

PREPARED STATEMENT
OF
REAR ADMIRAL CLYDE E. ROBBINS
CHIEF, OFFICE OF OPERATIONS
U. S. COAST GUARD
BEFORE THE
HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIME

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Biographical Sketch
U.S. COAST GUARD



REAR ADMIRAL CLYDE E. ROBBINS
CHIEF, OFFICE OF OPERATIONS

Rear Admiral Clyde E. Robbins graduated from the Coast Guard Academy in New London, Connecticut, in 1954. After serving for a year-and-a-half aboard the cutter HALF MOON, he completed flight training at Pensacola, Florida, and Corpus Christi, Texas. He then served as an aviator in a variety of assignments, including tours in St. Petersburg, Florida, San Francisco, Canada, and Bermuda.

Following a five year tour at Coast Guard Headquarters in Washington, D.C., he served three years as a commanding officer of Air Station Washington, D.C. Rear Admiral Robbins took command of U.S. Coast Guard Base Galveston, Texas in June of 1974 where he remained for two years. Following a year as a student at the National War College in Washington, D.C., Rear Admiral Robbins was assigned as the Chief of the Programs Division at Headquarters in 1977. Moving to Boston in 1980, he became the Chief of the Operations Division of the First District and a year later he assumed duties as Chief of Staff of that district.

Rear Admiral Robbins was promoted to his present rank in June 1982 while serving at Headquarters as the Chief of the Special Staff Element for the Commandant. He assumed the duties of the District Commander, First Coast Guard District, May 25, 1983. On June 30, 1983, he became the Commander, Fourteenth Coast Guard District in Honolulu and in July of 1985 he moved to Headquarters, Washington to be the Chief, Office of Operations.

Rear Admiral Robbins holds a Bachelor of Science degree from the Coast Guard Academy and is a Distinguished Graduate of the National War College. He has been awarded the Legion of Merit, Meritorious Service Medal, Air Medal, Coast Guard Commendation Medal, President's Medal and the Secretary's Award for outstanding achievement in equal opportunity, among others.

A native of Columbia Cross Roads, Pennsylvania, and son of the late Howard and Lisle Robbins, Rear Admiral Robbins is married to the former Elizabeth P. Byrem of Hohokus, New Jersey. They have two children, Jennifer, a 1983 graduate of Temple University in Pennsylvania, now living in Philadelphia and James, a 1983 graduate of the Coast Guard Academy, who is assigned to Naval flight training.

Mr. Chairman and members of the Committee, I am RADM Clyde E. Robbins, Chief, Office of Operations of the Coast Guard. It is a pleasure to appear before you today to provide an overview of the Coast Guard's role in maritime drug law enforcement and counter-terrorism.

As you know, most maritime drug traffic destined for Florida and other Atlantic and Gulf Coast regions of the United States departs from South American or Caribbean staging areas. Marijuana from the Guajira Peninsula on the north coast of Colombia is a prime example. As seaborne smugglers proceed north, they normally pass through one of the four inter-island channels we call "choke points" en route toward the Bahamas, Florida or the Gulf Coast. Some vessels attempt to avoid the increased law enforcement pressure off Florida by transiting the Eastern Caribbean and offloading further north along the Mid-Atlantic or the New England sea coasts.

There has also been a substantial increase in drug smuggling on the West Coast. Marijuana from Central and South America is most prevalent, which could be a further reaction to increased enforcement pressure in the Caribbean. Other West Coast maritime narcotic smuggling comes from Southeast Asia.

Analysis shows that while we must keep pressure on all facets of the maritime drug scenario, interdiction of "motherships," which deliver contraband to smaller, faster contact boats well off our coast, has the greatest potential for disrupting the maritime flow of drugs. To effect this strategy, the Coast Guard conducts continuous surface patrols and frequent surveillance flights over the waters of interest, and an intense program of boarding and inspecting vessels at sea. Major resources are concentrated in the choke points with emphasis on the Yucatan Channel between Mexico and Cuba and the Windward Passage between Cuba and Haiti. Cutters, as available, also patrol elsewhere such as the Bahamas, eastern passes of the Caribbean, and the Gulf, Atlantic and Pacific coastal areas.

We have noted that as law enforcement pressure in the maritime region has increased, there has been a shift in modes and methods of transportation. In 1984 there was a decided increase in airdrop activity to boats off our coasts, the use of hidden compartments (compartments incorporated into the design of a ship for the express purpose of hiding contraband) and attempts by smugglers to circumvent our interdiction resources through counterintelligence and the use of their own surveillance aircraft. In 1985 several attempts were made to use tugs towing barges with massive loads of marijuana.

We believe these tactics confirm the fact we are having a noticeable effect on maritime smuggling because they make smuggling more difficult and expensive for the traffickers as they attempt to find alternate means to continue their illicit trade. In addition to larger quantities of marijuana, large quantities of cocaine and some other drugs have begun to be seized ... indicating a distinct shift in trafficking trends. Previously, we rarely seized these higher value, low volume, drugs because the quantities were so small they were disposed of "over the side" prior to the at-sea boarding of the vessel. In 1985, however, we seized over 6,500 pounds of cocaine, up from the 1,967 pounds seized in 1984, and well above the high of 46 pounds in previous years.

Starting in the fall of 1984, a new strategy was also employed, facilitated by a new awareness by our allies of the international ramifications of drug trafficking. Operation Wagonwheel, conducted in November and December, 1984, was the key element of a larger national and international operation, Operation Hat Trick, coordinated by the National Narcotics Border Interdiction System (NNBIS). Operation Hat Trick was the first of several multiagency, international operations employing the maximum of flexibility and deception to complement the anti-drug operations being carried out by foreign forces in-country ashore and afloat.

The latest effort, Operation Hat Trick II, was very similar to Hat Trick I, but on a more massive scale. Again, planned and coordinated through NNBIS, the Coast Guard, supported by the U.S. Navy, provided the primary maritime surveillance and interdiction forces, while the Customs Service, Navy, Air Force, Army and Marines conducted air operations. Through Department of State and Drug Enforcement Administration initiatives, the federal agencies worked with our neighbors and allies, primarily Colombia, Panama, Venezuela, Jamaica and the Bahamas, to provide the maximum coordination of our combined anti-drug operations.

These types of operations, involving not only the United States but other nations directly concerned with the problem of narcotics trafficking, have been an extremely effective adjunct to our own interdiction program. In addition, the Coast Guard has often received requests from other nations for operational assistance in maritime interdiction. For example, many of the smaller countries in the Antilles have established their own coast guards and have requested our assistance in law enforcement operations and training. However, one problem, which became especially apparent during joint operations such as Wagonwheel, involved the restrictions imposed by the "Mansfield Amendment" [22 U.S.C. 2291(c)].

The Mansfield Amendment had been interpreted by the Chief Counsel of the Coast Guard as permitting the Coast Guard to act alone within foreign waters, with the consent of the foreign sovereign, to enforce U.S. law, with respect to U.S. vessels, stateless vessels, and third nation vessels with the consent of the flag state. However, the Coast Guard could not DIRECTLY assist foreign personnel in the enforcement of their laws. Under these restrictions, any joint operation or "hands-on" training in foreign territorial waters must be carefully conducted to avoid any direct involvement in foreign drug law enforcement.

Section 605 of the International Security and Development Cooperation Act of 1985 recently amended the Mansfield Amendment. That section provides that the Mansfield Amendment shall not prohibit U.S. personnel from "being present during direct police actions with respect to narcotics control efforts in a foreign country" as long as the Secretary of State and that country agree to the U.S. presence and the agreement is reported to Congress before the agreement takes effect.

The effect of the amended language regarding U.S. "presence" is unclear, at least in the context of the type of joint maritime interdiction efforts noted earlier. In addition, the requirement that the agreement with the foreign country be communicated to Congress before it become effective hinders the amendment's usefulness to the Coast Guard. To be effective, the Coast Guard

must have an umbrella agreement with the foreign country, permitting actions on a case-by-case basis, with the umbrella agreement communicated to Congress (rather than case-by-case notifications).

Given the practicalities of narcotics interdiction in the maritime environment, the restrictions imposed by the Mansfield Amendment create significant problems for the Coast Guard in particular. The President's Commission on Organized Crime, upon reviewing the effect of the Mansfield Amendment on U.S. narcotics control efforts, urged that it be repealed in its entirety, and the concerns which prompted that legislation be addressed in guidelines which provide necessary flexibility while embodying the limits of permissible U.S. agency conduct.

Other legislative changes could also enhance the Coast Guard's efforts to combat maritime narcotics trafficking. On 16 May 1985, Rear Admiral Cueroni, the Commander of the Seventh Coast Guard District, testified before this Committee regarding H.R. 2132. That bill was designed to amend Public Law 96-350, sometimes known as the "Marijuana on the High Seas Act," to make clear that the informal consent we obtain from a foreign government to take law enforcement action against its vessel on the high seas constitutes an "arrangement" within the meaning of that statute. Once such an "arrangement" has been concluded, the vessel is by definition within the "customs waters of the United States." This bill was recently signed into law. As Admiral Cueroni testified, this amendment solves one problem that had arisen; however, other problems remain. These problems generally fall into two related categories: jurisdiction and documentation.

With respect to jurisdiction, the problems arise out of the basic structure of Public Law 96-350. As the legislative history of that act indicates, Congress was concerned that the United States not exceed the scope of criminal jurisdiction we could exercise under existing international law. Therefore, international law jurisdictional principles were incorporated into the substantive offenses. Thus, the status or location of a vessel or an individual determines which particular offense applies. This structure also has prompted some courts to hold that such status or location is an element of the offense, which must be proved to the jury beyond a reasonable doubt, rather than solely a question of jurisdiction to be decided by the court as a matter of law under a lesser standard of proof.

This incorporation of jurisdictional principles into the substantive offenses leads to the second major problem area under Public Law 96-350, that of providing sufficient documentation to establish both the status of the vessel and/or the consent of the flag state (i.e., the "arrangement") to take enforcement action. Although a few courts have held that the written message traffic from the U.S. embassy in the flag state is sufficient for this purpose, most have required affidavits from foreign governments either refuting the vessel's claimed registry or verifying registry and confirming that State's consent to take enforcement action. It has often been extremely difficult to obtain affidavits acceptable to our courts, both in content and form, in a timely manner. This problem has jeopardized some prosecutions, and has in some cases required Coast Guard personnel to fly on the eve of trial from the United States to foreign capitals to physically obtain affidavits.

Another problem arising out of the incorporation of jurisdictional principles into the substantive offenses occurs when a vessel fails to make any claim of registry prior to seizure by the Coast Guard. The vessel may at that point be considered a stateless vessel; if drugs are discovered, it may legitimately be seized and prosecuted under U.S. law. However, at trial, the defendants may for the first time claim a foreign registry, and produce documentation to that effect. At that point, it is very difficult for the United States to refute the "new" claim. Moreover, the failure to make a claim before trial prevents the United States from entering into an "arrangement" with the flag state before taking law enforcement action. This could prevent the United States from proceeding against the vessel for possession within U.S. customs waters under 21 U.S.C. 955a(c). To the extent that it is necessary to dismiss charges under these provisions, the only alternative is to prove under 21 U.S.C. 955a(d) that the defendants intended to import the drugs into the United States. As the history of the narcotics interdiction program prior to enactment of Public Law 96-350 demonstrates, proving intent to import can be very difficult.

It should be emphasized that these legal problems have not impeded actual interdiction of vessels carrying drugs. Our practice, when discovering a vessel (other than a U.S. vessel) on the high seas that we suspect is carrying drugs, is to query the vessel as to its registry. We then, through the State Department, contact the claimed flag state to verify the claim of registry and obtain the consent of the flag state to take enforcement action. In the vast majority of cases, we have been successful in obtaining the cooperation of the flag state in a timely and effective manner, thus, the requisites of international law have in all cases been satisfied. As a result, we are aware of no instance where another state has protested our interdiction effort directed at one of its vessels.

The problems, however, do affect our ability to prosecute in U.S. courts. During the prosecution, the major issues frequently litigated have nothing to do with whether the defendants were engaged in illicit drug trafficking. Indeed, actual compliance with international law is not really at issue either. Rather, the litigation centers around meeting the standard of proof of compliance with international law. Such issues should be treated solely as questions relating to foreign relations, and not litigated in the courts as failures of proof of non-essential elements raised by the defendants. It certainly would be anomalous for a foreign flag state to concur with our law enforcement actions and later have our own courts hold that such actions violated international law.

It is clear that Public Law 96-350 has proved to be a significant step forward in our efforts to stem the flow of illicit narcotics into the United States. Section 7 of H.R. 739 provides further help. Addressing the problems noted above, however, will help assure that our prosecutorial efforts directed against drug smugglers are truly effective.

I'd like to now briefly discuss the valuable assistance that has been provided by the Navy in this war on drugs. As a result of the provisions of Section 905 to the Department of Defense Authorization Act of 1982 which established a new Chapter 18 of Title 10, United States Code, all the armed services have increased their participation in the Federal government's narcotics

interdiction efforts. However, it is the Navy that has been providing the most direct assistance to the Coast Guard. The specific types of assistance include:

- o INCREASED SURVEILLANCE AND SUSPECT VESSEL REPORTING, which has increased the intelligence in our data base.
- o TOWING AND ESCORT SERVICE for seized vessels, which allows our cutters to remain on station.
- o THE NAVY'S SPECIAL USE ASSETS, such as the PHM (Hydrofoil patrol boat) squadron and their special mission surveillance aircraft.
- o Deploying COAST GUARD BOARDING TEAMS ON NAVY UNITS, which increases the number of Coast Guard boarding platforms. This program is extremely useful because it provides us with a surface resource to supplement the limited number of Coast Guard cutters.

As an example of the valuable assistance we receive from the Navy, since April, 1981, when we started maintaining records, there was one case of Navy assistance -- the USS BEARY recovered 38 pounds of marijuana -- the number of cases per year has grown; 6 cases in 1982, 10 cases in 1983, 18 cases in 1984, and 11 cases in 1985. This year we have had 4 so far. These cases amounted to 47 vessels seized, more than 1 million pounds of marijuana confiscated, and 285 arrests. Additionally, 7 vessels participated in Operation Hat Trick and this year, more than 30 Navy vessels participated in Hat Trick II -- between 6 and 9 of these with Coast Guard boarding teams on patrol at all times.

Navy assistance will continue to grow. The DOD Authorization Act, 1986, signed into law on 8 November, 1985, authorized the mandatory assignment of CG personnel on naval vessels in a drug interdiction area. It also contained authority for \$15 million to be transferred to the CG for FY86 from the Navy to fund 500 additional CG billets. These billets are being filled over the next two years to provide additional Coast Guard boarding teams and the minimum necessary support positions to train them, coordinate their activities, and conduct liaison with the Navy. These teams will be located near where the largest concentrations of Navy vessels are homeported to reduce travel costs and provide liaison training to Navy staffs.

Now I'd like to briefly review the role the Coast Guard would play in counter-terrorism.

As a result of the "ACHILLE LAURO" incident, attention by the Administration and Congress has been focused on the present level of domestic and international maritime security. Current efforts have concentrated on a review of existing law enforcement authority and a consideration of additional measures, that might be necessary to enhance the safety of ships, their passengers and crews. The International Maritime Organization's (IMO) Maritime Safety Committee is developing internationally agreed measures to prevent unlawful acts against passengers and crews on board ships. The U.S. delegation was instrumental in preparing draft measures which are under consideration by the Committee. The provisional draft measures have been mailed to U.S. interested parties for their review and comment. It is expected that these measures will be adopted at the next session of the Maritime Safety Committee in September 1986.

The Maritime Security Working Group of the Interdepartmental Group on Terrorism, chaired by the Secretary of the Department of Transportation, with representatives from the Department of State, Coast Guard, Navy, Maritime Administration, Federal Aviation Administration, Federal Bureau of Investigation, Customs Service, and Central Intelligence Agency, is considering options and making recommendations for a domestic maritime security program. This review is critical because, although international measures can be developed, the Magnuson Act, which authorizes the present domestic port security program, does not provide an adequate framework for specific regulations protecting passengers and crews or a provision for civil penalties. Both the international and domestic approaches are desirable for an effective program.

This concludes my prepared testimony, Mr. Chairman. I will be happy to answer any questions you or the members of the committee may have.