americans continue with improvements in narcotics enforcement programs. As we seek to increase our cooperation with the Mexican Government in interdiction efforts, we must also give thought to what happens to Americans that get caught.

On the 27th of last month, I once again had the privilege of addressing my fellow Mexican legislators at the 17th Mexico-U.S. Interparliamentary Conference held in Hermosillo, Sonora. At the May meeting I reviewed the progress that had taken place during the last year, including the advances of the treaty before you. While stressing the need once again to seek a solution to the problems raised by Americans in Mexican jails, I sought to open a two-way street for mutual concern about all prisoners, stating:

For our part we must not ignore the hundreds of Mexican nationals who are imprisoned in U.S. jails. Not counting our state and local facilities, it is estimated that more than 1,200 Mexican nationals are held in Federal prisons across the United States. In the State of California alone there are between 400-500 Mexicans incarcerated.

Just as we seek to insure the full protection of the human rights for the United States prisoners abroad, we urge the other nations to become concerned about the human rights of their citizens abroad. In recent months we have noticed with enthusiasm an increase in the visits to our jails by Mexican consular officials. We will give prompt attention to any complaints expressed by your countrymen of possible abuse or wrong doing by any U.S. prison officials. We are committed to preventing the violation of basic human rights of any person in any country. While attending the Interparliamentary Conference in Hermosillo, I took advantage of the opportunity to visit the Sonora State Prison. Accompanying me on the visit was Mexican Congressman Victor Manzanilla-Schaffer.

In stark contrast to Lecumberri, the Sonora Prison is a modern, clean penal facility. Both Congressman Manzanilla and I talked at length with nine Americans

being held at that institution. Unlike the horror stories of the past, without exception every man readily admitted that the prison conditions at Sonora were as good as can be expected in a prison. There were no complaints of discrimination, prejudice or extortion. The complaints that the prisoners did have were related to their early stages of arrest and to their difficulties in dealing with the Mexican legal system.

One of the major problems that we heard about was the need for early notification of arrest and for prompt access to the detainee in accordance with the Vienna Convention on Consular Relations to which both our countries are signatories. We are convinced that the Mexican Federal Government is in full accord with our position. Unfortunately, in practice, the implementation of this accord is uneven and spotty at the local levels. We all recognize the importance of not only sharing our concerns at the highest levels of government, but our thoughts and ideas to be effective must permeate the working levels of government. First the upper echelons of government must acknowledge the problem and then they must relay their concerns and programs to the lower bureaucratic levels in order to effectively and positively respond. It is at this level where they make the arrests, question the accused, and guard the prisoners. Accordingly, we should make certain that our thoughts and ideas are being communicated to this level to insure the protection of the rights granted to all prisoners, both Mexican and American.

As testimony to the sincerity and understanding of the Government of Mexico, they have acted quickly to complete all needed legislative actions, including Constitutional changes to ratify the treaty. This action completed in a little more than a month after the initial agreement, demonstrates the dedication of the leaders of that country to resolve this source of friction between our two nations in a swift manner.

Unlike the monumental tasks of restraining the hundreds of thousands of illegal aliens entering this country, destroying the thousands of acres of illegal poppy cultivation, or guaranteeing the absolute protection of every prisoner, the ratification of this treaty was seen as a clear way to reveal the true desire to help - a desire that is often masked by the frustrations of government bureaucracy in a developing nation. If there was one message heard above all others at the recent interparliamentary meetings, it was that "on this issue we have acted, it is now up to you."

While we cannot bring about immediate change in the vast differences of our two cultures and peoples, and the differences in our respective laws, we do share the same desire to protect the human rights of all our citizens. We should increase our efforts in both of our nations to educate our youth about the horrors of prison life before they commit a crime. But, most important, we should bring pressure to bear on the governments of both our nations to insist on the fair and lawful treatment of all prisoners.

It is hoped that the consummation of this treaty will help relieve the special hardships which fall upon prisoners incarcerated far from home. In addition, it will help remove some of the strains on the diplomatic and law enforcement relations between our two countries that have surfaced as a result of the imprisonment of large numbers of each other's citizens.

Perhaps, some day there will be no need for such a treaty. But, as Secretary of State Vance stated in his March report to Congress on the status of United States Citizens detained in Mexico:

Unfortunately there are still substantial cases in which U.S. citizens are not receiving the full rights guaranteed to them under Mexican law.

While it is true that the total number of cases of substantiated abuse represents a small percentage of the total number of arrests, we cannot be complacent. As was noted in our previous report, as long as one American citizen is not being accorded his human and legal rights under Mexican law, we will not be satisfied.

Clearly, real progress has been made in respecting the human rights of all United States citizens detained in Mexico, and the prospects for further progress are encouraging. However, I regret that I cannot report that we are fully satisfied with what has been accomplished thus far. Unfortunately, there are still many cases in which U.S. citizens are not receiving their full rights under Mexican law. While the ratification of this treaty will not of itself resolve the many problems we face, it will provide some relief to the strain that the imprisonment of Americans in a foreign land has caused.

The Mexican Government and people have responded to our cries for help. In turn we should respond with the same show of sincerity and conviction and seek

every opportunity to resolve the problems that we both share. Accordingly, I urge the distinguished members of this committee and the entire Senate to support the ratification of the Treaty of the Execution of Final Sentences between the United States and the United Mexican States.

#### APPENDIX A

(From the New York Times, June 30, 1976)

#### MEXICAN PRISONS SAID TO IMPROVE

WASHINGTON, June 29.—Conditions for Americans imprisoned in Mexican jails have improved markedly in some respects since January, the Ford administration told Congress today.

However, in testimony before a House International Relations subcommittee, William H. Luers, Deputy Assistant Secretary of State, said some of the 607 American citizens jailed in Mexico are still subject to physical abuse.

According to Mexican authorities, about 83 percent of the Americans were arrested on narcotics charges.

Mr. Luers, who is responsible for Central American and Caribbean matters in the State Department's Bureau of Inter-American Affairs, said that while there have been "a number or real areas of improvement" in the Mexican jails, there were others where "no meaningful improvement can be reported."

#### COMMANDANT REMOVED

The foremost improvement, he said, was in the administration of Lecumberri prison in Mexico City, where the commandant was removed a month ago and the chief of guards imprisoned after corrupt practices, including extortion, were revealed.

Americans in Lecumberri have been given access to English-language books and periodicals for the first time and have been allowed to form football teams. American consular officers also have broader access to prisoners in Lecumberri, he said.

However, Mr. Luers indicated conditions remained poor in Mazatlan prison, and he also reported an incident in which two American prisoners were assaulted by Mexican guards.

He said that of 334 Americans arrested in Mexico since the beginning of the year, 61 cases of physical abuse had been substantiated—a rate of 18 percent. The new American prisoners include 57 women, the administration has learned. The American prison population in Mexico has increased by 85 since June 1975.

"We are most concerned about the lack of significant improvement in the treatment of U.S. citizens in the period shortly after their arrest," he said.

Mr. Luers told the House subcommittee on international political and military affairs that the administration welcomed a Mexican proposal that the two countries study the possibility of exchanging prisoners so that they might serve out sentences in their homelands.

He said Ambassador Joseph J. Jova has been instructed to begin discussions with Mexican authorities on a transfer agreement.

#### APPENDIX B

(From the Washington Post, Apr. 17, 1977)

#### MEXICANS DROPPING DRUG CASES AGAINST SMALL-USE TOURISTS

(By Marilise Simons)

MEXICO CITY, April 16.—In a move that should make Mexico less perilous for American visitors, the Mexican Government has decided it will no longer press charges against persons holding small amounts of heroin, cocaine or marijuana that are clearly intended for personal use.

As a result, 15 Americans have already been secretly handed over to U.S. officials and sent across the border in the last 2 weeks.

Another 30 Americans should be released by the end of this month when the

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authorities plan to drop charges against some 2,000 persons who have been arrested, but not yet tried, for possessing small quantities of drugs, said Mexico's new attorney general.

The attorney general, Oscar Flores, said in an interview that he is moving to solve another bilateral headache, the problem of aircraft and cars stolen in the United States and brought to Mexico. Owners have charged that Mexico was violating the 1896 U.S.-Mexican convention on return of stolen property.

Of almost 200 stolen U.S. aircraft listed as awaiting release or investigation, only 16 were returned in the last 3 years. But in the past month, Mexico has handed over 42 stolen planes to the U.S. embassy for return to their owners.

Officials are now tackling the enormous task of checking thousands of cars to see if they were stolen in the United States. "It looks like the Americans are more interested in collecting their insurance money rather than in collecting their car," said Flores. "People try to get their planes back, but they rarely bother with a car."

The aim of the drugs decision, Flores said, is to reduce the chances that people are subjected to arbitrary arrests and extortion by police and lawyers when caught with small amounts.

At present, he said, Mexico's tough anti-drug laws are lopsided, with too much punishment for the small user. "Even if the person does not get a long sentence, it may take 1 year for the trial to come up. And in that time, dishonest police and lawyers have often had a chance to bleed people for money."

Every year, almost 3 million American tourists come to Mexico. Many more cross the border for short trips. As marijuana smoking spread in the United States, the number of Americans caught here with the coveted "Mexican gold" increased. The 15 persons released this month, for example, were all arrested with only a few marijuana cigarettes and held for 3 to 4 months.

A treaty, permitting Mexicans and Americans arrested across the border to serve their sentences at home, awaits ratification and enabling legislation.

The unexpected Mexican policy change toward small drug users does not apply to traffickers. Of the 592 American currently held in Mexican jails at least half have been accused of transporting cocaine from South America or dealing in large amounts of Mexican marijuana or heroin destined for sale in the United States.

"We are not changing the law and not establishing any minimum amount permitted," the attorney general warned. "We'll look at everything case by case. Somebody with only five cigarettes caught selling at a school is a pusher, as far as I'm concerned."

A tough, outspoken and pragmatic man, Flores has brought considerable relief to U.S. embassy officials here who found it difficult to deal with the often antagonistic previous administration.

"I'll give you your prisoners, if you just move them out of the country, the same day," Flores told U.S. consular officials.

"Sure we'll take them," U.S. Consul General Vernon McAninch replied. For the 15 newly released Americans, the U.S. consulate hastily raised money from the prisoners' friends and relatives or made loans for the return tickets. "Of course we are very pleased with this new development," McAninch said.

#### OPINION OF PROPOSED TREATY AS DRAWN

The CHAIRMAN. Thank you very much, Congressman Gilman. Let me ask both Congressmen this question. Are you in favor of the proposed treaty as it is drawn?

Mr. STARK. Mr. Chairman, I would say that I am in favor of it. My only reservation, and I am not really competent to discuss it, is that the constitutional experts must make sure that we can, under the treaty, protect the constitutional rights of our own citizens. Other than that, I would say that yes, I am wholeheartedly in favor of the treaty.

Mr. GILMAN. Mr. Chairman, I would add that I certainly favor the objectives of the treaty to exchange our prisoners and to permit the prisoners of both countries to serve out the balance of their time in

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ing prisoners have created a great deal of tension and have created a wide gap between our two countries at a time when we should be working very closely together on a very serious problem, the problem of illicit narcotics trafficking.

The CHAIRMAN. Senator Church, do you have anything at this time?

Senator CHURCH. Thank you, Mr. Chairman. I don't know if I have questions of the Congressmen, but I am very much aware of the problem. A number of my own constituents, families in Idaho, have children in Mexican jails. In some of these cases, Americans are being held for long periods of time without being charged and without being tried.

#### AMERICANS WHOM TREATY DOESN'T REACH

Now, as this treaty is written, welcome as it is in the objective it seeks to serve, I take it that the Americans who find themselves imprisoned, but without being charged and without being tried, would not be reached by this treaty.

Mr. STARK. Senator, that is quite right. It is a step in that direction, but more must be done somehow to encourage the Mexicans to obey their own laws, which prohibit the kinds of things that you mention.

Mr. GILMAN. If I might add, Senator, I think that the adoption of the treaty would help to expedite some of these cases that are lingering.

When I visited the Sonora Prison, I found three young college students from the Southwestern part of our Nation who had been lingering in the jail from November through May, having been charged with possession of some 50 grams of marijuana, some cigarettes that they had in their possession when they crossed the border or that they had picked up on the Mexican side of the border. They had not even been indicted at that point. When we raised the issue and the Mexican authorities looked into the problem, they discharged them within a few days thereafter. The Mexicans have now embarked on a policy of releasing those who are charged with just minor offenses, rather than incarcerating them for long periods of time.

#### EXPEDITION PROVIDED BY RATIFYING TREATY

I do think that the adoption of the treaty would help to expedite that situation. A great deal of it has to do with bureaucratic process and the slow manner in which some of these cases are being processed.

Senator CHURCH. I would hope that the adoption of the treaty would have that effect and that we could get some of the very vexing and really tragic cases attended to. I am inclined to agree with you that if we ratify the treaty and put it into effect, perhaps that would help to move along the resolution of these other cases.

I think I have no further questions, Mr. Chairman.

The CHAIRMAN. Senator Javits.

#### COMMENDATION OF WITNESSES

Senator JAVITS. Thank you, Mr. Chairman. There is a feeling which I would like to express to both my colleagues, and especially to Con-

This is a tremendous demonstration to me of why our people need to understand the Congress and what it does. You hear all about junkets. Here you two Congressmen have really put yourselves out in a major way to render a service to our country and its people. You have worked very hard on this and you are still at it. You are following through very admirably. I would hope that this is eloquent refutation to the nonsense about people not working. People don't have to work here; they can be on a junket right here by not attending to their business and doing nothing but going to vote or answering a quorum call.

Thank you both very much.

Mr. STARK. I thank the Senator for his kind remarks.

Mr. GILMAN. Thank you, Senator Javits.

#### ARE MEXICAN AND CANADIAN PROBLEMS THE SAME?

The CHAIRMAN. I noticed in your discussion and also in our outline that we are talking about both the Mexican and Canadian treaties. Are the problems essentially the same?

Mr. STARK. To my knowledge, Senator, we don't experience the problems of our citizens being denied human rights and process under the Canadian laws. Certainly it has never come to my attention that this is the case.

There has been some indication, but that is purely hearsay as far as we are concerned, that there seems to be less discrimination against Canadians in Mexico than there is against American citizens, but I really have no facts to support that.

Mr. GILMAN. I have not received any information or complaints with regard to any of the Canadians, Senator.

#### CONSTITUTIONAL QUESTIONS INVOLVED

The CHAIRMAN. Of course, the facts may be different, but there are constitutional questions involved, aren't there? These are the same with both countries. Is that not your opinion?

Mr. STARK. I would suspect so. It is my understanding that both our and the Canadian laws derive from the English system, and I believe they would have the same problems with the Napoleonic Code in Mexico. That would be my pedestrian guess, that they would be the same.

Mr. GILMAN. I am frank to say that I have not taken a close look at all of the constitutional issues involved in the treaty, so that at this point I am not able to respond to your question, Mr. Chairman.

The CHAIRMAN. You would think, though, even though you have not looked into it, that there would be constitutional questions involved. Would you not?

Mr. GILMAN. I have talked with I believe one of the constitutional consultants to this committee, who seemed to indicate that while there were some issues that had been raised with regard to the constitutional issue, there was thinking that these could be overcome by way of legislation.

Mr. STARK. I am concerned, as I mentioned earlier, Mr. Chairman, that there are constitutional problems. I guess I can resolve them in several ways.

I think that this committee in its deliberations is not going to deal with those capriciously and is going to get the best advice it can and design the treaty to protect the constitutional rights of our citizens. In the final analysis, I guess if I had to make the choice for our own citizens, I would feel a whole lot more comfortable about our protecting the rights of our own nationals if they were in this country. I think they would be accorded better rights and rights more consistent with the American tradition than they are now being accorded in Mexico.

So, if I had to take a chance on erring and make that decision for these people, I guess I would choose to bring them home, and then we could deal with them in ways more consistent with our own social and cultural code.

#### PROBLEM OF TRANSPORTATION OF DRUGS

The CHAIRMAN. With reference to the offenses, did I understand that the transportation of drugs is a problem?

Mr. STARK. We have a serious problem of narcotics traffic between Mexico and our country. Out of the 600 people incarcerated, I would suppose that two-thirds were in there on narcotics-related charges. However, out of those 400 in on narcotics charges, probably less than half a dozen are there on heroin-related charges, which is the really serious problem.

I know that in New York, the Senator's State, brown heroin is a pernicious problem, as it is in my own district in California. It is our understanding that most of this brown heroin is coming into this country through Mexico. These arrests do not deal with that problem. That seems to be another whole orbit of possibly organized dealers. Most of these people who were arrested had no criminal record, and those who were transporting narcotics were bringing either marijuana or cocaine on a first-time basis and were people who were first-time offenders.

So, it was a completely different sort of situation than is present in our most serious problem at this point, which is the importation of heroin from and through Mexico to this country.

Mr. GILMAN. Mr. Chairman, there is no question that the Mexican trafficking of drugs is a very serious problem. Over 80 percent of the heroin on our streets is derived from Mexican heroin, the brown heroin. There is no question that our country is concerned about the traffic that crosses this border.

The CHAIRMAN. That is the Mexican border?

Mr. GILMAN. The United States-Mexican border.

The CHAIRMAN. Does that exist at the Canadian border?

Mr. GILMAN. We also have a problem in the northwest, in the Vancouver area. I don't know how much is crossing that border. Our committee has not yet taken a good, hard look at those statistics. But Mr. Bensinger is here. He is the Director of our Drug Enforcement Administration and he, I am sure, would have that information for you in the testimony he will deliver later on this morning.

Let me just state this, Senator. It certainly is a very serious problem. Some of these young people were involved in transporting narcotics. But I think that our State Department Bureau of Security

and Consular Affairs Chief, Mr. Walentynowicz, best summed up the premise that we are proceeding on:

that successful drug interdiction, far from being in conflict with the guarantee of rights to prisoners, is, in fact, dependent upon such guarantees. Thorough law enforcement is ultimately dependent upon wholehearted cooperation of the public, and the people will cooperate only when they are confident that their human rights are not threatened by the enforcement procedures. Unless there is public confidence in just treatment, law enforcement becomes difficult, and even ultimately impossible.

He went on to say that:

fundamentally a strong policy for the fair and decent treatment of prisoners leading to social rehabilitation of offenders, is fully consistent with a strong, successful program of drug interdiction.

So many of the critics of the exchange of prisoners say well, on the one hand you are seeking hard punishment, and, on the other hand you are saying let the prisoners be exchanged. Well, I say that there is no conflict between these two propositions. What we are merely seeking to do is to make certain that once they are arrested, their civil rights are protected. We are not critical of the harshness of the penalty. If the penalty is to be harsh, so be it. But let's make certain that in imposing that penalty, the rights of the individual are not being violated, both here in our country, and in Mexico.

The CHAIRMAN. Thank you very much. I fear I may have taken up too much time.

Senator Church.

CASE OF TERRY JOHN DIXON

Senator CHURCH. Thank you, Mr. Chairman, I have been reading a case. A letter has come to me from a young man whose parents live in Idaho. It gives an account of how he and his wife were treated, how they were arrested, how he pleaded guilty, under coercion, with the understanding that if he did so, his wife would be released. He told of how his wife was then released. Then he undertook to renounce the declaration that he had made in order to secure his wife's safety and return to the United States.

He sets out the facts as he claims they occurred, which show a classic case of entrapment. It may all very well be true. He has not been charged nor has he been tried. He has been in prison for months in violation of the laws of Mexico. Riots have occurred in the prison and the Americans have been singled out, beaten, and brutally treated.

Somehow we seem powerless to do anything on his behalf.

If the facts are as he relates them, he would not be in jail at all in the United States. I would hope that through the ratification of this treaty we could endeavor to secure the cooperation of the Mexican authorities to solve cases of this kind.

Senator JAVITS. Would the Senator yield?

Senator CHURCH. Yes, Jack. But first, Mr. Chairman, if I may, I would like to place this letter in the record. I think it is a typical problem of the kind that concerns us most. For that purpose, I would ask that it be included in the record.

The CHAIRMAN. Without objection, that will be included in the record.

[The information referred to follows:]

*Jalisco State Penal Guarantia, Jalisco, Mex.*  
My name is Terry John Dixon and for the past sixteen months I have been incarcerated in the Jalisco State Prison in Guadaluajara, Jalisco, Mexico. As of yet I have no sentence.  
I was arrested on Jan. 12, 1976 at a roadblock on Highway 15 about 3 miles north of Magdalena, Jalisco. My wife was with me and our immediate destination was Puerto Vallarta where we hoped to relax a few days on the beach. The Federal Police discovered a bag (of marijuana in our car and asked us where it had come from. I spoke no Spanish and my wife very little. They made my wife and I strip naked beside the highway before taking us to Guadaluajara, 80 miles away. When we arrived at the Federal Palace in Guadaluajara we were forced to sign confessions of buying and transporting marijuana. The American Consulate was not allowed to visit us until this was done. Two men who identified themselves as DEA agents were called in.



The CHAIRMAN. I believe I did say that we would insert into the record the statements of the two attorneys general, along with your own testimony.

Mr. HILL. If I can secure a clean copy of my documents from my staff people, I will give it to the committee staff.

The CHAIRMAN. Very well.

The next witness is Barbara M. Watson, Administrator, Bureau of Security and Consular Affairs, Department of State.

I see on our agenda we have four witnesses who I think could very well serve as a panel. May we call to the table Herbert J. Hansell, Peter Flaherty, and Peter B. Bensinger. Gentlemen, please come up with Ms. Watson.

Mr. Hansell is the Legal Advisor of the Department of State; Mr. Flaherty is the Deputy Attorney General of the Department of Justice; and Mr. Peter B. Bensinger is Administrator of the Drug Enforcement Administration of the Department of Justice.

We are very glad to have all of you here today.

Ms. Watson, we will hear from you first.

You haven't been in this job for very long, have you?

**STATEMENT OF HON. BARBARA M. WATSON, ADMINISTRATOR,  
BUREAU OF SECURITY AND CONSULAR AFFAIRS, DEPARTMENT  
OF STATE**

Ms. WATSON. It has only been since April, Mr. Chairman.

The CHAIRMAN. Yes. I remember your confirmation hearing.

Ms. WATSON. You were very kind to me at that time, sir.

The CHAIRMAN. We are very happy to have you back.

We have a copy of your statement and it will be printed in the record in full. You may proceed as you see fit. In fact, I say that to all of you at the table.

Ms. WATSON. Mr. Chairman, since mine is such a very brief statement, I would hope you would permit me to read it.

The CHAIRMAN. Very well.

Ms. WATSON. It is a pleasure to appear before you, Mr. Chairman, and members of the committee, to provide testimony on the treaties on the execution of penal sentences which the United States has recently negotiated with the Governments of Mexico and Canada.

The welfare of American prisoners in foreign jails is of great concern to the Department of State. In 1972, 240 Americans were imprisoned abroad. Today this number has soared to about 2,200, with approximately 600 imprisoned in Mexico. The majority have been arrested on drug related charges.

**PROBLEMS OF PRISONERS IN FOREIGN PRISONS**

The situation in Mexico is well known. Congressional hearings have highlighted the prisoners' problems, including abuses in the pretrial process, failure to notify consular officers, and physical mistreatment of those arrested.

In spite of recent improvements, there is much that we still find unsatisfactory.

There are special hardships involved in being in a prison abroad. It is difficult or impossible to maintain contact with one's family. Dietary and living conditions are different than those found in the United States. Ignorance of the language is a difficult obstacle to overcome, and basic cultural differences make adjustment extremely difficult. All of these factors make rehabilitation of prisoners in foreign prisons an exceptionally difficult task. Prisoners cannot be reintegrated into the civilian environment at the end of their term.

Comparable problems exist for Mexican nationals in the U.S. prisons, even though we hear less about these cases. They, too, experience real hardship. The food and the climate are unfamiliar, and particularly in small institutions, nobody speaks their language or understands their culture. They, too, should be our concern.

**TREATY WITH CANADA**

We have also negotiated a treaty on the execution of penal sentences with Canada. The Canadian Government suggested such a treaty. It is appropriate to have an agreement with both of our immediate neighbors, even though there are fewer problems regarding U.S. prisoners in Canada.

Our treaties with both Canada and Mexico have the same humanitarian end—the most effective rehabilitation possible for the prisoners concerned.

**HOW TREATY WITH MEXICO WOULD WORK**

In considering many approaches to resolving this program, we discussed a treaty on the execution of penal sentences with the Government of Mexico. This treaty, and a similar one with Canada, are our concern today. I would like to describe briefly how the treaties would work for American prisoners in Mexico.

The Mexican Government would draw up a list of the prisoners it deemed eligible for transfer under the treaty. Some offenses are excluded, such as violation of immigration laws, political and military offenses, and prisoners with less than 6 months to serve. Prisoners whose names were not on the list could submit a request for consideration. Prisoners would not be transferred unless they so consented. No transfer will be made unless all three parties agree—the prisoner, and the sending and receiving countries.

Prisoners to be transferred would be interviewed by a U.S. magistrate or other official to insure that the consent to the transfer was freely and intelligently given.

The place of confinement in this country will be determined by several factors, including the proximity to the offender's home, the need for security, and health problems. Sentences to be served in the United States will be measured by the balance of the Mexican sentence, diminished by work credits and good behavior in Mexican institutions. United States parole rules will apply.

**DEPARTMENT OF STATE RECOMMENDATION**

The Department of State recommends without reservation that the treaties on the execution of penal sentences with Canada and Mexico

be ratified. This kind of treaty is unprecedented in the history of the United States. We know that effective implementation will not be free of problems. But we firmly believe that the humanitarian goal of these treaties, the rehabilitation of Americans imprisoned abroad, is a compelling reason for approval.

That ends my statement. Thank you.

The CHAIRMAN. Thank you very much. We are very glad to have your statement.

Next we will hear from Mr. Hansell, of the Department of State.

We are very glad to hear from you. We have your statement.

Mr. HANSELL. Thank you, Mr. Chairman.

With your permission, I will submit my prepared statement for the record and will deliver only a portion of it. I would prefer to use part of my time to comment on some of the discussion that has occurred here this morning.

The CHAIRMAN. Very well.

Please proceed as you see fit.

**STATEMENT OF HON. HERBERT J. HANSELL, LEGAL ADVISER, DEPARTMENT OF STATE, ACCOMPANIED BY DETLEV VAGTS, LEGAL ADVISER STAFF, DEPARTMENT OF STATE**

Mr. HANSELL. I think the discussion today has indicated that there may be some misunderstandings as to what these treaties do and do not do. It seems to me that it is important, as we begin this discussion, to clarify those misunderstandings.

So, with your permission, I will read only a portion of my prepared statement, but will submit the entire statement for the record.

**CONSTITUTIONAL QUESTION**

I do want to touch just briefly on the constitution question, which is raised primarily by article VI of the Mexican treaty. I will confine my remarks to the Mexican treaty, although in general, they will apply as well to the Canadian treaty.

The basic provision that creates the constitutional question, article VI of the Mexican treaty, reads as follows:

The Transferring State, which is Mexico, shall have exclusive jurisdiction over any proceedings, regardless of their form, intended to challenge, modify or set aside sentences handed down by its courts. The Receiving State shall, upon being advised by the Transferring State of action affecting the sentence, take the appropriate action in accordance with such advice.

The effect of that provision, therefore, is that any proceedings to challenge or modify or set aside the sentence imposed by a Mexican court would have to take place under that provision in the Mexican courts.

This clause was an essential part of the treaty arrangement, as negotiated. Mexico has a long history of sensitivity to foreign interference with its legal system, a history that it shares with other Latin American countries. The Mexicans could not accept review of Mexican judgments by an American court.

The negotiators of the treaty also concluded that our own Senate probably could not be expected to give its advice and consent to an

arrangement under which Mexican courts would sit in judgment on the findings of U.S. courts. In addition, the problems that would be involved in holding hearings in a U.S. court to determine precisely what happened in a remote Mexican police station might well be insurmountable.

It is obvious that there will be challenges to the constitutionality of that provision. This treaty is, as Ms. Watson has said, with respect to the United States, a novel one and the issue is new. We have given careful study to this question, which has also been reviewed, of course, by the Department of Justice, and by scholars outside the administration. We would not have caused the treaty to be signed if we had not concluded that it was constitutionally defensible.

Briefly, the grounds for that conclusion are two: First, what we have called the "conflicts of law" ground, and second, what we call the "waiver" ground.

Under the first, we start from the premise that the prisoner's trial was conducted in a foreign country that lawfully had jurisdiction over the offender and the offense. The courts have repeatedly said that the U.S. Constitution has no applicability to the conduct of a foreign trial for a foreign offense.

The U.S. action, under this treaty—and I think it is important to understand that this is a limited action—is the acceptance of custody over the offender. That action is really only ancillary to the action of the Mexican court. The legal history of the United States is that U.S. authorities have consistently been upheld in turning over persons to foreign courts for trials not consistent with our Constitution. In our judgment, the type of procedure that is contemplated by this treaty in receiving foreign prisoners does not deprive them of rights they have previously had. Indeed, we confer on them the protection of the constitutional provision against cruel and unusual punishment.

Many prisoners in the United States are transferred from one State to another, or from State to Federal institutions without it being thought that the receiving State adopted the sentence or made it its own.

The waiver argument, as has already been suggested by the attorney general of Texas, proceeds on the basis that nobody will be transferred against his or her will. Extensive precautions have been written into the implementing legislation to assure that the consent to transfer will be as free and as fully informed as possible. The question of providing counsel will have to be settled in the implementing legislation, and we expect to work with the Department of Justice in resolving that matter.

The decisions of the Supreme Court give wide effect to guilty pleas and other choices by the accused in the criminal process. This particular choice stands on even firmer footing.

**TREATIES ARE LIMITED SOLUTION**

I think, Mr. Chairman, on the constitutional questions I will limit my comments to those that I have given. I will be glad to answer your questions, of course, but would wish to add one additional comment in respect to the discussion that has occurred thus far.

I think it is important to recognize that these treaties are a limited solution to some of the problems that have been discussed this morning, problems that I think we are all deeply concerned with in the Congress and in the administration.

The treaties do not represent a means of dealing with the full spectrum of concerns that have been discussed this morning, and we do not want to create false hopes among the families of prisoners in Mexico and in Canada that it is a solution to all of those problems.

The treaties will not deal directly with the treatment of prisoners prior to conviction. These are, as has already been indicated, arrangements for service of a sentence after the sentence has been imposed.

The treaties will not, in fact, result in the freeing of most U.S. citizens who have been incarcerated in Mexico and Canada. There may be, in a few instances, the result that a prisoner in a foreign country may gain his or her freedom, but that would be the exception, rather than the rule under these treaties.

We want to be very sure that we are not creating false expectations of raising hopes that will not be realized by these treaties. We think they are an important step forward in our relationships with both Mexico and Canada. We think that they will enable us to deal with some of the concerns that we have about the treatment of our own citizens in foreign courts. But we have a way to go before we would be able to respond to all of the concerns that have been voiced here this morning.

I think, Mr. Chairman, with that I will conclude my affirmative presentation.

[Mr. Hansell's prepared statement follows:]

PREPARED STATEMENT OF HERBERT J. HANSELL, LEGAL ADVISER, DEPARTMENT OF STATE

Mr. Chairman and members of the committee: I am pleased to have this opportunity to be with you today to discuss legal and constitutional aspects of the Mexican and Canadian prisoner transfer treaties. They were negotiated by the State Department's Legal Adviser's office in cooperation with the Department of Justice and other bureaus of the Department of State. The Legal Adviser's office is primarily responsible for its legal aspects. We have also participated in the drafting of proposed implementing legislation, but the primary responsibility for that work has been undertaken by the Department of Justice. Miss Watson has given you a general description of how the treaty would operate. I will focus on some special and complex legal issues. My remarks will concentrate on the Mexican version, but in general they apply to the Canadian situation as well.

#### CONSTITUTIONALITY

A key question is that of Article VI which provides that all challenges to the validity of the underlying sentence shall be addressed to the courts of the country where the sentence was handed down. Let me note that the Canadian treaty uses the words "conviction or sentence" whereas the Mexican treaty uses only the term "sentence." No difference was intended, but we were advised that there are no separate Mexican equivalents for the two terms. This clause was an essential part of the arrangement. Mexico has a long history of sensitivity to foreign interference with its legal system, one it shares with other Latin American countries. It could not accept review of Mexican judgments by an American court. We also concluded that the Senate could not be expected to give its advice and consent to an arrangement under which Mexican courts could sit in judgment on the findings of United States courts. Furthermore, the problems involved in holding hearings to determine precisely what happened in a remote foreign police station would be insurmountable. We know that

the Mexican constitution provides safeguards not very dissimilar from those afforded in the United States and that the Mexican courts afford direct review and collateral review by way of the writ of amparo. Thus, that provision was agreed to.

It is obvious that there will be challenges to the constitutionality of that provision. The treaty is, with respect to the United States, a novel one and the issue is new. We have given careful study to this question, which has also been reviewed by the Department of Justice and by outside scholars. We would not have caused the treaty to be signed if we had not concluded that it was constitutionally defensible. Let me state briefly the grounds for that conclusion. The first ground may be called the "conflicts of law" ground and the second the "waiver" ground. Under the first approach we start from the premise that the prisoner's trial was conducted in a foreign country that lawfully had jurisdiction over the offender and the offense. The courts have repeatedly said that the United States Constitution has no applicability to the conduct of such a trial. The United States action, the acceptance of custody over the offender, is only ancillary to the action of the Mexican court. United States authorities have consistently been upheld in turning over persons to foreign courts for trials not consistent with our Constitution. While extradition typically involves foreign fugitives, surrenders under the Status of Forces Agreements do involve American citizens—service personnel. It seems no greater deference to and no deeper an involvement in a foreign criminal process to receive prisoners when the process is completed.

Indeed, it involves less of an intrusion than extradition, which will subject them to a non-American trial. In receiving foreign prisoners, we do not deprive them of any rights they have previously had; indeed, we confer on them the protection of the constitutional provision against cruel and unusual punishment. Many prisoners are transferred from one state to another or from state to federal institutions without it being thought that the receiving state adopted the sentence or made it its own.

The waiver argument proceeds on the basis of the fact that nobody will be transferred against his or her will. Extensive precautions have been written into the implementing legislation to assure that the consent to transfer will be as free and as fully informed as possible. The question of providing counsel will have to be settled in the implementing legislation, and we will work with the Department of Justice in resolving this matter. The decisions of the Supreme Court give wide effect to guilty pleas and other choices by the accused in the criminal process. This particular choice stands on an even firmer footing. In this case the offender is offered a genuine benefit, one to which he had no prior entitlement. In return he is being asked to give up something to which he was never previously entitled—an American court review of his underlying conviction.

It has been suggested that it is analogous to the case of a conditional pardon, in which it has been held that reasonable conditions may be attached when a benefit is conferred upon a prisoner. The person accepting the pardon must take the whole package offered to him. Similarly, where the President and the Congress have together obtained a special and unusual benefit for an offender, he should not be able to repudiate his assent to the conditions which were necessary to achieve that benefit. Success in such repudiation would, of course, destroy this avenue of relief for all later cases.

For these reasons we believe that the agreement will be sustained against constitutional challenges.

#### FEDERALISM ISSUES

In general, the Treaty creates a relationship between the federal authorities of the two countries. However, states may, if they choose, elect to accept to have some of their prisoners transferred. The number of state prisoners in Mexico is not large since most offenses relate to drugs, and drug offenses are federal. However, the states in the United States probably hold substantially more prisoners of Mexican nationality than do our federal prisons, although we do not have much detail on this.

Especially since many of the 1500 U.S. federal prisoners from Mexico are excluded by the exception in Article II for immigration offenses, it might be that the states of the United States will provide the largest contingent of prisoners headed south. Upon arrival in their home country, prisoners will be the responsibility of the federal authorities. However, in the U.S., the state authorities may be asked to receive some of the prisoners if no suitable federal prison space is available. Contract arrangements will be worked out for those

have consulted extensively with the Attorneys General of the border states, and they inform us that they regard their interests as fully protected by the treaty and the implementing legislation.

#### COLLATERAL EFFECTS OF CONVICTION

Finally, I should say a few words about a provision—Article V(6)—that readers have found confusing. The problem involved is the fact that Americans in Mexican jails are concerned about having "a record" if they are returned under the Treaty. It turns out that the question of having "a record" is a complex one. There are many rules which penalize persons convicted of crime. For example, there are statutes that increase penalties for those who have previously been convicted of crimes. There are rules which bar certain types of employment to convicts or prevent them from having licenses to own firearms, or from serving on juries.

Some are state and some are federal. These statutes vary in their treatment of foreign convictions; some explicitly include only convictions in the United States. Others clearly cover convictions anywhere. Yet, others are ambiguous. All that the treaty tries to do is to insure that nobody will be worse off in these collateral respects if he elects to return to the United States than if he elects to stay in Mexico. He is still to be regarded as having only a foreign conviction.

Mr. Chairman, this concludes my formal presentation. I will be pleased to try to answer any questions the Committee may have.

The CHAIRMAN. Thank you, Mr. Hansell.

Our next witness is Mr. Peter Flaherty, Deputy Attorney General, Department of Justice.

#### STATEMENT OF PETER FLAHERTY, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. FLAHERTY. Thank you, Mr. Chairman. I am appearing before the committee today on behalf of the Department of Justice to join with the Department of State in recommending that the Senate give its advice and consent to the two treaties between the United States and Mexico and the United States and Canada.

The Department of Justice is of the opinion that these treaties are within the scope of the treaty-making power, and are constitutional, and can be implemented constitutionally.

The CHAIRMAN. May I ask a question at this point which would apply to all the witnesses? When you say that you are in favor of the ratification of the treaty, do you mean without reservation? I would like to clear that up.

Mr. FLAHERTY. Yes, sir.

Mr. HANSELL. [Nods affirmatively.]

#### REQUISITE IMPLEMENTING LEGISLATION

Mr. FLAHERTY. The two treaties before this committee are not self-executing. Before any action can be taken to implement them, the requisite implementing legislation must be enacted. Proposed legislation for this purpose has been prepared and has been introduced in the Senate by Senators Biden and Bentsen, and in the House by Judiciary Committee Chairman Peter Rodino.

#### NOVELTY OF TREATIES

The principle that it is desirable to permit a penal sentence imposed by the courts of one country upon a citizen of another country to be

executed in the country of which the offender is a citizen is not new. However, the present treaties represent the first endeavor by the United States to realize that objective.

The treaty with the United Mexican States is novel in that it represents the first known proposed prisoner transfer treaty between a nation with a civil law system and a nation with a common law system. Despite the differences resulting from the historical development of these two systems, we believe there is a sufficient commonality of observance of constitutional principles between the two systems to warrant ratification of the treaty with Mexico.

The Canadian legal system also differs in many respects from ours, but there is a greater similarity between these two systems than there is between the Mexican and the U.S. system. There is, therefore, sufficient concordance of our respective criminal justice systems to recommend the ratification of the Canadian treaty also.

#### NO IMPINGEMENT ON SOVEREIGNTY

The treaties do not impinge on the sovereignty of any of the contracting parties. The transfer of an offender may occur only with the consent of both the transferring and the receiving countries. The organic structure of the government of each party is respected. The States and Provinces of the parties may consent to offenders against their laws being transferred, but they are not obligated to do so.

The sentence imposed remains in effect in the sentencing jurisdiction. It is not converted into a sentence in the receiving State. The right to a pardon, to grant amnesty, or to ameliorate the sentence is reserved to the country which issued the sentence.

The courts of the receiving State are not given any authority to pass on the validity of the sentence. This function is reserved exclusively to the country in which the sentence was issued.

#### BENEFITS OF TREATIES AND IMPLEMENTING LEGISLATION

We believe the treaties and the proposed implementing legislation will improve the administration of criminal justice, while safeguarding and insuring that the humanitarian purpose of these treaties will not be subverted. A transfer of an offender may be accomplished only if he or she consents with full knowledge of the consequences of the transfer. Recognizing the potentially coercive situation in which offenders find themselves, every effort has been made in the proposed implementing legislation to guarantee that the consent required by the treaties will, in fact, be voluntarily and understandingly given.

Therefore, it can be truly said that the treaties and legislation will provide a positive benefit to the offender; namely, the voluntary serving in the country of which he is a citizen, and to which he has closer ties, of a sentence imposed by a foreign country.

Other benefits also accrue to the offender who is transferred. First, the treaties and the proposed legislation provide that the sentence, for the execution of which the offender is transferred, shall operate as a bar to further prosecutions in the receiving State to the same extent as if the sentence had been issued by a court of the particular jurisdiction.

tion seeking to prosecute. This provision, in effect, is the extension of the policy behind the double jeopardy clause of the Bill of Rights to a situation to which that clause otherwise would not be applicable.

Second, although recognizing the sentence of the foreign jurisdiction for this purpose, neither the treaties nor the proposed implementing legislation converts the foreign sentence to a domestic sentence for the purpose of determining the adverse consequences of the sentence. Rather, it is provided that the transfer will not result in adverse consequences, other than those which in any event would flow from the fact of the foreign conviction.

Third, the parole system of the receiving State will govern eligibility, timing, and conditions of release from the prison.

#### IMPLEMENTATION OF TREATY WITH MEXICO

Because Canada will not be prepared to implement its treaty until late this year at the earliest, and whereas Mexico is presently ready to implement its treaty, we are presently drawing up plans for the rapid implementation of the treaty with Mexico and are working with the State Department and the Mexican Government to complete as much of the necessary preparatory work as possible in order to permit us to effect the transfers under the treaty with Mexico at the earliest possible date.

However, I must stress that the actual implementation of the treaty in the field is not a simple undertaking. The public must not be misled into assuming that the transfers can be accomplished within a few days of the effective date of the treaty.

First, the requisite implementing legislation must be enacted.

Second, in order to assure the voluntariness of the decisions by the Americans convicted by Mexican courts to serve their sentences in Federal prisons and be subject to the Federal parole system, it is essential that the U.S. Government representatives meet with each prisoner who is presently eligible for transfer, or who will be eligible for transfer upon termination of any pending appeal of his Mexican conviction.

At these meetings the prisoners will be advised of the ramifications of their consent including, among other things: The criteria for the selection of the Federal institutions at which they will serve their sentences; their parole eligibility; the earliest dates at which they can hope for favorable parole consideration; to the extent permitted by the positiveness of their identification, the pendency of warrants for their arrest in the United States; their right to consult counsel prior to the transfer verification proceedings; and, the effect of their consent to transfer on their ability to attack their Mexican convictions.

It would appear that such meetings will have to take place at each of the Mexican jails or correctional institutions in which these American prisoners are held. As is readily apparent from the fact that there are presently over 500 Americans in Mexican prisons throughout all of Mexico who will be eligible, or who will become eligible upon the conclusion of their appeals, conducting these briefings is going to be a major, time-consuming task. While we may make every effort to allocate sufficient manpower to conduct these briefings as expeditiously as possible, we are not now in a position to determine the time lag be-

tween the effective date of the Mexican treaty and the initial transfers of prisoners under it.

#### CONCLUSION

In closing, let me again stress that the Department of Justice believes these treaties represent an extremely worthwhile opportunity to ameliorate the hardships of imprisonment far from one's family and friends, which presently result from conviction in a foreign country of violations of its criminal laws, and to enhance the rehabilitative potential of our respective criminal justice systems. Therefore, the Department of Justice strongly urges the Senate to give its advice and consent to these treaties.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

[Mr. Flaherty's prepared statement follows.]

#### PREPARED STATEMENT OF PETER F. FLAHERTY, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. Chairman and members of the committee. I appear before this committee today on behalf of the Department of Justice to join the Department of State in recommending that the Senate give its advice and consent to and pass a Resolution of Ratification of two treaties concerning the Execution of Penal Sentences, one the Treaty between the United States of America and the United Mexican States, the other the Treaty between the United States of America and Canada.

The Department of Justice is of the opinion that these treaties are within the scope of the treaty making power, are constitutional, and can be implemented constitutionally.

The two treaties before this committee are not self-executing. Before any action can be taken to implement them, the requisite implementing legislation must be enacted. Proposed legislation for this purpose has been prepared, and has been introduced in the Senate by Senators Eiden and Bentsen (S. 1682) and in the House by Judiciary Committee Chairman Peter Rodino (H.R. 7148). The principle that it is desirable to permit a penal sentence imposed by the courts of one country upon a citizen of another country to be executed in the country of which the offender is a citizen is not new. However, the present treaties represent the first endeavor by the United States to realize that objective.

The treaty with the United Mexican States is novel in that it represents the first known proposed prisoner transfer treaty between a nation with a civil law system and a nation with a common law system. Despite the differences resulting from the historical development of these two systems, we believe there is a sufficient commonality of observance of constitutional principles between the two systems to warrant ratification of the treaty with Mexico.

The Canadian legal system also differs in many respects from ours, but there is a greater similarity between these two systems than between the Mexican and United States systems, and there is, therefore, sufficient concordance of our respective criminal justice systems to recommend the ratification of the Canadian Treaty also.

The treaties do not impinge on the sovereignty of any of the contracting parties. The transfer of an offender may occur only with the consent of both the transferring and the receiving countries. The organic structure of the government of each party is respected. The states and provinces of the parties may consent to offenders against their laws being transferred, but they are not obligated to do so. The sentence imposed remains in effect in the sentencing jurisdiction. It is not converted into a sentence of the Receiving State. The right to pardon, grant amnesty or ameliorate the sentence is reserved to the country which issued the sentence. The courts of the Receiving State are not given any authority to pass on the validity of the sentence. This function is reserved exclusively to the country in which the sentence was issued.

We believe the treaties and the proposed implementing legislation will im-

prove the administration of criminal justice, while safeguarding and insuring that the humanitarian purpose of these treaties will not be subverted. A transfer of an offender may be accomplished only if he consents with full knowledge of the consequences of the transfer. Recognizing the potentially coercive situation in which offenders find themselves, every effort has been made in the proposed implementing legislation to guarantee that the consent required by the treaties will in fact be voluntarily and understandingly given. Therefore, it can truly be said that the treaties and legislation will provide a positive benefit to the offender—namely, the voluntarily serving in the country of which he is a citizen and to which he has closer ties of a sentence imposed by a foreign country.

Other benefits also accrue to the offender who is transferred. First, the treaties and the proposed legislation provide that the sentence, for the execution of which the offender is transferred, shall operate as a bar to further prosecutions in the Receiving State to the same extent as if the sentence had been issued by a court of the particular jurisdiction seeking to prosecute. This provision, in effect, is the extension of the policy behind the double jeopardy clause of the Bill of Rights to a situation to which that clause otherwise would not be applicable.

Second, although recognizing the sentence of the foreign jurisdiction for this purpose, neither the treaties nor the proposed legislation converts the foreign sentence to a domestic sentence for the purpose of determining the adverse consequences of the sentence. Rather, it is provided that the transfer will not result in adverse consequences other than those which in any event would flow from the fact of the foreign conviction.

Third, the parole system of the Receiving State will govern eligibility, timing, and conditions of release from prison.

Because Canada will not be prepared to implement its treaty until late this year at the earliest, whereas Mexico is presently ready to implement its treaty, we are presently drawing up plans for the rapid implementation of the treaty with Mexico, and are working with the State Department and the Mexican Government to complete as much of the necessary preparatory work as possible in order to permit us to effect the transfers under the treaty with Mexico at the earliest possible date.

However, I must stress that the actual implementation of the treaty in the field is not a simple undertaking. The public must not be misled into assuming that the transfers can be accomplished within a few days of the effective date of the treaty.

First, the requisite implementing legislation must be enacted. Second, in order to assure the voluntariness of the decisions by Americans convicted by Mexican courts to serve their sentences in federal prisons and subject to the federal parole system, it is essential that United States government representatives meet with each such prisoner who is presently eligible for transfer or who will be eligible for transfer upon termination of any pending appeal or collateral attack on his or her Mexican conviction. At these meetings, the prisoners will be advised of the ramifications of their consent including, among other things: the criteria for the selection of the federal institutions at which they will serve their sentences; the earliest dates at which they are eligible for transfer or parole consideration in light of Parole Commission guidelines; to the extent permitted by the positiveness of their identification, the pendency of warrants for their arrest in the United States; their right to consult counsel prior to the transfer verification proceedings; and, the effect of their consent to transfer on their ability to attack their Mexican convictions.

It would appear that such meetings will have to take place at each of the Mexican correctional institutions at which there are presently roughly 500 Americans in Mexican prisons throughout all of Mexico who will be eligible, or who will become eligible upon the conclusion of their appeals, conducting such briefings will be a major, time-consuming task. While we will make every effort to allocate sufficient manpower to conduct such briefings as expeditiously as possible, we are not now in a position to determine the time lag between the effective date of the Mexican treaty and the initial transfers of prisoners under it.

In closing, let me again stress that the Department of Justice believes that these treaties represent an extremely worthwhile opportunity to ameliorate the hardships of imprisonment in a foreign country of violations of its criminal laws, and to enhance the rehabilitative potential of our respective criminal justice

systems. Therefore, the Department of Justice strongly urges that the Senate give its advice and consent to these treaties, and expedite their ratification at the earliest possible date.

The CHAIRMAN. Next we will hear from Mr. Peter B. Bensinger, Administrator, Drug Enforcement Administration, Department of Justice.

**STATEMENT OF HON. PETER B. BENSINGER, ADMINISTRATOR,  
DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF  
JUSTICE**

Mr. BENSINGER. Thank you very much, Mr. Chairman. I support this treaty without reservation. I do so, Mr. Chairman, having been the head of a large State prison system for the State of Illinois and recognizing that in our own country we have, to my knowledge, at least three dozen interstate compacts which address the problem of the gradual reentry into society of an individual who may be arrested and incarcerated in one jurisdiction, but who is eventually going to lead his or her life in another jurisdiction and geographic territory. I think there will be salutary implications of such a treaty and I support it.

**DEA EFFORTS TO REDUCE DRUG SUPPLY**

The Drug Enforcement Administration is the principal Federal agency which enforces the Controlled Substances Acts in the United States. We work with foreign governments and police agencies to limit the supply of narcotics and dangerous drugs into the United States.

In foreign countries we work in each and every case under the direction of the U.S. Ambassador, and we work to provide training and exchange of intelligence, and to provide a reduction in the total overall supply of drugs either grown in that country or transited through that country.

**DIFFERENCE BETWEEN CANADA AND MEXICO AS DRUG LOCATION**

Mr. Chairman, the comments earlier that were directed to Congressman Gilman raised a question that perhaps I could address as to the differences between Canada, as a drug location, and Mexico.

I would ask that my statement, if it can, be inserted in the record in its entirety, and would address myself just to that issue. Then I would be happy to answer any questions.

The CHAIRMAN. Without objection, it will be incorporated in its entirety in the record.

Mr. BENSINGER. Thank you, Mr. Chairman. Mexico represents a major source country for our country's number one drug priority, heroin. It is also a source country for marijuana and a transiting country for cocaine and some dangerous drugs.

Canada, on the other hand, represents a transit country and, to a certain extent, a user country. The narcotics, the heroin that principally goes through Canada into the United States does come through

the Northwest part of our country, that is, the greater Seattle area. Vancouver is a major city in Canada, and that is generally supplied from Southeast Asia, as opposed to Mexico. So, the heroin description would be different.

The Royal Canadian Mounted Police and the Department of Justice's Drug Enforcement Administration have worked closely, as have the Mexican Federal Judicial Police in the exchange of information and targeting of major organizations which deal in the principal drugs.

#### CLASSIFICATION OF PREPONDERANCE OF U.S. PRISONERS IN MEXICO

I would finally add, Mr. Chairman, that the preponderance of the U.S. prisoners now housed in Mexico for drug violations would not be classified as major distribution elements of criminal organization dealing with heroin, and would not be what we would call major violators, except in rare instances.

Mr. Chairman, I would be happy to respond, as I know my colleagues would, to any further comments or questions which you might have.

Thank you, Mr. Chairman.

[Mr. Bensinger's prepared statement follows:]

#### PREPARED STATEMENT OF PETER B. BENSINGER, ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION, U.S. DEPARTMENT OF JUSTICE

It is a pleasure to appear before this Committee to discuss DEA's activities in Mexico and Canada and our view of the respective prisoner exchange Treaties. In Canada, which is not a source country for opiates, there is a long tradition of drug enforcement cooperation with the U.S. drug enforcement agencies. DEA's activities there relate only to liaison, intelligence exchange and the development of conspiracy investigations.

In Mexico, where there is also very close cooperation, all of our activities are bilateral and conducted in concert with Mexican authorities under the overall direction of the U.S. Embassy. DEA is involved in four aspects of the Mexican drug control effort: investigations, training, intelligence development and opium eradication.

In the investigative area, we conduct inquiries with the Mexican Federal Judicial Police (MFJP) and provide information and expertise that frequently result in drug arrests and seizures.

The data that DEA provides the MFJP relate to how, when, where and whom to target: for instance, the techniques of undercover negotiations, the location of violators and drug caches and the location of fugitives.

On the sixth of this month, for instance, in a cooperative Mexican/DEA investigation in Calexico, Mexican authorities, acting on information provided by DEA, arrested three individuals. Seized were 15 kilograms of cocaine and 28 kilograms of heroin—one of the largest heroin seizures ever made in Mexico. On June 9, as part of the same investigation, another 27 kilograms of heroin were seized at San Luis. The investigation started when three subjects negotiated for a three-ounce sale to a DEA undercover agent on this side of the border.

In formal training programs from fiscal year 1969 through 1976, DEA has trained 490 Mexican police officers: 18 in the United States and 462 in Mexico. Represented in this group are all levels of rank and expertise of Mexican officials involved in drug law enforcement.

In the area of intelligence, we provided drug-related strategic and operational intelligence to the Mexican authorities and assist them in drug data collection, collation and dissemination. We also cooperate with the MFJP in the development of official sources of drug information, such as airport managers and port captains. Through our investigative/intelligence programs, we have referred to the MFJP information concerning major networks currently distributing drugs of Mexican origin.

DEA participation in the Mexican opium eradication program has been given the code name, "Operation TRIZO." In this effort we have provided pilots, observers, aircraft and intelligence on a seasonal basis to enable our Mexican counterparts to locate, monitor and verify the destruction of the illicit poppy fields. To destroy these opium fields, since December 1975 (when the TRIZO program commenced), the Mexican government has been using an ecologically-safe herbicide.

For Phase I of TRIZO 1977—which began in January 1977 and concluded last April—DEA provided a total of six fixed-wing aircraft, a limited communication system and a personnel force of 28 on temporary duty in Mexico. Phase II is scheduled to commence on August 15 and run through November 1977, the second of the year's growing season.

We also assist the Mexican effort in the areas of management assessment and technological and legal support. Let me reemphasize that the eradication program is a Mexican Government program run by the Mexican Attorney General's Office and the MFJP. The helicopters that do the spraying are flown by Mexican pilots. We have helped to train the Mexican personnel involved and to locate the fields.

During the year-round 1976 campaign, 28,230 poppy fields (covering approximately 6,710 hectares) were destroyed. Had this crop been harvested, it could have produced approximately 78 metric tons of heroin (six per cent pure). During Phase I of the 1977 program (from January 1 through April 10, 1977), 25,470 poppy fields (approximately 6,222 hectares) were destroyed. This crop ultimately could have resulted in the distribution of 73 metric tons of six per cent pure heroin throughout the United States.

In all countries in which DEA has programs, we have imposed many limitations upon our activities. In Mexico, these limitations encompass three of the aforementioned areas of DEA involvement—investigations, intelligence development and opium eradication. For instance, in the area of investigations, we do not:

- Conduct unilateral investigations;
- Engage or participate in arrests;
- Target individuals by nationality, including U.S. citizens;
- Pay bounties for the work done by the MFJP;
- Have any police powers;
- Undertake any unusual activity which has not been approved by DEA Headquarters, the U.S. Mission and the host government; or
- Take any action that is contrary to Mexican and/or U.S. laws.

In the area of intelligence, we do not:

- Install telephone intercepts;
- Seek any intelligence not related to drugs; or
- Perform unilateral intelligence probes without the consent and knowledge of the MFJP.

Our activities in support of the Mexican eradication program are likewise limited; that is, we do only what I mentioned previously and we do not:

- Spray poppy fields;
- Participate in arrests of farmers, make laboratory seizures, etc.;
- Purchase or recommend types of herbicides to be used; or
- Participate in roadblocks or any direct police arrest action.

In no foreign country do we engage or participate in any direct police arrest action; neither do we involve ourselves in any foreign police actions where any physical use of force can reasonably be anticipated.

Restrictions such as the above, which have been traditional DEA policy, were formalized in the revised version of the DEA Foreign Guidelines which was implemented on July 1, 1976. The Guidelines were promulgated as a result of the enactment of the Mansfield Amendment to the "International Security Assistance and Arms Export Act of 1976," Public Law 74-329.

We have also developed specific guidelines, concerning DEA activities in the more than 40 countries where we have personnel assigned, as well as those countries in which we only conduct liaison.

DEA's Foreign Guidelines outline other prohibitions, including one that specifies that DEA personnel will not encourage or participate in cruel or inhuman treatment of any detained or arrested individual. Since 1975, there have been only seven instances where allegations of improper actions by DEA per-

sonnel in Mexico have been made; in all but one case, upon investigation the allegations proved unfounded. In the one founded case, the agents in question received a 9-day suspension for unnecessary use of force.

The foregoing—what we do and what we do not do (in Mexico or any other country)—is an important issue. However, the bottom line of the most impressive-sounding program is, is it effective? In other words, have our joint investigations, training programs, technical assistance and intelligence activities in Mexico from where most of the heroin on our streets originates been successful? Success I believe can be at least approximately assessed by an accounting of the availability on our streets of the most serious drug of abuse: heroin.

Last year for the first time we established measurable criteria to assess this availability and, therefore indirectly, the success of DEA in curbing drug abuse in this country. The criteria established are: 1) the national average heroin purity at the retail level; and 2) the number of heroin-related deaths.

National average heroin purity is measured by DEA's laboratory analyses of seizures made by DEA and the domestic police departments that utilize DEA laboratory services.

Heroin fatalities are reported to the Federal Government by medical examiners in the 21 Standard Metropolitan Statistical Areas that account for 80 per cent of the nation's addicts. This reporting network—the Drug Abuse Warning Network (DAWN)—has been in operation since July 1973. DAWN also monitors drug abuse nationally through reports of drug abuse "episodes" received from hospital emergency rooms, inpatient treatment facilities and drug crisis centers.

While the heroin purity and fatality statistics I believe provide a fairly accurate assessment of our progress, what really matters is the heroin supply on the street, in our cities, suburbs and rural area. An article in the *Detroit Sunday News*, June 5, reports that officials in that city have noted a reduced quality and availability of heroin. They report that prices are higher and the purity of the heroin—which is cut with everything from strychnine to lactose—is as low as one per cent.

Supply is affected by many factors—in addition to DEA's efforts—including: The workings of the criminal justice system; that is, will the violator be immobilized and go to jail?

- Prosecutorial resources;
- Ball;
- The priority the U.S. Government affords to international drug control;
- The attitudes, resolve and capabilities of foreign governments;
- The penetrability of U.S. borders;
- The appropriateness of U.S. drug control policy and strategy concerning assessment of responsibility, the allocation of resources and the coordination of effort; and
- State and local law enforcement efforts.

For the first three months of 1976, heroin availability, as indicated by the average purity of retail heroin nationwide, was at the highest level since 1971. During this period, retail heroin purity averaged 6.6 per cent (it averaged 9.6 per cent in 1970 and 7.5 per cent in 1971).

In the course of a year, heroin purity dropped from 6.6 per cent to 5.8 per cent—only .8 per cent away from the recent record low of 5.2 per cent during the 1973 heroin shortage following the Turkish poppy ban. Preliminary indications are that this trend has continued in the last two months.

Heroin fatalities, decline occurred in heroin-related injuries. During the first quarter of last year, 4,336 heroin-related injuries were reported; the figure for the first quarter of this year was 3,021—a 30 per cent drop.

Naturally, we are concerned that these trends be maintained, and our concern must be reflected in our position on the issue being discussed today: the prisoner exchange treaties with Mexico and Canada and the proposed legislation.

Maintaining this level of effectiveness requires that we continue to concentrate our efforts on major traffickers, a practice which we urge other governments to continue as well. According to our recent reports, many of the Americans imprisoned in Mexico on drug charges are charged for minor offenses of drug possession.

From our point of view, an exchange of prisoners would not limit DEA's ability to cooperate in any of the programs I have described. Moreover, as a former

correctional director familiar with the workings of interstate and intercountry compacts, I believe that the provisions of the Treaty will work. The Attorney General of Mexico has assured me that the Treaty with Mexico will receive the full support of the Mexican Government.

The CHAIRMAN. Thank you very much.

I have a few questions to pose to you. It may very well be that they have been generally covered, but in order that we may boil down the testimony, I would like to present the questions to you. If you are not ready to answer them at this time, perhaps you could give us a written answer which we would place in the record.

#### INFLUENCING MEXICAN REWRITE OF DRUG LAWS AND PAROLE TERMS

Was the Drug Enforcement Administration or any other agency involved to any extent in influencing the Mexican Government to rewrite its drug laws and parole terms?

[Scattered audience applause.]

The CHAIRMAN. We will get along much better if the audience will refrain from any demonstrations.

Please go ahead, sir.

Mr. BENSINGER. Mr. Chairman, I have been Administrator of the Drug Enforcement Administration since January 23, 1976. At no time since I have been Administrator have we, I personally, or our agency in Mexico made representation to the Mexican Government for a change or revisions in its laws.

It is my information that its predecessors, neither formally nor informally sought revisions to parole provisions regarding drug offenses.

#### CHARACTER OF U.S. DRUG PRISONERS

The CHAIRMAN. Of the U.S. citizens currently held in Mexican prisons, how many were what you might call big time traffickers, and how many were convicted for small amounts of drugs or for acting as one-time couriers?

Mr. BENSINGER. I would characterize the vast percentage of the U.S. drug prisoners, the overwhelming majority, as couriers or users as compared to major traffickers. There are exceptions and there are several major violators, but they are in the vast minority.

In addition, Mr. Chairman, I would like to point out that the Drug Enforcement Administration is not responsible for the arrest of U.S. citizens. The Mexican Government enforces its own laws. We do not dictate to it the provisions of those laws nor alert them in each and every case as to who may be bringing in contraband into their country or in fact into the United States. There are instances, particularly involving heroin, and to some extent cocaine, where we will have information, from Colombia, for example, that a courier is passing through Mexico, and that information will be passed on to the Mexican Federal Judicial Police.

The CHAIRMAN. If any other member of the panel has something to say about these questions, please feel free to do so. Let us know your interest in them.

Ms. WATSON. Mr. Chairman, I agree with Mr. Bensingger, that the great majority of the American prisoners in Mexican jails are those



who are less sophisticated. They are users, and perhaps one-time mules. But the majority of the prisoners are not the "big time" traffickers. The traffickers seem to be a little bit more clever.

#### U.S. CITIZENS INVOLVED IN DRUG TRADE IN MEXICO

The CHAIRMAN. How many Americans are currently involved in the drug trade in Mexico? Will the onset of Americans and their imprisonment continue to be as large a problem as it is at the present time? Will ratification of the treaty seriously damage DEA's efforts to curb the drug traffic?

Mr. BENSINGER. Mr. Chairman, it would be difficult to speculate as to how many Americans are involved in the drug traffic in Mexico. There is considerable involvement of American citizens, for example, in the marijuana traffic, as users and couriers, rather than in heroin. There are a good number of Hispanic-American organizations dealing on an international basis from Mexico and other points into the United States. I would not characterize the individuals in Mexican prisons, or U.S. citizens, to represent that jurisdiction, although there are a certain number. There are also certain other foreign nationals in Mexican prisons. I can think of Alberto Cecelia Falcone, whose organization was responsible for bringing in on a regular basis kilo quantities of cocaine and over 150 tons of marijuana. His organization now has in Swiss bank accounts, which have been frozen, over \$25 million, and his resources are incredible and awesome. That organization has not utilized, though, the Americans and the prisoners who are incarcerated in the Mexican jails in any large fashion whatsoever.

#### EFFECT OF TREATY ON DEA EFFECTIVENESS

With respect to the treaty, I don't believe, Chairman Sparkman, that this will impede DEA and the Mexican Federal Judicial Police in being able to reduce the effectiveness of curbing the narcotic traffic, and in particular the heroin traffic.

I have met several times with Oscar Flores Sanchez, the Mexican attorney general. He is committed to have a serious effort against drug traffickers. They are not selecting or preselecting Americans, believe me. Many of the people who are incarcerated in Mexico and in the United States have Hispanic-American backgrounds. But there are 5,000 witnesses, Mr. Chairman, that are not represented at this hearing. They are the Americans who died last year from overdose drug deaths. The efforts of the Mexican Government to spray poppy fields that are cultivated by their own citizens has, in fact, had a considerable impact on reducing the heroin overdose deaths in the United States, and that reduction was 21 percent in the last 6 months, as compared to the first 6 months, and we have seen a reduction in the purity level as well.

Those activities are the principal activities of this Mexican Government and the assistance and interest which we have is directed toward heroin.

I have talked with Oscar Flores Sanchez, and he does not believe this treaty would impede his effectiveness nor our effectiveness; and in fact he has urged me to urge you to ratify it.

#### EFFECT OF PUBLICITY ABOUT MEXICAN TREATMENT OF U.S. PRISONERS

The CHAIRMAN. Has the publicity about Mexican treatment of U.S. prisoners decreased the number of Americans dealing in drugs in Mexico?

Mr. BENSINGER. I am not sure that I could say that it has.

The major criminal organizations will recruit couriers and sacrifice individuals who are recruited, and sacrifice large quantities of drugs—heroin and cocaine—to protect themselves. Many of the criminal organizations and their leadership can best be reached through conspiracy cases built on the testimony of others at a lower level, who are at the distributorship or dealership level. Some of those individuals will not be reluctant to continue to try to get heroin and other drugs from Mexico because of the conditions of prisoners in that country. I think it will have an effect and has had an effect on users, both in Mexico and in Colombia. In fact, the Colombian Government put out a film which gives advance notice warning to tourists coming into that country that their drug laws and their prison programs are vastly different than those of the United States. They are trying, in a sense, to forewarn tourists and traffickers.

I think the criminal organizations are interested in making profits and will do so in any jurisdiction in which they can obtain drugs illegally and bring them into the United States.

#### DEA INVOLVEMENT IN MEXICAN ARRESTS OF U.S. CITIZENS

The CHAIRMAN. To what extent do agents of the DEA become involved in the arrest of U.S. citizens in Mexico? Specifically, have DEA agents ever been present at the arrest, interrogation, or confession of any American citizen?

Mr. BENSINGER. Chairman Sparkman, DEA agents are prohibited from participation in arrest action in foreign countries. Our own foreign guidelines issued last year, following the Senate's enactment of the Mansfield amendment, were distributed in July of 1976. The U.S. Embassy in Mexico and the Deputy Chief of Mission, Herbert Thompson, has informed me personally, as well as our Domestic Regional Director, that there has not been a complaint since July of 1973 of a direct arrest action by a DEA agent.

I can tell you, sir, that since I have been Administrator, there has not been a DEA agent that has been accused of wrongdoing at the time of an arrest in Mexico. There have been guidelines issued; there have been investigations of allegations.

I would be happy to return to this committee to respond to any other comments or questions which it may have on this matter.

The guidelines with respect to interrogation are clear, and I would like to make them a matter of record for this committee, if I might do that, sir.

The CHAIRMAN. Is that the complete list of guidelines that you referred to [indicating]?

Mr. BENSINGER. Yes, sir.

The CHAIRMAN. Very well. We would be very glad to have those. They will be printed in the record of this hearing.

OPTIONAL FORM NO. 10  
MAY 1962 EDITION  
GSA FPMR (41 CFR) 101-11.6  
UNITED STATES GOVERNMENT

**Memorandum**

TO : Deputy Administrator,  
Assistant Administrators, Directors, DATE: July 30, 1976  
Office Heads, Division Chiefs, Regional  
Directors, Criminal Investigators,  
FROM : Narcotics Intelligence Officers, and Pilots  
Peter [Signature]  
ADMINISTRATOR  
SUBJECT: DEA Functions and Guidelines Relating to Operation  
in Foreign Countries

On June 4, 1976, the first publication of DEA Functions and Guidelines Relating to Operation in Foreign Countries was distributed to all DEA employees in foreign countries and to those employees in the United States who are reasonably expected to perform a function in a foreign country.

On June 30, 1976, the Internal Security Assistance and Arms Export Control Act of 1976 was signed into law (Pub.L. 94-329). This Act specifies that:

"Notwithstanding any other provision of law, no officer or employee of the United States may engage or participate in any direct police arrest action in any foreign country with respect to narcotics control efforts."

Consequently, it has been necessary to modify the guidelines issued June 4, 1976.

Attached is a copy of the revised guidelines dated July 30, 1976. Inasmuch as most DEA special agents and narcotics intelligence officers may be assigned to perform a function in a foreign country, we have made wide distribution of the revised guidelines.

All headquarters and field personnel in series 1811 and 132 are required to acknowledge receipt of these guidelines to their regional directors and division chiefs on the attached form.

Attachments

TO: Regional Director, Region No. \_\_\_\_\_

This is to acknowledge receipt of copy of  
DEA Functions and Guidelines Relating to  
Operation in Foreign Countries, dated  
July 30, 1976.

Date \_\_\_\_\_  
(Employee's Signature)

\_\_\_\_\_  
(Name Printed)

DRUG ENFORCEMENT ADMINISTRATION

U.S. DEPARTMENT OF JUSTICE

FUNCTIONS AND GUIDELINES RELATING  
TO OPERATION IN FOREIGN COUNTRIES

JULY 30, 1976

(REVISED)

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DRUG ENFORCEMENT ADMINISTRATION FUNCTIONS  
AND GUIDELINES RELATING TO OPERATIONS  
IN FOREIGN COUNTRIES

INTRODUCTION

Since many of the serious drugs of abuse in the United States originate in foreign countries, DEA places a high priority on encouraging the greatest commitment from other governments to concentrate on all aspects of illicit production and distribution of drugs. The primary mission of the Drug Enforcement Administration in foreign countries is to assist host government officials in preventing supplies of illicit drugs from entering the illicit traffic affecting the United States.

To accomplish this mission, with the permission of the respective host governments, DEA representatives are assigned to many countries. The purpose of this paper is to present guidelines and functions for DEA representatives stationed abroad.

I. GUIDELINES FOR DEA FOREIGN ACTIVITIES

A. Directions from United States Ambassadors.

1. General direction. DEA representatives,\* like all other official U.S. personnel abroad (excepting certain military commands), are under the full authority of the Ambassador. The Ambassador is expected to assist and give policy guidance to DEA activities in such a way as to assure that the DEA mission is realized to the maximum extent possible. He may also seek to minimize publicity involving the presence of DEA representatives in the host country. The Narcotics Control Program is a high priority issue, and the U.S. Government supports as vigorous an approach as possible. However, each country presents its own unique situation in this respect.

2. Daily operations controlled by DEA. Day-by-day DEA operations in foreign countries are under the chain of command of DEA. Regional Directors and Country Attaches will operate within the policies established by the Ambassador in that country. Whenever a planned DEA activity could jeopardize host country relations with the United States, the decision of the Ambassador shall be determinative; however, any major difference with the Ambassador will be referred to DEA headquarters.

B. Agreements with Host Governments.

1. Historical perspective. The vast majority of host countries and their police agencies have set forth informal guidelines and parameters for the activities of DEA. Other host countries have formal agreements with DEA. Ambassadors at posts where DEA representatives serve have been requested to establish guidelines for DEA personnel under their authority. DEA representatives are required to inform themselves of all these guidelines.

2. No unilateral enforcement operations. DEA representatives will not engage or participate in unilateral enforcement operations or activities outside the scope

\* See definitions, pages 10 and 11

of the agreement developed between the United States and the host government without the approval of a responsible host government official.

3. Determination of authority of host country officials. On or before September 1, 1976, all DEA Regional Directors in foreign countries shall establish and maintain on a continuous basis a list of the officials in host countries who are empowered by their governments to permit DEA representatives to function in the host countries under these guidelines.

C. DEA Personnel Assignments in Foreign Countries. DEA foreign activities differ from and are more sensitive than those normally carried out in the United States. Consequently, DEA will select and assign personnel who have demonstrated the ability, particular skills, and adaptability necessary for such assignments. Since Regional Directors and country attaches are members of the Mission staff, and must work closely with the Ambassador, DEA will provide biographical data for those persons in a timely manner to the State Department, prior to the assignment of SAICs and above. These assignments will be made following advice and the concurrence of the Ambassador.

D. DEA Conduct in Foreign Countries.

1. Low profile. DEA involvement in foreign countries will be limited to a low profile role consistent with maximum effectiveness. This role encompasses matters ranging from assuring minimum adequate investigational staffing to the exercise of great care should the occasion arise to release to the news media information relating to DEA activities and conditions relating to drugs in the country. On the latter point, any dealings by DEA personnel with news media representatives should be with the guidance of the Ambassador and the advice of the Mission's Public Affairs Officer.

2. No violations of U.S. or foreign laws. No DEA representative shall carry out any activity prohibited by United States laws, regulations or executive orders. Additionally, no DEA representative shall engage in any activities prohibited by the host government.

3. DEA exclusive employer. DEA representatives shall not be employed by any other agency, organization or service, and shall not be directed by any other agency, organization or service to undertake any action which would be in conflict with the orders, instructions and policies of DEA.

\* See definitions, page 10.

E. Focus on Major Trafficking. To achieve maximum impact, DEA representatives will focus their enforcement and intelligence efforts on those high-level traffickers believed to be involved in the international narcotic traffic affecting the United States. DEA personnel should avoid becoming involved in investigations strictly of a local nature, except in response to special requests from host country officials for on-the-job training or other investigative expertise warranting an exception to the rule.

F. DEA Representatives Precluded from Engaging in Direct Police Arrest Actions. On June 30, 1976, Public Law 92-329 was enacted. The bill "International Security Assistance and Arms Export Act of 1976", provides in section 504 as follows:

(c) (1) Notwithstanding any other provision of law, no officer or employee of the United States may engage or participate in any direct police arrest action in any foreign country with respect to narcotics control efforts:

1. Application in strict sense. The Congress intends that this provision be applied in its strict sense and that DEA representatives shall not accompany host country police officials in any situation where the DEA representative will be present and directly involved in any foreign police arrest action.

2. No presence if violence is foreseen. Further the Congress intends to preclude DEA representatives from intentionally becoming involved in any activity in a foreign country in which violence is reasonably foreseeable, irrespective of whether an arrest is to be made.

3. No incidental involvement, except when life is in jeopardy. Additionally, when a DEA representative is accompanying a host country official in a situation that is planned in such a way as to avoid any involvement of DEA representatives in a direct police arrest action, e.g., under the provisions of paragraph 6 of this section, and unexpected violent action is directed against the host country official, DEA representatives shall avoid becoming involved in any direct police arrest action unless the life of a DEA representative or a cooperating host country official may be in jeopardy.

\* See definitions, page 11

4. General rule when in doubt. The general rule established by DEA in complying with P.L. 92-329 is that if a DEA representative should have any doubt as to the meaning of the law or the guidance in this section, the doubt will be resolved in favor of his not being present at the site of host country police arrest actions.

5. Examples of prohibited involvement. Examples of instances in which DEA representatives are prohibited from engaging or participating in host country arrest actions are as follows:

(a) DEA representatives will not accompany host country police officers to an arrest site for the purpose of actually assisting host country police officers in making an arrest, i.e., to exert physical force or contact against a person to be arrested.

(b) DEA representatives will not accompany host country police officers to act as an auxiliary force.

(c) DEA representatives will not accompany host country police officers under any circumstances where it is reasonable to foresee that violence will ensue, or where it can be anticipated that the host country police officer might reasonably expect to request assistance from the accompanying DEA representative in order to effect the arrest.

6. Permissible passive presence. Consistent with the provisions of P.L. 92-329 and the above guidance, DEA representatives may be passively present in the vicinity of an arrest by foreign officers under the circumstances listed below. Thus, where host country police operations which are likely to result in arrests are planned in such a manner as to avoid any involvement of DEA representatives in a direct police arrest action, a DEA representative may be passively present in the vicinity of the arrest action under these following special circumstances:

(a) When it is necessary for a DEA representative to be in the vicinity solely to identify the person to be arrested, and where other means of identification are not practical;

(b) When host country officials authorize the presence of a DEA representative to be in the vicinity to operate technical or scientific equipment;

(c) When host country officials authorize the presence of a DEA representative to be in the vicinity to assist in training local officers in investigative techniques;

(d) When a DEA representative is authorized by host country police officers to operate in an undercover capacity to acquire intelligence or evidence regarding the international traffic in illicit drugs affecting the United States;

(e) When DEA agents are working with host country officials in connection with illicit crop destruction and the host country officials receive a request for assistance from other host country authorities, DEA representatives may transport them to the vicinity of illicit crop eradication and/or arrest-site;

(f) When host country officials authorize the presence of DEA representatives in the vicinity strictly for post-arrest activities such as interviewing persons under section I, G of these guidelines; to collect intelligence under section II, E of these guidelines; and to provide technical knowledge peculiar to the illicit drug operation, which knowledge is not possessed by the host country officials.

G. Presence of DEA Representatives During Interview of Prisoner Following Arrest. When information important to U.S. illicit drug control efforts may be obtained, a DEA representative may seek to interview a prisoner following an arrest by host country officials. For the same reason, it may be beneficial for a DEA representative simply to be present during questioning of the prisoner by host country officials. If so, DEA representatives will be guided by the following conditions:

\* See definitions, page 11

1. Under no circumstances will any DEA representative tolerate cruel or inhuman treatment of any arrested person. If such action should occur, the DEA representatives should protest and withdraw in a definitive fashion and promptly report the incident to the Regional Director and United States Ambassador.

2. Prior to interviewing a prisoner, DEA representatives will in each case obtain permission from host country officials through host country channels and, in the case where a prisoner refuses to be interviewed, the DEA representative will not insist on access to the prisoner.

3. In all cases where a prisoner is an American citizen, DEA representatives will inform the prisoner of their true identity.

4. The DEA representative shall inform the American citizen that he has a right to confer with a U.S. consular officer.

5. If there is a likelihood that a statement made by the American citizen being interviewed will be utilized against the person in a prosecution in the United States, the DEA representative will inform the person of his Constitutional Rights against self-incrimination in accordance with Section 664.12E of the DEA Agents Manual. Inasmuch as there is no U.S. jurisdiction for appointed counsel or funds available to provide private counsel in a foreign country, the DEA representative will terminate the interview if the person subject to interview does not waive his right to counsel.

If a DEA representative learns of the arrest of an American citizen in a foreign country, the matter will be immediately reported to the appropriate consular officer.

#### B. Carrying of Firearms.

1. General rule. Authority for DEA representatives to possess and carry firearms in a foreign country can be granted only by officials of the host government. Firearms regulations for aliens vary from country to country, and DEA Regional Directors are responsible for determining what is permitted for DEA representatives in the countries within their areas of responsibility. Decisions in this matter shall be within the guidelines approved by the Regional Director and Ambassador.

\* See definition, page 11

2. Extra precautions. DEA representatives authorized to carry a firearm in a foreign country must use extra precautions so as not to display or use the firearm except as authorized. As is the rule in the United States, firearms are to be used in foreign countries strictly as defensive weapons.

3. DEA precluded from hazardous activities when unarmed and protection is inadequate. Whenever an operation in a foreign country appears to warrant carrying a firearm for personal safety, even though violence is not immediately foreseeable, and authority cannot be obtained to carry a firearm, DEA representatives will assess the security to be provided by the host country officials and, if deemed inadequate, will decline to engage in the activity.

## II. DEA'S SPECIFIC FUNCTIONS

A. Role of Relationships with Foreign Enforcement Agencies. The Drug Enforcement Administration was designated by Reorganization Plan No. 2 of 1973 as the Federal agency to deal with foreign drug law enforcement officials under the policy guidance of the Cabinet Committee on International Narcotics Control and the U.S. Ambassador assigned to each country. In carrying out this key role, DEA activities should give priority to producing disruptive effects on the foreign supply of drugs which severely affect the United States.

B. Development of Foreign Control Capability. DEA representatives in foreign countries will give constant attention to encouraging and assisting the host government to establish self-sustaining, highly skilled drug law enforcement units and to influencing it to devote the required human and material resources to drug law enforcement efforts. This institution-building activity is particularly important where the cultivation, production, transiting or trafficking of illicit drugs are destined for the United States.

C. Advisers to United States Ambassadors. DEA Regional Directors and Country Attaches are the principal advisers to the Ambassador and his staff with regard to drug law enforcement and control matters. In such capacity, they work closely with the Embassy's Narcotics Control Coordinating Committee. DEA representatives are responsible for analyzing the drug law enforcement and control capabilities in foreign countries to which they are assigned and assisting the Mission in drawing up the Narcotics Control Action Program (NCAP) for submission to the Regional Interagency Narcotics



Control Committee of CCINC in Washington for consideration of appropriate funding and action. These programs generally include the following types of action:

1. **Training Foreign Officials.** DEA representatives will help the Embassy Narcotics Coordinating Committee identify training needs for foreign officers, assist in providing on-the-job training or more formalized training programs, either in-country or in the United States under CCINC funding. DEA representatives will help evaluate the host government personnel responsible for drug law enforcement and identify those persons who would benefit from executive briefing programs or training in-country or in the United States. DEA in-country representatives will make special efforts to keep in touch with trainees, to continue their development and attempt to assist them in their continued and increased contribution to the common effort. For long-range effectiveness the provision of proper training to drug control officials is a high priority function. While the immediate goal of training is to transfer certain knowledge and skills, the ultimate goal should be to develop host government institutions for narcotics training. Accordingly, all training decisions should be made with this in mind.
2. **Technical Equipment and Assistance.** DEA representatives will help the Embassy Narcotics Coordinating Committee to identify needs of foreign drug control agencies for technical equipment and assistance necessary for the development of the needed foreign drug control capability. To the extent requested and permitted by the host government and in conformity with the country action program planning, DEA representatives will assist in training foreign officers in the use of technical equipment.
3. **Illicit Crop Eradication.** In certain countries, DEA representatives may be asked to help monitor crop eradication and should advise and assist in income replacement programs being carried out. In this regard, DEA representatives will avoid any direct involvement in foreign police actions where violence can be reasonably anticipated. They are responsible to help assess the specific needs of the program and report to the Regional Director and Ambassador on problems, progress and results. They should submit recommendations in the same way for improving the effectiveness of the programs.

D. **Cooperative Enforcement Activities.** Consistent with section I, F, and where such activities are within local guidelines established by the Regional Director, the Ambassador and host country officials, DEA representatives may assist host country authorities in investigating international trafficking affecting the United States. To that end, DEA representatives should:

1. **Develop sources of information.** Assist in developing sources of information and the interviewing of witnesses not only among drug traffickers, but among other persons who are knowledgeable about illicit cultivation, production and transportation.
2. **Utilize undercover operations.** Provide direct assistance by operating in an undercover capacity to acquire intelligence and to further investigations regarding the international traffic in illicit drugs affecting the United States.
3. **Conduct surveillance.** Assist in conducting surveillance of the activities of drug traffickers to develop evidence against major traffickers of illicit drugs affecting the United States. Basic to this objective is that DEA representatives avoid involvement in relatively minor local cases with which host government law enforcement officials are expected to be concerned. The procedures established by the Attorney General governing the conduct of DEA representatives in foreign countries relating to electronic surveillance will be followed.
4. **Provide information to host countries.** Provide to the extent possible appropriate information obtained by DEA which will enable host government officials to carry out investigations of or operations against international illicit drug traffickers.
5. **Pursue investigative leads.** Participate with host country officials in pursuing investigative leads, for example, checking hotel records, public and private organization records, airport and shipping records, and passport records.
6. **Obtain drug samples.** Receive and transmit to the United States samples of illicit drugs seized by host country officials for use in conducting laboratory studies in regard to the origin of drugs found in the United States traffic.

7. Coordinate extraditions, expulsions and rogatories. Coordinate as appropriate matters regarding extraditions, expulsions, joint prosecutorial efforts, and requests for judicial assistance.

E. Collection of Intelligence. All DEA representatives in foreign countries are assigned a high priority to collect, report and exchange drug intelligence. Intelligence collection is not only seizure and arrest oriented -- it should include strategic information such as host country capabilities relative to suppression of illicit cultivation and trafficking. Intelligence should also be collected relative to routes and methods of trafficking, the vulnerabilities of traffickers, and any other information that will clarify the overall drug situation and the ability of host government officials to deal with it. DEA representatives will also give a high priority to analyzing drug intelligence as fully as possible in order to integrate it with enforcement activities in foreign countries and the United States.

1. Couriers, routes of traffic and methods. Special emphasis should be placed on identifying couriers who smuggle illicit drugs into the United States, discovering new methods of smuggling, developing profiles of such offenders and furnishing all other information that may be beneficial to the United States Customs Service in its primary interdiction responsibilities.

2. Proper intelligence indoctrination. Regional Directors, Country Attaches and Special Agents-in-Charge are specifically charged with the responsibility for assuring that the narcotic intelligence responsibility is understood by all DEA Special Agents and that their efforts in this connection are properly coordinated.

III. DEFINITIONS

A. As used in these guidelines:

1. The term "Ambassador" means the chief of the U.S. mission in a foreign country having jurisdiction over the activities of DEA representatives.

2. The term "authorized by host country officials" means the officials on the list established and maintained by the DEA Regional Director, who are empowered by their governments to authorize DEA representatives to function within the host country under agreements with DEA and under these guidelines.

3. The term "auxiliary force" means helping or aiding, or giving support or supplementary power in a police arrest action, or on an illicit crop destruction.

4. "Cruel and inhuman treatment" means conduct endangering life, limb, or health or creating reasonable apprehension of such danger.

5. "DEA representative" means an employee of the Drug Enforcement Administration, who is appointed in the civil service of the executive branch of the United States Government.

6. "Foreign country" means foreign territories, continental or insular, outside the jurisdiction of the United States.

7. "Illicit drugs" means all controlled substances listed in the schedules of the Controlled Substances Act.

8. "Narcotics" means all controlled substances listed in the schedules of the Controlled Substances Act.

9. "Passive presence" means inaction in an observer capacity at a location sufficiently removed from the arrest site so as to avoid direct involvement in the arrest.

10. "Vicinity" means near or close at hand as distinguished from being squarely on the spot where the arrest is being made. It does not depend on distance or topography, but denotes that the DEA representatives must be sufficiently removed from the arrest site so as to not be a part of the arrest activities.

11. "Violence" means the exertion of any physical force against persons who are in defiance of the constituted authorities of the host country, or by drug law violators who oppose the constituted authorities.

The CHAIRMAN. The next witness is Patrick Balvin of Corona, Calif. We are very glad to hear from you, sir.

**STATEMENT OF PATRICK BALVIN, CORONA, CALIF.**

Mr. BALVIN. Mr. Chairman and Senators, my name is Pat Balvin. I am employed as a claims representative for the Department of HEW's Social Security Administration. I am here representing my brother.

I wish that the entire testimony which I have submitted be entered into the record. However, in order to save time, I will summarize my statements in some sections and delete other sections. I will also talk fast.

**STORY OF VINCENT PAUL BALVIN**

In Mexico City Airport, on June 18, 1974, Mexican customs officials found a minute amount of cocaine buried in the bottom of one of two sleeping bags that were in the possession of my brother, Vincent Paul Balvin. The following is the story of what led up to—and the tragic aftermath—of this find. Our family has saved most of the correspondence and documents, if any verification of what I relate is requested by the committee.

No case of an American prisoner in Mexico is the same as any other case. If there is a norm, Vince's norm is a long way from resembling that norm. There is a generality that can be seen from Mexican justice, and that is that there is none. In Mexico, they still use a system of Napoleonic Law: one is guilty until proven innocent, and to prove that is impossible when there is forced confessions and suppression of evidence. It is an example of the confusion experienced when working with Mexican law that the actual amount of cocaine found was not determined for months. First we heard 900 grams, then we heard 900 milligrams, then 2 grams; and then when we read the expediente, the court record, we found out the actual amount found was 90 milligrams—less than one-tenth of a gram.

**VINCE'S ARREST AND INCARCERATION**

Vince was on a surfing trip. He flew into Mexico City from Colombia to meet an old friend who was traveling in a jeep with five surfboards. When Vince left Colombia, where he was staying briefly with our brother Mark, Mark asked Vince to take his sleeping bag with him so that he could take it to El Salvador, where they had both left belongings to facilitate their trips. The small amount of cocaine was found in that sleeping bag. Vince should not be made to pay for the mistakes of his brother.

Behind the scenes, greater forces were coming together and provided another cause of our predicament. In that fiscal year, 1974-75, the U.S. Government poured \$8 million into Operation Cooperation. It was U.S. involvement that led Mexico to build up the number of drug arrests.

Humberto E. Moreno, of the U.S. Drug Enforcement Administration, who coordinated efforts between the DEA and Mexico, stated: "We motivated it."

Vince's arrest and incarceration in Mexico was used to help the Mexicans justify the amount of U.S. money they spent to eradicate drugs. It is ironic that during Operation Cooperation, Mexican heroin increased from 15 percent to 60 percent of the U.S. supply. It seems that U.S. money was misspent and did not fulfill its purpose, but instead led to the arrest of small-time dealers and, in Vince's case, innocent victims.

Vince's original description of his arrest and interrogation are submitted in this testimony. During this time we did not know where he was. Six days after his disappearance, we were notified by a lawyer of his whereabouts in Lecumberri Penitentiary.

**EXCESSIVE WORK AND BEATINGS**

My father, James Balvin, long ago had suffered four nervous breakdowns and is now psychologically disabled because of his 14-month stay at Stalag 17b during World War II. I saw this type of pressure getting to Vince when I visited him during the first month of his stay in Lecumberri. So, I wrote the Ambassador on July 8, 1974. In part that letter reads:

"We have hired an attorney and have been following legal processes in trying to free him. However, we are thinking in participating in illegal extortion in order to improve Vincent's condition."

"We have heard that what I am about to relate happens all the time but deals are made, and no one talks about them. Giving no weight to hearsay or conjecture, though; we know that in dormitorio F the guards and trustees are attempting to extort \$1,000 American currency from Vincent for him to be excused from working 20 hours a day, 7 days a week, as is presently the case."

"For a more complete description of the type of work, a signed letter from Vincent will be forthcoming. His letter will also contain a description of the beatings he undergoes, which incidentally, are growing more severe."

"For the past 18 days he has sustained the work detail and the beatings without making a deal. However, his physical and psychological well-being is at stake. I suggested to him to offer them \$200 American currency. I take full responsibility for this action if it becomes necessary. I feel it will become necessary if other action is not taken this week to put an end to the excessive work and the beatings."

The U.S. Embassy in Mexico City has Vince's report in his own words of his mistreatment at the military-run prison. A copy is also submitted in this testimony.

The Embassy also should have records of our search for Vince, the date of his arrest, and the date I notified them of his arrest and incarceration. The U.N. Convention on Consular Relations, held at Vienna in 1963, specifies that a foreign national, if arrested, has a right to notify his Embassy within 3 days. Vince was never given that right. He was also beaten at the airport jail and at Lecumberri. At Lecumberri, in dormitorio F, the guards and trustees attempted extortion.

"After my letter of July 8, 1974, and after speaking personally to Mr. Peterson, the Consul General, and with the colonel of the prison, Vince was transferred to dormitorio O, where the majority of the Americans were and where the major, the head trustee, usually demanded \$2,500 from Americans. Mexican prisoners give about \$200 for their so-called 'fahina.'"

Vince has refused all demands for extortion, except once for 80 cents, and has suffered the consequences.

A hunger strike by Americans at Lecumberri was being conducted at the time of the transfer from dorm F to dorm O. The major of dorm O had approved the strike on condition that the prisoners only mention the role of the United States in their arrests and not talk about mistreatment in prison or in interrogation. The major called the strike off when word leaked to the press about extortion, beatings, and torture.

They found out that some would talk, including Vince, so Vince was not pressed for the \$2,500 when he refused to give it and told them that he simply did not have it. He was one of the only American prisoners who was allowed to sleep in a bed and did not have to undergo excessive work detail in dorm O within a month without paying. Of course, essentials such as blankets and food were supplied by visitors. His fiance still visits him every day, now at Santa Marta penitentiary, and provides necessities.

#### PROFITS OF MEXICAN ATTORNEYS

Mexican attorneys also profited from desperate American prisoners and their families. A lawyer acquaintance of Vince's fiance believes in Vince and is now handling the case as a favor, with no fee. This is quite commendable because drug cases are avoided unless a huge fee is involved. Our family, though, has had its share of rip-offs from unethical lawyers. We only lost a couple of thousand dollars, as compared to tens of thousands of dollars others have lost because we tried to be very careful and quite skeptical. We knew that he had to have an attorney in order for him to receive a sentence within a year. But we decided not to pay exorbitant fees and to keep a check on what they were doing.

Vince's conviction and 6-year sentence was upheld on appeal. Under Mexican law, a drug addict may possess small amounts of drugs. Vince could have been declared an addict by three doctors for a sizeable fee for lying, and quite possibly released. But he opted to tell the truth, that the evidence found was not his. A letter from our brother Mark was analyzed, notarized, translated, and legalized by the Mexican Consulate in Los Angeles. In it he expressed his culpability. Mark was arrested in August of 1974 and died in a prison in Bogotá.

#### MAIN POINT OF TESTIMONY

The main point of this testimony is that Vince should not have languished in a Mexican jail for 3 years. I feel it is the responsibility of the U.S. Government to see that he is released as soon as possible. Even with the reduction in his sentence for working these 3 years, he still has over a year left to serve. His family and friends cannot see any sense to this story. He was a good citizen who did not break the law. He voted. He was even a registrar of voters. He served in this country's military and fought in one of its police actions, Vietnam.

We ask first that you bring this treaty to exchange prisoners to a vote on the floor of the Senate as soon as possible. We hope you also

see to it that the implementing legislation is passed quickly, otherwise Vince will not even be affected by this treaty. If Vince is not able to petition for an exchange under the proposed treaty by December of this year, then he will not fall under the treaty's guidelines.

A situation analogous to this occurred about a month ago. About 70 prisoners were released who had been arrested with small amounts of drugs. The amount that Vince was arrested for was probably the smallest amount ever found. But the prisoners released were those who had not been to trial yet. Thus, Vince was not included.

We believe that the case of my brother deserves special consideration. Our family requests that this committee consider transmitting a joint letter to President Portillo of Mexico asking that he pardon Vince and send him home immediately. I wish to be notified of the outcome of this consideration.

I thank you for allowing me to tell his story and I wish to end with a note of thanks and appreciation to Vince's fiance, Theresa Briones. For 3 long years she has stayed by his side visiting him nearly every day, bringing him food and other necessities. She has kept his spirit up all this time. She is another one who can tell you how innocent Vince is. That's why she is there.

The CHAIRMAN. Thank you very much.

[Mr. Balvin's prepared statement and supporting documents follow:]

## PREPARED STATEMENT OF PATRICK L. BALVIN

3978 Moody  
Corona, Ca. 91720  
June 18, 1977

United States Senate  
Committee on Foreign Relations  
Washington, D.C. 20510

At Mexico City Airport, on June 18, 1974, Mexican customs officials found a minute amount of cocaine buried in the bottom of one of two sleeping bags that were in the possession of my brother, Vincent Paul Balvin. The following is the story of what led up to, and the tragic aftermath of this find. Our family has saved most of the correspondence, if any verification of what I relate is requested by the Committee.

No case of an American prisoner in Mexico is the same as any other case. If there is a nora, Vince's case is a long way from resembling that nora. There is a generality that can be seen from Mexican justice, and that is, that there isn't any. In Mexico they still use a system of Napoleonic law: One is guilty until proven innocent.

It is an example of the confusion experienced when working with Mexican law that the actual amount of cocaine found was not determined for months. First we heard 900 gr., then 900 mg., then 2 gr., and then when we read the expedients (court record) we found out the actual amount found was 90 mg.--less than one-tenth of a gram.

Vince's penchant for surfing put him in this dreadful wrong-place-wrong-time position. Vince had surfed for over ten years and was never away from the beach for long, except for a tour of duty with the U.S. Army, which included Viet Nam. In the winter of 1974, he realized a desire to experience the type of waves he had experienced in Hawaii. (He had attended Chaminade College in Hawaii, in 1967.) In 1974, he had worked two years and saved enough money to surf in Central America. La Libertad, El Salvador, featured in Surfing Magazine and recommended for its big, uncrowded waves, was his first stop. Then, on his way to surf in Ecuador, he stopped at Bogota, Colombia, to visit our brother, Mark. Vince had already stayed with Mark at a family residence in El Salvador.

But in Columbia, our brother Mark was dabbling into cocaine and Vince wanted to get away. It was at this time that he was offered a trip in a jeep, with five surfboards for different types of waves, by a friend with whom he had surfed in Hawaii. His friend was to meet him in Mexico City. This friend paid for Vince's flight to

Mexico City and was to drive him back to El Salvador and eventually to Ecuador where they were to meet Vince's fiancee who was going straight from Colombia to Ecuador.

Vince's friend, Michael Whitsell, had surfed with Vince in Hawaii. He told me Vince had saved his life at Sunset Beach. My wife and I had planned to attend U.N.A.M., Mexico's National University, in Mexico City. We were going with another student, in his car, and Mike Whitsell decided to go with us so that four people could share the driving of two cars. Picking up Vince in Mexico City meant that he did not have to drive the rest of the way to El Salvador alone.

When Vince left Columbia, Mark asked Vince to take his sleeping bag with him to El Salvador where they had both left belongings to facilitate their trips. The small amount of cocaine was found in that sleeping bag. Vince should not be made to pay for the mistakes of his brother.

Behind the scenes greater forces were coming together and provided another cause of our predicament. In that fiscal year, 1974/1975, the U. S. Government poured \$ million dollars into "Operation Cooperation". According to the Los Angeles Times, December 9, 1974, "The vast majority of Mexican federal and customs agents had been trained by the U.S. . . ."

One major plan was to halt drug traffic in Mexico City on commercial flights from South America. Most flights from South America to the United States stopped at Mexico City Airport. The reason for making arrests in Mexico was expressed by Humberto E. Moreno of the U.S. Drug Enforcement Administration. He coordinated efforts between the D.E.A. and Mexico. He stated, Mexico is ". . . much better than our courts on convictions and penalties." He added, "The Mexicans are giving defendants six years in cases that we are losing in American courts." Vince's is one of those cases. Actually in the United States, charges probably would not have even been pressed.

It was United States involvement that led Mexico to build up the number of arrests. In Mr. Moreno's words, "We motivated it." Vince's arrest and incarceration in Mexico was used to help the Mexicans justify the amount of U.S. money they spent to eradicate drugs. It is ironic that during "Operation Cooperation" Mexican heroin increased from 1% to 60% of the U.S. supply. It seems that U.S. money was mispent and did not fulfill its purpose, but instead led to the arrest of small-time dealers and in Vince's case, innocent victims.

Vince's original description of his arrest and interrogation are submitted in this testimony. During this time we did not know where he was.

Six (6) days after his disappearance we were notified by a lawyer of his whereabouts. All this time the U.S. Embassy said they could not locate him. Kathy Hullen, a Vice Consul, said that the Embassy even had tried at the airport jail, where authorities had lied to them. After Vince was transferred to Carcel Preventiva de Ciudad de Mexico, otherwise known as Lecumberri, he told a visiting lawyer to contact me. We are now working with our fourth lawyer.

My father, James Balvin, long ago had suffered four nervous breakdowns and is now psychologically disabled because of his fourteen month stay at Stalag 17b during WW II. My father, after working during the day, would do much of the work on the famed tunnel at night because of his small size. I saw this type of pressure getting to Vince when I visited him during the first month of his stay in Lecumberri, so I wrote the Ambassador on July 8, 1974. This letter is submitted in this testimony. In part it reads:

"We have hired an attorney and have been following legal processes in trying to free him. However, we are thinking of participating in illegal extortion in order to improve Vincent's condition. We have heard that what I am about to relate happens all the time; but deals are made, and no one talks about them. Giving no weight to hearsay or conjecture though, we know that in dormitorio F the guards and trustees are attempting to extort \$1,000 American currency from Vincent for him to be excused from working twenty (20) hours a day, seven (7) days a week as is presently the case. He sleeps less than four (4) hours a day and works the rest of the time except when visitors are present.

For a more complete description of the type of work, a signed letter from Vincent will be forthcoming. His letter will also contain a description of the beatings he undergoes, which incidentally, are growing more severe. He will also try to name as many of the transgressors as possible.

For the past 18 days he has sustained the work detail and the beatings without asking a deal. However, his physical and psychological well-being at stake, I suggested to him to offer them \$200 Am. Cy. I take full responsibility for this action if it becomes necessary. I feel it will be more necessary if other action is not taken this week to put an end to the excessive work and the beatings. This means that normal channels of issuing complaints should be circumvented. (Another reason is that a normal complaint might result in even worse conditions, a chance we are not going to take.) For these reasons I respectfully request your most prompt intervention in these affairs."

The U.S. Embassy in Mexico City has Vince's report in his own words of his mistreatment at the military-run prison. A copy is also submitted in this testimony.

The Embassy also should have records of our search for Vince, the date of his arrest and the date I notified them of his arrest and incarceration. The U.N. Convention on Consular Relations, held at Vienna in 1963 specifies that a foreign national, if arrested, has the right to notify his Embassy within three (3) days. Vince was never given that right. He was also beaten at the airport jail and at Lecumberri. At Lecumberri, in dormitorio 'F' the guards and commandos (trustees under the domination of the major, the head trustee in each dormitorio) attempted extortion. After my letter of July 8, 1974, and after speaking personally to Mr. Peterson, the Consul-General, and the Colonel of the prison, Vince was transferred to dormitorio 'O' where the majority of the Americans were and where the major usually demands \$2500 from Americans. Mexican prisoners give about \$200 for their so-called "fahina". Vince has refused all demands for extortion (except once for \$0) and has suffered the consequences.

A hunger strike by Americans at Lecumberri was being conducted at the time of the transfer from dorm 'F' to dorm 'O'. The major of dorm 'O' had approved the strike on condition that the prisoners only mention the role of the U.S. in their arrests and not talk about mistreatment in prison or in interrogation. The major called the strike off when word leaked to the press about extortion, beatings, and torture.

They found out that some would talk, including Vince, so Vince was not pressed by the major of Dorm 'O' for the \$2500 when he refused to give it and told them that he simply did not have it. He was one of the only American prisoners who was allowed to sleep in a bed and did not have to undergo excessive work detail in dorm 'O' within a month without paying. Of course, essentials such as blankets and food were supplied by visitors. His fiance still visits him every day and provides necessities.

Vince is now at Santa Marta Penitentiary. Lecumberri was shut down in August, 1976. In May of 1976 it was rumored the General and Colonel of Lecumberri had been removed from their positions and had themselves been jailed. I have heard that a U.S. Embassy investigation found bank accounts containing hundreds of thousands of dollars in their names. Apparently this money came from Americans imprisoned there.

Mexican attorneys also profited from desperate American prisoners and their families. A lawyer acquaintance of Vince's fiance believes in Vince, and is now handling the case as a favor (no fee). This is quite commendable because drug cases are avoided unless a huge fee is involved. Our family, though, has had its share of rip-offs from unethical lawyers. We only lost a couple thousand dollars

because we tried to be very careful and quite skeptical. The Mexican lawyer who notified us of Vince's arrest, and who escorted Mike and I into Lecumberri to see Vince for the first time after his arrest, proposed an initial fee of \$2,500. He said he would have Vince out in three months. We thanked him for getting us in to see Vince, but did not take him up on his offer. It causes me distress to look back on these events and ask myself what might have been. Would that attorney have been able to free Vince? I can empathize with the many families who have spent tens of thousands of dollars to Mexican lawyers to free a loved one but received no results. We knew he had to have an attorney for him to receive his sentence within a year, but we decided not to pay exorbitant fees.

Vince's conviction and six (6) year sentence was upheld on appeal. Under Mexican law a drug addict may possess small amounts of drugs. Vince could have been declared an addict by three doctors for a sizeable fee (for lying) and quite possibly released. But he opted to tell the truth: that the evidence found was not his. A letter from our brother Mark was analyzed, notarized, translated, and legalized by the Mexican Consulate in Los Angeles. In it he expressed his culpability. Mark was arrested in August of 1974 and died in a prison in Bogota.

The main point of this testimony is that Vince should not have languished in a Mexican jail for three years. I feel it is the responsibility of the United States government to see that he is released as soon as possible. Even with the reduction in his sentence for working these three years, he has over a year left to serve. His family and friends cannot see any sense to this story. He was a good citizen and did not break the law. He voted. He was even a registrar of voters. He served in this country's military and fought in one of its police actions, Viet Nam.

We ask first that you bring this treaty to exchange prisoners to a vote on the floor of the Senate as soon as possible. We hope you also see to it that the implementing legislation is passed quickly, otherwise Vince will not be affected by this treaty. If Vince is not able to petition for an exchange under the proposed treaty by December of this year, then he will not fall under the treaty's guidelines.

A situation analogous to this occurred about a month ago: about 70 prisoners were released who had been arrested with small amounts of drugs. The amount that Vince was arrested for was probably the smallest amount ever found. The prisoners released were those who had not been to trial yet. Thus, Vince was not included.

We believe that the case of my brother deserves special consideration. Our family requests that this committee consider transmitting a joint letter to President Luis Portillo of Mexico asking that he pardon Vince and send him home immediately. I wish to be notified of the outcome of this consideration.

I thank you for allowing me to tell his story and I wish to end with a note of thanks and appreciation to Vince's fiance, Theresa Briones. For three long years she has stayed by his side visiting him nearly every day, bringing him food and other necessities. She has kept his spirit up all this time. She is another one who can tell you how innocent Vince is. That's why she is there.

Sincerely,

*Patrick L. Balvin*

Patrick L. Balvin

went through. Declassified in Part - Sanitized Copy Approved for Release 2013/08/09 : CIA-RDP98-01394R000200040002-2  
 and acquitted with order from the Appeals Court to be immediately released along with my airplane. Yet my airplane still sits rotting in Mexico. Who is going to reimburse me for all the hell, the sufferings, the loss of my health, and my airplane and for 20 months of my life?

During my time in the Acapulco prison, I learned to speak fluent Spanish. This enabled me to translate for the other prisoners. I became their spokesman and was called upon to assist them when they needed my help. I treated men and women who had been horribly tortured and burned with cattle prods by the Mexican police and American and Interpol agents.

There are approximately 600 Americans in Mexican jails, and their future, their health and well-being are in your hands. So are the rights as American citizens. I beg you to bring them home while they are still alive and able to be helped.

The treaty before you now is a bunch of buffalo chips. When an American citizen does not have the right to contest his conviction in our courts without a chance of proving his innocence, our country is going to the dogs. Regardless of the guilt, 30 days of the torture and the hell put on these people by our own agents, working in conjunction with the Mexican system, is punishment enough. Is America going to allow a foreign government to take away an American citizen's basic rights? Let them come home now and let them come home free. Parole under a constitutional treaty.

Enclosures: Statement of Dr. Eduardo Varela Hamui dated July 14, 1976.

Robert Smith's letter to Legal Department, U.S. Embassy, Mexico City dated January 25, 1977.

[The enclosures are in the committee files.]

The CHAIRMAN. Thank you very much, Mr. Smith.

Mr. DiCaro, we will next hear from you.

[Mr. DiCaro's biography follows:]

**PAUL FRANCIS DICARO**

Date of birth: July 23, 1947.  
 Place of birth: Chicago, Ill.  
 Parents: Anna Wanda Mazur and Peter Phillip DiCaro, Wheeling, Ill., both retired.  
 Education: 12 years Chicago Parochial School system.  
 Work experience—full time employment—Chicago: Chicago Transit Authority, November 1965 to June 1970; Elmwood Park & Fire Dept., June 1970 to July 1971; E. Myers & Son Interstate Movers, January 1971 to November 1972.  
 Part time and second employment—Chicago: Elmwood Park Concrete, January 1966 to July 1971; Liggett & Meyers Tobacco Co., January 1971 to July 1971.  
 Work experience in California: Catholic Worker, Los Angeles, January 1973 to June 1973; Sovereign Management Co., Sonoma County, January 1974 to June 1975; Palace Hill Ranch, Santa Rosa, January 1977 to present; Friend--Independence Ranch, Healdsburg, July 1973 to present.  
 Interests: Baseball, history, out-of-doors.  
 Arrested in Mexico: January 22, 1976.  
 Date of freedom: February 28, 1976.

**STATEMENT OF PAUL DICARO, HEALDSBURG, CALIF.**

Mr. DiCaro. Senators and Mr. Chairman, I am here today to give testimony concerning my arrest in Mexico during the months of January and February 1976. As you gentlemen represent citizens of your individual States, I, too, have been chosen to represent the state of affairs of young Americans incarcerated in Mexican jails. I believe

by this meaningfully and in all candor.

Approximately 600 U.S. citizens are incarcerated in Mexican prisons as we sit here today. Beatings, tortures, and extortions have been documented in the American press over the last few years. These, it may be said, are common experiences for the men and women behind the walls of Santa Marta, Lacumberrri, Hermasillo, Mazatlan, and Jalisco State Prison, just to name a few.

I feel fortunate to be here today. I feel somewhat like a veteran of a foreign war, lucky enough to be able to tell his story.

**MR. DICARO'S ARREST AND INCARCERATION**

On January 22, 1976, I was arrested, along with Deborah Friedman, at an aduana stop, 1,000 miles south of the American border. In our possession was less than one-half ounce of marihuana—intended for personal use only.

Upon my arrest, I remember being handcuffed, hands behind my back, while a secret service agent beat on me until finally he had had enough of his own revenge and had shown his subordinates how to beat on a gringo, suspected of trafficking, without drawing too much blood.

I remember how I waited in a 12-foot-by-12-foot-by-12-foot solid concrete cell, a floor below the streets of Guadalajara, 30 degree temperatures, with only the tee shirt on my back, no food, no water, only a hole in the floor to bring me yet closer to the bowels of Guadalajara.

I had 7 nights and 6 days of this treatment, until finally the secret service had extracted a signed declaration, at gunpoint, in a language that was not my own, by a hand that no longer seemed to be my own.

This declaration stated that we had brought, transported, possessed, and tentatively intended to export less than one-half ounce of marihuana. Five years, three months, to twenty-one years, was the sentence we were tentatively looking at.

After signing the declaration, upon my transfer to La Penal del Estado de Jalisco, I remember being assigned to Departamento Procesos, where to share a cell with three other prisoners, the cost was only \$25. But unfortunately, my last remaining \$40 had disappeared somewhere within the secret service department of Jalisco, along with my car and credentials.

So, I found myself on the streets on my newly acquired all-male village, with only myself and a prayer. Survival in my first week at Jalisco State was difficult, to say the least, but one learns the rules of this game rapidly. Aid came partially in the form of fellow-Americans incarcerated in the penal, and from a strong sense of self-preservation. After two attempted muggings and two protection threats against my life, my prayers were temporarily answered in the form of \$100 that was sent to me from Chicago by a member of my family. With this, I was able to buy into Departamento H, which housed 8 of the 10 young Americans incarcerated in Jalisco State at that time.

I remember all too well the stories heard and the documents read during that time in prison, the stories of beatings, cattle proddings, water tortures, forced signings of fabricated declarations without



counsel and without interpreters, bribes, money extorted until his story became my story and became the same story all over again.

You sit and you wait and you pray that justice will prevail; but optimism turns quickly to pessimism as the hours turn to days, and with each passing day, you begin to realize that this is reality and not just a nightmare or a scene from the surreal.

Your ears begin to hear the word "gringo" until it reverberates off the walls of the penal as well as the innermost confines of your mind. It caroms from one side of your brain to the other, until the echoes intensify, even in your sleep. Gringo becomes omnipresent, until one finally realizes that this is a hopeless situation.

"Con dinero baile los perros." Loosely translated, this means "with money, even the dogs will dance." This, Senators, is the unwritten law of the land. Morally, ethically, and legally you protest, but there are no listening ears sympathetic to your cause.

Yes, I remember the morning that my freedom papers arrived, once again waiting, hoping, and praying that this is not just another scene from the surreal that has become part of one's everyday life. Suddenly I found myself being let out of the front gate of this inferno and I was hustled into a car by yet two more officials of the State, representing the Department of Immigration; and I was cast once again into the dungeon where I had begun this entire nightmare.

I felt nothing at this time but a hostility and anger, for I had my passport, my visa, and my freedom papers signed by three "jefes" of various police departments, and by the appellate court judge of the State of Jalisco, stating that all charges against me had been dismissed, no deportation necessary. Why, then, was I back here where it all began?

Another day and another \$800 was extorted, and we were finally free to flee Guadalajara and all of old Mexico.

#### SITUATION TODAY AT GUADALAJARA PRISON

Senators, I would like to bring you up-to-date on the situation as it stands today at the prison in Guadalajara in the prisoners' own words, if I may.

Mr. Roger Timothy Richards:

On Monday, April 25, 1977, a riot began at the Guadalajara Penal. For several days the Mexicans burned, looted, robbed, and even murdered. The prison was all but destroyed. Several Americans were threatened at knifepoint. Many large caliber automatic pistols were in evidence, being carried by various Mexican prisoners. The situation grew graver by the day, and on the third day of the rioting, Wednesday, April 27, 1977, the American citizens concerned had barricaded themselves in a cell with only boiling water and clubs for their protection. Next is a quote by Mr. Dirk Van Der Brink, who, as recently as a week ago today, June 9, was beaten so severely for his escape attempt that his mother is there today and cannot be with us for the simple fact that the man is mentally and physically incapable of doing things for himself. He is, to our knowledge, acting like a 5 year old. This is his quote: So there we stood, our department and conderados were the only ones left. All the others along with the tienda stores and shops had been looted; many deaths had occurred and we were next. At 10:30 that night, we were informed of our transfer, which we had requested previously. At this point, I would like to commend Mr. Gregory, Vice Counsel and the Counsel General. Because of their efforts and sleepless nights, we were removed from this life and death situation. This and other events to come showed me the power the State Department really has. For 2 years they have been telling me they don't have the power to help us.

Once again, I will quote Mr. Roger Timothy Richards: That evening, April 27, the Americans were transferred to a judicial holding jail in Guadalajara. Many were familiar with this jail as they had spent their first few days of interrogation there. During our stay in this jail, we once again witnessed the same brutality we had suffered being given to arrested Mexican citizens. Human rights violations in Mexico are so common place as to be considered standard operating procedures. Yet nothing is ever said from our government. It's simply appalling.

In the early hours of May 6, 1977, an escape involving nine Americans took place at the judicial jail. The Americans had been informed that there was an extremely good possibility that they would be transferred back to the main prison. After all the abuse that the Americans had already suffered, they were left with little choice but to risk their lives in an escape attempt.

The Americans that were recaptured on the morning of May 6, 1977, were beaten severely. Only after a U.S. State Department official forced his way into the jail and threatened the Mexican agents were the beatings stopped. His name, once again, was Gerald Gregory, and the Americans are all quite thankful for his aid. Escape is legal in Mexico yet it didn't stop them from beating us once again.

#### HUMAN RIGHTS HIGH ON ADMINISTRATION'S AGENDA

Mr. Chairman and Senators, our President, Mr. Jimmy Carter, has put human rights high on the agenda of his administration's international concerns. President Carter is a man who would dare and tempt the breakdown of a delicate Soviet détente because of human rights denied Soviet citizens, sending a warm letter of support to the foremost Russian dissident and advocate of human rights in Russia today, Andrei Sakharov.

More recently and in addition, Mrs. Carter met with two American churchmen in Recife, Brazil—Lawrence Rosebaugh, a Catholic priest, and Thomas Capuano, a Mennonite missionary—who had been arrested while distributing vegetables to the poor. They said they had been held incommunicado for 3 days, stripped naked, and beaten before being allowed to call the U.S. Consulate.

Clearly, gentlemen, human rights is on the agenda of the present administration, and so I must ask you why has the matter of U.S. citizens undergoing torture in Mexican jails been left to bake in the sun all these long months?

#### TREATY MUST BE PASSED

This treaty must be passed to reduce ill will between the two countries. Mexico has passed and ratified it. President Carter has endorsed its passage.

The treaty does not call for a release of these prisoners, but only that they be exchanged as prisoners. It is a sensible treaty to help alleviate this most stressful situation for both governments, relatives, and the young Americans involved.

The situation, as it stands today, in Guadalajara la Penal is still a very volatile one. Let us take affirmative action to protect the human rights of Americans in Mexico today.

#### INTRODUCTION OF GORDON DUNLOP AND DWIGHT WORREK

At this time, gentlemen, if time and this committee permit, and there are no objections, I would like to introduce two former prisoners

ance papers. The *Federal* thanked Debbie and looked at Paul again before going over to the group in uniforms on the road's shoulder. When he finally returned, the policeman spoke rapidly in Spanish with an occasional English word thrown in. The couple's papers were in order, but there was still some problem. The *Federal* wanted them to pull over to the side. He said he would have to detain them "for a moment." It was 9 A.M.

That "moment" is the subject of this account. By 11:30 A.M., DiCaro and Friedman would be found to be in possession of an envelope containing marijuana—13½ grams, to be exact. Had they been stopped with the same quantity of contraband in California, they would have been issued a citation and fined \$25. By 5 P.M., they would be charged with buying, possessing, trafficking, transporting and intending to export dangerous drugs, and they each would face a possible 57 years in prison. They would join some 600 other Americans in the Mexican prison system, the largest single group of this country's citizens imprisoned in any foreign nation. Most of the arrests have been on drug charges. However, a good number have been for minor violations, and it is the treatment of those arrested or imprisoned that is the focus of attention and concern. This account was drawn from interviews with Paul DiCaro and Deborah Friedman and with dozens of others, as well as from documents and records in the Mexican court system and offices of both American and Mexican immigration and diplomatic authorities.

Paul's and Debbie's nightmare began with a single marijuana seed that Paul says did not belong to them. Debbie had spent an hour the night before on her knees looking for seeds in the car's upholstery. He says the seed belonged to the Mexican Federal Judicial Police.

That Thursday the Magdalena *atunana* was being manned by eight *Federates* armed with automatic weapons and two plainclothes Federal agents. Three *Federates* began combing through the car's carpet, and two others stood beside Paul and Debbie, 50 feet from the car. Finally, Paul said, a young agent, wearing a bright polyester shirt, sunglasses and pointed boots, looked at Paul for a moment, walked to the car, bent over the doorway for 10 seconds and stood up with his hand over his head. "¡Mira," he shouted, "look at this." He was holding one marijuana seed.

The "discovery" gave the police license to search everything. Paul was handcuffed with his hands behind his back and told to get down on his knees. Paul DiCaro got up off his knees twice in the next two and a half hours. The first time was when the agent came over to ask, in Spanish:

"Do you have any contraband in your car you want to tell me about?"  
"No," Paul said, struggling to his feet. Paul DiCaro wanted out of the vise he felt tightening around him. He continued talking in stumbling Spanish. "No *inglés, amigo!*" the agent said. "It makes no difference," Paul said. "You can have it all, *Saber!*" The whole thing. The car. The sleeping bags. Everything." Paul motioned with his head at the VW surrounded with brown uniforms. "It's all yours. Just take us to the bus station and let us buy a ticket north."

The agent laughed and pulled a fat wad of bills out of his pants pocket. "¡Muchos pesos," he grinned before walking off. Paul took the response as a simple statement that the price was a lot more than an old VW and two sleeping bags. A *Federal* motioned Paul back to his knees with the barrel of his carbine.

DiCaro got on his feet a second time when the agent discovered the hidden weed. The agent was going through the mail in Debbie's bag again and noticed that two of the unopened letters were addressed to herself in her own handwriting—apparently an obvious giveaway. He shouted and ripped them open. The agent was on Paul in a flash; DiCaro had just enough time to stand up before the first blow landed.

"You lied to me, gringo mother—," the agent shouted. "You lied to me twice." Then he swung at Paul's head. DiCaro tried to back up but a *Federal* had moved behind him and there was suddenly nowhere to go. The blow slid off the American's ear.  
"Wait a second." As Paul recounts the story, he tried to talk through the pain ringing in his head, and as he did so, the agent swung a foot at the gringo's testicles, threw a series of body blows and then another kick. "You can have it all. You don't want to bust me—." The plainclothes agent hit Paul DiCaro in the middle of the face.  
Deborah Friedman ran toward them. "¡Mi esposo," she shouted. "¡Mi esposo. You can't beat him like that."

The agent laughed, took one more kick at DiCaro's crotch and had the *Federates* chain Paul to the Volkswagen until a car could be sent out from Guadalajara to the Chevrolet passed them going even faster and cut them off. The agents were furious and began chasing the Chevrolet. After weaving through traffic for three blocks, the Lincoln caught the Chevy and forced it to pull over. The two agents drew their .45's and got out of the car. One grabbed the Chevy's driver by the collar and the other put a pistol to the driver's head. He said he ought to learn some respect. The driver protested, pulling the arm of his jacket down and showing them the insignia on his khaki shirt. He was a *Federal*, too. The plainclothesmen said it didn't matter. He still ought to learn respect. They slapped him a few times before returning to Paul. The rest of the trip was uneventful.

At 4:45, the Lincoln Continental pulled into the garage under the *Palacio* Guadalajara. As soon as Debbie arrived in the VW, the agents took them both to the sixth floor, where they were told they would be interviewed as soon as Captain Salinas returned from dinner. That took three hours.

In the meantime, Paul and Debbie waited on a bench with no idea of what would happen. Their legal knowledge, restricted to high-school civics and TV for a week. Their requests for a lawyer were ignored until after they were interrogated twice. They would not be fed for four days, and then only because another prisoner shared some beans her mother brought on visiting day. The interrogation began at 3 P.M., and it set the tone for what was in store. DiCaro and Friedman were not shown any identification by their interrogator but they I have since queried now insist that there is no such captain.

The captain was sitting behind his desk when DiCaro was brought into his office. He motioned for Paul to sit. Two agents in plainclothes stood at parade rest behind Paul's chair. One held a two-foot-long hard leather baton. Throughout the interview, he twisted the leather in his hands, and it made a high squeaky sound behind the American's left ear. Salinas toyed with the edge of a folded newspaper on his desk. The captain wanted Paul to explain the marijuana.

Paul asked for a lawyer instead. The captain said it wasn't necessary. Paul asked for a phone call, and Salinas smiled.

"If you don't mind," Paul explained in a polite voice. "I'd like to have my lawyer read it before I sign."

As soon as the words were out of DiCaro's mouth, the room filled with tension. The agent on DiCaro's right bent over nervously and advised signing right away. The agent on his left increased the volume of his leather squeak. After an appropriate pause to let the enormity of the moment sink in, the captain proceeded to teach Paul DiCaro the rules of the game. He opened the newspaper in front of him and revealed a .45-caliber Colt automatic pistol. The captain placed his palm on the weapon and turned it until the barrel pointed straight at DiCaro. Paul stared. With a slow motion of his thumb, Salinas drew the Colt's hammer back. Paul DiCaro reached forward, took the pen off the desk, and signed his name. The captain smiled and said he had to sign both sides. Paul DiCaro smiled and signed his name a second time on the back.

DiCaro and Debbie Friedman were quickly learning the workings of Mexican law. It and the Yankee variety are built on different principles. The theory behind Mexican justice is the Napoleonic Code, a legacy from the reign of Emperor Maximilian in the 19th century. Under this form of legal organization, the accused are, in effect, assumed guilty until they prove their innocence. There is no effective Bill of Rights, and arrest is the equivalent of indictment. There are no juries, and trials are not usually open to either the general public or the defendants themselves. The judge decides largely on the basis of the case description written by his own secretary. Lawyers rise to be secretaries and secretaries eventually become judges. Legal business is conducted in very small rooms, and there are no verbatim transcripts of the proceedings.

The daily application of the Napoleonic Code is shot full of *mordida*, the home-grown expression signifying the practice of gaining influence or getting results through bribery. Whom your lawyer knows and what his friends will do for you are as important as the law itself. Those who have risen to high position expect their assistance to be rewarded in proportion to their stature. The result is *mordida*. Lawyers who know the judge or his secretary are in great demand and figure the price of bribes into their fees.

There are thousands of tiny passageways through the legal maze built by Napoleon and *mordida*. But these passageways were invisible to Paul and Debbie, whom Salinas ordered off to the city lockup. On the arch over his front door are inscribed the words *Procuraduria de Justicia*, literally, translated as "where Justice is procured." The sign means exactly what it implies.

It was 30 degrees in Guadalajara that night, and the jail was cold. There was no food. On the women's side, Debbie was able to borrow a blanket. On the men's side, Paul slept in a T-shirt on the floor. Both felt they were being buried alive and prayed that someone would rescue them.

On Friday night, Jan. 23, DiCaro and Friedman had a visitor. They had no idea how he knew they were there. His name was Hale, and he was a representative from the American Consulate. He patiently explained that his job was to help them get a lawyer, contact relatives in the United States and help arrange for them to receive money from home. Nothing more. He had no advice to give and no influence to wield on their behalf. Hale produced a list of Mexican lawyers and asked Paul to choose three of the unknown names. The consulate would contact their choices directly.

Blindly, they selected Gustavo Ramirez-Gomez. If they hadn't been such newcomers to Mexican justice they never would have hired him. Gustavo Ramirez' *mordida* was minuscule. He'd begun life as a *campesino*, a peasant; after the family farm was foreclosed, he moved to the city to work as an auto mechanic. Gustavo Ramirez learned the law at night school. He was full of resentment for the system and the way it worked. Ramirez was a very principled man who believed the law was the law and ought to be bigger than anyone who practiced it. He wanted \$1,000 to take the case, to be paid when they were released.

Paul and Debbie hired him because he looked straight in their faces and seemed to know his business. Small *mordida* or not, Gustavo Ramirez was a smart attorney. He was the first to tell DiCaro and Friedman about Articles 524 and 525 of the Federal Penal Code. These provisions established a legal classification of marijuana "addicts" who trafficked for use only. According to Articles 524 and 525, possession of up to .40 grams is considered an addict's habit and constitutes grounds for dismissal of criminal charges. Ramirez' habit and pleading addiction and would approach the judge with this argument immediately. He was sure the charges would be dropped without a hearing. Gustavo Ramirez assured them, optimistically, that the process would take no more than 72 hours.

Ramirez was wrong. Seventy-two hours later, Paul DiCaro and Deborah Friedman were still in the lockup. Ramirez apologized for their disappointment and explained that the judge was about to be promoted and didn't want to jeopardize his possibilities by seeming to be lenient on gringo marijuana addicts. They would have to wait for a formal hearing in two weeks. Paul and Debbie winced, tried to stifle their panic and buckled down for their wait.

One full week after the arrest, the two Americans were transported to the Jalisco State Penitentiary, outside Guadalajara. The prison was in an apron when they arrived and soldiers were patrolling the grounds. The army had reinforced the prison guards after a daring breakout the day before. Six political prisoners had killed two guards with pistols and gone over the front wall. A bus with sandbagged windows had been waiting for them and raked the front of the prison with automatic-weapon fire. Two more guards died on the front steps.

The Jalisco State Penitentiary didn't feel much like home, but Paul and Debbie recognized it was going to be just that for another two weeks at least. If Gustavo Ramirez was right, DiCaro and Friedman didn't want to think about how long they'd stay if Gustavo was wrong a second time. The car dropped Paul at the main entrance and Debbie around the corner at the women's gate.

The walls at Jalisco State Penitentiary are 20 feet tall and four-feet thick.

Built in 1926 to hold 1,500 prisoners, it now houses more than 3,500. Twelve blue-shirted guards walk the wall with carbines during the day and the shift doubles at night. The women's section is a small compound, 60 by 150 feet, housing 100 prisoners. With the addition of Deborah Friedman, 3 of them were American citizens. Jane Barstow (like all the names of American prisoners described here, except those of DiCaro and Friedman, this is a pseudonym) had been arrested for possessing 200 seeds in her car. She would end up staying four months and spending \$4,000 to get out. The other American citizen, Elaine Gavin Sanchez, was married to a Mexican who'd been arrested anyway. Elaine charged. Elaine knew nothing about it but was arrested anyway. At the Palace, she said she was strapped to a table while a *Federal* interrogated her with applications of an electric cattle prod to her breasts, vagina and rectum until she passed out. Like everyone else, the American women spent their days wandering around the central compound; at night, they were locked into one of four large sleeping rooms. Only half the women had beds and the rest slept on the floor. Debbie, Jane and Elaine slept on the floor. No one would sell them beds.

The Men's Prison takes up the rest of the penitentiary's 15 acres, except for the administrative offices and the separate political compound. The Men's Prison is more like a village with a population of 3,400. It has a soccer field, a rubber factory, basketball court and a dozen assorted shops and cafes. On the night they arrived, Paul DiCaro met the prisoner who owned Javier's Cafe, which is between the mess hall and the front office. Javier befriended the American and told him Jalisco State Penitentiary's first commandment: "Don dinero baila el perro"—with money, even the dogs will dance.

Javier knew what he was talking about. Every male prisoner at Jalisco State sleeps in one of six sections according to the state of his finances. A single cell in Department 6 costs a flat fee of \$25. Department 5 rises to \$45 and Department 3 on up to \$75. Department 4 is simply called "1" and, at \$100 is the last of the flat-fee cell blocks. Department 1 and 2 have 18-by-19 foot cells with 18-foot ceilings, arranged into suites, and rent by the month. Half of the prisoners can't afford a cell and sleep in the hallways in either Departments 5 or 6, where they pay an appropriate "street fee" to the inmate "street sergeant." The street sergeant takes a small piece of his rents and passes the rest on to the department captain, also an inmate. The six department captains take another small cut and deliver the remainder to what is called the prisoner jefe, or boss. Don Calistro, an old man doing 27 years for cattle rustling. This jefe keeps a herd of cattle inside the walls in a corral he himself rents from the warden.

Paul DiCaro began his stay in prison sleeping on the floor of Department 5. He explained to the sergeant that he had money on his way from the United States and would pay his fee when it arrived. After four days, the money hadn't come and DiCaro was transferred to the floor in No. 6, the second worst. (The worst is the Pit, to which a prisoner is sent as punishment. The Pit's ceiling is 4 1/2 feet high and its residents are chained to a floor that the guards slash with water-sounds of 400 very poor people creeping around in the dark looking for something to own. Paul DiCaro knew he was going to have to get some credit right away. To do that, he would have to talk to Don Calistro, the jefe.)

Don Calistro wasn't exactly suffering. He kept his cattle down by the soccer field and sold them to the prison butcher shop, which he also ran. The shop in turn supplied the mess hall, the cafes and the restaurants, one of which was Don Calistro's. He had a handsome suite where he lived with his wife and children. Paul DiCaro approached him there on Feb. 3, the 13th day after his arrest. He told the jefe that the money was sure to come. Don Calistro relented and DiCaro moved back to No. 5. Two days later, a money order arrived from Paul's brother in Chicago. Paul DiCaro paid his debts and bought a cell in H right away. It had showers and toilets. Six of the 10 other Americans in the Men's Prison lived there.

Like DiCaro and Friedman, the rest of the Americans in the Jalisco State Penitentiary were small fish. Throughout the 1970s, the United States has applied heavy pressure on Mexico to stop drug traffic. Good enforcement statistics have been rewarded with financial aid and gifts of equipment. The result has been thousands of arrests and an increase in traffic. The major dealers who move marijuana by the ton and 90 percent pure heroin in kilo lots are rarely arrested. They have the requisite cash for some very heavy *mordida*. The small fish are used to fill the statistical beach. Once he had met some of these other Americans, Paul realized just how lucky he and Debbie had been.

Mort Brainard was the only one besides Paul who didn't tell stories about having been tortured. Brainard and his wife had been busted at the Magdalena *aduana*. The *Federates* found 4½ kilos of marijuana in the car and, Mort said, stripped his wife naked on the spot. He was told she would be raped if he didn't sign a confession.

Bill Frye and Sam Russell had been arrested in the cab of a truck hauling 300 kilos of marijuana. The two Americans said they were chained to a tree at the scene of their arrest for two days and beaten at regular intervals. When they finally reached the Federal Palace, they were cattle-prodded around their genitals, beaten with clubs and immersed head first in a 50-gallon drum of water. Frye is sure his testicles were permanently damaged. Originally sentenced to two decades apiece, \$30,000 in bribes and legal fees had reduced their terms to eight years.

The Patterson brothers, James and Dennis, were awaiting sentencing for marijuana transportation. James had been worked over so viciously at the Palace that he almost died; his interrogator had beaten on his chest with a mallet and split open his rib cage. He was never hospitalized.

Robert Gordan's questioning was conducted by the usual team of four *Federates* in a room right off the Federal Palace parking lot and lasted 30 days. He reported being given the full treatment of water, cattle prods and clubs. Gordan was originally arrested when the police kicked down the door of his Guadalajara apartment. They were looking for cocaine. No cocaine was ever found, he said, but he was charged with selling it nevertheless. His confession was signed after the interrogating officer placed a loaded .45 against his head. Gordan had been in the prison for three years.

No one was worse off than Alan Cummings, who had been caught with LSD. This seemed especially infuriating to the *Federates*. Two months after they were through beating him, a tumor had begun growing on the back of his head. In prison more than two years, he had once been hospitalized for a week but only after he had passed out on the floor of his cell and seemed to be dying and the rest of the Americans pooled their cash and bribed the jailer to take Cummings to the infirmary. Alan was married to a Mexican woman who came to sleep with him every two weeks and she was pregnant. He seemed to be slowly dying in the Mexican prison, yet had never even been sentenced. The other three Americans there were not well known by the rest.

Frye and Russell had bought a three-room suite for \$500 when it had become clear that they were going to be in Jalisco State for some time. It was one of His nicest. During his first few days in that department, Paul spent a lot of time there, listening to their stories. They explained that there were no guarantees even *mordida* would work. One American arrested for possession of a marijuana cigarette had spent \$10,000 over the last year and was still inside Santa Marta prison. All the Americans told stories about their countrymen. One was of an American citizen named Hernandez from Tucson, who had been giving the Guadalajara jailers a hard time, and they were said to have administered a fearsome beating with their leather batons. Two days later, on Christmas Eve 1975, Hernandez was rumored to have died from his injuries. Paul DiCaro soaked up the talk, and felt worse with every story.

He and Friedman next saw each other on the regular day when the women were allowed to visit the men. The couple walked across the plaza outside H, and Debbie shuddered as her eyes fell on the Snail, a Mexican prisoner who had tried to commit suicide by jumping off the two-story administration building. He had failed and only broken a leg. Rather than set the bone, the prison authorities amputated it above the knee. The Snail couldn't afford crutches, and he made his way through the dust by pulling himself along with his arms.

The two Americans' hopes for the judge's hearing on Monday, Feb. 9, fell flat. The judge was unwilling to do anything more than reduce the charges. He said he needed more evidence about their addiction. Ramirez apologized for this further disappointment and delay but reassured his clients that it would be only a short while before they were freed. Paul and Debbie had their doubts.

So did Hannah Friedman and Tod Friend. Tod Friend is a member of DiCaro's and Friedman's Sonoma County co-op and shares their house. Hannah Friedman, Debbie's mother, is a housewife in Waukegan, Ill., with a long history of community service. At this point, they joined forces to try to rescue Paul and Debbie. Before they were done, \$10,000 had been spent, in bribes, lawyers' fees and expenses. Relative to the sums paid by other Americans, it was a bargain basement.

As soon as Debbie's mother had heard from the consulate, she had wired money and guaranteed the lawyers' fees. She and her husband, a suburban physician, had flown to Guadalajara and visited the couple on Sunday, Feb. 8. Hannah Friedman had been so sure of Paul and Debbie's imminent release that she left them two plane tickets home, told them to stay out of trouble, and flew back to Chicago that night. When she heard that her daughter was still behind bars, she felt Debbie and Paul were being swallowed in legal quicksand. She wasn't sure what to do.

Tod Friend had heard that it was possible to call the prison directly and talk to an inmate. He did and got Debbie on the phone. She said things did not look good. Friend called Hannah Friedman, told her he was going south and promised to call her from Guadalajara.

He rented a room in the Hotel San Jorge and began visiting Paul and Debbie every day he could. Most of the visits took place in a small room in the front of the prison, but on two days a week he was allowed to be locked in the men's side Ramirez but thought he was too naive and didn't have the necessary connections. Paul had a replacement in mind: Francisco Gutierrez Martin.

Gutierrez Martin was said to be a legend behind the walls of Jalisco State Penitentiary. Martin's extraordinary influence grew out of a long career teaching law at Guadalajara University. Three of his former pupils sat on the Jalisco State bench, and the old professor was said to be making great sums of money. Paul had seen one example of Martin's influence first-hand: Two 17-year-old Mexican kids had been brought to the prison after being arrested while harvesting an entire field of marijuana. They were cocky and bragged that Gutierrez Martin was their lawyer so there was no reason to worry. Two days later, the kids were released. Many people told Paul that he and Debbie would have been home by now if they had hired Gutierrez Martin. Paul was convinced and sent Debbie a message to call Martin, who said he could, indeed, get them out. It would cost \$12,000 cash in advance.

Twelve thousand dollars in cash is a lot of money, and it took five days for Tod to persuade Hannah to bring it down. When she finally arrived in Guadalajara, Mrs. Friedman planned to see Martin and make the arrangements as soon as she had registered at the Hotel Fenix. She would have if there hadn't been a sudden change in plans. At the last minute, Paul and Debbie decided to stick with Gustavo Ramirez. The change of heart grew out of a conversation with an imprisoned lawyer in Javier's Café while Tod was spending the day. The lawyer's name was Abraham and he agreed to look Paul and Debbie's papers over. Abraham concluded that it was a waste of money to hire Martin.

"Gustavo has done all the work," Abraham explained, "so why Martin?" The prison lawyer said the charge reduction was a first step to freedom and told them not to worry. Gustavo had all the right law on paper.

Tod reached Hannah with the news after she had contacted Martin and made an appointment. She called Martin back, canceled the appointment and deposited her \$12,000 certified draft, on a Waukegan, Ill. bank, in the hotel vault. The decision saved money but would eventually cause Paul and Debbie plenty of trouble. The smell of cash was around their case now and a lot of folks in Guadalajara have a nose for the smell of cash.

In the meantime, Gustavo Ramirez put the final touches on their case. Friends of Paul, Debbie and Hannah in the United States sent letters asserting that the couple were genuine marijuana addicts and had been treated for their addiction for years. The last piece of the puzzle was their official certification. To get this, Paul and Debbie were taken out of the prison to a clinic near the Federal Palace. They both passed the examination with flying colors.

The other Americans had clued Paul on the tests picked up traces of marijuana resin in the mouth and on the fingertips. Their mouths and hands would be rinsed with a solvent to collect samples. On the recommendation of his countrymen, Paul bought a little weed on the plaza and smoked half a joint on the morning of the tests. He hid the remainder in his pants and passed it to Debbie on their way to the clinic. She asked to relieve herself before she saw the doctor and smoked the rest of the weed in the bathroom. The next day, Dr. Natzahuacoyotl Ruiz Gaitao sent a memorandum to the Third Judge of the *Distrito en el Estado* certifying that the accused Paul Francis DiCaro and Deborah Lee Friedman "are habitual drug addicts in the use of marijuana requiring at least three to six cigarettes a day."

Mexico City—then, in a rented car, they drove to Monterrey, changed cars and continued on to Texas. They crossed the Mexican border at Nuevo Laredo shortly after midnight on Sunday, Feb. 29. On their way to the San Antonio airport, the party stopped at the Alamo. It was 5 A.M. Tod, Paul and Debbie kissed the monument's wall.

At the airport, Paul bought a Sunday copy of The San Antonio Light. The front section was dominated by a two-inch banner headline: "U.S. Suicide in Mazatlan Jail." The story, by Larry D. Hatfield, was about a young American jailed in the state of Sinaloa who had "committed suicide . . . rather than face torture for his part in an aborted escape attempt." Paul DiCaro and Deborah Friedman didn't need to read further. They closed the paper, boarded the plane to San Francisco, and counted themselves lucky to be north of the Rio Grande.

#### THE ARGUMENT OVER MEXICAN JUSTICE

After repeated inquiries made by The New York Times to various Mexican Government and U.S. State Department officials about the imprisonment case of Paul DiCaro and Deborah Friedman, the Mexican Government announced what was described as a change of policy: As of April 16, 1977, possession of small amounts of marijuana, cocaine and heroin for "normal use" would not be subject to criminal charges. However, those people already sentenced would have to continue serving their sentences, ranging from 5 to 14 years, and, in the case of marijuana, the announcement represented no change in the law. That provision already existed in Articles 524 and 525 of the Mexican Federal Penal Code, though, in fact, it was for possession of a small amount of marijuana that DiCaro and Friedman were put in prison. And reports of torture, mistreatment and corruption in Mexican prisons are still being heard from friends and relatives of the approximately 600 Americans in Mexican prisons.

The State Department's statistics on the question are contradictory. At the June 29, 1976, hearings of the House Subcommittee on International Political and Military Affairs, Leonard Walentynowicz, then administrator of the Bureau of Security and Consular Affairs, testified that the State Department had been able to substantiate 40 cases of physical abuse in the first six months of 1975 and 61 cases in the same period of 1976. Secretary of State Cyrus Vance, however, in his quarterly report to Congress about the status of Americans in Mexican prisons on March 4 of this year claimed that only 58 cases had been substantiated in the entire period of July 1975 to Jan. 1977.

At present, the American and Mexican Governments are attempting to reach a treaty agreement on prisoner exchange, but it has stalled in the U.S. Senate on questions of constitutionality.

The Jalisco justice authorities deny DiCaro's and Friedman's allegations, and representatives of the Mexican Government and U.S. State Department contend that conditions have changed dramatically in the past year. Those with friends or relatives still in prison say the situation remains the same. Following are various comments on the matter:

"When someone is arrested, there are always complaints and bitterness. We always follow law and ethics. We live in a glass house and everyone can judge us. We are entirely satisfied and proud of our behavior."

—Gabriel Romero Barragon, Chief of the Department of Population, Guadaluajara, Jalisco.

"This is a typical case of Americans in Mexican prisons. If anything, these two were exceptionally lucky relative to the other cases that have come to my attention."

—Representative Fortney Stark, Democrat, California.

"Usually Americans are handled in a way comparable to their handling here in the U.S. We do have a substantial number of abuses, but once the case comes to the attention of the consular officer, nothing untoward happens. There has been significant improvement over the last year and a half and a marked decrease in reports of physical abuse. We have had innumerable discussions with senior Mexican officials and had a good response. It takes a while for the word to filter down, but we are beginning to see hopeful results!"

—Robert Hennemeyer, deputy administrator, Bureau of Security and Consular Affairs, Department of State.

"The State Department ought to come out of its ivory tower and deal with reality. Torture continues during arrest and interrogation. Things haven't improved. Just this week, an American prisoner was in desperate need of an ap-

pendectomy and in great pain. They took her to the hospital in the back of a truck. That's not torture? It used to be that the consulate called collect but now they will return your calls at their own expense. That's the biggest change. In my experience, the consulate officials acted more like undercover C.I.A. and F.B.I. than consuls."

—Juanita Carter, mother of an American prisoner in Norte Prison, Mexico City. "Things have changed radically on this question. I'm almost in a position to say that you're kicking a dead horse. Since the change of Mexican administrations, we have had almost no complaints of mistreatment. I suspect there is still a certain degree of extortion, but that it, too, has decreased. We have developed a very good relationship with the Attorney General of the Republic on this question. We try to see that American prisoners have all the rights they are entitled to, but they are subject to Mexican law."

—Rolfe Daniels, Chief of Citizen Consular Services, American Embassy, Mexico City.

"The State Department is just a damn bunch of liars. Just last week, the new director of Santa Marta Prison allowed his cronies to extort all the Americans in his prison. They were told that they had to buy insurance to keep themselves from getting hurt. They talk all about human rights in Russia but they don't say a thing about Mexico. When the State Department says torture has stopped, they're just not telling the truth."

—Mildred Cortlow, mother of an American prisoner in Santa Marta Prison, Mexico City.

"Look very carefully into these people's story. People who violate laws always see the story from their point of view, which may not be the whole truth. Sometimes law enforcers go beyond their prescribed limitations, but that often is dependent on the attitude of those arrested. By order of the President, these abuses have come to a standstill. Abusers have been dismissed and abuses are now in the process of being totally eliminated. We have always tried to investigate all allegations. When we have, we have often found the story to be more than the complainers told. Often it is shown that these people are drunk, resisting arrest, under the influence of drugs or have drugs in their possession."

"I personally know of individuals as recently as April 1976 who were tortured upon arrest. The treatment inside the Federal District prisons did improve over the last year. Two new prisons have been built. The arrest procedure, however, remained brutal as far as I could tell. Although the Federal District had improved, the reports I heard from the provinces were still just as bad as ever. The judicial process hasn't changed at all. In that sense, the prison reform is a fraud. With the courts and arrest procedures unchanged, all it means is a nice place to stay after they screw you."

—Bob Goode, American prisoner in Oriente Prison, Mexico City, released March 22, 1977.

—D.H.

15 June 1977.

#### PREPARED STATEMENT OF GORDON DUNLOP, JR.

My name is Gordon August Dunlop, Jr. I was living in Seattle, Washington in the year 1972 working for my father as a wholesale furniture representative. On my vacation, I took a trip to South America and on my return to the United States, I was arrested in Mexico City, 21 April 1972. My final charge was importation of Cocaine into Mexico, 1/2 gram. I was sentenced to seven years and 5000 peso fine. I spent four years, ten months and twenty-one days in Mexico City in jail. I'm now living at 87 Nelson Mill Valley, California. Phone 383-9419.

GORDON AUGUST DUNLOP, JR.  
U.S. SENATE COMMITTEE ON FOREIGN RELATIONS, WASHINGTON, D.C.

On April 21, 1972 I was landing in Mexico City, coming from Columbia. I was on my way to Los Angeles, California. However, as I waited for my flight to Los Angeles, I was asked to go with a man who said he was with the police—international, that is. I was taken to a room where Robert Wayne Sexton was seated and on a table in front of him was a bag filled with a white powder. I was told to take off my clothes. I did this and then to my surprise, I was told that a

pair of pants in Wayne Sexton's bag were mine, and that they contained 1/2 gram of drug. I was then left in a blank space because the American who arrested me left. I asked to use the telephone to speak with my embassy in Mexico. Well, no one spoke English at all. I was taken to a jail in the main part of town, where I was told in broken English that the man speaking and a friend would be back at 12:00 to beat me up if I did tell the truth. When they came back, I said the same. I know nothing about a green pair of pants. I was then hit and then they left. For two days I sat in my cell waiting, and in those two days I had one coke that a visitor to someone else gave me. I was a complete wreck.

On the 3rd night I was taken out, it was dark out. I was taken to the D.A. office, where I was told to tell my story to a woman who said she understood English, but didn't speak much. Well I told her everything that happened and then I told her about my problems of not eating or being able to contact my family. Well she said something I couldn't understand at all. I was then taken upstairs where to my surprise were some newsmen. I was forced to hold a big bag of white powder, and I was forced to by a police officer gun in my back. I then tried to talk to one of the T.V. men to get help I was knocked to the ground and removed from the room. The next day I was taken to a new jail, Tucumbiari in Mexico City. No one here spoke English either. Well I was there 2 days and then it's been five days now altogether I get my first visit—the American Embassy and a member of my family. Well he told me there was nothing he could do for me himself this being the American counselors, but gave me a list of lawyers to call. Well this is now at the point of entering a Mexican Prison. My first hours were spent fighting with the prisoners themselves. There are no guards inside the prison nothing but prisoner who run the Dorms.

Well all the fighting ended when the Mayor came out offered me a big marijuana smoke and then tells me it will cost me \$2000.00 dollars for a cell. He spoke a bit of English I told him I needed to speak on the phone he told me \$100.00 dollars. This is just the very beginning of a nightmare that I feel no one can help to prevent this but our own Government. I spent a total of 4 years 10 months and 21 days in Mexican jails my charge importation of Cocaine. My time there would be impossible to write down, it would be a book of years of unbelievable things. There is no verbatim in Mexican jails there is no understanding of the English language or of foreigners at all. They believe every American is rich. I myself have several human rights valuations and know that there is nothing being done about this.

Therefore I feel the Mexican American Prisoners Exchange should take place. The people that are still doing time in Mexican jails are many and I know about hundred of them, along with my wife and baby who I met in jail who have years of pain and torture to live through. I watch people get there head cut off and the guards just looked on. Time's were you would see people undressed in a shower for days because they didn't have money. Then there the case where if you are a hard guy you get a new trial because there some drug in your cell. They have all the power and the way to make you pay. Now I ask you isn't 5 years of a prison life enough. I've been out for three months, there are no government against I can go to get help. I apply for a job and because of five years in a Mexican jail I can not get employed. Yet if I were a convict in the United States I could receive help and believe me after trying to stay alive for four years ten months 21 days you owe a lot of money to people and you need a chance to get started.

We could go to the doctor and the doctor couldn't speak English and Krebs just couldn't get anyone to help him. I not sure what cause his death but I know the lack of understanding between the Mexican officials and him was a big part. Please do vote for the exchange it is the only way to bring about justice to all the people who are involved.

Thank you  
GORDON AUGUST DUNLAP, JR.  
PREPARED STATEMENT OF DWIGHT WORKER

I was incarcerated in Lecumberri prison from December 8, 1973 to December 17, 1975, charged with importation of cocaine. I was guilty as charged, regardless of the fact that this was the first time I had ever attempted smuggling. I am not proud of myself for what I did, and I cannot make any moral justifications for my conduct, since greed was my only motivation.

But unlike me, most of the Americans in Mexican prisons are charged with

them are charged with trafficking heroin, they are all subject to the same infeasible laws.

Upon my arrest I was cattleprodded with electricity on my face and genitals until I signed my confession. After I had signed, the police laughingly told me my trial was over; I would now spend the next 7 to 15 years in "Hotel Lecumberri". For the next two years I never saw a judge, entered a courtroom, or entered a plea of guilt or innocence.

When I arrived at Lecumberri prison, I was told my price was \$5,000 to survive. When I told them I could not pay it, I was beaten by a prison gang and hospitalized two weeks. Over the next five months I would be hospitalized three more times from beatings, whippings, and stabbings because I could not pay extortion. I was finally sent to a psychiatric ward for electroshock treatment. During this period I watched leaders of different Mexican prison dormitories literally fight over who would get the next American prisoner for extortion purposes. Guilt or innocence was irrelevant. Americans in Mexican prisons are big business. The treatment I received by the Mexicans, although brutal, was in no way unique to that received by Americans throughout Mexican prisons.

While I was in Lecumberri in the spring of 1974, I met Dan Root, former vice-consul in charge of prisoner affairs at the U.S. Embassy. Dan Root told me there was nothing he or the embassy could do to protect me, although by now I had discovered that the prison guards did not beat up or extort Canadians, Australians, or British subjects. For purposes of protection and survival, I learned to declare myself to be a Canadian to threatening, unfamiliar guards. If they believed I would not be beaten. But although Dan Root could not help me, he did suggest that I get the services of Mexican attorney Jorge Avilés-Ortiz, because in Root's words, "if there's a man who can get you out of here, it is Jorge Avilés-Ortiz."

Jorge Avilés-Ortiz was later arrested in Mexico and charged with defrauding U.S. prisoners. On April 2, 1975, he would declare that Dan Root worked with him to defraud these Americans. Although Dan Root's actions were extreme, they exemplify the negligence or inability of the U.S. Embassy and consulates to act when needed.

The prisoner exchange treaty should be passed because the cultural and legal differences are too great to bridge from within a foreign prison. The temptation to rob and extort American prisoners is too great for Mexicans in prison to resist. Just by having these Americans within our borders and free of extortion would relieve much of the burden that the parents and relatives now suffer.

The prisoner exchange treaty should be passed because these Americans in Mexico are not heroin traffickers. Their return to the United States as prisoners would be irrelevant to the serious drug problems within the United States. They have been used as scape-goats and pawns in the game while the dangerous heroin trafficking from Mexico increases. Their continued presence in Mexico only threatens to further exacerbate the relations between the United States and Mexico.

After I crossed the U.S.-Mexico border on Christmas Eve of 1975, I knelt down on the cool Arizona sand and kissed at the ground, crying. Unfamiliar with my past circumstances, the two U.S. customs agents watching me from the nearby border station thought this an unusual display of emotions. But while in a Mexican prison, I had learned to respect and value our Constitution and Bill of Rights. So have the other U.S. prisoners in Mexico. I hope that the work of this treaty is completed sooner rather than later so that they will return home.

Everyone who has testified before this committee on the proposed treaty has endorsed its passage; yet I fear that it may take many months, even years, before we see any results from it. Please do not forget the human terms of this treaty: the wasted years, and broken lives and families. Gentlemen, I urge you to proceed with all due haste and pass this treaty and the requisite enabling legislation.

Thank you,  
DWIGHT WORKER  
The CHAIRMAN. Our last witness this morning is Mr. Glen Jones, of Kansas City, Mo.

STATEMENT OF GLEN JONES, KANSAS CITY, MO.  
Mr. JONES. Thank you, Mr. Chairman.  
I wish to thank the committee for allowing me to speak this after-

I am neither an attorney nor a member of a family who has someone incarcerated in Mexico. I am a legal investigator. Over the past 5 years, I have taken extortion money to Mexico for the release of Americans arrested in Mexico, so I do have some knowledge of extortion, ill abuse, and misconduct by Mexican and American officials in the country of Mexico.

I have no prepared statement and will speak off the top of my head. Again, I will try to keep this short.

#### MEXICAN GOVERNMENT MENTALITY

First of all, you have to realize what you are dealing with when you are dealing with Mexico. You are dealing with a corrupt government. The PRI Party is the only party that has been in power since the revolution. It is a totalitarian state in which every president happens to be appointed by the outgoing president. He is always elected. This is the party that counts the votes. This is the party that authorizes what legal action is to be taken anywhere in the country.

However, in small groups in isolated areas, the discretion of law is left up to the individuals who are appointed.

Civil servants and police in Mexico support themselves not from the fees they receive as government employees, but from bribes—"a mordida," the bite, as it is referred to in Mexico. That is the only way they have of supporting themselves and their families.

It has become worse since the devaluation of the peso. For some reason they hold Americans responsible for this. I don't know why, but that is a common statement heard by officials in Mexico and citizens.

Legal fees charged families are outrageous by Mexican lawyers. I know of one such family who has spent over \$70,000 in legal fees for absolutely nothing. This is not involved in the money which they have to send their son in Mexico to support himself: It averages, I think, around \$100 a month. He is in one of the better prisons in Mexico. He is in Recreuloz Oriente in Mexico City.

The constitutional question involved in the treaty is abstract. I am not a constitutional expert and I know nothing about it. But I do know that a great number of these people in Mexico are guilty of only minor infractions, even under Mexican law, and a great number are guilty of absolutely nothing. These were people who were arrested for "the bite," so that the families could be extorted.

I have had offers from Mexican officials in various parts of Mexico—this is not an isolated incident—for me to be part of the deal. When a child or an American citizen was arrested, they would tell the prisoner that the only way he could effect his release was to have his family get in touch with me in this country. This deal was offered to me, which I declined, of course.

#### DEA MENTALITY

Now just take this mentality that we are talking about and you add the mentality of the DEA, the Drug Enforcement Administration, which came into power in any really effective way during the Watergate period. I think we have the same mentality that started this

agency and ran this agency that was responsible for this event that happened in our country.

Hopefully we have taken care to weed out those people involved and to get ourselves straight again, to get our country on the move.

But this agency, the DEA, which was created by these same people, is still in business. It still effects the same consequences that it did when it was begun. I ask you in the form of a question, how many U.S. prisoners were imprisoned in Mexico on drug charges before 1963? Just compare that figure and the figure for today. You will see that the former is almost nonexistent.

The laws are the same in Mexico. They were not changed. They were implemented at the request of the Drug Enforcement Administration of this country.

We heard Mr. Beringer yesterday tell us—and I can't quote him exactly, he went so fast—that the DEA agents in Mexico absolutely do nothing. They don't do this and they don't do that, so they have no function.

I will ask another question: are DEA agents carrying firearms in Mexico? the answer is yes, on occasion. Are DEA agents issued weapons? The answer is yes, always. Is there an arsenal in the DEA office specifically for DEA agents in Mexico? The answer is yes.

In behalf of a client in Mexico, I sued the Drug Enforcement Administration for any information it might have pertaining to his arrest, and/or conviction. I was denied this information under the Freedom of Information Act.

I went to Mexico at the behest of the family and acquired that, the Freedom of Information and the Privacy Acts, both, and took my request to the Embassy, and it was denied. I took it back home, sued in Federal Court, and it was denied, the reason being that this particular individual—who I might add had no former arrest record nor any former drug record, indeed had nothing but good grades in school; he was merely a businessman—I was told and the Federal judge was told, was under investigation.

I find that not one DEA file has been released to an American citizen or to his counsel. Gentlemen, not one.

Now with 600 people in Mexican prisons, they are telling you that all are under investigation.

Now that is a simple procedure. You just whip up a quick 10 pages as soon as someone is arrested. I have information regarding this particular individual from informers within the DEA office in Mexico City that they were indeed involved, not with the arrest, but with the prosecution after the arrest.

This particular individual was on an airplane from South America. When he got to the airport in Mexico City, he asked a Colombian national, who happened to be on the same plane, for dinner. The Colombian national was what is termed a "mule." She was carrying drugs for an organization with which this man was not involved. He merely spoke to the girl. He was sentenced to 8½ years imprisonment. His confession was extracted out of him after 3 days of electrical torture, physical abuse and mental abuse. For me to recount those things would be to say again what this panel has already said. Most of those things, if not all of them, happened to this particular individual. We don't

that was in Spanish without the aid of a translator.

When the Embassy finally was called, he told the Embassy that it was taken by force. He showed them signs of physical violence which were properly recorded by the Embassy. A formal protest was made to the Government of Mexico—all to no avail. Nothing has happened, not to this date, anyway, except that he has been sentenced to 8½ years prison time, a completely innocent man.

Something has to be done.

#### TREATY RECOMMENDED

I suggest that there are outlets, even in this treaty, and I recommend the treaty for the simple fact that these people will be home and can be dealt with under the penal system here.

I will tell you why I think so, although I again state that I am not an expert on the law.

Even if these individuals waive their rights, it does not waive my rights, as an American citizen, to ask for habeas corpus or any other judicial process in their behalf, even if it means a class action suit. I don't believe that the Supreme Court of this country will allow the system in Mexico to dominate our judicial system in this country, regardless of the treaty. But I think you should approve the treaty.

The CHAIRMAN. You say you think we should approve the treaty?  
Mr. JONES. Yes, sir, I think you should approve it for the simple reason that I think this Government can deal with it, once it is done.

The CHAIRMAN. Thank you very much.  
Mr. JONES. Thank you for allowing me to speak.  
The CHAIRMAN. Senator Glenn and Senator Sarbanes, do you have any questions?

Senator GLENN. I have a few questions, Mr. Chairman, thank you.

#### PRISONERS' AWARENESS OF TREATY

Are most of the prisoners in jail in Mexico even aware of the treaty and what is being considered, as far as you know?

Ms. COULTER. Yes.

Ms. CARTER. Yes.

Mr. JONES. Senator, most of them are not only aware, but most of them are skeptical. I spoke to the arrest and detention officer in Mexico City, and he asked me to urge you people to expedite this matter because the mental anguish of 3 years of waiting for this thing to happen or not to happen has become intolerable on these people. We are inflicting our own pain upon them.

Senator GLENN. When you say that they are skeptical, are they skeptical of us passing it, or do you mean they are skeptical of the provisions doing any good once it is passed?

Mr. JONES. Both. Some prisoners think that it will never come to pass.

Senator GLENN. I see no reason for skepticism in the first case, about it being passed. I can't guarantee that it will be passed, of course.

However, the second point, what do they see as the deficiencies in its provisions if it is passed?

Mr. JONES. Yes, sir. Certain individuals, particularly the individuals that are guilty of no crime or of minor infractions, see that they might have to serve up to 20 years in the U.S. prisons for these offenses with which they were charged in a foreign country, and for which confessions were extracted from them by brute torture.

They cannot conceive that they would have to do that. But the way things have gone, they have been stalled for 2 and 3 years and so they don't know what to think.

Senator GLENN. Do you think that with the provisions of this treaty most of the prisoners in Mexican jails now would prefer to serve out their sentences there, or would they prefer to come back under the treaty's provisions?

Mr. JONES. I can't answer that, Senator Glenn. You would have to ask the prisoners.

Senator GLENN. Does anyone else have any ideas on that?

Mr. CARTER. Senator Glenn, I would like to comment on that. Our son has commented to us. He is like the Balvin boy. He might not fit into the guidelines of this treaty. But, under the circumstances where we have passed the treaty, as has been touched upon here, if a man has been sentenced to 7 years in a Mexican jail and he is on his way home, and there is no hope for him to get out of these 7 years, even on his own soil, he does not look forward to this prospect either.

#### PAROLE, HABEAS CORPUS AND PAROLE UNDER TREATY

Senator GLENN. Staff, correct me if my interpretation of the treaty is incorrect. It is my interpretation that once they come back under this treaty, they will be eligible under American law, we being the receiving nation, for parole.

Mr. CARTER. But that would have to be a Mexican parole.  
Senator GLENN. No, that is not true. Staff, correct me on this. It is my impression that of the prisoners come back from Mexico, they would be handled parolewise by U.S. authorities; but they would have to give up any right of habeas corpus or any right of appeal of their sentence. When they arrived here, however, they could apply for parole.

Is that correct, or not?

Mr. McMURPHY. They could apply for parole. They could only appeal in the Mexican courts.

Senator GLENN. They could only appeal for relief from the whole sentence, for guilt or innocence, in the Mexican court. They could appeal for parole here under American law, but with no right of habeas corpus.

Mr. McMURPHY. [Nods affirmatively.]

Mr. CARTER. Now I am not a lawyer, but I read this treaty thoroughly in New York City in December. It would seem to me to be a holding treaty for the nation of Mexico. It would seem to be, at best,